

Slovakia: Open Land Market and No Restrictions

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ABSTRACT

Slovakia's accession to the European Union opened a whole new chapter in the country's history and brought dynamic changes to its land transfer regulation. In the Slovak Republic, the moratorium forbidding the purchase of agricultural land by foreigners expired in 2014. Following this period, the European Commission launched a comprehensive examination regarding land acquisition regulations in the newly acceded member states. The investigation revealed that specific provisions of the Slovak land regulation restricted the EU's fundamental economic freedoms. The Slovak legislator responded to this situation by amending a particular paragraph of the Foreign Exchange Act, which has resulted in opening the agricultural land market not only to EU nationals but also to third-country nationals. In addition, several new rules concerning this subject were adopted, namely the Act on the acquisition of ownership of agricultural land. It should be noted that even before the mentioned revelation, this Act had been the subject of numerous public debates. Consequently, the Constitutional Court of the Slovak Republic annulled a significant part of the Act on land acquisition in its decision on November 14, 2018, which has contributed to the agricultural land market becoming fully open in Slovakia.

This chapter introduces the current legislation on land protection and characterizes the rules on agricultural land regulation and land transfer law in Slovakia, exploring the constitutional level with particular regard to the decision delivered by the Constitutional Court of the Slovak Republic in detail. Moreover, the proceeding initiated by the European Commission is also a subject of this study. Finally, the national legal instruments of Slovakia are also analyzed in light of the Commission's Interpretative Communication.

KEYWORDS

land law, cross-border land acquisitions, agricultural land, Slovakia

1. Theoretical background and brief summary of the national land law regime

Agricultural land as a natural resource plays an integral and important part of every country's natural heritage, and for that reason, every country is ought to be responsible for protecting it. In Slovakia, this duty was declared on the supreme

layer of the legal order.¹ As a result, it can be stated that the basis of the Slovak land law regulation is the Constitution of the Slovak Republic,² according to which the state shall ensure a cautious use of natural resources.³ In addition, the Constitution specifically highlights the protection of agricultural land and forest land. Furthermore, these natural resources are defined as non-renewable natural resources,⁴ and the Constitution accords them priority protection to ensure the country's food security.

The Slovak land regime regulation is a complex system of legal norms. At this point, we also must note that a detailed listing of all relevant legal sources is beyond the scope of this study.⁵

1 At this point, we will refrain from a detailed description of the constitutional rules as this will be covered in the following subchapter.

2 Constitution of the Slovak Republic, Act no. 460/1992 Coll. Hereinafter referred to as the Constitution of the Slovak Republic or Constitution of the Slovak Republic (*Ústava Slovenskej republiky*, č. 460/1992 Zb.)

3 For more on this subject, see, for example, Hornyák, 2017; Orosz, 2018; Olajos, 2018; Szilágyi, 2018a.

4 Constitution of the Slovak Republic, Article 44 (5).

5 For the most essential sources of Slovak land law, see, for example, Act no. 229/1991 Coll. on the regulation of ownership relations to land and other agricultural property, as amended (*Zákon č. 229/1991 Z. z. o úprave vlastníckych vzťahov k pôde a inému poľnohospodárskemu majetku*), which regulates the rights and obligations of owners, users, and lessees of land, as well as the competence of the State in regulating ownership and user rights on land; Act no. 180/1995 Coll. on specific measures for land ownership arrangements, as amended (*Zákon č. 180/1995 Z. z. o niektorých opatreniach na usporiadanie vlastníctva k pozemkom*); Act no. 504/2003 Coll. on the lease of agricultural land plots, agricultural holding, and forest plots, as amended (*Zákon č. 504/2003 Z. z. o nájme poľnohospodárskych pozemkov, poľnohospodárskeho podniku a lesných pozemkov*); Act no. 180/1995 Coll. on specific measures for land ownership arrangements, as amended (*Zákon č. 180/1995 Z. z. o niektorých opatreniach na usporiadanie vlastníctva k pozemkom*); Act no. 330/1991 Coll. on land arrangements, settlement of land ownership rights, district land offices, the Land Fund, and land associations, as amended (*Zákon č. 330/1991 Zb. o pozemkových úpravách, usporiadaní pozemkového vlastníctva, pozemkových úradoch, pozemkovom fonde a o pozemkových spoločenstvách*); Act no. 162/1995 Coll. on cadastre of real estate and on registration of ownership and other real estate rights, as amended (*Zákon č. 162/1995 Z. z. o katastri nehnuteľností a o zápise vlastníckych a iných práv k nehnuteľnostiam*); Act no. 220/2004 Coll. on the protection and use of agricultural land, as amended (*Zákon č. 220/2004 Z. z. o ochrane a využívaní poľnohospodárskej pôdy*); Act no. 40/1964 Coll. Civil Code, as amended (*Zákon č. 40/1964 Zb., Občiansky zákonník*); Act no. 202/1995 Coll. on the foreign exchange act, as amended (*Zákon č. 202/1995 Z. z., Devízový zákon*). For the legislative framework of agricultural land in SR see for example Ilavská, 2016. Although the chapter primarily focuses on issues of land ownership, we would like to briefly mention the regulations resulting from other legislation in the field of agriculture or land protection, such as Act no. 136/2000 Coll. on fertilizers, as amended (*Zákon č. 136/2000 Z. z. o hnojivách*), Act no. 405/2011 Coll. on plant medicine care and on the amendment of Act of the National Council of the Slovak Republic No. 145/1995 Coll. on administrative fees, as amended (*Zákon č. 405/2011 Z. z. o rastlinolekárskej starostlivosti a o zmene zákona Národnej rady Slovenskej republiky č. 145/1995 Z. z. o správnych poplatkoch v znení neskorších predpisov*), Act no. 151/2002 Coll. on the use of genetic technologies and genetically modified organisms, as amended (*Zákon č. 151/2002 Z. z. o používaní genetických technológií a geneticky modifikovaných organizmov*). These regulations have a significant impact on the use of the land and therefore interfere with ownership rights.

While exploring the level of regular acts, it can be seen that one of the most important sources of law is Act no. 220/2004 Coll. on the protection and use of agricultural land, as amended. The subject of this act is undoubtedly the “agricultural land,” which is characterized as a productively potential land registered in real estate cadastre as arable land, hop fields, vineyards, fruit orchards, gardens, and permanent grasslands.⁶ This act provides for the protection of the characteristics and functions of agricultural land, ensuring its sustainable management and agricultural use, the protection of its environmental functions as well as the protection of its areas from unauthorized use for non-agricultural purposes.⁷

Act no. 140/2014 Coll. on the acquisition of ownership of agricultural land, as amended⁸ regulates certain legal stages of the acquisition of ownership of agricultural land by transfer and also the powers of public administrative bodies regarding the transfer of ownership of agricultural land. It is also worth noting that the term “agricultural land” is also defined in the Act on land acquisition,⁹ and this definition is based on the aforementioned act. In the Act on land acquisition, agricultural land is legally defined as an agricultural land or land built up with a construction intended for agricultural purposes up to June 24, 1991.¹⁰ However, the legislator exhaustively defines the exceptions to which the given law does not apply: the list includes gardens regardless of their location; land plot in a municipality’s built-up area regardless of its type; land plot outside the municipality’s built-up area if it is intended for other than agricultural use, separate regulations limit the possibility of its agricultural use, and its acreage is less than 2,000 m²; in addition, it is adjacent to the construction, together with which it creates one functional whole.¹¹

As can be seen from the definition, the forest land or nature conservation areas are excluded from the definition.

