Land associations in Slovakia

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Abstract

The land fragmentation is one of the serious problems in Slovakia which is given by the historical development of the land law. In the past, landowners tried to solve this problem by creation of various forms of land associations oriented to the common cultivation of agricultural land and forest land. Nowadays, the Slovak lawmaker decided to regulate the institute of land associations by the law. Land associations in Slovakia are legal entities conducting agricultural business on agricultural land, forest land or in water areas; moreover, they can provide also other business activities according to particular legal regulations. Land associations conduct business on real estate property or, more commonly, properties, which are usually owned by many co-owners, because the individual cultivation of small part of land plots would not be effective. However, the law is a subject of legal amendments more often than necessary in order to ensure the legal certainty. This paper introduces this recondite legal entity, its activities, its internal government and the ownership rights of its members. A pre-emption right that has a special legal regulation different from the general legal regulations of the pre-emption rights in the Civil Code is one of the special issues.

Keywords: *land association, agricultural land, legal regulation, owner of the common real estate property, land fragmentation.*

JEL Classification: K12

1. Introduction

Land associations sprang from urbarial co-ownership of land and other similar units established in medieval feudalism. Those units represented a special type of common (joint) use of land, which has persisted up to the present day and does not fit into the common ownership and use relations regulated by the Civil Code.

In 1848, serfdom was abolished and the Urbarial Patent of 1853 recognized the former serfs as owners of the land they had in their personal use.[5] Arable land

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[5] Bezáková, L. et al. 1996. Pozemkové právo. Nitra: SPU, 1996, pp. 59-60.

was divided among the serfs according to the number of homesteads in the village. Owners of specific plots were then determined by drawned lots. The co-owners of urbarial land, so called urbarialists, gained both the arable land and ownership rights to forests and pastures. However, the system of management of forests and grassland fields was not efficient enough to become independent. As it would not have been useful, it was not possible to determine boundaries in the use of forests and pastures. Thus, in case of forests and meadows, forms of common management, so-called urbarial associations, originated. The background conditions were regulated by the Austro-Hungarian Act of 1898. Jointly used pastures and forests became indivisible property owned by all urbarialists and managed by the assembly of co-owners. Resolutions of the assembly were implemented by either the president as its statutory body or other executive bodies established. The decisions were adopted by the majority of co-owners counted according to their shares. The yield from the common management was divided among the co-owners based on their rights.[6]

Many urbarial associations have preserved until today despite the fact that during the socialism they were abolished by the Slovak National Council Act No. 81/1949 Coll. on adjustment of legal conditions of pasture property of former urbarialists, compossessorates and other similar legal units, as well as the Slovak National Council Act No. 2/1958 Coll. On adjustment of conditions and management of jointly utilized forests of former urbarialists, compossessorates and other similar legal units.[7] While the first Act dealt with the property of pastures, the second one focused on forests. According to the Acts, the property of pastures was to be given into the ownership of a cooperative and urbarialists became its members, and the property of forest land was to be given into the use of the state forests management, specifically regional forests management or peasant cooperatives (only if the size of the area did not exceed 50 ha).[8] Both cases referred to expropriation or withdrawal of the right to use with no compensation and both Acts were repealed by the Act No. 229/1991 Coll. on regulation of ownership relations to land and other agricultural property. Every urbarialist having a share in pastures that formed an urbarial association in the past had to apply for restitution. The urbarial association as a legal entity could not restitute the property, as it no longer existed. After the urbarialists gained ownership to pastures, their urbarial legal relation to the whole urbarial property was restored.[9]

After 1989 several regulations[10] relating to land associations have been adopted, for instance Act No. 330/1991 Coll. on land modifications, settlement of ownership of land, land offices, land fund and land associations and Act No. 293/1992 Coll. on regulation of certain types of ownership relations to real estate.

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[6] More details in Štefanovič, M. 2006. Pozemkové právo. Bratislava: Eurounion, 2006, pp. 166-169.
[7] Kolesár, J. et al. 1980. Československé pozemkové právo. Bratislava: Obzor, 1980, p. 117.
[8] Kolesár, J. et al. 1980. Československé pozemkové právo. Bratislava: Obzor, 1980, pp. 117 -118.
[9] More details in Štefanovič, M. 2006. Pozemkové právo. Bratislava: Eurounion, 2006, pp. 177-179.
[10] Takáč, I. Relations of uses on agriculture land in individual legal forms in Košice and Nitra counties. In: Podnikanie na poľnohospodárskej pôde v EÚ-27, Nitra: SPU, 2008, pp. 175-182.

