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Closed gardens: the peripheries of agriculture

1. Introduction

In Hungary's real estate registration there are three different categories on the title deeds where a land parcel can lie: on the central area, on the outlying area and we also have a special category, the so-called limited-use parcels. The latter ones are the closed gardens which I intend to analyse from the perspective of agricultural law. Parcels lying on any of these three area categories can be registered as tillage, meadow, pasture, vineyard, garden, orchard, reed bank, forest or woodland according to their method of utilization and natural condition. However, it is important to point out that closed gardens are generally used as vineyard, garden or orchard as a result of historical development, so they represent the most intensive form of land utilisation. Unfortunately, it is only true in theory, the less in practice…

This conflict is originated from the 1970's when closed gardens started to change functionally. According to the original Socialist idea these parcels would have served as important agricultural territories being an integrant part of the system of farmers' co-operative as primary lands of small-scale farming. Although, in the last third of 20th century many of the owners started to use them for habitual residence and recreational functions[1]. The problem started here: though the parcels have not been used for agricultural purposes, but from the perspective of real estate law and agricultural law they have been considered as agricultural lands. On the 1st part of title deeds they are registered according to their theoretical natural condition, nevertheless the real life doesn't seem to be in balance with these features. Because of the legal fact that they are considered as agricultural lands the legal sources of agricultural law have to be enforced referring to them, such as the Act CXXII of 2013 on Transactions in Agricultural and Forestry Land and the Act CXXIX of 2007 on Protection of Agricultural Lands.

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[1] According to some data there are 200 000 hectares of limited-use parcels, in: http://www.agrotrend.hu/piac/agrarpenzek/5-6-millio-tulajdonost-erinthet-a-zartkertek-problemaja (28.05.2018)

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As a result of this contradiction between the legal and the social status of closed gardens there are many polemies in every-day life which are mainly suffered by the owners. At the same time, not only the owners can be pitied, but also the Hungarian agriculture as a whole. According to the National Rural Strategy[2] 2,7% of Hungary's agricultural area are registered as vineyard, garden or orchard which mainly lie as limited-use parcels / closed gardens. Although the percentage rate may seem neglectable at first sight, but we cannot forget that these parcels intensifiedly need the daily work and care of the land users which results that they cannot be cultivated on a territory so large as tillage.

In the last years the solutions intending to cease the problem have been created from two different aspects: there were times when the interests of owners were in the focus, but nowadays the matter is approached from a point of view which prefers the Hungarian agriculture's collective needs to the individual demands. My scholarship wishes to deal with the consequences of these decisions: I would like to enlighten the problems and qualm that were caused by the legal provision[3] which had created the opportunity for the owners of closed gardens to have their limited-use parcels rezoned as non-agricultural by filling out and submitting a simple request for free. Besides it, I would like to mention a new and welcome national application that takes into consideration the aspects of recultivation, but its detailed analysis is not my intention. Although, first of all I aim to introduce a short historical background of closed gardens – based on my latest research – in order that the current problems could be examined in accordance with these parcels' original functions.

2/A. The historical roots

In order to analyse the direct and indirect historical antecedents of closed gardens it is reasonable to start with its first legal defition that was incorporated in the Act IV of 1967, Section 26, Paragraph (1): „Closed garden is the part of a town's (city's) outlying area that is separated and cannot be used for large-scale cultivation." A parallel can be drawn between the elements of the definition – being a part of an outlying area, incapability for large-scale cultivation and separation – and the agricultural scenes of last centuries, which directly lead the Socialist legislature to comply the existing characteristics of town systems and the legal relations of lands with the uniquely created system of farmers' co-operative. In connection with these specialities we can even look back to the 14th century.

[2] Nemzeti Vidékstratégia [National Rural Strategy] 2012-2020, 23.

[3] Act CXLI of 1997 on Real Estate Registration (hereinafter referred to as Inytv.), Section 89/A, Paragraph (1): The owner of a land shown in the real estate register as a limited-use parcel (hereinafter referred to as „limited-use property") may submit a request unti 31 December 2017 – as provided for in the decree adopted for the implementation of this Act – for having his property rezoned as non-agricultural.

