

USAGE OF AGRICULTURAL LAND FOR NON-AGRICULTURAL PURPOSES IN SLOVAKIA

VYUŽÍVANIE POĽNOHOSPODÁRSKEJ PÔDY NA NEPOĽNOHOSPODÁRSKE ÚČELY NA SLOVENSKU

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I. Introduction

Slovakia covers the area of 4 903 420 ha with the 5 437 754 inhabitants. Agricultural land represents 2 381 953 ha and within that arable land is 1 408 660 ha. There is 0,44 ha of agricultural land per capita and 0,26 ha of arable land per capita. The land represents more than 90% of its area and it is a territorial base, and therefore the state-forming parameter of the Slovak Republic⁽¹⁾. Bonitation as a marker of soil quality has had a long tradition in the territory of Slovakia. We recognize 9 bonited soil ecological units (BSEU). This term is understood as a homogeneous area having a unique character of the soil and ecological properties. It has been created and mapped based on characteristics of several indicators as climate, soil type, soil texture etc. Soil science recognizes 9 382 BSEUs on the territory of Slovakia. They are integrated into 100 main soil units, which have associated codes and are divided into soil types, sub-types, varieties and forms⁽²⁾. This system is widely used in the management of the agricultural practice. It served

as a basis for the “differential premiums” in agriculture, as an instrument for the promotion of the development of agriculture, and at coordination and management of application of the Common Agricultural Policy of the EU. Its application is wide in science, research, and decision-making sphere of many state and management institutions⁽³⁾. The most vulnerable type of land resource is agricultural land. Agricultural land in the EU is withdrawn mainly for housing, industry, roads or recreational purposes. More than 1 000 km² are subject to withdrawal every year while about half of this surface is actually sealed⁽⁴⁾. An important reason why fertile agricultural land is withdrawn, sealed and loses its essential ecological functions is urban sprawl⁽⁵⁾. Withdrawal of agricultural land for non-agricultural purposes reduces the capability of the agricultural land to ensure food security and self-sufficiency. In Slovakia, in the course of one calendar year, a loss of 7 425 ha of agricultural land was recorded. Agricultural land acreage is continu-

⁽¹⁾ Statistical Office of the Slovak Republic (2018)

⁽²⁾ BANDLEROVÁ et al. (2016)

⁽³⁾ National Agriculture and Food Centre (2018)

⁽⁴⁾ PROKOP - JOBSTMANN - SCHÖNBAUER (2011)

⁽⁵⁾ EEA Report (2016)

Abstract (EN)

The paper analyzes the usage of agricultural land for non-agricultural purposes in Slovakia, the historical background of usage and protection of agricultural land with emphasis on its withdrawal and administrative procedure. It describes the historical development of usage and protection of agricultural land. The progress of agricultural land protection legislation correlates with the socio-economic determinants of a specific historical period. The paper reflects the administrative procedure of agricultural land withdrawal and significant measures for its protection. It also describes the decision-making process about the conversion of agricultural land, administrative procedures for agricultural land withdrawal, its reasons and also its conversion into another type of the agricultural land and measures protecting agricultural land acreage.

Keywords (EN)

agricultural land, land withdrawal, non-agricultural purpose

Abstrakt (SK)

Príspevok analyzuje využívanie poľnohospodárskej pôdy na nepoľnohospodárske účely na Slovensku, historické pozadie využívania a ochrany poľnohospodárskej pôdy s dôrazom na jej odnímanie a administratívny postup. Popisuje historický vývoj využívania a ochrany poľnohospodárskej pôdy. Progres v legislatíve ochraňujúcej poľnohospodársku pôdu korešponduje so sociálno-ekonomickými determinantami konkrétneho historického obdobia. Príspevok reflektuje administratívny postup odnímania poľnohospodárskej pôdy a významné opatrenia na jej ochranu. Taktiež opisuje rozhodovací proces konverzie poľnohospodárskej pôdy, administratívne postupy odňatia poľnohospodárskej pôdy, jeho dôvody, ako aj jej premenu na iný druh poľnohospodárskej pôdy a opatrenia na ochranu výmery poľnohospodárskej pôdy.

