



13. Agricultural Land Purchase

Summary:

THE LAW ON LAND “SAFEGUARDS” MAY BE CONTRARY TO EU LAW, AND THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA, AND IS DETRIMENTAL TO THE INTERESTS OF THE COUNTRY.

May 1, 2014 – A new recast of the Law on the Acquisition of Agricultural Land in the Republic of Lithuania²⁹ (hereinafter referred to as “LAAL”), also known as the land “safeguards” law, has taken effect. The law stipulates provisions that limit the right to freely operate in the agricultural market by restricting agricultural land purchase and sale transactions.

The said provisions are detrimental to the interests of the country, may be contrary to the Constitution of the Republic of Lithuania (hereinafter referred to as “The Constitution”), the EU principle of the free movement of capital, and Lithuania’s bilateral agreements on foreign investment.

Certain restrictions exist in other EU countries, but they are most stringent in the EU’s new Member States: Latvia, Slovakia, Poland, Hungary, and Lithuania. Other countries have less stringent restrictions. In Finland, for instance, restrictions on agricultural land sale transactions are imposed in certain regions only (Åland). Research shows that even before enforcing the “safeguards” law, concerning restrictions agricultural land purchase in the EU, Lithuania was already among countries with the most stringent restrictions.³⁰

1. **Regarding LAAL application when purchasing over 10 ha of agricultural land or(and) a legal entity or(and) over 25 per cent of shares in a legal entity owning the said amount of agricultural land**

1.1. The law may not be in line with the EU principle of the free movement of capital

The successful functioning of the European Union’s (hereinafter EU) common market is ensured by a consistent implementation of the four fundamental freedoms: the free movement of goods, persons, services, and capital. Article 26 of the Treaty on the Functioning of the European Union (hereinafter TFEU) stipulates that *“the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured.”* Furthermore, Article (63)(3) TFEU states that *“within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.”*

²⁹ Law No XII-854 on the Acquisition of Agricultural Land in the Republic of Lithuania.

³⁰ Swinnen, J., Herck, K. and L.Vranken. 2014. Land Market Regulations in Europe. *Discussion Paper 354/2014*. Available at <http://feb.kuleuven.be/drc/licos/publications/dp/dp354>, accessed 23 January, 2015.

Although the TFEU notion of the free movement of capital is not defined, Directive 88/361/EEC³¹ provides an indicative list of the transactions regarded as capital movements. The freedom of capital movement implies several freedoms that should ensure the maximum efficiency of the utilisation of the factors of production in the common market: the freedom of individuals to purchase real-estate, shares, and perform other investment procedures in other Member States, as well as the freedom of businesses to purchase, invest, or participate in the management of companies of other Member States.

Under Article 4(3) of the Treaty on European Union, *“the Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.”*

It should be noted that although Lithuania’s legal framework for agricultural land sales has been tightened recently, the experience of other countries show that the European Commission opposes strict agricultural market regulation. For example, Hungary has introduced extremely strict restrictions under which agricultural land could only be purchased by farmers who are Hungarian citizens while both Hungarian and foreign companies were not allowed to purchase agricultural land. Exemptions were made for the State, credit institutions, religious institutions, agricultural cooperatives and municipalities. The European Commission identified such flawed regulation at the end of last year and initiated legal proceedings against Hungary. The Commission noted that Hungary had infringed on the EU principle of free movement of capital and the freedom of establishment guaranteed for Member States.³² This reaction of the Commission towards the Hungarian land market regulation is an indication that the provisions of LAAL may not be in line with the principle of free movement of capital as well.

Given that some countries have tightened agricultural land market regulation recently, the number of infringements on the principle of free movement of capital identified is relatively small. However, the European Commission’s approach towards similar regulation is clear - stringent restrictions on EU citizens purchasing agricultural land are intolerable.

1.2. The law may not be in line with Lithuania’s agreements on foreign investment protection

The restrictions on agricultural land purchases may not be in line with Lithuania’s bilateral agreements on investment promotion and protection. Lithuania has such agreements with fifty countries.

The principles on foreign investment protection enshrined in these agreements protect investors from expropriation of property, restrictions and obligations that would significantly reduce the value of their investment (unjustified refusal to renew permits and licences, for example), as well as discriminatory prohibitions and other legal restrictions.

