

Gergő ÁRVAI*
The liquidation of undivided common land ownership in Hungary

Abstract

The issue of undivided common land ownership is a special anomaly in Hungarian land law that has been waiting for a solution for decades. As a result of the reorganization of land tenure relations after the change in regime and the legal successions that have taken place since then, almost one-third of Hungarian farmland is in common ownership. The legal institution of undivided common land ownership creates a bureaucratic obstacle to the circulation of farmland; the land register is unorganized due to the lack of knowledge of the co-owners, which exists only on the surface because of the small ownership they have, all of which lead to administrative burdens for land users and public administration and, in sum, reduce the competitiveness of Hungarian agriculture. As a result of the legislator's action in 2021, new rules allowed the liquidation of joint ownership, and from 2023, special land inheritance rules were introduced into the Hungarian legal system. This study focuses on the introduction of undivided common land ownership, relevant legal problems, and particularities of liquidation.

Keywords: undivided common land ownership, liquidation, land transactions, land tenure policy

1. On undivided common land ownership

This study examines the current situation of undivided common land ownership, which has been an unresolved problem in Hungarian agriculture for almost 30 years. In the 1990s, following the change in regime, the land ownership and land use structure in Hungary underwent major changes, one of the unintended consequences of which was a significant fragmentation of the Hungarian land tenure structure, which has been a source of unresolved legal and economic problems. The emergence of undivided common land ownership may have been related to this period. After the breakup of the Eastern bloc, all Central and Eastern European states settled the issue of land reparceling in their own way,¹ and the Hungarian solution was unique in several respects. The experience of the past shows that it was a mistake for Hungarian legislators to fragment the land tenure structure to such an extent, and to separate land ownership and land use in such a way and to such an extent. This idea is confirmed by the lines from Tamás Andr ka, written almost two decades after the change of regime, that *“in Hungary, for historical and economic reasons, the land tenure structure is significantly different from the European structure, given that nearly 3.3 million landowners have an average agricultural area of less than 2 hectares.”*² According to Zvi Lerman, another speciality of Hungarian land tenure policy

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¹ Burgern  Gimes 2003, 819–832.

² Andr ka 2010, 11.



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is that *“Hungary is the only country where the restitution process is finished for all practical purposes.”*³ In the 1990s, the Hungarian legislator transferred 2.3 million hectares of the 9.3 million hectares of state land to the ownership of about 700,000 people (on average 0.46 hectares per person), and 3.4 million hectares to the ownership of about 2 million people on a pro-rata basis (on average 1.7 hectares per person).⁴ Bobvos defined the economic significance of land tenure redistribution as follows: *“Two consequences of land tenure redistribution should be highlighted. First, as the number of landowners has increased, landholdings have become excessively fragmented, making it very difficult to manage a large part of the land in a modern way and compete in European markets. The second is that much of the land has been taken over by people who are not engaged in agriculture as a profession, who currently rent out their land, and later, by selling it, they will withdraw capital from agriculture, thereby increasing its production costs.”*⁵

In Hungary, undivided common land ownership was created to the greatest extent possible because of sharecropping and legal inheritance. Sharecropping was a special form of property acquisition after the change of regime, which was entitled to those people who had not lost their private property between 1945 and 1989, but who had merely ‘transferred’ their land to the agricultural cooperative, typically not of their own free will, and on which the cooperative had ‘a land use right of a proprietary nature.’⁶ Members of the agricultural cooperative or their heirs were entitled to lease land if the cooperative did not buy their land. Due to the ambiguous legislative provisions that *“sharecroppers were not granted by law a subjective right to recover the land they had previously occupied from the cooperative”*,⁷ sharecropping resulted in the creation of common ownership under civil law rules⁸ on many parcels of land. The characteristic feature of common ownership is that the whole thing is owned in undivided shares, *“i.e. each partner owns the whole thing to the extent of his share of ownership (pro parte, pro indiviso). The thing is not divided between partners, but only the right. The right, as an abstract concept, can only be shared in an ideological sense (pro-intellectuals).”*⁹ Sharing the ideas of Tamás Andr ka, forced ownership communities have been formed, which are characterized by the fact that the co-owners *“members who are not acquainted with each other in any way are entitled to use their share of the property without infringing the rights and legitimate interests of the others in their property.”*¹⁰ Because there were no special agrarian inheritance rules, the creation of undivided common land ownership was a legal inheritance. Under the general rules of legal inheritance, the number of landowners has steadily increased, and their share of ownership has fragmented over the past decades. According to figures from the Ministry of Agriculture, the number of undivided common ownerships under the title of sharecropping is around 300,000, affecting nearly 1.5 million owners. As a result of legal succession, common ownership was established on 700,000 land parcels, affecting around 2.5 million owners.¹¹