The basic legal regulation in the field of forest land and forest management is the Act no. 326/2005 Coll. on forests, as amended,¹² which can be regarded as a certain code in the field of legal relations to forests, forest land, and forest management.¹³ The Forest Act provides the definition¹⁴ of forest lands¹⁵ by means of a broad definition, and their protection in the permanent set-aside, which means a permanent

6 Act on the protection and use of agricultural land, Para. 2 point b)

7 Dufala, Dufalová and Šmelková, 2017, p. 160.

8 *Zákon č. 140/2014 Z. z. o nadobúdaní vlastníctva poľnohospodárskeho pozemku*. Hereinafter referred to as Act on land acquisition.

9 I.e., the basic legal act directly related to the possibility of agricultural land acquisition is the Act on land acquisition, which regulates the transfer of agricultural land and also the competence of specific bodies operating in this area.

10 This term (both positive and negative) is defined in the Act on land acquisition, Para. 2 (1).

11 Act on land acquisition, Para. 2.

12 *Zákon č. 326/2005 Z. z. o lesoch*. Hereinafter referred to as Forest Act.

13 Máčaj, 2021b, p. 84. See also Máčaj, 2020.

14 See the Forest Act, Para. 2 point a): “Forest is an ecosystem created by the forest land with forest stand and factors of its atmospheric environment, plant species, animal species and soil with its hydrological and atmospheric regime.”

15 Forest Act, Para. 3.

change of forest land use or permanent change of land type.¹⁶ As in the case of agricultural land, constitutional regulation is paramount in the case of legal protection of forest land.¹⁷ The protection of forest land is primarily provided by the fact that forest land can be primarily used to fulfill functions of forests. For other purposes, they may only be used based on a decision of the competent state administration forestry authority, which may decide about its temporary or permanent exemption from the functions of forests or about restrictions on the use of forest functions on them.¹⁸

Protected sites of national importance are regulated according to Act no. 543/2002 Coll. on nature and landscape protection, as amended.¹⁹ The legislation on nature and landscape protection, which is part of the unique nature and landscape protection, contributes to land protection mainly by territorial protection. This protection is stricter than the general protection of nature and landscape as it represents a sum of over-standard rules that apply concerning exceptional and unrepeatable components of the environment.²⁰

The land is part of a specific territory of different categories and types that are protected by relatively broad legislation. In this context, the legislation regarding land protection and land care can be divided into two groups. The first group includes legal acts regulating specific categories of territory with the land as a part of these territories,²¹ while the second group includes legal acts regulating land protection against sources of danger or damage.^{22,23}

It is necessary to mention the issues of measures and the prohibition of land fragmentation, which are contained in Act no. 180/1995 Coll. on specific measures for land ownership arrangements, as amended. This fragmentation is mostly caused by the past, from the period of different legal regulations. However, the measures and the ban on land fragmentation represent a tool to prevent further

16 In the Forest Act, the lease of forest land is specified in more detail, while the basic provisions of the Civil Code shall apply to these relations if the Forest Act does not provide otherwise. Particular attention shall be paid to the content of the lease agreement, which are mandatory (obligatory) provisions of every forest land lease agreement. They are set out in the wording of paragraph 2 and include three elements in total—only those defined in the Forest Act; for the remaining elements, the Civil Code applies. For the lease, which is forest management, there must be a fixed term, at least for the duration of the forest management program. There is no such restriction for any other purpose of the lease. For more information, see Beracka, 2019.

17 Máčaj, 2021b, p. 84.

18 For more information, see Dufala, Dufalová and Šmelková, 2017, p. 159.

19 *Zákon č. 543/2002 Z. z., o ochrane prírody a krajiny*

20 Cepek et al., 2015, p. 261.

21 For example, Act no. 543/2002 Coll. on nature and landscape protection, as amended; Act no. 364/2004 Coll. on water, as amended; and Act no. 326/2005 Coll. on forests, as amended.

22 For example, Act no. 39/2013 Coll. on integrated pollution prevention and control, as amended; Act no. 223/2001 Coll. on waste, as amended; Act no. 188/2003 Coll. on the application of sludge and bottom sediments into the land and on the amendment of Act no. 223/2001 Coll. on waste, as amended; and Act no. 136/2000 Coll. on fertilisers, as amended.

23 Dufala, Dufalová and Šmelková, 2017, p. 157.

fragmentation, which is one of the most significant problems of Slovak land law and needs to be solved by comprehensive land consolidation at the state level. Moreover, it is necessary to mention the possibility of conducting land consolidation in terms of Act no. 330/1991 Coll. on land consolidation, settlement of land ownership rights, district land offices, the Land Fund, and land associations, as amended.²⁴

Furthermore, since Slovakia has no uniform Land Code, the legal regime of leasing of agricultural land is regulated by several sources of law, such as the Civil Code, Act no. 229/91 Coll. on the arrangement of ownership of agricultural land and other agricultural real estate, as amended, and Act no. 504/2003 Coll. on the lease of agricultural land, agricultural holding, and forest land, as amended. The Civil Code contains general rules within the provisions on the issue of leases; these rules apply only if the issues are not regulated by a specific law.²⁵

It should be also noted that in the Slovak legal environment, no separate legislation on agricultural holdings exists. The relevant specific rule concerning this topic is included in the Act no. 504/2003 Coll. on the lease of agricultural land, agricultural holding, and forest land, as amended,²⁶ which contains relevant provisions on leasing.

Moreover, Slovakia has no special regulations for the succession of agricultural land or holding, and general succession rules of civil law²⁷ shall be applied. Furthermore, there is no land possession limit (minimum or maximum) that cannot be exceeded by succession.

