

ORIGINAL ARTICLE

Legislation on land protection in Slovakia

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Abstract—Agricultural land is a natural heritage of each country; therefore, the land protection is required. The agricultural land protection is a complex role where the interests of agriculture, industry, housing, transport and environment should be taken into account. Moreover, it is necessary to consider also the EU legislation because the national laws have to be in harmony with the EU legal acts. It is a very hard role to meet all entitled interests together with the requirements of the EU law. Therefore, the adoption of a legal measure should be accompanied by the complex analysis how a measure would affect the land protection. The Slovak law maker has adopted some legislative acts with special measures for the land protection but they are a focus of regular and frequent amendments.

Keywords—agricultural land, natural resources, land protection, land use, land ownership, legislation

Received: March 31, 2020

Accepted: April 19, 2020

Introduction

Agricultural land is a natural heritage and an economic, social and ecological potential of each country. The portion of the land surface of the earth upon which plant grows is covered by the soil (Baldwin et al., 1938) which is considered as a non-renewable dynamic natural resource that is essential to life (Schoonover, Crim 2015). The important role of land is not only food production to ensure food security but there are also environmental functions, landscape element with the regulation and detoxification potential (Kobza, 2010). Moreover, the land is a basic element of the living conditions. Therefore the land should be taken the great care mainly at the time when land degradation is considered as a major global environmental issue of this century (Eswaran et al., 2001). In addition, the wrong practises of some farmers cause water or wind erosion which is the reason of large damage on the land (Hanes, 2014) and industry, transport, infrastructure and housing construction cause even more agricultural land loss, mainly the most fertile ones (Ilavská, 2016; Némethová, Feszterová, 2018).

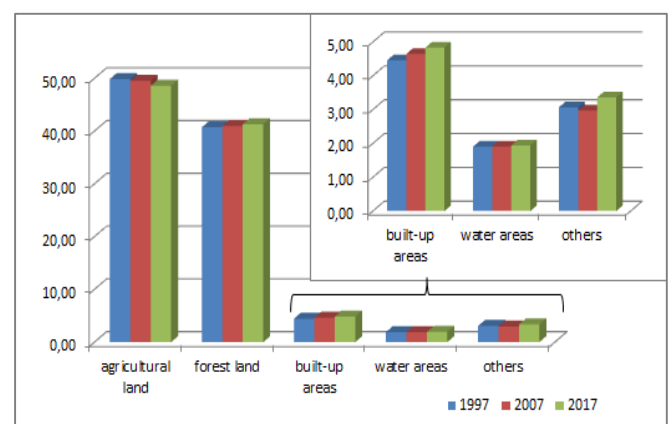
It is also a problem of Slovakia which occupies 4 903 423 ha, out of which agricultural land represents 2 380 000 ha (i.e. 48.54 % of the territory). The structure of Slovak landscape has been changed in the last 20 years. Figure 1 describes the development of the Slovak landscape.

The Slovak law maker tries to protect the agricultural land by various legal regulations related to the land ownership,

land use, land planning and land protection. There are many specifications that need to be taken into consideration when creating the land legislation which come from the Slovak history of land law.

The aim of the paper is to map and systematize the Slovak legislation related to the agricultural land protection.

Figure 1. Structure of the Slovak landscape in ten year intervals from 1997 to 2017 in percentage of total areas of the country

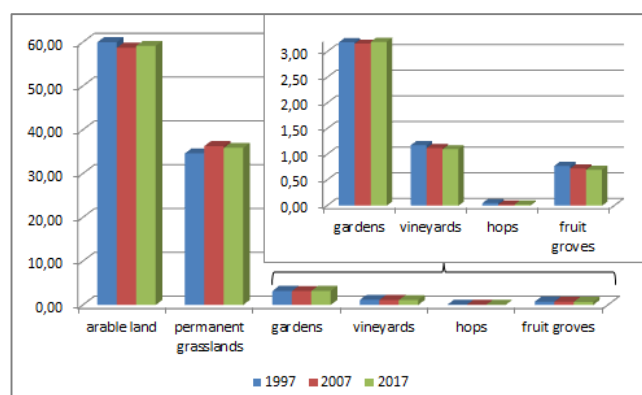


Source: Statistical yearbook on the land funds in the Slovak Republic, 2016

The agricultural land means arable land, meadows and pastures (permanent grasslands), vineyards, hops, fruit

groves and gardens. The changes in the diversity of agricultural land are documented in Figure 2.

