

István OLAJOS *
The acquisition and the right of use of agricultural lands, in particular the
developing Hungarian court practice**

1. The specialities of the application of land transaction

Our land transaction law carries the approach which is typical for the whole agricultural law. On the one hand, the subject of acquisition is special, so its subject is the agricultural and forestry land that has many unique features. One of these specialities is that its value is difficult to determine. In the socialist period, as the social goods of most, the value had not been attributed to the land.¹ However this approach changed after the change of regime. The definition of land value has become important and it is still one of the key issues regarding the assessment of land transaction relations. In Hungary, the value of the land is traditionally determined with the method of the capitalization of the pure income per unit of land, which most accepted instrument is the agricultural land value assessment process. In the process, the cultivation branch² and 'quality classifications³ of the lands are determined and the lands are classified to

* dr. jur., PhD, associate professor, University of Miskolc, Faculty of Law, Department of Agricultural and Labour Law, e-mail: civoliga@uni-miskolc.hu

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¹ See about the agricultural and economic problems of gold crown value and ecological assessment: Németh László: A földértékelés mai problémái, *Társadalmi Szemle*, 1970/2, 59-62; Lóczi Dénes: Tájéértékelés, földértékelés, *Földrajzi Ertesítő*, 1989/3-4, 263-281; Dömsödi János: A földértékelés, földminősítés módszertani elemzése, rendszerezése, továbbfejlesztése, *Geodézia és Kartográfia*, 2007/3, 26-33; furthermore about the legal problems of the aforementioned assessment: Bobvos Pál: A termőföld értékelése: az aranykorona érték és a földár, *Állam és igazgatás*, 1989/7, 658-662; Farkas Csamangó Erika: Az agrár-környezetgazdálkodás alapjai, *Acta Universitatis Szegediensis: Acta juridica et Politica*, 2008/1-17, 151-182; Horváth Gergely: Gondnokság – Az agrár-környezetjog funkciója és felépítése, *Jog, Állam, Politika*, 2012/2, 107-127; Szilágyi János Ede: Az agrárjog dogmatikájának új alapjai - útban a természeti erőforrások joga felé?, *Jogtudományi Közlöny*, 2007/3, 112-114, 121.

² Act CXXII of 2013 on Transactions in Agricultural and Forestry Land (hereinafter referred to as: Fftv) Section 5 Point 17: 'agricultural, forestry land' shall mean any parcel of land, irrespective of where it is located (within or outside the limits of a settlement), registered in the real estate register as cropland, vineyard, orchard, garden, meadow, permanent pasture (grassland), reed bank or forest or woodland, including any parcel of land shown in the real estate register as non-agricultural land noted under the legal concept of land registered in the Országos Erdőállomány Adattár (National Register of Forests) as forest.

³ Agricultural Ministry Decree no. 47/2017 (IX.29) on the Detailed Rules of Agricultural Land Value Assessment (hereinafter referred to as: Frszr.) Section 1, Point 11: 'quality classification' shall mean the differentiation of the different quality areas within the determined cultivation branch on the basis of the differences in the fertility of the land.

the relevant estimation or classification⁴ and then the cadastral clean income of the relevant land is determined.⁵ The estimation of valuation is the task of the land quality experts of land office and other experts. The first topic, which I deal with, the effect of the land value to the authority's approval process.

The other important basis that needs to be systematized is to clarify the sequences of procedures. In case of sales contracts, since the adoption of Fftv. the real estate registration procedure is preceded by a notary's procedure for ensuring the rightful exercise of preemption rights holders and a preliminary administrative procedure, which aim is the examination of the buyer's contractuality and the selection of the buyer exercising preemption rights who best suits the spirit of the Land Transactions Act.

The original contract prepared on security document and endorsed with the approval decision shall be the attachment which constitutes the documentary ground of the real estate registration procedure. In this case the real estate registration authority only examines the existence of the criteria of Act on Real Estate Registry in its own procedure.⁶

⁴ Frszz. Section 1 Point 1. and 14.

⁵ Frszz. Annex no. 3.

