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NEW RULES FOR ACQUISITION OF AGRICULTURAL LAND – – CASE OF SLOVAKIA

NOVÉ PRAVIDLÁ PRE NADOBÚDANIE VLASTNÍCTVA K POĽNOHOSPODÁRSKEJ PÔDE – – PRÍPAD SLOVENSKA

Jarmila LAZÍKOVÁ* – Anna BANDLEROVÁ**

I. Introduction

Many countries in the world have adopted restrictions for foreigners to acquire agricultural land. This is the way for the countries to protect themselves from a wave of foreign buyers who would take advantage of low prices and eventually control the local agriculture. The EU Treaties prohibit discrimination based on the nationality, guarantee the free movement of goods, persons, services and capital, and freedom of establishment within the European Union, and restrict the competence of Member States in the limitation of land acquisition by foreigners, mainly from other EU Member States. In general, according to the Slovak legal order, every subject of the civil law relationships can be an owner of assets, movable or immovable ones. The 4th article of the Constitution of the Slovak Republic defines some exceptions, e.g. mineral resources, caves, ground waters, natural healing resources and watercourses, which are owned exclusively by the Slovak Republic. At the same time, article 20 par. 2 adds that the law can define what other property can be owned only by the state, municipalities or specified legal persons. The law can also determine certain objects, which may be owned only by the citizens of Slovakia or by legal persons having registered their office on the territory of Slovakia. The last one just affected agricultural land during the period up to the adoption of new legal regulation, Law no. 140/2014 Coll. on the acquisition of the ownership to the agricultural land that entered into force on 1st June 2014. It confers the same rights and restrictions not only for Slovak citizens but also for foreigners. There is only one exception related to the citizens of those states which permit the acquisition of agricultural land to Slovak citizens.

Abstract (EN)

The paper analysis the development of the legal regulations of the currency law related to the acquisition of the land by the foreigners and the new legal regulation no. 140/2014 Coll. on the acquisition of the ownership to the agricultural land which entered into force on June, 1st, 2014 and to limit not only the rights of foreigners but also the rights of the Slovak residents as well. According to this law the owner of the agricultural land in Slovakia may, without further restrictions, transfer the agricultural land only to (a) a buyer who has been active in the food business or exercises agricultural activity („Farmer") in the municipality where the agricultural land is situated for at least three years prior to the transfer; (b) the existing co-owner of the agricultural land; or (c) persons related to the owner, in the event that the owner is a natural person.

Keywords (EN)

agricultural land, foreigners, currency law, land acquisition, legal regulation

Abstrakt (SK)

Príspevok analyzuje vývoj právnej úpravy devízového zákona vo vzťahu k nadobúdaniu pôdy cudzincami vrátane nového zákona č. 140/2014 Z.z. o nadobúdaní vlastníctva poľnohospodárskeho pozemku a o zmene a doplnení niektorých zákonov, ktorý vstúpil do platnosti 1. Júna 2014. Tento zákon neobmedzuje len nadobúdanie pôdy cudzincami, ale aj občanmi Slovenska. Na základe zákona, vlastník poľnohospodárskej pôdy na Slovensku je oprávnený bez ďalších obmedzení previesť pozemok do vlastníctva (a) osobe, ktorá vykonáva poľnohospodársku výrobu ako podnikanie najmenej tri roky predo dňom uzavretia zmluvy o prevode vlastníctva poľnohospodárskeho pozemku v obci, v ktorej sa poľnohospodársky pozemok nachádza, (b) spoluvlastníkovi poľnohospodárskeho pozemku, (c) príbuznej osobe, v prípade, že vlastníkom je fyzická osoba.

Kľúčové slová (SK)

poľnohospodárska pôda, cudzinci, devízový zákon, nadobúdanie pôdy, právna úprava

* Slovak University of Agriculture in Nitra, Slovakia
** Slovak University of Agriculture in Nitra, Slovakia

II. Objects and Methods

The object of this paper is to analyse legal relations relating to the acquisition of agricultural land and it sets two partial objectives. The first one consists of mapping the development of the legal regulations of the acquisition of agricultural land in relation to the non-residents from the transformation of the economy in the 1990's up to present. The second partial objective is to analyse the Law no. 140/2014 Coll. on acquisition of ownership of agricultural land and amending and supplementing certain laws (hereinafter only Law no. 140/2014 Coll.) and, based on the analysis, to point out the potential problems that may arise in application practice in relation to the new legal regulations.

The paper uses the method of analysis of the legal regulations based on grammatical, logical, systematic and teleological interpretation.

III. Acquisition of Immovable Assets by Non-residents before the Accession of the Slovakia to the EU

After the transformation of the socialist economy into market economy at the end of 1990, Law No. 528/1990 Coll., the Foreign Exchange Law, with effect from 1 January 1991 was adopted. According to the provision of § 25 of this Law, foreign exchange non-residents (i.e. persons not having their residence or registered office in the country) were allowed to acquire the immovable assets in the territory of Slovakia only by inheritance or if provided for by separate regulations (e.g. Law No. 403/1990 Coll. on mitigation of consequences of certain property injustices, Law No. 427/1990 Coll. on transfers of state property to certain objects on other legal or natural persons). The restriction applied to all immovable assets, i.e. land plots and constructions connected firmly fixed to the ground. However, it caused significant problems not only due to the adoption of the restitution and privatisation regulations, but especially in family relations, for example, parents could have neither donated nor sold their immovable properties to their children during their life unless they had resided in the territory of Slovakia (or Czech lands during the Czech and Slovak Federative Republic). Therefore the legislator proceeded to the amendment of the Foreign Exchange Law (Law No. 228/1992), which introduced exhaustively listed exceptions defining when the foreign exchange non-residents were allowed to acquire the ownership of immovable assets in the territory of the country. In compliance to the amended provision § 25, any non-resident have been allowed to acquire the property right to immovable assets in the Czech and Slovak Federative Republic since 1st July 1992 only:

