The agricultural land legislation and its constitutional review in the Republic of Slovenia after 1991

Die Gesetzgebung über die landwirtschaftlichen Grundstücke und ihre verfassungsrechtliche Prüfung in der Republik Slowenien nach 1991

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Zusammenfassung

Der Beitrag schildert die Entwicklung der slowenischen Gesetzgebung über die landwirtschaftlichen Grundstücke im Licht der verfassungsrechtlichen Prüfung, nachdem Slowenien sich im Jahre 1991 selbständig gemacht hat. Der Verfassungsgerichtshof hat die Vorschriften in diesem Bereich mehrmals geprüft und mit seinen Entscheidungen mehrere gesetzliche Veränderungen angeregt. Die verfassungsrechtliche Prüfung betraf vor allem (1) die rechtliche Lage der landwirtschaftlichen Grundstücke und Wälder im Prozess der Denationalisation und Privatisierung, (2) verschiedene Beschränkungen des Eigentumsrechts von landwirtschaftlichen Grundstücken und Wäldern sowie (3) den Zugang von Fremden zum Eigentum der landwirtschaftlichen Grundstücke und Wälder im Rahmen des Beitritts Sloweniens zur Europäischen Union.
Schlagworte: Gesetzgebung über die landwirtschaftlichen Grundstücke, Slowenien.

Summary

The paper describes the development of the Slovenian agricultural land legislation in light of its review by the Constitutional Court after Slovenia gained its independence in 1991. The Constitutional Court has made several reviews of the regulation in this field and initiated, due to its decisions, several legislative changes. The Constitutional review concerned, above all, (1) the legal regime of agricultural land and forests in the denationalisation and privatisation process, (2) various

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restrictions of ownership right to agricultural land and (3) the foreigners' ownership of agricultural land in the view of the Slovenian accession to the European Union.
Key words: agricultural land legislation, Slovenia.

1. Introduction

The agricultural land legislation is one of the classical parts of the agrarian law. Fast and deep economic, social and political changes in Slovenia after 1991 have not left this branch of law unaffected. The legislation about privatisation of the former socially owned property had to solve the question whether the socially owned agricultural land or forests[1] should be privatized in the same way as other assets of social enterprises. While the new Constitution, adopted at the end of 1991[2], introduced a different notion of ownership, also the provisions regulating the use and disposal of privately owned agricultural land and forests have been reviewed from the standpoint of new constitutional principles. The agricultural land legislation has been finally influenced also by the accession to the European Union since the trade in agricultural land in the EU is covered by the free movement of capital[3]. In order to better understand the content and the dimensions of recent changes, a quick historical survey is necessary.

2. Historical background

The modern agrarian land law began with the so called "land release" of farmers after the March revolution of 1848. In the first decades thereafter, the legal regime of agricultural land was liberal, allowing everyone to acquire and to alienate the agricultural land or holdings. Although special acts provided for tax exemptions and other facilitation of the land exchange in order to make agricultural production

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1 The major part of agricultural land and forests in Slovenia remained to be private after the WWII. According to statistical data for 1989, about 17 % of agricultural land and about 36 % of forests belonged to the social ownership (STATISTIČNI LETOPIS REPUBLIKE SLOVENIJE 1990, 216).

2 Uradni list (Official Gazette) RS, No. 33/1991.

3 See, for instance, Articles 56-60 of the Treaty Establishing the European Community, Official Journal of the European Communities, No. C 325, 24. 12. 2002, p. 56-57; Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty, Official Journal of the European Communities, No. L 178, 8. 7. 1988, p. 5.

