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Acquisition of Agricultural Land in the Czech Republic

- **ABSTRACT:** *The article focuses on the acquisition of agricultural land in the Czech Republic. It aims to describe the topic in the context of both historical and property law. The article introduces historical context of property ownership relations and their composition. Agricultural land was nationalized by the State in the past. Therefore, after the Velvet Revolution, it was necessary to restate a significant part of state-owned property back to its original owners.*

Privatization and related matters form a significant part of the present analysis because it still affects the transfer of agricultural land from the State to private individuals. Historically, transfers of agricultural land have also been restricted on the basis of nationality. However, after the accession of the Czech Republic to the European Union, this restriction has gradually been lifted.

Pre-emption also remains an important issue. At present, however, there is no pre-emption right in general. It affects only certain types of agricultural land, where the pre-emption right is established in favor of the State.

The next part of the article deals with actual transfers of agricultural land. This part introduces the basic requirements and elements of transfers, with an emphasis on transfers of state-owned agricultural land. On behalf of the Czech Republic, agricultural land is administered by the State Land Office, which is responsible for the disposal and alienation of land. First, the article focuses on privileged transfers the land in question is transferred only to a certain circle of subjects. In the succeeding section, methods of land transfers to non-privileged entities are described.

- **KEYWORDS:** Czech Land Law, acquisition of land, agricultural land, restitution, pre-emptive right

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1. Introduction

In the Czech Republic, it is mandatory to register land ownership in a public register, the Cadastre of Real Estate. For registration purposes, land is divided into two types: agricultural and non-agricultural. Pursuant to Section 3(2) of Act No. 256/2013 Coll., the Cadastral Act, as amended, agricultural land includes arable land, hop-field, vineyards, gardens, orchards, and grassland (formerly meadows and pastures).

A special act for the protection of agricultural land was adopted in 1959. It was replaced by acts of the same name in 1966 and 1992 (after the Velvet Revolution). The last of these acts, Act No. 334/1992 Coll., remains in force. These regulations ensure the protection of agricultural land from erosion, pollution, and non-agricultural use. Non-agricultural land that is necessary for agricultural production (e.g., farm tracks, irrigation reservoirs, or drainage ditches) and ponds for fish farming are protected by these acts as well.

The following information on agricultural land is available in the Cadastre of Real Estate: type of land, type of land use (e.g., tree plantation, border, photovoltaic plant), type of land protection (i.e., national park or water protection area), and the Evaluated Soil Ecological Units (known as BPEJ), which reflect the quality of the soil.

Unfortunately, registration in the Cadastre of Real Estate often does not correspond to reality because of historical inaccuracies or because landowners do not usually report changes. Any doubts regarding the nature of the land were resolved by the municipal authorities. The nature of the land had to be examined retrospectively in the process of restitution (most often as of June 24, 1991, when Act No. 229/1991 Coll. The Land Act became effective). For these transfers, it was necessary to interpret the definition of agricultural land as broadly as possible.¹

Farmers in the Czech Republic still conduct farming mainly on rented land, although the share of rented land has decreased from 92% to less than 73% over the last 20 years.² However, land-use relations are voluntarily registered in the Cadastre of Real Estate. In practice, this does not occur for financial reasons. Fortunately, information on agricultural land users can be obtained from the Public Land Register (LPIS),³ which was created primarily to provide European subsidies.

1 Judgment of the Supreme Court of November 18, 2009, Ref. No. 28 Cdo 2969/2009.

2 Czech Statistical Office. Integrated Agricultural Survey (2020) [Online]. Available at: <https://www.czso.cz/csu/czso/integrated-farm-survey-2020> (Accessed: 6 December 2021).

3 Information [Online]. Available at: <https://eagri.cz/public/app/lpisext/lpis/verejny2/plpis/> (Accessed: 6 December 2021).

In 1993, 4,283,010 hectares of agricultural land was registered in the Cadastre of Real Estate. The latest figure for 2020 is only 4,200,204 hectares.⁴ Thus, almost 8.5 hectares of fields, meadows, or gardens have disappeared each day since the Czech Republic was founded, mostly having been converted into construction properties, though parts have been reforested. On the other hand, the price of agricultural land has been rising steadily. Since 2004, when the oldest data were available from the Czech Statistical Office, until 2020, it has increased almost five times, from CZK 4.98/m² to CZK 24.2/m².⁵

2. Historical context

The current land ownership structure and land size are the result of a complex historical development. Between 1948 and 1989, the communist regime tried to nationalize land. Owners were often illegally deprived of agricultural land or left with bare ownership (the land was used by agricultural cooperatives). After the Velvet Revolution (as early as 1990 and 1991, still in Czechoslovakia), legislation regulating land restitution was adopted. Its aim was to mitigate property injustices and wrongs committed by communist regimes. Former owners obtained their confiscated agricultural land or substitute land if the original land could no longer be given back (e.g., due to construction of urban development). However, restitution was also considered a form of privatization.⁶ By privatizing businesses and land, the state sought to establish a market economy.