Lithuania’s agreements on foreign investment promotion and protection usually include a clause on unjustified restrictions, discrimination in investment management, disposal, etc. E.g.: *“Either Contracting Party in the territory of the other contracting party shall not discriminate the citizens or enterprises of the other country in any way and shall not create any arbitrary obstructions to the*

³¹ Annex I of the Council Directive of 24 June, 1988 for the Implementation of Article 67 of the Treaty (88/361/EEC).

³² *Free movement of capital: Commission opens infringement procedure against Hungary on rights of cross-border investors to use agricultural land*. 2014. Brussels: European Commission Press Release Database. Available at http://europa.eu/rapid/press-release_IP-14-1152_en.htm, accessed 23 January, 2015.

utilisation, management and disposal of investments”.³³ The conditions set out in the treaty between Lithuania and the USA are as follows:

“3. (a) Investment shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less favourable than required by international law. (b) Neither party shall in any way impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. For purpose of dispute resolution under Articles VI and VII, a measure may be arbitrary or discriminatory notwithstanding the fact that a Party has had or has exercised the opportunity to review such measure in the courts or administrative tribunals of a Party.”³⁴

Investment agreements not only impose an obligation to ensure equality, and prohibit discrimination of foreign investment in respect of local, or vice versa, but also prohibit arbitrary measures that impair the management, enjoyment, disposal and other use of investments.

Unilateral restrictions enshrined in LAAL restrict the abilities of both local and foreign investors to freely manage, enjoy, and dispose of investments in the Republic of Lithuania, thereby violating the principles laid down in the agreements on foreign investment protection.

Also, the law limits the number of potential purchasers. So then a foreign investor would sell the shares of an agricultural land owning company at a lower price than without such restrictions. What is more, a foreign investor could incur additional costs related to the sale of shares when, for example, there is a need to reorganise a holding company into separate enterprises in order to sell its shares to different purchasers. Therefore, the requirements laid down in LAAL may violate Lithuania's commitments set out in the agreements on foreign investment promotion and protection, as well as result in investor-to-state disputes against the Republic of Lithuania.

1.3. Discriminatory requirements apply to new farmers only, thereby possibly violating the principle of equality

The requirements laid down in LAAL apply to future farmers only (those who will purchase agricultural land after the law is enforced on May 1, 2015) thus those who have purchased land before adopting the restrictions will be able to continue their market operations. It distorts the market and may infringe on the principle of equality. For example, individuals who were able to purchase agricultural land without restrictions prior to enforcement of the law will have much more favorable conditions due to the lack of competition caused by LAAL. For instance, an agricultural company which acquired 1,500 ha of land a few years ago will continue to produce the same amounts of production whereas those who would like to acquire the same amount of land now and compete with bigger companies will be limited to acquiring 500 ha.

Therefore, it seems that the law will not attain its objectives to protect the agricultural land market from the influence of large landowners and the restrictions will not have any influence on the current situation, because after closing the market, large landowners will continue to dispose their market power without competition.

³³ Article 2(2) of the Agreement of 28 February, 1992 between the Republic of Lithuania and the Federal Republic of Germany on the Promotion and Reciprocal Protection of Investment.

³⁴ Article 3(3) of the Treaty of January 14, 1998 between the Government of the United States of America and the Government of the Republic of Lithuania for the Encouragement and Reciprocal Protection of Investment

1.4. The law may not be in line with the freedom of individual economic activity and initiative

The provisions laid down in LAAL stipulate restrictions on entering (purchasing) and leaving (selling) the agricultural land market. These rules restrict the right of individuals to acquire agricultural land and may not be in line with Articles 46 and 23 of the Constitution. The Constitutional Court of the Republic of Lithuania (hereinafter referred to as “The Constitutional Court”) ruled that:

“<...> the freedom of individual economic activity and initiative is a set of legal possibilities which presupposes individual autonomy in making decisions on economic activities, implies the freedom of contract and fair competition, as well as opportunities to restructure economic entities, change the nature of their activities and freely establish or liquidate an economic entity as a response to market developments; it is an integral part of the possibility of an individual who wants to engage in or cease economic activities, to enter and leave the market without artificial barriers.”³⁵

The requirements laid down in LAAL create artificial barriers for agricultural land purchasers and the existing land owners to enter and leave the market by purchasing and selling agricultural land respectively.

