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Judit BARTA[1]

The importance of intergenerational transfer of family farms and a specific hungarian solution[2]

Abstract

After a short introduction to the EU, the present study aims to present the importance and generational situation of agricultural family-owned businesses in Hungary in the light of statistical data on the one hand, and the legal rules specifically applicable to them on the other, focusing on the definition of the concept and the specific Hungarian solution to facilitate intergenerational farm transfers.
Keywords: agricultural family-owned businesses, types of agricultural family business, the concept of family farms, intergenerational farm transfers, generational situation of family farms

Introduction

According to the EU survey[3], agricultural family-owned businesses are the most common type of agricultural enterprise, contributing to the population retention of rural areas, providing employment opportunities for people living in rural areas, generally having a positive environmental and social impact, and many other benefits. For these reasons, their survival is of paramount importance, and one of the key issues is to increase the efficiency of intergenerational economic transfer.[4]

1 | Ludovika University of Pulic Service, Faculty of Public Governance and International Studies, university professor
2 | TKP2021-NKTA-51 has been implemented with the support provided by the Ministry of Culture and Innovation of Hungary from the National Research, Development and Innovation Fund, financed under the TKP2021-NKTA funding scheme.
3 | See for example Family businesses in Europe. European Parliament resolution of 8 September 2015 on family businesses in Europe (2014/2210(INI)) (2017/C 316/05)
4 | According to the European Commission's Entrepreneurship 2020 Action Plan (COM(2012)0795), the biggest challenge for agricultural family-owned businesses is the transfer of ownership and control of the business from one generation to the next. In its 2015 Resolution, the Commission called

Judit BARTA: The importance of intergenerational transfer of family farms and a specific hungarian solution. *Journal of Agricultural and Environmental Law* ISSN 1788-6171, 2024 Vol. XIX No. 37 pp. 7-25

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However, in the absence of a Community-level definition, there is no possibility to collect comparable information and data on the subject in the EU Member States, on the one hand, and to regulate at Community level, on the other. There are scattered and divergent national solutions, both in terms of the concept and the support for intergenerational transfers.

The present study aims to present the importance and generational situation of agricultural family-owned businesses in Hungary in the light of statistical data and the legal rules specifically applicable to them. In Hungary, in order to ensure targeted benefits and more efficient legal regulation, a special law defines the types and concepts of family agricultural enterprises, which is also referred to in EU documents as an example.[5] In addition, a recently adopted specific Hungarian legal solution aimed at facilitating intergenerational farm transfers is also presented.

Agricultural holdings and family farms in the European Union

The vast majority of EU farmers[6] (94.8% in 2020) were classified as family farms, defined as farms where at least 50% of the regular farm labour is provided by family members. Family farms were the dominant farm type in all Member States.[7]

EU family farms fall into three distinct size groups:

1. semi-subsistence farms, where the emphasis is on producing food to feed farmers and their families,
2. small and medium-sized farms,
3. large agricultural enterprises, which are more likely to have a legal form.[8]

on Member States to improve the legal framework conditions for the transfer of family businesses and to create special financing instruments for such transfers to ensure the continued existence of family businesses and prevent forced sales.

5 | Opinion of the European Economic and Social Committee on 'Family businesses in Europe as a source of renewed growth and better jobs' (own-initiative opinion) (2016/C 013/03)

6 | Farming here refers to the production of crops and livestock, which produces agricultural products and services, and the production of basic foodstuffs. The resources or 'factors of production' used for this can be broadly categorised as land, labour, knowledge, capital and entrepreneurship.
https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Farms_and_farmland_in_the_European_Union_-_statistics
https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Farms_and_farmland_in_the_European_Union_-_statistics#Farms_in_2020

7 | https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Farms_and_farmland_in_the_European_Union_-_statistics

8 | https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Farms_and_farmland_in_the_European_Union_-_statistics#Farms_in_2020

Family farms occur in all size groups, but are typically classified as 1 and 2. The majority of EU farms are small. In 2020, almost two thirds of EU farms were smaller than 5 hectares.[9]

Neither at international level nor in the European Union is there a generally accepted definition of a family farm, but there are some proposed definitions.[10]

According to the European Economic and Social Committee (EESC), to qualify as a family farm, an agricultural farm must have the following characteristics:

- Decisions concerning the business are made by family members.
- The core of the work on the farm is done by family members.
- Land and other property, most of the capital, is also owned by the family or a local community.
- The family also has control over the running of the business.
- The farm is passed down from generation to generation within the family.
- The family lives on or near the land and plots belonging to the farm.[11]

Within the EU, the agricultural sector operates under the Common Agricultural Policy (CAP).[12] The CAP 2014-2020 stressed that the family farm is the

9 | Rachele Rossi: Small farms' role in the EU food system. European Parliamentary Research Service, 2022. https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733630/EPRS_BRI(2022)733630_EN.pdf

10 | According to FAO's working definition, family farming is a means of organizing agricultural, forestry, fisheries, pastoral and aquaculture production that is managed and operated by a family, and that is predominantly reliant on the family labour of both women and men. The family and the farm are linked, co-evolve and combine economic, environmental, social and cultural functions. Family farmers include mountain farmers, artisanal fisherfolk, pastoralists and forest dwellers, while family farms may include members of multiple generations managing and working on the farm (FAO, 2013). Simon Blondeau and Anna Korzenszk: Family farming. Legal Brief, 8 March 2022., Rome, FAO. https://doi.org/10.4060/cb8227en. https://openknowledge.fao.org/server/api/core/bitstreams/5a5ec564-5692-4bf9-b32b-0ee0417eaf1b/content
Further information:
Substantive definition: Family farming is "a means of organizing agricultural, forestry, fisheries, pastoral and aquaculture production which is managed and operated by a family and predominantly reliant on family capital and labour, including both women's and men's. The family and the farm are linked, co-evolve and combine economic, environmental, social and cultural functions".
International Year of Family Farming 2014 Master Plan (final version) (30 May 2013)
https://www.fao.org/fileadmin/user_upload/iyff/docs/Final_Master_Plan_IYFF_2014_30-05.pdf
https://www.fao.org/world-agriculture-watch/tools-and-methodologies/definitions-and-operational-perspectives/family-farms/ar/
The evolution of the concept of family farms is presented in a table in the following literature:
Sigrid Egartner - Thomas Resl: Einblicke in Österreichs Landwirtschaft seit dem EU-Beitritt Insights into Austrian agriculture since the EU accession, 42-45.
Schriftenreihe 108 der Bundesanstalt für Agrarwirtschaft Wien, 2015.
ISBN: 978-3-901338-36-6
https://bab.gv.at/jdownloads/Publikationen/Archiv/AWI/Schriftenreihe/SR108_20_J_EU-Beitritt.pdf

11 | Opinion of the European Economic and Social Committee on 'Land grabbing — a warning for Europe and a threat to family farming' (own-initiative opinion) (2015/C 242/03) See Point 5.2.

12 | https://agriculture.ec.europa.eu/cap-my-country/cap-strategic-plans_en

foundation of European agriculture and at the heart of the European agricultural model.[13]

Several other documents discuss the beneficial and valuable role of family farms in agriculture. Small family farms contribute to reducing the risk of rural poverty by providing additional income and food.[14] They emphasise their role in creating vibrant rural areas and preserving rural landscapes[15], protecting the environment, ensuring food safety[16], the survival of regional products, organic farming, health protection (e.g. producing more than one type of product, direct to the consumer or through a short supply chain),[17] ensuring biodiversity, etc.[18]

The CAP 2023-27 continues to emphasise the importance of small and medium-sized farms, including family farms, as they play an important role in achieving one of the main objectives of the CAP, namely to maintain agricultural production throughout the EU. It points out, however, that in recent years structural changes have particularly affected small and medium-sized farms,

13 | For the first time the CAP 2014-2020 gave special attention to small family farms, in line with the International Year of Family Farming 2014. A process of reform began. Family farms account for 95% of all farms in the EU. Most farms, including family farms, farm less than five hectares of land. At the same time, large farms (over 100 hectares) account for more than half of agricultural land and make up a very small proportion of farms. CAP support has traditionally been area-based, so the lion's share of funding has gone to larger farms. The reform has therefore been designed to ensure a fairer distribution of support to small farms, including family farms.
https://foodtank.com/news/2014/05/countries-and-one-common-agricultural-policy-european-family-farmer/

14 | https://www.europarl.europa.eu/RegData/etudes/note/join/2014/529051/IPOL-AGRI_NT(2014)529051_EN.pdf

15 | Further information can be found in "Opinion of the European Economic and Social Committee on 'Land grabbing – a warning for Europe and a threat to family farming' (own-initiative opinion)" (2015/C 242/03) See Point 4.7.
As an example, in Scotland 200 years ago, a piece of land the size of the Netherlands was divided into lots of between 8,000 and 20,000 hectares and sold to investors. The area was previously home to between 1.5 and 2 million people. It has been depopulated by industrial farming. They are currently working to repopulate the area, which will cost a lot of money, considerably more than if they had preserved the small farm-based agricultural model.

16 | Opinion of the European Economic and Social Committee on 'Land grabbing – a warning for Europe and a threat to family farming' (own-initiative opinion) (2015/C 242/03) Point 5.

17 | Rachele Rossi: Small farms' role in the EU food system. European Parliamentary Research Service, 2022.
https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733630/EPRS_BRI(2022)733630_EN.pdf

18 | Thia Hennessy: CAP 2014-2020 tools to enhance family farming: opportunities and limits (in-depth analysis), European Union, 2014., p. 13.
https://www.europarl.europa.eu/thinktank/en/document/IPOL-AGRI_NT(2014)529051
www.europarl.europa.eu/RegData/etudes/note/join/2014/529051/IPOL-AGRI_NT(2014)529051_EN.pdf
doi: 10.2861/56801

a significant proportion of which are family farms.[19] While the number of farms in the EU fell by around 25% between 2010 and 2020, the decline was more significant for small farms (31%). Ensuring their survival is a priority.[20] As a result, family farms have become a priority for support in recent years. Despite political and financial support, family farms in Europe still face a number of challenges.[21] One of these is adverse demographic change. With a third of farmers in the EU-27 aged 65 or over, generational renewal is needed, which is essential for the sustainability of family farms.[22]

Given the significant barriers to entry into European agriculture, relatively scarce and extremely expensive land, limited and costly access to credit, and low income-generating capacity, entry into farming is usually through inheritance, and rarely occurs outside inheritance.[23]

19 | Vö. Schuh, B. et al.: The Future of the European Farming Model: Socio-economic and territorial implications of the decline in the number of farms and farmers in the EU. Research for AGRI Committee. European Parliament, Policy Department for Structural and Cohesion Policies, Brussels, 2022., p. 141.
ISBN 978-92-846-9234-7 | doi:10.2861/921074 | QA-08-22-104-EN-C
www.europarl.europa.eu/RegData/etudes/STUD/2022/699620/IPOL_STU(2022)699620_EN.pdf
20 | Chartier, O., Kruger, T., Folkeson Lillo, C. et al.: Mapping and analysis of CAP strategic plans – Assessment of joint efforts for 2023-2027, Chartier, O.(editor), Folkeson Lillo, C.(editor), European Commission, Directorate-General for Agriculture and Rural Development, 2023, p. 955.
DOI 10.2762/71556
ISBN 978-92-68-05351-5
https://op.europa.eu/en/publication-detail/-/publication/80d12120-89bc-11ee-99ba-01aa75ed71a1/language-en
For an analysis of structural change in agriculture, see Alan Matthews: Farm consolidation continues, January 1, 2021.
http://capreform.eu/farm-consolidation-continues/
21 | Thia Hennessy: CAP 2014-2020 tools to enhance family farming: opportunities and limits (in-depth analysis), European Union, 2014., p. 13-16., 25., 45.
https://www.europarl.europa.eu/thinktank/en/document/IPOL-AGRI_NT(2014)529051
www.europarl.europa.eu/RegData/etudes/note/join/2014/529051/IPOL-AGRI_NT(2014)529051_EN.pdf
doi: 10.2861/56801
22 | However, Professor Alan Matthews points out that the ageing of the European workforce is a general social phenomenon, with the increase in the number of ageing farmers and the decrease in the number of younger entrants being largely due to this. The average age is increasing, the older generation is in better shape and stays longer in the workforce. The younger generation enters the labour market later for various reasons. He does not see the problem getting worse in agriculture. However, it recognises that it would be desirable to alleviate the unfavourable age distribution in agriculture and to encourage the younger generation to farm or take over the family farm.
Alan Matthews: Is there a particular generational renewal problem in EU agriculture? April 17., 2018.
http://capreform.eu/is-there-a-particular-generational-renewal-problem-in-eu-agriculture/
23 | Thia Hennessy: CAP 2014-2020 tools to enhance family farming: opportunities and limits (in-depth analysis), European Union, 2014., p. 14.
https://www.europarl.europa.eu/thinktank/en/document/IPOL-AGRI_NT(2014)529051
www.europarl.europa.eu/RegData/etudes/note/join/2014/529051/IPOL-AGRI_NT(2014)529051_EN.pdf
doi: 10.2861/56801

The ten main objectives of the CAP 2023-27 therefore continue to include the promotion of generational renewal.[24] One leg of this is to help older generations to transfer the farm, the other is to attract new, young farmers to the farm.[25]

Family farming and forms of family business in the Hungarian agriculture

After the change of regime, farming units and business forms in Hungarian agriculture developed in a specific and heterogeneous way. This fragmented structure made it difficult to adopt a uniform approach to regulation, agricultural administration, and the granting of subsidies and other benefits, such as tax tax allowances.

In Hungarian agriculture, *especially in the area of land-use farming, there are many family businesses.* In 2020, a significant proportion of farmers in Hungarian agriculture were small-scale farmers and family farms within the category of small and medium-sized farmers.[26] To provide targeted benefits, it was necessary to define the family economy. These are the farms that can ensure the retention power of the local presence of rural areas and agriculture, since it is the activity of small and medium-sized family farms that can ensure the preservation of agricultural diversity and strengthen the adaptability of agriculture.

The state intervention was therefore guided by several objectives, which resulted in *Act CXXIII of 2020 on family farms*.

According to Article P Sector (2) of the Fundamental Law of Hungary, the rules applicable to *family farms and other agricultural farms* must be laid down in a cardinal law[27], based on the importance of the legislation is shown.[28]

24 | "A vibrant agricultural sector needs skilled and innovative young farmers to respond to societal demands, from quality food to environmental public goods."
https://agriculture.ec.europa.eu/common-agricultural-policy/cap-overview/cap-2023-27/key-policy-objectives-cap-2023-27_en

25 | The challenges of the young generation of Hungarian agricultrue is discussed in the paper of 'Legal Responses to the Challenges Facing the Young Agricultural Generation' by Peter Hegyes in Journal of Agricultural and Environmental Law, 17 No. 33 (2022), pp. 51–62 [Online].
Available at https://doi.org/10.21029/JAEL.2022.33.51

26 | According to the data provided by the Secretary of State of the Ministry of Agriculture during the parliamentary debate on the draft law on family farms, 290,251 people had a farmer's identity card, 23,555 family farms were in operation, employing 83,272 people. More than half of the farmers were over 55 years old, and the proportion of those under 35 was less than 10 percent, showing a deteriorating age composition compared to previous surveys. The age composition of those classified as smallholders and family farm managers also showed a negative trend.

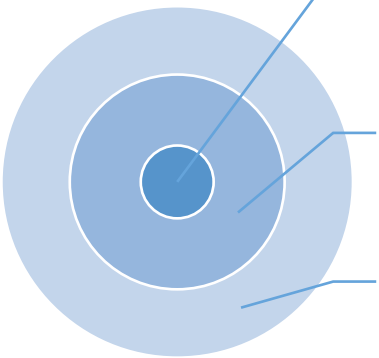
27 | According to Article T Sector (4) of the Fundamental Law of Hungary, a cardinal law is a law which requires a two-thirds majority of the votes of the Members of Parliament present to be passed and amended.

28 | See Csilla CSAK, Zsofia HORNYAK, Flora OROSZ: The farm model based on constitutional value. In Journal of Agricultural and Environmental Law, Vol. 17 No. 33 (2022), p. 13. [Online].
Available at https://doi.org/10.21029/JAEL.2022.33.7

The main aim of the law adopted in 2020 was to define in a uniform way the forms of family farming, to define family farming.[29]

Family farming is defined as agricultural and forestry activities carried out with the participation of family members, using their resources (e.g. their labour, tools, property, material resources) jointly for the purpose of securing their common livelihood, and complementary activities. The law interprets the scope of family members rather broadly, introducing the category of *related chain*[30], in order to ensure that the joint farming of persons who are distantly related is also considered to be family.[31]

Persons under the umbrella of the chain of relatives:



close relatives: spouse, parent and child, adopted, step- and foster child, with adoptive, step- and foster parent, the sibling

relatives of close relatives:
– the partner,
– the spouse of a direct relative (child and parent),
– child and parents of the spouse, and brother or sister,
– the spouse of a brother or sister

relatives in the direct line of relatives:
children and parents of relatives

The law distinguishes between three types of agricultural family business: *the small-scale farmer*, the family farm of *small-scale* farmers and the family

29 | In addition to the tax relief, there are other advantages of this qualification, e.g. in the case of the purchase of agricultural land, the family farmer is ahead of nonfamily farmers in the pre-emption queue.

30 | According to Article of Act CXXIII of 2020 on Family Farms Section 2 Point b, the chain of relatives is defined as the group of natural persons in a close family relationship, their relatives and the direct relatives of these relatives.
According to Act V of 2013 on the Civil Code (Civil Code), Section 8:1 (1) Point (1): close relatives are spouse, direct relative, adopted, step and foster child, adoptive, step and foster parent and sibling.
Point 2: relative means a close relative, a partner, the spouse of a relative in the same line of marriage, the spouse's relative in the same line of marriage and brother or sister, and the spouse of a brother or sister.
Civil Code Section 4:96. (1): there is direct kinship between those who are descended from one another.

31 | See Istvan OLAJOS: Creation of Family Farms and its Impact on Agricultural and Forestry Land Trade Legislation. in Journal of Agricultural and Environmental Law, Vol. 17 No. 33 (2022), pp. 105-117. [Online].
Available at https://doi.org/10.21029/JAEL.2022.33.105

agricultural *company*. To be recognised as a family agricultural holding, all three types of enterprise must be registered with the competent agricultural chamber.

It should be stressed, however, that in Hungary not only family businesses are active in the agricultural sector, but also a number of other legally recognised enterprises belonging to other communities of interest.

A small-scale farmer is a natural person who carries out an agricultural activity independently on his own holding.

A family farm of the small-scale farmer is a new form of business set up by at least two members of the family farming community who are related to each other. It is a community of production made up of natural persons (sharing the assets and property of any one of them, sharing profits and losses). It is a written contractual partnership which does not create a separate legal entity, with no separate assets from the members' property. The members carry out their farming activities jointly on their own farms, each of them being personally involved in the management, and therefore, a farmer can only be a member of a family farm of *small-scale* farmers.

The *family agricultural company* is also a completely new category in the Hungarian agricultural legislation, unprecedented in the past.

Contrary to its name, a *family agricultural company* can take several forms of legal entities, such as a company, a cooperative or a forestry cooperative.

Two conditions must be met to qualify as a *family agricultural company*:

- it must have at least two members who are related to each other, i.e. there must be a family relationship between them;
- they must be engaged exclusively in agricultural and forestry activities or in ancillary activities as defined by law.

For the reason that personal participation in family agricultural holdings is required, a person may be a member of only one such company at a time.

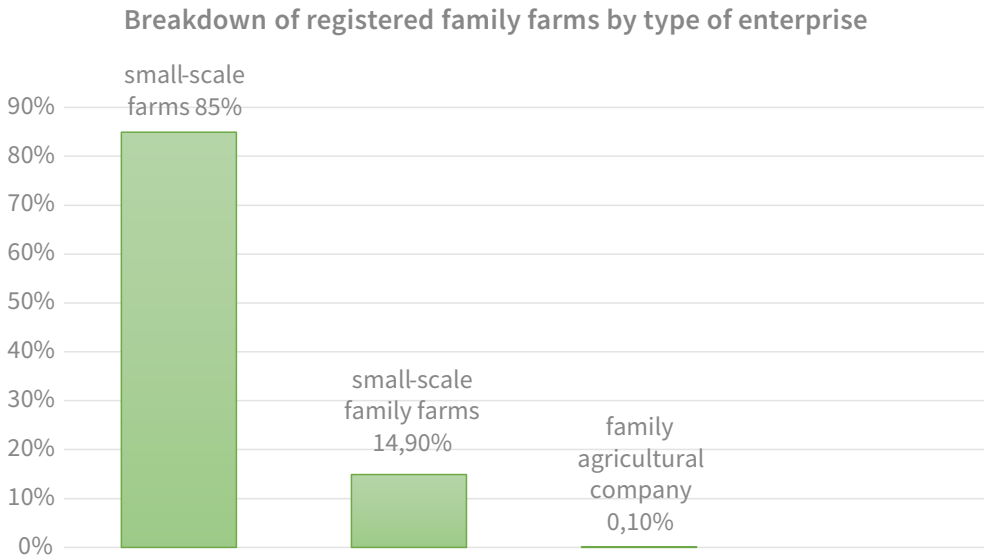
Agricultural family farms and their generational situation in Hungary in the light of figures

According to the 2023 annual report of the National Chamber of Agriculture published in 2024, there are 55,058 farmers, 9704 family farms and 63 family agricultural companies registered.[32] In total, there are 64,825 family farms in the Hungarian agricultural sector in the legal sense.

Compared to the number of Hungarian agricultural enterprises reported as a result of the agricultural census, their number is not high, but their importance should be emphasised in the sense that in Hungary, with few exceptions, only

32 | https://www.nak.hu/images/01_NAK_Tajekoztato/04_NAK-szamokban/NAK_2023-szamokban.pdf

natural persons can acquire ownership of agricultural and forestry land, and as a consequence family farms are the main ones engaged in related activities.



The Hungarian Central Statistical Office carried out a comprehensive statistical data collection in the agricultural sector in 2020 and 2023 on the basis of Regulation (EU) 2018/1091 on integrated agricultural statistics and its implementing Regulation (EU) 2021/2286 (agricultural census).

The survey covered agricultural farms. The Regulation defines a farm as a self-managed, technically and economically distinct unit carrying out designated agricultural activities within the economic territory of the Union, either as a principal or secondary activity[33], in accordance with specific EU legislation.

The statistical survey covers only farms and agricultural units above the thresholds set in the Regulation.

A complete agricultural data collection covering all municipalities and farms above the thresholds defined in the Regulation is carried out every ten years, the last time in 2020. For this reason, the statistical data for 2020 are considered more focused.

33 | This includes the production of non-perennial crops in group A.01.1, the production of perennial crops in group A.01.2, the production of plant propagating material in group A.01.3, the production of livestock in group A.01.4, mixed farming in group A.01.5 or the maintenance, care and protection of the ecology of agricultural land in group A.01.6, as defined in Regulation (EC) No 1893/2006. For the activities in A.01.49 (rearing of other animals), 'rearing of semi-wild or other live animals' (excluding insects) and 'keeping of bees, production of honey and beeswax' are included.

Based on the data of the census in 2020, there were 241,000 agricultural holdings (not the same as family farms) in Hungary.

The average age of all managers was 57.9 years, 57.1 for men and 59.6 for women. In 2010, 28% of farms were managed by persons aged 65 and over, in 2020 35%.

Managers aged between 70 and 75 represent 10%. The vast majority of managers, 70%, are aged between 45 and 74, and only 10% were under 40 in the year of the survey.

The survey also asked how many more years farmers plan to farm. 45% of the farmers surveyed did not answer this question, 18% planned to farm for 5 years or less and 26% said they planned to farm for more than 10 years.

The average age of farmers is high in the data, and this is the group that is thinking of transferring in a few years.

The question of 'How do you see the future of the economy? ' was not answered by 55% of farmers surveyed. Over half of farmers aged 65 and over responded, compared to 40% of farmers under 40.

86% of all respondents said that they envisaged the continuation of their farm within the family after they had stopped farming.

80% of farmers aged 65 and over think that they will be succeeded within the family, compared with over 90% of farmers aged under 40.

The majority of farmers with a long-term vision, mainly young farmers, envisaged the transfer of their farm within the fami.[34]

On individual farms, the amount of work done by the farmer and family members assisting him has declined slightly over the past 10 years, from 70% of total work in 2010 to 56% in 2020.

Of the family labour, 66% is the farmer's own labour and a further 15% is related to the farmer's spouse or partner. The remainder is accounted for by the work of the extended family and distant relatives.

On smaller farms, family labour accounts for 93%. As the size of the farm increases, this decreases steadily to 1% in the highest size category. Only partial results of the 2023 statistical survey have been published (published data are final).[35] On 1 June 2023, there were only 196,000 agricultural farms in the country. In recent years, mainly smallholdings with few livestock have abandoned farming, resulting in a further increase in the size of properties. The ageing of the farming population has continued. The proportion of farmers aged 65 and over has increased from 35 to 37% in 2020. 23% of managers are in the 45-54 age bracket and another 23% in the 55-64 age bracket.

In 2023, 55% of managers did not respond to the question of how long they intend to continue managing. 12% of farm managers plan to farm for 5 years or less,

34 | https://www.ksh.hu/docs/hun/xftp/ac2020/mezogazdasagi_munkaero_generaciovaltas/index.html

35 | https://www.ksh.hu/s/kiadvanyok/agrarium-2023-elozetes-adatok/

compared to 18% in 2020. 24% of respondents plan to farm for more than 10 years, a decrease of 2% compared to 2020.

The data reflect a declining number of farms, a high average age of farmers, 60% of managers over 55 years old, and an increase in the number of older managers over the last decade. The number of farmers planning to farm for more than 10 years has decreased. Younger farmers are those who tend to plan for the longer term. The vast majority of respondents (86%) (45% who answered this question) want to pass the business on within the family.

The Hungarian solution to the transfer of the agricultural farm

The EU and Hungarian statistical surveys in the agricultural sector have also shown that a significant part of the generation in Hungary who started their agricultural business after the change of regime has reached retirement age. The first major change of agricultural generation is due. Experience has shown that the biggest difficulties in the transfer of agricultural holdings are the administrative tasks and the transfer of specific assets, which is a very complex process involving not only the transfer of real estate (land, houses, crops and other storage and livestock buildings, etc.) but also the transfer of the farm assets and movable assets (machinery, crops, livestock, tools, equipment, etc.), as well as the succession of various subsidies (tenders), public authorisations, contractual positions, company shares, other legal entity holdings in companies. The agricultural and forestry activity carried out by agricultural holdings creates a special group of assets which is not only a group of goods and rights but also includes various rights which, taken as a whole, have a greater value.[36]

The responsible ministry has therefore started to develop a new legal solution that can provide a framework for a smooth transfer of things, rights, entitlements, etc.

The legislative work resulted in Act CXLIII of 2021 on the Transfer of Agricultural Holdings. The introductory provisions of the law set out the legislative objectives, the first of which is to facilitate the transfer to the next generation of the farm as a unique asset, created through the participation of family members, the joint use of their resources and the results of their work for their common well-being. It is necessary to emphasise that the law covers the transfer of the holding of the agricultural holder (including the small-scale family farms) and the individual entrepreneur engaged in agricultural, forestry and ancillary activities (many of whom are not yet registered as small-scale farmers).[37] This is probably due to the fact that these are the types of

36 | See more Mihály Kurucz: Agricultural law's subject, concept, axioms and system. in Journal of Agricultural and Environmental Law No. 2. (2007), pp. 52-53 pp. [Online]
Available at: https://epa.oszk.hu/01000/01040/00002/pdf/00002.pdf
37 | Act CXLIII of 2021 on the Transfer of Agricultural Holdings Section 1.

enterprise where private ownership and entrepreneurial assets are mixed, and all this is personal, i.e. the transfer involves a change of subject, a change in the person of the holder. In the case of a family agricultural company, a separate legal entity has all the rights, but here a company share is transferred, so the person entitled does not change. This results in a simpler situation.

According to the law, the parties may settle all issues by means of a *single contract*, the *so-called farm transfer contract*.

In a contract, they may provide for the transfer of ownership of several things – movable and immovable property – property rights or company shares, and may determine the consideration in one lump sum without having to indicate the consideration for each asset separately, moreover, this contract also provides for general legal succession in relation to official licenses, subsidies and contractual positions.

The transfer of the holding may take place not only for a fee, but also free of charge, and the transferee may undertake to keep the transferor in kind or to pay an annuity.

The Act focuses exclusively on cases where the older generation wishes to cease their activities and transfer their agricultural economy to the younger generation because of their old age, i.e. they do not wish to start a new agricultural and forestry activity. The farm transferor must undertake to cease its activities relating to the holding.[38]

In order to ensure that the statutory objective cannot be circumvented, the circle of both the transferor and the recipient of the holding is defined.[39]

According to the Act, a *farm transferor* is a farmer who has reached retirement age[40] or has reached the maximum of 5 years from the conclusion of the contract, who has carried out agricultural activities for at least 10 years in his own name and at his own risk, from which he has generated a proven turnover, and has been the owner land user or other land user for at least 5 years of more than three-quarters of the area of agricultural and forestry land specified in the farm transfer contract. The *farm transferee* is a farmer who is at least ten years younger than the farm transferor, has reached the age of 50, meets the conditions laid down by law for the operation of the holding to be taken over, and who has been *in a chain of relatives* with the farm transferor or has had a working relationship with the farm transferor for at least 7 years.

The farm transfer contract means legal succession in relation to official licenses, contractual positions and subsidies.[41]

38 | Act CXLIII of 2021 on the Transfer of Agricultural Holdings Section 4.
39 | Act CXLIII of 2021 on the Transfer of Agricultural Holdings Section 2.
40 | Act LXXXI of 1997 on Social Security Pension Benefits Section 18 (1) The retirement age for old-age pension benefits under the social security system shall be:
g) the 65th birthday for persons born in 1957 or thereafter.
41 | Act CXLIII of 2021 on the Transfer of Agricultural Holdings Section 13-15.

Positions in various contracts concluded by the farm transferor may also be transferred without the permission of the contracting partner. Of course, the farm transfer contract must specify precisely the civil law contracts that are involved. The various civil law contracts concluded by the transferor do not therefore have to be re-concluded, but the transfer contract puts the transferee in the contractual position of the transferor. To this end, the parties shall stipulate in the farm transfer contract that the contractual obligations shall be assumed by the farm transferee in accordance with each contract.

Under the farm transfer contract, the transferee shall replace the transferor in respect of all official authorisations required to carry out agricultural and forestry activities related to the holding, if he so requests and complies with the conditions laid down by law. The authority shall then amend the authorisations.

Subsidies shall also be transferred provided that the recipient is also entitled to them. If the recipient does not meet the eligibility criteria, the aid is terminated, the legal relationship is terminated, there is no obligation to repay, the subsidy relationship ends.

The farm transferor may decide not to transfer ownership of the land, but only to transfer its use. In order to protect third parties, the law stipulates that the use of land owned by the farm transferor but used by third parties may not be transferred by the farm transferor to the farm transferee.

A significant advantage of the farm transfer contract is that it contains numerous facilitations compared to the classic transfer of land,[42], e.g. agricultural and forestry lands transferred by a farm transfer contract are free from the right of

42 | Detailed rules on land transfer by Janos Ede Szilagyi (2022) 'Hungary: Strict Agricultural Land and Holding Regulations for Sustainable and Traditional Rural Communities' in Szilagyi, J. E. (ed.) Acquisition of Agricultural Lands: Crossborder Issues from a Central European Perspective. Miskolc–Budapest: Central European Academic Publishing. pp. 145–197.
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https://real.mtak.hu/154764/1/CEALSCEPhD05AcquisitionofAgriculturalLands06e-konyv.pdf
See more: Csilla Csak: Constitutional issues of land transactions regulation. in Journal of Agricultural and Environmental Law, Vol. 13 No. 24. (2018), pp. 5–32 [Online].
Available at https://doi.org/10.21029/JAEL.2018.24.5
Kriszta Banyai: Theoretical and practical issues of land obtaining restrictions in Hungary. in Journal of Agricultural and Environmental Law, Vol. 11 No. 20 (2016), pp. 5–15 [Online].
Available at: https://doi.org/10.21029/JAEL.2016.20.5
Istvan Olajos: The acquisition and the right of use of agricultural lands, in particular the developing Hungarian court practice. in Journal of Agricultural and Environmental Law, Vol. 12 No. 23 (2017), pp. 91–103 [Online].
Available at https://doi.org/10.21029/JAEL.2017.23.91 (Accessed: June 12, 2022).
https://ojs.mtak.hu/index.php/JAEL/article/view/2453/1772
Adrienn NAGY – Laszlo LAURIK: Sale of Agricultural and Forestry Land in Enforcement Proceedings in Hungary. in Journal of Agricultural and Environmental Law, Vol. 17 No. 33 (2022), pp. 5–32 [Online].
Available at https://doi.org/10.21029/JAEL.2022.33.93

pre-emption, contracts transferring ownership do not have to be posted, lease agreements do not have to be re-concluded, posted, etc.[43]

The farm transferor may decide not to transfer ownership of the land, but only to transfer its use. In order to protect third parties, the law stipulates that the use of land owned by the farm transferor but used by third parties may not be transferred by the farm transferor to the farm transferee.

The farm transfer contract can be concluded in 4 types of contracts: the sales contract, the gift contract, the contract of support and the annuity contract.[44] These four types of contracts may be supplemented by the use of agricultural and forestry land if, by agreement between the parties, the transferor retains ownership of the agricultural and forestry land. A mix of different types of contracts may be applied at the discretion of the parties. In this case, it is necessary to specify exactly according to which type of contract each element of the economy will be transferred. The Act defines the mandatory content elements of the farm transfer contract.

The farm transfer contract must be drawn up in an authentic instruments or countersigned by a lawyer. The contract for the transfer of holdings shall be submitted to the agricultural administration for approval within sixty days of its conclusion. The agricultural administration shall take a decision within 60 days of receipt of the documents.[45]

During the institution of farm transfer, it may be important for the transferor to share his knowledge, business contacts and experience with the recipient. The law provides a solution for this as well, the farm transferor and the farm recipient can agree on cooperation lasting up to 5 years.[46] During the period of cooperation, the transferee personally participates in the management of the holding concerned. In the course of cooperation, the parties shall, as a general rule, be entitled to conduct matters jointly and take their decisions jointly. The costs shall be borne jointly and equally and shall share in the results in a similar share. The parties may deviate from these in the cooperation agreement.

The farm transferor shall transfer all elements of the holding on the last day of the cooperation period and, depending on the situation, ensure the use of the land to the transferee.

The law offers only one possibility of transferring farms, the parties may also decide to use classic civil law contracts.

43 | See Istvan Olajos: The farm transfer contract as a type of contract establishing generational renewal. in Advocat, 2 (2022.) pp. 29-35.
http://www.miskolciugyvedikamara.hu/files/699/ADVOCAT_2022_2_SZ%C3%81M.pdf
44 | Details about this type of contract by Janos Dul: Certain civil law aspects of the law on the transfer of agricultural holdings. In Debreceni Jogi Műhely, Vol. 20. No. 1-2. (2023.) pp.65-97. [Online]. Available at https://doi.org/10.24169/DJM/2023/1-2/4
45 | Act CXLIII of 2021 on the Transfer of Agricultural Holdings Section 12.
46 | Act CXLIII of 2021 on the Transfer of Agricultural Holdings Section 10.

In the case of agricultural enterprises operating exclusively in the form of a company, members or shareholders can transfer their shares in the company on the basis of company law rules.

Summary

Both in the Member States of the European Union and Hungary, agricultural family farms perform a number of important functions that large industrial farms cannot perform. For example, their role in maintaining diverse agricultural production is irreplaceable. For a number of reasons, it is important to protect family farms, to ensure their survival and in connection with this, to support generational renewal. The EU has issued several documents calling on Member States to facilitate farm transfers. Both Community and national legislation is hampered by the lack of a uniformly agreed concept of family businesses or family farms. A few Member States can boast their own definition as Hungary. The document of "A Opinion of the European Economic and Social Committee on 'Family businesses in Europe as a source of renewed growth and better jobs'" point 3.2. mentions two countries, where an attempt has been made to define agrarian family farms in legislation:

- Hungary has adopted a definition of agricultural family-owned businesses.[47]
- In Austria family businesses are defined by the regional law on agriculture.[48]

In the meantime, a law on family agricultural holdings (obiteljska poljoprivredna gospodarstva/OPG, 2018) has also been adopted in Croatia, which defines it as follows:

"an organisational form of agricultural operation of farmers (natural persons) who work to generate their income and independently and permanently perform farming and other linked activities".[49]

The issue of generational renewal is topical throughout Europe due to the development of the demographic situation, and it takes on special significance in Hungary, because agricultural entrepreneurs of the regime change that occurred in 1989 are now reaching retirement age.

47 | This was an earlier, rudimentary experiment. See more Janos Ede Szilagyi: Changes in the theory of agrarian law? in Miskolci Jogi Szemle, Vol. 11. No. 1 (2016), p. 40.

48 | In addtition, two acts – Niederösterreich: NÖ Landwirtschaftsgesetz és Oberösterreich: Oö. Landwirtschaftsgesetz – mentions family agricultural farm as supporting institution, indeed, but conceptual definition is not provided.

49 | Tatjana Josipovic: Acquisition of Agricultural Land by Foreigners and Family Agricultural Holdings in Croatia – Recent Developments. in Journal of Agricultural and Environmental Law, Vol. 16. No.30 (2021), p. 115. [Online].
https://epa.oszk.hu/01000/01040/00032/pdf/EPA01040_agrar_es_kornyezetjog_30.pdf

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The transfer of an agricultural farms is not easy in many respects, e.g. emotional, social, social security, legal. There are several unfoldings[50], but perhaps the Hungarian legal solution, the law on the transfer of agricultural holdings, is the most breakthrough. The impact of the law and its success cannot yet be assessed, as it entered into force only a year and a half ago, on 1 January 2023. However, the legislator's determination, forward-looking intentions and boldness in breaking through the classical civil law contractual framework are certainly proven by the birth of the law. The law certainly promotes generational renewal. On the one hand, by requiring the transferor to cease its activities, but by allowing for a transitional cooperation period of up to 5 years, during which the know-how can also be transferred. On the other hand, the transfer of all things, rights, claims, contractual positions belonging to the economy – which would otherwise require the conclusion of several civil law transactions – and the legal succession of official permits and subsidies can be flexibly solved with a single contract, which would not be possible under the classical civil law framework.

50 | For example in Germany, Switzerland and Austria information booklets and guidelines are provided by professional agricultural institutions regarding transferring family business. In Austria a model of contract is also provided. In general, the transfer of family business, including agricultural holdings, is supported by the new legislation pack in Austria that ensures the cooperation with the tax authority in order to the obtaining a settled enterprise by the transferee.
„Unkomplizierte Betriebsübergabe unterstützt Familienbetriebe und KMU" (2024. 04. 10.)
https://www.bmf.gv.at/presse/pressemeldungen/2024/april/grace-period-gesetz-betriebs%C3%BCbergaben.html
https://agripedia.ch/betriebsuebergabe/wp-content/uploads/sites/16/2019/10/Betriebs%C3%BCbergabe-in-der-Familie-Kurzfassung-v2-2019.pdf
file:///C:/Users/user/AppData/Local/Temp/MicrosoftEdgeDownloads/a1744331-48db-4b3d-a0c7-1077abc70109/Betriebs%C3%BCbergabe_Brosch%C3%BCre.pdf

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Sibilla BULETSA[1]

The peculiarities of restitution of agricultural land in Ukraine[2]

Abstract

In the post-Soviet space, two main approaches formed the basis of land reforms: 1) restitution, i.e., the return of land ownership to former owners (as in the Baltic countries, Romania, Slovakia, Albania, etc.), and 2) privatisation of land plots (as in Ukraine, Belarus, etc.). Ukraine lacks legislation regarding property restitution, as the country has not yet decided on this matter. Worldwide, property restitution is carried out to restore property rights violated by communist and national-socialist (Nazi) totalitarian systems. The state must acknowledge its unlawful seizure of private property by recognising the act of violence by the state during the acquisition of property rights. The adoption of the Land Code on March 13, 1992, marked the beginning of land privatisation in Ukraine. The initial years of land reform and privatisation primarily focused on agriculture. In the sphere of agrarian production, a reform was necessary to provide land to workers. For this reason, starting from 1992 rural lands in Ukraine, which were previously owned by the state and used by agricultural enterprises, were transferred to peasants. During the war in Ukraine beginning in 2022, existing legislation prohibits both the formation of land plots through free privatisation, as well as specifying their boundaries and registering them in the state land cadastre.

Key words: *restitution, nationalisation, collectivisation, agricultural land, land.*

Ukraine has decided to move towards the European development vector, hoping to implement the positive experiences of other European countries in its own growth. For this reason, the country's leadership is conducting numerous reforms in almost every sphere of public activity. However, land reform, which has

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been ongoing for over two decades, is the country's most significant challenge. Ukrainians who gained property rights to land in the late 1900s still had no right to use it freely. This is because in 2001, a moratorium on selling agricultural land was introduced in Ukraine. The process of returning property to former owners, known as property restitution, is used in Eastern and Central Europe as one of the criteria for assessing the democratic progress of countries seeking membership in the European Union and the North Atlantic Treaty Organization (NATO). According to the official position of the United States, a successful property restitution program indicates how well the rule of law operates in a democratic country. The World Jewish Restitution Organization (WJRO), representing Jewish people worldwide in resolving claims to restore Jewish property in Europe outside Germany and Austria, actively supports restitution. Ukraine, as it is known, seeks to become a member of NATO and the EU, which may necessitate such a property restitution procedure.[3]

It should be noted that Ukraine lacks the same land restitution procedure as other European states. There was only a petition in 2019, indicating that Ukraine's law on coupon privatisation should be reconsidered. Instead of a restitution law, the suggestion was to have a law on the return of expropriated land and property, or compensation for its value at European prices to the descendants of former landowners - for everything destroyed, stolen, or taken by the Bolsheviks during the Soviet regime.[4] All developed countries adhere to a standard that if it is impossible to return property or land, monetary compensation is paid to the victim. Additionally, there are currently two different mechanisms for gathering evidence, each differing in every country. The first duty is for the individual to collect all necessary documents for filing a lawsuit. For instance, this is the case in neighbouring Poland, where there is no specific restitution legislation because it was unnecessary. Even during the so-called Warsaw Pact, Polish people had private property, including land. In Poland, there are also no issues with obtaining relevant written evidence regarding the chain of "new" owners. The second approach, used for example in Slovakia and Austria, requires the existence of special state authorities. Victims or legitimate heirs can turn to these authorities. Officials then gather information themselves from registers, archives, contracts, and decisions of government bodies. This helps to confirm what was lost, when, and how documentarily.

Conducting civilised restitution in Western Ukraine is easier because the Soviet government came to power there a whole generation later than in Eastern Ukraine.[5]

3 | Аврамова (Avramova) 2019
4 | Ганко (Hanko) 2019
5 | До Євросоюзу Україну не приймуть. Якщо в державі не появиться інститут реституції (Do Yevrosoiuzu Ukrainu ne pryimut. Yakshcho v derzhavi ne poiavytsia instytut restytutsii) 2021

1. Historical note.

Despite the absence of land restitution in Ukraine, it has undergone a complex historical path to achieve independence, contributing to the development of land relations in the country. Due to its fertility and favourable geographical location, Ukrainian land has been the subject of many disputes and wars throughout its existence.

In Ukraine, the first attempts at administrative-territorial division can be considered the existence of land principalities during the time of Kyivan Rus. In the 9th to 12th centuries, the territory of modern Ukraine was divided into the Kyivan, Chernihiv-Siversky, Pereyaslav, Volyn, and Halych lands, all of which were part of the Kyivan state. Due to lower economic and political development, some smaller lands were part of the Kyiv principality, including the Polyanian (Rus), Turov-Pinsk, and Drevlyanian lands. The land principalities were divided into volosts, with cities serving as their centres (*gorods)*. From the mid-12th century, the decline of the Kyivan state began. The direct successor to the political and cultural traditions of Kyivan Rus was the Halych-Volyn Principality, which continued the early period of Ukrainian statehood. From the 13th to the first half of the 14th century, a significant part of the Ukrainian ethnic territory was united within the Galician-Volhynian state.

After the death of Yuri II Boleslav in 1340, the decline of the Galician-Volhynian state began. Foreign states annexed Most Ukrainian lands in the second half of the 14th century. In 1387, the prolonged wars between Poland, Hungary, and Lithuania for Galicia concluded with the annexation of this territory to the Kingdom of Poland. After the conclusion of the Lublin Union between Poland and Lithuania in 1569, all Ukrainian lands, except for Brest and Dorogychyn, Transcarpathia[6], Bukovina,[7] and Chernihiv, came under the direct rule of the Kingdom of Poland. The defeat of Ukrainian national liberation struggles from 1917 to 1921 led to the elimination of national statehood and another change in the political-administrative system of Ukrainian lands in the 1920s and 30s. During the interwar period,

6 | After Hungary captured Transcarpathian Ukraine (finally in the thirteenth century), the Hungarian administrative-territorial system was introduced on this territory. The Ukrainian lands were divided into seven comitates (zhupas): Spysh, Zemplin, Sharyz, Uzhan, Uhochany, Berezny, and Marmaros. The head of the comitatus was a żupan appointed by the king. In the early 16th century, due to Hungary's loss of independence, most of Transcarpathia fell under the rule of the Principality of Transylvania (Semygorod). Since 1699, all of Transcarpathian Ukraine was part of Austria.

7 | These lands were part of the Galicia-Volhynia state in the 12th - first half of the 14th century. The decline of the Galicia-Volhynia principality strengthened Hungary's position in the region in the middle. XIV century. In this region, Hungary's position was strengthened. In 1774, Bukovyna (except for the Khotyn district) came under Austrian rule and, in 1786, was governed by a military command. In early 1787, the Bukovinian lands became part of Galicia. The territory of the Khotyn district came under the rule of the Russian Empire under the Treaty of Bucharest in 1812.

Ukrainian ethnic territories were part of four states: the Soviet Union, Poland, Czechoslovakia, and Romania.

Therefore, until 1945, the territory of Ukraine underwent significant changes. From the 1950s to the 1980s, the government structure of Ukraine experienced no substantial alterations. After the Act of Declaration of Independence of Ukraine on August 24, 1991[8], the legislative and executive bodies of the country took a series of important measures to improve the administrative-territorial structure of Ukraine and bring it in line with the new status as an independent state.

Considering that the territory of modern Ukraine has undergone constant changes, there are several historical stages in the development of land relations 1. Communal land ownership, where community and communal land ownership existed in Ukrainian lands for a long time, with each family having property rights to the land. 2. Feudal ownership, signifying that land belonged to feudal lords who utilised the labour of dependent peasants. 3. Peasant landownership, where peasants paid rent to their feudal lords, princes, and nobles - who were significant landowners - during the land cultivation. 4. Manor ownership, where after Ukrainian lands became part of the Polish-Lithuanian Commonwealth, peasants received intermediary lands for which they had to pay monetary dues and natural taxes and perform manorial duties. 5. State or collective ownership, in which selling land by peasants to feudal lords (serfdom) was prohibited. 6. Private ownership without the right of sale. When the Zaporizhian Sich was established in the territory of Ukraine, peasants gained freedom and property rights to their land. The land belonged to Orthodox monasteries, elders, higher clergy, Cossacks, minor nobility, and townspeople.

The land of wealthy landowners and landlords returned to their owners after Ukrainian territories came under the control of two empires: Russia and Austria-Hungary. During this period, a number of significant events took place: 1) On February 19, 1861, serfdom was abolished in the Russian Empire. 2) The Stolypin agrarian reform led to peasants acquiring land in private ownership, while the land owned by landlords was bought and sold to peasants on favourable terms. 3) In 1848-1849, there was a peasant reform in Austria-Hungary, where peasants gained independence from landlords and acquired land through redemption.

The procedure and principles of transferring land ownership to the state fund were specified in the articles of the Land Reform Law of the Western Region of the Ukrainian People's Republic (UNR) dated April 14, 1919. It stated that not only were the large land holdings of landlords (tabular lands) subject to nationalisation, but so too was the land owned by the Austro-Hungarian Empire, as well as monastery and church lands, episcopal lands, lands used by owners for speculation and enrichment, and land grants exceeding the established norm. Lands confiscated without

8 | Про проголошення незалежності України (Pro proholoshennia nezalezhnosti Ukrainy) 1991

the right to compensation included those owned by individuals who fought against the UNR army and lands acquired through speculative means during 1914-1918 and 1919 wars. Forests and pastures were placed under state management, while water bodies and meadows came under the jurisdiction of the rural community. Agricultural machinery and remnant assets were seized from the owners and utilised by the community.[9] In 1920, peasants received 12,154 thousand desyatins of land, accounting for 83.5% of the confiscated area. The remaining land was used by sugar factories and collective farms.[10] Before the People's Commissariat of the Ukrainian SSR in 1922, the task was set to carry out nationalisation within occupied Ukraine through three pathways:

1. through the confiscation of aristocratic land ownership, land owned by merchants, and shares of joint-stock companies
2. through the transition of former cabinet and urban lands under state control
3. through the abolition of the ownership of rural communities and the ownership of individual citizens over purchased or endowed agricultural lands.[11]

Drawing on the statistics from the reports of the People's Commissariat of Agriculture of the Ukrainian SSR for 1922 - materials from archival institutions - R.D. Lyakh reports the nationalisation of around 30 thousand estates, 96 thousand residential and farm buildings, 360 thousand units of agricultural inventory of various purposes, 80 thousand working oxen, and 46 thousand breeding cows. He adds that the confiscation of landownership from the kurkuls did not become a widespread phenomenon in Ukraine.[12]

The Central Executive Committee of the USSR adopted the General Principles of Land Use and Land Management on December 15, 1928.[13] This provided preferential rights for poor and middle-class members of the community to acquire better and more conveniently located plots. Collective formations were granted additional privileges in land use. Wealthy peasants, who were labelled with the derogatory term 'kurkul' in the evolution of land use in Ukraine, were prohibited from holding leadership positions in the community, which violated democratic principles. Kurkuls were classified into three categories: 1) organisers of mass anti-Soviet uprisings and terrorist acts, and therefore subject to isolation; 2) large kurkuls and former semi-landowners, who were resettled in sparsely populated areas of the USSR; 3) all other kurkuls, who were resettled on lands outside collective farms. The resolution also abolished laws allowing land leasing and hired labour in agriculture, introducing the confiscation of means of production from kurkuls. The implementation of this resolution led to the de-kurkulisation

9 | Луцький (Lutskyi) 2014, 168.
10 | Житков (Zhytkov) 2018, 324-325
11 | Лях (Liakh) 1975, 60.
12 | Лях (Liakh) 1975, 62-67.
13 | Бойчук (Boichuk) 2017, 8

of 70,407 peasant households and the eviction of 31,593 families, comprising 146,229 individuals, beyond the borders of the republic.[14] The implementation of measures accompanying the comprehensive collectivisation led to a reduction in the number of peasant households. Between 1928 and 1931, their number decreased by 352,000.[15] The adoption of this document eliminated the communal method of land distribution by lottery and introduced a class-based principle: the poor and members of collective farms were endowed with land plots near populated areas and with better soils, creating conditions for further collectivisation. Less favourable lands, located farther from the village, were allocated to the kurkuls.[16]

The collectivisation of agriculture served as one of the sources of industrialisation. Simultaneously, it provided control over the peasantry. The transition to collectivisation was facilitated by the grain procurement crisis of 1927-1928. With the increasing market price of bread, the peasantry refused to sell grain to the state at lower prices. In January 1928, the Politburo of the Central Committee of the Communist Party of the Soviet Union (CC CPSU) decided on the forced requisition of grain surpluses from the peasantry and the necessity of forced collectivisation of agriculture.

To encourage peasants to join collective farms, the state artificially revived the issue of the 'kurkul danger' and launched a campaign against them. However, according to the central statistical management of the Ukrainian SSR, as of 1927, only 4% of 5114.7 thousand peasant farms exhibited signs of being kurkul farms. After abandoning the New Economic Policy (NEP), a significant number of such farms tried to eliminate signs of being kurkul, resulting in a decrease in their share to 1.4% in 1929.[17] However, the necessity to create an atmosphere of intimidation, an integral condition for collectivisation, led to labelling all those who disagreed with the party line as kurkuls. Comprehensive collectivisation began in 1929, known as the "year of the great turning point". It was acknowledged that Ukraine had everything necessary to implement collectivisation ahead of other republics. A commission led by the People's Commissar of Agriculture of the USSR, Yakov Yakovlev, established the deadlines for comprehensive collectivisation in the main grain-producing regions.[18] The resolution of the Central Committee of the Communist Party of the Soviet Union (CC CPSU) dated January 5 1930, titled "On the pace of collectivisation and measures to assist the state in collective farm construction," assigned Ukraine to the group of regions where

14 | Кульчицький (Kulchytskyi) 2009, 486.
15 | Історія колективізації сільського господарства Української РСР 1917—1939 (Istoriia kolektyvizatsii silskoho hospodarstva Ukrainskoi RSR 1917—1939 rr.) 1965, 476.
16 | Паньків (Pankiv) 2012, 116.
17 | Кульчицький (Kulchytskyi) 1995, 145; Кульчицький (Kulchytskyi) 1991, 234
18 | Кульчицький (Kulchytskyi) 2013, 110

collectivisation was to be completed by the autumn of 1931 or spring of 1932.[19] However, Ukrainian party leaders shortened the terms of collectivisation by 1-1.5 years.

The beginning of collectivisation revealed that peasants were unwilling to give up their property and transfer it to collective farms. This is because not only were means of production being socialised, but also productive livestock, poultry, and remnants. Achieving this was possible only through brutal violence. The main essence of the government's policy in agriculture was the collectivisation of individual farms. Peasants were forced to join collective farms using various coercive methods, including tax pressure.[20] Faced with a hopeless situation, the peasantry began to sell or slaughter livestock and hide or spoil remnants. In the years 1928-1932, almost half of the livestock in Ukraine was exterminated, and it would take decades to rebuild it.[21]

The next step of the communist authorities in the reform of land use was the resolution of the Presidium of the All-Union Central Executive Committee of the USSR on February 3 1930. This resolution abolished land communities, transferring their rights and responsibilities to the rural councils.[22] On the eve of mass collectivisation, 66.2% of peasant households followed the courtyard land use form, 20.7% followed the communal form, 6.7% followed the strip form, 1.4% followed the farmstead form, and only 3.7% followed the collective form. Collectives produced only 4% of the gross agricultural output, maintained 48,000 head of livestock out of 11.8 million, and cultivated 315,000 hectares of grain out of 25.2 million hectares of sown area.[23] The active advance of Denikin's army temporarily forced the Bolsheviks to abandon plans for mass collectivisation.

In the Ukrainian SSR, as in the former Soviet Union, land was nationalised, and the state was considered the sole owner. The land was only transferred to citizens, agricultural enterprises, organisations, and institutions for use. It is considered that the dominance of complete state ownership of land became one of the main reasons for the low level of its effective use. The Soviet planned economy, like the entire artificially created socialist system, began to experience a collapse.[24] The main goal of the agrarian policy of the Soviet government in the post-war period was the restoration of land use that had previously been utilised by collective farms. As collective farms began to decline in the mid-1980s, the restoration of leasehold land relations in Ukraine began. Ukrainians believed that the land belonged to them, not the state.

19 | Колективізація і голод на Україні: 1929-1933; Історія Українського селянства : нариси. (Kolektyvizatsiia i holod na Ukraini: 1929-1933; Istoriia Ukrainskoho selianstva : narysy) 2006, 345
20 | Кравчук (Kravchuk) 2020, 29
21 | Кондратюк (Kondratiuk) 2003
22 | Марочко (Marochko) 1995, 123
23 | Паньків (Pankiv) 2012, 117
24 | Ковалів (Kovaliv) 2016, 159

In most former Soviet republics, the main reason for land reform was the low productivity of agricultural production. This differed from Eastern European and Baltic countries, where the primary goal was the return of property to former owners.

Inherited from socialist land use, independent Ukraine faced an imbalanced structure of land resources, with 72.2% occupied by agricultural land and 57.5% ploughed territory. Forests and other wooded areas constituted 16.4% of the total area of the country (9.9 million hectares), with the main forest massifs concentrated in the Polissia and Carpathian regions of Ukraine. In terms of forest area, forest density, and timber reserves, Ukraine belongs to the forest-deficient states. Among the tree stands, coniferous trees occupy 42.2%, hardwoods 43.3%, and softwoods 13.6%. Forest lands are state-owned, and for forestry management they are leased to the State Forest Management Committee (68.3%) and the Ministry of Agrarian Policy (24.0%).[25]

In the 1990s, the first stage of land reform began in Ukraine, primarily focusing on agrarian aspects. Its main slogan was "land for the peasants". Until the late 1980s, agricultural production was predominantly carried out by large farms that operated with hired labour from collective farm members and state farm workers, but had no means of production.

In 1990, the Supreme Council of the Ukrainian SSR adopted a resolution "On Land Reform" which, over time, was supplemented by other legislative acts emphasising the need for new methods of effective land use, conservation, and restructuring of land relations in light of market developments[26]. This resolution stipulated that all lands in the country would undergo reform even before the declaration of Ukraine's independence. The concept of denationalisation and privatisation of enterprises, lands, and residential property, approved by the Verkhovna Rada of Ukraine on October 31, 1991, envisioned the redistribution of land ownership. However, the rural population deemed this concept unacceptable as it granted every adult citizen of Ukraine the right to privatise an equal-sized land plot. A second idea for land reform emerged during the development and adoption of a new version of the Land Code of Ukraine on March 15, 1992. This code regulated the denationalisation of lands, their transfer into private and collective ownership, and the right to a land share for social sector workers in rural areas and members of collective agricultural enterprises. Lands for public use in settlements; lands for mining, transport, communication, defence, and the unified energy and space system; lands for health, environmental, recreational, and historical-cultural purposes; lands of the forest and water fund; lands for agricultural research institutions and educational establishments; lands for agricultural research and educational institutions; and lands for agricultural

25 | Паньків (Pankiv) 2012, 163

26 | Формування ринку землі в Україні (Formuvannia rynku zemli v Ukraini) 2006, 9

purposes were all specified. Collective agricultural enterprises (CAEs), agricultural cooperatives, and gardening farms were examples of entities with collective ownership rights to land. The area transferred into collective ownership was determined as the difference between the total area of lands owned by the respective council and the total area of lands owned by the state and private entities. In the event of the termination of CAE activities, each member had the right to a share of the land determined by dividing the total area of agricultural land by the number of pensioners and workers in the social sector (education, health care, culture, domestic services, communication, trade, public catering, law enforcement agencies).

Thus, the following land reforms were implemented in Ukraine:

1. The land reform of 1861. As a result of this reform serfdom was abolished, and peasants were given the opportunity to obtain land in communal ownership, usually through redemption.
2. The Stolypin reform from 1906 to 1912. This reform involved the transfer of land to communities rather than communes.
3. The land reform of 1917. Consequently all private lands were confiscated, leading to nationalisation.[27] By the Decree on Land, certain fundamental principles of Soviet land legislation were established. According to the decree, the right to private land ownership was abolished. Moreover, lands belonging to landowners, feudal lords, cabinet officials, monasteries, churches, and possession lands were confiscated and placed under the control of land committees and county councils of peasant deputies.[28]
4. Currently, Ukraine is undergoing its fourth land reform. Denationalisation of land, which involves transferring state-owned land to private individuals, is the main objective of the reform. Thus, it plays a crucial role in the agrarian reform, aiming to change ownership relations of material and technical production means, as well as other aspects of the functioning of Ukraine's agricultural sector. To ensure the efficient use of land, it is necessary to strengthen planning components with maximum consideration of societal needs. Additionally, an increase in the role of land information systems in land management is expected as a tool for state regulation of land use and protection. Furthermore, the multifunctional cadastre is anticipated to play a growing role as a decision-making tool for both public and private enterprises.[29]

27 | Заставнюк (Zastavniuk) 2011, 25
28 | Життя і розвиток Земельного законодавства України у XX – на початку XXI століття науково-практичний посібник для суддів та кандидатів на посаду судді (Zhyttia i rozvytok Zemelnoho zakonodavstva Ukrainy u XX – na pochatku XXI stolittia naukovo-praktychnyi posibnyk dlia suddiv ta kandydativ na posadu suddi) 2018
29 | Tretyak 2002, 111-112

2. Ideological approaches to the restitution of agricultural lands after the collapse of Soviet dictatorships.

The issue of restitution has been the subject of scientific research by renowned scholars such as S. Vilnyansky, M. Gordon, O. Dzera, N. Kuznetsova, R. Maydanik, V. Maslov, N. Moskalyuk, O. Pushkin, N. Saniakhmetov, E. Kharitonov, Ya. Shevchenko, and many others.

In the 1990s, during the privatisation processes, legislators managed to alleviate some of the social tension. For instance, those who were tenants of state-owned housing were granted the right to privatise, those working in collective farms gained the right to a land share, and those employed in factories were entitled to a share in the property of their enterprise. Everyone seemed to have the right to obtain a portion of state property, but it was not the same share that individuals had lost due to the communist regime in the past. Therefore, social justice was not restored.

Ukraine's affirmation of its desire to become a member of the European Union has once again brought this issue to the forefront, as all EU member states have gone through the process of regaining lost property rights or receiving compensation for their loss. For each country, this has been a path that required significant financial expenditures and immense political will. So, if Ukraine wants to be part of the European community in the future, it must address the issue of restitution. For Ukraine, the complication arises from the fact that state property, which could have been transferred into private hands through privatisation processes, has already been effectively distributed. Therefore, scholars and practitioners logically question: what is there to restore now? In our opinion, a compromise solution needs to be sought.

Restitution (from the Latin 'restituere': to compensate, restore, or bring back into order) is commonly considered the general consequence of the invalidity of legal transactions in civil law. This invalidity leads to the need to restore violated property rights and bring them back to the state that existed at the time of the action causing harm - i.e., the restoration or return of material assets of the same value.[30]

According to N.B. Moskaluk, there is a considerable number of doctrinal interpretations of restitution, many of which are almost identical. Therefore, it is not practical to list them all within the scope of our research. However, we managed to group certain interpretations and provide a brief characterisation. A significant group of researchers adheres to the position that restitution is a type of conduction or that restitution is essentially a consequence of unjust enrichment. This position is substantiated by the idea that rights are not acquired through an invalid legal

30 | Москалюк (Moskaliuk) 2021, 255

transaction, making the enrichment unjustified. Another group of scholars argues that "the claim for the return of unjustly acquired property is a form (method) of exercising the right to restitution."[31]

It is worth noting that all the mentioned perspectives have serious theoretical justification, and the reason for their diversity is that national legislation, unfortunately, does not provide answers to all questions. Furthermore, restitution can be applied to both contemporary invalid legal transactions and state-compelled measures that resulted in the violation of property rights. We support the idea of an expanded interpretation of the concept of restitution and a clear classification of it, either as a civil law institution or an international law one. In the civil law sense, it involves restoring the state of affairs that existed before the commission of a legal act, declared invalid by law or recognised as such by a court order. Its essence is that each party is obligated to return to the other party in-kind everything it received under the contract. In the case of impossibility of such return, especially when what was received consists of the use of property, work performed, or services provided, the obligated party must compensate the value received according to the prices existing at the time of compensation (Part 1 of Article 216 of the Civil Code of Ukraine). If we talk about international law, "restitution" is considered a form of material legal responsibility that commits an act of aggression or another internationally wrongful act. In this case, restitution involves the duty of the state to eliminate or reduce the material damage caused to another state and restore the previous state.[32] Under the current civil legislation, restitution is defined as the restoration of the state of affairs that existed before the commission of a legal act, declared invalid by law, or recognised as such by a court order (Part 1 of Article 216 of the Civil Code of Ukraine). This concept is further detailed by the Supreme Court of Ukraine, which states in a resolution: "Despite the fact that restitution is not provided for in Article 16 of the Civil Code of Ukraine as one of the means of protection, it can be considered a separate means of protecting civil rights violated due to the invalidity of a legal act. Without delving into theoretical discussions on these ambiguous issues, it is worth noting that restitution (aiming at the 'actual state of affairs') is an exceptional consequence (and recognising legal acts regarding the invalidity of the transfer of property rights to real estate should be considered exceptional in itself), which should be applied only in exceptional cases (at least, such an understanding of restitution should be pursued to maintain the stability of turnover of land plots and other immovable property)."

31 | Москалюк (Moskaliuk) 2020, 190; Пояснювальна записка до проекту Закону України «Про відновлення дії Закону України «Про перелік об'єктів права державної власності, що не підлягають приватизації» (Poiasniuvalna zapyska do proektu Zakonu Ukrainy «Pro vidnovlennia dii Zakonu Ukrainy «Pro perelik obiektiv prava derzhavnoi vlasnosti, shcho ne pidliahaiut pryvatyzatsii»).

32 | Мирошниченко, Попов, Рипенко (Myroshnychenko, Popov & Rypenko) 2012

However, Ukraine lacks sufficient experience in restitution. This concerns not only the termination of property rights but also the return by the state of church property, which was less problematic. Certainly, there are issues related to the church's ability to maintain the property transferred to it by the state, but there are also other problems. Political and social factors also influence the property rights of churches. Before 2014, protests were associated with the transfer of state property to the Ukrainian Orthodox Church of the Moscow Patriarchate, but after 2014 protests came from the opposite side.[33] It is worth noting that during the Soviet era, both the Catholic and Orthodox churches were persecuted. Thus, to prevent conflicts between denominations, these issues should be resolved through dialogue between the churches. It is clear that the question of returning church property should be approached from the perspective of restoring it to the church from which it was confiscated. This would be both legally correct and socially just.

N.B. Moskalyuk compared restitution in Ukraine with other Eastern European countries, and highlighted objective reasons that hinder or complicate the process: 1) ownership of disputed property by individuals who acquired it through inheritance or privatisation agreements. These individuals, being legitimate owners, have a right to protection and should be safeguarded. Besides, the significant lapse of time between the violation of property rights and restitution is a major obstacle; 2) lack of proper documentation establishing rights to nationalised property; 3) the absence of a restitution law in Ukraine leads to attempts to address issues of unlawful property acquisition, often involving corruption, document falsification, and engagement with law firms that sell rights to former owners or their heirs, ultimately leading to the completion of the case; 4) if buildings or other structures were destroyed, their heirs might demand the return of the land on which they stood. Given the existing land rights issues in Ukraine and the fact that most of these lands are already developed or in public use, satisfying such demands is challenging; 5) problems related to the national context, particularly in western Ukraine, which was annexed to the eastern part of Poland in the mid-20th century; 6) foreign citizens who, after restitution, become owners of property in another country, often selling or leasing it. Such actions, though reasonable for the owner, have a negative impact on society. When commercial companies purchase real estate, the local budget does not benefit, unlike privatisation. In such cases, the complex process of property restitution, which could be replaced by monetary compensation, is unnecessary. When renting out housing, individuals who previously rented it but had it confiscated during restitution in favour of the legal successor of the former owner become tenants. Depriving individuals of property rights under such circumstances is a painful matter, and the new owner, charging a higher rent, takes advantage of the fact that people who have lived in the house for a long time do not wish to move. The local budget is also responsible for paying

33 | Василець (Vasylets) 2016

rent to residents.[34] The conclusion is that restitution in Ukraine is impossible, both practically and legally.

3. Legal sources of agricultural land reform after the collapse of the Soviet-type dictatorship, including the evolution or modification of this legislation over the past decade.

All spheres of life for Ukrainians would differ from the Soviet era when Ukraine gained independence. To achieve this goal, reforms were implemented in all areas of social activity in Ukraine, including land management. The Resolution of the Verkhovna Rada of Ukraine, dated December 18, 1990, "On Land Reform",[35] envisaged the redistribution of lands that were transferred to private and collective ownership. In March 1991, the first Land Code of Ukraine came into effect.[36] At that time, all land was declared the subject of the reform. Ukraine opted out of the restitution of land plots as a method of reforming land ownership relations, steering towards demonopolisation and denationalisation of land. The institution of perpetual hereditary possession of individual land plots was introduced accordingly. In accordance with the resolution,[37] the main task of the land reform was to redistribute land while simultaneously providing perpetual hereditary ownership to citizens, permanent ownership to collective farms, state farms, and other enterprises and organisations, as well as granting land use for the purpose of creating conditions for the equal development of various forms of economic activity on land, forming a diversified economy, and ensuring the rational use and protection of land.[38] During that time, to pass the law on private land ownership, it was necessary to suspend the alienation of land for six years. In March 1992 a new version of the Land Code of Ukraine was adopted. In particular, Article 17 of the Land Code stipulated that owners of land plots transferred by the Supreme Council were not allowed to sell or otherwise alienate this land plot within six years from the moment of acquiring ownership rights, except for transferring it by inheritance or back to the Supreme Council under the same conditions as it was transferred. The

34 | Москалюк (Moskaliuk) 2020, 109.
35 | Про земельну реформу, (1990), (Постанова не застосовується на території України згідно із Законом від 21.04.2022 р. Про дерадянізацію законодавства України) (Pro zemelnu reformu 1990, (Postanova ne zastosovuietsia na terytorii Ukrainy zghidno iz Zakonom vid 21.04.2022 r. Pro deradianizatsiiu zakonodavstva Ukrainy)), 2022.
36 | Земельний кодекс України (Zemelnyi kodeks Ukrainy) 2001
37 | Про земельну реформу, (1990), (не діє на території України від 2022 р.), внаслідок прийняття закону Про дерадянізацію законодавства України (Pro zemelnu reformu 1990, (ne diie na terytorii Ukrainy vid 2022 r.), vnaslidok pryiniattia zakonu Pro deradianizatsiiu zakonodavstva Ukrainy) 2022
38 | Ковалів (Kovaliv) 2016, 24.

court, at the owner's request, could shorten this period if there were valid reasons. The only article related to land restitution in the current Land Code is Article 212, which states that illegally occupied land cannot be returned to owners or land users without compensation for the expenses incurred during their unlawful use. Unauthorised occupation of a land plot involves actions such as fencing off the land plot, constructing on it, etc. Individuals or legal entities that have unlawfully occupied land are obliged to restore it to a condition suitable for use, including the demolition of buildings and structures. The court orders the return of unlawfully occupied land. In 1992, the Verkhovna Rada of Ukraine adopted a resolution on March 13, 1992, "On Accelerating Land Reform and Land Privatisation",[39] due to the lack of state control over the implementation of land reform. The president of Ukraine's decree "On Urgent Measures to Accelerate Land Reform in Agricultural Production", dated November 10, 1994,[40] was issued to ensure equal development of various forms of ownership and economic activity on the land. It provided for the division of large farmlands into shares. In the late 1990s, Ukrainians received free land shares due to these presidential decrees. In 2001, the Verkhovna Rada of Ukraine adopted the Law "On the Agreement on Alienation of Land Share" dated January 18, 2001,[41] which temporarily prohibited the owners of shares from buying, selling, or gifting them.

In the same year, the Land Code of Ukraine was adopted on October 25 2001, which prohibited land alienation until January 1, 2005. It temporarily banned entering into agreements for buying, selling, gifting, or otherwise alienating these shares, except for their inheritance and repurchase of land plots for the needs of the state and community. The main role in this process of reforming land relations was assigned to local councils, which were under the control and complete dependence of the leaders of collective farms and state farms. Part 1 of Article 81 of the Land Code of Ukraine provides that among the grounds for Ukrainian citizens to acquire ownership of land plots can be: gratuitous transfer from state and communal ownership, privatisation of land plots previously provided to them for use, and allocation in kind (on-site) of their land share (share).

In addition, certain types of land cannot be transferred into private ownership. Lands belonging to this category include: lands under objects of the natural reserve fund; lands under objects of historical, cultural, and recreational purposes; lands for forestry purposes, except in certain cases; lands of the water fund, except in certain cases; and so on. Furthermore, the Land Code applies to both shares

39 | Про прискорення земельної реформи та приватизацію землі (Pro pryskorennia zemelnoi reformy ta pryvatyzatsiiu zemli) 1992

40 | Про невідкладні заходи щодо прискорення земельної реформи у сфері сільськогосподарського виробництва (Pro nevidkladni zakhody shchodo pryskorennia zemelnoi reformy u sferi silskohospodarskoho vyrobnytstva) 1994

41 | Про угоди щодо відчуження земельної частки (паю), (2001), (втратив чинність) (Pro uhody shchodo vidchuzhennia zemelnoi chastky (paiu) 2001, (vtratyv chynnist))

and land plots for commercial agricultural production and farming, regardless of ownership form.

As for forests,[42] those in state ownership may include forests in Ukraine, excluding forests in communal or private ownership. The right of state ownership of forests, as specified in the provisions of the Forest Code of Ukraine, is acquired and exercised by the state through the Cabinet of Ministers of Ukraine, the Council of Ministers of the Autonomous Republic of Crimea, and local state administrations in accordance with the law.

In February 1992 the Law of Ukraine, "On Collective Agricultural Enterprise",[43] was adopted, marking the beginning of determining the property share of each member of the collective farm. At that time, peasants were told, "You have a share in every tractor, machine, and cow, and dividing them into pieces is impossible."

After that, the moratorium was used several times, as confirmed by laws amending the Land Code from 2006 to 2019. When examining these documents, it is important to note that the moratorium on the sale of land was introduced as a temporary measure but unfortunately turned into a prolonged one, lasting for 20 years.

Among the normative sources of Ukraine that define the possibility and procedure for establishing lease relations regarding agricultural land owned by the state, it is also necessary to mention:

- The Constitution of Ukraine (1996),[44] which in Article 14 proclaims: "The right to land ownership is guaranteed. This right is acquired and exercised by citizens, legal entities, and the state exclusively in accordance with the law"; The Land Code of Ukraine as of October 25, 2001, which in Article 84 establishes the state's right to land ownership, and in Chapter 21 outlines the basics of selling land plots or rights to them on a competitive basis;
- The Law of Ukraine "On Land Lease" defines the procedure for establishing, amending, and terminating lease relationships concerning land in Ukraine. Article 4 specifies the lessors, stating that "The lessors of land plots belonging to state ownership are executive authorities who, in accordance with the law, transfer land plots into ownership or use";
- The Law of Ukraine, dated December 5, 2019, No. 340-IX, amends several legislative acts of Ukraine,[45] including the Land Code of Ukraine and the Law of Ukraine "On Land Lease". This law is aimed at combating raiding, an extremely negative phenomenon unfortunately present in Ukraine;

42 | Лісовий кодекс України (Lisovyi kodeks Ukrainy) 1994
43 | Про колективне сільськогосподарське підприємство (Pro kolektyvne silskohospodarske pidpryiemstvo) 1992
44 | Конституція України (Konstytutsiia Ukrainy) 1996
45 | Про внесення змін до деяких законодавчих актів України щодо протидії рейдерству (Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo protydii reiderstvu) 2019

| Several subordinate normative legal acts aimed at implementing the norms of laws in practice. Among them, one can mention the Cabinet of Ministers of Ukraine Resolution dated March 3, 2004, No. 220, Presidential Decree of Ukraine dated December 3, 1999[46], No. 1529/99,[47] and others.

4. Procedural issues: how the restitution took place in terms of the relevant procedures, and evidence of former ownership.

Land allocation of state farms and other state agricultural enterprises is carried out after their transformation into collective agricultural enterprises.[48] The transformation is considered completed from the moment of the state registration of the newly created legal entity, and the state registration of the termination of the legal entity as a result of the transformation.

In 1995, the procedure for dividing lands transferred into collective ownership was adopted.[49] According to the procedure, land sharing involves determining the size of the land share in the collective land ownership of each member of a collective agricultural enterprise, agricultural cooperative, agricultural joint-stock company without allocating land plots in kind (in the area). Members of a collective agricultural enterprise, agricultural cooperative, or agricultural joint-stock company - including pensioners who previously worked in it and remain members of the specified enterprise, cooperative, or company - had the right to a land share, in accordance with the list attached to the state act on the right of collective ownership of land. Certificates of land ownership were issued to citizens.[50] When allotting, the value and size in conditional cadastral hectares of land shares of all members were considered equal (regardless of seniority).[51]

46 | Про затвердження Типового договору оренди землі (Pro zatverdzhennia Typovoho dohovoru orendy zemli) 2004
47 | Про невідкладні заходи щодо прискорення реформування аграрного сектора економіки (Pro nevidkladni zakhody shchodo pryskorennia reformuvannia ahrarnoho sektora ekonomiky) 1999
48 | Про надання роз'яснення (Pro nadannia roziasnennia) 2009
49 | Про порядок паювання земель, переданих у колективну власність сільськогосподарським підприємствам і організаціям (Pro poriadok paiuvannia zemel, peredanykh u kolektyvnu vlasnist silskohospodarskym pidpryiemstvam i orhanizatsiiam) 1995
50 | Про затвердження форми сертифіката на право на земельну частку (пай) і зразка Книги реєстрації сертифікатів на право на земельну частку (пай) (Pro zatverdzhennia formy sertyfikata na pravo na zemelnu chastku (pai) i zrazka Knyhy reiestratsii sertyfikativ na pravo na zemelnu chastku (pai)) 1995
51 | Чому розміри та вартість земельних паїв, вказаних у сертифікатах, були для всіх членів КСП однакові, якщо стаж роботи в колгоспі у всіх не однаковий? (Chomu rozmiry ta vartist zemelnykh paiv, vkazanykh u sertyfikatakh, buly dlia vsikh chleniv KSP odnakovi, yakshcho stazh roboty v kolhospi u vsikh ne odnakovyi?) 2001

The size of the land share was calculated by commissions formed in enterprises from among their employees, the composition of which was approved by general meetings (meetings of authorised members).[52]

The value of the land share was calculated by dividing the monetary value of the agricultural land by the number of persons entitled to the land share.[53]

The number of individuals entitled to a land plot (share) is determined based on the list attached to the state deed granting collective ownership rights to the land. This list, if necessary, is clarified and signed by the heads of the respective council and enterprise. The roster of citizens, as an appendix to the state deed, is compiled by the enterprise itself in accordance with the statute, reviewed, and approved by the general assembly, then signed by the mayor and the head of the collective agricultural enterprise.[54]

Members of the collective agricultural enterprise included: permanent employees; members of the collective agricultural enterprise; pensioners who previously worked in a collective agricultural enterprise and remained members, regardless of their place of residence; conscripted military personnel, if they had not left the collective agricultural enterprise; persons sent for training, if they remained members of the collective agricultural enterprise; women who were on leave due to pregnancy and childbirth, or on leave to take care of a child under the age of three; and members of a collective agricultural enterprise who held elected positions in state authorities or local self-government bodies, if their retention of membership was provided for in the charter of the collective agricultural enterprise.[55]

Citizens who work in the association or worked there at the time of the land transfer into collective ownership, as well as retirees who previously worked in the association (or in the enterprise whose successor became the association) and remain its members, have the right to a land plot (share), regardless of whether they are shareholders of this association or not. Citizens who may be shareholders of the association but were not members of the association at the time of the land transfer into collective ownership and, therefore, were not included in the appendix to the state deed granting collective ownership rights to the land do not have rights to a land plot (share). Newly admitted members to the association may be provided with land plots equivalent to a land plot (share) from the reserve land fund, subject to prior transfer, by the decision of the local council, into the collective ownership

52 | Методичні рекомендації щодо паювання земель, переданих у колективну власність сільськогосподарським підприємствам і організаціям (Metodychni rekomendatsii shchodo paiuvannia zemel, peredanykh u kolektyvnu vlasnist silskohospodarskym pidpryiemstvam i orhanizatsiiam) 1996

53 | Ibid.

54 | Про земельний пай для спадкоємця (Pro zemelnyi pai dlia spadkoiemtsia) 2001

55 | Хоменко (Khomenko) 2004

land of the association and making the necessary amendments to the state deed granting collective ownership rights to the land.[56]

If a citizen was erroneously not included in the appendix to the state deed granting collective ownership rights to the land before the land redistribution and issuance of certificates, they needed to address co-owners' assembly regarding the inclusion of their name in the appendix. If the land redistribution has already taken place, then with the consent of all certificate owners, a re-distribution should occur. The dispute should be resolved solely through legal proceedings if no consensus is reached.[57]

Rural and township councils establish a reserve land fund within their territory, with the area agreed upon with the land user, up to 15 percent of the total area of all agricultural lands, including those within respective settlements. The reserve land fund remains state-owned and is designated for further redistribution and purposeful use.[58] Local councils have authority over the disposition of reserve and surplus lands. Current legislation states these lands can be temporarily leased or permanently used.[59]

In accordance with recommendations on the redistribution procedure of reserve lands for their purposeful use,[60] parcels of land from the reserve land fund are transferred into collective ownership for members of non-state agricultural enterprises in an amount equivalent to the average land plots (shares) needed by the newly admitted citizens to these enterprises. Land plots can also be allocated for individuals engaged in the social sphere in rural areas. Local self-government bodies may allocate land parcels from the reserve land fund for redistribution among members of a reorganised collective agricultural enterprise, if their membership is established after the redistribution of the enterprise's lands.[61]

Membership in non-state agricultural enterprises is regulated by the enterprise's statute, which also outlines that disputes arising from membership relations are resolved either through general assemblies or through legal proceedings.

56 | Щодо паювання сільськогосподарських угідь, переданих в колективну власність (Shchodo paiuvannia silskohospodarskykh uhid, peredanykh v kolektyvnu vlasnist) 2000

57 | Щодо надання права на земельну частку (пай) із земель резервного фонду особам, що були помилково (безпідставно) не включені до списку-додатку до державного акта на право колективної власності на землю (Shchodo nadannia prava na zemelnu chastku (pai) iz zemel rezervnoho fondu osobam, shcho buly pomylkovo (bezpidstavno) ne vkliucheni do spysku-dodatku do derzhavnoho akta na pravo kolektyvnoi vlasnosti na zemliu), 2002

58 | Щодо земель резервного фонду, переданих у колективну власність сільськогосподарським підприємствам і організаціям (Shchodo zemel rezervnoho fondu, peredanykh u kolektyvnu vlasnist silskohospodarskym pidpryiemstvam i orhanizatsiiam) 2001

59 | Щодо передачі земель у колективну власність сільськогосподарським підприємствам (Shchodo peredachi zemel u kolektyvnu vlasnist silskohospodarskym pidpryiemstvam) 2001

60 | Рекомендації щодо порядку перерозподілу земель резервного фонду з метою використання їх за цільовим призначенням (Rekomendatsii shchodo poriadku pererozpodilu zemel rezervnoho fondu z metoiu vykorystannia yikh za tsilovym pryznachenniam) 1998

61 | Практика розгляду судами земельних спорів (Praktyka rozghliadu sudamy zemelnykh sporiv) 2003

To address membership matters within the enterprise, individuals must submit personal applications to the general assemblies (or authorised meetings). In case membership in the enterprise is positively resolved, additional land parcels equivalent to their land plots (shares) from the reserve land fund may, by the decision of the local council, be transferred into collective ownership. Upon the district state administration's decision, corresponding certificates will be issued to them.[62]

The court is not authorised to grant demands for the allocation of a land plot (share) from the reserve land fund without the consent of the local council. The authority to manage this fund solely belongs to the local council, which is not obliged to provide land plots from this fund to individuals who acquired rights within a collective agricultural enterprise at the same level as other members.[63]

Furthermore, heirs of those members of the collective agricultural enterprise who had the right but passed away before the issuance of land certificates could also obtain a land share. Individuals who became members of the enterprise after the list was approved were added to the list by the decision of the general assemblies of the collective agricultural enterprise. Such decisions were approved by the district council, which issued state deeds granting collective ownership rights to the land. The right to a land plot did not directly depend on a citizen's work experience, productivity indicators, personal merits, place of residence, and so forth. Even if a person stopped working in the collective agricultural enterprise or moved elsewhere after receiving the certificate, they did not lose the right to the land share. This right was guaranteed by Ukrainian legislation, and revoking this right was only possible through a court decision.[64]

Lawsuits filed by citizens related to land shares (including claims for recognition of the right to a land plot, its size, unlawfulness of refusal to issue a certificate, allocation of the share in kind, etc.) could be subject to court proceedings. Defendants in such cases could include collective agricultural enterprises, agricultural cooperatives, the district state administration that approved the share size and decided on certificate issuance, as well as the executive body or local self-government body responsible for the allocation of the land share in kind, and so on.[65]

In practice, courts do not differentiate between the concepts of labour participation in collective farms (and later collective agricultural enterprises) and membership in these collectives. If the labour relations of individuals with these collectives arose based on an employment contract rather than membership in the collective, they do not entail the right to obtain a land share. Only members who

62 | Про право на земельну частку (пай) (Pro pravo na zemelnu chastku (pai)) 1999

63 | Практика розгляду судами земельних спорів (Praktyka rozghliadu sudamy zemelnykh sporiv) 2003

64 | Хто має право на одержання земельного паю? : питання-відповідь (Khto maie pravo na oderzhannia zemelnoho paiu? : pytannia-vidpovid) 2001

65 | Про практику застосування судами земельного законодавства при розгляді цивільних справ (Pro praktyku zastosuvannia sudamy zemelnoho zakonodavstva pry rozghliadi tsyvilnykh sprav) 2004

remained in the collective agricultural enterprise at the time of land privatisation have the right to a land plot. Legislation does not provide for considering the days worked, work schedules, or the nature of work performed by individuals who seek to obtain a land share.[66]

For instance, in one court case, the plaintiff had worked in a collective agricultural enterprise for less than three years at the time of land redistribution. However, the enterprise's statute stipulated that a person needed to work in the enterprise for at least three years to qualify for a land plot. The court ruled that this provision was unlawful, narrowed the circle of individuals entitled to a land plot and violated the rights of the collective agricultural enterprise members.[67]

Another unlawful provision was found in the statute of an agricultural joint-stock company, which tied the right to a land share for company shareholders to their labour relations with the company at the time of land allocation. The courts interpreted that the right to a land share for members of the agricultural joint-stock company actually arose not solely from this basis but from their membership in the company at the time of land allocation. Moreover, the list of individuals entitled to a land share in the company, as approved at the time of land allocation, should correspond to the registry of the company's shareholders at the same time. Such a provision in the statute limits the rights of shareholders.[68]

Decisions made by the general assemblies of collective agricultural enterprises, refusing to include individuals in the appendix to the state deed granting collective ownership rights to the land based on not meeting the minimum workdays requirement, do not comply with legal requirements.[69]

Court practice also highlights that seasonal work in collective farms does not warrant the acquisition of a land share.[70] Additionally, the employment record book does not indicate membership in a collective agricultural enterprise, agricultural cooperative, or agricultural joint-stock company but merely denotes labour relations with these entities.

A person acquires the right to a land share under the presence of three conditions: (1) being a member of a collective agricultural enterprise at the time of sharing; (2) inclusion in the list of persons added to the state act on the right of

66 | Практика розгляду судами земельних спорів (Praktyka rozghliadu sudamy zemelnykh sporiv) 2003
67 | Ibid.
68 | У сільськогосподарському акціонерному товаристві, якому земля передавалась у колективну власність, право на земельний пай набували його учасники - громадяни, які були акціонерами на момент передачі (U silskohospodarskomu aktsionernomu tovarystvi, yakomu zemlia peredavalas u kolektyvnu vlasnist, pravo na zemelnyi pai nabuvaly yoho uchasnyky - hromadiany, yaki buly aktsioneramy na moment peredachi) 2001
69 | Praktyka rozghliadu sudamy zemelnykh sporiv 2003
70 | Федієнко (Fediienko) 2003

collective ownership of land; (3) receiving by a collective agricultural enterprise of this act[71].

The right to a land share can be inherited.[72]

However, this right is contingent upon whether the individual was a member of the enterprise at the time of the issuance of the state deed granting collective ownership rights to the land.[73] The ownership right to a land share does not arise from the moment of inclusion in lists appended to the state deed, the verification, refinement, or approval of these lists. Instead, it originates from issuing the state deed granting collective ownership rights to the specific enterprise the person is a member of.[74] A member of the collective agricultural enterprise included in the list appended to the state deed granting collective ownership rights to the land acquires the right to a land share from the date of issuance of this deed. In the event of their death, the inheritance of the land share occurs even if, for various reasons, they could not obtain the certificate for the land share before their death.[75]

However, if a citizen passed away before the issuance of the state deed granting collective ownership rights to the land and, therefore, was not included in the appendix list, their heirs do not have inheritance rights to the land share.[76]

In such cases, if the court recognised that a person has the right to a land share directly or by way of inheritance, but at the time it was mistakenly not included in the lists of persons added to the state deed on land ownership, then depending on the real possibilities during the consideration of the case, the court in the decision must specify in which way this right should be realised: 1) if in the collective, which received land ownership on the basis of a state act, there were undivided lands, then at the expense of these lands; 2) if the local council agreed to the transfer of land from the reserve fund to the collective to meet the demands of persons who were mistakenly not included in the mentioned lists, then at the expense of these lands; 3) if at the time of resolution of the dispute, the land transferred to the ownership of the collective is completely unsoldered, the local council does not give

71 | Постанова Верховного Суду від 4 серпня 2021 року у справі № 617/537/19 (Postanova Verkhovnoho Sudu vid 4 serpnia 2021 u spravi № 617/537/19)

72 | Під час реорганізації КСП людина померла, не отримавши ані земельного, ані майнового сертифікату. Але в списках членів КСП її прізвище було (Pid chas reorhanizatsii KSP liudyna pomerla, ne otrymavshy ani zemelnoho, ani mainovoho sertyfikatu. Ale v spyskakh chleniv KSP yii prizvyshche bulo.) (2001)

73 | Щодо права на земельну частку (пай) (Shchodo prava na zemelnu chastku (pai)) 2006

74 | Про визнання права на земельну частку (пай) у порядку спадкування законом (Pro vyznannia prava na zemelnu chastku (pai) u poriadku spadkuvannia zakonom) 2004

75 | A member of a collective agricultural enterprise included in the list attached to the state act on the right of collective ownership of land acquires the right to a land share (plot) from the date of issuance of this act. In case of his death, inheritance of the right to a land share is carried out in accordance with the provisions of the Civil Code of Ukraine, including in the case when, for various reasons, he was unable to obtain a certificate of the right to a land share.

76 | Щодо успадкування права на земельний пай (Shchodo uspadkuvannia prava na zemelnyi pai) 2000

consent to the allocation of land from the reserve fund to satisfy the claims of the plaintiff, the court, citing the stated reasons, may satisfy the claims of the plaintiff by charging the value of the land share in cash.[77]

Therefore, upon leaving the enterprise, a citizen has the right to a land share in kind, in cash, or in securities. Disputes arising from exercising this right are resolved by the court.[78]

In 1996, methodological recommendations on the procedure for transferring a land share in kind from collective ownership lands to members of collective agricultural enterprises and organisations were approved.[79] According to these recommendations, the transfer of a land share in kind is conducted to a citizen who holds a certificate for the right to a land share, based on their application, and is carried out after the creation of a Land Division Scheme for the collective ownership lands. The creation of these schemes is undertaken by land management and other authorised organisations. These schemes are developed with the participation of leaders and specialists of collective agricultural enterprises (organisations), agricultural cooperatives, agricultural joint-stock companies, including those formed on the basis of state farms, and other state agricultural entities. These schemes are approved by general assemblies of these enterprises and organisations and are coordinated with district (city) state administrations (executive committees of city councils).

The allocation of a land plot in kind, in accordance with the scheme, is approved by the executive management body of the enterprise within a month of the time of the co-owner's application to leave the company. The creation of these schemes is funded by budgetary allocations as well as by the enterprises or citizens who wish to receive land plots (shares) in kind. In cases where the scheme is not developed, the allocation of the land plot (share) being transferred is approved by a relevant decision at the subsequent general assembly of the enterprise, but no later than three months from the time of submitting the application to leave the company. In cases demanding immediate allocation of a land plot in kind, it is granted within the current agricultural year, but not exceeding 12 months.

The establishment and delineation of the boundaries of the land plot in kind were carried out with the participation of the citizen to whom the land plot is being

77 | Практика розгляду судами земельних спорів (Praktyka rozghliadu sudamy zemelnykh sporiv) 2003

78 | Про вирішення спорів щодо відшкодування паїв при виході громадянина з приватизованого колективного сільськогосподарського підприємства (Pro vyrishennia sporiv shchodo vidshkoduvannia paiv pry vykhodi hromadianyna z pryvatyzovanoho kolektyvnoho silskohospodarskoho pidpryiemstva) 1997

79 | Методичні рекомендації щодо порядку передачі земельної частки (паю) в натурі із земель колективної власності членам колективних сільськогосподарських підприємств і організацій (1996), (втратив чинність) (Metodychni rekomendatsii shchodo poriadku peredachi zemelnoi chastky (paiu) v naturi iz zemel kolektyvnoi vlasnosti chlenam kolektyvnykh silskohospodarskykh pidpryiemstv i orhanizatsii (vtratyv chynnist).) 1996

transferred, a representative from the enterprise, as well as the owners of adjacent land plots and land users. After determining the boundaries in kind, an act of transferring the land plot from the collective ownership lands to the ownership of the citizen is drawn up.

To obtain the state act[80] for the right to private ownership of land, one should apply to the local council for the allocation of the land share in kind. The application should be accompanied by a certificate for the right to ownership of the land plot (share). The local council decides to grant permission to allocate the land plot and issues a state act for the right to private ownership of the land. The certificate holder orders the land management organisation to develop the technical documentation for transferring the land share into private ownership and to conduct a set of land management works for land allocation on-site. Upon completion of the documentation, defining the boundaries in kind, and marking the plot, the local council issues a state act for the right to private ownership of the land. Subsequently, the certificate is withdrawn (returned to the respective district state administration that issued it). Ownership of the land arises after the land management organisation establishes the boundaries of the land plot in kind (on-site), and you receive the state act for the right to private ownership. The state act is a document certifying that the person to whom it is issued is the rightful owner of the land plot.[81] The individual covers the cost of land surveying works necessary to allocate a land share in kind (on-site) and prepare a state act.[82]

Upon the liquidation of the respective collective agricultural enterprise, agricultural joint-stock company, or agricultural cooperative, the right of collective ownership of the land ceases to exist.[83]

There are instances where a land share remains unclaimed, meaning the person entitled to it does not actualise their right. Before delineating the lands between state and communal ownership, the authority to manage lands within populated areas, excluding those transferred to private ownership, lies with the respective rural, township, or city councils. Beyond populated areas, it rests with the corresponding executive authorities. Consequently, in line with these provisions, the council or administration may lease out a land share whose owner hasn't exercised their right while abiding by these regulations. This lease agreement might include terms specifying the duration (for example, the agreement remains

80 | Про затвердження форм державного акта на право власності на земельну ділянку та державного акта на право постійного користування земельною ділянкою (втратила чинність) (Pro zatverdzhennia form derzhavnoho akta na pravo vlasnosti na zemelnu dilianku ta derzhavnoho akta na pravo postiinoho korystuvannia zemelnoiu diliankoiu (vtratyla chynnist).) 2002
81 | Потапенко (Potapenko) 2002
82 | Мачуська (Machuska) 2005
83 | Ibid.

valid until a certain condition is met - either the identification of the owner or a request by the inheritor for the land share).[84]

Undistributed (unclaimed) land plots or shares are not part of state or communal ownership. Their provision for use occurs without conducting land auctions, based on a decision made by the respective executive authority or local self-government - after preparing technical documentation through land surveying - to compile a document certifying the right to the land plot.[85]

The right to claim a land plot (share) in kind, as evidenced by the certificate of land ownership, can differ in size from what is indicated in the certificate.[86] This discrepancy can be either larger or smaller. This variation occurs because, according to the law, the quality of the received land is taken into account during the allocation of land shares in kind. If the soil of the allocated plot's soil is higher than the enterprise's average, the plot's size will be smaller than the size indicated in the land certificate. Conversely, if the soil quality is poorer than the average, the size of the plot will be larger than what is stated in the land certificate. If there is disagreement regarding the justification for the change in the size of the land share, the individual has the right to appeal to the court to protect their rights.[87]

In 1998, the president of Ukraine issued a decree "On the Protection of the Rights of Owners of Land Shares (unit),"[88] which stipulated that in case of alienation through sale-purchase transactions of the right to a certified land share (unit), the preferential right to acquire it belongs to the members of collective agricultural enterprises, agricultural cooperatives, agricultural joint-stock companies, peasant (farmer) households, and individuals entitled to create them. Sale-purchase, donation, exchange agreements of the right to a certified land share (unit), after notarial certification, must be registered by the district state administration at the location of the respective collective agricultural enterprise, agricultural cooperative, or agricultural joint-stock company, with corresponding changes recorded in the Book of Registration of Certificates for the Right to Land Shares (units).