Figure 2. The changes in the diversity of the agricultural land in percentage of total area of agricultural land



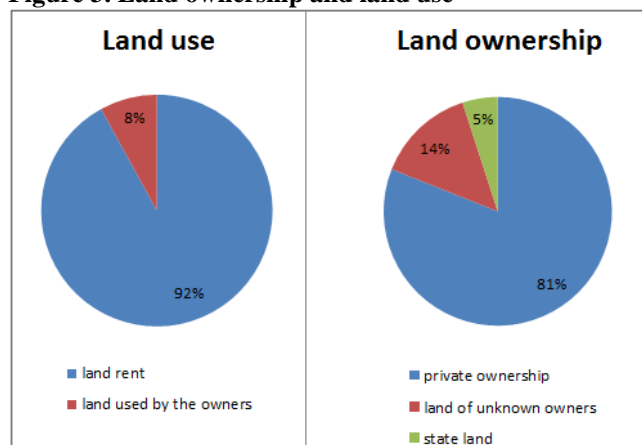
Source: Statistical yearbook on the land funds in the Slovak Republic, 2016

Materials and methods

For the purpose of this paper, literary sources available on this subject, the normative legal acts and explanatory memoranda were used. The paper used also the statistical data related to the structure of the landscape in Slovakia and to the diversity of agricultural land. The data are available in the Statistical Yearbooks on Land Fund published by the Geodesy, Cartography and Cadastre Authority of Slovak Republic and in the Reports on the environment in the Slovak Republic prepared by Ministry of Environment of the SR.

Two groups of methods were used. The first group includes basic methods of legal science such as legal analysis and comparison. The second one includes the analysis of data on the land fund by the descriptive statistical methods and the results are presented in the form of figures.

Figure 3. Land ownership and land use



Source: own calculation, 2020

Results and discussion

The agricultural land in Slovakia is used for the agricultural production. However, the land use is different from the structure of land ownership (Figure 3). The different structure has the roots in the history.

Historical elements of land law in Slovakia

In the period 1948 – 1989 the land ownership of natural persons was deformed. The laws were oriented on the objective that the state should be the only owner of the agricultural land (Štefanovič, 2006). In 1990, the centrally planned economy system was transformed to the market economy mechanism. Landlords were offered the right to access the land and the new legislation was adopted aiming to improve this right. However, most landlords lost the interest to cultivate the land and most of the land has been used by tenants. The second reason why the agricultural land is cultivated mostly by the tenants consists in land fragmentation. Its roots are in the inheritance system of Slovakia when the property is still distributed among all entitled heirs. It causes decreasing of land plots size and increasing number of landowners (Štefanovič, 2006). In the period 1964–1989, the state notaries had to prevent the land fragmentation by contract among heirs to receive the land ownership only one of them. This effort to prevent the land fragmentation failed after 1990 by adoption of laws regulating land ownership restitutions. The first restitution act was aimed at the elimination of property damages caused to the landowners and owners of the agricultural property during the period 1948 – 1989. According to this act, the entitled persons (original owners or their heirs) had a right to reclaim their occupied agricultural land till the end of 1992. The period was very short for reclaiming and finding the relevant documents to prove their ownership rights. Moreover, many of the entitled persons were not able to fulfill the condition of the permanent residence in the Slovakia. Therefore, about 20 percent of land did not find its owners (Bandlerová, Lazíková et al., 2011). The problem of so called unknown owners persists in the market of agricultural land until today. Moreover, the heirs who had given up their share on the agricultural or forest land during socialisms, they were interested in it because the land property has become valuable after 1990. The land fragmentation continued. Only in 1995, the act no. 180/1995 Coll. on some measures for arrangement of landownership was adopted. It includes the legal rules on minimum size of land plots (Lazíková et al., 2017). It relates to the agricultural and forest land plots that are situated outside the built-up areas of the municipalities. The Slovak law maker stipulates three levels of prevention for land fragmentation. The first and second one eliminates the land fragmentation by the fees. If the landowners want to subdivide their land into more land plots and at least one of them is smaller than 20 000 m², they should pay a fee. The first level stipulates the fees of 10 percent of the agricultural land value. It is in the case when the new land plot created after subdividing of land has a size smaller than 20 000 m² but greater than 5 000 m² in the case of agricultural land and