Land associations are a noteworthy feature of the Slovak land law.²⁸ Land associations are currently regulated by Act no. 97/2013 Coll. on land associations, as amended.²⁹ A land association is a legal entity according to the law, and this term includes many entities regulated by different legislation in history. In Slovakia, the Register of Associations is managed by the District Office.³⁰ It is worth noting that these associations represent a special type of co-ownership that is particularly difficult to cancel and, in this way, also represent a certain way of protecting the ownership of the land in question.³¹

24 For more on this subject see for example Máčaj, 2021, p. 117–126.

25 Lazíková, Bandlerová and Palšová, 2017, pp. 101–102.

26 *Zákon č. 504/2003 Z. z., o nájme poľnohospodárskych pozemkov, poľnohospodárskeho podniku a lesných pozemkov*

27 See, for example, Act no. 40/1964 Coll., the Civil Code, as amended (*zákon č. 40/1964 Zb., Občiansky zákonník*)

28 On this topic, see Bandlerová, Lazíková, Rumanovská and Lazíková, 2017, pp. 80–94; Lazíková, 2014, pp. 61–70.

29 *Zákon č. 93/2013 Z. z., o pozemkových spoločenstvách*

30 Máčaj, 2018a, p. 156.

31 For more on this subject, see Máčaj, 2018b, pp. 173–179.

As far as the issue of real estate ownership³² is concerned,³³ it can be stated that titles to real estate in Slovakia are well protected, mainly by the Constitution and the Civil Code.³⁴ According to the highest legal source of the country, everyone has the right to own property, and everyone's property right is equally protected. However, specific properties are exclusively owned by the State.³⁵ It is worth noting that the ownership right is not time-barred because of the title claims to real estate that may be brought by third parties without time a limit. Relevant legal norms in connection with real estate ownership are not amended frequently and are generally considered stable – with the exception of the agricultural land regulation.³⁶ It can be stated that under current legislation, both natural and legal persons can acquire agricultural land ownership with almost no restrictions.³⁷

2. Land regulation in the Constitution and the case law of the Constitutional Court

In Slovakia, significant changes in agricultural land and forest land legislation occurred in 2017. It is essential to point out that they were primarily linked to the constitutional protection of agricultural land and forest land, which can be found in Chapter Two, Part Two of the Slovak Constitution under the title “Basic Human Rights and Freedoms.” Similar protective measures are enacted in Part Six of the Constitution, titled “The Right to the Protection of the Environment and Cultural Heritage.” It should be noted that until May 31, 2017, the protection of agricultural land was regulated by the general environmental provisions of the Constitution, in particular Articles 4 and 44. However, following the constitutional amendment, now with effect from June 1, 2017, the Constitution also provides for special protection of agricultural land not only as a component of the environment but also with some specificities related to the acquisition of ownership.³⁸

32 In Slovakia, a single public register (cadastre) is available for the registration of certain real estate rights, regulated primarily by Act no. 162/1995 Coll., as amended (Cadastral Act), and its implementing legal norms. This act enumerates the real estate assets and also real estate rights that are to be registered in the cadastre.

33 In connection with this topic, see, for example, Bandlerová, Lazíková and Palšová, 2017, pp. 98–103.; Lazíková and Bandlerová, 2011; Lazíková, Takáč, Schwarcz and Bandlerová, 2015, pp. 367–376.; Palšová, Bandlerová, Melišková and Schwarcz, 2017, pp. 64–72.; Palšová, 2019, pp. 72–76.; Palšová, 2020; Lazíková and Bandlerová, 2014, pp. 115–124.; Illáš, 2019, pp. 8–15.

34 In each type of transfer, the legislator refers to the Civil Code and its specific provision. Therefore, it can be assumed that agricultural land cannot be the subject of a transfer under other legislation (e.g., under the Commercial Code, where the transfer of real estate would otherwise be considered as a contract for the purchase of the leased item or a contract on the sale of a holding).

35 Constitution of the Slovak Republic, Article 4 (1).

36 Prokopová, Vagundová and Stripaj, 2021.

37 For exceptions, see Para. 7 of the Act on land acquisition.

38 Dufala, Dufalová and Šmelková, 2017, p. 157.

Agricultural land, which is both an integral part of a country's territory and an important natural heritage, is available only in limited quantity. As it is a unique natural resource that cannot be replaced by anything else, its indispensability, capacity for renewal, sensitivity to risk, and low profitability embody the particular social nature of land ownership,³⁹ and it should be the duty of every country to protect their own agricultural land.⁴⁰

In the case of Slovakia, this “duty” has been declared in the Slovak Constitution⁴¹ via amendment no. 137/2017 Coll.,⁴² with effect from June 1, 2017.⁴³ This change responds to the Program Declaration of the Government of the Slovak Republic for 2016–2020,⁴⁴ according to which Slovakia is a predominantly rural country, and therefore, the policies of the Government of the Slovak Republic⁴⁵ aim to support and promote rural development and improve the living conditions of rural populations. The government considers agriculture, food, and forestry as strategic sectors of the state's economic policy and as irreplaceable in the economy's structure.⁴⁶

The Constitution enshrines the fundamental right to a favorable environment. Additionally, it is the constitutional duty of the state to protect and enhance the environment and different types of cultural heritage. Moreover, the provision that no one may endanger or damage neither the environment nor natural resources and cultural heritage beyond reasonable limits is also enacted in the Constitution.⁴⁷ According to it, the state shall ensure a cautious use of natural resources, protection of agricultural land and forest land, ecological balance, and effective environmental care, and protect specified species of wild plants and animals. The Constitution explicitly emphasizes the protection of agricultural land and forest land among natural resources.⁴⁸ Additionally, these two natural resources are defined as non-renewable natural resources,⁴⁹ and the Constitution accords them priority protection

39 Bányai, 2016, p. 2. See also Bányai, 2016, p. 16.

40 Szieńek Csütörtöki, 2021, p. 161.

41 In Slovakia, it should be noted that the constitutional system consists not only of the Constitution but also of several constitutional acts (in other words, constitutional laws). It should also be noted that the question of the relationship between the Constitution and constitutional laws has been addressed by the Constitutional Court of the Slovak Republic, which, in its decision no. I. ÚS 39/93, stated that the Constitution is the supreme layer of the legal order. In this context, see, for example, Giba et al, 2019, p. 64.

42 *Ústavný zákon č. 137/2017 Z. z., ktorým sa mení a dopĺňa Ústava slovenskej republiky č. 460/1992 Zb.*

43 The amendment to the Constitution was adopted on May 16, 2017.

44 *Programové vyhlásenie vlády Slovenskej republiky*. Hereinafter referred to as Program Declaration.

45 *Vláda Slovenskej republiky*. Hereinafter referred to as Slovak Government or Government.

46 For further information, see the Program Declaration, p. 17. Available at https://www.mosr.sk/data/files/3345_6483_programove-vyhlasenie-vlady-slovenskej-republiky.pdf (Accessed: February 22, 2022)

47 Constitution of the Slovak Republic, Article 44 (1)–(3).

48 Constitution of the Slovak Republic, Article 44 (4)–(5).

49 Constitution of the Slovak Republic, Article 44 (4).

to ensure the country's food security.⁵⁰ In Slovakia, agricultural land and forest land are no longer considered commodities⁵¹ but non-renewable natural resources that enjoy special protection by the state and society under the Slovak Constitution.^{52,53} It is worth noting that the adoption of this constitutional regulation meant in the least that it pointed to the importance of the significance of agricultural land and forest land as a component of the environment and the instrument of organic farming. By systematically incorporating these provisions in the section that establishes the right to the protection of the environment and of cultural heritage, we could assume that the primary objective of adopting this regulation was to highlight environmental aspects. However, it can be inferred from the explanatory memorandum⁵⁴ that the primary aim of this amendment was to prevent the speculative purchase of land and to establish the obligation for the state to protect agricultural land and forest land, to support the rural nature of the land, and to ensure its protection by defining and distinguishing it from other goods as a subject of legal relations. Thus, in the explanatory memorandum to the draft of this constitutional act, the protection of land is primarily perceived through the regulation of the conveying of property rights.⁵⁵

However, the rights enshrined in Article 44 of the Constitution are not directly enforceable but can be enforced through different acts. This possibility is stated in Article 44 (6) of the Constitution, which explicitly refers to the enforceability of third-generation human rights, also known as solidarity rights. It is important to underline that solidarity rights include the right to protect cultural heritage and the right to protect the environment. It arises from the provision of the Constitution that everyone has a right to a favorable environment. Notwithstanding the previous sentence, this right cannot be considered an individual right as its purpose primarily ensures that society benefits from it. That is why it must be considered an intergenerational right, but it should also be noted that solidarity is inherent in the right to the environment.⁵⁶

It is also noteworthy that Article 20 (2) of the Constitution has been amended as follows:

50 On this topic, see Szilágyi, 2018b, pp. 69–90.; Szilágyi, Hojnyák and Jakab, 2021, pp. 72–86.; Csirszki, Szinec Csütörtöki and Zombory, 2021, pp. 29–52.

