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Land lease in Slovakia in the light of the new legal regulations¹

Introduction

Agricultural land plays an important role in national food sovereignty where agricultural producers have a dominant role. Therefore, the Slovak law maker tries to create the conditions that allow maintaining the agricultural land in the hands of agricultural producers. Agricultural land covers almost half of the territory of the Slovak Republic² and most of it (79%) is in private ownership; state ownership represents about 6% of all agricultural land. The rest of the agricultural land belongs to so-called land of unknown owners, where the land ownerships, still not documented, is administrated by the Slovak Land Fund together with the state land. It is about 14% of all agricultural land of Slovakia.³ This means that one-fifth of all agricultural land in Slovakia is managed by the Slovak Land Fund which is a legal entity

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² In 2021, there were 2 375 025 hectares of agricultural land. See *Statistical report on Land Fund in the Slovak Republic*, Bratislava 2021, p. 20.

³ *Slovak Land Fund. Annual Report 2020*, Bratislava 2021, p. 5.

registered in the business register without the status of a state body. This situation naturally hinders the development of the agricultural land market, as this land cannot be transferred to other natural persons or legal entities. It remains under the administration of the Slovak Land Fund which manages the land, usually by leasing it. This is one of the reasons why Slovakia's land use relations are still dominated by persons other than its owners. It follows that the regulation of the agricultural land lease is an important legal instrument for all participants in the agricultural land market.

Legal regulation of the lease of agricultural land is governed by several legal documents in Slovakia. The basic law is Act No 504/2003 Coll. on the lease of agricultural land, agricultural enterprise and forest land and on the amendment of certain acts (hereinafter referred to as the Act on Land Lease or Act No 504/2003 Coll.). This Act regulates the lease of agricultural land in two different situations, namely (1) the lease of agricultural land for agricultural purposes (§§ 1–6), and (2) the lease of agricultural land for agricultural purposes carrying out the business.⁴ Another law regulating the lease of agricultural land is a general legal regulation of lease contained in the Civil Code No 40/1964 Coll. (§§ 663–684). It follows that the lease of agricultural land will be governed primarily by the provisions of the Act on Land Lease (*lex specialis*) and the subsidiary provisions of the Civil Code on the lease contract (*lex generalis*). In addition, the land lease is regulated “*ex lege* land lease” in § 22 (2) of Act No 229/1991 Coll. on the regulation of ownership relationships regarding land and other agricultural property.

Other regulations governing the land lease include Government regulation No 238/2010 Coll. laying down details of lease, sale, exchange or acquisition of real estate by the Slovak Land Fund; Decree of the Ministry of Agriculture No 38/2005 Coll. on evaluation of estates and vegetation for the purpose of land consolidation; and Decree of the Ministry of Agriculture and Rural Development No 172/2018 Coll. laying down details of the manner and extent of keeping and providing records and determining the usual amount of rent. Finally, the lease of agricultural land is also governed by the internal regulations of the Slovak Land Fund as a lessor managing state land and the land of unknown owners. The Act No 504/2003 Coll. is subject to an annual amendment. The latest amendments from 2021 brought significant changes to the functioning of lease relationships in spite of the fact that it was only a small amendment. The aim of the article is to point out to the

⁴ It is the official name of the second chapter of the Act; however it means the lease of agricultural land for commercial agricultural purposes.

changes that the latest amendment has brought about and their problematic application in practice.

1. Lease relationships

The land lease relationship arises from a lease contract, a decision of a state authority or *ex lege*. The most frequent legal title results from a lease contract concluded between the lessor (usually the owner of the agricultural land or the Slovak Land Fund) and the lessee (usually an agricultural producer). After 1989, the agricultural producers had a duty to conclude land lease contracts with the owners of the land which they used. If the land lease contract was not concluded, § 22 (2) of Act No 229/1991 Coll. on regulation of ownership relations to land and other agricultural property was activated, according to which “if there is no other contract concluded between the previous user and the owner of the agricultural and forest land, the lease relationship between them is effective from the date of entry into force of that law (24 June 1991) and can be terminated on 1 October of the current year.” It follows from this provision that the lease *ex lege* arises in a subsidiary form if the parties have not agreed otherwise. However, the lessee is obliged to pay for the land lease. According to § 23 of the Act on Land Lease, the lease payment may not be less than 1% of the value of agricultural land designated under a special regulation. Such an *ex lege* lease relationship is governed by the provisions of the Act on Land Lease.

The lease relationship can be established also by the state authority, namely the district office (specifically the Land and Forest Department). This is a specific situation governed by the Act on Land Lease in §§ 12a–12c. In the current state of land fragmentation, there is often a situation where the landowner does not have access to his land, or his lands have an unsuitable shape, location, or area to be managed efficiently, even though their total area could reach several hectares. If these lands have been leased and the lease between the lessor (the owner of these lands) and the lessee has expired, the current lessor is able to ask his land plots from the current lessee; however if the current lessee is not able to give these lands back to the owner due to above mentioned reasons, the current lessor has a right for concluding a sub-lease contract to the substitute lands which the current lessee uses.

