

# **The termination of joint ownership on Hungarian agricultural land**

## **Theses of the Ph.D. thesis**

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## **I. Background of the doctoral thesis**

The doctoral research was aimed at examining one of the long-standing and unresolved issues of Hungarian land law, namely the legal theory and practice of joint ownerships on agricultural land and the liquidation of joint land ownership, which resulted in the doctoral thesis.

### **I.1. Identification of the research problem**

The issue of commonholds on agricultural land is a complex legal problem, as the termination of common ownership is inherently a private law issue, but is nevertheless permeated by land tenure policy objectives and by certain public interest restrictions, prohibitions and conditions, due to the special legal nature of agricultural land. The current Hungarian legislation on land use does not only lay down restrictive provisions on the acquisition of ownership of land and the right to use it, but also imposes public law limits on the termination of a joint ownership of agricultural land.

The Hungarian land regime has not only a priority goal but also a historical debt to address the issue of common ownership of land, to prevent land fragmentation and to create an effective legal environment for the creation and preservation of land holdings of a size suitable for viable and competitive agricultural production. However, in the light of the doctoral research, the problem is not necessarily one of common ownership, but rather of the material and natural manifestation of the object of ownership. Although, it is difficult to attribute normative legal content to the phenomenon of land fragmentation and land concentration, the link between land fragmentation in the property sense and joint ownership of agricultural land is unquestionable, and I argue that joint ownership is the main safeguard of the survival of the fragmented land structure.

One of the key points of my doctoral research was the examination of the private law-public law dichotomy of the regulation on the termination of joint land ownership on agricultural land, and the doctrinal analysis of the related case law. In the course of these examinations, I came to the fundamental conclusion that the objective of property policy pursued by the legislator, the principle of certain restrictions, prohibitions and conditions in the public interest, is that no procedural rule of detail may infringe the right of a joint owner to terminate a joint ownership

of agricultural land. Another aspect of this is that the termination of the joint land ownership is a right and not an obligation of the joint owner.

In addition to the structure of the existing land transfer regulation, the research task included the examination of the prevailing land tenure policy preferences, the framework for the termination of the joint ownership of a given agricultural land and the possibilities of its application. Although the rules of the Civil Code provide in principle for the right of the joint owner to terminate the joint land ownership, the answer to the question "*how?*" is far from being exclusive.

The existing legislation on the liquidation of joint ownership is fragmented, and a thorough mapping of this has been a cornerstone of doctoral research. In the light of the findings of case-law, the choice of the method of liquidation and the procedural arrangements is a matter for the partners concerned, but the procedures leave sometimes more limited and sometimes wider scope for the substantive issues to be addressed in the liquidation procedure. Since the Hungarian legislation provides for three main ways of terminating the joint ownership of agricultural land, the task is to be carried out in accordance with the rules of Act V of 2013 on the Civil Code (hereinafter: Civil Code), the official procedure for the termination of undivided joint ownership arising from the transfer of a share of land (hereinafter: "OKTM procedure"), conducted pursuant to Act II of 1993 on Land Settlement and Land Transfer Commissions (hereinafter: Fktb.), and the methods of terminating under the provisions of Act LXXI of 2020 on the terminating of joint ownership of land and the settlement of data on the holders of real estate that is land (hereinafter: "Foktfvt. ").

In addition to the examination of the property law issues arising in the context of the termination of joint ownership of agricultural land, the doctoral research also aimed at examining the dynamics of the divisions, i.e. the anomalies in the application of law of a contractual nature (e.g.: land user interests, inappropriate time, etc.) associated with the changes in land use resulting from the termination, and at identifying normative gaps.

## I.2. Rationale for the research

In many respects, the issue of jointly owned agricultural land can be considered a special, in a certain sense Hungarian peculiarity, a Hungaricum, the origin of which can be found in the specific reorganisation of land ownership and land use relations after the regime change and in the continuously changing land transfer regulations in the almost 30 years that followed. For decades, Hungarian agriculture has been facing unresolved problems due to what is colloquially known as 'undivided joint land ownership', which has given rise to a number of legal, administrative and economic problems and difficulties in everyday agricultural activity. In view of the dogmatic nature of the doctoral thesis, only the jurisprudential anomalies have been examined in depth, but the problems mentioned above are nevertheless justified by the social utility of the research findings. In the light of the doctoral research, there are two main problems that justify the need to address the issue of common ownership of agricultural land as soon as possible:

1. on the one hand, the incompleteness and inaccuracies of the data in the land register, which makes it impossible to identify and contact the owners concerned.
2. the large number, sometimes unrealistically large, of owners and land registry holders who are actually or presumably involved in a given joint ownership of agricultural land.