51 Pavlovič, 2021.

52 See, for example, the paper issued by the Office of the National Council of the Slovak Republic on the occasion of the 25th anniversary of the Slovak Constitution: Rolková Petranská, 2017, p. 70.

53 Constitution of the Slovak Republic, Article 44 (4).

54 I.e., Explanatory Memorandum to the Bill of the Members of the National Council of the Slovak Republic Andrej Danko, Eva Antošová, Jaroslav Paška and Tibor Bernáček for the Issue of the Constitutional Act amending the Constitution of the Slovak Republic No. 460/1992 Coll., as amended.

55 Máčaj, 2019, p. 294.

56 Pavlovič, 2020, p. 63.

“The law shall lay down which property, other than the property specified in Article 4 of this Constitution,⁵⁷ necessary to ensure the needs of society, food security, the development of the national economy and public interest, may be owned only by the State, municipality, or designated individuals or legal persons. The law may also state that certain things may be owned only by citizens or legal persons resident in the Slovak Republic.”⁵⁸

This amendment enables the legislator to restrict the acquisition of agricultural land and forest land by certain groups of persons—legal as well as natural—including foreigners. The explanatory memorandum to the Act on land acquisition⁵⁹ justifies these changes based on the need to establish a framework for protecting agricultural land against speculative purchases, which could have negative consequences.⁶⁰

The state ought to be responsible for protecting its land through legislation as well as control of certain activities, supported by sanction mechanisms. These instruments should, therefore, be legally binding and enforceable. Specific arguments state that the changes in the Constitution on land protection are rather declaratory, which, however, enabled the legislator to adopt laws on land protection anchored in the Constitution.⁶¹

In this chapter, the constitutional rules are presented, and in this context, the relevant case law will also be analyzed. Among other reasons, the key Constitutional Court decision, which will be introduced in detail below, has brought about significant changes in Slovak land legislation.

57 See the Constitution of the Slovak Republic, Article 4, which states that raw materials, caves, underground water, natural and thermal springs, and streams are the property of the Slovak Republic. Furthermore, the Slovak Republic protects and develops these resources and makes careful and effective use of mineral resources and natural heritage to benefit its citizens and subsequent generations. In addition, the transport of water taken from water bodies located within the territory of the Slovak Republic outside its borders by vehicles or pipelines is prohibited. This prohibition does not apply to water intended for personal use, drinking water put into consumer containers within the territory of the Slovak Republic, and natural mineral water put into consumer containers within the territory of the Slovak Republic, nor to water provided for humanitarian help or assistance in states of emergency. Details of conditions for transporting water for personal use or water provided for humanitarian help and assistance in states of emergency shall be stated in a specific law.

58 It is important to note that, according to some considerations, agricultural land, as the basis of food security, can be limited to the ownership of the state, citizens, and legal persons resident in the Slovak Republic based on the provision in question. Food safety is part of national security and thus should fall under the legislation of a member state rather than the European Union. This opinion has, of course, not yet prevailed in legislation.

59 Hereinafter referred to as the Explanatory Memorandum. The explanatory memorandum to the Act on land acquisition is available in the Slovak language on the website of the National Council of the Slovak Republic: <https://bit.ly/30bIv97> (Accessed: February 2, 2022).

60 Pavlovič and Ravas, 2017.

61 Pavlovič, 2020, p. 63.

On November 14, 2018, the Constitutional Court of the Slovak Republic⁶² ruled, in a closed session on the motion of a group of 40 members of the National Council of the Slovak Republic,⁶³ to initiate proceedings under Article 125 (1) Point (a) of the Constitution of the Slovak Republic,⁶⁴ examining the conformity of the Act on land acquisition with specific provisions⁶⁵ of the Constitution of the Slovak Republic; on the other hand, on the motion of a group of 33 members of the National Council of the Slovak Republic, it ruled to initiate proceedings under Article 125 (1) Point (a) of the Constitution on the conformity of the Act on land acquisition with certain provisions⁶⁶ of the Constitution.⁶⁷ In its decision,⁶⁸ the Constitutional Court found that the provisions of Paragraphs 4, 5, and 6 of Chapter I⁶⁹ of the Act on land acquisition in question were not in line with certain provisions of the Constitution of the Slovak Republic.^{70,71}

It is clear from the nature of the legal norms examined and the petitioner's arguments that the critical issue for the Slovak Constitutional Court was the assessment of the constitutionality of the problematic legislation concerning Article 20 (1) of the Slovak Constitution.⁷² As stated above, Article 20 of the Constitution enshrines that everyone has the right to own property, and the property rights of all owners shall be uniformly construed and equally protected by law. The Article further states that

62 *Ústavný súd Slovenskej republiky*. Hereinafter referred to as Constitutional Court or Slovak Constitutional Court.

63 *Národná rada Slovenskej republiky*. Hereinafter referred to as the Slovak Parliament.

64 Constitution of the Slovak Republic, Article 125 (1) Point a): "The Constitutional Court decides on the compatibility of laws with the Constitution, constitutional laws and international treaties to which a consent was given by the National Council of the Slovak Republic and which were ratified and promulgated in a manner laid down by law..."

65 More specifically, Article 1 (1), first sentence, in conjunction with Article 2 (2); Article 12 (1) and (2); Article 13 (3) and (4); and Article 20 (1), (2), and (4) of the Constitution of the Slovak Republic.

66 More specifically, Article 1 (1); Article 2 (2); Article 12 (1) and (2); Article 13 (3) and (4); Article 20 (1), (2), and (4); Article 35 (1) and (2); and Article 55 of the Constitution of the Slovak Republic.

67 The Slovak Constitutional Court, in its preliminary examination of the motions to open proceedings, concluded that the conditions for the substantive examination of the two cases provided for in the Constitution and in Act no. 38/1993 Coll. on the organisation of the Constitutional Court of the Slovak Republic, the procedure before it, and the status of its judges, as amended, were met; therefore, by its decision of September 17, 2014, PL. ÚS 20/2014, it merged the two motions to open proceedings into a joint procedure and accepted them for further proceedings. It did not grant the requests for suspension of the contested legislation.