Restitution and privatization are therefore intertwined. This connection was also reinforced by the possibility of former owners (restituents) selling their claims for substitute land. However, this applied until 2005, when only the original restituents and their heirs were entitled to acquire land (this decision is the so-called first restitution dot).⁷ Neither the constitutional order nor the international obligations of the Czech Republic imply an obligation to remedy historical injustices (there is no constitutional right to restitution): It was therefore a benefit provided by the state.⁸

In the 1990s, buildings, technological equipment, livestock, and movable assets were privatized. Transfers of agricultural land during this period were rare. Until 1998, transfers of state-owned land were performed by the Land Fund of the Czech Republic at its discretion based on the demands of former owners, in

4 Information [Online]. Available at: <https://cuzk.cz/Periodika-a-publikace/Statisticke-udaje/Souhrne-prehledy-pudniho-fondu.aspx> (Accessed: 6 December 2021).

5 Czech Statistical Office. Table 7.1 The average agricultural land prices [Online]. Available at: https://www.czso.cz/csu/czso/ipc_ts (Accessed: 6 December 2021).

6 Judgment of the Constitutional Court of June 4, 1997, Ref. No. Pl. ÚS 33/96.

7 Judgment of the Constitutional Court of December 13, 2005, Ref. No. Pl. ÚS 6/05.

8 For example, Judgment of the Constitutional Court of November 19, 1999, Ref. No. IV ÚS 432/98.

a process that was very non-transparent.⁹ The laws regulating the mechanism of privatization in other areas also did not target the de-nationalization of agricultural property.¹⁰ Privatization and restitution of agricultural land therefore began only after the adoption of Act No. 95/1999 Coll. on the conditions for the transfer of agricultural and forestry land from state ownership to other persons. This came into force in May 1999. This Act was replaced on January 1, 2013, by Act No. 503/2012 Coll., which took over its main principles (see below).

Privatization started to speed up after the adoption of Act No. 95/1999 Coll. The state initially intended to privatize 500 thousand hectares of land, subsequently increasing the scope to 600 thousand hectares (i.e., about 14% of the total area of agricultural land). Approximately 276 thousand hectares were transferred in 2005, 452 thousand hectares three years later, and 547 thousand hectares in 2011. Thus, in 10 years, the restitution process was almost complete. The latest figures (as of December 31, 2019) show that only a few particularly complex cases remain to be resolved, and 99.79% of the restitution applications have been decided.¹¹

The Land Fund announced public offers for the sale of land under Act No. 95/1999 Coll. Unfortunately, the Land Fund often preferred the applications of farmers to former owners. This was considered a violation of the law. The Supreme Audit Office also criticized such practices.¹² After several years of great struggle and search for a just solution,¹³ the legislation finally established the following order of applicants: 1. Former owner (restituent), 2. Tenant who has been using the offered land for at least 36 months, 3. Farmers who have been using at least 10 hectares of the offered land for 36 months, or owners using at least 10 hectares of agricultural land at the location of the offered land who have been farming in the Czech Republic for 36 months.

If no one expressed their interest, the land was offered to any natural person (a citizen of an EU country, a European Economic Area country, and Switzerland) in a commercial tender. Thus, priority was given to former owners and farmers who actually farmed the land. Price was also more favorable: The land was sold at prices below market value. This approach was intended to support private farmers. The income from the sale was not decisive for the state.¹⁴ An advantage of the privatization process was the possibility for beneficiaries to acquire substitute land outside their place of residence and outside the place where the

9 Zeman, 2013, pp. 242, 252.

10 Adamová et al., 2020, p. 766.

11 Green report on agriculture, 2019, p. 123 [Online]. Available at: <https://eagri.cz/public/web/mze/zemedelstvi/publikace-a-dokumenty/zelene-zpravy/zelena-zprava-2019.html> (Accessed: 15 December 2022).

12 Sale of state-owned real estate managed by the Land Fund of the Czech Republic (2008). Audit conclusions [Online]. Available at: <https://www.nku.cz/informace/informace-08-12.pdf> (Accessed: 15 December 2021).

