

Importance of ownership and lease of agricultural land in Slovakia in the pre-accession period

Význam vlastníckych a užívacích vzťahov k poľnohospodárskej pôde na Slovensku v predvstupovom období

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Abstract: A vast majority of agricultural land is leased, only a few owners manage their own land. The market with agricultural land falls behind and, together with land lease, it depends on the prosperity of Slovak agriculture. In comparison with the EU countries, the prices of land and land lease in Slovakia are disproportionately low. At present, the Slovak legislation is focused on legal regulation of long-term, i.e. lasting more than ten years, leasing. However, this raises a question whether we should not rather concentrate on the support of the developing market with agricultural land instead.

Key words: ownership, tenant, agricultural land, land lease, land market

Abstrakt: Väčšina poľnohospodárskej pôdy na Slovensku sa prenájima, iba veľmi málo vlastníkov podniká na vlastnej pôde. Trh s poľnohospodárskou pôdou na Slovensku zaostáva a spolu s nájmom poľnohospodárskej pôdy je závislý od prosperity slovenského poľnohospodárstva. V porovnaní s krajinami EÚ sú trhové ceny poľnohospodárskej pôdy ako aj ceny za nájom poľnohospodárskej pôdy neúmerne nízke. V súčasnosti sa slovenská legislatíva sústreďuje na právnu úpravu dlhodobého nájmu poľnohospodárskej pôdy so snahou uzákoniť dlhodobý nájom na desať a viac rokov. Zostáva otázkou, či by nebolo vhodnejšie sústrediť pozornosť na podporu trhu s poľnohospodárskou pôdou, ktorí sa v súčasnosti iba formuje.

Kľúčové slová: vlastníctvo, nájomca, poľnohospodárska pôda, nájom, trh s pôdou

INTRODUCTION

The rectification and restitution of ownership in Slovakia have from the very beginning been faced with a considerable chaos in land ownership relations. The chaos resulted especially from the fact that there was a long time during which the management of lands of real owners was suppressed and a registry was kept only with regard to the leases of large and integrated plots of land.

Although the ownership of agricultural land in the EU Member States is regulated in a similar way, protecting the ownership right, leasing of agricultural land in each of the countries is regulated by a different rule, allowing a flexible and more productive use of the land.

THE AIM AND METHODOLOGY

We analysed and compared ownership and land lease in the Slovak Republic with some aspects of these relations in the selected EU countries. Our objective is to take into account not only the price of agricultural land

and the price of lease, but also the proportions between the size of land managed by particular forms of business.

The paper is concerned with the proposed legislation on long-term leasing of agricultural land in Slovakia and its possible effects on agricultural business, emphasising certain aspects of land lease and management. We draw on the results obtained from the EUROSTAT (the EU Statistical Office), on the ideas of Brussard (1992) and Austend (1992) regarding the regulation of ownership and lease of agricultural land, on the case report to the draft of the proposed law on a long-term lease of agricultural land, and on our own works (Bandlerová, Marišová 1999).

RESULTS

Slovakia is one of the Central European countries with most scattered ownership of agricultural land. This fact proves to be one of the most serious problems of agricultural businesses here. The situation is different in the Czech Republic and in Germany where, as a result of the

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past legal regulation, the establishment of the ownership of agricultural land was fixed in such a way that the land was inherited only by one, usually the oldest, inheritor. The scattered agricultural land ownership causes problems for purchasing as well as leasing of land, especially because of the existence of 9.6 million plots. Often, a plot of an average area of 0.45 ha is owned by 12–15 persons.

As far as agricultural land under socialism is concerned, the real estate registry recorded mainly land use, since it was considered more important than ownership which was not even recorded in the inheritance proceedings.

A long awaited market with agricultural land is only at its beginnings in Slovakia. One may, however, observe a surge in the market with the leasing of agricultural land. This is a consequence of an increased demand for land situated in lucrative areas with an increased activity of home and foreign businesses which prefer leasing to buying, especially because contracts of lease are far less restrictive and thus more suitable for them.

In Slovakia, the price of agricultural land is legally fixed, depending on soil quality units and fluctuating between 0.50 to 120 SKK/m². It is not identical with market prices which are significantly lower and reach – depending on the worthiness of the land – approx. 30% of the officially fixed price. Most agricultural land is leased, only a few farmers work on their own land. The ownership is safeguarded by the Constitution.

The market with agricultural land in Slovakia falls behind because it depends, together with agricultural land leasing, on the general prosperity of Slovak agriculture. If compared with the EU countries, market prices in Slovakia are disproportionately low.

Information on prices of agricultural land in most EU Member States are achieved during the land registration or from tax offices. Content and regulation of basic data on the price of agricultural land are different in different EU countries. As far as recent years are concerned, the highest market price has been repeatedly reached in Luxembourg (52 992 EUR/ha, 1998), the lowest in Sweden (1 628 EUR/ha, 1998). High prices of agricultural land are also recorded in the Netherlands (31 540 EUR/ha, 1999, the maximum price can be limited by a particular office during the conclusion of contracts) and Germany (17 078 EUR/ha, 1999).