more rational, it soon turned out that the land fragmentation was too great to be efficiently dealt only with by bilateral exchange contracts, although facilitated (SCHIFF, 1903, 30). Since the 1860s, a new stream of agrarian policy emerged claiming that the application of "capitalistic" civil law in agriculture was constantly leading to agricultural crisis and that special rules were therefore needed for agriculture (SCHIFF, 1903, 16). The framework agrarian acts, adopted in 1883, regulated the exchange contracts for forests enclaves, but also commassations which, provided that the prescribed requirements were complied with, could be carried out also against the will of individual owner (VILFAN, 1980, 470). The State Act from 1 April 1889 concerning the special rules for inheritance division of middle-sized agricultural holdings allowed the regions to protect certain farms from fragmentation at the occasion of inheritance (SCHIFF, 1903, 17). Being implemented only in Tyrol, Bohemia and Carinthia, the Act did not apply on the prevailing part of territory then inhabited by the Slovenian people (VILFAN, 1980, 465).

The development between the two World wars was marked by the slow-paced agrarian reform and long seeking for a compromise solution of farmers' indebtness (VILFAN, 1980, 473).

Immediately after the WWII, farmers were released from former debts. A radical agrarian reform was carried out, during which joint stock companies, banks and similar legal persons were expropriated entirely without compensation. Private ownership was limited by the agricultural land maximum, which was established separately for farmers (20-35 hectares of agricultural land and 10-25 hectares of forests, with the overall maximum of 45 hectares) and non-farmers (3 hectares of land in lowlands and 5 hectares of forest in forest areas)[4]. After the trial to organize the cooperatives after the Soviet model had failed, an additional agricultural land maximum (10 hectares of cultivable land in lowlands per agricultural holding) was introduced[5], but the major part of the agricultural land and forests remained in private property. One

[4] Zakon o agrarni reformi in kolonizaciji (Act on Agrarian Reform and Colonisation), Uradni list (Official Gazette) DFJ, 64/1945, Zakon o agrarni reformi in kolonizaciji v Sloveniji (Act on Agrarian Reform and Colonisation in Slovenia), Uradni list (Official Gazette) SNOS and NVS, No. 62/1945, 30/1948 (consolidated text).

[5] Zakon o kmetijskem zemljiškem skladu splošnega ljudskega premoženja in o dodeljevanju zemlje kmetijskim organizacijam (Act on Agricultural Land Fund of Common People's Property and Assigning of the Land to Agricultural Organisations), Uradni list (Official Gazette) FLRJ, No. 22/1953.

of the main goals of agricultural land policy was to increase the share of state and later socially owned land by introducing the pre-emptive right and consolidation proceedings to the benefit of agricultural organisations. In the beginnings of the seventies, the republics acquired competence for the agricultural land legislation. In 1973, Slovenia adopted the Agricultural Land Act[6] which regulated the protection of agricultural land, legal transactions dealing with agricultural land, land maximum, agricultural operations (free exchange of parcels, consolidation, commassation and ameliorations) as well as common pastures (ČEFERIN, 1974; KOCJAN, 1979). In the same year, Slovenia, as the only federal unit of the former federation adopted the Act on Inheritance of Agricultural Land and Private Agricultural Holdings[7].

3 The ownership transformation of socially owned agricultural land and forests

3.1 Denationalisation Act

The Denationalisation Act from 1991[8] provides for privatisation of that part of social property that was created as a result of nationalisation of the private property after the World War II. The nationalised property is returned primarily in kind, while in cases where this is not possible due to certain reasons, the entitled person has the right to receive compensation in the form of replacement land, securities or cash.

Beneficiaries of denationalisation are individuals whose property was nationalised and their heirs as well as legal persons. Among legal persons, the churches and religious communities are expressly mentioned as justified claimants in the Denationalisation Act, while some special

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6 Zakon o kmetijskih zemljiščih, Uradni list (Official Gazette) SRS, No. 26/1973, 1/1979, 1/1986).

7 Zakon o dedovanju kmetijskih zemljišč in zasebnih kmetijskih gospodarstev (kmetij, ZDKZK, Uradni list (Official Gazette) SRS, No. 26/1973, 29/1973 and 1/1986).