³ Lerman 2000, 1140–1148.

⁴ Bobvos & Hegyes 2019, 26.

⁵ Bobvos 1998, 8.

⁶ Bobvos & Hegyes 2019, 20.

⁷ Bobvos & Hegyes 2019, 25.

⁸ Act V of 2013.

⁹ Moln r & Jakab 2015, 179.

¹⁰ Andr ka 2021.

¹¹ Andr ka 2021.

According to the National Chamber of Agriculture, Hungary currently has approximately 2.5 million hectares of undivided common land ownership.¹² Comparing these figures with Endre Tanka's thoughts that “...today, 83 percent of the 9.3 million hectares of state land is farmland, while 63 percent of the land is under agricultural cultivation...”¹³ It can be concluded that almost one-third of the Hungarian farmland base is in undivided common ownership. Another major problem is that the land register for jointly owned parcels of land is not ordered, so only the total number of co-owners can be estimated. According to statistics from the National Chamber of Agriculture, 4.6 million partners may be involved, whereas other sources estimate that only 3.5 million may be involved.¹⁴ This may be due to errors in the inheritance procedures. Beyond the disorder in the land register, several legal issues and problems make farming difficult. Under the current Hungarian legislation, a community of ownership may be created by other legal titles (e.g., sale, gift, etc.), but this does not pose a problem from the point of view of the land tenure structure.

One of the main reasons for the fragmented nature of the Hungarian land tenure structure and the distorted land use structure is undivided common land ownership. The Hungarian legislator has tried to abolish undivided common land ownership several times,¹⁵ without success so far, and in 2020 it enacted Act LXXI of 2020 on the liquidation of undivided common land ownership and the settlement of data on the land register of the holders of real estate constituting land (hereinafter: Foktftv.), and Government Decree 647/2020 (XII.23.) on detailed rules for the liquidation of undivided common land ownership. These legal sources offer new possibilities for the dissolution of ownership communities, withdrawal from the ownership community, change in ownership of other co-owners, and the resolution of problems arising from undivided common land ownership.

2. Legal problems arising from undivided common land ownership

The problems of undivided common land ownership affect the Hungarian agricultural sector. As already pointed out by László Fodor in 2010, “even according to conservative estimates, farmland accounted for about 20% of national wealth,”¹⁶ which has increased in recent years, making the issue of strategic importance. The source of economic problems is typically legal, with the main anomaly being the lack of knowledge about the exact number of owners involved and the lack of order in the land register. The title deeds of these properties often list deceased, non-identifiable, or unidentifiable persons. This is due to the incomplete/incorrect inventories of inherited land assets, typically in the period before the digitalization of the land register. In many cases, the heirs themselves and often the testators were unaware of these properties, as the fragmented land tenure structure meant that their market value was negligible. Hungarian succession

¹² National Chamber of Agriculture 2020.

¹³ Tanka & Molnár 2011, 13.

¹⁴ Hungarian Agriculture 2020.

¹⁵ Act II of 1993, Government Decree 63/2005 (IV.8.), Government Decree 405/2012 (XII.28.), Government Decree 374/2014 (XII.31.).