⁶ See about the land transactions process: Alvincz József: A földügyi szabályozás téves értelmezése, avagy hiteltelen írás a Hitelben, *Hitel*, 2013/6, 111-121; Andréka Tamás – Olajos István: A földforgalmi jogalkotás és jogalkalmazás végrehajtása kapcsán felmerült jogi problémák elemzése, *Magyar Jog*, 2017/7-8; Anka Márton Tibor: Egymás ellen ható kodifikációk (Polgári Törvénykönyv és földforgalom), *Gazdaság és jog*, 2015/10, 13-19; Bányai Krisztina: A zsebszerződések ügyvézi szemmel, *Új Magyar Közigazgatás*, 2014/1, 62-71; Bányai Krisztina: A zsebszerződésekről a jogi környezet változásainak tükrében, *Studia Iurisprudentiae Doctorandorum Miskolciensium*, 2014/13, 7-33; Bányai Krisztina: A földszerzés korlátozásának elméleti és gyakorlati kérdései Magyarországon, *Agrár- és Környezetjog (JAEL)*, 2016/20, 16-27, doi: 10.21029/JAEL.2016.20.5; Bányai Krisztina: *A magyar mezőgazdasági föld tulajdoni és használati forgalmának jogi korlátai és azok kijátszása*, PhD-Értekezés, Miskolc, Miskolci Egyetem, 2016; Bobvos Pál: A termőföldre vonatkozó elővásárlási jog szabályozása, *Acta Universitatis Szegediensis Acta Juridica et Politica*, 2004/3, 1-25; Bobvos Pál – Hegyes Péter: *Földjogi szabályozások*, Szeged, JATEPress, 2014; Bobvos Pál – Hegyes Péter: *A földforgalom és földhasználat alapintézményei*, Szeged, SZTE ÁJK – JATE Press, 2015; Bobvos Pál – Farkas Csamangó Erika – Hegyes Péter – Jani Péter: A mező- és erdőgazdasági földek alapjogi védelme, in: Balogh Elemér (edit.): *Számadás az Alaptörvényről*, Budapest, Magyar Közlöny Lap- és Könyvkiadó, 2016, 31-40; Burgerné Gimes Anna: Földhasználati és földbirtok-politika az Európai Unióban és néhány csatlakozó országba, *Közgazdasági Szemle*, 2003/9, 819-832; Csák Csilla: Die ungarische Regulierung der Eigentums- und Nutzungsverhältnisse des Ackerbodens nach dem Beitritt zur Europäischen Union, *JAEL*, 2010/9, 20-31; Csák Csilla: A termőföldet érintő jogi szabályozás alkotmányossági normakontrollja, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Alapítvány, 2010; Csák Csilla – Hornyák Zsófia: Az átalakuló mezőgazdasági földszabályozás, *Advocat*, 2013/1-4, 12-17; Csák Csilla – Hornyák Zsófia: A földforgalmi törvény szabályaiba ütköző mezőgazdasági földekkel kapcsolatos szerződések jogkövetkezményei, *Óstermelő*, 2014/2, 10-11; Csák Csilla – Hornyák Zsófia: Igényérvényesítés lehetőségei és határai a mezőgazdasági földforgalom körében - bírósági keretek, *Studia Iurisprudentiae Doctorandorum Miskolciensium*, 2014/14, 139-158; Csák Csilla – Nagy Zoltán:

Regulation of Obligation of Use Regarding the Agricultural Land in Hungary, *Zbornik radova Pravnog fakulteta u Novom Sadu*, 2011/2, 541-549; Csák Csilla – Szilágyi János Ede: Legislative tendencies of land ownership acquisition in Hungary, *Agrarrecht Jahrbuch*, 2013, 215-233; Csák Csilla – Kocsis Bianka Enikő – Raisz Anikő: Agrárpolitikai – agrárjogi vektorok és indikátorok a mezőgazdasági birtokstruktúra szemszögéből, *JAEL*, 2015/19, 44-55; Fodor László: Kis hazai földjogi szemle 2010-ből, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Alapítvány, 2010, 115-130; Gyovai Márk – Kiss-Kondás Eszter: A mező- és erdőgazdasági földek árverés útján történő szerzésének szabályai, különös tekintettel a végrehajtási eljárásra, *JAEL*, 2016/20, 64-77, doi: 10.21029/JAEL.2016.20.50; Gyurán Ildikó: A földforgalmi törvény bírói gyakorlata, in: *A mező-és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. tv. gyakorlati alkalmazása* c. konferencián elhangzott előadás, Miskolci Törvényszék, 2016. október 14.; Hegyes Péter: Értelmezési és jogintézményi kérdések a termőföldre vonatkozó elővásárlási jog szabályozásával összefüggésben, in: Bobvos Pál (edit.): *Reformator iuris cooperandi*, Szeged, Pólay Elemér Alapítvány, 2009, 199-207; Holló Klaudia – Hornyák Zsófia – Nagy Zoltán: Az agrárjog fejlődése Magyarországon 2013 és 2015 között, *JAEL*, 2015/19, 73-87; Hornyák Zsófia: Grunderwerb in Ungarn und im österreichischen Land Vorarlberg, *JAEL*, 2014/17, 62-76; Hornyák Zsófia: Die Voraussetzungen und die Beschränkungen des landwirtschaftlichen Grunderwerbes in rechtsvergleichender Analyse, *CEDR Journal of Rural Law*, 2015/1, 88-97; Hornyák Zsófia: Földöröklési kérdések jogösszehasonlító elemzésben, in: Szabó Miklós (edit.): *Miskolci Egyetem Doktoranduszok Fóruma: Állam- és Jogtudományi Kar szekciókiadványa*, Miskolc, Miskolci Egyetem Tudományos és Nemzetközi Rektorhelyettesi Titkárság, 2016, 131-135; Hornyák Zsófia – Prugberger Tamás: A föld öröklésének speciális szabályai, in: Juhász Ágnes (edit.): *Az új Ptk. öröklési jogi szabályai*, Miskolc, Novotni Alapítvány, 2016, 47-58; Keller Ágnes: A termőföld (mező- és erdőgazdasági földek) forgalmára vonatkozó új szabályozás ügyészi szemmel, *Ügyészek Lapja*, 2013/6, 191-198; Kocsis Bianka Enikő: Az új magyar földforgalmi szabályozás az uniós vizsgálat szemszögéből, *JAEL*, 2014/16, 111-127; Kocsis Bianka Enikő: A mező- és erdőgazdasági földek tulajdonjogának megszerzését vagy használatát korlátozó jogszabályi rendelkezések kijátszására irányuló jogügyletek és a naturalis obligatio kapcsolata, *Studia Iurisprudentiae Doctorandorum Miskolciensium*, 2015/16, 241-258; Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közszerződési Egyetem, 2013, 11-166; Korom Ágoston – Gyenei Laura: The compensation for agricultural land confiscated by the Benes decrees in the light of free movement of capital, in: Lánco Petra et al (edit.): *Hungarian Yearbook of International Law and European Law 2014*, Hague, Eleven International Publishing, 2015, 289-306; Kozma Ágota: Zsebszerződések veszélyei, *Magyar Jog*, 2012/6, 350-360; Kurucz Mihály: Gondolatok egy üzemszabályozási törvény indoklásáról, *Gazdálkodás*, 2012/2, 118-130; Kurucz Mihály: Gondolatok a magyar földforgalmi törvény uniós feszültségpontjainak kérdéseiről, in: Szalma József (edit.): *A Magyar Tudomány Napja a Délvidéken 2014*, Újvidék, VMI, 2015, 120-173; Nagy Zoltán: A termőfölddel kapcsolatos szabályozás pénzügyi jogi aspektusai, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Kiadó, 2010, 187-198.; Roland Norer: General report Commission III – Scientific and practical development of rural law in the EU, in states and regions and in the WTO, in: Richli, Paul (coord.): *L'agriculture et les exigences du développement durable*, Paris, L'Harmattan, 2013, 367-387; Olajos István: A termőföldek használata az erdő- és mezőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény alapján, in: Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közszerződési Egyetem, 2013, 121-135; Olajos István: A mezőgazdasági földek tulajdonszerzéséhez kapcsolódó eljárások (jegyző, helyi földbizottság), *Új Magyar Közigazgatás*, 2014/3, 53-55; Olajos István: Az Alkotmánybíróság döntése a helyi földbizottságok szerepéről,