8 Zakon o denacionalizaciji (ZDen), Uradni list (Official Gazette) RS/I, No. 27/1991, 13/1993, 31/1993, 24/1995, 29/1995, 74/1995, 23/1997, 41/1997, 49/1997, 13/1998, 65/1998, 67/1998, 76/1998, 83/1998, 60/1999, 66/2000.

provisions regarding to the restitution of the nationalised cooperative property are found in the Act on Cooperatives[9].

The persons liable to return nationalised property are legal persons in the possession of such property. Property cannot be returned if ownership rights are held by natural or civil legal persons.

Some agricultural companies which faced the restitution claims of individuals, initiated the proceeding before the Constitutional Court to declare the Denationalisation Act null and void, because the Act allegedly failed to solve a number of issues concerning relations between entitled persons and liable persons, mainly regarding the investments the liable person made in the land improvement, nor did it solve the question of mortgages and other burdens on the property[10].

The Court found the Denationalisation Act to be a »consequence of the political consent to correct the injustices done in the post-war period through state interference in ownership relations, while the another reason for denationalisation was the already running and planned privatisation of social property«[11]. According to the Court, »it is equitable that in the process of privatisation the part of social property created as a result of unjust nationalisation of private property is privatised by returning the nationalised property in kind and where this is not possible due to certain reasons, through compensation in the form of replacement land, securities or cash«[12].

Article 33 of the Denationalisation Act provides that immovable property shall be returned free of mortgage burdens which arose after its nationalisation. Property was nationalised free of burden. The Court found out that the initiators of the proceedings had not taken over any burdens together with the property. The Court ruled that:

»Initiators who received certain property on the basis of regulations that enabled forced expropriation of private property without giving the owners appropriate compensation, cannot demand that legal order should respect these regulations, which are not in accordance with Article 2 of the Constitution. Quite the contrary, legal order in a

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9 Zakon o zadrugah (ZZad), Uradni list (Official Gazette) RS, No. 13/1992, 7/1993, 13/1993, 22/1994, 35/1996, 31/2000. Another act dealing with restitution is the Act on Reestablishment of Agricultural Communities and Restitution of Their Property and Rights (ZPVAS), Uradni list (Official Gazette) RS, No. 5/1994, 38/1994, 69/1995, 22/1997, 79/1998, 56/1999, 72/2000.

10 Odločba (Decision) U-I-75/92 from 31 March 1994, Uradni list (Official Gazette) RS, No. 23/94, OdlUS III, 27, conf. Paragraph 1 of the Decision.

11 Part B of the cited Decision.

12 Ibid.

democratic, social state governed by the rule of law must ensure protection of human rights and basic freedoms, including the removal of the consequences of implementing such regulations as infringe human rights and basic freedoms«[13].

3.2 Ownership transformation and the Fund of Agricultural Land and Forests of the Republic of Slovenia

According to Art. 74(2) the Cooperatives Act, those agricultural lands and forests that existing cooperative organisations had obtained without payment, became the property of the State and were transferred to the Fund of Agricultural Land and Forests of the Republic of Slovenia.
In December 1992, a compromise formula regarding the privatisation of socially owned capital was accepted by the Slovenian Parliament, adopting the Act on Ownership Transformation of Enterprises[14]. The Act provided that the socially owned capital should be established as a difference between the total value of the assets and the debts of the enterprise. The enterprise could choose autonomously, but under state control, a method or a combination of methods for the privatisation of social capital. A certain part of the socially owned capital was distributed gratuitously between citizens, while the rest of it was transferred to several funds.
The Act contained a special provision for agricultural land and forests. According to Article 5 of the Act, prior to establishing the social capital of an enterprise, socially owned agricultural land and forests managed by the enterprise should be separated from other assets of the enterprise, irrespective of whether they had been obtained with or without payment. On the day of validation of the Act, the agricultural land and forests became the property of the Republic of Slovenia or a municipality, and should be transferred to the management of the Fund for Agricultural Land and Forests of the Republic of Slovenia or the municipality. Enterprises were allowed to continue to use and manage agricultural land and forests if they cultivated or exploited them themselves and cared for them as good managers, until the issue of a legally binding decision on denationalisation or until the awarding of a concession or the conclusion of a lease contract in accordance with the law. Terms of contract should be established or a concession awarded for at