This is possible even if the lease contract explicitly forbids the sublease to these substitute land plots. If the lessee fails to fulfil this obligation within 60 days (the deadline was amended by Act No 291/2017 Coll. from the original 90-day period) from the written request of the owner of inac-

cessible land, this owner – the lessor of his land – may contact the District Office, in the area of which the land is located, in order to decide that the sublease relationship in favour of the applicant is formed. The District Office discusses with both parties a proposal for the location of the land to which the sublease relationship is going to arise. If the District Office decides to establish a sublease relationship, it will issue a decision. This is the only exception where the lands managed by the Slovak Land Fund can be given to sublease. By this provision, the legislator seeks to resolve temporarily the typical problems in the land market, such as fragmentation and the related inaccessibility of the land.

A conclusion of a sublease contract, regardless if the land is managed by Slovak Land Fund or owned by a natural or legal person, likewise the issue of an administrative decision establishing a lease relationship is possible only if the land area is at least 2000 m².⁵ If a smaller land is the subject of the lease, this procedure can only be used provided that two conditions are cumulatively fulfilled: first, the use of the land is not associated with disproportionate difficulties; and second, the cost of its allocation does not exceed the value of the land plot itself. However, these conditions need not be met if both parties apply to the District Office for such procedure together.

2. Lease contract

A lease contract is defined by the Civil Code as a contract according to which the lessor gives the lessee a thing against payment and allows him to use it or take proceeds from it temporarily.⁶ It is a consensual contract, which arises when the lessee and the lessor make a mutual and identical expression of will. However, § 12(4) of the Act on Land Lease regulates also the lease contract arising from a legal fiction when the lessor's consent is absent. According to this rule, this consent is deemed to be given if the particular legal conditions foreseen by the law are met. "If the entitled user who uses the land according to a special regulation,⁷ proposed to the owner the conclusion of the lease contract and the owner did not refuse to conclude

⁵ The original acreage of this area was 400 m²; it was increased to 2000 m² by Act No 2/2019 Coll.; compare e.g. A. Bandlerová, J. Lazíková, *Agricultural land lease in Slovakia*, in: R. Budzinowski (ed.), *XV World Congress of Agricultural Law. Contemporary challenges of Agricultural Law: among Globalization, Regionalization and Locality*, Poznań 2018, pp. 229–236.

⁶ § 663 of the Civil Code.

⁷ § 22(2) of Act No 229/1991 Coll (is cited above).

it within two months from the date of delivery or did not invite the land user to return and take over the land or did not conclude the lease contract with a third person, it is assumed that two months from the date of delivery of the proposal of a lease contract between them, a lease relationship has been established for an indefinite period, which can be terminated on 1 November with a notice period of one year.

The proposal to conclude a lease contract may be rejected in its entirety or in part. When proposing the conclusion of a lease, the user is obliged to instruct the owner on the form and manner of rejection of the proposal and warn him that if the proposal is not rejected or the land user is not invited to return the land plots, a land lease will arise, otherwise this lease will not arise. If the lessor has concluded a lease contract with another person before the expiry of two months from the date of delivery of the lease proposal, the lessor shall notify the user within six months from the date of delivery of the lease proposal.” This cited rule was changed by the last amendment of the Act on Land Lease.⁸ Before the amendment, all users who used the land without the lease contract were entitled to this procedure. Nowadays, pursuant to § 22 (2) of the Act No 229/1991 Coll this is possible only for entitled users. It means it is possible only for those who used the land on the basis of the land lease established *ex lege*. It was not forbidden to conclude a lease contract with someone other than the land user. In this case, the lease relationship did not arise. However, it was a condition that the contract had been concluded before the proposal for the conclusion of the lease contract from the land user was delivered.

This condition was supplemented by amendment no 291/2017 Coll. which, however, raised the question of what would happen if the land owner entered into a lease contract with a third party after the delivery of the proposal and the land owner was inactive and the conditions for the establishment of a lease contract by legal fiction were met. According to the actual wording of this rule, the lessor is entitled to conclude a lease contract with a third party also after the delivery of the lease proposal provided this is done before the expiry of two months from the date of its delivery. However, the period for notification of six months is too long for the lessee who is still uncertain if the land lease will be restored. We propose *de lege ferenda* the amendments to this rule in two ways. First, in the interests of legal certainty, it should be accompanied by an explicit sanction when the lessor concludes a land lease contract with third person after the expiry of two months from the date of

⁸ Act No 151/2021 Coll.

delivery of the lease proposal. Second, the period of six months for notification that the land has been leased to a third person should be shortened because of the need to ensure legal certainty of the lessee.

