THE SYSTEM OF LAND TENURE AND LEASEHOLD THE HUNGARIAN PEOPLE'S REPUBLIC

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To build up a developed socialist society was formulated in the decade 1970—1980 in Hungary as a basic objective. Realization of this objective requires some longer period and demands corresponding economic and legal measures, regulations in every area of the national economy. Accordingly, the bulding up of a developed socialist society demands also in the field of ownership rights such legal regulation as will serve the attainment of said objective over a longer period of development.

In my apinion, in the fields of Hungarian land ownership and leasehold relations the legal system of land tenure and leasehold has on the whole already developed which allows and promotes the building up of an advanced socialist society. True, this socialist system of land tenure and leasehold has not yet been codified in Hungary, but it is still regulated by many dispersed legal regulations, and while work is still in progress on the still necessary modifications and complements, it will become possible and indispensable in a foreseeable short time to codify the first Hungarian socialist code of land law.

In the given framework we have only a possibility to shortly outline the prevailing system of Hungarian socialist land tenure and leasehold showing its characteristic features and development tendencies, mainly in respect of the land destined for agricultural use.

1. The system of land tenure. In the Hungarian People's Republic land can be subject of every form of ownership acknowledged by the Hungarian socialist law. Accordingly, land can be and is: in state social ownership, in cooperative social ownership, in personal ownership and in (small) private ownership. This system of land tenure is on the whole uniform, as for its character it may be definitively considered to be of socialist nature, since the owerwhelming part of land is in state ownership, in cooperative ownership, (listing here also from the economic aspect the land used in common by cooperative members and their family) and in personal ownership — and in the Hungarian law these forms of ownership are to be considered as being socialist in nature. The transitorily existing (small) private ownership of land amounting to merely 2 per cent of the total area lend only some colour to the system of land ownership, but does not

challange its socialist nature, since its functioning is delimited by the dominating socialist economic and social environment and its future fate is to become some form of socialist land ownership (state, cooperative, personal) as soon as the possibility arises. Within this system of land ownership rights there is a legally regulated mutual relationship among the various forms of land ownership, which is basically called upon to secure the socialist system of leasehold and that the system of socialist land ownership should become ever firmer, durable and simpler, and more easily surveyable as regards its structure and development tendencies.

It is a general rule in Hungarian law that the ownership right of land does not extend to the wealth below the surface of the eurth since this is exclusive state property and, accordingly, the monopoly of mining is due to the state (which may cade the right of mining certain surface minerals, as sand and gravel, to cooperatives). Thus the ownership right of land generally extends to a definite part of the surface of land. In depth —towards the centre of the eurth and in height (in the air) it is interpreted as edmanded by the use of the land surface according to its destination. In connection with the right of ownership of land the Hungarian law also knows the principle that aedificium solo cedit, — and enforces it in a given case — but at the same time it formulated the principle and practice that it consideres the part (consitutent) of land as the main thing (e.g. house, perennial plants etc.) as independent subjects of ownership rights. To all that is related the fact that in Hungarian law the distinction between movables and immovables has not only economic but also legal importance — in fact the notion of immovables emerges in land fan in a further breakdown (closed garden, downtown outskirts, farmsteads etc.) all of which have legal implications.

It is characteristic of all forms of land ownership in the Hungarian system of land ownership rights that the owner is not only entitled but simultanesouly obliged to use his land in conformity with its destination or to make arrangements that is be used so. Neglect of this obligation involves sanction — varying according to the forms of ownership, e.g. if someone having as personal property agricultural land of 0.5 hectares neglects its cultivation for reasons attributable to himself, the land may be confiscated without compensation. This and several other legal regulations show that in the Hungarian land law emphasis as regards the contents of land ownership has shifted among the known contentual partial rights (possession, use, dispcsal) to the right of use and the right of disposal plays but a subordinated and complementary role.

In the Hungarian system of land ownership rights it is characteristic for every form of land ownership acknowledged that the land owned has more or less an established socialist commcdity character. In general, the characteristic feature of the latter is that it is closely related to the partial right of land use, and that this commodity character promotes first of all a more rational management of land. The socialist commodity character of land ownership has, as a matter of fact, two forms of appearance, to wit: on the one hand such, where only the right to use the land is affected,

but the ownership right is not; on the other hand such, where the ownership right is on the whole affected. Formally the latter case is such as the purchase and sale under private ownership of land, but with the important contentual difference that in this way no socially owned land (by the state, the cooperative or a person) can be transformed into private ownership. As against that, the (small) private ownership of land can transform in this manner into any kind of socialist form of ownership.

a) The subject of the state social ownership of land is the state. The Hungarian law conceives the state as subject of law in respect of land ownership in a double sense, so that is considers the state to be the primary owner and the legal manager of the state's landed property as the secondary owner. This concept is no speculative theoretical conclusion, but a principled standpoint relying on concrete legal regulations, which may be condensed in the following formulation: the subject of the state land ownership right is on state-social level the state itself, but on social group level it is the collective, that is in respect of the state land managed by state and social organs the subject of state land ownership rights is the individual state or social organ as legal entity.