According to those, it is not the ownership of the association acting as a legal entity, but the ownership of natural persons – urbarialists. It was only in 1995 that Act No. 181/1995 Coll. on land associations was adopted to regulate the legal conditions of land associations for the first time after 1989.[11] However, the regulation was replaced by the new Act No. 97/2013 Coll. on land associations which is still valid today. The adoption of the new Act is justified by the Explanatory Memorandum as follows: "Due to the incorrect distribution of property to former owners and land associations without any adjustment of legal conditions of the Act No. 181/1995 Coll., vague interpretation and implementation of certain provisions of the Act and the absence of sanctions for the violation of duties, it is inevitable to replace the so-far valid Act on land associations with an Act that will solve the consequences of those imperfections. Elaboration of a draft of the new Act on land associations is also justified in the fact that the Act No. 181/1995 Coll. was mainly aimed at getting over the period of searching for mechanisms that ensured the existence of land associations, arrangement of their relations with the state, arrangement of relations inside the associations; supporting the unification of plots, and fighting against further fragmentation. Those problems expanded during the implementation of the Act to such an extent that a new legal regulation is needed."[12] Current legal regulation can be found in the Act No. 97/2013 Coll. on land associations.

2. Land association – notion defined pursuant to the current legal regulation

Pursuant to provision § 2 of the Act No. 97/2013 Coll. on land associations, the land association is:

a) *a forest and pasture association of owners of shares in common real estate property subject to specific regulations established under specific regulations.* The specific regulations including the Act XIX/1898 on state management of municipal and other types of forests and upland pastures, regulation of economic report on jointly used forest and upland pastures which represent indivisible property of compossessorates and former urbarialists, the Act X/1913 on indivisible common pastures, and the Act XXXIII/1913 on sale or exchange of certain state estates, had been valid until the adoption of the Act No. 181/1995 Coll. on land associations. It refers to land of former urbarialists, whose rights to use were withdrawn, but whose ownership rights to property were preserved formally even during the period of collectivization. Their legal relations continued to be subject to the above-mentioned Acts, which were not repealed.

[11] Bandlerová,A., Takács Gyorgy, K.., Lazíková, J. Zhody a rozdiely vo vývoji majetkovej štruktúry a vo vlastníctve k poľnohospodárskej pôde v krajinách V4. In: Medzinárodné vedecké dni, Nitra: SPU, 2004, pp. 53-57.

[12] Explanatory Memorandum to the Act No. 97/2013 Coll. on land associations. General part.

b) *a forest association, pasture association or land association established under specific regulations.* The specific regulations include restitution regulations, especially the Act No. 229/1991 Coll. on regulation of ownership relations to land and other agricultural property and the Act No. 293/1992 Coll. on regulation of certain types of ownership relations to real estate. Pursuant to § 11 of the Act No. 293/1992 Coll., it was possible to decide about the common management of restituted land plots and about the indivisibility of co-ownership. It referred to restoration of no longer existing units, where former urbarialists were withdrawn ownership rights to given real estate property based on the Slovak National Council Act No. 81/1949 Coll. on adjustment of legal conditions of pasture property of former urbarialists, compossessorates and other similar legal units, as well as the Slovak National Council Act No. 2/1958 Coll. on adjustment of conditions and management of jointly utilized forests of former urbarialists, compossessorates and other similar legal units.

c) *an association of owners of common real estate property.* It refers to an association established under new legal regulations after 1989, especially under the Act No. 181/1995 Coll. on land associations or under existing valid legal regulation.

d) *an association established by owners of jointly managed real estate properties*. The previous legal regulation of the Act No. 181/1995 Coll. on land associations did not allow the establishment of a land association if it had referred to several properties, the owners of which were interested in their common management. This possibility was introduced by the currently valid legal regulation in the Act No. 97/2013 Coll. on land associations.

The primary aim of the land association described in letters a) to c) is a rational management of a common real estate property, which could not be effectively divided into exclusive ownership of individuals having shares in it. It is specifically related to meadows, pastures and forests. "Urbarial and other associations were established and have been preserved in renewed forms. It is justified by the result of a rational request for common effective use."[13] The new type of the land association introduced in letter d) focuses on common management of individual agricultural or forest properties maintained in the ownership of individual members of the association.[14] Unlike the preceding three types of the land association, this one does not create a common real estate property. The owner of the jointly managed real estate property concedes the property to the management of the association with no establishment of co-ownership of those properties by association members.