The consensual land lease contract should have a written form. The Civil Code does not require concluding a lease contract in writing. However, in the case of a lease of agricultural land, it is necessary to take into account the Act on Land Lease, which requires a written form in the case of a lease of agricultural land for agricultural purposes carrying out the business.⁹ Otherwise the land lease contract is null and void. This provision was not changed by the legislator.

3. Terms of a land lease contract

The lease contract must contain three essential terms to be valid; first, the designation of the parties; second, the subject of the lease; and third, the obligation to pay the lease and the amount of the lease payment (rent) if the land lease contract is related to the agricultural business. However, other terms of lease are also recommended to be mentioned in the land lease contract, e.g. lease period, form, method and time of lease payment, possibilities of adjusting the lease amount, usual and extraordinary costs, sublease relationship, or ways of terminating the lease.

3.1. The essential terms of a land lease contract

The contract parties are the lessee as the person who will use the leased land and the lessor as the land owner or land administrator (e.g. the Slovak Land Fund). Both the lessor and the lessee may be a natural or legal person, including a State. In the case of a lease relationship, it is irrelevant whether a natural or legal person is a resident or a non-resident in the Slovak Republic. Foreigners also have the right to conclude a lease contract involving an agricultural land, regardless of whether they come from the Member States of the European Union or from third countries. If the leased land plot has more land owners, it is important to conclude the land lease contract with at least those land owners who own more than 50% of the land plot. In the case of a change of ownership of a leased land, the new land owner enters into the legal position of the previous lessor and assumes all rights and obligations that belonged to the previous lessor. The law provides the lessee with the

⁹ § 14 of the Act on Land Lease.

right to give notice within the period specified by law or agreed in the lease contract due to a change of the lessor because of change of land ownership. In such a case, the lessee has the right to give notice even if the contract was concluded for a fixed term.¹⁰ The notice must be given in the nearest notice period. *De lege ferenda* it would be useful to make a clear provision on the notice period because nowadays it is not clear if the one-year or five-year notice period should be applied. If the land lease contract is concluded for a fixed term, it is necessary to consider which period expires earlier.

This right in the case of a real estate lease is only due to the lessee. On the other hand, the lessor is entitled to cancel the land lease contract.¹¹ The law maker did not explain in the explanatory report why the obligation of a withdrawal has been replaced by an unclear provision on the cancelation of the lease relationship. *De lege ferenda* because of the interest of legal certainty, it would be appropriate to allow the lessor to deal with the change of ownership of the lessee's enterprise by giving notice in the same way as the law allows the lessee to do so in the event of a change of the owner of the leased land.

The leased agricultural land plots must be precisely determined in the lease contract by the type of land, parcel number, ownership certificate number, cadastral area and area in square meters. The agricultural land plot for the purpose of land lease is defined as follows: first, any type of agricultural land inscribed in the Land Cadastre; second, the land plot registered in the C Registry of the Land Register as a built-up area and a courtyard serving agricultural purposes or a land built-up by a building serving agricultural purposes (before amendment no 291/2017 Coll. it was a land built-up by building for agricultural purposes until 24 June 1991); third, other land left for agricultural purposes.¹² The land lease relationship should be recorded in the cadastre. However, there is no sanction when the record is not provided, so many land plots are leased without any information in the land cadastre. Moreover, the lessee is obliged to keep records of lands and lease payments in accordance with Decree of the Ministry of Agriculture and Rural Development No 172/2018 Coll. and provide annually by 31 January of the following year the District Office with data and information from the records of the agreed and paid lease. The District Office is obliged to calculate the average lease payments in each municipality yearly and publish them on the

¹⁰ § 680(3) of the Civil Code.

¹¹ § 12(6) of the Act on Land Lease.

¹² § 1(2) of the Act on Land Lease.

website of the Ministry for Agriculture and Rural Development as a usual amount of land lease payment (hereinafter the usual lease payment). The usual lease payment is defined as follows: “For the purposes of this Act, the usual lease payment amount for the use of agricultural land when operating an enterprise is the amount of lease payment for 1 ha of agricultural land as published by the relevant District Office on 30 June for the previous year for each cadastral territory based on the data that it finds from the records of the agreed and paid lease by the § 14(3) as the average lease fee for the use of agricultural land when operating an enterprise.”¹³ The usual lease payment is used for calculation of the minimal amount of payment when the parties do not agree otherwise.

The Act on Land Lease prescribed a minimal amount of lease payments depending on the land plot defined for the land lease by this Act. If the leased land plot is agricultural land or other land left for agricultural purposes, the lease payment must be at least 1% of the value of agricultural land determined by Decree of the Ministry of Agriculture no 38/2005 Coll. on evaluation of estates and vegetation for the purpose of land consolidation. It follows that the minimal land lease payment should be at least EUR 1.66 per one hectare per one year for the lowest land quality and EUR 39.83 per one hectare per one year for the most fertile lands in Slovakia. This provision is obsolete as the amount of average market lease payment is much higher than that prescribed by law (Figure 1).