In addition to the disorder of the land cadastre, according to the statistics of the Ministry of Agriculture, the number of jointly owned lands created by the partial land transfer is almost 300 thousand, affecting almost 1.5 million joint owners, and almost 700 thousand agricultural and forestry lands, affecting about 2.5 million joint owners, have acquired joint ownership as a result of legal inheritance.<sup>1</sup> According to the National Chamber of Agriculture, there are currently about 2.5 million hectares of land in common ownership, involving more than 1 million individual parcels of land, with a total of 4.6 million owners. (Interestingly, the source mentions that there are 8.5 hectares of individual parcels of land with 1 600 owners, and that there are also parcels of land in common ownership with less than 0.5 square metres per owner, which is a textbook example of land tenure fragmentation.<sup>2</sup>) Even without a more detailed

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<sup>1</sup> Tamás Andréka: The liquidation of undivided joint ownership of land – presentation at the conference „A massive land consolidation is coming to Hungarian land”, 18 February 2021, Portfolio Agrár Klub.

<sup>2</sup> Downloaded: <http://nak.hu/agazati-hirek/videkfejlesztes/161-gazdasagfejlesztes/100102-versenykepesseg-javulast-hozhat-az-osztatlan-kozos-foldek-rendezese> (Time of download: 8 March 2025).

analysis of the statistical figures, it can be said that the issue of common ownership of agricultural land is a problem of national importance.

It can be assumed that if the land register were up-to-date and complete with all the data on the rightful owners, all the problems mentioned could - in theory - be solved. In practice, this would of course create an unjustified administrative burden (e.g. notification of more than 100 joint owners), so the other attitude mentioned is that of a high number of owners, since this characteristic naturally makes the practice of certain decision-making mechanisms affecting the joint ownership of agricultural land owners impossible.

In my view, the main negative impact of joint ownership on the tenure structure is not only manifested in the land tenure relations, but also in the liquidation of the joint ownership of agricultural land due to the impeded decision-making mechanisms. Obviously, EU and state subsidies, the use of land as collateral for bank financing, etc., is a cumbersome process even for land that is owned exclusively, and practical problems are exacerbated in the case of common ownership, but these aspects are consequences rather than causes.

### **I.3. Objectives of the research**

The doctoral research has focused on the issue of joint ownership in agricultural land, a complex subject with private law aspects arising from the terminating of joint land ownership, but the enforcement of land tenure policy preferences arising from the special legal status of agricultural land and the resulting public interest restrictions and prohibitions have also determined the public law dimension of the research.

The issue of agricultural land and the land tenure attached to it has been the subject of a multidisciplinary study, involving international law, EU law and constitutional law. In view of the current land law problem, i.e. the issue of agricultural land in joint ownership, the taxonomic positioning of the problem under examination was of fundamental importance in addition to the research objectives, which established that it falls within the domain of land tenure fragmentation, under the aegis of the regulation of holdings.

The research was focused on the current Hungarian land transfer, in the course of which the legal policy background and the reasons for the termination of the joint ownership of agricultural land were outlined as a fundamental question. One of the main research questions of the doctoral research was to what extent the terminating of joint land ownership can be regarded as a compulsory preference in land tenure policy, or as a free determination of the owner's will resulting from the right of ownership. In the light of specific legal provisions, often normative land tenure policy objectives and case law, the basic principle that the termination of joint ownership of agricultural land is a right, but not an obligation, of the joint owner has been established.

In view of the complexity of the research, no hypothesis was formulated, and some of the cornerstones of the study were the search for answers to minor research (sub)questions. The presentation of the historical antecedents of Hungarian property policy and its present situation - especially the reference to the case law of the European Court of Justice - served to place the research in a systematic way, which was also reinforced by the subsections on the concept of joint ownership of agricultural land, its development and related problems (land use, discrepancies in land registration).