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[13] Ibid.
[14] Zakon o lastninskem preoblikovanju podjetij (ZLPP), Uradni list (Official Gazette) RS, No. 7/1993, 31/1993, 43/1995, 1/1996, R 72/1998, 31/2000.

least a period which corresponds to the amortisation period of the investment in the land or long term planting. In the payment of rent or compensation for the award of the concession the purchase price for obtaining the land by payment should be respected so that the rent or compensation were going to be set off with this purchase price.

According to the Act on the Agricultural Land and Forests Fund of the Republic of Slovenia[15], all agricultural lands, farms and forests in social ownership which had not become the property of the State under former acts, became, on the day of the validation of this Act, the property of the State or municipalities.

The enterprises which managed the socially owned agricultural land and forests initiated a proceeding before the Constitutional Court claiming that the provision of the Act on Ownership Transformation of Enterprises which had separated the agricultural land and forests from the establishment of the social capital and its privatisation, was not in accordance with several Constitutional provisions, concerning, for instance, the principle of legal and social state (Art. 2), equality before the law (Art. 14), right to private property (Art. 33), social security (Art. 50), property (Art. 67), expropriation (Art. 69), entrepreneurship (Art. 74) and the ban on retroactivity (Art. 155). They claimed that the impugned provisions meant an unconstitutional encroachment on their rights, in particular in cases where they or their predecessors had obtained the land on the basis of payment contracts[16].

The Court found out that social ownership in the previous legal system had not been a real ownership. The agricultural land, forests and other resources in social ownership "appertained" to specific social legal persons.

Then, the Constitutional Court studied the regulation of agricultural land and forests in the previous legal system. It found out that specific particularities and limitations applied in relation to the social owner-

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15 Zakon o Skladu kmetijskih zemljišč in gozdov Republike Slovenije (ZSKZG), Uradni list (Official Gazette) RS, No. 10/1993, 1/1996.

16 Odločba (Decision) U-I-77/93 from 6 July 1995, Uradni list (Official Gazette) RS, No. 43/1995, OdlUS IV/2, 67.

ship management of agricultural and forest land compared to the management of other resources which legal persons had use of[17].
The Court acknowledged that the transfer of the agricultural land of companies to the property of the State or municipalities meant an encroachment on the specifically constitutionally protected position of those enterprises which had used such agricultural lands as assets in social ownership. Such an encroachment had to be in accordance with the principle of proportionality, appropriate and necessary to achieve the legitimate aims of the legislator and for the protection of the public interest.
The Court judged that »unified and long-term agricultural policies are a legitimate aim, for the achievement of which the establishment of state ownership of land is a suitable intervention«[18] .
However, although the state became the owner of the land, the latter still remained in the use of companies. The Fund was responsible for all obligations created in connection with agricultural land, farms and forests which have been transferred to it. In addition, there was a provision about reconciling the rent or compensation for the award of a concession with the former payment, if the land had been obtained with payment. The Court found out that such arrangements reduced the gravity of the encroachment to a large extent.
Nearly the same was the reasoning in a similar Constitutional Court decision reviewing the constitutionality of the Act on Agricultural Land and Forest Fund of the Republic of Slovenia. In this decision, the Court stated that the forest management companies had the right to further management and use, to the establishment of concessionary or contract relations for performing executing works in state forests, at least for a period corresponding to the amortisation period of investment in the land or long-term planting. The Court stated that it was not possible to speak of a violation of the constitutional principle of equality before the law if the law determined a different method of priva-

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17 Thus, for instance, the transfer of agricultural land in social ownership into private property was in principle forbidden, being allowed only in exceptional cases determined by law. The passing of agricultural land in social ownership into the ownership of citizens, societies and other civil legal persons had been subject to the consent of the competent public "defender of law". On the other hand, it was possible to transfer agricultural and building land, forest and forest land which was social property, to another social legal person without payment, or on payment only at the level of the investment in this land or this forest (See, paragraphs 32–33 of the cited Decision).