68 For a detailed description of the decision, see Szinek Csütörtöki, 2022, pp. 126–143. See also Veliký, 2019.

69 A procedure for transferring ownership of agricultural land, publication of an offer for the transfer of ownership of agricultural land, verification, and demonstration of the conditions for acquiring ownership of agricultural land.

70 More specifically, Article 1 (1); Article 13 (4), and Article 20 (1) of the Constitution of the Slovak Republic.

71 Decision of the Constitutional Court of the Slovak Republic, no. PL. ÚS 20/2014, p. 1 and 2.

72 For more on the right to property, see, for example, Drgonec, 2019; Orosz et al., 2021; Čič et al., 2012.

property acquired in a manner that is contrary to Slovak laws shall not enjoy such protection and that the right of inheritance is fundamentally guaranteed.⁷³ Thus, based on this, it can be concluded that the property rights of all owners have the same legal content; however, no precisely defined (delimited) definition exists for such content.⁷⁴ It can be concluded that the right to property is considered a fundamental right by the Slovak Constitutional Court, but the right to acquire property is not. The Constitutional Court has already ruled in several cases that Article 20 (1) of the Constitution does not guarantee the right to acquire property⁷⁵ and that Article 20 (1) of the Constitution only protects property acquired under the law in force.^{76,77}

As highlighted by the Constitutional Court, the legislation in question is substantially related to the fundamental right to property, and the Act on land acquisition is intended to impose limits on the transfer of ownership to a form of individualized ownership, where the limits are determined by the legal conditions of the entity to which the owner of the agricultural land wishes to transfer ownership. The inspected legislation, therefore, focuses directly on the conditions for the use of one of the legal elements of the right to property, namely the right to dispose of the object of property (*ius disponendi*),⁷⁸ and therefore falls within the scope of Article 20 (1) of the Constitution of the Slovak Republic.⁷⁹

In its resolution, the Constitutional Court upheld the contradiction of the Act on land acquisition with Article 20 (1) of the Slovak Republic's Constitution regarding the restriction of the right to property. The Constitutional Court logically justifies its decision by stating that agricultural land is part of the land—immovable property—subject to property rights and other rights *in rem* and obligations.

73 Constitution of the Slovak Republic, Article 20 (1).

74 It is worth mentioning that the Slovak Constitutional Court has repeatedly accepted the content of the right to property as defined by the Roman private law by stating that the owner is entitled to possess, use, enjoy, and dispose of the object of the right to property (see, for example, decisions no. PL. ÚS 15/06 and II. ÚS 8/97). This is, therefore, the most complete and broadest definition of a subjective right to ownership, which includes the general characteristics of a subjective right and specific characteristics that clearly distinguish it from other subjective rights (PL. ÚS 30/95).

75 Decision of the Constitutional Court of the Slovak Republic, no. PL. ÚS 13/97.

76 Decision of the Constitutional Court of the Slovak Republic, no. PL. ÚS 33/95.

77 As in the Constitutional Court of Hungary. In this context, see the Decision of the Constitutional Court of Hungary, no. 743/B/1993, ABH 1996, p. 417. The Constitutional Court of Hungary has also ruled that fundamental rights must protect acquired property and that the guarantees for the protection of this property right must be defined (Decision no. 575/B/1992). On the constitutional issues of land transactions regulation, see, for example, Csák, 2018. For the related Hungarian case law, see Olajos, Csák and Hornyák, 2018; Olajos, 2015.

78 Civil Code, Para. 123.

79 For further, see the Decision of the Constitutional Court of the Slovak Republic, no. PL. ÚS 20/2014, p. 31.

Based on the proportionality test,^{80,81} the Slovak Constitutional Court concluded that all the three factors of this test⁸² failed in terms of the restriction of the fundamental right to property.⁸³ Within the framework of the proportionality test, the Constitutional Court considered whether a balance was struck between the needs of public interest, which is the protection of agricultural land and rural development, and the protection of the individual and their fundamental rights. In this test, the Constitutional Court concluded that the Act is heavily dominated by the regulation of the property rights of agricultural landowners and fails to protect public interest. The Act significantly limits the right of disposition as an element of property rights and seeks to protect agricultural land by concentrating ownership rights in agricultural land in the hands of potential purchasers who have been carrying out agricultural production in the vicinity of the transferred land for a certain period.

Additionally, the Constitutional Court stated that protecting agricultural land and its productive potential is a public interest whose nature legitimizes regulatory intervention by the state in the agricultural land market environment. Furthermore, agricultural land is part of the land, that is, of immovable property, which is the subject of property rights and other rights in rem and legal obligations. The two characteristics outlined above logically require that the requirement to protect the productive potential of agricultural land (public interest) and the fundamental right granted to agricultural landowners by Article 20 (1) of the Constitution be constitutionally compatible.⁸⁴ The Act on land acquisition is a piece of legislation that predominantly regulates the content of the property rights of agricultural land owners. In the view of

80 The proportionality test has still not found its place in the Slovak legal environment because the Constitutional Court was relatively late in applying this test in its decision making. Although the first two steps of the proportionality test were defined in a simplified form in 2001 (see, in this respect, Decision of the Constitutional Court of the Slovak Republic, no. PL. ÚS 3/00), they were not developed and applied to the extent necessary and were used only as part of the supporting argument. The actual application of the legislation in the constitutional procedure can only be discussed since 2011. See Zelenajová, 2016, p. 379.

81 The proportionality test can also be characterised as a constitutional restriction of a human right or fundamental freedom only if several—usually three—steps (in other words, a subtest) are met. See Lálík, 2016, p. 285. In the first stage, the appropriateness test is applied, whereby an act restricting a fundamental right is examined to determine whether it is suitable for achieving the objective pursued, which may include the protection of public interest. The second stage is the test of indispensability—the test of necessity—that is, the need to compare the legislative measure under examination, which restricts a fundamental right or freedom, with other measures that serve the same purpose but do not affect fundamental rights and freedoms or affect them to a lesser extent. The final stage is to examine the criterion of proportionality in the strict sense.

82 In other words, the inadequacy of the legislation under examination to achieve the objective pursued, the existence of other legislation allowing targeted and technically justified interference with the beneficial element of the property right, and the restriction imposed by the legislation under examination on the dispositive element of the property right.

83 Furthermore, see the decision of the Constitutional Court of the Slovak Republic, no. PL. ÚS 20/2014, Point 3. Available at <https://www.aspi.sk/products/lawText/4/3178032/1/2?vtextu=ÚS%2020/2014#lema0> (Accessed: February 15, 2022)

84 The decision of the Constitutional Court of the Slovak Republic, no. PL. ÚS 20/2014, p. 78.

the Constitutional Court, its protective function concerning the productive potential of agricultural land is more a matter of legislative wish than reality.⁸⁵

Furthermore, the Slovak Constitutional Court considers the Act on land acquisition to be a good and effective instrument for the protection of agricultural land. It notes, however, that the legislature undoubtedly has room to optimize the legislation in question or even introduce new regulatory restrictions of a targeted nature capable of guaranteeing the achievement of the objective pursued. In this respect, the Slovak Constitutional Court highlights the examples of foreign legislation—notably Austria and, to some extent, Hungary⁸⁶—which require proven professional competence of the organization owning or managing the agricultural land. The Slovak legal system, *de lege lata*, does not require any professional experience from the person carrying out agricultural production.⁸⁷

It should also be noted that three dissenting opinions accompany the Constitutional Court decision.