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After the reign of Louis the Great a new progress started to evolve: many serfs, who put faith in the opportunity of elevation, endeavoured to get more and more hectares of land. Its one method was the so-called clearing that is an open space in a forest, especially one cleared for cultivation. Clearings meant the possibility of unlocking personal skills and the autonomous right of use for serfs. Because of these features clearings were the areas where serfs tended to cultivate more valuable plants, like fruits, vegetables and especially different kinds of grapes. So in the times of feudalism clearings' way of utilisation equalled the closed gardens' way of utilisation in the 20th century. In both cases the chosen plants are originated from the fact that the land users had high level of freedom concerning these areas. As during feudalism besides clearings there was the two-year or three-year shifting cultivation of lands, in the last century we can speak about the lands cultivated by the farmers' co-operative besides closed gardens. Although the cultivation of feudal town communities was not so coordinated and organised as the farmers' co-operatives' method of the 20th century, but putting an emphasis on collective needs can be noticed in both cases. Whereas the town's coordinated cultivation was only controlled because of the requirements of economical and productional reasonableness, establishing farmers' co-operatives and their way of cultivation was „fed" by the Socialist-Communist ideology.

Apart from clearings there were the so-called outlying gardens, which were formed during the 14th and 15th centuries and were solidified during the urbarium of Maria Theresa. These gardens had the same features as the above-mentioned legal definition of closed gardens in 1967: they lied in the outlying areas of towns due to the geographical characteristics and the specialities of town systems. In many medieval villages and market towns houses were built tightly next to each other and this resulted in the consequence that the serfs were not able to establish their orchards and vineyards in the central areas, so they needed to cultivate these plants farther from their houses. So the legal definition's element of being part of an outlying area was inherited from this necessity. Though the outlying gardens had to be set up reasonably; serfs had to take into account several factors: they could not curb the lands of tillage and they had to ensure its continuity. These requirements and the claim to realise the intensive cultivation of gardens generated that these gardens were positioned in the outlying areas, but still as near the serfs' houses as they could be. It was complemented with the recognition of the need for protection, because these valuable plants cultivated in gardens could not have been left unguardedly. Fences consisting of manure, boughs and sticks meant the protection against wild animals; and a park-keeper was who guarded the area against thieves and other ill-wishers. Thus the 'separation' element of the legal definition can be related to the fences around outlying gardens and the person of the park-keeper can be seen as the continuity of a legal provision from 1929 that declared the joint guarding and protecting of gardens as the task of the orchard and vineyard owners' organization.

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The positions of outlying gardens in the town system, that were solidified during the reign of Maria Theresa, were not influenced by the reallocation proceedings of lands after the abolition of serfdom, so they were predominantly missed out of the land parcellings because of their special role and significance. This was also emphasized by the Act XII of 1894 and the Act XVII of 1929 which regulated the relations of vine-growing communities, strengthening the special needs of orchards and vineyards and their accentuated part in Hungarian commodity production.

Considering the above-mentioned connections it can be said that closed gardens, that are handled as a sui generis concept of Socialist legislature, are far from being without antecedents. Their evolvement can be originated from the fact that an important principle of Socialist agricultural policy found its base in a medium generated by an exceptional historical and town-structural development. The principle mentioned previously is the maintenance of individual and complementary cultivation besides the farmers' co-operatives' collective production. The given structural system of towns and the special provisions directly effected that the Socialist legislature did not have anything more to do than defining a Socialist terminus technicus, beyond which the existing types of tenure can be lined up and which suits the requirement of the principle of individual and complementary cultivation besides farmers' co-operatives.[4]

2/B. Having a limited-use property / closed garden rezoned as non-agricultural

The Act CXLI of 1997 on Real Estate Registration was amended by a provision of the Act XLIV of 2015, Section 11 which made it possible for the owners of limited-use properties to have their closed gardens rezoned as non-agricultural[5]. These properties, that were originally registered as vineyard, garden or orchard and which originally served agricultural purposes, lost their agricultural nature and character as a consequence of this legal action. The possibility for the owners was primarily maintained until 31st December 2016 but later it was lengthened until 31st December 2017 by the Act CLXXXVII of 2016, Section 2. In the introduction I shortly mentioned the fact of functional transformation lasting for more decades that encouraged the legislator to deal with the case and to put emphasis on the owners' interests. However, in order to understand the original function of closed gardens, firstly we have to examine the legal „products" of Socialist legislation.

