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Sale of Agricultural and Forestry Land in Enforcement Proceedings in  
Hungary\*\*\*

*Abstract*

*In Hungary, special, complex rules apply to the auction of agricultural and forestry land. The legislator highlighted the sale of land covered by the Land Transaction Act from the powers of the bailiff, and an administrative body implements the auction of land. In practice, this solution requires the joint application of several pieces of legislation. The aim of this study is to present the auction process of land and to analyse the problems that arise in case law. We will discuss the latest judicial case law related to this topic. We place special emphasis on the presentation of Decision No. 12/2022 (VI.2) of the Constitutional Court, which will result in a major change in the future among the persons entitled to auction land.*

**Keywords:** enforcement proceeding in Hungary, real estate auction, auction of agricultural and forestry land, acquisition of ownership of land

## 1. Introduction

Nearly 26% of Hungary's national wealth<sup>1</sup> is agricultural and forestry land, which means that the range of property changes related to agriculture is of paramount importance. The number of auctions conducted in connection with agricultural land in Hungary is estimated to be between 25,000 and 30,000 in the recent period.

As of 2014, Act CXXII of 2013 on the Acquisition of Agricultural and Forestry Land (hereinafter referred to as the Land Transaction Act) changed the rules of procedure for the auction of land: in the case of acquisition by auction in the framework of the judicial enforcement, insolvency or debt settlement procedure affecting the municipality, the territorially competent agricultural administration body must be contacted.<sup>2</sup> Auction can only be conducted by the agricultural administration body under Decree No. 191/2014 (VII.31). It follows that in Hungary, the auction of farmland does not have to apply to the auction of land by Act LIII of 1994 on judicial enforcement (hereinafter referred to as the 'Enforcement Act'), the independent bailiff is not entitled to carry out the auction of agricultural and forestry land.

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<sup>1</sup> Ministry of Rural Development; National Rural Strategy 2012-2020, 23.

<sup>2</sup> See more Csák & Hornyák 2014, 8–12.



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First of all we have to define the legal concept of agricultural and forestry land. According to the interpretative provisions of the Land Transaction Act, land used for agriculture and forestry purposes: all parcels of land, regardless of the location of the land (inland area, outskirts), which are registered in the land register as arable land, grapes, orchards, gardens, meadows, pastures (lawns), reeds, forests and wooded areas, as well as parcels of land recorded as areas excluded from cultivation, for which the land register is registered as forest in the National Forest Stock Data Store.<sup>3</sup>

Unless otherwise provided by law, the rules governing the land shall also apply to the farm.<sup>4</sup> This is significant because this provision of the Land Transaction Act is the reason why the auction of farms has also been removed from the jurisdiction of independent bailiffs.

If, in addition to the subspecies registered in the land register as a fish pond, the parcel of land contains a subspecies registered in the cultivation branch specified in Section 5 (17) of the Land Transaction Act, the provisions of the Land Transaction Act shall apply to the entire parcel of land if the area size of the subspecies recorded in the cultivation branch specified in Section 5 (17) exceeds the size of the subsection registered as a fish pond.<sup>5</sup>

## 2. Rules governing auctions of the Land Transaction Act

In accordance with Article 35 of the Land Transaction Act, in the case of land auctions, the forced sale is not carried out by the independent bailiff, but by the agricultural administration body (government office) at the request of the bailiff. One of the extremely significant changes to the Land Transaction Act can be considered that the rules of electronic auction cannot be applied in the case of the land auction compared to the real estate auction in Enforcement Act. Furthermore, it is also a significant regulation, different from the Enforcement Act, that there is no place for the sale of the land outside the auction and the takeover by the applicant for enforcement during the procedure. Only those who prove their ability to acquire land property at the place and time of the auction with the documents establishing it may participate in the auction.

Of course, as in the case of other properties, some legal entities may also be entitled to pre-emption in respect of land used for agriculture and forestry purposes.<sup>6</sup> This right may be exercised by the rightholder at the auction on condition that he must also attach documents proving his right of pre-emption in person at the place and time of the auction.

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<sup>3</sup> Point 17 of Section 5 of Land Transaction Act.