Kľúčové slová (SK)

poľnohospodárska pôda, odňatie pôdy, nepoľnohospodársky účel

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ously shrinking and over the last decade, there was a decrease of 41 067 ha of agricultural land⁽⁶⁾. One way to prevent the trend of withdrawal of agricultural land for non-agricultural purposes is to comply with the legislation and administrative procedure.

II. Historical overview of usage and protection of agricultural land

The progress of legislation of agricultural land protection correlates with the socio-economic determinants of a particular historical period. First, from 1918, there was no legislation regulating the comprehensive protection of the biological properties of agricultural land.

Since the establishment of Czechoslovakia, it was necessary to consolidate the ownership and use relations of citizens of Czechoslovakia. And so, land reform as the idea of land ownership was gradually created. Within this period, a total amount 1 312 721 hectares of agricultural land in Slovakia was confiscated and allocated to new owners according to the State Land Office decision. Its targets were to provide a livelihood for the population and that's why the land was emphasized as a factor of production rather than environmental aspects of land protection.

After World War II, it was indispensable to ensure the agricultural land use and expansion to a sufficient extent. The Act No. 55/1947 Coll. on the assistance of farmers in the implementation of the agricultural production plan stated that in the interest of nutrition of the population, all agricultural land must be farmed in accordance with the agricultural production plan. According to Paragraph 1 of this Act, the State was required to ensure that every agricultural land was farmed and conversely, in the case where the farmer was unable to ensure the land management, the competent authorities ensured it. Agricultural land withdrawal for another purpose was subject to the approval of the District National Committee. This Act was amended by Act No. 132/1948 Coll. and by Act No. 244/1949 Coll. As mentioned in Paragraph 41 section 2 of Act No. 241/1948 Coll., on the first five-year economic development plan of the Czechoslovak Republic (act on the five-year plan), the Government adopted Regulation No. 55/1951 Coll. on the expansion of arable land area and the safeguarding of land for agricultural production. The objective of this government regulation was to ensure proper management of the agricultural land, in particular, arable land and its planned expansion, mainly from agricultural land. This regulation, following previous legislation, has protected the size of agricultural land in two ways, namely, Conversion of individual types of agricultural land was subject to the consent of the District National Committee and Change of agricultural land to non-agricultural land out of the building area of the municipality was in principle impossible. Simultaneously, it is undertaken that land-use planning should regard maintaining of arable land. When farmer changed the purpose of the agricultural land without consent, he was obliged to return the land to the

⁽⁶⁾ Statistical Yearbook on the Soil Fund in SR (2018)

original purpose.

On the territory of Slovakia in the period 1918-1958, a land reform took place. As an effect of this reform agricultural land was allocated to state-appointed persons. The legislation mainly aimed at expanding the size of agricultural land, in particular, arable land, and protecting it from withdrawal for non-agricultural purposes.

The reconstruction of the countryside in the 1950s was realized through socialization. A new period of organizational consolidation of socialist agricultural enterprises was underway. The stabilization of the land base of cooperatives occurred as well as the period of the overall transition to the scientific and technical base of socialist mass production. Act no. 48/1959 Coll. on the protection of agricultural land defined the agricultural land as an irreplaceable basic production means of agricultural production. Paragraph 8, section 3 of the Act stated that, when removing agricultural land, it must be ensured that agricultural land of inferior quality is used first and that as little area of agricultural land as possible is removed.

In order to decrease the withdrawal of agricultural land and make the protection of agricultural land more effective, Act No. 53/1966 Coll. on the Protection of Agricultural Land Fund was adopted, repealing Act No. 48/1959 Coll. Contributions were, for the first time, incorporated into the law as an economic tool for the protection of land and the preservation of the culture of the agricultural land. Contributions for agricultural land withdrawal were paid not only to the state budget but also to the funds of individual cooperatives. The number of contributions was specified by the District National Committee and they were paid by the entity which took the land away from agricultural production. They were applied for both permanent and temporary withdrawals of agricultural land. In order to implement certain provisions of the Act, a Decree of the Ministry of Agriculture and Forestry no. 97/1966 Coll., was introduced, implementing certain provisions of the Act on the Protection of Agricultural Land Fund. Contributions were one of the main revenues of the State Land Regeneration Fund, which was established by the Ministry of Agriculture and Food of the Slovak Socialist Republic by Act No. 179/1969 Coll.