The system of farmers' co-operatives consisted of two main elements: its emphatic parts were the farmers' co-operative *per se*, but besides these there were the so-called domestic farms where small-scale production took place. Already in the last years of 1950's it was declared that each member of a farmers' co-operative, who has a separate household, can maintain a domestic farm for personal use. This was the time (between 1955 and 1959) when the expression „closed garden" started to appear in the text of government decrees, but its exact definition was not formulated.

[4] Csirszki Martin Milán: A zártkertek kialakulásának történelmi előzményei, *Miskolci Jogtudó*, 2017/1, in: http://jogtudo.uni-miskolc.hu/files/111/csirszki_martin.pdf (28.05.2018)
[5] Inytv., Section 89/A., Paragraph (1)

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The expression was generally used for areas that were cultivated like a garden and included smaller parcels, thus separated from lands appropriate for large-scale production[6]. The connection between closed gardens and domestic farming is greatly demonstrated by the 7th Decree-law[7] of 1959, Section 28, Paragraph (1) which declared the following: The member of a farmers' co-operative is provided with the freedom to exercise his right in connection with his own domestic land lying in central areas, in a homestead or in a closed garden. A member, who has entered the farmers' co-operative, could withhold domestic land from his land taken into the farmers' co-operative, provided he did not obstruct the forming of collective lands. The area of a domestic land could be between 2877,5 and 5755 m^2, but the garden around the house, the vineyard and the orchard, as well as the unbuilt site of the house were also taken into account.

Creating and organising closed gardens was the key of unfolding personal property in Socialism. It is not accidental that I do not call it private property, because in Soviet law – which was also the model for Hungarian law – the categories of private and personal property were sharply separated from each other. According to the Soviet Constitution domestic complementary farms[8] were the part of personal property, and these can be considered equal to Hungarian domestic lands. Socialist views declared that personal property is in total antinomy with private property, because the latter one is the product of capitalism based on exploitation,[9] but the previous one is the most prominent Socialist form of income obtained by work.

The detailed and thorough regulation concerning closed gardens was created by the Acts III and IV of 1967. The Act III of 1967, Section 69, Paragraph (3) repeated the important principle of Socialist agricultural policy: in connection with the work of farmers' co-operatives and of domestic farms there is a strong and concurrent unity. According to the Act IV of 1967, Section 26, Paragraph (2) closed gardens are the agricultural areas designed for the perpetuance of personal land use of citizens, so closed gardens should have been the basis of supplying personal needs, that could not have been realised by the farmers' co-operatives: such as cultivating vegetable, fruit and grape. It was also underpinned by the executive decree of Act IV of 1967: during organising closed gardens areas appropriate for planting grape and fruit had to be marked continuously within closed gardens from the lands that are suitable for these plant cultures according to the features of climate, soil and landscape[10]. Nevertheless, the conceptions were barely realised and were not maintained for a long time. „Closed gardens became the stages of self-fulfilment and in many instances significant destruction of landscapes took place.

[6] *A kertségek és a kertművelés szerepe és jövője III*., in: http://epiteszforum.hu/a-kertsegek-es-a-kertmuveles-szerepe-es-jovoje-iii (28.05.2018)

[7] I use the phrase „decree-law" for the special legal source of Hungarian Socialist legislature: it is a decree of the Presidential Council of the Hungarian People's Republic having the force of a law enacted by the legislature.

[8] Pap Tibor: A személyi tulajdon néhány kérdése a szovjet jogban és fejlődése a népi demokráciák alkotmányainak tükrében, *Jogtudományi Közlöny*, 1949/17-18, 368.

[9] Pap 1949, 371.