a) by inheritance;

b) for diplomatic representation of a foreign country on condition of reciprocity;

c) if the immovable asset is acquired into undivided co-ownership of spouses of whom only one is a foreign exchange non-resident, or if a foreign exchange non-resident - natural person - is to acquire the property from his/her husband, wife, parents or grandparents;

d) through the exchange of one domestic property for another domestic property, the price of which does not exceed the price of the former property;

e) if the non-resident has the right of pre-emption by reason of divided co-ownership of the immovable property;

f) if it is a construction built up by the non-resident on his/her own land;

g) provided it is explicitly stipulated by a separate laws (e.g. Law No. 403/1990 Coll. on mitigation of consequences of certain property injustices, Law No. 427/1990 Coll. on transfers of state property to certain objects on other legal or natural persons, as amended, Law No. 92/1991 Coll. on conditions of the transfer of state property to other persons, as amended by the Law No. 92/1992 Coll.)

In terms of enterprises with foreign capital interest, it was still necessary to transfer the property owned by the enterprise only to the foreign exchange resident in case of their liquidation.

However, since 24 June 1991, the Law No. 229/1991 Coll. on regulation of ownership relations to land and other agricultural property (hereinafter referred to as the Law on land), has already been in effect. This law stipulated that it was not possible to transfer land into the ownership of the foreign exchange non-residents (provision § 3). The term „land" stood for agricultural and forest land. This provision was lex specialis to the provision § 25 of the Foreign Exchange Law. It means that the abovementioned exemptions did not apply to the transfer of agricultural and forest land. In other words, the foreign exchange non-residents could acquire the property rights to immovable properties, with the exception of the transfer of agricultural and forest land, in Slovakia in the situations exhaustively listed above.

On 28th July 1993, another amendment of the provision § 25 of the Foreign Exchange Law, entered into force. The Law No. 161/1993 Coll. extended the exhaustively specified possibilities of acquiring immovable assets in the country by the foreign exchange non-residents in Point (c) concerning siblings of a foreign exchange resident who did not reside in the territory of Slovakia (or Czech lands).

This state had been in effect until 1st October 1995 when the new Foreign Exchange Law No. 202/1995 Coll., the role of which was to liberalise the international trade in capital, entered into force. The mentioned law was adopted after the formation of the independent Slovak Republic, hence the term "inland" applied to the territory of the Slovak Republic only. Instead of the terms "foreign exchange resident" and "foreign exchange non-resident", new terms "resident" representing a legal person with registered office in the territory of Slovakia or a natural person with permanent residence in the territory of Slovakia and "organisational unit of a resident based abroad" were introduced. A contrario other persons or entities are considered to be non-residents.

The provision § 19 of the new Foreign Exchange Law preserves the exhaustively specified possibilities of acquiring the immovable assets by non-residents, which were laid down by the previous Foreign Exchange Law, as last amend-

ed. But the new Law also allowed the non-residents, who are citizens of the Slovak Republic, to acquire the immovable assets without any restrictions. The explanatory statement to the Law informed that the reasons for other non-residents being allowed to acquire the immovable assets only in the exhaustively listed cases are a difference between the purchasing power of the residents and that of the non-residents and the price level of the immovable assets inland and abroad. The only exception was agricultural and forest land, because under the provision § 3 of the Law on land, land could not have been transferred to the ownership of the foreign exchange non-residents even if they had been citizens of the Slovak Republic. In terms of the transfer of agricultural and forest land, the restrictions stipulated on the non-residents, who are citizens of the Slovak Republic, within the meaning of the provision § 19 of the Foreign Exchange Law continued to be in effect. The provision, however, did not prevent the non-residents to lease immovable assets in Slovakia, or to set up legal entities with offices registered in Slovakia with the statuses of residents allowing them to acquire the property rights to immovable assets in the territory of the Slovak Republic.

On 1st April 1998, the amendment to the Foreign Exchange Law No. 45/1998 Coll., which allowed the branches of foreign banks regarded as non-residents to acquire the property right to immovable assets in Slovakia not only in the cases mentioned above but also on the basis of the contract for work if the property was intended to be used as business premises of the bank, entered into force. But banks were allowed neither to sell nor to lease such premises earlier than after the expiry of 10 years from the date of their acquisition.

