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Legal issues in the property, use, preservation, and management of agricultural lands in Bulgaria[2]

Abstract

This article reviews the subject of 'agricultural lands' in Bulgaria from a legal aspect, for the period 1878-2023. It analyses the normative acts, legal consequences and the most important legal changes that the land reforms in the country derive from. There is a review of the processes of restitution, land-settlement, and limitations of property; the initiation of cadastral maps and other events and initiatives related to them; legal actions of the administrative and judicial organs; and decisions related to the judicial and constitutional control, related to the owners and users of agricultural lands. There is some detailing of how the latter perform their legal rights to the land in certain cases. The study is provisionally divided into three sub-periods: the first presents legislation in Bulgaria related to agricultural lands in the period after the establishment of the Third Bulgarian State. It gives explanation to some important moments, deriving from the historical participation of the country in the political events related to the Balkan Peninsula and the First World War, as well as to the policies of land-settlement, organisation and cooperation of the agricultural subjects; establishment of the first administrative bodies; and the administration of the processes related to the property and in particular to the agricultural land. The second period reflects on the legislation defined by the collectivisation and expropriation of the private property, the limitation of the economic relations in regard to the agricultural lands, and the following redefining of the legal institutes related to the property of agricultural land. In a sense the first two parts of the article give answers to the reasons and the need for the last land reform performed after 1989. A milestone in the article is the process of restitution as well as the problems of the legal doctrine of the last period from 1989 until 2023. Apart from identifying the most important problems of the management of the legal aspect of the restitution processes, the article provides a short review of the new course and the 'curve' of the legislation regarding agricultural land. The newest changes in the trajectory of the public

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2 | *The research and preparation of this study was supported by the Central European Academy.*

Minko GEORGIEV: Legal issues in the property, use, preservation, and management of agricultural lands in Bulgaria. *Journal of Agricultural and Environmental Law* ISSN 1788-6171, 2024 Vol. XIX No. 37 pp. 135-170

https://doi.org/10.21029/JAEL.2024.37.135

relations and the legal challenges deriving from the legal order in the European Union are presented, including: legal contradictions of the Bulgarian legislation with the law of the EU; reflection of the structural funds over the legal processes related to the agricultural lands; and the 'green' payments and consolidation of the property in agricultural lands. At the end there are some suggestions for the improvement of the legal framework regarding the agricultural lands in the country. The article uses several legal methods, including legal-historical, positive legal analysis, and a normative approach in explaining the offers suitable for the change of the legal framework regarding agricultural lands.
Key words: agricultural lands, land reform, restitution, legal doctrine

Introduction

Restitution is a complex legal, political, and socio-economic process that has varied characteristics in every part of the world, including the USA.[3] In a legal context, it is analysed as a prerequisite for the distribution of property rights,[4] as well as on the conditions under which new legal doctrines emerge, even in conflict with other understandings of agricultural land.[5] Other scholars[6] looking at Eastern Europe analyse restitution as part of the transition in the post-communist period, together with land reforms unfolding in parallel. The subject of these studies is the problems of property acquisition, the fragmentation of agricultural property, and the rules for cross-border investment in agriculture of the respective countries.[7]

Bulgaria is an agricultural country. At least 8 land reforms have been held in its recent history. A major part of the population (more than 80%) lived in villages in the period after 1878, sustaining their living with activities related to the agricultural land. This predefined the public relations, regulating agricultural land as initially important for every subject on the territory of the country. The land reforms from that period were the reason for the land-settlement of the indigent and landless people (from 1880, 1883, 1923), and redistribution of agricultural land in 1921. They also indirectly favoured the creation of cooperative relations, which helped the survival of not only this large group of people and their families, but also of the population of the whole country. In those years the first legal framework for property management was gradually developed. Despite the political concussions, the legal medium from that period is relatively stable. This guaranteed an amount of certainty and foreseeability in the relationship related to or derived from the agricultural land.

3 | Fay & James 2009.
4 | Hall 2007, Beyers 2005, Burawoy & Verdery 1999, Ntsebeza 2005, James 2007.
5 | Myers 1986, 148.
6 | Holt-Jensen & Raagmaa 2010; Szilágyi 2016; Szilágyi 2022; Hartvigsen 2013; Giovarelli & Bledsoe 2001
7 | Povinelli 2004.

The period of the 'communist era' (1944-1989) is known for the abolition of private property. Agricultural lands are part of large, centralised structures, so market deals with them are relatively missing in practice. There is agricultural entrepreneurship, but it is of controlled and state-supported characteristics. The institutes of property relate simultaneously to the urban and the rural communities, meaning that the legal consequences for the owners of agricultural lands and lands in those urban places are often identical. It is an object of dispute whether this should be defined as suitable or as a barrier to the development of agriculture. The migration from rural to urban areas in that period, following the ideology of 'dictature of the working class', could be considered as a prerequisite for the 'break up' of some of the farmers with the land.

Speaking of land reform and restitution (after 1989) we mean two parallel processes which intersect with each other in relation to the category of 'property'. Restitution is not related only to agricultural lands, but also to lands from the forestry fund, to the ownership of movable and immovable properties in the cities and other places. The meaning of the term 'land reform' could be presented as a mixture of processes and events related to the agricultural lands and activities, some of which are not always of legal essence.

Restitution is a legal process for reinstatement of private property and its re-acquirement by the former owners and their heirs. There are many consequences of restitution; the systems for acquisition of property or adequate reimbursement are mixed. In this respect restitution, despite being of limited scope, creates some complex effects which might be defined as legal problems. How, for example, can we define which estate is most suitable for reinstatement, or what should be the compensation in money or by other means, when said estate had been covered with permanent crops that were destroyed in the time before the restitution?[8] On the other hand, the land reform considers the establishment of many different relations needed by society —effective markets, entrepreneurship, and the ability to use agricultural land as social and, in recent years, as ecological capital.

The specially designed payment instruments for participation in the tenders in the former agricultural enterprises - as well as the system for compensation by compensatory bills - should be defined not only as juridical, but also as socially economic means — part of the land reform in Bulgaria. Initiatives as the cadastre, which relate not only to the agricultural land and have documental and electronic format, create a special new architecture where the agricultural subjects and the state consolidate the assets and make their management more effective. These processes of restitution and the last land reform are inextricably linked. The legal framework about agricultural land could be defined as the basis of this reform.

8 | Sivenov 1992, 187-192 for the need of 'multidisciplinarity' in the analysis of the agricultural lands; while Nikolov 1992, 207 supports the opinion that the analysis, which is also related to some possible consequences of the privatisation and liberalisation of the other sectors, should be 'complex'.

The same framework, although following the main targets of the restitution, also created challenges related to the management of the restitution process. These challenges could be considered as a prerequisite for the higher number of legal disputes with an object of agricultural lands in the period of the last land reform, from 1989-2023.

The aim of the current material is to describe and define the challenges related to the legal media of the agricultural land, the process of restitution that started 1991[9], and the essence of the new problems of the last part of the reform. The study should cover the following stages:

- A description of the legal framework related to agricultural land, dividing it on a conditional basis into three periods: 1878-1944; 1944-1989; and 1989-2023
- An analysis of the legal doctrine of 'restitution', as well as of some important decisions related to the judicial practice of the courts in the country
- A follow-up of the new 'legal trajectories', the new law defining land relations
- Proposals for changes in the country's legal framework (*de lege ferenda*)

Materials and methods

This study uses a legal-historical approach to explain the change in the normative base related to agricultural lands. On the other hand, there is the legal essence of agrarian right – prerequisites and consequences of certain legal norms being explained with the means of positive legal analysis. Suggestions for improvements to the legal framework are made mainly in a normative manner.

1. Agricultural lands after the reinstatement of the Bulgarian state

Period (1878-1944).[10]

The first normative acts[11] regarding the new Bulgarian state are adopted during the time of the Provisional Russian Administration in Bulgaria (administration by the Russian civil and military authority from June 1877 until July 1879). Practically

9 | The process of restitution of agricultural lands in Bulgaria began with the adoption of the Law on the Ownership and Use of Agricultural Lands by the Grand National Assembly on February 22, 1991. The law was promulgated in the State Gazette, iss. 17/ 01.03.1991.
10 | See full list of normative acts in (MAFF 2017, 15-38).
11 | The first normative act regarding the agricultural land is 'The Journal Decree' from 2 August 1878 issued by the Chancellery of Russian Emperor's Commissioner A. M. Dondukov-Korsakov. It regulates the refugee status and the agrarian issues. See Decree No. 1 of 02.08.1878 of the Provisional Government.

they eliminate the possession by the Ottoman Empire of approximately 450000 Ha[12] of land that transits in possession of the Bulgarian population. Just a few days after the enforcement of that regulation the Provisional Russian Administration in Bulgaria issues a new act,[13] which regulates not only the principles of court independent from the administration, publicity and instancy in the court proceedings, and choice of judges, but also accepts notary deeds as a valid form of transaction for transfer and vesting of rights *in rem* over corporeal estates. This order is also fully valid for agricultural lands.

Bulgarians from Besarabia, Banat receive lands by The Law on Settlement of Uninhabited Lands in the Principality of Bulgaria (LSUL, 1880). This group receives state lands under the condition that they are developed for agriculture and livestock breeding. The users are freed from taxes and tithes for a period of 3 years. The lands can also be used for pastures and for timber extraction, being also imprescriptible for a period of 10 years. Afterwards their users become omnipotent owners. Such legislation in Bulgaria is also created for the receipt of lands for people coming from Circassian and Tatarian lands, as well as for the so called "lordly and homestead lands".[14]

From 1881 begins the settlement of the undersized estates.[15] For political reasons some large-scale estates were expropriated too. Another group of laws regulates 'ownership' and "possession of uncovered estates".[16] They aim to keep and develop the municipal lands, forestry and pastures, and to create a fund of tillable municipal farmland. So the state creates the conditions to define the area and borders of the municipal landed estates and pastures, as well as to find a final decision in the disputes between municipalities, and between the municipalities and the state.[17]

In 1883 the Public-Administrative Regulations for Possessions (PARP 1883),[18] and later in 1885 the Law on Notaries and District Judges (LNDJ 1885),[19] modify who can perform notarial acts.

As well as introducing special notary functions, Art. 34 of the LNDJ 1889 introduces a preserving procedure to issue "constative notary deeds for ownership".

12 | Petrov Ts 1975.

13 | Provisional Rules for the Organisation of the Judicial Part in Bulgaria (PROJP 1878). This normative act was elaborated by a commission headed by S. Lukianov. As a result of this act there is a start of the process of building of a legal framework for proceedings and structure of the judicial system. See Chapter 3, Art. 528 which is related to the agricultural lands. See Decree No. 2 of the 24.08.1878 of the Provisional Government.

14 | Law on Circassian and Tatar Lands (LCTL 1880) (rev. 1883) as well as Law on Improving the Condition of the Agricultural Population on Lordly and Homestead Lands (LICAPLHL 1880); (LICAPLHL 1885, new). See State Gazette iss. 95/23.12.1880.

15 | The Law on the Sale, Exchange and Exploitation of State Real Estate (LSEESRE 1881).

16 | Domestic Rules Acts (DRA 1883).

17 | Law for Determining the State Measures and Pastures (1885) enforceable until 1903. See State Gazette, issue 24 of 1885.

18 | State Gazette, iss. 6/15.02.1885.