The fact that most agricultural land is leased is characteristic both for Slovakia as well as for the EU states.

The amounts paid for land lease vary in Slovakia. The largest lessor of land in Slovakia, Slovenský pozemkový fond (The Slovak Land Fund), has determined the price of lease for, at least, 1% of the land price according to the bonited soil ecological unit (BPEJ). Other agricultural landowners, i.e. physical persons and the Church, negotiate with the tenants contractual lease prices which fall between 13.2–26.4 EUR/ha (depending on the evaluation of land by the BPEJ), that is between 1.5–3% of the price of agricultural land according to the BPEJ. Comparing the per hectare lease price of agricultural land in Slovakia with the EU shows that our lease prices are 14 to 55 times low-

er. At present, there is no specific institution in Slovakia which would in fact manage to record the fluctuation of lease prices. Low lease prices in Slovakia, unlike the EU countries, are in proportion with lower agricultural production and sales – basically by 30–40% per hectare of land.

The analysis of Slovak relevant laws shows that long-term leases of agricultural lands in Slovakia are not specifically regulated. An exception to this may be the aforementioned lease which is regulated by the governmental decree No. 208/1994 Coll., that is by a sub-law norm.

A great majority of agricultural land is managed by private businesses through contracts of lease either with landowners, or with the Slovak Land Fund whose task is to manage the state-owned land as well as the land of unknown owners. Nowadays, the Land Fund controls 115 993 thousand ha of state-owned land and 515 233 thousand ha of land belonging to unknown owners (land which is not documented) (Report Slovak Land Fund 2002; World bank 2002). The fact that the Slovak Land Fund controls approximately 25% of agricultural land in Slovakia is some anomaly and it should be solved by a fast privatisation. We agree with the opinion, that: if land to which no valid ownership claims can be laid is to remain in state control or formally transferred to state ownership, Slovakia will be among the very few transition countries (such as Russia and Ukraine) where state-owned land exceeds 20% of total agricultural land. Slovakia needs to revise its policy of not allowing the Land Fund to sell any of its land inventories and launch an active campaign to privatise state-owned land through sales to farmers (World bank 2002).

The 2002 statistical accounts in agriculture (Survey VÚEPP from 31. 12. 2001, Štruktúrálny census fariem SR 2001 preliminary results – physical persons) record the following businesses as managing agricultural land in Slovakia:

	Number	Area (ha)
agricultural cooperatives	695	1 126 238
trading companies	707	727 894
other entities	–	392 364
of this independent farmers	5 292	191 988

A survey of the number of concluded contracts of lease, or of the land managed by its owners, is not available. Due to different reasons for non-entering the land into the cadastre of real estate, also a survey of exact structure of agricultural land ownership is not available.

By the end of 2001 the Land Fund leased 631 226 ha of agricultural land which is under its control. This makes up the total of 2 917 concluded contracts of lease with an annual lease price of 235 764 thousand SKK (Slovak Land Fund, Bratislava, February 2002).

DISCUSSION

Agricultural lands are intended for agricultural production – one of many agricultural activities labelled as busi-

ness. In Slovakia, as well as in the EU countries, agricultural businesses do not generally own farmland, but lease it.

Changed social and economic conditions in the Slovak Republic after 1989 resulted in a new legal regulation of ownership and leasing. The ownership of all types of owners has been made equal and, unlike in the past, equal legal protection, as well as limitations, were granted to all owners. In Slovakia, there is no single land codex and the regulation of ownership is scattered into several legal norms. The most important of them is the Civil Code, Act No. 229/1991 Coll., amended by later regulations, and the Decree of the Government No. 208/1994 Coll., amended by later regulations.

The area of the Slovak Republic is 4 903 600 ha, of this 2 444 600 ha (49.9%) is the area of agricultural land, 1 996 400 ha (40.7%) forest land, 93 300 ha (1.9%) water areas, 218 600 ha (4.4%) built-up areas, and 150 600 ha (3.1%) other areas.

In the initial stages of privatisation, there prevailed an opinion that agricultural land will be gradually used directly by its owners.

As far as social and professional structure of present land owners is concerned, we already know that there have been, and will be in the future, more contracts of lease with other entities, professionally and economically focused on agricultural production. They may be physical persons in the position of individual farmers as well as legal persons (business companies or co-operatives).

Even if there is no specific legal regulation treating long-term leases of agricultural lands, the Civil Code does not rule out such contracts of lease, provided they are based on the agreement between the lessor and the lessee. It may be said that legal regulation in the selected EU countries is focused on long-term lease of agricultural land, including the possibility of its extending. In France, where 64.9 percent of agricultural land is leased out, the shortest period of lease is set for 9 years, but law recognises leases as long as 18 years, renewable after 9 years, as well as life leases with minimal period of 25 years – allowing the lessee to reach a retirement age (www.mpsr.sr/slovak/spf/spfceny; MoA report of land lease Bill in Slovakia).