[10] Agricultural Ministry Decree no. 7/1967 (X.24.), Section 37

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As a consequence of increasing economical circumstances the areas having high level of situational potential started to be infiltrated by small booths, later vacation houses and residential houses were built on them, so they overdeveloped; at the same time closed gardens far from infrastuctural lines and towns were left being fallow."[11] The consequences of these actions were that closed gardens started to serve purposes that were not drawn up by Socialist views, so they were not used for agricultural work. The situation became more complicated before the change of the regime: the Act I of 1987 repealed the Act IV of 1967, thus it ruined the statutory grounds of closed gardens established 20 years before. After the change of the regime closed gardens finally ceased to exist as a separate category, since the Act LV of 1994, Section 89 declared that henceforth provisions concerning outlying areas have to be used for closed gardens. Although on the level of legal sources closed gardens do not exist any more, but in the real estate register we can meet them on title deeds as a cause of that they were not re-registered as outlying areas.

Inasmuch as closed gardens are not rezoned as non-agricultural lands, i.e. they are registered as vineyard, garden or orchard according to the original Socialist conception, although they are not cultivated in accordance with their registered legal facts, their owners might face several difficulties. The Act CXXII of 2013 on Transactions in Agricultural and Forestry Land, Section 2, Paragraph (1) says: „This Act applies to all lands located in the territory of Hungary." Closed gardens registered as vineyard, garden or orchard are agricultural lands, even so they are not cultivated agriculturally. As a consequence of this provision the most significant disadvantages arise when the owner intends to sell his closed garden, since the legal institutions limiting the Hungarian system of land transactions have to be applied entirely. These restrictive legal institutions are the following: land acquisition limit and land possession limit, ownership acquisition rights, requirements of preliminary declarations, preemption rights, procedure of land acquisition and approval of the contract of sale by the competent authority.[12] The obligation for the application of above-mentioned institutions concerning closed gardens was also confirmed by the Hungarian Supreme Court in one of its review procedures.[13] In the given case the Court declared that the scope of Hungary's previous land act must be applied in connection with a closed garden registered in the real estate register as garden. According to the claimant's argumentation on the estate in question there is a weekend house, hence its function is not agricultural and it cannot be considered as agricultural land, but the Court dismissed his point of view and declared that the factor that must be exclusively taken into account is the status / legal fact registered in the real estate register, and affirmed the Land Act then in force as applicable. Of course, this statement also stands its ground after the enactment of Hungary's new land act, the Act on Transactions in Agricultural and Forestry Land.

[11] *A kertségek és a kertművelés szerepe és jövője III.*
[12] Szilágyi János Ede: A magyar földforgalmi rezsim tulajdonszerzési előírásai, in: Szilágyi János Ede (edit.): *Agrárjog – A magyar agrár- és vidékfejlesztési jogi szabályozás lehetőségei a globalizálódó Európai Unióban*, Miskolc, Miskolci Egyetemi Kiadó, 2017, 76-94.
[13] Decision of the Curia no. Kfv.II.38.080/2014/7.

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The restrictive legal institutions above were created in order to protect and maintain the nation's common heritage in accordance with the Article P of Fundamental Law of Hungary, but it is of great concern whether closed gardens not being in balance with their status in the real estate register could be listed under the umbrella of our nation's heritage. This can only happen if they are recultivated. As a cause of arguments „diagnosed" above the legislator decided to enact the possibility of having closed gardens rezoned as non-agricultural lands, free of charge filling out a simple standardised form for the owner's request. As soon as a closed garden is re-registered as non-agricultural land in the real estate register, the above-mentioned restrictive legal institutions of our land act cannot be applied regarding the transaction of a closed garden; henceforth it can be sold according to the general rules of the Act V of 2013 on the Civil Code. There are no official data about how many percent of the owners seized the opportunity ensured until 31st of December 2017, although we can say that ten thousands of hectares of agricultural lands might have vanished from the sight of agricultural law, which should have originally served the functions of fruit and vegetable growing. In my opinion it should not have been supported by the legislation in a time when more and more hectares of agricultural lands lose their primary role thanks to human expansion. According to the data of Hungarian Central Statistical Office in 1960 in Hungary 7 141 100 hectares were used as agricultural land, but by 2016 it decreased to 5 349 000 hectares[14]. Considering these trends it can be said that the role of the regulations of environmental law becomes more important than ever, and within this the introduction of legal institutions ensuring the increased realisation of land protection and their appropriate and effective implementation into practice must be given an accentuated attention.