The object of the state social land ownership right is, irrespective of its economic destination, every land area having become state property under any title. Within that two major groups have to be distinguished: the groups of exclusive and non-exlusive objects of state land ownership rights. This distinction is justified by legal rules differing according to said groups, beyond the general legal regulations. Accordingly, the exclusive right of ownership of the state extends to the beds of running waters, channels and natural lakes, the dried-up beds of running waters, newly emerging inslands in running waters, public roads and squares. Also the forests managed by state farms and state forestries are to be considered as exclusively state properties. Exclusivity means here that these objects of state land ownership rights are in general not negotiable. On the other hand, it also means such state monopoly of ownership right that – unless the law makes exception – the objects of landownership listed can be owned only by the state within the frontiers of the country. As against that, the scope of non-exclusive state ownership right of land covers such land areas which may be also objects of cooperative, personal and (small) private ownership – or if they are owned by the state, they may participate in commodity turnover in a legally exactly defined scope and manner, that is, they may come into the ownership of others. However, it is a characteristic main rule also for this scope of objects of state land ownership that the land owned by the state cannot come into the ownership of others. Generally, only state land in dewntown areas and closed garden areas participates in the turnover to major extent, in the scope characteristic of personally owned land and, accordingly, is also transformed into the latter.

The contents of the state ownership of land develops accordings to the partial titles of ownership as follows. The right of possession is due to the state as owner, so it can accordingly use the legal instruments of pro-

tection of possession – but these rights are actually exercised by the actual possessor entitled to manage the land or using the land under any other title. The state as owner of the land has the right of use and usufruct and it can also cede them under definite titles. But this is not only a right but also a duty of the state as land owner. The state implements the right of land use through state organs, social organs, cooperatives and citizens, partly free of charge (state farms and state forestries etc.) and partly against payment (state enterprises and citizens etc.). The state as owner has the right of disposal, which is, here too, the ensemble of rights. In this stat the right of disposal is of commodity nature only to the extent that the state landed property is of commodity nature. Also this commodity nature can be considered as of socialist nature, since it is called upon to promote the efficient socialist use of land according to its destination. The right of disposal over the state's landed property is an ensemble of socialist commodity and noncommodity rights. All in all, in the case of the state's landed property the right of disposal extends to the cession of possession of land, to the use of land, to ceding the right of usufruct and to the transfer of the right of ownership. The land in state property must not be mortgaged and the right of ownership must not be abandoned. To transfer the ownership right of the state's landed property is possible only in the scope defined by the legal regulations and only against payment. (The right of possession and use and of usufruct can be ceded in the case of state-owned sites the right of the management of the state-owned site) against payment for the socialist economic organizations using the site: they have to pay an appropriation fee and aregular charge for the use of land. State-owned sites (plots) can be given into lasting use equally against payment (a single appropriation fee), but only for a definite period. Other state-owned lands can be ceded for use either free of charge (to state farms and production cooperatives etc.) or aganist payment (lease, lasting land use). The state as owner of land also has the right due to the owner as administrator, but this must not be mixed up with the land administration right of the state as public power, which extends to all kinds of landed property within the frontiers of the country.

The titles under which the state may acquire the ownership of land, are the same as the general titles under which ownership can be acquired; beside them, however, more important roles are played by those titles of acquisition of property in the growth of the state's landed property which – exclusively or beside other forms of land ownership – are primarily characteristic of state land ownership. Such are, particularly: nationalization, expropriation, voluntary offering of land and exchange of land, as well as the concrete titles which belong to the scope of the right of preemption but secure the possibility of acquiring land only for the state.

We have already mentioned that, as a main rule, the state ownership of land cannot cease, but exceptionally this is made possible by law, first of all through ceding into personal property building sites for family houses. The law makes endeavours to satisfy other demands affecting the state ownership of land through the legal institutions of lasting use of land,

lease etc. so that the land should continue to be legally owned by the state, but also other justified claims can be met in this field. The state's landed property enjoys increased protection due to the social ownership. In this context it has to be stressed that if the right of ownership of some land area is challanged against the state by a cooperative, other organization or private person, the state ownership of land has to be presumed and so the duty of proof falls on who challanges the right of ownership against the state. It is similarly a legal rule that the land owned by the state cannot be acquired by prescription But. the rule relates also to the landed property of the state that the right of ownership of immovables cannot be abandoned. In connection with this protection also the rule has to be mentioned that the contract with which state-owned land is alienated against legal rules is void.

b) 1. The subject of the cooperative social ownership of land is the individual independent agricultural production cooperative as legal entity. Behind this legal entity there is a group of of people which exists as a collective of production cooperative owners. The collective ownership is linked to membership, in a cooperative, that is, the subject of the social ownership right of production cooperatives can be only a collective of owners consisting of members of the production cooperative.

The object of the land ownership of production cooperatives is all land area, irrespective of its destination, which has become the property of the production cooperative under any title. This may be also in the outskirts downtown or closed garden area. It may be considered as a principle that land in outskirsts and closed garden can be owned by the cooperative only in the farming region of the cooperative, that is where the collective of the cooperative can cultivate the land itself.