19 | State Gazette, iss. 41/15.11.1885.

These deeds are issued on the grounds of written and oral evidence in cases where the written evidence is not enough to establish the property right. After the unification of The Principality of Bulgaria with Eastern Rumelia in 1886, when the law on notaries and district judges also becomes enforceable for Eastern Rumelia, justice of the peace magistrates can also perform notary deeds.

In 1887 the Law on Transactions Involving the Purchase and Sale of Real Estate by Emigrants from Bulgaria (LTIPSREEB 1887)[20] was enacted. At that time there were cases where residents in the country, subjects of the former Ottoman Empire, decided to leave forever. To protect the interests of the state and Bulgarian buyers, the legislature created requirements for the validity of these transactions. The seller had to prove that they were the legal owner of the land or building, or that they had the right to acquire the respective property. When the seller did not possess a 'fortress act' for their land or building, they were obliged to prove the period of possession of the property, which could not be less than five years.

The Law on Obligations and Contracts (LOC 1892)[21] adopted in 1892 marks the beginning of Bulgarian contractual law. It literally transposes whole branches from the Italian Civil Law of 1865,[22] codifying the object, means of acting, interpretation of contracts, different types of considerations, methods of repayment and others. Through LOC 1892 the state organises the mutual paid use of objects and workforce, as well as the different types of lease contracts with a predominantly agrarian nature — in addition to the specifically normative types of contracts such as commission, treaty, insurance, game, pledge, deposit, sequester, antichresis and guaranty. It is important to note that the law also arranges contractual agricultural rents.

In 1892 the Law on the Sale of Immovable Property Carried Out in Domestic Conditions or Private Acts (LSIPCODCPA 1892)[23] is adopted. It validates the written contracts for sale of real estate property, signed before its coming into force. It also introduces the written form of the contracts for sale of property as enough for the real assignment effect,[24] but without opposing this simplified form of the acquired rights *in rem* over any such real estate, acquired by third persons with a serf deed.

In 1895 the Agricultural Funds Act (FAA 1895)[25] is enacted, which settles the activity of the agricultural funds in Bulgaria and their principal – the Ministry of Trade and Agriculture (MTA) at the time. MTA again, after the enforcement of the Agricultural Education Act of 1897 (AEA 1897),[26] manages the first Bulgarian

20 | State Gazette, iss. 5/ 15.02.1887.
21 | See State Gazette, iss. 268/01.01.1892.
22 | The same transposes the ideas of the French Civil Codex from 1804 (famous also as the 'Napoleonian Codex').
23 | See State Gazette, iss. 23/15.10.1892.
24 | Acting simultaneously ex tunc and ex nunc.
25 | State Gazette, iss. 14/ 27.02.1895.
26 | State Gazette, iss.12/ 15.02.1897.

modern structures for agricultural education, distributed between lower, middle and higher agricultural schools.

In 1898 the Property, Title and Easements Act (PTEA 1898) is adopted, giving regulation to the institutes of legal prescription and usucapion.

The Land Tax Act of 1901 (LTA 1901)[27] initiates the payment of tax for all 'uncovered' (uncultivated) lands, being in their essence fields, meadows, gardens, rose gardens, paddy fields, fallow lands, pastures, empty fields, and others.

In 1904 the Property, Title and Easements Act (PTEA 1904)[28] enters into legal force and settles a unified legal regime of immovable property, including agricultural lands in Bulgaria. The act defines the means of transfer of property, and should be considered as a fundamental law — the first to regulate the right *in rem* as a legal branch in Bulgaria.

Two decades after the establishment of the Third Bulgarian state, from 1903-1905, Bulgaria adopts 'The Emlak Registers'.[29] These can be considered an event that protects private property with a combination of written and notary evidence, special means of manifestation, and an order for the management of processes by a specially appointed public authority.

The Privileges and Mortgages Act of 1908 (PMA 1908)[30] enters into legal force in 1910. For the first time in the country it initiates the registration of deeds regarding real estate property. All deeds for gratuitous or onerous contracts, or any such where transfer or validation of rights *in rem* over real estates are stipulated, apart from privileges and mortgages, are registered in an excerpt within a special notary book, kept by the notary (in the first edition "the keeper of the mortgage books"), acting within the regional or justice of the peace magistrate at the region where the real estate is situated.[31]

In 1908 The Cadastre Act (CA 1908)[32] is adopted. It distinguishes the properties as being either state, municipal or private property, defines their exact borders, and aims at the juridical and physical definition of properties as agricultural lands. One of the targets of the law is to achieve correct calculation of the land tax, as well as the initiation of precise real estate registers. It also defines some works related to planimetry and altimetry (charting of the terrain) of the country. Even though this reform was never finished, these few acts made the first attempts to initiate a centralised system of land registers and the creation of a property register.

27 | State Gazette, iss.12/ 15.03.1901.
28 | State Gazette, iss. 5/01.01.1904.
29 | 'The Emlak Register' (from Turkish 'emlak', which means 'real estate' and also 'real estate tax') is a book-keeping register where real estates are registered, such as lands, buildings and accessory facilities.
30 | Decree No. 20 /19.01.1908.
31 | Art. 1 of the PMA, 1908.
32 | State Gazette, iss. 8/22.09.1908.

Soon after the end of the First World War, the country starts a process of redistribution of land property. Two laws – The State Lands Increase Act (SLIA 1920)[33] and The Labour Land Property Act (LLPA 1921)[34] limit the right to possess agricultural lands exceeding a certain size. The *homestead lands* can not exceed 30 ha in total in cases where the land is not being cultivated by the owners, e.g. including rented lands. No forestry and pasture lands belonging to private owners can exceed 50 ha. LLPA 1921 allows possession of agricultural land in accordance with the abilities and needs of the owner and his family.[35] Up to 30 ha of farmable area could be possessed by each family, on the condition that the land is being cultivated. The area is limited to 4 ha if the owner is alone, and up to 10 ha when there is a family but the land is not directly used. The law also considers the mutual living and farming of the land by related families who have separate ownership of the land.

The Law for the Settlement of Immovable Property in the New Lands (LSIPNL 1921)[36] aims to define the public relations regarding disputable property of refugees, as well as former property of Turkish citizens or the Turkish state.[37] In the case of agricultural lands affiliated to the kingdom in 1913 and 1915, this act abandons the approach of initial verification of rights by the claimants of property before a district judge. LSIPNL 1921 is repealed in 1941.

In accordance with the Law for the Improvement of Agricultural Production and Protection of Field Real Estates (LIAPPFRE 1923),[38] the state establishes norms for compensation of the losses "caused by known and unknown ill-doers", as well as losses due to lost or damaged livestock and destruction or theft of apiaries, beehives, buildings, fences, facilities, and others. In its essence this law provides the first of its kind financial compensation from the state - and despite the fact that it does not refer to agricultural lands (as legislation about land-settlement of indigent or landless persons), it does provide direct help for farmers.

33 | State Gazette, iss 109/30.05.1920.
34 | State Gazette, iss. 31/30.03. 1921.
35 | Part 1, Art. 1 of LLPA 1921 stipulates that each farmer may possess and use as much land as he needs in order to invest all his labour into it, combined with the helping labour of the members of his family, and this area of the lands does not include the lands used with hired labour.
36 | Decree No. 54 / 19.07.1921
37 | As for the contracts for the lands, given to the Kingdom of Bulgaria by the Ottoman Empire by force of the treaties from 1913 and 1915 and by the norms of the international treaties with third countries, the matter for the property of the foreigners should be cleared. For example, in Art. 29 of the law the rights of other foreigners from other nationalities is mentioned, as those envisaged in the Greek-Bulgarian convention from 27 November 1919. These texts are only enforced under the conditions of mutuality, i.e. only if the country of origin of the foreigners ensure the same rights and privileges for Bulgarian refugees.
38 | State Gazette, Iss 52/15.12.1923.

The Law on Cadastre and Land Comasation[39] (LCLC 1941)[40] initiates a legal regime of cadastre imaging of properties, as well as their registration in a list with a detailed description of: their type, location, borders, size and owner, and the creation of a cadastre plan with horizontals and keeping of the relevant registry data. For the first time the terms for 'plot of land',[41] 'participants in the cadastre' and 'cadastre object' are defined.

The Law on Settlement of Real Estate Ownership in Southern Dobrudja (LSREOSD 1942)[42] defines the public relations towards properties, including agricultural land owned by migrants from Northern Dobrudja, as well as the restitution of the estates expropriated by the Romanian state. As a result of this law, the following questions are resolved: (a) compensation for the owners for the time of the acts performed by the Romanian authority in Southern Dobrudja for the living, as well as in case of death; (b) some corrections related to the land consolidation; (c) land-settlement with state- and municipality-owned backyard parcels designated for building, which were given by the Romanian authorities to Bulgarians or have been picked up by 14 September 1940 by Bulgarians; (d) exchange of properties left in Northern Dobrudja outside of the cities by owners who are not migrants, as well as formation of ownership of the estates under Art. 5 of the Craiova Treaty, transferred with private written contracts.

This period should be characterised as a time of codification of the issues related to agricultural property, establishment of working institutions for management and keeping of the property, and finding decisions of the problems related to land - specifically the means of living for the indigent and landless villagers - as well as first attempts for consolidation of the agricultural land.

2. Period of centralised governance of agriculture and 'collectivisation'

The 'communist era' (1944-1989) in Bulgaria saw the abolition of private property. This was codified in the 1947 Constitution,[43] known as the 'Dimitrov Constitution,' after the then communist leader, and borrowed heavily from the 1936 USSR Constitution. The ideological doctrine categorised property into personal, cooperative, and state-owned, notably excluding private property. Despite the claim that "the

39 | The term "commasation" originates from the Latin "commassatio," which means "grouping." Commasation represents the process of redistributing agricultural land. Scattered properties in different locations are exchanged for equivalent ones belonging to other owners. In this way, through the exchange, owners (farmers) have larger, consolidated agricultural lands.
40 | State Gazette, Iss. 127/13.06.1941.
41 | Art. 8 of LCLA says that 'plot of land' is a part of the earth's surface, defined by durable, visible borders or by characteristics distinguishing it for its means of use.
42 | State Gazette, Iss. 157/20.07.1942.
43 | State Gazette Iss.1/27.12.1947.

land belongs to those who cultivate it", the period was marked by extensive expropriation of property.[44]

In 1945, the Council of Ministers adopted the Ordinance-Law on Labour Cooperative Agricultural Holdings (OLLCAH 1945),[45] establishing the legal framework for Labour Cooperative Agricultural Holdings (LCAHs). This normative act initiated the 'voluntary cooperation' and land transfers, leading to the creation of centralised agricultural structures.[46] It stipulated that the majority of the property of cooperatives would be integrated into the LCAH.[47]

In 1946 the Labour Land Property Act (LLPA 1946)[48] was enacted. In addition to revoking several laws,[49] it implicitly nullified all other conflicting normative acts. The same year, this law was supplemented with a regulation[50] for its implementation, which was fully repealed in late 1997, eight years after the 'transition period'. This fundamental normative act addressed property rights over agricultural lands within these organisations. The subsequent laws effectively reduced the permissible size of agricultural land that individuals could own. Depending on the land type, ownership of private forests and forestry pastures was limited to 0.5 hectares and no more than 1 hectare respectively. Lands exceeding these sizes were expropriated by the state with compensation provided to the owner.[51]

In 1948 a new act was adopted by the Council of Ministers establishing novel types of cooperative entities under state management. The Law for Cooperation (LC 1948)[52] and the Law for Labour Cooperation (LLC 1951), along with accompanying regulation, endorsed a "new socialistic plan" for agricultural cooperation, indirectly impacting agricultural lands.

