

AGRICULTURAL SOIL AND AGRICULTURAL LAND – – PROBLEMS AND CHALLENGES FROM THE VIEW OF LEGAL REGULATION

POLNOHOSPODÁRSKA PÔDA – – PROBLÉMY A VÝZVY Z POHLADU PRÁVNEJ ÚPRAVY

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I. Introduction

The basic term of the conference is the protection of agricultural land. This term can be divided in the physical protection of the agricultural soil and the legal protection of the agricultural land as an object of legal relations. The sense of these two aspects of protection is preserving the productive functions of the agricultural land.

II. Material and Methods

This paper is a technical description focused on identification of the basic terms, basic problems and basic goals and challenges of the protection of agricultural land in the Slovak Republic. It could possibly serve as a support for an attempt to resolve the defined problems by the legislative means. This paper is not aimed at identifying the economic measures of resolving the identified problems, which are equally important like the legal measures.

Most of the definitions, data and possible legislative solutions mentioned in the text are primary based on the documents elaborated in the legislative process of the Act No. 140/2014

Coll. on Acquisition of Ownership of Agricultural Land and on Amendments to Certain Acts, as amended, and its later not adopted amendments drafts, prepared in the Ministry for Agriculture and Rural Development of the Slovak Republic. As a secondary source, the documents of the infringement procedure against the Slovak Republic No. 2015/2017 regarding the possible violation of the Treaty on the Functioning of the European Union were used.

III. Basic terms and relations

Public discussion concerned on the protection of agricultural soil and land is significant with one big problem - misconception and misuse of the terms used in argumentation. In order to achieve the aim of this work, it is needed to define these basic terms and basic relations.

Agricultural soil

Agricultural soil is a part of the environment. As a horizontal phenomenon or horizontal layer, it is an objectively existing part of the earth's surface, i.e. the pedosphere. The agriculture soil is one of the basic means of production, beside the capital

Abstract (EN)

At present, the issue of agricultural land protection resonates in a wide range of scientific disciplines. Individual approaches to the subject are in line with the relevant field, but the basis should always be grounded in the current legislation. The paper is a technical description focused on identification of the basic terms, relations, problems, goals and challenges and possible legal or legislative solutions of the physical protection of the agricultural soil and the legal protection of the agricultural land as an object of legal relations in the Slovak Republic. Achievement the goals and their legal realisation is possible only if certain legal obstacles are resolved on the national level and level of European Union. This paper represents a basic analysis, which can possibly serve as a support for an attempt to resolve the defined problems by the legislative means.

Abstrakt (SK)

Problematika ochrany poľnohospodárskej pôdy v súčasnosti rezonuje v širokom spektre vedných disciplín. Jednotlivé prístupy k danej téme zodpovedajú príslušnej sfére, avšak základ by mal vždy vychádzať z platnej legislatívy. Príspevok je technickým popisom zameraným na identifikáciu základných pojmov, vzťahov, problémov, cieľov a výziev a možných právnych alebo legislatívnych riešení fyzickej ochrany poľnohospodárskej pôdy a právnej ochrany poľnohospodárskej pôdy ako objektu právnych vzťahov na Slovensku. Dosiachnutie týchto cieľov a ich právna realizácia je možná len vtedy, ak sa na národnej úrovni a úrovni Európskej únie vyriešia určité právne prekážky. Príspevok predstavuje základnú analýzu, ktorá môže slúžiť ako podporný materiál pri pokuse o vyriešenie definovaných problémov legislatívnymi prostriedkami.

Keywords (EN)

agricultural land, land ownership, land use, landgrabbing

Kľúčové slová (SK)

poľnohospodárska pôda, vlastníctvo pôdy, využívanie pôdy, zabratie pôdy

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and work. Unlike the capital, the agricultural soil is a non-renewable, non-repairable and non-transferable means of production. And unlike the capital, the agricultural soil itself cannot be an object to ownership.