18 Paragraph 41 of the cited Decision.

tising a part of social property for which a different legal regime had applied throughout.[19]
The Constitutional Court found that both Acts under the review were not in compliance with the Constitution only insofar as they did not regulate the duration of the transitional period until the conclusion of a leasing or other suitable contract or until the award of a concession and the manner of resolving disputes in connection with this.

4 The rule of law and the principle of social state

4.1 Agricultural land maximum

In proceedings concerning the constitutionality of land maximum in the Agricultural Land Act (1973), the Constitutional Court found legal provisions which in a general way restricted or denied the right of ownership over farmland, to be in conflict with the provisions of the Constitution. According to the Constitutional Court, the Constitution did not restrict ownership rights but only made it possible for the ways of acquiring and enjoying property to be regulated by legislation in such a way as to ensure its economic, social and ecological functions[20].

4.2 Special rules for inheritance of protected farms

The main aim of the Act on Inheritance of Agricultural Land and Private Agricultural Holdings (Farms) from 1973 was to prevent agricultural holdings from further fragmentation and to create reasonable conditions for taking over of viable farms by younger generations. According to this Act, the protected farm should be inherited by one heir, while the rights of other close relatives and a spouse if they did not take over the protected farm were reduced to the money value of the obligatory inheritance share (this share being, in principle, twice lower than the intestacy share).
Until 1986, the protected farms were determined by the municipal assembly which had to, while establishing a list of protected farms on the territory of municipality, take into account several descriptive criteria, like classification of agricultural land in municipal plans, chances

[19] Odločba (Decision) U-I-78/93 from 18 October 1995, Uradni list (Official Gazette) RS, No. 68/1995, OdlUS IV/2, 104.
[20] Odločba (Decision) U-I-122/91 from 10 September 1992, Uradni list (Official Gazette) RS, No. 46/1992; OdlUS I, 56.

for cooperation between private farms and socially owned enterprises, importance of farms and settlement on the countryside for national defence and for protection of the landscape etc.

The amendments, adopted in 1986[21], introduced more objective criteria for the determination of protected farms providing that all farms where the cadastral income of their agricultural land and forest at least achieved a certain threshold amount should be protected, out of official duty (»*ex officio*«). On the other hand, at the request of owner or other rightful proponents, the competent body, i. e. the municipal assembly could proclaim as protected also other farms, taking into account the descriptive criteria already mentioned.

In the proceeding initiated in 1992, the Constitutional Court found the descriptive criteria for the determination of protected farms to be incompatible with the Constitution because they allowed the arbitrariness of administrative organs, while the aims of special inheritance rules could be realised through other measures. Therefore, the restrictions of ownership right in the act were not in accordance with the principle of proportionality[22].

The Constitutional Court held that it was not contrary to Constitution for special rules concerning the inheriting of agricultural land and private farms to be prescribed. These rules can be justified by the commitment of Slovenia to social state as well as by the special social and economic functions of medium sized farms. Since there was no need for protection of great farms after the agricultural land maximum had been abolished, the Parliament had to determine not only the lower, but also the upper limit for the protection of farms.

