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Succession and Transfer of Agricultural Land Holding: Evidence from
Slovakia****

Abstract

The number of farmers in the European Union is gradually declining due to weak incentives, especially for the younger generation, to work in agriculture. State intervention is therefore essential for the preservation of farms in the form of legal regulation of succession as well as the creation of a supportive environment for successor entities to be able to continue agricultural production effectively. The aim of this paper is therefore to assess the sustainability potential of agricultural holdings on the basis of an analysis of the legislation on the succession and transfer of agricultural land holdings to physical and legal persons. In this article, we used traditional legal methods of examining legal regulations based on grammatical, logical, systematic, and teleological interpretations. The results show that in Slovakia there is currently no specific legal regulation by the state that would address the succession of agricultural land and agricultural enterprises in a targeted manner.

Key words: agricultural land holding, agriculture, land fragmentation, ownership, lease, succession, transfer

1. Introduction

Over the last years, the number of farmers, especially young farmers, have decreased in several European countries due to technological, social, and economic changes.¹ At the same time, there is the threat of an increasingly intensive process of concentration taking place in European farming. Between 2005 and 2015 the number of farms in the EU-27 decreased by approximately 3.8 million and the average size of the farms increased by about 36%.² Therefore, farm succession has become a key policy

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¹ Duesberga, Bogue & Renwick 2017, 526.; Leonard, Kinsella, O'Donoghue, Farrell & Mahon 2017, 148.

² Eurostat 2017.



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concern of the EU's Common Agricultural Policy and the European Commission's proposals for the future.³ In this context, several political discourses are taking place that should result in implementation of instruments to support young farmers in setting up and ensuring the viability and future sustainability of their activities.

At present, economic and legal instruments for maintaining European agriculture are mainly used. The Common Agricultural Policy mainly uses an economic instrument in the form of stimulating support for the establishment of farms for young farmers through payments. In the program period 2014–2020, the young farmer payment is a compulsory scheme that Member States must implement⁴ in accordance with Regulation (EU) 1307/2013 No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009. The discourse of “young farmers” is deeply related to the process of farm succession and its legal regulation. Results of research show that farms are passed from one generation to the next within the framework of the family because the agricultural sector is typified by a strong heredity. Thus, the most common means of entry to farming is succession in the family.⁵ Succession on a farm is therefore the basis for a farm's existence and development.⁶ State intervention is therefore essential for the preservation of farms in the form of legal regulation of succession as well as the creation of a supportive environment for successor entities to be able to continue agricultural production effectively. As follows from the recommendations of the Directorate General for International Policies, the key regulations are mainly supportive legal regulations, access to land, actions of new innovative initiatives, access to capital, capacity building, financial support, etc.⁷ Based on the above-mentioned facts, the state must specifically regulate the legal succession of agricultural holdings when developing the concept of long-term sustainable agriculture.

The legal regulation of the succession of agricultural land holding of individual states of the European Union is determined by socio-political developments in relation to the support of small and medium-sized enterprises on agricultural land.

Slovakia as a post-socialist country declares in Article 44(5) of the Constitution of the Slovak Republic no. 460/1992 Coll. Constitution of the Slovak Republic as amended, that agricultural land is a non-renewable natural resource enjoying special protection from the state and society. Emphasizing the concept of public goods, the Constitution of the Slovak Republic in Art. 20(5) allows limitations on the transfer of ownership of property that is necessary to ensure the needs of society, food security of the state, development of the national economy, and the public interest to defined entities. However, there is still no effective regulation⁸ for succession and transfers of agricultural land, and it therefore remains *de iure* tradable goods in the concept of private goods.

³ Pitson, Bijttebier, Appel & Balmann 2020.

⁴ European Commission 2016

⁵ Zagata & Sutherland 2015, 41.

⁶ Kerbler 2011, 290.

⁷ Directorate General for International Policies 2017.

⁸ Restriction of ownership.

The aim of this paper is therefore to assess the sustainability potential of agricultural holdings on the basis of an analysis of the legislation on the succession and transfer of agricultural land holdings to physical and legal persons. In the article, we use traditional legal methods of examining legal regulations based on grammatical, logical, systematic, and teleological interpretation. The research results are based on the legal opinions of domestic and foreign authors.