The next stage was the reform of the agricultural sector, initiated by the decree of the president of Ukraine in 1999.[89] It involved a shift in ownership forms, with collective agricultural enterprises being transformed into private market-oriented

84 | Щодо порядку паювання земель, переданих у колективну власність сільськогосподарським підприємствам і організаціям (Shchodo poriadku paiuvannia zemel, peredanykh u kolektyvnu vlasnist silskohospodarskym pidpryiemstvam i orhanizatsiiam) 2006
85 | Про надання роз'яснення (Pro nadannia roziasnennia) 2012
86 | Щодо оподаткування спадщини (Shchodo opodatkuvannia spadshchyny) 2007
87 | Щодо правомірності зміни площі паю без згоди власника (Shchodo pravomirnosti zminy ploshchi paiu bez zghody vlasnyka) 2007
88 | Про захист прав власників земельних часток (паїв) (втратив чинність) (Pro zakhyst prav vlasnykiv zemelnykh chastok (paiv) (vtratyv chynnist)) 1998.
89 | Про невідкладні заходи щодо прискорення реформування аграрного сектора економіки (Pro nevidkladni zakhody shchodo pryskorennia reformuvannia ahrarnoho sektora ekonomiky) 1999

entities and peasants becoming actual owners of land and property shares.[90] In 2001, a moratorium was imposed on the alienation of land shares (plots).[91]

During that same year, the Basic Directions of Land Reform for 2001-2005[92] were defined. On October 25, 2001, a new Land Code of Ukraine was adopted, which remains in effect to this day.[93]

According to statistics, from 1991 to 2000, due to the redistribution of land resources, 49.7% of the land remained in state ownership. The privatisation involved the allocation of 26.4 million hectares of land in collective ownership to 11,419 enterprises. 6.5 million citizens acquired the right to land share (units). The average land share (unit) size stood at 4.1 hectares. Mass allocation of land share (unit) and issuance of state acts confirming private ownership rights to land began. A reserve land fund was created, totalling 3,070.3 hectares. Owners of land shares (units) leased out 22.4 million hectares of land, with lease payments in 2000 exceeding 1.6 billion hryvnias. 11 million citizens privatised their land shares, covering an area of 3,256 hectares, and 37006 farm enterprises utilised nearly 2 million hectares of agricultural land.[94]

In many cases, legitimate expropriation may only be considered justified if full compensation is associated with the value of the property. Article 1 of Protocol 1 of the European Convention on Human Rights and Fundamental Freedoms of 1950 does not guarantee the right to full compensation under all circumstances. Lawful purposes in 'public interest', such as goals pursued within the framework of economic reform measures or actions aimed at achieving greater social justice, may require less than total market value compensation ("Schembri and others v. Malta").[95] In another case, "Case of Mango v. Italy",[96] authorities gained custody of the land on July 14, 1987. On 1 October 1990, the applicant sued Moiano Municipality for damages in Benevento District Court. He claimed that the land was illegally occupied and that development had been completed without expropriation or compensation. He sought the market value of the land and damages for loss of enjoyment during legitimate occupation. Article 41 of the convention states: "If the Court finds a violation of the Convention or its protocols, and if the relevant High Contracting Party's domestic legislation provides only partial compensation, the Court, if necessary, shall provide just satisfaction to the injured party." The court ruled after 25 years. Adjusted for inflation and interest, the petitioner sought compensation

90 | Дайджест від 6.04.2000 р. (Daidzhest vid 6.04.2000 r.)
91 | Про угоди щодо відчуження земельної частки (паю) (втратив чинність). (Pro uhody shchodo vidchuzhennia zemelnoi chastky (paiu) (vtratyv chynnist)) 2001
92 | Про Основні напрями земельної реформи в Україні на 2001-2005 роки (Pro Osnovni napriamy zemelnoi reformy v Ukraini na 2001-2005 roky) 2001
93 | Земельний кодекс України (Zemelnyi kodeks Ukrainy) 2001
94 | Про Основні напрями земельної реформи в Україні на 2001-2005 роки (Pro Osnovni napriamy zemelnoi reformy v Ukraini na 2001-2005 roky) 2001, 986.
95 | Case «Schembri and Others v. Malta» 2009
96 | Case Of Mango V. Italy 2015

for building damage, agricultural destruction, and land value. The applicant demanded legal occupation pay. The March 2008 declared total was 84,380 euros after inflation and interest. In Iatridis v. Greece (just satisfaction),[97] a violation decision requires the respondent to fix the damage to restore the pre-violation situation. The Grand Chamber changed constructive expropriation damage appraisal rules in Guizot-Gallisay v. Italy (just satisfaction).[98] The court rejected the applicant's claims based on the land's worth at the time of its ruling and did not include state-building costs when determining substantial injury. The court determined that pecuniary damage compensation should equal the property's market value on the date the applicants lost title, following national rules, based on court-appointed experts. When petitioners renounced title, the national sum paid must be converted to the land's market worth, accounting for inflation. This money will be subject to simple legal interest (applied to capital gradually adjusted) to compensate claimants for lengthy landlessness. The Benevento District Court ruled the applicant lost land ownership on July 14, 1990. Benevento District Court evaluated the land at 6,213,000 lire (3209 euros). The court awarded the applicant 8800 euros plus any taxes on the difference between the land's market worth when they lost their title and the national amount, augmented by inflation and interest and based on equity. Article 41 legal and other fees must be fair and necessary, citing court precedent (Can v. Turkey, no. 29189/02, section 22, January 24, 2008). The court awarded 5000 euros for proceedings.

Based on the statistics of privatisation within the framework of the first land reform, we can observe that the balance between public and private interests can be maintained not only through the application of the restitution institution (which is particularly challenging for Ukraine considering that western and eastern lands were annexed after the establishment of the communist regime) but also through the right to free privatisation of land by every citizen within the norms established by land legislation.

5. The role of judicial power and constitutional courts in restitution procedures.

The constitution states that the land, its subsoil, atmospheric air, water, and other natural resources within the territory of Ukraine, including the natural resources of its continental shelf and exclusive (maritime) economic zone, are objects of ownership rights of the Ukrainian people. The Constitution of Ukraine guarantees the right to property, including land (Articles 13-14).[99]

97 | Case Of Iatridis V. Greece 1999
98 | Guiso-Gallisay v. Italy (just satisfaction) 2008
99 | Конституція України (Konstytutsiia Ukrainy) 1996.

The Constitutional Court of Ukraine in its practice has repeatedly emphasised the principle of inviolability of property rights, which primarily entails non-interference by anyone in the exercise of the owner's rights concerning possession, use, and disposal of property, prohibiting any infringements on the owner's rights against their interests and will.[100] The property right is not absolute and can be limited, but interference with this right can only occur on legal grounds, observing the principles of legal certainty and proportionality. Proportionate measures, which are less burdensome for the rights and freedoms of individuals among all available measures, may be considered when limiting property rights in the interest of society.[101]

Interference with an individual's right to peaceful possession of their property may occur due to the authorities' inability, without fault, to sell agricultural land by establishing a moratorium (case of "Zelenchuk and Tsitsyura v. Ukraine").[102]

Currently, the possibility for Ukrainian citizens to freely exercise the right to alienate agricultural land plots holds significant social and political significance.

As previously mentioned, with the law's enactment in July 2021,[103] the moratorium on the sale of agricultural land was lifted.

A constitutional motion was filed with the domestic body of constitutional jurisdiction regarding the law's constitutionality.[104] The authors of the motions assert that land, as an object of property rights of the Ukrainian people and a fundamental national asset, is under special state protection, particularly concerning agricultural land. According to their conviction, the adoption of the Law by the Verkhovna Rada of Ukraine violated the constitutional procedures for consideration and adoption, and its provisions contradict the provisions of the Constitution of Ukraine. Ukrainian MPs emphasize that only the Ukrainian people have the right to make decisions regarding the disposal of land, as this requires a nationwide referendum. This aligns with the Constitution of Ukraine, which stipulates the right to a referendum (Article 38).

100 | Рішення Конституційного Суду України у справі про захист права власності організацій споживчої кооперації (Rishennia Konstytutsiinoho Sudu Ukrainy u spravi pro zakhyst prava vlasnosti orhanizatsii spozhyvchoi kooperatsii) 2004

101 | Рішення Конституційного Суду України у справі за конституційною скаргою товариства з обмеженою відповідальністю «МЕТРО КЕШ ЕНД КЕРІ Україна» (Rishennia Konstytutsiinoho Sudu Ukrainy u spravi za konstytutsiinoiu skarhoiu tovarystva z obmezhenoiu vidpovidalnistiu «METRO CASH AND CARRY Ukraina») 2019.

102 | Case «Zelenchuk and Tsytsyura v. Ukraine» 2018

103 | Про внесення змін до деяких законодавчих актів України щодо умов обігу земель сільськогосподарського призначення (Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo umov obihu zemel silskohospodarskoho pryznachennia) 2020

104 | Конституційне подання щодо офіційного тлумачення положень першого речення ч.1 ст. 13, ч.1 ст. 14 Конституції України у системному зв'язку із положеннями речення першого Преамбули, положень ст. 1, ч. 2 ст. 3, ч. 2 ст. 5, ч.4 ст. 13 Конституції України. (Konstytutsiine podannia shchodo ofitsiinoho tlumachennia polozhen pershoho rechennia ch.1 st. 13, ch.1 st. 14 Konstytutsii Ukrainy u systemnomu zviazku iz polozhenniamy rechennia pershoho Preambuly, polozhen st. 1, ch. 2 st. 3, ch. 2 st. 5, ch.4 st. 13 Konstytutsii Ukrainy.)

In early November 2020, in order to determine public opinion, a draft resolution was published stating that this issue should be resolved only through an all-Ukrainian referendum.[105] However, it is evident that due to political pressure, the resolution of this issue has been postponed for 3 years (in 2020[106] and in 2023).[107] The primary reason is the judges' refusal to participate in the case, resulting in a lack of quorum. Currently, the constitutional submission remains in open proceedings awaiting review.

Constitutional experts point out that such a decision has led to a constitutional crisis in the country.[108] During a court session in the country, rallies against the considered law took place near the court building.[109] Simultaneously, the presidential party registered a draft law that deprived the sole body of constitutional jurisdiction of budgetary funding.[110] Furthermore, by revoking the acts of the previous president, the president of Ukraine dismissed two judges of the Constitutional Court of Ukraine,[111] though his act was deemed unlawful and subject to repeal by the Supreme Court.[112]

The postulate about the significance of an impartial judiciary for democracy and justice does not require separate evidence. Political pressure on the judicial branch is unacceptable in a rule-of-law state, as is disregard by state authorities for judicial acts. This concerns statements by the Head of the State Geocadastre that, regardless of the decision made by the Constitutional Court of Ukraine, the sale of agricultural land will commence.[113]

Land legislation is based on the principle of non-interference by the state in citizens', legal entities', and territorial communities' exercise of their rights to ownership, use, and disposition of land, except as provided by law. In other words,

105 | Рішення Конституційного Суду України у справі за конституційним поданням 46 народних депутатів України щодо офіційного тлумачення положень першого речення ч.1 ст. 13, ч.1 ст. 14 Конституції України (Rishennia Konstytutsiinoho Sudu Ukrainy u spravi za konstytutsiinym podanniam 46 narodnykh deputativ Ukrainy shchodo ofitsiinoho tlumachennia polozhen pershoho rechennia ch.1 st. 13, ch.1 st. 14 Konstytutsii Ukrainy) 2020

106 | У розгляді справи щодо офіційного тлумачення положень першого речення ч.1 ст. 13, ч.1 ст. 14 Конституції України (U rozghliadi spravy shchodo ofitsiinoho tlumachennia polozhen pershoho rechennia ch.1 st. 13, ch.1 st. 14 Konstytutsii Ukrainy) 2020

107 | У розгляді справи щодо конституційності Закону України „Про внесення змін до деяких законодавчих актів України щодо умов обігу земель сільськогосподарського призначення" та окремих положень Земельного кодексу України (U rozghliadi spravy shchodo konstytutsiinosti Zakonu Ukrainy „Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo umov obihu zemel silskohospodarskoho pryznachennia" ta okremykh polozhen Zemelnoho kodeksu Ukrainy) 2023

108 | Жуков (Zhukov) 2020

109 | КСУ продовжує розгляд справи про відкриття ринку землі, під судом – мітинг. (KSU prodovzhuie rozghliad spravy pro vidkryttia rynku zemli, pid sudom – mitynh) 2021

110 | Симоненко (Symonenko) 2020

111 | Про деякі питання забезпечення національної безпеки України (Pro deiaki pytannia zabezpechennia natsionalnoi bezpeky Ukrainy) 2021

112 | Рішення Верховного Суду (Rishennia Verkhovnoho Sudu) 2022

113 | Симоненко (Symonenko) 2020

the landowner has the authority over ownership, use, and disposal, and the state should not intervene in citizens' exercise of their right to manage the land, except as prescribed by law.[114] The same applies to the free transfer of state and communal land plots into private ownership, which should not impose restrictions on citizens' rights.[115]

The Grand Chamber of the Supreme Court notes that since the prohibition on alienation was imposed, the state failed to ensure a proper mechanism for the realisation of property rights on agricultural land for many years. However, considering the content of the ECHR decision ("Zelenchuk and Tsitsyura v. Ukraine"), it is justified to state that this ECHR decision cannot be interpreted as a specific permit for the free circulation, particularly exchange, of agricultural land plots, irrespective of the provisions of Ukraine's regulatory acts.[116]

Therefore, after the establishment of independent Ukraine, the right to private land ownership became one of the fundamental rights of citizens guaranteed by the constitution. Courts made a significant contribution to the privatisation process within the framework of the first land reform by providing legal protection and safeguarding citizens and their successors from the unlawful deprivation of their right to land. The Constitutional Court of Ukraine plays a crucial role in interpreting the right to private land ownership, as it has the authority, in compliance with the requirements of the Basic Law, to preserve, on behalf of citizens, the legitimacy concerning Ukrainian land.

6. Conclusion.

The privatisation of land plots for peasants in Ukraine occurred through the overall collectivisation, which involved the transfer of land from state to collective ownership, and subsequently into virtual private ownership in the form of land shares without physical division. The restitution of agricultural land ownership rights in Hungary, Romania, Lithuania, Latvia, and Estonia also included urban pensioners and other individuals who were not actively engaged in agriculture. In most cases, they lacked qualifications and the desire to engage in agricultural production, attempting to sell their property. The surplus of agricultural land on the market led

114 | Postanova Velykoi Palaty Verkhovnoho Sudu 2019

115 | Рішення Конституційного суду України у справі за конституційним поданням 51 народного депутата України щодо відповідності Конституції України (конституційності) положень статті 92, пункту 6 розділу X "Перехідні положення" Земельного кодексу України (справа про постійне користування земельними ділянками) (Rishennia Konstytutsiinoho sudu Ukrainy u spravi za konstytutsiinym podanniam 51 narodnoho deputata Ukrainy shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) polozhen statti 92, punktu 6 rozdilu Kh "Perekhidni polozhennia" Zemelnoho kodeksu Ukrainy (sprava pro postiine korystuvannia zemelnymy diliankamy)) 2005

116 | Постанова Верховного Суду (Postanova Verkhovnoho Sudu) 2021

to price reductions and an increase in uncultivated land. This issue was particularly evident in Latvia and Hungary. To counter these processes, authorities had to create bodies tasked with developing such land (for instance, Hungary established the State Land Fund in 2002 for this purpose) or delegate the responsibility of developing unused lands to existing governmental bodies (as in Latvia).[117]

The value of the land share was calculated by dividing the monetary value of the agricultural land subject to sharing by the number of persons entitled to the land share. The number of persons entitled to the land share is accepted according to the list attached to the state act on the right of collective ownership of land, which, if necessary, is specified and signed by the heads of the relevant council and enterprise. The list of citizens, as an appendix to the state act, is formed by the enterprise itself in accordance with the charter, is reviewed and approved by the general meeting of the enterprise, and is signed by the chairman of the city council and the chairman of the collective agricultural enterprise. Members of a collective agricultural enterprise included: permanent employees; members of a collective agricultural enterprise; pensioners who previously worked in a collective agricultural enterprise and remained its members, regardless of their place of residence; conscripted military personnel if they have not left the collective agricultural enterprise; persons sent for training, if they remained members of the collective agricultural enterprise; women who were on leave due to pregnancy and childbirth or on leave to take care of a child under the age of three; and members of a collective agricultural enterprise who held elected positions in state authorities or local self-government bodies, if their retention of membership was provided for in the charter of the collective agricultural enterprise. The formation of a full-fledged land market in Ukraine must be preceded by a significant modernisation of the institutional structure of the economic system based on the indicated shortcomings and contradictions in land relations. Based on the conducted research, we support the following system of institutional parameters that will form the basis of the future land market: protection of private property rights; ensuring the authority of the state in matters of land ownership; developed infrastructure in the field of lease relations (commercial lending, leasing, etc.); effective implementation of the rule of law; separation of state and commercial structures; restoration of the tradition of working on the land; compensation for the impact of urbanisation on the demographic structure; modernised cadastre of land resources (with expanded parametric database); a clearly regulated system of interaction between the State Agency of Land Resources, the Bureau of Technical Inventory, notary agencies, the State Land Cadastre, and land auctions; focus on long-term land ownership with the management of land use changes.[118]

117 | Гуторов (Hutorov) 2010, 134
118 | Virchenko 2013

It should also be noted that considering case No. 6-3104цс16, which was filed with the Supreme Court of Ukraine on March 29, 2017,[119] regarding the prosecutor's claim in the interests of the state to invalidate a sales contract and property ownership certificate, cancel property ownership records, decisions on state registration of rights, and the obligation to return a land plot, the court concluded that restitution as a means of protecting civil rights (part one of article 216 of the Civil Code of Ukraine) is applicable only if there is a contract between the parties that is either void or declared invalid. Consequently, only the party affected by the invalid transaction can demand the return of property transferred under that invalid transaction, following the rules of restitution. A claim for the return of alienated property to a third party cannot be based on the provisions of part one of Article 216 of the Civil Code of Ukraine. Claims by property owners to invalidate subsequent transactions regarding property alienation made after an invalid transaction cannot be satisfied. On the other hand, the general rule stipulated in Article 387 of the Civil Code of Ukraine provides that an owner has the right to reclaim someone else's property that does not belong to them. Based on part one of article 388 of the Civil Code of Ukraine, the right of the owner to claim property from a bona fide acquirer depends on the manner of its acquisition. This rule encompasses various situations wherein an owner has the right to reclaim property from a bona fide acquirer. One of these grounds is the removal of property from the owner or the person to whom it was transferred against their will. When an owner intends to transfer their property to another person, they cannot reclaim it from a bona fide acquirer. Therefore, in Ukraine, restitution applies to the recovery of property from another's unlawful possession but does not extend to land plots that were confiscated in Ukraine while it was part of the Soviet Union.

For Ukraine to join the EU the completion of land restitution is necessary, returning property to individuals or states from whom it was illegally taken - to illegitimate heirs, or to rightful owners. It aims to restore justice and the legal basis of communities after decades of lawlessness and revolutionary plundering, by returning property, especially land, to its former owners by taking it away from the 'new' ones. However, restitution is often seen as another redistribution of property in our increasingly divided society. It is a complex, expensive, and lengthy process, and its social consequences are difficult to predict. Yet due to the considerable passage of time and the physical destruction of much property, land restitution in Ukraine is practically impossible. Furthermore, an ill-considered privatisation policy has essentially made this unfeasible. As a result, compensation payments are one of the potential means of restitution. However, this requires the establishment of appropriate state archives, the creation of compensation funds, and, most importantly, having the necessary legislative framework. Since

119 | ВСУ роз'яснив коли застосовується реституція (VSU roziasnyv koly zastosovuietsia restytutsiia) 2017.

the physical possibility of returning land is minimal, the only viable solution for now is compensation for the expropriated lands if the necessary documentation is available. It would be appropriate to confiscate unused, illegally alienated, unreasonably altered lands, or those used for non-target purposes (plots), regardless of who currently owns, uses, or manages them. Balancing interests also demands the revocation of provisions regarding the right to sublease, emphyteusis, sale, and pledge of lease rights for land and other non-transparent grounds, especially concerning land plots that were gratuitously transferred to peasants during their delinking from state ownership and privatisation.

Ukraine should establish rules for compensating property lost under the communist and Nazi regimes. Given that new owners already possess this property on legal grounds, despite these laws stemming from legal nihilism, it is evident that returning a significant portion of the looted property in kind is practically impossible. The issue could have been at least partially resolved if legislators in the 1990s had considered restitution and granted former owners preferential privatisation rights. Since this didn't happen, and new owners have no connection to previous owners, the only way to address the problem is through monetary compensation. We acknowledge the burden compensation might pose on the budget, so we allow capping the maximum amount, or providing compensation in the form of vouchers for participation in the annual privatisation of state property in Ukraine. Considering a similar experience in Hungary, it could be applied at the national level.

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57. Про затвердження Типового договору оренди землі: Постанова Кабінету Міністрів України; Договір, Форма типового документа від [Pro zatverdzhennia Typovoho dohovoru orendy zemli: Postanova Kabinetu Ministriv Ukrainy; Dohovir, Forma typovoho dokumenta vid] 03.03.2004 №220 Available at: https://zakon.rada.gov.ua/laws/show/220-2004-%D0%BF#Text

58. Про затвердження форм державного акта на право власності на земельну ділянку та державного акта на право постійного користування земельною ділянкою: Постанова Кабінету Міністрів України від [Pro zatverdzhennia form derzhavnoho akta na pravo vlasnosti na zemelnu dilianku ta derzhavnoho akta na pravo postiinoho korystuvannia zemelnoiu diliankoiu: Postanova Kabinetu Ministriv Ukrainy vid] 2.04.2002 №449 (втратила чинність). *Офіційний вісник України. [*(vtratyla chynnist). *Ofitsiinyi visnyk Ukrainy.]* 2002. № 14. С. 221.

59. Про затвердження форми сертифіката на право на земельну частку (пай) і зразка Книги реєстрації сертифікатів на право на земельну частку (пай): Постанова Кабінету Міністрів України від [Pro zatverdzhennia formy sertyfikata na pravo na zemelnu chastku (pai) i zrazka Knyhy reiestratsii sertyfikativ na pravo na zemelnu chastku (pai): Postanova Kabinetu Ministriv Ukrainy vid] 12.10.1995 №801. Available at: https://zakon.rada.gov.ua/laws/show/801-95-%D0%BF#Text

60. Про захист прав власників земельних часток (паїв) 6 Указ президента України від [Pro zakhyst prav vlasnykiv zemelnykh chastok (paiv) 6 Ukaz prezydenta Ukrainy vid] 21.04.1998 № 332/98 (втратив чинність). *Офіційний вісник України. [*(vtratyla chynnist). *Ofitsiinyi visnyk Ukrainy.]* 1998. № 16. С. 10.

61. Про земельний пай для спадкоємця : Лист Державного комітету по земельних ресурсах від [Pro zemelnyi pai dlia spadkoiemtsia : Lyst Derzhavnoho komitetu po zemelnykh resursakh vid] 10.12.2001 № 14-17-2-П2073/6048. *Урядовий кур'єр. [Uriadovyi kurier].* 2001. № 236.

62. Про земельну реформу: Постанова Верховної Ради Української РСР від [Pro zemelnu reformu: Postanova Verkhovnoi Rady Ukrainskoi RSR vid] 18.12.1990 № 563-XII https://zakon.rada.gov.ua/laws/show/563-12#Text (Постанова не застосовується на території України згідно із Законом [Postanova ne zastosovuietsia na terytorii Ukrainy zghidno iz Zakonom] 2215-IX від [vid] 21.04.2022 Про дерадянізацію законодавства України: Закон України від [Pro deradianizatsiiu zakonodavstva Ukrainy: Zakon Ukrainy vid] 21.04.2022 № 2215-IX Available at: https://zakon.rada.gov.ua/laws/show/2215-20#Text

63. Про колективне сільськогосподарське підприємство: Закон України від [Pro kolektyvne silskohospodarske pidpryiemstvo: Zakon Ukrainy vid] 14.02.1992 № 2114-XII Available at: https://zakon.rada.gov.ua/laws/show/2114-12#Text

64. Про надання роз'яснення: Лист державного агентства земельних ресурсів України від [Pro nadannia roziasnennia: Lyst derzhavnoho ahentstva zemelnykh resursiv Ukrainy vid] 14.05.2012 № 7295/17/6-12. *Баланс-Бюджет. [Balans-Bjudzet]* 2012. № 25. С. 12.

65. Про надання роз'яснення: Лист Державного комітету України з питань регуляторної політики та підприємництва від [Pro nadannia roziasnennia: Lyst Derzhavnoho komitetu Ukrainy z pytan rehuliatornoi polityky ta pidpryiemnytstva vid] 18.03.2009 № 2826. Available at: https://zakon.rada.gov.ua/rada/show/v2826563-09#Text

66. Про невідкладні заходи щодо прискорення земельної реформи у сфері сільськогосподарського виробництва: Указ Президента України від [Pro nevidkladni zakhody shchodo pryskorennia zemelnoi reformy u sferi silskohospodarskoho vyrobnytstva: Ukaz Prezydenta Ukrainy vid] 10.11.1994 № 666/94. Available at: https://zakon.rada.gov.ua/laws/show/666/94#Text

67. Про невідкладні заходи щодо прискорення реформування аграрного сектора економіки: Указ Президента України від [Pro nevidkladni zakhody shchodo pryskorennia reformuvannia ahrarnoho sektora ekonomiky: Ukaz Prezydenta Ukrainy vid] 03.12.1999 № 1529/99 Available at: https://zakon.rada.gov.ua/laws/show/1529/99#Text

68. Про Основні напрями земельної реформи в Україні на 2001-2005 роки : Указ Президента України від [Pro Osnovni napriamy zemelnoi reformy v Ukraini na 2001-2005 roky : Ukaz Prezydenta Ukrainy vid] 30.05.2001 № 372/2001. Available at: *https://zakon.rada.gov.ua/laws/show/372/2001#Text*

69. Про порядок паювання земель, переданих у колективну власність сільськогосподарським підприємствам і організаціям : Указ Президента України від [Pro poriadok paiuvannia zemel, peredanykh u kolektyvnu vlasnist silskohospodarskym pidpryiemstvam i orhanizatsiiam : Ukaz Prezydenta Ukrainy vid] 8.08.1995 № 720/95. Available at: https://zakon.rada.gov.ua/laws/show/720/95#Text

70. Про право на земельну частку (пай) : Лист Державного комітету України по земельних ресурсах від [Pro pravo na zemelnu chastku (pai) : Lyst Derzhavnoho komitetu Ukrainy po zemelnykh resursakh vid] 29.04.1999 № 14-14-8/1106. Available at: *https://zakon.rada.gov.ua/rada/show/v1106219-99#Text*

71. Про практику застосування судами земельного законодавства при розгляді цивільних справ: Постанова Верховного Суду України від [Pro praktyku zastosuvannia sudamy zemelnoho zakonodavstva pry rozghliadi tsyvilnykh sprav: Postanova Verkhovnoho Sudu Ukrainy vid] 16.04.2004 № 7. Available at: https://zakon.rada.gov.ua/laws/show/va007700-04#Text

72. Про прискорення земельної реформи та приватизацію землі: Постанова Верховної Ради України від [Pro pryskorennia zemelnoi reformy ta pryvatyzatsiiu zemli: Postanova Verkhovnoi Rady Ukrainy vid] 13.03.1992 №2200-XII Available at: https://zakon.rada.gov.ua/laws/show/2200-12#Text

73. Про проголошення незалежності України: Постанова Верховної Ради України; Акт від [Pro proholoshennia nezalezhnosti Ukrainy: Postanova Verkhovnoi Rady Ukrainy; Akt vid] 24.08.1991 № 1427-XII Available at: https://zakon.rada.gov.ua/laws/show/1427-12#Text

74. Про угоди щодо відчуження земельної частки (паю): Закон України від [Pro uhody shchodo vidchuzhennia zemelnoi chastky (paiu): Zakon Ukrainy vid] 18.01.2001 №2242-III (втратив чинність). [vtratyv chynnist]. Available at: https://zakon.rada.gov.ua/laws/show/2242-14#Text

75. Рекомендації щодо порядку перерозподілу земель резервного фонду з метою використання їх за цільовим призначенням: Рекомендації Державного комітету України по земельних ресурсах від [Rekomendatsii shchodo poriadku pererozpodilu zemel rezervnoho fondu z metoiu vykorystannia yikh za tsilovym pryznachenniam: Rekomendatsii Derzhavnoho komitetu Ukrainy po zemelnykh resursakh vid] 21.08.1998. *Землевпорядний вісник.* [Zemlevporiadnyi visnyk.] 1999. № 1.

76. Рішення Верховного Суду від [Rishennia Verkhovnoho Sudu vid] 27.10.2022 у справі [u spravi] № П/9901/97/21. Available at: https://reyestr.court.gov.ua/Review/107090521

77. Рішення Конституційного Суду України у справі за конституційним зверненням Центральної спілки споживчих товариств України про офіційне тлумачення положень пункту 1 статті 9, пункту 1 статті 10 Закону України «Про споживчу кооперацію», частини четвертої статті 37 Закону України «Про кооперацію» (справа про захист права власності організацій споживчої кооперації) від [Rishennia Konstytutsiinoho Sudu Ukrainy u spravi za konstytutsiinym zvernenniam Tsentralnoi spilky spozhyvchykh tovarystv Ukrainy pro ofitsiine tlumachennia polozhen punktu 1 statti 9, punktu 1 statti 10 Zakonu Ukrainy «Pro spozhyvchu kooperatsiiu», chastyny chetvertoi statti 37 Zakonu Ukrainy «Pro kooperatsiiu» (sprava pro zakhyst prava vlasnosti orhanizatsii spozhyvchoi kooperatsii) vid] 11.11.2004 № 16-рп/2004. *Урядовий кур'єр. [Uriadovyi kurier].* 2004. № 224.

78. Рішення Конституційного Суду України у справі за конституційним поданням 46 народних депутатів України щодо офіційного тлумачення положень першого речення частини першої статті 13, частини першої статті 14 Конституції України : Проект станом на [Rishennia Konstytutsiinoho Sudu Ukrainy u spravi za konstytutsiinym

podanniam 46 narodnykh deputativ Ukrainy shchodo ofitsiinoho tlumachennia polozhen pershoho rechennia chastyny pershoi statti 13, chastyny pershoi statti 14 Konstytutsii Ukrainy : Proekt stanom na] 2.11.2020. Справа (Sprava) № 1-294/2019 (6992/19). Available at: https://tinyurl.com/bvzts4ef

79. Рішення Конституційного суду України у справі за конституційним поданням 51 народного депутата України щодо відповідності Конституції України (конституційності) положень статті 92, пункту 6 розділу X "Перехідні положення" Земельного кодексу України (справа про постійне користування земельними ділянками) від [Rishennia Konstytutsiinoho sudu Ukrainy u spravi za konstytutsiinym podanniam 51 narodnoho deputata Ukrainy shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) polozhen statti 92, punktu 6 rozdilu Kh "Perekhidni polozhennia" Zemelnoho kodeksu Ukrainy (sprava pro postiine korystuvannia zemelnymy diliankamy) vid] 22.09.2005 № 5-рп/2005. *Офіційний вісник України. [Ofitsiinyi visnyk Ukrainy.]* 2005. № 39. С. 95.

80. Рішення Конституційного Суду України у справі за конституційною скаргою товариства з обмеженою відповідальністю «МЕТРО КЕШ ЕНД КЕРІ Україна» щодо відповідності Конституції України (конституційності) положень абзаців двадцять четвертого, двадцять п'ятого, двадцять шостого розділу I Закону України «Про внесення змін до Податкового кодексу України щодо уточнення деяких положень та усунення суперечностей, що виникли при прийнятті Закону України «Про внесення змін до Податкового кодексу України щодо покращення інвестиційного клімату в Україні» від [Rishennia Konstytutsiinoho Sudu Ukrainy u spravi za konstytutsiinoiu skarhoiu tovarystva z obmezhenoiu vidpovidalnistiu «METRO KESh END KERI Ukraina» shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) polozhen abzatsiv dvadtsiat chetvertoho, dvadtsiat piatoho, dvadtsiat shostoho rozdilu I Zakonu Ukrainy «Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy shchodo utochnennia deiakykh polozhen ta usunennia superechnostei, shcho vynykly pry pryiniatti Zakonu Ukrainy «Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy shchodo pokrashchennia investytsiinoho klimatu v Ukraini» vid] 23.03.2017 № 1989-VIII від 5.06.2019 № 3-р(I)/2019. *Вісник Конституційного Суду України. [Visnyk Konstytutsiinoho Sudu Ukrainy.]* 2019. № 4. С. 37.

81. Симоненко Д. [Symonenko D.] (02.11.2020) «Слуги» зарегистрировали законопроект о лишении КСУ бюджетного финансирования. *Коментарі*. [«Sluhy» zarehystryrovaly zakonoproekt o lyshenyy KSU biudzhetnoho fynansyrovanyia. Komentari.] Available at: https://tinyurl.com/42addawa

82. Симоненко Д. [Symonenko D.] (02.11.2020). КСУ відклав прийняття рішення за поданням про ринок землі на невідомий термін – ЗМІ. *Коментарі*. [KSU vidklav pryiniattia rishennia za podanniam pro rynok zemli na nevidomyi termin – ZMI. Komentari.] Available at: https://tinyurl.com/ypzbsxz3

83. Спадкоємці члена колективного сільськогосподарського підприємства, включеного до списку, доданого до Державного акта на право колективної власності на землю, успадковують його право на земельну частку (пай) : Ухвала (Витяг) Верховного Суду України від [Spadkoiemtsi chlena kolektyvnoho silskohospodarskoho pidpryiemstva, vkliuchenoho do spysku, dodanoho do Derzhavnoho akta na pravo kolektyvnoi vlasnosti na zemliu, uspadkovuiut yoho pravo na zemelnu chastku (pai) : Ukhvala (Vytiah) Verkhovnoho Sudu Ukrainy vid] 20.12.2001. *Вісник Верховного суду України. [Visnyk Konstytutsiinoho Sudu Ukrainy.]* 2002. № 2.

84. У розгляді справи щодо конституційності Закону України „Про внесення змін до деяких законодавчих актів України щодо умов обігу земель сільськогосподарського призначення" та окремих положень Земельного кодексу України Суд оголосив перерву / Конституційний Суд України. [U rozghliadi spravy shchodo konstytutsiinosti Zakonu Ukrainy „Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo umov obihu zemel silskohospodarskoho pryznachennia" ta okremykh polozhen Zemelnoho kodeksu Ukrainy Sud oholosyv perervu / Konstytutsiinyi Sud Ukrainy.] 28.02.2023. Available at: https://tinyurl.com/56tpkbjv

85. У розгляді справи щодо офіційного тлумачення положень першого речення частини першої статті 13, частини першої статті 14 Конституції України оголошено перерву / Конституційний Суд України. [U rozghliadi spravy shchodo ofitsiinoho tlumachennia polozhen pershoho rechennia chastyny pershoi statti 13, chastyny pershoi statti 14 Konstytutsii Ukrainy oholosheno perervu / Konstytutsiinyi Sud Ukrainy.] 05.11.2020. Available at: https://tinyurl.com/yx9kf2fp

86. Ухвала Верховного суду України; Витяг від [Ukhvala Verkhovnoho sudu Ukrainy; Vytiah vid] 19.12.2001 Available at: https://zakon.rada.gov.ua/laws/show/n0053700-01#Text%D0%B8

87. Федієнко П. (2003). Моя мама працювала продавцем у сільській крамниці. Будучи пенсіонеркою, з 1978 до 2001 р. вона брала участь у сезонних роботах у колгоспі (городній бригаді, коморі тощо). Підтвердженням цієї трудової участі у господарстві є відомості в бухгалтерії на зарплату. Є й свідки, які можуть підтвердити про її трудову участь в господарстві. Які документи потрібно пред'явити для отримання матір'ю земельного паю? : питання-відповідь. 06.02.2003. № 9. *Праця і зарплата*. 2003. № 6.

88. Формування ринку землі в Україні. [Formuvannia rynku zemli v Ukraini.] (2006). 2 -е вид., переробл. та доп. [за ред. д.е.н. А.С. Даниленка, Ю.Д. Білика]. К.: Урожай, [2 -e vyd., pererobl. ta dop. [za red. d.e.n. A.S. Danylenka, Yu.D. Bilyka]. K.: Urozhai,] 276 с.

89. Хоменко Н. [Khomenko N.] (2004). Про права щодо одержання земельного паю : питання-відповідь. *Голос України.* [Pro prava shchodo oderzhannia zemelnoho paiu : pytannia-vidpovid. Holos Ukrainy.] № 54.

90. Хто має право на одержання земельного паю? : питання-відповідь. [Khto maie pravo na oderzhannia zemelnoho paiu?: pytannia-vidpovid.] 08.05.2001. № 0208. *Земельна реформа: питання і відповіді.* Київ, [Zemelna reforma: pytannia i vidpovidi. Kyiv,] 2001. Available at: https://zakon.rada.gov.ua/rada/show/p0208697-01#Text

91. Член колективного сільськогосподарського підприємства, включений до списку, що додається до державного акта на право колективної власності на землю, набуває права на земельну частку (пай) з дня видачі цього акта, і в разі його смерті успадкування права на земельний пай здійснюється за нормами Цивільного кодексу України, в тому числі й у випадку, коли з різних причин він не зміг отримати сертифікат на право на земельний пай : Ухвала (Витяг) Верховного Суду України від [Chlen kolektyvnoho silskohospodarskoho pidpryiemstva, vkliuchenyi do spysku, shcho dodaietsia do derzhavnoho akta na pravo kolektyvnoi vlasnosti na zemliu, nabuvaie prava na zemelnu chastku (pai) z dnia vydachi tsoho akta, i v razi yoho smerti uspadkuvannia prava na zemelnyi pai zdiisniuietsia za normamy Tsyvilnoho kodeksu Ukrainy, v tomu chysli y u vypadku, koly z riznykh prychyn vin ne zmih otrymaty sertyfikat na pravo na zemelnyi pai : Ukhvala (Vytiah) Verkhovnoho Sudu Ukrainy vid] 25.04.2002. *Вісник Верховного суду України. [Visnyk Verkhovnoho sudu Ukrainy.]* 2003. № 2. С. 21.

92. Чому розміри та вартість земельних паїв, вказаних у сертифікатах, були для всіх членів КСП однакові, якщо стаж роботи в колгоспі у всіх не однаковий? : питання-відповідь. [Chomu rozmiry ta vartist zemelnykh paiv, vkazanykh u sertyfikatakh, buly dlia vsikh chleniv KSP odnakovi, yakshcho stazh roboty v kolhospi u vsikh ne odnakovyi? : pytannia-vidpovid.] 14.05.2001. № 0218 / Земельна реформа: питання і відповіді. Київ, [Zemelna reforma: pytannia i vidpovidi. Kyiv,] 2001. URL: Available at: https://zakon.rada.gov.ua/rada/show/p0218697-01#Text

93. Щодо земель резервного фонду, переданих у колективну власність сільськогосподарським підприємствам і організаціям : Лист Державного комітету України по земельних ресурсах від [Shchodo zemel rezervnoho fondu, peredanykh u kolektyvnu vlasnist silskohospodarskym pidpryiemstvam i orhanizatsiiam : Lyst Derzhavnoho komitetu Ukrainy po zemelnykh resursakh vid] 17.05.2001 № 14-17-11/2473. *Урядовий кур'єр. [Uriadovyi kurier].* 2001. № 104.

94. Щодо надання права на земельну частку (пай) із земель резервного фонду особам, що були помилково (безпідставно) не включені до списку-додатку до державного акта на право колективної власності на землю: Лист Державного комітету України по земельних ресурсах від [Shchodo nadannia prava na zemelnu chastku (pai) iz zemel rezervnoho fondu osobam, shcho buly pomylkovo (bezpidstavno) ne vkliucheni do spysku-dodatku do derzhavnoho akta na pravo kolektyvnoi vlasnosti na zemliu: Lyst Derzhavnoho komitetu Ukrainy po zemelnykh resursakh vid] 17.01.2002 № 14-17-6/319. *Урядовий кур'єр. [Uriadovyi kurier].* 2002. № 87.

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100. Щодо правомірності зміни площі паю без згоди власника: Лист Міністерства аграрної політики України від [Shchodo pravomirnosti zminy ploshchi paiu bez zghody vlasnyka: Lyst Ministerstva ahrarnoi polityky Ukrainy vid] 5.07.2007 № 37-17-1-16/10396. Available at: *https://zakon.rada.gov.ua/rada/show/v37-1555-07#Text*

101. Щодо успадкування права на земельний пай: Лист Державного комітету України по земельних ресурсах від [Shchodo uspadkuvannia prava na zemelnyi pai: Lyst Derzhavnoho komitetu Ukrainy po zemelnykh resursakh vid] 26.06.2000 № 14-17-V-1066/2611. *Урядовий кур'єр. [Uriadovyi kurier].* 2000. № 175.

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The Restitution of Agricultural Land During the Political Regime Change and its Effects on Hungarian Property Relations Today[3]

Abstract

In Hungary after World War II, the system of large estates was abolished and private peasant ownership was established. The peasant strata's desire for land was therefore satisfied within the framework of a micro- and smallholder structure. During the period of collectivisation, the possibility of using peasant land practically disappeared, and the collective use of peasant private property took place within the framework of the producer cooperative system. From the 1960s until the period of the regime change, the cooperative model became dominant in terms of agricultural production. The political regime change of 1989/90 and the associated economic transformation also meant that the system of large-scale cooperative land use was dismantled and lands under cooperative ownership and partly state ownership were privatised. Part of this process was the provision of compensation, which primarily meant state reparation for unjust property deprivations (including land ownership) in the period between 1939 and 1967. This also had negative aspects in terms of the concept of reparations, which did not strengthen the market economy character of agricultural activity and agricultural holdings.

Keywords: compensation, restitution of agricultural lands, privatization, reprivatisation, estate structure, arable land

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1. Historical Background – Antecedents of Collectivisation

World War II completely destroyed agricultural production in Hungary and there was a constant need by the rural population to transform the land ownership structure in the hope of access to land. In Hungary, land reform was included in the program of the Hungarian National Independence Front (MNFF), the anti-fascist united front formed on 2 December 1944, along with a number of issues shaping the further fate of the nation.[4] The communist concept of land reform was publicised by the National Peasant Party, which enjoyed the sympathy of the poor peasantry as well as the landless. Two concepts were formulated, one focusing on economic efficiency (Smallholder Party) and the other on social justice (Communist Party and National Peasant Party).[5] The victory of the latter aspect was strengthened by military considerations, as the rapid land distribution contributed to the disintegration of the Hungarian army, which was still fighting in the western half of the country, and so also reduced the losses of the Red Army.

The Hungarian feudal system of large estates was abolished after World War II, within the framework of the land reform of 1945.[6] The land reform affected 34.5% (3.2 million hectares) of Hungarian agricultural land together with the corresponding fixed and working assets, and had three objectives: firstly, the abolition of the feudal system of large estates, secondly, the establishment of peasant private property, and thirdly, the establishment of a middle-sized estate structure. The first two goals of the triple system were achieved, but the third goal was not, as the estate structure was characterised by a small and micro-ownership structure. The reason for this can be found in the correlation between the large number of people receiving land beneficiaries and the amount of available land. The land reform was completed in 1947 and 98.5% of the land holdings were less than 30 hectares in size.[7] Land was distributed during the land reform, but the beneficiaries received the land from the state land fund in exchange for a so-called redemption price. As a result, the bipolar production structure clearly became small-scale, which was fundamentally different from the middle-sized estate property relations of Western countries with developed agriculture. The vertical system of agricultural production and food industry, which was based on a large-scale structure, declined, and the fate of the stock of industrial means of production supporting agricultural production became doubtful, the operation of which was revived within the framework of farmers' cooperatives, and then the

4 | Balogh and Izsák 2004, 9-13.
5 | Donáth 1962, 282–287.
6 | For more about this period, see: Szilágyi 2009, 15-30; Bobvos 1994, 1-20; Bobvos 1988, 636-646; Koronczay 1979, 1010-1020; Kozma 2011; Markója 1987, 289-295; Seres 1965, 984-997; Tanka 1981, 140-152; Tanka 1990, 239-245.
7 | Szakács 1998, 330–343.

system of machine stations was also organised in order to supply small farms with means of production. These represented a central and centralised organisational framework for production. The machine stations operating until the end of the 1950s can be regarded as state-owned machinery built on the Soviet model, whose task was to support the agricultural work (ploughing, harvesting) of small estates by mechanical means for a certain compensation. Together with the land reform, the organisation of state-run estates and state farms also began.

2. The Development of the State and Cooperative Land Use System

At the beginning of the period of state organisation based on communist dictatorship (1948/49), private peasant ownership was dominant in agriculture, while nationalisations began in industry in other sectors of the economy. The different sectoral ownership structure (agricultural private ownership – industrial state ownership) carried antagonistic contradictions, which had to be resolved in view of the socialist system and communist ideology. The solution was realised in violation of the peasant private ownership. Initially, this was done by restricting the right of disposal of peasant private ownership, subject to the approval of transactions by the authorities, and then by collectivisation, which meant the transition to the socialist large-scale agricultural model. With collectivisation, the possibility of the individual use of private land ownership disappeared, and was replaced by a system of collective use established within the framework of state farms and cooperatives, creating a common land use system. The establishment of the common land use of cooperatives was basically served by the institution of imposing obligations on land intake and property intake (livestock and means of production). The peasant private owners were obliged to become members of the cooperative, and even forced to do so, if necessary. Membership created an obligation to transfer land, i.e. the member had to transfer the use of the land to the cooperative, while retaining his/her ownership. The land owned by the peasants was farmed by cooperatives according to the imagined system of large-scale cultivation. However, the measures did not only mean the transfer of land use to cooperatives, but also pointed in the direction of transferring as much ownership as possible to the cooperative in addition to its use. This aspiration can be observed both in the period of collectivisation, and also in the 1960s – for example, the objective of Act IV of 1967[8] was that the land should preferably be owned by the person using it. Given that the cooperative was the main custodian of use, an extension of cooperative ownership can be observed under various titles. An example is the legal provision according to which if the member died, his/her heir had to decide whether or

8 | For more information and its history, see: Réti 2012, 3-49; Olajos 1998, 137-153; for the current regulation, see: Bak 2018.

not to join to the cooperative, because if they did, they could retain ownership of the land by continuing the use of the cooperative, but if they did not join to the cooperative as a member, the cooperative acquired ownership of the land by way of so-called redemption at a price significantly lower than the market price. Prior to the change of regime, the majority of agricultural land and other assets were owned by the state or cooperatives based on legal provisions. However, political will was increasingly also aimed at the abolition of peasant private ownership. Legislation enacted during the period of socialism increased the proportion of cooperative land ownership under various titles and conditions. By the end of the 1960s, the process of collectivisation had been completed and stabilised, and the system of cooperative/collective large-scale cultivation was established, which existed until the regime change.

Until the end of collectivisation, in addition to small-scale peasant farms, there were three state-owned types of organisations: state farms, machines, stations; forest farms; and agricultural producer cooperatives, which were continually strengthened. The dominance of agricultural producer cooperatives can be observed and became decisive in the agricultural sector. The producer cooperative system can also be defined as decisive within the cooperative system. Agricultural producer cooperatives were called existential cooperatives, given that the members derived their existence from the cooperative, the members of the cooperative had an obligation to work, and the cooperative had an employment obligation towards the members.

The cooperatives operating in 1962 had an average area of around 1,000 hectares. Within 10 years, the average area grew to almost 2,000 hectares and then to almost 4,000 hectares by 1983, at which time there were 1,300-1,400 cooperatives. Of the approximately 500 state farms, 217 remained by 1962, and by the early 1970s there were 120–130. The initial average area of 2,000 hectares grew to 5,000 hectares and then to more than 7,000 hectares.

3. Change of Organisational and Estate Structure

After the regime change in Hungary in 1989, the ownership and use of agricultural land changed fundamentally.[9] The Act on Business Associations[10] imposed the obligation on state farms and forest holdings to transform by the end of 1989. They continued to operate as limited liability companies or joint-stock companies, while state ownership was retained in some state farms, and in forest holdings. In addition to the sale of company shares, state-owned land was also sold and privatised.[11]

9 | Csák 2007, 3-18; Kurucz 2007, 17-47; Tanka 2007, 42-49; Tanka 2006, 23-28.
10 | Act VI of 1988 on Business Associations
11 | See: Olajos 1999, 105-129.

The property relations of forests also changed significantly after the regime change. About 40% of the forests (nearly 700,000 hectares) became the private property of hundreds of thousands of forest owners. The current property structure of forests is as follows:

- State-owned 58%,
- Community-owned 1%,
- Private 41%.

The privatisation of forests caused significant degradation in the first years after the transformation. Later, through associations of forest holders and cooperatives, co-management also developed for a proportion of the private forests. Management relations are still unsettled in a decreasing number of other forests – mostly due to the many undivided common properties – therefore professional forest management has not started there. The approximately 795,000 hectares of private forest were extremely fragmented in terms of ownership.

However, forest management obviously requires expertise and community regulation. In Hungary, an act was passed relatively quickly, in 1994, which proposed the establishment of associations of forest holders as institutions of regulated private property for new forest owners. Today, a significant proportion of private forests are also co-managed.

In the case of cooperatives, the transitional acts on cooperatives envisaged a complete transformation of assets by the end of 1992. . This involved creating a cooperative form based on private property. Some of the cooperatives changed their company form into limited liability companies and joint-stock companies, despite the fact that, according to the Act on Business Associations, the transformation of cooperatives was intended to be restricted by policy.

The transformation of cooperatives was intended to promote privatisation. A number of laws were passed that settled the transitional regulations, aimed at restoring private ownership from cooperative and partly state ownership. In contrast to business organisations, which can be defined as capital pooling organisations, cooperatives functioned and still operate as individual pooling legal persons. The transformation of cooperative assets can be examined in two dimensions. Firstly, the land owned by the cooperatives became private property during the compensation procedure. This affected an area of about two million hectares. Secondly, the issue of member-owned land (share ownership) in the common use of cooperatives also began to be addressed with the aim of abolishing undivided common ownership in favour of independent real estate. In addition, there was a transfer of land worth 30 gold crowns (AK) to members and 20 gold crowns (AK) to employees from cooperative ownership.

Other assets of cooperatives became the property of members through the ‘procedure for the declaration of assets’, during which the non-land property became the property of the members in the form of business shares or cooperative

shares. The business share expressed the owner's share of the assets of the cooperative, and the cooperative share represented membership. Accordingly, the member acquired the cooperative assets in the form of two asset connections. The business share of the cooperative was a marketable document which could be sold with the pre-emption right of the cooperative and the member. This led to the development of there being persons who had business shares and cooperative shares, the 'share owners', and persons who only owned business shares, the 'third-party share owners'. This solution was abolished during the amendment of the cooperative acts in 2000 and 2006, and the legal solution pointed towards the creation of a form of asset connection, the cooperative share as a contribution of assets. It is still worth clarifying the relationship between the cooperative and the member. Before the regime change, the member participated in the activities of the cooperative, and the member's activity can be interpreted as subordinate to the cooperative. After the regime change, however, this relationship changed, and with the establishment of member farming and family farms, the role of the cooperative changed so that the cooperative became an integrator organisation, promoting and supporting the realisation of members' interests. The main objective was to develop a viable family economic model within the framework of both ownership and use. This process also meant the transformation of the agricultural holding structure, as a result of which the role of cooperatives (from the previous production holding model) also changed and today they are mainly organisations helping and integrating private farms.

4. Reasons for and Realisation of Restitution

In a speech delivered in Parliament, József Antall, the candidate for prime minister of the MDF (Hungarian Democratic Forum) who would go on to win the elections held following the regime change, announced a new agricultural policy abolishing agrarian monopolies, with the goal of introducing a market economy model for private owners based on the unity of ownership and use.[12]

12 | Prime Minister candidate József Antall's program speech in Parliament in 1990. "The government announces a new agricultural policy. A market economy is inconceivable without a genuine private owner, which in agriculture largely means ownership by natural persons, and in most cases ownership and use coincide. The new agriculture is fundamentally based on family cooperation of private owner producers, as well as on real cooperatives of owners, and on specific, more narrowly state farms.
The basic principle of agricultural land reform is that land should become the property of those who are expected to cultivate it. Our aim is to bring justice to the peasantry for the injuries they have suffered. In this respect, 1947 can be a decisive starting point, when ownership relations following the land reform of 1945 were established and forced collectivisation had not yet begun.
But this must not jeopardise production or the modern design of the country's ownership system, nor must it jeopardize our entire agricultural policy. Therefore, the government's agricultural programme must not be a single party, but a unified programme of the parties of the coalition.

At the time of the regime change, the social need to correct past grievances and mitigate the consequences of grievances naturally arose.[13] In Hungary, Decision No. 37/1990 of the Hungarian Parliament[14] was the first to formulate compensation as a current legal task. The compensation was related to personal injury and damage to property, and was to be resolved in the form of money, compensation tickets, annuities or other additional benefits. Compensation for pecuniary damage was mainly in the form of compensation tickets. Pecuniary damage included grievances related to the taking of agricultural land, but also the taking of businesses.

It is useful to clarify the position Hungary took on the issues of reprivatisation, compensation, and privatisation, as during the development of the concept of reparations, there were political views that advocated reprivatisation of agricultural land. The reprivatisation argument – referring to the position of the Constitutional Court – stood on the legal basis that the ownership rights of the former private owner continue to exist and the resulting claims are indefeasible. By contrast, the 'ownership damages' that compensation was intended to remedy presupposed the loss of ownership. The compensation mainly concerned cases where ownership had been acquired by the State (or by the producer cooperative). The compensation, therefore, did not satisfy the ownership claims of former owners. In terms of claims for damages and indemnification due to expropriation of ownership,

The fate of the remaining state lands depends on the decision of parliament, until then the sale of land owned and used by large farms, including distribution to members, must be frozen. The use of agricultural land is determined by the will of the owners, who decide whether to cultivate, rent or sell individually or jointly.
The acquisition of land by foreigners in Hungary must be made public and transparent, and can only be restricted for a temporary period. The government's measures prevent large holdings from consuming their wealth.
The government initiates the creation of the Land Act, the basic principle of which is that free land ownership cannot be obtained. The stability of agricultural production requires that cooperatives operating according to the needs of membership be strengthened."
On 25 September 1990, the coalition government of the regime change published the three-year, and several times amended, Programme of National Renewal, which also included economic policy ideas. In the field of agricultural policy, the programme initially formulated reprivatisation efforts in accordance with the ideas of the Smallholders Party (Independent Smallholders Party), but after political bargaining partial indemnification was implemented.

13 | See more about it: Schlett and Cseszka 2009, 92-120; Kovács 2011, 239-260; Madácsy 2016, 240-253; Schlett 2023, 35-53; Péntek and Ritter 2023, 313-354; Bíró and Makó 2005, 61-125; Berényi et al. 1998; Mihályi 1998;
Mucsi 1998, 211-215; Kovács 1994, 77-87; Vass 1992, 125-138.; Sáriné and Mikó 1991.

14 | Decision of the Hungarian Parliament 37/1990 (III.28) on the Compensation of Persons Unlawfully Restricted in Personal Liberty between 1945 and 1963
Based on the provisions of § 55 of the Constitution, – according to which in the Republic of Hungary everyone has the right to freedom and personal security; and any individual subject to illegal arrest or detainment is entitled to compensation – the Parliament declares its intention that all those who suffered persecution under the Stalinist dictatorial power in connection with the Second World War or after it, receive compensation. The purpose of compensation is to remedy as far as possible the injuries caused by injustices against one's life and personal freedom, in accordance with society's sense of justice.

compensation was not based on the original legal grounds either. In legal relations affected by the Compensation Act, reference to the old legal bases was excluded, and by renewing the obligations incumbent on the legislature, the Compensation Act served as a common and original legal basis for claims for compensation based on legal obligations and those granted by act without a previous obligation.[15] In the case of pecuniary damages, due to the unconstitutionality of the ideas of reprivatisation of agricultural land, the deprivation of assets was settled within the framework of the same compensation procedure. This was because the state did not satisfy legal claims, but allocated goods to beneficiaries on the basis of equity. While reprivatisation involved the return of state property to the former owner, privatisation involved the private transfer of state property. The Hungarian solution to reparation was compensation, meaning remedying the damage unjustly caused by the state to citizens' ownership in order to settle ownership relations and create security of transfer conditions and the businesses necessary in a market economy, guided by the principle of the rule of law, and taking into account both society's sense of justice and its carrying capacity. Compensation therefore focused on the issue of justice and not legality. The removal was carried out on the basis of previously applied legislation, which could be considered lawful at the time of the removal, but based on today's perception, these violations were unjust. The question of legality determined the exclusion of the claim for damages. Indemnification was not applied due to the judicial and legal relationship and partial reparation. It was, therefore, compensation which acted as a special legal institution to settle the injuries suffered. It was a partial restitution of damages unjustly caused by the State to the ownership of citizens.

The act provided for compensation for damages to citizens' ownership unjustly caused by the State after 8 June 1948. This was followed by Act XXIV of 1992 on the Damages Caused Between 1 May 1939 and 8 June 1948, based on the same principles, and Act XXXII of 1992 on Compensation for Those Unjustly Deprived of Life or Liberty for Political Reasons.

The restitution of pecuniary damages was carried out on the basis of Act XXV of 1991[16] and Act XXIV of 1992.[17] The essence of the legal provisions was that the compensation received for various reasons was determined at a flat rate based on the extent of the damage – for this, different tables were prepared according to ownership categories – and the value of the land was determined on a gold crown (AK) basis, at a rate of 1,000 HUF/AK. The amount of compensation was degressive, with 100% compensation only for damages of up to 200,000 HUF.

15 | See: Decision of the Constitutional Court 15/1993 (III. 12)
16 | Act XXV of 1991 on partial compensation for damages unjustly caused by the State to the ownership of citizens in order to settle ownership relations
17 | Act XXIV of 1992 on partial compensation for damage unjustly caused by the State to the ownership of citizens in order to settle ownership relations, applying legislation enacted between 1 May 1939 and 8 June 1949

The amount of compensation was limited to 5 million HUF per object of ownership and per person. Entitlement to compensation was limited to the following categories: a) a Hungarian citizen, b) a Hungarian citizen at the time of the injury, c) a person who has suffered harm in connection with Hungarian citizenship, d) a non-Hungarian citizen who habitually lived in Hungary on 31 December 1990. As a sui generis rule of succession, the compensated person or, in the event of his/her death, his/her descendants or, in the absence of these, his/her spouse, could apply for compensation, whether he/she lived in Hungary or abroad. The compensation process was such that the former (private) owners were either very old or no longer alive and their descendants were generally not engaged in agriculture. Therefore, agricultural land fell into the hands of a group of private owners who could not or did not want to work in agriculture. In Hungary, there was no legal requirement for a person wishing to acquire ownership or use of agricultural land to be linked to agriculture.

The compensation took the form of a compensation ticket[18], which was a bearer, transferable security equivalent to the amount of the compensation, embodying the nominal value of the claim against the State, which could be purchased a) from state assets to be sold during privatisation, b) from designated land funds of producer cooperatives and state farms, or c) from municipal rental housing designated for disposal; or could be, d) converted into life annuity, e) sold, or f) traded on a stock exchange. The compensation ticket used for the privatisation of state assets was classed as a resource at the nominal value of the compensation ticket during privatisation. This study focuses on the purchase of cooperative and state lands using compensation tickets.

When analysing the process of buying land under the compensation procedure, it is necessary to clarify the question of the available land fund. In the common land use system resulting from collectivisation, there was cooperative farmed land owned by its members, land owned by the cooperative (which was extended due to unjustly caused grievances), and state-owned land. The legislation enacted in 1992[19] created the possibility of establishing a compensation land fund, which cooperatives had to designate according to previously announced claims, and state farms had to do the same. The gold crown (AK) value of land funds designated by state farms had to be at least 20% of the land offered by producer cooperatives on a national average. The designated land fund could be bid on at auction by the holders of compensation tickets. Members, former local landowners and residents of the municipality could bid on producer cooperative lands, and all compensated persons could buy state lands. There was a great demand for the acquisition of land by auction as part of compensation.

18 | For more information, see: Radnai 1995, 279-300.
19 | Act I of 1992 on Cooperatives and Act II of 1992 on the entry into force and transitional rules of Act I of 1992 on Cooperatives

The compensation cannot be considered as land reform, because its primary purpose was not to change the property relations, but to make equitable reparations by the state to remedy the wrongs committed in the past. Of course, the compensation had political reasons, connected to the change of political regime, and also had an impact on property relations. It is a fact that the cooperative common use system was not sustainable and the transition to a market economy presupposed the advancement of privatisation efforts.

5. The Effects of the Transformation of Land Ownership and Conditions of Use until Today

The structure of land ownership and use that emerged after the regime change was enshrined by the Arable Land Act, which has been amended several times (Act LV of 1994 on Arable Land; hereinafter referred to as: ALA). An essential element of the amendments relates to Hungary's accession to the EU in 2004. The acquisition of ownership by foreigners is always a central issue in the acquisition of agricultural land. As a general rule, foreigners (individuals, legal entities) may not acquire ownership of agricultural land. In this context, it is worth briefly referring to the European Agreement signed in 1991 and promulgated in Hungary by Act I of 1994, which settled a number of issues between the applicant Hungary and the European Community. The issue of land ownership is settled in relation to the establishment of community companies and citizens (Article 44). The question arose in relation to freedom of establishment as to the date from which the principle of 'national treatment' should be guaranteed to community companies and citizens in the applicant country. The ownership, sale, and long-term lease of real estate, land and natural resources were included in a so-called 'perpetual exception list', according to which Hungary did not have to introduce national treatment of EU companies and citizens in respect of agricultural land until it became a full member of the European Union.[20]

Hungary was granted a land moratorium for 7 + 3 years (due to serious disruption in the market for land) on the basis of point 3 of Annex X to the Accession Treaty (2003), which meant that it could maintain the divergent rules on land acquisition for citizens of Member States existing at the time of accession. Citizens of Member States could acquire land ownership in Hungary if they had lived in Hungary for at least 3 years and engaged in agricultural activities and wished to continue agricultural activities in the future. The reason for maintaining the land moratorium was that the system of agricultural subsidies and land settlement had not yet been established, and land prices were very low in Hungary. At the end of the 7 years, the Hungarian government initiated the maintenance of the land

20 | Szilágyi 2010, 49-50; Compare: Prugberger 1998, 276-277.

moratorium for another 3 years,[21] which was granted to Hungary by the European Commission.[22] Accordingly, the same regulation was introduced for domestic persons and Member State citizens with effect from 2014.[23] The legislation is still in force, although it has been amended several times, and is quite complex and wide-ranging, affecting as much as 80% of Hungary's land.[24] [25]

Compensation and privatisation strengthened private ownership, but this process also had negative consequences, some of which continue to this day. The transformation of the former socialist large holdings (e.g. through compensation) was carried out by separating land assets from other assets, which made production impossible, and which could only be restored through appropriate agricultural credit and support schemes. The food chain between producer and consumer has lengthened considerably, for several reasons: (1) procurement prices are low and traders make disproportionately high profits; (2) the country basically became focused on production of raw materials, as food processing capacity was privatised, often to foreign competitors who, considering the opportunity as market acquisition, sometimes later closed down holdings acquired on favourable terms (e.g. the sugar sector); and (3) more than half of the landowners do not manage the land and use it by leasing.

After the regime change, the estate structure of Hungarian agriculture has become dual: a small number of large holdings with large areas, and many small farms (averaging 2.2 hectares) balancing on the threshold of viability and based on the direct work of family members. The lack of viable middle-sized estates has been a problem in Hungary since the land reform of 1945.

Since the regime change, land consolidation has not been implemented in Hungary, and processes have not been completed. There is a problem with the development of undivided common ownership, which arises from: (1) the designation of compensation land funds and the common ownership character of the

21 | Decision of the Parliament 2/2010 (II.18)

22 | Decision 2010/792/EU of the European Committee

23 | Act CXXII of 2013 on the Transfer of Agricultural and Forest Land, which is a cardinal two-thirds act according to the Fundamental Law. Fundamental Law Article P) Section (2) "The regulations relating to the acquisition of ownership of arable land and forests, including the limits and conditions of their use for achieving the objectives set out under Paragraph (1), and the rules concerning the organisation of integrated agricultural production and on family farms and other agricultural holdings shall be laid down in an implementing act."

24 | Act CCXII of 2013 on Certain Provisions and Transition Rules Related to the Act CXXII of 2013 on the Transfer of Agricultural and Forest Land (Implementation Land Act), Act VII of 2014 on the Detection and Prevention of Legal Transactions Aimed at Circumventing Legal Provisions Restricting the Acquisition of Ownership or Use of Agricultural Land, Act CXXIII of 2020 on Family Farms, Act LXXI of 2020 on the Liquidation of Undivided Common Ownership of Land, Act CXLIII of 2021 on the Transfer of Agricultural Holdings. Act XXXVIII of 2010 on the National Land Fund, Act LIII of 1996 on the Protection of Nature, and Act XXXVII of 2009 on Forests, Forest Protection and Forest Management.

25 | The area under cultivation is 7.5 million hectares, of which 5.5 million hectares is agricultural land (the remaining area is forested). Of the types of cultivation, cropland covers 4.5 million hectares, which represents 81% of the agricultural area.

acquired land; (2) from the non-allocation of share property (the land on which the member's ownership existed was in common use by a cooperative); and (3) from the possibility of succession of several heirs in the event of the death of the owner. In the first two cases, the Hungarian state tried to abolish common ownership by setting up and operating land settlement and land allocation committees, consisting of lay persons. Land settlement committees assessed, reconciled, and aggregated compensation auction claims and made recommendations for scheduling auctions and designating land to be auctioned. While the activities of land settlement committees can be linked to the compensation procedure, land allocation committees dealt with matters relating to agricultural land registered as share land property.[26] The agricultural land allocated to the compensation land fund became private property under the title of auction purchase, while the share-ownership land fund became independent private property under the title of land allocation. If the share landowners do not request the development of independent properties, the parcel of land becomes the common ownership of the share landowners who submitted the eligible application or of the owners determined by arrangement or lot. Attempts to abolish undivided common ownership have been fruitless since the 1990s, so new solutions have been proposed as explained below.

The creation of common ownership generated by the legal institution of succession could only have been prevented by applying special rules on land succession and farm succession. Under the current regulatory framework, there are several provisions to eliminate undivided common ownership of land and to avoid its formation. After the creation of the Land Transfer Act[27] in 2013 and the creation of additional acts[28] related to it, there was a small break in the legislation related to this area, but in 2020, the process continued with Act LXXI of 2020 on the Liquidation of Undivided Common Ownership of Land (hereinafter referred to as: Co-ownership Land Act), which launched a wave of legislation,[29] one of the aims of which – in addition to promoting generational change and the beginning of the holding regulation – was the elimination of undivided common ownership. This wave continued with two additional acts: Act CXXIII of 2020 on Family Farms[30] – which is currently less relevant from the point of view of the topic of the study – and

26 | Act II of 1993 on Land Settlement and Land Allocation Committees

27 | Act CXXII of 2013 on the Transfer of Agricultural and Forest Land. For analysis of this and its background, see: Andréka 2010, 7-19; Bobvos and Hegyes 2015; Csák 2018, 19-32; Csák 2010, 20-31; Csák and Szilágyi, 2013, 215-233; Fodor 2010, 115-130; Horváth, 2013, 359-366; Jani, 2013, 15-28; Kapronczai, 2013, 79-92; Kecskés and Szécsényi, 1997, 721-729; Korom, 2013, 11-24; Mikó, 2013, 151-163; Nagy, 2010, 187-197; Olajos, 2002, 13-17; Olajos and Szilágyi, 2013, 93-110; Prugberger, 2012, 62-65; Raisz, 2017a, 434-443; Raisz, 2017b, 68-74; Vass, 2003, 159-170; Zsohár, 2013, 23-24.

28 | Act CCXII of 2013 on Certain Provisions and Transition Rules Related to the Act CXXII of 2013 on the Transfer of Agricultural and Forest Land; Act VII of 2014 on the Detection and Prevention of Legal Transactions Aimed at Circumventing Legal Provisions Restricting the Acquisition of Ownership or Use of Agricultural Land.

29 | See: Szilágyi 2022, 402-411.

30 | See: Olajos 2022b, 300-314; Olajos 2022c, 105-117; Schiller-Dobrovitz 2021, 59-71.

Act CXLIII of 2021 on the Transfer of Agricultural Holdings (hereinafter referred to as: Farm Transfer Act). Some of the provisions of these acts are intended to settle the status quo and are specifically intended to facilitate the liquidation of existing undivided common ownerships. The other part of these provisions is intended to avoid the development of undivided common ownership of agricultural land in the future. The Co-ownership Land Act[31] contains the rules belonging to the first round, while the provisions belonging to the second round were formulated in several acts.

One of the objectives of the creation of the Co-ownership Land Act is to accelerate the elimination of undivided common land ownership, to settle the ownership relations of agricultural and forest lands in undivided common ownership developed in recent decades, and therefore to create estates that can be economically cultivated for the benefit of Hungarian farmers and that can be used or owned without administrative burdens. In this way, a national estate structure of optimal size and transparent use and ownership can be created. It is also clear from the Preamble of the Act that Parliament is committed to improving the competitiveness of Hungarian farmers on the agricultural market, strengthening their economic positions, and supporting the development of an optimally sized domestic agriculture based on a stable ownership structure.

The act provides several possibilities for achieving this[32]. The first option is the termination of common ownership by dividing the land, which may be initiated by any co-owner by submitting an application to the real estate authority to record the fact of the ongoing division. The co-owners determine how their shares are to be formed as independent land in a settlement, which must specify exactly the properties created during the allocation and their owners. The Co-ownership Land Act imposes several conditions on the settlement: (1) no jointly owned land may be developed in it, unless the co-owners involved in it expressly agree to it; (2) the new lands to be developed as a result of the settlement must be suitable for the intended agricultural and forestry purposes; and (3) during the division, none of the owners may receive land of a value lower than the value calculated according to the cadastral net income of the land expressed in gold crowns based on their share of ownership in the land that is the basis of the division, unless they expressly agree to it as part of the settlement. According to the legal provisions, under the terms of the settlement, the co-owners may agree on a division other than the shares in the lands on which the division is based.[33]

Another innovation of the Act[34] is that it introduces a territorial minimum requirement, according to which the land created as a result of the termination of the undivided co-ownership – not including the road used to access the land – may

31 | See: Andréka 2020, 6-11.
32 | See: Nagy 2022, 102-116.
33 | Co-ownership Land Act Art. 4(1), Art. 6(2), (4), (5), (6), Art. 7(1).
34 | See: Szinay 2022, 29-34.

not be less than 3,000 m^2 in the case of vineyards, gardens, orchards, and reeds or less than 10,000 m_2 in the case of cropland, meadows, pastures, forests, and wooded areas, and in the case of any parcel of land shown in the real estate register as non-agricultural land noted under the legal concept of land registered in the Országos Erdőállomány Adattár (National Register of Forests) as forest. In the case of land in mixed cultivation, the rate for the cultivation with the lower minimum area applies. If the object of the division procedure is land classified as closed garden, the land created as a result of the termination of undivided co-ownership cannot be less than 1,000 m^2. Furthermore, if the land to be developed on the basis of the share of one or more co-owners in the land on which the division is based does not reach the territorial minimum laid down by act, the settlement must provide for the addition of shares below the territorial minimum to the share of another co-owner (annexation). In such a case, as a result of the division, the land must be allocated to the other co-owner in accordance with the combined extent of his/her share in the land on which the division is based and the share of ownership annexed.[35]

The second option for terminating undivided common ownership is for a single co-owner to take ownership (annexation) of the land. This is possible if the land cannot be converted into at least two parcels of land corresponding to the territorial minimum, since in this case there is no room for the division described above, but the land can be owned by a single co-owner. In such a case, any owner of the land may initiate the annexation of the shares of the other co-owners. For the other co-owners, the acquiring co-owner must pay in consideration an amount at least equal to the value of the land as determined in the valuation offer. If several co-owners indicate their intention to annex, the land may be taken over by the co-owner who undertakes to pay the highest consideration compared to the amount offered for valuation.[36]

The third option for terminating undivided common ownership is termination by expropriation of the land, whereby any owner of the land may apply to the body responsible for managing the National Land Fund for the expropriation of the whole land by the State with a view to establishing an optimal estate structure, if the division of undivided common ownership has been initiated at least three times without the application being rejected, the termination of undivided common ownership has not taken place within two years of the entry into force of the Co-ownership Land Act, and the number of owners of the land exceeds 100 or more than 30 persons and the ratio between the area in hectares of the land and the number of owners is less than 0.5.[37]

As mentioned above, there are also provisions to prevent the formation of undivided common ownership. Two One of them is the existence of special succession

35 | Co-ownership Land Act Art. 11(1)-(3), Art. 12(1).
36 | Co-ownership Land Act Art. 16(1), (2), (3), (4).
37 | Co-ownership Land Act Art. 18(1).

rules in relation to agricultural lands, since a large percentage of the formation of undivided common ownership occurs due to succession, but special rules serve the purpose of keeping the land in one hand even during succession.[38] Unlike Hungary's previous land succession regulation,[39] today there are special rules not only for land succession by way of testamentary disposition, but also for intestate land succession.[40]

Special rules on the intestate succession of land are laid down in the Co-ownership Land Act,[41] on the basis of which, if, under the rules of intestate succession, several heirs jointly inherit the agricultural land, – including a legal heir who is entitled only to a compulsory share but who receives that compulsory share from the land in kind –, in order to prevent the creation of undivided common ownership on the land a) they may enter into an allocation agreement; b) the land is transferred by the heir or heirs to another person interested in the succession, to the defaulting heir or to the creditor of the estate, in such a way that co-ownership does not arise; c) the heirs sell the land as a unit; or d) the heirs offer the land free of charge for the benefit of the State. If the previous rules do not lead to results, the co-heirs will inherit the ownership interest in the land, – including a legal heir who is entitled only to a compulsory share but who receives that compulsory share from the land in kind –, according to the rules of intestate succession, provided that within five years: a) they must sell it together; b) it is owned by one of them; c) they must offer it free of charge for the benefit of the State; or d) they must terminate the undivided co-ownership of the land by division of the land or – if the conditions are met – by acquisition of ownership of land by a single co-owner. If the co-heirs do not fulfil these requirements, the land will be compulsorily sold.[42]

Since its creation, the Land Transfer Act of 2013 contains special provisions on the acquisition of land by testamentary disposition, as opposed to the acquisition of land by intestate succession, which was expressly excluded from the scope of the Land Transfer Act. Therefore, in the case of intestate succession, the formation of undivided common ownership is prevented only by the rules laid down in the Co-ownership Land Act described above. In the case of acquisition of land ownership by testamentary disposition, the conditions of acquisition of ownership of the Land Transfer Act are therefore applicable, the aims of property policy are enforced, and undivided common ownership does not occur.

An essential condition for running viable small and medium-sized agricultural holdings is the presence of an owner and employee base with the appropriate expertise. In general, it can be stated that a large part of those who received land

38 | About the agricultural succession regulation of certain Western European countries, see: Kronaus 2022, 75-92; Prete 2022, 141-154; Muñiz Espada 2020, 171-183.
39 | See: Hornyák 2018; Hornyák 2019.
40 | See: Hornyák 2023, 76-86.
41 | See: Kiss 2022, 39-43.
42 | Co-ownership Land Act Art. 18/A.

during compensation did not have sufficient expertise to cultivate the land. Based on the negative effects of the period before the regime change, the attachment to agricultural land did not attract the younger generation, and so farmers became older and fewer in number. Agricultural activity has since become more valuable and the younger generation is also showing interest in it. In view of the special regulation of land acquisition in Hungary, it was necessary to create an opportunity for young farmers or farmers and owners who are no longer able to operate an agricultural holding to hand over the holding to the young farmer in a simplified procedure.

The transfer of the holding[43], a new legal institution in Hungary, is a further tool to prevent the development of undivided common ownership. It is intended to promote generational change in Hungary and can be defined as a step towards holding regulation, as the object of the legal transaction here will no longer be only agricultural land, but the entire holding. The legal institution enables a farm transferor close to retirement age to settle who will be the owner of the farm by means of a farm transfer contract – which has four types: farm transfer sale contract, farm transfer gift contract, farm transfer maintenance contract, and farm transfer life-annuity contract – avoiding the ownership of the farm being settled by succession after death. Another aim is to bring about generational renewal, which is why the legislator has established strict age rules for both farm transferor[44] and farm transferee,[45] in addition to the fact that both parties must be a primary agricultural producer or an individual entrepreneur engaged in agricultural and forestry activities. The new regulation also provides for the possibility of knowledge transfer by including in the farm transfer contract a cooperation period of up to five years, during which the parties jointly operate the farm and the farm

43 | See: Olajos 2022a, 29-36.

44 | Farm Transfer Act Art. 2 b) the farm transferor can be a primary agricultural producer or an individual entrepreneur engaged in agricultural and forestry activities, who has reached the age-limit for retirement or will reach it within 5 years from the conclusion of the contract, who a) for at least 10 years, including the period of activity of himself or his legal predecessor, in his/her own name and at his/her own risk, has carried out agricultural and forestry activities or additional activities, and has proven sales revenue derived from this, and b) more than three-quarters of the agricultural and forestry land area defined in the farm transfer contract has been the owner of the land for at least 5 years prior to the date of the farm transfer – with the exception of agricultural and forestry land acquired within 5 years – or has been registered in the land use register for at least 5 years under another legal title a land user, a forest manager registered in the forest management register for at least 5 years, a close relative of this person or the owner of at least 25% of the agricultural production organisation registered as a land user or forest manager.

45 | Farm Transfer Act Art. 2 c) The farm transferee can be a primary agricultural producer or an individual entrepreneur engaged in agricultural and forestry activities who is at least ten years younger than the farm transferor, under the age of 50, who meets the conditions prescribed by law for the operation of the farm to be taken over must either (a) be in the chain of relatives defined in the Family Farms Act with the transferor or (b) have been employed or have been in other employment relationship with the transferor for at least 7 years.

transferor transfers ownership of all elements of the farm to the farm transferee on the last day of the cooperation period.[46]

6. Constitutional Issues[47]

It is not possible to remedy grievances from the period 1939 to 1967 in court proceedings. As stipulated in the Compensation Act, litigation can be initiated for the harm of interests contained therein. In terms of their topic, these proceedings are partially related to the proceedings initiated before the Constitutional Court.

The Constitutional Court has dealt with the issue of conformity with the Constitution of the Compensation Act, and the legal regulation of reparation, in many of its decisions. Below, certain important issues of constitutional interpretation related to compensation will be discussed. Several petitioners turned to the Constitutional Court objecting to the partial nature of compensation, claiming that it violates the right to ownership. The petitioners also complained that the final court decisions rejected their claim to restore their ownership taken during nationalisation.

Constitutional review cannot deal with the assessment of the method of compensation chosen by Parliament, but is limited to whether the solution is contrary to the Constitution. The Constitutional Court found during the preliminary norm review that the Compensation Act is not unconstitutional. The requirement that ownership taken away under previous regimes be returned by the State to its original owner cannot be inferred from the Constitution. Nor does the Constitution require that the State provide full compensation of damages or indemnification. It does not follow from the Constitution that ownership is returned to the owners. The transfer of State ownership to private ownership, which in this case also means its return to its former owners, depends on the free decision of the State as owner whether privatisation or reprivatisation should take place, or whether reparation should take place partially. The reprivatisation argument is dependent on the legal basis that the ownership of the former private owner continues and that the claims arising therefrom are not time-barred. On the other hand, ownership damage remedied during compensation presupposes the loss of ownership. The state has acquired ownership, so the former owners have no ownership claim. Therefore, the Compensation Act does not satisfy ownership claims, i.e. compensation is not due on the original legal basis.[48] The legal basis for partial compensation is equity.[49]

The reference that the ownership claim is not time-barred because of the acquisition of State ownership based on an unconstitutional legislation is incorrect. The Constitution does not require the return of ownership to be enforced.

46 | Farm Transfer Act Art. 3, Art. 10.
47 | See more about it: Nagy, G 2010, 211-226; Prugberger 1995, 48-64; Sajó 1992 190-209.
48 | Decision of the Constitutional Court 15/1993 (III.12)
49 | See: Téglási 2011.

The restoration of original private ownership and claims for full indemnification are based on other principles. Due to the constitutional solution and regulatory scope of the Compensation Act, it is not the task of the Constitutional Court to decide between different concepts. The Compensation Act is based on distributive justice, which must be examined in the context of the regime change, and the most important constitutional aspect of this is equal treatment.[50] The issue of discrimination was raised from two perspectives. On the one hand, the exclusion of legal entities from compensation and, on the other hand, that the various legal claims are treated uniformly by the compensation. The Compensation Act treats former owners equally, and the definition of personal scope does not violate the Constitution.[51]

The acquisitions entailed by the establishment of a new system of ownership must be reconciled with bearing the burden of transformation. There is no constitutional justification for treating former owners in such a way that their claims are fully satisfied by the legislature in relation to those who suffered injustice or damage to property and moral damage in the past regime, or even to society as a whole bearing the burden of transformation. The legislator acts constitutionally if it takes into account the financial capacity of the country, if it does not leave out any group from the burden of transformation, and if it imposes a proportionate burden on the beneficiaries. The Constitutional Court has pointed out that the Compensation Act could constitutionally burden former members and employees who received free ownership from former social property, as well as local governments, with a certain part of the compensation. A similar burden can be seen in the incompleteness of compensation. In each case, during the establishment of the new system of ownership, under a new title created on the basis thereof, the original acquisition of ownership by new owners occurs. Furthermore, the State acts constitutionally if the remedy for ownership injuries is proportional to the financial compensation provided by acts serving political reparations. Integration into the transformation as a whole allows the legislator to ignore the original legal nature of individual ownership infringements ('novation'). Compensation is not made according to original needs, but within the tasks and possibilities of the new situation, taking into account the distribution of the burden of transformation. According to the Constitutional Court, in the given historical situation, the legislator may constitutionally settle the compensation of former owners on the basis of distributive justice considering the transformation as a whole, instead of individual settlement. This consideration allows not only partial compensation, but also the possibility for compensation legislation to make compensation completely independent of the original title.[52]

50 | Decision of the Constitutional Court 11/1992 (III.5)
51 | Decision of the Constitutional Court 21/1990 (X.4)
52 | Decision of the Constitutional Court 21/1990 (X.4)

The unconstitutionality of provisions concerning the law of succession has been raised. Under the provisions of the Constitution, it is not unconstitutional for the Compensation Act to introduce rules according to which the deceased claimant provides a claim for compensation to his/her descendants and spouse. Relatives entitled to compensation do not inherit the claim for compensation, i.e. there is no connection between the constitutional right to succession and compensation.[53]

Already during the preliminary norm control, the Constitutional Court found that it constitutes discrimination if the former ownership of some persons is reprivatised but not that of others. There is no constitutional justification for landowners to get their ownership back in kind, while other former owners should receive only partial monetary compensation.[54]

Within the framework of the preliminary norm control, the Constitutional Court conducted the constitutional review within the requested framework and took a position on the legality of compensation in favour of finding certain regulatory elements unconstitutional. With regard to constitutional motions submitted after the entry into force of the Compensation Act, it can basically be stated that the Constitutional Court found no constitutional concerns.

However, the European Court of Human Rights (ECHR) refused to examine the compensation and the underlying measures because it could not examine violations prior to the entry into force of the European Convention on Human Rights (ECHR) binding on Hungary. In Hungary, the process of compensation started in 1990-1991. Between 1990 and 1994, compensation acts were passed.[55] This was before Hungary signed the European Convention on Human Rights, so these compensation cases could not, in essence, be brought before the Strasbourg Court.[56]

7. Concluding Remarks

After World War II, the system of large estates was abolished and private peasant ownership was established. Therefore peasant strata's desire for land was satisfied within the framework of a micro- and smallholder structure. During the period of collectivisation, the possibility of using peasant land practically disappeared, and the collective use of peasant private property took place within the framework of the producer cooperative system. From the 1960s until the period of the regime change, the cooperative model became dominant in terms of agricultural production. The political regime change of 1989/90 and the associated economic transformation also meant that the system of large-scale cooperative land use was dismantled and cooperative ownership and partly state ownership

53 | Decision of the Constitutional Court 28/1991 (VI.3)
54 | Decision of the Constitutional Court 21/1990 (X.4)
55 | See: Prugberger 1993, 6-14; Prugberger 1992, 29-57.
56 | Téglási 2010, 22-47; Bónis 2017, 7-22.

were privatised. Part of this process was the provision of compensation, which primarily meant state reparation for unjust property deprivations (including land ownership) in the period between 1939 and 1967. This also had negative aspects in terms of the concept of reparations, which did not strengthen the market economy character of agricultural activity and agricultural holding. Based on what has been explained within the framework of the study, it can be seen that the disadvantages arising during the transformation of the cooperative system and the model of compensation are still being corrected by economic and land property policy and, accordingly, legal regulation. These problems can be remedied through centrally managed land consolidation, the main tools of which today are: (a) inclusion of land ownership and the acquisition of rights of use within the scope of permission of authority; (b) the introduction of farmer status for professional farming; (c) personal cultivation obligation – exclusion of speculative land acquisition (not for production but for capital income); (d) the right of pre-emption or pre-lease; (e) the land acquisition limit and land possession limit; and (f) land ownership can only be acquired by natural persons, not (usually) by legal entities.

Importance has been placed in Hungarian land property policy on the role of the countryside, including the enhancement of the population and income-generating capacity of villages, the increase of the weight and role of agricultural society, the spread of family farming, the creation of conditions for sustainable land use, and the stabilisation of viable and competitive holding structures and land property relations.

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Social Ownership and Restitution of Agricultural Land in Croatia[3]

Abstract

This paper discusses the state of agricultural land in Croatia from a historical perspective. It first discusses the genesis and development of collectivisation of agricultural land in Croatia after the Second World War, particularly with reference to the idiosyncrasies of Yugoslav socialist property as compared to traditional Soviet doctrines. The developments are characterised by gradual changes in legal status as reflections of changing ideologies and policies during the socialist period concerning self-management, as well as sectoral developments (cooperative and industrial sectors). The paper goes on to analyse the transformation of social ownership over agricultural land, both in terms of its direct transformation into state ownership, as well as its in-kind restitution to former rights-holders or their descendants, particularly referencing the causes and consequences of various problems in achieving initial privatisation goals. The paper finally draws conclusions on the current state of agricultural land policies and its prospects.
Keywords: Agricultural land, restitution, social ownership, expropriation, cooperatives, land registration.

I. Introduction

Agricultural land law and policy in transition has, throughout the last twenty years, remained a somewhat less reviewed topic, as the bulk of legal issues concerned developed land and buildings due to the nature of the transition process. However, it is important to recognise that agricultural policy in both its design and its outcomes heavily depends on property-related issues. These were in many

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terms specific to agricultural land, because the developments in property law throughout the entire period after 1945 followed a specific trajectory.

The state of the law after the Second World War in Croatia - with respect to agricultural land, as well as all types of land - was turbulent. The change in the political and economic system from capitalism to socialism meant that agricultural policies balanced between sustaining subsistence farming and promoting organised agricultural production within the new socialist order. The policies were a part of a general socialisation of property, wherein the existing system of private property was radically transformed into a dual system incorporating both private and socialised property. In the area of agricultural land law, these transformations were sometimes complicated by the fact that agricultural land law in some areas still contained feudal structures well into the interwar period (depending on the specific location of the property, due to the historical legal differences caused by various legal regimes present in the Croatian territory). In Croatia and Slavonia feudalism was abolished in 1848,[4] but feudal structures partially lingered in the Croatian Littoral, Dalmatia,[5] and Istria.[6] In many areas archaic land communes and similar structures still existed at the end of the Second World War, when they were dissolved.[7]

The system of social ownership was developed gradually. The development of social ownership closely followed the changes in the socialist socio-economic order, resulting in the concept of social ownership being modified on multiple occasions. These changes produced developments in the organisational forms of social legal persons, and further in the substance and nature of their entitlements,

4 | See Beuc 1980, 18, 29; Bosendorfer, 1980.

5 | In Dalmatia, existing feudal structures were abolished in the interwar period so that land became privately owned by its cultivators. See Zakon o likvidaciji agrarnih odnosa na području ranije pokrajine Dalmacije [Act on the Liquidation of Agrarian Relations in the Territory of the Former Province of Dalmatia], Official Gazette 254/30.

6 | A similar process occurred in Istria, but only after the end of the Second World War. See Odluka o uređenju agrarnih odnosa i poništenju dražbi na području oblasnog Narodnog odbora za Istru [Decision on the Arrangement of Agrarian Relations and Cancellation Auctions on the Territory of the Regional People's Committee for Istria], Official Gazette FNRY 19/46.; Uredba o uređenju agrarnih odnosa i poništenju dražbi na području Kotarskog narodnog odbora Buje [Regulation on the Arrangement of Agrarian Relations and the Cancellation of Auctions on the Territory of the Buje District People's Committee], Official Gazette FNRY 18/46.

7 | See Zakon o proglašenju imovine zemljišnih i njima sličnih zajednica te krajiških imovnih općina općenarodnom imovinom [Act on the Declaration of Patrimony of Land and Similar Communities and Krajina Property Municipalities as the People's Property], Official Gazette 36/47, 51/58, 13/87. Similarly, issues over pre-war usurped agricultural land were still pending after the war. Agrarian reform legislation mandated that all usurpations and unrecognised partitions of land be resolved in the next two years, so that usurpers be granted ownership. These issues were not resolved well into the 1950s, when Croatia passed the Act on regulating property relations created by involuntary seizures (usurpation) of land in the people's property [Zakon o uređenju imovinskih odnosa nastalih samovlasnim zauzećem (uzurpacijom) zemljišta u općenarodnoj imovini], Official gazette 31/58, 20/77, 34/79. These issues were still not resolved well into the 1980s and 1990s. See Simonetti 2009, 459 (noting that in 1988 there were still around 25,000 pending cases).

and therewith in the status of such entitlements within the 'patrimony'[8] of these legal persons in the various stages of development. These stages are: (a) state-owned property (the people's property) with rights of administration (1945-1950), (b) indirect social ownership with rights of use over socially owned assets (1950-1971), (c) direct social ownership with rights of disposition (1971-1988), and (d) the transitional period toward the 'property' notion of rights of disposition (1988).

Immediately after the end of World War II, the state became the owner of vast amounts of property via confiscation,[9] nationalisation,[10] expropriation,[11] agrarian reform[12] and other legal measures. This was the period of 'administrative socialism' characterised by strict state control over all means of production. The newly coined term used for this version of socialist property was 'the people's property' (*općenarodna imovina*) inaugurated in article 14 of the 1946 Constitution.[13] The state was considered the sole owner of all state property, but the rights holders of such ownership were the working people in the concept of the socialist state.[14] [15] The state had ultimate control, and thus rights equal to ownership over such assets. State-owned enterprises were granted the 'right of administration' over such assets, via which they would act as agents of the socialist state.

8 | The term 'patrimony' is used in the traditional civilian sense referring to the totality of rights (and obligations) held by a single legal entity. See generally Nikšić 2012, 1599; Kennedy 2010, 811; Peroni 2018, 368.

9 | See Zakon o konfiskaciji imovine i izvršenju konfiskacije [Confiscation of Property and Enforcement of the Confiscation Act], Official Gazette DFY 40/45, 70/45; Official Gazette FNRY 61/46; Zakon o postupanju sa imovinom, koju su vlasnici morali napustiti u toku okupacije i imovinom, koja im je oduzeta od strane okupatora i njegovih pomagača [Act on the Administration of Property Owners had to Leave During Pccupation and Property Taken from them by the Occupiers and their Collaborators], Official Gazette DFY 36/45, Official Gazette FNRY 64/46, 105/46, 88/47, 99/48; Zakon o oduzimanju ratne dobiti, stečene za vrijeme neprijateljske okupacije [Act on the Confiscation of War Profits Acquired During Enemy Occupation], Official Gazette DFY 36/45; Official Gazette FNRY 52/46. These measures were both punitive and ideologically motivated, promoting the idea of "expropriation of the expropriators." See Marx (1992), 697.

10 | These were effectively mass takings, also carried out via legislation. See Zakon o nacionalizaciji privatnih privrednih poduzeća [Law on the Nationalisation of Private Business Enterprises], Official Gazette FNRY 98/46, 35/48.

11 | These were measures akin to traditional takings. See Osnovni zakon o eksproprijaciji [Basic Law on Expropriation], Official Gazette FNRY 28/47.

12 | See, Zakon o agrarnoj reformi i kolonizaciji [Agrarian Reform and Colonisation Act], Official Gazette DFY 64/45, Official Gazette FNRY 24/46, 101/47, 105/48, 21/56, 55/57, Official Gazette SFRY 10/65; Zakon o provođenju agrarne reforme i kolonizacije na području Narodne Republike Hrvatske [Act on Implementing the Agrarian Reform and Colonisation in the Territory of the People's Republic of Croatia], Official Gazette FNRY 111/47, 25/58, 58/57, 62/57, 32/62.

13 | Ustav Federativne Narodne Republike Jugoslavije [Constitution of the Federal People's Republic of Yugoslavia], Official Gazette FNRY 10/46 art. 14 reads: "The means of production . . . are either the people's property, i.e., the property in the hand of the state, or the property of the people's collective organisations, or the property of private individuals or legal persons. (...) The means of production in the hands of the state are used by the state itself or are given by the state to others to use."

14 | See Opštenarodna imovina, in Blagojević 1989, 1028.

15 | Gavella 2005, 68.

Starting in 1950 an ideological shift toward self-managing socialism favoured eliminating the state as a "third factor between the producers and the means of production".[16] The goal was for workers as producers to take direct control over the production process by managing the means of production.[17] The 1953 Constitution[18] replaced the term 'people's property' with 'social ownership', reflecting the general stance that management should be transferred from the state to the worker's collective. This was effectively done by the Ordinance on the Administration of Basic Assets of Economic Organisations (*Uredba o upravljanju osnovnim sredstvima privrednih organizacija),*[19] which coined the term 'right of use' (*pravo korištenja*).[20]

This stage of development of social ownership is characterised by indirect management over the means of production via socially owned enterprises.[21] State ownership was transformed into social ownership, and the former right of administration was replaced by the right of use. The transformation occurred by operation of law concurrently with the change in corporate form of earlier state-owned companies that became work organisations.[22] The right of use was considered *the* fundamental right over socially owned assets.[23] It was a defined term, in Article 8 of the 1957 Resources Act,[24] as the "organisation's right to use in accordance with the law the resources it had created through its activity, or had acquired via a loan and other credit transactions, or other grounds prescribed by the [Resources Act]." It included the right to dispose of, i.e. to transfer, the resource to some other socially owned entity.[25] It was a broad right over socially owned resources held by a socially

16 | See Vedriš & Klarić 1983, 244; Stojanović 1976, 61. Ownership itself was viewed as inherently harbouring some 'third party' who essentially brokered between the worker and his/her means of production, just like "the slave-owner, the feudal baron, the bourgeoisie, or the socialist state." Ibid.
17 | See Vedriš 1971, 189.
18 | Ustavni zakon o osnovama društvenog i političkog uređenja Federativne Narodne Republike Jugoslavije i saveznim organima vlasti [Constitutional Act on the Foundations of the Social and Political Organisation of the Federative People's Republic of Yugoslavia and Federal Authorities], Official Gazette FNRY 3/53, 4/53. Article 4(1) reads: "Social ownership of the means of production, the producers' self-management in the economy, and self-management of the working people in the municipality, city, and province are the foundation for the social and political order of the country."
19 | Official Gazette FNRY 52/53.
20 | Ibid. article 1(2).
21 | See Pravo korišćenja, in Blagojević 1989, 1236.
22 | See Zakon o uknjižbi nekretnina u društvenom vlasništvu [Act on the Registration of Socially Owned Real Property], Official Gazette SFRY 12/65, Official Gazette 52/71 [hereinafter: "Socially Owned Land Registration Act"], art. 5(1) (stating that the "entries recorded under the [earlier] Regulation on Registration of Ownership over State Real Property are deemed as entries of social ownership, and the record of the administrative body — the record of the holder of the right of use").
23 | See Stojanović 1976, 289.
24 | Zakon o sredstvima privrednih organizacija [Act on the Resources of Economic Organisations], Official Gazette FNRY 54/57, Official Gazette SFRY 10/68, subsequently renamed as Zakon o sredstvima radnih organizacija [Act on the Resources of Work Organisations] [hereinafter: "Resources Act"].
25 | See Resources Act art. 8 (stating that the "right of use also includes the right to dispose of the resources within the limits of the law.")

owned entity, and it was generally conceded that it was a property right in its own right — a novel and autonomous property right over socially owned assets.[26]

The described notion of social ownership remained unchanged after the constitutional reform of 1963. It kept the term social ownership but contained a more detailed set of provisions.[27] According to the 1963 Constitution, it was the work organisation that became the central legal entity endowed[28] with the right of use.[29] All means of production, and "other means of social labour" were socially owned,[30] but the work organisation was the element that linked the workers and their means of production. In this stage, the right of use was included in the "patrimony" of the work organisation,[31] while workers derived their rights over socially owned assets from the work organisation. The work organisation itself was later viewed as exploitative,[32] because it held the right of use as a collective right,[33] encroaching on the worker.[34] This is why this phase is

26 | Vedriš & Klarić 1983, 258. Its content was sometimes considered elusive, because it was defined as "the right and duty to engage a social resource into the production process." Ibid. at 258.