2/C. The questions of land protection concerning closed gardens

First of all, we have to deal with the question: Which are the main groups that can be used as collecting categories for factors that endanger the proper use of lands? We can distinguish three of them: the urbanisation and industrialisation, the intensification of agriculture, the natural factors.[15] Regarding closed gardens the disadvantages of the use of methods increasing agricultural productivity (for example fertilizers) are out of the question, because the problems are resulted by their neglect; natural factors are more likely general impacts that influence all agricultural lands, not typically closed gardens. For us the first category is the most relevant: closed gardens are mainly threatened by the expansion of urban environment and industry. There are a number of closed gardens where according to the real estate register fruit, vegetable or grape cultivation takes place, but in reality people live there habitually because they cannot afford to have an apartment or a house in the central areas due to their financial assets.

[14] Központi Statisztikai Hivatal: A mezőgazdaság főbb adatai (1960-), in: https://www.ksh.hu/docs/hun/xstadat/xstadat_hosszu/h_omf001a.html (28.05.2018)
[15] Molnár István: A környezetvédelem földjogi vonatkozásai, *Jogtudományi Közlöny*, 1974/7, 344-345.

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The appearance of industrial activities can be related to the closed gardens' quite low market value, so by purchasing more parcels lying next to each other „significant-sized" areas can be cumulated for the purposes of industrial work.

The question is what type of legal instruments exist that can contribute to the proper use of agricultural lands, especially closed gardens. According to the Act CXXIX of 2007 on Land Protection lands registered in the real estate register as vineyard or orchard have to be cultivated in accordance with their special needs for cultivation, but regarding the other types of lands (that are registered as tillage, meadow, pasture, garden, reed bank, forest or woodland) it is enough to prevent the growing of weeds besides complying with the rules of soil protection[16]. „The obligation of the cultivation of land is unconditional and it is the obligation of the all-time land user."[17] This is a general principle that can be considered as a starting point for establishing accidental failures and applying legal consequences. The general sanction regulated in the Act on Land Protection is the so-called land protection fine that can be used in cases of failure to obligations, notifications and obtaining appropriate authorization[18]. I have to mention that it is really difficult to elaborate an effective and preventive sanction sytem for the occasions for failure to the obligation of cultivation. It was already ascertained during the era of the Socialist regime that expropriating without any reimbursement cannot be a proper sanction, because those let their land lie fallow who do not intend to cultivate it anyway[19]. Although in connection with closed gardens there is a special legal sanction: the first step is that the real estate supervisory authority sends its decision (which includes land protection fine against the owner) to the municipal government of the community where the closed garden is located. If the municipal government runs a so-called social land programme and the owner does not verify the fulfilment of his obligation regarding land use, the municipal government can draw the closed garden in question into the social land programme for a maximum one year without any consideration[20]. The most up-to-date social land programme intends to support potagers (kitchen gardens) and livestock. Its realization period is from 1st March 2018 to 28th February 2019 and there are approximately 440 000 euros for all subsidies. It does not only contributes to the improvement of local social and economical welfare[21], but also ceases that the unutilised closed gardens function as a source of weeds and a centre of infection, and hereby there are no excessive expenditures for the neighbours arising because of the increased tasks of decontamination.[22]

[16] Act CXXIX of 2007 on Land Protection (hereinafter referred to as Tfvt.), Section 5, Paragraph (1)-(2)

[17] Seres Imre: *Földjog*, Budapest, Tankönyvkiadó, 1974, 370.

[18] Tfvt., Section 24, Paragraph (1)

[19] Prugberger Tamás: A mezőgazdasági földre vonatkozó egységes jogi szabályozás kódexrendszerének kialakításához, *Jogtudományi Közlöny*, 1985/3, 147.

[20] Tfvt., Section 5/A, Paragraph (1)-(2) and (7)

[21] *Pályázati felhívás – Konyhakerti és kisállattartási szociális földprogram*., in: http://www.emet.gov.hu//_userfiles/felhivasok/SZOC_FP/szoc_fp_17/palyazati_felhivas_szoc_fp_18_kk__20180112.pdf, 1. (28.05.2018)

[22] Orlovits Zsolt: *A termőföldforgalom és –használat jogi szabályozása*, 2013, 20.