2. Structure of agricultural land holdings ownership

Slovakia can be characterized as a predominantly rural country, and agriculture remains important in terms of its productive and non-productive functions. Of the total land area of Slovakia, 4,903,405 hectares, 2,375,025 hectares (48.43%) constitute agricultural land and 2,027,852 hectares (41.36%) constitute forest land. The agricultural land is dominated by arable land of an area of 1,405,263 ha (59.17%) and permanent grassland of an area of 850,027 hectares (35.17%).⁹

Out of the overall area of agricultural land, 77.5% is owned by private entities (individuals and legal entities), 5.77% is owned by the state, and 16.77% is owned by unknown/unidentified owners administered by the Slovak Land Fund as a budgetary institution of the state.¹⁰ One of the significant obstacles in land management in Slovakia is unresolved land fragmentation. Based on data from Ministry of Agriculture and Rural Development of the SR,¹¹ the following can be identified: (a) 8.4 million of ownership parcels; (b) 4.4 million of owners and 100.7 million of co-ownership relations; (c) 11.93 average numbers of owners in 1 parcel; (d) 22.73 parcels own 1 owner.

At the same time, individuals manage especially parcels up to 50 hectares, while legal entities dominate the ownership of areas of more than 50 or 100 hectares.¹² In the period 2010–2016, legal entities managed 80% of overall agricultural land.¹³ Up to now, approximately up to 90% of the total agricultural land is leased land, which is one of the largest land tenure concentrations in the European Union.¹⁴

Therefore, Slovakia is among the European countries with the highest proportion of land management by state and legal entities. Such a structure of land management often results in some unintended negative consequences,^{15,16,17} one of which may be a lower demand for an effective solution of the problem of succession of agricultural land holdings. We believe that Slovakia is also for this reason one of the few countries in the European Union that does not have a specific concept of or legislation on succession of agricultural land holdings.

⁹ Geodesy, Cartography and Cadastral Authority of the Slovak Republic 2021.

¹⁰ Slovak Land Fund 2020.

¹¹ Ministry of Agriculture and Rural Development of the Slovak Republic 2020.

¹² Statistical Office of the Slovak Republic 2017.

¹³ EUROSTAT 2018.

¹⁴ Bandlerová & Lazíková 2018, 232.

¹⁵ De Schutter 2011, 250.

¹⁶ Burja, Tamas-Szora & Dobra 2020.

¹⁷ Behnke 2018, 710.

3. Transfer of agricultural holdings *inter vivos*

The rules on the transfer of agricultural holdings while the entrepreneur or the existence of the legal person whose property the holding is part of is still alive are not regulated by *lex specialis*. The issue of transfer must be assessed under the provisions of several pieces of legislation depending on the legal form of the business. An agricultural holding can be owned by a natural or legal person.

The status of an entrepreneur as a natural person (self-employed farmer) is regulated by Act no. 105/1990 Coll. on private business activities of citizens as amended. In case of transfer of an agricultural holding, it is necessary to proceed in accordance with the provisions of the Contract of Sale of the holding pursuant to the provisions of Arts. 476–488 of Act no. 513/1991 Coll. Commercial Code as amended¹⁸ or in accordance with the provisions of the Deed of Gift pursuant to Arts. 628–630 of Act no. 40/1964 Coll. Civil Code as amended. The subject of these contracts is the enterprise as a whole (e.g., agricultural land holdings), i.e., it concerns the transfer of ownership of things and the transfer of other rights and other assets used to operate the business, including agricultural land.

The status of an entrepreneur as a legal entity is regulated by the Commercial Code or a special regulation. An agricultural holding can take any form of legal entity (trading company,¹⁹ cooperative, state enterprise, or another legal entity).²⁰ Based on statistical data from the Ministry of Agriculture and Rural Development of the Slovak Republic for the period 2016–2020, the most numerous business entities in agriculture are limited liability companies and cooperatives.²¹

(a) Transfer of ownership interest in a limited liability company (Art. 115 Commercial Code): A partner may, in accordance with the Articles of Association, transfer his shareholding either to another partner or to another person. Unless the Articles of Association provide otherwise, the partner may, with the consent of the General Assembly of the company, transfer his shareholding to another partner. He may transfer his share to another person outside the company if the Articles of Association so allow. One of the conditions of the transfer to another person, even if the Articles of Association allow it, may be the consent of the General Assembly. The result of the transfer of the business share may be the sale of the majority share of the business company and thus the fulfillment of the reason for the termination of the lease agreements for the lease of agricultural land by the lessors, landowners.