27 | According to Principle III of the 1963 Constitution, "[s]ocially owned means of production, as the common inalienable foundation of social labour are used for the satisfaction of personal and common needs and interests of working people and the development of the material basis of the social community and socialist social relationships. The working people who work with socially owned means of production manage them in their own interest and in the interest of the social community, responsible to each other and to the social community. (...) Starting from the fact that no one has ownership over social means of production, no one – neither the socio-political community, nor the work organisation, nor the individual working man – can, on any legal grounds, appropriate the product of social labour, nor manage, nor dispose of social means of production and labour, nor unilaterally set the terms of distribution." Ustav Socijalističke Federativne Republike Jugoslavije [Constitution of the Socialist Federal Republic of Yugoslavia], Official Gazette SFRY 14/63 [hereinafter: "1963 Constitution"], Principle III. art. 8 further stated that "the means of production and other means of social labour, as well as mineral and other natural resources are socially owned." Ibid.

28 | See ibid. art. 15(2) (stating that the work organisation holds "certain rights with respect to socially owned resources which it manages"). The provision did not expressly enumerate what these rights were. When read with the provisions of the Resources Act, it is clear that these rights are the right of use that included the right of disposition. See also ibid. art. 6 (stating that the "basis of the socioeconomic order of Yugoslavia was the free labour associated by socially owned means of production and self-management of the working people in the production and distribution of the social product in the work organisation and the social community").

29 | Povlakić 2009, 26.

30 | 1963 Constitution art. 8(1).

31 | Pravo korišćenja, in Blagojević 1989, 1236.

32 | Stojanović 1976, 67.

33 | Ibid. at 68.

34 | In modern economic terms, this is the problem of rent-seeking, which self-managing socialism intended to solve by eliminating ownership itself. This is why social ownership was viewed as a socioeconomic relationship wherein the means of production belonged to everyone (every member of the society) at once, and to no one in whole. Because ownership, and all property rights, are exclusionary ex hypothesi, there is an internal contradiction in the term. There is, however, an element of exclusion present, in that rights extend only to members of the working collective ("associated labourers"). In property theory, this ownership type is often termed "limited-access commons." See Rose CM 1998, 129, 155.

usually described as the system of "indirect self-management"[35] and "indirect social ownership."[36]

Under the Resources Act, all assets acquired by work organisations on any legal grounds were considered socially owned.[37] The work organisation had the right to use them in accordance with the provisions of that act, and the right of use comprised the right of disposition and the right to transfer or alienate assets to other work organisations and socially owned legal persons by way of contract, unless otherwise provided by federal law. The work organisation could not transfer its basic assets and assets of joint consumption gratuitously or sell them to individuals or civil legal persons, except if of a lesser commercial interest, or a lesser value.[38] The transfer of land and buildings was covered in the Act on the Transfer of Land and Buildings[39] which prohibited transfers of socially owned land but permitted the acquisition of rights of use.[40] Transfers of land and buildings between work organisations and individuals or civil entities were allowed under specific conditions (barter, sale and further purchase, sale of commercial and residential buildings).[41] Additionally, it was possible for work organisations and socio-political associations to acquire buildings by way of contract, and under the conditions set out in that act, irrespective of who owned them, as well as land from individuals and civil entities.[42]

The third stage of development of social ownership is characterised by a shift to the system of 'direct self-management' and 'direct social-ownership'. This stage was the consequence of an ideological shift, formally expressed in the 1971 Constitutional Amendments XX-XXIII,[43] the 1974 Constitution,[44] and the 1976 Associated Labour Act.[45] The shift was from the former 'property' view of social ownership to

35 | Even though the 1963 Constitution heralded the "non-property" view of social ownership, it is generally accepted that this phase of development still held on to the "property" view of social ownership, because the right of use remained a central right held by an organisation over socially owned assets. See Vedriš & Klarić 1983, 254.
36 | Pravo korišćenja, in Blagojević 1989, 1236.
37 | See Resources Act art. 4.
38 | See Resources Act art. 93(1).
39 | Zakon o prometu zemljišta i zgrada [Act on the Transfer of Land and Buildings], Official Gazette FNRY 26/54, 19/55, 48/58, 52/58, 30/62, 53/62, Official Gazette SFRY 15/65, 57/65, 17/67, 11/74, N.N. 27/91 [hereinafter: "Transfer of Land Act"].
40 | See Transfer of Land Act art. 1(1).
41 | See ibid. art. 17-22.
42 | See ibid. art. 4.
43 | Amandmani na Ustav Socijalističke Federativne Republike Jugoslavije [Amendments to the Constitution of the Socialist Federal Republic of Yugoslavia], Official Gazette SFRY 29/71.
44 | Ustav Socijalističke Federativne Republike Jugoslavije [Constitution of the Socialist Federal Republic of Yugoslavia], Official Gazette SFRY 9/74 [hereinafter: "1974 Constitution"].
45 | Zakon o udruženom radu [Associated Labour Act], Official Gazette SFRY 53/76, 57/83, 85/87, 6/88, 40/89. The Associated Labour Act was the fundamental legislative source for social ownership. It was a successor of sorts to the Resources Act, and the Zakon o prometu društvenih sredstava osnovnih organizacija udruženog rada [Act on the Transfer of Social Resources of Basic Organisations of Associated Labour], Official Gazette SFRY 22/73.

the new 'non-property' view of social ownership. The difference was in that the 'non-property' view held that social ownership was a mere economic relationship where a socially owned asset not only belongs to no one and everyone concurrently, but does not 'belong' at all. It was simply a means to an end — to facilitate associated labour, which was the central tenet of self-management.[46] Article 13 of both the 1974 Constitution and the Associated Labour Act inaugurated 'the right to work' as a fundamental right of the worker.[47]

The new notion of social ownership introduced by the 1974 Constitution was founded on the idea of associated labour, wherein the workers' labour and their means of production were united - associated - to form the basis for maintaining and developing the socialist society.[48] The basic organisational form became the "basic organisation of associated labour".[49] The workers themselves and their labour became the core of the entire economic and legal system,[50] where the worker originally held the 'right to work' (i.e. produce, with socially owned assets as the means of production). Organisational forms existed only to facilitate transactions — to participate in the economy and acquire assets, rights, and duties, but only to immediately have them subject to the workers' right to work.[51]

The workers who "associated their labour" had the right and duty to "use and dispose over socially owned assets",[52] but because they held this right collectively,

46 | See Vedriš & Klarić 1983, 267.

47 | Art. 13 of the 1974 Constitution read: "The worker in associated labour has the right to work with socially owned assets as his/her inalienable right to work with such assets in order to satisfy his/her personal and social needs and to manage, as free and equal with other workers in associated labour, his/her labour and the conditions and the results of his/her labour." Art. 13 of the Associated Labour Act read: "Each worker who works in associated labour with socially owned assets has the right to work with socially owned assets as his/her inalienable right to work with such assets for the satisfaction of his/her personal and social needs, and to manage, as free and equal with other workers, his/her labour, the conditions and the results of his/her labour." Socially owned assets were defined as "[t]he common material base for sustaining and developing the socialist society and socialist self-managing relations, and they are managed by the workers in a basic organisation of associated labour, and in all other forms of association of labour and assets, workers in a working community and other working people in a self-managing interest community or other self-managing organisations and communities, and the socio-political community." Associated Labour Act art. 10(1).

48 | Note that the theory of social ownership in Yugoslavia was far from settled, and there were numerous views on who and what this relationship included. See Stojanović 1976, 63; Simonetti 2009, 323.

49 | It was a part of the collective work organisation which constituted a unit "where the results of common labour could be valued independently in a work organisation or the market, and wherein [the workers] could realise their socio-economic and other self-management rights." Associated Labour Act art. 14.

50 | See Gavella 2005, 58, 75.

51 | Vedriš & Klarić 1983, 279. The fundamental change inaugurated by the 1974 Constitution, supporting the 'non-property' view of social ownership, was the origin and focus of entitlement. It was believed to rest in the worker, who had a general 'right to work' with the social means of labour.

52 | Associated Labour Act art. 231. Socially owned assets of a legal person were defined as "things, money, and material rights which are a material condition of [the workers'] labour, and the material foundation for the achievement of tasks within that socially owned legal person." Associated Labour Act ar. 265.

it was next to impossible for them to legally transact. In order to overcome this restriction, the Associated Labour Act endowed socially owned legal persons[53] with the 'right of disposition'.[54] The right of disposition was defined as the right of a socially owned entity (e.g. the basic organisation of associated labour) to conclude self-management agreements and contracts, and other transactions and acts within their legal capacity.[55] In theory, it wasn't a property right; in fact, it was sometimes considered as not a right at all, but simply a mode of exercising the right to work, akin to legal capacity itself.[56] It was a legally recognised as a power to dispose over individual socially owned assets and comprised a set of entitlements allowing the socially owned legal person to legally act and dispose of socially owned assets.[57] Consequently, associated labour organisations had no assets or patrimony of their own, nor a direct right of use over socially owned assets. They only held a derivative entitlement - the right of disposition - derived from the right to work,[58] which replaced the earlier right of use.

This is why this understanding of social ownership is termed as 'non-property' wherein social ownership is functionally defined as "a socialist socio-economic relationship wherein the means of production and other means of societal work as well as mining and other natural resources belong to every member of the society and all members of the society contemporaneously, but to no one in whole, or exclusively."[59] In exercising this right, associated labour organisations were authorised to transfer socially owned assets to other socially owned legal persons, acquire assets from private owners to the benefit of social ownership, authorise temporary use of socially owned assets, barter with socially owned assets and otherwise dispose of them.[60] The right of disposition over some assets also included the right to remove them from social ownership by transfer to individuals or civil entities but this was not permissible for agricultural land.[61]

In the final stage of development of social ownership, the right of disposition was converted back into a quasi-ownership right and reincorporated into the 'patrimony' of enterprises that used socially owned assets in their business, which also

53 | Associated Labour Act art. 244(1). The right of disposition could be transferred from the basic organisation to other organisational forms of associated labour. See Associated Labour Act art. 244(2).
54 | Technically, the workers still needed an organised form to exercise this right, and this was the 'basic organisation of associated labour', which was the single legal entity originally endowed with the 'right of disposition'.
55 | Associated Labour Act art. 243(1).
56 | See Vedriš & Klarić 1983, 282. See also Vedriš 1976, 32 – 33. See Gavella 2005, 76. See also Simonetti 2009, 330. See generally Gams 1988, 251 – 316; Vedriš 1986, 659; Đurović 1979; Vedriš 1977. A part of the literature did hold that the right of disposition was a patrimonial right belonging to socially owned legal persons. See Stojanović 1976, 291.
57 | See Stojanović 1976, 291.
58 | Pravo korišćenja, in Blagojević 1989, 1237.
59 | Vedriš 1971, 195.
60 | Associated Labour Act art. 243(2).
61 | Associated Labour Act art. 248(1).

resulted in relaxing the rules on transfers of socially owned assets, because the earlier restrictions under the Associated Labour Act did not apply to reorganised enterprises. The change took place after the passage of the 1988 Constitutional Amendments,[62] and the Enterprises Act of 1988.[63] The theory behind this conversion was in the introduction of the term 'patrimony' into the provisions of the Enterprises Act, which was impossible unless there were property rights involved. All enterprises had a 'patrimony' composed of "things, rights, and money,"[64] under Enterprises Act art. 160, and they were liable for their debts with all of the assets they used and disposed over.

The transitional provisions of the Enterprises Act mandated that work organisations adjust their self-management acts with the Enterprises Act by December 311989.[65] After these adjustments were completed, the provisions of the Associated Labour Act no longer applied to such enterprises.[66] Dispositions under the Enterprises Act were adjusted to the 'property' view of social ownership,[67] hence the assets of the enterprise were generally transferable, and, when prescribed by law, transferable with restrictions, or non-transferable.[68] The Enterprises Act did not abolish social ownership, nor did it transform existing socially owned enterprises into corporations, nor the right of disposition over such assets, which remained as such.

This paper proceeds as follows: in Part II we present the complex development of collectivisation and socialisation of agricultural land in Croatia during the socialist period. In Part III we discuss the transformation of social ownership, first by giving an overview of the transformation process, and then by discussing the specific issues concerning the transformation of rights over agricultural land under the general rules pursuant to the Ownership Act. In Part IV we analyse the restitution process, with particular reference to agricultural land, and in Part V we discuss the development of the still ongoing process of privatisation of state-owned agricultural land. Part VI concludes.

62 | Ustavni amandmani IX-XLVII na Ustav SFRJ [Constitutional Amendments IX-XLVII to the Constitution of the SFRY], Official Gazette SFRY 70/88.
63 | Zakon o poduzećima [Enterprises Act], Official Gazette SFRY 77/88, 40/89, 46/1990, 61/90, Official Gazette 53/91, 71/91, 26/93, 58/93.
64 | In fact, the enterprise was defined as a "legal person who is the holder of rights and obligations in legal transaction with respect to all assets it disposes over and which it uses (...)" Enterprises Act art. 1(2) (emphasis added).
65 | See Enterprises Act art. 192(3) (July 15, 1989).
66 | See Enterprises Act art. 196(2).
67 | See Enterprises Act art. 163-167.
68 | See Enterprises Act art. 163.

II. Collectivisation and Socialisation of Agricultural Land in Croatia

In order to understand the decollectivisation of agricultural land in Croatia, a brief overview of the collectivisation that preceded it is necessary. The collectivisation process was initiated in 1945 with the passage of the Agrarian Reform and Colonisation Act.[69] This was not the first agrarian reform executed in the territory,[70] but was far more systemic and overreaching. The proclaimed principle was the one that "land belongs to those who cultivate it",[71] with the goal of allocating agricultural land to landless farmers or farmers with insufficient land.[72] Unlike the proclaimed Soviet agrarian reforms,[73] the allocated land was privately owned, hence the agrarian reform consisted of two separate legal stages: expropriation and allotment. Expropriation included all large properties,[74] properties owned by banks and corporations (with exceptions), churches and other religious institutions,[75] abandoned properties, as well as all excess arable land over a set maximum[76] area.[77]

69 | Zakon o agrarnoj reformi i kolonizaciji [Agrarian Reform and Colonisation Act] Official Gazette DFY br. 64/45, Official Gazette FNRY 24/46, 101/47, 105/48, 21/56, 55/57, Official Gazette SFRY 10/65 [hereinafter: "Agrarian Reform Act"].

70 | Earlier agrarian reforms happened after World War I. See Simonetti 2009, 166.

71 | This principle was explicitly stated in art. 1 of the Agrarian Reform Act.

72 | See Agricultural Reform Act, art. 1.

73 | Soviet agrarian reform in 1918 initially sought to socialise all land, abolish private property, and redistribute toil tenure, but immediately deviated from this policy in 1919 by making all expropriated land publicly owned. See Gsovski 1948, 689 – 693 (noting, however, that these reforms remained ineffective because "the peasants interpreted the soviet decrees as authorising the seizure and redistribution of large estates. And so it transpired that the bulk of the agricultural land in European Russia (96 per cent) was actually taken over by peasants and used from 1918 to 1921 in a traditional manner as established by the imperial laws for 'allotted' land, regardless of Soviet decrees and their underlying theory." Ibid. at 693. Later, under the New Economic Policy introduced in 1922, "factual holding was recognised as a title, so that each local peasant unit, township, or village commune had to continue to use the land which happened to be in its actual possession", although only by way of toil tenure on public land. Ibid. at 697, 702. Concurrently, the New Economic Policy pushed for the development of various forms of collective farms, most importantly the kolhoz (while eliminating wealthy individual farmers, kulaki, as the 'rural bourgeoisie' or the 'last capitalist class') which would become the dominant form of agricultural production in the period from 1929 until the end of the Second World War. Ibid. at 706.

74 | These were defined as agricultural land over 45 hectares, or 25 to 35 hectares of arable land (fields, meadows, orchards, and vineyards) if exploited by way of lease or hired labour). See Agrarian Reform Act art. 3(1)(a) and art. 26(1). In Croatian, Zakon o provođenju agrarne reforme i kolonizacije na području Narodne Republike Hrvatske, [Act on implementing the agrarian reform and colonisation in the territory of the People's Republic of Croatia], Official Gazette FNRY 111/47, 25/58, 58/57, 62/57, 32/62, set this maximum at 20-25 hectares for agricultural land (art. 15(1), and 8-30 hectares for forestland (art. 16).

75 | Religious institutions were granted exceptions for 10-30 hectares of agricultural land. See Agrarian Reform Act art. 8.

76 | These were set at no less than 20, and no more than 35 hectares of arable land depending on the number of family members, soil quality and crop type. See Agrarian Reform Act art. 5(1).

77 | See Agrarian Reform Act art. 3.

The expropriated agricultural land became state-owned, with no compensation,[78] except in cases of excess expropriation.[79]

Expropriated property, along with previously confiscated land[80] as well as state-owned designated land,[81] was included in the state-owned agrarian land fund,[82] which served as the source for land allotment. The allotment was designed for subsistence farming either for farmers already living in the area or for settling in a different area.[83] The allotted agricultural land area was between around 17 and 70 hectares per family,[84] with veterans and their families enjoying priority allotment.[85]

The beneficiaries were household members, who were each granted an equal co-ownership share of the allotted property.[86] The allotted agricultural land was prohibited from alienation including sales, leases, or mortgages, for a subsequent period of 20 (later reduced to 15) years,[87] and 10 years for forestland.[88] Both co-ownership and restraints on alienation were registrable in the relevant land register,[89] however registration was declaratory. This was particularly important due to the role of the land register under the existing land registration system, discussed below, and the transformation of the entire system of land law into a dual system of socialised property and private property. As the agrarian reform resulted in grants of ownership (i.e. private property), such land was removed from socialised property ('the people's property') where only quasi-ownership rights were available. In many cases, due to the preceding state of the land register, or the inadequacies in the documents issued and submitted, decisions on agrarian reform allotment were not duly registered, causing subsequent confusion as to the property rights over such land.[90]

78 | See Agrarian Reform Act art. 4(1).
79 | See Agrarian Reform Act art. 6.
80 | This included land previously owned by German nationals, enemies of the state. See Agrarian Reform Act art. 10.
81 | See ibid.
82 | See ibid.
83 | See Agrarian Reform Act art. 12. and 15. Settlers who missed the set relocation deadline would forfeit the land allotment. See Agrarian Reform act art. 25.
84 | See Agrarian Reform Act art. 19.
85 | See Agrarian Reform Act art. 16. For forestland, the area was set at 1-10 hectares, and the beneficiaries of forestland were obligated to forest unforested forestland within a five-year period, or be subjected to being stripped of the ownership. See Osnovni zakon o postupanju sa ekspropriranim i konfisciranim šumskim posjedima [Basic Act on Administering Expropriated and Confiscated Forestland] Official Gazette 61/46, art. 12.
86 | See Agrarian Reform Act art. 2.
87 | See Agrarian Reform Act art. 24. Inheriting such property was, however, permitted.
88 | See Basic Act on Administering Expropriated and Confiscated Forestland art. 11.
89 | See Agrarian Reform Act art. 24.
90 | See Simonetti 2009, 176 (noting that the Ministry of Justice and General Administration issued a memorandum in 1969 instructing that any applications to amend earlier agrarian reform decisions be delegated to the cadastral authority in order to conduct appropriate parcel identification and then relayed to the land registration court. If the courts were unable to proceed, they were to order the

Concurrently with agrarian reform, post-war socialist reforms introduced peasant cooperatives, following the Soviet collectivisation model. The 1946 Constitution explicitly mentions cooperative property as a separate category of property over means of production, along with public and private property,[91] and cooperatives were guaranteed 'special attention' by the state.[92] Cooperatives were regulated in 1946 under the Basic Act on Cooperatives,[93] which introduced the arrangement of peasant cooperatives. Unlike earlier cooperatives, which were privately organised for the benefit of their members,[94] the new cooperatives were designed for the benefit of the working people and state interests.[95] Similarly, the 1949 Basic Act on Agricultural Cooperatives[96] contained provisions on various models (types) of pooling land (including transfers to the cooperative)[97] which ultimately served public interests. The cooperative had its own property (cooperative property) which could be sourced from state-owned property over which the cooperative was granted rights of use, or private property of the cooperative members transferred to the cooperative.[98] Cooperatively owned land could not become privately owned land on any grounds, but could only be transferred to the state or another cooperative.[99] Irrespective of whether the land (ownership) was transferred to the cooperative or not, the cooperative members were prohibited from alienating pooled land, and could see few benefits from joining the cooperative.

The Soviet experiment was quickly perceived as unsustainable and failed, and was thus abandoned.[100] The 1953 Ordinance on Property Relations and Reorganisation of Peasant Cooperatives[101] relaxed the existing regime by allowing cooperatives to reorganise or liquidate, with the land being returned to existing cooperative members and provided an early exit option.[102] The 1949 Act was repealed by the 1954 Ordinance on Agricultural Cooperatives,[103] which finally

party to take appropriate steps to update the land register, or pay a fine, under par. 85 of the Zakon o zemljišnim knjigama [Land Registration Act], Official Gazette of Kingdom of Yugoslavia, 146/30 [hereinafter: "Land Registration Act of 1930"].

91 | See Constitution 1946, art. 14(1).

92 | See ibid. art. 17.

93 | Osnovni Zakon o zadrugama [Basic Act on Cooperatives], Official Gazette FNRY 59/46.

94 | See Zakon o privrednim zadrugama [Act on Economic Cooperatives], Official Gazette of Kingdom of Yugoslavia, 217/37. par.1.

95 | See ibid. art. 1. See Matijašević 2005, 153 – 170.

96 | See Osnovni zakon o zemljoradničkim zadrugama [Basic Act on Agricultural Cooperatives] Official Gazette FNRY 49/49.

97 | See ibid. art. 62.

98 | See ibid. art. 7.

99 | See ibid. art. 9.

100 | See Juriša 1983, 55 – 73.

101 | Uredba o imovinskim odnosima i reorganizaciji seljačkih radnih zadruga [Regulation on property relations and the reorganisation of peasant labour cooperatives], Official Gazette FNRY 14/53, 20/54.

102 | See ibid. art. 50.

103 | Uredba o zemljoradničkim zadrugama [Regulation on agricultural cooperatives] Official Gazette FNRY 5/54, 34/56, 41/56, 15/58, 18/58, 30/58, 22/59, 49/59, 10/61, 18/61.

dismantled the Soviet collectivisation model and allowed all cooperative members to voluntarily exit the cooperative and have the land previously transferred to the cooperative returned to them, or seek compensation. The 1953 Constitution did not recognise cooperative property, but only social property over means of production, so cooperative property was socially owned.[104]

In 1953 all publicly owned agricultural land was pooled into the agricultural land fund of the people's property (*poljoprivredni zemljišni fond općenarodne imovine*),[105] along with all excess arable agricultural land over 10 hectares that was privately owned,[106] effectively nationalising all such land.[107] These takings were not without compensation. The compensation was set at 30-100,000 dinars per hectare of arable land[108] and was paid out over a period of 20 years in the form of government bearer bonds, without interest.[109] The fund served as a source of land to be granted for perpetual use to agricultural organisations.[110] The land was socially owned, and was registered as such in the land register (with the right of use to the benefit of the agricultural organisation).[111] The nationalised excess land remained in possession of the previous owners free of charge for use until it was granted for use to an agricultural organisation.[112] The granting of rights of use to agricultural organisations was initiated by these organisations, or individual farmers or agricultural workers who intended to form such an organisation.[113] The final decree granting such rights of use served as a registration title for these rights in the land register.[114]

The agricultural organisation with rights of use over allotted agricultural land was prohibited from alienating the land[115] but could apply to the public authority for an exchange or sale and purchase of a different parcel,[116] or for the transfer of rights of use to another agricultural organisation.[117] If no right of use existed, the public authority could also carry out an swap for another agricultural property of

104 | See ibid. art. 11.
105 | See Zakon o poljoprivrednom zemljišnom fondu općenarodne imovine i dodjeljivanju zemlje poljoprivrednim organizacijama [Act on the Agricultural Land Fund of the People's Property and Allocation of Land to Agricultural Organisations], Official Gazette FNRY 22/53., 27/53., 4/57. i 46/62, Official Gazette SFRY 10/65, art. 1.
106 | See ibid. art. 3.
107 | The excess was calculated by adding up the total area of all arable land that was in fact cultivated by the head of each household and the household members, or whoever shared its profits, irrespective of the ownership registered in the land register. See ibid. art. 21.
108 | See ibid. art. 23.
109 | See ibid. art. 24.
110 | See ibid. art. 7 and 13(2).
111 | See ibid. art. 15.
112 | See ibid. art. 27.
113 | See ibid. art. 28.
114 | See ibid. art. 31.
115 | See ibid. art. 16 and 33.
116 | See ibid. art. 33(3),
117 | See ibid. art. 33 (4).

the same value, or sell the property and purchase another agricultural property from the earnings.[118]

The new ideal, in line with self-management, was to focus on agricultural production in socially owned agricultural organisations self-managed by the workers. Agricultural organisations were socially owned economic organisations. The earlier state-owned enterprises managed state-owned agricultural land in a top-down model.[119] Self-management was introduced in 1949 with the Basic Act on Administration of State Economic Enterprises and Higher Economic Associations by Work Collectives,[120] while enterprises were still state-owned. They were transformed into economic organisations, where administration was ceded to the work collectives for the benefit of the entire society,[121] following the principles enshrined in the 1953 Constitution.[122] Ten years later, economic organisations were transformed into 'work organisations' under the 1963 Constitution.[123] The enterprise, which now enjoyed a greater degree of autonomy, was an independent and fundamental work organisation,[124] with socially owned resources.[125] Particularly relevant in agriculture were 'combined enterprises' (*kombinati*), which were created by merging several enterprises or cooperatives with activities spanning various branches of production,[126] e.g. agricultural-industrial, industrial-alimentary etc. These combined enterprises remained the major players in the agricultural sector during the entire socialist period.

As explained in the introduction, the initial system of indirect self-management was subsequently transformed into a system of direct self-management in the 1971-1976 period, so work organisations ultimately became 'associated labour organisations'[127] wherein workers directly and equally exercised their self-management rights.[128] Dominant corporate forms at the time were the 'basic associated labour organisation' (*osnovna organizacija udruženog rada, OOUR*),[129] which comprised work collectives, and the 'complex associated labour organisation'

118 | See ibid. art. 16.
119 | See Zakon o upravljanju državnim poljoprivrednim dobrima [Act on the Management of State-owned Agricultural Assets], Official Gazette DFY 56/45.
120 | See Osnovni zakon o upravljanju državnim privrednim poduzećima i višim privrednim udruženjima od strane radnih kolektiva [Basic Act on the Management of State-owned Economic Enterprises and Higher Economic Associations by Labour Collectives], Official Gazette FNRY 43/50.
121 | See Uredba o upravljanju osnovnim sredstvima privrednih organizacija [Regulation on the Management of the Basic Assets of Economic Organisations], Official Gazette FNRY 52/53.
122 | See 1953 Constitution, art. 4 and 6.
123 | See 1963 Constitution, art. 15.
124 | See Zakon o poduzećima [Enterprises Act], art. 1(2).
125 | See ibid. art. 16(3).
126 | See Zakon o poduzećima [Enterprises Act], art. 95.
127 | See Zakon o konstituiranju i upisu u sudski registar organizacija udruženog rada [Act on the Establishment and Registration in the Court Register of Associated Labour Organisations], Official Gazette SFRY 22/73, 63/73.
128 | See 1974 Constitution, art. 14(2).
129 | See Associated Labour Act, art. 280-313.

(*složena organizacija udruženog rada, SOUR*).[130] Complex associated labour organisations in the agricultural sector included combined types as well.

The cooperative sector remained active during the entire period of self-management. Under the 1954 Regulation on Agricultural Cooperatives, economic enterprises could be established, managed by work collectives,[131] which could contract with other economic organisations.[132] Cooperatives could also enter into agricultural land lease contracts and employment contracts with their members,[133] as well as alliances with other cooperatives.[134] Cooperatives were later transformed into economic organisations under the Basic Act on Agricultural Cooperatives[135] managed by work associations,[136] and after the inauguration of direct self-management they became a form of association in agriculture under the 1973 Act on Association in Agriculture.[137] The Associated Labour Act contained detailed provisions on the inclusion of individual labour into the system of self-managed associated labour.[138] These provisions regulated agricultural cooperatives,[139] basic cooperative organisations,[140] as well as cooperative work organisations within complex associated labour organisations.[141] Agricultural cooperatives comprised basic associated labour organisations, basic cooperative organisations, or work associations.[142] All of the various relationships were regulated under self-management agreements.[143] Individual farmers who combined land kept ownership over such land unless it was transferred into social ownership under the self-management agreement.[144] Agricultural cooperatives could also unite into complex agricultural cooperatives,[145] as well as cooperative alliances.[146]

Another measure that targeted agricultural land during the socialist period was land consolidation. Land consolidation had two variants: land consolidation by merger and land consolidation by reallocation. Land consolidation by merger (*arondacija*) was a method used to merge privately owned parcels with larger

130 | See Associated Labour Act, art. 354-361.
131 | Uredba o zemljoradničkim zadrugama [Regulation on Agricultural Cooperatives], art. 7 and 36.
132 | See ibid. art. 26
133 | See ibid. art. 81. and 22.
134 | See ibid. art. 69.
135 | See Osnovni zakon o poljoprivrednim zadrugama [Basic Act on Agricultural Cooperatives] Official Gazette SFRY 13/65, 7/67, Official Gazette 52/71, Zakon o udruživanju poljoprivrednika [Association of Farmers Act] (Official Gazette 31/73).
136 | See ibid. art. 19.
137 | See Zakon o udruživanju poljoprivrednika [Association of Farmers Act] Official Gazette 71/73.
138 | See ibid. art. 5(2).
139 | See Associated Labour Act art. 275
140 | See Associated Labour Act art. 292.
141 | See Associated Labour Act art. 293
142 | See Associated Labour Act art. 279.
143 | See ibid. art. 280.
144 | See Associated Labour Act art. 281
145 | See Associated Labour Act art. 288
146 | See Associated Labour art. 300

compounds of socially owned land, where expropriated owners would receive other land outside the compound, or financial compensation.[147] This method was particularly relevant during the socialist period because it facilitated the feeding of social ownership and further grants of rights of use to the benefit of socially owned agricultural organisations. On the other hand, land consolidation by reallocation (*komasacija*) was a method used (and is still used today)[148] to restructure and redistribute fragmented farmland parcels within a consolidation area.[149] This would result in owners acquiring ownership over larger parcels of equal value, of the same class, and in the same area. Both methods were used with the purpose of achieving a more efficient management and exploitation of agricultural land.

The use of agricultural land was regulated during the entire socialist period by special legislation (agricultural acts). Agricultural land was predominantly used by agricultural organisations, first defined as cooperatives, agricultural landholdings, and other economic organisations and institutions with agricultural activity,[150] and later defined as associated labour organisations, agricultural cooperatives, and other forms of association of farms, as well as institutions performing farming.[151] Agricultural organisations could transfer agricultural land to other agricultural organisations.[152] These organisations also enjoyed pre-emption rights in all sales by individuals[153] and leases.[154] They could also sell and lease agricultural land to individuals[155] where land maximums applied.[156] Individual ownership of agricultural land existed throughout the socialist period, however it was capped at a maximum area, as previously described.[157] Economic organisations could trans-

147 | See Uredba o arondaciji državnih poljoprivrednih dobara općedržavnog značaja [Regulation on the Consolidation of State Agricultural Assets of State Interest] (Official Gazette FNRY 99/46), Uredba o arondaciji zemljišta i poljoprivrednih dobara i seljačkih radnih zadruga [Regulation on the Consolidation of Land and Agricultural Assets and Peasant Labour Cooperatives] (Official Gazette FNRY 50/51, 1/52), Zakon o iskorištavanju poljoprivrednog zemljišta [Exploitation of Agricultural Land Act] (Official Gazette FNRY 43/59) arts. 36-49, Zakon o arondaciji [Land Consolidation Act] (Official Gazette 6/76., 5/84, 5/87). See Vasić 1961, 400 – 441.

148 | See Zakon o komasaciji poljoprivrednog zemljišta [Agricultural Land Consolidation Act], Official Gazette 51/15; Zakon o komasaciji poljoprivrednog zemljišta [Agricultural Land Consolidation Act], Official Gazette 46/22. See Staničić 2016, 77 – 112; Staničić 2022, 112 – 125.

149 | See Zakon o komasaciji zemljišta [Land Consolidation Act] (Official Gazette FNRY 60/54, 11/55, 15/1965, 21/1965), Zakon o iskorištavanju poljoprivrednog zemljišta [Exploitation of Agricultural Land Act] (Official Gazette FNRY 43/59) arts. 50-69, Zakon o komasaciji [Consolidation Act] (Official Gazette 10/79, 21/84, 5/87). See Panjaković 1990, 237 – 243; Medić 1978, 37 – 42.

150 | Zakon o poljoprivrednom zemljišnom fondu, art. 7(2).

151 | See Zakon o poljoprivrednom zemljištu [Agricultural Land Act], Official Gazette 26/84, 19/90, 24/90, 41/90 [hereinafter: "Agricultural Land Act (1984)"], art. 4.

152 | See Transfer of Land Act art. 17; Agricultural Land Act (1984) art. 82.

153 | See ibid. art. 92-94

154 | See ibid. art. 98

155 | See arts. 84-85.

156 | See art. 97 (1984), and arts. 95-97 (1990) (removing the maximums for leases).

157 | See Transfer of Land Act art. 14.

fer land to individuals (barter or sale and further purchase),[158] and individuals could freely transact with respect to their land within the prescribed caps. Ownership of such land was constitutionally guaranteed to farmers by express provisions of the constitution.[159]

III. Transformation of Social Ownership and Restitution of Agricultural land in Croatia

A. The Transformation of Social Ownership

The transformation of social ownership into private ownership was a long and complex process.[160] The transformation process broadly took two avenues: one of restitution (denationalisation), and the other of conversion (or transformation *stricto sensu*). Restitution, and other forms of redress were legislated in the Act on the Compensation for Property Taken during the Yugoslav Communist Rule,[161] and is discussed further below. The second avenue of transformation was legislated in an array of statutes, covering different types of real property depending on their previous status, land use, and other criteria. This transformation was tightly linked to and coincided with the conversion of socially owned legal persons into private legal persons. The most important statute relevant for this transformation was the Act on the Transformation of Socially Owned Enterprises,[162] as the transformation of socially owned enterprises had both the effect of a transformation of corporate form - from the socially owned enterprise into a company with a known owner - and the transformation of quasi-ownership rights (such as the right of use) into ownership.[163] It is this transformation of the socially owned enterprise into a corporation that justified and legally allowed the transformation of rights of

158 | See ibid. art. 17.
159 | See 1963 Constitution, art. 21(2), 1974 Constitution, art. 80.
160 | At the time the Croatian Constitution was passed in 1990, it was clear that socialism and its economic doctrine was abandoned. Legally, this was reflected in article 48(1) of the Ustav Republike Hrvatske [Constitution of the Republic of Croatia], Official Gazette 56/90, 135/97, 113/00, 28/01, 76/10, which simply states: "Ownership is guaranteed."
161 | Zakon o naknadi za imovinu oduzetu za vrijeme jugoslavenske komunistički vladavine [Act on the Compensation for Property Taken During Yugoslav Communist Rule], Official Gazette 92/96, 80/02, 81/02, partially invalidated by USRH U-I-673/96, Official Gazette 39/99, 43/00, 131/00, 27/01, 34/2001, 65/01, 118/01 [hereinafter: "Restitution Act"]
162 | Zakon o pretvorbi društvenih poduzeća [Act on the Transformation of Socially Owned Enterprises], Official Gazette 19/91, 26/91, 45/92, 83/92, 84/92, 18/93, 94/93, 2/94, 9/95, 42/95, 21/1996, 118/99, 99/03 [hereinafter: "Transformation Act"].
163 | See Simonetti 2009, 622. According to the Transformation Act a socially owned enterprise could be converted into a joint stock company or an LLC by way of a sale, investment of capital, conversion of investments and claims into shares, and by way of transfer to certain funds. See Transformation Act art. 6.

socially owned land into traditional ownership.[164] Other legislation provided for the transformation of other (specifically designated) legal persons.[165]

B. Transformation of Rights over Agricultural Land

Socially owned agricultural land presented one of the special cases in the transformation of social ownership. The 1991 Agricultural Land Act[166] declares agricultural land as an asset under the special protection of the republic.[167] Agricultural land was defined as "fields, gardens, orchards, vineyards, meadows, pastures, fisheries, sedgelands, and swamplands that are not particularly valuable biotopes, as well as other land that is used, or is not used, but can be cultivated for agricultural production."[168] According to Agricultural Land Act article 3(1), the Republic of Croatia becomes the owner of socially owned agricultural land on the territory of the republic. Hence, the republic became the owner of all such land on the date that these provisions came into force, i.e., July 24 1991, by operation of law.[169]

164 | See Gavella & Josipović 2003, 97, 103; Simonetti 2009, 636; Barbić 1992, 11; Žuvela & Crnić 2007, 97, 135.

165 | See e.g., Zakon o lokalnoj samoupravi i upravi [Act on Local Self-Government and Government], Official Gazette 90/92, 94/93, 117/93, 5/97, 17/99, 128/99., 51/00, 105/00; Zakon o ustanovama [Institutions Act], Official Gazette 76/93, 29/97, 47/99, 35/08; See generally Josipović 1999, 19, 21, 25.

166 | Zakon o poljoprivrednom zemljištu [Agricultural Land Act] Official Gazette 34/91, 26/93, 79/93, 90/93, 48/95, 19/98, 105/99 [hereinafter: "Agricultural Land Act (1991)"].

167 | Ibid. art. 1(1).

168 | Agricultural land was defined as "fields, gardens, orchards, vineyards, meadows, pastures, fisheries, sedgelands, and swamplands that are not particularly valuable biotopes, as well as other land that is used, or is not used, but can be cultivated for agricultural production." Agricultural Land Act (1991) article 2(1). "Other cultivable land" is a term that can be linked to the classifications set out in the Zakon o geodetskoj izmjeri i katastru zemljišta [Act on Geodetic Surveying and the Land Cadastre], Official Gazette 16/74, 10/78, 31/86, 47/1989, 51/89, 71/91, 26/93, 37/94, which was in force on July 24 1991, and which set out analyses for land classification. Therefore, in all instances, the land must be cultivable in order to be considered agricultural.

169 | Land registration courts would proceed to register the republic as owner, expunging social ownership and any quasi-ownership right-holder from the register. Applications would be supplemented by a certificate issued by the spatial planning authority certifying that the plot lay outside the area zoned for construction on July 24 1991. In 2005, the Ministry of Environmental Protection, Spatial Planning, and Construction issued a memorandum circular advising on the issuing of such certificates, and stating that the Agricultural Land Act effected a transformation of ownership such that all land that was located on that date outside the area zoned for construction, and was entered into the land register as socially owned, was transferred to the republic by operation of law, irrespective of who was entered as the user of said land. See Ministarstvo zaštite okoliša, prostornog uređenja i graditeljstva, Izdavanje uvjerenja o statusu zemljišta na temelju dokumentacije prostora u svrhu uknjižbe prava vlasništva Republike Hrvatske na poljoprivrednom zemljištu – uputa, kl. 940-01/05-01/00023, ur.br. 531-01-05-2 (December 23 2005). The certificate certified the location of the land in terms of the zoning regulation that was in force on July 24 1991. This mattered because ofas the provision of the Construction Land Act, and its predecessors, all of which defined construction land using a land use analysis, e.g., as all land located within cities, and urban settlements, as well as other developed land or land designated for the construction of buildings, or for public space. See Construction Land Act article 3. See Hrvoj-Šipek 2009, 189, 202.

The transformation of socially owned agricultural land meant that quasi-ownership rights holders lost such rights, without compensation,[170] and the value of agricultural land was subsequently not appraised in the transformation of socially owned enterprises that previously held such rights. In order to remedy the situation in the transitional period, Agricultural Land Act article 42 allowed socially owned legal persons who used agricultural land on the date the Agricultural Land Act came into force to continue such use until their transformation into a privately owned company.[171] The 1993 amendments added sections 2 and 3 to Article 42, which provided that the legal person established by way of transformation of a socially owned person must report to the Ministry of Agriculture and Forestry within 30 days after the completed transformation, for the purpose of regulating further use of such agricultural land.

The transformation of social ownership over agricultural land was designed to simply transfer the ownership to the state. The main reason for such a model was to conserve the vast amounts of such land for future restitution.[172] At the time this legislation was passed, there was no legislation on restitution, but it was obviously planned, as can be seen in Agricultural Land Act article 2(3) which explicitly states that "agricultural land taken from previous owners after May 15 1945 remains the property of the Republic of Croatia until the passing of the legislation on restitution and the return of agricultural land to previous owners."[173] Had there been no prior transformation, such land would ultimately end up owned by the legal successors of socially owned enterprises which transformed their quasi-ownership rights into ownership, and would have been unavailable for in-kind restitution.[174]

C. The Transformation Articles of the Ownership Act

The final provisions of the Ownership Act were designed to cover almost all socially owned land that was not covered by other (preceding) law, with some exceptions. It was passed relatively late, considering that all legislation and regulation had to be harmonised with the constitution no later than December 31 1997, pursuant to the Constitutional Act for the Operationalisation of the Constitution of

170 | See USRH (Constitutional Court of Croatia) Decision No. U-I-546/2000, at §6 (holding that such rights were not constitutionally protected rights under the new constitution, because they could not be equated with ownership). But see Kontrec 2014, 69, 85 (stating that the entire process was another nationalisation).

171 | See Agricultural Land Act (1991) art. 42.

172 | See Jelinić 1997, 37 – 54.

173 | See Agricultural Land Act (1991) art. 3(2).

174 | In many cases there was a subsequent attempt to claim agricultural land based on various transfers, including those in transformation proceedings of socially owned enterprises, however the Supreme Court had consistently held that no transfer was available after socially owned agricultural land became state-owned. See e.g. VSRH (Supreme Court of Croatia) decisions No. Rev 170/00, Gzz 85/05, Rev 1412/08, Rev 352/10, Rev 448/10, Rev 450/11, Revx 780/11, Rev 502/12, Rev 1725/12, Rev 1218/13, Rev 571/15, Rev 2272/18, Rev 1018/22.

the Republic of Croatia.[175] The general rule of transformation of rights of administration, use and disposition, was set out in article 360 of the Ownership Act, which provided that the right of administration, or use, and disposition over a socially owned thing had become by way of transformation of the holder of such right – ownership of the person that became by way of transformation the universal legal successor of the former holder of the right of administration, use, and disposition of the thing based on the transformation process, provided that the thing is capable of being owned. Further to that, entries in the land register and other public registers of the right of administration, use, and disposition entered before the date of entry into force of this Act shall be assumed to be entries of ownership.[176] The transformation articles cover the transformation of quasi-ownership rights of socially owned persons that were not covered by other (earlier) legislation, or restitution.[177] Therefore, they are not of particular relevance for agricultural land, as these transformations occurred prior to the passing of the Ownership Act, which didn't apply to such land.

IV. Restitution of Agricultural Land

The Restitution Act was passed in 1996, which was well over five years after socially owned agricultural land became state-owned.[178] During this period it was clear, however, that restitution was planned in some form, and this put a severe hold on any effective management of such agricultural land. But the passage of the Restitution Act was only the beginning of the restitution process, which meant that, now definitively, the future of previously socially owned agricultural land became uncertain. Restitution was not immediate, but required a legal (administrative) proceeding, initiated by eligible applicants. These were defined as natural and legal persons whose property has been taken under acts listed in articles 2 and 3 of the Restitution Act (which contains an exemplary list of 32 statutes and other acts), as well as their heirs[179] and legal successors.[180] The main principle was monetary compensation (cash compensation or compensation in the form of bonds or shares),[181] while in-kind compensation was an alternative, exceptional route. The reason for

175 | Ustavni zakon za provedbu Ustava Republike Hrvatske [Constitutional Act for the Operationalisation of the Constitution of the Republic of Croatia], Official Gazette 56/90, 8/91, 31/91, 33/91, 59/91, 27/92, 91/92, 62/93, 50/94, 105/95, 110/96.
176 | See Ownership Act (Official Gazette 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 152/14, 81/15, 94/17) art. 360(4).
177 | See Ownership Act art. 359(2) (conditioning all acquisitions under the final provisions of the Ownership Act on Conformity with Restitutionary Rights).
178 | See generally Bagić, Šeparović & Žuvela 1997; Kačer 1997; Simonetti 2004.
179 | Eligible heirs were only descendants in the first order of succession. See Restitution Act art. 9.
180 | See Restitution Act art. 1(5).
181 | See Restitution Act art. 1(2). See Jelčić 1998, 483 – 504.

this was the protection of acquired rights, and public interest. The idea of 'righting a wrong' via restitution was dismissed by the Croatian Constitutional Court, holding that the legislator is free to decide which properties are to be returned or compensated, in what scope, and to which persons.[182] No violation of the constitutional protection of property was found, as property rights were extinguished prior to the entry into force of the Croatian Constitution, irrespective of the fact that social ownership was not recognised by it.[183]

Several major problems existed with respect to identifying eligibility, most of them caused by clouded titles at the time of the taking the land, due to incomplete land registration. Croatia has a history of land registration that dates back to the nineteenth century, when land registers were introduced in the Austrian Empire.[184] The system of land registers was kept in Croatia after the Second World War irrespective of the introduction of the socialist legal system. Land registration legislation in socialist Croatia, as well as other parts of the former SFRY, was the one passed in the Kingdom of Yugoslavia,[185] also modelled after the Austrian land registration system. The first Land Registration Act[186] after independence was passed in 1996 and came into force on January 1 1997. In 2019 a new Land Registration Act[187] was passed and has been in force since July 6 of that year. All of these acts closely followed original Austrian legislation. In the socialist period land registers served, to a certain degree, the purpose of publicising rights over real property even for socially owned real property. However, as the existing land registration rules were designed before the Second World War, they were inadequate for entries of social ownership; hence, special legislation and regulation was passed for that purpose.[188]

182 | See Constitutional Court of the Republic of Croatia, U-I-673/1996, Official Gazette 39/99.

183 | See ibid. The opinion was heavily criticised by some commentators who saw them as perpetuating the state that existed under social ownership and were thus contrary to the fundamental protection of ownership. See Simonetti 2009, 504 – 507.

184 | See Gruntovni red [Land Registration Order], Deržavno-zakonski list [Official Gazette of the Kingdom of Croatia] 222/1855 (Austrian Empire).

185 | Land Registration Act of 1930; Zakon o unutarnjem uređenju, osnivanju i ispravljanju zemljišnih knjiga [Act on Internal Organisation, Establishing, and Correcting Land Registers], Official Gazette of the Kingdom of Yugoslavia, 146/30; Zakon o zemljišnoknjižnim diobama, otpisima i pripisima [Act on Land Registration Partitions, Disjoinments, and Adjoinments, Official Gazette of the Kingdom of Yugoslavia, 161/30, Pravilnik za vođenje zemljišnih knjiga [Land Registration Rules], Official Gazette of the Kingdom of Yugoslavia, 64/31.

186 | Zakon o zemljišnim knjigama [Land Registration Act], Official Gazette 91/96, 68/98, 137/99, 114/01, 100/04, 107/07, 152/08, 126/10, 55/13, 60/13, 108/17.

187 | Zakon o zemljišnim knjigama [Land Registration Act], Official Gazette 63/19.

188 | See, e.g., Uredba o uknjiženju prava vlasništva na državnoj nepokretnoj imovini [Regulation on the Registration of Ownership Rights on State-owned Real Property], Official Gazette FNRY 58/47; Uputstvo za izvršenje Uredbe o uknjiženju prava vlasništva na državnoj nepokretnoj imovini [Instructions for the execution of the regulation on the Registration of Ownership Rights on State-owned Real Property], Official Gazette FNRY 10/49; Uputstvo o načinu upisivanja u zemljišnim knjigama prava vlasništva na zgradama izgrađenim na zemljištu općenarodne imovine [Instructions on the method of registering ownership rights over buildings built on the people's property in the land registers]; Uputstvo o zemljišnoknjižnim upisima nacionaliziranih najamnih zgrada i građevinskog

Socially owned real property and rights over such property held by socially owned legal persons were registerable in the land register under the Socially Owned Land Registration Act,[189] and the registration of each change of the rights holder was mandatory.[190] However, social ownership itself was almost always introduced via legislation, decrees, or judgments which were registerable, but took effect irrespective of registration, i.e. without it, and registration was merely declarative. Similarly, the transformation of rights and entitlements that took place during the various stages of development of social ownership was effectuated by operation of law. Actual entries of such transformations following the constitutional and legislative reforms that transformed these rights were merely declarative. Further to that, excluding transfers by deed, where land registration was always a requirement for the passing of title, in all other acquisitions, most importantly succession, confiscation, nationalisation, eminent domain, and the various methods of agrarian and land reform discussed above, title was passed automatically, independent of registration. Even after 1990, up to the passage of the Restitution Act, most transformations of social ownership occurred independent of registration. Many of these transfers, albeit registerable, went unrecorded, both pre- and post-1990, a major reason being the problem of a deteriorating congruence of cadastral and land registration data.[191] In cases where the land register was incomplete, both individuals and enterprises resorted to unrecorded sales and other contractual transfers, where recording was in fact a condition for the transfer of title, which made the situation even more complex.[192] These issues were also confronted in the context of intergenerational transfers. Where informal ownership was present at the time of death, estate proceedings could not formalise such ownership, so the problem stretched inter-generationally.[193]

The application of the Restitution Act meant that both applicants and the administrative authorities were faced with land registers that were rarely up to date and had to often tediously reconstruct all of the chains of title since the pre-war era through the socialist period in order to determine eligibility. Under

zemljišta [Instructions on land registration entries of nationalised rental buildings and construction land], Official Gazette FNRY 49/59; Uredba o postupku za sprovođenje nacionalizacije najamnih zgrada i građevinskog zemljišta [Regulation on the Implementation Process for the Nationalisation of Rental Buildings and Construction Land], Official Gazette FNRY 4/59, 53/60, 8/64, 7/65;

189 | Zakon o uknjižbi nekretnina u društvenom vlasništvu [Act on the Registration of Socially Owned Real Property]
Official Gazette SFRY 12/65.

190 | See ibid. art. 1.

191 | Land registration records are based and depend on cadastral data. Bottlenecks occurred when land registers had to be updated to match cadastral surveys. This process of establishing matching data on a mass scale was costly, time and labour intensive, and often never completed. Buildings were often left unrecorded because zoning and construction law barred recording of unpermitted buildings. See Ernst 2022, 495 – 564.

192 | See ibid.

193 | See ibid.

such circumstances, it is little wonder that some restitution proceedings are still pending to date.

The general rule for restitution of agricultural land was in-kind restitution, deviating from the general principle of monetary restitution.[194] This included both land and buildings built on such land at the time of taking,[195] if such land was still agricultural land at the time of restitution. This meant that agricultural land that was converted to construction land, or repurposed was not restituted as such, but was subject to the regime applicable to land use at the time of restitution. Consequently, normally in such cases no in-kind restitution was available due to third-party acquired rights.

The land returned was given in the state that it existed in at the time of restitution.[196] In case the value was increased, the former owner would have to compensate the difference to the current right-holder in cash or in kind (via co-ownership shares).[197] Conversely, the former owner had no right to damages of any kind.[198]

In-kind restitution of agricultural land was, however, also severely restricted in cases that were considered paramount and overriding. The Restitution Act provided various exceptions for various types of real property, such as those belonging to legal entities performing services in the areas of healthcare, social security, education, culture, science, energy, water management, sport and other public services.[199] Similarly, exceptions were provided for reasons of national security or defence,[200] for properties that are an indivisible part of a system of networks, buildings, equipment, or resources of public enterprises in areas of energy, utility, transportation, and forestry.[201] For agricultural land, two groups of exceptions can be identified. The first group concerned cases involving acquired rights. The general rule was that no in-kind restitution was available if third parties acquired ownership by way of a valid contract, or possession under a valid title for ownership

194 | See Restitution Act art. 20(1). The same rules applied to forests and forestland. Forests and forestland were governed by special legislation throughout the socialist period, and are still under a special regime today. See Opći zakon o šumama [General Act on Forests], Official Gazette FNRY 106/47, Zakon o šumama [Forests Act], Official Gazette SFRY 1/62, Osnovni Zakon o šumama [Basic Forests Act], Official Gazette SFRY 26/65, Zakon o šumama [Forests Act], Official Gazette SFRY 19/67, Zakon o šumama [Forests Act], Official Gazette 20/77, Zakon o šumama [Forests Act], Official Gazette 54/83, 32/87, 47/89, 41/90, 52/90, 5/91, 9/91, 61/91, 26/93, 76/93, 29/94, 76/99. 8/00, 13/02, 100/04, 160/04, Zakon o šumama [Forests Act], Official Gazette 140/05, 82/06, 129/08, 80/10, 124/10, 25/12, 68/12, 148/13, 94/14, Zakon o šumama [Forests Act], Official Gazette 68/18, 115/18, 98/19, 32/20, 145/20, 101/23, 145/23, 36/24. A detailed analysis of issues pertaining to forests and forestland is beyond the scope of this article.

195 | See Restitution Act art. 20(2).

196 | Restitution Act art. 49(1).

197 | Restitution Act art. 49(2).

198 | Restitution Act art. 51(1).

199 | See Restitution Act art. 54.

200 | See Restitution Act art. 1(3),

201 | See Restitution Act art. 55(1)(1).

acquisition.[202] These were, for example, cases where properties were first taken, and then allotted as part of the agrarian or land reform to third parties who acquired ownership over such land, or their successors who inherited or purchased such land. The second group involved cases where restitution would either materially compromise the spatial integrity or intended use of space and property,[203] or materially compromise the technological functionality of a compound (e.g. an industrial, agricultural, or forest compound wherein such land was included).[204]

In cases where in-kind restitution was not available, previous owners were entitled to restitution in other forma (securities).[205] Agricultural land was appraised in the proceedings under special regulation which classified such land into various classes.[206]

Another important issue, particularly relevant for agricultural land, was the prohibition of foreign acquisition of agricultural land under the Agricultural Land Act.[207] The Restitution Act had initially made foreign citizens ineligible for restitution, but these provisions were struck down by the Constitutional Court in 1999.[208] However, the bar on foreign ownership of agricultural land was introduced in 1993 by amendments,[209] i.e. before the Restitution Act, so foreign acquisition by way of in-kind restitution of agricultural land was barred irrespective of the constitutional requirement that restitution be applied equally to nationals and foreign citizens.

A particularly difficult problem was the one of restitution to the Catholic Church. This complex area is governed by several international treaties between Croatia and the Holy See,[210] and remains unresolved due to the uncertainties in

202 | See Restitution Act art. 52(1).
203 | See Restitution Act art. 55(1)(3). Examples include recreational and sports areas, as well as tourist campgrounds. Simonetti 2009, 567.
204 | See Restitution Act art. 55(1)(4).
205 | See Restitution Act art. 20(3).
206 | See Pravilnik o mjerilima za utvrđivanje vrijednosti oduzetog poljoprivrednog zemljišta, šuma i šumskog zemljišta [Ordinance on Criteria for Determining the Value of Confiscated Agricultural Land, Forests and Forestland] Official Gazette 58/98, 106/01; Pravilnik o mjerilima za utvrđivanje vrijednosti oduzetog poljoprivrednog zemljišta, šuma i šumskog zemljišta [Ordinance on Criteria for Determining the Value of Confiscated Agricultural Land, Forests and Forestland], Official Gazette 18/04.
207 | See Agricultural Land Act (1993 – after the amendments published in the Official Gazette 79/93), art. 1(3) (stating that foreign nationals cannot own agricultural land, nor can they acquire it by way of investing capital or purchasing a domestic legal person, unless otherwise provided by international treaty).
208 | See Constitutional Court of the Republic of Croatia, decision no. U-I-673/1996, Official Gazette 39/99.
209 | See Zakon o izmjenama i dopunama Zakona o poljoprivrednom zemljištu [Amendments to the Agricultural Land Act], Official Gazette 79/93, which did not apply to foreign citizens who had already acquired agricultural land before September 7, 1993 (art. 15).
210 | See Ugovor između Svete Stolice i Republike Hrvatske o suradnji na području odgoja i kulture [Treaty between the Holy See and the Republic of Croatia on Cooperation in the Area of Education and Culture], Official Gazette – International Treaties 2/97, Ugovor Svete Stolice i Republike Hrvatske o

their interpretation, the large amount of properties involved, as well as political considerations. For example, the treaty on economic issues guarantees that the Catholic Church will receive in-kind restitution for property taken during the socialist period that is available for restitution under 'the provisions of the law',[211] yet the Restitution Act which was passed prior to the signing of the Treaty excludes restitution in cases where issues are covered under an international treaty.[212] Another example concerns issues of legal successorship within the Catholic Church. In many instances there were internal transformations of legal entities within the Church during the socialist period, such that legal successors who claimed eligibility under canonical law were not eligible under the Restitution Act, because it excluded legal persons who did not continuously retain legal successorship, operations, and seat in Croatia.[213] Yet under the Treaty on legal issues, Croatia recognised the legal personhood of both the Catholic Church and its legal entities under canon law.[214] Finally, the treaty on economic issues guaranteed that the Church would receive restitution in the form of substitute properties for a "part of the properties that are unavailable for restitution"[215] and monetary compensation for "other property that will not be returned",[216] and all properties were to be listed by a joint commission composed of representatives of the Croatian Government and the Croatian Episcopal Conference, which has only met a few times in recent years and has not produced any meaningful results. A detailed analysis of these issues is beyond the scope of this article, but have been extensively discussed in the literature.[217]

Another unresolved issue was the property of land communes and similar communes and border property counties. As mentioned earlier, these were archaic property communes which existed since the 19th century. Their members lost special semi-feudal rights of use (*užitnička prava*) when this land was transferred to the people in 1947.[218] This land was not included in the restitution process, i.e. former right-holders were not eligible for any restitution. This exclusion has been heavily criticized in the literature,[219] and to date remains unresolved.

pravnim pitanjima [Treaty between the Holy See and the Republic of Croatia on Legal Issues], Official Gazette – International Treaties 3/97 [hereinafter: "Treaty on legal issues"]., Ugovor između Svete Stolice i Republike Hrvatske o gospodarskim pitanjima [Treaty between the Holy See and the Republic of Croatia on Economic Issues], Official Gazette – International Treaties 18/98 [hereinafter: "Treaty on economic issues"].

211 | See Treaty on Economic Issues, art. 2(1)(a), 3(1).

212 | See Restitution Act art. 10(1).

213 | See Restitution Act art. 12.

214 | See Treaty on legal issues, art. 2.

215 | See ibid. art. 2(1)(b), 4.

216 | See ibid. art. 2(1)(c), 5.

217 | See Mikulandra 2023; Petrak & Staničić 2020.

218 | See Zakon o proglašenju imovine zemljišnih i njima sličnih zajednica te krajiških imovnih općina općenarodnom imovinom (supra).

219 | See Simonetti 2009, 613 – 614; Koprić 2015, 545 – 557.

V. Privatisation of State-Owned Agricultural Land

The Agricultural Land Act initially did not contain provisions on the sale of agricultural land, but its article 3(3) allowed all foreign and domestic legal and natural persons to be granted a concession pursuant to the terms set out in another statute.[220] This section was repealed via an amendment in 1993.[221] The same amendment comprehensively regulated different modes of disposition over state-owned agricultural land. Except for land taken after May 15 1945 (which was supposed to remain available for restitution, as discussed above), it allowed sales,[222] gifts,[223] barter,[224] and concession.[225] It also legislated leases,[226] and gratuitous usufruct.[227] Concessions could be granted for the period of 10-40 years (depending on the purpose), for the purpose of farming, ranching, hunting, or fishing,[228] following a public tender.[229] Leases could be concluded for a period of 3-10 years[230] with no possibility of a sublease,[231] and also following a public tender.[232] Similar, but very

220 | See Agricultural Land Act (1991) art. 3 (defining 'concession' as a 'permission to use' agricultural land owned by the republic). Pursuant to the Transfer of Land Act art. 33, the state could only sell agricultural land to a legal person (not socially owned) in order to buy other agricultural land from that person, which was effectively a barter.
221 | See Zakon o izmjenama i dopunama Zakona o poljoprivrednom zemljištu, Official Gazette 79/93, article 2.
222 | See Agricultural Land Act art. 24m(1).
223 | Ibid. Gifts were later restricted in that all property transactions with land acquired by way of a gift were barred for a period of 10 years after the gift was given. Leases of donated land were allowed with the permission of the Ministry of Agriculture and Forestry. See Zakon o izmjenama i dopunama Zakona o poljoprivrednom zemljištu [Amendments to the Agricultural Land Act], Official Gazette 19/98, art. 6 (inserting Agricultural Land Act art. 40 sections 3 and 4). This restriction was repealed in 1998. See Zakon o izmjenama i dopunama Zakona o poljoprivrednom zemljištu [Amendments to the Agricultural Land Act], Official Gazette 105/99, art. 26.
224 | See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 24m(1).
225 | See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 24a-24g.
226 | See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 12a.
227 | Gratuitous usufruct was only available to socially endangered Croatian citizens, who were participants of the Croatian War of Independence. See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 24l(2).
228 | See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 24b(1).
229 | See Agricultural Land Act (1991 – after the amendments OG 79/93) arts. 24(b)-24(d).
230 | See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 24h(1).
231 | See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 24h(3).
232 | See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 24i. Leases were restrictive in that agricultural land that was not cultivated in the previous vegetative period could be forcibly leased out, while compensating the owner with the market value of such lease. See Agricultural Land Act art. 12a. Similar provisions on forced leases over privately owned agricultural land that was left uncultivated were introduced by amendment into the Agricultural Land Act of 2001 in 2005, see Amendments to the Agricultural Land Act, Official Gazette 48/05, and again in the Agricultural Land Act of 2008, see Agricultural Land Act 2008 art. 15 and 16, but the latter ones were ultimately struck down by the Constitutional Court as violating the constitutional protection of ownership. See Constitutional Court, decision no. U-I-763/2009 et al., March 30, 2011, Official Gazette 39/11.

detailed provisions were included in the Agricultural Land Act of 2001[233] (governing sales,[234] leases,[235] and concessions[236]), as well as in the Agricultural Land Act of 2008[237] (governing sales and leases,[238] long-term leases,[239] and fishpond concessions[240]), and the Agricultural Land Act of 2013[241] (governing leases,[242] temporary use,[243] barter,[244] sales,[245] and use).[246] [247] The current Agricultural land Act of 2018[248] also governs leases,[249] temporary use,[250] barter,[251] sales,[252] use,[253] as well as partition,[254] grants of building rights,[255] and easements.[256] In the period after accession to the EU, a particularly problematic issue was the one concerning acquisitions of agricultural land by EU nationals, discussed elsewhere.[257]

As previously mentioned, in the period between the transformation of social into state ownership over agricultural land and the resolution of restitution, earlier rights holders could remain in possession and use such land. This was a way of conserving agricultural productivity of the land, even though there was uncertainty as to its restitution. However, they had lost any rights they earlier held over such land, irrespective of the grounds on which they acquired such rights. This meant that even in cases where socially owned entities had purchased such land during the socialist period (as opposed to it have been granted), their rights were extinguished once the land became state-owned. In 2002, an amendment to the Agricultural Land Act attempted to better the position of the successors of earlier socially owned entities who purchased agricultural land from natural persons, by allowing them

233 | Agricultural Land Act, Official Gazette 66/01, 87/02, 48/05, 90/05 [hereinafter: "Agricultural Land Act (2001)"].
234 | See art. 23-28.
235 | See art. 29-42.
236 | See art. 43-46.
237 | See Agricultural Land Act, Official Gazette 152/08, 25/09, 153/09, 21/10, 90/10, 39/11, 63/11 [hereinafter: "Agricultural Land Act (2008)"].
238 | See arts. 32-53.
239 | See arts. 54-59.
240 | See arts. 60-70.
241 | See Agricultural Land Act, Official Gazette 39/13, 48/15.
242 | See arts. 27-47.
243 | See art. 48.
244 | See art. 49.
245 | See art. 50.
246 | See art. 51.
247 | See Kontrec 2014, 69 – 95; Brežanski 2011, 547 – 568.
248 | See Agricultural Land Act, Official Gazette 20/2018, 115/2018, 98/2019, 57/2022
249 | See arts. 31-56.
250 | See art. 57.
251 | See art. 58.
252 | See arts. 59-72.
253 | See art. 73.
254 | See art. 75-76.
255 | See arts. 77-79.
256 | See arts. 80-82a.
257 | See Josipović 2021, 100 – 122.

to apply for a priority concession without a public tender, if they proved that such land was in fact purchased.[258]

Agricultural land today is mostly owned by private farmers (70%), while the rest (30%) is still state-owned.[259] The government is still actively privatising agricultural land, although this process remains relatively slow.[260] Because the bulk of transactions involving state-owned agricultural land includes leases and not sales, it seems privatisation has not been entirely effective, and it will take further governmental action to fully achieve it.

VI. Conclusion

The collectivisation of agricultural land was a major post-war project, which was a fundamental part of destroying private property in the socialist legal system. The historical analysis presented demonstrates that this process was extremely complex. On the one hand, its complexity stemmed from existing, sometimes convoluted, legal regimes that were already present at the time the socialist legal regime was inaugurated. On the other hand, its complexity is a consequence of the changing policies during the socialist period. As presented above, we see that it is extremely difficult to discuss collectivisation in singular terms, because the development of social ownership was a consequence of changing ideological views on what social ownership entails. The Yugoslav system notoriously deviated from Soviet policies, and after the Tito-Stalin split started to develop a system based on the notion of self-management which grew into associated labour—a system unique to Yugoslav socialism. This meant that agricultural production was developed in a far more relaxed and market conscious fashion compared to that of the Soviet Union and Eastern European countries behind the Iron Curtain. The restitution process was slow and plagued by the remnants of the collectivisation process, mostly due to clouded titles and incomplete land registration.

Restitution of agricultural land was, unlike other land, based on the policy of in-kind restitution. This policy had the advantage of staying committed to the actual returning of previously taken land but had to be restricted for overriding public and economic interests, which in many cases resulted in only monetary restitution. The main drawback of this model was that it was designed by first essentially re-nationalising all socially owned agricultural land by transferring it into state ownership, and then administering long and complex proceedings

258 | See Agricultural Land Act 2001 art. 67 (2002). This option was only available until October 1 2002.
259 | Josipović 2021, 103.
260 | In the period between 2018-2022 about 11.5 K hectares were leased out, and about 485 hectares were sold. In 2022, out of 1M hectares of agricultural land used, a little over half was owned, and the rest was used under a lease, concession, or otherwise. See Republic of Croatia, Ministry of Agriculture, Forestry, and Fishing 2023, 24.

which required determining eligibility and appraisals. This effectively extended the entire process of privatisation, first during the period of pending legislation, and then again during the period of actual restitution proceedings, haunted by problems stemming from agrarian reform, land reform, social ownership, and dated land registers. The consequences of the application of this model are still present today. One of the major weaknesses in Croatian agriculture today remains the weak positioning of small agricultural farms in the agricultural network, and the government has identified that one important reason for this is the very small farmed area, recently reported at less than 5 hectares of farmed agricultural land for 70% of farmers.[261] This seems reminiscent of the land maximums set during the socialist period that haven't formally existed for well over 30 years. A significant amount of agricultural land is still state-owned, a significant amount of which is uncultivated, and its privatisation is still incomplete. The rules on privatisation, as seen above, were (and still are) in a state of constant flux, and the government is still searching for an optimal model. It is particularly interesting that one of the solutions the government puts forward today is an association of farmers, which is, once again, reminiscent of the associated labour policies under the socialist self-management regime.[262] At the same time, the government is painfully aware that farmers exhibit 'reluctance to association', which may have its roots precisely in the link between any association and associated labour, so it seems that the correct balance between collective and individual participation in agriculture remains to be found. We remain cautious, however, in assigning exclusive blame for the state of agricultural production today to the transformation and restitution processes over agricultural land, because in many instances, other factors, most importantly the Homeland War and the failed policies in the transformation and privatisation of socially owned enterprises, have significantly contributed to its deterioration. We remain hopeful that further land reform will live up to the challenges still present and bring an end to the restitution and privatisation of agricultural land in Croatia.

261 | Strategija poljoprivrede do 2030 [Agricultural Strategy until 2030], Official Gazette 26/22, par. 2.
262 | See Republic of Croatia, Ministry of Agriculture, Forestry, and Fishing 2024.

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Legal issues in the property, use, preservation, and management of agricultural lands in Bulgaria[2]

Abstract

This article reviews the subject of 'agricultural lands' in Bulgaria from a legal aspect, for the period 1878-2023. It analyses the normative acts, legal consequences and the most important legal changes that the land reforms in the country derive from. There is a review of the processes of restitution, land-settlement, and limitations of property; the initiation of cadastral maps and other events and initiatives related to them; legal actions of the administrative and judicial organs; and decisions related to the judicial and constitutional control, related to the owners and users of agricultural lands. There is some detailing of how the latter perform their legal rights to the land in certain cases. The study is provisionally divided into three sub-periods: the first presents legislation in Bulgaria related to agricultural lands in the period after the establishment of the Third Bulgarian State. It gives explanation to some important moments, deriving from the historical participation of the country in the political events related to the Balkan Peninsula and the First World War, as well as to the policies of land-settlement, organisation and cooperation of the agricultural subjects; establishment of the first administrative bodies; and the administration of the processes related to the property and in particular to the agricultural land. The second period reflects on the legislation defined by the collectivisation and expropriation of the private property, the limitation of the economic relations in regard to the agricultural lands, and the following redefining of the legal institutes related to the property of agricultural land. In a sense the first two parts of the article give answers to the reasons and the need for the last land reform performed after 1989. A milestone in the article is the process of restitution as well as the problems of the legal doctrine of the last period from 1989 until 2023. Apart from identifying the most important problems of the management of the legal aspect of the restitution processes, the article provides a short review of the new course and the 'curve' of the legislation regarding agricultural land. The newest changes in the trajectory of the public

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relations and the legal challenges deriving from the legal order in the European Union are presented, including: legal contradictions of the Bulgarian legislation with the law of the EU; reflection of the structural funds over the legal processes related to the agricultural lands; and the 'green' payments and consolidation of the property in agricultural lands. At the end there are some suggestions for the improvement of the legal framework regarding the agricultural lands in the country. The article uses several legal methods, including legal-historical, positive legal analysis, and a normative approach in explaining the offers suitable for the change of the legal framework regarding agricultural lands.
Key words: agricultural lands, land reform, restitution, legal doctrine

Introduction

Restitution is a complex legal, political, and socio-economic process that has varied characteristics in every part of the world, including the USA.[3] In a legal context, it is analysed as a prerequisite for the distribution of property rights,[4] as well as on the conditions under which new legal doctrines emerge, even in conflict with other understandings of agricultural land.[5] Other scholars[6] looking at Eastern Europe analyse restitution as part of the transition in the post-communist period, together with land reforms unfolding in parallel. The subject of these studies is the problems of property acquisition, the fragmentation of agricultural property, and the rules for cross-border investment in agriculture of the respective countries.[7]

Bulgaria is an agricultural country. At least 8 land reforms have been held in its recent history. A major part of the population (more than 80%) lived in villages in the period after 1878, sustaining their living with activities related to the agricultural land. This predefined the public relations, regulating agricultural land as initially important for every subject on the territory of the country. The land reforms from that period were the reason for the land-settlement of the indigent and landless people (from 1880, 1883, 1923), and redistribution of agricultural land in 1921. They also indirectly favoured the creation of cooperative relations, which helped the survival of not only this large group of people and their families, but also of the population of the whole country. In those years the first legal framework for property management was gradually developed. Despite the political concussions, the legal medium from that period is relatively stable. This guaranteed an amount of certainty and foreseeability in the relationship related to or derived from the agricultural land.

3 | Fay & James 2009.
4 | Hall 2007, Beyers 2005, Burawoy & Verdery 1999, Ntsebeza 2005, James 2007.
5 | Myers 1986, 148.
6 | Holt-Jensen & Raagmaa 2010; Szilágyi 2016; Szilágyi 2022; Hartvigsen 2013; Giovarelli & Bledsoe 2001
7 | Povinelli 2004.

The period of the 'communist era' (1944-1989) is known for the abolition of private property. Agricultural lands are part of large, centralised structures, so market deals with them are relatively missing in practice. There is agricultural entrepreneurship, but it is of controlled and state-supported characteristics. The institutes of property relate simultaneously to the urban and the rural communities, meaning that the legal consequences for the owners of agricultural lands and lands in those urban places are often identical. It is an object of dispute whether this should be defined as suitable or as a barrier to the development of agriculture. The migration from rural to urban areas in that period, following the ideology of 'dictature of the working class', could be considered as a prerequisite for the 'break up' of some of the farmers with the land.

Speaking of land reform and restitution (after 1989) we mean two parallel processes which intersect with each other in relation to the category of 'property'. Restitution is not related only to agricultural lands, but also to lands from the forestry fund, to the ownership of movable and immovable properties in the cities and other places. The meaning of the term 'land reform' could be presented as a mixture of processes and events related to the agricultural lands and activities, some of which are not always of legal essence.

Restitution is a legal process for reinstatement of private property and its re-acquirement by the former owners and their heirs. There are many consequences of restitution; the systems for acquisition of property or adequate reimbursement are mixed. In this respect restitution, despite being of limited scope, creates some complex effects which might be defined as legal problems. How, for example, can we define which estate is most suitable for reinstatement, or what should be the compensation in money or by other means, when said estate had been covered with permanent crops that were destroyed in the time before the restitution?[8] On the other hand, the land reform considers the establishment of many different relations needed by society —effective markets, entrepreneurship, and the ability to use agricultural land as social and, in recent years, as ecological capital.

The specially designed payment instruments for participation in the tenders in the former agricultural enterprises - as well as the system for compensation by compensatory bills - should be defined not only as juridical, but also as socially economic means — part of the land reform in Bulgaria. Initiatives as the cadastre, which relate not only to the agricultural land and have documental and electronic format, create a special new architecture where the agricultural subjects and the state consolidate the assets and make their management more effective. These processes of restitution and the last land reform are inextricably linked. The legal framework about agricultural land could be defined as the basis of this reform.

8 | Sivenov 1992, 187-192 for the need of 'multidisciplinarity' in the analysis of the agricultural lands; while Nikolov 1992, 207 supports the opinion that the analysis, which is also related to some possible consequences of the privatisation and liberalisation of the other sectors, should be 'complex'.

The same framework, although following the main targets of the restitution, also created challenges related to the management of the restitution process. These challenges could be considered as a prerequisite for the higher number of legal disputes with an object of agricultural lands in the period of the last land reform, from 1989-2023.

The aim of the current material is to describe and define the challenges related to the legal media of the agricultural land, the process of restitution that started 1991[9], and the essence of the new problems of the last part of the reform. The study should cover the following stages:

- A description of the legal framework related to agricultural land, dividing it on a conditional basis into three periods: 1878-1944; 1944-1989; and 1989-2023
- An analysis of the legal doctrine of 'restitution', as well as of some important decisions related to the judicial practice of the courts in the country
- A follow-up of the new 'legal trajectories', the new law defining land relations
- Proposals for changes in the country's legal framework (*de lege ferenda*)

Materials and methods

This study uses a legal-historical approach to explain the change in the normative base related to agricultural lands. On the other hand, there is the legal essence of agrarian right – prerequisites and consequences of certain legal norms being explained with the means of positive legal analysis. Suggestions for improvements to the legal framework are made mainly in a normative manner.

1. Agricultural lands after the reinstatement of the Bulgarian state

Period (1878-1944).[10]

The first normative acts[11] regarding the new Bulgarian state are adopted during the time of the Provisional Russian Administration in Bulgaria (administration by the Russian civil and military authority from June 1877 until July 1879). Practically

9 | The process of restitution of agricultural lands in Bulgaria began with the adoption of the Law on the Ownership and Use of Agricultural Lands by the Grand National Assembly on February 22, 1991. The law was promulgated in the State Gazette, iss. 17/ 01.03.1991.
10 | See full list of normative acts in (MAFF 2017, 15-38).
11 | The first normative act regarding the agricultural land is 'The Journal Decree' from 2 August 1878 issued by the Chancellery of Russian Emperor's Commissioner A. M. Dondukov-Korsakov. It regulates the refugee status and the agrarian issues. See Decree No. 1 of 02.08.1878 of the Provisional Government.

they eliminate the possession by the Ottoman Empire of approximately 450000 Ha[12] of land that transits in possession of the Bulgarian population. Just a few days after the enforcement of that regulation the Provisional Russian Administration in Bulgaria issues a new act,[13] which regulates not only the principles of court independent from the administration, publicity and instancy in the court proceedings, and choice of judges, but also accepts notary deeds as a valid form of transaction for transfer and vesting of rights *in rem* over corporeal estates. This order is also fully valid for agricultural lands.

Bulgarians from Besarabia, Banat receive lands by The Law on Settlement of Uninhabited Lands in the Principality of Bulgaria (LSUL, 1880). This group receives state lands under the condition that they are developed for agriculture and livestock breeding. The users are freed from taxes and tithes for a period of 3 years. The lands can also be used for pastures and for timber extraction, being also imprescriptible for a period of 10 years. Afterwards their users become omnipotent owners. Such legislation in Bulgaria is also created for the receipt of lands for people coming from Circassian and Tatarian lands, as well as for the so called "lordly and homestead lands".[14]

From 1881 begins the settlement of the undersized estates.[15] For political reasons some large-scale estates were expropriated too. Another group of laws regulates 'ownership' and "possession of uncovered estates".[16] They aim to keep and develop the municipal lands, forestry and pastures, and to create a fund of tillable municipal farmland. So the state creates the conditions to define the area and borders of the municipal landed estates and pastures, as well as to find a final decision in the disputes between municipalities, and between the municipalities and the state.[17]

In 1883 the Public-Administrative Regulations for Possessions (PARP 1883),[18] and later in 1885 the Law on Notaries and District Judges (LNDJ 1885),[19] modify who can perform notarial acts.

As well as introducing special notary functions, Art. 34 of the LNDJ 1889 introduces a preserving procedure to issue "constative notary deeds for ownership".

12 | Petrov Ts 1975.

13 | Provisional Rules for the Organisation of the Judicial Part in Bulgaria (PROJP 1878). This normative act was elaborated by a commission headed by S. Lukianov. As a result of this act there is a start of the process of building of a legal framework for proceedings and structure of the judicial system. See Chapter 3, Art. 528 which is related to the agricultural lands. See Decree No. 2 of the 24.08.1878 of the Provisional Government.

14 | Law on Circassian and Tatar Lands (LCTL 1880) (rev. 1883) as well as Law on Improving the Condition of the Agricultural Population on Lordly and Homestead Lands (LICAPLHL 1880); (LICAPLHL 1885, new). See State Gazette iss. 95/23.12.1880.

15 | The Law on the Sale, Exchange and Exploitation of State Real Estate (LSEESRE 1881).

16 | Domestic Rules Acts (DRA 1883).

17 | Law for Determining the State Measures and Pastures (1885) enforceable until 1903. See State Gazette, issue 24 of 1885.

18 | State Gazette, iss. 6/15.02.1885.

19 | State Gazette, iss. 41/15.11.1885.

These deeds are issued on the grounds of written and oral evidence in cases where the written evidence is not enough to establish the property right. After the unification of The Principality of Bulgaria with Eastern Rumelia in 1886, when the law on notaries and district judges also becomes enforceable for Eastern Rumelia, justice of the peace magistrates can also perform notary deeds.

In 1887 the Law on Transactions Involving the Purchase and Sale of Real Estate by Emigrants from Bulgaria (LTIPSREEB 1887)[20] was enacted. At that time there were cases where residents in the country, subjects of the former Ottoman Empire, decided to leave forever. To protect the interests of the state and Bulgarian buyers, the legislature created requirements for the validity of these transactions. The seller had to prove that they were the legal owner of the land or building, or that they had the right to acquire the respective property. When the seller did not possess a 'fortress act' for their land or building, they were obliged to prove the period of possession of the property, which could not be less than five years.

The Law on Obligations and Contracts (LOC 1892)[21] adopted in 1892 marks the beginning of Bulgarian contractual law. It literally transposes whole branches from the Italian Civil Law of 1865,[22] codifying the object, means of acting, interpretation of contracts, different types of considerations, methods of repayment and others. Through LOC 1892 the state organises the mutual paid use of objects and workforce, as well as the different types of lease contracts with a predominantly agrarian nature — in addition to the specifically normative types of contracts such as commission, treaty, insurance, game, pledge, deposit, sequester, antichresis and guaranty. It is important to note that the law also arranges contractual agricultural rents.

In 1892 the Law on the Sale of Immovable Property Carried Out in Domestic Conditions or Private Acts (LSIPCODCPA 1892)[23] is adopted. It validates the written contracts for sale of real estate property, signed before its coming into force. It also introduces the written form of the contracts for sale of property as enough for the real assignment effect,[24] but without opposing this simplified form of the acquired rights *in rem* over any such real estate, acquired by third persons with a serf deed.

In 1895 the Agricultural Funds Act (FAA 1895)[25] is enacted, which settles the activity of the agricultural funds in Bulgaria and their principal – the Ministry of Trade and Agriculture (MTA) at the time. MTA again, after the enforcement of the Agricultural Education Act of 1897 (AEA 1897),[26] manages the first Bulgarian

20 | State Gazette, iss. 5/ 15.02.1887.
21 | See State Gazette, iss. 268/01.01.1892.
22 | The same transposes the ideas of the French Civil Codex from 1804 (famous also as the 'Napoleonian Codex').
23 | See State Gazette, iss. 23/15.10.1892.
24 | Acting simultaneously ex tunc and ex nunc.
25 | State Gazette, iss. 14/ 27.02.1895.
26 | State Gazette, iss.12/ 15.02.1897.

modern structures for agricultural education, distributed between lower, middle and higher agricultural schools.

In 1898 the Property, Title and Easements Act (PTEA 1898) is adopted, giving regulation to the institutes of legal prescription and usucapion.

The Land Tax Act of 1901 (LTA 1901)[27] initiates the payment of tax for all 'uncovered' (uncultivated) lands, being in their essence fields, meadows, gardens, rose gardens, paddy fields, fallow lands, pastures, empty fields, and others.

In 1904 the Property, Title and Easements Act (PTEA 1904)[28] enters into legal force and settles a unified legal regime of immovable property, including agricultural lands in Bulgaria. The act defines the means of transfer of property, and should be considered as a fundamental law — the first to regulate the right *in rem* as a legal branch in Bulgaria.

Two decades after the establishment of the Third Bulgarian state, from 1903-1905, Bulgaria adopts 'The Emlak Registers'.[29] These can be considered an event that protects private property with a combination of written and notary evidence, special means of manifestation, and an order for the management of processes by a specially appointed public authority.

The Privileges and Mortgages Act of 1908 (PMA 1908)[30] enters into legal force in 1910. For the first time in the country it initiates the registration of deeds regarding real estate property. All deeds for gratuitous or onerous contracts, or any such where transfer or validation of rights *in rem* over real estates are stipulated, apart from privileges and mortgages, are registered in an excerpt within a special notary book, kept by the notary (in the first edition "the keeper of the mortgage books"), acting within the regional or justice of the peace magistrate at the region where the real estate is situated.[31]

In 1908 The Cadastre Act (CA 1908)[32] is adopted. It distinguishes the properties as being either state, municipal or private property, defines their exact borders, and aims at the juridical and physical definition of properties as agricultural lands. One of the targets of the law is to achieve correct calculation of the land tax, as well as the initiation of precise real estate registers. It also defines some works related to planimetry and altimetry (charting of the terrain) of the country. Even though this reform was never finished, these few acts made the first attempts to initiate a centralised system of land registers and the creation of a property register.

27 | State Gazette, iss.12/ 15.03.1901.
28 | State Gazette, iss. 5/01.01.1904.
29 | 'The Emlak Register' (from Turkish 'emlak', which means 'real estate' and also 'real estate tax') is a book-keeping register where real estates are registered, such as lands, buildings and accessory facilities.
30 | Decree No. 20 /19.01.1908.
31 | Art. 1 of the PMA, 1908.
32 | State Gazette, iss. 8/22.09.1908.

Soon after the end of the First World War, the country starts a process of redistribution of land property. Two laws – The State Lands Increase Act (SLIA 1920)[33] and The Labour Land Property Act (LLPA 1921)[34] limit the right to possess agricultural lands exceeding a certain size. The *homestead lands* can not exceed 30 ha in total in cases where the land is not being cultivated by the owners, e.g. including rented lands. No forestry and pasture lands belonging to private owners can exceed 50 ha. LLPA 1921 allows possession of agricultural land in accordance with the abilities and needs of the owner and his family.[35] Up to 30 ha of farmable area could be possessed by each family, on the condition that the land is being cultivated. The area is limited to 4 ha if the owner is alone, and up to 10 ha when there is a family but the land is not directly used. The law also considers the mutual living and farming of the land by related families who have separate ownership of the land.

The Law for the Settlement of Immovable Property in the New Lands (LSIPNL 1921)[36] aims to define the public relations regarding disputable property of refugees, as well as former property of Turkish citizens or the Turkish state.[37] In the case of agricultural lands affiliated to the kingdom in 1913 and 1915, this act abandons the approach of initial verification of rights by the claimants of property before a district judge. LSIPNL 1921 is repealed in 1941.

In accordance with the Law for the Improvement of Agricultural Production and Protection of Field Real Estates (LIAPPFRE 1923),[38] the state establishes norms for compensation of the losses "caused by known and unknown ill-doers", as well as losses due to lost or damaged livestock and destruction or theft of apiaries, beehives, buildings, fences, facilities, and others. In its essence this law provides the first of its kind financial compensation from the state - and despite the fact that it does not refer to agricultural lands (as legislation about land-settlement of indigent or landless persons), it does provide direct help for farmers.

33 | State Gazette, iss 109/30.05.1920.
34 | State Gazette, iss. 31/30.03. 1921.
35 | Part 1, Art. 1 of LLPA 1921 stipulates that each farmer may possess and use as much land as he needs in order to invest all his labour into it, combined with the helping labour of the members of his family, and this area of the lands does not include the lands used with hired labour.
36 | Decree No. 54 / 19.07.1921
37 | As for the contracts for the lands, given to the Kingdom of Bulgaria by the Ottoman Empire by force of the treaties from 1913 and 1915 and by the norms of the international treaties with third countries, the matter for the property of the foreigners should be cleared. For example, in Art. 29 of the law the rights of other foreigners from other nationalities is mentioned, as those envisaged in the Greek-Bulgarian convention from 27 November 1919. These texts are only enforced under the conditions of mutuality, i.e. only if the country of origin of the foreigners ensure the same rights and privileges for Bulgarian refugees.
38 | State Gazette, Iss 52/15.12.1923.

The Law on Cadastre and Land Comasation[39] (LCLC 1941)[40] initiates a legal regime of cadastre imaging of properties, as well as their registration in a list with a detailed description of: their type, location, borders, size and owner, and the creation of a cadastre plan with horizontals and keeping of the relevant registry data. For the first time the terms for 'plot of land',[41] 'participants in the cadastre' and 'cadastre object' are defined.

The Law on Settlement of Real Estate Ownership in Southern Dobrudja (LSREOSD 1942)[42] defines the public relations towards properties, including agricultural land owned by migrants from Northern Dobrudja, as well as the restitution of the estates expropriated by the Romanian state. As a result of this law, the following questions are resolved: (a) compensation for the owners for the time of the acts performed by the Romanian authority in Southern Dobrudja for the living, as well as in case of death; (b) some corrections related to the land consolidation; (c) land-settlement with state- and municipality-owned backyard parcels designated for building, which were given by the Romanian authorities to Bulgarians or have been picked up by 14 September 1940 by Bulgarians; (d) exchange of properties left in Northern Dobrudja outside of the cities by owners who are not migrants, as well as formation of ownership of the estates under Art. 5 of the Craiova Treaty, transferred with private written contracts.

This period should be characterised as a time of codification of the issues related to agricultural property, establishment of working institutions for management and keeping of the property, and finding decisions of the problems related to land - specifically the means of living for the indigent and landless villagers - as well as first attempts for consolidation of the agricultural land.

2. Period of centralised governance of agriculture and 'collectivisation'

The 'communist era' (1944-1989) in Bulgaria saw the abolition of private property. This was codified in the 1947 Constitution,[43] known as the 'Dimitrov Constitution,' after the then communist leader, and borrowed heavily from the 1936 USSR Constitution. The ideological doctrine categorised property into personal, cooperative, and state-owned, notably excluding private property. Despite the claim that "the

39 | The term "commasation" originates from the Latin "commassatio," which means "grouping." Commasation represents the process of redistributing agricultural land. Scattered properties in different locations are exchanged for equivalent ones belonging to other owners. In this way, through the exchange, owners (farmers) have larger, consolidated agricultural lands.
40 | State Gazette, Iss. 127/13.06.1941.
41 | Art. 8 of LCLA says that 'plot of land' is a part of the earth's surface, defined by durable, visible borders or by characteristics distinguishing it for its means of use.
42 | State Gazette, Iss. 157/20.07.1942.
43 | State Gazette Iss.1/27.12.1947.

land belongs to those who cultivate it", the period was marked by extensive expropriation of property.[44]

In 1945, the Council of Ministers adopted the Ordinance-Law on Labour Cooperative Agricultural Holdings (OLLCAH 1945),[45] establishing the legal framework for Labour Cooperative Agricultural Holdings (LCAHs). This normative act initiated the 'voluntary cooperation' and land transfers, leading to the creation of centralised agricultural structures.[46] It stipulated that the majority of the property of cooperatives would be integrated into the LCAH.[47]

In 1946 the Labour Land Property Act (LLPA 1946)[48] was enacted. In addition to revoking several laws,[49] it implicitly nullified all other conflicting normative acts. The same year, this law was supplemented with a regulation[50] for its implementation, which was fully repealed in late 1997, eight years after the 'transition period'. This fundamental normative act addressed property rights over agricultural lands within these organisations. The subsequent laws effectively reduced the permissible size of agricultural land that individuals could own. Depending on the land type, ownership of private forests and forestry pastures was limited to 0.5 hectares and no more than 1 hectare respectively. Lands exceeding these sizes were expropriated by the state with compensation provided to the owner.[51]

In 1948 a new act was adopted by the Council of Ministers establishing novel types of cooperative entities under state management. The Law for Cooperation (LC 1948)[52] and the Law for Labour Cooperation (LLC 1951), along with accompanying regulation, endorsed a "new socialistic plan" for agricultural cooperation, indirectly impacting agricultural lands.

The cooperations gradually introduced their agricultural lands in LCAH. By some evidence their share is about 90% of all the agricultural lands.[53] Some authors[54] have suggestions about the disputable status of the agricultural lands. The essence is whether the land had been a property of the state, because LCAHs were structures developed on centralised state level, which operate with land

44 | See the Law on Declaring the Properties of the Families of the Former Kings Ferdinand and Boris and their Heirs to be State Property (LDPFFKFBTHSP 1947) which was proclaimed unconstitutional in 1998 with Decision No. 12 of the CC from 4 June 1998 under Constitutional case No. 13 /1998, as well as the Law on the Purchase of Large Agricultural Machinery.
45 | State Gazette Iss. 95/25.04.1945.
46 | Ibid. 'Voluntary cooperation' is defined in Art. 1 and suggests that for the establishment of an LCAH at least 15 physical persons are needed.
47 | Ibid. Art. 15.
48 | State Gazette Iss. 81/09.04.1946 https://tinyurl.com/c4f7vnxa
49 | The Labour Farming Act (LFA 1941) and The Internal Migration and Settlement Act (IMSA 1941) as well as the text of Art. 19 of the Law for the Recovery of the City of Vidin.
50 | State Gazette Iss. 189/20.08.1946. https://tinyurl.com/4s6uupd4
51 | The compensation is not paid in money, but through state obligations. They are paid with 3% interest in a 15-year term by annual emissions.
52 | State Gazette Iss. 282/01.12.1948. https://tinyurl.com/yb5xbkевц
53 | MAFF 2017, 44.
54 | Djerov 1994, 79.

after an act of a state authority — which could be perceived as an act of alienation. Sometimes the thesis is supported that the land is a property of the farmers, who voluntarily presented it into the LCAH or State Agricultural Holding (SAH), while at the same time they have been members of that organisation. The last means that the farmers have kept their ownership of the land.

In this period the real market of agricultural land is missing, as LCAHs and SAHs are the only entities for agricultural produce, and the state has no legal interest in selling agricultural land. Although it should be taken into consideration that in the villages where farmers and their families lived, the agricultural land and their personal backyards were actively used for agricultural production. While even at these reduced sizes the land allowed the farmers to produce not only for themselves but also for sale for the farmers markets,[55] it could be concluded that *de facto* the land had been enough for small private initiatives.[56]

The Property Act 1951 (PA 1951)[57] redefines the institutes of *property*, *possession,*[58] constitution of the *right of use*, legal *prescription,*[59] and *increments*.[60] This processed the protection of 'damaged' and 'impeached' possession,[61] and took actions for protection of property.[62] PA 1951 defines important *potestative rights* related to the right of purchasing of co-owned property[63] or the right to partition of property of a co-owned thing.[64] It could be considered that this legal act follows the classic concept of property, derived from Roman law. It has a major role in the formation of the former Bulgarian legal doctrine, but also for the contemporary one. PA 1951 should be defined as a system of common norms aimed at property and its formal protection.[65] The legislation of the period created some means of protection

55 | At the beginning of the 1980s a backyard of 0.25 ha had a separate building where 3000 chickens were kept. In the nearby backyard there were 25 sheep and 4 cows, and 10-15 tonnes of vegetables (cucumbers, tomatoes, cabbages, onions and others). Stalls for livestock (1-2 cows, 10-12 sheep, 3-5 pigs, 20 bee hives) are a common sight in villages after 1980 (Observations from the town of Straldja, Yambol region; village of Padarsko, Plovdiv region).

56 | Later in the 1980s part of the lands cultivated by the LCAH became the object of lease contracts between the LXAH and the farmers, which is described in detail later in this study.

57 | State Gazette Iss. 92/ 16.11.1951r. https://lex.bg/laws/ldoc/2122102787

58 | The possession is defined by Article 68 of PA 1951, and the bona fide possession is defined in Art. 70 of PA 1951 – acquiring of property on the grounds of 'bona fide possession'.

59 | Ibid. Art. 79 – 85.

60 | Ibid. Art. 92 – 93.

61 | Ibid. Art. 76 gives a regulation to the possession actions and actions of damaged and impeached possession (actio possesio).

62 | Ibid. Art. 108 claim for protection of property (vindicatio rei) is regulated, and in Art. 109 – the claim (actio negatoria); claim for the protection of the boundaries of the property - Art. 111 – (actio funium regundorum).

63 | Ibid. Art. 33, para. 2.

64 | Ibid. Art. 34.

65 | See Venedikov (1991) for the system of Bulgarian property law.

of the agricultural lands from unscrupulous conversion, and their transformation into urban territories of city type.[66]

In 1953, with Decree 88[67] of the Presidium of the National Assembly, properties of the Catholic Church were confiscated.

Hereditary relations were regulated by the Law for Inheritance (LI 1949),[68] which adopted the classical Roman private law concept of inheritance by succession. In this system, the closest heirs exclude the more distant ones, and the spouse of the deceased inherits property alongside all other classes of heirs.

Later in the transition period the CC explicitly affirmed the unconstitutionality of the testamentary disposition with agricultural lands, which were part of the property of the LCAH.[69]

The Family Code (FC 1968) defines the Marital Contract (Marital Unity System, MUS)[70] concerning property. It stipulates that all assets acquired by the spouses during marriage, except for gifts or inheritances received by one of them, are co-owned equally and indivisibly. Despite amendments allowing the MUS to be transformed into a 'separate system' or governed by a 'marital contract',[71] this legal framework remains the most prevalent and frequently applied. Following the completion of the restitution process, the importance of the 'separate system' and 'marital contract' institutes has diminished since 2008 when the code came into effect.