2. The land acquisition requirements may not be in line with the constitutional principle that Lithuania's economy shall be based on private ownership rights and freedom of individual economic activity and initiative

The requirements laid down in LAAL for natural persons purchasing agricultural land may not be in line with the fundamental rights and freedoms that are private ownership rights, freedom of economic activity and initiative.

The explanatory note of the law³⁶ indicates that restrictions are provided to prevent speculation and concentration of land ownership in the hands of a number of citizens, foreigners, or their legal persons and to ensure that the land shall only be purchased by a person who is “*actually prepared and is able to farm.*” Such an opinion is formulated unambiguously: a land owner is prohibited from selling it (allegedly “speculating”). In other words, the land owner is deprived of his right to dispose of assets at his discretion.

2.1. Occupational skill and competence requirements for natural persons

The requirement for a person to have a diploma in agriculture in order to purchase agricultural land may not help to attain its objective of rationalizing land use. Firstly, it should be noted that there are cases when the purchaser may not carry on the activities himself. For example, a purchaser of a plot of land for building a house is not subject to occupational skill and construction competence requirements. Such requirements would be considered unreasonable, unnecessary, and unjustified, because in order to build a house on his property, a purchaser does not need construction skills and, in the majority of cases, does not perform the construction himself. Construction permits and the competences necessary are subject to special rules and there is no reason to additionally associate particular competences with the construction area. However, it is believed that a purchaser of agricultural land must be specifically trained in order to acquire it.

³⁵ Ruling of 8 October, 2009 of the Constitutional Court of the Republic of Lithuania. 2009. *Valstybės žinios*, No 121-5237.

³⁶ Explanatory note of the Law No XIIP-1498(2) on Amending the Provisional Law No IX-1314 on the Acquisition of Agricultural Land in the Republic of Lithuania.

Occupational skill and competence requirements for agricultural land purchasers are unjustified and the obligation to carry on agricultural activities in the purchased land infringes on the right of self-determination. It seems that the requirement to be prepared and able to farm the purchased land means that whoever bought the land must farm it himself. Such a requirement is flawed, restrictive and may be against the Constitution. The Constitutional Court concluded that the requirement for agricultural land owners to farm the land themselves is constitutionally unjustified. What is more, the Court ruled on what requirements are regarded as unconstitutional: “<...> unjustified, disproportionate or unjust in any other respect so that such regulation restrict the rights or freedoms of an individual more than it is necessary for the constitutionally based protection of public interests <...>”.³⁷

2.1.1. An obligation for natural and legal persons to carry on agricultural activities for at least 3 years and to have utilized agricultural area and crops declared

Firstly, there is no evidence for the selection of a three year criteria. It should be regarded as subjective and unjustified and thereby violating the fundamental principles of law-making. Also, the obligation to have utilized agricultural area and crops declared deprives the opportunity to purchase land of those who meet other requirements, but have no crops declared on their own behalf, but, for example, on the behalf of a business partner. To add, this regulation is retrospective, because the legislature sets out rights and obligations that must have been fulfilled in the past. In this case, the obligation to have agricultural activities performed and crops declared prior enforcing the law violates legitimate expectations of persons.

2.1.2. An obligation for natural persons to register a farm or to have a diploma in agriculture

The obligation laid down in LAAL on the purchasers of agricultural land to have occupational skills and agricultural competences may violate the fundamental rights and freedoms and may not be in line with the constitutional right to private ownership which covers the possibilities to acquire, manage, use and dispose of private property at the owner’s discretion. The Constitutional Court ruled that:

“The Constitution, guaranteeing the protection of private property, also enshrines the constitutional right of acquiring private property <...> the constitutional right of private ownership is an essential (obligatory) condition of the implementation of the freedom of individual economic activity”, also “under the Constitution, a person’s right to private ownership shall not be restricted depending on the person’s education”.³⁸

The Constitutional Court acknowledged that the provisions of the Law on Pharmaceutical Activities that stipulated restrictions on persons without a relevant university degree in pharmaceutics on acquiring the ownership rights of pharmacies, infringed on Articles 23(1), 23(2), 46(1) and 48(1) of the Constitution. The Constitutional Court stated the following:

“The requirements to have necessary qualification and education in pharmaceutics shall be imposed on persons engaged in pharmaceutical activities in pharmacies. Education requirements shall not be imposed on persons seeking the ownership rights of pharmacies.”