After the Constitutional Court annulled the Act on Inheritance of Agricultural Land and Private Agricultural Holdings (Farms) in 1994 with suspensive effect of one year, the Parliament adopted the Act on Inheritance of Agricultural Holdings in 1995[23]. The Act specified objective criteria for the determination of protected farms. In order to be protected, an agricultural holding owned by a single person, by spouses or co-owned by an ancestor and a descendant must have nei-

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21 Zakon o spremembah in dopolnitvah Zakona o dedovanju kmetijskih zemljišč in zasebnih kmetijskih gospodarstev (kmetij), Uradni list (Official Gazette) SRS, No. 1/1986.

22 Odločba (Decision) U-I-57/92 from 3 November 1994, Uradni list (Official Gazette) RS, 76/1994, OdlUS III, 117.

23 Zakon o dedovanju kmetijskih gospodarstev, Uradni list (Official Gazette) RS, No. 70/1995.

ther less than the minimum (5 hectares) nor more than the maximum (100 hectares) of comparable agricultural area.

4.3 Restrictions of legal transactions with agricultural land and agrarian operations

In 1995, the Constitutional Court annulled the Agricultural Land Act from 1973 (with suspensive effect of one year) and abolished the Instructions for carrying out commassation of agricultural land.

The Court reasoned that both the Act and the Instructions regulated questions which had been conditioned by the former concept of ownership rights, in a way which was in conflict with the current Constitution, both envisaging the creation of social property. Legal transactions with agricultural land and its spatial planning operations were regulated, »due to a different concept of property, in a way that is incomparably stricter than measures which are necessary for the protection of agricultural land under the second paragraph of article 71 of the Constitution and also for protecting the social position of persons who count as farmers…«[24].

The Parliament adopted a new Agricultural Land Act[25] in 1996. The Act provided strict substantative and procedural provisions concerning the legal transactions of agricultural land (approval or certification of administrative unit).

The Act prescribed also grounds because of which the administrative unit should reject to give the approval to a proposed legal transaction with agricultural land, forest or farm. These restrictions were reviewed in a special proceeding initiated by several individuals as well as some agricultural companies. The Constitutional Court found that the opposing party had not proved that the restrictions imposed by the Agricultural Land Act to the legal transactions of agricultural land, farms and forests are inevitable, necessary and proportional to their aim[26].

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[24] Odločba (Decision) U-I-184/94 from 14 September 1995, Uradni list (Official Gazette) RS, No. 58/1995, OdlUS IV/2, 73 (citation from Paragraph 11, *in fine*).

[25] Zakon o kmetijskih zemljiščih (ZKZ), Uradni list (Official Gazette) RS, No. 59/1996.

[26] Odločba (Decision) U-I-266/98 from 28 February 2003, Uradni list (Official Gazette) RS, No. 27/2003, OdlUS XI/1, 27, Paragraph 27.

The Court annulled the entire third chapter of the Agricultural Land Act with suspensive effect of one year. The Amendments, which entered into force on April 17th, 2003[27], added two further exceptions from indivisibility of protected farms *inter vivos*, facilitated the conclusion of life annuity contracts[28], modified the provisions about the pre-emptive right and drastically reduced the list of cases when the administrative unit was authorized to reject the approval of legal transaction.

5. Free movement of capital

According to the original text of paragraph 2 of Article 68 of the Constitution, adopted in 1991, foreigners might not acquire title to land except by inheritance subject to reciprocity[29].

In 1996, Slovenia signed the Europe Agreement Establishing an Association with the European Communities and their Member States (hereinafter: the EAA[30]) which contained several clauses liberalizing the movement of capital between Slovenia and the Member States of the EU.

After the Government had filed, on 15 May 1997, a request for the evaluation of constitutionality of some provisions of the EAA, the Constitutional Court found out, that the Agreement, while providing, (a) to Community nationals and branches of Community companies, as regards natural resources, agricultural land and forestry, the same rights as enjoyed by Slovenian nationals and companies, where these rights are necessary for the conduct of the economic activities (clause 7c of article 45), and (b) to the citizens of the Member States of the European Union, on a reciprocal basis, the right to purchase real property

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27 Zakon o spremembah in dopolnitvah Zakona o kmetijskih zemljiščih, Uradni list (Official Gazette) RS, No. 36/2003).