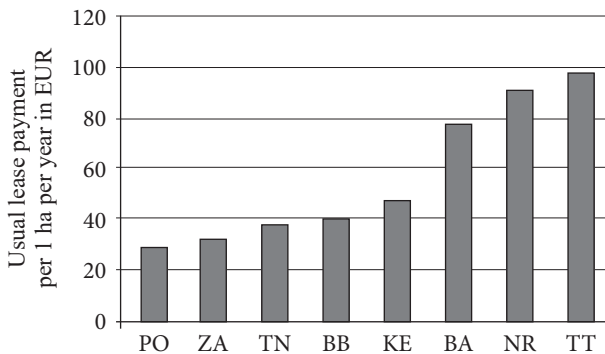


Figure 1. Usual lease payment in 2020 in Slovakia

Source: data from the website of the Ministry of Agriculture and Rural Development, 2020.

¹³ § 1(3) of the Act of Land Lease.

If the leased land plot is land plot registered in the Cadastre as a built-up area and a courtyard serving agricultural purposes or land built-up by a building serving agricultural purposes, the minimal lease payment is determined at least as a double of the usual lease payment in the given cadastral area. Moreover, the rule enables the parties to make another agreement. However, it is not clear if the other agreement could provide for less than a double of the usual lease payment in the given cadastral area, i.e. less than the minimal one. *De lege ferenda* the law maker should delete the rule “if the parties do not agree otherwise” or the phrase “at least.”

Land lease payment is paid annually on 1 October of the calendar year provided that the parties have not agreed another time of payment.

The law regulates the right to change the lease fee in four cases: first, exceptional circumstances;¹⁴ second, a change in the price of agricultural products;¹⁵ third, a substantial change in economic conditions;¹⁶ fourth, difficulties or the limitation of use of the leased land or the intensity of its use has been reduced.¹⁷ The wording of these rules is very vague, therefore we recommend to the parties to make clearer agreements in the land lease contracts.

3.2. Other terms of a land lease contract

One way to use the leased land is also the sublease it. Although sublease does not belong to the essential terms of the lease contract, it should not be underestimated, in particular by the lessor if he does not wish the land to be used by a third party without his consent. Indeed, the law allows the lessee to sublease the land, unless the parties agree otherwise.¹⁸ The lessee is only obliged to notify the lessor within 30 days, but he does not need the lessor's consent if the contract does not explicitly require or prohibit it. However, this rule does not apply to the land leased from the Slovak Land Fund. The lessee cannot sublease the lands leased from the Slovak Land Fund.¹⁹ The prohibition of sublease agreed in the contract or given by law will not apply in the situation when the District Office is entitled to issue a decision on

¹⁴ § 5 of the Act on Land Lease.

¹⁵ § 10(3) of the Act on Land Lease.

¹⁶ § 11(1) of the Act on Land Lease.

¹⁷ § 11(2) of the Act on Land Lease.

¹⁸ § 10(4) of the Act on Land Lease.

¹⁹ § 10(7) of the Act on Land Lease.

establishing a land sublease.²⁰ Finally, the land that the Slovak Land Fund leased to a farmer for the purposes of special crop or animal production cannot be subleased,²¹ even in the cases provided for in §§ 12a–12c.

According to the previous § 12(1) of the Act on Land Lease, it was necessary for the lessor or lessee to invite the other contracting party in writing one year before the end of the business lease to return or hand over the leased land after termination of the lease. Otherwise, the lease contract was renewed with the exception of the lands of the Slovak Land Fund. The law maker deleted this provision in 2017 without compensation. “It was detected that automatic renewal of the lease is a frequent cause of so-called double declarations. Consequently, such findings may hamper the direct payments to those entities that – due to the system of direct payments linked to land blocks – did not cause double declarations. By cancelling the automatic renewal of the lease relationship for the reason stated in the previous § 12(1), the submitter has the ambition to strengthen both the rights of the owner of the land and the stability of the business environment for those entities that actually manage the land, while creating conditions for access to land for other business entities.”²² It was very welcomed in view of the fact that, in the application practice, the lessor has very often failed to act on lands’ return within the prescribed time limit. The removal of the lease renewal provision thus contributes to a more balanced legal protection of the lessor against the lessee of the agricultural land.²³

After the lease is terminated, the lessee is obliged to return the leased land in a condition that corresponds to its agreement or usual use. “The lessee is obliged to return the thing without delay and in the manner usual to the nature and use of the thing.”²⁴ If there is no contract between the parties, there is a risk that one of them will be delayed.²⁵

The lease relationship can be terminated in several ways, e.g. by the expiry of the period if it has been a fixed-term; by giving notice if the contract is open-ended; by withdrawal from the contract under the law or under the

²⁰ §§ 12a–12c of the Act on Land Lease.