Agricultural land (agricultural land estate)

The agricultural land is a legally defined portion of the earth's surface determined by the parcel line which is covered with agricultural soil and is included in the so called "agricultural soil fund". It can be an object to ownership.

The agricultural land as any other estate is beside its horizontal sense also a vertical phenomenon because as an object of the ownership right it involves the whole space under the surface including the agricultural soil. It means that agricultural soil is a part of the agricultural land, it is its attribute and it is also the criterion of the value of the land (estate).

The agricultural land has several types - arable land, permanent grassland, garden, orchard, vineyard and hop-field⁽¹⁾.

Ownership

Ownership is one of the basic human rights. As a human right, it is imprescriptible, inalienable, perpetual and irrevocable. As a basic right, it belongs to any natural person and also to any legal entity. Ownership means to own the object of the ownership, it means the right to dispose, the right to hold and right of usufruct. In connection with the liberty of contract, the ownership also means a right to acquire and to transfer the property. Ownership does not mean only the "right" to own a thing but also the "liability" for and to the object of the ownership.

Usage or usufruct

The right to use (usage) and the right to derive profit from the object of the ownership (usufruct) are the parts of the ownership right. Both of these two rights can be transferred to other person - a user, a tenant.

State territory and state sovereignty

It is often argued that the outflow of the agricultural land ownership out of the state territory may endanger the state sovereignty. A state territory is a part of the earth's surface and the space above and below it, where the state exercises its sovereignty and determines the rules. It is a legally defined phenomenon. The state territory does not mean the state property. The state territory is not the object of the state's ownership. It is an area with many different private owners and users. The state territory cannot be endangered by private ownership of land, because the land is not transferrable out of the state territory and remains under the rules and laws adopted by the state.

State sovereignty means the inviolable right of the state to determine the rules in the state territory. It also includes the right of the state to transfer part of its rights and accept obligations. Similarly to the state territory, nor the state sovereignty can be endangered by private ownership of land, because the state is the only entity able to determine the rules and laws in this territory.

⁽¹⁾ § 2 letter b) of the Act No. 220/2004 Coll. on the protection and use of agricultural land and amending Act No. 245/2003 Coll. on integrated pollution prevention and control and on amendments of certain acts, as amended.

Commodity

A commodity is a thing, which is the object of ownership and therefore it is the object of property transfer. A commodity is any legally and economically valuable and usable thing. This means that agriculture soil cannot be a commodity, because it is not a separate and autonomous thing. On the contrary, the agricultural land is a commodity because it is a legally defined thing and object of the ownership.

Market

Market is a system of relations where the exchange of commodities takes place. Market is essentially open and free. The owners of the agricultural land realize their ownership and their liberty of contract on the market. The object of the market is not the agricultural soil but it is the agricultural land.

Farmer

A farmer is a person operating on the agricultural land as a producer or processor of primary products. The farmer can be a natural person or a legal entity, an undertaker or non-undertaker and owner or user of agricultural land.

Food safety and food self-sufficiency

Food safety can be defined as the ability to provide enough food for the population. It is the essential role of the state. It does not matter from which source the food is acquired, i.e. whether from the domestic or foreign sources.

Food self-sufficiency can be defined as the ability to ensure food safety at a local, regional or national level from its own, it means domestic sources.

Legal and economic environment

Legal and economic environment is created by the set of rules governing the acting of all entities. It is determined by the Constitution and other national laws and orders, by the international treaties, obligations and rules especially adopted by the United Nations Organisation, World Trade Organisation and the European Union with European Economic Area.

IV. Problems identification

The loss of agricultural soil

The most significant trend in the present situation of the agricultural soil protection is continuing change of the agricultural land for other purposes than agriculture, i.e. changing the agricultural land in other types of land or by overgrowing with the forests. This change may be temporary or permanent, intentional or spontaneous, irreversible or reversible. This trend is characterized by very intensive regional differences. It is an accompanying phenomenon of the growth in other sectors of the economy (mainly building industry and transport) and by the agricultural crisis manifested mainly by abandoned and uncultivated land.