In the 70s, a new expropriation of private property occurred. New limitations were imposed on the property individuals could own and its potential for involuntary alienation. The Law on Citizens' Property (LPC 1973)[72] included agricultural lands. A single-family not part of an LCAH or similar organisation, whose main income was from agricultural work, could own up to 0.5 ha of irrigated land and 1 ha of non-irrigated land. Families not primarily dependent on agriculture could own up to 0.2 ha.[73]

For most of this period, there was no specialised legislation regarding agricultural land[74] tenancy. However, towards the end tenancy was regulated through

66 | Ordinance of the Council of Ministers No 216 for improvement of the town planning plans of the urban areas and increase of the fund of infield lands.
67 | State Gazette Iss. 4/04.01.1953.
68 | State Gazette Iss. 22 /1949 in force from 30.04.1949.
69 | See Decision No 4 from 27.11.1996, for case № 32/95, CC proclaimed that Art. 90a of the LI 1949 is unconstitutional. See also judicial practice under Art. 90a of the LI 1949 in Decision No 216/1996 for civil case 63/96 of the Supreme Court of Cassation, as well as Decision No 422/1998 for civil case 252/98 of the Supreme Court of Cassation.
70 | MUS is short for the Marital Unity System. The ideas of the Family Code from 1968 (annulled) are transposed in the Family Code from 1986 (annulled) and the Family Code from 2008 (FC, 2008).
71 | Art.18, para. 1, p. 2 and Art. 18, para. 1, p. 3 from FC 2008.
72 | State Gazette Iss. 45 /1973, Iss. 19/ 2005 (repealed).
73 | See Art.12 and Art. 13 of the LPC 1973, as well as Ordinance of the Council of Ministers No 25, 1973.
74 | See Stefanov 1992 for the tenancy relationship.

several ordinances. Agricultural land tenancies were integrated into the overall framework for regulating economic activity.[75]

In this period, questionable yet legally binding ideological concepts prevailed. Despite claims that agricultural land belongs to those who cultivate it, possession was highly restricted. The consolidation of agricultural land, however, is an indisputable fact. The normative acts defining property, with minimal changes, remain part of the country's property rights framework. These acts continue to significantly impact relationships concerning agricultural lands.

3. Transition and the Land Reform of 1989. Restitution and Private Property.

The legal sources regulating public relations in property and agricultural lands derive directly from the action of constitutional provisions.[76] There is general and special legislation, as well as law resulting from international agreements.[77]

3.1. First part of the reform: constitutional protection of private property, restitution legislation, discharge (liquidation)

The 1991 Constitution established a new way of distinguishing between ownership: public and private.[78] This restitution should be considered the 8th land reform since the establishment of the Third Bulgarian State.[79] The first changes to the basic law from 2005 were related to guarantees that agricultural land could be acquired by foreign citizens.

75 | Ordinance for Collective and Personal Work Employment of the Citizens for the Production of Additional Quantities of Goods and Services (established with an Ordinance of the Council of Ministers No 35, which regulates the management of small and medium-sized objects (1987). Later the tenancy was organized also by Ordinance No 17 of the Council of Ministers for the remodelling of the internal trade and the services – 1988 and Decree No 56 for the performance of economic activity and the ordinance for its implementation – 1988, as well as in Decree No 922 for the use of land and performance of agricultural activities. Despite that, we should formally mention the Ordinance for Sale, Rent and Tenancy of Object in the Trade, Tourism and Services – 1990 as part of the other period, covered in this study, tenancy relationships were also regulated by this act.

76 | See Art. 21 and Art.22 par. 1, 2 and 3 of CRB, 1991. See State Gazette Iss. 56/ 13.07.1991 r., in force 13.07.1991.

77 | Pursuant to Art. 4 par. 5 of CRB, the international treaties ratified by the Bulgarian Parliament are part of the law of the country.

78 | See the distinction made by the CC with Decision No. 19 in constitutional case No. 11/93. According to Sarafov 2000, 5-12), in the transition period, the important issue of the conditioning community between the state and private individuals, including agricultural lands, was resolved.

79 | Doichinova 1996, 9-14) on land reforms in: 1880, 1885, 1921, 1924, 1933, 1934, 1941 and the one after 1989.

In 1991, the restoration of private property began with the Law on Restoration of Ownership of Expropriated Real Estate (LROERE 1992).[80] A related goal of this reform was the restoration of market relations and, accordingly, the protection of agricultural production. The inclusion of these lands in LCAH and SAF[81]properties led to unclear agricultural land boundaries. This was exacerbated by urban expansion until 1989. Nonetheless many roads, dams, canals, and facilities were constructed during this period, benefiting agriculture. These consequences are dualistic: while infrastructure blurs property boundaries and complicates land ownership determination, it also supports emerging new types of agriculture during the transition.

The Law on the Ownership and Use of Agricultural Lands (LOUAL 1991) was enacted as a special law for the restitution of agricultural land.[82] It balanced public and private interests, establishing a legitimate definition of agricultural land. Specialised administration, detailed administrative procedures, and compensation methods were defined. Municipal Land Commissions (MLCs)[83] restored agricultural lands to owners and their heirs from before collectivisation.[84] LOUAL 1991 clarified the concept of the 'farmer', linking it to residence and the ability to cultivate and care for the land. This was essential for the continuation of the reform, especially as farmers became a key part of the Common Agricultural Policy (CAP).

With the creation of liquidation councils[85] and other organisations,[86] rapid and comprehensive restitution of agricultural land ownership began. Special legislation was created to manage agricultural land, not only by owners and their heirs but also by new producers and private entrepreneurs. The initial responsibility of care fell under LOUAL 1991.

In 1996 the Law on State Property (LSP 1996)[87] and the Law on Municipal Property (LMP 1996)[88] were enacted. Both legal acts introduced a prohibition on the acquisition of state and municipal lands through possession.[89]

This law underpinned public relations in Bulgaria from 1989 to 2023, concerning the acquisition, use and management of agricultural lands, and enabling farmers

80 | State Gazette Iss. 25/30.03.1992.
81 | State Agricultural Farms (SAF).
82 | Art. 2 of LOUAL 1991 gives a legal definition of the agricultural land.
83 | The Land Commissions became the Agriculture and Forestry Services (MLC).
84 | In Decision No. 759 of 01.11.2010 under Decree No. 1859/2009, of the CC, after analysis of Art. 60, par. 4 (repealed) and par. 5 (repealed) of RILOUAL 1991 regarding conclusions about the structure and composition, the number of members of the Land Commissions and in what composition it must meet to make valid decisions.
85 | Through the action of special administrative bodies, in places, LCA and SA were liquidated. See § 13 of the TFP of LOUAL 1991, and § 6a of the additional provisions of the RILOUAL. See State Gazette Iss. 47/30.11.1991r.
86 | Organisations under § 7 of LOUAL's TFP.
87 | State Gazette Iss. 44/ 21.05.1996 https://lex.bg/laws/ldoc/2133874689
88 | Ibid. Iss. 44/ 21.05.1996 https://lex.bg/laws/ldoc/2133874691
89 | Art 7 para. 1 LSP 1996 and Art. 7 para. 1 LMP 1996.

to undertake EU-funded activities. It underwent numerous amendments during this period. Additionally, the Law of Lease in Agriculture (LLA 1996) addressed the economic activities of non-owners.[90]

In 1996, a platform emerged for fostering long-term relations between producers and landowners. The restrictive effect of the Law of Obligations and Contracts (LOC 1950)[91] on contract duration was replaced by a legal framework specifically tailored to agriculture, addressing producers' concerns. Articles 228-239 of LOC 1950, limited leases to 10 years, creating obstacles for long-term cultivation of perennial crops. Despite this, lower costs made such contracts the most prevalent in Bulgarian agriculture.

In practice, rental agreements last at least one year due to the inability to terminate them before the end of the agricultural year,[92] allowing the lessee to harvest. Furthermore, the special form of the rental agreement means that its entry under Art. 112b of the PA 1951, and Art. 113 of the Regulations on Entries (RE)[93] can be contested by any third party who inherits ownership after the contract begins.

Through the LLA 1996, better protection for farmers was achieved due to the extended buyback period for agricultural investments mandated by law. The concept of the 'agricultural year' was introduced, providing legal protection for agricultural producers. Longer terms before the termination of lease contracts and a stricter process for cancelling contracts, always subject to court control, were also established. The claims for cancellation of a contract are conducted by the 'proper party' to the contract - an owner or tenant who has fulfilled all the conditions of the contract - and whoever has the right to cancel it, if the other party is 'faulty'. Long-term lease contracts are not annulled by court decisions.[94]

After the repeal of some of the land acts, the new reform regulated the continuation of these relations based on a by-law.[95]

The ordinance temporarily regulates the assignment of property rights to agricultural land and the conditions for leasing it to citizens, with or without an auction. It outlines the methodology for determining rental contributions and the scenarios of 'land expropriation'[96] for public needs. There are such cases under the

90 | The role of the Commercial Act (CA 1991) /State Gazette Iss.48/18.06.1991/as well as the Co-operatives Act (Co-A, 1991)/State Gazette Iss.63.19.07.1991/ should not be denied either - in the compassion of conditions for farmers - entrepreneurs, some of whom are owners and others as users - to farm and cultivate agricultural lands.

91 | State Gazette Iss 275/ 22.11.1950

92 | Art.16 para. 3 of LLA 1996 in relation with § 2, item 3 of the LLA 1996.

93 | Ibid. Iss .101/18.12.1951.

94 | Art. 28 para. 2 of the LLA 1996 in relation whit Art. 87 of the LOC 1950.

95 | The Council of Ministers issued an Ordinance on the Land Acquisition of Poor and Landless Citizens (See Art. 20 para. 1 of the LOUAL 1991).

96 | 'Land expropriation' can be defined as the opposite of land acquisition - Article 30 paragraph 1 of the Ordinance. The persons who have acquired land have their property confiscated. It is applied when it is established that the persons who have acquired land do not comply with the obligations under § 4 of the Law on the Ownership and Use of Agricultural Lands of 1991 or under Art. 26 of the Law

Law on Restitution of Real Property Ownership of Bulgarian Citizens of Turkish Origin (LRRPOBCTO).[97] The reform is a complex, multifaceted process aimed at resolving the issues of alienated properties[98] by providing legal solutions to the livelihood problems of agricultural landowners, farmers, and their families.[99]

3.2. Restitution: decisions on the restitution of agricultural land within real limits (Article 10a of the LOUAL 1991 and Article 18a and 18b of the RILOUAL)

The legal essence of the restitution of agricultural land gives importance to the restoration of a previously existing legal situation, in the considered case of the right to ownership of agricultural land under special laws.

Restitution involves returning agricultural lands to their original owners and heirs. For accurate restoration, municipal mayors were to provide the MLC with data on changes in specific agricultural lands within six months of LOUAL 1991 coming into force. Legal proceedings start with an application,[100] which includes a sketch and evidence of property rights or heirship.[101] The MLC then issues a decision for each case.[102]

MLC[103] decisions adhered to criteria outlined in Art. 14 para. 1, item 1 and item 2 of LOUAL 1991. These pertained to pre-collectivisation property ownership, and whether land existed and could be restored within real limits.[104] For restitution, the administrative body had to evaluate positive prerequisites for property rights and negative ones, which acted as obstacles. For example, under Art. 9a of the Law of Inheritance (LI 1949), the 'surviving spouse' posed a challenge when restoring ownership of state properties or those included in labour cooperatives. If the subsequent spouse died before restitution and had no children with the testator, they did not inherit.

The main part of the restitution of agricultural land should be carried out within the 'real boundaries' of the property, according to the special legitimate

on the Ownership and Use of Agricultural Lands of 1991 or when the agricultural land is expropriated for public needs.

97 | State Gazette Iss.66/ 14.08.1992

98 | See Decision of the CC No. 18 of 1992.

99 | Punev 2013.

100 | See Art. 11 of LOUAL, 1991 and Article 13 of the RILOUAL 1991

101 | Ibid Art.10 and Art. 13, par. 4, 5 and 6 and Art. 13a of the RILOUAL 1991.

102 | Ibid Art. 14 par. 1 and Art. 11 of the RILOUAL 1991.

103 | The decisions of the Municipal Services for Agriculture for property restoration were individual administrative acts with independent significance and a high degree of stability (they cannot be revoked by the authority that issued them) under Art. 2 of the Law on Administrative Proceedings. After 2006, with the repeal of the Law on Administrative Proceedings (LAP repealed) decisions were issued on the basis of Art. 21 of the Administrative Procedure Code, 2006.

104 | The administrative procedure was similar when it came to forests, according to Art. 13 paragraph 5, of the Law on Restitution of Ownership of Land and Lands from the Forest Fund (LROLLF 1999).

definition in Art. 18a and 18b of the RILOUAL 1991.[105] In many cases, it comes to the need[106] to open a new property.

Another aspect of agricultural land restitution was regulated by §4 of the Transitional and Final Provisions (TFP) of LOUAL 1991. This provision allowed citizens to use agricultural lands according to other normative acts. It included the restoration of properties in urbanised areas, which were initially located in specific places before the formation of Labour Cooperative Farms and State Farms (LSA & SA), and later became part of these organisations' properties.

Restitution also applied to agricultural lands within LCAH yards and other holdings, acknowledging the right of former cooperatives to restitution. Consequently, legal entities were also entitled to restitution. These proceedings were typically initiated administratively, often before 'liquidation councils', which included actions for restoring agricultural lands.[107]

An interesting aspect is the restitution of property in settlements and urbanized areas.[108] The law restores agricultural land properties located in populated areas. Where there is no approved cadastral map, data on property borders is missing, necessitating the creation of an auxiliary plan. Once the MLC's decision for the recovery of a specific property takes effect, the agricultural land in that urban area is added to the cadastral plan.[109]

In 2014, the state policy regarding these agricultural lands was changed. All agricultural lands for which there was no decision to restore the rights of the owners or their heirs became state property.[110]

3.3. Special Proceedings: evidence needed to recover ownership of agricultural land

Ownership was verified through various means, including oral and written evidence. Often old notarial acts were unavailable, so extracts from LCAH & SAH account books, LCAH membership declarations, annuity payment records,

105 | The recovery takes place within real limits, however, where they exist, Art. 10 par. 1 of LOUAL 1991.

106 | 'Distribution' - a term from the Bulgarian legal doctrine related to determining the status of the property and its purpose. In addition to the act of state power - an administrative act, a court decision - the settlement is also associated with the constitutive effect due to which the property has become part of someone's new patrimonium. The term is also used for other properties, not just agricultural land.

107 | See § 12 of the TFP of LOUAL 1991. Restitution in cooperatives was originally regulated in RCM No. 192/1991.

108 | See Article 10 par. 7 of LOUAL 1991.

109 | When restoring properties under Art. 11 and Art. 12 of the RILOUAL 1991. In these cases, the properties supplemented the map of the recovered property according to the order of Art. 134, par. 2 item 2, in connection with § 6, para. 6 of the TPL and became part of the plan, and in the cases where there was an approved cadastral map according to the order of art. 53 and Art. 54 of the LCPR became part of the Cadastral Plan.

110 | See § 12a of RI of LOUAL 1991

partition records, and deeds from the 'Emlak Registers' were used (Art. 12 of LOUAL, 1991). Occasionally, special proceedings were initiated before the MLC.

Owners or their heirs submitted a notarised declaration specifying the location and area of the site[111] with the restitution request. Despite the threat of criminal liability for false data,[112] this recovery method, which persisted until 2001, contributed to the rise in 'land grabbing'[113] cases across the country.

3.4. A three-tier compensation system where restitution within realistic limits cannot be made

With the texts in Art. 10 of LOUAL 1991, in practice a three-tier system for compensation to the owners of agricultural lands, was introduced in Bulgaria. We can conditionally distinguish the benefits as follows:

a) Compensation through other land - according to the location of the restored properties, from the State Land Fund[114]
b) Compensation through other land in case of shortage or lack of land from the State Land Fund (SLF) - with other outside land[115]
c) Compensation through other land or with registered compensation vouchers (RCV)[116]

The compensation system is mixed. Owners and their heirs were compensated with land for agricultural use, as before collectivisation. The state introduced RCVs for cases where restitution in kind was not possible. These could be used by former owners and their heirs to acquire property from agricultural liquidation or participate in state land fund tenders. They also facilitated participation in privatisation processes, including trading on the Bulgarian Stock Exchange. RCVs could not be used as the sole means of payment in auctions for agricultural land, but their flexibility aimed at satisfying claimants and boosting entrepreneurial activity in agriculture.

111 | This possibility exists until 31.12.1999. The declarations under Art. 12 par. 3 is submitted only to the administrative legal authority and were not admissible in the proceedings under Art. 14 par. 3 of LOUAL 1991, that is, before the court.
112 | Without having specifically examined the issue, according to the text of Art. 313 of the Criminal Code (CC 1968) and its application in the cases of restitution of agricultural lands, familiar with the conviction of at least 39 persons in the Plovdiv region alone, for the period 1993-1999.
113 | Norer 2023.
114 | See par. 2, item 1 and par. 4 of LOUAL 1991
115 | Ibid Art. 10c par. 5
116 | Ibid Art. 10c par. 5 which is regulated in detail in Art. 19a as well as Art. 29, para.1 art. 35 – 37a. In Art. 35 par. 4 of LOUAL 1991 and Ordinance on the Conditions, Terms and Procedure for Issuing and Receiving Nominal Compensation Vouchers, as well as Ordinance No. 6 of 19.07.2000. for organizing the sale and trade of agricultural lands from the state land fund and forests from the state forest fund.

With the onset of the restitution processes, the first 'white spots'[117] appeared, leaving parts of the land uncultivable. The restitution methods used led to unclaimed lands of an unknown quantity. Once the land division plans and approved maps of existing lands[118] with restored real boundaries came into effect, these lands were designated as municipal property.

4. Material and procedural issues related to the restitution and protection of agricultural land ownership rights

4.1. Material Law issues in the restitution of agricultural lands.

The restitution of agricultural lands to Bulgarian citizens of Turkish origin. Citizens of Turkish origin and citizens of other countries who had taken steps to leave Bulgaria during the period May - September 1989 had the right to return agricultural lands.[119]

Restitution of lands near state borders. This issue, known as 'dual state lands', involved the restitution of agricultural lands near Bulgaria's western borders. A special procedure for their recovery was established under LOUAL 1991[120] and Law on the Restoration of Ownership of Forests and Lands from the Forest Fund (LROFLFF 1997), but it was suspended along the borders with Serbia and Macedonia until resolved at the interstate level.[121] According to the amended provisions of § 37 of the Transitional and Final Provisions to the Amendment Act of LOUAL, 1991, and the Law on Restoration of Ownership of Forests and Lands from the Forest Fund (LROFLFF, 1997), the Minister of Agriculture, Forestry, and Agrarian Reform was required to announce in the State Gazette the lands where restoration proceedings of 'dual state lands' were suspended until the interstate issue was resolved.

Restitution of lands taken from the Bulgarian Orthodox Church (BOC). The right[122] of restitution of the Bulgarian Orthodox Church (BOC) was restored

117 | 'White spot' - has no legitimate definition but is often used. It refers to the lands that participate in the allocation procedure under Art. 37c, par. 3, item 2 of LOUAL 1991, and for them payments are received in the form of rent on the basis and Art. 37c par. 7 LOUAL 1991.
118 | See 'Unclaimed lands' in Art. 19, par. 1 of LOUAL, 1991.
119 | Decision of GCC No. 962 in city case 704/2005 of 2006.
120 | § 7 of the TFP, LOUAL 1991 State Gazette, No. 98 /f 1997
121 | According to the amended provisions of § 37 of the Transitional and final provisions to Amendment Act of LOUAL (State Gazette, No. 98 of 1997) and § 7 of the TFP of the Law on Restoration of Ownership of Forests and Lands from the Forest Fund (LROFLFF, 1997) the Minister of Agriculture, Forestry and Agrarian Reform was charged with the obligation to announce in the State Gazette the lands in which the proceedings for the restoration of ownership of the so-called 'dual state lands' are suspended under the border with the Federal Republic of Yugoslavia and with the Republic of Macedonia until the issue is resolved at the interstate level.
122 | See decision of GC No. 1631/1995 in civil case No. 2157/93 and Decision of GC No. 1745/1995 in administrative case No. 1540/93.

through a special law – the Law of Religions (LR 2002). Issues arose in the restitution of agricultural lands for Bulgarian citizens, foreign citizens, those with dual citizenship, and organisations. Some subjects lived in border areas, while others were permanently outside the country, necessitating a special order of administrative protection. This allowed most to recover their rights to agricultural lands.[123]

Restitution that cannot be made within real limits (Art. 10 of LOUAL 1991). Due to the impossibility of restoring built-up agricultural land, the restoration had to involve equally sized land given to LCAH during collectivisation, sometimes even in neighbouring areas. This process often led to resentment as the new land differed in value and location from the original. Disputes arose when the new property was smaller than what was taken during collectivisation or when lands were restored in different settlements.[124] Restituents had to establish new factual and legal relationships with new property neighbours and the administrative bodies managing other lands in different settlements. Agricultural lands were subject to compensation per Art. 10b of LOUAL 1991, and Art. 16 of the Water Act (WA 2000), making actual restitution inapplicable for lands with dams.[125]

Exclusion of certain persons from the circle of persons participating in the restitution of agricultural lands (Art. 9a of LI 1949). The legislator imposed negative provisions on the right to property arising from restitution for those described in Art. 9a of LI 1949 — specifically the 'next spouse'. Persons who married a decedent with agricultural land inheritance, after the inclusion of the property in the LCAH or SAH, and whose marriage ended before the land recovery process began, without having children, are excluded from restitution.[126] Due to inheritance methods, the number of undersized and co-owned properties with agricultural land rights became obstacles for dispositional actions, often rendering long-term agricultural activities impractical.

Legal institutes of prescriptive possession and acquired prescription (Art. 10 of LOUAL 1991 and Art. 16, par. 2 of LI 1949). Applying the general principle of *tempus regit actum*, assessing facts according to the law in force at their implementation, led to legal disputes in agricultural land restoration. Objections arose over interrupted or expired prescription and claims that legal entities could not invoke acquired statute of limitations due to substantive legal norms of repealed laws.[127]

123 | See Interpretative Decision of No. 1 of GMCC of 1997.

124 | These problems of Bulgarian restitution are described by Kopeva, Noev & Evtimov 2002, 63–65; Boliari 2013, 273–302 although following the fragmentation of property, in a logistical, economic aspect. The same turned out to be a prerequisite for legal disputes, both with the 'new' neighbours and in some cases with the 'new' administrative authorities.

125 | State Gazette, iss. 67/27.07.1999

126 | See ID of the General Meeting of the Civil College (GMCC) No. 1/1998 under the Civil Code 1/98 for the figure of the 'next spouse'.

127 | See Decision of GC No. 467/1994 under City Decree 1059/93 in connection with Art. 34 of LJ, 1898, according to which properties are acquired by a prescriptive tenure of 20 years as opposed to PL (5 or 10 years). See also Decision GCC No. 1860/2000 under city d. 849/00 on how the statute of limitations runs under PL, 1973.

4.2. Important substantive legal issues regarding already restituted lands

Competition in establishing a right of use on state agricultural lands (Art. 26 of LOUAL 1991). The issue arises when establishing a right to land from the State Land Fund, particularly with multiple applicants and no clear procedure from the Council of Ministers. By analogy and the criteria in Art. 21 and Art. 22 of LOUAL 1991, it is inferred that organising a tender is necessary for establishing an easement.[128] Later revisions of the law prioritised those who cultivated the land in establishing real property rights. For municipal agricultural lands used for over 10 years, ownership could be transferred to the cultivator, following a Municipal Council decision in the respective location.[129]

The right to redeem jointly owned property (Art. 32 of PA 1951). In co-ownership, each co-owner has the right to buy the property at the price offered by the seller. The claim for the protection of these potestative rights is brought simultaneously against the buyer and the seller of the agricultural land.[130]

The divisions of jointly owned property, due to the limitations of the maximum allowable amount subject to division (Art. 34 of PA 1951). Agricultural land divisions were conducted in two forms: contractual and extrajudicial. Each co-owner[131] could request division if the item's value exceeded BGN 50.[132] Security proceedings were handled before a notary, with the contract written and notarised, and recorded in the Property Register. State or municipal co-ownership could also be terminated through partition, sale, exchange, or buyback, as determined by the Council of Ministers.

Fragmentation of land was prohibited if properties were below 0.3 ha for fields, 2 acres for meadows, and 0.1 ha for vineyards and orchards.[133] Inheritance divisions often involved multiple properties, including urban and agricultural lands, complicating equal share distribution among heirs. Each heir could seek their share[134] in non-cash remuneration and request agricultural land they were already cultivating, leading to diverse interests and legal challenges in property division lawsuits.[135]

Establishing a servitude of agricultural land for public benefit. These *servitudes* were carried out pursuant to Art. 104, par. 2 of the Act of Waters (AW, 2000).

128 | Boyanov 2000, 23-25.
129 | Stoyanov 2000.
130 | Venedikov 1975, 87.
131 | Ibid Art. 36.
132 | See Art. 34 of PA, 1951.
133 | Ibid Article 72, as well as Art. 10 para. 1 of RI to LOUAL 1991
134 | See IJ of GMCC No 14/85 of 1985.
135 | 'Inheritance mass' - the sum of all the property of a testator, including his rights and obligations.

4.3. Procedural issues during and after restitution. Protection of property and other rights arising from agricultural land

The defence was to be divided into two types: administrative procedures/ proceedings for restitution of property and judicial challenge, through a claim process, with both restitution decisions and preliminary rights related to the implementation of a fair restitution legal process.[136]

Decisions of the Municipal Land Commissions (MLCs) in the absence of accurate information about the borders of agricultural lands. There were cases in which MLCs issued a decision under Art. 14 par. 1 item 3 of LOUAL 1991, in the absence of sufficient evidence of the boundaries and sizes of the properties representing agricultural lands.[137] The decision detailed the boundaries and size of the properties, and who owned them at what time. The names of the neighbours of the property are described, on which side of the property the neighbouring property was located (north, south, east, west), as well as the first names of the neighbours of the property.[138]

Establishing a manifest error of fact (Art. 26 of the RI on LOUAL 1991). Factual errors were established in accordance with Art. 26 of RI on LOUAL 1991, leading to a revision of the effective map of the restored property.[139]

Protection of agricultural lands by administrative order (Art. 34 of LOAUL 1991). This protection is related to the obligation of the administrative body to establish the illegal use of agricultural land according to the texts in Art. 34 of LOUAL 1991. In accordance with the obligation arising directly under the law itself (*ex lege*), the administrative body should establish specific circumstances in cases where it is referred to seize the land from a person who uses it without a legal basis, or with a defective legal basis[140] — that is, there is a dispute about which person has the right to use the property. An administrative procedure for the acquisition of agricultural lands was also established in Art. 34, para. 1 of the LOUAL 1991. On the legal basis of Art.34, para. 1 of the LOUAL 1991, agricultural land was expropriated in favor of the State Land Fund.[141]

136 | Luchnikov S. (1999).

137 | See § 4 - § 4 l of LOUAL's TFP 1991.

138 | Later, after the entry into force of the cadastre, these descriptions were replaced by a property identifier, which includes the UCATTU code of the settlement in whose territory the property is located, a cadastral area number on the cadastral map and a land property number. There are still properties with active solutions of the described type that do not have an identifier.

139 | An order for processing the map of the restored property was issued on the basis of Art. 17, para. 8 of LOUAL 1991. This proceeding is not to be confused with the establishment of 'incompleteness and error' (art. 53b of LCPR 2001) and the correction of the error (art. 54 para. 1 of LCPR 2001).

140 | See Art. 34 par. 2 of LOUAL 1991. See Decision of the GCC No. 530/2007 under city d. 604/06 for annulment of the administrative act under the pretext that the substantive law was violated.

141 | This norm is also developed in Art. 47 par. 1, 8, 9 of TFP LOUAL 1991, and in these cases the Regional Agriculture and Forestry Offices should self-report and order the seizure of the property in favour of the owner - the State.

This protection is special compared to the protection procedures introduced in Art. 65 of the MPA 1996 and §80 of the SPA 1996. In that case the mayor's order, which was issued in a material violation of the administrative production rules, should be revoked. The execution of the seizure orders could be in advance.[142]

As for the persons whose property was used without a legal basis, they have the right to compensation, which is defined as three times the amount of the average annual rent payment in the land where the disputed property is located.[143]

Special claims for violated property right (under §4i of TFP of LOUAL 1991 and RILOUAL 1991[144]). These claims were brought by the owners of agricultural lands or their heirs. When by an act of the Presidium of the National Assembly, by the Council of State or the Council of Ministers, the land was confiscated or was transferred in violation of other normative acts, including by using a party or official position or by abuse of power, in a one-year period from the entry into force of the law, each of the owners of such lands could establish by court order their violated right of ownership.

Claims against restitution decisions and to establish a substantive right on which the restitution of agricultural land depends (Art. 11 par. 2; Art. 14 par. 3 and Art. 14 par. 4 of LOUAL 1991). Claims under Art. 11, par. 2 of LOUAL 1991 involve substantive law disputes, independent of restitution stages. Owners and heirs[145] missing the Art. 11 deadline can still claim restitution through MLC.[146]

Proceedings under Art. 14, par. 3 of LOUAL 1991 are administrative, involving actions before the MLC for property recovery. Regional court decisions based on the property's location, or the cassation instance as a District Court (post-2007, Administrative Court), should recognize restitution rights. These decisions lack constitutive effect, requiring a new MLC decision aligned with restitution or compensation methods.

Art. 14, para. 4 of LOUAL 1991 claims are for those denied restitution, available to any third party, excluding the State, if the property was restored to another in a separate proceeding.[147] These claims act as a prejudicial remedy before restitution

142 | See Art. 34 par. 2 of LOUAL 1991.

143 | Ibid. Art. 34 par. 6.

144 | Regulations for the Implementation of the Law on the Ownership and Use of Agricultural Lands (RILOWAL). This normative act was adopted by Decree No. 74 of the Council of Ministers of April 25, 1991.

145 | See GCC Decision No. 676/1996 in Civil Case 876/96.

146 | See IJ of GMCC No 2/1991, that the validity of the decision is a preliminary issue. This matter under IJ of GMCC No 2/1996 is within the exclusive competence of MAS.

147 | The decision of MLC would not be invalid. It was possible to 'reissue' a new decision of MLC, but in limited cases, when the individual administrative act that entered into force is cancelled or amended in accordance with Art. 231 and Art. 239 of the Code of Civil Procedure (CPC 1952, repealed); or according to art. 32 par. 1 of Law on Administrative Proceedings (LAP, 1979 repealed). In any case the GMCC is not competent to overturn its decisions on its own. See also IJ of GMCC No. 1/97 on city case 11 of 1997 for individual administrative acts, as well as IJ of GMCC No. 6/05 of 2006 for the right of

under Art. 14, para. 3 of LOUAL 1991, contesting the legality of MLC and court decisions.

Ownership claims could be filed until the land division plan's enforcement. Illegal property use, such as laying field roads, violated owners' rights. Protection was sought through property[148] protection claims.[149]

Protection under the general claim procedure (Art. 108 of PA 1951). In cases where properties of cooperatives and cooperative unions were seized or expropriated and subsequently restituted as agricultural land, representatives had the right to seek judicial protection, following the general claim procedure. The state or seized property had to belong to cooperatives or unions that had resumed activities, and until the LC 1991, this property was state or municipal. To have legal interest, the cooperatives and unions should have resumed activities later, preventing timely restitution requests.[150]

Problems with indemnifying the owners related (§ 27, par. 2, item 3 of the TFP of LOUAL 1991). Disputes also arose because of problems with notifying interested parties when receiving benefits. The controversial practice of providing compensation pursuant to § 27, par. 2, item 3 of the TFP of LOUAL 1991[151] delayed the process of obtaining them.[152]

Claims affecting access to agricultural land and easement benefits - section 36(1) of the Agricultural Property Protection Act (APPA 1999). In cases where agricultural property has no access, the owner may request a land easement for passage through another's property by applying to the local mayor. The property owner is entitled to compensation. The mayor issues an order regarding the right of way and compensation, which can be appealed before the district court within 14 days per the Civil Procedure Code (CPC 2008). The district court examines the case and issues a final decision. The right to restitution was not unconditional,[153] and

interested parties to make an objection that the issued administrative act is invalid, thereby removing the restitution effect.

148 | Stoyanov, Kurteva & Stoykova 2011 provide a detailed legal analysis of the legal regimes for acquiring ownership of agricultural land.

149 | See Art. 4 par. 4 and Art. 23, par. 1 and par. 2 of LOUAL 1991 and Art. 20. See decision No. 1609/1994 civil case 151/93 of GC.

150 | Initially, the jurisprudence under § 1 Additional Provisions to the Law of the Cooperative Act (CA 1999) held that claims could only refer to the actual return of the property, not restitution of property. This was subsequently rectified by ID No 6/2005 of 2006.

151 | Rosanis (2001).

152 | See Bobatinov & Vlahov 2007, Parallax 2000 with an analysis of the issues in judicial practice related to the restitution process.

153 | Under Art. 7, para. 1 of the LROERE 1992, property owners or their heirs who had not received compensation for their expropriated properties could file claims for the restoration of ownership, even if the properties had been acquired by third parties in violation of legal regulations, through the use of official or party positions, or by abuse of power. The text of Art. 7 para 1 of the LROERE 1992 was declared unconstitutional and repealed by Decision No. 20/1995 of the Constitutional Court on Case 24 of the 1995, thereby restoring legal certainty.

often faced judicial protection challenges. This led to prolonged and costly legal disputes,[154] introducing legal uncertainty regarding ownership.[155]

5. New philosophy in acquiring agricultural land. The two moratoriums, the decisions of the Constitutional Court (CC) of Bulgaria, and the decision of the Court of Justice of the European Union (CJEU) regarding agricultural lands.

Moratorium on the acquisition of agricultural land by foreigners. The first of two moratoriums concerned the acquisition and use of agricultural lands in line with Bulgaria's accession to EU law. From 1951 to June 1 1996, acquiring any tangible state or municipal property was completely banned in Bulgaria. Despite the amendment to Art. 22, par. 1 of the CRB,[156] allowing foreign citizens to own agricultural land under certain conditions, its implementation was postponed for seven years after Bulgaria joined the EU in 2007. In 2014, the National Assembly attempted to extend the moratorium restricting foreign ownership of agricultural land, but the Constitutional Court declared it unconstitutional.[157] Within a year, Art. 3 and Art. 3a of LOUAL 1991 were amended, introducing residency criteria for acquiring agricultural land and criteria for the origin of funds used. These changes conflicted with the EU's free movement of people, goods, and capital laws, prompting the European Commission to initiate a procedure against Bulgaria in 2017 for violating EU law.[158]

The decision of the CJEU in case C-562/22. Despite the concerns of the member states, particularly Bulgaria, Romania, Hungary, Latvia, Lithuania, and Slovakia on the topic of 'Land Grabbing', against which there are ongoing procedures for non-compliance with EU law on 'Free Movement of Capital', the Court of Justice of the European Union issued a preliminary ruling on the matter. It rejected the possibility of constitutions and land laws to contain special protections or restrictions regarding acquiring agricultural land. In Bulgaria, the acquisition of agricultural land is only possible after establishing 'permanent residence', meaning the person

154 | We are aware of multiple legal disputes with more than 20 co-claimant plaintiffs spanning approximately 10 years.
155 | See comment by Yotov 2020.
156 | CRB, Art. 22 par. 1 - amendment published in the State Gazette, no. 18 of 2005, in force from 01.01.2007.
157 | See Decision No. 1 of January 28, 2014 of the CC in Constitutional Case No. 22 of 2013, SG No. issue 10 of 4.2.2014 in connection with a violation of Art. 22 par. 1 of the Constitution and § 3 'Free Movement of Capital', item 2 of Annex VI: The list under Article 20 of the Accession Protocol, Transitional Measures, Bulgaria from the Treaty of Accession of the Republic of Bulgaria and Romania to the European Union (TARBREU).
158 | See the European Commission website for the infringement procedure against Bulgaria in the section General Directorate Financial Stability, Financial Services and Union of Capital Markets for 'Acquisition of Agricultural Land'. http://europa.eu/rapid/press-release_IP-16-1827_EN.htm .

acquiring the property must prove that they have been practically and continuously residing in the country for five years before the transaction.[159]

The decision of the CJEU in case C-562/22[160] categorically states that Art. 63 of the TFEU[161] must be interpreted to mean that member state regulations are not permissible that require more than five years' residency in order to acquire agricultural property.

This interpretation suggests that the provision in Art. 3c para. 1 and para. 2 of the LOUAL 1991 contradicts EU law and the text[162] of the Act of Accession of Bulgaria.

The text of the CJEU decision aligns with the view expressed by the President of the Republic of Bulgaria, made through the imposition of a veto,[163] which halted a decision of the then Bulgarian parliament to extend the moratorium.

Therefore, the judicial practice in the Republic of Bulgaria regarding the application of Art. 3c of the LOUAL 1991 should be changed. There are some exceptions, for example, for facts that occurred during the period of 1 January to 7 May 2014. The decision,[164] where the deciding authority recognised the ownership rights of a German citizen who requested this right due to a preliminary contract for the purchase and sale of agricultural land concluded in 2012.[165] The court ruled that, despite the prohibition being in force, by the end of the period on 1 January there were no obstacles to the transaction, hence the contract should be declared as concluded. A citizen of another state cannot be treated less favourably than provided for in the accession treaty, according to which Bulgarian legislation does not foresee a requirement for 'permanent residence' despite the norm in Art. 3c, para. 1 of the LOUAL 1991 for the period after 2014.

Following the CJEU decision, Bulgarian jurisdictions should cease the practice of declaring transactions void based on Art. 26, para. 1 of the Law on Obligations and Contracts, when the subject is agricultural land and it is not irrefutably proven that a person has 'resided' in the country for five years.[166]

Similar reasoning can be found in the judgment issued by the Pleven District Court,[167] in a process regarding a claim to declare a preliminary contract for

159 | Art. 3c para. 1 and para. 2 of the LOUAL, State Gazette, Iss. (38/2014). The text of the legislative amendment has been in this form since 2014. The hidden motives for its creation were economic. However, the protection of small Bulgarian agricultural producers—living in villages—from large investors did not materialise.

160 | Decision of the CJEU in case C-562/22 (ECLI:EU: C: 2024:55)

161 | Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Official Journal of the European Union, Volume 51, 9 May 2008, 2008/C 115/01 (TFEU)

162 | § 3 'Free Movement of Capital', item 2 of Annex VI: List under Art. 23 of the Act of Accession of Bulgaria.

163 | President of the Republic of Bulgaria, made through the imposition of a veto with Decree № 73 of 11.04.2014 State Gazette, issue 34 of 15.4.2014

164 | Decision № 16 of 29.02.2016 of the Targovishte District Court in civil case № 302/2012.

165 | Art. 19 of the Law of Obligations and Contracts.

166 | Decision № 18 of 29.01.2016 in civil case № 368/2015 of the Kubrat District Court

167 | Decision № 201/14.05.2018 of the Pleven District Court in civil case № 208/2018.

a transaction - in this case, involving agricultural land - as final, i.e., producing its real property effect, i.e., transferring ownership rights.[168]

This also means that the court should not terminate judicial disputes "due to lack of legal interest"[169] if there is a possibility of a potential 'irregularity' in the claim, due to evidence – contracts for the sale of agricultural land presented before the Court - even when such contracts were made for 'personal simulation'.[170] Similarly, the procedure for security proceedings before a notary where the subject of the transaction is agricultural land should be changed in notarial proceedings.[171] Citizens and legal resident entities should not be required to present evidence of their residence in the country.

The CJEU only guides how this norm should be understood,[172] therefore a legislative change should be initiated. Moreover, jurisdictions must consider that Bulgarian courts, due to their obligation (*erga omnes*) to apply this decision in case C-562/22 of the CJEU, must understand that the same decision has a retroactive effect (*ex tunc*) for the period until 1 January 2014.

Moratorium on the acquisition by statute of limitations of agricultural lands that are state and municipal property. The second moratorium continued the rejection of the 'communist era' ideology, preventing property acquisition from the state or municipalities, even when they were inactive. The statute of limitations for acquiring state and municipal properties was suspended for over 15 years, from May 31 2006 to 2022. This moratorium was lifted by a CC Decision,[173] which argued that the excessively long term provided for in § 1, par. 1 of the PA 1951 (PA Supplement Act - PASA 2020) and § 2 of the final provisions of the PA 1951 (PA Amendment Act - PAAA 2018) should be terminated.

The state and municipalities must manage their properties with the care of a good owner. They have sufficient tools to prevent the acquisition of their properties by private individuals through the statute of limitations. Municipalities and the state can issue deeds of ownership or file a *vindicatio rei*[174] to protect the property. Regional governors and mayors can also issue orders[175] for the seizure of such properties.[176]

168 | See Legal basis Art. 19 of the Law on Obligations and Contracts
169 | Art. 130 of the Civil Procedure Code
170 | Art. 17, para. 1 of the Law on Obligations and Contracts
171 | Art. 530-607 of the Civil Procedure Code
172 | Bressol et al., C-73/2008 , EU:C:2010:181
173 | See Decision No. 3 of February 24, 2022 of the CC in Constitutional Case No. 16 of 2021.
174 | We mean vindicatio rei - 'claim of the non-possessing owner, against the possessing non-owner' (Venediktov, 1991, p. 393). In the Bulgarian legal doctrine, this is the claim under Art.108 of PA, 1951.
175 | Art. 80, para. 1 SPA, 1996 and art. 65, para.1 MPA, 1996.
176 | There are the first cases where the Supreme Court of Cassation has recognised private individuals as owners who have acquired properties from the municipality due to expired statute of limitations. See Decision № 559 of the SCC /02.10.2024 1 and Decision № 510 of the SCC /06.02.2024 2. Although the cited examples are for urban properties, the likelihood of seeing decisions for the acquisition of agricultural lands owned by the state or municipality is high.

6. Continuation of land reform after restitution. Period of accession of the country to the EU

As part of the continuation of this reform, we should pursue land reform, and enter onto the cadastre of real estate in the country, respectively, the links created within it and between it and the Property Register — as well as new governance carried out through new administrative authorities.[177]

After 2007, with its accession the EU, one can see a new trajectory for the country regarding the acquisition of land by foreign citizens,[178] as well as implementation of the goals of the Common Agricultural Policy (CAP) for effective agricultural production,[179] with the help of the application of the procedure for the consolidation of the use of agricultural land[180] and accordingly, the creation of new organisational forms to manage agricultural land.[181] All this leads to a new direction in the reform.

6.1. The preference of the user of the property by the user

In practice, with some of the changes, the state tried to restore the principle of "the land belongs to the one who cultivates it" by returning it naturally into the hands of farmers. By deliberate legal provisions, 'preferences' were introduced in favour of the lessee, giving them priority when buying agricultural land, with a lease agreement for a period of 5 years.[182]

6.2. The procedure under Art. 37 c of LOUAL 1991 - consolidation of agricultural land

The state created a special procedure in Art. 37c of LOUAL 1991, which gave priority to land reform over the land acquisition of poor and landless citizens, by deploying consolidation based on the use of agricultural land. Consolidation was to be effected by means of a 'distribution' of agricultural land not under cultivation among tenant-producers on the same land. This procedure begins for properties

177 | The relationship between the LCPR 2001 and the Registration Regulations, as well as the relationship between the Agency for Geodesy, Cartography and Cadastre (AGCC) and the Registration Agency (RA) under the LCPR 2001, is structured similarly to the Law on Cadastre and Land Registry of Romania (Monitoring Official No. 26 / 1996)
178 | The topic is discussed below in point 3 of the article.
179 | We have in mind the first and main objective of the CAP incorporated in Art. 39, para. 1(a) TFEU, according to which 'individual efficiency' is most important in agriculture.
180 | Art. 37 of (LOUAL, 1991).
181 | Special Investment Purpose Companies and Protection of Economic Sovereignty Act 2021 (SIPCPES 2021), which repealed the Special Investment Purpose Companies Act 2003 (SIPCPES 2003).
182 | Art. 4a par. 1 of LOUAL 1991.

under Art. 37c, Para. 3, Item 4 of LOAUL 1991 for which no declaration has been submitted under Art. 69 of RILOUAL by the owners or persons entitled to use the land.

In such cases, the already mentioned tenants of the land should distribute them themselves.[183] When these lessees do not reach an agreement, the agricultural lands in question are distributed administratively by a specially created commission.[184] All owners whose land was cultivated (used) in accordance with the described procedure are paid a sum – rent.[185]

The procedure for determining the arrays for the use of agricultural lands and for concluding, amending and terminating the agreement between the lessees under Art. 37c of LOUAL 1991 is defined in detail in RILOUAL.[186] Other agricultural lands from the state land fund may be added to these lands by the order of the Minister of Agriculture or a designated representative.

6.3. Special Purpose Companies (SPC)

The state developed the necessary legislation for the creation of specialised organisations dealing with the consolidation of agricultural land - activities related to: acquisition, management and securitisation of agricultural land in Bulgaria and in other EU and EEA member countries. Where the immovable properties acquired by such a company are located in the territory of another EEA member state, the valuations of such properties shall be subject to international valuation standards adopted by the International Valuation Standards Board in London, UK. Later, the companies were given the opportunity to work in other countries that have expressed their desire to become members of the EU.[187]

6.4. Problems arising from the relationship of agricultural land - financing of farmers from EU structural funds

Problems with the lease of agricultural land included by one of the co-owners. This relationship is not immediate, and yet the subsidies associated with receiving funds from EU funds[188] are an important incentive for land use and leasing. In the case of leases concluded under Art. 4a (new) of LOUAL 1991, only one of the co-owners is sufficient to lease the agricultural land to a third party if they own more than 25% of the land in question. It may emerge that other co-owners who

183 | Ibid. Article 37c, para. 2.
184 | Ibid. Art.37c para. 3 and 4.
185 | Ibid. Art.37 in para. 7 in connection with Art. 37 par. 4 (LOUAL 1991), the rent is defined as the average for the land.
186 | Art. 37 of LOUAL, 1991. which refers to RILOUAL.
187 | We are referring to the operations of one of the five remaining companies in countries such as Ukraine.
188 | See Farmers' Assistance Act (FAA 1998).

grow crops permanently attached to the land and feed off of that land should be removed from the property.

Competition when registering two or more legal acts (agreements). Lease contracts concluded in the form determined by law should be registered in the MLC, as this is the proper procedure for the lessees - producers to receive financial resources from the EU funds.[189] These contracts are entered pursuant to Art. 112b of PA 1951. According to the provision of Art. 37b, para. 6 of LOUAL 1991 in force from 22 May 2018, when competing contracts are found - that is, when for the same property more than one contract for rent or lease of agricultural land is submitted for registration - upon registration in MAS preference is given to that entered with earlier data. However, this way of solving the issue may not solve the problems with short-term contracts. Accordingly, it is possible to witness the consequences detailed in the previous paragraph.

6.5. Attempt to integrate land legislation

In light of the procedure initiated against Bulgaria for violating EU law, multiple attempts were undertaken to revise the legislation concerning agricultural lands. Initially, on August 27 2018, during the LOUAL session, the Ministry of Education and Culture proposed a draft amendment to Article 3c of LOUAL 1991, aligned with the MAFF 2017 research advocating for a unified legal framework for land relations. This project was subsequently withdrawn.

Subsequently, on December 17 2018 a legislative amendment was introduced in LOUAL 1991. The accompanying rulebook proposed changes to institutions dealing with property, rents, and rental agreements, inadvertently blending substantive and procedural legal norms, thus compromising systematic coherence. On December 17 2018 the Council of Ministers initiated a public consultation, extending until January 16 2019, aimed at formulating a new draft decision on the adoption of a draft Law on Property, Land Relations, and Protection of Agricultural Lands.

These proposed changes were deemed inconsistent with the delegation powers stipulated in normative acts. Consequently, the anticipated unification of two principal laws - LOUAL 1991 and the Law for the Protection of Agricultural Lands (LPAL 1996) - was not realised. The final legislative endeavour, provisionally termed the Agricultural Code, was attempted on November 5 2019. This initiative aimed to harmonise with the fundamental principles outlined in Art.19 and 20 of the CRB, ensuring the protection of users and supporting landowners who cultivate to

189 | In Art. 41, par. 3 of LOUAL 1991 is an imputed obligation to register the legal grounds (contracts and property documents) for the purposes of the assistance. Ordinance No. 5 of 2009 is about the terms and conditions for submitting applications under schemes and measures for direct payments contained in § 11, item 1 of the Ordinance amending and supplementing Ordinance No. 3 of 2015 in connection with FAA 1998.

prevent agricultural land fragmentation. Furthermore, this legislation also prioritised environmental objectives.

6.6. 'Green' agricultural lands

In accordance with Art. 21 of the national constitution, and Article 2, paragraph 1 of the LPAL 1996, land is designated as 'national wealth.' Furthermore, Art. 2, paragraph 3 of the aforementioned legislation permits the alteration of agricultural land use "exceptionally in cases of proven necessity". Assuming such necessity, this pertains to the construction of buildings and facilities that bolster agricultural activities.[190] In cases involving facilities under Article 17a, it is challenging to assert that certain changes - such as those related to construction or the use of land for photovoltaic plants - fully protect the public interest, and do not result in building on fertile agricultural lands.[191]

7. The judicial system and some more interesting legal figures in the doctrine affecting agricultural lands

The judiciary exercises control over the legality of acts and actions of administrative bodies.[192] Beyond the decisions of administrative bodies that previously restored ownership of agricultural lands, courts adjudicated all disputes concerning material rights related to property protection. Amidst the transitional period, the judicial system underwent several reforms. It transitioned from two-instance to three-instance proceedings, with agricultural land disputes being addressed both administratively and civilly. The structure of the judicial system evolved, with changes in the generic jurisdiction for disputes related to agricultural lands. Initially, these disputes were heard before the civil courts, starting with the district court. Since 2007, appeals against decisions of the first-instance district courts have been handled by the administrative court.[193]

The interpretative decisions of the Colleges of Civil Courts in Bulgaria (CCCB), along with the interpretations by the collegiums of the Supreme Court of Cassation (SCC) and the Supreme Administrative Court (SAC) in cases where analogous legal relations were decided by different panels of the court, were often contradictory.

190 | See § 5 of Ordinance No. 19. for the cases of construction on agricultural lands: 1. Agricultural buildings for storage of plant and animal products. 2. Agricultural buildings for raising animals. 3. Buildings for agricultural machinery. 4. Reservoirs. 5. For the places where the animals are kept, manure storage and purification facilities. 6. Facilities for water supply, sewage and electricity supply. 7. Hydromelioration facilities.
191 | Art. 20a and Art. 2, LPAL 1996, in connection with Article 17a of LOUAL 1991.
192 | Art. 9 paragraph 1 of the Judicial System Act (JSA 2007).
193 | For example, the court proceedings before the second instance on the claims under Art. 14 para. 3 of LOUAL 1991.

This aspect of practice was and remains binding for the judicial authorities. Its extensive volume, as per LOUAL 1991, PA 1951, SPA 1996, MP 1996 and LPAL 1996 - spanning thousands of printed pages - complicates legal defence and the judiciary's functioning.

Conclusions and discussion

The repeated changes and turning to the direction of the legislation should also be interpreted as a 'problem' of the land reform. To date, there is no legal information system that covers all legal changes in agricultural land to the full extent.

Restitution is a process whereby, along with the restoration of private property, a redistribution of agricultural land is created. The redistribution of the assets also led to its subsequent fragmentation, correspondingly to difficulties in realising the ownership rights of the agricultural lands.

In the legal system of the country, new relations related to the use of agricultural lands have developed. Consolidation of agricultural lands should solve problems arising from the fragmentation of the resources and conditions for dealing with the fundamental problem - food security. At the same time, thanks to this direction of land reform, conditions were created for increasing the concentration of agricultural land and problems with the access to it of entire groups of farmers.[194]

The modern trajectory of farmland legislation follows the logic of the Green Deal. Despite the idea of a balance between food and environmental security, it is difficult to predict what the long-term effect of such an impact will be.

De lege farenda

A. Article 3c, paragraph 1 and paragraph 2 of the LOUAL 1991 should be repealed. This would synchronise Bulgarian legislation related to agricultural land with EU law in the section "free movement of persons, goods, capital" and would terminate the infringement procedure against the country.

B. We believe that a new order for compensation for the owners who have been recognised but have not had ownership restored, according to the order of § 27, paragraph 2, item 3 of LOUAL's TFP 1991, would be appropriate not only for managing agricultural lands. After the restitution, suitable land for agricultural use, which can be offered as compensation to entitled persons, is highly limited. The lands from the municipal land fund are invariably far from populated areas. The persons - restitutors, in most cases - do not live in the settlements where these lands are located and prefer to sell them when possible. Since there is no explicit

194 | This issue is discussed in detail in CEDR 2019.

legal prohibition, compensation from the municipal land fund can be carried out not only through agricultural lands but also through lands with the status of urban lands, i.e., located in urbanised areas. Such compensations are particularly suitable if they are carried out in small and highly depopulated settlements. This would be a suitable incentive for people to return to live in Bulgarian villages.

C. Some problems related to the competition of rights among co-owners of agricultural land, providing the same for rent in the manner provided in Article 4a of LOUAL 1991, can be solved by the method of rent payment. That is, landlords who rent agricultural land without the consent of the other co-owners are obliged to compensate them appropriately, by Article 30, paragraph 3 of PA 1951. The owner who can conclude a rental agreement on behalf of and for the account of the remaining co-owners should pay them a proportional part of the received rent. The rent amount should not be less than the average rent in the respective locality where the agricultural land subject to the transaction is located. This would reduce unfair behaviour on the part of those co-owners who conclude rental agreements to the detriment of the remaining co-owners. We propose that a new text be created in Article 4a of LOUAL 1991: "The amount of the proportional part of the rent payment for those co-owners who did not participate in its conclusion cannot be less than the average rental payment for the respective locality where the agricultural land subject to the rental agreement is located."

D. The registration of short-term rental agreements for agricultural land should become mandatory. Such a requirement does not exist at present, and therefore only rental agreements concluded for a term longer than 1 year are registered. For this reason, the agreements are only registered with the Municipal Agriculture and Forestry Services, as a basis for farmers to receive subsidies under the Law on Assistance to Agricultural Producers. This would play a preventive role against fraud with funds received from the EU. We propose that a new text be created in Article 112 of the Property Law: "Rental agreements for agricultural land are registered regardless of the term for which they are concluded."

E. Some adverse consequences related to the procedure for consolidating the use of agricultural land under Article 37c of LOUAL 1991, and more specifically the concentration of agricultural land in the hands of several tenants within one land, can be solved by 'separating' agricultural land for the needs of farmers - those who live on the same land. This means that in Article 37c, paragraph 3 of the LOUAL 1991, a new text should be created, stating that in cases of allocation of agricultural land use among tenants, the interests of farmers living in nearby settlements should be taken into account.

F. The integration of information between agricultural and other registers would play a positive role in the management of agricultural lands.

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Land Restitution in Czechoslovakia and the Czech Republic after 1990[2]

Abstract

This article is divided into two parts: the first is devoted to the historical context of restitution; the second to its legal regulation and implementation.
In the first part, state interventions in property and post-war land reforms are presented with an emphasis on the so-called second land reform (after 1945), which consisted of three different and relatively independent phases. The first phase (1945) was associated with the confiscation of agricultural property and its redistribution (Presidential Decree No. 12/1945 Coll., regulation of the Presidium of the Slovak National Council No. 4/1945 Coll. SNC). The second phase (1947) aimed at revising the first land reform (Special Act No. 142/1947 Coll.). The third phase (after February 1948) was presented as the new land reform (Special Act No. 46/1948 Coll.), and resulted in collectivisation associated with the establishment of agricultural cooperatives (at the time, four types of cooperatives were distinguished according to the degree of collectivisation, or according to the method of joint production and remuneration: in the first type, there was a joint organisation of sowing, harvesting and the use of mechanisation; the second type introduced remuneration according to the quantity and quality of work performed for the cooperative, regardless of the size of the cooperative share).
Within the framework of collectivisation (1948–1960), we may distinguish three phases. In the first phase (up to 1953), the number of unified agricultural cooperatives (including preparatory committees) increased to approximately 8600, which was more than half of the municipalities in the Czech lands (at first, unified agricultural cooperatives of the first type predominated; at the end of 1951 and the beginning of 1952, the number of the third and fourth types of unified agricultural cooperatives increased); during the second phase (1955–1960), the number of unified agricultural cooperatives increased to approximately

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12,500, mainly of the third and fourth types; in the third phase (the 1970s), cooperatives merged into larger economic units (in 1980, there were 1722 of them).
The process of collectivisation was accompanied by various forms of coercion, which finally resulted in the persecution of the peasantry – in addition to kangaroo courts against the opponents of collectivisation, 'Action K' (Kulak) took place from November 1951 to May 1952 and from November 1952 to July 1953 (based on the so-called 'directive of the three ministers' of October 1951) to resettle the families of convicted peasants.
After both world wars, approximately one third of all the agricultural land in Czechoslovakia was subject to land reform; 4,143,149 hectares of all land was redistributed under the three phases of land reform after 1945, including 2,135,798 hectares of agricultural land. Small beneficiaries obtained 30.9% of the total, or 59.8% of agricultural land; 52.1% of all (especially forest land) belonged to the state. According to the statistics for 1978, the state sector managed 30.6% and the cooperative sector 62.1% of agricultural land in Czechoslovakia; in 1989, the socialist sector created a 98.7% share in all the agricultural land, out of which the cooperative sector, including crofts, created 67.8%, the state sector created 30.9%, while independently farming peasants and small landholders created only 1.3%.
In the context of the development after the collapse of the communist regime, restitution means the process and the resulting state of redressing some property wrongs that occurred before 1990. It may be understood in a narrower sense (carried out on the basis of restitution legislation after 1990) or in a broader sense, where it includes not only the national but also the international level (including case law). They represented an important tool for coming to terms with the past, but also for the transformation of the economy and society after the collapse of the communist regime.
Gradually, between 1990 and 2012 nine main restitution regulations were adopted in the territory, most of which were repeatedly amended. The Czech Constitutional Court also repeatedly intervened in the restitution legislation (in 1994 and 1995, by cancelling the condition of permanent residence for determining restitution entitlement; and in 2005 and 2018, by cancelling the so-called 'restitution full stop' – referring to the possible end of the process of dealing with restitution cases).
From the perspective of the definition of property wrongs, a general range of facts was mostly chosen (a more specific definition occurred in the case of municipal property, church property defined in the 1990 by enumeration, as well as Jewish property defined in the enumeration at least in part). From the perspective of entity, three laws related only to natural persons, four only to legal entities, and two to both natural persons and legal entities. From the perspective of the subject matter, two laws related to agricultural property, one to non-agricultural property, and six to both agricultural and non-agricultural property. From the perspective of the relevant period, most of the laws had not dealt with reparation of wrongs until 25 February 1948 (although this limit was explicitly mentioned in only three of them); in the case of three acts, it was bound to a later date, while only in the case of two acts did it also apply to wrongs committed before the mentioned date. Finally, from the perspective of the method of restoration of the ownership right, this occurred in two cases directly by law, in five cases by entry into the Land Registry, and in three cases by a decision of an administrative body (the 2012 Church Restitution Act regulated different methods for agricultural and non-agricultural property).

For the area of restitutions, Act No. 229/1991 Sb. regulating the ownership relations to land and other agricultural property, (also called the 'Land Act'), followed by Act No. 243/1992 Coll. (also called the 'Transformation Act'), was the most important one from the perspective of agricultural and forest property (movable and immovable ones).
While the first of them set the decisive period from 25 February 1948, the second also applied to property seized on the basis of confiscation decrees from 1945. The Land Act regulates both the rights and obligations of owners, original owners, users and lessees of land, as well as the competence of the state in regulating ownership and the rights to use the land. To date, it has been amended by 27 acts and 30 implementing regulations have been issued in relation to it. It defined in particular the beneficiaries (Section 4), Obligated entities (Section 5), property subject to restitution (Section 6 et seq. – originally it was 18 and, after the amendment, it was 20 cases), the deadlines for filing the claim (Section 13) and compensations for unreleased or damaged property (in Sections 14 to 16 and Section 20).
In 2005, and again in 2018, the Constitutional Court also cancelled the so-called 'restitution full stop', by which the state tried to exclude the satisfaction of the restitution claims of beneficiaries in the form of providing replacement land, and leaving only financial compensation. In the case of determining the amount of financial compensation for unreleased land, the Constitutional Court has repeatedly taken the view that the State Land Office is obliged to provide beneficiaries with adequate compensation for confiscated property; however, it fails to do so. The issue of judicial settlement of restitution claims is still alive.
Keywords: Land Restitution; Land Reform; Land Act; Compensation

Introduction

The restitution of agricultural property in Czechoslovakia, and subsequently in the Czech Republic after the collapse of the communist regime, are part of a broader and long-term process within the Central European area. They are related both to the restitution of non-agricultural property and to other ways of coming to terms with the totalitarian past, while representing one of the most important tools for the transformation of property relations – and the entire society of post-communist countries.

However, it is also related to previous state interventions in land ownership during the 20th century in Czechoslovakia and Central Europe, especially with the redistribution of property in post-war land reforms, and with the gradual expansion of state and cooperative ownership. The collectivisation of agriculture in Czechoslovakia after the communist coup in 1948 followed not only the Soviet models, but also previous domestic development – when the constitutional guarantees of property protection were broken, and the idea of collectivisation strengthened after the creation of Czechoslovakia in 1918 in connection with the interwar land reform.

The following text will therefore be divided into two larger parts: the first will be devoted to the historical context of restitution with an emphasis on post-war land reforms; the second to the legal regulation and implementation of restitution (land property), including their international dimension in the form of so-called compensation negotiations.

1. Land Ownership, Nationalisation and Collectivisation of Agricultural Land from a Historical Perspective

The issue of interventions into ownership, and especially land reforms, has always attracted increased attention of the professional public – lawyers, economists and historians.[3] Compared to the pre-November era, there has of course been an increase in the quantity, variety and quality of professional works. However, while the interwar land reform is basically a closed issue of interest mainly to historians, the interventions into ownership after 1945 are still a 'live' issue of general interest.[4]

1.1 On Limitation of Ownership and Changes in Ownership Concepts

Over the past two hundred years, ownership in the Czech lands has oscillated between the concept of 'user' and 'power' – the middle of the 19th century, the middle of the 20th century and the 1990s may be mentioned as milestones here, which correspond to significant socio-political changes (the user approach was decisive until the middle of the 19th century and from the middle of the 20th century). For the power (or liberal) approach, it is characteristic to emphasise the 'unlimited' character, for the user (or social) approach, it is the 'restricted' one.

In the course of the individual stages, both concepts permeated and complemented each other to varying degrees: after 1918, for example, the user approach began to be promoted again, which was particularly reflected in the framework of land reforms (redistribution of agricultural land with regard to the existing lessee, but also the limitation of the right of disposition of the assignees) and further in the housing area (strengthening the position and protection of the tenant); while the social dimension of the issue was significantly reflected. Looking ahead, it is possible to expect greater consideration of the user concept again, which had already started by the adoption of the Civil Code from 2012 (reflected in the institutes of

3 | From the extensive literature on the issue of ownership, cf. i.a. Lehman 2004. From contemporary Czech literature, cf. i.a. Eliáš 2017; Horák 2017, 1109–1123; Horák 2021, 1–28.

4 | The issue was addressed mainly by S. Cambel, A. Doležalová, P. Dufek, K. Eliáš, T. Gábriš, O. Horák, V. Horčička, K. Jech, K. Kaplan, K. Kaucká, A. Kubačák, J. Kuklík, V. Lacina, G. Novotný, M. Otáhal, J. Pšeničková, J. Rychlík and L. Slezák. Comprehensively cf. Prucha et al. 2004, 2009; Pupa 2010. From legal history works: Kuklík et al. 2011; Horák 2012, 347–368, 391–409.

extraordinary acquisition of a personal right by means of prescription, leasehold estate, trust fund and others).

The thesis on the inviolability of ownership reflected a political rather than a legal point of view, but it had an invaluable educational character and shaped the contemporary way of thinking of lawyers and non-lawyers. However, from a historical-legal perspective, we may only talk about it in relation to the personal sphere and human dignity.

1.2 On State Interventions into Ownership and Socialization Projects

1.2.1 Revolution and Ownership

The leading Czech interwar journalist Ferdinand Peroutka wrote in an extensive publication *Budování státu – Building a State* (to some extent a 'chronicle' of the early years of the young republic) that "...the Czechoslovak revolution stands on three pillars, which were a coup d'état, land reform and the adoption of the constitution".[5] It may only be added here that every successful revolution (in modern Czech history, it will be the turning points of 1848, 1918, 1945, 1948 and 1989) stands on three pillars – first, a more or less violent coup, then interventions in property relations (especially to agricultural land), and finally in the symbolic anchoring of changes within the framework of basic laws.

The only fundamental and permanent result of the revolution of 1848 in the Habsburg monarchy was the abolition of subject-lordship relations and the related untying of subject land from all restrictions resulting from the superior ownership of the feudal lord. This was followed by the gradual cancellation of other relationships resulting from the so-called divided ownership, which was still enshrined in the *General Civil Code* (*ABGB – Allgemeines bürgerliches Gesetzbuch, i.e., the then Civil Code of Austria*) of 1811. In the 1860s, feoffment relations were abolished and feoffments were gradually allodified (transformed into a 'free' estate) and in 1924 in Czechoslovakia, the family fideicommissum was abolished.

Substantial interventions into property relations occurred after both world wars in the vast majority of European states, either for reasons of war or occupation (restitution and confiscation), or economic renewal and reforms (land reforms, nationalisation). Post-war socialisation projects and especially land reforms were an important part of the revolutionary changes and significantly influenced the political and legal development of Czechoslovakia and the entire Central European area.

In Czechoslovakia after 1918, state intervention focused mainly on agriculture (land reform); after 1945 it spread to the entire economy (national administration, confiscation, nationalisation). First, there was the imposition of national

5 | Peroutka 1934, 564.

administration and then the confiscation of agricultural property (in the Czech lands, from June 1945; in Slovakia from February 1945) and later (October 1945) of all enemy property. Nationalisation was enacted in two main stages (October 1945 and April to May 1948) – in 1945 important areas of the economy (mines and important industrial enterprises, food industry, joint-stock banks and private insurance companies) were nationalised and after the communist coup in 1948 medium and small enterprises were nationalised as well.

The motivations for these measures were also similar, including social, national, economic and political causes and aims. After 1945 the ethnic-national dimension emerged as a dominant one, though this had remained mainly in the background during the interwar period. There was also a fundamental political shift with the Communist Party acquiring a pivotal position. While the radicalism of the post-war years of the First Republic (1918–1938) gradually died down and relationships became consolidated with the passing of time, the Third Republic (1945–1948) seemed more like a temporary solution with a semi-totalitarian character, particularly as the communists took over the leading positions in 1948. This then led to a total takeover of power by the communists in 1948.

1.2.2 Terminology and Constitutional Protection

After the First World War, it was more about socialisation; after the Second World War it was nationalisation that became a symbol of the new development. Both terms express the idea of state interventions in private property for the benefit of the whole, while we perceive socialisation as a broader (including not only the takeover of property, but also other interventions into private business) and less politicised concept (whereas nationalisation is mainly associated with the rise of communism). From the point of view of the assignees, it may be a takeover by the state (etatisation), local governments (municipalisation) or cooperatives (cooperativisation). From the point of view of the former owners, it may be expropriation (takeover with compensation) or confiscation (takeover without compensation).

While according to the Austrian constitutions of 1849 and 1867, adequate compensation was to be provided for expropriation, the Czechoslovak constitution of 1920 (Section 109) and similarly the constitution of 1948 (Section 9) allowed for expropriation without compensation (the 1960 constitution did not regulate expropriation). In the case of the breach of property guarantees in the Constitution of the First Republic from 1920, it was the most significant modification of the traditional catalogue of basic rights and freedoms at the time. In addition to Czechoslovakia some other countries, especially Germany, have enshrined the possibility of expropriation without compensation into their constitutions (Article 153 of the Weimar Constitution of 1919).

1.2.3 Socialisation Reforms and the International Dimension

After the First World War, land reform was carried out in twenty-two European countries, particularly in the lands 'east of the Elbe', where large estates and the associated political power were often in the hands of the German or Hungarian aristocracy. Apart from Russia, which underwent land collectivisation from 1928 to 1934, elsewhere in Europe small and middle-sized farmers were strengthened at the expense of land ownership by the large estates. Of the thirteen countries in Central and Eastern Europe (again apart from Russia), land reform in Czechoslovakia (1919–1935) was the second most extensive one after Romania.[6]

The most radical intervention came after the Second World War. In addition to the land reforms that were often connected to the confiscation of enemy property, many countries also chose to nationalise key areas of industry based on economic, strategic and ideological reasons. This was a highly debated issue not only in countries oriented towards the Soviet Union, but also in Western Europe (e.g., Great Britain, France and Italy).[7]

After the Second World War, the confiscation measures were closely associated with reparation claims for damage caused during the occupation and the war. 'The Agreement on Reparations from Germany, on the Establishment of the Inter-Allied Reparations Agency and the Return of Monetary Gold' was signed in Paris on 21 December 1945 (published under no. 150/1947 Coll.) by eighteen signatory states, including the British dominions. Of the major countries, only the Soviet Union and Poland were not represented, though the confiscation measures also applied to them. In international comparison, the Czechoslovak version of confiscation was ranked among the most severe ones, while based on an ethnic outlook regardless of nationality and individual guilt, and in particular, the way it established the conditions for exoneration.[8]

Specific land reforms were mainly carried out in those countries which had recently fallen into the Soviet sphere of influence. Of the thirteen countries in Central and Eastern Europe, land reform in Czechoslovakia (1945–1948) was the second most extensive one after Poland.[9]

Naturally, each of these land reforms had its own specific characteristics. Whether in terms of the extent or the actual process, however, there were also a number of features in common: a) they were the first, most basic problems that the new regimes dealt with; b) they were carried out in a radical manner by the communist parties, which thereby significantly strengthened their position in rural areas; c) to implement them, land confiscated to culprits was used. However,

6 | For more details see Maslov 1927; Sering (ed.) 1930; Roszkowski 1995.
7 | For more details see Kuklík 2010, 322 et seq.
8 | For more details on the individual states see Böhmer, Duden, Janssen (eds.) 1951; on domestic situation cf. Pešek et al. (eds.) 2006.
9 | For more details see Průcha 1998, 59.

the land reforms in the people's democratic countries eventually led to agricultural collectivisation along the Soviet model.[10]

1.2.4 Post-war Land Reforms in Czechoslovakia

Czechoslovakia proceeded with land redistribution after both world wars. Traditionally these projects are referred to as the 'first' and 'second' land reforms. While the interwar reform had a basically unified framework, the reform after WWII consisted of three different and relatively separate parts.

The first phase (1945) was associated with confiscations of agricultural property and its redistribution, or settlement, which was completed within two years. The second phase (1947) aimed at revising the first land reform, criticised after 1945. The third phase, presented as the 'new land reform', was established after February 1948 and was to be based on the principle of 'land to those who work on it'. However, before the redistribution was completed, the collectivisation of agriculture began to take place, which may be called the 'fourth phase' because it continuously followed the previous phases and because it was the real and original goal of the communist politicians.

Both land reforms were fundamental interventions in private property. Both were the result of war events, and in addition to solving social and economic problems, they primarily concerned the transfer of power and political influence. While the interwar land reform was characterised by long-termism, evolutionary character and a large amount of legislation, post-war confiscations were a matter of few regulations, speed and radicality. From a legal point of view, however, a similar scheme and legislative-technical instruments were applied. At the political level, interventions into land property were declared in the so-called 'Washington Declaration' of 18 October 1918 (large estates were to be expropriated for domestic colonisation) and in the 'Košice Government Programme' of 5 April 1945 (Article XI concerning the establishment of the National Land Fund, conditions of confiscation and allocation). The legal beginning, as well as a sort of prologue to the main laws of both post-war interventions, was represented by regulations making it impossible to dispose of the property in question, such as Act No. 32/1918 Coll. 'regulating the attachment of large estates', and Presidential Decree No. 5/1945 Coll. 'regulating the invalidity of certain property-legal acts from the time of non-freedom and on the national administration of the property values of Germans, Hungarians, traitors and collaborators and certain organisations and institutes'. Unlike its 1918 predecessor, it pursued two distinct purposes. It not only dealt with the property in question, but also with restitution and the redress of previous wrongs, which, however, were closely linked together. The scope of the decree was

10 | For more details see Rychlík 2008, 13–29.

originally intended to be nationwide; the Slovak National Council finally issued its own regulation on national administration dated 5 June 1945 No. 50 Coll. SNC.

The main interwar reform regulations were passed between 1919 and 1920, the ones connected with post-war confiscations in 1945. It concerned mainly Act No. 215/1919 Coll. 'regulating the seizure of large land property', or the so-called 'Seizure Act', and in the case of confiscation of agricultural property in the Czech lands by Presidential Decree No. 12/1945 Coll. 'regulating the confiscation and accelerated distribution of the agricultural property of Germans, Hungarians, as well as traitors and enemies of the Czech and Slovak nations'. In Slovakia, several months before the expected adoption of the regulation with nationwide scope, its own regulation was applied, which also affected the regulation in the Czech lands (especially the issue of exemptions from confiscation for persons of German nationality who were required to actively participate in the anti-fascist resistance). It was a regulation of the Presidium of the Slovak National Council of 27 February 1945 No. 4 Coll. SNC 'regulating the confiscation and accelerated distribution of agricultural property of Germans, Hungarians, as well as traitors and enemies of the Slovak nation', later amended by Decree of the Slovak National Council No. 104 of 23 August 1945 (with retroactive effect as of 1 March 1945).

These regulations are a reflection of the tense post-war atmosphere and efforts to fundamentally transform and intervene in land ownership. However, the Seizure Act had the character of only a framework act; practical implementation could only be carried out after the adoption of the follow-up standards, which mitigated the original radicalism - especially with regard to international obligations (takeover without compensation was foreseen in Section 9 of the Seizure Act for seven categories of property; in the end however, it only applied to members of the former Habsburg-Lorraine royal family). On the contrary, in the case of the confiscation regulations of 1945 aimed mainly at persons of German and Hungarian nationality, ownership relations were changed directly as a matter of law (*ex lege*) and without compensation. The determining factor of the different solution after 1918 and 1945 consisted mainly in the situation on the international scene, which underwent substantial development between the wars and – in connection with the defeat of Nazism – it influenced the destiny of Europe, especially its eastern part, for the next forty years.

1.2.5 Confiscation of Agricultural Property and its Allocation (1945)

The confiscation regulations of 1945 (Decree No. 12 and Slovak National Council Regulation No. 104) were based on similar principles, but at the same time they differed in some essential aspects. Their preparation and implementation fell under the department of the Ministry of Agriculture (Julius Ďuriš), or the Commission for Agriculture and Land Reform (Michal Falťan, Ján Ursíny). Therefore, the Communist Party played a major role in the formation of post-war agricultural

policy, while the persons of Ďuriš and Falťan personified the most radical part of it. This was particularly reflected in their own arrangement of confiscations, which went beyond the scope of the Košice Government Programme. Approval of Decree No. 12/1945 Coll. was accompanied by a number of disputes, but the communist ministers were able to enforce it even against the fundamental comments of the president and other members of the government.

In both regulations, there was also a connection of different legislative intentions – punishing offenders and at the same time using confiscated property to implement a new land reform. They were created in a hurry, which was reflected in their problematic legislative-technical level. An interesting feature of the Slovak and Czech regulations was that they influenced each other (first, it was Regulation No. 4, Decree No. 12 and then Decree No. 12 of Regulation No. 104), which led to the radical nature of confiscation in the field of agriculture (especially the requirement of active resistance participation for exemption from confiscation). Yet both differed from the original ideas of the Moscow leadership and from other confiscation regulations (especially Decree No. 108/1945 Coll. 'regulating confiscation of enemy property and National Renewal Funds').

The confiscation took place directly by law and with immediate effect, as of 23 June 1945 (Czech lands), or of 1 March 1945 (in Slovakia); compensation was not provided, as follows from the nature of the confiscation. According to Decree No. 12, for the purposes of land reform, there was confiscated agricultural property owned by: 1) all persons of German and Hungarian nationality, regardless of nationality, with the exception of persons who actively participated in the fight for the preservation of the integrity and liberation of the Czechoslovak Republic; 2) traitors and enemies of the republic of any citizenship and nationality, who manifested this hostility especially during the crisis and during the war in the years 1938 to 1945 (the categories were elaborated in Section 3, Sub-section 1 and correspond to the definition according to Decree No. 108); 3) joint-stock and other companies and corporations, the administration of which intentionally and purposely served the German leaders of the war or fascist and Nazi purposes.

According to the original wording of Regulation No. 4, agricultural property belonging to the following persons was confiscated: 1) persons of German citizenship, with the exception of persons who actively participated in the fight against fascism, if it did not exceed 50 hectares; 2) persons of Hungarian citizenship who did not have Czechoslovak nationality by 1 November 1938; 3) persons of Hungarian nationality, if it exceeded 50 hectares; 4) traitors and enemies of the Slovak nation of any nationality. Upon Regulations No. 104/1945 and No. 64/1946 Coll. SNC, the range of confiscated items was expanded to include legal entities and all persons of Hungarian citizenship, regardless of nationality, or on the unification of the regime of persons of German and Hungarian citizenship according to Decree No. 12.

Both Regulations (Sections 7–13 of the Decree and Sections 5–13 of the regulation) also regulated the allocation of confiscated property; for the Czech lands,

the rationing and compensation issues were further elaborated by the Decree of 20 July 1945 No. 28/1945 Coll., 'regulating the settlement of agricultural land of Germans, Hungarians and other enemies of the state by Czech, Slovak and other Slavic farmers'. The regulations were followed by a number of other implementing regulations, often of an internal nature.

Confiscated agricultural property was administered until handed over to the allottees by the National Land Fund, established under the Ministry of Agriculture (upon Government Regulation No. 70/1945 Coll. its status was issued), or the Slovak Land Fund. Upon decree of 17 July 1945 No. 27 Coll. 'regulating the uniform management of internal settlement', the Settlement Office was established to ensure the entire process, with headquarters in Prague and Bratislava (these were separate offices subordinate to the Ministry of the Interior).

In Czechoslovakia, a total of 2,946,395 hectares of land was confiscated, of which 1,651,016 hectares was agricultural land. In the Czech lands, a total of 2,400,449 hectares of land was confiscated, of which 1,405,070 hectares was agricultural land (in the borderlands 1,955,076 hectares, of which 1,306,941 hectares was agricultural land). Smaller beneficiaries received 1,037,255 hectares of mainly agricultural land and the remaining 1,360, 224 hectares (mostly forestry land) was kept by the state or was divided among public institutions and corporations. Unlike in the Czech lands, in Slovakia the process of confiscating and distributing land was slower. Of the 578,638 hectares which was subject to confiscation, by 1948 only approximately 72,000 hectares of land had in fact been confiscated and distributed. This accelerated after February 1948 and by 1 March 1949, 545,946 hectares of land was confiscated, with smaller beneficiaries receiving 183,463 hectares.[11]

1.2.6 Revision of interwar Land Reforms (1947)

In contrast to the separate regulation of confiscation of agricultural property in the Czech lands and Slovakia, the legal regulation of the continuation of the land reform should have been common to the entire territory. This so-called second phase was primarily aimed at revising the first land reform, which was subjected to harsh criticism after 1945. The preparatory works were started after the victory of the Communist Party in the elections in 1946, when a new government of the National Front was established under Gottwald's presidency. It was based on the discussions and conclusions of VIII. National Congress of the Communist Party of the Czech Republic of the end of March 1946 dealing with agricultural issues. The revision was also to be linked to a number of other measures in the field of agriculture. In the summer of 1946, the outlines of six agricultural acts – also called 'Ďuriš' laws' – were drawn up under the auspices of the communist-run Ministry of Agriculture, which were submitted to the government on 24 September. In addition

11 | Cf. Lacina 1963, 216–219, 230–232.

to the Land Reform Review Act itself, other proposals related to consolidation, hunting, bookkeeping of allocated property, provision of an agricultural production plan, division of agricultural businesses within the framework of inheritance, and prevention of fragmentation of agricultural land. However, the reform was presented in the form of a comprehensive programme only on 4 April 1947 in a speech by Minister Julius Ďuriš at an assembly in Hradec Králové. That is why it is also called the Hradec Králové programme (Cz: *Hradecký program*). It was based on the principle 'the land belongs to the one who works on it'. The forced purchase and redistribution of land over 50 hectares (point 3) and all land of persons who did not farm on it (point 4) was declared.[12]

The most serious disputes were accompanied by the adoption of the first and most important of Ďuriš' outlines regarding the revision of the interwar land reform. In an effort to maintain their positions in the countryside, non-communist parties also agreed with the idea of revision, but they had a number of reservations about the outlines, which were discussed in more detail in the government, the agricultural committee and the plenum of the Constituent National Assembly (the method and scope of the revision, the amount of replacement prices). The communists, who did not have a majority (the social democrats exceptionally did not support them), were eventually forced to compromise (guarantees of 50 hectares, revisions were not to be a flat-rate, replacement and ration prices were increased). The act regulating the revision of the first land reform was adopted in a mitigated form (compared to the original proposal of the Ministry of Agriculture) on 11 July 1947 and published as Act No. 142/1947 Coll. The decisions and measures of the bodies implementing the land reform (the State Land Office, later the Ministry of Agriculture or the Land Office for Bohemia and Moravia) were subject to revision. The revision was carried out by the Ministry of Agriculture, in Slovakia mainly through the Commission for Agriculture and Land Reform; it was supposed to decide according to the resolution of the revision commission composed of representatives of the individual parties. According to Section 1, the subject of the revision was mainly: 1) property excluded or released from seizure according to the Seizure or Allocation Act, which allowed for numerous exceptions; 2) so-called general agreements on the implementation of land reform; 3) residual estates.

Government Regulation No. 194/1947 Coll. was adopted to implement the act; revision commissions were only established by Government Regulation No. 1/1948 Coll. The practical implementation of the revision made it possible to reinforce the positions of the Communist Party of the Czech Republic, but the non-communist parties partially succeeded in mitigating the revisions.[13]

In connection with the revision of the land reform, Act No. 143/1947 Coll. 'regulating the transfer of ownership of the property of the Hluboká branch of

12 | Cf. Ministry of Agriculture 1947, 20.
13 | Cf. Jech 1963, 400.

the Schwarzenberg family to the Czech Republic' (so-called 'lex Schwarzenberg') was also adopted on 10 July 1947, which resulted in takeover of the property of the Schwarzenberg primogeniture without compensation (the original owners should have been paid a welfare pension in the amount determined by the government, but this did not happen either). As stated by the legal committee reporter JUDr. Jan Bartuška, the later attorney general and head of the department of administrative law at the Prague Faculty of Law, it was a "sui generis land reform in the South Bohemian region". The main reason was the size of the property (approximately 55,000 hectares); it was argued to atone for historical wrongs and the German origin of the Schwarzenbergs.[14] This was basically the only large property complex of the former nobility that was not affected by confiscation decrees. Therefore, the form of an individual act was chosen for its liquidation, which gives it an exceptional character.[15]

1.2.7 New Land Reform (1948)

After a partial failure with the revision of the land reform, the communists prepared a new outline called 'on the allocation of land to peasants' in line with the principles of the Hradec Králové programme. Minister Ďuriš presented it to the government on 17 October 1947. In the commentary proceedings, the non-communist ministries spoke out against the outline, arguing the economic effects and significant interference with the principle of legal certainty and protection of private property. During the discussion in the government, there was certain mitigation. In addition, the non-communist parties prepared their own drafts of the new land reform act.[16] In the end, the government outline was not approved during the discussion in the agricultural committee of the Constituent National Assembly, which was the result of a change in the policy of the Social Democracy, which stopped unconditionally supporting the communists after the Brno congress in November 1947.

The adoption of the new land reform act, which opened the so-called third stage of land reform, finally took place after the February coup, on 21 March 1948. It was published as Act No. 46/1948 Coll. and implemented the principles of the Hradec Králové Programme. The land ownership of one personally and properly managing owner or family was to be reduced to a maximum of 50 hectares. The first part of the act concerned the forced purchase; the second part delt with the rationing. However, the decrees of the Minister of Agriculture on the purchase of land were not issued and compensations were not provided.

14 | Cf. steno-protocols from the 65th meeting of the Constituent National Assembly of 10 July 1947, http://www.psp.cz/eknih/1946uns/stenprot/065schuz/s065001.htm [10.12.2023].
15 | For more details see Kalkušová 2018.
16 | Rychlik 1998, 16–17.

Act No. 44/1948 Coll., which amended Act No. 142/1947 Coll., was also adopted at the same time. It thus acquired the form that was originally proposed by the communists. Revision proceedings were carried out immediately, which meant the blanket annulment of the original decisions of the State Land Office; in cases where the revision commission confirmed its decision even before February 1948, these resolutions were reviewed and annulled (a total of 422 large estates and 1875 residual estates were subject to revision).[17]

Allocation strategies differed under the second and third phases of the reform. While for allocations according to Act No. 142/1947 Coll. as amended, for political reasons there was an effort to quickly allocate land to small farmers and the landless (55.6% of agricultural land went to state farms, 2.8% to state forests, 1.9% to unified agricultural cooperatives, 25.8% to small farmers and 14.8% to others), according to Act No. 46/1948 Coll., allocations to private individuals were implemented only to a minimal extent, and land was allocated mainly to the socialist sector (42% of agricultural land went to state farms, 34.6% to unified agricultural cooperatives, 0.1% to state forests, 3.6% to small farmers and 19.7% to others).[18]

In total, 4,143,149 hectares of all land was redistributed under the three phases of land reform, including 2,135,798 hectares of agricultural land. Small beneficiaries obtained 30.9% of the total, or 59.8% of agricultural land, 52.1% of all (especially forest land) belonged to the state.[19]

1.2.8 Collectivisation of Agriculture (1948–1960)

The implementation of the post-war land reform resulted in the collectivisation of agriculture in the 1950s; although it was initially excluded by communist officials, private ownership of land up to 50 hectares was (unlike the 1920 Constitution) even constitutionally protected in the 1948 Constitution (Section 159).

Forced collectivisation, which is also the subject of the most attention in professional literature, has come to the public awareness,[20] however it was only part of a broad-based process of transformation of the entire countryside. The term 'collectivisation of agriculture' is mainly used for the process and results of cooperatives (creation of unified agricultural cooperatives), but nationalisation (creation of state farms and research institutes) may also be included under the term. The motivation for collectivisation, linked to the elimination of the 'peasant status', included political, economic and social reasons.

Collectivisation was carried out primarily on the basis of Act No. 69/1949 Coll. 'regulating unified agricultural cooperatives', however a number of other

17 | Cf. Lacina 1963, 229–230, and Rychlík 1998, 17–18.
18 | Ministry of Agriculture and Forestry 1958, 19.
19 | Ibid (captures the situation as of May 1951).
20 | For more details on collectivisation see Jech 2008; Blažek, Kubálek (eds.) 2008; Blažek, Jech, Kubálek et al. 2010.

regulations were used (and misused) for it – both from the area of land law, including the previous phases of land reforms (especially Act No. 46/1948 Coll. 'regulating the new land reform'; Act No. 47/1948 Coll. 'regulating some technical and economic adjustments of land'; Act No. 27/1949 Coll. 'regulating the mechanisation of agriculture' and subsequent Decree of the Ministry of Agriculture No. 612/1949 of the Official Document of the Czechoslovak Republic 'regulating the purchase of basic agricultural mechanisation equipment from certain natural persons'; Government Regulation No. 86/1953 Coll. 'regulating financial assistance to unified agricultural cooperatives and private peasants'; and Government Regulation No. 50/1955 Coll., 'regulating some measures to ensure agricultural production'), as well as criminal and minor offence law (Act No. 231/1948 Coll. 'for the protection of the People's Democratic Republic, Criminal Act' No. 86/1950 Coll., 'Criminal Administrative Act' No. 88/1950 Coll.). Mandatory deliveries under Act No. 56/1952 Coll. 'regulating delivery obligations and purchase of agricultural products', which, however, had their origins in the war and post-war functioning of the economy.

At the time, four types of cooperatives were distinguished according to the degree of collectivisation, or according to the method of joint production and remuneration: in Type I. there was a joint organisation of sowing, harvesting and the use of mechanisation; in Type II. there was the introduction of joint crop production, which was manifested both factually and symbolically in the ploughing of borders, and remuneration was realised in the form of parts of the harvest according to the area of land invested in the cooperative; in Type III. there was expansion including joint livestock production, and remuneration was mainly based on work units performed for the cooperative, and partially also with funds for the use of land by the cooperative; Type IV. introduced remuneration according to the quantity and quality of work performed for the cooperative, regardless of the size of the cooperative share.

Collectivisation took place from 1948 in three phases. In the first phase (until 1953), there was an increase in their number especially during 1950 and 1951, while at the end of 1949 there were approximately 2000 unified agricultural cooperatives. By 1952 their number (including preparatory committees) had increased to approximately 8600, which was more than half of the municipalities in the Czech lands. At first, Type I, of unified agricultural cooperatives prevailed; at the end of 1951 and beginning of 1952, the number of unified agricultural cooperatives of Types III. and IV. increased. Then, in 1953, after the death of Stalin, there was a partial relaxation of collectivisation pressure. During the second phase (1955–1960), the number of unified agricultural cooperatives increased to approximately 12,500 mainly of Types III. and IV. In the third phase (the 1970s), cooperatives merged into larger economic units (in 1980 there were 1722 of them). Well-known cooperatives included JZD Slušovice or JZD 1. máj Pozořice. According to statistics for 1978, the

state sector managed 30.6% and the cooperative sector 62.1% of agricultural land in Czechoslovakia.[21]

Originally, voluntariness was emphasised in the process of collectivisation; however, it was accompanied by various forms of coercion, which finally resulted in the persecution of the peasantry, connected mainly with 'Action K' (*Kulak*) from November 1951. In the wake of the Babice case of the summer of 1951 (after the murder of three officials of the local national committee in Babice), there were a number of kangaroo courts against opponents of collectivisation and further (based on the so-called directive of the three ministers of October 1951) for increased repression against the 'village rich' – which consisted of bans on residence and resettlement of families of convicted peasants in two waves (from November 1951 to May 1952, when it was interrupted due to organisational problems – and then from November 1952 to July 1953 when it continued on an even larger scale).

In 1989, the socialist sector created a 98.7% share in all the agricultural land – out of which the cooperative sector, including crofts, created 67.8%; the state sector created 30.9%; while independently farming peasants and small landholders created only 1.3%.[22]

2. Land Restitution, its Legal Regulation and Implementation

The issue of restitution in general and land property in particular has already been given attention by a number of authors with a legal or economic focus. These are especially Milan Pekárek (*1944), Antonín Kubačák (1951–2021), Jiří Spáčil (*1953), Milan Kindl (*1954), Ivana Průchová (*1955), Karel Zeman (*1955), Zdeněk Hraba (*1975), Josef Benda (*1978) and Vojtěch Příkopa (*1987). Some of them participated in the preparation of legislation (Kubačák), while others worked or have been working mainly in the academic sphere (Pekárek, Průchová, Zeman), in the judiciary (Spáčil) or in advocacy (Příkopa). It was both a comprehensive view of restitution (Průchová, Zeman) and a focus on sub-issues such as the restitution of noble estates (Benda) or the transfer of replacement land (Příkopa).[23]

21 | Hraba 2016, 131–135.
22 | Zeman 2013, 98 and 285.
23 | Průchová 1997; Spáčil, Barešová (eds.) 1998; Kubačák, Jacko 2012; Benda 2013; Hraba 2013; Zeman 2015; Příkopa 2020. Most of the mentioned authors strive for an objective approach, which is of course determined differently by their professional activities, however some publications lack balance and impartiality (cf. the review of Benda's work: Horák 2015). In the following text, I mainly follow up on summaries: Průchová 2017, 462–471; Kubačák 2017, 529–539; and Horák 2023, 183–190.

2.1 On Post-1990 Restitutions under Transformation Processes

In the context of the development after the collapse of the communist regime, restitution means the process and the resulting state of redressing some property wrongs that occurred before 1990, whereby the entitled persons became the owners of the original property or were provided with compensation. This is one of the most significant and still unresolved ways of coping with the totalitarian past. Although this term is not defined in the restitution regulations and is used only exceptionally, it is common in professional literature and the media, and it is accepted in a broader social context.

Restitution may be understood in a narrower sense (carried out on the basis of restitution legislation after 1990) or in a broader sense, when it includes not only the national, but also the international level (including case law). Although both types of restitution redressed similar property wrongs, the main difference was that while restitution at the national level was the result of a decision of democratically elected representation and only occurred in the post-revolutionary era, restitution at the international level was the result of international responsibility and had been dealt with since the post-war period.

Restitutions are part of a wider process of transformation of property relations in post-communist countries, which also includes privatisation, or the transfer of public property to private ownership; while restitution is sometimes understood as a form of privatisation. They concerned natural persons and legal entities – churches, municipalities, physical education organisations, Holocaust victims and ordinary owners.[24]

The transition from the user to the power concept of ownership was the accompanying phenomenon and the result of the transformation (see sub-chapter 1.1). The adoption of the amendment to the constitution from 1960 (Constitutional Act No. 100/1990 Coll.) and the adoption of the Charter of Fundamental Rights and Freedoms (with the Constitutional Act No. 23/1991 Coll. in its introduction), which returned to a unified concept of ownership and to the elimination of discrimination in private property, were an important prerequisite. On the basis of this change, a group of transformation regulations was adopted for the area of agricultural and forest property, which partially also fulfilled the function of restitution or were closely related to restitution regulations. It was Act No. 114/1990 Coll. 'amending Act No. 123/1975 Coll. regulating the use of land and other agricultural property to ensure production', and Act No. 162/1990 Coll. 'regulating agricultural cooperatives', which (despite a number of exceptions) enabled the owners of agricultural land used by an agricultural organisation to apply for the return of the land, as well as Act No. 42/1992 Coll., 'regulating property relations and the settlement of

24 | See Zeman 2017 for more details on restitution and privatisation as part of the transformation processes in the Czech Republic.

property claims in cooperatives', and Act No. 39/1993 Coll. 'regulating fines and bails for non-compliance with the laws governing the transformation of agricultural cooperatives and the redress of property grievances in the field of ownership of land and other agricultural property'.

The principle was applied in the relationship between restitution and privatisation 'restitution priorities', which was taken into account especially in the so-called blocking provisions contained in both the privatisation regulations (in the original version of Section 2, Sub-section 3 of Act No. 427/1990 Coll., 'regulating the transfers of state ownership of certain assets to other legal entities or natural persons', also called the 'Small Privatisation Act', and Section 3, Sub-section 2 of Act No. 92/1991 Coll., 'regulating the conditions for the transfer of state property to other persons', also called the 'Major Privatisation Act'), as well as in restitution issues (in the original version of Section 5, Sub-section 2 and Section 29 of Act No. 229/1991 Coll., 'regulating the adjustment of ownership relations to land and other agricultural property', also called the 'Land Act').

The process of restitution was one of the most legally complex and politically controversial issues of post-revolutionary development, an approach to the idea *favor restitutionis* differed with politicians, academics and courts.[25] Therefore, instead of trying to consistently settle property wrongs, there was only an attempt to mitigate their consequences, with the true argument that it is not possible to settle all wrongs. In reality it was only a euphemistic statement, because from the beginning there was an effort to limit restitution in various ways. The biggest controversies accompanied church restitution.

In the context of Act No. 198/1993 Coll., 'regulating the illegality of the communist regime and resistance against it', restitutions were mainly related to the communist regime between 1948 and 1989, which according to this act was supposed to be 'criminal', 'illegitimate' and should be 'reprehensible' (Section 2, Sub-section 1). However, it was overlooked that the Communist Party of Czechoslovakia, which was supposed to be under the same act "a criminal and reprehensible organisation similar to other organisations based on its ideology, which in their activities aimed at suppressing human rights and the democratic system" (Section 2, Sub-section 1), served by the means of its ministers and their collaborators already in the governments of the so-called Third Republic (1945–1948), and that what is criticised about the communist regime in Section 1 of the aforementioned act (e.g. that it deprived citizens of "property arbitrarily and violated their property rights") may be traced very well as soon as after 1945. A case of expropriation without compensation of the property of the Schwarzenberg primogeniture through the so-called 'lex Schwarzenberg' (1947), which was presented at the time as part of

25 | In this context, the courts speak directly about the principle (III.ÚS 4121/18), which is also expressed in one of the restitution laws (Section 18, Sub-section 4 Act No. 428/2012 Coll.). For more details see Příkopa 2020, 37–42.

the 'Czechoslovak national and social revolution' may be mentioned here (see sub-chapter 1.2.6 for more details). An at least partial solution of the restitution of property seized in the period before 1948 was made possible by Act No. 243/1992 Coll. in the case of post-war confiscation decrees, even though it was generally perceived as an exception and criticised by some authors (e.g. Václav Pavlíček and Josef Benda), and further by Act No. 212/2000 Coll. (in the case of Jewish property this was no longer publicly disputed).