However the situation is different if the contract is not under the scope of the Land Transaction Act.⁷ In this case, the choice of the person exercising the preemption right is the responsibility of the seller, and the criteria indicated in the Land Transaction Act are examined by the land office in the frame of the real estate registration procedure.⁸

döntéseiről, és az állásfoglalásuk indokainak megalapozottságáról, *Jogesetek Magyarázata*, 2015/3, 17-32; Olajos István: Die Entscheidung des Verfassungsgerichts über die Rolle, die Entscheidungen und die Begründetheit der Gründen der Stellungnahmen der örtlichen Grundverkehrskommissionen, *Agrar- und Umweltrecht*, 2017/8, 284-291; Olajos István – Szilágyi Szabolcs: The most important changes in the field of agricultural law in Hungary between 2011 and 2013, *JAEL*, 2013/15, 101-102; Orlovits Zsolt (edit.): *Földforgalmi szabályozás*, Budapest, Nemzeti Agrárgazdasági Kamara, 2015; Prugberger Tamás: Szempontok az új földtörvény vitaanyagának értékeléséhez és a földtörvény újra kodifikációjához, *Kapu*, 2012/6-7, 62-65; Papik Orsolya: “Trends and current issues regarding member state’s room to maneuver of land trade” panel discussion, *JAEL*, 2017/22, 132-145, doi: 10.21029/JAEL.2017.22.132; Raisz Anikó: Földtulajdoni és földhasználati kérdések az emberi jogi bíróságok gyakorlatában, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Alapítvány, 2010, 241-253.; Raisz Anikó: Topical issues of the Hungarian land-transfer law, *CEDR Journal of Rural Law*, 2017/1, 68-74; Raisz Anikó: A magyar földforgalom szabályozásának aktuális kérdéseiről, *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, 2017/35, 434-443; Tanka Endre: Történelmi alulnézet a magyar poszt szocialista földviszonyok neoliberais diktátum szerinti átalakításáról, *Hitel*, 2013/1, 109-136; Téglási András: Az alapjogok hatása a magánjogi viszonyokban az Alkotmánybíróság gyakorlatában az Alaptörvény hatálybalépését követő első három évben, *Jogtudományi Közlemény*, 2015/3, 148-157.

⁷ Fftv. Section 11 (2) Ownership of land may be acquired by a listed church, or the internal legal entities thereof, under a maintenance or life-annuity agreement or an agreement for providing care, or a contract of gift, and also by testamentary disposition, by a mortgage loan company, subject to the limits and for the duration provided for in the Act on Mortgage Loan Companies and Mortgage Bonds, by the municipal government of the community where the land is located for the implementation of public benefit employment programs and social land programs, and for urban development purposes. Furthermore Fftv. Section 36 (1) Approval by the agricultural administration body is not required: for State acquisitions; for the alienation of land owned by the State or by any municipal government; for the transfer of ownership of land by way of a gift; for transactions of ownership between close relatives; for transfers of ownership between joint owners, if it results in the termination of joint ownership; for sales transactions by way of conveyance to another farmer in conformity with the relevant legislation, as a precondition for subsidy; for acquisitions within the framework of authorization of parcel reconfiguration.