Act No. 53/1966 Coll. was amended by Act no. 75/1976 Coll. amending Act no. 53/1966 Coll. on the Protection of Agricultural Land Fund. The ground for adopting the amendment was to introduce stricter and more rigorous protection of agricultural land. This amendment tightened the economic protection instruments by introducing objectively decisive considerations for determining the amount of the contributions. The amendment also determined the payment of fines for breaching the obligations imposed by law and included a compensation for economic harm caused to a socialist agricultural organization by removing the land in a larger scale or by impairing or restricting its management.

Political-social changes, and the new legal environment in the Slovak Republic after 1990, were the reason for the adoption of the new Act no. 307/1992 Coll. on the Protection of Agricultural Land Fund. Dissimilar to the previous legislation, the Act made an owner, a tenant, or a land manager explicitly responsible for the agricultural land protection. Withdrawal of agricultural land was only possible after the consent of the body for the protection of agricultural land, in the area where

the agricultural land or the largest part of it was withdrawn. This act also laid down the obligation to pay contributions for the withdrawal of agricultural land from the agricultural land fund.

The impulsion for a new approach to land protection was the resolution of the Slovak Government no. 1141 of December 6, 2001 on the proposal for the principles of the Slovak State's Land Policy, approved on December 6, 2001 under the title "Principles of the State Policies of the Slovak Republic". This resolution, emphasized the correct use of land, respecting the principles and criteria of sustainable development and it also dealt with the protection of the quality and quantity of land. It underlined that land protection is carried out in the context of the protection of environmental compartments with the aim to achieve the stabilization of the area and the area of the best quality land and to prevent its unreasonable withdrawal. By adopting these Principles of State Land Policy of the Slovak Republic, the Government of the Slovak Republic has fulfilled the objective of implementing land protection initiatives coming from the world, especially from the European Union.

Act no. 220/2004 Coll. on the protection and use of agricultural land and on the amendment of Act no. 245/2003 Coll. on Integrated Prevention and Control of Environmental Pollution and on the Amendment and Supplementation of Certain Acts was a response to the Government Resolution no. 1141 of 2001. It emphasizes the protection of the environmental functions of agricultural land, ensuring its sustainable management and exploitation, as declared in the Principles of State Land Policy. Every legal regulation that used the institute of contributions for the land withdrawal at the same time introduced numerous exceptions to the obligation to pay contributions. According to the explanatory statement to the act, these exceptions related to about 70% of all agricultural land withdrawals, making the institute of contributions in the legislator's opinion non-systemic and undemocratic, which led to the abolition of the contributions at a given time. The act abolished the contributions, but on the other hand, it tightened the legislation on the protection of agricultural land. Categories and limit values related to erosion, compaction, soil organic matter quality, liming of agricultural land, limit values of risk substances in agricultural land, which were understood as the values of the maximum permissible contents of the hazardous substances and the degree of contamination were established. Fines were a single economic tool for the protection of agricultural land against its withdrawal for non-agricultural purposes. The legislator by this step expected a positive impact on landowners and users of agricultural land. The reduction of the state budget for the income from payments for the withdrawal of agricultural land should have been partly compensated by an increase in contributions and taxes from business activities on withdrawn land.

But the abolition of the contributions for the withdrawal of agricultural land for non-agricultural purposes did not produce the effect the legislature expected at the time of the adoption of Act 220/2004 Coll., when it abolished the contributions and therefore, five years after, the amendment to Act no. 220/2004 Coll., namely Act no. 219/2008 Coll.16 with the effect from January 1, 2009 was adopted. The amendment re-introduced the contributions but only for the withdrawals of agricultural land classified under the BSEU code into groups

1 to 4. The legislator planned to achieve three socio-economic aims, namely protection and stabilization of the best agricultural land in Slovakia; guiding and eventually forcing construction investors to orient themselves to Slovakia's locations outside the Bratislava and Trnava regions on lower quality land (BSEU in the 5th to Group 9) and less important locations for primary agricultural production; and securing funds for the implementation of certain provisions of the Act, such as activities concerning the organization of agricultural land registration in the cadastre with the real state in the field and the creation of an information system on soils.