In addition to their compensatory nature, restitution has unfortunately also acquired a partially 'confiscating' dimension, because the protection of property, i.e., an inalienable, unlimitable, and irrepealable fundamental right, was limited based on the jurisprudence of the Constitutional Court. Refer to the opinion of the plenum of the Constitutional Court in the matter of the claim for the determination of the property right in relation to the application of the right according to the restitution regulations — according to which opinion the meaning and purpose of the restitution legislation may not be circumvented by a claim for determination, nor may it be effectively claimed under the general regulations for the protection of the property right, the termination of which occurred before 25 February 1948 and the special restitution regulation did not stipulate a way to mitigate or remedy this property damage (on the contrary, Eliška Wagnerová's dissent is inspiring).[26] Therefore, restitutions not only partially enabled the return of property, but as a result simultaneously legalised a number of illegal interventions into private property before 1990.

Furthermore, we may not ignore a number of decisions of general courts, which followed the previous era not only legally in terms of formal legality, but also in terms of value, which brought an obvious strengthening of the legitimacy of the old regime, while the Constitutional Court repeatedly criticized the "ahistorical and formalist approach" of some general courts (among others, file no. I. ÚS 23/97 or 617/08). Last but not least, it is worth mentioning here that the process of restitution and especially the provision of replacement land provided a lot of space for corrupt practices, and brought about a number of controversial decisions — some of which had criminal consequences (e.g. cases like Bečvár's and Czernin's family estate).

Related to restitution and the transformation process was the restriction of the possibility of foreigners acquiring real estate in Czechoslovakia and the Czech Republic, which was enshrined in foreign exchange laws (specifically in Section 25 of Act No. 528/1990 Coll. and in Section 17 of Act No. 219/1995 Coll., with a few exceptions, e.g. when acquired by inheritance or from a spouse or close relatives, whose circle gradually expanded). Upon joining the European Union, the Czech Republic negotiated a transitional period to extend the sales ban, which ended in May 2009

26 | Opinion of the plenary session of the Constitutional Court of the Czech Republic dated 1 November 2005, no. Pl. ÚS-st. 21/05, published under No. 477/2005 Sb., https://nalus.usoud.cz/Search/GetText.aspx?sz=st-21-05_1 [10/12/2023].

for real estate used for housing and in May 2011 for privately owned agricultural land, followed by an amendment to the Foreign Exchange Act No. 206/2011 Coll. (effective from 19 July 2011) lifted the restrictions. Even before that, however, foreigners could acquire domestic real estate under certain conditions, in particular, by establishing or acquiring a Czech legal entity.[27]

2.2 Restitution Legislation

2.2.1 Background

In the post-November era, the appropriateness of restitution, the definition of property wrongs, the range of entitled persons, the subject matter, the decisive period or the form (return of the original property, financial compensation or a combination thereof) were discussed. Not only the left wing, but also an influential part of the then political representation and economic elites (especially the Federal Minister of Finance Václav Klaus and his team) rejected restitution on the grounds that it would slow down privatisation and cause considerable economic damage. The complexity of negotiations in the first phase also resulted from the existence of a federation and partly different property conditions and interventions in ownership relations in the Czech lands and Slovakia (especially in the case of confiscations after 1945). No single framework or comprehensive law was created. Gradually, between 1990 and 2012 nine main restitution regulations were adopted in the territory, most of which were repeatedly amended. The Constitutional Court also repeatedly intervened in restitution legislation (in 1994 and 1995 by cancelling the condition of permanent residence for determining restitution entitlement; and in 2005 and 2018 by cancelling the so-called 'restitution full stop', referring to the possible end of the process of dealing with restitution cases).

Restitution may be divided and evaluated according to various criteria, in particular according to the definition of the property wrong (whether it was a general way – by the range of facts, or specific – by enumeration); according to the subject (whether natural persons or legal entities belonged to the range of beneficiaries); according to the type of property (whether it was agricultural or non-agricultural property, movable or immovable property); according to the relevant period (whether they related to the wrongs after February 1948, or even before that date); and according to the method of restoration of the ownership right (whether it occurred directly by law, by registration of the contract by a state notary or later by depositing it in the Land Register on the basis of an agreement on the release of property, by the decision of an administrative authority, or by the decision of a court).

27 | Šerá, Racková 2009.

The individual restitutions involved interconnected and constantly evolving processes both by amendments (all restitution regulations were amended at least once, most often by the Land Act of 1991) and by case law, including the one of the Constitutional Court and European Court of Human Rights (e.g. by abolishing the condition of permanent residence by the Constitutional Court in 1994 in the 'Act on Out-of-court Rehabilitations' and subsequently in 1995 in the Land Act). For the sake of clarity, restitution regulations will be presented using a combination of thematic and chronological perspectives, while characterising them using the above criteria. Subsequently, attention will be paid to the Land Act (Act No. 229/1991 Coll. 'regulating the adjustment of ownership relations to land and other agricultural property'), which represents the dominant regulation of restitution of agricultural and forest property.

2.2.2 Restitution Regulations in Relation to Legal Entities

This category ranks among the oldest cases of restitution. The first restitution regulation was Act No. 173/1990 Coll., 'which repeals Act No. 68/1956 Coll., regulating the organisation of physical education, and which regulates some other relations regarding voluntary physical education organisations'. The restitution limit was not established until 31 March 1948, while the restoration of ownership occurred by registering the contract with the state notary (or, from the beginning of 1993, by depositing it in the Land Register). The second restitution regulation (Act No. 298/1990 Coll. 'regulating certain property relations of religious orders and congregations and the Archbishopric of Olomouc') defined property by the so-called enumeration method, when specific items acquired by church entities *ex lege* were listed in the appendices of this act. Both acts concerned both non-agricultural and agricultural property, as well as both immovable and movable property. The fifth restitution regulation (Act No. 172/1991 Coll. 'regulating the transfer of certain items from the property of the Czech Republic to the ownership of municipalities') also defined the subject of restitutions more specifically when municipalities acquired *ex lege* the so-called historical property owned as of 31 December 1949. It concerned only real estate (agricultural and non-agricultural).[28]

Act No. 428/2012 Coll., 'regulating property settlement with churches and religious societies and amendment of some acts' is the last case of this group and the ninth restitution regulation in total. It was one of the most controversial, which was also reflected in the length of the (non-)resolution of this issue. It concerns both agricultural and non-agricultural property, as well as both immovable and movable property. In addition to the restitutions themselves, there was also an attempt to

28 | For more details see Kišš 2005.

find a comprehensive solution to the property settlement with church institutions (the amount of the financial compensation was particularly disputed).[29]

2.2.3 Restitution Regulations in Relation to Natural Persons and Legal Entities

The regulations of this category concern both agricultural and non-agricultural property, as well as both immovable and movable property. The third restitution regulation (Act No. 403/1990 Coll., 'regulating the mitigation of certain property wrongs', also called the 'Small Restitution Act') defines the scope of restitution matters in general. Pursuant to Section 1 of the act, it was property confiscated 1) according to Government Regulation No. 15/1959 Coll. 'regulating measures concerning certain items used by organisations of the socialist sector'; 2) according to Act No. 71/1959 Coll., 'regulating measures concerning some private household property'; and 3) by nationalisation based on assessments of some sectoral ministries, issued after 1955 and referring to the nationalisation regulations of 1948. In particular, small and medium-sized family businesses were returned – such as restaurants, shops and workshops, but also mills and sawmills, as well as household property.

Another case of this group and the eighth restitution regulation in total concerns Jewish property (Act No. 212/2000 Coll., 'regulating mitigation of certain property wrongs caused by the Holocaust'), which was defined partly in general and partly by enumeration. In this case, the boundary was set from 29 September 1938 to 8 May 1945. In contrast to other domestic restitution laws, it does not require the applicant's Czech citizenship for the release of art objects, nor does it impose a time limit on the application of the restitution claim. In the case of both laws, the ownership right of real estate was restored by depositing it in the Land Registry (or, until the end of 1992, by registering an agreement on the release of property by a state notary).[30]

2.2.4 Restitution Regulations in relation to Natural Persons

This category ranks among the most significant in terms of the number of restitution cases and court outcomes. The fourth restitution regulation (Act No. 87/1991 Coll., 'regulating out-of-court rehabilitations', also called the 'Great Restitution Act') defines the range of restitution matters in general, while it refers to non-agricultural property (movable and immovable). It defines the relevant period from 25 February 1948. Ownership rights were restored (until the end of 1992) by registration of the agreement on the release of property by the state notary, then by deposit in the Land Register. The subsequent regulation (Act No. 231/1991

29 | For more details on church restitutions, cf. Valeš 2009; Kubačák 2016; Valeš 2020.
30 | For more details see Kuklík et al. 2015.

Coll., 'regulating the authority of the bodies of the Czech Republic in out-of-court rehabilitation') addressed the issue of financial compensation. In the summer of 1994, based on the proposal of a group of deputies led by Marek Benda in Act No. 87/1991 Coll. the Constitutional Court abolished (with effect from 1 November of the same year) the condition of permanent residence, which enabled the restitution of citizens who emigrated and remained abroad.[31]

The sixth restitution regulation (Act No. 229/1991 Coll., 'regulating the adjustment of ownership relations to land and other agricultural property', also called the 'Land Act') followed by the seventh regulation (Act No. 243/1992 Coll., 'regulating some issues related to Act No. 229/1991 Coll., regulating ownership relations to land and other agricultural property, as amended by Act No. 93/1992 Coll'. also called the 'transformation law') define the scope of restitution in general, while both relate only to agricultural and forest property (movable and immovable). Ownership rights are restored by the decision of an administrative body (originally the Land Offices and, since the beginning of 2003, the State Land Office). While the first of them set the decisive period from 25 February 1948, the second one also applied to property taken away on the basis of confiscation decrees from 1945 (the historian Jan Rychlík was apparently the initiator of this important and, given the international compensation negotiations, also logical shift).

2.2.5 Partial Summary

At the end of the analysis of the restitution legislation, it may be summarised that from the perspective of the definition of property wrongs, a general range of facts was mostly chosen (a more specific definition occurred in the case of municipal property, church property defined in the 1990 by enumeration, as well as Jewish property defined in the enumeration at least in part); from the perspective of entity, three laws related only to natural persons, four only to legal entities, and two to both natural persons and legal entities; from the perspective of the subject matter, two laws related to agricultural property, one to non-agricultural property, and six to both agricultural and non-agricultural property; from the perspective of the relevant period, most of the laws had not dealt with reparation of wrongs until 25 February 1948 (although this limit was explicitly mentioned in only three of them), in the case of three acts, it was bound to a later date, while only in the case of two acts, it also applied to wrongs committed before the mentioned date; and finally, from the perspective of the method of restoration of the ownership right, this occurred in two cases directly by law, in five cases by entry into the Land Registry, and in three cases by a decision of an administrative body (the 2012 Church

31 | Judgement of the Constitutional Court of the Czech Republic dated 12 July 1994, file no. Pl. ÚS 3/94, published under no. 164/1994 Sb., https://nalus.usoud.cz/Search/GetText.aspx?sz=pl-3-94 [10.12.2023].

Restitution Act regulated different methods for agricultural and non-agricultural property).

2.3 Land Act

The Land Act, or Act No. 229/1991 Coll. 'regulating the ownership relations to land and other agricultural property' was adopted by the Federal Assembly of the Czech and Slovak Federative Republic on 21 May 1991 and it entered into force on 24 June the same year. To date, it has been amended by 27 acts and 30 implementing regulations have been issued in relation to it.

The Land Act regulates both the rights and obligations of owners, original owners, users and lessees of land, as well as the competence of the state in regulating ownership and rights to use the land. The adoption of the act pursued (according to its preamble)[32] three goals: 1) mitigation of the consequences of some property injustices which occurred against the owners of agricultural and forest property in the period of the years 1948 to 1989; 2) improving the care of agricultural and forest land by restoring the original ownership relations to the land; and 3) adjustment of ownership relations to land in accordance with the interests of rural economic development, and in accordance with the requirements for the creation of the landscape and the environment.

As to the material applicability of the act (in accordance with Section 1), it applies to both immovable and movable property: 1) to the land which forms the agricultural land fund or belongs to it (in accordance with Section 1 of Act No. 53/1966 Coll. and more recently Act No. 334/1992 Coll. 'regulating the protection of agricultural land fund'), and to the extent determined by this act, as well as to land that forms a forest land fund (in accordance with Section 2 of Act No. 61/1977 Coll. and more recently Act No. 289/1995 Coll. 'regulating forests and the amendment and supplementation of certain acts'; the type of land is registered in the Land Registry; 2) to residential buildings, farm buildings and other constructions that belong to the original farmstead, including built-up land; 3) to farm buildings and structures that serve agricultural and forestry production or related water management, including built-up land; and 4) to other agricultural property listed in Section 20 of the Land Act (or to live and dead inventory).

Only natural persons were the authorised persons – the original owners and their legal successors. According to the original wording of Section 4 of the Land Act, all these persons had to fulfil the condition of Czechoslovak (Czech) citizenship and permanent residence, while the agricultural property had to be transferred to the state or to other legal entities in the period from 25 February 1948 to 1 January

32 | The preamble to restitution regulations is also used by courts as a tool for their interpretation. cf. Judgement of the Constitutional Court dated 13 December 2005, file no. Pl. ÚS 6/05, published under no. 531/2005 Coll., https://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-6-05 [10.12.2023].

1990; if the original owner dies (or is declared dead) before the expiry of the period for asserting the claim regulated in Section 13 of the Land Act, their legal successors become the beneficiaries in the following order: 1) a legal heir; 2) children and spouse - in the case that the heir dies before or simultaneously with the death of the testator, their children; 3) parents; 4) siblings and - in the case that the heir dies before or simultaneously with the death of the testator, their children (extended to spouses by amendment No. 183/1993 Coll.); it is similar to legal succession according to the Civil Code from 1964, but so-called cohabitants were excluded). If the beneficiary who claimed the right to release the property dies before the administrative decision is issued, the right passes to the heir (which is explicitly enshrined in Amendment No. 183/1993 Coll.).

The condition of permanent residence for the application of the restitution claim was abolished by the Constitutional Court at the end of 1995 (with effect from 2 February 1996) on the basis of a proposal connected with the constitutional complaint of Ing. W. M. and the proposal of a group of deputies;[33] In this context, amendment No. 30/1996 Coll. to extend the deadline for claiming restitution claims (in the case of persons meeting all conditions except permanent residence) until 31 December 1996.

The state (if the property was in the possession of a state body or facility without legal personality) or legal entities (typically agricultural cooperatives or state farms) which held the property on the effective date of the Land Act (i.e. in the case of legal entities, they had the right to manage the property or the right of permanent use; in the case of other properties, it was managed by their owners), with the exception of foreign countries and also enterprises with foreign property participation and business companies whose partners or participants are exclusively natural persons, unless it was an item acquired from legal entities after 1 October 1990, are the obliged entities (according to Section 5, which was amended once). Obliged entities had to treat real estate (according to Section 5, Sub-section 3) with the diligent care and from the effective date of the Land Act, they could not (under penalty of invalidity) transfer their ownership.

Upon the motion of the authorised person, the court (according to Section 8, which was amended 4 times) decided that the ownership right to real estate owned by a natural person is transferred to them if they acquired it from the obligated entity (see above) either 1) in violation of the regulations in force at the time; or 2) at a price lower than the price corresponding to the price regulations in force at the time; or 3) on the basis of unlawful favouring of the assignee. The same also applied to persons close to that person if ownership or personal use of such real estate passed or was transferred to them. The natural person had the right *vis-à-vis* the state to return the purchase price and to reimburse the costs purposefully spent

33 | Judgement of the Constitutional Court dated 13 December 1995, file no. Pl. ÚS 8/95, published under no. 29/1996 Coll., https://nalus.usoud.cz:443/Search/GetText.aspx?sz=Pl-8-95 [10.12.2023].

on the real estate; on the other hand, the state subsequently had the right *vis-à-vis* the authorised person to reimburse the costs purposely spent on the real estate, which reimbursed the natural person.

If an entitled person donated their land to a natural person in need or transferred it free of charge in connection with the conclusion of a purchase contract for a building to which the land belonged, and if these lands were still owned by this natural person or a person close to them, the court decided on the motion of the entitled person either 1) to cancel the contract in the part in which the land was donated or transferred free of charge; or 2) to pay the price of the donated land by the owner who acquired it in this way, or by their heir (the price was determined according to the price regulations valid on 24 June l991, however according to the type of land at the time of donation). If the landowner did not agree to pay this price, the court decided to cancel the contract. Finally, in the event that the land was owned by a third party, the person to whom the land was donated or transferred free of charge, or their heir, had to pay the entitled person the price for which the land was transferred to the third party.[34]

Obligated persons had (in accordance with Section 6, which was amended 4 times) to release the property[35] that they acquired as a result of the cases listed in Section 6, Sub-section 1 – originally there were eighteen cases, on the basis of which the original owner lost their property; after amendment by Act No. 93/1992 Coll., two others joined them; the sub-paragraphs below correspond to the legal enumeration. These were restitution titles which were:

1. *associated with court rulings in delictual cases*: a) forfeiture of property, forfeiture of item or seizure of item in criminal proceedings, or in criminal administrative proceedings according to previous regulations, if they were cancelled according to special regulations (especially according to Act No. 119/1990 Coll. 'regulating judicial rehabilitation, and Act No. 87/1991 Coll. regulating out-of-court rehabilitations')
2. *associated with agricultural measures and collectivisation*: b) confiscation without compensation in accordance with Act No. 142/1947 Coll. 'regulating the revision of the first land reform' or according to Act No. 46/1948 Coll. 'regulating the new land reform' (for more details see sub-chapters 1.2.6 and 1.2.7); this restitution title is associated with a concurrence of claims (see Section 12 of the Land Act, according to which the right to release the original real estate belongs to the entitled person who lost ownership earlier, unless they agree

34 | There is also extensive jurisprudence on the issue of Section 8: e.g. on the distinction between the terms 'donation' and 'gratuitous transfer' (cf. 3 Cdon 1119/96); on the concept of 'price regulation' (cf. 2 Cdon 166/96); on acquiring real estate at a price lower than the price regulations (cf. 2 Cdon 1267/96); on acquiring real estate in violation of legal regulations (cf. 2 Cdon 1164/96, 3 Cdon 1175/96); gratuitous transfer of land and distress (cf. 3 Cdon 1288/96); to cancel part of the contract on the free transfer of land (cf. 2 Cdon 655/96, 2 Cdon 1233/96, 3 Cdon 1375/96, 2 Cdon 1675/96. For more details see Spáčil, Barešová (eds.) 1998, passim.

35 | 'Extradition' was a specific institute established by restitution regulations.

otherwise; the other entitled persons then have regulating right to compensation according to Section 11 and 11a); d) confiscation without compensation in accordance with Act No. 81/1949 Coll. SNC 'regulating the adjustment of the legal conditions of the pasturage property of former urbariátník, i.e. fief holders upon the Urbarium, komposesorát, i.e. a special type of property community in Slovakia based on feudal Hungarian law and similar entities'; e) confiscation without compensation in accordance with Act No. 2/1958 Coll. SNC 'regulating the conditions and management of jointly used forests of former urbariátník, komposesorát and similar entities'; s) transfer to the ownership of the cooperative according to special regulations (such as Acts No. 69/1949 Coll. and No. 49/1959 Coll. 'regulating unified agricultural cooperatives', or Act No. 122/1975 Coll. 'regulating agricultural cooperatives'; t) order to use to a legal entity on the basis of Act No. 55/1947 Coll. 'regulating assistance to peasants in the implementation of the agricultural production plan', or Government Regulation No. 50/1955 Coll., 'regulating some measures to ensure agricultural production' (this was a situation of so-called forced tenement, while ownership remained with the original owners, therefore in practice the procedure was followed according to Section 22 of the Land Act, when the rights to use and enjoy were converted into a lease relationship with a notice period of 1 October of the current year); u) the transfer of jointly used singular forests and forest cooperatives to the territory of the Czech Republic if the members of the cooperative were exclusively natural persons (however, it was not a case of so-called proprietary forest cooperatives, which were not the owner and had no right to restitution as a legal entity)

3. *associated with emigration*: c) procedure according to Section 287a of the Criminal Code (Act No. 87/1950 Coll. as amended by Act No. 67/1952 Coll.) or pursuant to Section 453a of the Civil Code (Act No. 40/1964 Coll. as amended by Act No. 131 /1982 Coll.), according to which the property of emigrants was transferred to the state; f) statement and agreement on assignment of claims in case of eviction (so-called renunciation statement); g) the case that a citizen staying abroad left real estate in the territory of the republic or that their property was transferred to the state pursuant to Act No. 183/1950 Coll. 'regulating the property left on the territory of the Czechoslovak Republic by persons who opted for the Union of Soviet Socialist Republics and resettled on their territory'; j) a court decision upon which a contract on the transfer of property, in which a citizen transferred an item to another before leaving the country, or was declared invalid if the reason for the invalidity was leaving the republic, or the recognition of such a contract by the parties as invalid; in such case, the assignee under the said contract became the entitled person, even if this contract did not take effect
4. *associated with actions in distress*: h) a contract on the donation of real estate concluded by a donor in need; i) auction proceedings conducted for the

payment of state claims (in particular, proceedings pursuant to Sections 335–337 of the Code of Civil Procedure and Sections 79–88 of the Notary Code governing the sale of real estate); k) a purchase contract concluded in distress under conspicuously disadvantageous conditions; l) refusal of inheritance in inheritance proceedings made in distress (when, as a result of the refusal, the property passed to the state in the case of death)[36]

5. *associated with expropriation, nationalisation or etatisation*: m) expropriation with compensation if the real estate exists and does not permanently serve the purpose for which it was expropriated; n) expropriation without payment of compensation; o) nationalisation or etatisation carried out in violation of the then valid legal regulations or without payment of compensation
6. *associated with illegal conduct*: p) taking over real estate without a legal reason; r) political persecution (i.e. the wrong caused to persons that arose in direct connection with their democratically motivated political and social actions and civic attitudes, or as a result of their affinity to a certain social, religious, property or other group or class; see Section 2, Sub-section 2 of Act No. 87/1991 Coll.) or a procedure that violates generally recognised human rights and freedoms (or conduct that is contrary to the principles of a democratic society respecting the rights of citizens expressed in the Charter of the United Nations, the Universal Declaration of Human Rights, and subsequent international covenants on civil, political, economic, social and cultural rights; see Section 2, Sub-section 3 of Act No. 87/1991 Coll.).[37]

The procedure for claiming the right to release real estate is regulated in Sections 9 and 13 of the Land Act. The authorised person had to submit a proposal to the land office in whose district the claimed real estate was located, and at the same time they had to call on the obligated person to release the real estate. If they did not apply it within the period according to Section 13 (originally by 31 December 1992; after the amendment by 31 January 1993), the claim expired. The obliged person had to enter into an agreement with the entitled person within 60 days from the submission of the request on the release of real estate, which was subject to approval by the land office in the form of a decision issued in an administrative procedure. In the case of non-approval of the agreement, the court reviewed the decision of the land office at the request of the participant. If the agreement was not concluded, the land office decided on the ownership of the authorised person to the real estate. Against the decision of the land office, it was possible to file a lawsuit within two months from delivery to the court, which heard it in civil proceedings.

36 | For definition of the term see 'state claim' (cf. 3 Cdon 1413/96).
37 | Taking over the item by the state without a legal reason and acquiring the ownership right of the state (cf. 2 Cdon 117/96).

Due to the serious functional changes of real estate after acquisition by the state or another legal entity, Section 11 of the Land Act, which has been amended 6 times (in particular by Act No. 183/1993 Coll.), distinguishes between so-called absolute and relative obstacles that prevent the release of land. An absolute obstacle results in the impossibility of returning the original property and instead of this, the right to provide compensation is granted; in the case of land, there were originally five obstacles, and after the amendment six obstacles, in particular the situation when the land was built on (more in Section 11, Sub-section 1); in the case of buildings, it was a situation where, through a fundamental reconstruction, the building lost its original construction-technical character in such a way that it was no longer related to the subject of agricultural production (Section 11, Sub-section 4). A relative obstacle means that the authorised person may decide whether to demand the release of the original land or the transfer of another unencumbered land that is owned by the state, if the use of the land has been restricted in the ways specified in Section 11, Sub-section 3.

The provision of compensation for unreleased or damaged real estate (more in Sections 14 to 16), which is done either through the transfer of real estate or the provision of financial compensation, is an important component of restitutions. For the settlement of restitution claims, real estate is valued according to the actual condition and according to the price regulation valid on the effective date of the Land Act (according to Decree No. 182/1988 Coll., as amended by Decree No. 316/1990 Coll.). Section 20 of the Land Act also provided for the provision of compensation for movable property or for live and dead stock.

Section 17 of the Land Act also determined the competences of the Land Fund of the Czech Republic (established by Act No. 569/1991 Coll. 'regulating the land fund of the Czech Republic'), which was a legal entity (it was not an administrative body) and was responsible for the management of real estate owned by the state. The land fund was supposed to perform an important function in relation to the provision of compensation to entitled persons, however, its procedure was the subject of repeated criticism – not only because of controversial or directly corrupt cases, but especially "arbitrariness or laziness in allocating land", which was repeatedly pointed out by the Constitutional Court.[38]

The Constitutional Court also in 2005 and again in 2018 cancelled the so-called restitution full stop, by which the state (or the Ministry of Agriculture) tried to exclude the satisfaction of the restitution claims of entitled persons in the form

38 | Judgement of the Constitutional Court of the Czech Republic dated 4 March 2004, file no. III. ÚS 495/02: https://nalus.usoud.cz/Search/GetText.aspx?sz=3-495-02, and the decision of the Office of the Czech Republic dated 30 October 2007, no. stamp III. ÚS 495/05: https://nalus.usoud.cz/Search/GetText.aspx?sz=3-495-05_4 [10.12.2023].

of providing replacement land and leaving only financial compensation.[39] *Obiter dictum* at the same time criticised the problematic established practice of the State Land Office, which was created on 1 January 2013 by the merger of the Land Fund of the Czech Republic and the structure of the Land Offices (they previously belonged to district offices). In the case of determining the amount of financial compensation for unreleased land, the Constitutional Court has repeatedly taken the view that the State Land Office is obliged to provide entitled persons with adequate compensation for confiscated property, however it fails to do so.[40] The issue of judicial satisfaction of restitution claims is still alive.[41]

2.4 Compensation Negotiations

The forgotten issue of the so-called compensation negotiations between Czechoslovakia and other states between 1945 and 1982 forms a special restitution branch, while it concerned not only nationalised property but also other post-war interventions in the property of foreign nationals. It was supposed to be conducted primarily with allied or neutral states, but in the end negotiations were also held with Italy and Austria. From the point of view of later national restitutions, it was important that compensation could also be obtained by persons of German and Hungarian nationality, as long as they were not guilty and had a foreign nationality.

According to data from the literature, 168 similar bilateral agreements were concluded in the monitored period, which could include both the claims of private individuals and the injured state. As a rule there was only partial compensation, paid in addition with a shorter or longer time interval.[42]

In the case of Czechoslovakia, parallel replacement negotiations with the USA, Great Britain, France, Belgium, the Netherlands, Sweden, Italy and the Swiss Confederation took place from November 1945. Norway, Denmark, Iceland and Turkey were also affected to a limited extent. Czechoslovakia tried to systematically reduce the amount of reparations as much as possible – to conduct negotiations with individual states separately and, where the political and economic situation

39 | Judgement of the Constitutional Court of the Czech Republic dated 13 December 2005, file no. Pl. ÚS 6/05, published under no. 531/2005 Coll., https://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-6-05; a Judgement of the Constitutional Court of the Czech Republic dated 19 June 2018, file no. Pl. ÚS 35/17, published under no. 135/2018 Coll., https://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-35-17 [10.12.2023].

40 | Cf. Judgement of the Constitutional Court of the Czech Republic dated 18 July 2017, file no. II. ÚS 4139/16: https://nalus.usoud.cz:443/Search/GetText.aspx?sz=2-4139-16_1; Judgement of the Constitutional Court of the Czech Republic dated 12 January 2021, file no. stamp Pl. ÚS 21/19, published under no. 81/2021 Coll., https://nalus.usoud.cz:443/Search/GetText.aspx?sz=Pl-21-19_1; and the Judgement of the Constitutional Court of the Czech Republic dated 15 November 2023, file no. IV. ÚS 2827/22: https://nalus.usoud.cz:443/Search/GetText.aspx?sz=4-2827-22_1 [21.12.2023].

41 | For a detailed analysis, see Příkopa 2020, 19–95.

42 | Winkler 1994, 629–644; Jančík, Kubů, Kuklík, Novotný, Šouša 2001, 445–462; Kuklík 2007.

allowed for it, to delay or completely exclude them. This was typically the case in Liechtenstein, whose political and economic importance is small; however, the property confiscated from the ruling family, on the contrary, is extensive, therefore diplomatic relations were not restored during the entire duration of Czechoslovakia, and the Czech Republic did not proceeded to establish them until 2009. At the same time, it was also carefully monitored what kind of interventions into property foreign countries perform, how they solve the issue of compensation and how, if necessary, the wrong is prevented.

According to British estimates, in the case of nationalisation it was supposed to be compensation in the total amount of 100 million pounds (the most for Great Britain with 35 million, then for the USA 20 million and for the Netherlands 15 million), Czechoslovak estimates were significantly lower: e.g., in the British case it was 13 million pounds.

In the first post-war years, it was possible to reach an agreement on the basic points of compensation only in less difficult cases (Sweden, the Netherlands), but even then, not all disputed issues were resolved. Most of the negotiations continued even after 1948, with some states re-opening them. From the perspective of the restitution of the property of persons of German citizenship, let us mention in particular the negotiations conducted with Switzerland (1945–1967) and Austria (1956–1974, which, however, only included the so-called Old Austrians, i.e. persons who acquired citizenship before 13 March 1938, i.e. before the Anschluss by Germany). Negotiations with Great Britain and the USA continued until 1982 (however, in the case of Britain most of the disputed claims arising as a result of post-war encroachments on property were resolved by a compensation agreement as early as 1949; later it was mainly a matter of settling Czechoslovak intergovernmental debts incurred during the war and vice versa about detained Czechoslovak monetary gold). The last and still unresolved significant group is represented by nationals of Liechtenstein; an interstate Liechtenstein complaint is currently being resolved before the European Court of Human Rights.

In the case of German nationals, on the other hand, there was a connection with Czechoslovak reparations towards Germany, therefore the compensation should be and was partially provided to the Federal Republic of Germany (*Lastenausgleichsgesetz* from 1952, or the Austrian-German treaty from 1961–1962).

Summary and Perspectives

The issue of restitutions is still a live topic. From a retrospective point of view, they represented an important tool for coming to terms with the past, but also for the transformation of the economy and society after the collapse of the communist regime. They brought hope and frustration, possibilities and problems. From a national perspective, they may be viewed as a specific post-revolutionary

process. However, if we also take into account the international legal dimension, we see that it is a whole complex of interrelated issues which have been solved for almost the last 80 years, while it concerns not only the period after 1948 but as early as from 1938, which we may rightly perceive as the beginning of semi-totalitarian and totalitarian regimes. Last but not least, restitutions also bring an important message that illegal, dishonest or predatory acquisition of property may be questioned even with a longer time gap.

In one of its first findings (in the matter of the proposal to repeal the law on the illegality of the communist regime), the Constitutional Court declared: "The awareness that injustice will remain injustice – even if it cloaks itself in the mantle of law - was also reflected in the constitutional order of the Czech Republic."[43] In many respects, this awareness was not materialised in the post-post-apocalyptic Czech development, and in some cases compensation is not even possible within the next thirty years. However, where it is at least partly possible, we should definitely not give up on it.[44]

43 | Judgement of the Constitutional Court of the Czech Republic dated 21 December 1993, file no. stamp Pl. ÚS 19/93, published under no. 14/1994 Coll., https://nalus.usoud.cz/Search/GetText.aspx?sz=pl-19-93 [10.12.2023].

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Nóra JAKAB[1]

Disability policy reforms in the light of sustainability of the social security system in the Czech Republic, Poland and Hungary

Abstract

With populations ageing across the EU social security systems are becoming financially unsustainable, as a shrinking labour force may no longer be able to provide for a growing number of older people. The paper focuses on the results of the book „Sustainability of the Social Security System – Demographic Challenges and Answers in Central Europe", which project was inspired by very important economic and social issues. One of the conclusions was, most good practices have been related to the employment and rehabilitation of people with disabilities. This paper therefore summarizes the key fundings of disability policy reforms in the Czech Republic, Poland and Hungary. Reforms of disability benefits have been linked to active labour market policies, but there have been no major breakthroughs in employment.
Keywords: sustainability, disability policy reform, disability pension, employment

1. Introduction – Broad context of the topic

Population ageing[2] is the major structural trend which advanced and many emerging market economies will have to deal with in the decades ahead. It has important

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2 | According to the White Paper, „With regard to the challenge of ageing populations, the Stockholm European Council in 2001 set out a strategy based on three pillars: i) reducing public debt, ii) increasing productivity and employment, especially for older workers, and iii) reforming social security systems. This three-pillar strategy to address the challenge of ageing populations has recently been complemented in the context of the overarching Europe 2020 strategy, and the 2010

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implications for both the economy and public finances. Research so far has focused, by and large, on the impact of population ageing on government expenditure, in particular via higher public pensions and health care spending.[3] Longer term demographic projections show that the EU is about to get a whole lot grayer in the next few decades. In fact, the absolute size of EU's population is forecasted to shrink in the long-run and even more important its age-structure will drastically change within only a few decades. In total, the population would fall by 5% from 447 million in 2019 to 424 million in on behalf of around this time. By contrast, the size of the working age population is projected to fall even faster – from 265 million in 2019 to just 217 million by 2070 – owing partly due that ongoing impact from changes in fertility and life expectancy as well as migration flows.[4] The old-age dependency ratio is expected to increase with less than two working-age persons for every person aged 65 and more by 2070.[5]

In the long term, this translates into EU populations ageing and social security systems running out of money as a smaller labour force will need to support an increasing number of elderly people.[6] Out of 12 COFOG (Classification of the Functions of Government)[7] divisions, it was still social protection that accounted

Green Paper on pensions has launched a debate on a comprehensive approach to achieving adequate, sustainable and safe retirement incomes." European Commission 2012. http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2012)0055_/com_com(2012)0055_hu.pdf (2014.07.08.)

3 | Crowe et al. 2022, See also:
The 2015 Ageing Report: Economic and budgetary projections for the 28 EU Member States (2013-2060)
The 2015 Ageing Report: Underlying Assumptions and Projection Methodologies
The 2012 Ageing Report: Economic and budgetary projections for the 27 EU Member States (2010-2060)
The 2012 Ageing Report: Underlying Assumptions and Projection Methodologies
The 2009 Ageing Report : Economic and budgetary projections for the EU-27 Member States (2008-2060)
The 2009 Ageing Report: Underlying Assumptions and Projection Methodologies for the EU-27 Member States (2007-2060)

4 | European Commission 2021, 3. The demographics of the global human population is drastically different now than 100 years ago. Worldwide, the fraction of individuals >60 years increased from 9.2% in 1990 to 11.7% in 2013 and is projected to reach 21.1% (>2 billion) by 2050. In light of this trend, the mechanisms of human ageing are being urgently debated and investigated in research institutions around the world. See more: Sander et al. 2015, 185-187. https://doi.org/10.1093/ageing/afu189

5 | Ibid. p. 4. There are different ways of defining older people, while public perception as to what constitutes being old can differ widely. Statistics on ageing generally categorise older people as being above a certain age threshold. Indeed, the United Nations (UN) noted in World Population Ageing 2019 that older people are commonly defined as those aged 60 or 65 years or more, while the World Health Organisation (WHO) states that older people in developed world economies are commonly defined as those aged 65 years or more. The WHO also uses an alternative definition, whereby an older person is defined as someone who has passed the median life expectancy at birth. See: Corselli-Nordblad & Strandell (eds) 2020, 9.

6 | Corselli-Nordblad & Strandell (eds) 2020, 9

7 | https://www.insee.fr/en/metadonnees/definition/c1064#:~:text=The%20COFOG%20(Classification%20Of%20the,which%20the%20funds%20are%20used. [15.07.2023.]

for most expenditure in all EU and EFTA States reporting on their finances Reconstructed general government by functions – annual data.[8]

This paper has been based on and inspired by the conclusions of the book „Sustainability of the Social Security System – Demographic Challenges and Answers in Central Europe".edited by the author. This project was driven by the above mentioned very important economic and social issues.[9] Taking into considerations the above mentioned phenomena the country reports dedicated a separate part to the sustainability of the pension and/or health care system. The comparative chapter also highlighted the key findings which reflect Central-European solutions to the urging problems. One of the conclusions was, most good practices have been related to the employment and rehabilitation of people with disabilities in Serbia[10], Croatia[11] and Hungary[12]. As Fultz also points out, the high unemployment experienced in most countries during the early 1990s led large numbers of persons with minor disabilities to seek pensions. Further, the transformation brought an increase in mental disabilities and in the number of younger pensioners. [13] In the near future, people with disabilities will increasingly form the core part in contributing to labor resources.[14] The first reform steps taken in the Czech Republic (1995) and Poland (1997) during 1996–2000 resulted in decline, in the Czech Republic, by 20 percent and in Poland, by nearly a third, however the reforms have not improved the return of disabled pensioners to work.[15]

The paper summarizes the major results of the reform of disability policy in the Czech Republic, Poland, and Hungary. Generally speaking, the problems of the schemes of disability pensions received less attention. The reform legislation was narrower in scope. These systems relied on medical model that had no correlation with the actual ability of a claimant to work. High unemployment in the early 1990s led many people with minor disabilities to seek out pensions and fall into benefits trap.[16]

The disability reforms introduced since the 1990s are the result of changes that have taken place both inside and outside the disability policy field. *Sabatier*

8 | https://ec.europa.eu/eurostat/statistics explained/index.php?title=Government_expenditure_on_social_protection#Expenditure_on_.27social_protection.27 [15.07.2023.] In 2021, the total expenditure on social protection benefits in the EU amounted to €4 196 billion, which was equivalent to 28.7 % of gross domestic product (GDP). See also: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Social_protection_statistics_-_social_benefits#Expenditure_on_social_protection_benefits_by_function [02.10.2024.]
9 | There are just a few analysis regarding Central Europe like Mussida & Sciulli 2016, Scharle & Váradi 2015.
10 | Bojić 2023, 155-178.
11 | Vinković 2023, 71-92.
12 | Tóth & Mélypataki 2023, 111-134.
13 | Fultz 2002, 12.
14 | Krekó & Scharle 2019, 178.
15 | Fultz 2002, 25. 27.
16 | Fultz 2002. 13.

and Offe[17]distinguish four groups of causes: 1) *external changes* in social, economic conditions, technology and other policy areas; 2) flawed constructions of disability policy; 3) changing actor and interest structures; and 4) changes and developments in research and public opinion.[18]

According to *Kaufmann*[19], there exist five major external challenges; of these social and economic challenges probably have a direct influence on the change in guardianship system. For one thing, the social challenge entails a meaning that demographic change is increasing the demand for care and nursing services. The cultural challenge means fulfilling the ideals of formal equality and equal opportunities. By calling into question the social rights that allow everyone to participate in the defining privileges of a functionally differentiated society regardless of income and wealth, it undermines state inclusiveness and narrows, through this, moral respect for others as persons with essentially equal rights and duties.[20]

Misallocation and misdistribution of disability policy, for example, overly broad spending on disability-specific social benefits or any incapacity and disability benefits, or insufficient basic services for certain groups of people with disabilities, are the internal factors that Maschke cited to be considered in reform. It follows from internal reasons, too, that Maschke's analytical work deals with the share of the welfare state's care system, viz. the level of benefits and services provided, the contribution to productivity, the balance between them, and so to speak, the examination of *sustainable disability policy*, if there is such a thing..[21]The reforms carried out by the reform movement thus shall contribute to the sustainability of the social security system. In the following, we will examine these steps in the Visegrad countries except for Slovakia.

17 | Sabatier 1993, 116-148., Offe 1995, 31-41.
18 | Maschke 2008, 18.
19 | Kaufmann 1997.
20 | The demographic challenge refers to the fact that the number of people living with chronic diseases increases rapidly with age. The economic challenge, because the continuous increase in productivity, the low growth rate of gross domestic product, the low growth rate of the working age population and the stagnation of the annual working time make it difficult to integrate people with disabilities into the labour market. In addressing this challenge, labelling comes up again. Among the phenomena that can be summarised under the label 'new disability challenge' are the various accounts of the costs of disability that could be saved by new techniques (legal capacity, human rights, right to life). These debates could reverse positive developments in the acceptance of people with disabilities if disability is increasingly seen as an inevitable and therefore self-evident part of human existence. Maschke 2008, 23-24.
21 | Maschke 2008, 23-24.

2. Czech Republic

The research shows that 1.152 million persons with disabilities live in the Czech Republic, which is 13% of persons over 15 living in private households. In other European countries, this percentage ranges between 5 and 25%. [22]

As Biskup and Kotrusová highlight, the core elements of the disability reform were new reform legislation: namely, the Pension Insurance Act and the State Social Support Act, both enacted in 1995. Both pieces of legislation unified certain existing types of benefits and redefined entitlement criteria. The year 1996, the first to feel the effects of the new legislation, witnessed a reduction in the number of new pensions granted along with changes in the share of full and partial disability pensions introduced a new method of calculation for benefit levels. Another consequence of new legislation and, correspondingly, new criteria for evaluation is the fact that, during the period 1996–2000, the total number of full disability pensions had decreased by almost nine percent.[23]

One of the most important milestones in the protection against discrimination and ensuring equal treatment was reached when Act No. 198/2009 Coll., on Equal Treatment and Legal Means of Protection against Discrimination and on Amendment to Certain Acts (the Anti-Discrimination Act), came into effect as of 1 September 2009.[24]

Starek states that, according to Blažková, the following three aspects stimulate companies in the country hire people with disability: discount on taxes, social responsibility and legal obligation. On the other hand, the statutory duty to hire a person with disability raises many questions; negative motivation may lead employers to avoid employing persons with disability. Contrarily, according to research in 2020 carried out by the Czech Chamber of Commerce, the tax discount is the best reinforcer.[25]

Stefko pointed out that benefits for disabled people were reformed at the end of 2011. Originally, these benefits were regulated by a very old and not well-functioning legislation which originated from communist times. During 2011 the new act on benefits was proposed and adopted.[26] In view of the social integration of disabled persons,

22 | Czech Statistical Office 2019. National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2021–2025 2020, 23.
23 | Biskup & Kotrusová, 2002, 61-62. 69.
24 | National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2021–2025 2020, 8.
25 | Starek 2022, 290.
26 | "The problem however, was that it entered into force not even two months after it was adopted. This meant that many offices did not have enough time to prepare themselves properly for such a change (including some technical changes – for example new software which has to be used in order to provide the benefits to the clients). Right from its beginning, the act was therefore strongly criticized. Some organizations representing people with disabilities also complained that some benefits were reduced through the new system, and that especially for severely handicapped people, who are

primary attention is paid to their employments and to all measures promoting such employment, especially their working rehabilitation. Every employer who employs over twenty-five employees has a duty to employ disabled persons. The obligatory quota[27] is 4% of handicapped employees of the total number of employees.[28] Besides the direct employment of handicapped persons, employers may also fulfill this requirement by purchasing products or services from special institutions which employ more than 50% handicapped persons, by assigning certain production programs to these organizations or purchasing their products of sheltered workshops operated by citizen cooperatives, owned by the state, a church or a religious assembly, or by placing orders with these subjects, or purchasing products or services from self-employed persons with a physical handicap.[29] Another possibility, in order to comply with this obligation to employ disabled persons, is paying, for each person with a physical disability that should be employed, 2.5 times the average monthly wage within the national economy to the state budget. In case he does not do so, however, through one of these three forms, an obligation imposed on the employer would be sanctioned by a fine.[30] The current trend of laws is quite categorical that a disabled person shall be made to stay in a family environment that as a rule, provides better possibilities for his or her social integration. Social care services for individuals with dependency are being governed by Act No. 108/2006 Coll., on social services.[31]

In this respect, the analysis of the national plan reveals that, although the process of integrating persons with disabilities is now gradually taking place in society, there are still a number of open and unresolved issues with direct influence on the life of these group of people. This unfavourable situation represents persons with disabilities, according to low indicators of employment in the open labour market.[32] Barriers must be further removed from public buildings and transport structures built before the Building Act which requires barrier-free building. There

not able to work, it is even more difficult to pay for all the services and special treatment which they urgently need." Stefko 2023, 59.

27 | Čábelková underlines that, even though quotas may do their job if enforced, there are also some arguments against quotas. First of all, the quotas are not always implemented fully. For example, in Austria, only 30% of companies followed the quota for disabled people in 2002. In some countries it is allowed to trade quota places. Thus, in the Czech Republic, if a company purchases products from the companies that employ over 50% of disabled people, it can reduce the minimal number of disabled people necessary to employ. This practice gives the company a legal opportunity not to follow the quota. Furthermore, with a view to meeting the quota with a minimum cost and in the shortest possible time, the firms may opt for internal employment rather than external and may target those disabled who are closest to the labor market, thus leaving the others unattended. Whereas, on the other hand, those disabled persons who manage to get the employment, may open the ways to others. Čábelková 2015, 299.

28 | See also Starek 2022, 289.

29 | See also European Commission, Employment, Social Affairs & Inclusion Your social security rights in Czech Republic, European Union, 2013

30 | Stefko, 59-60.

31 | Stefko, 60.

32 | See also the Concluding observations, on the initial report of the Czech Republic, 2015, CRPD/C/CZE/CO/1: p. 7.

is also an urgent need to monitor the application of valid regulations concerning the barrier-free nature of structures. Finding a transparent, just and effective way of funding social services is another urgent task. Decades now, coordinating rehabilitation has been tackled in terms of legislative treatment; this is the initial step to establishing conditions that will guarantee the continuity of individual components of rehabilitation, ensuring rehabilitation care is comprehensive.[33]

The conclusion given by Starek was that next to the present system in the Czech Republic, support for employment has to be developed further. It is possible to underline that the primary mechanisms that support employing people with health handicaps include a question of their will to be employed; employers' attitude to employment of people with health handicaps; informational and counselling system for employers; cooperation of several services - that is, employer, charity, the Office of Labour; duty of employer with more than 25 employees to hire someone with health handicap in the share of 4 % from the total number of employees; financial stimulus for employers in the open or supported job market; acknowledgement of disability; disabled pension; attitude of society against a disabled person.[34]

3. Poland

The system for evaluating disability and the available supports for people with disabilities in day-to-day life and in the labour market are regulated in Poland by the Act on Vocational and Social Rehabilitation and on the Employment of Disabled Persons of 27 August 1997[35] (Journal of Laws of 2019, item 1172, as amended).[36] Unfortunately, it has been changed more than 60 times since its introduction.[37]

33 | National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2021–2025 2020, p. 9. For more information see: https://vlada.gov.cz/en/ppov/vvzpo/uvod-vvzpo-en-312/ [29.09.2024.]

34 | Starek 2022, 300.

35 | About the Polish history see Wóycicka et al. 2002, 147-226.

36 | Important pieces of legislation concerning the situation of persons with disabilities are: Act on Healthcare Services Financed from Public Funds (Journal of Laws 2004 No. 210 item 2135), Act on Retirement and Disability Pensions from the Social Insurance Fund (Journal of Laws 018, item 1270), Act on Family Benefits (Journal of Laws 2003, No. 228, item 2255), Act on Social Welfare of 12 March 2004 (Journal of Laws of 2018, item 1508, 1693, 2192, 2245, 2354 and 2529) – concerns available financial support, including support for people with disabilities. These possibilities are closely linked to the legal status of the given person. The law applies to migrants who have permanent residence rights in Poland obtained on any basis, as well as to persons residing in Poland on the basis of certain types of temporary residence permits and citizens of Ukraine subject to temporary protection in Poland. Support for people with disabilities in Poland https://forummigracyjne.org/wp-content/uploads/2022/12/3223.pdf [29.09.2024.]

37 | Struck-Peregończy 2015, 110. In Poland, the disability pension, now renamed the inability-to-work pension to stress its linkage with functional capacity, was available only to those with a demonstrated functional loss 1997. The Polish reforms also shifted responsibility for eligibility determinations from medical boards to individual doctors, centralized their supervision, and established new requirements for their education and training. Fultz 2002, 23.

According to Wóycicka, Ruzik and Zalewska some of the important features of the disability reform included: the first reform in 1995 was the entrustment of the Polish Social Insurance Authority – ZUS with the competence to provide rehabilitation in order to avoid that a person who is sick or temporarily unable to work passes into permanent or long-term disability groups, the new indexing mechanism implied the fall in average benefits relative to wages. The 1997 legislation made 'inability to work' a new category of eligibility, as opposed to the previous one called 'disability', for the ZUS social insurance benefits. Professional supervision was utilized to raise the level of professionalism and skill of the medical professionals. Alongside free training -or retraining- by labour offices, for people referred to them by ZUS, ZUS introduced a new kind of pension named 'training pension'[38] Spending on disability pensions fell from 4.2 percent of GDP in 1996 to 3.8 percent in 2000 after the reforms.[39]

In 1997[40], through Sejm of Rzeczpospolita Polska passed the Charter of Rights for People with Disabilities, a declaration of values that delineated the areas within which the state should take actions to realize the rights of the disabled for „independent, active life that is free from any traces of discrimination."[41]

According to Article 69 of the Polish Constitution „public authorities shall provide, in accordance with statute, aid to disabled persons[42] to ensure their subsistence, adaptation to work and social communication". This provision is not a source of a subjective right that disabled people are entitled to[43].

The Republic of Poland is a Central European country, estimated to have about 38.5 million people. It can be estimated that, depending on the approach towards the definition of disability, it ranges between 12.2 and 21.5% of Polish residents.[44] During the last years, the growth of the labour activity rate of the disabled was one of the top issues of public concern. Quite expectedly, the labour market situation of the impaired is much worse compared to that of able-bodied people. During 2011-2018, the labour activity rate of disabled grew from 26.3 up to 28.3%, but was much lower compared to that of able-bodied people. One can also draw a similar inference from the rate of employment analysis. The difference in the rate of employment between able-bodied subpopulations and that of the disabled subpopulation stands within 47-51 percentage points.[45]

38 | Wóycicka et al. 2002, 165-171.
39 | Wóycicka et al. 2002, 171.
40 | Poland, with the highest ratios of pensioners and expenditures adopted a set cost-controlling measures. The most significant of these was the shift in indexation for pensions from wages to prices both old and disability
Fultz 2002, 24.
41 | Radlińska et al. 2014, 27. . Struck-Peregończy 2015, 107.
42 | On the definition of disabled see Czyrka & Borowiecki (2014)
43 | Decision of the Constitutional Tribunal of 6 September 2000, Ts 69/00, OTK 2000/7/277. Barański 2023, 97.
44 | Struck-Peregończy 2015, 105.
45 | Jabłońska-Porzuczek 2019, 145.

As of 31 December 2021, 337.0 thousand disabled persons were working for 198.4 thousand entities, which employed more than 10 persons[46], they were employed mainly in administrative and support service activities (30.3%), including detective and security activities (18.7%) and service activities related to maintenance of buildings and green areas development (8.4%). Every fourth disabled person worked in manufacturing (23.5%), especially in the food processing (3.9%). 10.4% of disabled persons worked in health care and social assistance, predominantly in health care (8.2%).[47] In December 2021, there were 2.3 million people in Poland receiving old age and other pension benefits and/or covered by insurance from the Social Security Institution, who were certified with the level of disability (issued by medical assessment commission) or certified with the level of inability to work (issued by the Social Security Institution)[48].

Definitions of degrees of disability[49] and inability to work are founded in the medical model of disability, concerning disablement with an inability and not barriers to employment or else, that disabled people may experience. Concepts such as 'incapable of work' create a general belief amongst employers that disabled people cannot work at all. Also, some individuals with disabilities have developed a belief themselves that they are prevented from working.[50]

The Polish Federation of Supported Employment (PFZW) unites organizations that have, since 2001, enabled supported employment for people with disabilities on the free labour market in Poland. It integrates stakeholders participating in supported employment projects and underlines competencies and inputs of people with disabilities to economy and society. PFZW acts in accordance with the highest international standards. Their results are more than 13,000 people with disabilities have benefited from supported employment services in the last 20 years, more than 40% of service users take up employment on the open labour market, almost 1,000 employers have been supported thanks to our career consultancy services.[51] Sheltered employment segregates disabled people from the society and,

46 | Persons with a disability certificate based on Act of 27 August 1997 on Vocational and Social Rehabilitation and Employment of Disabled Persons (Journal of Laws 2021 items 573, 1981 and 2022 items 558, 1700).

47 | Of disabled people of working age in 2021, in Poland, only 22.4% are in paid employment, and more than 40% of them are estimated to be employed in the open labour market32. In subsidised workplaces, 66% of them are thus in the sheltered labour market. There exist two types of sheltered workplaces in Poland: sheltered enterprises (zakłady pracy chronionej) and vocational activity enterprises (zakłady aktywności zawodowej). Struck-Peregończy 2015,114.

48 | https://stat.gov.pl/en/topics/living-conditions/social-assistance/disabled-people-in-2021,7,3.html p. 2. See also The Ministry of Investment and Economic Development Governmental Programme Accessibility Plus 2018–2025, The Ministry of Investment and Economic Development Warsaw 2018, https://www.funduszeeuropejskie.gov.pl/media/72628/Dostepnosc_angielski.pdf [1.10.2024.]

49 | See Jabłońska-Porzuczek 2019, 145.

50 | Struck-Peregończy 2015, 107.

51 | https://pfzw.pl/en/ and https://pfzw.pl/wp-content/uploads/2022/10/raport_ostateczny.pdf (Accessed: 09 September 2024.) see also: Struck-Peregończy 2015, 112.

therefore, as a result fosters negative attitudes in the society and creates a barrier for increased employment of persons with impairments. The number of sheltered workshops (in 2011 1797, in 2018 922) and disabled employees (in 2011 192,563, in 2018 113,766) decreased over the last decade.[52]

It is prohibited for disabled people in Poland to work while simultaneously receiving any financial support in the form of disability pension. There are two major types of disability pension: an 'inability to work pension' and a 'social pension'. The former is a contributory benefit for persons who have worked for more than a certain period; the latter is a non-contributory, non-means-tested benefit for persons who have no work experience and became disabled in their youth.[53]

The quota levy system, adopted by Poland, binds every employer employing 25 or more workers to ensure that at least 6% of their employees are disabled people. In the event of failure to meet the quota, the employer is obliged to pay into the State Fund for Rehabilitation of Disabled Persons -SFRDP. Those which fulfill the quota – or that are not obliged to do so, but who nevertheless employ disabled people – are entitled to a monthly subsidy from the SFRDP.[54] For 72% of employers, the possibility of gaining the subsidies is the decisive factor in employing disabled workers. The consequence of all this, as far as many disabled people are concerned, is low-paid, low-skill, low-status employment. Because the level of the subsidies does not depend on the wages paid to the workers with disabilities, the employers are stimulated to create low-cost job positions.[55] Between 2011 and 2018, data from the Financing and Reimbursement System of the State Fund for Rehabilitation of Disabled Persons shows a 2.7% growth in the number of subsidized jobs. This was to be accompanied by a 38% decrease in the number of disabled people employed in sheltered workshops and a 102% increase in the number of disabled people employed in the open labor market.[56] Despite these results disabled people are largely affected by professional inactivity. In 2011-2018, nearly 3/4 of the disabled population were economically inactive working-age persons.[57]

4. Hungary

Within the Hungarian social care system, the most important task of the Hungarian pension system is to care for the elderly. At the same time, until 2012, disability and accidental disability pensions were also financed from this system. One of

52 | Jabłońska-Porzuczek 2019, 147.
53 | This system does not pay any attention to extra costs due to disability. See more: Struck-Peregończy 2015, 113-114. See also Čábelková 2015, 300.
54 | Struck-Peregończy 2019, 109.
55 | Struck-Peregończy 2015, 111.
56 | Jabłońska-Porzuczek 2019, 147-148.
57 | Jabłońska-Porzuczek 2019, 151.

the keys to sustainability in Hungary has been to limit access to early retirement schemes and other early exit options from the labour market, and to reintegrate workers with reduced working capacity into the labour market. A new reform was therefore justified from 1 January 2012. A complex approach to rehabilitation was already introduced in Hungary in 2008. The essence of complex rehabilitation is the appropriate coordination of areas. Previously, there were 3 areas, but now there are 5: medical, mental health, social, training and occupational rehabilitation. However, from 1 January 2012, a new reform has been introduced. [58]

According to the explanatory memorandum of the Act, it established a unified system of benefits for persons with a disability, the aim of which was to create the conditions for the employment-centred rehabilitation, social reintegration and employment of persons with a disability based on their remaining and developable skills. To this end, the Act contains two main areas of focus. On the one hand, it includes cash benefits to compensate for loss of income and, on the other, services to assist rehabilitation. This was necessary because the benefits system for people with disabilities has become fragmented over the past decades, with different types of benefits providing assistance to people with disabilities and different levels of rehabilitation, re-integration and incentives. The current benefit system has encouraged the long-term use of cash benefits rather than rehabilitation and work without benefits. [59]

In 2011, almost 22% of the working-age population (15-64 years) reported having a long-term health problem or illness (almost one and a half million people) and more than 50% felt that they were limited in their opportunities and skills in the labour market, according to the Central Statistics Office (KSH).[60] Women accounted for a higher proportion of most health problems and the report shows that these percentages increase with age.[61]

58 | Legislation related to the new system of occupational rehabilitation: Act CXCI of 2011 on the Benefits of Persons with Disabled Work Ability and on the Amendment of Certain Acts (Mmtv.), Act CXCIV of 2011 on the Economic Stability of Hungary, Decision on the Establishment of the Rehabilitation Authority, Government Decree 327/2011 (XII. 29.) on the Procedural Rules for the Benefits of Persons with Disabled Work Ability, Government Decree 1502/2011 (XII. 29.) 7/2012 (II. 14.) NEFMI Decree on the detailed rules for the complex qualification, NEFMI Decree No. 7/2012 (II. 14) on the detailed rules for the complex qualification, NEFMI Decree No. 8/2012 (II. 21) on occupational rehabilitation experts, and Government Decree No. 327/2012 (XI. 16) on the accreditation of employers of workers with reduced working capacity and on budgetary support for the employment of workers with reduced working capacity.

59 | Explanatory memorandum to the Mmtv. Available athttps://uj.jogtar.hu/#doc/db/1/id/A1100191.TV/ts/20240701 [23.09.2024.]

60 | The labour market situation of the Hungarian population with disabilities is not good by international standards. The Labour Force Survey, which covers all EU countries, last included a question on working capacity in 2011. According to this survey, Hungary was at the bottom of the European league: its relative employment rate (30%) was just over half the EU average (56%), with only Bulgaria having a lower rate than Hungary. Krekó & Scharle, 2020, 182.

61 | Persons with Disabled Work Capacity on the Labour Market, 2011

The main principle of the law is to change the medical approach permanently and effectively, and to prioritise rehabilitation in order to help people with disabilities to work more effectively, to engage in gainful activities that enable them to support themselves and their families. This can contribute to ending dependency on public care and ensuring equal opportunities, creating opportunities for people with disabilities to work in value-added jobs, to be self-sufficient and to improve their standard of living.[62]

The rehabilitation employment and the surrounding support services have been the transformation focus until recently. In the reform, active solutions refer to the employment rules where the rehabilitation services are joined with the employment policy instruments. The theme deals with the effective employment of people with disabilities where persons with disabilities are found within society. The most important among these are, of course, the employment policy instruments relevant to outplacement, of which the corresponding rules under the Employment Act have since been abolished. On the other hand, there does seem to be a trend toward urging employers to contribute to successful integration. What, then, are the most significant legislative steps toward promoting labor market integration? Article 28 of NFM Decree 14/2012, 6.3.2012 outlines the governing rules for support with regard to workers with disabilities and stipulates that in respect of the employment of workers with disabilities, support may be granted as an allowance for wages.[63]

Pursuant to Article 23 of Act CXCI of 2011 on the Benefits of Persons with Disabled Work Ability and Amendments to Certain Acts (Mmtv.): Employers are obliged to pay a rehabilitation contribution in order to promote occupational rehabilitation of people with work ability that are disabled, provided the number of employees is more than 25 and the number of people with work ability that is disabled employed by them amounts to less than 5 percent of the number of employees. In case the employer hires a person with reduced ability for work, he is entitled to the benefits in accordance with the regulations of the Act CXCI of 2011.

However, the restructuring has not brought about any significant change in employment figures. The number of people with a disability in 2017 was 122 638, gradually increasing until 2020, when the number of people in employment was 126 106. Later KSH data are no longer available. The number of unemployed persons was 20 578 in 2017, decreasing to 13 690 in 2020. The number of employed persons with a disability has stagnated compared to the number of employed persons

62 | The importance of rehabilitation is also reflected in the law by the fact that, in a break with previous practice, instead of determining the percentage of health impairment, eligibility for benefits is based on a complex assessment based on the degree of health retained and the individual's chances of rehabilitation and employment and their direction. To this end, the law also treats the concept of health in a complex way, taking into account the physical, mental and social circumstances of the individual.

63 | On incentives see Krekó & Scharle 2020, 183-184.

without a disability. Both the economic activity of persons with and without a disability is stagnating.[64] In 2019, almost a quarter (23 percent) of the working-age disabled population was in work, just under a third of the employment rate of the healthy population. Between 2011 and 2015, the latter relative rate barely changed as employment in the total population also rose rapidly. Between 2017 and 2019, however, both relative and absolute employment rates showed a slow increase.[65]

Although KSH data on employment is not available, the central budget figures are telling in recent years. The 2024 allocation for supporting the employment of disabled workers is HUF 61 531.3 million.[66] According to the Budget Law https://magyarkozlony.hu/hivatalos-lapok/QBtX1KkIggzxfEb5vS0s63ab423ce9373/dokumentumok/09e9d8765f6e8986ff869a305f492695e6e30aee/letoltes , the Ministry of Finance expects to receive around HUF 173,800 million in 2024 from the tax on rehabilitation contributions.[67] In other words, according to the planning based on the payment data of the past years, in 2024 the employers concerned are expected to decide to pay the contribution instead of employing more than 72 thousand employees with altered working ability (at the expense of the rehabilitation contribution) - while thousands of employees with altered working ability and disabilities are waiting for the right labour market opportunities. In its absence, employers are expected to pay HUF 174 billion in taxes to the treasury instead of the win-win (beneficial) situation of rehabilitation employment. The development of the employment of people with disabilities shows that in 2023 the Government planned to receive HUF 158 billion from the tax on rehabilitation contributions, based on the payment of contributions instead of the employment of around 75,000 people with disabilities.[68] In 2022, the Government planned to receive HUF 116,300 million from the tax on rehabilitation contributions, while the subsidy for the employment of people with disabilities was HUF 50,165.0 million. In other words, there is clearly an improvement in the number of people in employment, but still more employers should take advantage of the employment opportunities. [69]

The increased rehabilitation contribution has led to an increasing number of employers showing an interest in hiring people with disabilities in recent years, but their integration has often been and still is difficult. Generally speaking, people with a disability can do any job where their skills, knowledge and experience can be used, where their disability is taken into account and where they are not put at risk of accidents.[70] Despite this, there has not been much integration into the labour market.

64 | https://www.ksh.hu/docs/hun/xstadat/xstadat_evkozi/e_megvamk9_16_01j.html [02.10.2024.]
65 | see Krekó & Scharle 2020, 180.
66 | Act LV of 2023 on the 2024 Central Budget of Hungary
67 | Act LV of 2023 on the 2024 Central Budget of Hungary
68 | https://ertekvagy.hu/hu/-/rehabilitacios-hozzajarulas_2024 [23.09.2024.]
69 | Act XC of 2021 on the 2022 Central Budget of Hungary
70 | See on this Dajnoki 2014, 117.

5. Concluding thoughts

Reviewing the literature on disability policy in English, it became clear that little information is available on the disability pension reforms and its effectiveness. Reforms of disability benefits have been linked to active labour market policies, but there have been no major breakthroughs in employment.

The first reform steps taken in the Czech Republic (1995) and Poland (1997) during 1996–2000 resulted in decline, in the Czech Republic, by 20 percent and in Poland, by nearly a third, however the reforms have not improved the return of disabled pensioners to work.

In the Czech Republik according to the National Plan for the Promotion of Equal Opportunities for Persons with Disabilities an unfavourable situation persists in the field of employing persons with disabilities, particularly in terms of employment in the open labour market. Another urgent task is finding a transparent, just and effective manner of funding social services. The legislative treatment of coordinating rehabilitation has been tackled for decades now, and this is the initial step for establishing the conditions to ensure the continuity of individual components of rehabilitation and making sure rehabilitative care is comprehensive.

In the recent years in Poland, the increase in the activity rate of disabled people has been a major topic of public discussion. The labor market situation of people with impairments is much worse than that of able-bodied persons. Disabled people are largely affected by professional inactivity.

In Hungary a new reform has been justified since 1 January 2012. A complex approach to rehabilitation was already introduced in Hungary in 2008, much later than in the Czech Republic and Poland.

In all three countries the focus in the transformation has been on quota regulation and the surrounding support services. However, the restructuring has not brought about any significant change in employment figures.

The main principle of the new reforms shall be to change the medical approach permanently and effectively, and to prioritise rehabilitation in order to help people with disabilities to work more effectively, to engage in gainful activities that enable them to support themselves and their families. This can contribute to ending dependency on public care and ensuring equal opportunities, creating opportunities for people with disabilities to work in value-added jobs, to be self-sufficient, to improve their standard of living and to decrease the burden on the social security system. This might contribute to a sustainable disability policy.

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Tanja KARAKAMISHEVA–JOVANOVSKA[1]

Constitutional and Legal Aspects of the Processes of (De)nationalisation and Privatisation of land and of state-owned enterprises – Macedonian examples of controversial politicisation and elitisation[2]

Abstract

The process of transition from former socialist to democratic systems brought to surface numerous questions about the political, legal, economic, social and cultural transformation in the societies in which these systems existed. With the fall of the Berlin wall and the so-called Iron Curtain, the former socialist states faced numerous challenges in dealing with the unfair nationalisation of citizens' private property, dilemmas on how to apply a denationalisation process that will be fair and just, and which model of privatisation of state-owned capital to apply, having in mind the experience of the more advanced western democracies. The key issues in this context were: which type of market economy to choose, how fast should the transition be implemented and through which methods; the answers to these questions differed from country to country, because the transition, just as in a game of chess, does not have a winning formula, but offers merely a limited set of general rules of behaviour. The quest for an intellectually perfect concept of transition that would cover all possible scenarios and details would mean indefinite delay in its application. However, the lack of a coherent and clear strategy also generates serious social and economic problems. This is what the transfer from a planned and politically monolithic economy to a pluralistic and market-oriented economy has done in the

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countries of Central, Eastern and Southeast Europe, leaving behind a number of open issues and dilemmas.
On the other hand, certain governments which captured the state institutions and did not set any boundaries between the party (personal) interests and the state interests, caused additional political turbulence. Partisan domination in the public/state administration had a strong effect on the ongoing privatisation processes, because business and the party in power were always on the same side of the coin. The high degree of political control over state resources created fertile ground for the emergence of political elites which entirely usurped the national economic potential of the given countries.
Unlike the Central and East European countries, which successfully completed their denationalisation processes, the number of incomplete denationalisation cases in Macedonia is devastating. This paper will focus on the Macedonian transition under the influence of the transition processes in the region and will reveal a number of specific features of the Macedonian model. It will show the connection between the captured state and the privatisation of state capital. This connection results in a strong influx of private capital in the hands of the political elite through dubious processes of state capital privatisation, thus generating sources of corruption, clientelism, elitism, technocraticism and other similar processes that reflect the political power in a captured state.
Keywords: nationalisation, denationalisation, privatisation, state capital, captured state, democratisation

1. Nationalisation processes in Macedonia – relics from the former socialist system

The nationalisation of private property in Macedonia is closely tied to Macedonian politics in the former socialist system when the country was part of the Yugoslav federation. The changes in the ownership structure of the properties in Yugoslavia started as early as during WWII, when the first cases of confiscation of property of the so-called enemies of the state was carried out. Their confiscated land was given to the people's collectives, in accordance with the decision of the national liberation boards. One of the first decisions of the new post-war government in Macedonia was to organise so-called "kangaroo court trials" of private property owners and to confiscate their entire private property. Through these processes, in just a few months, the new government gained control over all major properties in Macedonia. The goal of this operation was to implement the doctrine of the revolutionary movement to confiscate and control all major economic means in the country.[3]

3 | Property Restitution in Central and Eastern Europe: The State of Affairs for American Claimants, Hearing before the Commission on Security and Cooperation in Europe, 16 July 2002, https://2001-2009.state.gov/p/eur/rls/rm/2002/11944.htm. (Accessed 5 February 2024).

This resulted in major changes in land ownership relations through the agricultural reform in Yugoslavia immediately after WWII, which came before the formal nationalisation and expropriation of the land, in accordance with the Act on agricultural reform and colonisation from 1945.[4]

Namely, the first agricultural fund and the first changes in land ownership relations took place after the confiscation of the land from the enemies of the National Struggle, the anti-fascist movement in Yugoslavia.[5]

The first aspects of the nationalisation process can already be witnessed in the first constitution of the People's Republic of Macedonia from December of 1946,[6] when the first five-year plan for the nationalisation process in the state economy was outlined.

The nationalisation and colonisation of private property was the ultimate goal of the government of the time, aiming to create a strong, monolithic, economically and politically centralised structure that would control all processes in the country.

The centralisation of all resources, capacities and policies first on the federal level, and subsequently on the level of the republics, resulted in the formation of the one-party system dominated by the Communist Party of Yugoslavia, i.e. the Communist Party of Macedonia as a republic within the federation. The policy of the CPY/CPM was to fully alter the ownership relations by creating a strong state-owned sector that would actually feed the party's social power and wealth.

Before the denationalisation was put into effect in 1946, the production process was mainly supported with funds from the fines levied on the "enemies of the state", according to the Criminal code of the time and later according to the Act on Nationalisation and the Act on Agricultural Reform.[7]

In this period, private property in Macedonia mainly consisted of the property of small producers and businessmen, who were later labelled as manipulators, enemies of the people, collaborators with the enemy, etc. Apart from constitutional provisions, a set of other laws and directives were adopted in this period by the Communist Party, which also served as a recruitment centre for all members of the government and the state bodies.

4 | L. Lazarov (1975), Adoption of Nationalization law and other measures and efforts by the social-political organizations in their implementation, Publication "Pravna misla", no. 6, Skopje, p. 46.

5 | Violeta Achkovska, MA (1993), Agriculture and countryside in Macedonia 1945-1955, Faculty of Philosophy, UKIM, Skopje, p. 41, PhD dissertation https://repository.ukim.mk/bitstream/20.500.12188/2519/1/vachkoska1993.pdf. (Accessed 5 February 2024).

6 | Constitution of People's Republic of Macedonia adopted by the Presidium of the Constitutional Founding Assembly on 31 December1946, ("Official Gazette of the People's Republic of Macedonia", January 1947).

7 | See more details in: Violeta Achkovska (2004), Social-economic development of contemporary Macedonian state 1944-2004, Periodica, Faculty of Philosophy, Skopje, http://periodica.fzf.ukim.edu.mk (Accessed 7 February 2024).

With the Nationalisation Law, forty-two economic branches were entirely nationalised and became state property. Pursuant to Article 4 of the Act on the Nationalisation of Private Businesses, the nationalisation covered all movable and immovable property, as well as the industrial property rights that belonged to these companies, such as patents, licences, work permits, samples etc.[8]

According to the industrial census carried out between March and December 1945, Macedonia had 140 factories, 163 enterprises, 8,873 positions and 3,391 employees. From the total number of industrial capacities in Yugoslavia, 3.95% were in Macedonia, and the number of jobs in this sector represented 2.57%, which speaks to the inferiority of the Macedonian economy compared with other republics.[9]

In 1947, the "partisan state" took control of all major economic sectors and monopolised the entire state capital. According to the Act on Agricultural Reform and Colonisation[10], in order to establish a sufficiently large agricultural fund, the state had to confiscate the property of private owners and transfer it into the hands of the state. With the nationalisation, over 25 hectares of farmable land and a total of 45 hectares of land became state property. The nationalisation included land that was in possession of banks, private companies, stock companies and other private legal persons, with the exception of the owners. In the case of the land of these owners, a decision was passed by the people's government on a proposal from the regional people's boards.

According to Article 4 of the Nationalisation Law, the former owners of the nationalised land received no compensation for their former property.[11]

In 1953, the Act on the Agricultural Fund was adopted which defined the distribution of land to agricultural organisations, with a maximum of 10 hectares per organisation. In this period, the compulsory buyout of agricultural products was instituted as a measure, which provided major support for the national economy.

The expropriation and nationalisation of industrial capacities and the planned economy in Macedonia was organised in accordance with the dominant Soviet

8 | Understanding a Shared Past - MK Chapter 2, Economical Life. https://www.euroclio.eu/wp-content/uploads/2019/10/Understanding-a-Shared-Past-MK.-Chapter-2.-Economical-Life.pdf. (Accessed 7 February 2024).

9 | Branko Petranović (1969), Politička i ekonomska osnova narodne vlasti u Jugoslaviji za vreme obnove, Institut za savremenu istoriju, Beograd, p. 309, https://www.econbiz.de/Record/politi%C4%8Dka-i-ekonomska-osnova-narodne-vlasti-u-jugoslaviji-za-vreme-obnove-petranovi%C4%87-branko/10000575502. (Accessed 10 February 2024).

10 | http://www.slvesnik.com.mk/Issues/99CFDDB7614A4C5289E2735DA8E25E88.pdf. (Accessed 11 February 2024). In accordance with the Agricultural Reform Law, in 1946, the Minister of agriculture and forestry adopted a Rulebook for the implementation of the Agricultural Reform Law and Internal Colonisation on the territory of the Federal Republic of Macedonia.

11 | Agricultural Reform Law and Colonisation on the territory of the Federal Republic of Macedonia, Official Gazette, No. 25, 5 December 1945, Skopje, http://www.slvesnik.com.mk/Issues/E91BCEE2F9F74519BE741EC4624B3DD1.pdf. (Accessed 1 February 2024).

model, which instead of modernising production led to inefficiency and collapse of the socialist economy. In addition, the state property was declared social property, but in reality it was treated as "everyone's and no one's".

The concept of social property proved to be a system in which property rights were vague and mainly insufficiently defined. According to the 1974 Constitution of the Socialist Republic of Macedonia, ownership in the production sector belonged to society as a whole. Neither the enterprises, nor their employees were owners of any stock. This situation favoured the ruling party which strengthened its political influence. However, conflicts about what belongs to whom were present in all aspects of life at the time.

Instead of having vast modern production, Macedonia became home to numerous non-profitable and unsustainable factories, in which it became evident that social benefit cannot replace the motive provided by profit.

Regarding nationalisation, the first in line to receive state land were the farmers with little or no land who were active fighters in WWII, war invalids, children of killed fighters, members of their families, as well as the families of people killed by the fascists.

The following aspects were taken into consideration regarding the priority of the distribution of land:

- If two farmers were without land, one of whom was partisan, they would always be given priority,
- If two partisans applied for land, priority was given to the one with a bigger family,
- If two or more partisans applied, advantage was given to the one with more years of service during the war,
- If the partisans who applied for land had identical years of service during the war, advantage was given to the one with a bigger family.[12]

In 1965, a new economic reform entered into force in Macedonia which proved to be a failure after a few years due to the lack of strength of radical interventions within the system. The economic changes remained only partial.

2. Political transition and denationalisation in Macedonia – key democratic processes in the country

With the fall of the Berlin Wall in 1989 and the growing political transition process towards democracy in Eastern, South Eastern and Central Europe, the issue of the transformation of state capital into private capital came to the forefront, just as

12 | Article 12 of the Rulebook, ibid.

the need for the denationalisation of citizens' property confiscated by the former socialist authorities of these very same countries.

The political transition towards democracy paved the road for economic transition to economic pluralism, entrepreneurship, and market-oriented economies. The political transition took place thanks to the introduction of free democratic and transparent elections, while the economic transition introduced the market economy and privatisation.

It is worth mentioning that in this speedy transition process many things were done well, while others were complete failures. For example, free elections are one of the pillars of democracy, however functional democracies require much more than that.

The legal protection of the rights for private property, just as the free market and entrepreneurship, are guaranteed in Macedonia, in its first Constitution from 1991. Article 30 guarantees the property and inheritance rights of citizens, while Article 55 guarantees the free market and entrepreneurship in the country. The Constitution provides protection for citizens' property by defining their rights to private property. In this context, the Constitution provides protection for two fundamental principles:

- It prohibits the violation of private property rights, by promoting the social aspects of private property,
- The right to private property cannot be denied to anyone, nor can anyone restrict the rights to private property of the citizens, except in cases regulated by law when it protects public interests.

When the expropriation or restriction of property rights is applied in the name of public interests, the Constitution grants the right to compensation which cannot be lower than the market value of the property in question. Article 55 guarantees the free market and entrepreneurship by securing the equality of all legal entities on the market. In this context, the Constitution also contains an antimonopoly clause that defines the measures against monopolies and monopolistic behaviour of companies on the market. The freedom of the market and entrepreneurship can be restricted only in cases when national interests, environment and public health are protected.

The land is defined as a natural resource and part of national public wealth, and as such is protected in Article 56, paragraph 1 of the Constitution. The Constitution also specifies the manner and conditions for granting the right to use public goods.

Article 8 refers to environmental protection and defines it as a fundamental value, and Article 57 stipulates that the State must urge national economic development, balanced regional development and enhanced economic development in underdeveloped regions. These are the constitutional provisions that directly regulate the property rights of the physical and legal persons in Macedonia.

The denationalisation processes, i.e. the restitution of forcefully confiscated properties from former owners was one of the key processes in the democratic development of Macedonian society in the context of rectifying the injustice caused by the previous governments and by returning these properties to their rightful owners. The denationalisation law aimed at enabling former owners to gain the right to confiscated property based on Article 30 of the Constitution.

In Macedonia, the denationalisation process took place much later compared to other former socialist countries. On the other hand, unlike the other countries in which the denationalisation was carried out successfully and efficiently, this is hardly the case in Macedonia.[13]

According to available data[14], the denationalisation process in Macedonia was unreasonably long. One of the reasons that led to this lengthy process is the lack of political will on behalf of the authorities to execute this process swiftly and successfully.[15]

13 | "The main reasons for the insufficient success of the process are the following: 1. Lack of political will in the government to implement this process swiftly and successfully, 2. Inefficiency from the first instance commissions, who did not act on the indications from the second instance commission within the deadlines set by the law. It is evident that the denationalisation bodies, in some cases failed to act in accordance with the decisions of the Supreme Court, yet no accountability was manifested. 3. The authorities in charge of the denationalisation process (with some exceptions) are incompetent and unprofessional. There are cases of lack of commitment, lack of professionalism, and illegality in their work…and the fundamental lack of knowledge of legislation among the people responsible to apply". Apart from these main reasons there are also subjective reasons, such as: persons who worked in these commissions received regular payments for their work, and therefore they had no motive to close the cases swiftly. There was non-application by the second instance commission of merit-based case resolving, in accordance with the Law of Administrative Procedure, which delayed the compensation procedure.
The State Attorney's office, which was also part of the procedure, played a major role in the stagnation of the process by submitting complaints or by initiating administrative disputes in cases when the denationalisation commissions made positive decisions on denationalisation applications. With this attitude the State Attorney's office caused serious doubts that instead of respecting the law this body is governed based on the government policy to preserve budget funds. The entire process is suspicious of corruption. Slow and inefficient restitution process, numerous obstructions that the applicants had to deal with, cases of sold denationalisation property, or other activities aimed at negating restitution, leads to serious doubts of corruption.
There are numerous complaints submitted to the State Commission for Prevention of Corruption and to the Ombudsman which indicate "strong ties between the bodies who decided on a property rights-subject of denationalisation, in order to satisfy certain business interests". See: Vanja Mihajlova (2010), Process of Denationalization – from declaration to reality, Legal Dialogue, no. 1. https://www.ihr.org.mk. (Accessed 19 December 2023).
14 | Sami Mehmeti (2016), The Process of Denationalisation in the Republic of Macedonia following its independence, II. Türk Hukuku Tarihi Kongresi Bildirileri, CDN Istanbul University, https://cdn.istanbul.edu.tr/FileHandler2.ashx?f=the-process-of-denationalization-in-the-republic-of-macedonia-after-its-independence_sami-mehmeti.pdf. (Accessed 10 January 2024)
15 | Despite the official completion of the denationalisation process in 2012, restitution cases mainly for agricultural lands are still stuck in the judicial labyrinths. According to the data of the Association "Mandra" from 2014, over 7,000 denationalization cases were still unsolved, most of them in the judicial processes between the first and the second instance commissions. In the same year, the Ombudsman office reported approx. 7,334 unresolved denationalisation cases. This paradox

The denationalisation process in Macedonia also faced numerous institutional barriers and bureaucratic procedures.[16] The Macedonian judiciary system showed many weaknesses and slowness in completing the court denationalisation cases, which obstructed the citizens' legal certainty and their faith in the judiciary.[17]

is unimaginable in a democratic country. The denationalisation law is part of the legal order in the Republic of Macedonia and as such, part of the democratic processes," said Ljubica Gjeorgjieva, lider of "Mandra". According to her, denationalisation is a problem of Macedonian governments and not the law on denationalisation.

The Ministry of Finance successfully built a judicial labyrinth between the first and the second instance commission, which constantly sent the cases back and forth. This has been going on for 15 years. Some of the applicants filed their cases in front of the Administrative Court, but this court sent the cases back to the first and second instance commissions – according to Ljubica Gjeorgjieva. Most of the cases which are still not resolved are cases about farmlands, and lands in the mountain areas in the eastern part of the country. She says that the property of her parents that was confiscated in 1945 consisted of farmland, pasture, forest, etc.

"The legal battle started in September 2000, when the law on denationalisation entered into force. We won the case in court, but the entire problem was caused by the Ministry of Finance. Each time we reached the second instance commission, they would reject our application saying that there was no trace of confiscation. The fact alone that the property was taken by force and no documents on the confiscation were issued points to the need of special evidence, which is in our possession," said Kiraca Kuzmanovska, one of the people whose restitution case is still not resolved. She points out that the main reasons for the rejection of these cases are old property documents, the land serving in the interests of the state, etc.

The Ministry of Finance claims that the denationalisation commissions operates in accordance with the law, and to support this claim they point to the denationalisation bonds that were being issued every year.

Officially, the Ministry of Finance closed the last denationalisation case in first instance in March 2002. A total of 30,744 cases were closed which enabled restitution or compensation to 500,000 citizens.

In the period between 2007 and 2012, a total of 15,000 cases were closed and those that were most complex were the last to be resolved as they required expertise and vast documentation. According to the available data, at the moment when the denationalisation process was declared completed, 3,000 cases were still ongoing before the second instance commission or before the Administrative Court. See: https://kanal5.com.mk/denacionalizacijata-oficijalno-zavrshena-za-zaglavenite-predmeti-sebara-reshenie/a312629. (Accessed 5 January 2024).

16 | Most of the complaints brought before the State Attorney's office in 2014, 2015, and 2016 concerned property relations and were submitted by citizens who felt manipulated in their denationalisation cases, i.e. people who were harassed by the Ministry of Finance and the Administrative Court for 16 years, disabling them from any right to compensation. Some of these cases were stuck in the bureaucratic labyrinth, in the denationalisation commissions established by the Ministry of Finance, in the administrative or in the higher administrative court, or in the State Commission which decided in the second instance. The administrative judges instead of deciding on the meritory basis continuously sent the cases back to the commissions.

17 | In its most critical report about Macedonia in the last few years, the US State Department, in the section focused on the protection of human rights, referenced the "Gradishte" case, one of the major denationalisation cases with a judicial history of 25 years. Namely, the members of 36 families from Ohrid organised protests in April 2022, claiming that the authorities did not provide them with adequate compensation for the land nationalised in 1957. The State Attorney's office found major difficulties and procedural flaws in the denationalisation cases and points to the poor work of the denationalisation commission under the Ministry of Finance, as well as to the inefficient cooperation with the Administrative Court and other government agencies. The denationalisation law from 2000 defines the denationalisation procedure as urgent – stated the US State Department in its report.

The denationalisation law, which was adopted on 7 May 1998 (published in the "Official Gazette of the Republic of Macedonia" no. 20/1998), defined the procedure and conditions for restitution of private properties in the country, as well as the procedure and conditions for compensation of property confiscated by the state. With this law, the former owners and their successors were given the right to restitution of property and the right to compensation.

The law saw numerous amendments ("Official Gazette of the Republic of Macedonia" no. 31/2000, 42/2003, 44/2007, 72/2010 and 104/2015), and the Assembly of the Republic of Macedonia issued an authoritative opinion on two legal provisions: Article 3, item 3, ("Official Gazette of the Republic of Macedonia" no. 14/2009) and Article 64 of the Denationalisation law ("Official Gazette of the Republic of Macedonia" no. 20/2009).[18]

By June 2005, a total of 22,809 applications for denationalisation were submitted to the Administrative Court. In 2007, the government decided to extend the deadline for applications due to great public interest. By December of 2007, an additional 7,935 applications were submitted.

A total of 30,744 restitution cases were completed by 2012 when the denationalisation process was formally declared complete. Since then (2012-2023) an additional 2,000 cases were closed in which the property was returned to the rightful owners. However, there are still 5,044 denationalisation cases stuck in the judicial procedure, most of them before the Supreme Court.

According to these figures, and taking into consideration the assumed number of owners who never initiated a denationalisation procedure due to lack of property documents, lack of information, or absence of successors, the total number of unresolved denationalisation cases reaches 10,000, which indicates approximately of 50,000 properties nationalised between 1945-1960, predominantly agricultural land, apartment buildings, factories, industrial facilities, and even two hospitals, one in Bitola, and one in Gostivar.

The denationalisation cases make up the bulk of applications from Macedonia before the European Court for Human Rights in Strasbourg, based on

See: https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/north-macedonia/ (Accessed 18 January 2024).

18 | In accordance with the denationalisation law, several by-laws were adopted, such as: Regulation on implementation of the denationalisation procedure ("Official Gazette of the Republic of Macedonia" no.43/2000), Regulation on a procedure for determining the value of de-nationalised property ("Official Gazette of the Republic of Macedonia" no. 43/2000), Manual on keeping separate denationalisation records, regulation on a criteria for determining the market price of state-owned apartments ("Official Gazette of the Republic of Macedonia" no. 68/92), Methodology on assessing the value of state-owned business premises as reference for determining lease ("Official Gazette of the Republic of Macedonia" no.29/99), Methodology for assessing the value of state-owned companies ("Official Gazette of the Republic of Macedonia" no.74/93 and 25/95).

violations of Article 2 and Article 6, and in combination with Article 10 of the ECHR on attempts for silencing the rightful owners.[19]

3. Privatisation experiences in several European countries – laws, strategies, privatisation policies

Laws and other formal rules on privatisation vary considerably across jurisdictions. Some countries have one unifying privatisation law while others have a mosaic of laws.[20]

Some countries apply a more "public finance approach", according to which the conversion of corporate assets into financial assets is mostly a question of value-for-money which does not require legal measures. Relatively few countries have a formalised, recurrent review procedure to establish whether individual SOEs should be privatised.

In the Czech Republic, the 2005 Act on Abrogation of the National Property Fund of the Czech Republic and on Competences of the Ministry of Finance in the Privatisation of Assets basically ushered in the post-transition era by terminating the country's privatisation agency and transferring its powers to the Ministry of Finance. The ministry conducts periodic assessments of the suitability of its SOE portfolio and issues reports on this topic to parliament and the general public.[21]

In Denmark, the rules on privatisation draws largely on EU regulations, including those on state aid and competition. In addition, the state cannot reduce (or increase) its ownership of a company without consent from parliament which is obtained by getting a "mini bill" approved by the parliamentary finance committee. According to government preferences, privatisation has, in the past, been either encoded in formal policy programmes or approached on an ad hoc basis.[22]

In Estonia, the government provides a legal and regulatory framework for the state's participation in companies and the sale of shares of SOEs with the State Assets Act (SAA). The Act establishes a codified list of rules for management and operating principles of SOEs, including a yearly evaluation of the state-owned

19 | See: https://old.jpacademy.gov.mk/wp56/wp-content/uploads/2019/12/presuda-na-eschp-2014-_-1.pdf, https://old.jpacademy.gov.mk/wp56/wp-content/uploads/2019/12/presuda-na-eschp-2019-mak_.pdf,
https://old.jpacademy.gov.mk/wp56/wp-content/uploads/2019/12/presuda-na-eschp-1-_-2014-ang..pdf,
https://old.jpacademy.gov.mk/wp56/wp-content/uploads/2019/12/presuda-na-eschp_2019-ang..pdf. (Accessed 20 January 2024).
20 | Used from OECD (2018), Privatisation and the Broadening of Ownership of State-Owned Enterprises, https://www.oecd.org/daf/ca/Privatisation-and-the-Broadening-of-Ownership-of-SOEs-Stocktaking-of-National-Practices.pdf. (Accessed 21 January).
21 | Ibid.
22 | Ibid.

enterprise ownership portfolio and procedures for the sale process. Usually, it is the shareholding ministry which is responsible for conducting the sale.[23]

In France, capital transactions in public enterprises, including privatisations and transfers of government securities, are governed by the Ordinance of the Decree No. 2014-949, dated 20 August 2014. These texts have clarified and simplified the law applicable to capital transactions.

In Germany, the main legal basis for deciding on privatisation is provided by the Federal Budget Code. Several other pieces of legislation and regulation apply, including the Code on Public Governance and resolutions adopted by parliament, parliamentary committees, and the state audit institution. The privatisation process is the responsibility of the Ministry of Finance on behalf of the Federal Government of Germany. The continuation of ownership is reviewed every two years relative to the Budget Code.[24]

In Hungary, Act CVI of 2007 on State Property governs accomplishment of a broad-scale privatisation with a view to managing state property more efficiently and cost-effectively. For its enforcement, Government Decree No. 254/2007 (4 October) was enacted with detailed regulations on exercising ownership rights relating to state property. The general aim of the legislation is to formulate a system of management for preserving the most important national assets, the effective operation and acquisition of state property and facilitating public duties. Within the legal framework, the state may sell stakes in an electronic auction in order to ensure transparency of the transaction. In the audited web-based electronic auction information system – operated by Hungarian National Asset Management Inc. (HNAM) – auctions are published and bids are electronically submitted.[25]

In Poland, the current legal and regulatory framework for state ownership and disposal of state-owned shares is provided by the 2016 Act on the Principles of State Property Management. The Act is a key part of the government's reform of the Treasury's exercise of state ownership and it has led to a significant change in the ways of undertaking disposal of state-owned shares. The Ministry of Treasury was liquidated at the end of 2016 and SOEs were moved to appropriate sectoral ministries.

23 | Ibid.
24 | Ibid
25 | Ibid

4. Privatisation of state property in Macedonia – a stumbling stone for the development of Macedonian economic democracy

In the opinion of the leading economics, there is no single or best privatisation model for state enterprises. Eastern European countries were unable to fully rely on the privatisation experiences of Western countries as they also learn from their own mistakes and often modified their privatisation laws and models. Despite these problems and difficulties, Eastern and Central European countries managed to demonstrate significant progress in terms of privatisation, having in mind the fact that the private sector share in state production varied between 30-50% just a few years after the privatisation process was complete, which strongly reflected on the development on their micro economy. In order to speed up the privatisation process, many countries apply the model of so-called mass privatisation by enabling voucher distribution to citizens. This privatisation model was applied in the Czech Republic, Poland, Slovenia, Russia, Lithuania, Estonia and some other countries.[26]

Regarding the restructuring of the enterprises two approaches were applied:

1. Restructuring the enterprises prior to the privatisation, and
2. Restructuring subsequent to privatisation.

The case of East Germany is often pointed out as the best-known example of enterprise restructuring before privatisation, where a separate state agency was formed to execute the restructuring of several thousand companies after which they were ready to be sold.

This type of restructuring was also applied in Hungary and Poland but with a somewhat weaker effect compared to East Germany.

Generally speaking, in most of the transition countries, the restructuring of companies was carried out after the privatisation, i.e. it was executed by new private owners. In all cases in which the model of the mass privatisation programme was applied, the privatisation took place before the restructuring.

In Eastern and Central European countries, it was mainly the government and other state bodies who directly organised the privatization process.

In Macedonia, the privatisation formally began in 1989 with the reforms of the former Yugoslav prime minister Ante Markovic, when the workers in the factories as shareholders were offered to buy the stocks of companies listed on

26 | Macedonian Academy of Sciences and Arts, Nikola Kljusev Macedonian Academy of Sciences and Arts Nikola Kljusev, Taki Fiti Mihail Petkovski, Trajko Slaveski, Vladimir Filipovski, Macedonian Economy in Transition (problems, dilemmas, aims), project leader and editor, Academic Nikola Kljusev, Skopje, 2002.

the market. Having in mind the fact that the previous system of state organisations in Macedonia created major issues that reflected on the employees in the state companies, it was natural to expect that privatisation will boost the capital market development in the country by providing trading "material" in the process of defining property rights.

The 1989 Law on State Capital adopted by the last federal government of the former Yugoslavia opened the possibility for the corporate structure of enterprises and their privatisation through "internal bonds".[27]

These bonds were issued based on their accounting value in the state capital of the companies, which in conditions of high inflation rate meant loss of the state capital value. The shares were offered with major discounts and were bought by the employees under very favourable conditions (up to 10 years payment period). The "internal" bonds could not be subjected to further trade and for this reason they were converted into simple stock.

The privatisation in many Macedonian companies followed the model of concluding agreements (voluntary or involuntary) between the workers and the people who took over the company management, which prevented the workers from selling their stocks to investors outside the company. This short-sighted policy had

27 | The Law on Transformation of State Capital adopted in 1989 by the Assembly of the Socialist Federal Republic of Yugoslavia, also known as Ante Markovic's law, was implemented in Macedonia in 1990 and 1991. In this period, a total of 240 companies were privatised based on the sale of internal stocks. Regarding the privatisation model in mid-June 1992, an advisory conference was organised at Hotel "Radika" in Mavrovo, focused on the future privatisation model to be applied in the country. This event was organised by the technical government led by academician Nikola Kljusev, the first Prime Minister of Macedonia. This event was intended by a large number of economic and legal experts, state ministers, and managers of the major enterprises in the country. The opinions were divided regarding the future model, i.e. some supported the thesis that privatisation should continue in accordance with Ante Markovic's law as it had already shown good results. The other group denied the success of the approach based on internal stocks, saying that they were distributed illegally without paying any taxes to the state, turning the managers into millionaires on a back of the middle class. On top of that, the new owners initiated massive layoffs and some entirely changed the company profile. Prime Minister Kljusev, his economic ministers and many of the economic and legal experts were in favour of applying so-called voucher privatisation, i.e. distribution of special privatisation documents (vouchers) to the citizens, who could then use them to buy stocks in the companies. These vouchers were to be distributed to the employees based on several criteria: years of work, age, salary, and other principles. This model was previously applied in the Czech Republic, Slovakia, Slovenia, and some other countries. Still, the two sides maintained their positions and the meeting ended without a conclusion to the question as to which privatisation model should be applied in the country. Two months later, the MP's, at the Assembly session held on 17 August 1992, put forth a vote of no trust concerning Prime Minister Kljusev's government. In their brief explanation, the MP's said that "in order to achieve faster development and prosperity, the country needs a political government". On 5 September 1992, Macedonia elected its first political government led by Branko Crvenkovski, president of the SKM-PDP. Previously, President Kiro Gligorov gave the mandate to the leader of VMRO-DPMNE, Ljupcho Georgievski, who returned the mandate, and later to Petar Goshev, who also return the mandate and resigned from SKM-PDP, thus the mandate went to the new leader of the SKM-PDP, Branko Crvenkovski. See: https://novamakedonija.com.mk/makedonija/politika/modelot-na-privatizacija-ja-urna-prvata-ekspertska-vlada/ (Accessed 22 January 2024).

a negative impact on the future development of these companies, mainly on their ability to attract fresh investment capital on the capital market.