<sup>4</sup> According to 25 point of Article 5 of the Land Transaction Act, a farm is a parcel of land on the outskirts of the settlement of up to 1 hectare, to which, in addition to the land, a residential and economic building or such group of buildings established for the purpose of crop production and animal husbandry, as well as related product processing and product storage, or a parcel of land listed as a farm in the land register.

<sup>5</sup> Section 4/A of Land Transaction Act.

<sup>6</sup> See more Szilágyi 2006, 516–517; Leszkoven 2004, 393; Raisz 2017, 440; Olajos & Juhász 2018, 164.

As regards the right of pre-emption, it is important that Act V of 2013 on the Civil Code (hereinafter referred to as the "new Civil Code") Section 5:81 (5) from 15 March 2014 allows the exercise of the right of pre-emption of fellow owners during execution auctions. With this step, the legislator broke with the provisions of Opinion 9 of the Civil College of the Supreme Court, according to which, in the case of an execution auction, the co-owners did not have the right of pre-emption. The legislator, by referring to the new Civil Code, completely changed the practice laid down by the opinion of the Supreme Court, so the rules of the Enforcement Act had to be amended. At the same time as the entry into force of the new Civil Code, paragraph 4a was added to Section 123/A of the Enforcement Act governing the right of pre-auction, according to which there is no order and ranking of pre-auction rights based on different laws during auctioning.<sup>7</sup>

They are entitled to pre-emption under the Land Transaction Act: the State, in the case of commonly owned land a co-owner for at least 3 years, a land user for at least 3 years, a local neighbour (but in the case of land in a neighbouring settlement only in respect of parcels of land situated on the adjacent settlement border), livestock, producer of origin products and organic farmers, horticultural activities, seed producer, resident, operating a plant centre within a 20 km radius for 3 years peasant.

According to the provisions of the Land Transaction Act, the agricultural administration body conducting the auction examines the facts of the existence of the acquirer's ability to acquire the auctioneer or the right of pre-emption of the person bidding as the right of pre-emption, and whether the auction purchase does not result in a breach or circumvention of the restriction on the acquisition of property. It may also arise that several auctioneers entitled to pre-emption in the same rank appear as auctioneers at the auction. In this case, according to the law, the holder of the land at the choice of the agricultural administration body acquires ownership of the land, which raises further constitutional concerns, which is not the subject of this study.<sup>8</sup>

If the agricultural administration body approves the acquisition of ownership, it shall endorse the auction report at the same time as its decision is taken and send it to the bailiff. The agricultural administration body then transfers the full purchase price according to the auction report to the bailiff.

In the case of enforcement proceedings, if the agricultural administration body refuses to approve the acquisition in favour of the buyer or the auction fails, the agricultural administration body conducting the auction shall contact the bailiff in order to publish a continuous auction notice. If a bid is received for ownership of the land, the executor shall again contact the agricultural administration body in order to conduct an auction.<sup>9</sup>

### 3. Rules governing auctions of the Enforcement Act

Despite the fact that the Land Transaction Act and its implementing regulation lay down a number of significant rules on land auctions, there is also some provisions among

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<sup>7</sup> Gyovai 2015, 42.

<sup>8</sup> See more Holló 2014, 44–49.

<sup>9</sup> Paragraph 7 of Section 35 of Land Transaction Act.

the sections of the Enforcement Act that are significant for the new owner of the land subject to enforcement.

First, however, the acquisition of the property by auction is presented as a method of acquiring property by an official decision.

The original nature of the acquisition of land at auction cannot be considered clear. Although the majority position in the Hungarian legal literature and the practice of the Curia also reinforce the original character of the acquisition at the auction. An example in court practice where the court determines the framework by which the auction results in the original way of obtaining: *“the auction results in an original acquisition mode only if the auction is made without the intention to sell, independently of the seller’s right of disposal, in the interest of the executor, using official coercion.”*<sup>10</sup> In one case, the Supreme Court made the following finding. The auction purchase is the original method of acquisition of property. The acquisition of property occurs by issuing the auction minutes. However, by destroying the auction, the auction buyer may lose ownership. There is no contractual relationship between the debtor and the auctioneer, therefore the debtor cannot enforce the rights arising from the contract against the auction buyer in a lawsuit, he can only use the remedies provided by the rules of the Enforcement Act.<sup>11</sup>