13 Hálková and Doležal, 2012, p. 892.

14 Explanatory memorandum to Act No. 95/1999 Coll.

unjustly confiscated property was originally located.¹⁵ However, the possibility of using agricultural land was often precluded by the fact that the land was located within larger blocks or that there was no access to it. This obstacle is still being remedied through land consolidation. However, former owners competed for the land offered to them, effectively reducing the value of their restitution claims. Although they could use the restitution claim to pay the price, they had to offer a higher price than others.

The church property restitution, which also included about 33,000 hectares of agricultural land, has also been almost completed.¹⁶ This lasted for a much longer period. In fact, they were only launched with the adoption of Act No. 428/2012 Coll., on Property Settlement with Churches, and Religious Societies. This Act also led to the separation of the church and the state.

Sales of land owned by the state have had a significant impact on the land market. Privatization, as mentioned above, effectively started in 2001 and continued until around 2012. By that time, 99% of the allocated land had been transferred. In contrast, in the 1990s, transfers of agricultural land were very limited, as farming was not profitable. It was more profitable for farmers to lease land than buy it. Agricultural land was mainly sold, where it could be converted into construction land (mostly around larger towns).¹⁷

3. Restrictions on the acquisition of agricultural land

■ 3.1. *Foreigners*

The rules for the acquisition of agricultural and other land by foreigners were originally regulated by Foreign Exchange Acts Nos. 528/1990 Coll. and 219/1995 Coll. Before the Czech Republic joined the EU (i.e., until April 30, 2004), foreigners could acquire agricultural land in principle only by inheriting it. It should be noted that a foreign national was not considered a foreigner for these purposes if they had permanent residence in the Czech Republic. The same applies to legal persons with a registered office in the Czech Republic. The Czech Republic (like Slovakia, Lithuania, or Hungary) negotiated a seven-year transitional period restricting the acquisition of agricultural and forest land.¹⁸ The main reason for the transitional period was concerns that Czech citizens and farmers would not be able to compete with offers from foreign bidders for agricultural land. This could lead to higher

¹⁵ Zeman, 2013, p. 251.

¹⁶ Explanatory Memorandum to Act No. 428/2012 Coll.

¹⁷ Soil: situation and outlook report. December 1999, p. 17 [Online]. Available at: <https://eagri.cz/public/web/mze/puda/dokumenty/situacni-a-vyhledove-zpravy/> (Accessed: 15 December 2021).

¹⁸ Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, and Slovakia (2003).

prices, land speculation, and, consequently, threaten the competitiveness of the agricultural sector. Foreign entities could not even participate in the privatization of agricultural land under Act No. 95/1999 Coll.

However, lawyers believed that seriously interested parties could acquire agricultural and forest land relatively easily by establishing a business corporation or purchasing it.¹⁹ In fact, Czech legal entities owned by foreign capital could acquire agricultural land in the Czech Republic without restrictions.

‘There have been no significant investments by foreigners in Czech land,’²⁰ although farmland prices in the Czech Republic in 2011 were significantly lower than in Western Europe, and have remained so until date. For this reason, the Czech Republic did not request an extension of the transitional period by three years. On the contrary, Slovakia, Hungary, and Lithuania decided to extend the transitional period.²¹ Since then, no relevant proposals to restrict the acquisition of agricultural land by foreigners have been introduced in the Czech Parliament. Neither the Czech Statistical Office²² nor the cadastral authorities record the share of agricultural land owned by foreigners or Czech companies owned by foreigners. Therefore, a more detailed analysis is very difficult.

■ 3.2. Pre-emption right

In the Czech Republic, there is no legislation establishing a pre-emption right to agricultural land for any entity other than the State. The most significant such right is the State’s pre-emption right to open land (i.e., including agricultural land) located outside developed areas of municipalities in national parks, national nature reserves, and national natural monuments. Pursuant to Section 61 of Act No. 114/1992 Coll., on Nature Protection, the owners of these lands are obliged to offer them for purchase first to the nature protection authority. According to the Constitutional Court, the state has a positive obligation under the Constitution (Article 7) to protect the environment, which it can fulfill, *inter alia*, by centralizing ownership of land in the national park. Only one of the components of the ownership triad (*ius disponendi*) is limited by pre-emption rights. Therefore, the Constitutional Court did not find this pre-emption right to be unconstitutional.²³

For a relatively long time, the state had a pre-emptive right to land that it privatized under Act No. 95/1999 Coll. (unless transferred to former owners).