In Macedonia, spin-offs typically occurred at the beginning of the 1990s, giving rise to a large number of new firms led by new top management. Macedonia is another case among transition economies where large numbers of break-ups occurred at the beginning of the privatisation process.[28]

The Macedonian government adopted a mixed privatisation strategy that allowed firms to choose between a variety of methods such as:

- EBO (employee buy-out),
- (MBO/MBI) management buy-out/buy-in,
- Issuing shares for additional investment,
- Debt/equity swaps,
- Leasing,
- Sale of assets and
- Privatisation of a firm in bankruptcy.

Firms that had not opted for voluntary privatisation by 1995 became subject to compulsory privatisation organised by the Privatisation Agency.

The Acton Transformation of Enterprises with Social Capital provides for the following: a) Employees are offered an initial discount of 30% of the appraised value plus 1% for each year of employment at the enterprise. Each employee can buy shares at a discount rate of up to DM 25,000. Payments can be made without down payments in five-year instalments and with a grace period of two years. b) At the beginning of the privatisation procedure, the company must automatically transfer 15% of the social capital (in the form of shares or stocks) to the Pension Fund. These are non-voting, preference, participating stocks and are expected to earn 2% fixed dividend.

The Act on Transformation of Enterprises with Social Capital offers different privatisation methods according to the size of the enterprise based on the number of employees:

1. Small enterprises (Article 41):

- • Employee buyout • Sale of a part of the enterprise (in the form of shares or stock)

2. Medium-sized enterprises (Article 55):

- • Sale of the enterprise or a part thereof • Buyout of the enterprise • Management Buy-Out • Issue of shares for additional investment • Debt/equity swap

28 | Polona Domadenik, Lubomír Lízal, Marko Pahor (2012), The Effect of Enterprise Break-Ups on Performance. The Case of the Former Yugoslav Republic of Macedonia, in Revue économique 2012/5 (Vol. 63), p. 849-866, https://www.cairn.info/revue-economique-2012-5-page-849.htm?contenu=citepar. (Accessed 22 January 2024).

3. Large enterprises (Article 71):

- Large enterprises use the same methods as medium-sized enterprises, with the only difference that the down payment for management buy-out is 10% and 15% for the issuing of shares for additional investment.

In addition, the following methods of privatisation can be applied to all enterprises, irrespective to their size:

- Leasing (Articles 73-75),
- Sale of all assets of the enterprise (Articles 76-79),
- Transformation of enterprises under the bankruptcy procedure (Articles 80-86).

The pure start of the Macedonian stock exchange had negative impact on citizens' rights to free disposal of their property. It is worth mentioning that in Central and Eastern European countries in which the method of rapid and mass privatisation was applied, contrary to the "case-by-case" method, it resulted in the healthy development of national capital markets.

As in the Macedonian case, privatisation that was mainly controlled by insiders at companies (managers and other employees) failed to provide sufficient boost on the capital market.[29]

Realistically speaking, the privatisation in Macedonia started in 1993 with the Act on Transformation of the Large Industrial Capacities in the country: Zelezara (Ferronickel industry), MZT (Bus factory), Rade Konchar (Electronics), Alumina (Aluminium alloys), Treska (Furniture factory), Gazela (Shoe factory), Porcelanka (Glass factory), etc.

Generally speaking, the commercial nature of the Macedonian privatisation model operated on a case-by-case approach.[30]

Why was this model applied? Because it was believed that it would lead to achieving the main goals of privatisation: making company management more efficient, attracting foreign capital, boosting the market economy, and opening new possibilities for balancing the national internal and external debt.[31]

29 | Sukarov, M., V. Hadzi Vasileva-Markovska (1994). "Privatisation in Macedonia - 1994", CEEPN, Ljubljana.

30 | Internal privatisation methods such as employee buy-outs and management buy-outs were widely adopted in the privatisation process in Macedonia. The Macedonian process of privatisation in the majority of firms was internal.

31 | Privatisation and Restructuring of the Socially and State-Owned Enterprises in the Republic of Macedonia and its Implications on Corporate Governance, by Marija Jovanovska, Privatisation Agency of the Republic of Macedonia, Director Emilija Belogaska, MSc, Investment Promotion Department, Director Slobodan Shajnoski, MSc, Legal Department, Director https://www.oecd.org/daf/ca/corporategovernanceprinciples/2394769.pdf. (Accessed 25 January 2024).

Between 1989 to 1996, a total of 900 companies in Macedonia were subject of privatisation with a total value of EUR 1 billion (mainly immovable property) and a total of 145,000 employees.[32]

On paper, the privatisation process was considered successful and many authors agreed that the different privatisation methods came as result of the political shifts in power, i.e. changes in government, which resulted in different political goals. Consequently, the privatisation in Macedonia was politically motivated, and the privatisation strategies depended on the political interests, which reflected directly on the legislative and regulatory authorities as well as on the application of these strategies.[33]

The process of direct company buyout by the workers and company managers resulted in long term weaknesses as the companies faced difficulties on finding their place on the market, there were shortages of investments and fresh capital, there was a lack of know-how and their corporative structure was weak. Instead of being offered on the stock exchange, the companies in Macedonia were sold in a process of suspicious direct agreements. That is why the privatisation process in Macedonia is viewed as based on numerous speculations with the buyout of the workers' shares from their managers for a price much lower than realistic, planned laws of property value before the privatisation took place, flooding of already established markets, takeover of the state companies by the former managers who most often misused the company name. (Porcelanka – Porcelana, Makedonija Sport – M Sport, MZT – MZT Skopje, etc.).

As result of these factors, in 1995 the rapid bankruptcy of large, privatised companies became a trend. In this context, 9 out of 10 large companies (with more than 2,000 employees) declared bankruptcy by 1995 and their workers became part of the bankruptcy mass.

This led to the adoption of the Act on bankrupt companies in 1995. However, with this law, the companies were fully fragmented based on production profile. For example, the Ferronickel factory Zelezara was divided into a dozen small companies (Smelter factory, Steal factory, Cooling factory, etc.). Each of these new companies were appointed a different bankruptcy manager which led to the removal of the mother company from the stock exchange. In this manner, the number of privatised companies who faced bankruptcy at the time increased from 900 in 1993 to 1,700 in 1996.

Since 1996, the privatisation, i.e. sale of the stocks of bankrupt companies was managed by the privatisation agency which existed until 2003 and which managed

32 | Arsov, S. (2005). Post-privatisation retrospective of Northern Macedonia – Could we have done it better?, in Kušić (Hrsg), Path Dependent Development in the Western Balkans, p. 184, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2033411, (Accessed 30 January 2024).

33 | Miljovski, K. Markovska, V. Stojkov, J. (2005). Privatisation in the Republic of Macedonia – Five Years After, in Conference "Privatisation in Serbia: Experience and Lessons from Other Transition Countries", European Association for Comparative Economic Studies, p. 1.

to realise tremendous profit of over EUR 2 billion by the time it was formally terminated.

Starting from the fact that the initial assessed value of all privatized companies was EUR 1 billion, there is an obvious difference between EUR 2 billion and according to the experts, this comes from the robbery on the back of the workers who then became bankrupt workers with no rights to salary, shares, dividends etc.

Note the following statistical data from 2001, when privatisation process was almost complete:

1. 1,759 companies were fully privatized,
2. There were around 230,000 employees in these companies,
3. According to financial reports, the capital of the privatised companies was worth USD 2.1 billion.

As stated above, the most common method of privatisation was their buyout by the managers. The second method was buyout by the employees and the managers, which followed the Russian scenario, where the managers would buy the stocks from the employees in packages using the "barricade" method.[34]

5. Privatisation of land in Macedonia

Following its independence in 1991, for the first time Macedonia started to develop its own agricultural policy which involved the Ministry of Agriculture, Forestry and Water Supply. The agricultural policy went through four phases of development:

1. The first phase took place from 1991 to 1995, which was based on the principle of market-price balance.
2. The second phase took place between 1996 and 2000, based on the first agricultural strategy from 1996, which foresaw the privatisation of the farm land and major agricultural factories.
3. The third phase took place between 2001 and 2006. In this period, Macedonia saw the second agricultural strategy (2001), signed the Agreement for Association and Stabilization with the EU and joined the World Trade Organization. Since 2007 until the present day, the country is undergoing intensive reforms in order to harmonize its agricultural legislation with those of the EU, as well as reforms aimed at increased budgetary support for agriculture.[35]

Prior to 1990, there were 211 state-owned agricultural enterprises in Macedonia, 147 agricultural factories and 64 agricultural associations which provided jobs

34 | https://idscs.org.mk/wp-content/uploads/2020/12 (Accessed 15 January 2024).
35 | http://www.fznh.ukim.edu.mk/images/stories/ap2019/8._ap_na_republika_makedonija.pdf. (Accessed 10 January 2024).

to around 30,000 people. The privatisation process of companies that operated with farmlands started in 1993.

These agricultural companies possessed around 450,000 hectares with an average size of land plots of 2.5 hectares and in the overall agricultural structure they represented:

- 82% of arable land, 63% of crops, 93% of meadows, 14% of pastures, 60% of fishing capacities, 95% of cattle, 62% of pigs, 92% of ships, and 60% of poultry.

In his work entitled *The Mystery of Capital*, Peruvian economist De Soto[36] states that successful and efficient transformation of dead capital can be achieved in numerous steps, some of which are applicable in Macedonia.

The first step is to legalise properties with economic potential, and this is what took place in Macedonia. Namely, over 40,000 illegal agricultural facilities and 10,000 tractors and other mechanisation in the country lacked proper documentation and hence were considered illegal. With the amendments to the Act on farmland and the Act on vehicles ("Official Gazette of the Republic of Macedonia" no. 18/2011, and no. 123/2012), their owners received a chance for legalisation.[37]

With the amendments to the Act on farmland ("Official Gazette of the Republic of Macedonia" no. 18/2011) farmers were provided a simplified procedure for the construction of new agricultural facilities, such as, barns, stables, orchards, processing facilities, etc. This made it easier for properties to become profitable.

Many farmers were in the need of financial support. According to the farmers, the main reason why the agricultural credits could not be fully used was due to the requirements imposed by banks to put their houses and other immoveable properties under mortgage, but these properties had to be in urban areas and not in rural areas.

Most farmers were unable to meet these criteria as their entire property was in rural areas. A major problem in securing funds that farmers were faced with was incomplete property documentation, i.e. unresolved property relations. Bank requirements in this regard are rigid as it is not their job to sell properties, but rather to plan deposits and credits.

Although initially privatisations were not allowed in several categories (in enterprises and companies that conduct activities of special national interest and public utilities and enterprises that conserve water, forests, land and other public goods), even these companies were subject to privatisations in the 2000s.[38]

It is worth mentioning that in the first years of Macedonian independence, the agricultural sector was characterised by two very different farm enterprise types:

36 | De Soto Hernando (2000), The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else, Basic Books.
37 | https://cea.org.mk/documents/CEA%20osvrt%20zemjodelie-1.pdf. (Accessed 16 January 2024).
38 | https://china-cee.eu/wp-content/uploads/2021/03/2021e02_North-Macedonia.pdf. (Accessed 17 January 2024).

1. Small family farms operating on privately owned land, and
2. Large socially-owned farms.

The latter can be further classified into two types: (a) agricultural enterprises, vertically integrated agribusinesses, which have large landholdings and are engaged in primary production, extensive agro-industrial processing, commercial storage, and marketing services; and (b) socially owned agricultural companies, which have smaller holdings and engage to a much lesser extent in non-primary production activities. At the time, the total arable land in Macedonia was 662,000 hectares, of which 204,000, or about 30 %, belonged to socially-owned farms. Most of the balance belongs to the private farm sector; the cooperative sector occupies a small percentage of arable land.[39]

Small farms were not able to take advantage of economies of scale in marketing. They had difficulty in obtaining inputs, lacked access to agricultural credit, had few market outlets, and were offered low prices for their products. The socially-owned farm sector had acted as both factory and product market for the family farm sector surrounding it.

The privatisation of large agricultural enterprises started with the adoption of the Act for the transformation of enterprises and collectives with state capital who operate with state-owned farm land ("Official Gazette of the Republic of Macedonia" no. 19/96, 25/99, 81/99, simplified text in no. 48/00). This means that the Act on Transformation of State-Owned Companies was not applied for agricultural enterprises. In other words, in most cases of the privatisation of agricultural enterprises, the wrong legislation was applied and Article 3 of the Act on Transformation of State Companies which explicitly states that "the transformation is not applied in the case of companies and other legal persons who operate with waters, forests, farm land, and other public goods" was ignored.

Since many of the agricultural enterprises contained large processing plants, they purchased certain products such as wheat, vegetables, and fruits from the family farms. The agricultural enterprises also provided family farms with the necessary input and extension services. Many of these enterprises have greatly reduced their operations, however, because state subsidies have been cut and credit has been practically eliminated. Thus, they are no longer able to provide the same level of services to the family farm sector, particularly at attractive prices or on convenient

39 | There are serious discrepancies among data sources even for such fundamental numbers as the cultivated area. The 1994 Census reports that private farms make up about half the amount that the Statistics Office reports. There is also imperfect reporting of the subdivisions within the social sector, among the organised social sector (agricultural enterprises), the unorganised social sector (scattered parcels acquired by the state over time), and the cooperative sector.
Cited according to: Jolyne Melmed-Sanjak, Peter Bloch, Robert Hanson (1998), Project for the Analysis of Land Tenure and Agricultural Productivity in the Republic of Macedonia, WORKING PAPER, NO. 19, Land Tenure Center University of Wisconsin–Madison, October, p.1. See: https://ideas.repec.org/p/ags/uwltwp/12798.html. (Accessed 10 February 2024).

terms. In addition, they are purchasing less of the family farm production and delaying payment for what they do buy. While these tendencies indicate a tendency towards a more efficient agricultural sector, the development of alternative forms of providing key services is important during the transition to a private economy.

The large enterprises also absorbed surplus labour from private farms in their areas. This important source of employment and wages for land-poor families will continue to shrink considerably with the restructuring of agricultural enterprises and other socially-owned farms.

6. Conclusions

The collapse of the socialist system and the democratisation in Macedonia in the 1990s resulted in numerous changes in the legal and economic structure of the system. The process of restitution of nationalised properties confiscated by the state in the previous socialist system as well as the following privatisation of social capital were the two key policies that strongly marked the first two decades of the country's independence.

Despite the enthusiasm among citizens regarding the announced denationalisation and privatisation, in the years that followed, the public mood shifted towards disappointment. The lack of experience in the functioning of these processes based on the rule of the law and the market economy created a fertile ground for the concept of the "Wild West" in the country's economic transformation which led to the creation of a political and economic elite that profited the most from these processes.

Under the patronage of the government, a small group of people in Macedonia became true oligarchs and millionaires at the expense of increasing poverty among the workers. By concentrating the institutional, economic, and political resources in the hands of a few, Macedonia, instead of becoming an economically robust country with an open market, became a captured state serving the elites.

In addition, ethnic turbulence in the country escalated the situation both politically and economically.

The capture of the former property of the state through privatisation processes has provided the political elite in the Macedonian divided state with significant resources used to cement their political power.

The political situation in Macedonia has offered preferential access to individuals loyal to the top echelons of political parties in the process of the direct sale of the state's assets. In addition to this, voucher privatisations, in which the state companies were sold through shares have also proven to be a major mechanism for capturing the state, since shares were offered to citizens at a nominal value, which

was not in line with supply and demand laws, but rather fluctuated according to 'who was in demand'.[40]

The process opened routes for wealth accumulation to those who were close to the top party echelons in the subsequent waves of privatisation. In turn, this provided opportunities for corruption, clientelism and patronage that were of key importance in capturing the Macedonian state by weakening its democratisation prospects.

This deeply partisan society with entirely partisan administration and its servile attitude towards the party leaders made the overall situation even more complex.

Most of the major corporations in Macedonia emerged from the privatisation process. This is atypical manner of forming a corporation, but if we take a look at the ownership structure of the wealthiest Macedonian corporations, we can easily identify the inside method of privatisation, in which the company management came into the possession of the majority of shares, providing them with complete control over the newly-established corporations.

These tendencies were the main tumbling stone in the privatisation process in Macedonia where by downgrading the social capital, deceasing its value, gaining majority share packages for the management most often by pressuring the employees, and purchasing their stocks for much lower prices, enabled a broadly illegitimate, and in some cases illegal privatisation in Macedonia, causing deep economic and social problems in Macedonia.

40 | Jelena Dzankić (2018), Capturing contested states: structural mechanisms of power reproduction in Bosnia and Herzegovina, Macedonia and Montenegro, European University Institute, https://cadmus.eui.eu/handle/1814/60030. (Accessed 10 February 2024).

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Sloboda MIDOROVIĆ[1]

Restitution of agricultural and forest land in the Republic of Serbia[2]

Abstract

This paper examines the solutions provided by the Serbian legislator for the restitution process, with a specific focus on agricultural and forest land. It traces the origins of this process to state interventionist measures such as agrarian reform and confiscation, which led to the creation of an agrarian fund used for land redistribution in line with socialist ideology. Although initial signs of the restitution process appeared in the early 1990s, no significant progress was achieved until the early 2000s. Rather than adopting a single, uniform law on restitution, the Serbian legislator chose to regulate the process through three separate laws: one addressing confessional restitution, another one dealing with general restitution, and a third one governing the return of property confiscated from Holocaust victims to Jewish communities. This paper outlines the key substantive and procedural provisions of these restitution laws and addresses certain contentious issues that have arisen during their practical implementation. The analysis is supported by the case law of the Restitution Agency and domestic courts. The conclusion emphasises that, despite its duration, the restitution process has yielded considerable results, particularly with respect to the restitution of agricultural land, where restitution in kind has been achieved in the vast number of cases.

Keywords: agrarian reform, confiscation, denationalisation, restitution, eligibility criteria.

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Historical context of nationalisation

Following World War II, the establishment of a new social order in Yugoslavia required a fundamental shift in property regulations, signalling a departure from the individualistic approach to property relations traditionally associated with private ownership. Instead, a collectivist concept was favoured, which was manifested in people's, state and social property.[3] This shift was aligned with the prevailing socialist ideology of the era, which sought to reduce class and economic disparities among citizens by minimising differences in property status.

Certain indications of these profound changes in property relations could already be discerned during World War II. In liberated territories, members of partisan units began implementing revolutionary laws. As a result, the properties owned by individuals suspected of collaborating with the occupiers and labelled as enemies of the people were confiscated and integrated into the People's Liberation Funds, which were managed by the People's Liberation Committees.[4]

After the war, these tendencies became even more pronounced as efforts to build a new classless society sought to break ties with the legacy of the old bourgeois system. This process involved a complete departure from the previous legal order, including the regulation of property relations. Consequently, the post-war period was marked by various measures that led to the mass collectivisation of property. These measures played a pivotal role in establishing socialist self-management, the communist regime that gradually took shape in what became known as the Second Yugoslavia.[5]

Agricultural and forest land naturally came under the impact of these measures. The ultimate goal of seizing such land was to create an agrarian fund from the properties taken from those deemed to possess more than necessary, specifically beyond the established land maximum. Subsequently, the land acquired in this manner would be redistributed and allocated to landless individuals, settlers, and those lacking sufficient land.

Establishing a new social order overnight was a formidable challenge. Therefore, the collectivisation of property unfolded gradually, involving the adoption, amendment and supplementation of numerous regulations.[6] Agricultural land was primarily seized under the laws regulating agrarian reform and colonisation. Nevertheless, a significant portion of agricultural land was confiscated under a supplementary measure imposed on the purported enemies of the people who allegedly collaborated with the occupying forces.

3 | Gavella in: Gavella et al. 2007, 7-11.
4 | Nikolić 2020, 95.
5 | Slijepčević & Babić et al. 2005, 49.
6 | Art. 2 of the Law on the Return of the Seized Property and Compensation from 2011 lists 41 various legal bases upon which the property was seized.

2. Principal legal sources governing the seizure of agricultural and forest land

Among the laws that enabled the seizure of agricultural land, the *Law on Agrarian Reform and Colonisation* (LARC) of 1945 stands out.[7] This law introduced the agrarian maximum[8], and any land exceeding that maximum was involuntarily taken from its owners and redistributed to those who lacked land, those without sufficient land, or individuals who settled in the country through the colonisation process.

The underlying principle of this law was that: "Land shall belong to those who till it" (Art. 1 of the LARC). Through the LARC, agricultural land was taken not only from farmers and possessors of land who did not till it themselves above the prescribed maximum; it was also confiscated from banks, enterprises, religious institutions, and secular foundations. The LARC explicitly stipulated that land would be taken from its owners without any compensation (Art. 4, para. 1), the only exception being cases where the agrarian surplus – land above the prescribed maximum – was taken. In such cases, the owner would be compensated in an amount equal to one year's revenue per hectare (Art. 6, para. 1).[9]

The agricultural land that was seized based on the *AVNOJ* (Anti-Fascist Council for the National Liberation of Yugoslavia) *Decision on the transfer of enemy property into state ownership, state administration of the property of absent individuals, and the sequestration of property forcibly alienated by the occupying authorities* of 21 November 1944, was also incorporated into the agrarian fund (Arts. 10 and 18 of the LARC). This Decision stipulated the confiscation of property, including agricultural and forest land, from citizens of the German Reich and German nationals in Banat, Bačka, and Srem. The seized land was intended to be distributed to colonists – combatants of the Yugoslav army – who would inhabit and cultivate the land with their families (Art. 16 of the LARC).

During the war and in its aftermath, the confiscation was widespread. It involved the mandatory seizure, without compensation, in favour of the state, of either the entirety or a portion of the property owned by an individual or legal entity. This measure was regularly implemented as an accompanying sanction for those convicted of criminal offenses. Nevertheless, it was not uncommon for confiscation to occur without any prior proceedings, based on regulations of a general

7 | Official Journal DFY, No 64/45, Official Journal FPRY, No 16/46, 24/46, 99/46, 101/47, 105/48, 19/51, 42-43/51, 21/56, 52/57, 55/57, 10/65.

8 | The agrarian maximum varied depending on the type of landholder: large landowners, farmers who tilled their own land, farmers who leased their land, or those who subcontracted workers to till it. For more details, see Nikolić Popadić 2020, 111-113. If family members cultivated the land, the agrarian maximum was determined based on the number of family members, the quality of the land, and the crop cultivated (Art. 5, para. 1 of the LARC).

9 | Slijepčević & Babić et al. 2005, 52-53.

nature.[10] In practice, it "served the communist authorities to, through orchestrated judicial processes, declare big capitalists the enemies of the people, sentencing them to lengthy imprisonment and seizing their entire property."[11]

The confiscation was largely performed under the *Law on Confiscation and Execution of Confiscation* (LCEC) of 1945.[12] This law stipulated that upon the finality of the decision pronouncing the confiscation sanction, the state became the owner of the confiscated property (Art. 8 of the LCEC). Confiscation was often coupled with prior sequestration, understood as the temporary takeover of property that could be confiscated (Art. 10 of the LCEC). This temporary measure was intended to secure such property from alienation, damage, or diminution of its value (Art. 11, para. 1 of the LCEC).

Agricultural land was also converted into social property through the *Law on Combating Unauthorised Trade, Unauthorised Speculation, and Economic Sabotage* (LCUTUSES) of 1946.[13]

When it comes to forests and forest land, seizure was performed based on the LARC and other laws, whereas the use of seized forests was regulated by the *Basic Law on the Use of Expropriated and Confiscated Forest Estates* as of 1946.[14]

In total, the agricultural and forest land seized under all applicable legal sources encompassed over 1,600,000 hectares.[15]

The profound changes in property relations resulted in numerous disruptions in the regulation of proprietary relationships. The far-reaching consequences of these measures, even seven decades later, continue to leave their traces and pose challenges for legislators in certain areas of real estate property law to this day.[16]

3. Preliminary outline of the restitution process

State intervention measures, justified by the ideological reorientation of society, constituted a significant injustice to those forcibly losing their property without adequate compensation. Therefore, in the early nineties, as the Serbian market gradually shifted back toward the principles of a market economy, a reverse

10 | Slijepčević & Babić et al. 2005, 53.
11 | Marinković 2012, 141.
12 | Official Journal FPRY, No 40/45, 56/45 (Autentično tumačenje), 70/45, 61/46 (prečišćen tekst), 74/46, 105/46, 11/51, 47/51.
13 | Official Journal DFY, No 56/46.
14 | Official Journal FPRY, No 61/46.
15 | Marinković 2012, 140.
16 | One of the relics of the post-war property transformation has not yet been overcome. The issue stems from the conversion of urban construction land into exclusive social, and later state, ownership, where private owners of buildings erected on that land were granted the right of permanent use. The legal basis for converting the right of permanent use into ownership was established in 2009, but to this day, despite significant progress, this process has not been concluded. For more see: Cvetić 2021, 93-111; Cvetić & Midorović 2021, 744-745.

process began, involving property reprivatisation and restitution. Denationalisation was incremental and initially very limited in terms of personal eligibility and the types of property to which it pertained.[17]

In the initial phase of denationalisation, two laws stand out due to their significance. The first one, the *Law on the Mode and Conditions of Restitution of Property Acquired through the Labour and Business Activities of Cooperatives after 1 July 1953* enacted in 1990[18] primarily addressed the return of property to cooperatives. This law stipulated that property acquired through the labour and business activities of cooperatives and their members after 1 July 1953, which had been transferred without compensation to other beneficiaries, should be returned to those cooperatives or their legal successors. The second law, the *Law on the Method and Conditions for Recognition of Rights and Return of Land that had been Transferred into Social Property based on the Agricultural Land Fund and Confiscation due to Unfulfilled Obligations from Mandatory Purchase of Agricultural Products*, was enacted in 1991.[19] This law provided for the restitution of agricultural land that was in social ownership at the time of the submission of the request. Requests could be filed within a 10-year period starting from the enactment of this law (Art. 3).

4. Suboptimal sequence of steps in the denationalisation process

Although the need for property transformation seemed inevitable, the manner in which it was implemented was far from optimal. The problem arose because the privatisation process in Serbia began before restitution, resulting in the sale of substantial portions of the property intended for restitution during the privatisation process.[20] While restoring private ownership as the predominant form of ownership necessitated the implementation of both privatisation and restitution processes, the sequence of steps chosen by the Republic of Serbia was suboptimal. Despite the widely recognised fact that a considerable amount of private property was seized from its owners through state intervention after World War II, segments of that property underwent privatisation instead of being returned to the former owners (and potentially their heirs) first.[21] With a view to accelerating the property transformation process, the state began selling social and state enterprises, including those established and developed by the individuals who had been forcibly deprived of them without compensation in the post-war period. If restitution had been addressed either before or, at the very least, concurrently with

17 | Veselinov 2023, 113.
18 | Official Gazette RS No 46/90.
19 | Official Gazette RS, No 18/91, 20/92, 42/98.
20 | Cvetić 2003, 156, 157; Slijepčević & Babić et al. 2005, 107-110.
21 | Veselinov 2016, 589-591.

the privatisation process – rather than nearly two decades later – the property intended for restitution would not have been subject to sale during the privatisation process.[22]

Today, private ownership is the predominant form of property, while social ownership has largely disappeared. The most essential resources vital to the state and its functioning still remain under state ownership.[23]

5. Key legal instruments in the restitution process

5.1 Law on Reporting and Registering of Seized Property

The first law heralding the state's intention towards comprehensive restitution was the *Law on Reporting and Registering of Seized Property* (LRRSP), which entered into force on 8 June 2005.[24] This law created legitimate expectations among former owners and their heirs/legal successors that the state would adopt measures to address the long-standing issue of returning property seized after World War II.[25] The LRRSP prescribed the procedure for reporting and registering property taken from former owners within the territory of the Republic of Serbia without market value or fair compensation, whether through nationalisation, agrarian reform, confiscation, sequestration, expropriation, or other regulations enacted and applied after 9 March, 1945 (Art. 1 of the LRRSP).

According to this law, former owners[26] of seized property, their heirs, or legal successors were required to report any seized property to the Republic Directorate for Property of the Republic of Serbia no later than 30 June 2006 (Arts. 3 and 6 of the LRRSP). Initially, the law stated that "reporting of the seized property under this law does not constitute a claim for the exercise of the right to restitution of the seized property or compensation for it, but is merely a condition for submitting a return request in accordance with a special law" (former Art. 8). However, during that period, this special law had not yet been enacted. Consequently, unless the seized property was reported and registered by the cut-off date, the interested party would lose its potential right to claim restitution, even though such a right did not exist at that time, but was merely intended to be granted by the state.[27]

22 | Veselinov 2023, 108-112; Veselinov 2016, 589.
23 | Slijepčević & Babić et al. 2005, 49.
24 | Official Gazette RS, No 45/2005, 72/2011.
25 | Samardžić 2012, 445, 446.
26 | The law explicitly mentioned only natural persons (Art. 3 of the LRRSP), which raised questions about the eligibility of legal persons to report seized property. This illogical solution was rectified through interpretations by the competent state bodies, which concluded that this stipulation should be extended to include legal persons as well.
27 | This abrogation, however, was not well thought out, as Article 8 of the LRRSP was repealed while the legislator apparently overlooked the need to abrogate Article 9, paragraph 2 of the same law. This

While the enactment of this law was justified to allow the state to assess the extent of the property to be returned and the financial resources required for this purpose, it is clear that the requirement for the prior reporting and registering of the seized property as a condition for restitution requests was inadequately considered. This is why this provision was abolished with the introduction of a comprehensive restitution law – the *Law on the Return of Seized Property and Compensation* (LRSPC) of 28 September 2011 (Art. 41, para. 3 and Art. 66 of the LRSPC).[28]

5.2 Cascade Restitution

Regarding the restitution process, the state has opted for a so-called "cascade restitution," which is performed incrementally based on the subjects entitled to it.[29] Consequently, the state has dedicated separate legal sources to: 1) *confessional* restitution, which involves the return of seized property to churches and religious institutions; 2) *general* restitution; and 3) restitution of property seized from Holocaust victims. Accordingly, confessional restitution is governed by the *Law on the Return of Property to Churches and Religious Communities* (2006)[30]; general restitution is governed by *the Law on the Return of Seized Property and Compensation* (2011); and the return of property seized from Holocaust victims is addressed by the *Law on Eliminating the Consequences of Property Seizure of Holocaust Victims Without Living Legal Heirs* (2016)[31].

It was somewhat unexpected that the law on confessional restitution preceded the law on general restitution,[32] as one would logically anticipate the enactment of a general restitution law first, followed by special provisions for ecclesiastical restitution.[33] This issue was challenged before the Constitutional Court, which found that "[a]ccording to the case law of the European Court of Human Rights, states generally enjoy a wide margin of appreciation in choosing measures and methods to achieve a legitimate goal. In the case of denationalisation in Serbia,

provision stipulates that a restitution request, governed by a separate law, can only be submitted if the confiscated property was reported by the specified cut-off date.

28 | Official Gazette RS, No 72/2011, 108/2013, 142/2014, 88/2015 - Odluka Ustavnog suda, 95/2018, 153/2020.

29 | http://www.ustavni.sud.rs/page/view/sr-Latn-CS/0-101423/inicijative-za-ocenu-ustavnosti-zakona-o-restituciji-imovine-crkvama-i-verskim-zajednicama-nisu-prihvacene 26 November 2023.

30 | Official Gazette RS, No 46/2006.

31 | Official Gazette RS, No13/2016.

32 | The logical sequence of enactements entails art. 18, para. 2 of the Law on the Return (Restitution) of Property to Churches and Religious Communities, which provides that in case the restitution is achieved through pecuniary compensation, the state bonds are to be issued under the conditions and within the time limits set by the general law on restitution, which was enacted five years later.

33 | Samardžić 2012, 449; Veselinov 2023, 118, 119.

this has been accomplished by regulating property changes as a complex process through multiple laws enacted over an extended period."[34]

5.2.1 Law on the Return of Property to Churches and Religious Communities

In 2006, the *Law on the Return of Property to Churches and Religious Communities* (LRPCRC) was enacted. This law envisaged several principles for confessional restitution, with the most important being the principle of equal treatment for all churches and religious communities (Art. 2). Furthermore, the law stipulated a preference for restitution in kind. Where restitution in kind is not possible, the priority is given to the return of an adequate substitute property over pecuniary compensation at market value (Art. 4). The provision allowing for substitute restitution is limited exclusively to confessional restitution, which has been identified as a significant shortcoming in the context of secular restitution under the general restitution law.

Agricultural land, as well as forests and forest land, which were owned by churches and religious communities at the time of their seizure, are also among the types of property to be restituted under the LRPCRC (Art. 9).

The LRPCRC prescribed the cut-off date for submitting restitution requests as 30 September 2008 (Art. 25). The law also established a special organisation – the Directorate for Restitution – tasked, among other responsibilities, with deciding on restitution requests (Arts. 21 and 22). It was the first state body dedicated entirely to the restitution process. On 1 January 2012, the Restitution Agency succeeded the Directorate, taking over its duties (Art. 63 of the LRSPC).

According to LRPCRC, the entity obligated to return the seized property or make a monetary compensation is the Republic of Serbia, a business entity, or another legal entity that, at the time of the entry into force of this law, is the owner of the seized property. Nevertheless, if a company which owns the property to be restituted, at the moment of the entry into force of LRPCRC, may prove that it acquired such property by a transaction for value (*quid pro quo* transaction), the Republic of Serbia shall pay out the compensation to the former owner/his-her heirs (Art. 7).

5.2.2 Law on Return of Seized Property and Compensation and the Associated By-law

As referred to previously, the general, umbrella law governing restitution is the LRSPC, which was enacted in 2011. This law specifically addresses the restitution of agricultural land, forests, and forest land (Arts. 24-26). Given the importance of these provisions to the topic, they will be discussed in detail.

34 | http://www.ustavni.sud.rs/page/view/sr-Latn-CS/0-101423/inicijative-za-ocenu-ustavnosti-zakona-o-restituciji-imovine-crkvama-i-verskim-zajednicama-nisu-prihvacene

In addition to this law, one significant by-law related to the restitution of agricultural and forest land is the 2018 *Regulation on Criteria for Determining the Surface Area of Agricultural and Forest Land in the Process of Returning Seized Property.*[35] This Regulation applies when a request for restitution involves agricultural or forest land that underwent land consolidation following its seizure. This is of particular importance as a substantial portion of the seized agricultural land was subject to consolidation – a policy aimed at merging numerous small, irregularly shaped parcels into larger, more regular-shaped ones to improve agricultural efficiency.[36] As a result, the parcel numbers, boundaries, and shapes of these lands were altered. In such cases, experts play a decisive role in the restitution process, determining, in accordance with the criteria set forth in the Regulation, which land from the state fund can be returned to claimants.[37]

The provisions of the aforementioned Regulation are also relevant in cases where a portion of agricultural land cannot be returned due to the erection of a structure on it. This specifically pertains to the portion of the land required for the regular use of the constructed object.

5.2.3 Law on Eliminating the Consequences of Property Seizure of Holocaust Victims without Living Legal Heirs

A significant portion of agricultural and forest land that was previously seized has been returned to Jewish communities under the *Law on Eliminating the Consequences of Property Seizure of Holocaust Victims without Living Legal Heirs* **(LECPSHV)**, which was enacted in 2016.[38] This Law provides tailored solutions for the restitution of property seized from Holocaust victims, making Serbia the only country in Central and Eastern Europe to establish a specific law addressing this issue.[39]

6. Restitution modalities

When it comes to the modes of reparation, the title of the Law on general restitution indicates that reparation can take place in one of two ways: 1) **effective restitution**, which involves the return of the seized property (*in-kind restitution*), or 2) *compensation*, which entails the payment of a specified amount of money, either in cash or through state bonds, depending on the awarded compensation amount.

35 | Official Gazette RS, No 29/2018.
36 | Stanković in: Stanković & Orlić 1999, 121; Nikolić Popadić 2020, 116, with further references stated there.
37 | Agency for Restitution 2022, 221 (hereinafter: Agency Report 2022).
38 | Official Gazette RS, No 13/2016.
39 | Agency Report 2022, 199.

6.1 Restitution in Kind and its Exceptions

Restitution *in natura* has played a significant role and has been implemented to the greatest extent possible with respect to agricultural land, as a substantial portion of this land was in state ownership prior to the commencement of the restitution process. Although Article 8 of the LRSPC establishes the principle of priority for *in natura* restitution, certain public interests (Art. 18) and the respect for lawfully acquired rights (Art. 10) necessitate some exceptions to this principle. Furthermore, exceptions to in-kind restitution are also specified for land that was sold or acquired during the privatisation process (Art. 18, point 9).

Three exceptions to the effective restitution of agricultural and forest land are provided for in the LRSPC. Specifically, if on the day the LRSPC entered into force: 1) immovable object(s) that are in use were erected on the land, the portion of the cadastral parcel necessary for the regular use of such immovable object(s) may not be restituted; 2) if the land intended for restitution shall be subject to land parcelling to allow for an access road to the land for which restitution is requested; and 3) land in social or cooperative ownership that was acquired through a legal transaction for value (Art. 25 LRSPC).

If agricultural or forest land that was seized underwent land consolidation after its seizure, the former owner has the right to reclaim land obtained from the consolidation process (Art. 24, para. 2 of the LRSPC).

According to the LRSPC, in-kind restitution can only be applied to property that is considered public property, is owned by the Republic, is an autonomous province, or a local self-government. Consequently, the debtor responsible for in-kind restitution can be one of the following entities: the Republic of Serbia, an autonomous province, or a local self-government unit, or a public enterprise, business entity, or other legal entity established by these public entities, regardless of their status – whether active, under bankruptcy, or in liquidation (Art. 9, para. 1 LRSPC).

It is noteworthy that according to the Law on confessional restitution (LRPCRC), the scope of obligated parties for effective restitution is broader compared to the Law on general restitution (LRSPC). As previously mentioned, in the case of general restitution, the obligated party for returning property is limited to public entities: the Republic, an autonomous province, or a local self-government unit, as well as entities established by these public entities. In contrast, under confessional restitution, the obligated party can include any business entity or other legal entity that, at the time the Law entered into force, was the owner of the seized property. However, this obligation does not apply if the legal entity can prove that it acquired ownership of the formerly seized immovable property through a transaction at market value. If such proof is provided, the legal entity that owns the property in question will retain it, while the Republic of Serbia commits to compensate the restitution claimant (Art. 7, paras. 1 and 2 of the LRPCRC).

As previously mentioned, the relevant Law regarding confessional restitution establishes the priority of in-kind restitution. However, if this is not feasible, the Agency will first assess whether an adequate substitute property can be provided. Compensation will only be considered when neither in-kind restitution is possible, nor can substitute property be found (Art. 4 of the LRPCRC).

According to the decennial report of the Restitution Agency, which covers the period from 2012 to 2022, "a total of 117,972 hectares, 91 ares, and 17 square metres of agricultural land, as well as 38,606 hectares, 96 ares, and 52 square metres of forest land were returned *in natura* under all three restitution laws."[40]

6.2 Compensation Mechanisms

When in-kind restitution is not feasible, reparation will be made through compensation, provided either in the form of state bonds issued by the Republic of Serbia or in cash.

The sole debtor of compensation, whether in bonds or cash, is the Republic of Serbia (Art. 9, para. 3 of the LRSPC). In all cases, the amount to be compensated will be expressed in euros, based on the official average exchange rate of the National Bank of Serbia on the day of assessment (Art. 31, para. 1 and Art. 32 of the LRSPC).

Cash payments will occur in the following cases: 1) as an advance payment for compensation, which will equal 10% of the total compensation amount, but is not to exceed 10,000 euros per applicant (Art. 37, paras. 1 and 3); or 2) when the compensation does not exceed 1,000 euros per applicant (Art. 30, para. 1 of the LRSPC).

For compensation payments, Serbia has allocated an amount of two billion euros (Art. 31, para. 1 of the LRSPC). This means that applicants will not be reimbursed for the full value of the seized property but rather proportionately. Specifically, the amount to be compensated will be calculated by multiplying the *compensation bases* by a certain *coefficient*.

The *compensation bases* represents the value of property on the day of assessment, based on its location and condition at the time of seizure (Art. 32, para. 3 of the LRSPC).

The key responsibility for assessing the value of agricultural or forest land, in determining the compensation basis, lies with the Tax Administration, specifically the competent organizational unit of the Tax Administrative Body. According to the *Instructions for Determining the Value of Seized Immovable Property at the Request of the Restitution Agency* issued by the Tax Administration, the assessment of agricultural land, forests, and forest land must rely on the cadastral municipality in which the land is located, as well as the value of adjacent or neighbouring cadastral parcels with the same or similar use (fields, orchards, meadows, forests, etc.). The quality of the land will also be taken into account, expressed in classes

40 | Agency Report 2022, 220.

(first, second, third, etc.).[41] The determined value is subject to corrective factors of ±10%, depending on various criteria such as the land's location, proximity to roads and infrastructure, and to populated areas.[42] If land that was agricultural at the time of seizure has since been converted into construction land, its value will be determined according to construction land prices.[43]

The compensation coefficient is calculated by comparing the allocated amount of two billion euros to the total sum of the compensation bases determined by the Restitution Agency's decisions on the right to compensation, while taking also into account the estimated undetermined bases – those yet to be assessed by the Restitution Agency (Art. 31, para. 1 of the LRSPC). According to the Conclusion of the Serbian Government of 21 January 2021, the compensation coefficient is set at 0.15. This means that applicants receiving monetary compensation, instead of in-kind restitution, will receive only 15% of the total value of the seized property. This places applicants who may not be restituted *in natura* at a significant disadvantage compared to those who receive restitution in-kind, as the latter can sell their returned property at market value. Moreover, the compensation amount is not only far below current market value, but it will also be paid out over a 12-year period, starting from the bond issuance date. The Law, however, provides exceptions to the 12-year payment period for two categories of applicants: 1) those aged 70 or older on the date the law came into force, who will receive their compensation within five years; and 2) those aged 65 or older, who will be compensated over a 10-year period (Art. 35, para. 5 of the LRSPC).

Moreover, the LRSPC sets a cap on the total compensation that may be paid to a single applicant to 500,000 euros (Art. 31, para. 3). The rationale behind this cap is to maintain macroeconomic stability and the economic growth of the Republic of Serbia. This limit applies to each applicant in two ways: 1) an applicant cannot be awarded more than 500,000 euros, regardless of how many potential grounds for compensation (s)he has (e.g., agrarian reform, nationalisation, confiscation, sequestration, or expropriation); 2) an applicant cannot receive compensation exceeding 500,000 euros, even if they inherited property from multiple predecessors who were deprived of their property (Art. 31, paras. 3 and 4 of the LRSPC).

The compensation scheme is not provided for in the *Law on Eliminating the Consequences of Property Seizure of Holocaust Victims without Living Legal Heirs*. Accordingly, this Law allows only for in-kind restitution. If in-kind restitution is not possible due to third parties' rightfully acquired interests in the property, the request for restitution will therefore be considered unfounded.[44]

41 | Instructions for determining the value of the seized real estate at the request of the Restitution Agency issued by the Tax Administration No. 464-273/2012-18, of 6 November 2013.
42 | Ibid.
43 | Ibid.
44 | Agency Report 2022, 205.

7. Eligibility and conditions for restitution

7.1 The Statutory Time Limits for Filing a Restitution Request and its Key Elements

According to the LRSPC, restitution requests could be filed within two years from the date the Restitution Agency published a public call on the website of the ministry responsible for financial affairs (Art. 42, para. 1). This timeframe began on 1 March 2012, and expired on 3 March 2014. Requests submitted after that date were considered untimely and were rejected accordingly.

Under the LRPCRC, the deadline for filing restitution requests was 30 September 2008 (Art. 25). In practice, attempts to circumvent this deadline have been observed through the submission of so-called 'expanded' requests, which were later found to be unrelated to the original requests filed within the specified timeframe. As a result, these 'expanded' restitution requests were rejected as untimely. The Supreme Court of Cassation of the Republic of Serbia held that "the extension of property restitution claims beyond the statutory deadline (30 September 2008), as stipulated by Article 25 of the Law on Restitution of Property to Churches and Religious Communities, to include properties unrelated to those specified in the initial request, may be considered an abuse of rights and, therefore, may not be allowed."[45]

The restitution request must include detailed information about the former owner, the seized property, the former owner's ownership of the property, the legal basis, the date, and the legal act by which the seizure was executed. Additionally, it must provide details about the applicant and their legal connection to the former owner, all of which must be substantiated by appropriate evidence. If the property was seized through confiscation, a final court decision on rehabilitation, or evidence that a request for rehabilitation was timely filed, must also be submitted (Art. 42 of the LRSPC).

7.2 Legal Bases for the Seizure

To exercise the right to restitution of seized property or to seek compensation under the LRSPC, it is essential that the property was originally seized under one of the 41 legal grounds specified in Article 2 of the Law. If the property was seized under a ground not included in this list, the Agency lacks the legal basis to proceed, and such a request will be rejected.

45 | Supreme Court of Cassation of the Republic of Serbia, Judgment No. Uzp 220/2021, 26 November 2021.

7.3 Legal subjects entitled to file a request for restitution

When discussing eligibility for restitution under the LRSPC, the following persons are entitled to request restitution: 1) domestic natural persons – individuals holding Serbian citizenship from whom the property was seized, and, in the event of their death or declaration of death, their legal heirs (heirs according to law, not those who qualify as heirs through a will)[46] as per the inheritance law of the Republic of Serbia; 2) endowments from which the property was seized or its legal successor; 3) former owners – individuals who have regained ownership of their previously seized property through a legal transaction for value; 4) individuals who entered into a sales contract with a state authority between 1945 and 1958, provided that a court proceeding has established that the seller was disadvantaged by the sale price. In this case, the applicant is entitled only to compensation reduced by the amount of the sale price paid; 5) foreign natural persons – foreign individuals and, in the event of their death or declaration of death, their legal heirs, subject to the condition of reciprocity (Art. 5, para. 1). However, foreign citizens will not be entitled to restitution if they are compensated by a foreign state under an international treaty, or if they have already received compensation or had their right to compensation recognized by a foreign state, regardless of the absence of an international treaty.

According to the LRSPC, the right to restitution cannot be granted to natural persons who were members of the occupational forces operating in the territory of the Republic of Serbia during World War II, nor to their heirs (Art. 5, para. 3). To enforce this exception, the Restitution Agency has established close cooperation with the Military Archives, resulting in the creation of a database of members of occupation forces on the territory of Serbia during the war.[47] By consulting this database, the Agency can determine whether an applicant or their descendants are ineligible for restitution. However, the relationship between this exception and the *Law on Rehabilitation*[48] has presented practical challenges. Specifically, there was uncertainty regarding the Agency's decision-making if an applicant is identified as a member of the occupation forces by the Military Archives, yet has also been rehabilitated under the *Law on Rehabilitation*. Initially, the Restitution Agency rejected requests from such applicants if evidence confirmed their affiliation with the occupation forces. In contrast, the Administrative Court has ruled that the Agency cannot disregard the legal effect of a final rehabilitation decision, which establishes that a former owner was not a member of the occupation forces and was neither a war criminal nor a public enemy. Consequently, all legal

46 | Veselinov 2016, 598.
47 | Agency Report 2022, 18.
48 | Official Gazette RS, No 92/2011.

consequences stemming from military court decisions are considered null and void, including confiscation orders, thereby reopening the path to restitution.[49]

7.3.1 Examining Reciprocity for Foreign Applicants

As previously stated, the LRSPC stipulates that seized property shall be returned *in kind* or through compensation to foreign citizens and, in the event of their death, to their legal heirs, subject to the condition of reciprocity. Reciprocity is presumed to exist if a Serbian citizen can acquire ownership rights and inherit real estate in the country of the applicant's origin (Art. 5, point 5, and para. 2). This condition also applies to the restitution of agricultural land.

It is noteworthy that this solution significantly deviates from the provisions contained in the *Law on Agricultural Land*[50] (LAL), which states that "the owner of agricultural land cannot be a foreign natural person or legal entity, unless otherwise specified by this law in accordance with the Stabilization and Association Agreement" (Art. 1). Specifically, the LAL allows for the acquisition of agricultural land in *state* ownership through transactions for value only under certain conditions, one of which is that the acquirer – if a natural person – must *hold citizenship of the Republic of Serbia* (Art. 72a, para. 2, point 1).[51] In contrast, agricultural land in *private* ownership can be alienated only to EU citizens, provided that strict conditions outlined in Art. 72dj of the LAL are met.[52] This (almost hypothetical)[53] possibility was introduced in 2017 through amendments to the LAL, aimed at aligning with EU requirements set for Serbia as a candidate country under the *Stabilization and Association Agreement*. Prior to these changes, there was an absolute ban on foreign citizens acquiring agricultural land, whether through *inter vivos* transactions or inheritance.[54]

This solution implies that the LRSPC deviates from the otherwise applicable provisions regarding the acquisition of agricultural land by foreign citizens. It significantly extends the possibility for a foreign citizen, not only an EU citizen, to become the owner of such land under the sole condition of reciprocity (Art. 5, para. 2 of the LRSPC). Consequently, the LRSPC should be regarded as *lex specialis* in relation to the LAL.

49 | See Judgment of the Administrative court 12 U 2847/15, 2 December 2016.
50 | Official Gazette RS, No 62/2006, 65/2008 (drugi zakon), 41/2009, 112/2015, 80/2017, 95/2018 (drugi zakon).
51 | Živković 2022, 255.
52 | Baturan 2017, 1136; Nikolić Popadić 2020, 226-228; Dudás 2022, 27, 28.
53 | The situation is almost hypothetical, as the conditions set are highly restrictive, meaning that very few, if any, EU citizens are likely to meet the foreseen criteria. Živković rightly concludes that "meeting these requirements [...] is almost impossible for a foreign national in real life". Živković 2022, 256. The same conclusion has been reached by Dudás in: Dudás 2021, 71.
54 | Stanivuković 2012, 546, 551.

The Restitution Agency is *ex officio* obliged to examine whether the reciprocity condition is met (Art. 5, para. 5 of the LRSPC). When assessing reciprocity, the legislator distinguishes between countries that have regulated the process of property restitution – such as Croatia, Slovenia, Montenegro, Macedonia, Hungary, Bulgaria, and Poland – and those that have not.[55] In countries where the restitution process is regulated, the rights of foreign nationals to property restitution and compensation are determined by that country's regulations concerning the restitution procedure and the possibility for Serbian nationals to exercise their rights to property restitution and compensation.[56] Conversely, if a country has not regulated the restitution process, it is presumed that reciprocity exists with such countries, provided that a domestic citizen can acquire property rights and inherit real estate there (Art. 5, para. 2 of the LRSPC).

An illustrative example demonstrates how this condition has been examined in practice. In one case before the Restitution Agency, the applicant seeking restitution was a foreign national who was a collateral relative of the former owner. Upon examining reciprocity, the Agency found that the regulations governing restitution in the applicant's country of origin recognized restitution only for first-degree heirs, while the applicant in this case was a second-degree heir. Consequently, due to the absence of reciprocity, the request for restitution was rejected. This decision was confirmed by the Constitutional Court in response to the applicant's constitutional complaint, where the Court emphasized that *substantive*, not merely formal, reciprocity is required.[57] Therefore, the key consideration is not whether the country of origin generally permits restitution to Serbian citizens, but rather if, in an equivalent situation, a Serbian citizen could pursue the right to restitution in the applicant's country. As stated by the Constitutional Court of the Republic of Serbia: "For the realisation of the rights of a foreign citizen to restitution or compensation, formal reciprocity is not sufficient, as it guarantees equality in treatment, excluding discrimination based on citizenship. What is required is substantive reciprocity, which ensures full international balance in terms of enjoying certain rights."[58] Substantive reciprocity also implies that the condition of mutuality should be considered concerning specific types of land. For instance, if the country of origin does not recognize the right of foreigners to restitution of agricultural and forest land, applicants from that country will not be granted restitution in that case either, even though domestic law on general restitution does not impose such a restriction.[59]

55 | Agency Report 2022, 133.
56 | See Notification of the Ministry of Justice and Public Administration on the existence of reciprocity with regard to the right of foreign citizens to return property and compensation, number 762-02-2988/2012-07, dated 03.07.2013.
57 | Decision of the Constitutional Court of the Republic of Serbia No. Už-3218/2015, 9 November 2016.
58 | Decision of the Constitutional Court of the Republic of Serbia No. Už-3218/2015, 9 November 2016, p. 7.
59 | Agency Report 2022, 137.

To assess the scope of agricultural and forest land restituted until 1 August 2022, data from the Restitution Agency reveals that foreign nationals have been granted restitution for a total area of 15,902 hectares, 53 ares, and 66 square metres of agricultural land, along with 74 hectares, 48 ares, and 25 square metres of forest land.[60]

7.3.2 Position of Endowments as Restitution Applicants

When considering endowments as legitimate entities for asserting claims for restitution and compensation, it is important to note that the legislator has established different rules based on the type of endowment. *Church* endowments fall under the scope of the Law governing confessional restitution (LRPCRC), while *secular* endowments have the right to reclaim seized property in accordance with the Law governing general restitution (LRSPC).[61]

It took some time to clarify the material criterion for qualifying an endowment as a church endowment. Specifically, the question arose as to whether an endowment qualifies as a church endowment only if the church was its founder, or also when it was established by a natural person and then entrusted to the church for management purposes. This ambiguity was resolved by the Administrative Court of Novi Sad in 2012,[62] which stated that, with regard to the LRPCRC, only those endowments established by the church could be characterised as church endowments. This stance was later confirmed by the highest state court.[63]

Comparing the regulations on church and secular endowments, substantial deviations can be identified. As a result of these divergences, church endowments undeniably enjoy preferential treatment regarding restitution.[64] The most striking difference concerns the ability of church endowments to seek an in-kind substitution (Art. 4 of the LRPCRC)[65] when the seized property itself cannot be restituted. In contrast, secular endowments in the same circumstances are entitled only to compensation, which is capped at 15% of the total value, with an overall limit of 500,000 euros as previously mentioned.[66]

While church endowments have succeeded in recovering their property, some secular endowments have encountered significant obstacles in realizing their

60 | Ibid, 65, 66.
61 | Veselinov 2023, 121-124.
62 | Judgment No. III-2 U. 11496/12, 21 December 2012.
63 | Supreme Court of Cassation judgments Uzp 175/2019, 27 June 2019 and Uzp 66/2016, 15 June 2016.
64 | Due to these considerable differences, as already highlighted, an initiative for the constitutional review of the LRPCRC was submitted in 2011, which, as mentioned earlier, was not accepted. http://www.ustavni.sud.rs/page/view/156-101423/inicijative-za-ocenu-ustavnosti-zakona-o-restituciji-imovine-crkvama-i-verskim-zajednicama-nisu-prihvacene 25 November 2023 All relevant differences in regulation are listed in: Veselinov 2023, 122-126.
65 | Samardžić 2012, 455.
66 | Veselinov 2023, 122-126.

right to restitution. One of the most striking examples is the Endowment of Bogdan Dunđerski. After World War II, the endowment's property was seized, preventing it from fulfilling the purpose for which it was established. This inability to achieve its goal was directly caused by the state's intervention in seizing its assets. However, the Restitution Agency rejected the claim for restitution, citing an alleged lack of continuity between the original endowment, whose property was seized, and the newly registered endowment under the Business Registers Agency.[67] The reregistration of the endowment was necessary to comply with updated regulations, and the fact that it could not pursue its goals due to state action should not have been an obstacle to the restitution of its property.[68]

When discussing the restitution of endowment property, it is important to emphasize that the LRSPC provides for the return of property only to independent endowments – those having their own legal personality. This means that restitution is not available in cases where endowment property has been entrusted to another legal entity, such as an association, with instructions to use it for a specific purpose, as associations are not listed among the eligible applicants.[69]

7.3.3 Rehabilitation of Persons from whom the Property was Confiscated

Former owners whose property was confiscated after 9 March 1945, or their legal heirs, may request restitution provided that the former owner has been rehabilitated through a final court decision. Alternatively, if a timely request for rehabilitation was filed, it must be attached to the restitution request (Art. 6 of the LRSPC).

The rehabilitation of individuals criminally convicted for political or ideological reasons was first governed in Serbia in 2006 with the adoption of the *Law on Rehabilitation* (LR).[70] This law aimed at addressing the totalitarian past by allowing what is termed "special rehabilitation" for individuals convicted for political or ideological reasons. This type of rehabilitation is distinct from "ordinary rehabilitation," which concerns the elimination of legal consequences for convictions

67 | This issue is vividly illustrated by the case of the Endowment of Bogdan Dunđerski, which is administered by Matica Srpska, the oldest Serbian cultural, scientific, and literary institution. In accordance with agrarian reform regulations, the entire agricultural land allocated by the founder of the Endowment of Bogdan Dunđerski for the establishment and operation of an Academy for Agricultural Education was seized. As a result, the smooth operation of the endowment was severely hindered. The administrator of the endowment has pursued restitution efforts before the Restitution Agency in an attempt to recover the seized property, though significant challenges remain. For more on the restitution efforts of the administrator of this endowment before the Restitution Agency, see: Veselinov, 2022, 141-156.
68 | Veselinov 2023, 16.
69 | Veselinov 2016, 592-595; Veselinov 2023, 126-130.
70 | Official Gazette RS, No 33/2006.

based on legitimate legal grounds.[71] Although the 2006 LR had numerous deficiencies, it signalled the state's intent to distance itself from the past injustices and seek redress for victims of political repression.[72] While it was clear that this law opened the door for property restitution, it took the state another five years to adopt a comprehensive law on restitution.[73] In 2011, the original LR was replaced by a new law with the same name.[74]

The primary purpose of the rehabilitation process and the resulting decision on rehabilitation is to annul the legal acts and consequences by which a person was deprived of life, liberty, or other rights for political, religious, national, or ideological reasons. This applies regardless of whether the penalty was carried out with or without a formal court or administrative decision (Art. 1 of the LR). If such a decision had been made, it must have violated the principles of the rule of law and universally accepted human rights and freedoms (Art. 1, para. 2 of the LR). One of the legal consequences of rehabilitation is that the rehabilitated person becomes entitled to restitution of confiscated property or compensation for such property (Art. 3, para. 2 of the LR).[75] However, members of occupying forces that held parts of the territory of Serbia during World War II, as well as members of collaborationist formations involved in war crimes, are explicitly excluded from rehabilitation (Art. 2, para. 1 of the LR).

8. Selected questions with regard to the lrspc

8.1 Pre-emption Right of Public Entities

The LRSPC allows for the free disposal of restituted property (Art. 62, para. 3). However, when an owner disposes of such property for the first time, (s)he is required to offer it to the Republic of Serbia, an autonomous province, or the local self-government unit, which may exercise their pre-emption right. This provision has raised several concerns. Firstly, there is uncertainty regarding the interpretation of the term "disposing." The pre-emption right, as stipulated by law, can only be exercised when the owner opts *to sell* the property to which this right pertains. However, the term "disposing" could be interpreted more broadly to include not only sales but also exchanges, gifts, and other gratuitous contracts. This suggests that the legislator should have been more precise in the language of this provision

71 | This distinction was introduced into Serbian legal doctrine by Stefan S. Samardžić. For more details, see: Samardžić 2021, pp. 113-114. The author provides a detailed description of the rehabilitation procedure according to the 2006 Law, as well as its successor, the 2011 Law, on pages 137-192.
72 | V. Midorović 2008, 559.
73 | Ibid, 561.
74 | Official Gazette RS, No 92/2011.
75 | A suitable example can be found in the court's decision on rehabilitation of Đorđe Dunđerski: Samardžić 2015, 192.

to eliminate potential misinterpretations. Secondly, the formulation does not clarify whether the holders of the pre-emption right are the Republic, the province, and the local self-government unit simultaneously, or if it is sufficient for the offer to be made to only one of these entities. In the case of the local self-government unit, it seems logical for the entity governing the territory where the agricultural land is located to be recognized as the holder of the pre-emption right.

Moreover, this provision raises questions regarding its correlation with the *Law on Transfer of Immovable Property*[76] (LTIP). The LTIP grants pre-emption rights to the owner of adjacent agricultural land (Art. 6 of the LTIP) and to co-owners of such property (Art. 5 of the LTIP), with the owner of the adjacent land being prioritized after the co-owners of the land being sold (Art. 6, para. 3 of the LTIP). Consequently, in the event of selling (for the first time) the restituted agricultural land, a conflict arises between the two laws: the LTIP and the LRSPC. If we consider the LRSPC as *lex specialis*, the public entities listed would have precedence in exercising their pre-emption rights. However, if we focus on the underlying purpose of granting pre-emption rights – namely, to expand agricultural land for more efficient cultivation in the case of adjacent land, and to simplify ownership complexities among co-owners – the LTIP should take precedence. Domestic legal doctrine provides a solution for co-ownership by prioritizing the co-owner over public entities in such cases. In other words, the provisions of the LTIP should take precedence over the relevant provisions of the LRSPC when it comes to co-ownership. Nonetheless, if the public entity is also one of the co-owners, it should exercise its pre-emption rights according to the general rules established in the LTIP.[77]

8.2 Acquisition of a Co-ownership Share of Agricultural Land

Although it may seem surprising, there has been uncertainty in practice regarding whether the Restitution Agency has the authority to award the applicant the right to an ideal part – a co-ownership share of agricultural land. Initially, it appeared that there were no obstacles to recognizing, at the request of the restitution applicant, his/her ownership right to an ideal share of agricultural land. However, in several cases, the Administrative Court adopted the contrary position, asserting that if the restitution applicant is entitled only to an ideal part of an agricultural parcel, restitution cannot occur until the physical division of the land parcel is executed. In other words, the Administrative Court's understanding suggested that ownership rights to an ideal share of the agricultural parcel necessitate the prior extraction of that share into a separate land parcel, which must then be designated as such in the cadastre before restitution can take place. With regard to this, the Supreme Court of Cassation rightly emphasized that this interpretation is

76 | Official Gazette RS, No 93/2014, 121/2014, 6/2015.
77 | Samardžić 2012, 463, 465; Baturan 2015, 1966-1968.

legally unfounded. It affirmed that an ideal share can be recognized and returned to the rightful owner without requiring the physical division of the land parcel.[78]

8.3 Position of a Lessee after the Restitution in Kind

Restitution *in natura* refers to the process of returning possession of the restituted property to the rightful owner. Therefore, in cases where agricultural land has been leased by the state, the position of existing lessees is significantly affected by the restitution process. Upon the restitution of agricultural land, a lessee utilizing such land for business activities may continue to do so under the terms of the applicable lease agreement. This continuation is permitted until the lease agreement expires, but it is limited to a maximum of three years from the enforceability of the restitution decision. This provision ensures that lessees can maintain their business operations while the ownership of the land transitions back to the original owner. For specific types of crops, the regulations provide further protections for lessees. In the case of perennial crops or vineyards, if the lessee has established their lease agreement based on a pre-emptive lease right, they may continue to use the land for a more extended period – 20 years for perennial crops and 40 years for vineyards.[79] These time frames are established in accordance with Article 20 in conjunction with Article 26 of the LRSPC.

Reports indicate that this legislative solution has led to considerable dissatisfaction among farmers who had previously leased agricultural land from the state for duration of 10 years or more.[80] Initially, the state sought to prevent agricultural land, designated for restitution, from remaining uncultivated during the restitution process. To achieve this, the state began leasing the land. Originally, these lease agreements were set for only one year due to the ongoing restitution efforts. However, this arrangement proved to be suboptimal for both farmers and the state. Consequently, the state extended the leasing periods to 10, 12, and even 15 years. As a result of this change, a farmer who leased land for 10 years may discover, shortly after the lease agreement's conclusion that the land has been returned to its previous owner through the restitution process. In such cases, the farmer cannot

78 | Supreme Court of Cassastion Uzp 397/2014 from 5 February 2015.

79 | It has been foreseen by the Law on Agricltural Land in art. 64a, para. 13: "The preemptive lease right for agricultural land in state ownership (hereinafter referred to as the preemptive lease right) is granted to a legal or natural person who: 1) is the owner of an irrigation, drainage, fishery, agricultural facility, greenhouse, or perennial crops (orchards and vineyards in production) located on agricultural land in state ownership, registered in the Register of Agricultural Holdings, and has been in active status for at least three years; 2) is the owner of domestic animals, and is also the owner or lessee of a facility for breeding those animals within the territory of the local self-government unit where the preemptive lease right is exercised, registered in the Register of Agricultural Holdings, and has been in active status for at least one year."

80 | https://www.rts.rs/lat/vesti/drustvo/5271456/restitucija-obestecuje-stare-vlasnike-poljoprivrednog-zemljista-a-stocarima-sa-pravom-preceg-zakupa-zadaje-muke-.html 25 November 2023.

fully rely on the lease agreement to cultivate the land until its original expiration, as they are limited to an additional maximum of three years of cultivation. This situation could have been managed more effectively to prevent adverse impacts on farmers who invest time and resources into cultivating the land. Ultimately, the lessee will continue to pay the contracted rent to the former owner to whom the land has been restituted. Needless to say, based on the principle of freedom of contract, the former owner and the lessee have the option to negotiate a different agreement.

9. Procedural rules

The Restitution Agency is structured to address various grounds for returning seized property. The agency includes the following specialised units: the Confessional Restitution Unit, which handles cases related to confessional restitution; the Unit for Holocaust Victims without Heirs, which manages requests from Jewish communities for property confiscated from Holocaust victims; and the General Restitution Unit, which conducts general restitution through four regional units in Belgrade, Novi Sad, Niš, and Kragujevac. The competent unit is determined by the former owner's last permanent residence at the time of property seizure (Art. 44 of the LRSPC).

The procedure for asserting the right to recover seized property and seek compensation is an administrative one, meaning that the *Law on General Administrative Procedure*[81] applies subsidiarily (Art. 11, para. 1 of the LRSPC). However, the procedural rules vary based on the specific law under which the restitution request is submitted.

For confessional restitution requests, the Confessional Restitution Unit of the Restitution Agency is responsible. While appeals against decisions made by this unit are not permitted, administrative litigation can be initiated against such decisions (Art. 32 of the LRPCRC). Although the right to appeal is excluded in the administrative procedure, this is balanced by the option to access the Supreme Court of Cassation (Art. 49, para. 2, point 3 of the Law on Administrative Litigation).[82]

The LRSPC and the Law on Holocaust victims provide the same procedural rules. Initially, the appropriate unit of the Restitution Agency is responsible for handling restitution requests. Decisions made by this unit can be appealed to the ministry in charge of finance. Against the second-instance decision, administrative litigation may be initiated before the Administrative Court (Art. 48 of the LRSPC and Art. 20 of the LECPSHV).

81 | Official Gazette RS, No 18/2016, 95/2018 (Autentično tumačenje), 2/2023 (Odluka Ustavnog suda).
82 | Official Gazette RS, No 111/2009.

10. Concluding remarks

This paper examines the efforts of the Republic of Serbia to rectify the injustices inflicted after World War II through state intervention measures, including agrarian reform and confiscation, which resulted in the deprivation of agricultural and forest land from former owners. The focus of the paper is on the regulations that facilitated the seizure of this land and the subsequent legal framework governing its restitution.

In Serbia, the restitution process has evolved gradually, guided by three distinct laws depending on the entities authorized to claim restitution: church and religious communities, Jewish communities, and domestic and foreign natural persons and endowments.

This paper analyses the methods of reparation, highlighting that substantial portions of agricultural land were returned in kind. It underscores the discrepancies between applicants who have been effectively restituted and those who are entitled to compensation. Specifically, the latter group only receives 15% of the value of the seized properties through state bonds, which come with long maturity periods of 12, 10, or 5 years. If 15% of the value of the seized property exceeds 500,000 euros, the compensation is capped at 500,000 euros in accordance with the legally imposed limit.

Despite the evident shortcomings in the legislative solutions discussed in this paper, an overall assessment suggests that Serbia has made significant efforts to regulate and efficiently implement the restitution process. After more than a decade of applying restitution regulations, considerable progress is evident in the return of agricultural land to both domestic and foreign citizens, as well as in the number of compensation decisions rendered.

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Meliha POVLAKIĆ[1]

Restitution of Nationalised or Collectivised Agricultural Lands and Forests – Bosnia and Herzegovina, Lost in Transition[2]

Abstract

In the former Socialist Republic of Bosnia and Herzegovina (hereafter: SRBH) agricultural and forest land, as important natural resources of any economy, were the subject of double restrictions. One was a result of the social attachment of property, and is immanent not only to socialistic regimes. The other restriction was the result of socialist ideology, which meant that these important economic resources could only to a limited extent be privately owned — and that everything beyond prescribed limits was nationalised. There was also a vast range of other reasons for the nationalisation of these goods.

The transformation process entailed the removal of restrictions on the extent of ownership of these properties, and this was done within the framework of the constitutional reforms in the former Yugoslavia (1989/90). Still in the SRBH, after these constitutional reforms it was clear that denationalisation and restitution should follow. In 1991 it was forbidden by law to dispose of nationalised property.

The measures of denationalisation and restitution of nationalised property are the focus of this article. First, a short analysis is given of the history of nationalisation and confiscation of property in the former Yugoslavia after the World War II. Since the end of the 20th Century (1995), Bosnia and Herzegovina (BH) has been an independent state which has performed crucial reforms within the process of transformation. But the denationalisation measures regarding agricultural and forest land are still pending. One of the reasons for that is the fact that BH is composed of three separate legal orders: Federation of Bosnia and Herzegovina, Republic of Srpska and Brčko District of BH. All three legal orders have been thoroughly analysed, since the legislative competencies for regulating denationalisation are merely given to these constituent parts of BH. Due to the political tensions and problems, it is unlikely that a framework law will be passed.

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The unclear ownership of agricultural and forest land (no criterion for the division of state ownership has yet been established) led to the OHR imposing a ban on the disposal of these assets in 2022. The consequence of the long absence of restitution and the co-existence of two restraining orders, which have different reasons and follow different goals, is a lack of legal certainty.

The article concludes that in Bosnia and Herzegovina the final implementation of the transformation process in general, and restitution as a part of it, still faces many obstacles — lack of legal basis, facts established during the war, processes that are not centralised and coordinated due to the state structure, adoption of legal solutions that may jeopardise restitution in general, and restitution of agricultural land and forests as well. In brief: Bosnia and Herzegovina is still lost in transition.

Keywords: Agricultural land, forest land, restitution, privatisation, denationalisation, transformation process

1. Introduction

Agricultural land and forests are among the most important assets of any economy, and they enjoy special protection — but also impose certain obligations on their owners. In the former socialist Yugoslavia[3], and thus in the Socialist Republic of Bosnia and Herzegovina (hereafter: SRBH) as one of the six socialist republics within it, this natural resource was the subject of double restrictions. In exercising the right of ownership over these goods, the owners were restricted – the preservation of these important resources requires the owner to take certain actions and, on the other hand, to refrain from certain actions to which he would be entitled as the owner. These limitations are not characteristic of the socialist system and they still exist today in BH, as well as in comparative law, as a result of the social attachment of property.[4] The second type of restriction was a direct consequence of socialist ideology, which saw in private property the danger of perpetuating capitalist property relations. The danger was seen in the possibility of private property becoming the basis for the exploitation of other persons. The fundamental ideological commitment was that income should be earned only through work and not on the basis of ownership.[5] Therefore, the ownership of agricultural land and forests was quantitatively limited; everything above the allowed maximum was nationalised and formed a fund of agricultural land and forests in state/public ownership. After the nationalisation, the agricultural land and the forests were

3 | The state organisation and names have changed: Democratic Federative Yugoslavia (DFJ), Federal People's Republic of Yugoslavia (FNRY) and finally the Socialist Federal Republic of Yugoslavia (SFRY), but this is not a central issue here. For this reason, the term former Yugoslavia or former Socialist Yugoslavia will be used throughout this paper.

4 | Gavella 1998, 352 – 356; Gavella 2007, 347-349, 355 et seq.

5 | Gavella 1990, 22.

allocated to certain socialist legal persons or to natural persons who were not the owners of such land.

Quantitative restrictions on private property were abolished with the adoption of Amendments to the Constitutions of the former Socialist Federal Republic of Yugoslavia (hereafter: SFRY) and the SRBH in 1989 and 1990. The Amendments to the Constitution of the SFRY (1988)[6] and to the Constitution of the SRBH (1989 and 1990)[7] represented the main pillar of the property order's reform – the guarantee of the property was established, the restrictions of private property were abrogated, all types of property rights (private and state property) were declared equal.[8] The privatisation process began and restitution was seriously considered.

More than three decades after the constitutional reforms in the former Yugoslavia and the SRBH, the issue of restitution of agricultural land and forests has still not been resolved in BH. Various factors have hampered this process, but the most dominant factor is currently the political struggle in BH between the State of BH and its constituent parts (two entities: the Federation of BH and the Republic of Srpska; and the Brčko District of BH). The question of whose jurisdiction it is to decide on the distribution of these resources between different levels of government, and who owns agricultural land and forests, is the source of a deep political and constitutional crisis in BH.

This paper will show how this political situation is reflected in the failure to adopt the necessary reform laws, or in the adoption of laws that the Office of the High Representative for BH (hereafter: OHR) has had to repeal.

The questions that will be addressed in this paper are listed in the publisher's questionnaire, which defines the research topic of this paper. It is noted that some questions that were asked in the questionnaire are grouped together in one chapter, and some are answered in relation to other questions, but no separate subtitle is dedicated to them.

2. Historical background: nationalisation and collectivisation of agricultural land and forests

During World War II, two parallel processes unfolded in former Yugoslavia, including Bosnia and Herzegovina — the liberation war against the fascist occupation, and the socialist revolution. The foundations of the new socialist state were established

6 | Amendments IX-XLII to the Constitution of the SFRY [Amandmani IX – XLII na Ustav SFRJ], Official Gazette of SFRY [Službeni list SFRJ], N° 70/1988, 57/1989.

7 | Amendments XX-LVIII to the Constitution of the SRBH [Amandmani XX-LVIII na Ustav SR BiH], Official Gazette of SRBH [Službeni list SR BiH], N° 13/1989 as well as Amendments LIX-LXXX to the Constitution of the SRBH [Amandmani LIX-LXXX na Ustav SR BiH], Official Gazette of SRBH [Službeni list SR BiH], N° 21/1990.

8 | Povlakić 2009, 32 et seq.

in the period from 1941 to 1945.[9] After the end of World War II, on 31 January 1946, the first constitution of the new socialist Yugoslavia was adopted. The fundamental goals of this constitution were to give "direction of economic life and development through a general economic plan, relying on the state and cooperative economic sector, and exercising general control over the private property."[10] BH (at this time the People's Republic of Bosnia and Herzegovina) adopted its first constitution in 1947.[11] Regarding proprietary relationships, chapter IV of this constitution is particularly relevant for this research, as it outlines three forms of property: people's property (*općenarodna imovina),*[12] cooperative (zadružna imaovina) and private property. The first form, people's property, enjoyed a special status and was afforded greater protection than private property. Certain goods could only be classified as people's property — this included all mineral and other natural resources, water, sources of natural power, as well as means of air and rail transport, mail, telegraph, telephone and radio.[13] The most important means of production were placed under state control (Article 15), along with the private sector and private property in general (Article 16).

People's property was foreseen as a main pillar for state development (Article 17). It was stipulated that private property could be nationalised or restricted if deemed in the public interest (Article 19). A key principle was that land should belong to those who cultivate it. The concept that individuals were prohibited from holding large landholdings on any basis had already been firmly established (Article 20).

In the period between 1945 and 1958, based on this constitutional framework, a series of regulations were adopted both on state and federal levels. These regulations included measures of nationalisation, confiscation or restriction of private property, primarily targeting real estate, and consequently agricultural land and forests. Nationalisation of agricultural land and forests was primarily implemented through the Agrarian Reform and Colonisation Act [*Zakon o agrarnoj reformi i kolonizaciji*],[14] which nationalised agricultural and forest land beyond the permissible maximum.

This act was followed by the Act on Agricultural Land Fund of People's Property and Allocation of Land to Agricultural Organisations.[15] After the nationalisation of

9 | Spaić 1971, 499; Bećirović 2013, 83 – 85.
10 | Bećirović 2013, 87.
11 | Constitution of the People's Republic of Bosnia and Herzegovina (hereafter: PRBH)
12 | It would also be correct to have the term 'state property' for this form of ownership.
13 | Spaić 1971, 559.
14 | Official Gazette DFY [Službeni list DFJ], N° 64/1945; Official Gazette FNRY [Službeni list FNRJ], N° 16/1946, 24/1946, 99/1946, 101/1947, 105/1948, 4/1951, 19/1951 and Official Gazette SRBH [Službeni list SR BiH], N° 41/67); Agrarian Reform and Colonisation Act in PR B&H [Zakon o agrarnoj reformi i kolonizaciji u NR BiH], Official Gazette NR BH [Službeni list NR BiH] N° 2/1946, 18/1946, 20/1947, 29/1947, 14/1951 and Official Gazette SRBH [Službeni list SRBiH], N° 41/1967.
15 | [Zakon o poljoprivrednom zemljišnom fondu društvene svojine i dodjeljivanju zemlje poljoprivrednim organizacijama], Official Gazette FNRY [Službeni list FNRJ], N° 23/1953, 10/1965.

agricultural land, this statute established the Fund of State-Owned Agricultural Land, encompassing all agricultural land classified as people's property (Article 1). This included agricultural land nationalised through various measures. The land in this fund was allocated for permanent use (right to use) by the socialist agricultural organisations, according to the conditions and procedures prescribed by law (Article 7 para 2 and 3). In addition to these statutes, other laws focused primarily on punishing individuals for their collaboration with the occupying power also included provisions for the expropriation of their property. If these individuals owned agricultural land and forests, their conviction for such crimes resulted in the expropriation of agricultural land and forests as well.[16] In total, fourteen nationalisation statutes were enacted, addressing various types of property and natural and legal persons.[17] Some of these specifically targeted agricultural and forest land.

It has often been said that socialism in the former Yugoslavia had a more 'human touch' compared to other Eastern Bloc countries. This was due to Yugoslavia's break with the Soviet Union in 1948, and its divergence from Soviet-style dictatorship. This was also reflected in the property regime; private ownership of real estate and land was neither completely abolished nor prohibited, but rather limited.[18] According to the socialist doctrine of the time, private property was intended to meet the needs of individuals and their families, rather than becoming a source of exploitation.[19] As far as agricultural land was concerned, a non-farmer could own up to 3 hectares, while a farming household could own up to 10 hectares — but it was foreseen that the corresponding laws of individual socialist republics could also set this maximum higher.[20] Forest ownership limits varied across different socialist republics, depending on geographical conditions and the type of forest, depending on whether the owner was engaged in forestry activities etc.[21]. The Constitution of the SFRY from 1974 (Art. 80) guaranteed the property right on agricultural land up to 10 hectares for a farming household, and with Amendments XXIII from 1988 this maximum was increased up to 30 hectares. There was no guarantee of ownership for other natural and legal persons or goods.

16 | For example Confiscation of Property and Enforcement of Confiscation Act [Zakon o konfiskaciji imovine i o izvršenju konfiskacije], Official Gazette FNRY [Službeni list FNRJ], N° 40/1945; Transfer of Enemy Property to State Ownership and Sequestration of Property of Absent Persons Act [Zakon o prelazu u državnu svojinu neprijateljske imovine i sekvestraciji nad imovinom odsutnih osoba], Official Gazette FNRY [Službeni list FNRJ], N° 63/1946, 105/1946.

17 | All these laws are listed in Article 365 of the Property Act of the Federation BH [Zakon o stvarnim pravima FBiH], Official Gazette of the FBH [Službene novine FBiH], N° 66/2013, 100/2013. For a comprehensive and detailed description of all nationalisation measures in the former Yugoslavia see Simonetti 2004, pp. 39 – 112.

18 | Stanković/Orlić 1989, 93 – 95.

19 | In this sense Spaić 1971, 579; Stanković/Orlić 1989, 96; Simonetti 2009, 20.

20 | Stanković/Orlić 1989, 98 – 99.

21 | Ibid.; Povlakić 2009, 23.These restrictions were foreseen by the Forest Act of the SRBH [Zakon o šumama SR BiH], Official Gazette of SRBH [Službeni list SR BiH], N° 11/1978.

If a person acquired more land than permitted, the surplus above the permitted maximum was nationalised. However, a distinction was made between cases of inherited land and those where the maximum was exceeded due to an *inter vivos* legal transaction (such as a purchase, gift, etc.). In the case of inheritance, the acquirer had the right to choose which part of land to retain and a fair compensation for the expropriated surplus was paid. In contrast, any surplus acquired through transactions beyond the allowed limits was subject to expropriation without compensation.[22]

The Agricultural Land Fund of People's Property and Allocation of Land to Agricultural Organisations Act from 1953 was amended in 1965, and brought crucial changes regarding proprietary relationships on agricultural land.[23] The term 'people's property' was replaced with the term 'social property' [*društvena svojina*] (Article 27). The jurisdiction over the Agricultural Land Fund was transferred from the federal state to the socialist republics, which was also a consequence of constitutional changes in 1963 (Article 14). Municipalities were granted the authority to use this land (Article 4, 5, 6, 7, 13, 17, 18). In the land registry, this land had to be registered as 'social property' with agricultural organisations assigned the right to use this land [*pravo korištenja*] (Article 15).

Such registrations were often omitted, resulting in cases where agricultural land remained registered as the property of a former owner or as people's property without a derivative right assigned to a socialist legal entity. This has caused numerous practical problems today, including issues related to the protection of trust in the land register.[24] When only people's, state, or social property was registered without noting the rights of an agricultural organisation, courts and the State Attorney's office typically interpret this entry as confirming state ownership by BH. This interpretation overlooks the fact that, since 1965, such land should have been classified as social property, and that people's property no longer existed.[25] Moreover, the Registration of Real Estate in Social Ownership Act[26] stipulated that socially owned real estate, including agricultural land registered as people's property but lacking a specific titleholder, should be registered in favour of the municipalities (Article 4). This required a request by the municipality along with proof that the land did not belong to any other entity. As a rule, municipalities failed to do this, leading to negative consequences today. Inadequate registration has resulted in numerous disputes over land ownership.[27]

22 | Simonetti 2009, 183 – 186; Stanković/Orlić 1989, 101 – 102.
23 | Amendments on Act on Agricultural Land Fund of Poeple's Property and Allocation of Land to Agricultural Organizations [Zakon o izmjenama i dopunama Zakona o poljoprivrednom zemljišnom fondu opštenarodne imovine], Official Gazette SFRY [Službeni list SFRJ], N° 10/1965.
24 | See Simonetti 2009, 315.
25 | Povlakić 2022, 21.
26 | Official Gazette of SFRY [Službeni list SFRJ], N° 28/1977.
27 | In the doctrine, it was not disputed that, in the case of the acquisition of social property on the basis of a law or a decision of the competent authority, the registration had only a declaratory character.

3. The restitution of agricultural lands and forests within the process of the transition in Bosnia and Herzegovina

3.1. Ideological approaches to the restitution of agricultural land and forest after the abandonment of the socialist model of the state and society

Although private ownership of real estate and agricultural and forest land was permitted, large areas of agricultural land and forests were still in state or public ownership until the beginning of the 1990s. During this period, significant reforms were undertaken in the former Yugoslavia and Bosnia and Herzegovina specifically.

During the first multi-party elections in 1990, all political parties committed to enacting regulations aimed at returning property that had been taken without fair compensation. The first 'preparatory' step was undertaken in 1991 by adopting the Amendments on Real Estate Legal Transaction Act [*Zakon o prometu nepokretnosti*].[28] With this amendment, a prohibition was pronounced of the disposal of property expropriated or confiscated under various nationalisation measures between 1945 and 1958. This prohibition has mainly affected the most important real estates for a national economy, such as agricultural land, forests, construction land etc. In view of the fact that the restitution process may take a long time, a prohibition was also enacted of alienation of the properties once expropriated, which should have served to protect the former owners and should have lasted until the restitution law. The Real Estate Legal Transaction Act was shelved with the entry of the new property acts (in the Brčko District of Bosnia and Herzegovina (BDBH) in 2001; in the Republic of Srpska (RS) in 2010; and in the Federation of Bosnia and Herzegovina (FBH) in 2014).[29] Only in the FBH this prohibition has been incorporated into the Property Act of FBH, so that it remains in force there (Art. 365 – 368) and still exists by causing enormous problems in practice, especially in real estate transactions (see under 6).[30]

Instead of many, see Simonetti, 2009, 315 - 317. In most cases, the change of ownership took place ex lege, outside the land register. After several decades and several changes in the concept of people's/social/state property, which took place outside the land register, it is not possible to find out who has what rights only on the basis of an entry in the land register made decades ago. Subsequent changes in legislation, which have automatically led to changes in ownership, have very often not been recorded in the land register. The history of each registration should be checked to ensure certainty about the legal status of a property.

28 | Official Gazette of SRBH [Službeni list SR BiH], N° 38/1978, 29/1980, 4/1989, 22/1991, 21/1992, 13/1994.

29 | See footnotes 69 – 71.

30 | The ban, which has been in place for over 30 years, cannot be effective and has been circumvented in many cases. Furthermore, this prohibition and undefined relationships have jeopardised investments. On the other hand, many properties remain unused and are depreciating or falling into disrepair. A major problem is the fact that long-term renting of such properties (renting for more than five

With the dissolution of former socialist Yugoslavia and the outbreak of war in BH in 1992, the reform processes were suspended until 1995. At that point, discussions were renewed regarding the possibility of adopting regulations for the denationalisation of such land, whether through restitution or privatisation.

Legislators at various levels faced several significant issues. One of the main controversies was related to constitutional questions and jurisdictional disputes. According to the Dayton Peace Agreement, which represents the Constitution of Bosnia and Herzegovina, the country is a complex state with legislative powers divided among different levels. Specifically, these powers are shared between the State of Bosnia and Herzegovina and its two entities: the Federation of Bosnia and Herzegovina and the Republic of Srpska.[31]

Another contentious issue was determining the relevant time for the return of confiscated property. Two main scenarios were discussed: 1918, when an agricultural reform was enacted in the newly established Kingdom of Yugoslavia, affecting Muslim large landowners in particular and leading to the expropriation of large estates from the former feudal class; or the years following 1945 and the socialist revolution. No consensus was reached on this issue.

The debate also asked which type of restitution would be most appropriate: effective restitution, i.e. in-kind restitution, or a compensation mechanism. Most legislative proposals considered a combination of these two methods.

Several drafts of restitution acts were proposed in FBH, but none were accepted or enacted by the Parliament of the FBH.[32]

In the RS, two laws were adopted in 1996: the Restitution of Confiscated Real Estate Act [*Zakon o vraćanju oduzetih nepokretnosti*] (hereafter: RCREA),[33] and the Restitution of Confiscated Land Act [*Zakon o vraćanju oduzetog zemljišta*] (hereafter: RCLA).[34] These acts were repealed in 2000 by the adoption of the Restitution of Confiscated Property and Compensation Act [*Zakon o vraćanju oduzete imovine i obeštećenju*] (hereafter: RCPCA 2000),[35] which was repealed shortly afterwards by the OHR.[36] For further information on these statutes, see below under 3.2.

The OHR is entitled to impose or to repeal the legislation. The role of the OHR regarding restitution is somewhat contradictory. For instance, in 2003 the OHR implemented a law allowing the denationalisation of building land in cities and urban settlements, resulting in only partial restitution. The urban building land was mainly allocated to the owners of the buildings constructed on it, without any

years) is not allowed, so many buildings fail because investors are unable to recoup their investments in the short term.

31 | For more see Povlakić 2010, 206 - 207.

32 | Velić 2022, 74.

33 | Official Gazette of the Republic Srpska [Službeni glasnik RS], N° 21/1996.

34 | Official Gazette of the Republic Srpska [Službeni glasnik RS], N° 21/1996.

35 | Official Gazette of the Republic Srpska [Službeni glasnik RS], N° 13/2000.

36 | Official Gazette of the Republic Srpska [Službeni glasnik RS], N° 31/2000.

compensation to the former owners.[37] Similarly, the denationalisation of apartments provided by the entities, which often restricted or undermined the rights of former owners, was not questioned or halted by the OHR.[38] However, the OHR adopted a different stance regarding the general decision on restitution, which included agricultural and forest land. The OHR's position is clearly defined: natural restitution would violate the rights of the current users (some of whom had been using the properties for decades), while compensation would lead to the financial collapse of BH. Further, the OHR insisted that the legislation to regulate restitution should be enacted at the level of the state and not at the level of the entities.

These issues have hindered the adoption of regulations on restitution, both in general and specifically concerning agricultural land and forests. The issues concerning ownership of agricultural land and forests remain unsolved and undefined, with the uncertainty of restitution hanging like the sword of Damocles. Additionally, some unilateral legislative attempts by the Republic of Srpska to determine ownership of agricultural and forest land have been overturned by the Constitutional Court of BH and the OHR (see under 5).

3.2. Legal sources of restitution of agricultural and forest land after the abandonment of the socialist economic and legal order

As mentioned under 3.1, there is currently no regulation on the restitution of agricultural and forest land.

This situation has persisted for 24 years, ever since the OHR repealed the 2000 Restitution of Confiscated Property and Compensation Act in the RS. There were two attempts to address the problem of restitution in the RS, both in 1996 and 2000. These will be discussed in more detail in section 3.3. It is important to note that

37 | The Building Land Act of the Federation BH [Zakon o građevinskom zemljištu FBiH], Official Gazette of the FB&H [Službene novine Federacije BiH], N°. 25/2003, 16/2004, 67/2005. The Building Land Act of the Republic of Srpska [Zakon o građevinskom zemljištu Republike Srpske], Official Gazette of the Republic of Srpska [Službeni glasnik Republike Srpske], N° 41/2003, 86/2003. More about legal status and transformation of the proprietary relationships over urban construction land see Simonetti 2008, 331 et seq.; Povlakić 2009, 97 et seq; Povlakić, 2019, 4 et seq.

38 | The Constitutional Court of the Federation of Bosnia and Herzegovina has ruled on several occasions on the constitutionality of the Purchase of Apartments on which there is an Housing Right Act. This act regulated the privatisation of state-owned flats in the FBH. It has been complained that the holders of the housing right were discriminated against depending on whether they had the housing right in nationalised flats or in flats which were owned by the state but for other reasons than nationalisation. (U-33/05 from 19th Jully 2006, available under: https://www.ustavnisudfbih.ba/bs/open_page_nw.php?l=bs&pid=68) [04.08.2024].
It was also pointed out that the former owners of the nationalised flats are not all in the same situation, namely that the religious communities are privileged as former owners (U-28/06 from 16th May 2007, available under https://www.ustavnisudfbih.ba/bs/open_page_nw.php?l=bs&pid=93) [04.08.2024].
There were also complaints that the Islamic religious community was not treated in line with the constitutional principles (U-15/08 from 23th Jully 2008, available under: https://www.ustavnisudfbih.ba/bs/open_page_nw.php?l=bs&pid=68) [04.08.2024].

although these statutes are no longer in force, they had legal consequences during their short period of validity. There are no public statistics on which agricultural and forest lands were restituted under these provisions, to whom, and in what amounts.[39] The media has frequently reported sporadic and *ad hoc* restitutions in certain local communities, but there remains no systematic legal solution.[40]

There have also been repeated allegations in the media that restitution in the RS has been discriminatory. For instance, it has been claimed that while some land has been returned to the Orthodox Church, only a very small portion of the expropriated property on the territory of the RS has been returned to the Islamic religious community.[41] Additionally, there are accusations that the Serb population has been favoured over other property owners.[42] Due to the lack of official data, these allegations cannot be confirmed, although there are reasonable doubts that such discrimination may have occurred in some cases. For example, the RCREA stipulated that only citizens of the RS were entitled to restitution, regardless of whether they had nationalised property in the RS or FBH (Article 3). First, this excluded natural persons residing in the FBH who owned property in the RS prior to nationalisation. Secondly, legal persons were not directly included in the group of claimants. However, if this provision is interpreted to include legal entities with their seat or registration in the RS, it becomes evident that legal entities were also treated differently. This discriminatory provision was amended by the RCPCA in 2000.

A framework Restitution Act was discussed, which aimed to establish guidelines for regulation within the entities. The OHR repealed RCPCA 2000 based on the principle that at least the framework conditions for restitution should be determined at the national level. The last attempt to draft the Framework Restitution Act

39 | There is no official or reliable data on how much property has been nationalised. According to data used by the media, allegedly based on data from the relevant authorities, one million hectares of land and three million square metres of residential and commercial space are awaiting restitution. See Softić Ibrahim, Restitucija, stanica na putu ka EU na kojoj mnogi u BiH decenijama čekaju, published by Aljazeera on 27.02.2023 on https://balkans.aljazeera.net/teme/2023/8/27/restitucija-stanica-na-putu-ka-eu-na-kojoj-mnogi-u-bih-decenijama-cekaju 12.04.2024].

40 | Instead of many others see Softić Ibrahim, Restitucija, stanica na putu ka EU na kojoj mnogi u BiH decenijama čekaju, published by Aljazeera on 27.02.2023 on https://balkans.aljazeera.net/teme/2023/8/27/restitucija-stanica-na-putu-ka-eu-na-kojoj-mnogi-u-bih-decenijama-cekaju and Emir Kovačević in the programme Kontekst, published by Aljazeera, https://balkans.aljazeera.net/videos/2013/7/4/kontekst-zakon-o-restituciji-u-bih, published on 04.07.2015, updated on 16.08.2017 [12.04.2024].

41 | Softić Ibrahim, Restitucija, stanica na putu ka EU na kojoj mnogi u BiH decenijama čekaju, published by Aljazeera on 27.02.2023 on https://balkans.aljazeera.net/teme/2023/8/27/restitucija-stanica-na-putu-ka-eu-na-kojoj-mnogi-u-bih-decenijama-cekaju and AJB, Bivša država pokrala, ova neće da vrati: Restitucija, stanica na putu ka EU na kojoj mnogi u BiH decenijama čekaju published by Aljazeera on 27.08.2023
https://izdvojeno.ba/bivsa-drzava-pokrala-ova-nece-da-vrati-restitucija-stanica-na-putu-ka-eu-na-kojoj-mnogi-u-bih-decenijama-cekaju/ [both accessed on 12.04.2024].

42 | Musli Emir, Čekajući Zakon o restituciji u BiH, published on 22.08.2016about:blank at https://www.dw.com/bs/%C4%8Dekaju%C4%87i-zakon-o-restituciji-u-bih/a-19493066 [12.04.2024].

at the state level was in 2008. On October 30 of that year, the Council of Ministers of Bosnia and Herzegovina adopted a resolution to proceed with the drafting of the Framework Restitution Act. A working group held numerous meetings, considered all previous versions of the law on denationalisation that had been submitted to and rejected by parliament, and consulted with the non-governmental sector, particularly with representatives of the Interreligious Council. In 2009, a broad public debate was held. On December 3 2009, the Ministry of Justice of Bosnia and Herzegovina sought the opinions of the entities (FBH and RS) and the government of the Brčko District on the proposed law. The government of the RS was of the opinion that this law should not be enacted at the state level of BH, and that its adoption should be exclusively within the competence of the RS and the FBH. On June 6 2014, the Ministry of Justice sent the new draft version of the law again to the same recipients. While the FBH and the Brčko District submitted their opinions, the Ministry of Justice of the RS did not respond to this request.[43] Under the proposed Denationalisation Act of 2008, property confiscated between 1st January 1945 and 3rd March 2005 was to be restituted or compensated for.[44] However, this law did not receive support from the authorities in the RS.

Instead, in 2008 the draft of the Restitution Act was simultaneously proposed in the Assembly of the RS, but this law was also not adopted.[45]

3.3. Substantive and Procedural Legal Issues

As mentioned above, there were several drafts of restitution laws in the FBH, but none was adopted by its parliament. For this reason, the substantive and procedural issues will be analysed on the basis of the statutes that became positive law in the RS, even though they were later repealed. The Restitution of Confiscated Real Estate Act of the RS from 1996 (RCREA) regulated the conditions and manner of restitution of confiscated real estate and provided for the adoption of a special law to regulate in greater detail the transfer of ownership to the former owners or their legal successors (Article 1 RCREA). The subject of restitution was state property confiscated based on earlier socialist regulations or without a legal basis (Article 2 RCREA). The former owner or its legal successor had the right to demand restitution unless the former owner was given other property or received fair compensation (Articles 3 and 4 RCREA). The obligation of restitution was imposed on the legal entity that owned the nationalised property. If the nationalised property

43 | See the footnote 37.

44 | The text of this proposal cannot be found on the relevant government sites.

45 | https://www.capital.ba/ns-rs-usvojila-nacrt-zakona-o-vracanju-oduzete-imovine-i-obestecenju/#:~:text=BANJALUKA%2C%20Narodna%20skup%C5%A1tina%20Republike%20Srpske%20usvojili%20je%20danas,vra%C4%87anja%2C%20osim%20nov%C4%8Dane%20naknade%2C%20predvi%C4%91ena%20i%20naturalna%20restitucija (published on 06.11.2008) [12.04.2024].

had been alienated, this legal entity was obliged to provide another suitable property or pay compensation in cash. If the legal entity was unable to carry out the restitution in one of these ways, the RS was liable for payment (Articles 6-8 RCREA). A special commission was to be established to decide on restitution claims (Article 9 RCREA).