Low price of agricultural land, low competitiveness of domestic farmers and inequality in the land-market

The agricultural land in the Slovak Republic has a very low price. The average asking price is 85 cents per square meter, but most of the agricultural land has price lower than this av-

erage price. The annual growth of agricultural land price is about 4%. There is no price regulation of agricultural land in the Slovak Republic. The reason is mainly the strong refusal of domestic farmers. As an example of price regulation can serve Germany where the rule of sale price regulation is based on the limit +/- 50% of the market price. The agricultural land in the Slovak Republic is despite of its low price relatively too expensive for domestic farmers who are mostly unable to buy it. On the contrary, the foreign farmers and foreign or domestic non-agricultural entities that are more solvent are able to offer higher prices because the agricultural land is relatively cheap for them. Regarding to the fact that every owner prefers a higher sale price, it is logical that if the more solvent buyer offers only a slightly higher price he will buy the land. Therefore, the solvent entities in the market have a natural predominance. They are not forced to significantly increase the price of land because the competition of the domestic farmers is weak.

The second aspect of this problem regards the owners who sell the agricultural land. The selling owners generally do not have any market price survey and therefore they do not know what price they could ask. The solvent buyer may use this fact and may offer any price, even lower than is the market price.

Landgrabbing

The problem of the so-called landgrabbing, which is intensively discussed in the European Union has two negative forms: concentration of the land-ownership and outflow of the land-ownership.

Concentration of the agricultural land ownership means the accumulation of the agricultural land ownership into the hands of a small number of owners, especially those who are not farmers or farming is not their main activity. The concentration may result into the exclusive ownership or into the majority ownership share of the agricultural land.

The ownership concentration into the hands of the foreign owners is not so far a dominant problem in the whole country. It is intensively growing only on a local level (several districts with the most quality agricultural land). The ownership concentration is the dominant problem in case of large domestic companies and their owners, more precisely their final beneficiaries: only about 30 final beneficiaries own in average 10 thousand ha of agricultural land (it means together up to 300 thousand ha).

The main intent of the entities concerning the agricultural land into their ownership is depositing the capital into the agricultural soil as one of the means of production. The risk or disadvantages of the concentration of the agricultural land-ownership can be summarized into these points:

- a) investing in agricultural land often without any interest in farming,
- b) outflow of the capital produced in agriculture into the other sectors,
- c) disturbing the access of the smaller farmer to the agricultural land as a means of production,
- d) determining the market price of agricultural land,
- e) determining the price of rent to the competitor's disadvantage,
- f) deepening the inequality of market participants,
- g) devaluation of the minority share in the case of the land

co-ownership.

Outflow of agricultural land-ownership from the Slovak Republic means the dominant position of the foreign buyers of the agricultural land in the land-market. It is a logic outcome of the open and free land-market in the European Union, European Economic Area and the World Trade Organisation and of the low prices of agricultural land, low competitiveness of domestic farmers and inequality in the land-market.

The buyer of the agricultural land is usually an economically stronger entity from abroad especially foreign farmer or foreign bank, holding or other non-agricultural subject. The exact scale of their foreign ownership is not known because no official register operating with the origin data of the owners exists, especially regarding the legal entities. Only empirical data and estimates are available: about 30 to 150 thousand ha of agricultural land is in ownership or in usage of the foreign entities. In some districts with the most quality agricultural land, the scale of the foreign ownership or usage rises up to or over 50% of the total agricultural land area. In the case of the foreign farmer, the ratio of the ownership and usage of the agricultural land is usually 1:3 of the whole operated area of this farmer.

Among the foreign farmers, the entities from Netherlands, Denmark and Austria dominate as the foreign owners of the agricultural land.

Outflow of land-ownership from the Slovak Republic has its advantages and disadvantages. The advantages may be summarized into these points:

- a) inflow of finances (foreign capital, foreign investing),
- b) consolidation of ownership instead of ownership fragmentation,
- c) the foreign farmers are in general very disciplined farmers,
- d) higher employment,
- e) impulse for the local domestic entities taking part in the agri-food complex.