a size smaller than 20 000 m² but greater than 10 000 m² in the case of forest land. The second level stipulates the fees of 20 percent of the agricultural land value. It is in the case when the new land plot created after subdividing of land has a size smaller than 5 000 m² but greater than 2 000 m² in the case of agricultural land and a size smaller than 10 000 m² but greater than 5 000 m² in the case of forest land. For the fees calculation, the agricultural land value is stipulated by the special legal regulation – order of the Ministry of agriculture no. 38/2005 Coll. on determination of value of the land plots and its groves for the purpose of land consolidation. The fees are revenues to the state budget. The third level of prevention for land fragmentation prohibits subdividing of the agricultural land plots under the size of 2 000 m² and forest land plots under size of the 5 000 m² by any acting. However, there are some exemptions in the act that enable to create a land plot under the minimum legal size of land plot. In spite of this act, there is typical in Slovakia, that one land plot with an area less than one hectare is owned by the several tens of people. One of the few measures how to solve the extreme land fragmentation is land consolidation. The land consolidation is regulated by the law and supported by the EU but there are only few realized projects. There are more reasons for it. It is a long-term process to prepare the project, to approve it by all entitled persons and to realize it. Moreover, the land consolidation is realized by the state bodies where the public procurement is necessary. In addition, there are often suspicions to break the rules of public procurements. Lastly, the entitled persons, especially natural persons who are owner of the land refuse to approve the land consolidation projects. They are in a mistake that the land consolidation is a new form of land collectivization.

Moreover, physical persons and legal entities as well were entitled to own the agricultural land but the foreigners were excluded from the land ownership. After the transformation of the socialist economy into market economy, Act No. 528/1990 Coll., the Foreign Exchange Act, with effect from 1 January 1991 was adopted. According to the provision of § 25 of this Act, 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. Act No. 403/1990 Coll. on mitigation of consequences of certain property injustices, Act No. 427/1990 Coll. on transfers of state property to certain objects on other legal or natural persons). This state had been in effect until 1st October 1995 when the new Foreign Exchange Act No. 202/1995 Coll. entered into force. Its role was to liberalize the international trade in capital. The new law also allowed the non-residents, who are citizens of the Slovak Republic, to acquire the immovable assets without any restrictions. The only exception was agricultural and forest land. In 2004, the Slovak Republic became a member of the European Union. The EU internal market ensures the free movement of goods, services, capital and persons as well. The agricultural land is considered as capital on the EU internal market. The Slovak Republic had negotiated an exemption

related to the agricultural land market. Treaty of Accession accepted a transitional period with the duration of 7 years. However, 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. An exception was provided by the nationals of the EU Member States who decided to do business in agriculture 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 expired, the Slovak Republic made a request for its extension within the meaning of the accession treaty. 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. On 30th April 2014, the transitional period, which the Slovak Republic requested in terms of the trade in agricultural 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 Act. The agricultural land market was opened to the foreigners not only for the EU citizens but also for the citizens of the third countries as well. In addition, the Slovak law maker adopted the new legal rules on the agricultural land acquisition. Since 1st June 2014, the Act No. 140/2014 Coll. has been in effect. The new legal regulation affected the land transactions not only in the relations to the foreigners but also between the nationals. The restrictions should protect the agricultural land. However, the Slovak Constitutional Court decided that some rules of the Act are not in compliance with the Slovak Constitution.

Acquisition of agricultural land

The purchase contract of agricultural land is a most common way of acquiring of ownership. The land sales market regulations are less strict than land lease regulations. There are some exemptions such as France or Germany where are special agencies focused on the agricultural land sales. In Slovakia, the law maker tried to copy some legal regulations from these countries however not very successful. Up to the adoption of Act on land acquisition the individuals and legal entities were able to conclude the contract on the transferring the ownership right to land (e.g. purchase contract, donation contract, exchange contract, etc.) and to register it in the Land cadastre. When the transitional period for Slovak Republic in terms of the trade in agricultural land expired in 2014, the Act on land acquisition entered into force from the 1st June 2014. The process of concluding the purchase contracts in the most of cases had been more difficult due to the specific proceeding of concluding contract (Lazíková et al., 2015, Ciaian et al., 2017). However, there were some exemptions from this specific proceeding. It means when some of the exemptions related to the contracting parties or subject matter are applied, the