The cooperations gradually introduced their agricultural lands in LCAH. By some evidence their share is about 90% of all the agricultural lands.[53] Some authors[54] have suggestions about the disputable status of the agricultural lands. The essence is whether the land had been a property of the state, because LCAHs were structures developed on centralised state level, which operate with land

44 | See the Law on Declaring the Properties of the Families of the Former Kings Ferdinand and Boris and their Heirs to be State Property (LDPFFKFBTHSP 1947) which was proclaimed unconstitutional in 1998 with Decision No. 12 of the CC from 4 June 1998 under Constitutional case No. 13 /1998, as well as the Law on the Purchase of Large Agricultural Machinery.
45 | State Gazette Iss. 95/25.04.1945.
46 | Ibid. 'Voluntary cooperation' is defined in Art. 1 and suggests that for the establishment of an LCAH at least 15 physical persons are needed.
47 | Ibid. Art. 15.
48 | State Gazette Iss. 81/09.04.1946 https://tinyurl.com/c4f7vnxa
49 | The Labour Farming Act (LFA 1941) and The Internal Migration and Settlement Act (IMSA 1941) as well as the text of Art. 19 of the Law for the Recovery of the City of Vidin.
50 | State Gazette Iss. 189/20.08.1946. https://tinyurl.com/4s6uupd4
51 | The compensation is not paid in money, but through state obligations. They are paid with 3% interest in a 15-year term by annual emissions.
52 | State Gazette Iss. 282/01.12.1948. https://tinyurl.com/yb5xbkевц
53 | MAFF 2017, 44.
54 | Djerov 1994, 79.

after an act of a state authority — which could be perceived as an act of alienation. Sometimes the thesis is supported that the land is a property of the farmers, who voluntarily presented it into the LCAH or State Agricultural Holding (SAH), while at the same time they have been members of that organisation. The last means that the farmers have kept their ownership of the land.

In this period the real market of agricultural land is missing, as LCAHs and SAHs are the only entities for agricultural produce, and the state has no legal interest in selling agricultural land. Although it should be taken into consideration that in the villages where farmers and their families lived, the agricultural land and their personal backyards were actively used for agricultural production. While even at these reduced sizes the land allowed the farmers to produce not only for themselves but also for sale for the farmers markets,[55] it could be concluded that *de facto* the land had been enough for small private initiatives.[56]

The Property Act 1951 (PA 1951)[57] redefines the institutes of *property*, *possession,*[58] constitution of the *right of use*, legal *prescription,*[59] and *increments*.[60] This processed the protection of 'damaged' and 'impeached' possession,[61] and took actions for protection of property.[62] PA 1951 defines important *potestative rights* related to the right of purchasing of co-owned property[63] or the right to partition of property of a co-owned thing.[64] It could be considered that this legal act follows the classic concept of property, derived from Roman law. It has a major role in the formation of the former Bulgarian legal doctrine, but also for the contemporary one. PA 1951 should be defined as a system of common norms aimed at property and its formal protection.[65] The legislation of the period created some means of protection

55 | At the beginning of the 1980s a backyard of 0.25 ha had a separate building where 3000 chickens were kept. In the nearby backyard there were 25 sheep and 4 cows, and 10-15 tonnes of vegetables (cucumbers, tomatoes, cabbages, onions and others). Stalls for livestock (1-2 cows, 10-12 sheep, 3-5 pigs, 20 bee hives) are a common sight in villages after 1980 (Observations from the town of Straldja, Yambol region; village of Padarsko, Plovdiv region).

56 | Later in the 1980s part of the lands cultivated by the LCAH became the object of lease contracts between the LXAH and the farmers, which is described in detail later in this study.

57 | State Gazette Iss. 92/ 16.11.1951r. https://lex.bg/laws/ldoc/2122102787

58 | The possession is defined by Article 68 of PA 1951, and the bona fide possession is defined in Art. 70 of PA 1951 – acquiring of property on the grounds of 'bona fide possession'.

59 | Ibid. Art. 79 – 85.

60 | Ibid. Art. 92 – 93.

61 | Ibid. Art. 76 gives a regulation to the possession actions and actions of damaged and impeached possession (actio possesio).

62 | Ibid. Art. 108 claim for protection of property (vindicatio rei) is regulated, and in Art. 109 – the claim (actio negatoria); claim for the protection of the boundaries of the property - Art. 111 – (actio funium regundorum).

63 | Ibid. Art. 33, para. 2.

64 | Ibid. Art. 34.

65 | See Venedikov (1991) for the system of Bulgarian property law.

of the agricultural lands from unscrupulous conversion, and their transformation into urban territories of city type.[66]

In 1953, with Decree 88[67] of the Presidium of the National Assembly, properties of the Catholic Church were confiscated.

Hereditary relations were regulated by the Law for Inheritance (LI 1949),[68] which adopted the classical Roman private law concept of inheritance by succession. In this system, the closest heirs exclude the more distant ones, and the spouse of the deceased inherits property alongside all other classes of heirs.

Later in the transition period the CC explicitly affirmed the unconstitutionality of the testamentary disposition with agricultural lands, which were part of the property of the LCAH.[69]

The Family Code (FC 1968) defines the Marital Contract (Marital Unity System, MUS)[70] concerning property. It stipulates that all assets acquired by the spouses during marriage, except for gifts or inheritances received by one of them, are co-owned equally and indivisibly. Despite amendments allowing the MUS to be transformed into a 'separate system' or governed by a 'marital contract',[71] this legal framework remains the most prevalent and frequently applied. Following the completion of the restitution process, the importance of the 'separate system' and 'marital contract' institutes has diminished since 2008 when the code came into effect.

In the 70s, a new expropriation of private property occurred. New limitations were imposed on the property individuals could own and its potential for involuntary alienation. The Law on Citizens' Property (LPC 1973)[72] included agricultural lands. A single-family not part of an LCAH or similar organisation, whose main income was from agricultural work, could own up to 0.5 ha of irrigated land and 1 ha of non-irrigated land. Families not primarily dependent on agriculture could own up to 0.2 ha.[73]

For most of this period, there was no specialised legislation regarding agricultural land[74] tenancy. However, towards the end tenancy was regulated through

66 | Ordinance of the Council of Ministers No 216 for improvement of the town planning plans of the urban areas and increase of the fund of infield lands.
67 | State Gazette Iss. 4/04.01.1953.
68 | State Gazette Iss. 22 /1949 in force from 30.04.1949.
69 | See Decision No 4 from 27.11.1996, for case № 32/95, CC proclaimed that Art. 90a of the LI 1949 is unconstitutional. See also judicial practice under Art. 90a of the LI 1949 in Decision No 216/1996 for civil case 63/96 of the Supreme Court of Cassation, as well as Decision No 422/1998 for civil case 252/98 of the Supreme Court of Cassation.
70 | MUS is short for the Marital Unity System. The ideas of the Family Code from 1968 (annulled) are transposed in the Family Code from 1986 (annulled) and the Family Code from 2008 (FC, 2008).
71 | Art.18, para. 1, p. 2 and Art. 18, para. 1, p. 3 from FC 2008.
72 | State Gazette Iss. 45 /1973, Iss. 19/ 2005 (repealed).
73 | See Art.12 and Art. 13 of the LPC 1973, as well as Ordinance of the Council of Ministers No 25, 1973.
74 | See Stefanov 1992 for the tenancy relationship.

several ordinances. Agricultural land tenancies were integrated into the overall framework for regulating economic activity.[75]

In this period, questionable yet legally binding ideological concepts prevailed. Despite claims that agricultural land belongs to those who cultivate it, possession was highly restricted. The consolidation of agricultural land, however, is an indisputable fact. The normative acts defining property, with minimal changes, remain part of the country's property rights framework. These acts continue to significantly impact relationships concerning agricultural lands.

3. Transition and the Land Reform of 1989. Restitution and Private Property.

The legal sources regulating public relations in property and agricultural lands derive directly from the action of constitutional provisions.[76] There is general and special legislation, as well as law resulting from international agreements.[77]

3.1. First part of the reform: constitutional protection of private property, restitution legislation, discharge (liquidation)

The 1991 Constitution established a new way of distinguishing between ownership: public and private.[78] This restitution should be considered the 8th land reform since the establishment of the Third Bulgarian State.[79] The first changes to the basic law from 2005 were related to guarantees that agricultural land could be acquired by foreign citizens.

75 | Ordinance for Collective and Personal Work Employment of the Citizens for the Production of Additional Quantities of Goods and Services (established with an Ordinance of the Council of Ministers No 35, which regulates the management of small and medium-sized objects (1987). Later the tenancy was organized also by Ordinance No 17 of the Council of Ministers for the remodelling of the internal trade and the services – 1988 and Decree No 56 for the performance of economic activity and the ordinance for its implementation – 1988, as well as in Decree No 922 for the use of land and performance of agricultural activities. Despite that, we should formally mention the Ordinance for Sale, Rent and Tenancy of Object in the Trade, Tourism and Services – 1990 as part of the other period, covered in this study, tenancy relationships were also regulated by this act.

76 | See Art. 21 and Art.22 par. 1, 2 and 3 of CRB, 1991. See State Gazette Iss. 56/ 13.07.1991 r., in force 13.07.1991.

77 | Pursuant to Art. 4 par. 5 of CRB, the international treaties ratified by the Bulgarian Parliament are part of the law of the country.

78 | See the distinction made by the CC with Decision No. 19 in constitutional case No. 11/93. According to Sarafov 2000, 5-12), in the transition period, the important issue of the conditioning community between the state and private individuals, including agricultural lands, was resolved.

79 | Doichinova 1996, 9-14) on land reforms in: 1880, 1885, 1921, 1924, 1933, 1934, 1941 and the one after 1989.

In 1991, the restoration of private property began with the Law on Restoration of Ownership of Expropriated Real Estate (LROERE 1992).[80] A related goal of this reform was the restoration of market relations and, accordingly, the protection of agricultural production. The inclusion of these lands in LCAH and SAF[81]properties led to unclear agricultural land boundaries. This was exacerbated by urban expansion until 1989. Nonetheless many roads, dams, canals, and facilities were constructed during this period, benefiting agriculture. These consequences are dualistic: while infrastructure blurs property boundaries and complicates land ownership determination, it also supports emerging new types of agriculture during the transition.

The Law on the Ownership and Use of Agricultural Lands (LOUAL 1991) was enacted as a special law for the restitution of agricultural land.[82] It balanced public and private interests, establishing a legitimate definition of agricultural land. Specialised administration, detailed administrative procedures, and compensation methods were defined. Municipal Land Commissions (MLCs)[83] restored agricultural lands to owners and their heirs from before collectivisation.[84] LOUAL 1991 clarified the concept of the 'farmer', linking it to residence and the ability to cultivate and care for the land. This was essential for the continuation of the reform, especially as farmers became a key part of the Common Agricultural Policy (CAP).

With the creation of liquidation councils[85] and other organisations,[86] rapid and comprehensive restitution of agricultural land ownership began. Special legislation was created to manage agricultural land, not only by owners and their heirs but also by new producers and private entrepreneurs. The initial responsibility of care fell under LOUAL 1991.