Also some other questions are more elaborated in the aforementioned countries, including the method of determining the lease price, since it does not always depend only on the will of the contracting parties. Such approach to the determining of the lease price is absent in Slovakia. Moreover, the terms of payment based on the Civil Code are not ideal (1st April and 1st October), since the lessees' financial resources are considerably dependent on the cashing of production.

The regulation of lease by the Civil Code does not take into account other specific features of agricultural land lease under the conditions of present Slovakia either, especially the scattered nature of land ownership. This fact on the one side and the need to provide for stability of land management on the other side require that rights

and obligations of lessors and lessees, as well as some related public interest, be regulated by a special law.

A legal regulation of agricultural land leasing is, last but not least, a necessity because some present legal relations are not regulated by any governmental decree (including the imposing of obligations), which thus raises doubts as to their constitutional nature. The analysis also shows that some provisions of the mentioned governmental decree are not clear enough and thus subject to a correction by a new law.

A new law treating a long-term leasing of agricultural land (attempting to provide for a long-term lease of from 10 to 25 years, which is so far absent in Slovak legislation) is still under preparation. While there is specific regulation applicable to contracts of lease lasting more than 5 years (Decree of Government No. 208/1994 Coll. – which differs from general regulation based on the Civil Code), it is not comparable with a typical long-term leasing as understood by the EU countries. A new law should in any case take into account basic principles of relations between lessees and owners of land, guarantee the lessee a safe lease and a freedom of agricultural activity, and ensure sufficient motivation of the owner of land to lease it again.

Legislative intention of the law on long-term land leasing should take into account the experience of the selected EU countries with a prevailing use of long-term leasing and businesses rather than owners managing the land, e. g. Belgium having 67% of land leased out, France 64.9% and Germany 62.1% (Tatík, Kniebugel 2001). It should fix a method for determining an adequate lease price based on productivity of lands, that is, on the parameter-based crops expressed in realisation prices of products. Such new regulation should provide for a description of the subject of lease before the conclusion of a contract and set an obligation to notify civil service institutions, record lease contracts, set a lease period, valid for the lands ranging from a set minimal land area, and determine conditions and intervals of agrochemical tests of land in accordance with the Act No. 136/2000 Coll. on fertilisers.

The proposed regulation should be a specific regulation with regard to the Civil Code that would thus have a supporting validity. The law should identify its subject matter (to which lands it will apply) as well as personal effect (what lessors and lessees it will affect).

It is proposed that the law will deal with the lands making up the agricultural land fund or belonging to it in accordance with the Act No. 307/1992 Coll. on the protection of agricultural land fund as amended by later regulation.

The new law should also include a possibility for the owner who does not use the land for agricultural production himself to lease it out only for the purposes of such production and only to the lessee whose business activity is in agricultural production. A contract of lease will have to be in a written form, as it is already stated in the governmental decree No. 208/1994 Coll.

The initiators of the law expect contracts of lease to be concluded for a limited period, based on the purpose of

use, for example from 12 years on, with a possibility to prolong it in accordance with the business plan. The proposed term of lease in the multiplications of 6-year cycles is based on agrochemical testing of land as required by 136/2000 Coll. on fertilisers and the act No. 215/22001 Coll. on the protection of genetic resources of plants for nutrition and agriculture.

Many owners have leased out their lands through contracts of lease, with the lease paid in kind or in cash. The price of lease usually reaches 0.5–2.5% of an official administrative value of the land. The method as well as price of lease depends on the place where the land is used. According to annual report of the Slovak Land Fund, the 2000 lease prices reached 1 per cent of land prices according to the BPEJ.

With regard to current low prices of farmland leasing in comparison with the EU countries, it will perhaps be necessary to raise them in the most productive areas, at least by the inflation rate. It is also possible to set a minimum and maximum lease price, depending on natural conditions, land value and the profitability of grown plants. It will be advisable (as stated in the draft of the new legal act) to gradually switch to the setting of price on the basis of parameter-based prices of staple harvests, achievable on an actual land and expressed in realisation prices in the given year.

The preparation of the new legal act may raise questions as to whether it would not be advisable to concentrate on the support of market with agricultural land, which is just being formed, and thus to go in rather for the support of the purchase of land by those who would also work on it.

CONCLUSION

The arrangement of ownership and concentration of scattered holding of land is considered to be one of the conditions for the management of structural changes and consolidation of business in agriculture. A long-term lease of lands shows that agricultural business is stable and in harmony with trends in the EU countries where the percentage of leased land increases while the percentage of lands managed by the owners goes down. There are no plans, in the short term, to extend the market with land toward the EU, therefore agrarian policy concentrates on long-term leasing within Slovakia. With regard to the EU, Slovakia has negotiated a 7-year transition period in order to harmonise its land prices with those of the EU and thus to provide for opening of the market. Before the arrangement of the land ownership is over, an analysis of the land market in Slovakia should be pre-

pared. It would address the conceptual questions regarding the management of state-owned agricultural land, the management of scattered ownership and land area or the prevention of speculative sale and purchase of land for non-agricultural purposes.

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