²¹ § 13(6) of the Act on Land Lease.

²² Explanatory report to the amendment to Act No 291/2017 Coll.

²³ J. Lazíková, A. Bandlerová, *Arrendamiento de tierras agrícolas en la República Eslovaca*, “Revista Anales de Legislación Argentina” 2017, No 77(3), pp. 143–155.

²⁴ § 682 of the Civil Code.

²⁵ P. Vojčík et al., *Občiansky zákonník. Stručný komentár* [Civil Code. Short Commentary], Bratislava 2008.

terms of the lease contract; or by agreement of the parties on the termination of the lease.

A fixed-term lease contract expires at the end of that period. The lease period is a matter of contract between the parties, but the Act on Land Lease prescribes a minimum lease period of 5 years when the land is leased for agricultural business. The law maker tries to stabilise the leased relationships and to motivate the lessee to invest in agricultural land. When the lease contract for agricultural purposes is being agreed for a fixed-term, the lease period may not exceed 15 years. This lease period is very frequently amended. Act No 145/2013 Coll. changed the original 15-year period to a maximum of 25 years. It was justified by the need “to strengthen the stability of the business environment of enterprises farming on land. It can also significantly help to temporarily eliminate the negative effects of speculative agricultural land purchases. Four years later, Act No 291/2017 Coll. changed the period again back to 15 years due to the protection of the owner and his rights to own land. The 25-year period is a period of one generation. Circumstances in which the owner has concluded a land lease contract for agricultural business may have changed, so it is not adequate to require the owner to wait for 25 years to fully exercise his property rights (even if, for example, land owner changed).²⁶

In addition, the Act on Land Lease stipulates also the special fixed-term for land lease contracts for agricultural business, e.g.:

- a maximum of 25 years for the establishment or renewal of an orchard,
- a maximum of 30 years, in the case of the establishment or restoration of a fruit tree nursery or ornamental woods, the establishment or restoration of vineyards, the establishment or restoration of hop gardens,
- a maximum of 15 years, in the case of the establishment or restoring asparagus or small fruit crops,
- at least 50 years, as regards the establishment of a repository,²⁷
- at least 10 years, in the case of the establishment of a research workplace that is registered.²⁸

²⁶ Resolution No 118 of the Committee of the National Council of the Slovak Republic for Agriculture and Environment of 28 September 2017.

²⁷ § 8(1) of Act No 215/2001 Coll. on the Protection of Plant Genetic Resources for Food and Agriculture: The repository is a field component of the gene bank, in which vegetative propagated plant species are kept in a live state in the field collections for a long time according to species, genera and varieties, and in the case of domesticated plants and plants cultivated also by varieties. The repository should be registered by the Ministry of Agriculture and Rural Development of the Slovak Republic.

²⁸ § 9(1) of Act No 215/2001 Coll. on the Protection of Plant Genetic Resources for Food and Agriculture: The research workplace establishes a research institute for the fulfilment

Contrary to the general maximum period of land lease, this special fixed term period of land lease has not been changed for a very long time.

When the land lease contract is concluded for an indefinite period of time, the contract can be terminated by notice addressed to the other contract party. The notice period starts on 1 November when another agreement between parties is missing. The notice periods depend on the type of land lease. In general, there are two types of notice period. The first one is a one-year notice period applied in the case of land lease for other purposes than agricultural business and when the contract parties did not agree otherwise. The other one is a five-year notice period applied in the case of land lease for agricultural business. According to the opinion of the law maker “economic certainty with regard to the use of agricultural land use rights in the agricultural business is currently supported by setting a minimum lease term of 5 years.

In the period before the end of the lease period, the stability of land use relations is very low and does not allow development and investment in agriculture. With reference to the above, it is necessary to change the notice period to 5 years, which will ensure greater stability throughout the duration of the lease.”²⁹ Moreover, the wording of this rule does not provide any possibility of another agreement between the parties. We consider this provision as too strict for a land owner who would like to cultivate his own land after the termination of the land lease. Even, if there is no access to the land, the lease will not end before land consolidation is carried out unless the situation can be resolved by sublease pursuant to §§ 12a–12c. In specific cases, such as fiction of the land leases contracts, the one-year period of notice is applied.³⁰

The third possibility of terminating the lease contract is to withdraw from it for reasons stipulated by law or agreed by the contract parties. It is usually not agreed in the land lease contracts. Therefore the reasons stipulated by law will often be used. The Civil Code identifies several legal reasons for withdrawal from the contract by the lessee.³¹ The lessee may withdraw from the contract at any time if:

- the lessor shall not hand over the land to the lessee in a condition suitable for agreed or usual use,

of the tasks of a national programme by a written contract with a legal entity or a natural person who is the investigator of the task of protection of the genetic resource of the plants. The research workplace is registered in the register of research workplaces maintained by the Ministry of Agriculture and Rural Development of the Slovak Republic.