In 1996 the Law on State Property (LSP 1996)[87] and the Law on Municipal Property (LMP 1996)[88] were enacted. Both legal acts introduced a prohibition on the acquisition of state and municipal lands through possession.[89]

This law underpinned public relations in Bulgaria from 1989 to 2023, concerning the acquisition, use and management of agricultural lands, and enabling farmers

80 | State Gazette Iss. 25/30.03.1992.
81 | State Agricultural Farms (SAF).
82 | Art. 2 of LOUAL 1991 gives a legal definition of the agricultural land.
83 | The Land Commissions became the Agriculture and Forestry Services (MLC).
84 | In Decision No. 759 of 01.11.2010 under Decree No. 1859/2009, of the CC, after analysis of Art. 60, par. 4 (repealed) and par. 5 (repealed) of RILOUAL 1991 regarding conclusions about the structure and composition, the number of members of the Land Commissions and in what composition it must meet to make valid decisions.
85 | Through the action of special administrative bodies, in places, LCA and SA were liquidated. See § 13 of the TFP of LOUAL 1991, and § 6a of the additional provisions of the RILOUAL. See State Gazette Iss. 47/30.11.1991r.
86 | Organisations under § 7 of LOUAL's TFP.
87 | State Gazette Iss. 44/ 21.05.1996 https://lex.bg/laws/ldoc/2133874689
88 | Ibid. Iss. 44/ 21.05.1996 https://lex.bg/laws/ldoc/2133874691
89 | Art 7 para. 1 LSP 1996 and Art. 7 para. 1 LMP 1996.

to undertake EU-funded activities. It underwent numerous amendments during this period. Additionally, the Law of Lease in Agriculture (LLA 1996) addressed the economic activities of non-owners.[90]

In 1996, a platform emerged for fostering long-term relations between producers and landowners. The restrictive effect of the Law of Obligations and Contracts (LOC 1950)[91] on contract duration was replaced by a legal framework specifically tailored to agriculture, addressing producers' concerns. Articles 228-239 of LOC 1950, limited leases to 10 years, creating obstacles for long-term cultivation of perennial crops. Despite this, lower costs made such contracts the most prevalent in Bulgarian agriculture.

In practice, rental agreements last at least one year due to the inability to terminate them before the end of the agricultural year,[92] allowing the lessee to harvest. Furthermore, the special form of the rental agreement means that its entry under Art. 112b of the PA 1951, and Art. 113 of the Regulations on Entries (RE)[93] can be contested by any third party who inherits ownership after the contract begins.

Through the LLA 1996, better protection for farmers was achieved due to the extended buyback period for agricultural investments mandated by law. The concept of the 'agricultural year' was introduced, providing legal protection for agricultural producers. Longer terms before the termination of lease contracts and a stricter process for cancelling contracts, always subject to court control, were also established. The claims for cancellation of a contract are conducted by the 'proper party' to the contract - an owner or tenant who has fulfilled all the conditions of the contract - and whoever has the right to cancel it, if the other party is 'faulty'. Long-term lease contracts are not annulled by court decisions.[94]

After the repeal of some of the land acts, the new reform regulated the continuation of these relations based on a by-law.[95]

The ordinance temporarily regulates the assignment of property rights to agricultural land and the conditions for leasing it to citizens, with or without an auction. It outlines the methodology for determining rental contributions and the scenarios of 'land expropriation'[96] for public needs. There are such cases under the

90 | The role of the Commercial Act (CA 1991) /State Gazette Iss.48/18.06.1991/as well as the Co-operatives Act (Co-A, 1991)/State Gazette Iss.63.19.07.1991/ should not be denied either - in the compassion of conditions for farmers - entrepreneurs, some of whom are owners and others as users - to farm and cultivate agricultural lands.

91 | State Gazette Iss 275/ 22.11.1950

92 | Art.16 para. 3 of LLA 1996 in relation with § 2, item 3 of the LLA 1996.

93 | Ibid. Iss .101/18.12.1951.

94 | Art. 28 para. 2 of the LLA 1996 in relation whit Art. 87 of the LOC 1950.

95 | The Council of Ministers issued an Ordinance on the Land Acquisition of Poor and Landless Citizens (See Art. 20 para. 1 of the LOUAL 1991).

96 | 'Land expropriation' can be defined as the opposite of land acquisition - Article 30 paragraph 1 of the Ordinance. The persons who have acquired land have their property confiscated. It is applied when it is established that the persons who have acquired land do not comply with the obligations under § 4 of the Law on the Ownership and Use of Agricultural Lands of 1991 or under Art. 26 of the Law

Law on Restitution of Real Property Ownership of Bulgarian Citizens of Turkish Origin (LRRPOBCTO).[97] The reform is a complex, multifaceted process aimed at resolving the issues of alienated properties[98] by providing legal solutions to the livelihood problems of agricultural landowners, farmers, and their families.[99]

3.2. Restitution: decisions on the restitution of agricultural land within real limits (Article 10a of the LOUAL 1991 and Article 18a and 18b of the RILOUAL)

The legal essence of the restitution of agricultural land gives importance to the restoration of a previously existing legal situation, in the considered case of the right to ownership of agricultural land under special laws.

Restitution involves returning agricultural lands to their original owners and heirs. For accurate restoration, municipal mayors were to provide the MLC with data on changes in specific agricultural lands within six months of LOUAL 1991 coming into force. Legal proceedings start with an application,[100] which includes a sketch and evidence of property rights or heirship.[101] The MLC then issues a decision for each case.[102]

MLC[103] decisions adhered to criteria outlined in Art. 14 para. 1, item 1 and item 2 of LOUAL 1991. These pertained to pre-collectivisation property ownership, and whether land existed and could be restored within real limits.[104] For restitution, the administrative body had to evaluate positive prerequisites for property rights and negative ones, which acted as obstacles. For example, under Art. 9a of the Law of Inheritance (LI 1949), the 'surviving spouse' posed a challenge when restoring ownership of state properties or those included in labour cooperatives. If the subsequent spouse died before restitution and had no children with the testator, they did not inherit.

The main part of the restitution of agricultural land should be carried out within the 'real boundaries' of the property, according to the special legitimate

on the Ownership and Use of Agricultural Lands of 1991 or when the agricultural land is expropriated for public needs.

97 | State Gazette Iss.66/ 14.08.1992

98 | See Decision of the CC No. 18 of 1992.

99 | Punev 2013.

100 | See Art. 11 of LOUAL, 1991 and Article 13 of the RILOUAL 1991

101 | Ibid Art.10 and Art. 13, par. 4, 5 and 6 and Art. 13a of the RILOUAL 1991.

102 | Ibid Art. 14 par. 1 and Art. 11 of the RILOUAL 1991.

103 | The decisions of the Municipal Services for Agriculture for property restoration were individual administrative acts with independent significance and a high degree of stability (they cannot be revoked by the authority that issued them) under Art. 2 of the Law on Administrative Proceedings. After 2006, with the repeal of the Law on Administrative Proceedings (LAP repealed) decisions were issued on the basis of Art. 21 of the Administrative Procedure Code, 2006.

104 | The administrative procedure was similar when it came to forests, according to Art. 13 paragraph 5, of the Law on Restitution of Ownership of Land and Lands from the Forest Fund (LROLLF 1999).

definition in Art. 18a and 18b of the RILOUAL 1991.[105] In many cases, it comes to the need[106] to open a new property.

Another aspect of agricultural land restitution was regulated by §4 of the Transitional and Final Provisions (TFP) of LOUAL 1991. This provision allowed citizens to use agricultural lands according to other normative acts. It included the restoration of properties in urbanised areas, which were initially located in specific places before the formation of Labour Cooperative Farms and State Farms (LSA & SA), and later became part of these organisations' properties.

Restitution also applied to agricultural lands within LCAH yards and other holdings, acknowledging the right of former cooperatives to restitution. Consequently, legal entities were also entitled to restitution. These proceedings were typically initiated administratively, often before 'liquidation councils', which included actions for restoring agricultural lands.[107]

An interesting aspect is the restitution of property in settlements and urbanized areas.[108] The law restores agricultural land properties located in populated areas. Where there is no approved cadastral map, data on property borders is missing, necessitating the creation of an auxiliary plan. Once the MLC's decision for the recovery of a specific property takes effect, the agricultural land in that urban area is added to the cadastral plan.[109]

In 2014, the state policy regarding these agricultural lands was changed. All agricultural lands for which there was no decision to restore the rights of the owners or their heirs became state property.[110]

3.3. Special Proceedings: evidence needed to recover ownership of agricultural land

Ownership was verified through various means, including oral and written evidence. Often old notarial acts were unavailable, so extracts from LCAH & SAH account books, LCAH membership declarations, annuity payment records,

105 | The recovery takes place within real limits, however, where they exist, Art. 10 par. 1 of LOUAL 1991.

106 | 'Distribution' - a term from the Bulgarian legal doctrine related to determining the status of the property and its purpose. In addition to the act of state power - an administrative act, a court decision - the settlement is also associated with the constitutive effect due to which the property has become part of someone's new patrimonium. The term is also used for other properties, not just agricultural land.

107 | See § 12 of the TFP of LOUAL 1991. Restitution in cooperatives was originally regulated in RCM No. 192/1991.

108 | See Article 10 par. 7 of LOUAL 1991.

109 | When restoring properties under Art. 11 and Art. 12 of the RILOUAL 1991. In these cases, the properties supplemented the map of the recovered property according to the order of Art. 134, par. 2 item 2, in connection with § 6, para. 6 of the TPL and became part of the plan, and in the cases where there was an approved cadastral map according to the order of art. 53 and Art. 54 of the LCPR became part of the Cadastral Plan.

110 | See § 12a of RI of LOUAL 1991

partition records, and deeds from the 'Emlak Registers' were used (Art. 12 of LOUAL, 1991). Occasionally, special proceedings were initiated before the MLC.

Owners or their heirs submitted a notarised declaration specifying the location and area of the site[111] with the restitution request. Despite the threat of criminal liability for false data,[112] this recovery method, which persisted until 2001, contributed to the rise in 'land grabbing'[113] cases across the country.

3.4. A three-tier compensation system where restitution within realistic limits cannot be made

With the texts in Art. 10 of LOUAL 1991, in practice a three-tier system for compensation to the owners of agricultural lands, was introduced in Bulgaria. We can conditionally distinguish the benefits as follows:

a) Compensation through other land - according to the location of the restored properties, from the State Land Fund[114]
b) Compensation through other land in case of shortage or lack of land from the State Land Fund (SLF) - with other outside land[115]
c) Compensation through other land or with registered compensation vouchers (RCV)[116]

The compensation system is mixed. Owners and their heirs were compensated with land for agricultural use, as before collectivisation. The state introduced RCVs for cases where restitution in kind was not possible. These could be used by former owners and their heirs to acquire property from agricultural liquidation or participate in state land fund tenders. They also facilitated participation in privatisation processes, including trading on the Bulgarian Stock Exchange. RCVs could not be used as the sole means of payment in auctions for agricultural land, but their flexibility aimed at satisfying claimants and boosting entrepreneurial activity in agriculture.