The disadvantages are the same as in the case of the concentration of the agricultural land-ownership; the outflow of the produced capital out of the Slovak Republic may be added.

In case of outflow of land-ownership, the domestic farmers are the group, which is affected by the negative impacts. It is important that there are similar problems concerning landgrabbing across the European Union, for example in Romania and Bulgaria (where the level of foreign ownership of the agricultural land in the scale of the whole country moves around 50% of the total agricultural land area) but also in East Germany⁽²⁾.

In the Slovak Republic, the landgrabbing is up to now not such a significant phenomenon, because there is a natural self-regulation factor - the huge fragmentation of the agricultural land ownership (see below).

The risk of concentration in the agri-food complex

Concentration of the land-ownership on a local, regional or national level causes a risk of disturbing of the alimentary chain or the so-called agricultural-food complex (agri-food complex). It means that the individual stages of the agri-food chain, i.e. producer, processor, supplier and seller, may get

⁽²⁾ Heubuch, Haerlin, Fuchsloch (2016)

concentrated in one legal entity or in a group of several connected legal entities. The result of the concentration in the agri-food chain is disqualification not only of those entities that are not able to effectively participate in the land market but all smaller or domestic farmers. These disqualified smaller or domestic farmers either liquidate or become dependent on dominant entities. This process has its consequence in the crisis of domestic food production and in the collapse of food self-sufficiency.

Fragmentation of land ownership

One of the most important problems of the Slovak agriculture is the extreme fragmentation of land-ownership and complexity of ownership structure of agricultural land. First reason is the duplicity of land-registry: the so-called "C register" as a binding register but often without real ownership relations and the so-called "E register" as non-binding but real-owned and transferred (the "E register" contains the pre-socialist parcel structure).

The second and essential reason is the ownership-fragmentation itself. In the Slovak Republic, there is approximately 1.9 million ha of agricultural land (another 400 thousand ha are presented by the areas which are not correctly registered or are dubious). This area consists of approximately 4.5 millions of parcels. One parcel has in average 0.4 ha. One parcel is in average owned by 11 co-owners. One owner of agriculture land is in average co-owner on 20 different parcels. In extreme cases - the so-called "land-associations" (total number of these entities is over 2800) - the land is owned by hundreds or thousands of co-owners (in some cases around 3100). These "land-associations" or "compossessorates" cover both the agricultural and forestland with total area around 475 thousand ha with up to 1 million owners.

The third reason of the ownership fragmentation is the ongoing trend of fragmenting the parcel or ownership share down to the minimal 2000 square meters limit.

The fourth reason is the persisting ownership of the unknown owners. Their ownership is protected by the Constitution as any other ownership, although the owner registered in the cadaster is not known or the owner is not registered at all. This property is held in the hands of the state administrators. The total area of the agricultural land in ownership of the unknown owners is up to 300 thousand ha. It is a negative factor especially in the cases where the unknown owner is the co-owner with not a negligible or even half or majority share together with the "known" owner or owners.

This complicated situation is despite its negative consequences on the other hand a natural barrier to a more dramatic outflow of land-ownership and to the concentration of land-ownership. In the discussion concerning the ownership-fragmentation, also the reason of the so-called "Hungarian inheritance" is often mentioned. However, it is a misconception arguing that in the Slovak Republic the so-called historical "Hungarian inheritance" survives till nowadays instead of the more modern "Austrian inheritance".⁽³⁾ It is true that in the

old Hungarian law the heritage after the father was inherited by all his adult sons what led to more and more fragmented land-ownership. According to the historical Austrian law codified by the Civil Code in 1811, the heritage after the father was inherited only by the oldest adult son. But it is very important to realize that at latest from 1948 when the Universal Declaration of Human Rights was adopted at the United Nations Organisation, the right of succession including the estate of inheritance is guaranteed to everybody without any difference based on age or gender. This conception of heritage is accepted in Austria as well as in the Slovak Republic or Hungary. By the way, the Czechoslovak Civil code was adopted in 1950 and a new one in 1964. Both of these two Civil codes contained the same system of inheritance which substituted all earlier rules of inheritance without any regard if they were Austrian or Hungarian.