The main objective of the doctoral research was to examine and compare the doctrine of the procedures for the liquidation of joint land ownership in the light of the Hungarian legislation in force. Based on the preliminary research plan, the methods of liquidation under the general

rules of the Civil Code, the OKTM procedure and the Foktftv. procedure predicted completely different routes, but in practice they often resulted in the same destination. It was found that the procedures follow a similar logical arc, yet heterogeneous methodologies.

A particular cornerstone of the legal-dogmatic analysis was the examination of the specific procedures (e.g. division in kind, expropriation, annexation, etc.) and the specific title of acquisition of property attached to them (termination of joint ownership). A constant dichotomy and a characteristic framework of the research was the presence of the state's intervention and involvement in the various methods of termination, which generated points of tension in the interpretation of the law through the exercise of the right to terminate the joint land ownership arising from the right of the joint owner to dispose of the property.

The main objective of the doctoral thesis was, in addition to the examination of the issues of property law arising in the context of the termination of a joint ownership of agricultural land, to examine the dynamics of the divisions, i.e. the anomalies in the application of law of a contractual nature (e.g.: land user interests, inappropriate time, etc.) associated with the changes in land use resulting from the termination, and to identify the normative deficiencies.

The main lines of the research, namely the examination of the specific legal nature of agricultural land, the jurisprudential implementation of Hungarian land tenure policy preferences, the legal nature and concept of joint ownership of agricultural land and the adjective 'undivided' attached to it, and the doctrinal analysis of the ways of terminating joint ownership, served to identify the advantages of solving the problem and to formulate the *de lege ferenda* proposals.

#### **I.4. The collection of material**

The history of the writing of the doctoral thesis and the related collection of resources goes back to 2019, when the thesis was written as a "precursor" to the thesis on a similar subject in undergraduate studies. After the thesis had been defended, the Foktftv. was adopted, which predetermined the main lines of doctoral research. From 2020 onwards, during my doctoral studies, I continuously collected literature in Hungarian and foreign languages, primarily focusing on the subject of agricultural law. The research work and the resulting scientific papers were related to land law, focusing specifically on the issue of joint ownership of agricultural land, but also on the subject of agricultural irrigation in the context of a shorter border area perspective.

In the first two years of the doctoral programme, the collection of material concentrated on the study of literature and specific legal sources, while after the complex examination, i.e. from 2022, the systematic analysis of Hungarian case law began. The simple pragmatic consequence of this was that, due to the entry into force of the Foktftv. on 1 January 2021, for a long time there were no court decisions available and analysable, only on the termination of joint ownership under the Civil Code and on the division of property in the context of the OKTM procedure. I have published some of the results of my doctoral research (e.g. the legal enforcement of land tenure policy preferences, land use anomalies in the context of in-kind division, speculative land acquisitions, a doctrinal comparison of the different procedures, legal theory of land tenure separation, etc.) in my previous publications and in my conference lectures with the intention of incorporating the relevant feedback into the doctoral thesis. To this end, my previous work is included as a source for the doctoral thesis.

The manuscript of the doctoral thesis for workshop discussion was closed on 31 October 2024, but changes to the land traffic regulations on 1 January 2025 also affected the central subject of the thesis. The final version of the thesis, which was closed for public discussion on 15 March 2025, was therefore modified not only in accordance with the proposals made in the pre-submission opinions of the workshop but also in the light of the land traffic regulations in force.

## **I.5. The methods used**

The analysis of the problems related to the termination of joint ownership on agricultural land has taken on a multidisciplinary character, in order to examine the complex subject of the termination of joint ownership by means of various methods of interpretation of primary legal sources, relevant legal provisions and available court decisions. The legal theory of land ownership also touched upon international, EU and constitutional law aspects, but the primary aim of the thesis was to analyse the dogmatic tensions between Hungarian private and public law, which affect joint land ownership and the procedures of termination. The research concentrated on the legal status of agricultural land, forestry land was only touched upon, and neither the issues of jointly owned agricultural holdings nor organisational succession were addressed. The methodology used in the study was primarily dogmatic, as the research aimed to examine the findings of the jurisprudential practice in addition to the academic sources of legal literature. In addition to the dogmatic aspects of the study, elements of descriptive-explanatory and comparative methodology were used in a subsidiary manner. Due to the specific nature of the topic under examination and the complexity of the research tasks and aspects of the study, no independent hypothesis was formulated, and the doctoral research was directed at answering the individual research questions, which are set out in the individual subsections of the thesis. The findings and conclusions of the research formed the basis for the *de lege ferenda* proposals.