It follows that the indivisibility of a jointly managed real estate property, which represents a major feature of the land association, will apply only to the first

[13] Štefanovič, M. Pozemkové právo. Bratislava: Eurounion, 2006, p. 167.
[14] Explanatory Memorandum to the Act No. 97/2013 Coll. on land associations.

three types of land associations, i.e. land associations managing one real estate property that is indivisible with the exceptions defined by the law.[15] There are certain issues connected with the indivisibility of a jointly managed real estate property that should be pointed out. Firstly, the divided co-ownership of a common real estate property can be neither cancelled nor settled according to the provisions of the Civil Code (§ 141 and 142), which regulate the cancellation and settlement of divided co-ownership in general. It means that co-owners of a common real estate property cannot agree on the cancellation of co-ownership and mutual settlement and the Court cannot permit the implementation of the settlement by means of division of property, passing it into the ownership of one or several owners as a compensation, or ordering the sale of the common property based on a proposal of a co-owner. The provision aims to prevent both further land fragmentation in the land association and subsequent creation of small land plots without any real economic value and the possibility of being efficiently managed.[16] Secondly, the transfer of ownership right to a share in a common real estate property relating to only certain land plots included in it is forbidden. The provision aims to prevent creation of co-ownership shares having different values on individual land plots of the common real estate property.[17] It means that a co-ownership share can be transferred to another entity only in relation to all land plots representing the common real estate property. However, the land association itself cannot be this entity (provision § 9 par. 9 of the Act No. 97/2013 Coll.). Thirdly, the co-owners of the common real estate property have the pre-emption right to the co-ownership share of a land association member only in relation to third persons; if a share in the common real estate property should be transferred between two or more members of the land association, the pre-emption right is not provided *ex lege*. However, it does not prevent the right to be introduced by an agreement, for instance the very agreement on establishment of the land association.

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[15] Provision § 8 par. 2 of the Act No 97/2013 Coll. on land associations: *Based on the decision of the assembly, a newly created land plot (hereinafter referred to as "separated part of the common real estate property") may be separated from the land or land plots belonging to the common real estate property:*

a) *in case of transfer of ownership right to a land plot built up with a construction permitted pursuant to a specific regulation* (Act No. 50/1976 Coll. *unless the construction is unauthorized* (§ 135 c) par. 1 of the Civil Code),
b) *if the purpose of use of the common real estate property or its part is being changed pursuant to a specific regulation* (§ 17 par. 4 of the Act No. 220/2004 Coll., § 7 par. 1 of the Act No. 326/2005 Coll.)
c) *in case of transfer of ownership right to land by means of expropriation or for the purpose which may serve the expropriation* (e.g. § 108 Act No. 50/1976 Coll.)
d) if defined so by a special regulation (e.g. § 11 par. 13 of the Act No. 330/1991 Coll.),*or*
e) *in case of transfer of ownership right to a land plot situated in a protected area or its protection zone pursuant to a specific regulation* (§ 62 par. 3 letter c) and § 63 of the Act No. 543/2002 Coll.).

[16] Explanatory Memorandum to the Act No. 97/2013 Coll. on land associations.
[17] Explanatory Memorandum to the Act No. 97/2013 Coll. on land associations.

The amendment of the Act on land association that is being prepared proposes complete elimination of the principle of indivisibility of land co-ownership in land associations, which would enable the co-owners of the common real estate property to cancel and settle the co-ownership pursuant to general provisions of the Civil Code. But it will be necessary to respect the provisions on land fragmentation within the meaning of the Act No. 180/1995 Coll. The lawmaker explains two reasons for the need for the abolition of indivisibility of co-ownership in land associations. Firstly, the number of co-owners of common real estate properties is constantly rising while the co-ownership shares are getting smaller and the number of co-owners interested in the life of the association, especially in taking part in the general assembly meetings, is decreasing. Secondly, conniving acquirers of shares in the common real estate properties, who gain the majority share, infiltrate into a group of co-owners, which leads to the minority owners being always outvoted. Thus the lawmaker wants to enable at least partial settlement of ownership by means of division of the common real estate property into ownership units of both minority and majority owners.[18]

3. Establishment and organizational structure of the land association

The land association is a legal entity established by an agreement on the land association. The agreement is concluded by the owners of the common real estate property or jointly managed properties. The establishment of the association is decided by an absolute majority of votes counted according to the size of co-ownership shares.