111 | This possibility exists until 31.12.1999. The declarations under Art. 12 par. 3 is submitted only to the administrative legal authority and were not admissible in the proceedings under Art. 14 par. 3 of LOUAL 1991, that is, before the court.
112 | Without having specifically examined the issue, according to the text of Art. 313 of the Criminal Code (CC 1968) and its application in the cases of restitution of agricultural lands, familiar with the conviction of at least 39 persons in the Plovdiv region alone, for the period 1993-1999.
113 | Norer 2023.
114 | See par. 2, item 1 and par. 4 of LOUAL 1991
115 | Ibid Art. 10c par. 5
116 | Ibid Art. 10c par. 5 which is regulated in detail in Art. 19a as well as Art. 29, para.1 art. 35 – 37a. In Art. 35 par. 4 of LOUAL 1991 and Ordinance on the Conditions, Terms and Procedure for Issuing and Receiving Nominal Compensation Vouchers, as well as Ordinance No. 6 of 19.07.2000. for organizing the sale and trade of agricultural lands from the state land fund and forests from the state forest fund.

With the onset of the restitution processes, the first 'white spots'[117] appeared, leaving parts of the land uncultivable. The restitution methods used led to unclaimed lands of an unknown quantity. Once the land division plans and approved maps of existing lands[118] with restored real boundaries came into effect, these lands were designated as municipal property.

4. Material and procedural issues related to the restitution and protection of agricultural land ownership rights

4.1. Material Law issues in the restitution of agricultural lands.

The restitution of agricultural lands to Bulgarian citizens of Turkish origin. Citizens of Turkish origin and citizens of other countries who had taken steps to leave Bulgaria during the period May - September 1989 had the right to return agricultural lands.[119]

Restitution of lands near state borders. This issue, known as 'dual state lands', involved the restitution of agricultural lands near Bulgaria's western borders. A special procedure for their recovery was established under LOUAL 1991[120] and Law on the Restoration of Ownership of Forests and Lands from the Forest Fund (LROFLFF 1997), but it was suspended along the borders with Serbia and Macedonia until resolved at the interstate level.[121] According to the amended provisions of § 37 of the Transitional and Final Provisions to the Amendment Act of LOUAL, 1991, and the Law on Restoration of Ownership of Forests and Lands from the Forest Fund (LROFLFF, 1997), the Minister of Agriculture, Forestry, and Agrarian Reform was required to announce in the State Gazette the lands where restoration proceedings of 'dual state lands' were suspended until the interstate issue was resolved.

Restitution of lands taken from the Bulgarian Orthodox Church (BOC). The right[122] of restitution of the Bulgarian Orthodox Church (BOC) was restored

117 | 'White spot' - has no legitimate definition but is often used. It refers to the lands that participate in the allocation procedure under Art. 37c, par. 3, item 2 of LOUAL 1991, and for them payments are received in the form of rent on the basis and Art. 37c par. 7 LOUAL 1991.
118 | See 'Unclaimed lands' in Art. 19, par. 1 of LOUAL, 1991.
119 | Decision of GCC No. 962 in city case 704/2005 of 2006.
120 | § 7 of the TFP, LOUAL 1991 State Gazette, No. 98 /f 1997
121 | According to the amended provisions of § 37 of the Transitional and final provisions to Amendment Act of LOUAL (State Gazette, No. 98 of 1997) and § 7 of the TFP of the Law on Restoration of Ownership of Forests and Lands from the Forest Fund (LROFLFF, 1997) the Minister of Agriculture, Forestry and Agrarian Reform was charged with the obligation to announce in the State Gazette the lands in which the proceedings for the restoration of ownership of the so-called 'dual state lands' are suspended under the border with the Federal Republic of Yugoslavia and with the Republic of Macedonia until the issue is resolved at the interstate level.
122 | See decision of GC No. 1631/1995 in civil case No. 2157/93 and Decision of GC No. 1745/1995 in administrative case No. 1540/93.

through a special law – the Law of Religions (LR 2002). Issues arose in the restitution of agricultural lands for Bulgarian citizens, foreign citizens, those with dual citizenship, and organisations. Some subjects lived in border areas, while others were permanently outside the country, necessitating a special order of administrative protection. This allowed most to recover their rights to agricultural lands.[123]

Restitution that cannot be made within real limits (Art. 10 of LOUAL 1991). Due to the impossibility of restoring built-up agricultural land, the restoration had to involve equally sized land given to LCAH during collectivisation, sometimes even in neighbouring areas. This process often led to resentment as the new land differed in value and location from the original. Disputes arose when the new property was smaller than what was taken during collectivisation or when lands were restored in different settlements.[124] Restituents had to establish new factual and legal relationships with new property neighbours and the administrative bodies managing other lands in different settlements. Agricultural lands were subject to compensation per Art. 10b of LOUAL 1991, and Art. 16 of the Water Act (WA 2000), making actual restitution inapplicable for lands with dams.[125]

Exclusion of certain persons from the circle of persons participating in the restitution of agricultural lands (Art. 9a of LI 1949). The legislator imposed negative provisions on the right to property arising from restitution for those described in Art. 9a of LI 1949 — specifically the 'next spouse'. Persons who married a decedent with agricultural land inheritance, after the inclusion of the property in the LCAH or SAH, and whose marriage ended before the land recovery process began, without having children, are excluded from restitution.[126] Due to inheritance methods, the number of undersized and co-owned properties with agricultural land rights became obstacles for dispositional actions, often rendering long-term agricultural activities impractical.

Legal institutes of prescriptive possession and acquired prescription (Art. 10 of LOUAL 1991 and Art. 16, par. 2 of LI 1949). Applying the general principle of *tempus regit actum*, assessing facts according to the law in force at their implementation, led to legal disputes in agricultural land restoration. Objections arose over interrupted or expired prescription and claims that legal entities could not invoke acquired statute of limitations due to substantive legal norms of repealed laws.[127]

123 | See Interpretative Decision of No. 1 of GMCC of 1997.

124 | These problems of Bulgarian restitution are described by Kopeva, Noev & Evtimov 2002, 63–65; Boliari 2013, 273–302 although following the fragmentation of property, in a logistical, economic aspect. The same turned out to be a prerequisite for legal disputes, both with the 'new' neighbours and in some cases with the 'new' administrative authorities.

125 | State Gazette, iss. 67/27.07.1999

126 | See ID of the General Meeting of the Civil College (GMCC) No. 1/1998 under the Civil Code 1/98 for the figure of the 'next spouse'.

127 | See Decision of GC No. 467/1994 under City Decree 1059/93 in connection with Art. 34 of LJ, 1898, according to which properties are acquired by a prescriptive tenure of 20 years as opposed to PL (5 or 10 years). See also Decision GCC No. 1860/2000 under city d. 849/00 on how the statute of limitations runs under PL, 1973.

4.2. Important substantive legal issues regarding already restituted lands

Competition in establishing a right of use on state agricultural lands (Art. 26 of LOUAL 1991). The issue arises when establishing a right to land from the State Land Fund, particularly with multiple applicants and no clear procedure from the Council of Ministers. By analogy and the criteria in Art. 21 and Art. 22 of LOUAL 1991, it is inferred that organising a tender is necessary for establishing an easement.[128] Later revisions of the law prioritised those who cultivated the land in establishing real property rights. For municipal agricultural lands used for over 10 years, ownership could be transferred to the cultivator, following a Municipal Council decision in the respective location.[129]

The right to redeem jointly owned property (Art. 32 of PA 1951). In co-ownership, each co-owner has the right to buy the property at the price offered by the seller. The claim for the protection of these potestative rights is brought simultaneously against the buyer and the seller of the agricultural land.[130]

The divisions of jointly owned property, due to the limitations of the maximum allowable amount subject to division (Art. 34 of PA 1951). Agricultural land divisions were conducted in two forms: contractual and extrajudicial. Each co-owner[131] could request division if the item's value exceeded BGN 50.[132] Security proceedings were handled before a notary, with the contract written and notarised, and recorded in the Property Register. State or municipal co-ownership could also be terminated through partition, sale, exchange, or buyback, as determined by the Council of Ministers.

Fragmentation of land was prohibited if properties were below 0.3 ha for fields, 2 acres for meadows, and 0.1 ha for vineyards and orchards.[133] Inheritance divisions often involved multiple properties, including urban and agricultural lands, complicating equal share distribution among heirs. Each heir could seek their share[134] in non-cash remuneration and request agricultural land they were already cultivating, leading to diverse interests and legal challenges in property division lawsuits.[135]

Establishing a servitude of agricultural land for public benefit. These *servitudes* were carried out pursuant to Art. 104, par. 2 of the Act of Waters (AW, 2000).

128 | Boyanov 2000, 23-25.
129 | Stoyanov 2000.
130 | Venedikov 1975, 87.
131 | Ibid Art. 36.
132 | See Art. 34 of PA, 1951.
133 | Ibid Article 72, as well as Art. 10 para. 1 of RI to LOUAL 1991
134 | See IJ of GMCC No 14/85 of 1985.
135 | 'Inheritance mass' - the sum of all the property of a testator, including his rights and obligations.

4.3. Procedural issues during and after restitution. Protection of property and other rights arising from agricultural land

The defence was to be divided into two types: administrative procedures/ proceedings for restitution of property and judicial challenge, through a claim process, with both restitution decisions and preliminary rights related to the implementation of a fair restitution legal process.[136]

Decisions of the Municipal Land Commissions (MLCs) in the absence of accurate information about the borders of agricultural lands. There were cases in which MLCs issued a decision under Art. 14 par. 1 item 3 of LOUAL 1991, in the absence of sufficient evidence of the boundaries and sizes of the properties representing agricultural lands.[137] The decision detailed the boundaries and size of the properties, and who owned them at what time. The names of the neighbours of the property are described, on which side of the property the neighbouring property was located (north, south, east, west), as well as the first names of the neighbours of the property.[138]

Establishing a manifest error of fact (Art. 26 of the RI on LOUAL 1991). Factual errors were established in accordance with Art. 26 of RI on LOUAL 1991, leading to a revision of the effective map of the restored property.[139]

Protection of agricultural lands by administrative order (Art. 34 of LOAUL 1991). This protection is related to the obligation of the administrative body to establish the illegal use of agricultural land according to the texts in Art. 34 of LOUAL 1991. In accordance with the obligation arising directly under the law itself (*ex lege*), the administrative body should establish specific circumstances in cases where it is referred to seize the land from a person who uses it without a legal basis, or with a defective legal basis[140] — that is, there is a dispute about which person has the right to use the property. An administrative procedure for the acquisition of agricultural lands was also established in Art. 34, para. 1 of the LOUAL 1991. On the legal basis of Art.34, para. 1 of the LOUAL 1991, agricultural land was expropriated in favor of the State Land Fund.[141]

136 | Luchnikov S. (1999).

137 | See § 4 - § 4 l of LOUAL's TFP 1991.

138 | Later, after the entry into force of the cadastre, these descriptions were replaced by a property identifier, which includes the UCATTU code of the settlement in whose territory the property is located, a cadastral area number on the cadastral map and a land property number. There are still properties with active solutions of the described type that do not have an identifier.

139 | An order for processing the map of the restored property was issued on the basis of Art. 17, para. 8 of LOUAL 1991. This proceeding is not to be confused with the establishment of 'incompleteness and error' (art. 53b of LCPR 2001) and the correction of the error (art. 54 para. 1 of LCPR 2001).

140 | See Art. 34 par. 2 of LOUAL 1991. See Decision of the GCC No. 530/2007 under city d. 604/06 for annulment of the administrative act under the pretext that the substantive law was violated.