⁸ The results of the connected process is analysed by Csilla Csák and Zsófia Hornyák editors in their articles about the interpretations of Land Transactions Act: Csák Csilla – Hornyák Zsófia: Az átalakuló mezőgazdasági földszabályozás, *Advocat*, 2013/1-4, 12-17; Csák Csilla – Hornyák Zsófia: A földforgalmi törvény szabályaiba ütköző mezőgazdasági földekkel kapcsolatos szerződések jogkövetkezmenyei, *Őstermelő*, 2014/2, 10-11; Csák Csilla – Hornyák Zsófia: Igényérvényesítés lehetőségei és határai a mezőgazdasági földforgalom körében - bírósági keretek, in: Szabó Miklós (edit.): *Studia Iuris-prudentiae Doctorandorum Miskolciensium*, Tomus 14, Miskolc, 2014, Gazdász Elasztik Kft., 131-158; The first essential interpretation of this special procedure was written by: Szilágyi János Ede: A földforgalmi törvény elfogadásának indokai, körülményei és főbb intézményei, in: Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás*

In case of use rights, the procedure differs. Here the form countersigned by the lawyer is not a precondition for the contract between the parties. The contract is concluded with the administrative approval of the contract and the registration in the land register only provides the contractual authenticity of the contract. This will be important in the case where other legal conditions are conditional on ensuring the conditions of lawful land use. The land use registration authentically certifies the title of the use. However based on the relevant Act on the General Requirements of Agricultural Supports Section 44 (7), there may be a number of conditions⁹ for the legitimate land use certification and there is no need to register in land use registration.

az uniós jogban, 2013, Budapest, Nemzeti Közszerzői Egyetem, 114-119; Szilágyi János Ede: Das landwirtschaftliche Grundstückverkehrsrecht als erster Teil der neuen ungarischen Ordnung betreffend landwirtschaftlichen Grundstücken, *Agrar- und Umweltrecht*, 2015/2, 47-50; Horváth Ákos: Az állami földek értékesítésével kapcsolatos eljárások: Cserba – Szinay (edit.) *Konferencia a termőfölddel kapcsolatos jogi problémákról*, A Borangolás rendezvénysorozat kísérő rendezvénye, Konferencia helye, ideje: Miskolc, Magyarország; See about the liability of notary: Olajos István: A mezőgazdasági földek tulajdonszerzéséhez kapcsolódó eljárások (jegyző, helyi földbizottság), *Új Magyar Közigazgatás*, 2014/3, 53-55; Olajos István: Az elővásárlási és előhaszonbérleti jogok gyakorlásának szabályai, Szalma József (edit.): *A Magyar Tudomány Napja a Délvidéken 2014*, Vajdasági Magyar Tudományos Társaság, 2015, 50-55; Kocsis Bianka Enikő: The new Hungarian land transfer regulation from the aspect of examination of the European Union, *Az új magyar földforgalmi szabályozás az uniós vizsgálat szemszögéből*, *Agrár- és Környezetjog*, 2014/16, 95-127.

⁹ Act XVII of 2007 on the General Requirements of Agricultural Supports (hereinafter referred to as Tet.) Section 44 (7)

- a) a lawful user shall mean as the following ranking the customer, who or what, expect as regulations on supports provide about this date otherwise, was registered as a land user in the Land Use Register referring to the last day of the deadline for the submission of the application and related to the requested areas;
- b) registered as a family farmer in the registration of family farmers or has an agreement on the establishment of a family farmer and he/she is in it as a family farmer;
- c) the lease, leasehold, bargaining, charity land use, recreational purposes land use and sublet contract, furthermore – according to the Act CCXII of 2013 on the Provisions and Temporary Rules of Act CXXII of 2013 on the Transactions in Agricultural and Forestry Land Section 70 and 76 – the agreement on land use rules, the mandatory contract based on the Act LXXXVII of 2010 on National Land Fund Section 18 (5) (including a contract concluded by a National Park Directorate), as well as a land user based on the temporary order of the court and who is entitled to use the defense area based on a contract;
- d) who is registered as a Trustee, Beneficiary in the Real Property Registration or the user of the right of use based on the Act V of 2013 on Civil Code Section 5:159, and who is qualified as the successor of the budgetary body registered as a trustee;
- e) who is registered as an owner or a cooperative land-use holder in the real property registration;
- f) in case of the Act CXXII of 2013 on the Transactions in Agricultural and Forestry Land Section 42 (2) Point c) the person, who has got a written agreement concluded with the land user registered in the land register;
- g) the joint owner on the undivided common property, on the area in excess of his/her share of ownership, in relation of the area in excess of his/her share of ownership, if he/she has not

The third issue is whether it can be investigated and if yes, what extent the contracts' null and void or the nature of the sham contract in the proceeding of agricultural administrative authority. Related to this part, the issue is whether it can be initiated within the limitation period for the purpose of determining of the invalidity of the contract in case of agricultural lands. If we answer yes in both areas, what is the difference between the approach of the administrative and labor court examining the administrative procedure of the authority deciding on the approval of the contract and the civil court deciding on the validity of the original contract?