On 1st January 2000, another amendment of the Foreign Exchange Law No. 388/1999 Coll., which altered the provision § 19 of the Foreign Exchange Law in three basic parts, entered into force. Firstly, the branches of the foreign banks were permitted to acquire business premises not only by means of the contract for work, as it was before, but also through the purchase. Secondly, other financial institutions, such as insurances, securities traders, etc., were allowed to acquire business premises as well. Thirdly, it can be assumed that the application of the provision § 3 of the law on land as lex specialis to the provision § 19 of the Foreign Exchange Law had not been completely clear in practice. Therefore the legislator proceeded to clarifying the relations between them. According to the amended provision § 19 par. 1 of the Foreign Exchange Law, a non-resident, with the exception of the non-resident, who is a citizen of the Slovak Republic, is allowed to acquire the property right to immovable asset inland only

a) by inheritance;

b) for diplomatic representation of a foreign country on condition of reciprocity;

c) if the immovable asset is acquired into undivided co-ownership of spouses of whom only one is a non-resident, or if a non-resident – natural person – is to acquire the asset from his/her husband, wife, siblings, parents or grandparents; it does not apply to the acquisition of the property right to immovable assets subject to a separate regulation;

d) through the exchange of a domestic property he/she owns for another domestic property, the price of which is determined in accordance with a separate regulation and does not exceed the price of the former property which is determined in accordance with a separate regulation;

e) if the resident has the right of pre-emption by reason of divided co-ownership of the immovable property; it does not apply to the acquisition of the property right to immovable property subject to a separate regulation;

f) if it is a construction built up by the non-resident on land in his/her ownership;

g) if it is explicitly stipulated by a separate law.

The explanatory statement to the amendment of the Law No. 388/1999 Coll. informs that the provisions § 19 par. 1 (c) and (e) were supplemented with a reference to a separate law, the Law on land, which does not allow the non-residents to acquire the property right to agricultural land through the transfer even if the non-resident is, who is a citizen of the Slovakia. It follows that, by means of the reference relating to the Law on land, the legislator probably intended to say that even a Slovak non-resident cannot acquire the ownership of land through the transfer, although he/she was granted such an exception by the law providing "the exception of the non-resident, who is a citizen of the Slovak Republic" in case of other immovable assets. However, it can be stated that such an interpretation does not follow from the grammatical wording of the Law. On the other hand, the supplemented information only makes the impression that it is an explicit confirmation of the status of the provision § 3 of the Law on land as lex specialis. If the legislator had intended to achieve the effect referred to in the explanatory statement, it would have been necessary to exclude the application of free transfer of agricultural and forest land in relation to the Slovak non-residents in a separate provision. The expression "it does not apply to" cannot be unequivocally recognised as referring to the wording "with the exception of the non-resident, who is a citizen of the Slovak Republic".

On 1st January 2000, another amendment of the Foreign Exchange Law No. 442/2000 Coll. entered into force and supplemented the provision § 19 par. 3: "A non-resident, who is residing in a Member State of the European Union or the Organization for Economic Co-operation and Development and has established a domestic organisational unit for the purpose of business under a separate law, may, in addition to cases of acquiring the property right to immovable assets under the paragraphs 1 and 2, acquire the property right to such domestic immovable assets, which is indispensable for obtaining business premises for this organisational unit".

It was a liberalisation step that allowed non-resident residing in the countries of the European Union or the OECD to acquire a domestic property that is necessary for the establishment of the organisational unit for the purpose of conducting business. There is no distinction made between whether it is a construction or land, but it must be immovable asset indispensable as business premises for the subject of his/her domestic business.

IV. Acquisitions of Immovable Assets by Non-residents after the Accession of the Slovak Republic to the EU

On 1 May 2004, the Slovak Republic (SR) joined the European Union and the internal market with free movement of goods, services, persons and capital as well. The Foreign Exchange Law therefore needed to be adjusted, because the Slovak Republic undertook to harmonise of its legal order with both primary and secondary legislation of the EU and thus with the provisions concerning the free movement of capital at the date of accession to the EU. The Slovak Republic requested two transitional periods, namely:

- with the duration of 5 years with aim to maintain the existing restrictions relating to the acquisition of the property right to immovable properties in the SR by non-residents using them as secondary residence;
- with the duration of 10 years with aim to maintain the existing restrictions relating to the acquisition of the property right to agricultural and forest land in the SR by non-residents.

Treaty of Accession accepted only the second request with the duration of 7 years and if it is subsequently proved that, upon expiry of the transitional period, there is a threat of serious disturbances on the agricultural land market of Slovakia, the Commission, at the request of the Slovak Republic, shall decide upon the extension of the transitional period by a maximum of three years. However, the Slovak Republic could not implement more restrictive measures towards the nationals of the EU Member States than those, which had been in effect until the date of the accession of the Slovak Republic to the EU. An exception was provided by the nationals of the EU Member States who decided to farm agricultural land in Slovakia. They could lease such land and, three years after the entry into force of the Treaty of Accession, even purchase it provided that they had farmed it during the whole time.

In 2011, when seven-year transitional period was to expire, the Slovak Republic made a request for its extension within the meaning of the accession agreement. The Commission issued the 2011/241/EU Decision of 14 April 2011, which extended the transitional period concerning the acquisition of agricultural land in Slovakia. Under Article 1 of the Decision, „the transitional period concerning the acquisition of agricultural land in Slovakia referred to in Chapter 3 of Annex XIV to the 2003 Act on Accession is being extended until 30th April 2014".