Complexity and non-clarity of relations in usage of the agricultural land

The indirect result of the fragmentation of land-ownership is the fact that up to 95% of farmers manages the rented agricultural land, not on their own land. In fact, the farmer does not need to own the agricultural land in order to manage it, but he needs only to use it (it means to farm). Therefore the farmer is dependent on the availability of rentable land and the price of rent. Consequently, a small farmer is threatened by other farmer who owns a large plot of land. This negative phenomenon is strengthened by the concentration of the land-ownership. The relations of using the agricultural land provided by the Slovak law are extremely complicated: there are at least eight different titles of land-use - rent, sublease, "sub-sublease", administrative decision on the sublease, dealing plan, simple dealing plan, rent *ex lege* and various types of common using treaties and rent by the minority co-owners.

The fragmentation of land-ownership has another negative influence on the land-usage system: it results in more than 45 million potential relations of land-use (compare the number of 5.44 million of inhabitants in the Slovak Republic).

The risk of concentration of land-use

A phenomenon very similar to the concentration of the land-ownership caused by inequality in the land-market is present also in land-use. The concentration of land-use means the accumulation of agricultural land usage in the hands of a small number of dominant farmers who are tenants on the large area of agricultural land rented from a large number of the land owners. The mechanism of the concentration of land-use is very similar to the mechanism of concentrating the land-ownership. The dominant farmers (domestic or from abroad), which are solvent, are able to offer a higher rent. Every owner prefers to get a higher price of the rent; therefore the dominant farmer has predominance in usage of agricultural land.

As the result of the land-use concentration, about at least 500 to 700 (maybe up to 1000) from approximately 17 000 farmers in the Slovak Republic use 80% of agricultural land. The rest 16 000 subjects use only 20% of agricultural land. The basic area limit of profitable farming as undertaking is about

articles" were derogated in 1995.

⁽³⁾ Till 1918 the territory of Slovakia was a part of Hungarian Kingdom. After 1918 the Hungarian law was preserved and the new Czechoslovak law system started to be unified. This process lasted almost till the end of the 20th century. The last Hungarian "law

180 ha of managed agricultural land (the basic volume moves between 150 and 200 ha). This has an important impact on the distribution of the direct payments and other types of aid in agriculture because the real farming, i.e. the real use of agricultural land, is the criterion for direct payments in agriculture. Therefore only 500 to 700 farmers get 80% of direct payments and the rest 16 000 farmers get the rest 20% of payments.

Inequalities between the European Union member states

The very negative factor of the Slovak agriculture and management of the agricultural land and one of the basic reasons of the low competitiveness of domestic farmers is the inequality in the direct payments and other types of aid in agriculture between the “old” and “new” member states of the European Union. When joining the European Union in 2010, the “new” member states had to agree only with 40% share of the payments in agriculture compared to the “old” member states.

V. Goals and challenges

The identification of the basic problems of the protection of agricultural land and all the related difficulties implies the formulation of the main goals and challenges in finding the most suitable solutions. These aims are:

- a) increasing the agricultural soil protection in order to preserve the present area of agricultural land,
- b) conservation and strengthening the domestic agriculture-food complex, i.e. to assure that the agri-food chain (producer – processor – supplier – seller) is as much as possible occupied by domestic entities,
- c) increasing the competitiveness of domestic farmers in the agricultural land market, i.e. to increase farmers’ access to agricultural land ownership and to assure that domestic farmers have more free financial resources to buy agricultural land,
- d) ensuring easier and more straightforward farmers’ access to agricultural land use,
- e) stopping the concentration of agricultural land ownership,
- f) stopping the outflow of agricultural land ownership out of the Slovak Republic,
- g) ensuring the food self-sufficiency.