(b) Transfer of membership rights in cooperative (Art. 229 Commercial Code): According to the current legislation, cooperatives have the character of mutual cooperatives. Their registered capital is the sum of all member deposits. The ratio of the

¹⁸ Act no. 513/1991 Coll. Commercial Code as amended is *lex specialis* in relation to the Act no. 40/1964 Coll. Civil Code as amended.

¹⁹ In accordance with the Green reports of the Ministry of Regional Development of the Slovak Republic for the period 2016–2020, the most numerous business entities whose subject of business is focused on agriculture are limited liability companies and cooperatives.

²⁰ In legal entities with an obligation to contribute, agricultural land may be the shareholder's contribution to the company.

²¹ Ministry of Agriculture and Rural Development of the SR 2016–2020.

membership fee to the registered capital of the cooperative determines the amount of the membership share, unless the Articles of Association of a particular cooperative provide otherwise. The Commercial Code, which regulates the legal status of the cooperative, allows the transfer of membership in the cooperative and thus the membership share to another member or to a third party. The transfer of membership may involve a change in the cooperative's property share. If the majority of the shares in the cooperative are sold, the cooperative, as the lessee of agricultural land, must publish this fact on the official notice board of the municipality in whose cadastral territory the land is located and the lessors may terminate the lease for this reason.

As almost 90% of all land in Slovakia is agricultural land, it is necessary to reflect on the consequence of the transfer of ownership rights to tenancy relations. Pursuant to Art. 12 Sect. 6 of Act No 504/2003 Coll. on the lease of agricultural land, agricultural enterprise, and forest land and on the amendment of certain laws as amended, in case of the contractual transfer of the company, the lessee is obliged to fulfil the notification obligation towards the owners of the land, which the lessee has used so far. Tenants may decide to terminate the lease for this reason. If the lease is not terminated due to the sale of the lessee's business, the successor, i.e., the buyer, enters into these relations. He is obliged to respect the established requirements of the agreed lease agreements.

4. Succession of agricultural land and/or holding

The succession of agricultural land is not regulated in the legal order of the Slovak Republic by a special legal regulation. Inheritance is governed by the provisions of Arts. 460–487 of the Civil Code, which regulates two forms of inheritance, namely by law and by will. Legal inheritance predominates in Slovakia. The Civil Code regulates four groups of legal heirs in case of legal inheritance.

As for succession of agricultural land, the provisions of Art. 23 of Act No 180/1995 Coll. on certain arrangements for the holding of land as amended prohibit an inheritance decision resulting in division of existing land to land that is smaller than 2000m² in the case of agricultural land, and less than 5000m² in the case of forest land. This prohibition also applies to the transfer of ownership of land on the basis of a legal act of the owner, such as purchase, donation, exchange contract, or joint venture settlement agreement, as well as to the transfer of ownership based on a court decision on settlement of co-ownership, as follows.

Another restriction in connection with the transfer of ownership of agricultural land follows from Art. 2 Sect. 3 of Act No 97/2013 Coll. On land-based communities as amended according to which “the transfer of the share in the joint property must not result in co-ownership share on the joint property which corresponds to an area of less than 2,000 m²; the merging of shares must not result in a share corresponding to an area of less than 2,000 m²”

In the legal order of the Slovak Republic, the regulation of inheritance is stipulated in the seventh part of the Civil Code, in Arts. 460–487. It is a general arrangement enshrined for the inheritance of any property, including the succession of agricultural land and agricultural holding. One of the basic principles of the regulation of inheritance is the universal succession of the guarantor's rights and obligations *ex lege* by the death of the guarantor (Art. 460 Civil Code).

Agricultural land and agricultural holding are part of the guarantor's property and are settled as inheritance from the guarantor within general provisions. According to the provisions of Act. 461 Sect. 1 of the Civil Code, inheritance takes place by law, will, or both. Inheritance by will is applied as an exclusive form of transfer of the guarantor's property and liabilities to the heirs, or it is applied simultaneously with inheritance by law. The relationship between these titles is subsidiary. Pursuant to Art. 461 Sect. 2 of the Civil Code, *"If the heir of the will does not acquire the inheritance, the heirs by law take his place. If only part of the inheritance is acquired from the will, the inheritance is acquired by the heirs by law."*

In Slovakia, the writing of wills, and thus inheritance by will, does not have a long tradition; in about 90% of inheritance proceedings, heirs are determined on the basis of inheritance groups.