Because of the abovementioned reason, the Law No. 456/2002 Coll. repealed the provision § 19 of the Foreign Exchange Law and replaced it with a new provision § 19 (a) of this law. Under the new provision, the non-residents regardless of their citizenship were allowed to acquire the property right to all domestic immovable assets, apart from two exceptions defined by the law. The first one comprised agricultural and forest land situated beyond the borders of the municipalities' built-up areas. That a contrario meant that if a plot with agricultural land (mainly with gardens, but with arable land as well) had been situated in a municipality's built-up area, the non-resident would have had the right to acquire the property right to it under the same conditions as a citizen of the SR residing in its territory. This restriction, however, applied neither to Slovak non-residents nor to the nationals of the EU Member States which have the right to temporary residence based on registration, and, at the same time, the property right was to be acquired to agricultural land which they had farmed for at least three years after the entry into force of the Treaty of Accession of the Slovak Republic to the European Union. The second exception included immovable assets, the acquisition of which is limited by separate regulations (e.g. Mining Law, Water Law, Law on Nature and Landscape Protection, Road Law).

That change also required the amendment of the provision § 3 of the Law on land, according to which, land cannot be transferred to the ownership of non-residents unless otherwise provided by a separate law. And it was the Foreign Exchange Law that became this lex specialis. In other words, although the provision § 19 of the Foreign Exchange Law had been applied as lex generalis and the provision § 3 of the Law on land had been applied as lex specialis. The new wording of the Foreign Exchange Law caused a confusion of general and special rules of the law. This wording of the Law, however, failed to preserve the right of the non-residents to acquire immovable assets by means of the inheritance. This deficiency was rectified by the amendment of the Law No. 554/2004 Coll. that entered into force on 1st January 2005. Thus the non-residents could acquire the property right to agricultural and forest land by means of inheritance regardless of their citizenship. The fact is that the accession of the Slovakia to the European Union has opened the agricultural land market in Slovakia. Even in spite of the fact that during the negotiation processes Slovakia received a seven-year moratorium on the purchase of agricultural land [(1)], which was extended by abovementioned Commission Decision (2011) for an additional three years, foreigners were buying agricultural land through Slovak companies. In terms of the foreigners, land represents not only a place for business activities, but mainly an investment in the future; they do not want to carry out business on land, but they want to own and lease it[(2)]. Therefore the land policy represents a key factor of economic and social development of the country[(3)], as it affects the movements within the agricultural land market.

(1) SWINNEN, J. F. M. – VRANKEN, L. 2009. Land & EU Accession: Review of the Transitional Restrictions by New Member States on the Acquisition of Agricultural Real Estate. Brusel: CEPS, 2009. ISBN 978-92-9079-827-9.

(2) BUDAY, Š. et al. 2013. Rozvoj trhu s pôdou a trhu s nájmom v podmienkach EÚ. Bratislava: VÚEPP, 2013. ISBN 978-80-8058-586-0.

(3) SCHWARCZ, P. – BANDLEROVÁ, A. – SCHWARCZOVÁ, L. 2013. Selected issues of the agricultural land market in the Slovak Republic. In Journal of Central European Agriculture. Vol. 14, č. 3 (2013). ISSN 1332-9049.

V. Acquisitions of Immovable Asset by Non-residents after the Moratorium Expiry

On 30th April 2014, the transitional period, which the Slovak Republic requested in terms of the trade in agricultural and forest land outside the municipalities' built-up areas in relation to the citizens of other EU Member States, expired. The Slovak legislator responded to the situation by an adequate amendment of the provision § 19 (a) of the Foreign Exchange Law.

Since 1st June 2014, the Law No. 140/2014 Coll. has been in effect. This Law repealed also the provision § 3 of the Law on land, which stated *land cannot be transferred to the ownership of non-residents unless otherwise provided by a separate act*. Moreover, the Law no 140/2014 Coll. amended the provision § 19 (a) of the Foreign Exchange Law, which allowed the non-residents to acquire the property right to agricultural land under the same conditions as residents.

The new legal regulation took over legally binding EU legislation represented by the Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (Special edition O. J. EU, Chap. 10/Vol. 1; O. J. EC L 178, 8. July 1988).

The Law exhaustively enumerates what is regarded as the acquisition of ownership of agricultural land. For the purposes, the acquisition of ownership of agricultural land represents either a conditional conveyance or a voluntary conveyance under § 588-610 (provisions related to purchase contract) and § 628-630 (provisions related to donation contract) of the Civil Code and a transfer for the purposes of the enforcement of lien pursuant to §151 (j) of the Civil Code or the enforcement of the security transfer of right pursuant to § 553 (c) of the Civil Code. Despite the exhaustive enumeration, the Law explicitly excludes the voluntary conveyance of the ownership of entitled persons from the extent of application in accordance with the restitution regulations (the Law on land and the Law No. 503/2003 Coll. on restitution of ownership of land) or in compliance with other separate regulations (for instance, the Law No. 543/2002 Coll. on nature and landscape protection). Moreover, the new Law does not affect the acquisition of ownership of agricultural land during both land consolidation and the transfer of ownership in public interest for the purposes for which agricultural land can be expropriated.

Legislator's application of the Law did not refer to the deposits by partners to companies, the subject of which can be represented by agricultural land, or to the contract for the sale of an enterprise comprising agricultural land. A partner's deposit to a company can be realised in terms of agricultural land as well, because it does not stand for any of the cases referred to in § 3 par. 1 of the quoted Law. In this way, it will be relatively easy to circumvent the law, when a partner (or a member of a cooperative) enters a company and contributes consideration other than in cash and subsequently repeals his/her membership and makes a financial settlement.