Downtown area (e.g. resting site) can be owned by a cooperative anywhere in the country.

The contents of the land ownership right of the cooperatives is composed from rights and obligation cooperative as owner. In this context the Land Act. (Act IV: 1967. § 12) says as a general rule: "In respect of the land owned by the cooperative or used by it under other title, the cooperative has the right of possession, use, and of usufruct, further – in the framework defined by law – the right of disposal. The production cooperative is under obligation to meet all commitments stated by legal rules for the owner and the user of land." From this it follows by implication that the contents of the right of ownership of the cooperative "radiates" to every collective land of the production cooperative, independently of the fact that today still about 50 per cent of the common lands is formally not owned by the cooperative, but mostly by the production cooperative members and persons considered as members, and a small part is owned by the state. Accordingly, the rules of production cooperative land ownership rights are asserted on the whole on every production cooperative land collectively used – not least because the diversified land ownership relations of these lands are expressed merely in proportions of ownership rights and are not linked to any concrete land area.

The contents of the land ownership of production cooperatives develops according to the partial ownership titles as follows: the production cooperative as owner has the right of possession, which relies, as the main rule, on own possession, its main function is to secure that the land shall be used according to its destination; in respect of every common land the right of protection of possession is due to the cooperative. As owner of land the production cooperative is entitled to use the land and to usufruct, but the use of land is not only its right but also its obligation. The right of disposal is also due to the production cooperative as owner. Since the cooperative landed property is basically not a commodity proparty, and yet it has a socialist commodity property nature – accordingly, the right of disposal is also composed of commodity and non-commodity rights of disposal. It is characteristic of the right of disposal of cooperatives over land that it is implemented in a manner defined by law and under the direct supervision of the district land office. That is, the agreement or permission of the land office is needed for every legal action which qualified as disposal over land. In the case of landed property owned by the production cooperative the right of disposal extends – in a narrow scope – to transfer the rights of use of the land and of usufruct and also to the transfer of ownership rights, but the land cannot be mortgaged and the right of ownership cannot be abandoned. The production cooperative as owner has the right of administration by the owner, and this is exercised by internal administrative organs built upon the principle of cooperative democracy.

The titles under which the cooperative ownership right of land can be acquired are the same as the general legal titles under which property can be acquired, but beside them there are also such which are primary or exclusive titles of acquiring production cooperative landed property. Practical assertion of the titles of acquisition is determined, as a general rule, by the fact that through them first of all those lands come into the ownership of the production cooperative, which came into the collective use of the cooperative under any title in the course of the massive collectivization of agriculture. From another aspect this also means that, as a general rule, the collectively used land can be owned only by that cooperative which had taken it into collective use under some title, that is, it belongs to the collective property. At present, stateowned land cannot become the property of a production cooperative. (Prior to that, the state owned land used lastingly nad free of charge by the production cooperative became cooperative property through cession by the state, against a symbolic fee of redemption.) At present hardly more than 3 per cent of the cooperative collective land area is owned by the state, which the production cooperatives use under the title of free and lasting leasehold.

A particular title of land acquisition by cooperatives is redemption. Through redemption land owned by people outside the cooperative but used by the production cooperative in collective becomes against payment the property of the coopetarive. Redemption as a title under which production cooperatives may acquire ownership of land is based on legal

rules and at present this is the title on whose basis the land owned by production cooperatives is mainly increasing. The rule is, namely, that whenever the membership of a cooperative member ceases and thus the land originally taken into collective use becomes the property of an "outsider" – and is not burdened by usufruct – this property becomes the property of the production cooperative by legal force under the title if redemption.

An other particular title under which production cooperatives may acquire land is the offering of land. A member of the cooperative may offer his land collectively used by the cooperative at any time against payment until his membership is maintained, on the basis of agreement made with the management of the production cooperative. Also land provately owned and personally used may be in this manner acquired by the cooperative. Evidently, a cooperative member who owns land can sell it only to the production cooperative that uses the land. Although it is the management the production cooperative which decides on whether the offer should be accepted or not the agreement becomes valid only after approval of the district land registration office. Cessation of the production cooperative land ownership is an exceptional phenomenon, since it is not a commodity ownership. Nevetheless, since it still has a particular socialist commodity ownership nature, in definite cases this may lead also to the cessation of coopetative land ownership. Not mentioning the exchanges of land taking place in various forms, as relative possibilities of the cessation of cooperative land ownership – the production cooperative land ownership may become exceptionally, through purchase and sale, according to the relevant legal rules, the property of a socialist organization, or of a citizen – but it cannot become private ownership of land in any form.