However, according to Gergely Légrádi,<sup>12</sup> the acquisition of ownership of the property at auction does not clearly constitute an original acquisition, since it mixes the characteristics of the original and derivative acquisition methods, and therefore he considers it a ‘quasi-original acquisition mode’ or a ‘specific version of the original acquisition.’<sup>13</sup>

The original method of obtaining agricultural and forestry land by auction is questionable for several reasons. The Enforcement Act provides that the acquisition of real estate established during the auction procedure may not be subject to any other rights than the service of the land, the right of use in the public interest, the right of usufruct registered in the land register, the right of usufruct based on the law, even if it is not registered in the land register. An exception is made if the holder is responsible for the claims of the executor or the contract on which the entitlement is based arose after the mortgage charge.<sup>14</sup>

Furthermore, the Enforcement Act decides, as regards agricultural and forestry land, that if the land-use entitlement established under a contract on the property under enforcement exists for the benefit of a third party, the ownership of the new owner acquiring the land subject to enforcement shall be limited, in addition to the abovementioned rights, in addition to certain time limits, by the land-use entitlement previously established by the contract.<sup>15</sup> Thus, the new owner replaces the old one with regard to the subjects of the contract, but this state normally only exists for 6 months after the acquisition of the new owner. The contract shall not be terminated with a 6-month expiry if the new owner declares during this time that he has entered into an

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<sup>10</sup> BH2008.239.

<sup>11</sup> Supreme Court No. Pfv. I. 21.165/2010.

<sup>12</sup> Légrádi 2003, 9–18.

<sup>13</sup> Gyovai & Kiss-Kondás 2016, 53.

<sup>14</sup> Paragraph (1)-(2) of Section 137 of Enforcement Act.

<sup>15</sup> Paragraph (3) of Section 137 of Enforcement Act.

agri-rural development aid from an EU or national source linked to the land, the condition of which is required by law for a specified period of time, in this case, the right to use land ceases to exist in accordance with the rules governing the termination of the contract establishing it and on a time.<sup>16</sup>

As a conclusion, it can be stated that agricultural and forestry land also have a special place among real estate in terms of the way they are acquired. In the case of agricultural and forestry land, auction acquisition is in no way a derivative acquisition, but only a special contractual method subject to warranty conditions, which is a specific variant of the original acquisition.<sup>17</sup>

According to the regulations of the Enforcement Act, it is possible to determine the value of the property in two ways: either the bailiff himself determines it on the basis of a tax and value certificate not older than 6 months, or the other way of establishing a value is to determine the value of the property on the basis of the expert's opinion of a judicial expert at the request of either party.<sup>18</sup> The valuation of agricultural and forestry lands requires special expertise, so in these cases it is accepted that the valuation is the responsibility of the land rating specialists or experts of the land registry.<sup>19</sup>

The real estate is not simply an asset, in most cases it satisfies the debtor's vital and housing needs. If the debtor loses his real estate, the last pillar of his existence is also lost.<sup>20</sup> At the same time, land is more than just real estate or means of production.<sup>21</sup> Land is a place of food production, so it is usually intended to provide not only the debtor, but also the vital needs of his environment. In view of this, the Enforcement Act expands the range of movable property exempt from enforcement: if the debtor is engaged in agricultural production on a life-like basis, he shall be exempt from enforcement of seed, agricultural machinery and equipment necessary for the cultivation of the debtor's land, a hauling animal and feed, a cow or other farm animal and the feed required for him for 3 months.<sup>22</sup>

#### **4. The role of the government office in the auction of agricultural and forestry land**

As of 1 August 2014, the county government office, as an agricultural administration body, has been selling agricultural and forestry land by auction in enforcement, insolvency or municipal debt settlement procedures. The bailiff is obliged to contact the county government office competent for the location of the land within 60 days of the establishment of the conditions of sale after the seizure of the land or forestry land for the purpose of conducting the auction.<sup>23</sup> The setting of the auction, the publication of the auction notice and the conduct of the auction are already within the competence of the county government office.