Firstly, the legislator applies that regulation neither to a land exchange and deposits of shareholders to enterprises, of which the agricultural land can be a subject, nor to a contract on the sale of an enterprise, of which the agricultural land is a part. Secondly, the Law does not apply to the transfer of the property right both by heritage in case of death of its owner – natural person – and by the transfer of rights and obligations to a legal successor in case of dissolution of a legal person with legal succession (i.e. by a merger, fusion, division, or, in some cases, change of the legal form).

The application praxis has shown the misuse the legal rules, mainly in the case of exchange contracts, which escaped the legislator's attention when adopting the legal regulation. We found out that the Land Register Departments are submitted with dozens of exchange contracts with the aim of registration proceedings, while the agricultural land parcels are exchanged either for movable assets or for other parcels, but in inappropriate acreages (e.g. hectares are exchanged for square metres). Therefore the legislator currently strives to amend and supplement the law with another type of contract – the exchange contract – and to do so in such a manner that it will also be subject to the procedure of publication of offers for the transfer of ownership of agricultural land. According to the explanatory statement[4], the second case of most often misuse of law is to demonstrate the status of either a close or a relative person not only by an official deed, but also by a declaration on honours[5]. Land Register Departments of the District Offices have daily experience with the misuse of declarations on honour intended for this purpose. Therefore it is proposed this provision should be abolished. If the proposed changes will be adopted, the new wording of the Law should enter into force on 1st July 2015. Restriction on the purchase of agricultural land, however, can be bypassed, for instance, by buying an enterprise, or its part or share, the ownership of which already includes agricultural land parcels. However, the new legal regulation establishing the administratively complicated procedure will not prevent the speculative purchases.

We have noticed another deficiency in the fact that because of the unclear wording of the Law (§ 2 par. 2), only land adjacent to the construction with which it creates a functional whole due to its location and use is not regarded as agricultural land. However, if the acreage of the land plot is more than 2,000 m^2 and the land plot is located directly under the construction (stables, granaries and other agricultural constructions are usually higher than 2,000 m^2), no exception applies to it, but according to § 2 par. 1, it will be non-transferable, or transferrable in a limited way in comparison to the construction situated on it.

In compliance with the new Law, agricultural land stands for the subject of the acquisition of ownership. According to § 2 of the Law no. 140/2014 Coll., either agricultural land or land built up with a construction intended for agricultural purposes until 24 June 1991 is regarded as agricultural

[4] The explanatory statement to the draft law amending and supplementing Act No. 140/2014 Coll. on acquisition of ownership of agricultural land and amending and supplementing certain laws.

[5] § 6 par. 8 point b) of Act No. 140/2014 Coll. on acquisition of ownership of agricultural land and amending and supplementing certain laws.

land. The term "agricultural land" means land registered as arable land, hop gardens, vineyards, orchards, gardens and permanent grassland in the Land Register and land built up with a construction intended for agricultural purposes until the effectiveness of the Law on land (i.e. until the moment, when the use relations were preferred to the ownership relations during the period of the socialist system). However, the legislator exhaustively specifies the exceptions, to which the given Law does not apply; they include:

a. gardens regardless of their location;
b. a land plot in a municipality's built-up area regardless of its type (arable land, vineyard, hop garden, meadow, etc.);
c. a land plot outside the municipality's built-up area if:
   i. it is intended for other than agricultural use;
   ii. the possibility of its agricultural use is limited by separate regulations (for example, by the Nature Conservation Laws);
   iii. its acreage is less than 2,000 m^2 (it is a land plot that nowadays, pursuant to the Law No. 220/2004 Coll. on agricultural land protection, cannot be created, yet many of such plots still exist as relics of the past); within the meaning of the new legal regulation, the cost of their transfer would exceed the price of the land, therefore, the legislator removed their transfer from the Law;
   iv. it is adjacent to the construction, together with which it creates one functional whole with aim to prevent the situation when the owner of the construction is one person while the owner of the adjacent land plot is another person, which would prevent the draft law from reaching the effect intended.

The person involved in the legal relations concerning the transfer of agricultural land can be represented by any natural or legal person, regardless of his/her nationality. An exception is provided by the provision § 7: *"Agricultural land cannot be transferred to the ownership of the state, citizen of the state, natural person with residence or a legal person with registered office in the state, the legal order of which does not allow any citizen of the SR or a natural and a legal person with residence or registered office in the territory of the SR to acquire the property rights to land in its territory; it does not apply to the inheritance of agricultural land as well as to the EU Member States, European Economic Area, Switzerland or to the states, the international treaty of which provides so, and the Slovak Republic is bound by it as well."* In the section mentioned, it is defined that it does not apply to the nationals and the natural persons with residence or the legal persons with registered office in the states mentioned. The provision § 7 of the Law no. 140/2014 Coll. enshrined the principle of reciprocity. It will be necessary to examine the foreign legal regulations if the sale of agricultural land involves an acquirer who does not come from the EU Member States, EEA or Switzerland, or to find out the existence of a potential bilateral treaty with a third country, which would exclude the restrictions of the acquisition of agricultural land in the territory of the SR in relation to either its citizens or the persons with residence or registered office in its territory.

VI. Procedure of the Transfer of Ownership of Agricultural Land

Within the meaning of the new legal regulation, in order to purchase or donate agricultural land, it is no longer sufficient to conclude the given contract with the person or the entity chosen by the landowner. It is necessary to carry out a number of bureaucratic procedures that extend the whole transaction process and burden it not only from the time perspective but especially from the financial point of view.