28 In the Decision from 28 February 2002, the Constitutional Court found that provision requiring the administrative approval for conclusion of life annuity contract was not in accordance with the Constitutional principle of social state: »... restricting the solution of the own social emergency because of public interest while not foreseeing and preparing an equivalent solution is not in accordance with the principle of social state« (Paragraph 29 of the cited Decision).

29 This provision, which is seldom to be found in modern constitutions, was motivated with the fear of „selling off of the Slovenian land" (See, GRAD and others, 2002, 264).

30 Uradni list (Official Gazette) RS, Mednarodne pogodbe (International Treaties), No. 10/1993.

on a non-discriminatory basis (Annex XIII to the EAA, the so called »Spanish compromise«), in so far as both provisions concerned the right to purchase land, was in a disagreement with the then paragraph 2 of Article 68 of the Constitution.

Therefore the Parliament amended the Article 68 of the Constitution before ratifying the EAA[31].

In 2003, the Constitution was amended in the view of the accession to the European Union[32]. According to the new Article 3a, Slovenia may, pursuant to a treaty ratified by the National Assembly by a two-thirds majority vote of all deputies, »transfer the exercise of part of its sovereign rights to international organisations which are based on respect for human rights and fundamental freedoms, democracy and the principles of the rule of law and may enter into a defensive alliance with states which are based on respect for these values«.

On the same occasion, Article 68 of the Constitution was amended for the second time. According to the new provision, »foreigners may acquire ownership rights to real estate under conditions provided by an act or a treaty ratified by the National Assembly«.

6. Conclusion

While the Constitutional Court recognised the aims of agricultural policy as a valid reason for the transfer of socially owned agricultural land and forests to State and municipalities, one must have in mind that the enterprises with social capital did not have the real ownership right relating to the real estate property and that the Constitutional Court allowed to legislator a wider margin as to the choice of owner-

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[31] Ustavni zakon o spremembi 68. člena Ustave Republike Slovenije (Constitutional Act on Amendment of Constitution of the Republic of Slovenia, UZS68), Uradni list (Official Gazette) RS, No. 42/1997. The amended text of the Article 68 stated that foreigners might acquire ownership rights to real estate under conditions provided by act (adopted by the National Assembly by a two-thirds majority vote of all deputies) or if so provided by a treaty ratified by the National Assembly, under the condition of reciprocity. On the basis of the amended provision, the Act on Establishing of Reciprocity (Zakon o ugotavljanju vzajemnosti (ZUVza), Uradni list (Official Gazette) RS, No. 9/1999) was adopted. The Act regulates the procedure for establishing the reciprocity in cases where a foreigner acquires legal title to land.

[32] Ustavni zakon o spremembah I. poglavja ter 47. In 68. člena Ustave Republike Slovenije (UZ3a,47,68, Constitutional Act on Amendments of the Chapter I and Articles 47 and 68 of the Constitution of the Republic of Slovenia); Uradni list RS (Official Gazette) RS, No. 24/2003.

ship transformation. The constitutional review of encroachments on the ownership right and the right of inheritance was carried out by the strictest test, verifying whether the measures under review were (1) appropriate to achieve the constitutionally acceptable goal, (2) necessary, meaning that no other, less incumbent measure is available, and (3) proportionate in the narrower sense (weighing the relation between the goal and the restrictions applied). While the Court recognised special inheritance rules for the protected farms as justified, several restrictions concerning legal transactions with agricultural land and farms *inter vivos* have not passed such exam twice up till now. Since the free movement of capital covers also investments into land, the Constitution had to be reviewed before ratifying the European Association Agreement.

It is interesting, however, that relatively few cases before the Constitutional Court concerned the restrictions established for agricultural use by the recent environmental legislation. They could be expected in the near future.

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