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<sup>16</sup> Section 137/A of Enforcement Act.

<sup>17</sup> Nagy 2020, 16.

<sup>18</sup> Paragraph (1) of Section 140 of Enforcement Act.

<sup>19</sup> Olajos 2017, 105.

<sup>20</sup> Petkó 2017, 16.

<sup>21</sup> Fodor 2007, 109–110.

<sup>22</sup> Section 91 of Enforcement Act.

<sup>23</sup> Paragraph 1 of Section 1 of Decree No. 191/2014 (VII.31.)

In addition to conducting the auction, the government office has the power to issue the necessary certificates for participation in the auction. At the request of the client, the government office issues an official certificate that the client is a farmer or can acquire ownership in accordance with the Land Transaction Act. This official certificate does not give the right to acquire ownership of the land, it only certifies that the applicant can participate in the auction.

In view of the fact that the government office conducts the auction of land used for agriculture and forestry, administrative law also has an impact in the context of the auction. This was confirmed by the National Meeting of College Leaders of Civil Studies in 2019, when it answered the following question: If the agricultural land is auctioned in accordance with 191/2014 (VII.31.) government decree, the government office conducts it, in the meantime the implementation has been suspended, from which, due to the failure of the bailiff, the government office has not become aware within the deadline of Article 14 of the Government Decree, can the record of a successful auction be annulled in administrative proceedings in the framework of an appeal in accordance with Act CL of 2016, or can the enforcement court annul it on the basis of an enforcement objection submitted pursuant to Section 217 of the Enforcement Act? According to CKOT Resolution 04.16:10 of 2019, the decision taken at the auction must be made in accordance with the rules of Act CL of 2016 on general administrative order in the appeal procedure, within the framework of which the auction held by the government office may be annulled. Enforcement objections under the Enforcement Act may be lodged only against the action of the bailiff (and not any other body).

## **5. Process of auctioning agricultural and forestry land**

The 2014 Government Decree regulating the auction of agricultural and forestry land was amended more than ten times after its entry into force. The change in the text of the legislation proves that this rule is constantly evolving, follows the changes in jurisprudence, and cannot be regarded as a clear procedural order.

### **5.1. Request for auction**

If, during the judicial enforcement proceedings, the bailiff has seized agricultural and forestry land, within 60 days of the occurrence of the conditions for the sale of the land, the bailiff is obliged to contact the county government office competent for the location of the land for the purpose of conducting the auction. It is important that the value of the land and the amount of the lowest offer to buy are determined by the bailiff, which he is obliged to indicate in the request. In the request, the bailiff must also indicate if the debtor and the landowners have requested that the whole land be auctioned together. It follows from these legislative provisions that the tasks related to the preparation of the auction of agricultural and forestry land are divided between the executor and the government office.

In its decision of principle no. Kfv.37.696/2018/5, the Curia emphasized that the exact data content of the executive request is important because the government office is obliged to prepare and publish the auction notice with the same content as the

bailiff's request. In the real estate auction notice, a lien based on the law must be indicated on the basis of a request from the bailiff.

## 5.2. The auction notice

Within 45 days of receiving the request, the county government office will set an auction of the land with the auction notice. The content of the executive request is almost identical to the mandatory content of the auction notice, which also facilitates the work of the government office in the preparation of the auction.

The auction notice shall indicate the main data of the government office conducting the auction, the place and time of the auction, its identification number, the name of the applicant and the debtor, the title and amount of the main claims, the land register and land use data, the essential characteristics of the land, the main intended nature of the building or structure registered together with the parcel of land. The auction notice also includes the value of the land, the amount of the auction advance and the bid fee, the amount of the lowest bid to be made at the auction, the threshold for bidding. It should include a reminder to those entitled to pre-emption that the pre-emptive right of purchase is subject to participation in the auction, an awareness of the possibility of recording the auction on a picture and audio recording, the possibility of viewing a building or structure registered with the parcel of land for auctioneers, and other information concerning the auctioneers.

The auction shall be held in the office of the district office where the land is located. The date of the auction shall be determined in such a way that it must not be earlier than the 60th day from the date on which the auction was scheduled, but shall not be later than the 90th day following the date of the auction.