2. The judicial practice on the special nature of the sales of agricultural and forestry land

The significant element of the judicial practice¹⁰ is that the contracts related to the agricultural and forestry land need to be determined based on the land transactions law or the civil code in the case, if the contract is concluded between two co-owners such a way, that one co-owner acquires the other co-owner's ownership share, however due to the transaction some co-owners still remain.

In connection with this, in case of the 'termination of joint ownership caused by sales transaction' turn of phrase, the Fftv. contains 3 provisions:

Ad 1: The 300 hectares land acquisition limit may be exceeded by the size of land commensurate with the share of a co-owner of land in joint ownership, upon the termination of such joint ownership of land already owned on 1 May 2014.¹¹

Ad 2: The right of preemption shall not apply to any sales transaction between the joint owners of a land, terminating joint ownership.¹²

been registered to the land use register through no fault of his/her own and has the written agreement, which entitles to the use of the proportion of the area and the fact of usage is supported by his/her management logbook;

h) the person on the undivided common property who is not qualified as joint owner, if he/she has not been registered to the land use register through no fault of his/her own and has the written agreement, which entitles to the use of the proportion of the area and the fact of usage is supported by his/her management logbook;

i) the close relative of land user within the meaning of the points a)-h)

j) who has the certificate issued by the notary in the deadline for submitting an application and certified the fact of the use of the land.

¹⁰ Related to the referenced and processed judicial practice it is important to note, that neither the lower courts nor the court making the published decision are bound by the case-by-case decision. So the certain courts don't necessarily follow the other court's judgment opinion, there are and there can be differences, and the practice can change at any time. In Hungary only the decision ensuring uniformity issued by the Curia and Magyar Közlöny is obligatory for the courts from publication based on Act CLXI of 2011 on the Organisation and Administration of Courts Section 42 (1). In: Barta Judit – Majoros Tünde: A bírói gyakorlat szerepe a gazdasági társaság vezető tisztségviselőjének hitelezőkkel szembeni felelősségét illetően, Publicationes Universitatis Miskolcensis Series Juridica et Politica, 2017/35, 188-189.

¹¹ Fftv. Section 17 Point b).

¹² Fftv. Section 20 Point b).

Ad 3: Approval by the agricultural administration authority is not required for transfers of ownership between joint owners, if it results in the termination of joint ownership.¹³

It can be concluded that the transaction of land happens according to the provisions of Land Transactions Act. However, such legal relations were removed from the land acquisition limit,¹⁴ the process related to the land preemption right,¹⁵ the approval of agricultural administration authority¹⁶ by the Fftv. Thus any specialities of the Land Transaction Act are not to be applied to the sales transaction sale, so in the aspect of substantive law¹⁷ these transactions are judged based on the Act V of 2013 on the Hungarian Civil Code (hereinafter referred to as Ptk.) and in the aspect of formal and procedural law these transactions are judged based on Act CXLI of 1997 on the Real Estate Registration (hereinafter referred to as Inytv.).¹⁸

The further interpretation possibility is what the 'termination of joint ownership caused by' means.

In this issue the judicial practice is also shared. On the one hand, this phrase can be interpreted in such a way that it is need to endeavor that in the exercise of the ownership, the joint ownership, as the transaction restrictive and difficult regulation of the common practise of partial rights, shall to be applied to a lesser extent. So in this aspect, the system of justice needs to undertake to promote the quicker perfection of the transactions, which leads to the reduction of the number of co-owners. Based on this consideration, the transaction is also within the scope of the regulation, which does not eliminate but only reduces the number of co-owners. So the judge, who makes decision in such a way, openly undertakes that in order to promote the subsequent disappearance of joint ownership, he/she does not enforce the possession limit, the pre-emptive right and the approval of the authority for the purpose of the protection of joint ownership.

The judge's argument, which correctly reveals that in this case the question is that *'based on the Fftv. Section 20 Point b), does the termination of joint ownership caused by sales transaction between the co-owners need to be interpreted in such a way, that it contains only the contract, wherein the termination of the joint ownership happens in point of the whole property. So the buyer purchases all ownership percentage of the co-owners, or it shall apply in the case, when if the buyer does not obtain exclusive ownership, so the termination of joint ownership shall be interpreted in the relation between the buyer and seller.'*¹⁹

¹³ Fftv. Section 36 (1) Point e).

¹⁴ Fftv. Section 16 (1), but the but the reference does not include a reference to Section 10 (2), so this applies only to the transactions between the farmers.

¹⁵ Fftv. Section 18-19.

¹⁶ Fftv. Section 23-35 Point 7-8.

¹⁷ Ptk. Section 6:215-6:230.