19 Fráňa, 2007, p. 840; Gala, 2010.

20 Soil: situation and outlook report. December 2012, p. 47 [Online]. Available at: <https://eagri.cz/public/web/mze/puda/dokumenty/situacni-a-vyhledove-zpravy/> (Accessed: 15 December 2021).

21 Commission decision of April 14, 2011, extending the transitional period concerning the acquisition of agricultural land in Slovakia.

22 Czech Statistical Office. Integrated Agricultural Survey (2020) [Online]. Available at: <https://www.czso.cz/csu/czso/integrated-farm-survey-2020> (Accessed: 6 December 2021).

23 Judgment of the Constitutional Court of September 25, 2018, Ref. No. Pl. 18/17.

However, since 2013, the existence of this right has been limited to a period until the full payment of the purchase price for the land or to a period of five years after the date of registration of the ownership right in the Cadastre of Real Estate.²⁴ The purpose of this limitation was to support the agricultural land market and improve the position of farmers.²⁵ The gradual repayment of the purchase price (approximately half of the land was privatized with the possibility of payment by installment) led to the termination of this pre-emption right. However, the state rarely uses the pre-emption right (only 84 cases in 2013–2020),²⁶ even though it has a shortage of agricultural land.

In particular, right-wing politicians and landowners consider legal pre-emption rights an undesirable restriction on property rights. There have been repeated proposals to abolish pre-emption rights for land in national parks (most recently, in spring 2021).²⁷ The Association of Private Agriculture of the Czech Republic and the Union of Landowners argue that statutory pre-emption rights would result in lower land prices and worsen access to land for new farmers. At the same time, neither the quality of the land nor its protection from non-agricultural use would be improved.

In view of this public opinion, it is not surprising that rare attempts to adopt pre-emption have not been successful. The first proposal was made in 2016 by three Communist Party deputies²⁸ who proposed that the owner of agricultural land²⁹ be obliged to offer the land to the state and to a tenant who has been using agricultural land in the municipality for at least three years and has resided in the Czech Republic for at least ten years (registered office in the case of legal entities). The farmer would have two months to accept the offer. The right of pre-emption was to apply also to state land. At the same time, the state would have the pre-emptive right if the farmer did not want to purchase the land. However, the government did not approve the proposal because of the lack of a guarantee of achieving the main objective of the proposal, i.e., the preservation of the existing scope of agricultural land. It also pointed out that the 10-year residency requirement was in breach of EU law.³⁰ Ultimately, the Chamber of Deputies did not discuss the proposal before the end of the parliamentary term. This demonstrates the low interest of politicians

24 Section 15 of Act No. 503/2012 Coll.

25 Fialová, 2012.

26 Final accounts of the organizational unit of the State for 2020 [Online]. Available at: <https://www.spucr.cz/statni-pozemkovy-urad/povinne-zverejnovane-informace/ekonomika/rozpocet> (Accessed: 8 December 2021).

27 Parliamentary Document No. 731/5 [Online]. Available at: <https://www.psp.cz/sqw/historie.sqw?o=8&t=731> (Accessed: 4 December 2021).

28 Parliamentary Document No. 1046/0. [Online] Available at: <https://public.psp.cz/en/sqw/sntisk.sqw?o=7> (Accessed: 4 December 2021).

29 However, gardens, land in developed areas, and land intended for non-agricultural purposes were not considered agricultural land.

30 Parliamentary file No. 1046/0 [Online]. Available at: <https://public.psp.cz/en/sqw/sntisk.sqw?o=7> (Accessed: 4 December 2021).

in dealing with this controversial issue. Lawyers have also paid minimal attention to it.³¹

Subsequently, in 2017, Minister of Agriculture, Marian Jurečka, proposed a softer version of the pre-emptive right. However, he did not officially submit a proposal to change the law, but an unofficial proposal³² requiring the owner of agricultural land to inform the tenant of the intention to sell the land. The conclusion of the contract could take place 30 days after receipt of the notification. However, the tenant would not be able to prevent the sale of the land. The second government of Prime Minister Andrej Babiš (in office since 2018) wanted to introduce an information obligation for landowners. The government pledged to 'enforce the notification obligation for the sale of agricultural land to those who farm on it.'³³ However, no such proposal was submitted by the government by the end of its term in the autumn of 2021.