land ownership was transferred like before the adoption of this Act. In all other cases, a landlord who wanted to sell or donate his/her land was 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 a period of at least 15 days. At the same time, the owner was obliged to publish the offer on the bulletin board of the municipality, where agricultural land was located. The potential land acquirer was 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. The Act on land acquisition laid down the order of the persons authorized to become new land owners. The ownership of agricultural land could be required only by the person who has permanent residence or registered office in the Slovak Republic 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 firstly in the municipality where the land was located, secondly, in the neighborhoods or thirdly, regardless of the place of business and at least, a person with the permanent residence or registered office in the Slovak Republic for at least 10 years regardless the business activity in agriculture. The fulfillment of the requirements of the transfer of the property right to agricultural land was verified by the District Office. The certificate becomes an annex to the contract on the transfer of ownership of agricultural land.

However, the 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 obstacles to the free movement of capital within the borders of the EU. 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 marked the start of the proceeding, giving countries a two-month deadline to provide information on the case. Therefore, the Slovak law maker was preparing the amendment of the Act on land acquisition, mainly to the conditions of ten years residency in Slovakia for the purpose to acquire the agricultural land. The amendment was not adopted because the Slovak Constitutional Court decided that some rules of the Act on land acquisition are not in compliance with the Slovak Constitution. These rules related to the publication of the supplies of land in the website of the Ministry and on the Board of the municipalities and the order of new potential land purchasers. These rules were cancelled. Nowadays, the Act on land acquisition defined only the notion of agricultural land acquisition. Without this history it is impossible to understand what the meaning of this Act is. However, there was some useful measure for more transparent land transaction. Nowadays, the situation on the agricultural land market in the Slovak Republic is not transparent again. There are no statistical tools that would precisely monitor how many contracts on the transfer of

ownership of the agricultural land were concluded, what was the price and acreage of the purchased land. The publication of the land supplies in the website of the Ministry of Agriculture and Rural Development of the Slovak Republic was only information on the agricultural land prices on the market. It could be a useful source of information to analyze the developments in the Slovak land market as currently there is no publically available data source of land market prices (Drábik, Rajčániová, 2014).

Agricultural land leasing

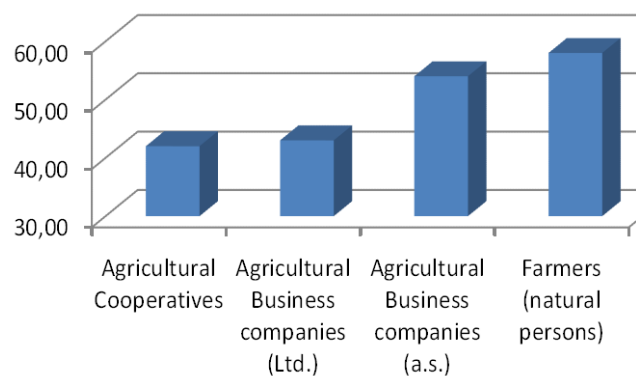
The agricultural land use is realized by the contract on land lease. There is no uniform land code in Slovakia; therefore, the legal system of agricultural land leasing is governed by several regulations, mainly Civil Code and Act No. 504/2003 Coll. on lease of agricultural land plots, agricultural enterprise and forest plots (hereinafter as Act on land leasing). The Act on land leasing is the *lex specialis* to the Civil Code. The Act on land leasing regulates the lease of land in two cases. Firstly, it is the land lease for agricultural purposes without business intentions. Secondly, the lease of land for agricultural purposes in case of conducting business is the most common legal institute. Only in the second mentioned case, the written form for the conclusion of the lease contract is asked.

The obligatory terms of agricultural land leasing contract are contracting parties, subject of the land lease detailed described and duty to pay the land lease price (Bandlerová, Lazíková, 2018). There are usually five types of land leasing regulation in the EU Member States such as price regulations, tenancy duration regulations, quantity regulations, transaction costs and other relevant regulations (Ciaian et al., 2012).