## **I.6. Overall presentation of the thesis**

The starting point for the thesis is the chapter entitled 'Basic principles', which provides a general introduction to the complex problem of joint ownership on agricultural land, and, in addition to the taxonomic positioning of the subject, sets out the rationale for the choice of topic, the structure of the research and its main objectives. The methods used in the research are also set out in this chapter. In order to maintain the intellectual and logical flow of the thesis, the section on the main principles is referred to several times.

The thesis attempts to approach the subject of contemporary Hungarian land legislation and the Hungarian land tenure structure from the legal theory, historical and international context of general land tenure. As declared in the chapter entitled "Fundamental Principles", the issue of joint ownership of agricultural land has a different interpretative dimension if it is examined in the context of the complex private-law relations of the owner concerned and if it is examined in the light of the specific land tenure policy objectives and the legislative preferences to be implemented. Although doctoral research has focused on the analysis of private law aspects, the complexity of the subject matter means that the thesis cannot be complete without a tangential presentation of the decisive historical antecedents of the Hungarian land regime and its regulatory framework. According to the interpretation of the legislator, joint ownership of agricultural land is the main depository of the fragmented land tenure structure, a problem which falls under the aegis of the land tenure regime. The concepts of land tenure, land fragmentation and land concentration are not or only tangentially related to the normative content, but their analysis is essential for understanding the land use preferences that permeate the regulatory framework.

In the light of Hungary's accession to the European Union and the uncertainty of its land tenure policy, which can be identified in European Union law, the dichotomy of negative and positive integration was analysed in the light of certain decisions of the Court of Justice of the European Union, which also affected the possible future scope of Hungarian land tenure policy. In the light of the current Hungarian legislation, after the constitutional and private law aspects of land ownership and property acquisition, the system of public interest restrictions, conditions and prohibitions on property acquisition will be analysed, the inevitable cornerstone of which is the examination of the normative content of certain land policy objectives, i.e. their application in court practice. The Hungarian land transfer regulatory framework is concluded with a review of current land tenure and land use conditions, the presumed desired land tenure structure, and

a brief international overview of the anti-land fragmentation provisions in some national regulations (Germany, Austria, Switzerland and France).

The backbone of the treatise is formed by the chapters on "undivided" joint land ownership and the legal theory of the liquidation of joint land ownership. The conceptual framework of joint ownership in agricultural land is based on the provisions of the Civil Code, the sources of legal literature and the findings of judicial practice. The specificity of the subject matter and the joint ownership of agricultural land stems from the special nature of the land. As the joint ownership on agricultural land have been created in an atypical way, a description of the history leading to the present situation (such as the joint land ownership created by the transfer of shares in land and by legal succession) is essential to an understanding of the problems of the present. In my view, the anomalies involved can be traced back to two main factors: the irrationally high number of joint owners involved in property communities and the disorderly nature of the data on joint ownership rights in the land register. This gives rise to numerous other problems, particularly in the area of land use. The often colloquially used adjective 'undivided' in the case of joint ownership of agricultural land is analysed.

The theoretical question of whether the termination of a joint land ownership is a state task to be carried out or a decision of the owners, a free competence of decision, is the guiding thread of the dogmatic thought concerning the termination of joint ownership. At the same time, the question sheds light on the civil law background of the subject matter and on the presence of public interest restrictions and prohibitions that radically transform it. The brief international overview is followed by a dogmatic analysis of the Hungarian legislation currently in force on the termination of joint land ownership on agricultural land. The regulation is fragmented, since in addition to the general provisions of civil law, joint ownership can also be terminated in the framework of OKTM procedures and, since 2020, in the framework of the procedures offered by Foktfvv. As a result of the doctoral research, no hierarchy of application or exclusivity of application can be identified between the different procedural regimes, leaving the choice of the method of termination to the competence of the joint owners concerned. In all procedures, the division of agricultural land in kind is the primary option for termination, but buy-outs, the incorporation offered by the Foktfvv. (i.e. the termination of the community of ownership by the acquisition of agricultural land by a single owner), forced sale and expropriation by the state as a last resort may also be used. The doctoral thesis deals only tangentially with the case of joint ownership created by legal succession and the related cogent regulation in force since 1 January 2023.

