

# PROTEST OF THE PROSECUTOR AS A TOOL OF AGRICULTURAL LAND PROTECTION

## PROTEST PROKURÁTORA AKO NÁSTROJ OCHRANY POĽNOHOSPODÁRSKEJ PÔDY

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### I. Introduction

The land question is currently being reappraised worldwide. Higher importance is linked to agricultural land ownership, land leasing, its taxation, recovery, as well as protection. Land and resource policy is the key to future economic and social development<sup>(1)</sup>. Concept of the European soil policy and soil protection strategy as well as its sustainable use was established in the 6th Environmental Action Programme, which was accepted by European Council as well as European Parliament on July 22, 2002. Government soil policy in SR declares that the soil is and will be the basic building block of environmental, ecological, economic and social potential of Slovakia and therefore it must be carefully protected against damage. The regulation concerning agricultural soils in SR is expressed in the Act No. 220/2004 Coll. on protection of agricultural soils and agricultural land use, Act

No. 59 of the Ministry of Agriculture and Rural Development of Slovakia from March 11, 2013 and Act No. 140/2014 Coll. on the acquisition of agricultural land<sup>(2)</sup>.

Agricultural land comprises both cropland, i.e. arable land and orchards, hop fields, meadows, pastures, gardens, in a wider sense also ponds with fish or aquatic poultry, as well as the non-agricultural land needed for the provision of agricultural production, for example, the field trails, water tanks, soil solitary, buffer strips, and others<sup>(3)</sup>.

In many countries, technological changes in agriculture have reduced the number of farms and increased farm sizes. At the same time, structural development in the ownership of arable land has only been moderate or has fragmented the land ownership even more<sup>(4)</sup>. Agricultural land-use in the

<sup>(1)</sup> Schwarcz, Bandlerová, Schwarczová (2013)

<sup>(2)</sup> Kobza (2015)

<sup>(3)</sup> Homolac, Tomsik (2016)

<sup>(4)</sup> Pouta, Myyrä, Pietola (2012)

#### Abstract (EN)

The prosecutor's protest is a legal mean by which the prosecutor supervises the observance of law by public authorities. District offices, cadastral departments decide on the deposit of property rights to real estate, as well as on ownership rights to agricultural land, and also decide on the protest of the prosecutor. If the relevant District office, cadastral department, or its superior authority does not remove the non-compliance by issuing a decision or a measure that complies with the law, the prosecutor may bring the case to court. The court may annul the contested decision or measure. The aim of the paper is to collect and analyse data and evaluate the institute of prosecutor's protest as an effective tool of agricultural land protection in connection with its acquisition or transfer. The paper compares the individual years in the observed period of time and also compares different regions in Slovakia. The result is a comparison and evaluation of the observed time periods.

#### Keywords (EN)

agricultural land protection, protest of the prosecutor

#### Abstrakt (SK)

Protest prokurátora je právnym prostriedkom, ktorým prokurátor vykonáva dozor nad zachovávaním zákonnosti orgánmi verejnej správy. Okresné úrady, katastrálne odbory rozhodujú o vklade vlastníckych práv k nehnuteľnostiam, aj o vlastníckych právach k poľnohospodárskej pôde, a rozhodujú taktiež o proteste prokurátora. Ak príslušný Okresný úrad, katastrálny odbor, resp. jeho nadriadený orgán neodstráni nesúlad s právnymi predpismi vydaním rozhodnutia alebo opatrenia, ktoré sú v súlade s právnymi predpismi, môže sa prokurátor obrátiť na súd. Súd môže zrušiť napadnuté rozhodnutie alebo opatrenie. Cieľom článku je zozbierať a zanalyzovať dáta a vyhodnotiť inštitút protestu prokurátora ako účinný nástroj ochrany poľnohospodárskej pôdy v súvislosti s jej nadobúdaním, respektíve prevodmi. Článok komparuje jednotlivé roky v sledovanom období od roku 2013 až doposiaľ a komparuje aj jednotlivé kraje v rámci Slovenska. Výsledkom je porovnanie a zhodnotenie sledovaných období.

#### Kľúčové slová (SK)

ochrana poľnohospodárskej pôdy, protest prokurátora

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context of the soil protection can be negatively affected by the land ownership changes<sup>(5)</sup>.

The goal of this paper is to examine one of the instruments of agricultural land protection in SR regarding the ownership of the agricultural land. This instrument is the prosecutor's protest, concrete against the decision of district offices, cadastral departments.