¹⁸ Inytv. Section 32-36, Section 39 (3) and Section 47.

¹⁹ BH 18679 Page 5 (4).

In order to solve the question, the court cited the rule among the general rules of Ptk. as the the legal place of the solution.²⁰ In its judgement, the court declares that *'the situation is qualified as a termination of joint ownership, when the court gives the subject of the joint ownership to several co-owners.'*

The fundamental aim of the termination of joint ownership is the reduction of the number of co-owners.

*'Consequently, regardless of the concept, that the joint ownership is a situation, when the right of ownership is entitled to several person based on Ptk Section 5:73 (1), the sales transaction between the co-owners is qualified as the termination of the joint ownership, when the co-owner buyer does not make contract related to the all ownership percentage, so the ownership right is not only for the buyer after concluding the contract.'*²¹

Based on the aforementioned description, the termination of joint ownership caused by sales transaction between the co-owners shall to be interpreted in the relation of the co-owners based on the Fftv. Section 20 Point b) regardless of the fact, that the property still remains in joint ownership between the buyer and the co-owners who do not participate in the contract.

In the above judgement, the judge, although cited to the relevant provisions of the Land Transaction Act, he did not consider the introductory reasons of the present article. The transaction is under the scope of Fftv and the transaction shall support the concentration of possession indicated in the preamble. So if the transaction does not effectively lead to the termination of joint ownership, only the ownership percentage handled by the owners is reduced, not the strange and contrary manner of the spirit of the Land Transaction Act of the exercise of ownership is disappeared.

The above judgement is contrary to the decision of the Curia.²² The council of the Curia agrees with the content of the decision no. Kfv.III.37.232/2015/7,²³ and the decision no. Kfv.III.37.349/2015/5. made by the other councils of the Curia, whose made a decision in the same legal point of view related to the aforementioned legal issue.

The Land Transaction Act Section 18 determined the ranking and person, what and who are entitled to the pre-emptive right. The Land Transaction Act Section 21 (1) contains the rule of pre-emptive right in case of land transaction. Based on the Land Transaction Act Section 20 Point b) the right of preemption shall not apply to any sales transaction between the joint owners of a land, terminating joint ownership.

²⁰ Ptk. Section 5:84 (1).

²¹ BH 18679 Page 6 (4)-(7).

²² BH 6613. Page 3 (6)-(9) and Page 4 (1)-(3).

²³ The decision interprets the common property as the follows: *'The common property, as a definition, always exists for a particular thing. It follows from the fullness of the property that only one property right can exist at one time, but if it is shared among several people, then a common property is created.'* See the aforementioned decision page 5 (3).

The Curia determines in its authoritative judgement, that the Fftv. Section 20 Point b) is clear, and it contains the termination of the joint ownership as an exception and not the transaction between the co-owners in general. The joint ownership is not determined by the number of co-owners, but the fact, if an object has more than one owner and until this situation still remain, the joint ownership is uninterrupted related to the object regardless of the number of co-owners. The condition based on the Land Transaction Act Section 20 Point b) is fulfilled if it is no longer possible to speak about joint ownership, so the number of co-owners decreases one person.

The viewpoint formed in the case law of Curia, that the joint ownership of the land is terminated, if the land is owned by only one owner. In case of co-owners, the transaction between the co-owners does not result the termination. The clear provision of Land Transaction Act defines the termination of the joint ownership as an exception not the transaction between the co-owners in general, because the joint ownership is not determined by the number of co-owners, but the fact that the land is owned by more than one owners. Until this situation remains, it shall be talked about uninterrupted joint ownership related to the land regardless of the possible changes of the number of co-owners in the joint ownership. The legal condition is the termination of joint ownership caused by sales transaction between the co-owners. The transaction shall to be concluded between the co-owners and result the termination of the joint ownership. In all other cases, the right of preemption defined in the Land Transaction Act is applicable, whereby the co-owners, if the offer comes from one of the co-owners, are entitled to exercise their preemption right according to their ranking of preemption rights based on the Land Transaction Act Section 18.²⁴

3. The conclusion of the null and void and non-concluded nature of contract

Until the adoption of the Transaction Land Act, the interpretation and conclusion of the nature of the contracts were the tasks of the civil courts. If there was a legal dispute between the parties related to the interpretation of the contract, anybody, who had legal interest to the invalid enouncement of the contract, brought an action within the limitation period and requested from the court to appoint that the contract is null and void, or is not qualified as concluded and there were not any legal effect attached to the contract.

Based on the Ptk Book six Chapter XVIII, the sham contract,²⁵ the illegal contract,²⁶ the immoral contract,²⁷ the usurious contract²⁸ and the nullity of fiduciary collateral arrangement²⁹ are qualified as null and void.