VI. The possibilities of legal solution

Rationalization of land-ownership

It is needed to establish the rational structure of the land-ownership. In order to avoid further fragmenting of the agricultural land and ownership relations, it is needed to reform the fragmentation limits. The solution may be either increasing the limits of fragmenting parcels and ownership shares or even prohibition of the fragmenting only with certain exceptions. Breaching of these rules should be sanctioned by absolute nullity of the legal act.

Another legal measure aimed at the rational ownership structure may be liquidation of ownership of the unknown owners. This cannot be done by annulling their ownership because it is

protected by the Constitution. Part of this problem may be resolved by the land consolidation which may lead to reduction of the property of the unknown co-owners where it presents a burden of land ownership of the “known” co-owners. The general solution may be achieved by more flexible disposal with this property by the state administrator but here it is needed to assure that this agricultural land will not become the subject of landgrabbing. Therefore, the releasing of the disposal with this property may be counter-productive. On the other hand, the fact that the state administrator holds a large area of the agricultural land including the land of the unknown owners and the state land property (round 160 thousand ha), increases the possibility of the state to support the smaller farmers and to regulate the market price of the rent. In fact, the basic measure which is able to achieve this aim is the land consolidation; it means the re-parcelling and arrangement of ownership relations to land. This measure is able to reduce also the problem of the unknown owners, the problem of the duplicity of “C” and “E” register of the cadaster, the problem of the “land-associations” and also the problem of incorrectly registered and dubious data in the cadaster.

In order to achieve the transparent and clear relations in agricultural land ownership and usage it is needed to create the special cadastral *operatus* (documentation) of the owners which could allow to search the real estate by the owner, not only by the land. This database should be linked with the register of the final beneficiaries in order to reveal the hidden connections especially between the dominant land owners concentrating the agricultural land ownership.

Rationalization of land-use

The complicated system of agricultural land usage can be solved by these three measures:

- a) the land consolidation which will ensure the direct access to every parcel and will reduce the inequality of the majority and minority co-owners with their different interests and parallel rental contract,
- b) reducing the existing types of usage-titles (only rent, sublease, administrative decision on the rent and common using treaty),
- c) the rental contract only by decision of the majority of the co-owners.

In order to achieve the transparent and clear relations in usage of the agricultural land it is needed to create the register of the land-use relations, i.e. identification of the user, the title of use and its duration, which will be connected with the cadaster.

An alternative measure may be the regulation of the rent price which is provided by a special regulation since 2018⁽⁴⁾.

Agricultural-soil protection as a public interest

The protection of the agriculture soil as the part of environment and the basis for any food production must be the primary criterion for any management of agricultural land. Since 2017, the Constitution established the state’s care and special protection for the agriculture land, which is characterized as

⁽⁴⁾ Regulation of Ministry for Agriculture and Rural Development of the Slovak Republic No. 172/2018 Coll., which lays down details on the manner and extent of keeping and providing records and determining the usual rate of rent.

a non-renewable nature source.⁽⁵⁾ However, this constitutional regulation yet has not emerged in some specific legal regulation.

For any change of the agricultural land to other type of the land, there should be always paid a fee without any exceptions which are today very often. Instead of remissions of the fees, there should be applied only reducing of the fee. In specified cases, a total prohibition on change of the agricultural land to another type of land should be provided. The financial resources gained from these fees should be invested back in the agricultural land protection. Changing the agricultural land to the other types of the land, especially to the building land, should be primarily limited to changing the land with degraded soils and on the sites with old environmental burdens, which need to be eliminated. Placing the large area industry buildings and factories should be primarily realised in urban areas, in old unused industrial sites, on the land with degraded soils and sites with old environmental burdens.

The environmental and rational practices in operating and cultivating the agricultural land should be supported by legislative means, for example:

- a) to conserve and build the balks and alleys as windbreaks and as means of water retention,
- b) to leave waterlogged and otherwise unproductive areas as natural refuges for the organisms which could serve as natural means of protection against the pests,
- c) ploughing should be realised always across the fall line of the slope.