¹⁶ Fodor 2010, 115.

law follows the principle of *ipso iure* inheritance, so even if the inventory of the testator's property did not include the notional share of the testator's property, by force of law it was inherited by legal heirs (or necessarily passed to the Hungarian State) who became owners outside the property register (including the Hungarian State). When these heirs later became testators themselves, without their ownership having ever been recorded in the land register, their shares in the estate were further divided among several legal heirs that were never recorded in the land register. As a result, tracing the current owners is impossible.

These ownership communities are also characterized by the fact that the partners are mostly not professionally engaged in farming and that the ownership of a partner is so low that it does not allow independent agricultural production. Endre Tanka's reflection: *"In the case of land ownership, private property does not mean possession and use of the land as a means of production for a population of nearly two million owners, and therefore cannot ensure a living from farming. According to economic and sociological standards, from the perspective of the rights holder, it is only a nominal, pseudo-property, temporary legal form."*¹⁷

The unknown ownership environment and the small shares that owners are entitled to are obstacles to land-use regularization. Generally, in the case of undivided common property, a use-sharing agreement must be concluded between owners to divide the land in kind. The right to use land is an independent right in the Hungarian legal system, and the Hungarian land-use structure is characterized by the fact that the identity of the landowner and land user is often separated from each other. This is confirmed by the fact that, according to the Hungarian Central Statistical Office, 53% of the farmland in Hungary will be used by farmers in 2021 based on leasehold tenancy, that is, not on their own ownership.¹⁸ In Hungarian public administration, the administration of land-use rights is ensured by an electronic database, the Land Use Register, which is a separate, publicly accessible register, and changes to the data contained therein are made upon request.¹⁹ The content of the Land Use Register is often different from that of the entitlements recorded in the Land Register. According to the general rules of civil law, the right to use the land primarily belongs to the owner of the property, but others may also acquire the right by other legal titles (e.g., usufruct, lease, courtesy land use, etc.). In the case of the undivided common ownership of agricultural land, land use registers, such as land registers, are often disorganized. Thus, the following question arises: How can land tenure be settled when one or more owners are unknown? The *"case of consent given,"* which is a legal fiction, was adopted in order to settle the rules on the use of undivided common land ownership.²⁰ If the owner is unknown, consent to the sharing of use between the owners must be deemed to have been given if the statutory conditions are met, which has raised questions of constitutionality that have been examined by the Constitutional Court.²¹ Another problem is that in addition to the administrative burden of settling the use of land, the fact that a fixed-term ownership agreement can easily be amended by a majority vote, which could lead to changes in the land parcels or parcel

¹⁷ Tanka 2010, 283.

¹⁸ Hungarian Central Statistical Office 2021.

¹⁹ Government Decree 356/2007 (XII.23.).

²⁰ Act CCXII of 2013.

²¹ Constitutional Court Decision No. 3255/2018. (VII.17.).

boundaries used by co-owners, is a major obstacle to management. By modifying use-sharing, land users will be entitled to use different parts of the land, which will result in a lack of an ownership approach, and the owner will certainly not carry out a high-value investment (e.g., installation of an agricultural irrigation system).

The disorder of land registration, small ownership shares, and difficulties in land use contribute to the fragmented Hungarian land tenure structure, which greatly reduces the competitiveness of agriculture. These disadvantages regarding competitiveness can be summarized in the words of Pál Bobvos, who says that *“farming on unincorporated land is disadvantageous; the disadvantage can be summed up most simply as the fact that it costs a lot of time and money.”*²² It is important to point out that the competitiveness of Hungarian agriculture could also be improved by the establishment of an agricultural holding regime, which could also speed up the process of land consolidation, as Mihály Kurucz points out: *“The individual parcels of land, as an amorphous set of independent properties as a land unit, become a unit of destination when the individual things form a structured set of things assigned to a common (agricultural) management purpose, or subordinate to it. A merger of holdings may achieve such a goal because it serves an agricultural purpose under common management.”*²³