Another major amendment to Act no. 220/2004 Coll. was Act No. 57/2013 Coll. amending Act no. 220/2004 Coll. on the protection and use of agricultural land and on the amendment of Act no. 245/2003 Coll. on the integrated prevention and control of environmental pollution and on the amendment and supplementation of certain laws as amended, and on amendments to certain laws with effect from April 1, 2013. It was based on the need to protect the institute of contributions of the best agricultural land in the cadastral territory proportionally throughout the territory of the Slovak Republic, by the individual protection of the specifically listed BSEU codes in the individual cadastral territories. The answer was an updated table of qualitative groups (BSEU codes) with the assignment of the contributions for the withdrawal of agricultural land by a quality group in €/m² for each cadastral territory within the territory of the SR. The contributions had to be paid as it is in the current legislation for every agricultural land in Slovakia for all qualitative groups. The scope of exemptions from the payment of the contributions was abolished by the amendment as it represented about 70% of all agricultural land withdrawals as described above.

III. The administrative procedure of agricultural land withdrawal

Agricultural land may be used for non-agricultural purposes only on the basis of a withdrawal decision on the withdrawal of agricultural land. This decision is issued by the authority responsible for the protection of agricultural land within the territorial area of the authority where the agricultural land proposed for withdrawal is situated. Agricultural land protection authorities include The Ministry of Agriculture and Rural Development of the Slovak Republic, which is the central authority for the protection of agricultural land and issues generally binding legislation on the protection of agricultural land; The District office at the headquarters of the region, which coordinates the cooperation with the soil service and processes and submits to the Ministry information on agricultural land losses within the territorial area of the region; and The District Office - Land and Forestry Department and Remedies Department, which in particular decides on withdrawal of agricultural land for non-agricultural purposes, on changing the type of agricultural land, it is the authority concerned and gives an opinion on the protection of agricultural land in proceedings relating to the prevention and remedying of environmental damage on

land, deals with offenses and imposes fines on the protection of agricultural land, cooperates with the soil service and monitors and evaluates agricultural land losses within its territorial area at annual intervals. We recognize permanent or temporary withdrawal of agricultural land. Permanent withdrawal means the permanent change in the use of agricultural land with a permanent change of land in the cadastre, and temporary withdrawal means a temporary change in the use of agricultural land for a maximum of ten years, with reclamation measures to return it to the original state.

It is possible to apply for permanent withdrawal or temporary withdrawal of agricultural land. Legal entities or natural persons who apply for permanent withdrawal or temporary withdrawal of agricultural land for non-agricultural purposes are required to submit an application to the competent authority for the protection of agricultural land, i.e. The District Office - the Land and Forestry Department and the Remedies Department, in whose area the agricultural land proposed for withdrawal is located. This application must be accompanied, in particular, by the approved land-use planning by the District office at the headquarters of the region, the project documentation, the basic land identification data and the calculation of the contribution for the entire extent of the withdrawal. Under the next procedure, The District Office - Land and Forestry Department and the Remedies Department will assess the application and will if it finds that the principles of protection of agricultural land are followed, issue a withdrawal decision. This decision is the basis for the change of the type of the land in the cadastre to the other area, the lawful decision will be sent to the competent state administration authority in the cadastral area by drawing up a geometric plan or a copy of the cadastral map, which will permanently remove the areas from the register of the agricultural land and will earmark the change of the agricultural land to the other area no later than 60 days after the decision is taken.