141 | This norm is also developed in Art. 47 par. 1, 8, 9 of TFP LOUAL 1991, and in these cases the Regional Agriculture and Forestry Offices should self-report and order the seizure of the property in favour of the owner - the State.

This protection is special compared to the protection procedures introduced in Art. 65 of the MPA 1996 and §80 of the SPA 1996. In that case the mayor's order, which was issued in a material violation of the administrative production rules, should be revoked. The execution of the seizure orders could be in advance.[142]

As for the persons whose property was used without a legal basis, they have the right to compensation, which is defined as three times the amount of the average annual rent payment in the land where the disputed property is located.[143]

Special claims for violated property right (under §4i of TFP of LOUAL 1991 and RILOUAL 1991[144]). These claims were brought by the owners of agricultural lands or their heirs. When by an act of the Presidium of the National Assembly, by the Council of State or the Council of Ministers, the land was confiscated or was transferred in violation of other normative acts, including by using a party or official position or by abuse of power, in a one-year period from the entry into force of the law, each of the owners of such lands could establish by court order their violated right of ownership.

Claims against restitution decisions and to establish a substantive right on which the restitution of agricultural land depends (Art. 11 par. 2; Art. 14 par. 3 and Art. 14 par. 4 of LOUAL 1991). Claims under Art. 11, par. 2 of LOUAL 1991 involve substantive law disputes, independent of restitution stages. Owners and heirs[145] missing the Art. 11 deadline can still claim restitution through MLC.[146]

Proceedings under Art. 14, par. 3 of LOUAL 1991 are administrative, involving actions before the MLC for property recovery. Regional court decisions based on the property's location, or the cassation instance as a District Court (post-2007, Administrative Court), should recognize restitution rights. These decisions lack constitutive effect, requiring a new MLC decision aligned with restitution or compensation methods.

Art. 14, para. 4 of LOUAL 1991 claims are for those denied restitution, available to any third party, excluding the State, if the property was restored to another in a separate proceeding.[147] These claims act as a prejudicial remedy before restitution

142 | See Art. 34 par. 2 of LOUAL 1991.

143 | Ibid. Art. 34 par. 6.

144 | Regulations for the Implementation of the Law on the Ownership and Use of Agricultural Lands (RILOWAL). This normative act was adopted by Decree No. 74 of the Council of Ministers of April 25, 1991.

145 | See GCC Decision No. 676/1996 in Civil Case 876/96.

146 | See IJ of GMCC No 2/1991, that the validity of the decision is a preliminary issue. This matter under IJ of GMCC No 2/1996 is within the exclusive competence of MAS.

147 | The decision of MLC would not be invalid. It was possible to 'reissue' a new decision of MLC, but in limited cases, when the individual administrative act that entered into force is cancelled or amended in accordance with Art. 231 and Art. 239 of the Code of Civil Procedure (CPC 1952, repealed); or according to art. 32 par. 1 of Law on Administrative Proceedings (LAP, 1979 repealed). In any case the GMCC is not competent to overturn its decisions on its own. See also IJ of GMCC No. 1/97 on city case 11 of 1997 for individual administrative acts, as well as IJ of GMCC No. 6/05 of 2006 for the right of

under Art. 14, para. 3 of LOUAL 1991, contesting the legality of MLC and court decisions.

Ownership claims could be filed until the land division plan's enforcement. Illegal property use, such as laying field roads, violated owners' rights. Protection was sought through property[148] protection claims.[149]

Protection under the general claim procedure (Art. 108 of PA 1951). In cases where properties of cooperatives and cooperative unions were seized or expropriated and subsequently restituted as agricultural land, representatives had the right to seek judicial protection, following the general claim procedure. The state or seized property had to belong to cooperatives or unions that had resumed activities, and until the LC 1991, this property was state or municipal. To have legal interest, the cooperatives and unions should have resumed activities later, preventing timely restitution requests.[150]

Problems with indemnifying the owners related (§ 27, par. 2, item 3 of the TFP of LOUAL 1991). Disputes also arose because of problems with notifying interested parties when receiving benefits. The controversial practice of providing compensation pursuant to § 27, par. 2, item 3 of the TFP of LOUAL 1991[151] delayed the process of obtaining them.[152]

Claims affecting access to agricultural land and easement benefits - section 36(1) of the Agricultural Property Protection Act (APPA 1999). In cases where agricultural property has no access, the owner may request a land easement for passage through another's property by applying to the local mayor. The property owner is entitled to compensation. The mayor issues an order regarding the right of way and compensation, which can be appealed before the district court within 14 days per the Civil Procedure Code (CPC 2008). The district court examines the case and issues a final decision. The right to restitution was not unconditional,[153] and

interested parties to make an objection that the issued administrative act is invalid, thereby removing the restitution effect.

148 | Stoyanov, Kurteva & Stoykova 2011 provide a detailed legal analysis of the legal regimes for acquiring ownership of agricultural land.

149 | See Art. 4 par. 4 and Art. 23, par. 1 and par. 2 of LOUAL 1991 and Art. 20. See decision No. 1609/1994 civil case 151/93 of GC.

150 | Initially, the jurisprudence under § 1 Additional Provisions to the Law of the Cooperative Act (CA 1999) held that claims could only refer to the actual return of the property, not restitution of property. This was subsequently rectified by ID No 6/2005 of 2006.

151 | Rosanis (2001).

152 | See Bobatinov & Vlahov 2007, Parallax 2000 with an analysis of the issues in judicial practice related to the restitution process.

153 | Under Art. 7, para. 1 of the LROERE 1992, property owners or their heirs who had not received compensation for their expropriated properties could file claims for the restoration of ownership, even if the properties had been acquired by third parties in violation of legal regulations, through the use of official or party positions, or by abuse of power. The text of Art. 7 para 1 of the LROERE 1992 was declared unconstitutional and repealed by Decision No. 20/1995 of the Constitutional Court on Case 24 of the 1995, thereby restoring legal certainty.

often faced judicial protection challenges. This led to prolonged and costly legal disputes,[154] introducing legal uncertainty regarding ownership.[155]

5. New philosophy in acquiring agricultural land. The two moratoriums, the decisions of the Constitutional Court (CC) of Bulgaria, and the decision of the Court of Justice of the European Union (CJEU) regarding agricultural lands.

Moratorium on the acquisition of agricultural land by foreigners. The first of two moratoriums concerned the acquisition and use of agricultural lands in line with Bulgaria's accession to EU law. From 1951 to June 1 1996, acquiring any tangible state or municipal property was completely banned in Bulgaria. Despite the amendment to Art. 22, par. 1 of the CRB,[156] allowing foreign citizens to own agricultural land under certain conditions, its implementation was postponed for seven years after Bulgaria joined the EU in 2007. In 2014, the National Assembly attempted to extend the moratorium restricting foreign ownership of agricultural land, but the Constitutional Court declared it unconstitutional.[157] Within a year, Art. 3 and Art. 3a of LOUAL 1991 were amended, introducing residency criteria for acquiring agricultural land and criteria for the origin of funds used. These changes conflicted with the EU's free movement of people, goods, and capital laws, prompting the European Commission to initiate a procedure against Bulgaria in 2017 for violating EU law.[158]

The decision of the CJEU in case C-562/22. Despite the concerns of the member states, particularly Bulgaria, Romania, Hungary, Latvia, Lithuania, and Slovakia on the topic of 'Land Grabbing', against which there are ongoing procedures for non-compliance with EU law on 'Free Movement of Capital', the Court of Justice of the European Union issued a preliminary ruling on the matter. It rejected the possibility of constitutions and land laws to contain special protections or restrictions regarding acquiring agricultural land. In Bulgaria, the acquisition of agricultural land is only possible after establishing 'permanent residence', meaning the person

154 | We are aware of multiple legal disputes with more than 20 co-claimant plaintiffs spanning approximately 10 years.
155 | See comment by Yotov 2020.
156 | CRB, Art. 22 par. 1 - amendment published in the State Gazette, no. 18 of 2005, in force from 01.01.2007.
157 | See Decision No. 1 of January 28, 2014 of the CC in Constitutional Case No. 22 of 2013, SG No. issue 10 of 4.2.2014 in connection with a violation of Art. 22 par. 1 of the Constitution and § 3 'Free Movement of Capital', item 2 of Annex VI: The list under Article 20 of the Accession Protocol, Transitional Measures, Bulgaria from the Treaty of Accession of the Republic of Bulgaria and Romania to the European Union (TARBREU).
158 | See the European Commission website for the infringement procedure against Bulgaria in the section General Directorate Financial Stability, Financial Services and Union of Capital Markets for 'Acquisition of Agricultural Land'. http://europa.eu/rapid/press-release_IP-16-1827_EN.htm .

acquiring the property must prove that they have been practically and continuously residing in the country for five years before the transaction.[159]

The decision of the CJEU in case C-562/22[160] categorically states that Art. 63 of the TFEU[161] must be interpreted to mean that member state regulations are not permissible that require more than five years' residency in order to acquire agricultural property.

This interpretation suggests that the provision in Art. 3c para. 1 and para. 2 of the LOUAL 1991 contradicts EU law and the text[162] of the Act of Accession of Bulgaria.

The text of the CJEU decision aligns with the view expressed by the President of the Republic of Bulgaria, made through the imposition of a veto,[163] which halted a decision of the then Bulgarian parliament to extend the moratorium.

Therefore, the judicial practice in the Republic of Bulgaria regarding the application of Art. 3c of the LOUAL 1991 should be changed. There are some exceptions, for example, for facts that occurred during the period of 1 January to 7 May 2014. The decision,[164] where the deciding authority recognised the ownership rights of a German citizen who requested this right due to a preliminary contract for the purchase and sale of agricultural land concluded in 2012.[165] The court ruled that, despite the prohibition being in force, by the end of the period on 1 January there were no obstacles to the transaction, hence the contract should be declared as concluded. A citizen of another state cannot be treated less favourably than provided for in the accession treaty, according to which Bulgarian legislation does not foresee a requirement for 'permanent residence' despite the norm in Art. 3c, para. 1 of the LOUAL 1991 for the period after 2014.

Following the CJEU decision, Bulgarian jurisdictions should cease the practice of declaring transactions void based on Art. 26, para. 1 of the Law on Obligations and Contracts, when the subject is agricultural land and it is not irrefutably proven that a person has 'resided' in the country for five years.[166]

Similar reasoning can be found in the judgment issued by the Pleven District Court,[167] in a process regarding a claim to declare a preliminary contract for

159 | Art. 3c para. 1 and para. 2 of the LOUAL, State Gazette, Iss. (38/2014). The text of the legislative amendment has been in this form since 2014. The hidden motives for its creation were economic. However, the protection of small Bulgarian agricultural producers—living in villages—from large investors did not materialise.

160 | Decision of the CJEU in case C-562/22 (ECLI:EU: C: 2024:55)

161 | Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Official Journal of the European Union, Volume 51, 9 May 2008, 2008/C 115/01 (TFEU)

162 | § 3 'Free Movement of Capital', item 2 of Annex VI: List under Art. 23 of the Act of Accession of Bulgaria.

163 | President of the Republic of Bulgaria, made through the imposition of a veto with Decree № 73 of 11.04.2014 State Gazette, issue 34 of 15.4.2014

164 | Decision № 16 of 29.02.2016 of the Targovishte District Court in civil case № 302/2012.