Increased protection due to social property is extenden also to the land owned by the production cooperatives, but – independently of the ownership situation of the lands – it essentially extends to all lands collectively used by cooperatives. Beyond the general rules relating to the protection of possession, the separate rules affecting the protection of the collective lands of the production cooperatives are as follows:

a) It is prohibited to transfer or cede the ownership or leasehold of land owned or used by the production cooperative in a manner not allowed by law.

b) A cooperative member may not transfer to other persons the right of ownership of his land used by the production cooperative.

c) Land owned by the production cooperative or used by it under any other title, may not be mortgaged unless the legal regulations make exception.

d) All mortgages on the land collectively used by the coopetative and originating from before the land was taken into collective use cease – unless the legal regulations make exception.

e) Land owned or utilized by cooperatives use not distainable for mortgagen registered prior to the transfer of proprietary rights or leasehold to cooperations.

b/2. Closely related to the production cooperative ownership of land, in the Hungarian system of land ownership rights also the land ownership of the production coopetative member exists. Here belong all lands which came under the collective use of the production cooperative as a result of the member's obligation to give his land the cooperative, and the owner of which is a member of the cooperative or a person who should be consid red as member from this respect (husband or wife, usufructuary etc.). The general rule on the obligation to give the land the production cooperative is according to the law on production cooperatives as follows:

"(1) The member of the production cooperative is obliged to give all land the cooperative usufructed or used under any other title by himself or the members of his family living together woth him.

(2) The obligation extends also to the land which the member or a member of his family living together with him acquires after entering into the cooperative either as property or usufruct or utilization under any other title.

(3) The obligation does not extend to the lands in personal property.

At present about 45 per cent of the cooperative collective lands is owned by the cooperative membefs on national level, which they united themselves in collective use of the cooperative legally the land ownership of cooperative members in regard of the collectively utilized land is gradually decreasing, so that these lands are transferred into cooperative ownership. This takes place in two ways; partly a considerable part of these lands is inherited by "outsiders" and as such it becomes through redemption – by force of law – the property of the cooperative. Partly the proprictor member of the cooperative using the right provided by legal regulations – offer their land against redemption to the cooperative. It has to be noted that this offering is arate in practice – in all certainty because the redemption price fixed legally is not at all incentive as against the ground rent. In spite of this – mainly in connection with inheritance – the land owned by cooperative members passes continually and to considerable extent into the ownership of production cooperatives. As a result – in foreseeable time – the overwhelming part of collective cooperative lands will be owned not only economically but also legally by the production cooperatives.

Owing to itsbeing united under collective utilization the land owned by the cooperative member undergoes a contentual change, it becomes transformed and functions in the economic sense as cooperative social landed property. This contentual transformation, socialization can be unequivocally shown in the contentual partial rights of the land ownership of the cooperative member, that is, exually in the rights of possession, use and dispcsal.

The substance of the contentual transformation, of the socialization of the land ownership of cooperative members can be summed up as follows: As a result of landed property being united in collective utilization the rights of possession, use and usufruct have become totally socialized on the level of cooperative social ownership. Besides, from the right of

disposal the group of rights serving the use, the utilization of land, and production became also socialized. All private rights of disposal relating to commodity turnover which are opposed to the interests of the collective economy of the cooperative have ceased – but the right of the member as owner of land has remained that he can offer his land to the cooperative against payment; his land may be also inherited, and, last but not least, he has the right to draw a ground rent regularly each year according to the relevant legal regulations and the statutes of the cooperative. If we add to all this that as a result of land also the land re-arrangements ownership of the cooperative members can be expressed only as an ideal share in ownership, but cannot be assigned to any concrete parcel of land; that the production cooperative possesses, uses and manages all land in collective utilization as if it were owner completely and not only to the extent of a certain percentage, – the conclusion may be clearly drawn that the land owned by cooperative members but collectivelly used exists as regards both its contents and its practical functioning as cooperative social land ownership. Thus, it has to be ranked in the same group, the same category as the land owned by the same category as the land owned same category as the land owned by the coopetative, in spite of the fact that the coopetative member as owner of land has certain rights in connection with his land given to coopetative.

c) The personal proprietary right of land as a form of socialist land ownership is institutionally acknowledged in Hungarian law. Its subject can be every natural person. This possibility is, however, considerably influenced partly by the family law position of the natural person (in certain cases, by his citizenship, too) and partly by the place, number and territorial situation as well as the economic destination of the land that may become personal property. Accordingly: a person or a family (family is in this snese a married couple and their miners, as well as unmarried children of age living with their parents may own – as personal landed property – at most one building site for a home plus a plot for a rest hause as well as land for agricultural use of at most 6000 sq.m. in downtown closed garden or in the outskirts; or a farm stead and related to it land for agricultural use of at most 6000 sq.m. a foreigners may cquire only the ownership of building plots and rest-house plots;) If the closed garden area (in this sense closed garden area is a separate part of the outskirts of a town or village that cannot be cultivated with large-scale methods) is destined for vineyard and orchard the upper limit is 3000 sq.m. All that show that the subjective and objective scopes of the personal proprietary rights of land are in concrete cases mutually interrelated. The contents of the personal ownership right of land is composed from the traditional rights of possession, use and disposal, which are in general regulated by the Civil Code (CC), but in certain respects the various rzkes rekatubg ti land law lend colour to their assertion. (E.g. the cooperative members use their personally owned land as household plots, with the restriction that within it the area of vineyards and orchards mutt not exceed 300 sq.m.) It deserves particular attention that according to legal regula-

tions even for private farmers the land areas previously announced as being objects of personal land ownership must be considered as personal property until individual farming does not cease in some manner (e.g. by entering into the cooperative) – independently of the fact that they are organic parts of private small-scale commodity production. Acquisition and cessation of personal ownership right of land occurs according to the general rules of civil law, but several partial land law rules are in force in this field in order that the rules relating to the objective and subjective scope of personal ownership of land should be consistently asserted in practice. With these rules the law essentially wishes to secure that personal landed property should remain lastingly an organic part of the system of socialist land ownership, so that it should ever more perfectly fulfil the function it has to fulfil throughout in a socialist society: direct satisfaction of personal needs and, in the given frameworks, production of the greatest possible volume of agricultural commodities.