4. Acquisition of agricultural land by legal persons

As a result of the transformation of State-owned enterprises and agricultural cooperatives, land in the Czech Republic is mainly managed by legal persons. In 1997, they farmed 74.9% of the land; in 2005, 70.7%; in 2011 and 2020, 70.1%.³⁴

By means of Act No. 95/1999 Coll., the legislator excluded the possibility of legal persons acquiring agricultural land sold by the state because of concerns that legal persons might buy larger amounts of land for speculation. This measure resulted in an increase in the amount of land farmed by natural persons by more than 100,000 hectares between 2000 and 2005. During this period, the state transferred 276,000 hectares of agricultural land to natural persons through the Land Fund.³⁵

Legal persons do not have to meet any special conditions when purchasing agricultural land, unlike natural persons. Therefore, full reference can be made to the interpretation in the following chapter.

31 Metelka, 2016.

32 Další pokus o omezení práv vlastníků půdy – informační povinnost a povinný bobřík mlčení [Online]. Available at: http://www.investicedopudy.cz/clanky/prilohy/201809_N%C3%A1vrh%20novely%20z%C3%A1kona%20o%20zem%C4%9Bd%C4%9Bstv%C3%AD%20-%20informa%C4%8Dn%C3%AD%20povinnost.pdf (Accessed: 4 December 2021).

33 Policy Statement of the Government of the Czech Republic [Online]. Available at: <https://www.vlada.cz/en/jednani-vlady/policy-statement-of-the-government-of-the-czech-republic-168237/> (Accessed: 6 December 2021).

34 Czech Statistical Office. Integrated Agricultural Survey (2020) [Online]. Available at: <https://www.czso.cz/csu/czso/integrated-farm-survey-2020> (Accessed: 6 December 2021).

35 Soil: situation and outlook report. December 2006, pp. 26, 34 [Online]. Available at: <https://eagri.cz/public/web/mze/puda/dokumenty/situacni-a-vyhledove-zpravy/> (Accessed: 15 December 2021).

5. The process of transferring ownership of land

The transfer of ownership of immovable property is regulated by Section 1105 of Act No. 89/2012 Coll., the Civil Code. If the immovable property is registered in a public register, the transfer of ownership occurs only through constitutive registration in the register. Therefore, a transfer contract alone, which, in the case of immovable property, must be in writing, as follows from Sections 560, 2057, and 2128 of the Civil Code, is not sufficient.

In the Czech Republic, the public register in which ownership rights to all land is entered is the Cadastre of Real Estate. It comprises a set of data on immovable property (as defined in Act No. 256/2013 Coll., the Cadastral Act), including its inventory, description, geometric and positional determination, and the registration of rights to these properties.³⁶

The subject of registration in the Cadastre of Real Estate is also land in the form of parcels, as described in Section 3 of the Cadastre Act.

Ownership rights to land are entered into the Cadastre of Real Estate through an application while other rights to the land may be registered by entry or notes. An entry is used to record rights derived from ownership rights, while a note is used to record significant information related to the registered immovable property.³⁷

An entry into the Cadastre of Real Estate has retroactive effects on the date of filing the application for entry; therefore, the transfer of ownership occurs at the time of filing of the application.

The entry is made based on the final decision by the Cadastre of Real Estate Office. The application for entry must be submitted on approved forms and contain all the required information.³⁸ As a minimum requirement, a deed of deposit on the basis of which the right is to be entered must also be attached to the application. This is often a contract of sale or donation in which the parties express their will to transfer ownership of the land.³⁹

The transfer must meet certain requirements. In particular, it must be in writing and have signatures of the parties on a single document. Another requirement is that the property to be transferred must be sufficiently defined. In the case of a plot of land, this will primarily involve specifying the municipality, parcel number, and Cadastre of Real Estate area in which it is located. When deciding whether to allow registration, the Cadastre of Real Estate Office assesses the requirements of the deed of transfer, i.e., the contract on the transfer of

³⁶ Section 1 zákona of the Act No. 256/2013 Coll., the Cadastral Act.

³⁷ Barešová, 2019, p. 89.

³⁸ Section 14 of the Cadastral Act.

³⁹ Adamová et al., 2020, p. 138.

ownership, but this review does not preclude any judicial review of the contract by the general courts.⁴⁰

If all the conditions for authorizing the entry are met, the entry is authorized, but not earlier than 20 days after the indication that the legal situation is affected by the change. The reason for implementing the protection period was to limit unwanted, and especially illegal, changes to immovable property. No appeal, review proceedings, retrial, or action under the provisions of the Code of Civil Procedure on proceedings in matters decided by another authority is admissible against the decision authorizing the registration.⁴¹

The information contained in the Cadastre of Real Estate is burdened with material publicity and the presumption of the correctness of the entry. This enables persons consulting this public register to rely on the accuracy of the information entered and derive legal consequences from this information.⁴²

6. Transfer of agricultural land

As mentioned above, immovable property, including agricultural land, is transferred based on a written contract. However, acquisition of ownership rights is only affected by registration in the public register (Cadastre of Real Estate), backdated to the date of the application for registration.