In the conclusion of this chapter, it can be summarized that the Constitutional Court has confirmed the unconstitutionality of parts of the Act on land acquisition that also coincide with the problems raised by the EU. It is noteworthy that Slovakia addressed the problem much earlier than the EU did. While Slovakia's swift response is a positive step, the decision of the Constitutional Court shows that the need to harmonize the rules for the protection of agricultural land has recently been on the agenda. Slovakia has recognized that agricultural land is a valuable natural resource that should be protected.

3. Land law of the country and its possible proceedings by the European Commission or the Court of Justice of the European Union

As stated above, the accession of Slovakia to the EU on May 1, 2004 was an important milestone in the history of Slovak land regulations. It can be stated that the legal framework of the EU has undoubtedly played a decisive role in its land protection.

Generally speaking, the member states that joined the EU in 2004, including Slovakia, are legally obliged to harmonize their national rules with the rules of the European Union. For most member states, this transitional period lasted 7 years,

85 The decision of the Constitutional Court of the Slovak Republic, no. PL. ÚS 20/2014, p. 255.

86 See, for example, Csák, 2017, pp. 1125–1134.

87 Decision of the Constitutional Court of the Slovak Republic, no. PL. ÚS 20/2014, p. 79.

until 2011, but the Slovak Republic submitted a request⁸⁸ to the European Commission for a 3-year extension.⁸⁹

Consequently, on April 14, 2011 the European Commission adopted Decision no. 2011/241/EU,⁹⁰ approving the application and extending the transitional period concerning the acquisition of agricultural land in Slovakia until April 30, 2014.⁹¹

Since then, the European Commission has conducted an extensive investigation among the newly acceded member states.⁹² It learned that specific provisions in the national laws of these states still restricted the EU's fundamental economic freedoms—in this case, the free movement of capital and the freedom of establishment.⁹³

Therefore, in 2015, the European Commission launched infringement proceedings against five member states: Hungary, Bulgaria, Latvia, Lithuania, and Slovakia. In the case of Slovakia,⁹⁴ the legal provisions related to preference to interested parties conducting business in agricultural production on the territory of the municipality in which the land to be transferred is located, the 10 years of permanent residence or registered office and the minimum of 3 years of commercial activity in agricultural production were controversial. The most problematic, however, was the criterion of a long-term residence in Slovakia,⁹⁵ which resulted in discrimination against other

88 The main reason for the transitional period was the need to protect the socioeconomic conditions for agricultural activities in Slovakia, owing to the introduction of a single market system and the transition to the common agricultural policy. Additionally, concerns about the potential impact on the agricultural sector were to be considered because of the significant initial differences in land prices and incomes, especially in comparison with Western and Northern countries. The transitional period was intended to facilitate the process of land restitution and privatization for farmers. See Nociar, 2016.

89 Lazíková and Bandlerová, 2014, p. 121.

90 Commission Decision of April 14, 2011, extending the transitional period concerning the acquisition of agricultural land in Slovakia (2011/241/EU), is available in the English language (also in official languages of the EU) at the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011D0241&from=HU> (Accessed: February 17, 2022).

91 Commission Decision of April 14, 2011, extending the transitional period concerning the acquisition of agricultural land in Slovakia (2011/241/EU), is available in the English language (also in official languages of the EU) at the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011D0241&from=HU> (Accessed: February 17, 2022).

92 Some authors indicated that although “the European Commission has discretionary powers as to which Member State to open a full investigation or infringement procedure against” and the European Commission “monitors the application of EU law for all Member States on an ongoing basis and takes action on complaints against the laws and measures of all Member States equally,” they found the discrimination against the new member states to be worrying, unjustified, and unfounded. For further information, see Korom and Bokor, 2017, pp. 262–263, p. 266.

93 See the press release of the European Commission: “Financial services: Commission requests BULGARIA, HUNGARY, LATVIA, LITHUANIA and SLOVAKIA to comply with EU rules on the acquisition of agricultural land.” The press release is available on the website of the EC: https://ec.europa.eu/commission/presscorner/detail/hu/IP_16_1827 (Accessed: February 18, 2022).

94 By letter from the European Commission no. C(2015) 3060 final dated May 27, 2016, the Slovak Republic received the reasoned opinion of the Commission issued on May 26, 2016 in accordance with Article 258 of the Treaty on the Functioning of the European Union concerning infringement No 2015/2017.

95 Macejková, 2016, pp. 19–20.

EU nationals.⁹⁶ These requirements of the Act on land acquisition were therefore not acceptable to the Commission. It follows that the other requirements of the Act were acceptable to the Commission—in particular, the system of publication of offers for the transfer of ownership of agricultural land and the identification of the selected bidder for its acquisition in the web-based Register of Publication of Offers for the Transfer of Ownership of Agricultural Land; the certification of the fulfillment of the conditions for the acquisition of agricultural land; and the absolute prohibition on the acquisition of agricultural land by entities from outside the EU member states, the EEA, and Switzerland.

The Slovak legislator responded to this situation by amending a particular paragraph of the Foreign Exchange Act,⁹⁷ resulted in opening the agricultural land market not only to EU citizens but also to third-country nationals. Additionally, several new rules concerning the purchase of agricultural land were adopted by the country.⁹⁸

The Act on land acquisition, which came into force on June 1, 2014, regulated the transfer of agricultural land while ensuring a relatively wide contractual freedom. The explanatory memorandum of this Act stated that a principal objective of the legislation was to regulate the acquisition of agricultural land to prevent speculative land purchases and thereby create a legal framework to allow agricultural production to continue as originally intended. The primary objective of the law, therefore, is to ensure that the user uses agricultural land for its intended agricultural purposes.⁹⁹

One of the most important provisions of the Act on land acquisition was the introduction of a strictly regulated tendering procedure, according to which the seller was obliged to upload his intention to sell the agricultural land¹⁰⁰ at least 15 days before the transfer to the database on the transfer of ownership of agricultural land, which was established by the Ministry of Agriculture and Rural Development of the Slovak Republic. Additionally, the landowner had to publish their offer on the bulletin board of the territorially competent municipality. The publication of the official notice on the bulletin board of the municipality was free of charge, and the municipality had to cooperate in publishing such offers.¹⁰¹ The potential buyer was obliged to indicate their intention to acquire ownership of the land at the owner's address, within the time limit specified, and for the price offered in the register.¹⁰² If these conditions were fulfilled, the ownership of the agricultural land could be acquired by a natural or legal person who had been resident or had a registered office in the country for at least 10 years and had been engaged in an agricultural activity for at least 3 years

96 Szilágyi, 2017, p. 176.

97 Act no. 202/1995 Coll. on the Foreign Exchange Act, Para. 19a: "A foreigner can acquire ownership of real estate in the country if there are no restrictions on the acquisition of such property in special laws."