When it is a change of one agricultural type of land to another agricultural type of land the competent authority for the protection of agricultural land, i.e. in this case The District Office - Land and Forestry Department and the Remedies Department upon the application of the owner or user will issue a binding opinion on the change of the type of land. In addition, when proposing a change of vineyard to another type of agricultural land, the expert opinion of the Central Control and Testing Institute in Agriculture and the opinion of the relevant territorial self-government authority, including an evaluation of historical contexts and regional development intentions are required.

We know various reasons for withdrawal of agricultural land for non-agricultural purposes. These include Housing and Civic Amenities, Industry, Transport, Mining and Other Purposes. Agricultural land may be used for non-agricultural purposes only in the necessary cases and to the extent justified. The authority of the protection of agricultural land is obliged in the proceedings on the change of the agricultural type of the land to ensure the protection of the best quality agricultural land in the cadastral area according to the code of the bonited soil-ecological units specified in the special regulation and vineyards.

In Slovakia, there are some tools used to guarantee the protection of agricultural land. Their regulation is contained in Act

No. 220/2004 Coll. on the Protection and Use of Agricultural Land and on the Amendment of Act No. 245/2003 Coll. on Integrated Prevention and Control of Environmental Pollution and on Amendments to Certain Acts, as amended by later legislation. They are Consent to the withdrawal of agricultural land; Contributions; Principles for the protection of agricultural land and Fines. Other laws also ensure the protection of agricultural land, for example, Nature and Landscape Protection Act, Land Planning and Building Regulations Act, etc. We also distinguish economic instruments for its protection, other than contributions and fines. They are taxes, fees, and payments, with application in two main payment groups, namely payments for environmental pollution and payments for the use of natural resources.

When protecting agricultural land acreage, emphasis is placed on protecting its properties and functions, ensuring its sustainable management and agricultural use, protecting its environmental functions such as biomass production, filtration, neutralization and conversion of substances in nature, maintaining the ecological and genetic potential of living organisms in nature, protecting its areas against unauthorized use for non-agricultural use, observing the procedure for changing the type of land and the procedure for its withdrawal for non-agricultural purposes, and ultimately on penalties for violation of obligations in the field of its protection. Each owner or user of agricultural land is obliged to protect it from degradation, erosion, compaction, hazardous substances and control the balance of the soil organic matter. Moreover, anyone who proposes to use it for non-agricultural use is obliged, inter alia, to pay contribution from the permanent withdrawal or temporary withdrawal of the highest quality agricultural land in the cadastral area according to the code of the bonited soil-ecological units and the vineyard.

The current legislation protects the agricultural land acreage by the condition of granting consent to the withdrawal of agricultural land. It is an administrative tool of legal regulation without which, apart from the scope of exceptions imposed by the Soil Protection Act, it is not possible to withdraw the agricultural land. The protection of agricultural land under the BSEU code provides the contributions as an economic tool for the protection of agricultural land from permanent or temporary withdrawal for non-agricultural use. An important part of the Soil Protection Act and at the same time a tool for the protection of agricultural land are the Principles for the protection of agricultural land for non-agricultural use. Other tools are fines, which are a sanction for unlawful action in the field of agricultural land protection and can be stored up to 166 000 €. Their main task is to deter offenders from unlawful proceedings. However, if they are already stored, their height is determined according to the statutory criteria. We can state that the Soil Protection Act by its tools effectively protects the agricultural land and in the future, it is possible to slow down the decline especially highest quality agricultural land.

IV. Conclusions

In Slovakia, the main specific legal act ruling the use of agricultural land for non-agricultural purposes and thus withdrawal of agricultural land is the Act no. 220/2004 Coll. on

the protection and use of agricultural land and on the amendment of Act no. 245/2003 Coll. on Integrated Prevention and Control of Environmental Pollution and on the Amendment and Supplementation of Certain Acts as amended. The protection of agricultural land acreage is also contained in other laws, among them for example Nature and Landscape Protection Act and the Land Planning and Building Regulations Act. Agricultural land may be used for construction purposes and other non-agricultural purposes only in the necessary cases and to the extent justified. The owner or user of agricultural land who proposes to use it for non-agricultural use is obliged also to pay contributions from the permanent or temporary withdrawal of agricultural land according to the code of the bonited soil-ecological units.

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