Another problem with undivided common land ownership is the lack of uniformity in the application of the law by courts. Since the change of regime, *“... the state has taken on an increasing role in influencing the land market and has increasingly intervened in private autonomy,”*²⁴ which has led the legislator to impose a privileged pre-emption right on the property rights of the partners in undivided common ownership in order to eliminate common ownership as soon as possible. Regarding the constitutionality of the statutory pre-emption rights, Csilla Csák's statement should be highlighted that *“the first right of pre-emption of a co-owner is not a constitutional evidential right, but is based on positive discrimination supported by constitutional grounds.”*²⁵ The controversies in interpreting laws that have arisen in connection with the exercise of privileged preemption rights by co-owners are presented in detail in a study by István Olajos.²⁶

In addition to all these factors, a number of administrative problems related to the legal institution of undivided common land ownership can be mentioned, which affect the administration of land registry authorities. As a consequence of land use problems, not only day-to-day management but also the application for certain income support is becoming more complicated, which, as explained, contributes to disadvantages regarding the competitiveness of agriculture.

3. Options for the liquidation of undivided common ownership

On January 1st, 2021, the Foktftv. entered into force, making the liquidation of undivided common land ownership completely new. According to the new provisions, the legislator primarily intends to facilitate an amicable termination between the parties, primarily by dividing the property in kind or by incorporating the property, but also

²² Bobvos 1998, 18.

²³ Kurucz 2010, 162.

²⁴ Bobvos 2021, 56.

²⁵ Csák 2010, 73.

²⁶ Olajos 2017, 109–116.

provides for the possibility of state intervention to ensure transparency in land ownership relations and prevent the fragmentation of property. The Hungarian State may acquire ownership of certain types of land through expropriation. It is a long-awaited development that, from January 1st, 2023, special rules will apply in cases where legal succession results in undivided common land ownership between heirs.

The legal possibility of opting out of undivided common land ownership exists even before 2020.²⁷ In addition to the relevant rules of civil law for the judicial dissolution of common ownership, the rules of land law allow individual owners to withdraw from the forced ownership community by obtaining as exclusive property a separate parcel of land of size and value corresponding to their own ownership, thereby reducing the size and value of the original undivided common land. Overall, it can be concluded that these procedures have not brought about a significant change in the Hungarian land tenure structure because relatively few procedures have been initiated and they have been significantly delayed. *“Since 2012, administrative procedures (...) have also been lengthy and difficult (...) costly for the state, and put a huge burden on government agencies. Despite this, by June 1st, 2012, including the previously submitted applications, approximately 250,000 applications for the termination of undivided common ownership had been submitted to the land authorities. These concerned 53.5 thousand parcels of land, and approximately 35 thousand procedures have already been completed, resulting in the granting of separate ownership to approximately 170 thousand owners.”*²⁸

The primary legislative objectives of the Fokftv. represents the liquidation of undivided common land ownership to improve land tenure and transparency. *“The question arises as to how the legislature intends to interpret this liquidation. The aim was to ensure undivided common land ownership: (1) may be reduced to less than about 1 million individual parcels of land, or (2) may be decreased per hectare, so to have fewer than about 2.5 million hectares in total at a national level, or (3) affect fewer owners, so that the number of forced common ownerships is reduced, which currently totals around 3.5-4.6 million?”*

*It would seem logical to answer all three options together as this would have the most positive impact on tenure structure.”*²⁹ However, there is a very fine line between public interest in eliminating the fragmented land structure to achieve more reasonable land sizes and the sanctity of the right to property. This is clear from the provisions of Fokftv. that the legislator offers the possibility of an amicable settlement between the co-owners, such as the division of the property in kind, and in the absence of this the legal instrument of incorporation is applicable (although incorporation may also be the joint will of the parties), but in certain cases it provides for a settlement by expropriation as the ultima ratio.

The system of termination methods in Fokftv. adopts the provisions relating to the termination of common ownership under general Hungarian civil law rules in detail. The right to terminate common ownership is not only established by Act V of 2013 on the Civil Code (hereinafter, the Civil Code), but is also established by the Fokftv. for the agricultural and forested lands, respectively. The *lex specialis derogat legi generali* principle applies to the relationship between the Fokftv. and the Civil Code.