An owner of a share in the common real estate property who does not want to be a member of the land association may offer his/her share to another co-owner of the common real estate property when the land association is established. Otherwise the owner becomes a member of the land association. Membership in the land association is bound to the ownership right to a share in the common real estate property, i.e. if the ownership right to a share in the common real estate property is either transferred or passed to a new owner, the original owner's membership expires and the new owner of the given share becomes a member of the association.

The agreement on the land association is in writing and includes the name of the association supplemented with words "land association" or their abbreviation; registered office of the association; identification of land plots managed by the land association; bodies of the association; rights and duties of its members; type of activity of the association and other information defined by the law (§ 5 par. 1 of the Act No. 97/2013 Coll.).

The land association originates on the day of its registration in the Register of Land Associations kept by a relevant District Office (Department of Forests and Land Plots), in the area of which the common real estate property or jointly

[18] Explanatory Memorandum to the amendment of the Act No. 97/2013 Coll. on land associations being prepared.

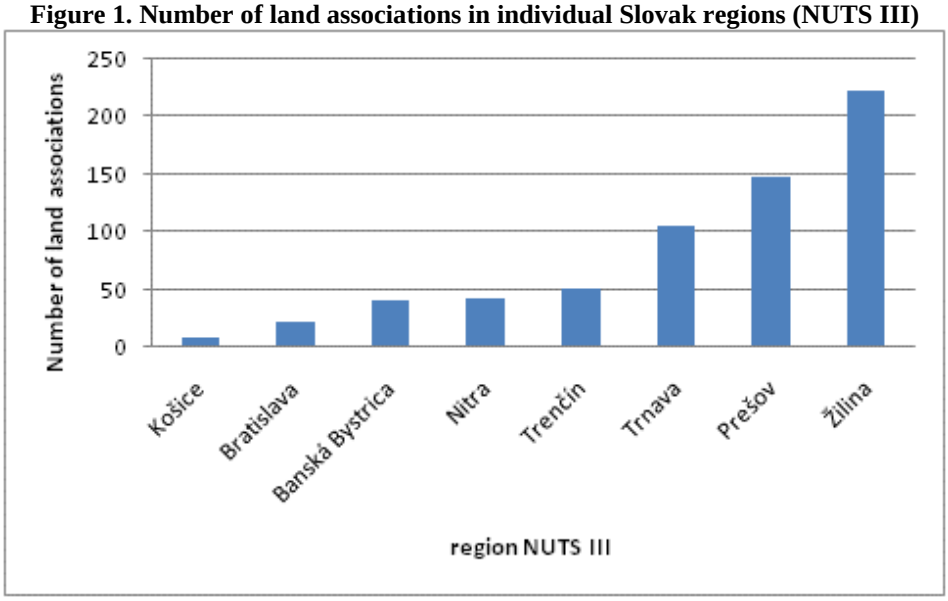
managed properties are situated. If the given property or properties lie in areas belonging to more District Offices, the registration is done in the District Office, in the area of which the largest part of the common real estate property or jointly managed properties is positioned. The proposal for registration is submitted by the president of the association and at least one member of its committee. The information necessary to be included in the proposal for registration as well as the requirements regarding annexes are set by provision § 24 of the Act No. 97/2013 Coll.

Nowadays, there are 640 entities registered in the Register of Land Associations. However, their distribution throughout the territory of Slovakia is not distributed equally. As it can be seen in Figure 1, their number significantly differs in individual regions of Slovakia (NUTS III).

Figure 1 shows that the highest number of land associations is positioned in Žilina and Prešov Regions. We can assume that it is caused by the land fragmentation, which is more significant on the north of the country.[19]

The organizational structure of the land association consists of the assembly, committee, supervisory board and other bodies established by the members of the association. Only members of the land association can act as members of the bodies of the association, except for the supervisory board, in which a natural person not being a member of the association can be included as well. The term of office of the bodies of the association is five years maximum.

Figure 1. Number of land associations in individual Slovak regions (NUTS III)



Source: Own processing based on the lists of individual District Offices of Slovak Republic

[19] For instance Lazíková, J., Rumanovská, Ľ., Takáč, I., Lazíková, Z. Land fragmentation and efforts to prevent it in Slovak legislation. In: Agricultural economics, Praha: VUZE, 2017, Vol. 63, doi: 10.17221/180/2016-AGRICECON (in press).