The price regulations are used by Belgium, France, Netherlands and Slovakia as well. In Netherlands the maximum price depends on the duration of contract. In Belgium and France, the maximum price varies among the regions and depends on the cadastral value of the land or on a price index obtained from information on the regional and national income from the agricultural sector. However, in Slovakia, the law maker stipulated only minimum land price. The amount to be paid or the way to calculate it depends on the contract of the contracting parties. However, if the contract for the lease of land is concluded for agricultural purposes in case of conducting business, a contract on the price of the lease respecting the minimum price of the lease is required; otherwise the contract is void. The price of the lease shall represent at least 1% of the value of agricultural land determined in compliance with the Decree of the Ministry of Agriculture of the SR No. 38/2005 Coll. on determination of the value of land plots and plantations on them for the purposes of land consolidation. According to this decree the land price ranges from 166 EUR per hectare to 3983 EUR per hectare. It means that the minimum land lease price as 1 percent of the land value ranges from 1.66 EUR per hectare and per year to 39.83 EUR per hectare and per year. However, the market land

lease prices are much higher. The official statistical data are still missing; however, by the results of research provided by the department of law at SUA in Nitra in 2015, the average market land lease prices ranges from 17 EUR per hectare and per year on the North of Slovakia with the land of the poorest quality to 63 EUR per hectare and per year on the West of Slovakia with the most fertile land plots. In some cases the land lease prices are higher than 150 EUR per hectare and per year, mainly in the case when a landlord is able to lease more than 50 hectares of land. The land lease price is higher in such cases because it is rare to receive more hectares of land from a sole owner due to land fragmentation. The new amendment of the Act on land leasing puts a duty to the county state bodies to collect the data related to the land lease payments and publish an average land lease prices of the particular municipalities in the county (LAU 1).

Figure 4. Average land lease payments by the land tenants in euro/ha

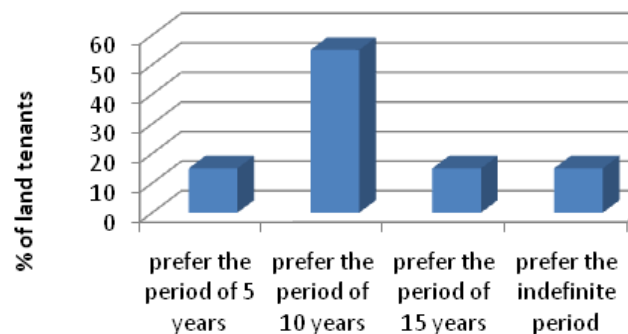


Source: own calculation by the research of the department of law, 2015

The lease contract should be concluded for a definite or an indefinite period of time. Tenancy duration is regulated in most of the EU countries. The maximum tenancy duration is stipulated e.g. in Finland (15 years), Hungary (20 years), Poland (30 years) and in Slovakia (15 years). The minimum tenancy duration is in Italy (1 year), France (9 years) and in Slovakia (5 years). The Act on land leasing regulates the minimum period of lease of land for agricultural purposes in case of conducting business that the land is leased for agricultural purposes in case of conducting business for at least five years. At the same time, the legal regulations specify the maximum amount of time by stating that “if the contract for the lease of land for agricultural purposes is concluded for a fixed period of time, the duration of the lease is 15 years at most.” A lease contract concluded for an indefinite period of time can be terminated with effect from November 1st. There are two notice periods. The first one is one-year advance notice if the lease contract was concluded for non-business purposes. The second one is five-years advance notice of the lease contract was concluded for the business purposes. The possibility to regulate the period is given only in the case of non-business purposes.

The other possibility how to terminate the lease contract is a withdrawal. A withdrawal from the contract is possible on grounds stated by law or agreed on in the lease contract. From a practical point of view, it is recommended to do so in a written form, e.g. when the sublease right is interrupted. The tenant is entitled to sublease the leased object unless otherwise stipulated by the lease contract.

Figure 5. The preference of period in the land lease contract



Source: own calculation by the research of the department of law, 2015

Transfer of ownership of the subject of lease is a specific reason for dismissal. In this case, a tenant has the right to dismiss the lease contract with notice stated by law or agreed on in the lease contract. Transfer of ownership of the enterprises of tenant is a specific reason for termination of land lease contract. In this case, a landlord has the right to dismiss the lease contract within a period of six months when the notice on the sale of the enterprise was published on the official board of a municipality.