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In relation to the land protection there are two other legal institutions that try to ensure the proper use of lands: the notification of the change concerning the land type (e.g. from orchard to vineyard) and the permission given by the real estate supervisory authority for non-agricultural utilisation. Regarding the previous one the Land Protection Act laconicly declares: the failure of notification entails land protection fine.[23] It can be mentioned that the less strict regulation – namely the requirement of notification and not of permission – may originate from the fact that the land's function remains agricultural, so the change of land type does not influence the obligation of land utilisation, but its content might alter. Nevertheless, in connection with closed gardens, that are predominantly registered as vineyard, stricter rules have to be applied, since when the owner grows grapes, he also needs permission for planting and cutting out[24].

The unlawfulness caused by the non-agricultural utilisation of closed gardens can be avoided by the permission given by the real estate supervisory authority[25]. According to the Land Protection Act, Section 9, Paragraph (3) the non-agricultural utilisation can be temporary or permanent, but the latter one – in my opinion – is more characteristic when speaking about closed gardens. The non-agricultural utilisation might typically refer to building up a house or an apartment, which can serve as the ground of habitual residence after having the appropriate building permission. It is quite interesting that the Act on Transactions in Agricultural and Forestry Land, Section 13, Paragraph (1) declares that ownership acquisition rights shall exist (among others) on condition that the acquiring party agrees not to use the land for other purposes for a period of five years from the time of acquisition, but the same Section, Paragraph (3) lists „the other purposes" that a land may be used for, even within five years from the acquisition and the construction of a residential building is included in it. This causes a contradiction in practice: if one acquires a closed garden registered in the real estate register as vineyard or orchard, he can immediately submit a request to utilise his land for the purpose of the construction of a residential building, although he agreed to accomplish the obligation of land use for a period of five years from the acquisition. Otherwise, the other purposes listed by the Paragraph (3) are all related to agriculture, except the above-mentioned construction of a residential building that is quite an odd one out.

The permanent and final utilisation of land for other purposes is an utter deviation from the obligation of land use by which the land becomes absolutely inadequate for agricultural utilisation and cultivation.[26] It is evident that in the request concerning non-agricultural land use the petitioner has to determine the size of the area needed for other purposes and his exact aim.[27]

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[23] Tfvt., Section 3, Paragraph (1).

[24] Fodor László: *Környezetjog*, Debrecen, Debreceni Egyetemi Kiadó, 2014, 203-204.

[25] Though there are exceptions when permission is not required. These are listed by Tfvt., Section 10, Paragraph (2): e.g. afforestation.

[26] *Termőföld végleges más célú hasznosításának engedélyezése iránti kérelem*, in http://kormanyablak.hu/hu/feladatkorok/170/FOLDH00051 (28.05.2018)

[27] Tfvt., Section 12, Paragraph (1) b) and c).

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If the land utilisation for another purpose is permitted by the real estate supervisory authority, in 30 days after the first non-agricultural use of the land a notification has to be made regarding the change, and on the basis of the notification the land is re-registered / rezoned as non-agricultural.[28] In the case of the land's permanent utilisation for other purposes there is an obligation to pay a single amount of money for land protection. It is determined on the basis of the land's quality and value.[29] This kind of contribution to the land protection is an economical instrument in order to encourage that only lands of lower quality and smaller lands be utilised for non-agricultural purposes.[30]

3. Conclusions and suggestions

As the analysis above shows, concercing closed gardens not only the general institutions and requirements of land protection are applied, but also there are a few special rules, although many of these norms can be easily disregarded. In my opinion, this might come from the fact that they have been handled as a strange and foreign element of the Hungarian agricultural system, so real and complete solutions have never been worked out. Many solutions meant a temporary improvement, but extensive and tangible accomplishments have not been achieved yet. However, the national application mentioned in the introduction is a progressive opportunity. It is called Closed Garden Programme and provides 2 billion Forints overall from the central budget; each project can be subsidised with a maximum of 10 million Forints, and it is even non-refundable. Applications can be submitted by local governments for numerous objectives: in connection with agriculture planting of fruit trees and grape can be highlighted, the other four areas[31] can only contribute to the Hungarian agriculture indirectly.[32]

In order that closed gardens play an important role in our country's agriculture again, a few suggestions have come to my mind during my research, which might help these lands recover their agricultural function. My suggestions can be divided into two main groups depending upon that it is related to the land protection or to the subsidies.