At the same time, the Restitution of Confiscated Land Act (RCLA) was enacted, which detailed the restitution of agricultural land. This law first listed the statutes under which agricultural land had been nationalised and confiscated, which were now subject to restitution (Article 1 RCLA). It also outlined exceptions that would render the restitution of agricultural land impossible, such as when permanent structures like buildings, stadiums or sports fields had been erected on the nationalised land, when large areas had been planted with permanent crops younger than fifteen years, when the land had been allocated to educational institutions for use (e.g. faculties, schools), or when the land had already been converted into urban construction land (Article 3 RCLA). The primary objective was to effectively return the nationalised land. If in-kind restitution was not possible, the act provided for the allocation of suitable replacement land, with specific conditions outlined in the RCLA to determine what constituted suitable replacement. As an *ultima ratio* solution, monetary compensation was provided for. In the case that the land had been designated as urban land by law or municipal decision, only monetary compensation was provided (Article 13 RCLA). If the conditions for the restitution of the nationalised land are met but it is not possible to return the entire nationalised area to all former owners, a proportionally reduced area of land will be returned to them; the procedure for this proportional restitution has been regulated (Articles 5 - 6 RCLA). When multiple heirs of the previous owner are entitled to apply for restitution, but not all of them do, the land will be returned to the heirs who did apply, in proportion to their respective shares (Article 18 RCREA). These initial statutes did not address situations involving multiple claimants or joint owners of agricultural land, nor did they provide guidelines for dividing such land.

To safeguard the restitution process, the sale of state-owned agricultural land was prohibited within five years of the laws' adoption. In 2000, these two laws were repealed with the adoption of the new Restitution of Confiscated Property and Compensation Act (RCPCA 2000).

Under the RCPCA 2000, the right to restitution was extended to any natural or legal person whose property was confiscated after 1st January 1945 without compensation, with inadequate compensation or for no legal reason (Articles 2 and 3(2) RCPCA 2000). Unlike the first laws of 1996, which granted restitution rights solely to citizens of the RS and the former Yugoslavia in case of reciprocity, the new law also included citizens of the FBH, thus eliminating the concerns about discrimination. Effective restitution is prioritised whenever feasible; if direct restitution is not possible, suitable replacement property may be provided to the former owner or monetary compensation can be offered. Effective restitution is precluded if the

property has been substantially altered and returning it would violate the rights of third *bona fidae* party (Article 7 RCPCA 2000).

If compensation is to be paid in cash, the specified amount is to be disbursed in ten equal instalments over a period of ten years (Article 16 RCPCA 2000), with the RS being liable for this compensation (Article 7 para. 3 RCPCA 2000). The value of the property to be restituted is assessed based on its condition at the time of nationalisation and its market value at the time of the compensation decision (Article 9(3) RCPCA 2000). Until the restitution decision becomes final, the parties may agree on the form of restitution and other forms of compensation in accordance with the law (Article 12 RCPCA 2000).

If the present owner acquired the property in good faith through a bilateral contract, restitution was excluded (Article 14 RCPCA 2000). Additionally, natural restitution was not permitted if the confiscated real estate was being used for state functions, or for activities in health, science, culture, education or if it was part of critical infrastructure related to energy, transport, or water supply (Article 15 RCPCA 2000). The law addressed the restitution of various types of real estate (including apartments, business premises, movable property, enterprises and land). With regard to agricultural and forest land, the law stipulated that such land would be returned to the previous owners or their legal successors (Article 19, 22 RCPCA 2000).

If the conditions for the restitution of the nationalised land are met but it is not possible to return the entire nationalised area to all former owners, a proportionally reduced area of land will be returned to them; the procedure for this proportional restitution has been regulated in the same way as by the RCLA, with an addition that a monetary compensation will be paid for the difference, unless the beneficiaries of the restitution agree otherwise (Article 20 RCPCA 2000).

In the case that claims for restitution are submitted by several persons and there is no agreement between them on the form of restitution, the amount of compensation, etc., the competent commission shall decide on this (Article 35 RCPCA 2000). However, if claims for restitution are submitted by several co-owners and there is no agreement between them on the form of restitution, the amount of compensation, etc., the claims of the co-owners whose shares make up more than half shall prevail, and if they are equal, the claims that are less burdensome for the person liable for restitution shall prevail (Article 31 RCPCA 2000).

Articles 10 to 24 of the CREA 1996 regulated the procedure for the restitution of property. The procedure for realising the restitution was regulated by Articles 27 to 40 of the RCPCA 2000, which were more detailed than the previous law. The latter provisions, which were in force, will be analysed here.

The RCPCA 2000 regulates certain specific procedural issues, while the procedural issues that are not regulated by this act are subject to the rules of general administrative procedure (Article 40 RCPCA 2000). Matters relating to restitution claims are decided by a commission, the composition of which is laid down by law

and which is appointed by the municipality (Article 27 RCPCA 2000). The restitution claims were to be filed within a prescribed period, namely one year after the law came into force. It is possible to file a claim after this deadline, but only monetary compensation can be claimed in this case. There are special rules regarding the deadline if only some of the co-owners submit the claims. In this case, the commission will invite the other co-owners to submit an application. If they fail to do so, the property will revert to the co-owners who made the request. After that, the other co-owners have no claim against the commission, but only against their co-owners to whom the land was returned (Article 30 RCPCA 2000).

The law prescribes what documents and evidence must be submitted with the application for restitution, which is primarily proof of ownership prior to the nationalisation of the property. Although many rights were not registered in the land register, and in some parts of BH there are still no trustworthy public land registers, which is a decisive proof of ownership, the RCPCA 2000 does not offer a solution for such a situation. If the applicant is unable to obtain all the necessary evidence, the competent authorities are obliged to provide assistance (Article 32 RCPCA 2000). However, it does not specify what can replace the missing land register extract, which can be a serious obstacle to the realisation of the restitution claim.

It is prescribed what elements a decision on restitution must contain. First of all, that the applicant acquires the right of ownership of the previously nationalised real estate, then requests to carry out the change of ownership in the public real estate register, meets the deadline for handing over the property, etc. (Article 36 RCPCA 2000). If a mortgage was registered after nationalisation, it should be cancelled. The RS provides security for the current unsecured claim in this case (Article 38 RCPCA 2000).

As a transitional provision, it was stipulated that the process initiated but not completed under previous restitution laws could continue, but in accordance with the new law (Article 42 RCPCA 2000).

In comparison, the 1996 and 2000 laws were of the same type and followed the same basic principles, while the 2000 law was more detailed, technically improved and, in particular, much more precise in terms of procedure, which is crucial for effective implementation of the restitution claims.

The Draft Restitution Act of the Republic of Srpska of 2008 regulates the restitution of nationalised property and its compensation to natural and legal persons whose property was confiscated forcibly, without just compensation or without legal basis after 6 December 1946, as well as the restitution procedure and the restitution authority, i.e. the Commission for Restitution. As a method of restitution, in addition to monetary compensation, the possibility of natural restitution is provided for, and the payer of compensation is the RS, i.e. the Ministry of Finance, which will ensure payment within ten years in ten equal annual instalments. The bill also provides for the restitution of agricultural land and forests.

The right to restitution is not granted to former owners who, in accordance with the law, have received fair compensation for confiscated property and rights or have received other property or rights in exchange, nor to persons whose property or rights were confiscated on the basis of a final criminal judgement for crimes which, according to international conventions, constitute war crimes, if the property and rights were acquired through the commission of such a crime.

It should be noted that all drafts and enacted laws regulating restitution issues in RS provided for effective restitution as the primary solution and compensation as a subsidiary mechanism, i.e. a combination of these two methods.

The Draft of the Restitution Act in the RS followed the solutions previously contained in the RCPCA 2000, which was repealed by the OHR. The question arises whether it is realistic to expect that a law, with the almost same content, which has already been repealed once by the OHR, will remain in force this time. It should be noted that the OHR's main objection was not to the content of the RCPCA 2000, but to the fact that the adoption of entities' laws would regulate this matter differently in different parts of BH.

4. Privatisation process regarding agricultural land and forest or state-owned/cooperation-owned agricultural enterprises

In the last years of its existence, the former socialist Yugoslavia was already undergoing significant reforms, one of which was privatisation. The process of privatisation was launched in the late 1980s, right before the dissolution of the country.[46] The process of privatisation was carried out in such a way that the workers acquired shares in the company (so-called 'internal shares') and thus became the owners of a certain percentage of the company.[47] The first series of internal shares was transferred to the workers of these companies, also as compensation for part of the wages owed to the workers. The process of transformation of the socialist enterprise into a commercial enterprise also meant the transformation of the former socialist rights (right of management/use/disposal) that these enterprises had over their assets.[48] As the rights of management/use/disposal were exclusively reserved for socialist companies, there was an *ex lege* transformation of these rights into property rights, regardless of what was registered by the land registry.[49] Any company that has been transformed into a joint-stock company or a limited

46 | For more see Povlakić 2009, 30 – 39.

47 | Enterprises Act [Zakon o preduzećima], Offcial Gazette SFRY [Službeni list SFRJ], N° 40/89, 46/90; Social Capital Act [Zakon o društvenom kapitalu], Offcial Gazette SFRY [Službeni list SFRJ], N° 84/1989, 46/1990;

48 | Simonetti 2009, 323 – 324.

49 | There are also opposing views. The opinion expressed here is that rights of management, use and disposal are incompatible with a company operating in the market as a capital company. In this sense Simonetti 2009, 619.

liability company since 1989/90 has ceased to be the title holder of the right of management/use/disposal by the very change of the company's form. The issuing of the internal shares shifted the socialist enterprises to the joint stock companies, called 'mixed-enterprises',[50] which were later on called the 'enterprises of mixed property'.[51] In an already 'semi-socialist' legal entity, state and private property coexisted. With the implementation of the process of acquisition of shares by employees, the share of private property in the company increased and the rights of this legal entity had to be changed.

This process was largely underway in 1992, when the dissolution of the former Yugoslavia and the independence of BH took place, and it could not be revised or turned in the opposite direction, but was rather forgotten and neglected by the post-war BH. All these measures, if properly understood, represent a reform of **property rights over the assets of these enterprise, both** in general **and of** agricultural land as well.

For the sake of this paper, it is important to note that no companies were excluded from this transformation process, including those engaged in agriculture or forestry. Additionally, no distinction was made regarding the goods owned by the companies. This means that the rights to manage, use and disposal of agricultural land and forests were transformed into property rights, regardless of whether this land had previously been denationalised from its owner. In this way, in the former Yugoslavia, agricultural land and forests could be, and indeed were, privatised. This process was later excluded by privatisation legislation of the entities of BH and BDBH.

Shortly after the end of the war (1992-1995), several acts regulating privatisation were adopted in BH. At the national level, the Framework Act on Privatisation of Enterprises and Banks in Bosnia and Herzegovina was adopted (hereafter: FPABH),[52] as well as the corresponding acts in the FBH,[53] the RS[54] and the BDBH.[55]

The FPABH regulates only some basic issues and leaves more detailed regulation of the privatisation process to the entities. Their legislation must align with the

50 | Article 3 para. 2 of the Enterprise Act, Official Gazette of SFRY [Službeni list SFRJ], N° 40/1989.
51 | Article 2 of the Amendments to the Enterprises Act, Official Gazette of SFRY [Službeni list SFRJ], N° 46/90.
52 | Official Gazette B&H [Službeni glasnik BiH], N° 14/1998, 12/1999, 14/2000, 18/2000, 16/2002.
53 | Privatisation of Companies Act [Zakon o privatizaciji preduzeća], Official Gazette of the FBH [Službene novine FBiH], N° 27/1997, 8/1999, 32/2000, 45/2000, 54/2000, 61/2001 27/2002, 33/2002, 28/2004, 44/2004, 42/2006, 4/2009.
54 | Privatisation of State Capital in Companies Act [Zakon o privatizaciji državnog kapitala u preduzećima], Official Gazette of Republic of Srpska [Službeni glasnik RS], N° 24/1998, 62/2002, 38/2003, 65/2003, 54/2005 (adjusted version) and a new Privatisation of State Capital in Companies Act, Official Gazette of Republic of Srpska [Službeni glasnik RS], N° 51/2006, 1/2007, 53/2007, 41/2008, 58/2009, 79/2011 and 28/2013.
55 | Privatisation of Companies Act [Zakon o privatizaciji preduzeća], Official Gazette BDBH [Službeni glasnik BD B&H], N° 8/2004, 19/2007, 2/2008.

framework law and be transparent and non-discriminatory. The agricultural land and forests were not mentioned in this law.

With regard to restitution, the FPABH contains a very important provision: "No process of privatisation of enterprises and banks shall prejudice the settlement of claims for restitution which may be submitted in accordance with the applicable laws on restitution, provided, however, that each Entity Law on Restitution shall exclude enterprises and banks subject to restitution, as well as their land, property and buildings, from in-kind restitution and ensure that the competent authorities provide fair compensation to all lawful claimants (Article 2 N° 3).

The implementation of privatisation and denationalisation measures can lead to a conflict of interest between different subjects.[56] The question arises of which measure – restitution or privatisation – should be prioritised? The answer is a matter of legal policy. As explained above, the FPABH favours restitution, stating that privatisation cannot prevent restitution. It is highly questionable whether these conditions prescribed by the FPABH have been correctly implemented in the entities' privatisation acts. First of all, the task of excluding the companies that will be the subject of restitution from privatisation in-kind was assigned to the restitution acts of the entities that have not yet been adopted.

The Privatisation of Companies Act of the FBH (hereafter: PCAFBH) stipulates that items designated for restitution, once communicated by the competent authority, cannot be included in the privatisation process. Moreover, companies undergoing privatisation that possess such assets are prohibited from listing them on their balance sheets prepared for privatisation. They are also not allowed to dispose of these assets and must manage them in a reasonable and professionally sound manner (Article 8 and 31 PCA FBH). However, since there were no provisions to determine which authority is responsible or which goods are to be restituted, it is possible that assets, that could later be subject to restitution, were sold during the privatisation process.

There is another problematic point in this act. It stipulates that citizens who have received certificates for compensation for the denationalised assets, which cannot be returned to their ownership and possession, are able to use these certificates as a means of payment in the privatisation process (Article 24 PCA FBH). This option only remained a possibility on paper, as no restitution certificates were issued.[57]

On the other side, in BDBH, Privatisation of Company Act (hereafter: PCA BDBH) it has been foreseen that the capital and assets of the companies subject to privatisation are exempt from restitution (Article 3 PCA BDBH). Consequently, it follows

56 | Simonetti 1997, 195.

57 | The same applies to apartments, which, according to the Privatisation of Companies Act of the FBH, should not be listed in balance sheets, and which have in the meantime been almost completely privatised in favour of the holder of the housing right. This issue will not be discussed in detail as the focus of this paper is on agricultural land and forests.

that the restitution should be performed in the form of monetary compensation, which looks aligned with the FPABH. However, the revenues generated from the privatisation of companies were not intended to be used for compensation in the restitution process. These revenues were used to primarily cover the costs of the Privatisation Office, while the rest was used to help economic development and agriculture in the district (Article 18 PCA BDBH).

The problem that privatisation could jeopardise or even render impossible the restitution in-kind at a later date is somewhat alleviated in the RS by the creation of the Fund for the Restitution of the Republic of Srpska under the Law on the Fund for the Restitution of the Republic of Srpska.[58] Under the 1998 and 2006 Acts on the Privatisation of State Capital in Enterprises (hereafter: PSCEA RS), the RS created the obligation of establishment of the fund to provide compensation to all those who are entitled to restitution of property nationalised in the period from 1946 to 1958 (Article 14 PSCEA RS). It should be noted that this fund was only set up eight years after the start of the privatisation process.

In order to provide funds for the compensation for assets which cannot be effectively restituted (*in natura*), it is foreseen that 5% of the shares in the state capital of each company shall be transferred to the Restitution Fund during the privatisation process. Accordingly, during the implementation of privatisation in the RS after 2006, 5% of the share capital of the company or the corresponding part of the money generated by the sale of the state capital of companies in which the value of this capital is less than 300,000 BAM was allocated to the fund (ca. €150,000).

The PCAFBH stipulates that the proceeds obtained from the sale of companies in the FBH, except for a portion earmarked for funding the Federation and Cantonal Agencies for privatisation, shall be transferred to a separate fund of the Development Bank of the FBH. The government of the FBH should manage this fund. The revenues generated from the privatisation process in the cantons should be governed by the government of the canton where the revenue is generated. The Development Bank of the FBH determines the purpose of the use of the federal funds, provided that 20% of the realised funds are used for the rehabilitation and insurance of the share capital of the Pension and Disability Insurance Fund and up to 15% for social assistance to employees who have lost their jobs (Article 33 PCA FBH). The legal provisions do not mention the direct allocation of funds for future restitution, and the official website of the Development Bank of the FBH does not contain any information about this fund or how the revenues were distributed.

The key focus of this paper is the question of whether agricultural land and forests can be privatised. As already mentioned, there are no provisions regulating this issue in the Framework Act on Privatisation, nor in the Act on Privatisation of Companies of BDBH. The PCAFBH does not explicitly mention agricultural land, but

58 | Official Gazette of the Republika Srpska [Službeni glasnik RS], No. 56/2006, 39/2013.

it excludes the possibility of privatising natural resources, and agricultural land is defined as such in the Agricultural Land Act.[59] Agricultural land, i.e. its value, will not be included in the balance sheets of the company to be privatised. For these reasons, the prevailing position is that the privatisation of agricultural land is not possible in the FBH.[60]

At the first glance, the RS has a better solution. The privatisation of the natural resources is not allowed here either (Article 8 PSCEA RS), but it has provided that the status (not specifically the privatisation) of agricultural land will be regulated by the special act (Article 8(2) PSCEA RS), which is still pending.

The forests enjoy a special position in the privatisation regulations of both entities (the FBH and the RS). In the FBH, if the main activity of the company is the exploitation of forests, the decision on methods, deadlines and competency of the agency for privatisation shall be made by the government of the FBH at the proposal of the Federal Privatisation Agency. This provision also applies to other state-owned strategic companies. A list of these enterprises is determined by the parliament of the FBH. The privatisation of these strategic enterprises is possible, but in accordance with the special statutes (Article 3 PCA FBH), regarding the forests no special regulation has been enacted yet.

A similar solution is offered by the PSCEARS. The state capital in companies of strategic importance shall be privatised under special privatisation programs adopted by the government of the RS with the consent of its National Assembly. One might wonder why the same solution is not being considered for agricultural land?

It should be concluded that neither the privatisation nor the restitution of agricultural and forests has been carried out in BH. In this way, the fate of the agricultural land and forests remains undetermined, which should not be seen negatively from the point of view of the former owners in the event of restitution. Namely, besides all the negative consequences that the uncertainty of ownership status entails, this land is not yet lost to restitution in kind (at least formally). As mentioned above, since 1991 there has been a disposal ban on these assets (even though the privatisation regulations of former Yugoslavia did not forbid the privatisation of the companies which had possessed such assets). However, there is currently an additional problem concerning both state-owned real estate and state-owned agricultural land and forests that is not related to privatisation or restitution but hinders these processes. If agricultural land and forests are registered as state property, they are subject to a disposal ban imposed by the OHR, which will be explain under 5 below.

59 | Article 2 of the Agricultural Land Act of the FB&H [Zakon o poljoprivrednom zemljištu FBiH], Official Gazette of the FB&H [Službene novine FBiH], N° 2/1998; Article 2 of the Agricultural Land Act of the FB&H [Zakon o poljoprivrednom zemljištu Federacije BiH], Official Gazette of the FB&H [Službene novine FBiH], N° 52/2009. Povlakić 2018, 54 – 55.
60 | For opposite point of view Povlakić 2018, 73 – 79.

5. Prohibition of disposal of state-owned property imposed by the OHR*

Since it was not possible to establish criteria for the distribution of state property between different levels of government, the OHR imposed a prohibition in 2005 on the disposal of state property, or more precisely, certain types of state property.[61] Agricultural land and forests were not explicitly included in this prohibition, and it could not be concluded from the totality of the legal provisions that these properties were also subject to the prohibition.

Among other reasons, the uncertainty regarding the title holder of agricultural land registered as state property, especially when the company that owned such land has been privatised or no longer exists, led to amendments in the Agricultural Land Act in Republic of Srpska.[62] It was prescribed that state-owned property with the right of management, use or disposal in favour of enterprises, which were the subject of privatisation upon the entry into force of this law, by force of law, shall become the property and possession of the Republic of Srpska (Art. 53 of the Agricultural Land Act). The constitutionality of this act has been challenged. The main issue in this proceeding before the Constitutional Court of BH was whether the RS had the constitutional competencies to regulate the ownership of the state-owned agricultural land in its favour by enacting that provision. The National Assembly of the RS, by responding to the constitutional claim, stated that the challenged provision exclusively relates to the agricultural land which had been used by the former state enterprises and which could not be the subject of the privatisation carried out by the RS in accordance with the PSCEARS (Article 8). The RS considered that this fact gave it the responsibility to adopt the contested provision.

In its decision U-8/19 of 6th February 2020, the Constitutional Court of BH concluded that "the challenged provision, which stipulates that the agricultural land in question, which is a public good,[63] i.e. the property of the State, becomes by force of law the property and possession of the Republic of Srpska, is incompatible with Article I(1), Article III(3)(b) and Article IV(4)(e) of the Constitution of

61 | Act on Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina [Zakon o privremenoj zabrani raspolaganja državnom imovinom], Official Gazette of B&H [Službeni glasnik BiH], N° 18/2005, 29/2006, 85/2006, 32/2007, 41/2007, 74/2007, 99/2007, 58/2008. For the problems and doubts this ban has raised in practice, see Velić 2022, 134 – 138.

62 | Official Gazette of the Republika Srpska [Službeni glasnik RS], N° 93/2009, 86/2007, 14/2010, 5/2012, 58/2019.

63 | The Constitutional Court's argument that agricultural land represents public good cannot be accepted. In the legal system of Bosnia and Herzegovina, this land has never been public good, i.e. subject to public administration and not subject to property rights. Agricultural land and forests were goods of public interest, which means that these goods can be the subject of ownership, but their owners are subject to a special regime. This was the case in the former Yugoslavia and is still the case in BH (Art. 7 and 8 PA FB&H, Art. 7 and 8 PA RS, Art. 13 and 14 PA BD B&H). For more see Povlakić in: Babić/Hašić/Medić/Povlakić/Velić 2014, 158 – 167.

Bosnia and Herzegovina, as Bosnia and Herzegovina has the exclusive responsibility to regulate the issue of state property."[64] In this regard, the Constitutional Court refers to its decision U-1/11 of 13 July 2012, in which it ruled that the criteria for the distribution of state property between different levels of government must be decided exclusively by the authorities of the State of Bosnia and Herzegovina. The Constitutional Court of BH held in this decision from 2012 that "the fact that a law on the state property has not been enacted yet does not mean that the entities may regulate, by their own laws, the issue of ownership over the state property, which has not been defined yet at the level of Bosnia and Herzegovina."[65]

In addition, the Constitutional Court of BH also notes that the agricultural land in question was not registered in any public register as the property of companies (agricultural cooperatives, cooperatives, etc.) in order to be the subject to privatisation. The land in question was registered as people's property, state or socially owned property. In conclusion, the Constitutional Court of BH reiterates that the decision in this case does not prejudge the issue of future legal regulation of state property, including agricultural land, by BH, the RS, the FBH or the BDBH.[66] The challenged legislation was repealed by this decision of the Constitutional Court of BH.[67] The same happened with the forests, as the Constitutional Court of BH declared several provisions of the Forest Act of the Republic Srpska[68] to be inconsistent with the Constitution of BH for almost the same reasons.[69]

64 | U-8/19, N° 44.
65 | U-1/11, N° 31.
66 | Here the Constitutional Court BH referred to Decision U-1/11, N° 84.
67 | This decision can be seriously criticised. The Constitutional Court of BH stated that agricultural land in the legal system of the Socialist Republic of Bosnia and Herzegovina had the status of people's property, i.e. socially owned property, which includes the right to manage, use or dispose of it. It referred to the Law of 1953 on the Agricultural Land Fund of the People's Property and the Allocation of Land to Agricultural Organisations. This law stipulated that agricultural land was the property of the people and that the agricultural organisation to which a piece of land was allocated had the right to manage it (this was land that had previously been confiscated from its owners). Taking into account the legal continuity of the State of Bosnia and Herzegovina according to Article I, paragraph 1 of the Constitution of Bosnia and Herzegovina, the Constitutional Court stated that it follows that agricultural land is state property (U-8/19, N° 37). The Constitutional Court failed to take into account that this law was amended in 1965 (Official Gazette SFRY [Službeni list SFRJ], No. 10/65). With this amendment, the term 'people's property' was replaced by the term 'social property', the right of management was replaced by the right of use, and it was the municipalities that took care of the agricultural land and allocated it to agricultural organisations. (Articles 5, 6, 7, 8, etc.). The Act on the Registration of Social Property [Zakon o uknjiženju nekretnina u društvenoj svojini], Official Gazette of the SFRY [Službeni list SFRJ], No. 28/1977, stipulated that if no socialist subject could be identified as the holder of the right of use, this right belongs to the municipalities and the municipality should be registered as the holder of the right of use (Article 4, paragraphs 2 and 3). The title holder of this land was known - it was neither the State of BH nor the RS, but the municipalities. For more information see Povlakić 2019, 24 et seq.
68 | Forest Act of Republic of Srpska [Zakon o šumama Republike Srpske], Official Gazette of RS [Službeni glasnik Republike Srpske], N° 75/2008, 60/2013 i 70/2020.
69 | U-4/21 from 23th September 2021, avaliable under: https://www.ustavnisud.ba/uploads/odluke/_bs/U-4-21-1280725.pdf [20.04.2024].

This decision of the Constitutional Court prompted the OHR to amend the Act on Temporary Prohibition of Disposal of State Property Act of Bosnia and Herzegovina,[70] by extending the prohibition of disposal to state-owned agricultural land and forest (Article 1, N° 3 and 4).

6. Was there land reform in addition to restitution?

In addition, there are other controversies and uncertainties regarding to the proprietary relationships on agricultural land and forests.

Since no restitution has been planned or carried out, and since agricultural land and forests have not been privatised but are currently subject to the double prohibition of disposal, the question arises as to whether the former socialist property relations can be abolished in another way, namely through a reform of property law. This approach to land reform has also proven to be a dead end.

A correct course of the transformation process would be to perform restitution as the first step in order to remove 'old burdens' and to have a clear situation as to which assets can be privatised. A new property law should then be adopted to regulate property rights for the future, followed by special laws to regulate the status and use of assets of particular importance (forests, agricultural land, urban building land, etc.). In BH, privatisation was carried out with almost no regard for restitution, so the new property law is based on property relations that have not been fully clarified. In addition, special laws were enacted before the property law reform and are still not harmonised with the new property law, especially in the FBH. This is not an environment for a comprehensive land reform. Moreover, the mentioned legal measures have been adopted at different levels of legislation without being harmonised with each other and then not coordinated within a particular level of legislation. As a result, property relations (in general and in relation to agricultural land and forests) are still unclear.

There are two major obstacles to the completion of the property and land reform. Firstly, these are unresolved restitution issues. Consequently, certain real estate should be retained for the former owner until the restitution is decided. Secondly, this is the issue of who owns state property or how it should be divided between different levels of government. As a consequence, the state property should be protected from unilateral action by some authorities in BH. These circumstances have led to two prohibitions of disposal that have lasted for decades and that partly overlapped. One prohibition dates from 1991 (see 3.1.) and the other, imposed by the OHR, dates from 2005; later, in 2022, the OHR has extended the prohibition on

70 | Act on amendments and supplements on the Act on Temporary Prohibition of Disposal of State Property Act of Bosnia and Herzegovina [Zakon o izmjenama i dopunama Zakona o privremenoj zabrani raspolaganja državnom imovinom], Official Gazette of B&H [Službeni glasnik BiH] N° 22/2022.

agricultural and forest land, following the decisions of the Constitutional court BH (see under 5).

In the entities of BH and the BDBH, a reform of property and other rights *in rem* was carried out. The following acts have been adopted in chronological order: Property and other right *in rem* Act of the Brčko District BH (hereafter: PABDBH);[71] Property Act of the Republic Srpska (hereafter: PARS);[72] and Property Act of the FBH (PAFBH).[73] The PARS and the PAFBH are largely harmonised, and in principle all these acts follow the regulation of property and other rights *in rem* in the Austrian Civil Code.

As mentioned above, the new property acts in the entities (FBH and RS) and BDBH were adopted without fully clarifying or revising the former socialist property relations. For these reasons, these laws contain extensive final and transitional provisions aimed at completing the transformation process and the transition from the old to the new regime of property relations. Unfortunately, in practice these provisions were often ignored and poorly understood, and on this basis numerous lawsuits were filed, which ultimately had to be decided by an appeal to the Constitutional Court of BH.[74]

The most controversial provision, identical in all three property acts, was a basic provision on the transformation of earlier social rights (Article 338 of the PAFBH, Article 324 of PARS, Article 205 of PABDBH). All former rights of socialist legal entities derived from state ownership were to be transformed into property rights. Chronologically, there was the right of management (until 1953), the right of use (1953-1971), and the right of disposal (after 1971). Each of these rights was characteristic of a particular stage in the development of the socialist system, but now they are all transformed into property rights in the same way. The basic principle of the transformation has been established: all basic rights arising from the property of the people/state/society are transformed into the right of ownership of the current holder of these rights or its successor in title, provided that the property has the capacity to be the subject of the right of ownership and unless otherwise provided by a specific legal act. The registration of these rights in the land registry, through the entry into force of the new property acts, should be considered as a the registration of the property rights.[75]

71 | Property and other rights in rem Act of the Brčko District B&H [Zakon o vlasništvu i drugim stvarnim pravima Brčko Distrikta BiH], Official Gazette of BD B&H [Službeni glasnik BD BiH], N° 11/2001, 8/2003, 40/2004, 19/2007, 26/2021, 44/2022.

72 | Property Law of the Republic Srpska [Zakon o stvarnim pravima Republike Srpske], Official Gazette RS [Službeni glasnik RS], N° 124/2008, 58/2009, 95/2011, 60/2015, 18/2016 – Decision of the Constitutional Court, 107/2019, 1/2021 – Decision of the Constitutional Court, 119/2021 – Decision of the Constitutional Court.

73 | Property Law of the FBH [Zakon o stvarnim pravima Federacije BiH], Official Gazette FBH [Službene novine Federacije BiH], N° 66/2013, 100/2013.

74 | Inter alia: AP-3317/17, AP-3679/17, AP-3680/17, all from 27.02.2019. More see Povlakić 2019, 24 et seq.

75 | For more see Povlakić 2018, 63 – 71.

In case law or in the interpretation or application of the property acts, it is generally considered that the conversion of these rights is not possible if the provisions of special laws provide for a different solution. The Act on Temporary Prohibition of Disposal of State Property of BH, imposed by the OHR and prohibiting the disposal of state property, is considered to be one of these special laws. This view is also shared by the Constitutional Court of BH.[76]

The same question arose with regard to agricultural land and forests, namely, whether the transformation of socialist rights to manage/use/dispose of into private property is possible or some special law prescribes something else, particularly having in mind the legislation, issued by OHR in 2005, prohibiting disposal of state-owned land. This was one of the most controversial issues in the legal system of BH, which has been decided in a large number of cases by the ordinary courts, and on which the BH Constitutional Court has also ruled on several occasions.[77] After the OHR imposed the amendments in 2022 to its regulations on the prohibition of disposal of state property, which now explicitly include agricultural land and forests in the ownership of the state (see under 5 above), any type of disposal, including privatisation, restitution or conversion of rights to manage, use and dispose of into ownership rights, is considered to be in violation of the OHR's prohibition on disposal.

In this way, an illogical situation has arisen in the legal system of BH: certain legal entities have been transformed from socialist enterprises into companies under modern commercial law (some of them as early as the end of the 1980s, see point 4), but nevertheless the rights they have over their assets (which can also be agricultural land) have in a number of cases remained registered as former socialist rights. It is not uncommon for a former socialist enterprise to be privatised, but its immovable property remains registered with the right to manage, use or dispose of it. Decades later, the planned reform and final transformation of these rights through the adoption of new property laws is now being obstructed by the legislation imposed by the OHR. On the one hand, this prohibition on disposing of state property is necessary to prevent unilateral allocations of state property by entities and other public authorities until the criterion for the division between different public authorities has been finally determined. On the other hand, the transformation process remains unfinished and reforms in general, as well as the land reform, stagnate.

At the same time, it is completely ignored that the decisive changes in the former Yugoslavia, and thus in the Socialist Republic of Bosnia and Herzegovina, already took place at the end of the 1980s. Long before the new property law was adopted, there was a reform of the former socialist companies, which automatically

76 | For example decision in the case AP–1080/18 from 28th January 2020.godine, N° 33 and 34. Available under: https://www.ustavnisud.ba/uploads/odluke/_bs/AP-1080-18-1221608.pdf [20.04.2024].
77 | Inter alia: AP-2081/19 from 15.01.2020, AP-3292/19 from 12.01.2021 and AP-1939/20 from 08.09.2021. For more see Povlakić 2022, 21 et seq.

led to the transformation of their rights to the company's assets, as mentioned above under 4.

It is a zigzag course: in the former Yugoslavia, the question of the transformation of the rights specifically related to agricultural land was not problematic, then in BH these assets were exempted from privatisation and finally by the OHR from any change in their legal status. Since the amendments to the Act on Temporary Prohibition of Disposal of State Property of BH do not contain final and transitional provisions, an additional problem has arisen, namely the question of whether the prohibition of disposal of agricultural land and forests, pronounced in 2022, has a retroactive effect. Due to the general prohibition of retroactive effect of laws and without an explicitly provided exception in the public interest, such an effect cannot be affirmed.[78]

To add to the confusion regarding agricultural land and forests, it should be noted that, in addition to the prohibition of the disposal of the state-owned property, imposed by the OHR in 2022, there is a prohibition on the sale of agricultural land and forests provided for in 1991 (see point 3.1. above), which today operates differently in the entities and the BDBH. The State Attorney's Office of BH (*Državno pravobranilaštvo BiH*) intervenes in judicial and administrative proceedings in which state-owned real estate under the prohibition of disposal are the subject of any legal transaction, aiming at protecting state property until a decision on the criterion for the distribution of such property between BH and its various parts (entities and BDBH) is made. This is exactly the purpose of the prohibition of disposal of the state property imposed by the OHR. At the same time, according to the prohibition of alienation introduced in the SRBH in 1991, it is the former owner who has a legal interest in not alienating the nationalised property until the decision on restitution has been taken.

In its decision AP-3332/21 of 23 February 2022, the Constitutional Court of BH recognised the legitimate interest of the former owner in this situation. In this case, the Municipality sold the nationalised agricultural land, which belonged to a religious community (Waqf Directorate of the Islamic Community in Bosnia and Herzegovina) before nationalisation. The Waqf Directorate attempted to intervene in the administrative and later court proceedings, arguing that it had a legal interest in the prohibition of the sale of agricultural land, which was not accepted by the competent authorities, since no restitution legislation was enacted. On the contrary, the BH Constitutional Court held that the right to a fair trial had been violated because the courts had not examined the Waqf Directorate's claims of legal interest.[79]

These facts maintain a kind of *status quo* and hinder the completion of the transformation process in BH.

78 | Against the retroactive effect also Baručija 2022, 46 – 47.
79 | AP-3332/21, N° 42.

7. Conclusion

The reform of the property system usually begins with the adoption of various denationalisation and (re)privatisation measures, which to a certain extent was also the case in BH. However, these processes did not include all the necessary measures. First of all, the restitution law was not adopted and, in addition, the privatisation processes in BH were also very slow and accompanied by many challenges, so more than thirty years after independence (1992) and the end of the war (1995), the reforms of the property law, which includes the reform of the proprietary relationships on agricultural land and forest, are still not completed.

The restitution legislation has not yet been adopted, which was usually the first stage of reform in former socialist countries. Privatisation has taken place without any certainty as to what will be the subject of restitution; it is quite possible that the property that could be the subject of restitution has already been sold to third parties in the privatisation process. Thus, any further step taken before the restitution was completed - or a decision was made that restitution would not take place - could be questionable or, after the restitution law was passed, could be the subject of litigation. Step two was taken before step one, and the reform of the property law is like a house without solid foundations.

The basic decision on whether or not to carry out restitution is still pending, which is causing various problems in Bosnia and Herzegovina. As Madl has stated from the economic point of view, the restitution is not crucial, but clarified and settled ownership relations. It is not so important who is the owner, but that someone actually is the owner.[80] Following this, restitution is not necessarily an inevitable step in the transformation process, but the decision on whether or not to carry out restitution should be the first and inevitable step for reasons of legal certainty. This step has not been taken.

Bosnia and Herzegovina is in an unsatisfactory situation with regard to restitution in general and the restitution of agricultural land and forests in particular, as the fate of agricultural land and forests remains uncertain. This is a point that is also criticised in the EU Commission's annual reports: "As regards property rights, the apportionment of property between the State and other levels of government remains one of the open issues under the '5+2' agenda for the closure of the Office of the High Representative. This requires the adoption of a state-level law, in line with jurisprudence of the Constitutional Court. Entities and cantons have legislation which is not in line with the constitutional and legal framework. There are no

80 | Madl, 1998, 598.

strategic documents that address this issue. ... There is no legislative framework on restitution claims, which are handled case by case."[81]

The above shows that in Bosnia and Herzegovina the final implementation of the transformation process in general, and restitution as a part of it, still faces many obstacles — lack of legal basis, facts established during the war, processes that are not centralised and coordinated due to the state structure, adoption of legal solutions that may jeopardise restitution in general, and restitution of agricultural land and forests as well. In brief: Bosnia and Herzegovina is still lost in transition.

81 | Brussels, 8.11.2023 SWD(2023) 691 final COMMISSION STAFF WORKING DOCUMENT Bosnia and Herzegovina 2023 Report. https://neighbourhood-enlargement.ec.europa.eu/document/download/e3045ec9-f2fc-45c8-a97f-58a2d9b9945a_en?filename=SWD_2023_691%20Bosnia%20and%20Herzegovina%20report.pdf [01.08.2024).

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Nationalisation of agricultural lands and forests in Poland after World War II[2]

Abstract

The article discusses how the post-war nationalisation of agricultural lands and forests, and the associated other expropriation activities were a far-reaching consequence of the outbreak of World War II. The article explains the political and historical circumstances of the nationalisation of agricultural lands and forests in Poland after World War II. Special attention was paid to the legal regulation of nationalisation of agricultural land, as well as the nationalisation of forests and forest lands. The conclusion discusses the legality of land nationalisation from the aspect of the legal acts in force at the time. Based on that, we may conclude that the nationalisation of agricultural lands and forests in Poland after World War II, executed by the communists, did not respect the law, particularly in view of the constitutional issue of pre-war Poland.
Keywords: nationalisation, property, history of law, agricultural lands and forests

Introduction

The post-war nationalisation of agricultural lands and forests, and the other associated expropriation activities were a far-reaching consequence of the outbreak of World War II and the related changes of a political, economic and social nature in Poland. However, at the same time, it should be borne in mind that the actual form of the property structure in the Second Republic also had a significant impact on the extent of the ownership transformations that took place as part of the post-war nationalisation processes.

The Polish literature on the subject points out that the post-war transition of property in Poland from the private to the public domain — which provided

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the foundations of the communist state — had a strong ideological justification interrelated with the economic programs of the then leading political powers with a socialist-communist orientation[3]. The "Manifesto of the Polish Committee of National Liberation" of July 22, 1944 (also known as the "July Manifesto" or the "PKWN Manifesto") should be the primary point of reference in the presentation of political and economic concepts for the formation of the post-war property structure. This is because it presented a comprehensive scheme for the political and economic transformations that were to take place in post-war Poland, which was under the Soviet sphere of influence. At the same time, however, it should be noted that one of the main purposes of publishing the Manifesto was to win broad public support for the Soviet-installed future state authorities.

Therefore, in the declarative sphere, the "Manifesto of the Polish Committee for National Liberation" did not explicitly call for the nationalisation of property, but only aimed at the restitution of property seized by the German occupation authorities. In fact it stated that "Property looted by the Germans from individual citizens, peasants, merchants, artisans, small and medium-sized industrialists, institutions and the Church will be returned to the rightful owners. (...) national assets concentrated today (...) in German hands, that is, large industrial, commercial, banking, transport enterprises and forests, will come under the Provisional State Administration; as economic relations are regulated, ownership will be restored".[4]

Moreover, it should also be noted that the provisions of the Manifesto of the Polish Liberation Committee regarding the implementation of land reform in Poland did not differ significantly from the demands of the declarations of the Polish Workers' Party and the Council of National Unity discussed above, in terms of the manner and scope of its implementation. Indeed, the Manifesto of the Polish Committee for National Liberation provided for the reconstruction of the agricultural system by taking over farms of more than 50 hectares (and more than 100 hectares in post-German areas) "without compensation but with provision for the former owners".[5] In turn, the property thus seized was to be subsequently distributed for a minimal fee to landless and smallholder peasants, with landowners who distinguished themselves in the fight against the German invaders to receive a higher provision, while lands belonging to the Church were to be completely excluded from this property reform.

In light of these facts, it should be concluded that the wording of the Manifesto of the Polish Committee of National Liberation did not envisage radical changes taking place later in the property structure of post-war Poland. However, these changes were later carried out by the communist authorities. Thus, this meant

3 | See more about the transition of property in Poland from the private to the public domain: M. Sopiński, Problem reprywatyzacji : doświadczenia, argumenty, rozwiązania, Warszawa, 2020.
4 | The Manifesto of the Polish Committee for National Liberation (Annex to OJ 1944 No. 1).
5 | The Manifesto of the Polish Committee for National Liberation (Annex to OJ 1944 No. 1).

a significant mismatch between the declarative layer of the Manifesto of the Polish Committee of National Liberation, which did not draw patterns from the USSR, and the actual actions of the Polish communists taken after the permanent installation of Soviet power in Poland. As T. Kowalik notes, the reason for this state of affairs may have been the desire to silence "the vigilance of the opponents of the excessive statisation of the national economy".[6]

Political and historical circumstances of the nationalisation of agricultural lands and forests in Poland after World War II

Turning to the subject of actual Communist activities, it should be noted that the gradual seizure of power in Poland by the puppet Polish Committee for National Liberation — which was a de facto extension of the previously occupying Soviet government — involved significant decisions by the latter not only in the political, but also in the economic field. As T. Luterek rightly states: "It is no coincidence that one of the first acts of the Polish Committee for National Liberation was the decree to carry out a land reform. It was intended to win support for the newly formed communist government among landless and smallholder peasants".[7] At the same time, the real reason for the Communists to carry out land reform was not to parcel out the land, but to achieve the goals of the Communist Revolution, for in the Soviet Union, which was the political model for the People's Republic of Poland, the model of collectivisation of agriculture was already implemented during 1927-1932.

However, in 1944 the communist authorities were not yet established in Poland, and feared the reaction of the peasants to the introduction of the Soviet model, hence they decided on the seemingly illogical move of parcelling out the multi-hectare landholdings among the peasants and only later — when the people's power would be firmly established — performing their gradual collectivisation.

The concept of collectivisation is important in this regard because, as T. Luterek notes: "the word 'collectivisation' was among the most exterminated by the censors (an institution completely under the control of the communists) in Poland at that time. Thus, they were fully aware that if they started with the introduction of the Soviet model, they would have great problems with the seizure of power".[8] The fundamental changes introduced by the communists were mainly in the area of property.

In terms of time, the first significant interference by the Communists in the pre-war property structure was the agrarian reform initiated by the decree of the Polish Committee of National Liberation on September 6, 1944. In order to execute

6 | T. Kowalik, Spory o ustrój społeczno-gospodarczy w Polsce. Lata 1944-1948, Warszawa 2006, 47.
7 | T. Luterek, Reprywatyzacja: źródła problemu, Warszawa 2016, 99.
8 | T. Luterek, Reprywatyzacja: źródła problemu, Warszawa 2016, 103.

this efficiently, the communist authorities invented the Land Offices. According to the provisions of this decree, forced parcellation without compensation applied to those estates that exceeded 50 hectares of agricultural land, or a total area of 100 hectares. The parcelled land was then distributed among peasants, who could take ownership for a relatively small sum.

As for the manner in which the communists carried out the land reform, as M. Bałtowski notes, "initially it took place, at least in principle, with all the necessary procedures performed by the representatives of the Ministry of Agriculture and Agrarian Reform of the Polish Committee for National Liberation, such as surveying plots of land, determining their value, making appropriate entries in the land registers".[9] The reason for carrying out these legalistic procedures was the desire of the communists to gain broad public support for the land reform, and to give it a legal dimension that would make the transition of ownership to be considered as irreversible. However, these measures were quickly abandoned, and the implementation of the land reform was then carried out by using revolutionary methods rather than legal means. Thus, this hasty method of executing the land reform soon raised numerous doubts among the public. From a legal standpoint, criticism was levelled at the fact that the land reform itself — which was a key decision at the time from both an economic and a social aspect — was not performed on the basis of an act of statutory rank, but on the basis of a decree issued by a communist authority with no legitimacy to exercise power other than de facto at the time. In social terms, the revolutionary violence coupled with the land reform, of the former owners of the seized property, was based on the hatred and fuelled by the communist authorities, was highly controversial. For it is a fact that the former landowners could be removed upon the decision of the communist authorities by grange committees within three days of the commencement of parcelling, and could not thereafter even come within reach of the former estates.

At the same time, it should also be noted that the agrarian reform carried out by the communist authorities did not have a homogeneous character across the entire territory of Poland, for, depending on the area, there were differences in the speed and scope of implementation. This dissimilarity is emphasised by J. Kaliński, stating that "the manner in which the land reform was implemented differed from one district of the country to another, depending on the size of the existing land reserve, population, the number and structure of farms, and local traditions".[10] Thus, for the lands on the right bank of the Vistula, land reform was essentially completed as early as in the first months of 1945. It was assumed that after the land was parcelled out, the new peasant farms were to be 5 hectares each; however, in reality they were smaller. On the other hand, regarding the lands — where the parcellation process was carried out on the basis of the decree of September 6, 1946, on the agricultural

9 | M. Bałtowski, Gospodarka socjalistyczna w Polsce, Warszawa 2009, 148.
10 | J. Kaliński, Historia gospodarcza XIX i XX wieku, Warszawa 2004, 250.

system and settlement on the territory of the Recovered Territories and the former Free City of Danzig — related to the agrarian reform, the parcels of parcelled land were significantly larger, ranging from 7 to 15 hectares. The maximum area of new farms was also larger, which was set at 20 hectares. At the same time, in the so-called Recovered Territories, the implementation of an agricultural policy based on the state involvement also started, with the establishment of the institution of State Land Properties. In 1949, after the merger of the State Land Properties with the State Plant Breeding Establishments and the State Horse Breeding Establishments, State Agricultural Farms, or so-called PGRs, were established. It should be noted here that as early as 1948, some 2.2 million hectares were under the control of the state government, which accounted for about 11% of the share of all agricultural land. However, it should also be mentioned that a certain part of the agricultural land was completely independent from the Polish state authorities, as the Red Army stationed in Poland exercised actual control over it.

Analysing the land reform carried out by the communists, it is necessary to present statistics on its effects. At the end of 1949, the area of land distributed in Poland amounted to 6.07 million hectares, of which 2.38 million hectares were distributed in the so-called Old Lands, while 3.69 million hectares were distributed in the so-called Recovered Lands; thus, 1.068 million farms were created (or existing ones were enlarged), 601,000 of which in the Old Lands and 467,000 in the Recovered Territories[11].

Summarising the above considerations, it should still be said that a far-reaching consequence of the land reform was the emergence of an excessively fragmented agrarian structure of individual farms, as most of these areas did not exceed 5 hectares. As J. Kaliński writes: "The preservation of more than 61% of the share of dwarf farms (about 2 hectares) and smallholder farms (2-5 hectares), covering 23% of the land area, meant agreement on the low commodity nature of Polish agriculture and its extensive development with the use of labour reserves in the countryside".[12] In addition, the land reform carried out by the communists, as M. Bałtowski notes, "also caused the permanent liquidation... of the landed gentry layer, which was the historical mainstay of Polishness. On the basis of the agrarian reform decree, more than 13,000 landed estates were parcelled out or taken into ownership".[13] The disappearance of the landed gentry layer was also noted in contemporary jurisprudence of the Polish Constitutional Court, which stated that "the PKWN Decree of September 6, 1944, on the implementation of the land reform not only ... did not make changes in the structure of agricultural property, but through the scope and manner of its implementation destroyed the Polish landed gentry as a social group and the category of producers satisfying a specific function in the

11 | M. Bałtowski, Gospodarka socjalistyczna w Polsce, Warszawa 2009, 149.
12 | J. Kaliński, Historia gospodarcza XIX i XX wieku, Warszawa 2004, 251.
13 | M. Bałtowski, Gospodarka socjalistyczna w Polsce, Warszawa 2009, 149.

economic structure of the country. Under the conditions of the time, it was one of many measures aimed at weakening society's ability to resist the imposed political system and the ideology underpinning it".[14] At the same time, however, it should be remembered that the largest pre-war landed estates remained outside Poland's borders in the so-called Borderlands after World War II, and thus were not subject to the 1944 land reform, and were taken into the public domain (in this case, the USSR) through other measures.

The far-reaching and at the same time disastrous effect of the land reform is pointed out at the same time by T. Luterek, stating that it led to the collapse of "(...) most of the most valuable building objects of the highest historical value, which are testimony to the achievements of material culture in the Polish lands".[15] This can be seen very vividly with regards to the condition and number of palace and manor buildings. The agrarian reform and its aftermath caused the destruction of more manor complexes than during the two world wars. The material decline and loss of importance in the consciousness of the rural community derailed the momentous, guiding role and function of the manor house. The worst was the situation of the estates that were parcelled out, as the manor and farm buildings became unnecessary and, as a kind of no-man's land, were subsequently ruined. Also contributing to this was the propaganda of the time, which treated these buildings as a symbol of the overthrown system. The destroyed mansions were to serve as a monument to the new order in the countryside.

Finally, it should also be noted that the implementation of land reform was accompanied by the nationalisation of forests, which resulted in more than 85% of Poland's forested areas falling into state hands.

Legal regulations on the nationalisation of agricultural lands

Legal regulations on the nationalisation of agricultural lands from the private to the public domain were included in various legal acts issued by the communist authorities at the time, of which the most important ones are:

- Decree of the Polish Committee for National Liberation of September 6, 1944, on the implementation of land reform ("Journal of Laws" 1945, No. 3, item 13, as amended); [in Polish: Dekret Polskiego Komitetu Wyzwolenia Narodowego z 6 września 1944 roku o przeprowadzeniu reformy rolnej („Dziennik Ustaw" 1945, nr 3, poz. 13 z późn. zm.)];
- Ordinance of the Minister of Agriculture and Agrarian Reform of March 1, 1945, on the implementation of the decree of the Polish Committee for National Liberation

14 | Order of the Constitutional Court of November 28, 2001, SK 5/2001, "Ruling of the Constitutional Court," 2001, no. 8/2001, item 266.
15 | T. Luterek, Reprywatyzacja: źródła problemu, Warszawa 2016, 113.

of September 6, 1944 on carrying out the land reform ("Journal of Laws" 1945, no. 10, item 51, as amended); [in Polish: Rozporządzenie Ministra Rolnictwa i Reform Rolnych z 1 marca 1945 roku w sprawie wykonania dekretu Polskiego Komitetu Wyzwolenia Narodowego z 6 września 1944 roku o przeprowadzeniu reformy rolnej („Dziennik Ustaw" 1945, nr 10, poz. 51 z późn. zm.);

- Decree of November 28, 1945, on the seizure of certain land properties for the purposes of land reform and settlement ("Journal of Laws" 1945, No. 57, item 321.); [in Polish: Dekret z 28 listopada 1945 roku o przejęciu niektórych nieruchomości ziemskich na cele reformy rolnej i osadnictwa („Dziennik Ustaw" 1945, nr 57, poz. 321.)];
- Decree of August 8, 1946, on the entry into the land and mortgage registers of the ownership of property seized for the purposes of land reform ("Journal of Laws" 1946, No. 39, item 233, as amended); [in Polish: Dekret z 8 sierpnia 1946 roku o wpisywaniu w księgach wieczystych prawa własności nieruchomości przejętych na cele reformy rolnej ("Journal of Laws" 1946, nr 39, poz. 233 z późn. zm.)];
- Decree of September 5, 1947, on the transfer to state ownership of property left behind by persons resettled to the USSR ("Journal of Laws" 1947, No. 59, item 318, as amended). [in Polish: Dekret z 5 września 1947 roku o przejściu na własność Państwa mienia pozostałego po osobach przesiedlonych do ZSRR ("Journal of Laws" 1947, nr 59, poz. 318 z późn. zm.);
- Decree of July 27, 1949, on the seizure of landed property not in the actual possession of the owners, located in certain districts of the Białystok, Lublin, Rzeszów and Cracow provinces ("Journal of Laws" 1949, No. 46, item 339, as amended); [in Polish: Dekret z 27 lipca 1949 roku o przejęciu na własność Państwa nie pozostających w faktycznym władaniu właścicieli nieruchomości ziemskich, położonych w niektórych powiatach województwa białostockiego, lubelskiego, rzeszowskiego i krakowskiego („Dziennik Ustaw" 1949, nr 46, poz. 339 z późn. zm.);
- Decree of April 18, 1955, on enfranchisement and regulation of other issues related to the agrarian reform and agricultural settlement, (consolidated text: "Journal of Laws" 1959, No. 14, item 78, as amended); [in Polish: Dekret z 18 kwietnia 1955 roku o uwłaszczeniu i uregulowaniu innych spraw związanych z reformą rolną i osadnictwem rolnym, (tekst jednolity: „Dziennik Ustaw" 1959, nr 14, poz. 78 z późn. zm.)];
- Law of March 12, 1958, on the sale of state-owned agricultural real estate and the ordering of certain issues related to the implementation of the land reform and agricultural settlement ("Journal of Laws" 1958, No. 17, item 71, as amended). [in Polish: Ustawa z 12 marca 1958 roku o sprzedaży państwowych nieruchomości rolnych oraz uporządkowaniu niektórych spraw związanych z przeprowadzeniem reformy rolnej i osadnictwa rolnego („Dziennik Ustaw" 1958, nr 17, poz. 71 z późn. zm.)].

The post-war transition of land property from private the public ownership took place largely according to the September 6, 1944 Decree of the Polish Committee for National Liberation on the Execution of the Land Reform, that is, on the basis of a general nationalisation law defining the characteristics of property subject to transfer by operation of law to the State Treasury. The formal, and at the same time propagandistic, justification for the communist authorities to carry out the land reform was included in the wording of Article 1, paragraph 1 of the September 6, 1944 Decree of the Polish Committee for National Liberation on the Execution of the Land Reform. This is because it stated that "Agrarian reform in Poland is a state and economic necessity and will be implemented with the participation of the social factor, in accordance with the principles of the Manifesto of the Polish Committee for National Liberation. The agricultural system in Poland will be based on strong and healthy production farms capable of being expended, which are the private property of their owners".[16] The post-war transfer of land property from private to public hands was carried out largely according to the September 6, 1944 decree of the Polish Committee for National Liberation on executing the land reform, i.e. on the basis of a general nationalisation law defining the characteristics of property subject to transfer by operation of law to the State Treasury.

In turn, the catalogue of real estate transfer under Article 2, paragraph 1 of the Decree of the Polish Committee for National Liberation of September 6, 1944, on the implementation of land reform into the ownership of the State Treasury in its entirety, immediately, and without any compensation was defined as follows: "For the purposes of the agrarian reform, landed property of an agricultural nature: a) owned by the State Treasury under any title; b) owned by citizens of the German Reich and Polish citizens of German nationality; c) owned by persons convicted of high treason, for aiding the occupying forces to the detriment of the State or the local population, or for other crimes provided for in the Decree of the Polish Committee for National Liberation of September 12, 1944 (Dz. U. R. P. No. 4, item 16); d) confiscated for any other reason; owned or co-owned by natural or legal persons, if their total size exceeds either 100 hectares of the general area or 50 hectares of agricultural land, and in the Poznań, Pomeranian and Silesian provinces, if their total size exceeds 100 hectares of the general area, regardless of the size of the agricultural land of that area".[17] Subsequently, pursuant to the decree of January 17, 1945 (Journal of Laws No. 3, item 9), an amendment was made to include non-agricultural land properties in the agricultural reform by deleting the words "of an agricultural nature" in the first sentence of Article 2, paragraph 1. Thus, it should be stated that although initially the agrarian reform was intended to cover only

16 | Decree of the Polish Committee of National Liberation of 6 September 1944 on the performance of the agricultural reform (consolidated text: Journal of Laws 1945, No. 3, item 13, as amended).
17 | Decree of the Polish Committee for National Liberation of 6 September 1944 on the execution of the agricultural reform (consolidated text: Journal of Laws 1945, No. 3, item 13, as amended).

actually agricultural landed property, the amendment made landed property that was not agricultural in nature also subject to agrarian reform.

However, crucial from the aspect of the consequences of executing the land reform in Poland is the wording of Article 2, paragraph 2, of the September 6, 1944 Decree of the Polish Committee for National Liberation on carrying out the land reform, which authoritatively states that "All landed property, referred to in points b, c, d and e, of the first part of this article, shall pass immediately, without any compensation, in its entirety, to the State Treasury for [land reform] purposes". At the same time, as J. Antosiewicz notes, the Decree of the Polish Committee for National Liberation of September 6, 1944, as well as the associated executive acts, did not define the concept of landed property, which made it necessary for the Polish Constitutional Court to deal with it in its resolution of September 19, 1990 (W 3/89).[18]

The individual assets seized by the state as part of the nationalisation of landed property were specified in detail in the Ordinance of the Minister of Agriculture and Agrarian Reform of March 1, 1945, on the implementation of the decree of the Polish Committee for National Liberation of September 6, 1944, on carrying out land reform. Thus, according to Article 11, paragraphs 1 and 2 of the same decree, the land reform did not involve: "items for the personal use of the owner of the seized property and members of their family such as clothing, footwear, bedding, jewellery, furniture, kitchen utensils, etc..., not related to the operation of the farm and if they had no scientific, artistic or museum value; stocks of household larder items; animals and rooming birds; any items personally owned by the tenants and their family; livestock and dead stock owned by tenants, whereby this circumstance had to be proven by documents; the part of the harvest from the last marketing year essential to ensure the tenants' and their family's own needs and dues for the labour of agricultural workers".[19] At the same time, this exemption was not strictly adhered to by the communist authorities, since, as A. Wiktor points out, "In violation of the law (...) not only were seeding machines taken into possession, but also family furniture and often paintings of ancestors handed down to descendants from generation to generation as the most valuable family valuables. And yet these possessions were supposed to be exempt from the provisions of the decree of the Minister of Agriculture and Agrarian Reform of March 1945. This was expropriation from everything without exception".[20]

The land reform scheme outlined by the Communist authorities meant that the transition of property rights from the private domain to the public domain took

18 | See. J. Antosiewicz, Reprywatyzacja, Warszawa 1993, 8.

19 | Ordinance of the Minister of Agriculture and Agrarian Reform of March 1, 1945 on the implementation of the decree of the Polish Committee for National Liberation of September 6, 1944 on carrying out the land reform ("Journal of Laws" 1945, No. 10, item 51, as amended).

20 | A. Wiktor, Losy ruchomych dóbr kultury ziemiaństwa w woj. rzeszowskim po zakończeniu II wojny światowej w latach 1944-1947, Rzeszów 2008, 256.

place *ex lege* on the day the decree came into effect, that is, as early as September 6, 1944, and thus it was unnecessary to issue any administrative decisions. Despite the fact that the decree provided for the transfer of property rights *ex lege*, it should be mentioned that the Decree of the Minister of Agriculture and Agrarian Reform of March 1, 1945 (on the implementation of the decree of the Polish Committee for National Liberation of September 6, 1944 on the execution of the land reform) introduced a certain possibility of appeal in paragraph 5 in the form of the possibility of addressing objections to the competent Provincial Land Office in the first instance, and to the Minister of Agriculture and Agrarian Reform in the second. However, this possibility was limited in nature, and should be considered declaratory.

Moreover, landowners were deprived of any form of compensation for their lost property. In fact the entitlement, provided for in Article 17 of the Decree of the Polish Committee for National Liberation, for owners of landed property listed in Article 2(1)(e) to receive either an independent farm outside the county in which the expropriated property was located, or a lifetime provision in the amount of a clerical salary of the sixth group (later converted to the lowest disability pension), cannot be considered as a compensation. However, this compensation provided by the communist authorities for the property confiscated was not only not "equivalent", but was of a rather purely declaratory nature. For, as A. Wiktor notes, "despite the fact that the provisions of the decree offered the possibility of receiving an independent farm outside the county where the expropriated property was located, such as in the Recovered Territories, the percentage of landowners who took advantage of this opportunity was negligible. Due to the persecution, most of them preferred to disappear, to melt into the urban crowd".[21]

At the same time, it should also be noted that the Decree on the Execution of the Land Reform and the Decree of the Minister of Agriculture and Agrarian Reform of March 1, 1945, on Implementing the Decree of the Polish Committee of National Liberation of September 6, 1944, on the Execution of the Land Reform had both a nationalisation aspect and an enfranchisement aspect. This interesting element of the land reform is pointed out, for example, by T. Luterek, who states that the above-mentioned regulations "were also the first privatization regulations of the communist government"[22]. This is because they first regulated the mode of transition of individual property rights from the private domain (landowners) to the public domain (the Treasury), and then determined the method of their redistribution, i.e. the transition from the public domain (the Treasury) to the private domain (peasants).

It should also be mentioned that in addition to the Decree of the Polish Committee for National Liberation of September 6, 1944 (on the implementation of the

21 | A. Wiktor, Losy ruchomych dóbr kultury ziemiaństwa w woj. rzeszowskim po zakończeniu II wojny światowej w latach 1944-1947, Rzeszów 2008, 256.
22 | T. Luterek, Reprywatyzacja: źródła problemu, Warszawa 2016, 106.

land reform), and the Decree of the Minister of Agriculture and Agrarian Reform of March 1, 1945(on the implementation of the Decree of the Polish Committee for National Liberation of September 6, 1944, on the execution of the land reform), the issue of transfers of landed property was also regulated by the Decree of November 28, 1945, on the seizure of certain landed property for the purposes of land reform and settlement, as neither of the former acts covered certain property situations in their scope, and the communist authorities sought to regulate them legally. Thus, pursuant to Article 1 of the Decree of November 28, 1945, on the seizure of certain landed properties for the purposes of land reform and settlement, the Polish state was able to seize landed properties not covered by the Decree of the Polish Committee for National Liberation of September 6, 1944, on the execution of the land reform, namely: "properties left behind by persons resettled in the Union of Soviet Socialist Republics; properties which, in connection with the war or occupation, were allocated for special purposes with a modification regarding the type of use (training grounds, airfields, afforestation, roads, etc.), if it was not in the interest of the state to maintain this type of use; any landed property with the consent of the owner; any landed property which, in the course of carrying out the land reform, was actually parcelled out by August 1, 1945".[23] What distinguished the nationalisation carried out pursuant to the Decree of November 28, 1945, on the Seizure of Certain Landed Properties for the Purposes of Land Reform and Settlement from the nationalisation carried out pursuant to the Decree of the Polish Committee for National Liberation of September 6, 1944, on the Purpose of Land Reform, and the Decree of the Minister of Agriculture and Agrarian Reform of March 1, 1945, on the Implementation of the Decree of the Polish Committee for National Liberation of September 6, 1944, on the Purpose of the Land Reform was its explicit stipulation of the issue of compensation for the seized property. Indeed, the provisions of the Decree of November 28, 1945, on the seizure of certain landed property for the purposes of the land reform and settlement of the land reform implied an entitlement for owners of landed property specified in the Decree to receive compensation for lost property in the form of obtaining landed property of equal value and quality, with the method of estimating the value of the seized landed property itself to be specified in the instructions of the Minister of Agriculture and Agrarian Reform.

At the same time, it should be pointed out, according to T. Luterek, that although "the land was transferred to the peasants cost-free, [there was] an obligation to repay the land in the amount of one annual crop, which constituted an extraordinary income for the state. In the realities of the time, such a payment was often a very heavy burden on the peasants, but on balance the real amount for which they acquired the land was extremely favourable".[24]

23 | Decree of November 28, 1945 on the seizure of certain landed properties for the purposes of land reform and settlement, "Journal of Laws" 1945, No. 57, item 321.
24 | T. Luterek, Reprywatyzacja: źródła problemu, Warszawa 2016, 111.

The regulations discussed above in the form of the decree of the Polish Committee for National Liberation of September 6, 1944, on the implementation of the land reform, and the decree of November 28, 1945, on the seizure of certain landed properties for the purposes of land reform and settlement for the purposes of land reform are considered the most important legal acts in terms of the scale and scope of the transition of ownership of landed properties; however, it is reasonable to also present other legal regulations of a nationalisation nature that were issued by the authorities of the People's Republic of Poland.

Thus, one should mention, for example, the decree of September 6, 1946, on the agricultural system and settlement in the area of the Recovered Territories and the former Free City of Danzig (Journal of Laws No. 49, item 279, as amended), in Article 1 of which it was stipulated that "For the establishment of farms and settlement plots and the replenishment of non-viable farms, all landed properties are allocated in the area of the Recovered Territories and the former Free City of Danzig, with the exception of those which, on the effective date of this decree, are owned by natural persons". At the same time, in Article 42 of the same decree, the scope is further clarified by stating that land properties that are not in the possession of the previous owners on the date of entry into force of this decree may also be taken into state ownership and be included in the land stock referred to in Article 1.

Another important legal act issued by the communist authorities during this period is the decree of September 5, 1947, on the transfer of property to the State from persons resettled to the USSR, according to Article 1 of which all movable and immovable property of persons resettled to the USSR remaining on the territory of the Polish State shall, by operation of law, pass onto the State without compensation upon the resettlement of such persons. It should be stated that the property subject to nationalisation included landed property, belonging to both natural persons and legal entities, whose very existence or operation was not justified as a result of the resettlement to the USSR.

It is also impossible to overlook the decree of July 27, 1949, on taking over to the State ownership of landed properties not in the actual possession of the owners, located in certain districts of the Białystok, Lublin, Rzeszów and Cracow provinces. According to paragraph 1 of Article 1 of the decree, land properties located in the Białystok, Lublin, Rzeszów and Cracow provinces within the border belt, (...) and in the Bilgoraj, Krasnystaw and Lublin districts of the Lublin province and the Brzozow and Przeworsk districts of the Rzeszow province could "be taken over into the ownership of the State in whole or in part, if they do not remain in the actual possession of the owners"[25], while according to paragraph 2 of the same article, the regulation also applied "to real estates located in the area specified in that

25 | Decree of July 27, 1949, on the seizure of landed properties not in the actual possession of the owners, located in certain districts of the Białystok, Lublin, Rzeszów and Cracow provinces, "Journal of Laws" 1949, No. 46, item 339, as amended.

paragraph, and remaining in the use, lease or management of third parties, if the owner does not reside there".[26]

In conclusion, it must also be said that the nationalisation processes in the field of landed property did not end in the 1940s, but continued into the 1950s, as exemplified by the Decree of April 18, 1955, on enfranchisement and the regulation of other issues related to the land reform and agricultural settlement, and the Law of March 12, 1958, on the sale of property of the State Land Fund and the ordering of certain issues related to the implementation of the land reform and agricultural settlement.

Thus, pursuant to Article 15 of the Decree of April 18, 1955, on enfranchisement and the regulation of other issues related to the land reform and agrarian settlement, a farm that was acquired on the basis of the decree of the Polish Committee for National Liberation of September 6, 1944, on the implementation of the land reform and the decree of November 28, 1945, on the seizure of certain landed properties for the purposes of land reform and settlement for the purposes of land reform, and subsequently abandoned by the owner before the effective date of the decree passed *ex lege* and without compensation to the State, free of encumbrances except for easements. As for the law of March 12, 1958, on the sale of state-owned agricultural real estate and the ordering of certain issues related to the carrying out of the agrarian reform and agricultural settlement, it should be emphasized that in Article 9(1) it stipulated the taking over by the State of agricultural and forestry real estate under the State's ownership prior to the entry into force of the law, as long as it remained under the State's ownership or was transferred for use to other natural or legal persons.

Legal regulations on the nationalisation of forests and forest lands

Legal regulations on the transition of ownership of forests and forest land from the private domain to the public domain were included in the following legal acts issued by the communist authorities of the time:

- Decree of the Polish Committee for National Liberation of December 12, 1944, on the taking of certain forests into the ownership of the State Treasury; [in Polish] Dekret Polskiego Komitetu Wyzwolenia Narodowego z 12 grudnia 1944 roku o przejęciu niektórych lasów na własność Skarbu Państwa
- The Act of November 18, 1948, on the transfer of certain forests and other local government land into State ownership; [in Polish: Ustawa z 18 listopada 1948

26 | Decree of July 27, 1949, on the seizure of landed properties not in the actual possession of the owners, located in certain districts of the Białystok, Lublin, Rzeszów and Cracow provinces, "Journal of Laws" 1949, No. 46, item 339, as amended.

roku o przejściu na własność Państwa niektórych lasów i innych gruntów samorządowych]

Bringing about the transfer of ownership of forests and forest land was a priority element of the communist authorities' policy, in a way complementing the land reform that had begun, in terms of property management. At the same time, the legal basis for the transfer of property in this case was the Decree of the Polish Committee for National Liberation of December 12, 1944, on the transfer of certain forests to the State Treasury. According to Article 1 of the decree, forests and forest lands with an area of more than 25 hectares, owned by natural persons or legal entities, were transferred into the ownership of the State Treasury. In addition to forests and forest land, all mid-forest land, meadows and waters, deputation land of the forest administration and forest guards, real estate and movable property located on forest facilities (regardless of their use), real estate and movable property serving the operation of forest farm, and all material stocks, both in the forest and in industrial plants, were also subject to transfer into state ownership.

At the same time, it should also be emphasised that in the case of citizens of the German Reich, non-Poles and Polish citizens of German nationality, the figure of 25 hectares of area was not used as a limit for being subject to the nationalisation legislation. This is because the Decree of the Polish Committee for National Liberation of December 12, 1944, on taking over certain forests into the ownership of the State Treasury stipulated the transfer of the entirety — regardless of the area occupied by them — of forests and forest lands, together with economically linked non-forest lands and other real estate and movables, belonging to citizens of the German Reich, non-Poles and Polish citizens of German nationality, into the ownership of the State Treasury.

Initially, forest properties belonging to local governments were excluded from the transfer of ownership of forests and forest land to the state, but the communist authorities decided to take this step by enacting the Law of November 18, 1948, on the transfer of certain forests and other local government land to the State. As a result, the communist authorities' bringing about the seizure of forests and forest land from previous owners resulted in a significant portion of the country's area — as forests accounted for one-fifth of Poland's territory — being in the hands of the communist-ruled state, which exercised custody over them through the institution of the State Forests.

Summary

Summarising the nature and legality of property transformations in Poland during World War II and the first post-war years, it should be noted that a significant part of the radical transformations made by the communist authorities — which shaped the new social and economic relations in Poland — took the form of decrees issued by the Polish Committee for National Liberation. This entity issued decrees under the delegation included in the Act of the National Council of August 15, 1944, on the provisional procedure for issuing decrees with the force of law.

At the same time, it should be stated that the decrees issued under delegation by the Polish Committee for National Liberation could not be considered legal under the provisions of constitutional rank — neither under the March Constitution of 1921 nor under the April Constitution of 1935 —, since they either did not provide for a decree as a source of law at all, or they did not legitimise the communist authorities. Both the National Council and the Polish Committee for National Liberation were therefore not bodies authorised to legislate on behalf of the nation, and the actions they carried out were not supported by constitutional provisions. Thus, the legitimacy of the communist organs was suspended in a legislative vacuum, since the legal act that defined the scope of the legislative authority of the National Council was the "Manifesto of the Polish Committee for National Liberation", that is, the act of the body authorised to issue decrees with the force of law by the National Council itself. Therefore, analysing the existing relationship between the then quasi-legislative authority in the form of the National Council and the quasi-executive authority in the form of the Polish Committee for National Liberation, one should note the duplication of apparent legitimacy to exercise power. By the same token, one should agree with the position presented by T. Lutherk, whose opinion: "De jure, a law enacted by unauthorised bodies is lawless or simply not a law. The nationalisation acts that have been issued by these illegal authorities cannot be considered to be an established law, i.e. a law universally applicable in an independent state. In this case, the principle of effectiveness can be reduced to the acceptance of the actual exercise of power by these authorities, while the mere exercise of power cannot mean, eo ipso, that the actions taken by it are convalidated and pass from the realm of factual to the realm of legally effective activity, for these actions do not constitute the exercise of law"[27].

In the context of the legality of the nationalisation acts issued by the communist authorities in the 1940s (including the Land Reform Decree, as well as the Law Concerning the Nationalisation of Industry and the Warsaw Land Decree), it should also be mentioned that even under the assumption granting the then authorities the right to issue nationalisation regulations, the nationalisation acts they actually

27 | T. Luterek, Reprywatyzacja: źródła problemu, Warszawa 2016, 92.

issued were not lawful. This is clear from the wording of the provision contained in Article 99 of the March Constitution, which, nota bene, was not derogated by Article 81 of the April Constitution, and which was subsequently incorporated into the principles of the system formulated in the "Small Constitution" of February 19, 1947.[28]

In turn, the content of this article was as follows: "The Republic of Poland recognises all property, whether personal property of individual citizens or collective property of associations of citizens, institutions, self-governing bodies and finally the State itself, as one of the most important foundations of the social system and legal order, and guarantees to all citizens, institutions and communities the protection of their property, and permits only in cases, provided by law, the abolition or limitation of property, whether personal or collective, for reasons of higher utility, with compensation. Only a law can determine what property and to what extent, for the benefit of the general public, is to be exclusively the property of the State, and to what extent the rights of citizens and their legally recognised associations may, for public reasons, be restricted in the free use of land, waters, minerals and other natural treasures. Land, as one of the most important factors in the existence of the nation and the State, cannot be subject to unlimited trading. Laws shall determine the State's right to the compulsory purchase of land, and regulate the circulation of land, understanding the principle that the agricultural system of the Republic of Poland is to be based on farms capable of viable production and personally owned".[29] Thus, this provision stipulated the state's obligation to pay compensation to ensure the legality of any abolition or restriction of property rights, while de facto no compensation was paid to owners whose property passed into the public domain as a result of the post-war ownership transition. Consequently, we can state that the nationalisation of agricultural lands and forests in Poland after World War II, carried out by the communists in Poland, did not comply with the law, especially with the constitutional issue of pre-war Poland.[30]

28 | Constitutional Law of February 19, 1947 on the System and Scope of Action of the Supreme Authorities of the Republic of Poland, (Journal of Laws 1947, No. 18, item 71).
29 | Law of March 17, 1921. - Constitution of the Republic of Poland. (Journal of Laws of 1921 No. 44, item 267).
30 | See more about the legal aspects of the nationalisation of agricultural lands and forests in Poland after World War II: P. A. Blajer, The constitutional aspect of regulations limiting agricultural land transactions in Poland [in:] JAEL 2022/32 pp: 7-26; A. Kubaj, Legal frame for the succession/transfer of agricultural property between the generations and the acquisition of agricultural property by legal persons – in Poland [in:] JAEL 29/2020, 118-132.

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Legal Complexities of Agricultural Land Restitution in Romania (1990-2024)[3]

Abstract

The legal and socio-political complexities of agricultural land restitution in Romania reveal a process shaped by conflicting objectives and administrative hurdles. Initiated after the fall of the Soviet-type dictatorship, restitution aimed to address the injustices of collectivization and nationalization under the former regime. Post-World War II agrarian reforms and especially forced collectivization (1949–1962) dismantled private property rights in favour of collective and state ownership. Restitution policies introduced post-1989, starting with Act No. 18/1991 and evolving through subsequent amendments, attempted to reverse these changes. However, the need to balance transitional justice with socio-political stability led to a protracted and inconsistent process. Key issues include legal hurdles in verifying ownership, practical difficulties in returning land, and the influence of political and economic factors on outcomes. Despite substantial progress in returning property to original owners or their heirs, inefficiency and legal ambiguity have left many claims unresolved, undermining public trust in the restoration of property rights.

Keywords: collectivization, agricultural land restitution, property rights, transitional justice, post-communism

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1. General Context

In post-World War II East-Central Europe, Romania – as other states of the region – fell under a Soviet-type totalitarian dictatorship.[4] Strangely enough, this regime started with a land reform for the redistribution of agricultural lands to the peasantry's private property. The Agrarian Reform Act No. 187/1945[5] expropriated large estates: about 1.4 million hectares[6] of land were 'expropriated' and 1 million hectares effectively distributed to peasants.[7] From a legal standpoint, this expropriation was effectively a form of nationalization, as no compensation was provided to the former owners. The expropriation targeted properties exceeding 50 hectares, with the surplus being seized by the state. However, the property seizure for redistribution also had a political dimension. Notably, all lands and agricultural properties owned by ethnic Germans – including Romanian citizens of German ethnic origin – who were collectively accused of having collaborated with Nazi Germany (even if no case-by-case verification of this ever took place), were fully expropriated. Additionally, the law targeted the lands and properties of war criminals, those responsible for the country's 'devastation', and those who fled to countries at war with Romania or abroad after 23 August 1944 (the date when Romania broke its alliance with nazi Germany in favour of the Soviet Union). Act No. 177/1947, which provided the interpretation of legal provisions concerning the implementation of agrarian reform, stipulated that the actions taken to carry out the reform, as well as the regulations and supplementary decisions issued by the Ministry of Agriculture and Domains, were considered acts of governance and could not be challenged in court by any means whatsoever.[8]

After World War II, agriculture remained the mainstay of the Romanian economy. The period under analysis is characterised by major structural changes, agriculture being thoroughly marked by the collectivization and nationalization process. This took place between 1949 and 1962 and consisted of the appropriation of private agricultural assets, as well as their incorporation into different new,

4 | The crucial moment marking the start of Soviet influence in Romania was the imposition of the Groza government on 6 March 1945, with Soviet backing. This government, led by Petru Groza, was effectively a pro-communist administration that paved the way to full Soviet control. The transition to a fully-fledged Soviet-type dictatorship culminated in the abdication of King Michael I on 30 December 1947. This event led to the proclamation of the People's Republic of Romania and the consolidation of communist power under the Romanian Workers' Party, with Gheorghe Gheorghiu-Dej becoming the head of the state apparatus. From 1947 onwards, Romania aligned itself closely with the Soviet model, establishing a one-party system, nationalizing industries, and collectivizing agriculture.

5 | Retrieved November 5, 2024, from https://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=1569.

6 | A land area of 10,000 square metres constitutes one hectare.

7 | Verdery 2003, 45.

8 | Retrieved November 5, 2024, from https://legislatie.just.ro/public/DetaliiDocument/41.

specific forms of organization (cooperative agricultural enterprises and state-operated agricultural estates). Some estates were divided as these various units were later reorganized. These measures of agrarian reform and land redistribution included forced collectivization as part of the regime's broader strategy to consolidate power, control the peasantry, and restructure the agrarian economy along socialist lines.

The initial land redistribution was a measure intended to win the hearts and minds of the rural population, to thereby legitimise the new regime which was still under formation at that time, to dismantle the existing property structures, and to directly attack the more significant landowners by subverting their main source of income. But this – otherwise partly legitimate – reform was never intended to last. Once the land reform had redistributed land to the peasants, the next phase involved reversing it, by pushing the peasants into *collective farms* (*cooperative agricole de producție*, meaning collective agricultural cooperatives, or 'CAPs' in Romanian).

From a legal point of view, collectivization was a means of property transfer: as peasants were forced into collectives, they were required to transfer their land, livestock, and tools to the collective farms. In Romania, the law and legal doctrine recognised a new form of ownership: *collective property*. Individual property rights over agricultural land were effectively abolished (except in some mountainous areas, where collective farming was less feasible). Theoretically joining the collective was an option, not an obligation. In reality, the state used a combination of propaganda, economic penalties (oppressive taxation, mandatory supply provision to the state etc.), coercion, and at times brutal violence (arrests, imprisonment, deportation, and in some cases, execution) to compel peasants to join collective farms.[9] The *Securitate* (the Department of State Security, the Romanian secret police) played a significant role in suppressing opposition.

The reason for collectivization was to exert full state control over agricultural production. By organizing agriculture into collective and state farms, the regime could theoretically plan agricultural production, and control and direct the output.[10] In reality, the efficiency of collective agricultural production was far below expectations.[11]

9 | Wealthy peasants or those opposing collectivization were labelled and persecuted as 'kulaks', enemies of the regime.

10 | This was not the sole reason for collectivisation, which was also a means of consolidating political control over the peasantry. However, collectivisation allowed the Romanian government to implement central planning in agriculture, dictating what crops were grown, how land was used, and how agricultural produce was distributed.

11 | For an overview of the Romanian collectivisation process, see Klingman & Verdery 2011. Collectivisation was an enthusiastic goal of the regime, despite the fact that the negative economic effects were already evident from the pre-WWII realities of the Soviet Union. Ideology was more important than economic facts.

The process of collectivization was highly disruptive. It led to significant reductions in agricultural productivity and contributed to food shortages and economic hardship for many peasants. The forced nature of collectivization and the associated repression left deep scars in Romanian rural society, with many peasants losing their traditional way of life. But collectivization was consistent with Marxist-Leninist ideology, which viewed private ownership of land as inherently exploitative and inefficient. The Soviet-type totalitarian dictatorship in Romania sought to create a socialist economy where the means of production, including land, were owned and managed by the state or at least collectively (even if 'collective' management would exist in name only). Beside collectives, state farms were also organised (in Romania these were called *gospodării agricole de stat* or later *întreprinderi agricole de stat*, meaning state-run agricultural enterprises, or 'IASs'), based on the model of '*sovkhozes*' (state-operated agricultural estates), which functioned in part at least with nationalised land.[12]

The period of forced collectivization in Romania started in the late 1940s and lasted until 1962.[13] Most agricultural land had been 'collectivised' and thousands of collective farms were established (in 1970, there were 4,626 agricultural production cooperatives and 370 state agricultural enterprises).[14] Figure 1 shows the distribution of agricultural and arable areas by type of holding. From 1962 to 1989, the share of state-owned farms holding agricultural land remained constant at around 29%. But the largest areas of land were farmed in the cooperative system which held, both in 1962 and in 1989, approximatively 60% of the agricultural areas, but, as data from 1962 shows, 76.4% of arable land. Towards the end of the Soviet-type dictatorship, statistics report the distribution of agricultural area by forms of ownership: public, cooperative, and individual (see the data for 1989).

12 | For an interesting modern investigation of collectivization from the point of view of a legal historian, see Horváth 2024, 620-655. For an analysis of the practical issues of similar collectivisation (the case of Hungary), see also Csák 2006, 49-73. and Csák 2007, 3-20.

13 | The collectivisation process in Romania unfolded in three main stages. The first stage (1949–1953) involved establishing basic structures, where the government imposed unattainable production quotas on individual farmers to coerce them into joining collective farms and to target the 'kulaks' (relatively wealthy peasants). The second stage (1953–1957) focused on easing pressure on the peasantry and strengthening existing collective farms. The final stage (1957–1962) saw a harsh crackdown on remaining opponents of collectivisation, influenced in part by the anti-communist uprising in Hungary in 1956. For further details, see Székely 2018, 65.

14 | România. Un secol de istorie, Date statistice, București, 2018, 208–209.

Figure 1: Distribution of agricultural and arable area by type of holding and type of ownership, 1962 and 1989[15]

Type of holding	1962				1989
	Agricultural Area		Arable Area		Distribution of Agricultural Area
	Thousand Ha	%	Thousand Ha	%	%
A. State-owned agricultural properties, of which:	4,363	29.9	1,781	18.1	29.7
State agricultural enterprises:	1,745	12	1,365	13.9	
B. Agricultural cooperatives:	8,862	60.7	7,524	76.4	60.8
C. Agricultural associations ('*întovărășiri agricole*' in Romanian):	415	2.8	149	1.5	
D. Non-cooperative farms ('individual sector', in mountain areas):	954	6.6	400	4	9.45
Total agriculture in Romania:	14,594	100	9,854	100	100

Forced collectivization fundamentally reshaped rural life and customs, leading to the disappearance of traditional agrarian practices. The profound connection between people and the land was eroded, severing a bond that had defined rural existence for generations.

Following the regime change in Romania, the issue of reparations for collectivization and nationalization imposed during the Soviet-type totalitarian dictatorship became a significant and contentious topic. As the old regime fell (in 1989), some Romanians believed that justice could only be served by reversing these policies and returning the nationalised and collectivised assets to their original owners or their descendants. The reversal of nationalisation and collectivisation – bearing in mind the topic of this article, essentially the restitution of agricultural land and other assets confiscated during the collectivization period – can be seen as the most just solution. This view was grounded in the belief that those who had been wronged by the Soviet-type regime deserved to have their properties returned. The restitution of these assets could be seen not only as a way to right past wrongs but also as a means to restore the pre-communist social and economic order. Finally, reprivatization was seen as a means to guarantee that there would be no backsliding into the previous economic and social order, for which great temptation still existed for some in the first decade after regime change had

15 | Source: România. Un secol de istorie, Date statistice, București, 2018, 208–209. The data for 1962 is collected from 'Agricultura României 1944–1964', Editura Agrosilvica, Bucharest, 53, T43, and for 1989, from the National Institute of Statistics (INS).

taken place. Restitution was seen as a bond, which guaranteed commitment to the capitalist order in which property is sacrosanct.

However, numerous arguments were raised against the straightforward reversal of nationalization and collectivization. Concentrating on collectivization, one of the primary challenges was the practical difficulty of returning assets that had been extensively fragmented, redistributed, or repurposed over the decades of communist rule. Most of the properties in question had been integrated into large collective farms or state enterprises, making them difficult to disentangle, roll back, and return to individual owners. Former agricultural lands had been developed for public use (extension of settlements, buildings of public institutions etc.).[16]

The legal process of proving ownership and determining rightful heirs was also seen (and proved to be) a procedure fraught with complexity, especially in the areas of the country which lie outside the Carpathians, with landowners' record books still in use instead of the much more modern land registers. Original owners or their descendants sometimes also lacked the necessary documentation, or ownership records had been lost or destroyed. Collectivization of land during the Soviet-type dictatorship was oftentimes implemented by factual dispossession, that is, without a title, or with a title that remained unregistered in the land registers, or the landowners' record books.

Additionally, legal disputes could arise between multiple claimants, leading to protracted litigation. Concerns were also raised by the political left about the social equity of restitution. Returning land to a relatively small group of former owners could exacerbate social inequalities, particularly in rural areas where wealth had been more evenly distributed during the pre-1989 period. This concern appeared to be particularly acute in cases where the original owners were wealthy landowners (sometimes belonging to ethnic minorities), and restitution would result in a concentration of land and resources in the hands of a few.

There was a fear that reversing collectivization could also lead to significant economic disruption. Next to the state-run farms, the collective farms, despite their inefficiency, formed the base of the agrarian economy. Breaking them up could undermine agricultural productivity, disrupt local economies, and lead to unemployment or underemployment among rural workers. As an alternative solution, it was also proposed that, instead of returning properties, a more realistic approach would be to provide financial compensation to former owners. This would avoid the disruption of current land use while still acknowledging and addressing

16 | According to Article 23 of Act No. 18/1991, the land within built-up areas that had been allocated by cooperatives to cooperative members or other eligible individuals for the construction of homes and household outbuildings remained in the ownership of the current holders and was registered as such, even if the land had originally been taken, by any means, from former owners. The former owners were to be compensated with an equivalent piece of land within the built-up area or, if that was not available, with land in the immediate vicinity outside the built-up area.

the injustices of the past. However, the state's capacity to provide compensation was limited by economic constraints.

The Constitutional Court of Romania has affirmed that the scope and extent of restitution or reparatory measures, as well as the decision to implement such measures, fall under the sovereign authority of the legislator. These decisions are made in alignment with the state's economic policy and the reparatory objectives of the law.[17] From the perspective of the temporal conflict of laws and the distinction between rights established under previous legislation and those arising under subsequent laws, the Constitutional Court has emphasised that a later law cannot alter the way a right was constituted under an earlier law, as this would result in retroactive application. Therefore, even if the manner in which the state's property rights were established under former laws does not comply with the current Constitution, those rights formed under the prior legal framework remain unaffected by the enactment of new legislation.[18] (This approach overlooks the fact that the 1945 land reform was in breach of the constitution in force then, as expropriations took place without prior fair compensation, which was still required by the Constitution of 1923 in force until 1948).

The post-communist transition in Romania in general was a complex process. The state adopted an evolutionary approach to the restitution of agricultural land in kind. This process began shortly after the collapse of the dictatorship and remains ongoing. All the difficulties mentioned above were significant, but the critical challenge was the conception and management of the restitution process itself. The complexity of designing a just and effective restitution framework, and the logistical challenge of returning land after decades of state or collective control posed enormous difficulties.

The key dilemmas surrounding the legal design of agricultural property restitution in Romania were multiple. Should the existing situation be maintained, or should reparations be enacted for victims of collectivization or nationalization? Should pecuniary compensation be provided, or should nationalised or collectivised land be returned in kind? Which waves of nationalization or collectivization should be addressed, particularly considering the varying impacts on different ethnic groups, such as those affected by the 1945 reform? Should efforts focus on achieving transitional justice, or should the measures prioritise creating conditions for economically efficient agricultural organization and address socio-economic issues? Should restitution be based on the political will of the elite, or should it involve a more inclusive process that consults a broader segment of the population? Should restitution be preferential, favouring certain groups, or should it aim to be equitable for all affected? Should land be returned in full or only partially? Should land be returned within its historic location, or should alternative

17 | Constitutional Court Decision No. 184/2004, Constitutional Court Decision No. 1285/2008.
18 | Constitutional Court Decision No. 73/1995, Constitutional Court Decision No. 136/1998.

locations be considered? Should the nationalised land of state agricultural enterprises be returned? Should there be restrictions on the sale of returned land assets to prevent further disparities or market disruptions?[19]

2. The Beginnings of Restitution: Act No. 18/1991

The restitution of agricultural and forested lands in Romania occurred gradually. Initially, the Land Act No. 18/1991,[20] in its original form effective from 1991 to 1997, permitted the return of up to 10 hectares of agricultural land and up to 1 hectare of forested land to former owners or their heirs.[21] In the early post-communist period, the government, composed of partial ideological successors to the Soviet-era regime, half-heartedly sought to create a hybrid system that bridged 'socialism' and 'capitalism' and lead to an attempt to balance socialist and capitalist principles, while avoiding the re-establishment of the pre-communist landowning class.[22] This ambiguity reflected the ideological struggle within the government, which aimed at maintaining control while gradually introducing limited market-based reforms.

The restitution process applied to agricultural land within the assets of agricultural production cooperatives (Article 8).[23] State agricultural enterprises, administering around 30% of arable land, were – initially – maintained in state property, or earmarked for privatization. Significant additional areas, particularly those allocated to agricultural research institutions, were also excluded from this phase of the restitution process.

Restitution was granted to cooperative members who had contributed land to the cooperative or whose land had been taken by the cooperative in any manner, as well as to their heirs according to applicable civil law. Restitution procedures were contingent upon the submission of a written request, and eligibility was restricted

19 | Atuahene 2010, 65–93. and Verdery 2003, 81–84.
20 | Retrieved November 5, 2024, from https://legislatie.just.ro/Public/DetaliiDocumentAfis/1459. For a general overview of the context, see Verdery 1994, 1071–1109.
21 | It was correctly stated that this act "was not a dedicated measure of restitution but contained – and still contains – the general norms of agricultural land use in Romania. By opting to append restitution norms to a law on general land use, the legislator left the impression that restitution was not the main reason for enacting this law (…): the approach of the legislator was mixed, on the one hand to privatise land in a way somewhat similar to the management-employee buyout (MEBO) model initially meant to set the stage for more efficient land use by encouraging the creation of modern agri-business companies, while on the other hand also achieving restitution as a measure of transitional justice, and as a measure of property redistribution". See Székely 2018, 71.
22 | In Transylvania, concerns about the so-called 'Hungarian threat' – empowering the Hungarian minority through land restitution – further influenced the restitution process, leading to limitations on the amount of land that could be returned.
23 | Terzea 2024, 65–67.

to Romanian citizens, as the 1991 Constitution [Article 41(2)][24] prohibited non-citizens from owning land. Requests had to be submitted at the mayor's office in the locality where the land in question was located [Article 9(3) of Act No. 18/1991], initially within a 30-day period, which was later extended several times, finally until 31 December 1998, after which no further requests were accepted. Subsequent restitution laws (Acts No. 169/1997[25] and 1/2000[26]) allowed for additional restitution but were interpreted to apply only to those who had already filed an initial request under Act No. 18/1991, even if for a smaller area of land. Moreover, the law defined eligible beneficiaries as those "who contributed land to the collective or from whom land was taken in any manner" [Article 8(2)],[27] therefore excluding individuals whose land was seized through indirect means, such as oftentimes unjust criminal convictions, through apparently legal deeds such as donations but in reality obtained through duress, which is difficult to prove, and also through pre-collectivization measures. As a result, the victims of expropriation during the 1945 land reform were not intended to be covered by the restitution provisions.[28]

As shown above, Act No. 18/1991 allowed expressly for land restitution not only to cooperative members but also to their heirs. It should be mentioned that besides restitution, an agrarian reform was also put into force, allowing several categories of persons to apply for agricultural property, such as cooperative members who had not contributed land to the agricultural production cooperatives or had contributed land with an area of less than 5,000 square metres, individuals who had not been cooperative members but had worked in any capacity as employees in the last three years before 1991 in agricultural cooperatives, persons who had been deported by the Soviet-type dictatorship, those who had lost their ability to work, either fully or partially, as a result of participating in the struggle for the victory of the December 1989 Revolution, and heirs of those who had died as a result of participating in the struggle for the victory of the December 1989 Revolution etc.

During the Soviet-type dictatorship, land transactions were prohibited, leading to significant challenges for heirs who often lacked documents to claim their inheritance. Many heirs had not formally accepted their inheritance within the – at the time – 6-month time limit, an obligation otherwise set forth in Romanian civil law under pain of forfeiture of the right to inherit, as agricultural land was not legally inheritable. To request restitution, heirs needed to present proof of succession or evidence of estate acceptance to the restitution commissions. If such evidence was unavailable, submitting a restitution request within the 6-month legal deadline was considered sufficient to establish acceptance. Restitution

24 | Art. 41(2) of the Romanian Constitution of 1991: "Private property is protected equally by law, regardless of who owns it. Foreign citizens and stateless persons cannot acquire ownership of land."
25 | Retrieved November 5, 2024, from https://legislatie.just.ro/Public/DetaliiDocumentAfis/11908.
26 | Retrieved November 5, 2024, from https://legislatie.just.ro/Public/DetaliiDocumentAfis/20557.
27 | Terzea 2024, 43–73.
28 | Székely 2018, 72–73.

commissions reviewed the evidence and issued a single property title to all heirs deemed to have accepted the inheritance. However, these commissions were only authorised to recognise the heirs, not to determine their share of the inheritance. This left the division of inheritance rights to courts or notaries, often leading to disputes among family members. To illustrate the complexities arising from the intersection of restitution and inheritance law, it is important to highlight a source of significant familial tension and litigation: the fact that commissions only recognised heirs who submitted restitution claims. Consequently, many individuals who had accepted their inheritance within the legal timeframe prior to the adoption of Act No. 18/1991 – such as those who emigrated during the dictatorship or believed they were covered by claims submitted by other heirs of the same original owner – found themselves excluded from consideration as heirs for restitution purposes. Conversely, individuals who failed to accept their inheritance within the standard six-month civil law period could later benefit from restitution if they submitted claims during the special acceptance period(s) established after Act No. 18/1991 came into effect. This situation created inconsistencies and uncertainties regarding heirship status and eligibility for property restitution.[29]

The minimum amount of land that could be returned was 0.5 hectares per eligible person, with a maximum of 10 hectares per family, measured in arable land equivalents.[30] The law defined a family as comprising spouses and their unmarried children, provided they managed the household together with their parents. The 10-hectare limit was applied to individuals who inherited land from multiple dispossessed owners. This also means that if a person regained property rights in multiple localities, the limit was imposed on the total amount of land, not on a per-locality basis.