The Act on land leasing protects mainly the tenant. The provision on priority right of the tenant to conclude a new lease contract after the end of the lease is one of examples (Bandlerová, Lazíková, 2016). It defines the situation when the priority right of the tenant to conclude a new lease contract after the fulfillment of legal conditions is established. According to the Act on land leasing, if the tenant duly and in time fulfils his/her obligations arising from the contract, he/she has a right of a priority conclusion of a new contract for the lease of land in return for usual price of the lease. There are five cases when the tenant does not have the right even if the conditions of the lease contract are fulfilled in a proper and timely manner and these are the cases if: (1) the landlord conducts business in agriculture in the time of termination of the lease before the expiry of the agreed period of lease or the expiry of the notice period; (2) the new tenant will be a person close to the landlord; (3) the new tenant will be a legal person of which the landlord is a member or a partner; (4) the land plot is intended for other than agricultural purposes under a special regulation and (5) the ownership to the land plot was transferred to a third person. If the priority right is interrupted by concluding the new land lease contract with a third person and no exemption from the above mentioned is fulfilled, the new land lease contract is void. This rules limit the ownership

rights to be free in decision how to dispose with own land ownership. However, the aim of the law maker is to maintain the land in the hand of farmers which carry out the business in agriculture.

Agricultural land protection against non-agricultural purposes

To use the agricultural land for the non-agricultural purposes (e.g. building or mining), a particular state body has to decide on the withdrawal of agricultural land (Paľšová, 2014). The agricultural land can be withdrawn permanent or temporary. The permanent withdrawn of agricultural land is the permanent transformation of the land type in the cadastre. The temporary withdrawn of agricultural land means a temporary change of the use the agricultural land for the period of maximum 10 years; then should be the land transformed in the original status by the recultivation.

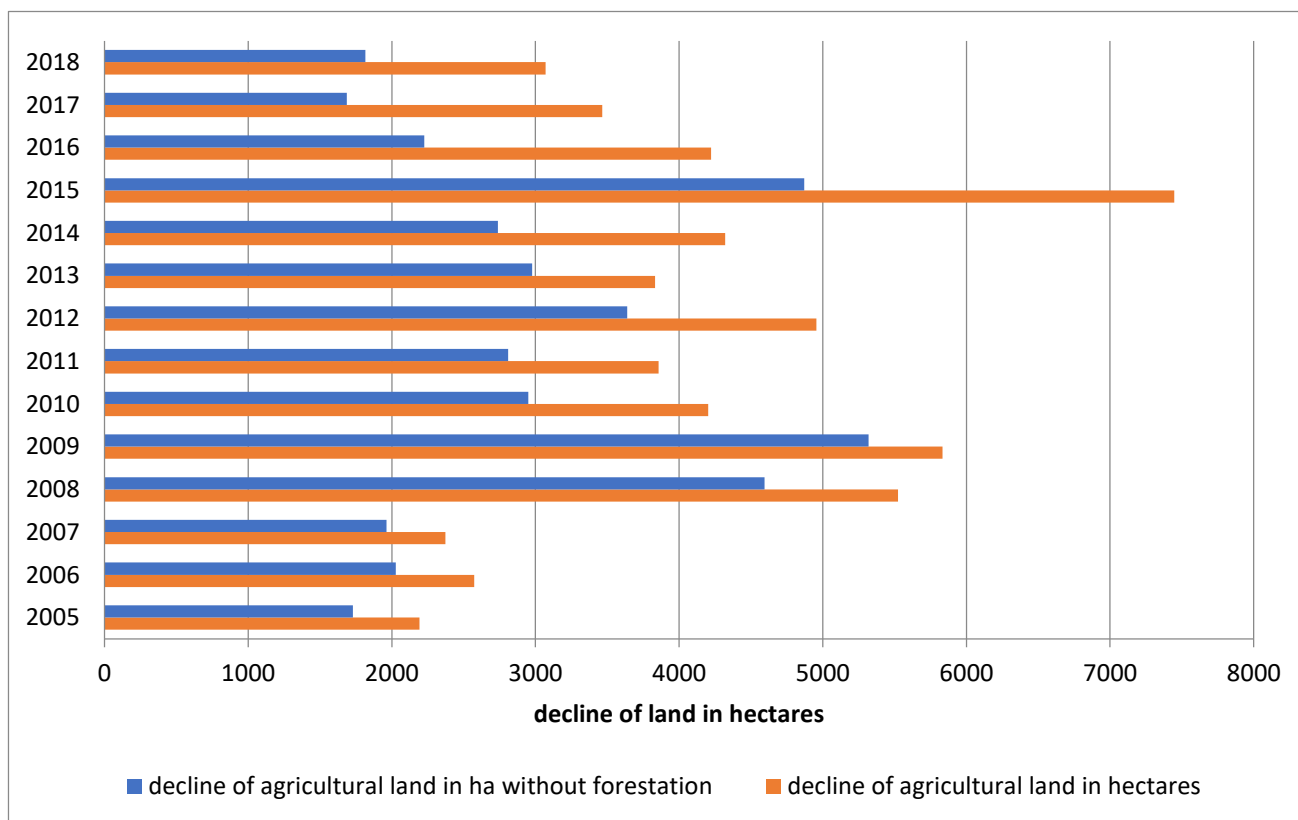
The land offices are obliged to issue a positive decision on the land withdrawal when the principles of the agricultural