The auction notice shall be served to the applicant and the debtor within 8 days of its preparation; those who have the right to land registered in the land register; if the land is jointly owned, to the co-owner; for posting to the municipal, urban and metropolitan district notary according to the location of the land; the real estate authority competent for the location of the land in order to record the fact of the auction in the land register; the bailiff and the National Land Centre.

The auction notice shall be suspended for at least 30 days prior to the auction or at least until the 5th day prior to the auction. The auction notice shall be hung on the bulletin board of the government office, the mayor's office of the municipality competent for the location of the land, on the bulletin board of the real estate authority and the court implementing the enforcement proceeding. In addition, it must be published on the website of the government office. The applicant for enforcement or the debtor may request that the government office make the auction public in other ways at the applicant's expense. The latter option is not really possible in practice.

In practice, the question arises as to whether there is room for independent redress against the auction notice published by the government office? We agree that there is no place for an enforcement objection under the Enforcement Act, because it is an opportunity to appeal against the bailiff's action. The auction notice is already published by the government office, the procedure of the government office is no longer governed by Enforcement Act, but by administrative procedural law. There is an opinion that the auction notice can be challenged by an appeal under administrative procedural

law.<sup>24</sup> However, according to the author of this study, the solution followed by practice is the right one: the auction notice cannot be challenged by an independent appeal, but it can be challenged against decisions establishing the result of the auction in an appeal under administrative procedural law.

### 5.3. Conditions for participation in the auction

Land used for agriculture and forestry may be auctioned by the person who deposited the amount corresponding to 10 % of the value as an advance and paid the bid fee, which is an amount equal to 1 % of the value, but not less than HUF 2000 and not more than HUF 10000. The bidding fee will be the revenue of the government body. Only those who can present a certificate of transfer of these amounts to the auctioneer can enter the place of the auction. Compliance with Section 35 (3) of the Land Transaction Act and Sections 13-15 must be certified by an official certificate. Compliance with the condition of the Land Transaction Act for a distance of up to 20 km<sup>25</sup> must also be certified by an official certificate.

It is important to emphasize that the condition laid down in Article 5 (1) (d) of Decree No. 191/2014 (VII.31.) – which required the verification of residence within a range of 20 km – was declared by the Hungarian Constitutional Court to be unconstitutional by decision No. 12/2022 (VI.2.) and annulled. According to the reasoning of the decision, Article P (2) of the Hungarian Fundamental Law provides for the creation of a cardinal law for the National Assembly, which must provide, among other things, for the limitations and conditions for the acquisition of ownership of land. Based on the practice of the Constitutional Court, the requirement of cardinality does not preclude the detailed rules from being determined by a law with a simple majority or even by a lower source of law.<sup>26</sup> For this reason, the Constitutional Court had to assess whether the regulation on the acquisition of ownership of land by auction contains detailed rules of a technical nature in relation to the provisions of the Land Transaction Act, or whether it directly contains provisions of a material legal nature other than the rules of the Land Transaction Act and therefore requiring a cardinal legal level of legislation on the acquisition of land ownership as a result of Article P (2) of Fundamental Law.

The general conditions for the acquisition of ownership of the land are set out in the Land Transaction Act. Pursuant to Article 10 (1), ownership of the land may, in principle, be acquired by domestic natural persons and nationals of EU Member States. The Land Transaction Act distinguishes between farmers [Section 5 (7)] and individuals who are not farmers from the point of view of the right to acquire property, which is important for the area of land that can be acquired.

Section 35 of the Land Transaction Act also contains rules for the acquisition of land by auction. Pursuant to Section 35 (3), the auction may be attended by the person who certifies his ability to acquire property with documents at the place and time of the

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<sup>24</sup> Gyovai & Kiss-Kondás 2016, 57.

<sup>25</sup> Section 18 (1) e) point of Land Transaction Act.

<sup>26</sup> 24/2016. (XII.12.) Decision of Constitutional Court, Explanatory Memorandum (40); Most recently: 1/2021. (I.7.) Decision of Constitutional Court, Explanatory Memorandum (70).

auction. The right to pre-emption may exercise this right at the auction by attaching documents proving his right of pre-emption in person at the place and time of the auction. Pursuant to Article 35 (4), the agricultural administration body must examine whether the authorship of the auctioneer or the right of pre-emption of the person bidding as the right of pre-emption exists and whether the auction purchase does not result in a breach or circumvention of the restriction on the acquisition of property.