Sections 4 to 6 of the Law regulate the procedure required to be followed when transferring the ownership of agricultural land in detail. This procedure refers to the acquisition of ownership of agricultural land, regardless of its acquirer. Therefore, the provision § 4 par. 1 of the Law no. 140/2014 Coll. explicitly and exhaustively lays down the exceptional cases, in which the established procedure does not need to be followed. In other words, it specifies the exceptions relating to the statuses of the acquirers of agricultural land, to which the established procedure of the acquisition of ownership does not apply. They are defined in the following way:

1. **if agricultural land is transferred to the ownership of an acquirer carrying out agricultural production as a business for at least three years before the date of the conclusion of the contract on the transfer of ownership of agricultural land in the municipality, where the agricultural land is located**. According to Article 4 par. 1 (c) of the Regulation of the European Parliament and of the Council (EU) No. 1307/2013, the agricultural activity means production, farming or cultivation of agricultural products, including harvesting, milking and breeding animals and animal reproduction and farming for agricultural purposes; the maintenance of agricultural area in the state, in which it is suitable for grazing or cultivation without any preparatory activities beyond the framework of the use of the usual agricultural practices and machinery on the basis of the criteria, which shall be laid down by the Member States arising from the framework set by the Commission; or the performance of a minimum level of activities on agricultural areas naturally left in the state suitable for grazing or cultivation, while the activity is specified by the Member States.
2. **if agricultural land is transferred to ownership of an acquirer, who is a co-owner of an agricultural land plot, provided that the co-ownership share is in compliance with separate regulations** (i.e. § 140 of the Civil Code, or the provision § 9 par. 7 of the Law No. 97/2013 Coll. on land communities). The co-owner has the right of pre-emption to agricultural land within the meaning of the provision § 140 of the Civil Code, thus the proposed procedure for the transfer of agricultural land cannot apply to him/her. In this way, the legislator solved the relation between the provision § 140 of the Civil code and the provision § 4 of the Law no. 140/2014 Coll. an unequivocal way. At the same time, the potential reduction of the amount of extremely small co-owner-

ship shares to agricultural land will be contributed to as well. Finally, the non-exemption of the co-owners from the proposed procedure of the transfer of land would represent a disproportionately large interference in their property right.

3. **if agricultural land is transferred to ownership of an acquirer, who is a close person** pursuant to paragraph 116 of the Civil Code and a relative person pursuant to § 117 of the Civil Code, i.e. persons, who are relative in direct line, sibling and spouse; as well as other persons in a family or similar relation who are considered to be close to each other if a detriment suffered by one of them is reasonably felt as own by the other. The degree of consanguinity of two persons is determined according to the number of the births by which one person descends from the other in direct line, and in the collateral line, by which both descend from the nearest common ancestor.

The owner of agricultural land as a transferor, who wants to sell or donate his/her land and does not represent any of the abovementioned exceptions, is first of all obliged to publish his/her offer in the register of published offers on the website of the Ministry of Agriculture and Rural Development of the SR for at least a period of 15 days. Formal requirements for submitting the proposal for the transfer of ownership of agricultural land are exhaustively listed in the law and, in addition to the identification data of the transferor, data on agricultural land in compliance with the data in the Land Register, information on the purpose of the use of agricultural land according to the land use plan of the municipality or the territorial plan of the zone, the price demanded by the transferor per m2 of agricultural land, with the exception of the cases of the voluntary conveyance of ownership of agricultural land, and the time limit and the address for the submission of offers for the transfer of ownership of agricultural land are required as well. At the same time, the owner is obliged to publish the offer on the bulletin board of the municipality, where agricultural land is located. The law explicitly defines that the publication of the offer on the bulletin board is gratuitous. However, it does not specify whether the publication of the published offers on the website of the Ministry of Agriculture and Rural Development of the SR is gratuitous as well. It is necessary to mention that only a person with an electronic signature can publish an offer on the website in the Register of the Publication of Offers. Due to the publication process being complicated, we may encounter offers by various private companies, which publish other owners 'offers on the website for a charge.

Any offer published in such a manner lapses six months after the expiry of the period determined for the publication of the offer in the Register of Publication of Offers, which is 15 days minimum pursuant to the provision § 4 par. 3. The acquirer is obliged to record the interest in the acquisition of ownership of the offered land both in the Register and at the address and within the period specified by the offer in the Register. If the acquirer, in spite of expressing his/her interest in the ownership of agricultural land in the Register, does not send a written information to the transferor within five days after the expiry of the period determined for the publication of the offer in the Register (provision § 4 par. 3 of the Act on acquisition of ownership of agricultural land), an irrefutable presumption of absence of interest in the transfer of the ownership is established.

In the provision § 4 par. 4-10 of the Law no. 140/2014 Coll., the legislator lays down the order of the persons authorised to become acquirers of the agricultural land. Within the meaning of the provision § 4 par. 4 of this Law, the ownership of agricultural land may be acquired only by the person who is not considered as representing any of the abovementioned exceptions and *who has either permanent residence* (in the case of natural person) *or registered office* (in the case of legal person) *in the territory of the SR for at least 10 years and carries out agricultural production as a business for at least three years before the date of the conclusion of the contract on the transfer of ownership of agricultural land*

a) in the municipality adjacent to the municipality in which the agricultural land transferred is located, or

b) regardless of the place of business.