The contract that provides for the transfer of agricultural land need not only be for consideration (e.g., a purchase contract) but may also be gratuitous (e.g., a donation or exchange contract). The requirements for the content of the contract have already been described in the section on the process of transferring the ownership of land.

It is also worth mentioning the proposal related to issues with the transfer of ownership of agricultural land.⁴³ This law was intended to introduce a pre-emption right to agricultural land for the rightful user (an agricultural entrepreneur who meets the condition of permanent residence in the Czech Republic and of farming on agricultural land in the municipality where the land is located). According to the proposal, the right to pre-emption was also granted to the State. The law was also intended to restrict the acquisition of agricultural land by those persons and states whose legal systems do not allow Czech citizens to acquire agricultural land. This condition was not to apply to citizens of the European Union, the European Economic Area, Switzerland, or

40 Barešová, 2019, pp. 224–268; Pavelec, 2021, p. 194–264.

41 Pavelec, 2021, pp. 279–291.

42 Adamová et al., 2020, p. 141.

43 Parliamentary file No. 1046/0, o převodu vlastnického práva k zemědělským pozemkům [Online]. Available at: <https://www.psp.cz/sqw/text/tiskt.sqw?O=7&CT=1046&CT1=0> (Accessed: 4 December 2021).

states where laws contradictory to an international treaty to which the Czech Republic is bound are followed.

■ 6.1. *Transfer of state-owned land*

Agricultural land owned by the Czech Republic is managed mainly by the State Land Office (hereinafter also referred to as the 'Office'), which was established by Act No. 503/2012 Coll., on the State Land Office, with effect from January 1, 2013. The establishment of the Office represented the completion of the process of transformation of the Land Fund. It is subordinate to the Ministry of Agriculture but has the status of an administrative office with national competence.

The Office acts on behalf of the Czech Republic in transfers of state-owned agricultural land, whether a transfer to natural or legal persons for consideration or without consideration. It also exercises the state's pre-emption right. It administers restitution claims and exercises the State's property rights under the Act on Property Settlement with Churches and Religious Societies.⁴⁴

The Office's remit includes, among other things, the administration of the State Land Reserve. The Reserve serves mainly to perform the duties of the State Land Office and to implement development programs approved by the Government. The Office is not only obliged to maintain and dispose the State Land Reserve, but also to create it. The law requires that the reserve designated for the exercise of the Office's powers not fall below 50,000 ha.⁴⁵

The State Land Office Act not only regulates the activities of the Office but also sets out the conditions for the disposition of agricultural land by the State, including its transfer. The Act also specifies the real estate that cannot be transferred from the State's ownership to other persons.

In order to discuss the transfer of State agricultural land, it is necessary to first identify the land within State property that cannot be disposed of, as a rule specified in Section 6 of the State Land Office Act. It defines land that cannot be transferred from State ownership as those lands that are intended for a use that, in practice, would not be possible at all or only with considerable difficulty because of a possible transfer of ownership. With the exception of land for public utility buildings, they cannot be transferred to local government units.

In addition to the restrictions on land that cannot be transferred from State ownership, there are also restrictions regarding the persons to whom State agricultural land can be transferred. Section 9 of the State Land Office Act contains an exhaustive list of persons to whom land can be transferred:

44 About the State Land Office [Online]. Available at: <https://www.spucr.cz/#> (Accessed: 4 December 2021).

45 Section 3 of the Act No. 503/2012 Coll., on the State Land Office.

(a) A natural person who is a citizen of: 1. The Czech Republic; 2. Another Member State of the European Union; 3. A state that is party to the Agreement on the European Economic Area; or 4. The Swiss Confederation,

(b) A legal person who is an agricultural entrepreneur in the Czech Republic,

(c) A legal person who is an agricultural entrepreneur or has a similar status: 1. in another Member State of the European Union, 2. In a state that is a contracting party to the Agreement on the European Economic Area, or 3. In the Swiss Confederation.

The term ‘agricultural entrepreneur’ is specified in Section 2e of Act No. 252/1997 Coll., on Agriculture as a natural or legal person who intends to carry out agricultural production as a continuous and independent activity on his own behalf, under his own responsibility for profit, under the conditions laid down in this Act.