²⁴ The summary of the opinion of property registration case-law analysis group about land transaction application of law, in: http://www.kuria-birosag.hu/sites/default/files/joggyak/az_ingatlan-nyilvantartasi_joggyakorlat-elemzo_csoport_osszefoglalo_velemenye_1.pdf (12.03.2016)

²⁵ Ptk. Section 6:92 (2) A sham contract shall be null and void, and if such contract is intended to disguise another contract, the rights and obligations of the parties are to be adjudged on the basis of the disguised contract. See about the sham contract: Kocsis Bianka Enikő: A mező- és erdőgazdasági földek tulajdonjogának megszerzését vagy használatát korlátozó jogszabályi

The contract is not qualified as concluded, if it contains impossible, meaningless, or contradictory clauses. Such litigation can be brought within five years' limitation period from the acquisition of the right on the competent district court or tribunal for the conclusion of the legal title of invalidity contract.

On the other hand, the Fftv Section 23 (1) Point a) contains the following provision: *'The agricultural administration authority shall adopt a decision within fifteen days of receipt of the documents for the refusal of approval of the contract of sale, if it finds that the contract of sale is to be treated as a non-contract or shall be considered null and void on account of the infringement of regulations.'*

In this case, the regulation gives double interpretation obligation to the agricultural administrative authority. On the one hand, the parties, therefore the buyer and seller of the original contract during the contracting did not observe the compulsory provision of the regulation. Because of this reason, the contract is qualified as a sham contract, an immoral contract, an usurious contract or a nullity of fiduciary collateral arrangement or because of this problems, the content of the contract will be impossible, contradictory or meaningless.

Therefore in case of its interpretation, the agricultural administration authority should fulfill such a dualistic interpretation. Analyzing the relevant decisions of agricultural administration bodies, it can be realized that the reference to the Fftv. Section 23 (1) is almost completely missing from the practise of agricultural administration authority. I can only refer to cases of court practice, wherein one of the party, mostly the original buyer, refers to that the agricultural administration authority did not interpret the contract concluded between the parties and did not find the null and void of the original contract due to the aforementioned faults.

3.1. The effect of the buyer's incorrectly marked preemptive right to the validity of the contract

I would like to start the interpretation of the null and void and non-concluded contracts in the land transaction process with the following statement. The original buyer of the sales contract was marked as a local resident. The agricultural administration authority determined, that the permanent resident of the buyer of the original sales contract was different than the marked place, wherein the subject of the contract, the land laid, so the buyer was not a local resident.

rendelkezések kijátszására irányuló jogügyletek és a naturalis obligatio kapcsolata, *Studia Iurisprudentiae Doctorandorum Miskolciensium*, 2015/16, 241-258; Kozma Ágota: Zsebszerződések veszélyei, *Magyar Jog*, 2012/6, 350-360; Olajos István: A zsebszerződésekről, *Héthatár*, 2001/2, 36-38; Olajos István – Szalontai Éva: Zsebszerződések a termőföld-tulajdonszerzések területén, *Napi Jogász*, 2001/7, 3-10.

²⁶ Ptk. Section 6:95.

²⁷ Ptk. Section 6:96.

²⁸ Ptk. Section 6:97.

²⁹ Ptk. Section 6:99.

Thus the contract was approved by the holder of the preemption right, who made a preemptive declaration as a local resident.

The original buyer of the sales contract brought an action against the legally binding administrative decision. In his application, he presented that in case of the examination of the contract's data, it should have been shown to the agricultural administration that the buyer's place of residence and the location of the land were in different places. Therefore the nullity of the contract concluded between the parties should have been determined because of the breach of the regulation and the administrative approval of the contract should have been rejected based on the analyzed Fftv Section 23 (1) Point a).

In this case the courts determined, that the validity of the basic sales contract was not concerned by the unilateral declaration of the buyer added in the contract. The unlawfulness of this does not make the whole contract between the parties null and void. If one of the contract's provision runs counter to a cogent rule or the targeted legal effect allowable by the parties is not allowed, the private law contains sanction of invalidity. Whether a contract clause qualified as null and void results the nullity of the whole contract or that the nullity is limited to the relevant clause of the contract, it is to be decided according to the rules of partial nullity. The cogent rules of the Civil Code usually link the consequences of nullity to the prohibition, and the contract contrary to the rule of the compulsory legal enforcement is invalid, if the nullity, as the consequence of its, is stated by the regulation.³⁰ The original contract is able to cause the legal effect in the lack of the null and void declaration and with the perfect legal declaration of the local resident has preemptive right, the original contract eliminated the partial nullity of the original contract. Thus based on the provisions of PED no. XXV if we examine the original contract without the null and void declaration, the authority could consider it valid, so the authority did the right thing, when they approved the contract with the holder of preemptive right.

The Curia agreed with this direction of the courts' argument. Taking into consideration the provision of Fftv. Section 28 the agricultural administrative authority shall carry out the examination based on the same criterias, in respect of the contractual buyer and persons submitting the recognised declaration, so they shall to be ranked based on the same criterias. In the point of the sales contract and the recognised declaration, the agricultural administrative authority shall carry out the preliminary validity clarification without the ranking to whether it can be determined one of the denial reason based on the Fftv. Section 23 (1) or more than one, which circumstance causes the refusal of the approval of the sales contract. If the recognised declaration has any defect, the denial legal consequence of the approval of the sales contract shall to be applicable based on Fftv. The same rule shall apply to the contracting party, the agricultural administration authority shall decide on the approval of the sales contract, and the listed denial reasons shall to be examined in the point of the buyer and person submitting the recognised declaration based on Fftv. Section 23 (1).³¹

³⁰ See the decision of Court of Gyula no. 9. Kf.25.190/2016/9.