Based on the cited provisions of the Land Transaction Act, it can be concluded that the law clearly provides an opportunity for all natural persons in Hungary or other EU Member States to participate in the auction who can acquire ownership of the land in accordance with the provisions of the Land Transaction Act. It is also clear from Section 35 (3) that if the auction participant is also entitled to pre-emption (i.e. it is not necessary that all auctioneers are also entitled to pre-emption), then, in addition to certifying the general conditions for obtaining ownership of the land, he must also present as an additional requirement the documents establishing his right of pre-emption, and that he is entitled to pre-emption only personally.

Pursuant to Article 5 (1) of 191/2014 (VII.31.) Government Decree, the four conjunctive conditions for the acquisition of the ownership of the land at auction, and thus, of course, of the acquisition of ownership of the land by auction are that the auctioneer deposits 10% of the value of the land with the agricultural administration body no later than before the start of the auction; pay the bid fee; certify its ability to acquire property and make the necessary declarations in order to acquire ownership of the land in accordance with Article 35 (3) of the Land Transaction Act; and finally, to comply with the condition of section 18 (1) (e) of the Land Transaction Act for a distance of up to 20 km and certify it with an official certificate. The first two of these four conjunctive conditions are specifically financial and technical requirements for participation in the auction. The third condition under Section 5 (1) (c) is the general requirement for the acquisition of ownership of the land, referring back to the provisions of the Land Transaction Act. However, Section 5 (1) (d) lays down a special restriction on participation in the auction, when [referring back to Article 18 (1) (e) of the Land Transaction Act] it provides that only a person who is considered to be a farmer and whose place of residence or agricultural centre has been in the settlement whose administrative boundary is from the administrative boundary of the settlement in which the land is the subject of the sale may take part in the auction, it is not more than 20 km away on a road or on a private road not closed to public traffic. This provision excludes the acquisition of ownership of the land by auction for all those who are otherwise entitled to acquire ownership of land under the provisions of the Land Transaction Act, but are either not entitled at all to exercise the right of pre-emption in respect of the land to be auctioned, or, if they are entitled, the legal basis for it is not Article 18 (1) e) of the Land Transaction Act. This also means that Section 5 (1) (d) of the Government Decree does not actually formulate detailed rules of a technical nature relating to the auction, but fixes content and material legal requirements other than the general provisions of the Land Transaction Act for the acquisition of land at auction, as a kind of *lex special* regulation.

By the fact that the legislator did not fix in a cardinal act, but in a government decree, an additional material legal requirement for the acquisition of land ownership by auction, other than the general provisions of the Land Transaction Act, the cardinal legal

requirement arising from Article P (2) of the Fundamental Law was not fulfilled in respect of Article 5 (1) (d) of the Regulation. The Constitutional Court therefore found that Article 5 (1) (d) of the Regulation is unconstitutional and annulled it.<sup>27</sup>

According to the Enforcement Act, the executor, the deputy executor, the executor candidate, other employees of the executor, the executive office, a member and employee of the executive office may not participate in the auction. A legal entity or company in which a person or entity prohibited from auction has a majority influence. The executor, deputy bailiff, close relative and partner of the member of the executive office. The person belonging to the court of enforcement in the case and the debtor. A person or entity who claims to acquire the property because of the status of a claimant or co-owner, or if a separate law grants him the right of pre-emption in the event of the sale of the thing, shall not be excluded from the auction.<sup>28</sup> This includes the right to pre-purchase under the Land Transaction Act.<sup>29</sup>

According to the Land Transaction Act, no foreign natural person, a state other than the Hungarian state or any of its organs may participate in the auction.<sup>30</sup> Legal entities can only participate in the auction in exceptional cases, the main reason for this is the restrictive provisions of the Land Transaction Act. Currently, the Hungarian state can make a bid for a purchase without limits, with restrictions on the church, the mortgage credit institution and the municipal government.