d) The subject of the (small) private land ownership may be only a private person as the legal capacity. From this aspect private person is the natural person and such legal entity which is not qualified as a socialist organization (e.g. the churches). But this legal capacity of a private person is considerably influenced by his family status. The rule concedes, namely, the right to (small) privately owned landed property to the ensemble of the private person and the members of his family living in the same household (family living together) up to the maximum established for this type of holdings. From this aspect the members of the family are: husband or wife, minors, and unmarried children of age living together. The main rule characteristic of the owner of (small) private holding is that agricultural production is his profesion.

The object of (small) private land ownership right may be only agricultural or forest area, up to 3 hectares. This 3 ka. is now the legally established upper limit to private landed property. (Earlier the maximum was 12 – 15 hectares up to 1978; those who owned land extending to the earlier maximum could keep it, but could no longer increase it. Into the 3 hectares the downtown and closed garden areas owned by the private person and the outskirt plots owned by the members of the family are included, which means in other terms that the housing plots and the resthouse plots are not, but farm steads and the surrounding land are included. Otherwise, as regards the application of the rule, with the exception of forest areas, agricultural area includes outskirts and closed garden areas, and all downtown land which is not qualified as building plot according to the building rules.

The contents of the (small) private landed property, that is, the rights of possession, use and disposal are governed as a general rule by the Civil Code.

Acquisition and cessation of (small) private landed property occur according to the general rules of the civil law, but, in order of the maximum size of land should be asserted, their practical enforcement is constrained by different concrete rules of land law. Cessation of the private

land ownership is not restricted, it may be sold etc. but abandonment of ownership is prohibited. E.h. if the land of the owner in outskirt area exceeds the maximum size of land because of inheritance, he is obliged to sell the excess area within a year. If he does not sell the exceas land within the specified time, the state has a right of purchase which it exercises through an appointed organ. The ownership right of an outskirt area can be acquired – among living persons – by a private person only up to 6000 sq.m. – within the framework of the maximum holding, (he cannot acquire more even if the maximum size of land has not been exhausted). Under the title of acquisition of ownership among living persons a private person may acquire the ownership right of land only by the permission of the appointed organ (the district land office). This rule does not apply to building plots either built in or not.

2. The system of leasehold. When the legal science examines the leasehold system of a given country, the examination extends to the lands destined for agriculture and forests, that is, to the branch of the economy frequently called agrarian economy within the whole of the national economy. The system of leasehold is always in a definite legal relationship with the system of land ownership in agrarian economy. In this context it may be considered as a principled established rule that the source of the right to leasehold is – directly or indirectly – always the right to land ownership in some form. This close relationship between the systems of land ownership and land use demands as an economic and a legal-logical necessity that the two systems should be of relatively uniform nature, (e.g. uniformly of private or uniformly of socialist nature). If natural development disrupts this relative uniform nature of necessity, in the course of development and in its interest, the relative uniformity of land ownership and leasehold should be again brought about on higher level, in order to make economic and social progress safer.

In the agriculture of the Hungarian People's Republic the socialist system of leusehold became basically established and predominant already with 1961, with the end of the massive collectivization of agriculture. In the almost twenty years since then its details too have taken shape and became consolidated. The present task in this field is to further refine this general and predominant system of socialist leasehold and to strengthen it according to the interests of building up a developed socialist society. In its course, the system of land ownership should conform to the socialist nature of the system of leasehold as a whole, and should rise to its level, as in some of its parts it is more backward in respect of legal form than the system of socialist leasehold. In other words this means that the relative unity of the systems of leasehold and land ownership of socialist nature should be brought about so that it should serve lastingly the interests of a developed socialist societe.

The socialist character of the Hungarian system of leasehold is lent mainly by the fact that its every form exists in a socialist economic and social environment; it is a so-called "working leasehold relying on own work (in collective or individual form) which is relized free from exploi-

tation, that is, without the exploitation of other's labour; it is generally planned it is an up-do-date use of land, approaching the given level of the social environment; it is a so-called "working leasehold relying on own work (in collective or individual form) which is relized free from expolitation, that is, without the exploitation of other's labour; it is generally planned it is an up-do-date use of land, approaching the given level of the technological and scientific revolution. With the possible fullest exploitation of land in conformity with its economic destination it is aimed partly at producing more commodities and partly at serving the satisfaction of needs to the possible extent also directly. The socialist character of the system of leasehold is basically made possible and to a greater extent secured by the fact that its land ownership basis is, in the economic sense, an essentially socialist systen of land ownership, which is mostly of socialist character also in legal form, and as for the rest it is developing in this direction as regards legal form.