165 | Art. 19 of the Law of Obligations and Contracts.

166 | Decision № 18 of 29.01.2016 in civil case № 368/2015 of the Kubrat District Court

167 | Decision № 201/14.05.2018 of the Pleven District Court in civil case № 208/2018.

a transaction - in this case, involving agricultural land - as final, i.e., producing its real property effect, i.e., transferring ownership rights.[168]

This also means that the court should not terminate judicial disputes "due to lack of legal interest"[169] if there is a possibility of a potential 'irregularity' in the claim, due to evidence – contracts for the sale of agricultural land presented before the Court - even when such contracts were made for 'personal simulation'.[170] Similarly, the procedure for security proceedings before a notary where the subject of the transaction is agricultural land should be changed in notarial proceedings.[171] Citizens and legal resident entities should not be required to present evidence of their residence in the country.

The CJEU only guides how this norm should be understood,[172] therefore a legislative change should be initiated. Moreover, jurisdictions must consider that Bulgarian courts, due to their obligation (*erga omnes*) to apply this decision in case C-562/22 of the CJEU, must understand that the same decision has a retroactive effect (*ex tunc*) for the period until 1 January 2014.

Moratorium on the acquisition by statute of limitations of agricultural lands that are state and municipal property. The second moratorium continued the rejection of the 'communist era' ideology, preventing property acquisition from the state or municipalities, even when they were inactive. The statute of limitations for acquiring state and municipal properties was suspended for over 15 years, from May 31 2006 to 2022. This moratorium was lifted by a CC Decision,[173] which argued that the excessively long term provided for in § 1, par. 1 of the PA 1951 (PA Supplement Act - PASA 2020) and § 2 of the final provisions of the PA 1951 (PA Amendment Act - PAAA 2018) should be terminated.

The state and municipalities must manage their properties with the care of a good owner. They have sufficient tools to prevent the acquisition of their properties by private individuals through the statute of limitations. Municipalities and the state can issue deeds of ownership or file a *vindicatio rei*[174] to protect the property. Regional governors and mayors can also issue orders[175] for the seizure of such properties.[176]

168 | See Legal basis Art. 19 of the Law on Obligations and Contracts
169 | Art. 130 of the Civil Procedure Code
170 | Art. 17, para. 1 of the Law on Obligations and Contracts
171 | Art. 530-607 of the Civil Procedure Code
172 | Bressol et al., C-73/2008 , EU:C:2010:181
173 | See Decision No. 3 of February 24, 2022 of the CC in Constitutional Case No. 16 of 2021.
174 | We mean vindicatio rei - 'claim of the non-possessing owner, against the possessing non-owner' (Venediktov, 1991, p. 393). In the Bulgarian legal doctrine, this is the claim under Art.108 of PA, 1951.
175 | Art. 80, para. 1 SPA, 1996 and art. 65, para.1 MPA, 1996.
176 | There are the first cases where the Supreme Court of Cassation has recognised private individuals as owners who have acquired properties from the municipality due to expired statute of limitations. See Decision № 559 of the SCC /02.10.2024 1 and Decision № 510 of the SCC /06.02.2024 2. Although the cited examples are for urban properties, the likelihood of seeing decisions for the acquisition of agricultural lands owned by the state or municipality is high.

6. Continuation of land reform after restitution. Period of accession of the country to the EU

As part of the continuation of this reform, we should pursue land reform, and enter onto the cadastre of real estate in the country, respectively, the links created within it and between it and the Property Register — as well as new governance carried out through new administrative authorities.[177]

After 2007, with its accession the EU, one can see a new trajectory for the country regarding the acquisition of land by foreign citizens,[178] as well as implementation of the goals of the Common Agricultural Policy (CAP) for effective agricultural production,[179] with the help of the application of the procedure for the consolidation of the use of agricultural land[180] and accordingly, the creation of new organisational forms to manage agricultural land.[181] All this leads to a new direction in the reform.

6.1. The preference of the user of the property by the user

In practice, with some of the changes, the state tried to restore the principle of "the land belongs to the one who cultivates it" by returning it naturally into the hands of farmers. By deliberate legal provisions, 'preferences' were introduced in favour of the lessee, giving them priority when buying agricultural land, with a lease agreement for a period of 5 years.[182]

6.2. The procedure under Art. 37 c of LOUAL 1991 - consolidation of agricultural land

The state created a special procedure in Art. 37c of LOUAL 1991, which gave priority to land reform over the land acquisition of poor and landless citizens, by deploying consolidation based on the use of agricultural land. Consolidation was to be effected by means of a 'distribution' of agricultural land not under cultivation among tenant-producers on the same land. This procedure begins for properties

177 | The relationship between the LCPR 2001 and the Registration Regulations, as well as the relationship between the Agency for Geodesy, Cartography and Cadastre (AGCC) and the Registration Agency (RA) under the LCPR 2001, is structured similarly to the Law on Cadastre and Land Registry of Romania (Monitoring Official No. 26 / 1996)
178 | The topic is discussed below in point 3 of the article.
179 | We have in mind the first and main objective of the CAP incorporated in Art. 39, para. 1(a) TFEU, according to which 'individual efficiency' is most important in agriculture.
180 | Art. 37 of (LOUAL, 1991).
181 | Special Investment Purpose Companies and Protection of Economic Sovereignty Act 2021 (SIPCPES 2021), which repealed the Special Investment Purpose Companies Act 2003 (SIPCPES 2003).
182 | Art. 4a par. 1 of LOUAL 1991.

under Art. 37c, Para. 3, Item 4 of LOAUL 1991 for which no declaration has been submitted under Art. 69 of RILOUAL by the owners or persons entitled to use the land.

In such cases, the already mentioned tenants of the land should distribute them themselves.[183] When these lessees do not reach an agreement, the agricultural lands in question are distributed administratively by a specially created commission.[184] All owners whose land was cultivated (used) in accordance with the described procedure are paid a sum – rent.[185]

The procedure for determining the arrays for the use of agricultural lands and for concluding, amending and terminating the agreement between the lessees under Art. 37c of LOUAL 1991 is defined in detail in RILOUAL.[186] Other agricultural lands from the state land fund may be added to these lands by the order of the Minister of Agriculture or a designated representative.

6.3. Special Purpose Companies (SPC)

The state developed the necessary legislation for the creation of specialised organisations dealing with the consolidation of agricultural land - activities related to: acquisition, management and securitisation of agricultural land in Bulgaria and in other EU and EEA member countries. Where the immovable properties acquired by such a company are located in the territory of another EEA member state, the valuations of such properties shall be subject to international valuation standards adopted by the International Valuation Standards Board in London, UK. Later, the companies were given the opportunity to work in other countries that have expressed their desire to become members of the EU.[187]

6.4. Problems arising from the relationship of agricultural land - financing of farmers from EU structural funds

Problems with the lease of agricultural land included by one of the co-owners. This relationship is not immediate, and yet the subsidies associated with receiving funds from EU funds[188] are an important incentive for land use and leasing. In the case of leases concluded under Art. 4a (new) of LOUAL 1991, only one of the co-owners is sufficient to lease the agricultural land to a third party if they own more than 25% of the land in question. It may emerge that other co-owners who

183 | Ibid. Article 37c, para. 2.
184 | Ibid. Art.37c para. 3 and 4.
185 | Ibid. Art.37 in para. 7 in connection with Art. 37 par. 4 (LOUAL 1991), the rent is defined as the average for the land.
186 | Art. 37 of LOUAL, 1991. which refers to RILOUAL.
187 | We are referring to the operations of one of the five remaining companies in countries such as Ukraine.
188 | See Farmers' Assistance Act (FAA 1998).

grow crops permanently attached to the land and feed off of that land should be removed from the property.

Competition when registering two or more legal acts (agreements). Lease contracts concluded in the form determined by law should be registered in the MLC, as this is the proper procedure for the lessees - producers to receive financial resources from the EU funds.[189] These contracts are entered pursuant to Art. 112b of PA 1951. According to the provision of Art. 37b, para. 6 of LOUAL 1991 in force from 22 May 2018, when competing contracts are found - that is, when for the same property more than one contract for rent or lease of agricultural land is submitted for registration - upon registration in MAS preference is given to that entered with earlier data. However, this way of solving the issue may not solve the problems with short-term contracts. Accordingly, it is possible to witness the consequences detailed in the previous paragraph.

6.5. Attempt to integrate land legislation

In light of the procedure initiated against Bulgaria for violating EU law, multiple attempts were undertaken to revise the legislation concerning agricultural lands. Initially, on August 27 2018, during the LOUAL session, the Ministry of Education and Culture proposed a draft amendment to Article 3c of LOUAL 1991, aligned with the MAFF 2017 research advocating for a unified legal framework for land relations. This project was subsequently withdrawn.

Subsequently, on December 17 2018 a legislative amendment was introduced in LOUAL 1991. The accompanying rulebook proposed changes to institutions dealing with property, rents, and rental agreements, inadvertently blending substantive and procedural legal norms, thus compromising systematic coherence. On December 17 2018 the Council of Ministers initiated a public consultation, extending until January 16 2019, aimed at formulating a new draft decision on the adoption of a draft Law on Property, Land Relations, and Protection of Agricultural Lands.

These proposed changes were deemed inconsistent with the delegation powers stipulated in normative acts. Consequently, the anticipated unification of two principal laws - LOUAL 1991 and the Law for the Protection of Agricultural Lands (LPAL 1996) - was not realised. The final legislative endeavour, provisionally termed the Agricultural Code, was attempted on November 5 2019. This initiative aimed to harmonise with the fundamental principles outlined in Art.19 and 20 of the CRB, ensuring the protection of users and supporting landowners who cultivate to

189 | In Art. 41, par. 3 of LOUAL 1991 is an imputed obligation to register the legal grounds (contracts and property documents) for the purposes of the assistance. Ordinance No. 5 of 2009 is about the terms and conditions for submitting applications under schemes and measures for direct payments contained in § 11, item 1 of the Ordinance amending and supplementing Ordinance No. 3 of 2015 in connection with FAA 1998.

prevent agricultural land fragmentation. Furthermore, this legislation also prioritised environmental objectives.

6.6. 'Green' agricultural lands

In accordance with Art. 21 of the national constitution, and Article 2, paragraph 1 of the LPAL 1996, land is designated as 'national wealth.' Furthermore, Art. 2, paragraph 3 of the aforementioned legislation permits the alteration of agricultural land use "exceptionally in cases of proven necessity". Assuming such necessity, this pertains to the construction of buildings and facilities that bolster agricultural activities.[190] In cases involving facilities under Article 17a, it is challenging to assert that certain changes - such as those related to construction or the use of land for photovoltaic plants - fully protect the public interest, and do not result in building on fertile agricultural lands.[191]

7. The judicial system and some more interesting legal figures in the doctrine affecting agricultural lands

The judiciary exercises control over the legality of acts and actions of administrative bodies.[192] Beyond the decisions of administrative bodies that previously restored ownership of agricultural lands, courts adjudicated all disputes concerning material rights related to property protection. Amidst the transitional period, the judicial system underwent several reforms. It transitioned from two-instance to three-instance proceedings, with agricultural land disputes being addressed both administratively and civilly. The structure of the judicial system evolved, with changes in the generic jurisdiction for disputes related to agricultural lands. Initially, these disputes were heard before the civil courts, starting with the district court. Since 2007, appeals against decisions of the first-instance district courts have been handled by the administrative court.[193]

The interpretative decisions of the Colleges of Civil Courts in Bulgaria (CCCB), along with the interpretations by the collegiums of the Supreme Court of Cassation (SCC) and the Supreme Administrative Court (SAC) in cases where analogous legal relations were decided by different panels of the court, were often contradictory.