## II. Material and methods

Material used in this paper was collected from district prosecutions in SR on the basis of requests put forward according to the Act No. 211/2000 Coll. on free access to information. The collected material was a subject of an analysis, detailed examination and a thorough study. Obtained information was statistically processed and a comparison based on regions in SR and years in the observed time period was made.

## III. Results and Discussion

One of the main competences of the prosecution stated in the Act No. 153/2001 Coll. on prosecution is the supervision of preservation of legality by public authorities and within the scope of its mandate it is obliged to carry out measures in the public interest to prevent the violation of lawfulness, to detect and remedy the violation of lawfulness, to restore the violated rights and to draw consequences for their violation. According to Explanatory Memorandum to the Act No. 140/2014 Coll. on the acquisition of agricultural land, protection and use of agricultural land is a public interest (public good).

If the prosecutor finds any violation of lawfulness in the action or inaction of public authorities, he has two types of remedies available to him to seek redress (unlike the criminal area, they do not have the character of a decision), namely the remedies in field of:

- public administration (primary means of prosecutor's supervision)
  - 1) a protest;
  - 2) a warning;
- the judiciary (secondary means of the prosecutor's supervision)
  - 1) submission of the proceedings in the administrative judiciary;
  - 2) submission of the proceedings in the constitutional judiciary.<sup>(6)</sup>

The prosecutor's protest is one of the legal means of the prosecution's supervision used by the prosecutor if he finds the unlawfulness of an administrative act and seeks to remove the found unlawfulness. Prosecution's protest is justified when it is necessary to repeal the lawful act of a public authority and restore legality, or to cancel or change it in the challenged part<sup>(7)</sup>.

According to section 24 of the Act No. 153/2001 Coll. on

prosecution, the prosecutor may appeal against a decision of a public administration body or a measure of a public authority within three years from the date of the validity of the decision or the issuance of a measure. If a public authority finds that the prosecutor's protest is well founded, it shall comply with the protest within 30 days of its delivery and make a decision that will revoke the challenged decision or measure. If a public authority does not comply with the protest or only partially meets it, it shall, within 30 days put it forward to its immediate superior for a decision, if such a superior exists, otherwise it makes a decision of its own. The superior authority decides on the protest within 30 days of its submission. If a public authority does not comply with the prosecutor's protest and does not annul the challenged decision or measure, the prosecutor is entitled to bring an administrative action against the decision of a public authority or a measure of a public authority to an administrative court.

The analysed data were collected through the requests based on the Act No. 211/2000 Coll. on free access to information from the different district prosecutions. All 54 of them were asked to access the requested information and only eight of them did not provide the requested information.

In this paper the analysed (requested) data are prosecutor's protests against decisions of district offices, cadastral departments during the years from 2013 to present day. The total number of collected prosecutor's protests against decisions of district offices, cadastral departments from 46 district prosecutions that have accessed the requested information was 390. Out of the 390 prosecutor's protests against decisions of district offices, cadastral departments only 30 of them were based on agricultural land protection laws (see the Figure 1 below).

Firstly it must be stated, that when comparing four regions (Bratislava, Nitra, Žilina, Košice), in which only one district prosecution did not access the requested information, with the other four regions (Trnava, Trenčín, Banská Bystrica, Prešov), where in each of them two or three district prosecutions did not provide the requested information, it is clear that in the case of the first four regions (Bratislava, Nitra, Žilina, Košice), the majority of all of the 390 prosecutor's protests against decisions of district offices, cadastral departments was issued in these four regions, in the concrete, 289 of them, what is more than 74%.

It can be a coincidence, but at least in the two regions with the lowest number of prosecutor's protests against decisions of district offices, cadastral departments (Trnava, Trenčín), it is very unlikely that even if the one or two of the remaining district prosecutions would provide the requested information, it would make any difference in their positions as the regions with the lowest number of prosecutor's protests against the decisions of district offices, cadastral departments.