It is a basic feature of the leasehold of socialist nature, that it is decisively a modern, large-scale collective leasehold (state farms and ccoperatives) and partly it is such personal leasehold which is linked in some form labour or membership relations) directly or indirectly (e.g. through contractual relations) to the large-scale collective forms of leasehold.

Both the collective and the personal leasehold are based on individual work, but while the collective use of land is the main activity of the members of the collective, the subject of the personal use of land exploits agricultural land only as on auxiliary activity and not as a profession – as against the individual user of private land who carries on agricultural production in the form of individual small commodity production as his profession but also realizes private use of land based on his own work. This use of small private land, although it is adapted to the ruling and determining socialist system of land use, is not an organic part of the latter.

Leasehold may be free of charge or against payment. Evidently, the land use of the owner of the land is free of charge, since he uses himself the land owned by himself. As against that, the leasehold based on so-called derived legal titles (either collective, or personal or private leasehold) may be either free of charge or aginst payment. In this respect the Hungarian system or leasehold is rather complicated, difficulto to survey and not established even in principle. But more and more such picture is taking shape that beside the free use of own landed property the other forms of utilization based on derived titles are, as a main rule, against payment. Lasting exceptions from this rule are the free and lasting use of state lands by production cooperative, the use of household plots and the stipendiary plots.

In the socialist system of leasehold an important part is played by the deadline. Since in the case of every socialist use of land it is a basic principle to bring about a lasting and firm use of land in the interest of sate management and production, also the duration of forms of leasehold had to be arranged accordingly. Naturally theoretically there is no deadline in

respect of the use of land based on ownership. Generally, also the forms of leasehold based on derived titles are lasting; either without a deadline or valid for 10, 15, 30 stc. years, securing smooth, effective land use according to destination.

Also in the case of socialist forms of leasehold the extent of land use is fundamentally inportant. This means to what extent the title of leasehold allows the utilization land for the leaseholder. Accordingly, leasehold may be total and limited in its extent. Land use is total if the title of leasehold allows every kind of utilization of the land according to its destination. Land use may be restricted e.g. by real servitude, and in a few cases of land use complementing wages, etc. The restrictions on leasehold may be divided theoretically into two groups. Partly there are such restrictions which limit the use of land according to its basic agricultural destination (e.g. the network of underground and overland grids). On the other hand, there are restrictions which, with other economic use of a given land area allow only a definite agricultural use of the land (e.g. mowing of grass and plantation of trees along roads, or the mowing of grass and grazing of definite kinds of animals in definite forest areas, etc.) Otherwise, as the main rule, in respect of lands destined for cultivation the extent of lausehold is total in conformity with its economic destination.

a) The titles of leasehold provide the basis for the system of leasehold. In the Hungarian land law these titles of leasehold constituting the legal base of the system of leasehold may be classified into three groups. These are the following ones: the own right of land ownership, titles of leasehold having the nature of ownership and the derived titles of leasehold.

1. The ownership right of land naturally comprises also the title to use the land since, as regards the contents of land ownership rights, according to the socialist legal view, it is precisely the right to use the land which is the most important partial right from among those making up the contents of the ownership right. In other terms this means that the owner (either collective or individual) uses the land owned by himself, the title of his utilization is his own right to the land.

2. The titles of leasehold having the nature of ownership were shaped in the Hungarian land law by the development of socialist law, on the basis of the socialist social forms of land ownership, mainly and decisively on that of the social state ownership right. To this group belong the right of the trustee, and the right to lasting use of land.

a) The subject of the trusteeship can be only a state organ or a social organization. State-owned agricultural lands and forests can be entrusted only to state organs. Accordingly, in the case of the stateowned land areas with agricultural and forestry destination the subjects of the trusteeship are mainly the state farms and the state forest ries, as well as experimental and training farms etc., further the executive committee and the administrative organ of the territorially competent council. The executive committee of the territorially competent council is the trustee of the state-owned land with agricultural destination given into free use without deadline to

the agricultural production cooperatives. As against that, the administrative organ of the executive committee of the territorially competent council is the trustee of state-owned land given into free use without deadline to other cooperatives or citizens and, transitorily, of such state-owned land which has not trustee, or ceased to exist, or has not yet been appointed. (All that clearly indicate the legal fact that the regulation of trusteeship extends to all inland immovables owned by the Hungarian State.)

In respect of the state-owned immovables the trustee exercises the rights of the owner and performs the duties of the owner – in the framework of the relevant legal regulations. The double legal capacity of ownership mentioned in connestion with the subject of the land ownership right of the state relies precisely on this regulation; this legal rule is the basis of the approach that also the trustee is considered as owner in respect of the state-owned land managed by him. And this is why the law classifies the right of the trustee under a separate title among the titles of leasehold having the nature of ownership.