The assembly is the highest body of the association. It consists of all members of the association and is convened at least once a year. Its powers include approval of the agreement on the land association and its amendments, approval of statutes of the land association and its amendments, election and dismissal of members of the bodies of the association, decision-making related to the division of some part of the common real estate property; decision-making related to the management of the association; decision-making related to the distribution of the profit and compensation of the loss; approval of annual financial statement; decision-making related to the association's entering a trading company or cooperative; and decision-making related to cancellation of the association. The number of votes of a member of the assembly represents the proportion of his/her involvement in the exercise of rights and duties, which is expressed by the shares in the common real estate property. Decisions are made by an absolute majority of votes.

The committee is a statutory body of the land association and manages its activities. It has at least five members and is headed by the president of the association, who is a member of the committee if not stated otherwise by founding documents.

The supervisory board monitors the activities of the land association and is accountable for its activities to the assembly. It has at least three members, while the number of members of the supervisory board not being members of the land association must be smaller than the number of those members of the supervisory board who are members of the association. A member of the supervisory board cannot act as a member of the committee. Members of the supervisory board elect a president from among themselves.

Other bodies of the land association are formed by the assembly according to its needs. Requirements regarding the activities and structure of such bodies are defined by the founding document (agreement on the land association and statutes of the land association).

4. Pre-emption right to co-ownership share in the land association

There is one provision of the Act on land associations that is constantly being amended and it is the provision dealing with the pre-emption right to co-ownership share in the land association. The pre-emption right represents a legal relationship between an entity defined as an authorized entity and the owner of the property defined as an obliged person, in which the authorized entity has the right to acquire the property as the first one under certain circumstances if the obliged person wants to sell or alienate the property in some other manner, and in which the obliged person is obliged to offer the property to the authorized entity to enable the entity to buy or gain possession of the property for such action.[20]

[20] Jehlička, O., Švestka, J. Nad předkupním právem. In: Právní rozhledy, 1994, Vol. 5, p. 160.

General legal regulation of the pre-emption right can be found in the provision § 140 of the Civil Code relating to the issue of divided co-ownership, as well as provisions § 602-606 regulating the pre-emption right within the framework of secondary arrangements connected with the purchase contract. The Civil Code represents the main pillar of the legal regulation of the pre-emption right. Many other regulations use the concept of the pre-emption right by either referring to its legal regulation in the Civil Code only or defining *lex specialis* rules with subsidiary application of the Civil Code. However, it is possible to find even a specific legal regulation of the pre-emption right excluding the subsidiary application of the Civil Code. An example can be provided by provision § 9 par. 7 of the Act No. 97/2013 Coll. on land associations. The Act No. 97/2013 Coll. on land associations regulates the pre-emption right in two other provisions as well.

Firstly, it is the provision § 11 par. 2 of the Act, which determines that owners of shares in the common real estate property have the pre-emption right to shares in the common real estate property that are managed by the Slovak Land Fund and owned by the state. If the Slovak Land Fund (hereinafter referred to as SLF) decides to sell the land plots of the common real estate property, it is obliged to offer them preferentially to all members of the land association by means of the committee as the statutory body of the association. SLF's proposal on the transfer of a share in the common real estate property has to be in writing and include an appropriate deadline for submission of a written request by those interested in the offered share, as well as the price it is willing to sell the share for. The price of the offered share shall be determined pursuant to the Decree of the Ministry of Justice of the Slovak Republic No. 492/2004 Coll. on determination of general value of assets. If the owners of the common real estate property use their pre-emption right, SLF is obliged to conclude an agreement on transfer of co-ownership share in the property with them. It is only after no owner shows interest in buying the offered co-ownership share that SLF may offer the share for sale in a tender to third persons. Since the provision § 11 par. 2-5 does not explicitly exclude the application of the provisions on pre-emption right set by the Civil Code, the provisions § 140 and § 602-606 of the Civil Code may be subsidiarily applied to this provision.

Secondly, the provision § 11 par. 8 of the Act excludes the application of general provisions on the pre-emption right.[21] It refers to the case of a consideration-free transfer of a share of the state to a member of the land association, who is recognized as an authorized person according to restitution regulations.[22] Thus, SLF may not only enable the authorized persons to acquire their original share in the real estate property in the land association, which belongs to them within the meaning of restitution regulations, but also give the authorized persons a co-ownership share in the common real estate property in the association that is managed and owned by the state as a compensation instead of their original

[21] I..e. provisions § 140 and § 602-606 of the Civil Code.