²⁷ Nagy 2022, 110.

²⁸ National Land Centre 2021.

²⁹ Árvai 2022, 18.

The essential difference is that the Civil Code precludes the court from ordering the termination of common ownership if it falls within an inappropriate time. However, the special rules of the Fokfttv. do not contain such restrictive provisions, regardless of the cyclical nature of agricultural production. The termination system under the Fokfttv. is similar to the termination options that can be ordered by the court under the Civil Code: there is sharing in kind in the first place, which requires the joint agreement of the partners. In this case, the new property created as a result of the division must meet three main requirements: no new undivided common ownership may be created unless the owners expressly agree to it, and the separate property created as a result of the division must be suitable for agricultural and forestry purposes, finally, no owner may receive, on the basis of his or her share of ownership in the property on which the division is based, a property with a value less than the cadastral net income of the land, expressed in Golden Crowns, unless he or she expressly agrees to this as part of the settlement. To prevent further land fragmentation, minimum area values (10.000-3.000-500 square metres) were divided by the type of farming, below which no land parcels with a smaller surface area could be created. The in-kind division is followed by sale under the Civil Code, whereby the co-owner has the right of preemption against third parties, so that if the co-owner takes the whole thing for himself, it is equivalent to the possibility of termination under Fokfttv. According to the provisions of the Fokfttv, the termination of undivided common ownership may be affected by the acquisition of the property by a single owner, that is, by incorporation, if the property cannot be divided into at least two separate parcels of land, each of which meets the specified minimum territorial requirements, and if there is no room for division. The Fokfttv. also provides for cases in which several owners wish to use incorporation, as well as for the determination of the consideration to be paid to other owners and the method of payment. Serious questions of legal theory are raised because the legislature also allows for the incorporation of the ownership of unidentified co-owners, for whom consideration must be paid by a court deposit. Given that a unilateral declaration is used to redeem the notional shares of uncertain partners, the legislature effectively gives partners the opportunity to initiate the incorporation of power (quasi-purchase right). Any co-owner has the right to initiate incorporation and division. The disadvantage of these procedures is that legislators do not set a final deadline for their implementation.

Finally, a distant parallel can be drawn between forced sales for the benefit of a third party under the Civil Code and state expropriation under Fokfttv. The termination of undivided common ownership by expropriation may only be carried out exceptionally under the conjunctive conditions laid down by law, at the earliest, from January 1st, 2023. In view of the ultima ratio nature of expropriation, the legislator intends to resort to this method of termination only in specific cases where in-kind division or incorporation would not be effective. The fundamental rights to property and the public interest in restructuring the national land tenure structure necessarily conflict with each other. As expropriation involves the deprivation of property rights, the provisions of the Fundamental Law must also be taken into account, according to which *“Property may be expropriated only exceptionally and in the public interest, in cases and in the manner provided by law, and with full, unconditional and immediate compensation.”*³⁰

³⁰ XIII Article of Fundamental Law.

A significant development in the liquidation of undivided common land ownership was the beginning of the process of sorting the data of the beneficiaries of the land register. From 2021 onwards, the land registry authority has started to search *ex officio* for persons born more than 120 years ago and listed as owners in the land register.³¹ The law requires the land registry authority to *ex officio* trace unidentifiable persons listed as owners in the land register in respect of property that is classified as land. If a search yields a result, data adjustment is required. If the land registry authority becomes aware that the beneficiary has been deceased, it shall contact the notary regarding the location of the property under investigation to initiate probate or alternative probate proceedings. The figures suggest that this could be a major task for local administrations and municipal notaries.