Also the contents of trusteeship is similar to that of ownership since the trustee exercises the rights and performs the ditues of the owner. A right of possession of a force of the owner's right is due to the trustee and he is also under obligation to use the legal instruments of protecting the possession. As owner, the right of utilization and usufruct is due to him as owner and be is netitled to cede them in a manner defined in the legal rules. This right may be in some cases a possibility, in others it is an obligation, it may be valid for a definite dime or undefinitely, it may be against payment and exceptionally also free of charge. The right of disposal of the trustee has the power of that of the owner, its extent being precisely defined by legal rules. The particular subject at legal nature of the owner appears also in the rule that so far as a state organ in its capacity as a trustee acquires the ownership of some immovable, it acquires it for the Hungarian State. State-owned lands have to be registered in the land register as property of the Hungarian State – according to the relevant rules; the registration has to show also the trustee.

Acquisition and cessation of trusteeship is also regulated by law. According to the relevant rules a state organ or social organization may acquire the trusteeship of a state-owned real estate *a)* by official resolution, *b)* by order of its founding (supervisory) organ, *c)* by agreement concluded with another state or social organ, *d)* by contract aimed at the transfer of ownership, *e)* by erection of a new building and *f)* by disposition of law. With the exception of the case of erecting a new building the titles under which the trusteeship can be acquired are identical with those under which it ceases. A particular case of the cessention of trusteeship is its transfer, for which however, the approval of the competent organ is required. Renouncement of trusteeship over a state-owned real estate can occur among the parties either against payment or without it – in the framework established by legal rules. In connection with the cessation of trusteeship the essential rule as to be emphasized that trusteeship over a state owned real estate cannot be abandoned.

b) The lasting use of land, too, is a recently established title of leasehold having the nature of ownership, which is linked to and comes about on the base of the socialist social forms of land ownership, that is, exclusively to the social state ownership and the cooperative social ownership of land.

The subject of the lasting use of land may be a private person or a legal entity, depending on the destination of the land. Outskirt areas which cannot be cultivated with large-scale methods (closed gardens and such areas which, owing to their territorial conditions, can be declared as closed gardens can be given into lasting use for the prurpose of agricultural production of private persons and groups of private persons without the characteristics of a legal entity. Such lands of a production cooperative can be given into lasting use only to members and employees of the cooperative.

The object of lasting land use – apart from housing plots and rest-housing plots – are outskirt areas of state and cooperative lands destined for agricultural production, which cannot be cultivated with large-scale methods. The area of a parcel of land must not exceed the maximum size of land established for the personal landed property and land use. This main rule is asserted in different ways inrespect of state and of production cooperative lands. State land can be given into lasting use for agricultural purposes of such Hungarian citizens whose total land owned or used does not exceed 6000 square metres, inclusive of the land to be given into lasting use. This rule has to be observed also when the land is given into the lasting use of a group of private persons. As against that, in the case of production cooperative land the cooperative may give into the lesting use of its member or employee – above the household plot and the stipendiary plot – at most 6000 sq.m. for the purpose of agricultural production. The lands that can be given into lasting use are marked out in the case of state lands by the executive committee of the local council, and in the case of cooperative lands by the management of the cooperative – but for the latter a preliminary permission of the local executive committee is needed.

Forests, downtown areas and outskirt lands of cities and villages of national importance as holiday resorts cannot be given into lesting use for the purpose of agricultural production.

The contents of the lasting use of land is similar to that of land ownership, but not to the same extent as as in the case of trusteeship.

The lasting utilizer of land has the right of passesion and use of land similar to that of the owner, but the right of disposal is not entirely due to him. The right to use the land given into lasting use for the purpose of agricultural production cannot be transferred among other persons form buildings can be erected on such land only according to the rules of building regulations. The shortest period of lasting land use for productive purposes is 30 years. If the user dies, the right of land use passes – according to the rules of inheritance of the Civil Code to the person who would otherwise inherit the ownership of the land. The user is under obli-

gation to use the land according to its destination and to manage it in the course of use according to the rules of proper use. Buildings erected on the land given into use, equipment, vegetation planted as well as the results of production are the property of the user. The user bears the obligations accompanying the right of use. He bears the burdens, inclusive of taxes.

For the acquisition of right to lasting use of land a relevant contract and registration of the leasehold into the land register is needed. The entitled person has to pay a fee-for taking the land into use which must not exceed 50 per cent of the local current value of similar plots of land. It follows that in this case the user of land does not pay rent.

The right to lasting use of land ceases: *a)* if the time specified in the contract passes, or the condition specified is fulfilled; *b)* by renounciation on the right to land use; *c)* by withdrawal or cancelling of the right to land use, which may ocur if the user of the land does not exercise his right to land use for some longer time for reasons attributable to himself, or gravely violates in spite of warning the obligations involved by the use.