²⁹ Explanatory report to the amendment to Act No 291/2017 Coll.

³⁰ § 12(4) or § 13(2) of the Act on Land Lease.

³¹ § 679 of the Civil Code.

- the leased land becomes unsuitable for the agreed or usual use during the lease term without the lessee's fault,
- the land becomes unusable,
- such part of the land shall be withdrawn (e.g. declared as a protected landscape area).

The last reason is stipulated in § 684 of the Civil Code: If a third person vindicates rights to the leased land that are incompatible with the lessee's rights, the lessor must take necessary legal measures for his protection. If the lessor fails to do so in the prescribed period or if his measures are unsuccessful, the lessee may withdraw from the contract.

Under the Civil Code, the lessor may withdraw from the contract only after a prior written warning addressed to the lessee in the following cases:

- inadequate use of the leased land as a result of which the lessor is at risk of considerable damage or there is a damage,
- non-payment of the lease amount due.

Moreover, the lessor may withdraw from the contract if the lessee has subleased the land in contravention of the contract.³² This does not apply, however, in the event of a procedure under §§ 12a–12 c mentioned above.

The Act on Land Lease also allows the Slovak Land Fund to withdraw from the contract as a lessor if the lessee violates the obligations stated in the lease contract or the provisions of the Act on Land Lease.

4. Right of the lessee to conclude a new land lease contract

EU Member States grant a lease priority right to agricultural land in various ways. For example Belgium, Italy, Netherlands, Scotland and France guarantee lease priority rights *ex lege*, while Germany offers the option of negotiating a pre-emption right in favour of the lessee in the lease contract. In Hungary and Poland, the lease priority right to a lessee is guaranteed *ex lege* only in the case of a lease lasting more than three years, while in Lithuania a one-year lease term is sufficient to create a pre-emption right.³³ If the objective is to promote the acquisition of land by farmers, pre-emption rights in favour of tenant farmers or farmers in a more general sense may

³² § 666(2) of the Civil Code.

³³ P. Ciaian, D. Kancs, J.F.M. Swinnen, K. Van Herck, L. Vranken, *Rental Market Regulations for Agricultural Land in EU Member States and Candidate Countries. Working Paper no. 15*, Brussels 2012, pp. 21–23.

be considered as a proportionate restriction of the free movement of capital in as far as they are less restrictive than the prohibition of acquisition by non-farmers.³⁴ In Slovakia, the law does not guarantee *ex lege* the lessee's any lease priority right, although nothing prevents the parties from agreeing it in a lease contract. However, the law maker intends to prohibit the negotiation of a pre-emption right to the land in favour of the lessee in the lease contract.³⁵ On the other hand, when the Act on Land Lease was adopted, the law maker introduced the rule which enabled a lessee to renew a lease contract with the present lessor. This rule was amended more than one time but the lessee's right to renew the lease was maintained. During this time, the lawyers frequently pointed out that this rule is contrary to the constitutional right to ownership.³⁶ This was changed by the last amendment of the Act on Land Lease in 2021 which left this right with the lessee but only in the case of a land leased from the Slovak Land Fund.

According to the earlier rule,³⁷ if the lessee had duly and timely fulfilled his obligations under the contract, he was then entitled to conclude preferentially a new lease contract to lease the same land and pay the rent in the usual amount agreed in the previous contract. In its supplement, the Act exhaustively specified the cases where the lessee does not have this right even in the case of a due and timely fulfilment of the conditions of the lease contract, namely:

- in the case the lease has been terminated by the expiry of the agreed lease term or by the expiry of the notice period if the lessor does business in agriculture,
- if the new lessee is to be a person close to the lessor,
- if the new lessee is to be a legal person to whom the lessor is a member or a companion,

³⁴ Commission Interpretative Communication on the Acquisition of Farmland and European Union Law (2017/C 350/05), 18.10.2017.

³⁵ Preliminary Information (according to § 9 of Act No 400/2015 Coll. on the creation of legal regulations and on the Collection of Laws of the Slovak Republic and on the amendment of certain acts).

³⁶ P. Vargaštok, M. Slamka, *Zákon o nájme poľnohospodárskych pozemkov, poľnohospodárskeho podniku a lesných pozemkov. Komentár* [Act on the lease of agricultural land, agricultural enterprise and forest land. Commentary], Bratislava 2018, p. 97; A. Bandlerová, J. Lazíková, *Land lease contract and prior right of lessee to concluding the new land lease contract – case of Slovakia*, "Tribune Juridical" 2016, Vol. 6, No 2, pp. 304–320; eidem, *Purchase and lease contracts of agricultural land – case of Slovakia*, in: *Uniao Mundial dos Agraristas universitários*, Sao Paulo 2014, pp. 51–71.