4.1. Subjects of the succession

Heirs can be natural and legal persons, while they must be eligible for rights and obligations in accordance with Art. 7 of the Civil Code, and at the same time, they must be eligible for inheritance, i.e., they may not be disinherited or ineligible. Who can become an heir depends on the legal title of inheritance. If the legal title is by law, only natural persons divided into four inheritance groups can become heirs, subsuming the heirs in a direct side-line. Inheritance that will not be acquired by any legal heir will belong to the state. If the inheritance is settled by legal title of the will, a natural or legal person can become the heir. The will must comply with the strict formalities required by the law on the validity of wills.

The maximum limit of ownership of agricultural land under the current legislation is not set. In inheritance proceedings, however, it is necessary to comply with the ban on the fragmentation of agricultural and forest land outside the built-up area of the municipality in accordance with Art. 23 of Act no. 180/1995 Coll. In the event that the inherited agricultural land has areas below the legal limit, the heirs must come to a mutual agreement. If an agreement cannot be reached, the decision will be made by the court.

The property acquired by succession or by transfer is registered in the Land Registry,²² where the ban on agricultural land fragmentation must be taken into account.

4.2. Processing of the succession of agricultural land

Negotiation of inheritance, confirmation of its acquisition in a legally binding manner that does not raise any doubts, and ensuring the continuity of the transfer of inheritance to a legal successor are provided by Arts. 158–161 of Act no. 161/2015 Coll. Civil non-dispute order as amended. This is in the competence of the district court in the district in which the legator had a permanent residence address at the time of death or where the property is located in case that the jurisdiction cannot be determined by permanent residence; or the place of death of the legator or if jurisdiction cannot be determined under the previous conditions. In succession proceedings, the competent court of first instance instructs the notary to act and decide on the succession; in view of

²² Land Registry is regulated by Act no. 162/1995 Coll. on Land Registry and on registration of property and other property rights (Land Registry Act) as amended.

the above-mentioned regulation, the notary's decisions represent the decisions of the court of first instance. The activity of notaries as judicial commissioners in inheritance proceedings is considered a direct exercise of part of the judiciary, as follows from the resolution of the Constitutional Court of the Slovak Republic.²³ The judicial commissioner participates in the inheritance proceedings entrusted with decision-making powers or participates as a judicial body in the first instance in inheritance proceedings in fulfilling the positive obligation of the state to protect human rights and freedoms in connection with the implementation of the fundamental right to judicial and other legal protection pursuant to Art. 46 Sect. 1 of the Constitution of the Slovak Republic and the right to a fair trial according to Art. 6 Sect. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The current legal regulation of inheritance proceedings is based on the principle of state interference in the transfer of property rights and obligations from the guarantor to legal successors. It includes the power as well as the obligation to initiate inheritance proceedings *ex officio*, even without a petition, as soon as the relevant district court learns that someone has died or been pronounced dead.

As for agricultural land, i.e., agricultural holdings, there are no special conditions for the implementation of the succession procedure. In the event that the decision on inheritance concerns agricultural land, the Land Registry Office shall keep a record of the creation, change, or termination of rights to agricultural land, as to all real estate.

The heir is liable for the debts of the legator only to the extent of the inheritance. In the event that there are valid decisions of state authorities to impose sanctions, they must be implemented. If the heir decides to do business in agricultural production, he must comply with the legal obligations arising from Act no. 220/2004 Coll. 220/2004 Coll. on the protection and use of agricultural land and amending Act no. 245/2003 Coll. on Integrated Pollution Prevention and Control and on the amendment of certain laws as amended.

4.3 Processing of the transfer of agricultural land

The procedure for acquiring ownership by natural and legal persons by transfer is regulated by the Civil Code, which regulates the purchase, donation, exchange contract, and transfer of ownership for the purposes of exercising the lien, or exercising the security transfer of the right. The provisions of the *lex specialis* Act no. 140/2014 Coll. on acquisition of ownership of agricultural land as amended, also apply to the transfer of agricultural land. The purpose of the law is to ensure that agricultural land is acquired by entities that carry out agricultural production as a business. This legislation introduced several restrictions on the acquisition of agricultural land.²⁴ Pursuant to the law, the acquisition of ownership of agricultural land is by sale or gratuitous transfer according to

²³ Resolution of the Constitutional Court of the Slovak Republic PLÚS 12/2019 of 6 February 2019