In addition, agricultural land of the State may be transferred free of charge to individual municipalities or regions under the conditions set out in Section 7 of the State Land Office Act. In the event that the conditions change and the transfer does not meet the requirements of Section 7, the municipality or district is required to transfer the agricultural land back to the Office under the same terms and conditions under which it acquired the land.

The State Land Office Act provides for certain specific situations in which transfers of agricultural land take precedence over sales by public offers.

■ 6.2. *Priority claims for the transfer of agricultural land*

The first preferential method includes transfers for consideration to municipalities, regions, and the owner of a building located on the land (Section 10 of the State Land Office Act). It is always a transfer on request and is subject to certain conditions. In the case of a municipality, the land must be located in a developable part of the municipality and designated by a final decision to be developed with a building for the benefit of the municipality (the municipality must also be the developer). In the case of a district, land must be designated for government-approved industrial development projects. In both cases, agricultural land must be located within the Cadastre of Real Estate area of the municipality or district. A specific approach is also applied to the owners or co-owners of a building located on agricultural land owned by the State. This set has been included in the priority group to unify the property regime of the building and the land on which it is situated.⁴⁶

A specific approach in the form of pre-emption rights is applied to those establishing permanent vegetation on agricultural land under the jurisdiction of the Office.⁴⁷ The condition stipulated for this is that the permanent vegetation be

⁴⁶ Hanák, 2020, p. 69.

⁴⁷ Section 10a of the State Land Office Act.

established with the permission of the Office and that the person uses the land on the basis of a lease agreement for a period exceeding five years. The pre-emption right to such land lasts only for the duration of the lease. Permanent vegetation includes forests, fruit trees, and vineyards. The price at which such land is transferred is the price determined in accordance with the price code, but excluding any accessories that the lessee has set up at his own expense.

Priority for the transfer of agricultural land may also be given to authorized users of land located in gardens or cottage settlements established on the basis of a planning permission or already in existence before October 1, 1976.⁴⁸ However, this was possible only for users until the end of 2018.

In the case of simultaneous 'priority' applications for the transfer of agricultural land, the highest priority is given to the application for the transfer of land in a garden or cottage settlement, followed by the owner or co-owner of an immovable building on agricultural land, the founder of permanent vegetation, the municipality, and the region.⁴⁹ The timing of the application does not affect the order, but the reason for the application does.⁵⁰

■ 6.3. Public offer

In addition to the above 'preferential' methods of transfer, the Office may transfer agricultural land on the basis of a public offer.⁵¹ By means of a public offer, the Office addresses an unspecified number of addressees with a proposal to conclude a purchase contract for agricultural land over which it has the competence to manage. The inclusion of land in the public offer does not exclude the right to apply for the transfer of land to a person benefiting from the preference pursuant to Section 10 of the State Land Office Act.⁵²

The land can be proposed for transfer by public offer only after it has been included in the public offer to satisfy restitution claims under Act No. 229/1991 Coll., on the adjustment of property relations to land and other agricultural property, three times in vain.

The price for the land is determined according to the Evaluated Soil Ecological Units (BPEJ codes, based on the climatic region, the main soil unit, the slope and exposure, and other properties of the land). If the land is not assigned a BPEJ code, the price is set at the average price for agricultural land, which is determined for each Cadastre of Real Estate area by a decree. The determined price will usually be lower than the normal market price, since the aim of the transfers of agricultural land is to support farming on agricultural land.⁵³

48 Section 10b of the Act No. 503/2012 Coll., on the State Land Office.

49 Section 10c of the Act No. 503/2012 Coll., on the State Land Office.

50 Judgment of the Supreme court ref. No. 22 Cdo 3876/2012.

51 Section 12 of the State Land Office Act.

52 Hanák, 2020, p. 82.

53 Ibid.

A precondition for the transfer of agricultural land based on a public offer is that the potential purchaser must be an agricultural entrepreneur. Simultaneously, this person must meet the other conditions required for a public offer.

The Office publishes the notice of the launch of the public offer on its official notice board. A tenant or lessee whose right to the offered land has been in existence for at least 36 months will have the right of first refusal to conclude a purchase contract pursuant to the notice.⁵⁴

It should be noted, however, that the transfer of land by public offer practically never occurs, primarily because of ongoing restitution claims and secondarily because of the obligation to ensure a sufficient reserve of State land.