In my view, the termination of joint ownership communities as a question of law of thins is the statics of the individual proceedings, and the land use aspects that may arise as a result of the termination of the joint land ownership (especially in the case of in-kind division) are the dynamics of the termination of the joint land ownership as a contractual anomaly. In addition to the property reparation claims arising in connection with land use changes, the property and economic interests of third-party land users were also a crucial segment of the doctrinal analysis. In this context, the issue of termination at an inappropriate time was also analysed.

The doctoral thesis concludes with a summary of the expected benefits of solving the problem and the *de lege ferenda* recommendations resulting from the doctoral research. The *de lege ferenda* proposals include specific ideas on certain aspects of the regulation of the termination of tenure of agricultural land (e.g. fine-tuning the rules on annexation, protection of the legitimate interests of the land users concerned, regulation of the settlement of property claims arising from changes in land use, analogy with the rules on inappropriate timing, etc.) and a separate subsection on general land policy considerations. The theoretical aspects of the law on the regulation of holdings, the law on the settlement of land tenure and the law on land titling are discussed in principle. The doctoral thesis concludes with some concluding thoughts.

## **II. The new scientific results presented in the doctoral thesis and their potential applications to the solution of specific practical or theoretical problems**

### **II.1. Theses**

In the course of writing the doctoral thesis, no hypothesis was formulated because of the complexity and specificity of the problem under consideration, and the logical arc of the research was therefore developed along the lines of the smaller research (sub)questions. The following scientific results and conclusions on legal theory and practice can be evaluated as the thesis of the doctoral thesis:

- In recent decades, there has been a strong "public law" trend in Hungarian land law as a whole. Public interest restrictions, prohibitions and conditions, which help to enforce land tenure policy preferences more effectively, narrow the private legal scope of the legal entities concerned. The "public law" can also be observed in the evolution of procedures for the termination of joint ownership, as well as in the detailed rules of individual procedures.
- The real anomaly of 'undivided joint ownership' in land tenure policy is not the existence or non-existence of joint ownership, but their impact on the fragmentation of property (in the property sense).
- A kind of legislative continuity and parallelism can be identified between the current system of rules of OKTM procedure and Fokfttv. the legislative background to which is the prolonged termination of joint ownerships resulting from the transfer of shares in land.
- The termination and the liquidation of joint ownership of agricultural land are not synonymous concepts.
- The regulation of jointly owned land is "Janus-faced". This is because, while various procedural preferences push for the early termination of joint ownership or exclude/limit their future creation, joint ownership can be created if the parties have the intention to

enter into a joint transaction. The central motive of the property policy anomaly is not joint ownership but the correlation with property fragmentation.

- The termination of a joint land ownership breaks up the internal contractual relationship between the legal entities, the synallagmatic relationship between the joint owners, which is an inherently sensitive private law issue. The assertion of property policy preferences is a breach of the shield of private autonomy, which creates points of tension in the interpretation of the law.
- The main thesis of the doctoral thesis is that the termination of the community of property is a right, but not an obligation, of the joint owners.
- The use of the adjective "undivided" in the case of joint ownership of agricultural land is doctrinally incorrect, since the fact of being undivided is a necessary conceptual element of joint ownership.
- The best way to preserve the balance of values and interests between the joint owners in the case of termination of joint ownership is to terminate it by means of a division in kind, but without parcel minimum values, this may lead to a further escalation of land fragmentation. The primary instruments to prevent future fragmentation are rules on parcel minima and legal succession.
- The dynamics of the termination of tenure arrangements on agricultural land are the changes in land use that follow termination. The effective implementation of the objectives of land tenure policy requires that the legitimate interests of land users are taken into account in the procedures.
- Due to the cyclical nature of agricultural production, the application of the provisions of the Civil Code concerning termination at an inappropriate time may serve to prevent future disputes.

- The current anomaly of land fragmentation can be remedied by the liquidation of joint ownership, but a long-term solution is only possible under the auspices of farm management.

## **II.2. *De lege ferenda***

The literature sources, the specific legal provisions, the sometimes normative agricultural and land policy preferences and the conclusions of judicial jurisprudence have identified several problematic issues concerning the subject of the termination of agricultural land and its ownership. The doctrinal methodology of the doctoral thesis may lead to the declaration of legislative proposals that may be able to support and contribute to the development of the subsequent interpretation and application of the law.