³⁷ Ruling of 30 March, 2006 of the Constitutional Court of the Republic of Lithuania. 2006. *Valstybės žinios*, No 37-1319.

³⁸ Ruling of 14 March, 2002 of the Constitutional Court of the Republic of Lithuania. 2002. *Valstybės žinios*, No 28-1003.

The requirements laid down in LAAL to have occupational skills and competences in order to acquire agricultural land are the same as those set out in the provisions of the Law on Pharmaceutical Activities which were declared unconstitutional. Therefore, the present requirement may also be against the Constitution.

There are around 132,000 farmers in Lithuania. Data regarding their education is not stored separately and only one third of the farmers are estimated to have a formal agricultural education. Therefore, the law restricts farming opportunities of the remaining part of the farmers who have acquired their competences in practice and the possibilities to start farming of those who did not have any farming experience before.

2.1.3. An obligation for legal persons to obtain more than 50 per cent of income from agricultural activities

The following example illustrates a lack of justification for the obligation to obtain more than 50 per cent of income from agricultural activities: a concern which is engaged in a large-scale production of agricultural machinery (which is very close to agriculture) and obtains 2/3 of its profit from it, will not be regarded as engaged in agricultural activities and therefore, will not be able to purchase agricultural land. Although the production of agricultural machinery is not considered as an agricultural activity, it is difficult to argue that such company does not have enough competence to understand the management peculiarities of agricultural land and there are no arguments to support the prohibition on such a company to purchase agricultural land, an agricultural company owning it or, at least, a part of it.

2.1.4. An obligation for legal persons to meet financial viability requirements

The law imposes an obligation on legal persons to prove their financial viability according to the procedure set out by the Ministry of Agriculture. In this way, public authorities have powers to prevent economic operators from engaging in agricultural activities.

Article 46 of the Constitution stipulates that *“Lithuania’s economy shall be based on the right of private ownership, freedom of individual economic activity and initiative.”* In such an economy, as opposed to a planned economy, it is the market and not the government which decides on business development, production and its quantities. Formalistic economic non-viability of enterprises is subject to the Law on Enterprise Bankruptcy.

In the ruling of 8 October 2009, the Constitutional Court clarified that *“situations when government or municipal authorities or their officials make decisions that hinder the expression and the development of individual initiative that is not harmful to the society shall not be possible.”*³⁹ There is no indication that the opportunity to freely dispose of agricultural land may be harmful to the society. This view may be justified in some individual cases, but it cannot become a presumption. On the contrary, Article 46 of the Constitution states that *“Lithuania’s economy shall be based on the right of private ownership, freedom of individual economic activity and initiative.”* The Constitutional Court ruled that:

“The Constitution, guaranteeing the protection of private property, also enshrines the constitutional right of acquiring private property⁴⁰ <...> the constitutional right of

³⁹ Ruling of 8 October, 2009 of the Constitutional Court of the Republic of Lithuania. 2009. *Valstybės žinios*, No 121-5237.

⁴⁰ Ruling of 14 March, 2002 of the Constitutional Court of the Republic of Lithuania. 2002. *Valstybės žinios*, No 28-1003.

private ownership is an essential (obligatory) condition of the implementation of the freedom of individual economic activity. Restrictions on the right of private ownership also restrict the freedom of individual economic activity.”

The obligation to meet financial viability requirements laid down in LAAL imposes unjustified restrictions on the freedom of individual economic activity enshrined in Article 46 of the Constitution and the right of freely choosing business enshrined in Article 48 of the Constitution.

2.2. An obligation for natural and legal persons to obtain authorization

The law stipulates that agricultural land shall only be purchased after obtaining authorization from the National Land Service under the Ministry of Agriculture (hereinafter referred to as “NLS”) and sold after obtaining a corresponding certificate.