This quotation from the Law no. 140/2014 Coll. raises several questions in connection with other paragraphs. For instance, in the case of a dispute, it is questionable how the courts would tackle the fact that the acquirer has his/her registered office in one municipality while he/she conducts business in several municipalities, which is a common phenomenon mainly in regard to larger agricultural entities. It is also questionable how the fact that the person interested in the acquisition of ownership of the offered land farms his/her land in the neighbourhood and does so for the purposes of agricultural production will be proved in practice, because the title deed itself or the existence of the lease contract does not demonstrate it. Finally, does the interpretation of the quoted provision need to be seen as meaning that both the permanent residence (and the registered office) and the performance of agricultural production relate to Point (a)? In other words, is the adjacent municipality only a municipality, in which the person interested in the acquisition of ownership of agricultural land has both permanent residence (or registered office) and the place of the business activity, which represents farming agricultural land plots for the purposes of agricultural production? Or is it possible to interpret the quoted provision as meaning that the condition of permanent residence (or registered office) is always fulfilled if it is situated in the territory of the SR and, moreover, that it is sufficient if the land transferred is located in the municipality adjacent to the municipality, in which the person carries out agricultural production as a business? We rather tend towards the second possibility and there are two reasons for it. Firstly, in the first part of the quoted text, the term "in the territory of the SR" was used, which showed that the condition of permanent residence or registered office is fulfilled if it is in the territory of the SR regardless of whether or not it is in the municipality adjacent to the municipality, in which agricultural land is offered. Secondly, even if the first part of the sentence concerning the issue of the registered office and the permanent residence referred to the adjacent municipality, a natural person, for instance, with a permanent residence in Košice conducting business in Nitra would have no real chance of acquiring agricultural land; however, considering

the aim of the Law to give the land mainly to the farmers in vicinity, such condition would be pointless, or even contrary to the objective pursued by the legislator.

Thus the law determines the following order of the individual interested persons fulfilling the conditions of permanent residence (or registered office) and of carrying out agricultural production as a business. First in the order are persons from the municipalities, in which the offered agricultural land plots are registered. The law, however, does not explain the term "acquirer from the municipality"; it means that the person must have permanent residence (or registered office) in the municipality, or it is sufficient if he/she carries out agricultural production as a business in it. We believe that the compliance with the second condition is sufficient; however, it subsequently raises the question of whether the person interested in the offered land, who has the permanent residence in the municipality and, at the same time, carries out agricultural production as a business in it, takes precedence over the person, who only carries out agricultural production as a business in the municipality. We believe that in this case both should have the same position in relation to the possibilities of acquiring the offered agricultural land. In other words, it will be only up to the owner of the offered land with whom he/she will conclude the contract on the transfer. Second in the order are persons interested in the offered land coming from the adjacent municipality, while the term "from the adjacent municipality" is interpreted by analogy with the first case. Third place is occupied by the interested persons, regardless of the place of business. Here again, the question of whether the term "regardless of the place of business" can be interpreted as meaning that the place may also be outside the territory of the SR arises. If we tended towards the first stricter interpretation of the wording of § 4 of the Act, the place of business would have to be exclusively in the territory of the SR. If we tended towards the second interpretation under which the territory of the SR related only to the permanent residence (or the registered office) and not to carrying out agricultural production as a business, it would not be excluded that those conditions would also be fulfilled by a person conducting business in the border regions in the neighbouring countries. Finally, if neither a person occupying the first or the second places nor a person complying with the requirements of the third place in order expresses the interest in the land, the owner of the offered land can transfer it to a person with permanent residence or registered office in the territory of the SR for at least ten years, however, it must be done at the latest until the lapse of the offer, i.e. the fulfilment of the condition of permanent residence (or registered office) is sufficient and the acquirer does not have to fulfil the condition of conducting business in agricultural production.

In addition to the persons who have permanent residence (or registered office) in the territory of the SR for at least 10 years and carry out agricultural production as a business for at least three years, the interest in the offered land can be also expressed by their employees who work for them at least three years in employment, similar employment relation or some other labour law relation in the same order. If the interest in the offered land is expressed by the persons who are not in labour law or similar relationship – for example, if they hold positions of managing directors or members of the boards of directors on the basis of a mandate contract, they are clearly discriminated by the law in comparison to other employees, because they are statutory representatives and thus do not comply with the condition pursuant to § 4 par. 9 of the Law, because those positions cannot be held in employment, similar employment relation or any other labour law relation and unless the contract of employment is concluded for another position, according to the wording of the law, they do not fulfil the condition.

Another exception is established in relation to young farmers, who are not required to comply with the requirement of a three-year business conduct in agricultural production. However, the Law replaces it with the requirement which is imposed on young farmers and according to which the young farmers cannot lease, sell or donate the acquired agricultural land for three years from acquiring the ownership of the agricultural land. According to Article 2 par. 1 (n) of the Regulation of the European Parliament and of the Council (EU) No. 1305/2014 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation No. 1698/2005, young farmer is a person who is less than 40 at the moment *of submitting the application, possesses adequate occupational skills and competence and is setting up for the first time in an agricultural holding as head of the holding*. Possible future circumvention of the law by the "young farmers" seems to be relatively easy. They just have to comply with the requirements of age and establishment the holding, i.e. they can establish a company with limited liability, buy land and then divest themselves of their shares (transfer them to another person).