#### 5.4. Conducting the auction

At the beginning of the auction, the auctioneer shall communicate the terms of the auction, the starting price, which is the same amount as the estimate. He checks the preconditions for the participation of auctioneers, calls on those entitled to pre-emption to indicate the legal basis and rank of the right of pre-emption. The lowest offer to buy is at least 50 % of the estimate value, with the exception of the farm. In the case of farm, the lowest offer to buy is 70 % of the estimate value; but in the case of the recovery of a claim based on a contract with the consumer, a valid offer of purchase may be made at least at the same amount as the starting price, if this is the debtor's only residential property, his place of residence is in it and he was also in it for the 6 months preceding the initiation of the enforcement proceedings.<sup>31</sup>

The auction must continue as long as a valid bid is made. If there is no larger bid, the bidder closes the bid by declaring the amount three times and invites those entitled to pre-emption to exercise the right of pre-emption. If the pre-emptive person makes a statement of acceptance for the highest bid, he or she will be the auctioneer. If several pre-emptive holders make a declaration accepting an offer to buy, the auction buyer will be entitled to pre-emption belonging to the first rank group. If there are several people eligible for pre-emption in this rank group, the declaring person will decide by a draw conducted locally.

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<sup>27</sup> Excerpt from 12/2022 (VI.2) Explanatory Memorandum of the Constitutional Court Decision

<sup>28</sup> Section 123 of Enforcement Act.

<sup>29</sup> Section 18 (1)-(4) of Land Transaction Act.

<sup>30</sup> Section 9 (1) a)-c) points of Land Transaction Act.

<sup>31</sup> Article 7 of 191/2014 (VII.31.) Government Decree.

In decision in principle no. Kfv.37.717/2019/10 of the Curia emphasized that in the event of the auction of land, the right to pre-purchase may act only in person pursuant to Article 35 (3) of the Land Transaction Act, and cannot exercise its right of pre-emption only by representative.

The first three bids reaching the minimum price are considered valid bids. If the first-place buyer does not transfer the purchase price within the deadline, the next highest auctioneer wins the auction. In this case, the person who fails to pay is charged for paying the difference between his own bid fee and the next bid fee.

The auction is unsuccessful if no one has made a valid bid for the land, the offered purchase price does not reach the minimum price at the repeated auction, if the buyer cannot acquire property on the land or the buyer has not transferred the purchase price in due date.<sup>32</sup> In the case of an unsuccessful auction, a repeated auction shall be scheduled, to which, as a general rule, the rules of the first auction shall apply. If the repeated auction is also unsuccessful, the agricultural administration body declares the auction unsuccessful. At the request of the agricultural administration body, the bailiff shall publish, in accordance with the rules of the Enforcement Act<sup>33</sup> a notice for the continuous auctioning of the land. After the publication of the notice, the offer to buy the land may be made in writing with the bailiff. Within 30 days of the receipt of the offer to buy, the bailiff shall again contact the agricultural administration body for the purpose of publishing the auction notice and conducting the auction.

## 6. Closing remarks

In Hungary, special, complex rules apply to the auction of agricultural and forestry land. The legislator highlighted the sale of land covered by the Land Transaction Act from the powers of the bailiff, and an administrative body implements the auction of land. In practice, this solution requires the joint application of several pieces of legislation.

In my opinion, this solution can be justified, on the one hand, by ensuring in practice the enforcement of the prohibition provisions on the acquisition of ownership of land, as laid down in the Land Transaction Act. On the other hand, this mixed solution also entails negatives: it increases the duration of the enforcement procedure; the auction of land takes place in a traditional way, with a personal presence, which represents a step backwards compared to electronic auctions. A rule insisting on personal participation in the auction on the part of the person entitled to pre-emption and excluding proceedings by proxy shall be regarded as archaic.

The constitutional court's decision 12/2022 (VI.2.) detailed in subsection 5.3 of this study can be considered as a positive. The practical problems surrounding the commonly owned land have thus been eliminated and the restrictive provisions of relation to the Land Transaction Act have been annulled.

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<sup>32</sup> Gyovai & Kiss-Kondás 2016, 60.

<sup>33</sup> Section 159 of Enforcement Act.

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