The main focus of the doctoral research was on the termination proceedings under the Civil Code, the rules of the OKTM and the provisions of the Foktfv. The primary focus was on the rules of the Foktfv., which at the time of writing the doctoral thesis was the most important termination trend, and on the land use aspects of in-kind divisions. In view of this, the *de lege ferenda* proposals made are primarily related to the Foktfv.

Among the *de lege ferenda* proposals, my specific ideas for the termination of joint ownership of agricultural land are not the only ones that have been proposed, but also ideas that have been examined in the course of research. The other group of proposals are legislative considerations of a general land tenure policy nature. My doctoral research has only indirectly touched on the general land tenure-political regulatory circles, so I could not claim their conclusive proof in my thesis, and therefore I only wish to record them as a food for thought, given the taxonomic specificity of doctoral research and the context of the problems examined.

## **II.2.1. *De lege ferenda* proposals for the termination of joint ownership of agricultural land**

The scope of the de lege ferenda proposals consists of my findings in relation to the termination procedures of the Fokftfv. The reason is that it would be pointless to burden the general rules of the Civil Code on the termination of joint land ownership with specific provisions concerning agricultural land, and the time limit for initiating the OKTM proceedings has expired, so that a proposal for past legislative action would be an ontological paradox. Furthermore, the findings that apply to either the termination under the Civil Code or the termination under the OKTM procedures may also be relevant for the Fokftfv. I agree with the legislator's premise that only the joint owners are entitled to initiate proceedings under the Fokftfv. and that the proceedings are not conducted by a court or an authority, but are always based on the consensus of the parties. In the light of the various points of tension and conclusions of the interpretation of the law, I have set out the following de lege ferenda proposals in my thesis:

- Fixing the final procedural deadline**

The efficiency of the procedures under the Fokftfv. and their impact on the land tenure structure can be greatly affected by the fact that no final deadline is set for the initiation of the procedures, which can result in the land tenure policy process becoming a deadlock. Given the disorderly nature of the land register and the often irrational number of joint owners involved, it is worth considering the development of a scheduling system, already used in the conduct of OKTM proceedings, which could be adapted to the subject of termination at an inappropriate time, as examined under the provisions of the Civil Code. It is hoped that the settlement of the data of the holders of the title to the land registry will be brought to a successful conclusion as soon as possible, which could be a cornerstone for the efficient conduct of the in-kind divisions and even the annexations.

- Protecting the legitimate interests of affected land users**

According to the provisions of the Fokftfv., not only the owners of jointly owned agricultural land but also the land users concerned must be notified of the initiation of the division process. As examined in the doctoral thesis, a division in kind may necessarily affect the land users as

well as the legitimate economic interests of the land users. If a division in kind results in a division of land use on agricultural land that is different from the status quo, it would be appropriate to inform the parties well in advance of the initiation of the termination procedure in order to organise the agricultural works for the year in question, to carry out the investments and to settle them amicably. Although the Fokfttv. provides for the obligation to notify changes in land use, land users are not specifically informed of changes in ownership and nature of the land under agricultural use. In this respect, it may be appropriate and justified to provide that the users of the land subject to the division should also be formally notified of the process and of the changes.

I further propose that, in order to protect the legitimate interests of land users, a special cancellation option should be provided for land users where land user obligations existing at the time of the conclusion of the contract are substantially impaired or rendered impossible by changes in land use as a result of the termination.

- **Analogy with provisions on inappropriate date**

Research on the question of termination at an inappropriate time has shown that the application of the rules of the Civil Code in a complementary or supplementary manner is also justified in the case of proceedings under the Civil Code. Since the proceedings under the Fokfttv. are not governed by a court or a public authority, the application of the provisions on the inappropriate time cannot be excluded to the agreement between the partners and the time of submission of the agreement to the real estate authority. In my view, in the course of the termination proceedings under the Fokfttv., it is necessary to designate a calendar period in the relevant year, according to the type of farming of the land in agricultural use concerned, by the last date of which applications for the year in question may be submitted. The planned date of registration in the Land Register may also be aligned with this, provided that the legal conditions laid down in the Fokfttv. are met. In my view, the provision in the Fktb., new land parcels created by way of division in kind had to be transferred into possession at the end of the marketing year, unless otherwise agreed by common consent, could serve to prevent future disputes between owners and users of land in the context of the settlement of land use relations. If these provisions are complemented by the special land-user right of termination outlined in the previous subsection, the projected land-user claims could be significantly reduced.