A person who intends to sell land is required to provide a statement to a notary public (when the land is common partial property) or a territorial NLS which performs the procedure of informing those having priority rights to purchase the land and issues a certificate and permits the sale. This service costs 26.07 EUR (90 LTL). In case a person intends to buy land, he has to obtain a one-year temporary permit. It issued by the NLS within 15 working days and costs 8.69 EUR (30 LTL).⁴¹ Upon the expiration of the one-year period, a person shall obtain a new permit; therefore, to meet the same criteria and pay the stamp duty again. This procedure is a significant administrative burden which delays the transaction not only due to the documentation processing time in public bodies, but because of the time needed to collect the documents prior applying for a permit. Furthermore, it is not free of charge.

2.2.1. The law is contrary to the case-law of the CJEU and may infringe on the principle of the free movement of capital

It must be realized that by joining the European Union, Lithuania did not only obtain the right to enjoy new privileges, but assumed certain obligations including the obligation to ensure free movement of capital. Meanwhile, the issue of such permits is contrary to the case-law of the CJEU and may be regarded as an infringement of the principle.

The CJEU heard a case⁴² in which the European Commission accused Portugal of holding the golden shares of *Portugal Telecom* and having the right of veto when over 10 per cent of the company's capital is purchased by shareholders engaged in competitive activities. For that purpose, prior administrative authorization is provided by the legislation of Portugal.⁴³

In his opinion, Advocate-General Paolo Mengozzi⁴⁴ concluded that public security requirements that deviate from the principle of the free movement of capital shall be interpreted narrowly and therefore, may be only relied upon in the event of a genuine and sufficiently serious threat to the overriding public interest. In accordance with a well-established case-law, the free movement of

⁴¹ Public and administrative services of the National Land Service under the Ministry of Agriculture of the Republic of Lithuania. Available at <http://www.nzt.lt/go.php/lit/Vieosios-ir-administracines-paslaugos>, accessed 1 January, 2014.

⁴² Decision in case No C-367/98 2002 of 4 June, 2002 *Commission of the European Communities v. Portuguese Republic*.

⁴³ “By virtue of those shares, indeed, a large number of management decisions concerning the undertaking's structure and significant aspects of its activities must previously be authorised by the Portuguese State. The Portuguese rules thus establish a system of prior administrative authorisation for the adoption of certain management decisions and for the acquisition of shareholdings in Portugal Telecom, as the Commission correctly describes” (Opinion of Advocate-General Paolo Mengozzi of 2 December, 2009 in case No 367/98 *Commission of the European Communities v. Portuguese Republic*).

⁴⁴ Opinion of Advocate-General Paolo Mengozzi of 2 December, 2009 in case No 367/98 *Commission of the European Communities v. Portuguese Republic*.

capital may be restricted by national measures which are justifiable under Article 58 of the Treaty Establishing the European Community (hereinafter referred to as “TEC”) or, in case of an absence of Community measures to ensure the implementation of the measures necessary to protect these interests, overriding reasons in the public interest.

The CJEU concluded that under Article 56 TEC, national legislation that allows Portugal to make decisions on issuing a permit to an individual who seeks to acquire over 10 per cent of *Portugal Telecom* shares, stipulate restrictions on the freedom of capital movement.

By contrast, LAAL imposes an obligation to obtain authorization from the NLS prior acquiring agricultural land. According to the CJEU, the introduction of the administrative procedure into the legislation of Portugal restricts the freedom of capital movement and LAAL also sets out a separate procedure of obtaining authorization. Therefore, the obligation to obtain authorization laid down in LAAL may infringe on the EU principle of the free movement of capital.

2.2.2. The law may not be in line with the case-law of the Constitutional Court

The Constitutional Court ruled that “<...> the freedom of individual economic activity and initiative <...> is an integral part of the possibility of an individual who wants to engage in or cease economic activities, to enter and leave the market without artificial barriers.”⁴⁵ Therefore, artificial barriers for individuals to freely dispose of assets shall not be created.

LAAL stipulates that both spouses shall obtain authorization before purchasing agricultural land. Such an obligation may infringe on the freedom of individual economic activity by imposing unjustified obligations, on a farmer’s wife, for example, who has to obtain authorization. In cases when crops are declared on behalf of a husband, a family cannot purchase agricultural land; because the farmer’s wife does not have any crops declared and does not meet the requirements. Therefore, the husband is allowed to acquire personal ownership rights to land only.