³⁷ § 13(2) of the Act on Land Lease before its amendment by Act No 151/2021 Coll.

- in the case of land which is intended for other than agricultural purposes,
- if there has occurred a transfer of the ownership right to the land (it was a new reason supplemented by Amendment No 291/2017 Coll.).

“If the lessee notified the lessor of the proposal of the new lease in a verifiable manner at the earliest one year and at least two months before the expiry of the time agreed in the lease, and if the lessor did not reject the proposal lease within two months from the date of delivery of the proposal for any of the reasons mentioned above or because the proposed amount of lease payment was not in the usual amount, a rental relationship was established for an indefinite period according to § 12 para. 1.”³⁸ This means that a lease contract could be terminated by giving notice, such notice however being a five-year period notice.

The Act provided the lessee with the right that if after the termination of the lease contract he was still interested in continuing the lease, he would be able to conclude a lease contract with the lessor for the land he had previously used under the lease contract, provided that the lessor wished to further lease it. This corresponded to the lessor’s obligation to preferentially conclude a lease contract with the former lessee of the land if the lessee so requested. This right was retained to the lessee also in the case of change in the land owner, as well as in the case of the transfer of ownership to the heirs after the death of the lessor. Amendment No 291/2017 Coll. precluded this by the enactment of the fifth reason where the preferential right did not arise. As of 1 May 2018 the new owner has had no obligation to respect the lessee’s priority right to conclude a new lease contract. This amendment was the first step to the cancelation of the lease priority right, at least in relation to the legal successors. However, there was no possibility for the lessor to lease the land to a third party willing to pay a higher lease, which had finally an impact on average lease payments in Slovakia. The law maker had significantly intervened into the free price setting and into the agricultural land lease market development as well.

This was changed by the last amendment to the Act on Land Lease,³⁹ when this right was cancelled also in relation to the lessor. The present rule⁴⁰ is as follows: “If the lessee has demonstrably delivered to the lessor a draft of a new lease no earlier than one year and no later than two months before the end of the lease period, and the lessor has not refused or notified

³⁸ § 13(3) of the Act on Land Lease before its amendment by Act No 151/2021 Coll.

³⁹ Act No 151/2021 Coll.

⁴⁰ § 13(2) of the Act on Land Lease after the amendment by Act No 151/2021 Coll.

the lessee that he has entered into a lease agreement with another person, it is assumed that on the expiry of the time for which the lease was agreed, a lease relationship was established between them for an indefinite period, which can be terminated on 1 November with notice period of one year.” There are two important changes. First, the lessor is not limited by the reasons (mentioned above) of which he is enabled to refuse to conclude a new land lease contract. He is able to do so regardless his reasons and intentions. Second, the renewed lease contract due to the omission of the lessor can be terminated by giving notice; however, the notice period was changed to a one-year notice period.

This rule is more in line with the human right concerning ownership and does not apply to the land leased from the Slovak Land Fund. However, in this case the tenant’s prior right to enter into a new land lease contract is justified. It is natural that the Slovak Land Fund, as the administrator of the state land with unknown owners, prefers lessees who have used land so far and who have fulfilled their obligations properly and on time. The special provisions were introduced for the first time in 2009 and changed by later amendments. In the case of lands managed by the Slovak Land Fund, “a lessee, who properly and on time fulfils his obligations under the lease contract, has the prior right to conclude a new land lease contract for the lease payment in the usual amount.”⁴¹ However, the pre-emptive right of the lessee to the land from the Slovak Land Fund does not arise if, apart from the present lessee, there are the following parties showing interest in the same land:

- a young farmer⁴² who has committed himself to focusing on special crops or on livestock production,
- a farmer fulfilling the conditions for a small enterprise⁴³ or micro enterprise⁴⁴ wishing to engage in a special plant or livestock production,⁴⁵

⁴¹ § 13(3) of the Act on Land Lease after the amendment by Act No 151/2021 Coll.

⁴² According to Article 2(1 n) of Regulation (EU) No 1305/2013 of the European Parliament and of the Council, young farmer is a person who is no more than 40 years of age 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 that holding.

⁴³ According to Article 2(2) of the Annex II of the Commission Regulation (EU) No 651/2014, a small enterprise is an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.

⁴⁴ According to Article 2(3) of the Annex II of the Commission Regulation (EU) No 51/2014, a micro-enterprise is an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

⁴⁵ Special plant production includes the cultivation of vineyards, hop gardens or orchards or the cultivation of special crops such as vegetables, root crops, legumes, medicinal plants,

- a farmer carrying out a special crop production on at least half of the cultivated area,
- a farmer who produces the final product.