[22] Tóthová, L. Nový zákon o pozemkových spoločenstvách. In: Justičný revue, 2013, Vol. 65, no. 10 p. 1252.

land plot if they are members of the land association. In this case, the application of the pre-emption right in relation to all members of the land association would be an inappropriately hard intervention in the ownership right of the member of the land association recognized as an authorized person within the meaning of the restitution regulations. Thus the lawmaker explicitly excluded the application of the pre-emption right in this case in the last sentence of the provision § 11 par. 8 of the Act No. 97/2013 Coll. on land associations.

Thirdly, the provision § 9 par. 7 of the Act excludes the application of the pre-emption right in accordance with the Civil Code in case of transfer of the share in the common real estate property between members of the land association with the exception of a transfer of a share managed by SLF (which is regulated by the above-mentioned provision § 11 par. 2 of the Act No. 97/2013 Coll. on land associations). Based on the wording of § 9 par. 7 of the Act on land associations stating that "*the general provision on the pre-emption right does not apply to the transfer of a share in the common real estate property between members of the land association*", it may be concluded that if a member of the land association decides to transfer his/her share to another member or members of the land association (for instance by means of sale or donation), he/she is not obliged to offer it for sale to all members of the land association before that within the meaning of the provisions § 140 and § 602-606 of the Civil Code. Both the provision and the aim followed by the lawmaker – to unify the co-ownership shares in the common real estate property and to reduce the fragmentation of land and land property – are clear. Certain unclearness may be found only in the phrase *between members of the land association.* Its grammatical interpretation would mean that the pre-emption right does not have to be applied if a share is transferred to a person who is a member of the land association and an owner of jointly managed properties, but not of that one, the co-ownership share of which is being transferred; in other words, the person is not a co-owner of the common real estate property, but he/she is a co-owner of jointly managed properties and therefore he/she is a member of the association. That is why the lawmaker proposes to make the wording of the cited provision more accurate in the amendment and to replace the phrase *between members of the land association* with *between owners of the common real estate property*, which reflects the aim followed by the lawmaker in this provision in a better way.

Certain confusion in the provision § 9 par. 7 was caused by its second sentence that has already been amended. According to the original wording of the sentence, "*if an owner of a share in the common real estate property transfers his/her co-ownership share, he/she may offer it for sale to other owners of shares in the common real estate property by means of the committee; if other owners of shares are not interested in the share, he/she may sell it to a third person*." In connection with the first sentence, the cited provision may be interpreted as meaning that if the owner of the common real estate property is not interested in transferring his/her share to another member or members of the land association, the pre-emption right of the members of the land association is preserved in

relation to third persons (including transferor's close persons[23]) and the transferor may realize the transfer either on his/her own or by means of the committee as a statutory body of the land association. Those alternatives arise from the word "*may"* used by the lawmaker in the original wording. The Explanatory Memorandum to this provision implies a duty rather than a right of the transferor of a share in the common real estate property to offer the share to other members of the land association by means of the committee: "*If the owner of the share in the common real estate property wants to sell his/her co-ownership share to another co-owner of the common real estate property, other co-owners have no pre-emption right. However, he/she may decide to offer the share to all co-owners of the common real estate property; in this case the offer is realized by means of the committee, which informs the members of the association via the invitation to the assembly meeting.*"[24] It seems that this inconsistency in the wording of the Act and the Explanatory Memorandum led to its quick amendment. The lawmaker changed the word *may* into *must* by means of the Act No. 34/2014 Coll. amending and supplementing the Act No. 220/2004 Coll. on protection and use of agricultural land and on amendment of the Act No. 245/2003 Coll. on integrated prevention and control of environment pollution and amendment and supplementation of certain acts as amended. The Explanatory Memorandum to this Act explains the change as follows: "*The so-far existing application practice led to a need for adjustment of the provision in the way that it clearly implies the duty to offer the share for sale by means of the committee of the association.*"[25] It means that the amendment limited the possibility of the owner of the share to transfer the co-ownership share to other members of the land association to only one possible way – by means of the statutory body (committee) of the land association. This is subject to condition that the transferor does not use the possibility to transfer his/her share to another member or members of the land association, in case of which the pre-emption right of other co-owners of shares in the common real estate property is not granted.