³¹ BH 11803 Page 6 (14).

3.2. The effect of the buyer's missed marked preemptive right to the validity of the contract

In the other case, from the result of the contract's data, the Fftv. Section 18 (1) Point d) was not recognised in case of the local resident,³² as the condition of preemptive right. Therefore a claim of preemptive right was founded to the contract by a person, who based his preemptive right on Fftv. Section 18 (1) Point e).³³ In its decision, the competent agricultural administrative authority supported the contract with the buyer who made the preemptive declaration. The authority referred to that the original buyer of the contract has not made a preemption declaration and it shall not examine the existence of the such right of the buyer.

The buyer of the original contract applied to his submission against the legally binding decision. In his submission, he stated that the agricultural administrative authority breached the regulation, when did not take into consideration in its decision that the original contract between the parties did not meet the following requirements as the substantive validation conditions of the contract based on the Fétv. Section 13 (3). *'In the sales contract it also shall to be determined whether the buyer is entitled to practise a preemptive right. In the case of the existence of this right, it also shall to be determined in the contract, that the right is in what regulation and in which place of ranking determined in the regulation. In case of the preemptive right based on a contract, this fact shall to be determined in the sales contract.'*

In this case, the lack of the existing preemption right from the contract is such a lack of provision, which causes that the original contract does not correspond to the conditions of Fétv., so it is qualified as the breach of the law. This breach of the law cannot be remedied in such a way that the agricultural administrative authority approved the contract with a preemptive rights holder who is weaker than the original buyer.

In the legally binding decision³⁴ the competent Administration and Labour Court approved the decision of the agricultural administrative authority as valid. The Court referred to that the buyer does not determine his claim to practise his preemption right, the existence of this right shall not to be assessed as the validation condition of the whole contract, but in such a way that if his preemption right is, then it does not have to be taken into account.

In my opinion, this interpretation is wrong in this case. The marking of the preemption right of the original buyer and the indication of this in the contract is such a substantive law natural provision based on Fétv. Section 13, which marking is the compulsory provision of such nature contracts. If the contract does not contain one of these elements,³⁵ it is not possible to aside from the cognition of these by the authority.

³² A farmer who qualifies as a local resident.

³³ Any farmer who has been residing or has his center of agricultural operations for at least three years in a municipality from whose administrative boundaries the land in question is located within a 20-kilometer radius via public road or publicly accessible private road.

³⁴ The decision of Miskolc Administration and Labour Court no. 11. K.27.145/7.

³⁵ The implementing decree of Fftv Section 13 (1) in case of natural person covered by the Act on the Register of the Citizens' Personal Data and Address, the personal identification number;

For example if the nationality of the party is out of the contract, the decision of the agricultural administrative authority is always a rejection even if the nationality of the parties has no doubt. In the present case, it was also clear to the agricultural administrative authority that the original buyer was a local resident. However, this circumstance can not be taken into account *ex officio*. It shall not aside from the fact, the local resident status and the fault of the parties and the lawyer prepared the contract that the fact is not in the contract. Such fault of the contract is not only affected to the parties. In the present case, the properly indicated circumstance giving the exercise of a right of pre-emption and the indicated local resident would have kept the farmer away, who has been residing or has his center of agricultural operations for at least three years in a municipality from whose administrative boundaries the land in question is located within a 20-kilometer radius via public road or publicly accessible private road. In the case, the preemptive declaration of the original buyer was replaced by the decision of the acting authority, but with the contradictory content. In my view, only the declaration of buyer could have led to the aforementioned legal interpretation of the authority, if the original buyer declares that he does not have a preemption right. In all other cases, the non-indication of the conditions giving to preemptive right is such an advocatory malpractice, which violates the interests of the original buyer and also such interests of the other preemption right holders, which they practise only their preemption right, which is stronger than the original buyer's right, in the notary proceeding.

In the further part of my research, I intend to analyze the civil law decisions about the nullity and the non-concluded nature of the contract. In the later parts of my research, I will also examine whether there is any difference in the practice of preemption and prelease rights based on the relevant court practice and whether there are differences between the assessment of the purchase price and the lease fee in the different courts.

in case of person, who has not got personal identification number, the internal unique identification number ruled by Section 2/A, if he/she has been informed about it, furthermore the citizenship and address.

The implementing decree of Fftv Section 13 (2) the contract party is a member of the Hungarian Chamber of Agriculture, Food Economy and Rural Development (hereinafter referred to as: Chamber), then the contract needs to contain the membership identification number beyond the Section 13 (1).

The implementing decree of Fftv Section 13 (3) the purchase contract must also state whether the buyer is eligible for preemption. In case of the existence of the preemption right, the contract must contain the relevant law and the rank of the specified place. In case of a contract-based pre-emptive right, this must be determined in the sales contract.