Such persons should demonstrate that they have already owned or leased agricultural lands from other landowners, although no more than 50 hectares. Initially, the Slovak Land Fund could only lease out a limited land area to these farmers with a maximum of 150 hectares.

The law does not take away from the original lessee the lease priority right to all lands leased from the Slovak Land Fund, but only to the part of those lands, especially those that are suitable for a special crop or livestock production.

Conclusions

Agricultural land is a natural heritage of each country. Moreover, agricultural land plays an important role in a sustainable and healthy food production. Therefore, we can expect that state regulations of the agricultural land market will limit to some extent certain rights of landowners. However, these measures should be in harmony with the principle of proportionality, i.e. they should not go beyond what is necessary to achieve the objectives and should not unreasonably interfere with the legitimate interests of private individuals. However, to find the reasonable border between the rights of landowners and the rights of farmers is a very hard role of the law-maker. One of the possible solutions is a legal instrument in the form of a land lease. The legal regulation on the land lease has already undergone several amendments (every year there is at least one amendment to the Act discussed in this paper).

Nevertheless, there are still unclear or obsolete legal norms that are binding today. The recent amendments, on the one hand, have contributed in many ways to the legal certainty and harmony with the basic human rights (for example, the cancellation of lease renewal in the event of a failure to call for a return, cancellation of lessee's priority right to conclude a new land lease contract with the private lessor, the definition of the usual rental amount of lease payment); on the other hand, there are legal rules which are unclear (e.g. how to cancel the land lease contract when an agricultural enterprise

aromatic plants, spice plants, poppy seeds, flax, hemp, pseudo-cereals such as amaranth, buckwheat, millet. Special livestock production is livestock production, which represents an agricultural parcel load of 0.4 livestock unit per hectare (further information: Government regulation No 416/2014).

is sold; what is the minimal land lease payment in the case of built-up areas serving for agricultural purposes, etc.), obsolete (e.g. minimal amount of the land lease payment) or what limits the rights of the landowner more than it is necessary according to the principle of proportionality (e.g. a 5-year notice period).

Moreover, the law-maker has also often forgotten to draft amendments to related legal regulations, e.g. Act No 330/1191 Coll. on Land Adjustment, Land Ownership Arrangement, Land Offices, Land Fund and Land Communities where the priority right to conclude a new lease contract for the lease of land after land consolidations still remains, and what is more, as amended in 2014. We consider that some changes to the Act on Land Lease are necessary but rather more than a substantial amendment to this Act we need a united strategy of the land policy which will be capable of influencing all other Acts and laws regulating land law in Slovakia. At present, land law is changing on specific case to case basis as they occur in society (*ad hoc* amendments), as a result of which changes in related regulations are neglected. In such cases it is very difficult to receive and maintain a sustainable and healthy food production.

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LAND LEASE IN SLOVAKIA IN THE LIGHT OF THE NEW LEGAL REGULATIONS

Summary

Agricultural land plays an important role in national food sovereignty where agricultural producers play a dominant role. Therefore the objective of Slovak lawmakers is to create conditions enabling agricultural land to remain in the hand of farmers. The Act on Land Lease is one of the most important legal regulations in the Slovak Republic where most of agricultural land is leased by agricultural producers. The paper identifies the main legal institutions of land lease in Slovakia and discusses the balanced relationships between a lessor as a landowner and a lessee as an agricultural producer and the relationship between them and their legal certainty in this relationship, mainly in situations when they rely on legal regulations that do not specify directly and explicitly their rights and obligations arising from land lease contracts. The most recent important amendments to land law are also discussed and some necessary modifications aimed at clarifying the relationship between parties to a lease contract are proposed.

Keywords: agricultural land, land lease, legal regulation, legal changes, land lease payments, period of land lease

AFFITTO DEI FONDI IN SLOVACCHIA ALLA LUCE DELLE NUOVE REGOLAZIONI GIURIDICHE

Riassunto

I fondi agricoli determinano la sovranità alimentare di un Paese, in cui a svolgere un ruolo importante sono i produttori agricoli. Il legislatore slovacco sta cercando di creare le condizioni in grado di far mantenere i fondi nelle mani degli agricoltori. La legge sull'affitto dei fondi è una delle regolazioni più importanti nella situazione in cui la maggior parte dei fondi agricoli è affittata da produttori agricoli. L'articolo presenta i principali istituti giuridici in materia di locazione fondiaria e discute il rapporto di equilibrio tra il locatore come proprietario dei fondi e l'affittuario come produttore agricolo, nonché la loro sicurezza giuridica risultante da tali relazioni. Alla fine sono state discusse proposte di modifiche da apportare alle disposizioni al fine di rendere più chiaro il rapporto intercorrente tra le parti del contratto.

Parole chiave: fondo agricolo, locazione fondiaria, regolazioni giuridiche, modifiche alla legge, canoni di locazione fondiaria, periodo di locazione fondiaria