However, the lawmaker did not choose words in the given provision felicitously and the amendment of the provision made it even more unclear for its addressees, especially if its addressee does not know the original wording and reads the text without the Explanatory Memorandum. It may seem that the first and the second sentences of the current wording of the provision § 9 par. 7 are inconsistent: "*The general provision on the pre-emption right does not apply to transfer of a share in the common real estate property between members of the association unless it is the case of transfer pursuant to § 11 par. 2. If an owner of a*

[23] According to § 116 of the Civil Code, a close person is a person relative in direct line, sibling and spouse; other persons in a family or similar relation are also considered to be close to each other if a detriment suffered by one of them is reasonably felt as own by the other.

[24] Explanatory Memorandum to the Act No. 97/2013 Coll. on land associations.

[25] Explanatory Memorandum to the Act No. 34/2014 Coll. amending and supplementing the Act No. 220/2004 Coll. on protection and use of agricultural land and on amendment of the Act No. 245/2003 Coll. on integrated prevention and control of environment pollution and amendment and supplementation of certain acts as amended.

share in the common real estate property transfers his/her co-ownership share, he/she must offer it for sale to other owners of shares in the common real estate property by means of the committee; if other owners of shares are not interested in the share, he/she may sell it to a third person." While the first sentence cancels the pre-emption right of members of the land association if the transferor wants to transfer his/her share to some other member or members of the association, it seems that the second sentence implies that the transferor has no other option how to transfer his/her share except for offering it for sale to other owners of shares in the common real estate property, i.e. the pre-emption right of the other owners is preserved and the transferor must respect it. It is only a lengthy systematic (coming from the relationship between the first and the second sentences of the provision § 9 par. 7), historical (coming from the original and current wording of the provision) and teleological (coming especially from Explanatory Memorandums) explication of the wording of the Act which implies that the word *must* does not apply to the pre-emption right of other co-owners of shares in the common real estate property, but to the method of realization of their pre-emption right by means of the committee if the transferor does not use the possibility provided according to the first sentence.

The quoted provision § 9 par. 7 may also result in interpretation, in which the first sentence cancels the application of the general pre-emption right pursuant to the Civil Code in case of transfer of a share between members of the land association. The pre-emption right is preserved in their relationship, but it will be regulated exclusively by the *lex specialis* provision, i.e. the second sentence of the provision § 9 par. 7 of the Act on land associations. The second sentence might be interpreted as meaning that when transferring the share in the common real estate property, the owner is always obliged to offer it to all co-owners in the land association and to do so exclusively by means of the committee and only if no member of the land association is interested in the share, it may be offered to a third person, including a close person, since the *lex specialis* does not determine the exception of close persons similar to that one defined by the provision § 140 of the Civil Code.

The above-mentioned possibly confusing interpretations are not based on a theoretical background only. There really have been situations when the pre-emption right of members of the land association was not applied at all or the registration of the ownership right in the Cadastre of Real Estate was rejected only due to the co-ownership share not being transferred between the co-owners by means of the committee. The lawmaker's Explanatory Memorandum to the amendment explains that there were two aims followed by the provision. Firstly, "when a share is being transferred to another member of the association, other co-owners have no pre-emption right."[26] Secondly, "if a share is being transferred to a third person in case when other co-owners always have the pre-emption right pursuant to the general regulation (except for the case of transfer to a relative), the

[26] Explanatory Memorandum to the amendment of the Act on land associations being prepared. Special section.

transferor is obliged to realize the offer for transfer to other co-owners by means of the committee of the association."[27] We take the liberty to argue that this intention is implied by no cited wording of the provision § 9 par. 7 of the Act on land associations. Its amendment that is being prepared is more precise: "*The general provision on the pre-emption right does not apply to transfer of a share in the common real estate property between owners of the common real estate property unless it is a case of transfer pursuant to § 11 par. 2. If the owner of the share in the common real estate property transfers his/her co-ownership share to a third person, he/she must offer it for transfer to other owners of shares in the common real estate property; the share may be offered by means of the committee. If other owners of shares or the association on their behalf are not interested in the share pursuant to par. 10, it may be transferred to a third person*."[28] The quoted wording raises questions related to the two above-mentioned aims of the lawmaker. Firstly, the wording does not imply the obligation to realize the transfer by means of the committee, which brings us to the interpretation problem of the original wording of the provision again. The wording clearly implies that it is the right, not an obligation, of the transferor to realize the offer in relation to other co-owners by means of the committee. However, it is not clear why it is currently provided as an obligation in the amendment. Since the lawmaker wants to change the provision for the third time and the amendment will change an obligation to a right again, the current wording imposing the obligation is probably not consistent with the principle of proportionality. Secondly, the wording does not clearly define non-application of the pre-emption right in case of transfer of the share in the common real estate property to a relative as stated by the lawmaker in the Explanatory Memorandum. Based on the first sentence, the provisions on the pre-emption right according to the Civil Code are excluded in case that the transferor transfers his/her share to another owner or owners of the common real estate property. Subsequently, it *a contrario* follows that if the transferor offers the share to a third person, the pre-emption right of the members of the land association is preserved in full extent as laid down in the Civil Code. It would mean that the pre-emption right of the members of the association is not preserved if the transferor transfers the share to a relative (§ 140 of the Civil Code). However, if we consider the wording that was added in the provision § 9 par. 7 (*if other owners of shares are not interested in the share, he/she may sell it to a third person)* to be a *lex specialis* provision, which excludes the application of the Civil Code, including the exclusion of the pre-emption right of close persons, the cited provision allows the owner of the share to transfer it to a third person (with no exception in relation to a relative) only if no member of the land association is interested in the offered share. Although it may be assumed that this interpretation could be out of question in case of the Slovak standard legislative technique, in order to provide legal certainty, it would be suitable to supplement the wording that is being prepared