3. A restriction on related persons to acquire more than 300 ha of land from the State and more than 500 ha from private individuals

Related persons – spouses, parents (including adoptive parents) and their minor children (including adopted), related companies – those holding 25 per cent or more shares of a company and having the right to vote at a meeting of the company which they intend to purchase.

Such a restriction may infringe on the right of private ownership and the principle of equality. It is fundamentally flawed and unjustified to determine how much land may be legally acquired in the civil market.

The market is also distorted, because the restriction applies to agricultural activities only and excludes animal farming. The restriction on related persons to acquire more than 500 ha of agricultural land laid down in LAAL does not apply to animal farming if the amount of the land purchased does not exceed the relative number of livestock units (1 ha of agricultural land for each unit). To add, abuses of the dominant position and the possession of excessive market power are subject to the Law on Competition thus the restriction on acquiring more than 500 ha is not necessary.

⁴⁵ Ruling of 8 October, 2009 of the Constitutional Court of the Republic of Lithuania, 2009. *Valstybės žinios*, No 121-5237.

This restriction is not imposed in neighbouring Estonia or Latvia⁴⁶, as well as Denmark or Germany, whereas Poland only limits the amount of land purchased from the State.

Since the restriction does not apply to those who already own over 500 ha, they will continue to operate on the market, whereas others who would like to enter the market (those who own 400 ha and intend to acquire 150 ha more, for example) and become big farmers, will not have such possibilities.

The number of particularly large farms (over 500 ha) have merely changed between 2009 and 2013⁴⁷ thus the fears that small farms will be pushed out of the market by the sweeping powers of large farm owners are unjustified.

To add, very few people in Lithuania (15) own over 500 ha of agricultural land while there are 172 individuals who own between 400 and 500 ha; therefore, the restriction will freeze these numbers.

3.1. On the disproportion of the sanctions provided

Under a claim of a prosecutor defending public interests and a court decision, in case of exceeding the limit of acquiring 500 ha of private or 300 ha of state-owned agricultural land, “<...> the area of land is taken over and transferred into state ownership <...>”.⁴⁸ Therefore, the law provides a disproportionate punishment for exceeding the purchasing limits which is land seizure and transfer into state ownership.

“<...> with regard to the circumstances of each individual case, it must be evaluated whether the corresponding changes did not deny the substance of the rights acquired. The principle of proportionality means that measures provided by law shall constitute legal and socially important objectives, shall be vital to the attainment of those objectives and shall be no more restrictive of the individual rights and freedoms than it is necessary to attain those objectives <...>”.⁴⁹

Land sales contracts are transactions concluded and annulled under the Civil Code. Since legal consequences of the annulment of land sales contracts are also defined by law, it would be reasonable to apply it. For example, after declaring a contract invalid, it could be annulled and restitution could be made. However, under LAAL, legal consequences of declaring a contract invalid constitute taking over the agricultural land acquired. Under the Constitution, land may be taken over only for the needs of society and shall be justly compensated for. However, taking over the excess land applies as a fine and does not constitute a public interest in this case.

More than two parties should express an interest in order to recognize a parcel of land as a public interest; “<...> public interest is when there is a violation of the fundamental values protected by the Constitution <...>”⁵⁰, or when the infringement is very serious and resulting in adverse legal consequences, etc. It is difficult to prove the existence of these criteria. “The public interest shall only protect <...> constitutionally important and significant, for example, human rights and freedoms

⁴⁶ <http://www.triniti.ee/newsletterV3/mail.php?n=135&t=862&l=eng>

⁴⁷ Lithuanian institute of agrarian economics. 2014. *Lietuvos žemės ir maisto ūkis, 2013*. Vilnius: Lithuanian institute of agrarian economics, p. 31.

⁴⁸ Article 3(7) of the Law No XII-854 on the Acquisition of Agricultural Land in the Republic of Lithuania. 2014. *Register of Legal Acts*, No 2014-04860.

⁴⁹ Ruling of 29 June, 2012 of the Constitutional Court of the Republic of Lithuania. 2012. *Valstybės žinios*, No 78-4063.

⁵⁰ Order in the administrative case No A146-335/2008 of 25 July, 2008 of the extended Chamber of the Supreme Administrative Court of Lithuania.