land protection are fulfilled. There is no absolute prohibition for withdrawal of land of the best quality. If there is no other alternative to locate the buildings, the agricultural land of the best quality can be withdrawn. Therefore, the law maker should consider the adoption of the legal regulation related to the absolute prohibition of withdrawal of the land of the best quality.

The Act on the land protection regulates one more exemption related to the use of land for the non-agricultural purposes during the period shorter than one year. The period of one year includes also the land recultivation. The land office stipulates the requirements of the land use for non-agricultural purposes and the period of time to provide there recultivation.

The fee for land withdrawal should compensate the land decline. The government Decree No. 58/2013 Coll. on the fee for land withdrawal and unlawful withdrawal of agricultural land (hereinafter as Decree 58/2013) stipulates a fee for permanent and temporary withdrawal of agricultural land.

Figure 6. Land withdrawals in Slovakia 2005- 2018



The fees depend on the land quality. The agricultural land is divided into nine class of the quality. The first class includes land of the best quality and the fee is 20 EUR per 1 m² if permanent withdrawal and 0.20 euro per 1 m² if temporal withdrawal. The fees for land withdrawal increase by up to the 30%, when the withdrawal of land includes also the land

with the irrigation system or decrease by up to the 30% when the withdrawal of land includes land out of built up areas of a municipality but the land is directly beyond the border of this built up area. The special fees are paid when the vineyards are withdrawal. The fee ranges to 100 EUR per m².

Moreover, there are some exemptions when the fees are not paid, such as floods-protection objects, field paths, construction of the water reservoirs or the sewage treatment plants, the construction of the roads, railways, and construction of the family house with one floor up to the 250 m² or two floors up to the 150 m².

If a natural person withdraws an agricultural land without permission of the state bodies, he commits the civil tort. There is a fine up to 995 EUR. If a legal entity or a businessman withdraws an agricultural land without permission, the fine varies from 1660 EUR to 166 000 EUR per an unlawful withdrawal hectare of agricultural land.

The development of the agricultural land withdrawal in Slovakia is documented in figure 6. The high land withdrawal in 2008, 2012 and 2015 were caused by the changes in the fee policy for land withdrawal. The expectations of higher fees cause that the agricultural land withdrawal in a previous year was markedly increased.

On the one hand it is necessary to introduce new rules to increase the agricultural land protection according to the actual social events. However, on the other hand to provide any changes in the legislation, an adequate analysis in favour of the agricultural land protection is necessary. The changes of the fee policy received only negative consequences on the agricultural land protection (Lazíková et al., 2019; Paľšová et al., 2017).

Conclusions

The agricultural land is a natural non-renewable resource, a natural heritage and economic, social and ecological potential of each country. Therefore, the law maker has to adopt measures that will solve the problem of land withdrawal, land fragmentation, land use and ownership in favor of land protection. The often changes in the Slovak legal measures related to the agricultural land protection prove that it is a very difficult role to find a right measure. However, the measures should be preceded by high-quality scientific studies and complex analysis of economic, social, urban, legal and environmental aspects. Unfortunately, this procedure is still missing very often when the new legislation is adopted in Slovakia. Moreover, the land protection should be accompanied by the innovation including the new technologies, new financial measures and new partnership among public, private and non-governmental sectors.

Acknowledgments

This work was supported by the Grant Agency FESRD projects no. 7/2017 The impact of CAP supportive mechanism on the market with agricultural land in Slovakia, VEGA project no. 1/0220/18 The protection of preserving agricultural land in Slovakia and project Jean Monnet no. 611792-EPP-1-2019-1-SK-EPPJMO-SUPPA Effectiveness of Common Agricultural Policy Implementation in Slovakia.

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