On January 1st, 2023, special rules were enforced for the legal succession of agricultural and forestry lands.³² The legislature wanted to reverse the past trend by ensuring that legal succession does not lead to further fragmentation of Hungarian land tenure. Under the new rules, if the testator's land used for agricultural or forestry purposes is to be inherited by more than one heir under the rules of legal succession (whether inheritance includes a share of the land in sole ownership or undivided common ownership), special rules of succession will apply. The aim is to maintain the testator's land in one type of ownership; that is, to prevent the creation of new undivided common ownership and an increase in the number of existing common ownership types. This largely serves the general objectives of agricultural and land tenure policies. However, the legislature introduced restrictions on inheritance rights, which are originally private in nature. As a result of the new rules, legal heirs may be forced to make a choice, since in order to inherit the land or its ownership, they will either have to enter into a class settlement, transfer it to another person, sell it, or offer it free of charge to the state, or, in extreme cases, the legislator foresees a forced sale. If the testator wishes to make his land the common ownership of several heirs through testamentary disposition, the new legal provisions do not apply.

4. Expected consequences of regulating the land ownership relations

The development of Hungarian agriculture can be greatly facilitated by the settlement of undivided common land ownership if the procedures result in land consolidation. This could improve the competitive position of small and medium-sized farms and their production efficiency. The economic benefits of land consolidation can be found in an organized land-use structure, which removes unnecessary administrative burdens for farmers and public administration, and in the development of more rational land sizes, which can lead to lower unit production costs, more efficient use of equipment and labor, and reduced other expenditures. In terms of the administrative burden, a positive change is expected in the simplified verification of legal land use for the application of certain subsidies. Clear and transparent land ownership relations could create opportunities for increased agricultural lending, secured by mortgageable land ownership and certified by a public land register that has already been regularized.

³¹ Act LXXI of 2020.

³² Act LXVII of 2022.

The availability of easily accessible credit and land ownership can improve the willingness to invest, which is a prerequisite for the implementation of many new modern technologies (e.g., irrigation and³³ precision equipment,³⁴ etc.). Furthermore, well-ordered land ownership and land-use structures have the advantage of greatly facilitating the creation of irrigation communities.³⁵ Another advantage of land consolidation is the more favorable location for individual parcels of land on a farm, which can also be facilitated by the liquidation of undivided common land ownership. *“The concept of economic cultivation based on geographic distance (i.e., distance of access) is not necessarily based on the distance between parcels of land, but on the distance from the location of the means of cultivation.”*³⁶ In the context of these projected competitive advantages, it can be noted that on land parcels with current unresolved ownership or land-use backgrounds, certain technical innovations may not be feasible at all or at considerable economic risk. The timeliness and continuity of farming may be problematic. In light of the above, it can be concluded that *“the advantages of land consolidation for economic production are indisputable.”*³⁷

Agreeing with Endre Tanka, the current distorted land tenure structure has a number of negative consequences, which are problems for the whole agriculture, since *“the environmentally destructive large-scale industrial monoculture based on wage labour that displaces living labour, completely denies the ecosocial value system (the combined requirement of economic, social and environmental efficiency), thus making the autocracy of agriculture unsustainable.”*³⁸ The liquidation of undivided common land ownership could lead to a more competitive and equitable land use structure in Hungary. By resolving the issue of undivided common land ownership, small and medium-sized farms could gain access to additional land, which would go some way to counteract the dominance of large farms.

5. Summary

In conclusion, I believe that settling the issue of undivided common land ownership is a matter of high importance for Hungarian agriculture. With the legislation adopted in 2020, the legislature has created the possibility, in principle, to liquidate undivided common land ownership, but in the absence of a deadline for the liquidation procedures, a delay in the process is expected. In my view, settling the issue of undivided common land ownership could lead to significant land consolidation in our country, the primary beneficiaries of which, if the legislature intends, would be small- and medium-sized farms, as opposed to large-scale land acquisitions. With the consolidation of land ownership and land tenure relationships, the strengthening of smaller farms and improvements in the competitiveness of the agricultural sector are predicted.

³³ Act CXIII of 2019.

³⁴ Fodor 2020, 18–38.

³⁵ Szilágyi, Dobos & Szűcs 2020, 44–45.

³⁶ Kurucz 2010, 160.

³⁷ Bobvos 1998, 4.

³⁸ Tanka & Molnár 2011, 20–24.

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