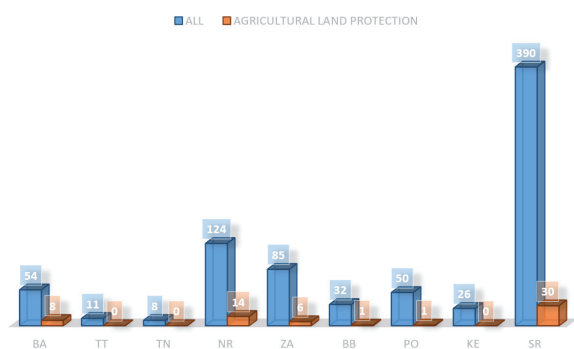
Figure 2 demonstrates the number of prosecutor's protests against decisions of district offices, cadastral departments by years in the observed time period. It should be noted, that in eight prosecutor's protests against decisions of district offices, cadastral departments the date, when it was released was not accessed or clear, but neither of the

<sup>(5)</sup> Homolac, Tomsik (2016)

<sup>(6)</sup> Svák, Balog, Polka (2017)

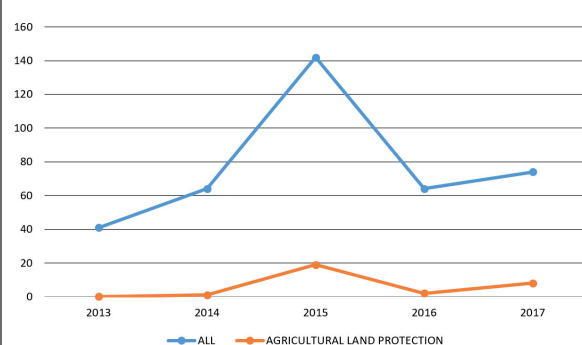
<sup>(7)</sup> Hoffmann (2010)

**Figure1: Prosecutor's Protest in SR by Regions**



Source: Own procession

**Figure2: Prosecutor's Protest in SR by Years**



Source: Own procession

**Table 1: Number of district prosecution in SR by regions**

Region	BA	TT	TN	NR	ZA	BB	PO	KE
Total of all district prosecutions	7	6	6	5	7	8	8	7
Total of all prosecutions which provided the required information	6	5	4	5	7	5	6	7

Source: Own procession.

eight was based on the breach of agricultural land protection law. So only 382 out of 390 provided prosecutor's protests against decisions of district offices, cadastral departments are processed in Figure 2. Besides the exceptional year of 2015, when there was quite an extreme growth of the number of prosecutor's protests, and after which was obvious and mainly expected decline, Figure 2 shows slight tendency of growth of prosecutor's protests against decisions of district offices, cadastral departments in general as well as of the number of prosecutor's protests against decisions of district offices, cadastral departments based on the breach of agricultural land protection laws in the observed time period.

By analysing the 390 prosecutor's protests against decisions of district offices, cadastral departments, a conclusion can be made that the most common and repeated reasons for challenging the decisions of district offices, cadastral departments are as follows:

- not taking into account or breach of the right of lien;
- deficient proposal to the district office, cadastral department;
- duplicate deposit or enrolment to the land register;
- deposit of more or less rights by the district office, cadastral department to the land register than it was entitled in the legal title;
- the restitution claim was applied to the real estate to which the decision of the district office, cadastral department relates;
- the law on land associations was breached (mainly because not all of the parcels of land association were included in the contractual or other assignment of property);
- the entity (party to the contractual relationship) was not entitled to dispose of the property;
- the principle of time priority has been violated.

The reasons why the 30 prosecutor's protests against decisions of district offices, cadastral departments based on the breach of agricultural land protection laws, are these four ones:

- 1 absence or invalid confirmation of performance of agricultural activity;
- 2 lack of evidence proving family relationship between the parties involved;
- 3 absence of the decision of the authority for soil protection on withdrawal of agricultural land;
- 4 breach of the process requested by the section 4 clause 7 of the Act No. 140/2014 Coll. on the acquisition of agricultural land.

What makes the statistics even worse is that out of all 390 the prosecutor's protests against decisions of district offices, cadastral departments only 7.7% (30) are reasoned on the basis of the breach of agricultural land protection laws. Furthermore, 25 out of the 30 prosecutor's protests against decisions of district offices, cadastral departments based on the breach of agricultural land protection laws are in fact three multiple cases. So this statistic could be strictly interpreted in a way, that through the years 2013 up to now (2017), 46 district prosecutions have found in fact only eight cases (five individual plus three multiple ones) of breach of the agricultural land protection laws by district offices, cadastral departments.