Modelling the ownership and agriculture land market

In order to reduce the problem of landgrabbing, i.e. the risk of concentrating the ownership and outflow of the ownership out of state, it is needed to model the rigid protection of the ownership right. The fundamental condition for this modelling is the amendment of the Constitution and its provisions protecting the ownership right.

One of the legislative measures of modelling the ownership right may be establishing the area limits of the land ownership; it means to state the maximum possible area of the owned agriculture land. These limits should be different for particular types of owners, for example the natural person, the natural person as undertaker, the legal entity and the group of interconnected legal entities.

Another measure of modelling the ownership right may be establishing the system of pre-emptive rights. However, some versions of this system may be counter-productive, especially the pre-emptive right of the owner of neighbouring agricultural land or of the tenant. These pre-emptive rights could lead to further concentration of ownership. Much more effective could be the system of pre-emptive right of the public entities like the state or municipalities.

In the specific case of the majority co-owner it may be possible to order him the obligation to buy out the minority shares what should be the prevention of the devaluation of the minor co-ownership shares.

In order to prevent outflow of the ownership out of the state

⁽⁵⁾ Art. 44 par. 4 and 5 of Act No. 460/1992 Coll. The Constitution of the Slovak Republic as amended.

through the legal entities it may be provided the limitation or prohibition of depositing the agricultural land as a non-monetary deposit into a business company. In every case, there should be an obligation of the owner to ensure management and productivity of the agricultural land.

Collective action of farmers

As a measure of the collective sharing the risks and benefits of smaller or domestic farmers as owners or users of the agricultural land, it should be supported foundation of their cooperatives, sales associations, venture funds, sector-organizations and other similar forms of collective dealing. This cooperation should serve as the initiative protection against all demonstrations of the landgrabbing and against the inequality in the market. These activities are possible also today but they need more progressive support by the state.

Achievement the goals and their legal realisation is possible only if certain legal obstacles on the national and European level are resolved.

Constitutional obstacles

The Constitution of the Slovak Republic guarantees the ownership right in maximum wide range only with several specific exceptions reasoned by the public interest.⁽⁶⁾ The constitutional provisions does not allow to:

- a) limit the size of the land owned,
 - b) give preference to some entities in acquisition of land ownership,
 - c) prohibit the deposit of the land into a business company.
- These obstacles could be eliminated by qualifying the protection of the agricultural soil and land as the public interest and by explicit modulating the ownership right in case of agricultural land with emphasising the liability component of the ownership right.

International legal obstacles

The legislation of the European Union does not allow restrictions in the agricultural land market. The agricultural land market is a part of the common market of the European Union, which is protected by the principles of free movement of capital, freedom of establishment and prohibition of not allowed state aid.

The European Commission faces several legislative attempts of the new member states of the European Union including the Slovak Republic to regulate the agriculture land market. These state use methods that are not conform to the law of the European Union and to the methods recommended by the European Commission. The methods recommended by the European Commission are:

- a) pre-emptive right of the tenant,
- b) price regulation of the agricultural land,
- c) transfer tax,
- d) uniform conditions of access to the agricultural land market,
- e) minimum rent duration.⁽⁷⁾

⁽⁶⁾ Art. 20 of Act No. 460/1992 Coll. The Constitution of the Slovak Republic as amended.

⁽⁷⁾ Commission Interpretative Communication on the Acquisition of Farmland and European Union Law (Official Journal of the European Union, 2017/C 350/05).

As it was mentioned above, several of these methods were actually used in the Slovak Republic [d) and e)] but several of them were dismissed and cannot be applied [a), b) and c)]. In the discussion with the European Commission it is often argued that these recommended measures are not able to resolve the actual problems, especially the problem of the land concentration and outflow of the ownership. As a comparative example of using these methods Germany may be mentioned, where all of these methods are applied but they do not solve the problem that is still growing especially in the East Germany. On the other hand, there exists also the totally opposite example - the legal regulation of the agricultural land market in France does not meet the measures recommended by the European Commission at all and is extremely strict, directional and affects the liberty of contract in a very intensive way; despite of this fact, the French regulation is not challenged by the European Commission as a violation of the European Union law.