- **Regulation of the settlement of property claims arising from changes in land use / field inventory**

In my opinion, it would be appropriate to regulate the settlement of the field inventory between the parties concerned not only in the event of termination by way of a division in kind under the Foktfv., but also in the event of changes in land use relations for whatever reason during the term of the land use contract. In view of the specific conditions and complexity of agricultural production, overly chaotic rules should be avoided, but certain benchmarks should be set for the costs incurred in the current year, for investments that are recoverable in the long term and for their justification and provability.

- **Modification the concept of inclusion, annual review of the valuation offer**

In the light of the subsections of the doctoral thesis on the procedure for incorporation, the clarification and fine-tuning of the text on incorporation is a legislative step worth considering. In addition, the valuation offer to be used in the course of the annexation procedures under the Foktfv. was published on the government website on 5 January 2021, and since the termination of the National Land Centre on 31 May 2024, the document has been available on the government portal of the Government of Hungary since 18 June 2024. The data contained in the valuation document has remained unchanged since 5 January 2021. In view of the dynamic increase in land prices in recent years, it is in the interest of the joint owner to review the data contained in the valuation offer every year. The effectiveness of the incorporation procedures can be greatly affected if the consideration to be applied in the compulsory valuation follows the movement of land market prices.

- **On legal succession**

As discussed in the doctoral thesis, questions concerning the inheritance of agricultural land have not been the primary focus of research, and therefore the de lege ferenda proposals on legal succession are not fully supported. In the light of the research findings, it is only a theoretical conclusion that, while the legal interpretation of inheritance of agricultural land by testamentary and intestate succession follows a different logical arc, which in the case of intestate succession is increasingly restrictive in its interpretation of the passive succession rights of the heirs' partners. The legislator may wish to consider amending the rules on legal

succession of the Foktfv. in such a way as to provide for an exceptional possibility of joint ownership as a result of legal succession in order to preserve the unity of the agricultural holding.

- **Limiting the number of owners?**

In the course of the doctoral research, the idea of limiting or maximising the number of owners within a joint land ownership was also raised, but this is obviously only conceivable in the context of a pro futuro application. While the concept may be expedient in terms of the elimination of joint ownership, it would create a point of tension with many elements of the current land use legislation. The idea of limiting the number of owners would not only be contrary to the concept of joint land ownership under the Civil Code, but would also unduly restrict the freedom of contract of the legal entities concerned in land use relations and their right to dispose of property. A further aspect is that it would lead to disputes over interpretation of the law, which would be contrary to the objectives of land tenure policy, typically in the case of privileged transactions between close relatives, and would result in an even more binding process and system of administrative approval and examination. For these reasons, the idea of limiting the number of owners has been abandoned.

- **Changes to the rules on expropriation**

According to the Foktfv., the State may, if the legal conditions are met, at the initiative of a joint owner, terminate the joint land ownership by expropriation, in which it acts as a quasi "intermediary", since the acquisition of property is in the public interest in the light of the objectives of agricultural and land policy, in accordance with the "optimal land structure". In view of the scarcity of resources available in relation to expropriation under the Foktfv., no conclusion can be drawn on the merits of the proceedings, but in my view the legislation represents, in doctrinal terms, a specific case of forced sale, which may justify a review and clarification of the detailed rules.

## **II.2.2. Legislative ideas of a general land policy nature**

The second group of legislative proposals consists of general land tenure policy ideas. As a matter of principle, I would like to declare that I cannot and do not claim that these ideas have a full scientific basis. Among the theoretical ideas, I have put down on paper my personal thoughts on the justification for the law on the regulation of holdings and the law on the settlement and titling of land.

- **Developing farm legislation**

It has been mentioned several times in the doctoral thesis that the termination of joint ownership on agricultural land is one of the areas of farm regulation. The suggestion is still not a new one on my part, as the concept of the "Farm Regulation Act", published in 2008, is still a guideline today. The subject of regulation is complex, due to its cross-cutting nature, in addition to the provisions on the acquisition of ownership and use of agricultural land, but one of its most important and inescapable links is with the law of succession. The effectiveness of the forthcoming generational changes in Hungarian agriculture may be fundamentally determined by the development and modification of certain regulatory areas of farm regulation.