*(freedoms of assembly and expression), the stability of the financial system <...>*⁵¹. It is also important to identify “<...> why the applicant appealed to an administrative court – to defend the public interest, subjective rights or the interest protected by law.”⁵² It should be evaluated whether agricultural land acquisition, even when breaching the administrative procedures provided, may be regarded as an infringement on the public interests. There is no doubt that offenders shall be punished, but it is inadequate to nationalize assets.

4. An obligation to ensure agricultural activities for five years

The provisions of LAAL that stipulate that the purchased agricultural land shall be used for agricultural activities for at least five years according to the minimum annual production rate per hectare determined by the Ministry of Agriculture may be contrary to the freedom of individual economic activity and initiative. Such a requirement is rather a prescriptive obligation than a rule. The Constitutional Court ruled that “<...> the freedom of individual economic activity and initiative is a set of legal possibilities which presupposes individual autonomy in making decisions on economic activities <...>”.⁵³

An obligation on the land owner to ensure cultivation of his private land even if it is economically unviable for a certain period of time (due to market changes), restricts the constitutional right of private ownership and the freedom of individual economic activity. Therefore, the requirements laid down in LAAL may not be in line with the principle of the freedom of economic activity and the right to freely choose businesses enshrined in Articles 46 and 48 of the Constitution.

It should be also noted that the Code of Administrative Offences provides disproportionate fines for infringements of these rules. For example, the fine imposed in the event of failure to prepare land so that it would be suitable to farm varies from 72 to 144 EUR whereas the fine for a very similar infringement, a failure to ensure agricultural activities, varies from 724 to 1448 EUR.

In general, the requirement to ensure the intended use of agricultural land according to the production rate determined by the Ministry of Agriculture is too detailed, unjustifiably strict and poses a significant burden on land owners. Furthermore, it is unlikely that the actions of an individual who fails to reach the output of 50 EUR from a hectare of land are harmful to the society. It is not the society that suffers from a reduction in the agricultural output; it is farmers who are unable to achieve maximum profit, as well as the agricultural market which is several tones poorer. There is no violation of the legal order.

4.1. On the disproportion of the sanctions provided

It is important to note that there are cases (for example, when the productivity score of a parcel is lower than 32 or parcels belong to the priority areas for afforestation) when agricultural land may be used for afforestation. Such land is frequently purchased to be afforested rather than cultivated. Similarly, agricultural land may be purchased for other lawful activities such as construction and operation of wind and solar power plants. Therefore, sanctions may have a negative impact on those who have no connection to agriculture, but intend to purchase and use agricultural land for forestry, electricity production, rural tourism and other activities.

⁵¹ Klimas, E. 2014. Identification of the public interest – objective criteria. *Jurisprudencija*, 21(1): 131.

⁵² Ruling in the administrative case No A822-1542/2013 of 19 November, 2013 of the Supreme Administrative Court of Lithuania.

⁵³ Ruling of 14 March, 2002 of the Constitutional Court of the Republic of Lithuania. 2002. *Valstybės žinios*, No 28-1003.

5. A right of first refusal vested in a tenant or a neighbour

The law stipulates the right of first refusal vested in joint owners (Article 4.79 of the Civil Code) or users (if used for at least one year for agricultural activities and if meets the requirements) or to those who have their parcel bordering with the parcel for sale and meet the requirements.

A person who intends to sell land is required to provide a statement to a notary public (when the land is common partial property) or a territorial NLS which, within 5 working days, informs a land user regarding the sale. The user, within 15 working days from the date of notice, informs about his decision. If the user does not agree to purchase the land, within 5 working days, the NLS informs those who have their parcel bordering with the parcel for sale. They are given 15 days to respond. Then, within 5 working days, the NLS issues a permit to sell the land. Thus, 44 working days (over two months) is the maximum period. Therefore, such a long period just to find out if anyone wants to enjoy the right of first refusal may deprive the owner of the opportunity of making the most effective transaction quickly.

Firstly, it is a direct restriction on individuals' freedom to choose how to manage their property. The Constitutional Court's opinion regarding such restrictions has already been discussed in the previous sections. Therefore, the prohibition to sell your parcel to a close relative who lives elsewhere may not be in line with the constitutional freedom of individual economic activity. However, these requirements unjustifiably restrict the freedom to sell a parcel to a close friend or relative.