As a result, while original owners (or their heirs) could reclaim up to 10 hectares from their former larger estates, the surplus land was returned to others or redistributed, effectively leading to lesser agrarian reform in and of itself.[31] By capping the amount of land returned and redistributing the surplus, the government disregarded historical land ownership patterns and created a fragmented landscape of ownership. This approach rendered the original pre-nationalization land register records irrelevant,[32] compromising the implementation of subsequent, more lenient restitution laws. The attempt to return land at its original, pre-nationalization location, as envisaged in the initial form of the law, became largely impracticable.

29 | Székely 2018, 78–79.
30 | Terzea 2024, 75.
31 | Act No. 18/1991 allowed for land grants to be allocated to individuals who, although they or their predecessors were not dispossessed of agricultural land during collectivisation, had worked as labourers in the cooperative or held other roles, such as agronomists.
32 | The situation was further complicated by the existence of different property registration systems in various regions of the country, a challenge that persists as efforts to unify and modernise these systems are still ongoing. These complications fall outside the scope of this study, but for a short overview, see Székely 2018, 67–69. and 74–75.

The decision to limit the amount of land eligible for restitution to a minimal quantity was intentionally designed to prevent the re-establishment of a rural middle class. At the same time, the imposition of a 100-hectare cap on land ownership per family, regardless of how the land was acquired, effectively encouraged members of the political elite and of the former rural nomenklatura to exploit their considerable resources to amass as much land as possible.[33]

Additionally, there was significant lobbying for access to higher-quality land. Individuals with political connections in this period were able to manipulate the restitution process, especially before the local and county restitution commissions, to their advantage. Those with connections or influence often secured the best land, rather than receiving their land on its pre-collectivization location. Those without connections were often left with less fertile or less valuable agricultural land. Historical accuracy of ownership was lost forever. The stated intent of the restitution process – to return land to its rightful owners – was undermined. The perception that land restitution was influenced by favouritism weakened public trust in the process. This erosion of trust had broader implications for the legitimacy of the first post-communist governments and their commitment to justice and reform, ultimately leading to their loss of power in 1996. The mismanagement of restitution and failure to meet public expectations was certainly a contributing factor to their loss of political power, though it was not the only one. This political shift resulted in a reform of the restitution legislation, but, by that time, the process had already been compromised.

The restitution process concluded with the issuance of a title of ownership, but the registration in the property records and the precise demarcation of boundaries led to numerous practical challenges and required a considerable amount of time.

Agricultural land restitution has been, and continues to be, an extrajudicial (administrative) procedure.[34] The authority to solve restitution claims resides with restitution commissions established at both local and county levels. A question that has often been overlooked is why lawmakers opted against a judicial process for restitution, one that would involve specialists with legal expertise. The choice of commissions may have been a pragmatic one, aimed at preventing the courts from being overwhelmed. Alternatively, another explanation is that keeping the process within the control of local officials or giving the impression of community-based rather than politically driven decision-making, was a deliberate strategy.[35]

The local commission is chaired by the mayor, with its membership comprising the deputy mayor, the secretary of the administrative-territorial unit (who also serves as the secretary of the commission), a specialist in topography, cadastre, and

33 | van Meurs 1999, 118.
34 | Terzea 2024, 406–510.
35 | Székely 2018, 77.

land organization from the local public authority, an agronomist or horticultural engineer from the same authority, a legal expert from the local public authority, the head of the forestry office or an authorised representative, and two to four elected representatives of the former dispossessed owners or their heirs.[36] As stated, this implied that a commission, predominantly composed of individuals often lacking formal legal training and at times subject to significant biases, was responsible for making restitution decisions. These decisions were based on limited evidence and were susceptible to various pressures exerted by their local communities.[37]

At the local level, communal, town, or municipal commissions were tasked with receiving and analysing applications for the reconstitution of property rights over agricultural and forest lands, excluding those submitted by communes, towns, or municipalities. These commissions verified that applications met the legal conditions set forth in relevant laws, gathering all necessary information and data for this purpose. They determined the size and location of land for which property rights were to be reconstituted or allocated, and when the original site was no longer available, they proposed alternative locations and secured written consent from the former owners or their heirs. Local commissions were also responsible for updating records with entitled individuals and entities following verification, receiving and forwarding appeals from interested parties to the county commission, and preparing final reports on those entitled to land, specifying the size and location based on delimitation and parcelling plans. They recorded titles of ownership issued under specific conditions and could propose the revocation of titles if owners renounced them for legal regularization. After validation by the county commission, local commissions were responsible for physically allocating land to entitled persons, completing possession records, and issuing ownership titles. They monitored ongoing legal cases involving the local commission, recommended procedural actions, and reported any misconduct by commission members to the competent authorities. Additionally, they identified illegally allocated lands and notified the mayor to initiate legal actions for annulment. Local commissions also performed any other duties as stipulated by law and regulations.

County commissions, including the one in Bucharest, had additional responsibilities. They organised training for local commissions, distributed necessary legal materials, maps, and plans, and ensured the smooth operation of these local bodies. They provided guidance and supervision to local commissions, verified the legality of proposals submitted by them, particularly concerning supporting documents, and assessed their pertinence, authenticity, and relevance. County commissions also resolved appeals against decisions made by local commissions, validated or invalidated their proposals, and issued property titles for validated requests. They handled applications for the reconstitution of property rights for communes,

36 | Terzea 2024, 108–113.
37 | Székely 2018, 76.

towns, and municipalities over forested lands and assessed proposals for revoking ownership titles, ensuring the legitimacy of such actions. Moreover, county commissions identified illegally allocated lands and notified the prefect to initiate legal actions for annulment. They continuously monitored the progress of legal cases in which they were involved and made decisions on the necessary actions. Finally, county commissions allocated and demarcated forest land to public entities such as communes, towns, and municipalities and managed applications involving multiple localities within the county, fulfilling all corresponding duties.

Against the decision of the county commission, the dissatisfied party could lodge a complaint with the district court within whose jurisdiction the land was located, within 30 days from the date they became aware of the decision issued by the county commission. The submission of the complaint suspended enforcement. The district court would set a hearing date with notice to the complainant and could request that the county commission designate one of its members to appear at the scheduled hearing to provide explanations. Judicial review was strictly limited to ensuring the correct application of the mandatory provisions of the law concerning the right to obtain a title of ownership, the extent of the land to which the complainant was entitled, and, if applicable, the accuracy of any reduction in this area according to the law. The complaint was initially adjudicated by a panel of two judges, which was reduced to one following reforms of the judiciary in 1997. The decision of the district court was subject to either a single or two appeals, as the case may be. The nature of the appeal, or appeals changed over time: initially an appeal before the county tribunal on point of fact, and of law, was admissible as well as a second appeal before the court of appeals, exclusively on points of law. Between 2005 and 2013 only an appeal on points of law could be exercised before the county tribunal, the decision in the first instance being definitive. Currently the first instance decision is only subject to a sole appeal on points of fact, and of law before the county tribunal.

Based on the court's ruling, the county commission that issued the title was required to modify, replace, or annul it, as appropriate.

3. Regarding the *restitutio in integrum* and its Impossibility: Acts No. 169/1997, No. 1/2000, No. 247/2005, and Subsequent Legal Instruments

The legislature revisited property restitution issues, particularly during the periods when opposition parties – reiterations of historical political parties from the era before the Soviet-type dictatorship – eventually gained power.

The second phase of agricultural land restitution was marked by the enactment of Act No. 169/1997, which served as an amendment to Act No. 18/1991. This

legislation – adopted in the context of a new parliamentary majority and government formed by the reestablished pre WWII political parties – raised the upper limit of restitution to 50 hectares per family for agricultural land and 30 hectares per family for forest land.[38] Families who had previously received 10 hectares under earlier restitution efforts were now eligible to request additional land, up to the new limit of 50 hectares, aligning with the cap established by the 1945 agricultural reform.

The law allowed religious structures to reclaim agricultural land in 1997, with specific limits depending on the type of institution, where parishes could claim up to 10 hectares, monasteries and sketes up to 50 hectares, patriarchal centres up to 200 hectares, and eparchial centres up to 100 hectares. The law required accurate boundary demarcation and the proper registration of land titles. Land had to be accurately measured and recognised by neighbouring landowners before property titles could be issued. The law outlined penalties for non-compliance, including imprisonment for 1 to 5 years for unauthorised land occupation or falsification of statements regarding land holdings. Additionally, administrative and legal procedures were established for resolving disputes and enforcing restitution rights. The implementation of Act No. 169/1997 was complicated by the fact that former state agricultural enterprises had been converted into commercial companies, and land controlled by these companies was not returned to its original owners. In parallel, Act No. 54/1998, which regulated land transactions, stipulated that a family could not acquire more than 200 hectares of land through legal transactions, extending the absolute limit of agricultural land ownership.

The third phase was marked by the adoption of the Act No. 1/2000, the 'Lupu' Act,[39] which again modified the upper limits: a maximum of 50 hectares could be returned for each nationalised/collectivised owner, so one family could inherit from different former owners a total exceeding 50 hectares.[40] Forested lands were returned to former owners or their heirs, up to a maximum of 10 hectares for every dispossessed owner. Thus, the 30-hectare limit established by the previous regulation could actually be exceeded if someone inherited forested land through multiple lines of descent. Certain forested lands with special designations or improvements were exempt from restitution on their original sites, and alternative lands had to be provided. Individuals and legal entities who had submitted claims under Act No. 18/1991, as amended by Act No. 169/1997, were entitled to have their property rights reconstituted on the original plots if they were available. If the original lands were unavailable, alternative lands from state reserves or the local public domain

38 | Terzea 2024, 75. and 378.

39 | Vasile Lupu was a prominent member of the Christian Democratic National Peasants' Party (PNȚCD) and a significant advocate for the rights of former landowners in Romania. He played a crucial role in drafting and promoting Act No. 1/2000, which is why the law is often referred to as 'Legea Lupu', the Lupu Act.

40 | Terzea 2024, 75–77.

were allocated. Certain forest lands with special designations or improvements were exempt from restitution on their original sites, and alternative lands had to be provided. Lands used by research institutes, universities, and other educational institutions remained under public ownership but could be transferred to these entities for educational or research purposes. This law introduced the possibility of compensation if restitution in kind was not feasible (where no land was available). Act No. 1/2000 included strict procedural requirements for verifying claims, including the need for clear documentation, and set up a framework for local and regional commissions to oversee the restitution process.

Article 26 of Act No. 1/2000 dealt with the reconstitution of property rights specifically for members of historical collective ownership associations over forest lands. These associations included commonages (especially in the Szeklerland region of Transylvania inhabited by a Hungarian majority[41]), '*obști de moșneni*' and '*obști de răzeși*' (traditional Romanian land ownership collectives, similar to commonages), and '*păduri grănicerești*' (forests historically attributed to the communities tasked with guarding the borders, set up in the 18th century). The law mandated the issuance of a single property title for the entire collective entity, rather than individual titles to each of the members. It preserved the collective nature of ownership by issuing a single title to the entire group. The total area returned to these collective owners could not exceed the area that was originally owned by them after the agrarian reform of 1921. This limitation served to prevent the expansion of claims beyond what was historically recognised. The share of each entitled member of the collective ownership entity had to be included.

The fourth phase of restitution was initiated by Act No. 247/2005,[42] which declared the principle of *restitutio in integrum* for forests (restoration to the original state, i.e. the one after the 1945 land reform).[43] For agricultural land, the 50 hectares cap per dispossessed owner remained in force. Restitution in the original locations could not be implemented in practice due to the application of previous restitution regulations. This amendment to Act No. 18/1991 facilitated the restitution of nationalised agricultural land, irrespective of whether it had been collectivised, but conditioned to the existence of a prior claim for restitution. While it permitted the submission of additional evidence for consideration during the restitution process, it did not initiate a new round of restitution claims.[44]

41 | This may explain why the Romanian state is currently attempting to reverse these restitutions, primarily arguing that the lands seized during the 1921 land reform are not subject to restitution, and that commonage forest lands were returned in their pre-1921 state. However, this approach fails to acknowledge that the expropriations carried out against communal ownership under the 1921 agrarian reform were, in practice, not fully executed, as the compensations were never paid. Consequently, the actual nationalisation only occurred during the Soviet-type dictatorship. Cases of this nature are being adjudicated in Romanian courts as of the manuscript's closure (August 2024).
42 | Retrieved November 5, 2024, from https://legislatie.just.ro/Public/DetaliiDocumentAfis/63447.
43 | Terzea, 662.
44 | Székely 2018, 80.

This legislation established the right of individuals whose agricultural land had been unlawfully confiscated – either by agricultural production cooperatives or by the state without a valid legal title – to regain possession of their property.[45] Specifically, this provision addressed the issue of land seized through means that did not comply with the legal provisions in force at the time of cooperativisation or nationalization. The phrase 'returned by the effect of law' or automatically reverted indicated that, because the land had been taken without a valid title, the ownership was never legally lost. Therefore, the restoration of ownership rights occurred automatically (*ope legis*), as long as the land had not been legally allocated to other individuals under valid legal provisions. In such cases, the property document ('title') issued by the prefect, based on the proposal of the local land restitution commission served as a confirmation of existing property rights rather than constituting new rights of ownership. The law allowed affected individuals to submit claims for property reconstitution at any time.

As stated above, according to these legal provisions, land that had been unlawfully taken by agricultural production cooperatives, without proper registration, or seized by the state without a valid title, was to be returned in kind to the original owners or their heirs, provided that it had not been legally allocated to other persons in accordance with land legislation. To clarify the term 'legally allocated to other persons', reference had to be made to Article II of Act No. 169/1997 and Article 2(2) of Act No. 1/2000, which acknowledged the validity of acts of reconstitution or constitution of property rights that had been issued 'in compliance with the provisions of the Act No. 18/1991.' Therefore, a systematic interpretation of the land legislation revealed that the phrase 'legally allocated to other persons' pertained only to compliance with the land laws, not with other legal provisions. As a result, land that had been allocated to other persons under regulations outside of Act No. 18/1991 (e.g., certificates of ownership issued to commercial companies under Act No. 15/1990) could still be returned to the original owners. The state was required to recognise their status as owners, and any further patrimonial relationships between the former owners and the commercial companies holding the land were to be regulated under common property law principles.

However, there was also a contrasting legal interpretation that the expression 'legally allocated to other persons' did not distinguish between natural or legal persons and that land referred to in Article 11(2^1) of Act No. 18/1991 could be considered legally allocated to other persons, whether or not the allocation complied with the land laws, as long as it was based on other normative acts such as Act No. 15/1990 and Government Decision No. 834/1991 during the privatization process. Therefore, this interpretation posited that such land could not be returned in kind to the former owners.

45 | Article 11(21) of Act No. 18/1991, as amended by Title IV, Article I, Point 2 of Act No. 247/2005.

For the application of Article 11(2[1]) of Act No. 18/1991, the interested person had to prove that, at the time of the enactment of this legislation, the land in question was in the possession of the former cooperative. If, at that time, the land was no longer in the cooperative's possession but had been transferred to a state entity, these provisions did not apply. Instead, the provisions of Article 37 of the same act would be applied, regarding the status of individuals as shareholders whose land had passed into state ownership due to special laws and was under the administration of state agricultural units. The Cluj-Napoca Court of Appeal supported this interpretation in Decision No. 1427/R/01.06.2006, which upheld the decision to annul the ownership titles issued to natural persons in favour of a commercial company. The court held that, under Article 20(2) of Act No. 15/1990, assets within the patrimony of a company reorganised from a former state enterprise became its rightful property, except for those acquired with another legal title. Therefore, the certificate of ownership (the evidence for the company's property) was only declarative and not constitutive of rights.[46]

Also, for the application of Article 11(2[1]) of Act No. 18/1991, the petitioner had to prove that the land was taken without a valid title. The burden of proof was on the petitioner. In this context, the Cluj County Tribunal in Decision No. 808/R/13.08.2008 rejected the petitioner's appeal, affirming that no evidence was provided to show that the land was taken without a valid title, even if it was seized through Decree No. 223/1974 without compensation.

The conclusion of the restitution process was envisioned by the Act 165/2013,[47] but the process is still ongoing in 2024. This piece of legislation was adopted as the effect of the Maria Athanasiu pilot judgment, issued by the European Court of Human Rights (ECtHR). This judgment addressed systemic issues in Romania's handling of property restitution and compensation claims, particularly concerning delays, inconsistent legal practices, and lack of effective remedies for claimants. As a result, the Romanian government was compelled to reform its restitution system to comply with the ECtHR's standards.

Article 32(1) of Act No. 165/2013 stated instituted a 90-day period during which individuals who considered themselves entitled to restitution could submit additional documents or evidence to complete their existing restitution claims. However, this period could be extended by another 60 days upon written request, effectively providing up to 150 days in total under certain circumstances.

The primary method of restitution according to Act No. 165/2013 was the return of properties in their original form, if possible. If returning the property was not possible, compensation was provided through a points system. These points represented a value in Romanian currency and could be used in public auctions or converted into cash. The law reformed local and national committees responsible

46 | For further details, see Terzea 2024, 69–73.

47 | Retrieved November 5, 2024, from https://legislatie.just.ro/Public/DetaliiDocument/169278.

for evaluating claims, managing available land, and overseeing the restitution process. Strict deadlines were set for local and national authorities to complete the restitution process. A belated rule stated that claims must be addressed based on the order in which they were registered, which promoted fairness and transparency in the process (Article 12). Additionally, it provided the former owners or their heirs with the right to refuse the proposed land, which could help in cases where the land offered was not suitable or equivalent to the original property.

Article 8(1) of Act No. 165/2013 stipulated that within 120 days from the date the law came into effect, local land commissions were required to centralise all unresolved restitution claims to determine the land area needed to complete the restitution process. This 120-day period was intended to be crucial for organizing and streamlining the restitution process, ensuring that all legitimate claims were accounted for and that the appropriate land allocations were made. However, this timeline proved impractical, leading to multiple extensions (the final one lasting until January 2018) before ultimately being repealed.

Act No. 165/2013 constituted a new regulatory framework aimed at speeding up the process of restitution of immovable property (land but also buildings). But, although the new regulatory framework was adopted to implement the case law of the ECtHR, due to the defective way in which it was drafted, it did not ensure the clarity and predictability of the rules established by this act, which would safeguard the guarantee and effectiveness of the rights conferred by it.

For these reasons, in view of the fact that some of the provisions of Act No. 165/2013 violated the rules of legislative technique established by Act No. 24/2000 (republished),[48] it was necessary to amend and supplement Act No. 165/2013, in order to correlate some of its rules with the other texts of the same law. In the same context, it was also necessary to amend and supplement Act No. 165/2013, in line with the other special normative acts on the restitution of immovable property, as well as in line with the provisions of the (European) Convention on Human Rights and Fundamental Freedoms and the case law of the ECtHR.[49] This further accentuated legislative instability.

4. Conclusions

As stated correctly, chief among the difficulties were 'the myriads of competing interests to be appeased: a token measure of transitional justice had to be enacted, without upsetting existing political, economic, and ethnic power structures while still achieving privatization and stimulation of the economy. Evidently, such an approach was destined to fail because of the competing goals set. The result is

48 | Retrieved November 5, 2024, from https://legislatie.just.ro/Public/DetaliiDocumentAfis/21698.
49 | Puie 2014, 116–134.

a nearly three-decade state of continued chaos, reform, and the lack of it, constant reprimands from national and international structures such as the European Court of Human Rights, rural poverty, property uncertainty, and a non-transparent process of restitution that is far from being finalised.'[50]

Although the process of restitution took more than thirty years and faced challenges such as delays, legal complications, and administrative disarray, a substantial portion of agricultural property was eventually returned to its original owners or their descendants. The process was highly suboptimal and could have been handled with far greater efficiency, equity, and impartiality.

After 1989, the land reform, which reconstituted farmers' property rights, brought about major structural changes, resulting in a large number of holdings – 4.299 million – with an average size of 3.45 hectares.[51] Precise statistical data on the restitution of agricultural land and forests is not available and requires further research beyond the scope of this article. However, an investigation conducted by the Romanian Ombudsman (the People's Advocate), revealed that by September 2021, the number of unresolved restitution claims exceeded half a million. The following figure highlights the significant backlog and administrative challenges faced in the restitution process.

Figure 2. Status of unresolved restitution requests (2021)[52]

Total unresolved restitution requests	Total unresolved requests for agricultural land	Total unresolved requests for forested land	Required agricultural land area (Ha)	Required forested land area (Ha)	Total number of requests validated for restitution through pecuniary compensation	Total number of unresolved compensation requests
603,402	467,212	150,636	993,380.23	612,726.75	52,522	19,118

The absence of a unified and all-encompassing framework for restitution from the beginning resulted in a disjointed approach. The lack of a definitive and uniform methodology caused divergent understandings of the legislation in many areas, leading to inconsistent and frequently capricious consequences. A multitude of individuals encountered a difficult bureaucratic system that was inadequately prepared to manage the large number of demands for reparation. The process was frequently hindered by insufficient resources and a lack of political determination to prioritise the settlement. The continual revisions to restitution legislation, combined with frequent fluctuations in government policies, resulted in an unstable

50 | Székely 2018, 81.
51 | România. Un secol de istorie, Date statistice, București, 2018, 208–209.
52 | Avocatul Poporului: Raport special privind respectarea dreptului de proprietate în procesul de reconstituire/constituire a dreptului de proprietate privată asupra terenurilor agricole și forestiere, București, 2022, 41. The report contains data collected at county level.

legal framework. Not only did this extend the duration of the process, but it also generated uncertainty and distrust among claimants, a significant number of whom believed that their claims were being unfairly delayed or disregarded.

The restitution process encountered substantial challenges with openness and corruption. The distribution of returned properties was not consistently carried out with transparency, resulting in allegations of fraud and corruption. Occasionally, properties were restored to persons with political connections. The process's inefficiencies resulted in substantial financial and societal costs. Extended litigation depleted the financial assets of both the claimants and the government, while the ambiguity surrounding property rights hindered economic progress in the impacted regions.

The restitution procedure ultimately recovered a significant amount of agricultural property, but it did so in a manner that was frequently inefficient, unfair, and burdened with unneeded complexities. By implementing improved strategic planning, robust legal frameworks, and dedication to openness and equity, the process could have been conducted in a manner that genuinely achieved more justice for individuals impacted by the past wrongs of property confiscation. Historical injustice, it seems, cannot be undone perfectly.

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Ana VLAHEK[1] – Matija DAMJAN[2]

The Denationalisation of Agricultural Land and Forests in Slovenia: Unfolding a Decades-Long Journey[3]

Abstract

The article analyses the denationalisation of agricultural land and forests in post-communist Slovenia, in the aftermath of its departure from socialist Yugoslavia in 1991. It begins with a historical overview of the relevant nationalisation measures adopted during and after the Second World War on the territory of Slovenia. It then analyses the prerequisites for, and the procedural rules on, the restitution of agricultural land and forests as set out in the Act on Denationalisation of 1991, and its further amendments, primarily shaped by decisions of the Constitutional Court. Special legislation on the return of property to agrarian communities and their members, as well as cooperatives, is also analysed. The article also focuses on the legal and procedural nuances that have shaped the denationalisation process in Slovenia, which after more than 30 years is finally in its closing stage.
Keywords: nationalisation, denationalisation, agricultural land, forests, Slovenia, return of nationalised property, compensation for nationalisation, restitution in kind

1. Introduction

The process of denationalisation was one of the central parts of Slovenia's transition from socialism to democracy, occurring in the aftermath of its departure

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from Yugoslavia in 1991. Running in parallel with the privatisation of enterprises, it reinstated private property rights, which are essential in any market economy. The denationalisation of agricultural land and forests, constituting the most significant part of the denationalised property, presents a unique and complex legal case study. This article analyses the legal and procedural nuances that shaped the denationalisation process in Slovenia, which remains incomplete even after three decades.

The article begins with a historical overview of the nationalisation measures adopted during and after the Second World War in socialist Yugoslavia, focusing on the territory of Slovenia. It then analyses the labyrinth of prerequisites and procedural rules for the restitution of agricultural land and forests. This provides crucial context about the legal and political environment that led to the nationalisation, and later necessitated the restitution of the nationalised property. Following the historical context, the article focuses on the restitution of agricultural land and forests[4] after the collapse of communism and Slovenia's subsequent independence. The discussion then turns to substantive legal issues about the prerequisites for denationalisation. This includes a detailed examination of the eligibility criteria, the object of restitution, and applicable limitations. Critical challenges such as the determination of Yugoslav citizenship, loyalty to the Yugoslav state, restitution received in other states, prerequisites for restitution in kind, etc., are explored, along with, *inter alia*, problems concerning the inheritance of agricultural land and acquisition of land by foreign citizens. Procedural aspects of the denationalisation proceedings are also thoroughly examined. The role of the judiciary and in particular the Constitutional Court of the Republic of Slovenia in the denationalisation process are also discussed.

The article concludes with a final reflection on the restitution of agricultural land and forests in Slovenia, and evaluates the success of the lengthy denationalisation process that is finally nearing completion.

2. Historical background

The Kingdom of Yugoslavia, to which Slovenia belonged before the Second World War, quickly collapsed after the Axis' invasion in 1941, and its territory was divided between the invading powers.[5] Upon the war's end, Slovenia's territory was liberated by the Yugoslav Partisan army, a communist-led resistance movement that gained recognition as the legitimate national liberation force by the Allies and, eventually, by the Yugoslav king in exile. The communist partisan leadership

4 | For a characterisation of the Slovenian and ex-Yugoslav agricultural property system, see Avsec 2021, 24-39, and Dudas 2022, 20-31.

5 | Prunk 2008, 145–147. For an overview of the rules in place in these parts during the war, see Vlahek & Podobnik, 294-297.

under Marshal Tito did little to disguise their aim to use the anti-occupation fight as a means for a revolutionary overhaul of society, in line with communist ideology following the Soviet model.[6] Even though the political organisation of the Partisan movement in Slovenia, the Liberation Front, was established in 1941 as a coalition of multiple left-leaning and liberal political groupings, it was soon entirely dominated by the Communist party and politically aligned with the Partisan movement elsewhere in Yugoslavia.[7] After the war, the victorious forces immediately began to impose an undemocratic socialist regime. The elections held in November 1945 were boycotted by the anti-communist parties, protesting the unequal conditions of participation, which resulted in a complete victory by the communist side. The transition to socialism was formalised on 29 November 1945 when the Constituent Assembly abolished the monarchy and proclaimed Yugoslavia a federal people's republic. Slovenia became one of the six people's republics comprising the federation. This communist regime remained in power in Yugoslavia for almost half a century.[8]

The nationalisation of private property was an essential political and legal tool of the communist ideology, aimed at collectivising all means of production, thereby breaking capitalist production relations and destroying the influence and power of the 'bourgeois apparatus.'[9] The process was legally highly complex, consisting of more than thirty laws and decrees adopted as a framework for implementing this revolutionary social and socio-economic project. The common characteristic of all the legal instruments used was the coercive transfer of private property to the state.[10] The first phase of nationalisation had already begun during the war. It consisted of confiscating enemies' and collaborators' property, including agricultural land and forests, which are the focus of this paper. A more widespread measure was the agrarian reform (Sl. *agrarna reforma*), executed in several stages after the war until 1953, that nationalised large tracts of agricultural land. The nationalisation of private enterprises and residential buildings was carried out in several stages from 1946 to 1965.

The nationalised land became 'general people's property' (*splošno ljudsko premoženje*), which was managed either by the government or by other public organisations granted this right by the government. The state became the owner of these assets as the representative of society as a whole, and in the interest of society.[11] The system was similar to state property (*državna lastnina*) with centralised administrative planning under the Soviet model.[12] However, the political

6 | Čepič 1995, 49.
7 | Prunk 2008, 154–165.
8 | Prunk 2008, 172–173.
9 | Prinčič 1994, 16.
10 | Breznik, Prijatelj & Sedonja 1992, 21-25.
11 | Prinčič 1994, 39.
12 | Gams 1987, 216–217.

split with the Soviet Union in 1948 led Yugoslavia to gradually diverge from the Soviet example and search for its own way of constructing a socialist society, based on workers' self-management rather than a planned economy.[13] The concept of general people's property was replaced by 'social property' (*družbena lastnina*), which was not owned by the state or any individual but belonged, in principle, to the whole society and each of its members.[14] Individual socially owned assets could be subject to specific rights: the right of use, the right of management, and the right of disposal. The holder of the right of use (*pravica uporabe*) was economically in a similar position to a proper owner, and the right could be transferred contractually. After the initial phase of distributing farmland among small farmers, the right to use agricultural land was typically granted to agricultural cooperatives and combined agricultural organisations.[15]

The Yugoslav socialist economic model had some success in modernising the country. It allowed self-managed enterprises to engage in market-based business activities, and in particular the Slovenian economy became increasingly export-oriented.[16] Nevertheless, the highly ideological system of socialist self-management (*samoupravljanje*) and associated labour (*združeno delo*) proved highly inefficient. By the end of the 1980s, Yugoslavia was in a deep economic and political crisis, eventually leading to the country's disintegration in 1991. Slovenia was the first part of Yugoslavia in which the communists stepped down and allowed free multi-party elections. The democratic opposition parties, which won the elections in April 1990 and formed the new Slovenian government, promised to abolish socialism, reintroduce the market economy, and restore private property to repair the injustices caused by nationalisation.[17] Slovenia declared independence from Yugoslavia in June 1991, and effectively achieved it by the autumn of the same year.

In November 1991, the Slovenian parliament passed an act on denationalisation (*denacionalizacija*), which gave high priority to the restitution of property to its former owners and their heirs in nature, rather than in the form of financial compensation.[18] This was followed by the adoption of laws concerning the privatisation of socially owned enterprises and the transformation of the remaining social property, which occurred in parallel with the denationalisation - and also served the purpose of transitioning towards a private-property-based legal and economic system. The implementation of denationalisation began in 1992. However, the entire process turned out to be extremely lengthy due to legal complications in determining the true heirs, their citizenship, compensation received in other

13 | Prunk 2008, 176–177.
14 | Finžgar 1955, 39–40.
15 | Avsec 2018, 108.
16 | Prunk 2008, 197.
17 | Udovč 2003, 3. Prunk 2008, 208–210.
18 | Prunk 2008, 246.

countries, etc., which was the subject of separate judicial and administrative proceedings. According to the Ministry of Justice, there were still 91 denationalisation cases pending on 31 December 2023, of which 62 were at the first instance and 29 cases pending appeal at the second instance or before the Administrative Court of the Republic of Slovenia or the Supreme Court of the Republic of Slovenia.[19]

3. Legal bases for the nationalisation of agricultural land and forests

3.1. Confiscation of enemies' and collaborators' property

The so-called 'patriotic phase' of nationalisation was initiated by the Partisan authorities on the liberated territories of Slovenia during the Second World War, and continued roughly until the end of 1946. The property of domestic and foreign 'anti-people elements' was confiscated in favour of the state, without compensation, as a punishment for collaboration with the occupier, as well as for certain acts labelled as anti-people or counter-revolutionary.[20] Most confiscations were based on the Decree of the AVNOJ[21] Presidency on the Transfer of Enemy Property to the State, on the State Administration of the Property of Absentees and the Confiscation of Property Forcibly Alienated by the Occupying Authorities,[22] adopted in November 1944 and confirmed by the Yugoslav post-war parliament in August 1946.[23]

On the date of the AVNOJ Decree's entry into force on 6 February 1945, all property of the German Reich and its citizens situated in the territory of Yugoslavia, as well as the property of all persons of German ethnicity, regardless of their nationality, became state property. Ethnic Germans who fought in the ranks of the National Liberation Army and the partisan detachments of Yugoslavia, or who were citizens of neutral countries and did not behave in a hostile manner during the occupation, were exempt from the confiscation.[24] Nevertheless, the measure was wide-reaching as it allowed the authorities to confiscate the property of any person with a German-sounding surname or with German as a mother tongue. The confiscation of German property was considered compensation for war damage caused by the German state to Yugoslavia. The procedure was carried out by confiscation commissions appointed in August 1945 at the federal, district,

19 | Ministrstvo za pravosodje 2023.
20 | Prinčič 1994, 30–32.
21 | The Anti-Fascist Council for the National Liberation of Yugoslavia (AVNOJ) was a deliberative and legislative body of the Partisan movement, and its presidency was the highest Yugoslav political body during the war.
22 | Official Gazette of the Democratic Federal Yugoslavia (OG DFY), 2/1945.
23 | Official Gazette of the Federal People's Republic of Yugoslavia (OG FPRY), 63/1946.
24 | Prinčič 1994, 32.

county and city levels. The commissions first registered German property and then issued confiscation decisions, valued it, and inventoried it. The property covered by these provisions included immovable property such as land, houses, agricultural estates, forests, industrial and commercial enterprises with all their installations and inventory, movable property such as furniture and valuables, and financial property such as securities and shares, industrial property rights, claims and other property rights.[25]

The AVNOJ Decree also confiscated all property of war criminals and their accomplices, irrespective of their nationality, as well as the property of any person condemned by a civil or military court to forfeit property to the state.[26] The court issued the confiscation decision in these cases, and the property was transferred to the state on the day the judgment became final. Additionally, under the Act on Confiscation of Property and the Execution of Confiscation,[27] the property was confiscated from any war criminal and enemy of the people who had been shot or killed, or had died or escaped at any time during the war. The local people's committees were tasked with drawing up lists of such persons and delivering them to the local people's courts, which then ordered confiscation regardless of whether the court possessed a judgment convicting them for war crimes or collaboration. This effectively allowed the authorities to confiscate the property of any political opponent who had gone missing during the war. For persons found guilty of war crimes or treason in a trial after the war, the courts could impose the confiscation of their property as one of the penalties prescribed by the Act on Punishment of Crimes and Offenses against Slovenian National Honour[28] and the federal Act on Crimes Against Nation and State.[29]

The AVNOJ Decree also transferred to the state the administration of all property of absentees who had been forcibly taken away by the enemy during the occupation or fled on their own. However, these persons were entitled to the restitution of their property upon their return to Yugoslavia, just like the persons whose property had been taken by the occupying forces or their collaborators during the war.[30]

All property belonging to the members of the former royal family of Yugoslavia, the Karađorđević dynasty, was confiscated in March 1947.[31]

25 | Prinčič 1994, 34.
26 | Prinčič 1994, 32.
27 | OG DFY, 59/1946.
28 | Official Gazette of the Slovenian National Liberation Council (OG SNLC) 7/1945.
29 | OG DFY, 44/1945.
30 | OG DFY, 36/1945.
31 | Order of the Presidency of the Presidium of the People's Assembly of the FPR Yugoslavia on the deprivation of citizenship and confiscation of all property of members of the Karađorđević family, OG FPRY, 64/1947.

3.2. Agrarian reform

In August 1945, the communist authorities launched the agrarian reform, based on the principle that land should belong to those who cultivate it. Therefore, farmland was to be taken from big landowners and distributed among small-scale farmers with little or no land of their own (the 'colonisation', or *kolonizacija*). The federal Agrarian Reform and Colonisation Act,[32] supplemented by the Act on Agrarian Reform and Colonisation in Slovenia,[33] expropriated the following land and forests:

1. large landed estates exceeding 45 ha altogether, or 25 to 30 ha of arable land if worked by leaseholders or hired labour
2. landed estates owned by banks, companies and other private legal entities
3. landed estates owned by churches, monasteries, or religious institutions exceeding 10 ha of arable land (or 30 ha for institutions of greater importance or historical value) and entire estates owned by any inheritance trusts
4. surplus of land worked by individual farmers with their families exceeding the land maximum of 20 to 35 ha of arable land and 10 to 25 ha of forest (and not more than 45 ha of land altogether)
5. surplus of more than three ha of arable land or five ha of forest owned by non-farmers and worked by leaseholders or hired labour
6. landed estates that, for whatever reason, were left without an owner and a legal successor during the war.

Large estates and those owned by commercial or religious institutions were expropriated without compensation. Apart from the land itself, expropriation encompassed the related buildings and installations as well as all agricultural and forestry inventories. However, individual farmers and non-farmer landowners, whose surplus of land above the maximum was expropriated, could retain the farm equipment needed to cultivate the remaining land, and were entitled to compensation for the expropriated land. Compensation was to be paid at the equivalent of one year's yield per hectare. However, this compensation was never really paid.34 Instead, the state took over the existing mortgages and other financial encumbrances on the expropriated land.35

The expropriated forests in Slovenia became the general people's property under the General Act on the Treatment of Expropriated and Confiscated Forest Estates, and were managed by the Ministry of Forestry.[36] The expropriated farmland, however, was transferred to the Land Fund of the Agrarian Reform and

32 | OG DFY, 64/1945.
33 | OG SNLC, 62/1945.
34 | Finžgar 1992, 11–12. Breznik, Prijatelj & Sedonja 1992, 10.
35 | Official Gazette of the FLRY (OG FLRY), 106/1947.
36 | Čepič 1995, 41.

Colonisation.[37] The Land Fund also took over the former German-owned arable land confiscated under the AVNOJ Decree, and the arable land of national enemies and other persons confiscated by judicial decisions. Additionally, the state could dedicate additional land from its possession to the Land Fund for allotment to impoverished farmers.

The Land Fund was used to allocate arable land to farmers owning little or no agricultural land where they lived, and for the settlement of colonists in other places designated for this purpose by the Minister of Agriculture. Priority in the allocation of land was given to landless and land-poor farmers who had fought in the partisan units or the Yugoslav army, as well as to war-disabled and the families and orphans of fallen partisans, and the victims and families of the victims of the fascist reign of terror. The Ministry of Agriculture implemented agrarian reform in Slovenia through district and regional commissions. The latter issued decisions both on expropriation and on the allocation of land. The land allocated to individuals passed into their private ownership and was immediately registered in the land registry. The remaining land in the Land Fund remained general people's property.[38]

Altogether, around 25% of all agricultural land and 18% of forests were nationalised in 1946.[39] In Slovenia, the Land Fund consisted of approx. 266,500 ha of land (approx. 96,000 ha of forests and 170,000 ha of agricultural land)[40]: 43% had been confiscated from foreign landowners and the collaborators of the occupier, 18% had been taken from the Church, 16% from domestic landowners, and 11.7% from banks and companies. Arable land was partially distributed among farmers who owned little or no land in Slovenia, numbering around 2000. The state kept 54% of the nationalised arable land to strengthen the state economy with the so-called state estates. After the agrarian reform, 83% of the farmland in Slovenia was owned by the farmers, and the rest was the general people's property, which was managed by the state and the cooperatives. However, two further nationalisation programs in the following years lowered the maximum amount of land that could be privately owned.[41]

3.3. Estates cultivated by colonists and vignerons

In addition to the general act on agrarian reform, a special act was adopted in Slovenia in 1945 that intervened in specific agrarian relations referred to as colonate (*kolonat*) and vigneronship (*viničarstvo*), two forms of semi-feudal

37 | Tractors and other large agricultural equipment were transferred to agricultural machinery stations.
38 | See Finžgar 1992, 11–12.
39 | Udovč 2003, 2.
40 | See CC Decision U-I-121/97.
41 | Prunk 2008, 171–172.

relationship between the landowner and the cultivator of the land. The colonate was a type of tenancy relationship, while the vigneronship was a labour relationship where the vignerons cultivated another person's vineyard in exchange for accommodation and payment in produce or money. Most vineyard owners, many foreign,[42] could not be expropriated based on the general agrarian reform as a large part of the vineyards did not reach the land maximum of 5 ha permitted to non-farmer landowners. Hence, special legislation was adopted to deal with these agricultural relations.

Under the Act on the Expropriation of Estates Cultivated by Colonates and Vignerons,[43] non-farmer landowners whose land was cultivated by colonates and vignerons were expropriated in total. The land was transferred to the Agrarian Reform Land Fund, together with any buildings, installations and inventory. The district and regional commissions for agrarian reform issued expropriation decisions. Compensation was only provided to small landowners who had acquired the property through savings. However, the expropriation only affected non-farmers whose vineyards were cultivated by colonates and vignerons, whereas land cultivated by hired labour was not expropriated. From the Land Fund, the expropriated land was typically allocated to the colonates and vignerons who had previously cultivated it.[44]

In 1953, all remaining farmland subject to vigneronships and colonates (belonging to farmers) was expropriated, against compensation, under the Act on the Abolition of Vigneronship and Similar Relationships.[45] The land, including buildings, became general people's property and was transferred to the Agricultural Land Fund, from which it could then be allocated to an agricultural organisation for permanent use.[46]

3.4. Abolition of agrarian communities

Before the Second World War, a significant extent of agricultural land and forests in Slovenia did not belong to individual owners but was owned by various agrarian communities (*agrarne skupnosti*), i.e. villages, townships, neighbourhoods, sub-communes, grazing communities, etc., typically composed of households in a particular area. The land was devoted to common use by the agrarian

42 | A large part of the vineyards cultivated by the colonates in Istria and the Goriška Brda region belonged to owners of Italian origin. In contrast, almost half of the vineyards in the Maribor area and around Ormož and Slovenska Bistrica belonged to German owners. Similarly, Germans owned more than half of the quality vineyards in the Gornja Radgona area and the eastern part of Haloze. The owners of these vineyards were not only ethnic Germans with pre-war Yugoslav citizenship but also Austrian or German citizens from Radgona, Cmurek, Lipnica and Graz. Čepič 1995, 90.
43 | OG SNLC, 62/1945.
44 | Finžgar 1992, 12. Čepič 1995, 89-90.
45 | Official Gazette of the People's Republic of Slovenia (OG PRS), 22/1953.
46 | Finžgar 1992, 14.

community's members, e.g. as common grazing grounds or forests for firewood. Under the Agrarian Communities Act[47] of 1947, the immovable and movable property of the former agrarian communities was declared general people's property. The management of these assets was then transferred to the municipalities in whose territories they were located. The municipalities subsequently allocated the land to socially owned agricultural or forestry organisations or agricultural cooperatives, whereas common grazing grounds were managed by municipal agricultural land communities.[48]

3.5. Collectivisation and reduced land maximum

The post-war agrarian reform fragmented land holdings, resulting in reduced productivity of agriculture. To expand the socialist agricultural sector and increase food production, the government encouraged the creation of 'agricultural workers' cooperatives' (*kmečke delovne zadruge*) modelled on the Soviet kolkhozes. According to the Basic Act on Agricultural Cooperatives,[49] farmers were supposed to invest their land and other resources in the cooperative for common cultivation, except for the housing needed for their households. Since many farmers were unwilling to give away most of their land, often only recently allocated to them under the agrarian reform, the authorities launched a political campaign to mass integrate farmers into agricultural workers' cooperatives. Despite the political pressure, which was at odds with the principle of voluntary participation in cooperatives, at the peak of the campaign only 5.3% of farmers were members of agricultural workers' cooperatives, and the land invested by members in these cooperatives did not exceed 2.6% of the land area in Slovenia.[50] After the conflict between the Soviet Union and Yugoslavia, the collectivisation policy was gradually phased out. In 1953, the federal government adopted the Decree on Property Relations and the Reorganisation of Peasant Workers' Cooperatives,[51] which made it possible to dissolve or reorganise the agricultural workers' cooperatives. The land and other assets invested were returned to the farmers who left the cooperatives.

At the same time, however, a single land maximum of 10 ha of arable land per household was introduced. It was considered that a farming family alone, without foreign labour, could cultivate a farm of this size. Based on the Act on the Agricultural Land Fund of the General People's Property and the Allocation of Land to Agricultural Organisations,[52] the arable farmland above the 10-ha threshold was transferred to the Agricultural Land Fund from which it could be allocated to (socially owned)

47 | OG PRS, 52/1947.
48 | Finžgar 1992, 12.
49 | OG FPRY, 49/1949.
50 | Avsec 2018, 110.
51 | OG FLRY, No 14/1953.
52 | OG FLRY, 22/1953.

agricultural organisations for permanent use. The previous owners were entitled to compensation for the land taken, payable over twenty years, without interest, in annual instalments and bearer bonds.[53] Under the Basic Act on the Exploitation of Agricultural Land,[54] annexations of agricultural land for the benefit of the social production sector continued on a large scale in Slovenia until 1967.[55]

In 1974, the 10-ha maximum of arable land for farmers was set in Article 97 of the Constitution of the Socialist Republic of Slovenia,[56] which remained in force until 1991, when it was abolished with the constitutional Amendment XCIX.[57] The 1979 Agricultural Land Act further reduced the land maximum for non-farmers[58] to a threshold of one ha of agricultural and forest land combined in the plains, and three ha in the mountains and hills per non-farmers family. In 1992, the Constitutional Court annulled the statutory provisions on the land maximum as contrary to the new Constitution of the Republic of Slovenia.[59] In the Constitutional Court's view, statutory provisions that generally restrict or exclude the right of ownership of agricultural land do not conform with the constitutional provisions guaranteeing the right to personal property and inheritance. The constitution only allows the legislation to determine how property may be acquired and enjoyed in such a way as to ensure its economic, social and ecological function, or to allow the right to property to be taken or restricted only for the public benefit under conditions laid down by law.[60]

4. Denationalisation

4.1. Denationalisation Act of 1991

Almost immediately after the first multi-party elections in 1990, Slovenia started addressing the injustices done to private owners under the previous regime by restituting their property. Slovenia was among the first former socialist countries to enact denationalisation (*denacionalizacija*) in a single, complex piece of legislation.[61] The Denationalisation Act (*Zakon o denacionalizaciji*, or 'ZDen'), adopted by the National Assembly of Slovenia on 20 November 1991, laid down both the substantive and procedural rules for the restitution of property. The act entered into force already on 7 December 1991, i.e. before the new Constitution of

53 | Finžgar 1992, 14.
54 | OG FPRY, 43/1959.
55 | Breznik, Prijatelj & Sedonja 1992, 240.
56 | Official Gazette of the Socialist Republic of Slovenia (OG SRS), 6/1974.
57 | Official Gazette of the Republic of Slovenia (OG RS), 7/1991.
58 | OG SRS, 1/1979.
59 | OG RS, 33/91-I.
60 | Constitutional Court (CC) Decision U-I-122/91.
61 | Breznik, Prijatelj & Sedonja 1992, 10.

the Republic of Slovenia was adopted on 23 December 1991.[62] The ZDen covered a nationwide return into private ownership of mass property nationalised or otherwise expropriated in Slovenia in the former regime. It did not annul the legislative acts or the individual administrative decisions that were the basis for the expropriation. The denationalisation was conceived as an economic and political measure that set *a novo* and *ex-nunc* certain ownership status.[63] The Constitutional Court described it in one of its decisions as "a result of political consensus to rectify injustices caused by state interference in property rights, which the new constitution classifies as human rights and fundamental freedoms".[64]

As of 2024, the ZDen is still in force and has been changed fourteen times since 1991. The Constitutional Court issued nine decisions annulling several of ZDen's provisions as unconstitutional.[65] The latest of these CC interventions occurred in 2023, showing that even after 30 years, the text of the ZDen is still under scrutiny and that denationalisation in Slovenia is still incomplete. However, as the deadline for filing denationalisation requests expired in 1993 and the vast majority of the denationalisation cases have been solved, the past tense is used in this article when discussing the denationalisation process -although a few cases remain pending before the competent authorities.

4.2. Denationalisation beneficiaries

One of the main features of the Slovenian denationalisation is that it did not take effect *ex-lege* and was not performed *ex-offo,* but based on an individual request filed in the prescribed period by a beneficiary or their successor. The ZDen defined the beneficiaries of denationalisation by referring to a list of possible legislative bases upon which they had been deprived of their property. The beneficiary's citizenship or other personal status and any compensation received were also relevant factors for determining the entitlement to denationalisation.

4.2.1. Legal bases for the nationalisation

The ZDen lists 29 categories of acts based on which property was nationalised or confiscated. These acts were adopted from 1945 to 1970 (most of them up to 1958 when the regulation of nationalisation of private property ended, and was followed mainly by the adoption of the rules on land rounding-off).[66] They are analysed *supra* in Chapter 3 of this paper. It should be noted that a person whose property

62 | OG RS 33/1991.
63 | Breznik, Prijatelj & Sedonja 1992, 9, 12.
64 | CC Decision U-I-107/96.
65 | CC Decisions U-I-10/92-19, U-I-25/92-27, U-I-72/93, U-I-81/94, U-I-23/93, U-I-326/98, U-I-138/99-41, U-I-58/04-7 and U-I-473/22-11.
66 | Breznik, Prijatelj & Sedonja 1992, 20.

was nationalised was generally a denationalisation beneficiary even if they had received compensation (in cash or in-kind) when their property was nationalised. Such compensation was only to be considered in denationalisation decisions if it exceeded 30 per cent of the value of the nationalised property.[67]

According to ZDen, the beneficiaries were also persons whose property was nationalised without compensation through a measure of a state authority issued without a legal basis.[68] Nationalisation was considered non-compensatory if any nationalisation compensation did not exceed 30 per cent of the value of the nationalised property. The practice had faced a complex evidentiary challenge in determining whether compensation had been received and exceeded the 30-percent threshold, which was only sometimes evident from the nationalisation decisions. A person was also considered eligible for denationalisation if their possessions or property (in practice mostly movable property) had been transferred into state ownership based on a contract concluded due to a threat, coercion, or deceit by a state authority or its representative.[69]

The ZDen did not apply for returning property confiscated as a criminal sanction. Such property could be addressed through the reopening of the criminal proceedings. The ZDen also excluded from eligibility for denationalisation persons whose property was confiscated for acting against official duty[70] or for war profiteering, as well as members of the former royal family.

4.2.2. Citizenship and other personal status

Under the original text of the ZDen, only natural persons could be eligible as beneficiaries. The only exception applied to religious communities and their institutions that operated in the territory of the Republic of Slovenia when the ZDen entered into force. However, the Constitutional Court ruled in 1993 that the provisions of the ZDen limiting the rights to natural persons were discriminatory and that legal persons, too, should be included.[71] A legal person that filed a denationalisation request by 13 May 1995 was eligible for denationalisation if it had its registered office in the territory of the Republic of Slovenia at the time its property

67 | See Breznik, Prijatelj & Sedonja 1992, 203; Polič I 1998, 137-147; Polič II 1998, 8-12.
68 | See Breznik, Prijatelj & Sedonja 1992, 23-26.
69 | Communist party representatives, military and intelligence service personnel, state companies' representatives and other persons giving the appearance of exercising the powers of a state authority responsible for nationalisation were meant to be covered by this term. Denationalisation was not available if the taken property ended up with these persons and was not in state ownership. The affected individuals could use the substantive and procedural instruments of regular civil law. See Breznik, Prijatelj & Sedonja 1992, 27, 36-37.
70 | OG DFY, 26/45. This covers cases where the persons in charge of the nationalisation retained the nationalised property for themselves or their relatives. Breznik, Prijatelj & Sedonja 1992, 221.
71 | CC Decision U-I-25/92-27.

was nationalised, and if the legal person or its legal successor was operating in the territory of the Republic of Slovenia at the moment the ZDen entered into force.[72]

As a rule, only individuals who had held Yugoslav citizenship at the time of the nationalisation could be entitled to the restitution of their property under the ZDen, if their citizenship was recognised after 9 May 1945 by law[73] or an international treaty.[74] Some exceptions were provided to take into account that during and after the Second World War, different parts of today's territory of Slovenia belonged to other countries and regimes.[75]

If the applicant could not show legal standing for any of the reasons connected to the required citizenship, denationalisation proceedings could not start.[76] The competent internal affairs authorities determined the citizenship status outside denationalisation proceedings. If an individual was not eligible for denationalisation due to the lack of Yugoslav citizenship, the beneficiary was their spouse or first-category intestate heir if Yugoslav citizenship was granted to them by law or international treaty.[77]

Amendments to the Citizenship Act adopted in 1948 took away Yugoslav citizenship from any persons of German ethnicity who had found themselves outside the territory of Yugoslavia on 28 August 1945 if they had been disloyal to Yugoslavia during the war. The ZDen stated that such persons were beneficiaries only if they had been interned for religious or other reasons or fought on the side of the anti-fascist coalition, thus showing their loyalty to Yugoslavia. (Dis)loyalty[78] was established immediately after the war based on checks by the operational services. Nevertheless, the Constitutional Court held in 1997 that the potential denationalisation beneficiaries could still challenge the presumption of their disloyalty in proceedings for determining citizenship preceding the denationalisation

72 | The legal succession of legal persons was to be assessed under Slovenian law.
73 | The post-war Yugoslav Act on Citizenship of 1945, OG DFY, 64/45.
74 | If a person's property was nationalised after their death that occurred before their DFY citizenship could be recognised, it was considered under the ZDen that this property was nationalised to their legal successors. However, the dead person was the addressee of the nationalisation act if these legal successors were recognised as Yugoslav citizens after 9 May 1945 by law or international treaty.
75 | Denationalisation beneficiaries were also individuals who, at the time their property was nationalised, were not Yugoslav citizens but had permanent residency in the territory of the present Republic of Slovenia (residents in zone B of the Free Territory of Trieste) and their Yugoslav citizenship was recognised by law or international treaty after 15 September 1947 (i.e. after the peace treaty between Yugoslavia and Italy that established the Free Territory of Trieste and its zone B under the Yugoslav sovereignty). See Breznik, Prijatelj & Sedonja 1992, 44-46.
76 | For case law analysis, see Polič I 1998, 274-279; Polič II 1998, 126-176.
77 | See Breznik, Prijatelj & Sedonja 1992, 51-52; CC Decision U-I-23/93.
78 | In practice, disloyalty was perceived as opting for the German Reich, membership in the Kulturbund or other German organisations that propagated Nazism, cooperation or sympathising with the occupier, and the like. According to Art. 63 of the ZDen, the determination of the loyalty to the people and the state could not be determined in the proceedings for the determination of citizenship, which was the prerequisite for the denationalisation proceedings.

proceedings.[79] The Constitutional Court also ruled that Yugoslav citizenship and loyalty requirements were not unconstitutional, rejecting the claims that the collective deprivation of citizenship was based solely on racial or ethnic grounds. The court stressed that the Slovenian legislature had a justified reason for differentiation according to citizenship as the property was confiscated during a period when Yugoslavia was a devastated country after the end of the war, and its citizens suffered extensive war damage. Foreign citizens could be compensated for the confiscated property based on treaties with numerous foreign countries. Hence, the ZDen did not contradict the general legal principles recognised by civilised nations at that time, which were victims of the Nazi regime during the Second World War.

According to the ZDen, individuals who had the right to compensation for nationalised property from a foreign country were not beneficiaries under the ZDen. That is because, after the Second World War, the SFRY concluded several peace treaties with other countries (Italy, Hungary, Austria, Switzerland, Turkey, and the USA), under which foreign states were obligated to compensate their citizens for confiscated property in Yugoslavia. Whether a person enjoyed such right abroad was determined by the competent authority *ex offo* based on concluded peace treaties and international agreements. In several denationalisation cases, the Slovenian authorities rejected nationalisation requests after establishing that the applicants had already received or had the right to receive compensation from a foreign country.[80]

The 1998 amendment to the ZDen added that if an individual held Yugoslav citizenship on 9 May 1945, a (now) foreign citizen was eligible for denationalisation based on reciprocity if such right was also recognised to Slovenian citizens in the country of the applicant's citizenship. Citizenship of Slovenia when the denationalisation request was filed was not a prerequisite under the ZDen. However, foreign citizens could generally not become owners of immovables in Slovenia.[81] The 1998 amendment to the ZDen also provided that individuals who had acquired property from the occupying forces or their organisations during the Second World War were not eligible for denationalisation, but the Constitutional Court repealed this rule the same year.[82]

79 | CC Decision U-I-23/93. It ensues from the decision that, in practice, the competent administrative authorities and the Supreme Court did not enable the applicant to prove loyalty, which the Constitutional Court found unconstitutional.

80 | Several disputes covered the question of whether social assistance granted by Austria post-war to its citizens whose property was nationalised in Yugoslavia also counted as compensation from the third state in cases where the amount of the social assistance was based on the value of the property taken. See, e.g., CC Decisions Up-282/15 and Up-601/15-15.

81 | Cultural or natural heritage could, according to the ZDen, be returned to foreigners irrespective of the general rules limiting foreign citizens' acquisition of immovable property. For further details, see Vlahek 2008; Kramberger Škerl & Vlahek 2020, 78-79; Vlahek 2008.

82 | CC Decision U-I-326/98.

4.2.3. Special limitations regarding agricultural land and forests

The issue of restitution of agricultural land and forests in kind was one of the most contentious issues in the drafting of the ZDen. It must be emphasised that the ZDen did not set any thresholds above which agricultural land and forests would not be returned. Considering Constitutional Amendment XCIX, which abolished provisions of the previous constitution that set the land maximum on agricultural land and forests, the legislature decided that this maximum did not apply to the denationalisation of forests and agricultural land. By adopting the ZDen, whose purpose was to rectify injustices of the post-war period, the legislature regulated the return of agricultural land and forests without any limitations as to the size of such land.[83] As explained *infra*, the Slovenian legislature adopted in 1995 an Act on Temporary, Partial Suspension of Property Restitution[84] that set out a three-year suspension of the return of agricultural land and forest, *inter alia*, when the return of more than 200 ha of agricultural land and forests was required for the sole beneficiary.[85] This provision aimed to limit the return of the estates to the Church and other large estate owners, save the agrarian communities. The process for the adoption of the act began with the proposal of the Act on the Temporary, Partial Suspension of Property Restitution to Churches and Other Religious Communities or Orders, which proposed suspending the provision of the ZDen that gave the religious communities the right to denationalisation, until the adoption of the Act on Religious Communities. It was claimed that there was a particular general interest in preserving natural wealth as a public good. The denationalisation process of forests was expected to alter the ownership structure of forests significantly, as after the denationalisation, Slovenia would have only 20% of public forests, placing it at the bottom of the list of European countries. In 1996, the Constitutional Court repealed the 200 ha maximum set out in the Act on Temporary, Partial Suspension of Property Restitution. In 1997, however, draft amendments to the ZDen anticipated the introduction of the denationalisation of land maximum to prohibit the return of agricultural land and forests to their former owners above 100 ha of comparable agricultural land. When deciding on the constitutionality of the referendum questions drafted for the pre-legislative referendum regarding the proposed ZDen amendments, the CC found the maximum unconstitutional.[86] The CC analysis showed that there was no reason to anticipate that without the maximum, there would not be enough land to distribute among denationalisation beneficiaries and that no compelling public need for agricultural land and forests that had been nationalised to remain in state ownership was demonstrated. By referring to its previous decision, the CC

83 | See CC Decision U-I-140/94.
84 | OG RS, 74/95.
85 | See CC Decision U-I-107/96.
86 | CC Decision U-I-121/97.

reiterated that the general interest in preserving forests as a national economy could not be implemented at the expense of denationalisation beneficiaries but could be achieved through other measures and methods.

A new article inserted into the ZDen in September 1998 excluded feudal-origin property from denationalisation, except where the beneficiaries of denationalisation were churches and other religious communities. The ZDen defined feudal-origin property as property granted by a monarch if such property was subsequently not the subject of a legal transaction against consideration.[87] The CC explained in 1997, when assessing the constitutionality of the questions drafted for the pre-legislative referendum on the ZDen amendments, that the initial text of the ZDen of 1991, which did not touch upon denationalisation of feudal-origin estates, had been drafted before the new legal order of the Republic of Slovenia was established, and that the return of feudal-origin property, by its nature, would not be compatible with the concept of a republic and the concept of a democratic state. In the opinion of the CC, the non-recognition of the status of denationalisation beneficiaries to previous owners of feudal estates was indispensable in a democratic society, and was also proportionate to the value of the legislative objective.[88] The proposed text of the ZDen amendments did not exclude religious communities' property from the prohibition of the return of feudal-origin property. Still, by referring to its previous decisions, the CC held that considering their role as public benefit institutions and their position in the Slovenian legal system, it would not be constitutionally permissible to equate their property with feudal estates.[89]

4.3. Forms of denationalisation

4.3.1. The basic general rules on forms of denationalisation

As the guiding principle of denationalisation, the Slovenian legislature chose restitution in kind for all types of property. This restitution in kind went further than in many other countries. Accordingly, the ZDen defined denationalisation as a return of the nationalised property in kind or, if the latter was not possible, as payment of compensation. The forms of restituting the property were regulated in detail in Chapter III of the ZDen. The general rules of property law and tort law applied to matters of denationalisation only if they were not contrary to the rules of the ZDen. Denationalisation was subject to particular regulations and principles that took into account the unique circumstances, the needs of the society, and the temporal distance of denationalisation from nationalisation.[90]

87 | See CC Decision U-I-121/97, where the CC held that notions such as "feudal-origin property" have to be explained by the legislator if applied in the ZDen or other legislation.
88 | CC Decision U-I-121/97.
89 | See CC Decisions U-I-107/96 and U-I-121/97.
90 | Breznik, Prijatelj & Sedonja 1992, 16.

The primary form of denationalisation was the return of the particular property that was nationalised. Depending on the type of property, its condition, purpose and function, as well as third parties' rights, the nationalised property was returned:

a) by returning it into ownership and possession of the beneficiary or
b) by restituting ownership rights on it to the beneficiary but leaving it (temporarily) in the obligor's possession or
c) by giving the beneficiary ownership shares.[91]

The difference between the three modalities of denationalisation was whether the possession of the item in question was also returned besides ownership rights. Whatever the form of denationalisation in kind, the beneficiary acquired ownership directly on the basis of the administrative decision and with an *ex-nunc* effect (from the moment the decision was final).[92] The ZDen laid down special rules on the return of immovable property, and further special rules on the return of farmland and forests are analysed in the next subchapters.

If it was impossible to return the property in its entirety, it could be returned partially, and compensation was paid for the difference in value. Property could not be returned if (other) natural or legal persons had become its rightful owners.[93] The only exception to this rule applied in cases where the property was nationalised based on speculative or fictitious legal transactions. Property of legal entities in mixed ownership, i.e. in different types of ownership (private ownership, social ownership, cooperative ownership, ownership by foreign persons),[94] could only be returned in the form of ownership shares in the legal entity up to the extent of the share of social property.

The denationalisation did not re-establish the property's condition at the moment of the nationalisation (the property value could have increased or decreased since then) or the condition it would have been in if the nationalisation had not occurred. Instead, compensation for the decrease in value was provided.

Compensation claims for the inability to use or manage assets due to nationalisation and up to the entry into force of the ZDen were expressly excluded. The Supreme Court and the Constitutional Court interpreted this provision as entitling the beneficiaries to compensation for the time between the entry into force of the ZDen and the issuing of the final denationalisation decision.[95] Another important decision for the beneficiaries was the Supreme Court's opinion in principle that default interest on compensation began to accrue when the beneficiary first filed an out-of-court request for compensation with the obligor rather than from the

91 | Cf. Breznik, Prijatelj & Sedonja 1992, 15.
92 | Breznik, Prijatelj & Sedonja 1992, 66–67.
93 | See case law analysis in Polič I 1998, 199-204.
94 | Such a regime was available under the novel company law legislation of the 1990s.
95 | Cf. Breznik, Prijatelj & Sedonja 1992, 203.

date of issuing the final compensation judgment. This triggered a tsunami of compensation claims, and the favourable interest rates reduced the beneficiaries' motivation to have their compensation paid out quickly.[96]

If the nationalised property could not be returned, the beneficiary was entitled to compensation in one of the following forms: (i) substitute property, (ii) securities (stocks in ownership of the Republic of Slovenia, bonds and certificates of the Farmland and Forests Fund), or (iii) a monetary sum. The latter was paid only in exceptional cases and was available only to a limited group of persons in poor financial conditions.

4.3.2. General rules on the return of immovable property

According to the ZDen, all types of immovables were returned in kind except in the following cases:

1. if it was used for the activities of state bodies or activities in healthcare, education, culture, or other public services, and if returning it would significantly impair the possibility of performing these activities
2. if it formed an integral part of the network, buildings, devices, or other assets of public companies in the fields of energy, public utilities, transportation, and communications
3. if it was *res extra commercium*[97]
4. if the spatial complexity or the utilisation of the immovables would be significantly impaired
5. in other cases specified by the ZDen.

Additionally, the ZDen stated that immovables, save forests, could not be returned to the beneficiary's possession and ownership if this would significantly impair the economic or technological functionality of the real estate complexes they were a part of. It was considered that the functionality of the complex was impaired considerably if the return of the immovable would cause disruptions or obstacles that would result in bankruptcy or liquidation of the entity managing the complex, in abandoning a significant part of its production or service, in dismissing a considerable number of employees, or in a substantial loss of revenue. There was no obstacle to the return of the immovable if the beneficiary demonstrated that they would provide investments or other necessary conditions for a more rational and economically successful use of the immovable.

Where the immovable could not be returned into the beneficiary's possession, ownership in favour of the beneficiary was established on the immovable,

96 | Pihlar 2016.

97 | The original text of this provision also excluded real estate of feudal origin from restitution in kind, but the Constitutional Court annulled this in November 1998.

whereas the obligor could use it for a period necessary to adjust its operations to the changed circumstances. This period could not exceed five years from the final decision on denationalisation or a maximum of seven years from the date of the enactment of the ZDen. The parties entered into a lease agreement for this purpose. If no agreement could be reached, the lease arose *ex-lege*, and any disputed issues were decided by a court in non-contentious proceedings upon the request of either party.

The return of an immovable under the rules of the ZDen did not affect lease, rental, and similar relationships established by a legal transaction for consideration. However, such relationships could continue for a maximum of ten additional years from the date of finality of the decision on denationalisation, unless the beneficiary and the lessee agreed otherwise. They could not be terminated prematurely only as long as the leased property was the principal source of livelihood for the lessee or their family. In such cases, the beneficiary could refuse the return of the property and was entitled to compensation.[98]

An immovable, the value of which had not significantly increased after the nationalisation, had to be returned without offsetting the difference in value. If the immovable's value increased by more than 30% due to new investments, the beneficiary could choose that the immovable was not returned to them, or that they obtained an ownership share in it corresponding to the initial value of the immovable, or that it was returned to them upon paying compensation for the difference in value. The deadline for paying compensation (not less than ten years) and other payment conditions had to be determined by the decision on denationalisation. Regardless of these rules, the obligor or the lessee who invested in the immovable could request from the beneficiary the difference in value if it exceeded one-half of the GDP per capita of the Republic of Slovenia in the year preceding the filing of the denationalisation request. Natural person obligors could request full reimbursement of their investments that increased the value of the immovable.[99] If the parties did not agree on the compensation, the beneficiary could request the return of the immovable before determining the increased value. In such a case, the authority conducting the denationalisation proceedings decided on the amount of compensation to be paid for the difference in value in a supplementary decision.

If the value of the immovable decreased by more than 30% after the nationalisation, the beneficiary was entitled to additional compensation for the decrease. The beneficiary could instead opt for total compensation rather than the return of the property. Due to the diminished value of the returned immovable, the beneficiary could request the difference in value from the obligor if it exceeded one-half of the first published GDP per capita of the Republic of Slovenia in the year before the filing of the denationalisation request. In the absence of the parties'

98 | For details on the relevant case law, see Polič I, 119-136.
99 | See case law analysis in Polič I 1998, 196-198; Polič II 1998, 35-36.

agreement, the authority performing the denationalisation proceedings decided on the compensation in a supplementary decision.

4.3.3. Special rules on the return of agricultural land and forests

The Farmland and Forest Fund of the Republic of Slovenia[100] was responsible for returning nationalised agricultural land, forests, and the substitute land. In doing so, it had to adhere to the provisions of the Agricultural Land Act[101] and the Forests Act[102] on the purchase priority rights that applied in the sale of agricultural land or forests.

Agricultural land was returned to ownership and possession if this did not impair the functionality of agricultural land complexes or complexes of permanent plantations, or if it did not lead to such fragmentation of parcels that would render economic cultivation impossible. If the ownership and possession of the land could not be returned, a co-ownership right was established in favour of the beneficiary whose land lay within the area of the socially owned agricultural land complex. The obligor still had the right to use the immovable for its activities for a period necessary to adjust its operations to the changed circumstances.[103] The same applied if new or restored permanent plantations were established on the agricultural land: the obligor could use such land until the end of its productivity, but not for more than ten years unless otherwise agreed between the obligor and the beneficiary.

If the beneficiary did not request the return of agricultural land in kind, they were issued a certificate (*priznanica*) by the Farmland and Forest Fund. The certificate was a negotiable instrument issued in the beneficiary's name and for a specified value, up to which the issuer undertook to sell agricultural land or forests or pay compensation. With the certificate subject to legal transactions, the beneficiary or the certificate's owner could purchase agricultural land or forests from the Farmland and Forest Fund or other owners. The beneficiary could also exchange the certificate for bonds issued by the Slovenian Compensation Fund.

The general rule was that immovables were returned free of mortgages that arose between the nationalisation and the day of the entry into force of the ZDen. The Republic of Slovenia guaranteed claims secured by these mortgages. Easements on immovables erased by nationalisation were reinstated.

The reports on the implementation of the ZDen show that the majority of agricultural land and forests were returned in kind into ownership and possession, while only smaller amounts were returned in other forms of compensation..[104]

100 | https://www.s-kzg.gov.si/en/ [18. 3. 2024].
101 | OG RS, No. 59/96, with further amendments.
102 | OG RS, No. 30/93, with further amendments.
103 | See case law in Polič I 1998, 193-195.
104 | The latest publicly available report on the implementation of the ZDen is the 16th Report adopted by the Government of Slovenia in November 2001 that shows, for example, that on 30 June 2001 the

4.3.4. Compensation for the nationalised immovable

Monetary compensation was available only exceptionally if the beneficiary was a person of lower financial means. As a general rule, if restitution in kind was not possible the beneficiary was entitled to compensation in the form of shares in the respective legal entity or, upon request, in bonds issued for this purpose. The beneficiary and the obligor could agree that the obligor would instead give the beneficiary a substitute immovable. The right to compensation was also available to beneficiaries who had regained their nationalised property based on a legal transaction for consideration.

The value of the nationalised property was determined based on the condition of the property at the time of nationalisation and by considering its current value. The value of agricultural land and forests was determined based on cadastral culture, cadastral class, and cadastral district. If the property's current value could not be determined, it was assessed using a prescribed methodology.[105]

The bonds issued to pay compensation were denominated in German marks and payable in equal semi-annual instalments over 20 years. The interest rate was set to six per cent. The bonds were issued in the name of the bearer and payable in the currency of the Republic of Slovenia. The bondholder could use it to purchase shares of funds managed by the Republic of Slovenia or shares held by these funds. They could also be used as a means of payment for purchasing real estate and other capital in the privatisation process. The funds to cover the obligations from the issued bonds were gathered in the Slovenian Compensation Fund[106] from the Development Fund of the Republic of Slovenia, from the sale of social housing and apartments, from the Farmland and Forests Fund and from other sources. If the beneficiary was a person of lower financial means, the state could ensure their social security by redeeming the bonds at their nominal value.

If the denationalisation beneficiary met the criteria for social welfare as a person of lesser financial means, compensation was paid in cash - up to the amount of 24 average monthly net personal incomes per employee in the Republic of Slovenia in the last three months prior to the issuance of the decision. Compensation in such cases was paid in a lump sum or monthly instalments.[107]

If the immovable property was returned to the denationalisation beneficiary from the funds of the obligor who had acquired it for consideration, the obligor was

return of agricultural land and forests was in the form of: ownership and posession (agricultural land: 55.21%, forests: 84.47%), ownership without the return of posession (agricultural land: 6.97%, forests: 2.03%), ownership shares (agricultural land: 8.82%, forests: 4.51%), substitute immovable (agricultural land: 0.09%, forests: 0%), shares and bonds of the Republic of Slovenia (agricultural land: 15.31%, forests: 0.73%), cash (agricultural land: 0.07%, forests: 0%), certificate of the the Farmland and Forest Fund (agricultural land: 0.04%, forests: 0%).

105 | See Polič I 1998, 186-188.

106 | Today, the fund is part of the Slovenian Sovereign Holding.

107 | See Breznik, Prijatelj & Sedonja 1992, 139-140.

entitled to compensation under the rules on expropriation and forced transfer of property into social ownership. The Slovenian Compensation Fund paid the compensation in bonds.

4.4. Transfer of socially owned agricultural land and forests to state ownership

At the start of denationalisation, most agricultural land and forests nationalised or confiscated since 1945 were held in social ownership. In many cases, non-state organisations, particularly agricultural cooperatives and socially owned enterprises held the right to use specific farmland or forests. Special rules were in place regarding how these organisations managed this land.[108] To facilitate the restitution of this property to its original owners, all the rights were first centralised in public authorities' hands as a first step in the denationalisation process. Under the Cooperatives Act[109] of 1992, socially owned agricultural land and forests managed by cooperatives became the property of the Republic of Slovenia. Similarly, under the Ownership Transformation of Enterprises Act,[110] socially owned enterprises had to exclude any agricultural land and forests from their assets, which then became the property of the Republic of Slovenia or the respective municipality. Any remaining socially owned agricultural land and forests were transferred to state or municipal ownership based on the National Farmland and Forest Fund Act of 1993.[111] The state and the municipalities were liable to return the agricultural land and forests to their original owners under the denationalisation procedure rules if proper restitution claims were filed. This transfer to state ownership turned out to be extremely important as it, *inter alia*, prevented the property from being part of the bankruptcy estate of the former entities that had the right of use on it.

From the entry into force of the ZDen and up to 30 days after the expiration of the deadline for filing a denationalisation request, no disposition of real property subject to the obligation of restitution under the provisions of ZDen was permissible. According to the ZDen, legal transactions and unilateral declarations of will that contravened this were void. Additionally, the ZDen enabled the first-instance bodies assessing the denationalisation requests to issue a decision temporarily

108 | The Decree on the Management of Forests in Social Ownership Subject to the Obligation of Restitution According to the Denationalisation Act until the Denationalisation Process is Completed, OG RS, 33/91 and 3/92, for example, required that until the transfer of forests to the ownership and possession of beneficiaries under the ZDen, all necessary cultivation and protective work in these forests is carried out and that logging is only carried out in forests for which a denationalisation claim has been filed if the beneficiary agrees to it. The organisations and companies had to keep a special record of logging, harvesting, and transporting forest wood assortments in cubic meters per plot, and the costs of logging, harvesting, transportation, and other forest preservation, protection, and development activities.
109 | OG RS, 13/1992.
110 | OG RS, 55/1992.
111 | OG RS, 10/1993.

prohibiting the disposition of real estate to secure denationalisation claims or other relevant reasons. It could order the transfer of real estate into temporary use by the beneficiary if the factual and legal basis of their claim for the return of the real estate were likely to be established. Since agricultural land and forests were relatively soon transferred into the state or municipality ownership, these moratorium rules were not particularly important for these types of property.

4.5. Denationalisation obligors

The person required to return the nationalised property was the legal person in whose assets the property to be returned to the beneficiaries was located. Since agricultural land and forests were beforehand transferred into the ownership of the state or a municipality, these (and no longer the legal persons) were denationalisation obligors in the case of denationalisation of agricultural land and forests. The person required to ensure the compensation in shares held by the Republic of Slovenia, as well as the compensation in bonds, was the Slovenian Compensation Fund. The payment of monetary compensation was the obligation of the Republic of Slovenia.

4.6. Denationalisation procedures

4.6.1. Jurisdiction

Administrative units throughout Slovenia assessed the requests for the denationalisation of agricultural land and forests at the first instance.[112] The heads of administrative units established five-member commissions, which had to include a graduate lawyer, an expert in the relevant field, and an expert in geodetic services. The ministry responsible for agriculture, forestry, and food decided on appeals against decisions on the denationalisation of agricultural land, forests, and agricultural estates. However, a district court decided in non-contentious proceedings on requests for denationalisation by beneficiaries whose possessions or property were transferred into state ownership based on a legal transaction concluded due to a threat, coercion, or deceit by a state authority.

The denationalisation decision of the first-instance authority had to be issued and served to the beneficiary no later than one year after filing an adequately

112 | Before the 1998 ZDen amendments, municipal bodies responsible for agriculture had jurisdiction and were assisted by five-member expert commissions established by the executive municipal councils. Before and after 1998, several ministries also had first-instance jurisdiction in denationalisation cases, but these were typically not cases covering agricultural land and forests.

drafted request.[113] Due to numerous ambiguities in the legislation, the requests often had to be supplemented, which prolonged the procedures. The one-year deadline also proved unrealistic due to the necessity of involving experts and resolving many preliminary issues. Thus, the deadline was continuously extended, and the competent authorities made many intervention attempts to tackle the vast backlogs of denationalisation cases. Some authors have argued that deciding on denationalisation cases has been too difficult for the administrative units, and that the courts would have tackled the task better.[114]

As of 31 December 2023, there were still 1091 denationalisation requests being assessed by the administrative units and ministries deciding as first instance bodies, representing 1.7% of all denationalisation requests filed in Slovenia. 20 out of 46 cases still pending before the administrative units (i.e. 43.47%) dealt with the return of agricultural land, forests, and agricultural holdings.

Administrative and judicial decisions on denationalisation were implemented by:

1. regular courts, if it involved the return of real estate or the establishment of property rights on other real estate, by registering this in the land register[115]
2. the Development Fund, if it involved the establishment of ownership shares in a company or compensation in shares[116]
3. the Slovenian Compensation Fund, if it involved compensation in bonds
4. the Ministry of Finance, if it involved monetary compensation.
5. Vrh obrazca

4.6.2. Denationalisation request

The denationalisation proceeding started upon the filing of a denationalisation request. The right to file the request was given to the beneficiary or their legal successor. If beneficiaries to denationalisation were deceased or declared dead, their legal successors were entitled to assert rights under the ZDen. Legal succession was, in principle, assessed under Slovenian law. However, a legal succession of churches and other religious organisations was assessed according to their autonomous law. Further, if legal successors were already determined by foreign law, foreign law applied except for succession of real estate ownership, where Slovenian law applied in any case. The denationalisation obligor could also request

113 | In cases where the first-instance authority issued a decision through an expedited procedure, it had to be issued and served to the beneficiary within sixty days of the filing of a properly drafted request. If the authority had to obtain the documents required for its assessment, the authority was not bound by the one-year deadline.
114 | Pihlar 2016.
115 | Breznik, Prijatelj & Sedonja 1992, 161.
116 | During the period pending denationalisation when the companies were privatised, this fund was also the administrator of the denationalisation reservation fund. See Breznik, Prijatelj & Sedonja 1992, 162.

denationalisation proceedings, provided they demonstrated a legal interest. If the competent authority determined that a legal interest existed, it initiated the proceedings, in which case the proceedings were considered initiated *ex offo*.

The denationalisation request had to be filed no later than 24 months after the entry into force of the ZDen, i.e. by 7 December 1993. At first, the ZDen set out an 18-month deadline, but the amendments of 1993[117] prolonged it to 24 months. A request filed promptly by one of the beneficiaries benefitted all beneficiaries eligible to assert the rights covered by the specific request. As denationalisation decisions were issued to the owner of the nationalised property at the time of the nationalisation, and denationalisation proceedings were not burdened by succession determination, challenges with handling multiple claimants and taking succession decisions were omitted in denationalisation proceedings.

The denationalisation request had to contain all necessary information for determining the request's eligibility and the form in which denationalisation was to take place. It had to be accompanied by all relevant documents required to identify the beneficiary and the nationalised property. If the person filing the request did not have a permanent residence in the territory of the Republic of Slovenia, they had to appoint a person to represent their interests before the competent authority.

The highest number of denationalisation requests was filed at the Ljubljana administrative unit, totalling 10,923, representing 27.75% of all denationalisation requests filed in Slovenia.

4.6.3. Parties to denationalisation proceedings

Parties to denationalisation proceedings were the beneficiary, their legal successor,[118] and the obligor or any other legal or natural person who had the right to participate in the proceedings to protect their rights or legal interests. Parties who did not have a permanent residence or a seat in the Republic of Slovenia had to appoint a representative with a residence or a seat in the Republic of Slovenia who represented them in the proceedings. If the claim concerned property owned by the Republic of Slovenia, the State Attorney of the Republic of Slovenia represented the interests of the obligor. The beneficiary and their legal successors were parties in determining citizenship as a preliminary question in the denationalisation proceedings. A party to denationalisation proceedings was also a legal or natural person who had invested in the nationalised real estate before the entry into force of the ZDen on 7 December 1991.

117 | OG RS, 31/93.
118 | Probable evidence sufficed for showing legal succession. See Polič I 1998, 294-295.

4.6.4. Settlement

During the first-instance proceedings, the beneficiaries and obligors could enter into a settlement regarding the property subject to denationalisation. The settlement could encompass all denationalised property or part thereof. The first-instance authority could inform the parties to the proceedings about the possibility of settlement and assist them in reaching it. The settlement had to be in line with the mandatory provisions of the ZDen. The settlement was concluded when the parties read and signed the settlement minutes. The first-instance authority included the settlement in the denationalisation decision.

4.6.5. Denationalisation decision

A special determination proceeding was carried out to establish all the facts and circumstances relevant to deciding on the request. Upon completion of the determination proceeding, the denationalisation commission drafted a report on the established factual and legal status of the case. The report was served to the parties, who could, within fifteen days of receiving it, propose amendments to the report or supplements to the determination proceeding. The parties' proposals did not bind the administrative unit.

Upon completion of the determination proceeding and after the expiry of the 15-day deadline for any reactions to the report, the administrative unit decided on the property to be returned, the beneficiaries to whom the property was to be returned, the form and scope of restitution, the denationalisation obligors, and the deadlines for performing the decision. In the denationalisation decision, the first-instance authority also issued an order to the competent authorities to implement the decision, as well as orders regarding any encumbrances and decided on the costs of the procedure. Parties in the denationalisation process under the ZDen were not required to pay any fees. Changes in the land register based on the denationalisation decision were carried out by the competent courts *ex-offo*.

Irrespective of who filed a denationalisation request, the denationalisation decision was issued to the beneficiary – the former owner of the nationalised property.[119] If this person had already died or was declared dead, the denationalised property was temporarily entrusted to a guardian for special cases. The beneficiary's legal successor could be appointed as such guardian.[120] The aim of issuing the decision in the name of the former owner, irrespective of whether they were still alive, was to guarantee that the decision was issued to the same person to whom the property in question had been nationalised and thus to avoid lengthy

119 | Only in exceptional cases covered by Art. 12 in connection with Art. 9 of the ZDen (explained supra) was the beneficiary not the person whose property was nationalised.
120 | For case law analysis, see Polič I 1998, 290-293.

proceedings on determining and contacting this person's heirs, and other issues that typically arise in succession proceedings. The latter are civil, non-contentious proceedings, whereas denationalisation proceedings are administrative proceedings unsuitable for addressing succession-related issues.

The beneficiary acquired ownership originally, i.e. upon the denationalisation decision's finality, not derivatively from the former owner. Ownership was acquired *ex nunc*, not *ex tunc*. Acquiring real estate, other property, or compensation under the ZDen was not subject to taxation.

4.6.6. Suspension of Property Restitution

In 1995, the Slovenian legislature adopted an Act on Temporary, Partial Suspension of Property Restitution[121] that set out a three-year suspension of the return of agricultural land and forests in the following cases:

- when the return of more than 200 ha of agricultural land and forests was required for sole beneficiary,
- when the beneficiary received or had the right to receive compensation for confiscated property from a foreign country and
- when the competent administrative authority determined beforehand that the beneficiary not registered as such in the citizenship records had Yugoslav citizenship at the time of nationalisation.

The moratorium was criticised as a political measure targeting the Catholic Church and wealthier persons with large estates by postponing the finalisation of the denationalisation. On the other hand, it was explained that the first-instance administrative bodies had detected many irregularities in determining citizenship as a prerequisite for denationalisation. This is why the legislature wished to address them and guarantee proper administration before allowing the assessment in the citizenship determination cases to proceed.[122]

The Roman Catholic Diocese of Maribor, the Cistercian Abbey of Stična, the Benedictine Priory of Maribor, and several individuals, initiated proceedings before the Constitutional Court, claiming the act was unconstitutional. In 1996, the Constitutional Court repealed the parts on the 200 ha maximum and the citizenship determination.[123]

121 | OG RS, 74/95.

122 | U-I-107/96. Being aware of inconsistencies and irregularities in the denationalisation procedures, one of the proposed ZDen amendments envisaged that all albeit already final denationalisation decisions could be reviewed, but the CCC deemed such a solution unconstitutional. See CC Decision U-I-127/97.

123 | The annulment was to take effect after six months. This timeframe was later amended; see CC Decision U-I-107/96.

4.7. Inheritance of the (de)nationalised property

If the denationalisation beneficiary died before the denationalisation was finished, and the initial inheritance proceedings did not cover the property to be denationalised, the inheritance of the denationalised property had to be decided in new inheritance proceedings. The deceased's denationalised property passed to their heirs on the date of the finality of the decision on denationalisation, not on the day the person died, as is the general rule of Slovenian inheritance law. The decision to denationalise put the denationalised property under guardianship until its heirs were determined in inheritance proceedings.

Inheritance statements made prior to the issuance of the denationalisation decision had no legal effects on the denationalised property unless they were given before the property had been nationalised or in the denationalisation proceedings themselves. Further, inheritance agreements concluded before the issuance of the denationalisation decision had no legal effects regarding the property belonging to the denationalisation beneficiary unless explicitly stated otherwise in the agreement.[124] Testamentary dispositions made before the issuance of the denationalisation decision had legal effects regarding the denationalised property only if the testator explicitly listed the nationalised property in their will.[125] If that was not the case, the ZDen stated that testamentary dispositions had legal effects only if the lawful heirs (if any) consented to such effects.[126] Such a rule was criticised in legal theory as too strict, as it did not enable the determination of the testator's true will.[127] In the absence of inheritance statements, agreements, and testamentary dispositions, the court decided on the inheritance of the denationalised property based on the initial inheritance decision without performing new inheritance proceedings. Inheritance of the denationalised property was subject to inheritance tax.

4.8. Denationalisation records and statistics

The first-instance authorities were obliged to keep records of filed denationalisation requests, issued denationalisation decisions, and their execution. The responsible state administrative bodies kept an aggregate database. Data from the 85th monitoring of the conclusion of the denationalisation process[128] shows that on 31 December 2023, 38,624 out of 39,715 denationalisation requests were resolved.

124 | For further details, see Zupančič & Žnidaršič Skubic 2009, 329.
125 | According to prevailing case law, the testator was not required to refer to the property they disposed of as nationalised property as long as the testator listed and described it. See Zupančič & Žnidaršič Skubic 2009, 330.
126 | For a critique of such a provision, see Zupančič & Žnidaršič Skubic 2009, 332.
127 | Despite the critique, the Constitutional Court did not decide to repeal this provision in 1993 (U-I-96/92). See Zupančič & Žnidaršič Skubic 2009, 331-332.
128 | Ministrstvo za pravosodje (2023).

This represents 98.3% of all denationalisation requests. A total of 91 unresolved denationalisation cases remained, of which 62 were still pending before the first instance body (an administrative unit or a ministry), while 29 were pending an appeal against the administrative unit's decision with the ministry, or were under judicial review at the Administrative Court or the Supreme Court.

Across all administrative units (most of the first instance denationalisation bodies), 38,410 out of 38,472 (i.e. 99.8%) requests have been resolved. The total number of unresolved requests across administrative units was 62, of which 46 were still pending before the units, while 16 cases were under appeal at the ministry or under judicial review. 20 out of the 46 cases pending before the units (43.47%) covered the return of agricultural land, forests, and agricultural holdings.[129] The highest number of all denationalisation requests was filed with the Ljubljana administrative unit, totalling 10,923. The Maribor administrative unit had the highest number of unresolved cases (six cases, representing 13.04% of all unresolved cases).[130] At the ministries acting as first-instance administrative bodies, 29 out of 1243 cases still had to be solved (not covering the denationalisation of agricultural land and forests).[131]

Seven denationalisation cases remained unresolved at the second instance, three at the Ministry of Agriculture, Forestry, and Food (including the denationalisation of agricultural land or forests) and four at the Ministry of Natural Resources and Spatial Planning. The Ministry of Economy, Tourism, and Sport had no unresolved cases. Twenty-two cases were pending review before the Administrative Court or the Supreme Court.

According to the initial plan, first-instance denationalisation cases should have been finalised by 7 December 1994. The short time frame illustrates how the legislature underestimated the complexity of the matter, which later compelled it to extend the deadline several times. Thirty years afterwards, the process of denationalisation is still unfinished. In most cases, the parties resorted to legal remedies in administrative and judicial proceedings.

129 | 19 cases (41.3%) deal with the return of residential houses, apartments, commercial buildings, commercial premises and building plots, while 7 cases (15.21%) cover the return of private commercial enterprises.

130 | Thirty-two administrative units have resolved all their cases, and their denationalisation decisions are already final. Five units have resolved all cases at the first instance pending appeal or judicial review. The Tržič unit has four unresolved cases, the Ajdovščina, Jesenice, Kočevje, Kranj, Ljubljana, and Ptuj units each have three unresolved cases. In contrast, the Lendava, Radovljica, Sežana, Škofja Loka and Žalec units each have two unresolved cases. Eight units each have one unresolved case (Celje, Gornja Radgona, Hrastje, Kamnik, Koper, Novo Mesto, Piran, and Šmarje pri Jelšah).

131 | At the Ministry of Culture, 1010 out of 1034 (i.e. 97.7%) denationalisation requests have been resolved. 24 claims remain unresolved, of which 14 are pending before the ministry, while 10 cases are under review. 121 denationalisation claims were filed with the Ministry of Natural Resources and Spatial Planning, of which 116 (i.e. 95.9%) have been resolved and five unresolved (2 still pending at the ministry and 3 under review). At the Ministry of Finance, 88 denationalisation requests were filed and resolved.

Information on the beneficiaries in the denationalisation proceedings is relatively scarce. One of the largest beneficiaries of denationalisation was the Archdiocese of Ljubljana. In the Radovljica administrative unit alone, the archdiocese filed a single request to return approximately 21,000 ha of nationalised property (agricultural land, forests, buildings, and building plots), with around 15,000 ha located within the Triglav National Park. By 2016, they had reclaimed more than 16,000 ha of land, mainly within the Triglav National Park, while for a small amount of land that could not be returned in kind, they received compensation in the form of bonds.[132]

4.9. Specific rules on the re-establishment of agrarian communities and the return of their nationalised land

As explained *supra*, agrarian communities were abolished after the Second World War and their property was nationalised. The former agrarian communities had to be re-established to reinstate this property. Thus, in 1994, the Slovenian parliament adopted the Act on Re-Establishment of Agrarian Communities and Restitution of their Property and Rights.[133] Until the adoption of this special legislation, the ZDen applied, while not being a very appropriate legal basis for handling the return of property to former agrarian communities.

The return covered the following rights:

- ownership rights registered in the land register under the agrarian community and its members, indicating individual co-ownership shares of the members by name, house numbers, etc.
- ownership rights registered in the land register under the agrarian community without specifying individual ownership shares of the members; instead, joint ownership of the members was established and was regulated in the rules of the agrarian community
- right to pasture, gathering of bedding, brushwood, woodcutting, right to water livestock, and other similar easements.

The new act defined an agrarian community as a community of natural and legal persons based on a contract. Community members have common rights, duties, and obligations determined by law and by the rules of the agrarian community. The agrarian community is not a legal entity. It must have a bank account. The agrarian community could be re-established in the area where it existed before the

132 | Pihlar 2016. One of the most notorious cases of denationalisation in Slovenia concerned the return of Bled Island to the Archdiocese of Ljubljana. Eventually, the minister of culture and the Roman Catholic Church signed an agreement according to which the Church withdrew its request for the return of the island in kind, in exchange for ownership of the sacred objects and a 45-year lease of the entire island free of charge.

133 | OG RS, 5/1994, with further amendments.

post-war rules abolished it. Only one agrarian community could be re-established in the area of the former agrarian community.

The right to re-establish an agrarian community was granted to all former members or their legal successors if they were Slovenian citizens or Slovenian legal entities. By the rules of the agrarian community, other Slovenian citizens living in the area of the community and other domestic legal entities with headquarters in the area of the community could also become members. Under the proviso of reciprocity, foreign citizens who were members of the former agrarian community or their legal successors also had the right to membership and the right to re-establishment of agrarian communities. The agrarian community was re-established if, after a public call, at least three adult beneficiaries concluded an agreement on its re-establishment and adopted written rules, taking into account the former rights, duties, and responsibilities they had under the rules valid at the time of the dissolution of their community. The agreement on re-establishing the agrarian community, the community membership register, and the community rules had to be certified by a notary public. The new agrarian community was established when it was registered in the Register of Agrarian Communities, a public record of agrarian communities and their membership maintained by the competent authority for agriculture and forestry. Administrative authorities decided on the registration requests. Without a registration decision, it was impossible to register the property rights of the agrarian community and its members in the land register.

After the agrarian community was re-established, any member or joint representative of the members could request the return of property to members of agrarian communities. The request had to be submitted by 30 June 2001.[134] The return requests were decided in the administrative procedure by the competent authority for agriculture and forestry.

A member of the agrarian community could only assert the extent of property rights they or their legal predecessor had at the time of nationalisation. Property rights were returned to the natural person from whom they were taken or to their legal successors. If the previous holder of the property rights was already deceased or declared dead, the returned property rights were dealt with under the inheritance law rules on subsequently discovered property. In such a case, the property rights in kind were inherited only by the heir who was a member of the agrarian community, while other heirs could claim only their share in cash. If former members or their legal successors did not claim the return of property rights in full, the remaining portions of the former agrarian community's area became the property of the municipality where they were located, and the municipality became a member of the agrarian community. If, however, the beneficiaries did not claim the return of property rights, the property became the ownership of the municipality, which had to offer it for free use and management to the village or local

134 | The deadline was initially set at two years and gradually prolonged by amendments to the law.

community in the area where it was located. If an easement was the subject of the return, it could be returned only if, given the actual and legal state of affairs, such right could be re-established and the general conditions of property law regarding easements were met. When returning property rights to agrarian communities, any compensation already paid for nationalisation was to be considered.

According to official records, there are over 500 agrarian communities in Slovenia, with around half of them active. Agrarian communities own around 10% of all land in Slovenia. In some parts of Slovenia, they have a significant share of ownership of forests and pastures.[135] In 2012, the Association of Representatives of Agrarian Communities of Slovenia was established to address and solve efficiently the problems encountered by the communities.

4.10. The return of cooperatives' property

In 1992, the Slovenian legislature adopted the Cooperatives Act, which also regulated the privatisation of the cooperatives and the return of the cooperatives' property that had been nationalised or otherwise taken from them without compensation after the Second World War. The rules of the ZDen were applied to questions not covered by the Cooperatives Act. As in the denationalisation process, cooperatives were also involved as denationalisation obligors, not just beneficiaries; denationalisation triggered shifts in the cooperatives' property in both directions.[136] Agricultural and forestry cooperatives, which have the longest tradition in Slovenia, remain the most important cooperatives and are members of the Cooperative Association of Slovenia.[137]

5. Conclusion

The denationalisation process brought about significant economic and legal change in Slovenia. Due to the legislators' decision to favour restitution in kind, large swathes of agricultural land and forests changed hands. Returning real property to foreigners and the Catholic Church remained politically contentious, leading to attempts to suspend the process and change the rules. Nevertheless, the main principles of denationalisation remained unchanged, and the process of reinstating private ownership of agricultural land and forests was not stopped.

As a legal process, the denationalisation turned out to be highly challenging. Consequently, it dragged on beyond the initial expectations that it could be carried out in a few years. The large number of claims to be decided was a heavy burden for

135 | https://agrarne.si/agrarne-skupnosti/ [18. 3. 2024].
136 | Avsec 2018, 112.
137 | Avsec 2018, 114.

the administrative units. The procedure also raised many preliminary questions, such as the beneficiaries' citizenship, their loyalty during the war, the inheritance of confiscated property, the possibility of restitution in kind, etc. Agricultural communities had to be re-established before their property could be returned to them. The administrative units were not used to deciding on such complex issues. Decisions on appeals and other denationalisation-related issues also burdened the courts. For example, the correctness of past deprivations of citizenship and criminal convictions had to be reviewed. Several hundred decisions regarding denationalisation were issued by the Administrative Court, the high courts and the Supreme Court.[138] The Constitutional Court also played an essential role in ensuring a constitutionally consistent interpretation of the disputed provisions of the law. The denationalisation process was regularly observed by the Slovenian Human Rights Ombudsman, to whom different persons and associations affected by nationalisation and denationalisation regularly turned.[139] It was also an important subject of the negotiation process for the accession of Slovenia to the EU.

After over thirty years, the denationalisation process is almost complete, and most denationalisation requests have been decided on. Rather than being a simple legal process of undoing past decisions, the denationalisation involved a wide-reaching reckoning of the modern legal system with the problematic legal legacy of the socialist past. The outcome of the process has had lasting consequences for the future.

138 | Pihlar 2016.
139 | One of the most active associations within this field was the Association of Owners of Confiscated Property (1990 – 2018).

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MINISZTERELNÖKSÉG

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