The fulfilment of the requirements of the transfer of the property right to agricultural land is verified by the District Office in the district of which the land is situated. Application for the verification, the content of which is set down in the Law, is provided by the person interested in the offered land before the conclusion of the contract. It is necessary to accompany the application by seven annexes, including a confirmation from the municipality, in which the person carries out agricultural production as business, proving the business conduct in agricultural production, or a confirmation of the permanent residence or the registered office in the SR for at least ten years before the conclusion of the contract on the transfer of ownership of agricultural land. The Law, however, does not specify the time limit for issuing the confirmation and due to municipalities not issuing such confirmations during administrative proceedings, it is not possible to arise from the general 30-day time limit within the meaning of the Administrative Code. If a municipality was inactive, the applicant would have the only possibility of taking legal action against inactivity of the public authority pursuant to § 250 et seq. of the Code of Civil Procedure.

The District Office shall issue a certificate on fulfilment of the requirements within 30 days from the date of receipt of the application and, in particularly complex cases, the certificate can be issued within 60 days. The term of particularly complex case is defined neither in the Act on acquisition

of ownership of agricultural land nor in the Administrative Code. Jurisprudence explains the concept in the following way; the term of complex case is used if the case is "challenging when taking of evidence, with a large number of participants, with participants residing in abroad who did not establish a guardian with residence in the territory of the SR, etc."[6]. Thus the certificate becomes an annex to the contract on the transfer of ownership of agricultural land. Refusal to issue the certificate is subject to review by the Court.

There is maybe one positive effects of this new legal regulation related to the price information. In Slovakia, there is the lack of information on the land market. It causes the decision-making process of subjects more difficult because of the missing land price information system[7]. The lack of the land price information has been not solved by the legal acts[8]. The new legal regulations does not solve the problem of price information directly; however the obligation to publish the land offers on the Ministry Register accessed by Ministry website can eliminate the lack of land prices information.

VII. Conclusions

The development of land relations in Slovakia is marked by the land policy of the relevant period and its result is the current state of land law relations. There is no doubt that the new Law no. 140/2014 Coll. affects the disposal right of the owners of agricultural land. Application practice will show whether the new legal regulation will meet the objective set by the legislator in order to justify the adoption of the Law, which is strengthening the legal instruments of the protection of agricultural land focusing not only on the protection against its degradation and the deterioration of its biological and physical characteristics but also on creating a legislative framework for the protection of land by defining the criteria, mainly those of professional nature, which will be required to be fulfilled by the acquirers of its ownership.

The facts mentioned above lead to an assumption that the legislation is based on the idea that if the acquirer of agricultural land is preferably a person conducting business in agricultural production, the legislative framework for the protection of the land will be ensured as well. It is a question if the new legal regulation is the best right. The agricultural businessmen would like to buy the agricultural land however their economic situation and complicated land ownership relations are the main factors why they rent majority of the cultivated land[9].

Because any measure oriented towards the protection of agricultural land, on which the legislator based the regulation, does neither arise from nor is explicitly established in any of the provisions of the Law, we believe that the new legal regulation will act as disincentive to the agricultural land market development, increase the transaction costs in the acquisition of agricultural land, and lead to the occurrence of a much larger amount of various factual and legal complications in the administrative process of the acquisition of agricultural land. The legal regulation will lead to the growth of bureaucracy and, last but not least, the exact meaning of several of the terms it introduced is unclear and it also did not fully address the possibility of circumventing the restrictions by means of a share deal. In addition, concerns have been raised (even by the Ministry of Interior) about its conformity with the Slovak constitution, in particular due to its excessive restriction of the constitutional right on ownership. Several MPs have already indicated that they will challenge the New Regulation at the Constitutional Court.

The Law precisely specifies the range of potential acquirers of agricultural land by the establishment of the priority right of the persons conducting business in agricultural production, on the other hand, the liberalisation of the Foreign Exchange Law (§ 19 (a)) and the provision § 4 par. 1 of the Law no. 140/2014 Co. open up the possibilities of acquiring agricultural land in Slovakia for new persons and entities, who have been allowed to acquire such land only by inheritance up to now (for instance, the donation or the sale of land to close persons not being citizens of the SR and residing outside the territory of the SR).

European Commission took a decision on demanding a clarification on the laws regarding the acquisition of agricultural lands passed in Bulgaria, Hungary, Lithuania and Slovakia. As announced by the commission's press office, several of the directives in the laws can be considered as hindrances to the free movement of capital within the borders of the EU. All restrictions to agricultural land ownership need to be substantiated and justified so that no doubt is left on possible discrimination against foreign investors. The commission also noted that all countries have the right to determine their own laws, but they also need to comply with the union's anti-discrimination policies. The EU Commission's official announcement letter marks the start of the proceeding, giving countries a two-month deadline to provide information on the case. According to the current legislation, EU private and company owners are required to have a permanent 5-year residency. Effectively, companies outside the EU and offshore firms are thus not allowed to buy agricultural lands.

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Contact address/ Kontaktná adresa

JUDr. Jarmila Lazíková, PhD.
Department of Law, Faculty of European Studies and Regional Development, Slovak University of Agriculture in Nitra,
Tr. A. Hlinku 2, 949 76 Nitra,
e-mail: jarmila.lazikova@uniag.sk
Prof. JUDr. Anna Bandlerová, PhD.
Department of Law, Faculty of European Studies and Regional Development, Slovak University of Agriculture in Nitra,
Tr. A. Hlinku 2, 949 76 Nitra,
e-mail: anna.bandlerova@uniag.sk