■ 6.4. *Public tender for the highest bid*

Another way to transfer agricultural land is to announce a public tender for the best offer.⁵⁵ Only agricultural land without built-up areas, buildings, or groups of buildings if they are separate immovable property and related property, or agricultural land with built-up areas and related property can be sold by public tender.

Agricultural land without built-up areas may be sold by the Office by public tender only if it has been unsuccessfully offered by public tender to satisfy restitution claims under Act No. 229/1991 Coll. Buildings or groups of buildings and related property situated on land belonging to another owner may be sold by the Office by public tender unless the owner of the land exercises his right of pre-emption over the property. The Office may offer agricultural land with built-up areas and related property for sale directly by public tender without first having to announce it.⁵⁶

The Office shall first announce the tender on its official notice board. The notice must contain information on the properties to be offered and the purchase price. The purchase price will be the normal price.⁵⁷ The Office then selects the most suitable tender offering the highest purchase price. A deposit of 5% of the published price is paid as a condition for submitting a bid.

7. Conclusion

The article focused on the acquisition of agricultural land in the Czech Republic in the context of both historical and property law. First, the article introduced the historical context and development of property ownership relations through the 20th century.

Between 1948 and 1989, the communist regime tried to nationalize the land. Owners were often illegally deprived of agricultural land or left with bare

54 Section 12 of the Act No. 503/2012 Coll., on the State Land Office.

55 Section 13 of the State Land Office Act.

56 Hanák, 2020, p. 90.

57 Section 14 of the Act No. 503/2012 Coll., on the State Land Office.

ownership. After the Velvet Revolution, legislation regulating the restitution of land was adopted. The restitution was closely intertwined with the privatization of State property. However, the privatization and restitution of agricultural land and forestry began properly after the adoption of Act No. 95/1999 Coll. on the condition of the transfer of agricultural and forestry land from State ownership to other persons. It came into force in May 1999. As of December 31, 2019, 99.79% of restitution applications have been decided. The restitution did not proceed without problems, after great struggle and a search for a just solution, the legislation finally established the following order of applicants: 1. Former owner (restituent), 2. Tenants who have used the offered land for at least 36 months, 3. Farmers who have been using at least 10 hectares of the offered land for 36 months, or owners using at least 10 hectares of agricultural land at the location of the offered land who have been farming in the Czech Republic for 36 months. Priority was given to former owners and farmers who actually farmed the land.

The next part of the article deals with the actual transfers of agricultural land. The article focused on the general requirements for transferring ownership of the land. As agricultural property is typically registered in a public register, the transfer of ownership takes place only by constitutive registration in the register. In the Czech Republic, the public register in which ownership rights to all land are entered is the Cadastre of Real Estate. Therefore, the information contained in it is burdened with material publicity and the presumption of the correctness of the entry. This enables persons consulting this public register to rely on the accuracy of the information entered and derive legal consequences from this information.

The main focus of this article is on the transfer of state-owned land. The State Land Office primarily manages the Agricultural land owned by the Czech Republic. Part of the state-owned property cannot be disposed of (as specified in Section 6 of the State Land Office Act). Among other provisions, there are also restrictions regarding the persons to whom State agricultural land can be transferred.⁵⁸

In Czech law, there exists a category of priority claims for the transfer of agricultural land. First, priority is given to transferring the land to municipalities and the owners of a building located on the land (to unify the property regime of the building and the land). Another prioritized group is people who established permanent vegetation on agricultural land. If there is no 'preferential' method of transfer, the Office may transfer agricultural land on the basis of a public offer addressed to an unspecified number of addressees. The price for the land is determined according to the Evaluated Soil Ecological Units (BPEJ codes; based on the climatic region, the main soil unit, the slope and exposure, and other properties of the land). If the land is not assigned a BPEJ code, the price is set to the average

⁵⁸ Section 9 of the State Land Office Act.

price for agricultural land. A precondition for the transfer of agricultural land based on a public offer is that the potential purchaser must be an agricultural entrepreneur.

Another way to transfer agricultural land is to announce a public tender for the best offer. Only agricultural land without built-up areas; buildings or groups of buildings if they are separate immovable property and related property; or agricultural land with built-up areas and related property can be sold by public tenders.

Overall, the legislation and processes set out by the State Land Office Act have proved effective and operational without any major issues. The main concern is that the State is no longer transferring land. As for the future development of criteria or priority claims for the transfer of agricultural land, the legislator should focus on ecological development and sustainability of the transferred land. For example, one of the criteria should be that the potential owner uses the land for organic farming or other environmentally sustainable practices.

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