²⁴ The Constitutional Court, on the basis of the case No. PL. Constitutional Court 20/2014 of 14th November 2018, ruled that the provisions of Art. 4, Art. 5, and Art. 6 of Act no. 140/2014 Coll. do not comply with Art. 1 Sect. 1, Art. 13 Sect. 4 and Art. 20 Sect. 1 of the Constitution of the Slovak Republic.

the provisions of the Civil Code, while the legal regulation does not apply to gratuitous transfer to the ownership of entitled persons according to special laws²⁵ and transfer according to special regulations.²⁶ The law does not affect the acquisition of ownership of agricultural land in the implementation of land modifications²⁷ or in the transfer of ownership in the public interest for the purposes for which the agricultural land may be expropriated.²⁸

4.4. Goals of land possession policy

Although so far the state has not placed much emphasis on the legal regulation of succession on agricultural land, new goals of land possession policies were introduced in the Program Statement of the Government of the Slovak Republic for the period 2020–2024 as follows: (a) Revision of the current legal regulation of land ownership and use relations in accordance with the Constitution of the Slovak Republic in order to balance the position of land owners in relation to its users. It will present a constitutional solution to ownership relations to land, thus preventing the sale of land for speculative purposes. The aim is to ensure that a decisive influence on the strategy and the direction of land management remains in the hands of Slovak entities. (b) Completion of restitution proceedings, settlement of land in horticultural settlements, termination of proceedings on the compilation of registers of renewed land record keeping, and correction of obvious wrongs caused in these proceedings. (c) Introduction of a transparent land lease system managed by the Slovak Land Fund to active farmers, who should have the potential for making the highest contribution to the growth of Slovakia's food self-sufficiency. (d) Creating legislative conditions for speeding up and streamlining land allocation procedures for small, young, family, and novice farmers in order to facilitate their access to land. (e) Seeking a solution for land modifications. (f) Creation of a specialized land administration under the responsibility of the department.

On the negative side, no specific legal framework is yet known to achieve these proposed goals.

²⁵ For example, Act no. 229/1991 Coll. on the regulation of ownership relations to land and other agricultural property, as amended, Act no. 503/2003 Coll. on the return of ownership of land and on the amendment of the Act of the National Council of the Slovak Republic no. 180/1995 Coll. on certain measures for the organization of land ownership, as amended.

²⁶ Art. 61a, 61c and 63 of Act no. 543/2002 Coll. as amended. Art. 3 and 4 of the Regulation of the Government of the Slovak Republic no. 238/2010 Coll., laying down details on the conditions of lease, sale, exchange, and acquisition of real estate by the Slovak Land Fund, as amended.

²⁷ § 1 par. 2 of the Act of the Slovak National Council no. 330/1991 Coll. on land readjustments, land ownership arrangements, land offices, land fund and land associations, as amended.

²⁸ For example Art. 108 of Act no. 50/1976 Coll. as amended, Act of the National Council of the Slovak Republic no. 129/1996 Coll. on certain measures to speed up preparations for the construction of motorways and roads for motor vehicles, as amended.

Conclusion

In all countries of the European Union, including Slovakia, the share of farmers – natural persons – is declining, which may lead to an irreversible change in the structure of agricultural holdings. This threat is therefore a matter of political discourse among EU politicians who have introduced measures to stimulate the young generation to undertake farming under the Common Agricultural Policy.

The development of land ownership in Slovakia is significantly influenced by socio-political developments. Large farms still have a dominant position in the management of agricultural land among farms (80%). This may be the reason there is no specific legislation in relation to the succession and transfer of both agricultural land and agricultural holdings. The issue of transfer must be assessed under the provisions of several pieces of legislation, depending on the legal form of the business. An agricultural holding can be owned by a natural or legal person.

In general, however, it can be stated that agricultural land as well as agricultural holdings are inherited like all other things, which can have a negative impact on land fragmentation and the lack of interest of heirs in the further management of agricultural land. In this regard, there is only one legal regulation that prevents the fragmentation of land, Act no. 180/1995 Coll. on certain measures for the organization of land ownership, as amended. On the other hand, it does not prevent the creation of co-ownership shares in agricultural land, the shares of which are inherited.

A specific feature of business activities on agricultural land in Slovakia is that farmers do business mainly on leased land, which deepens the owners' lack of interest in ownership of agricultural land. From the analysis of legal regulations concerning the inheritance of agricultural land, it is necessary to state a weak intervention of the state in dealing with succession. The Government of the Slovak Republic is scheduled to address this issue in the future, but its basic concept has not yet been introduced.

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