98 Lazíková, Bandlerová and Lazíková, 2020, p. 100.

99 Kollár, 2019.

100 The procedure for the transfer of ownership of land, laid down in Para. 4 of the Act on land acquisition.

101 Strapáč, 2015, p.15.

102 Lazíková, Bandlerová and Lazíková 2020, p. 101.

before the conclusion of the contract.¹⁰³ If no one expressed the intention to buy the land offered for sale in this way, the agricultural land could be claimed (in the first place) by a person having permanent residence or a registered office in the municipality where the agricultural land was located. In the absence of interest, an offer could be made to natural person residents or legal persons with an office registered in a neighboring municipality.¹⁰⁴ If no one expressed the intention to buy the land offered for sale in this way, the agricultural land could be offered to the person having permanent residence or a registered office outside the municipality in whose administrative territory the agricultural land was located. If no acquirer (irrespective of permanent residence or registered office) expressed interest in acquiring the land in the tendering procedure, the transferor may transfer the land exclusively for the price or value equal to that indicated in the unsuccessful tendering procedure and exclusively to a person who had been a permanent resident or had a registered office in the territory of the Slovak Republic for at least 10 years. Additionally, the transfer may be made no later than 6 months after the unsuccessful completion of the tendering procedure.¹⁰⁵ The competent district office¹⁰⁶ was responsible for verifying the existence of legal requirements for the transfer of ownership of land.

It should be noted, as it was stated in the previous subchapter, that even before the request of the European Commission, the Act on land acquisition was the subject of numerous professional and political debates because of its provisions. Consequently, the Constitutional Court examined the constitutionality of specific provisions of the Act on land acquisition.¹⁰⁷ In conclusion, it can be stated that the Constitutional Court has confirmed the contradiction of parts of the Act on land acquisition in points that also coincide with the problems raised by the EU. It is also worth noting that although Slovakia dealt with the problem at the national level long before the EU did, it was a long and challenging process that lasted about 4 years.

The European Commission's proceeding against the Slovak Republic became irrelevant due to the Constitutional Court's ruling, promulgated on February 11, 2019 in the Official Gazette of the Slovak Republic.¹⁰⁸ By the promulgation of this ruling in the Collection of Laws, Paragraphs 4–6 of the Act on land acquisition ceased to have effect. As the legislator did not remove the contradiction of the provisions in question with the Constitution of the Slovak Republic within 6 months from the date of their loss of effectiveness, the provisions in question also lost their validity on the expiry

103 Kollár, 2019.

104 Act on land acquisition, Para. 4 (7). We would like to add that in the previous legislation, the condition of an applicant from a neighbouring municipality was applied in some cases. However, this concept is problematic in some regions of Slovakia as, in some cases, the territories of two municipalities border on mountainous terrain, and access to them is much more problematic than to more distant municipalities. The same applies to possible cooperation in the area of agricultural implementation.

105 Relevans advokátska kancelária, 2017.

106 The territory of Slovakia is divided into eight regions (*kraje*) and 79 districts (*okresy*).

107 Drábik and Rajčániová, 2014, p. 84.

108 *Zbierka zákonov Slovenskej republiky*. Hereinafter referred to as Collection of Laws.

date (August 11, 2019). Consequently, the Commission's proceeding against the Slovak Republic was discontinued on October 10, 2019.

It is worth mentioning that there have been no proceedings at the Court of Justice of the EU (CJEU) in connection with the cross-border acquisition of agricultural lands/holdings concerning Slovak legal regulation or practice.

4. National legal instruments in the context of the Commission's Interpretative Communication

On October 18, 2017, the European Commission published the Commission's Interpretative Communication on the Acquisition of Farmland and European Union Law,¹⁰⁹ in which it sets out the benefits and challenges of foreign investment in agricultural land, describes the applicable EU law and related jurisprudence of the Court of Justice of the European Union, and draws some general conclusions in connection with the jurisprudence on how to achieve legitimate public interests in conformity with EU law.¹¹⁰ The document aims to provide a basis for discussion on foreign investment in farmland, to support the member states that are in the process of amending their legislation or are about to do so, and to help disseminate best practices more widely in this complex area.¹¹¹

In addition, the document also responds to the request of the European Parliament for the Commission to publish guidance on how to regulate the agricultural land markets in conformity with EU law.¹¹² On this basis, it states that member states can define appropriate policies for their land markets under EU law. Certain objectives have been recognized by the Court of Justice of the European Union as justifications for restricting fundamental freedoms. In formulating these objectives, clarity must be sought, and the means chosen must be proportionate to these objectives, which means that they must not be discriminatory or go beyond what is necessary.¹¹³

It should be noted, however, that the Commission has also addressed, in this document, the different needs and forms of regulation of agricultural land and even discussed some of the features of the legislation governing land markets and drawn some conclusions from case law that can guide member states on how to regulate their land markets in conformity with EU law and in a way that balances the capital needs of rural areas with the pursuit of legitimate policy objectives.

109 For further information, see the Official Journal of the European Union, 2017/C 350/05. Available at [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC1018\(01\)&from=HU](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC1018(01)&from=HU) (Accessed: March 10, 2022).

110 Commission Interpretative Communication on the Acquisition of Farmland and European Union Law, Section 3.

111 Ibid.

112 Ibid.

113 Hornyák, 2018, p. 27.

This document assists in writing the final chapter of this country study by summarizing—for the most part—what has already been described above regarding the individual legal institutions.

a) prior authorization

The Slovak law does not contain neither provisions on prior authorization nor provisions on prior administrative approval for the transfer of agricultural land.

b) preemption rights (rights of first refusal) in favor of farmers

The current Slovak legislation does not contain provisions on preemption rights favoring farmers.¹¹⁴ It should be noted, however, that in Slovakia, it has recently been mooted to “grant” a right of first refusal on agricultural land put up for sale.¹¹⁵

In Slovakia, parties may agree on the preemptive right either as an *in rem* obligation or as a contractual obligation¹¹⁶, but it is worth noting that some preemptive rights may also be created by statute. In order to justify the preemptive right *in rem*, a contract has to be in writing and becomes effective upon its registration in the cadastre. If the seller has not purchased the property offered by the buyer, it retains the preemptive right, and in case of violation of such right, the entitled party may either demand that the acquirer offer the property for sale or that the seller shall retain the preemptive right for the future. As mentioned earlier, under Slovak law, the co-owners of real property have a statutory preemptive right. Additionally, various acts (such as for the preservation of nature or significant investment) contain several statutory preemptive rights. Moreover, such acts also provide for the consequences of a preemptive right breach.¹¹⁷

c) price controls

It can be said that the legislation in Slovakia does not provide for a uniform price regulation that would determine the price of agricultural land.¹¹⁸

114 With regard to preemptive rights, it should be noted that the general provisions are contained in Act no. 40/1964 (i.e., the Civil Code). It should be noted, however, that the Civil Code’s rules on the preemption rights are not coherent, which obviously raises several problems in the application of the law. On this topic, see, for example, Lazíková, 2014, pp. 61–70. Furthermore, in Slovak law, a special rule on the preemption right excludes the application of the Civil Code to land associations. For the literature, see Bandlerová, Lazíková, Rumanovská and Lazíková, 2017, special, pp. 80–94.