In discussion with all the EU member states regarding the regulation of the agricultural land market, the European Commission recommended unofficially also to apply these measures:

- a) deconcentration of the land ownership,
- b) obligatory investment in farming of the land owned,
- c) adopting rules against the vertical concentration of the agri-food chain.

These unofficially recommendations of the European Commission are paradoxical because no specific method of their realisation was recommended and, what is more important, all of these measures are in fact in possible conflict with the European Union law, especially in case of obligatory investing of the owner in farming of his land.

Diametrically different view compared to the official statement of the European Commission was presented by the European Parliament, which recommended the member states to use practically all those measures, which were dismissed by the European Commission.⁽⁸⁾

These extreme differences in the opinions of two highest bodies of the European Union testify that the problem of the physical and legal protection of the agricultural soil and land requires wide discussion and essential decision. Actually, only two possible conclusions may be reached: either there will be adopted common legal regulation applicable directly in all member states, or it will be only very general legal regulation and the detailed rules will be adopted in the national legislation in a very different and individual way.

General strategies

As a general base for all possible legal solution it is needed to adopt some non-legislative actions, which could serve as the political and ideological concept. It could be some kind of a long-term strategy implying two basic thoughts: preserving and revitalizing the cultural landscape and the right of the state and its inhabitants to protect their environment from the negative effects of the free market. Taking in account the high degree of involvement of civil society in public politics, it is

obvious that all attempts leading to solution of the problems mentioned above must have the public support; that can be secured only if the citizens understand and accept the actions resolving the problems.

VII. Conclusions

The paper defines basic terms and relations important for the involved topic: agricultural soil, agricultural land, ownership right, right to use (usage), state territory, state sovereignty, commodity, market, farmer, food safety, food self-sufficiency and legal and economic environment. As the main problems of the agricultural land protection were identified the loss of agricultural soil, low price of agricultural land, low competitiveness of domestic farmers, their inequality in the land-market, landgrabbing (manifested by concentration of the agricultural land-ownership and outflow of the land-ownership), concentration in the agri-food complex, fragmentation of land ownership, complexity and non-clarity of relations in usage of the agricultural land, concentration of land-use and inequalities between member states of the European Union. The definition of the goals and challenges is aimed at resolving the basic problems, i.e. to increase the agricultural soil protection in order to preserve the present area of agricultural land, to conserve and strengthen the domestic agriculture-food complex (producer - processor - supplier - seller), to increase the competitiveness of domestic farmers in the agricultural land market, to ensure easier and more straightforward farmers' access to agricultural land use, to stop the concentration of agricultural land ownership and outflow of agricultural land ownership out of the Slovak Republic and to ensure the food self-sufficiency. These goals can be achieved by several possible legal or legislative solutions in several ways. First and essential legislative measure is rationalization of land-ownership which can be achieved by reforming the fragmentation limits, liquidation of ownership of the unknown owners, realisation of the land consolidation and by transparent and clear ownership relations in cadaster. Rationalization of land-usage can be achieved also by the land consolidation together with reducing the existing types of usage-titles, by concluding the rental contract only by decision of the majority of the co-owners and by creating the specific register of the land-use relations. Physical protection of the agricultural-soil protection should be codified as a public interest with strict rules of changing the agricultural land to other type of land always with paying a fee without any exceptions and with prohibition of changes in specific cases. To avoid the landgrabbing in all of its demonstrations, it is possible to model the ownership and agriculture land market by certain limits of the ownership right. As a private and initiative measure of protection against the inequality of the small and domestic farmers it is needed to support collective organising the farmers. The realisation of the possible legal measures requires in some cases to eliminate several obstacles, especially the constitutional obstacles caused by the rigid protection of the ownership right, the international legal obstacles caused by the law of European Union and the absence of any general strategies.

⁽⁸⁾ European Parliament resolution of 27 April 2017 on the state of play of farmland concentration in the EU: how to facilitate the access to land for farmers.

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