Notable is also the fact, that 13 out of the 25, what is more than a half, prosecutor's protests dealing with the three multiple cases, are connected with the investment of national significance – the construction of a Jaguar-Land Rover car factory. For completeness it is necessary to mention, that these 13 prosecutor's protests against decisions of district offices, cadastral departments are based on two reasons. First, already mentioned, breach of the agricultural land protection laws and the second is breach of the statutory pre-emp-

**Table 2:** Number of prosecutor's protests against decisions of district offices, cadastral departments based on the breach of agricultural land protection laws by the four reasons

Reason no.	1	2	3	4
Number of protests	21	7	1	1

Source: Own procession

tion right of the state under section 3 clause 5 of the Act No. 175/1999 Coll. on certain measures concerning the preparation of significant investments. Even though these 13 prosecutor's protests against decisions of district offices, cadastral departments were beside the other reason also justified by the fact that there was a violation of the agricultural land protection laws, this concrete case had absolutely nothing to do with protection of agricultural land, because the agricultural land concerned was still designed for building. In connection with what was stated above one last remark, from all of the 390 prosecutor's protests against decisions of district offices, cadastral departments 74 relate to the construction of a Jaguar-Land Rover car factory.

The other two cases of multiple breaches of agricultural land protection laws are based on two scenarios. The first one is that in six prosecutor's protests dated to the same date in the reasoning it is stated, that an affidavit on family relationship between the contractual parties involved is insufficient evidence to prove the family relationship. To clarify, why this is connected with the agricultural land protection laws, family relationship between contractual parties involved in transfer of agricultural land is one of the exceptions from the limitations to agricultural land acquisition stated in the Act No. 140/2014 Coll. on the acquisition of agricultural land. The second one is that also six prosecutor's protests dated to the same date were justified by the fact that there was insufficient confirmation of performance of agricultural activity. Among other conditions stated in the Act No. 140/2014 Coll. on the acquisition of agricultural land for a person to be considered as preferable or privileged person to acquire agricultural land is also a condition to perform agricultural activity for a certain period of time. To prove fulfilment of this condition it is necessary to submit to the district office, cadastral department a confirmation of performance of agricultural activity issued by a municipal office. In this case, the acquirer of the agricultural land was also the city mayor of the municipality that has issued the confirmation of performance of agricultural activity, even though he did not met the conditions for its issuing.

To summarize the performed analysis, it is evident that the prosecutor's protests against decisions of district offices, cadastral departments based on the breach of agricultural land protection laws is not a very common institute of agricultural land protection, but it is still quite effective institute, mainly in the case of multiple or re-occurring cases. This finding results from the fact, that administrative authorities are not obliged to comply with the prosecutor's protests, but following the obtained information from the District Prosecution of Nitra, which had issued the highest number of prosecutor's protests against decisions of district offices, cadastral departments in the observed time period, the administrative authorities, not only district offices, cadastral departments,

but all of them, almost every time follow the prosecutor's protests and cancel the challenged decision. The effectiveness of this institute can be deduced also from the fact that district offices, cadastral departments themselves are quite often giving an incentive to district prosecution, if they find out that their already valid decision is unlawful, because a valid decision cannot be changed without previously being challenged by the prosecutor's protest.

## IV. Conclusion

Currently the topic of soil protection and especially agricultural soil is gaining more and more attention. The question of ownership of the agricultural land is in the centre of these discussions and interests. In SR one of the institutes of the agricultural land protection regarding the ownership is the protest of the prosecutor, mainly against decisions of district offices, cadastral departments.

In the observed time period of the years from 2013 up to now (2017), 46 out of 54 district prosecutions have issued 390 prosecutor's protests against decisions of district offices, cadastral departments. In terms of their distribution in individual years, in general, a slight growth of the number of the prosecutor's protests against decisions of district offices, cadastral departments can be observed, even though it is not very significant.

Prosecutor's protests against decisions of district offices, cadastral departments justified by the breach of agricultural land laws constitute only a small portion of all of the 390 prosecutor's protests against decisions of district offices, cadastral departments. Only 30 prosecutor's protests against decisions of district offices, cadastral departments were reasoned on the grounds of the violation of the agricultural land protection laws, while 25 out of 30 were based on three multiple cases and 13 out of 25 have nothing to do with protection of agricultural land, because the land concerned was designed to building.

However, the institute of prosecutor's protest is quite effective, although it is not used very often, because it is very rare that the administrative authority, whose decision is being challenged by the prosecutor's protest, would not comply with the prosecutor's protest.

### Used abbreviations:

BA - Bratislava, TT - Trnava, TN - Trenčín, NR - Nitra, ZA - Žilina, BB - Banská Bystrica, PO - Prešov, KE - Košice, SR - the Slovak Republic

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