190 | See § 5 of Ordinance No. 19. for the cases of construction on agricultural lands: 1. Agricultural buildings for storage of plant and animal products. 2. Agricultural buildings for raising animals. 3. Buildings for agricultural machinery. 4. Reservoirs. 5. For the places where the animals are kept, manure storage and purification facilities. 6. Facilities for water supply, sewage and electricity supply. 7. Hydromelioration facilities.
191 | Art. 20a and Art. 2, LPAL 1996, in connection with Article 17a of LOUAL 1991.
192 | Art. 9 paragraph 1 of the Judicial System Act (JSA 2007).
193 | For example, the court proceedings before the second instance on the claims under Art. 14 para. 3 of LOUAL 1991.

This aspect of practice was and remains binding for the judicial authorities. Its extensive volume, as per LOUAL 1991, PA 1951, SPA 1996, MP 1996 and LPAL 1996 - spanning thousands of printed pages - complicates legal defence and the judiciary's functioning.

Conclusions and discussion

The repeated changes and turning to the direction of the legislation should also be interpreted as a 'problem' of the land reform. To date, there is no legal information system that covers all legal changes in agricultural land to the full extent.

Restitution is a process whereby, along with the restoration of private property, a redistribution of agricultural land is created. The redistribution of the assets also led to its subsequent fragmentation, correspondingly to difficulties in realising the ownership rights of the agricultural lands.

In the legal system of the country, new relations related to the use of agricultural lands have developed. Consolidation of agricultural lands should solve problems arising from the fragmentation of the resources and conditions for dealing with the fundamental problem - food security. At the same time, thanks to this direction of land reform, conditions were created for increasing the concentration of agricultural land and problems with the access to it of entire groups of farmers.[194]

The modern trajectory of farmland legislation follows the logic of the Green Deal. Despite the idea of a balance between food and environmental security, it is difficult to predict what the long-term effect of such an impact will be.

De lege farenda

A. Article 3c, paragraph 1 and paragraph 2 of the LOUAL 1991 should be repealed. This would synchronise Bulgarian legislation related to agricultural land with EU law in the section "free movement of persons, goods, capital" and would terminate the infringement procedure against the country.

B. We believe that a new order for compensation for the owners who have been recognised but have not had ownership restored, according to the order of § 27, paragraph 2, item 3 of LOUAL's TFP 1991, would be appropriate not only for managing agricultural lands. After the restitution, suitable land for agricultural use, which can be offered as compensation to entitled persons, is highly limited. The lands from the municipal land fund are invariably far from populated areas. The persons - restitutors, in most cases - do not live in the settlements where these lands are located and prefer to sell them when possible. Since there is no explicit

194 | This issue is discussed in detail in CEDR 2019.

legal prohibition, compensation from the municipal land fund can be carried out not only through agricultural lands but also through lands with the status of urban lands, i.e., located in urbanised areas. Such compensations are particularly suitable if they are carried out in small and highly depopulated settlements. This would be a suitable incentive for people to return to live in Bulgarian villages.

C. Some problems related to the competition of rights among co-owners of agricultural land, providing the same for rent in the manner provided in Article 4a of LOUAL 1991, can be solved by the method of rent payment. That is, landlords who rent agricultural land without the consent of the other co-owners are obliged to compensate them appropriately, by Article 30, paragraph 3 of PA 1951. The owner who can conclude a rental agreement on behalf of and for the account of the remaining co-owners should pay them a proportional part of the received rent. The rent amount should not be less than the average rent in the respective locality where the agricultural land subject to the transaction is located. This would reduce unfair behaviour on the part of those co-owners who conclude rental agreements to the detriment of the remaining co-owners. We propose that a new text be created in Article 4a of LOUAL 1991: "The amount of the proportional part of the rent payment for those co-owners who did not participate in its conclusion cannot be less than the average rental payment for the respective locality where the agricultural land subject to the rental agreement is located."

D. The registration of short-term rental agreements for agricultural land should become mandatory. Such a requirement does not exist at present, and therefore only rental agreements concluded for a term longer than 1 year are registered. For this reason, the agreements are only registered with the Municipal Agriculture and Forestry Services, as a basis for farmers to receive subsidies under the Law on Assistance to Agricultural Producers. This would play a preventive role against fraud with funds received from the EU. We propose that a new text be created in Article 112 of the Property Law: "Rental agreements for agricultural land are registered regardless of the term for which they are concluded."

E. Some adverse consequences related to the procedure for consolidating the use of agricultural land under Article 37c of LOUAL 1991, and more specifically the concentration of agricultural land in the hands of several tenants within one land, can be solved by 'separating' agricultural land for the needs of farmers - those who live on the same land. This means that in Article 37c, paragraph 3 of the LOUAL 1991, a new text should be created, stating that in cases of allocation of agricultural land use among tenants, the interests of farmers living in nearby settlements should be taken into account.

F. The integration of information between agricultural and other registers would play a positive role in the management of agricultural lands.

References

1. Beyers Ch (2005) Land Restitution in District Six, Cape Town, Community, citizenship and social exclusion, Dphil dissertation, Sussex University.
2. Bobatinov M & Vlahov, Kr (2007). *Property Law. Practical problems,* Sibi.
3. Boliari N (2013) Does Land Fragmentation Affect Land Productivity? Empirical Evidence from Bulgaria, *Review of Agricultural and Environmental Studies* 94 (3), pp. 273–302, doi: 10.4074/S1966960713003019.
4. Boyanov G (2000) Land easements related to water bodies, *Ownership and right*, 5, pp. 13-19.
5. Burawoy M & Verdery K (1999) *Introduction. In Uncertain Transition: ethnographies of change in the post-socialist world (eds) Burawoy, M. and K. Verdery*, Oxford: Rowman and Littlefield.
6. CEDR (Hrsg.) (2019) *Agriculture and Competition: XXIX European Congress and Colloquium of Rural Law, Lille, 20-23 September 2017* (82), Schriften zum Agrar-, Umwelt- und Verbraucherschutzrecht UR - https://doi.org/10.5771/9783845299655.
7. Djerov A (1994) *Restitution – legal issues. Comment*. Asconi - ed. p. 168
8. Doichinova Yu (1996) Organizational restructuring of Bulgarian agriculture prerequisites results, *Economy and management of agriculture*, 2, pp. 9-14.
9. Fay D & James D (2009) Originally published in Fay, Derrick and James, Deborah, (eds.) The rights and wrongs of land restitution: 'restoring what was ours'. *Routledge, London, UK*, pp. 1-24. http://tinyurl.com/yzxnt5dr [28.01.2024]
10. Giovarelli R & Bledsoe D (2001) Land Reform in Eastern Europe Western CIS, Transcaucuses, Balkans, and EU Accession Countries. FAO. https://www.fao.org/3/ad878e/AD878E00.htm [28.01.2024]
11. Hall R (2007) The impact of land restitution and land reform on livelihoods, Research Report 32, http://tinyurl.com/4fturxvt [accessed 28.01.2024]
12. Hartvigsen M (2013) Land reform in Central and Eastern Europe after 1989 and its outcome in the form of farm structures and land fragmentation, Land Tenure Working Paper 24, FAO, p. 61. http://tinyurl.com/jbzhkwps [02.09.2024]
13. Holt-Jensen A & Raagmaa G (2010) Restitution of agricultural land in Estonia: Consequences for landscape development and production, Norsk Geografisk Tidsskrift - Norwegian Journal of Geography, 64(3), pp.129-141. DOI: 10.1080/00291951.2010.502443

14. James D (2007) Gaining Ground? 'Rights' and 'Property' in South African land reform, London: Glasshouse Press.

15. Kopeva D, Noev N & Evtimov V (2002) Land fragmentation and land consolidation in the agricultural sector – A case study from Bulgaria. FAO. https://tinyurl.com/y3jpbabp [28.01.2024]

16. Luchnikov Sv (1999). The restitution, *Bar review*, SIBI. pp. 5 – 11.

17. Ministry of Agriculture, Food and Forestry (MAFF 2017) Analysis of the normative regulation of public relations in land use regarding the ownership, use, protection and management of agricultural lands in Bulgaria, Working group under order No. RD 09-771 of October 3, 2017.

18. Myers F (1986) The Politics of Representation: Anthropological Discourse and Australian Aborigines. *American Ethnologist* 13(1), pp. 138-153.

19. Nikolov V (1992) *Processes and issues of privatization and restitution in the rural economy, Restitution and privatization through the eyes of independent experts*, Zager.

20. Norer R(Ed.) (2023) Food sovereignty, food security and the contribution of agricultural law: XXX European Congress and Colloquium of Rural Law, Poznań, 18–21 Sept., 2019 (92), Schriften zum Agrar-, Umwelt- und Verbraucherschutzrecht, https://doi.org/10.5771/9783748941439.

21. Ntsebeza L (2005) Democracy compromised: chiefs and the politics of the land in South Africa. Leiden: Brill, 2005.

22. Parallax (2000) *Agricultural lands. Collection of normative acts. Court practice*. A new star.

23. Petrov Ts (1975) Agrarian Reforms in Bulgaria, 1880-1944, Sofia, Publishing House of the Bulgarian Academy of Sciences, 41.

24. Povinelli E (2004) *At home in the violence of recognition. In Property in Question: value transformation in the global economy* (eds) Katherine Verdery and Caroline Humphrey, Berg: Oxford.

25. Punev B (2013) Restitution of illegally seized property by the authorities in the communist state (review of the jurisprudence of the Constitutional Court of the Republic of Bulgaria), *Property and law,* 9 and 10.

26. Rosanis S (2001) Co-ownership and camaraderie in the process. *Ownership and right*, (6), pp. 41 – 46.

27. Sarafov P (2000) Ownership between private and public ownership. *Ownership and right*, (5) pp. 5-12.

28. Sivenov B (1992) *Some economic and legal aspects of restitution and privatization, Restitution and privatization through the eyes of independent experts*, Zager.

29. Stefanov G (1992) About the nature of lease agreements. *Legal thought.* (1), pp. 27-33.

30. Stoyanov V (2000) Right of use according to Art. 26 of the LOUAL. *Ownership and right*. 5, pp. 23-27.

31. Stoyanov V, Kurteva, St & Stoykova, Yu (2011) *Legal regime of agricultural lands and forest territories,* IC Labor and Law.

32. Szilágyi JE (2016) Acquisition of the ownership of agricultural lands in Hungary, taking the EU's and other countries' law into consideration, *Zbornik Radova*, 50, p. 1437.

33. Szilágyi JE (2022) Hungary: Strict Agricultural Land and Holding Regulations for Sustainable and Traditional Rural Communities, Central European Academic Publishing, pp. 145-197.

34. Venedikov P (1975) *Co-ownership*. Science and art.

35. Venedikov P (1991) *System of Bulgarian property law.* Schedule 7M. Sofia

36. Yotov St (2020) *Rule of law, justice and legal certainty, Challenge the right!*. https://tinyurl.com/4hy5ap2u [04.12.2024]