115 See, for example, the proposed legislation no. LP/2020/504, special part, p. 16.

116 It can be stated that, in general, contractual preemptive right is only binding for the contracting parties, and breach thereof causes only contractual liability and does not void the title to real estate.

117 Prokopová, Vagundová and Stripaj, 2021.

118 Bandlerová, Marišová and Schwarcz, 2011, p. 20.

It should be noted that in the case of sales and purchases between natural and legal persons, it is essential that the market price of agricultural land be established by an agreement between two parties and, in practice, be the result of an agreement between the seller and the buyer.¹¹⁹ The agreed price is not subject to any legal restrictions and is independent of the value of the agricultural land, whether it is calculated based on an expert report or other legislation in force.¹²⁰ It should be emphasized, however, that no price regulations restrict individuals or legal entities from transferring real estate, while the official prices¹²¹ provide them with important information for price determination.¹²²

In our view, therefore, Slovak land law does not have a direct instrument for regulating prices; however, this does not mean that Slovak land law does not take land prices into account and does not address the issue of land prices in certain situations.

d) self-farming obligation

The Slovak law does not contain any provisions on self-farming obligations.

e) qualifications in farming

The current Act on land acquisition does not contain any provisions on qualifications for farming. However, it can be noted that the former legislation was stricter, and the ownership of agricultural land could be acquired by a natural or legal person who had been a resident or established in the country for at least 10 years *and* who had been engaged in an agricultural activity for at least 3 years before the end of the contract.¹²³

f) residence requirements

The Act on land acquisition does not contain any provisions on residence requirements. However, it may be noted that the former legislation was stricter as the conditions for acquiring agricultural land in the country included a minimum of 10 years of permanent residence for natural persons and a minimum of 10 years of registered office for legal persons.

119 Blažík et al., 2014, p. 69.

120 Lazíková and Bandlerová, 2006, p. 140.

121 The official price of agricultural land is used primarily to express the value of agricultural land for the purpose of determining the amount of property tax. See, in this context, Decree no. 492/2004 on the determination of the general value of immovable property. See also Bradáčová, 2007, pp. 184–188.

122 Lazíková and Bandlerová, 2006, p. 144.

123 Kollár, 2019.

g) prohibition on selling to legal persons

The Act on land acquisition in force allows both natural and legal persons to acquire land ownership without almost any restriction. However, at this point, it should be noted that the legislator, based on the principle of reciprocity, has formulated an express prohibition and related exceptions to the acquisition of ownership of agricultural land, which is contained in Paragraph 7 (1) of the Act on land acquisition. For further details, see point (j).

h) acquisition caps

The current Slovak land legislation does not provide for acquisition caps, but the idea of introducing land acquisition limits is not alien to the Slovak legislator.¹²⁴

i) privileges in favor of local acquirers

The current Act on land acquisition does not contain any provisions on the privileges in favor of local acquirers.

j) condition of reciprocity

The current Slovak land law allows both natural and legal persons to acquire land ownership with almost no restrictions. The only restriction is that agricultural land cannot be owned by a state, a citizen, a resident, or a legal person of a state whose legal system does not allow ownership of agricultural land by Slovak citizens, residents, or legal persons. An exception to this prohibition is the acquisition of agricultural land by inheritance.¹²⁵ In addition, the law also provides exceptions to the prohibition's territorial scope, namely the member states of the European Union, the European Economic Area, the Swiss Confederation, and states bound by an international treaty that is also binding for Slovakia.¹²⁶

124 In this context, see, for example, proposal no. LP/2017/429, which was submitted in June 2017 as a reaction to the amendment to the Constitution of the Slovak Republic approved by the Parliament on May 16, 2017 and to the infringement proceeding initiated by the European Commission. The amendment was intended, among other things, to prevent speculation for capital investment purposes. The proposal by former Slovak Minister of Agriculture Gabriela Matečná would have introduced a maximum land acquisition limit of 300 hectares for natural persons and farmers and 700 hectares for legal persons. As another example, the bill presented by the Ministry of Agriculture under Minister of Agriculture Ján Mičovský for 2020 also included provisions for land acquisition limits: 300 hectares for natural persons and farmers and 1,200 hectares for legal persons. According to the explanatory memorandum to the draft, the specified land acquisition limit would not have applied to the acquisition of agricultural land by inheritance or by the state, the county council, or the municipality.

125 Act on land acquisition, Para. 7 (1).

126 Act on land acquisition, Para. 7 (2).

Conclusions

Agricultural land is an irreplaceable natural resource and heritage of every country; therefore, it should be a priority for every country to protect it. The Slovak Constitution explicitly emphasizes the protection of agricultural land and forest land among natural resources. In addition, these two natural resources are defined as non-renewable, and the Constitution accords them enhanced protection to ensure the country's food security.

The study of the constitutional level and the level of regular acts indicates that the Slovak land regime should be seen as a complex system of legal norms. The most important act in this context should be the Act on land acquisition.

In Slovakia, restrictions on the acquisition of agricultural land have been in force for more than 4 years. It can also be concluded that the legislator clearly intended to protect agricultural land; however, as it is clear from the decision of the Slovak Constitutional Court and the infringement proceeding initiated by the European Commission against Slovakia, the legal restrictions on the acquisition of agricultural land were not in line with the EU's fundamental economic freedoms. Thus, pressure from the European Commission and the efforts of certain members of the Slovak Parliament to annul certain provisions of the mentioned act undoubtedly contributed to the Slovak Constitutional Court's finding that certain provisions were not in conformity with the Slovak Constitution, which led to the annulment of certain contested provisions of the Act on land acquisition.¹²⁷

The decision of the Slovak Constitutional Court has resulted in cardinal changes, especially with regard to the acquisition of agricultural land; it can be seen that not only natural persons but also legal persons can now acquire ownership of agricultural land in Slovakia, with almost no restrictions. In our opinion, this leads to the conclusion that the Slovak state is not adequately performing its important tasks in land protection, but it is worth highlighting the fact that several efforts have been made in this direction to change the abovementioned situation and the possibility of sufficient regulation of disposals of ownership to agricultural land. At the same time, it is necessary to point out how the Slovak Constitutional Court emphasizes, in its decision analyzed in this chapter, that the more important the constitutionally protected interest is, the greater the responsibility of the state to protect it effectively, since the land becomes a commodity that can easily be abused if not adequately protected in legal and institutional terms.¹²⁸

Thus, for the legislator, the biggest challenge is to adopt such measures for the protection of land—especially agricultural land and forest land—that would be in accordance with the European Union law as well as the protection of fundamental rights and freedoms in accordance with the Slovak Constitution and the European Convention on Human Rights.

¹²⁷ See Ptačinová: i. m.

¹²⁸ Palšová, Bandlerová and Machničová, 2021, p. 11.

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