The most crucial measurement should be to increase the number and the efficiency of supervisions. Although our Land Protection Act declares that the real estate authority shall carry out a site visit during the land protection process and the examination of a specialised question,[33] but it would be practical to introduce regular supervisions like before the change of regime.

[28] *Termőföld végleges más célú hasznosításának engedélyezése iránti kérelem.*
[29] Orlovits 2013, 33-34.
[30] Fodor 2014, 204.
[31] For example: installing wild fence, well sinking, developments in relation to electricity etc.
[32] *Megjelent a Zártkert Program pályázati felhívása*, in: http://www.kormany.hu/hu/foldmuvelesugyi-miniszterium/kornyezetugyert-agrarfejlesztesert-es-hungarikumokert-felelos-allamtitkarsag/hirek/zartkert-program-palyazati-felhivasanak-megjelenese (28.05.2018)
[33] Tfvt., Section 7, Paragraph (2).

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These could be organised by the staff of the competent district office of the real estate authority, who should write records about the revealed circumstances. Regular supervisions should be held when there is enough time yet to complete the missed agricultural works.[34] Besides these, irregular supervisions should also be organised according to the supervision plans created by the county offices. It would be considerable to use the help of rangers during the supervisions and they could help the land registries with their advices and perceptions. In connection with land protection one of my other suggestions would be to prohibit lands of 1st and 2nd quality (there are 8 quality classes) to be utilised for non-agricultural purposes, so these requests should be rejected by the real estate supervisory authority without any consideration. Although the Land Protection Act, Section 11, Paragraph (1) declares that lands can only be utilised for non-agricultural purposes exceptionally and only lands of lower quality can be utilised, but – in my opinion – it is a too general phrasing and more definite provisions should be enacted to increasedly protect the agricultural lands of great quality. Apart from this, it would be substantial to abrogate the Act on Transactions in Agricultural and Forestry Land, Section 13, Paragraph (3), Point g), because it is unreasonably permissive by allowing the non-agricultural utilisation of the agricultural land within five years from the acquisition, even if it aims to construct a residential building. It strengthens the possibility of abuse, since considering closed gardens there is a decreasing trend in relation with the requirement of proper agricultural utilisation. The special provisions of closed gardens regarding the failure of the obligation of land use should be stricter: Nemzeti Földalapkezelő Szervezet should have an option for buying the closed garden in question ipso iure, if the closed garden is drawn into the social land programme for the second time. So, it does not only mean a temporary forfeit as a one-year-long sanction. Though it can seem an extraordinarily severe penalty, but the lack of intention of land use should be determined as a presumption which could be disproved by the owner. All of these provisions might indicate a significant step forward, and even in general they could contribute to the decrease of agricultural lands.

Besides the modification of land protection rules, more positive financial incentives should be introduced. The most efficient development could be achieved by letting the owners of closed gardens apply for national subsidies, because this opportunity is only provided for local governments. Within the framework of the European Union's financing there are plenty of possibilities for land users, but because of the closed gardens' small size (they are usually smaller than 6 000 m^2) meeting the appropriate requirements can cause difficulties during the application in default of the concentration of parcels. The main objective of the national applications should be the recultivation, like in the above-mentioned Closed Garden Programme by planting fruit trees and grape. The closed gardens already utilised properly should be supported by different instruments increasing land fertility and productivity, for example fertilizers, manure or glasshouse.

[34] Koronczay Miklós – Mészáros István: *Földügyi szakigazgatás II.*, Földmérési Intézet, 1983, 120.

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In connection with closed gardens this analysis intends to unfold only a few parts of the problems, although I think it would be high time to handle the case by considering these lands' original functions. There are two ways out: dealing with closed gardens as a sui generis legal institution and elaborating a complete and special regulation, or ceasing their existence by re-registering them as outlying areas. The conclusion has to be the same in both of the ways – the decrease of agricultural lands has to be stopped and not to be supported by the legal provisions, thus we might save 200 000 hectares of land, which can serve the purposes of intensive agricultural cultivation.

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