- **Land consolidation law?**

The idea of general land consolidation is a recurring element in Hungarian land tenure policy, as the international examples (e.g. "Flurbereinigung") in the doctoral thesis have shown, the concept is not unknown in other national regulations. In the light of the events of 20th century Hungarian agricultural history, a law on land consolidation or land titling initiated and implemented solely by the state is inherently doomed to failure. In line with the implicit premise of the Foktftv. that the termination of the joint ownership is the exclusive prerogative of the owner concerned, any land consolidation or land consolidation cannot be a public task to be carried out by the state alone. As mentioned in the thesis, the Hungarian land law legislation is no stranger to the idea of annexations and proportionalisation. Although the current land legislation does not provide for any concrete land consolidation, certain legal institutions (e.g. statutory pre-emption rankings, voluntary land exchange, single purchase price, etc.) serve to indirectly facilitate a kind of land consolidation process. The subject is complicated by the fact

that the process of land consolidation is unfeasible without state involvement, but in my experience, given the functioning, structure, mindset of decision-makers, etc. of Hungarian agriculture, it is difficult to imagine a highly centralised conceptual transformation, possibly similar to the French regulatory model, in which a state institution with tasks and powers similar to SAFER would take an active role in land market movements. I see the main obstacle to this not in its rationality or justification, but in the lingering memories of the bitter historical legacy that still pervades agricultural society today.

### **III. List of publications on the subject of the doctoral thesis**

1. Gergő Árvai: The annexation as a special case of land acquisition, In: Klára Gellén (ed.): Gazdasági tendenciák és jogi kihívások a 21 században, 5., Iurisperitus Kiadó, Szeged, 3024, pp. 7-18.
2. Gergő Árvai: Legal Theoretical Issues of Preventing the Fragmentation of Estates, In: JURA, 3/2024. issue, pp. 5-19.
3. Gergő Árvai: Determining the local market rent, In: Róbert Bartkó (ed.): Doctoral Working Papers 2024, Universitas-Győr Nonprofit Kft., Győr, 2024, pp. 34-46.
4. Gergő Árvai: Reflections on the termination of ownership communities on agricultural and forestry land by in-kind division, In: Gazdaság és Jog, 3-4/2024. issue, pp. 43-51.
5. Gergő Árvai: The need to settle Hungarian land ownership relations for a more competitive agriculture, In: Klára Gellén (ed.): Gazdasági tendenciák és jogi kihívások a 21 században, 4., Iurisperitus Kiadó, Szeged, 2023, pp. 9-25.
6. Gergő Árvai: The liquidation of undivided common land ownership in Hungary, In: Journal of Agricultural and Environmental Law, 35/2023 issue, pp. 7-17.
7. Gergő Árvai: Comparative analysis of the termination of joint ownership of agricultural and forestry land, In: Zsuzsanna Fejes (ed.): Trends in the Application of the Comparative Method in Law and Political Sciences, University of Szeged Doctoral School of Law and Political Sciences, Szeged, 2023, pp. 41-55.
8. Gergő Árvai: Practical issues of speculative land acquisitions, In: Róbert Bartkó (ed.): Doctoral Working Papers 2023, Universitas-Győr Nonprofit Kft., Győr, 2023, pp. 21-32.

9. Gergő Árvai: Some legal issues of undivided joint land ownership, In: Csaba Erdős (ed.): PhD Workshop Papers 2021 - Doctoral Working Papers 2021, Széchenyi István University School of Law and Political Sciences, Győr, 2022, pp. 227-241.
10. Gergő Árvai: The practical implementation of the Hungarian land tenure policy objectives, In: FORUM: Publicationes Doctorandorum Juridicorum, Szeged, 2022, pp. 5-20.
11. Gergő Árvai: Legislative efforts to abolish the undivided joint ownership of land, In: Klára Gellén (ed.): Gazdasági tendenciák és jogi kihívások a 21. században, 3., Iurisperitus Kiadó, Szeged, 2022, pp. 11-21.
12. Gergő Árvai: The legal institution of undivided joint land ownership - The shackle of Hungarian agriculture, In: Erika Jámborné Róth (ed.): PhD Forum, University of Miskolc, Faculty of Law and Political Sciences, Miskolc, 2020, pp. 1-5.

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