[27] Explanatory Memorandum to the amendment of the Act on land associations being prepared. Special section.

[28] Draft amendment to the Act on land associations, 2017.

with information on relatives, for instance, as follows: *The general provision on the pre-emption right does not apply to transfer of a share in the common real estate property between the owners of the common real property unless it is a case of transfer pursuant to § 11 par. 2. If the owner of the share in the common real estate property transfers his/her co-ownership share to a third person (with the exception of his/her relative),*[29] *he/she must offer it for transfer to other owners of shares in the common real estate property; the share may be offered by means of the committee. If other owners of shares or the association on their behalf are not interested in the share pursuant to par. 10, it may be transferred to a third person*.

The last problem caused by the confusing provision is the wording of the above-mentioned added phrase –"*may sell it to a third person*." Neither the Explanatory Memorandum nor the aims followed by the lawmaker in the Act No. 97/2013 Coll. on land associations identify why the transferor could not alienate his/her share in the common real estate property in the land association to a third person (including his/her close persons) in any other way. In this case it is probably just a result of the lawmaker's paying less attention to the application of rules of legislative technique, because he omitted other methods of alienation, although the question whether the pre-emption right applies to a sale only or to other methods of alienation as well has already been solved by the application practice. "There is controversy on question whether the pre-emption right originates in case of transfer with consideration only or in case of transfer without consideration as well. In order to answer correctly, the wording of § 140 is not important itself, as it does not focus on the transfer with consideration only, but it is the purpose of the provision that is crucial. If the pre-emption right should protect other co-owners from a certain person becoming a new owner, it cannot be limited to transfer with consideration only."[30] The Supreme Court of the Slovak Republic agrees: "The pre-emption right of a co-owner is also applied in case of transfer of a co-ownership share based on a donation contract."[31] The lawmaker has already noticed the imperfection and changed the wording of the provision in the amendment that is being prepared as follows: "*may be transferred to a third person.*" The current wording inadequately limits the ownership right of the owner of a share in the common real estate property in the land association to freely dispose of his/her share. The quoted wording thus forces the owners of shares in the association to transfer their shares by means of simulated purchase contracts and leads to them acting *in fraudem legis*.

5. Conclusion

Land associations represent a legal form of land management and conducting business in agriculture. They are a legal institute, the establishment of

[29] Relative within the meaning of § 116 of the Civil Code.

[30] Fiala, J. et al. Občanský zákoník. Komentář. I. Vol. Praha: WoltersKluwer ČR, 2009. p. 472.

[31] Judgement of the Supreme Court of the Slovak Republic of 25th October 2005, No. l Cdo 102/2005.

which is determined by historical events related to land property fragmentation and inefficient individual management of forest and meadow areas. After the period of socialism, the lawmaker has repeatedly tried to legally regulate the land associations. The current legal regulation in the Act No. 97/2013 Coll. on land associations introduces many changes in comparison with the previous legislation. The land association is unequivocally defined as a legal entity with legal subjectivity registered in the Register of Land Associations managed by District Offices. However, there is a constant need for changes in the new legal regulation, which can be proved by the unclear interpretation of provisions on the pre-emption right in the land association. During the relatively short period of existence of the mentioned Act, the lawmaker has already started to prepare its second extensive amendment, including the issue of the pre-emption right. But the character of individual amendments may show us that even the lawmaker has no clear idea about how the land association and especially the ownership relations to real estate properties involved in it should function.

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