3. Land law classifies into the group of derived titles of leasehold all the other titles to the use of land acknowledged by law. They are:

a) membership in a production cooperative;
b) certain cases of employment relations;
c) usufruct and use;
d) lease;
e) servitude.

a) Membership in a production cooperative is such new socialist title to leasehold which has come about with the emergence of production cooperatives, and, with the completion of the massive collectivization of agriculture, it is even at present one of the most important titles to leasehold. The membership in a production cooperative is such complex legal relationship which, beside relations with the production cooperative, is at the same time a title to use the land. But it has particular features even as title to leasehold since it serves simultaneously for legal basis of two kinds of land uses. In practice this means that the legal relation of cooperative membership as title to leasehold is partly at title to the collective us of cooperative land on the land owned by members and united under common use, partly it is a title of the member to the use of household plot marked out from the collective land, and it also provides the member with a title to his own personally owned land in the sense that he may use the latter as household plot. This title to leasehold lasts until the termination of cooperative membership, that is, its coming about and cessation is linked in general (as the main rule) to membership in a cooperative. If the membership relation is terminated the land taken into the cooperative remains in the collective use of the latter under a different title (it generally comes under its ownership); the household plot marked out from the collective land has, in general, to be given back to the cooperative – but the personally owned household plot remains in personal ownership and use.

b) Some cases of employment relations – beside features generally characteristic for such labour relations – figure simultaneously also as titles to personal use of land which result in the use of stipendiary land, or provide legal foundations for the the of stipendiary land. Since this title of land use is an organic part of labour relations, both its coming about and its cessation are linked to employment relatic:ns. As regards its substance, the use of stipendiary land is nothing else but the part of the employers remuneration secured by his employer in kind for the work done full-time, or the possibility of aquiring additional income.

The subject of the use of stipendiary land can be only an employee having a definite job defined by legal rules and possessing the prescribed conditions. Even this scope of subjects can be divided into two groups, since some peoples may get while others must get stipendiary land for use. Stipendiary land may be given e.g. to railway track watchnen gatekeepers teachers in villages and in outskirt areas, some workers in water-control jobs as keepers of channels and sluices; permenent enployees of cooperatives etc. As against that, stipendiary land must be given (personal right) to workers in state farms employed for unlimited period, atc. The size of stipendiary land may be 3000 – 6000 sq.m. per person or family. Its use is free of charge, the entitled person is obliged to care for its cultivation, the right to land use must not be ceded to third person, it must not be given into métayage or usufructuary. The emergence of the right to stipendiary land is expressely linked to empolyment relation, its cessation only in general terms. The use of stipendiary land ceases if: the title holder renounces it; if the employer withdraws it provisonally or with final power (e.g. as a punishment); if the title holder is transferred into ancther job not entitling to land use; if the employment relationship ceases.

c) Usufruct and use are such titles to land use still established under the private ownership of land which – adequately adapted – are acknowledged and used also by the socialist system of land use; its rules are laid down in the CC. In the case of land collectively used by the production cooperative the right to usufruct becomes essentially modifiied, since in this case the use of the thing (the land) is no longer due to the title holder; the usufructuray has only the right to get ground rent or rent of a size corresponding to the ground rent; he has also the right that without his approval the land burdened by his usufruct cannot pass into the ownership of the cooperative as long as his right to usufruct is living.

d) Lease is similarly a right to land use still established under the private ownership of land which the socialist system of leasehold acknowledges and uses adapting it to the demands evolved under the socialist leasehold relations. The basic case is regulated by the CC. Its substance is that, on the basis of the leasc contract the lessee is entitled to use a definite agricultural land or other thing bringing a gain and to enjoy its fruit, and is obliged to pay for its a rent. According to the agreement between the partners, the rent may be paid either in money or in kind. For the lease of agricultural area a written contract is recquired the law may bind the

validity of the contract to administrative approval. Sub-lease are void. The CC regulates the rights and duties of the parties, as well as the rules of cessation of lease. The concrete cases of the institution of lease are influenced by the rules affecting the maximum of holdings; by the subjective rights in this respect of the person giving into lease and the lessee, etc. The legal institution of lease is used in a relatively wide scope in the case of personally owned land and (small) privately owned land – but also agricultural large-scale farms like to avail themselves of it as well as councils in respect of land managed by the councils but which cannot be cultivated with large-schale methods. Essentially the rules relating to lease have to be applied, mutatis mutandis, in the case of métayage-leases – taking care, however, that the agreements on métayage which are of the nature of labour contract cannot be considered as titles to land use in any respect.

e) Servitude is also a title to land use which became established still earlier, on the basis of private ownership of land, but it is a partial title to use the land applied also under our socialist conditions. Its rules are similarly contained by the CC. Its substance if that on the basis of servitude the possessor of some real estate may use the real estage of some other persons to definite extent or may demand that the possessor of the immovable burdened by sevitude should refrain from some behaviour. Servitude may be created e.g. for passage, water supply or drainage, building of a cellar, putting up of posts for transmission lines or for other purposes advantageous for the entitled person. If some land area is not linked to a proper public road, the neighbours have to tolerate that the entitled person should pass through their lands. Thus the servitudes do not allow complete use of the land, they secure only a definite and restricted use.

With the coming about of socialist large-scale farming the servitudes fell to a minimum in the outskirts; they are invariably important in downtown and closed garden areas and in farmsteads. With the progress of the scientific and technological revolution they have again become important in the outskirts as well, mainly in connection with the laying and operation of various underground and overground networks.

In conclusion, it has to be emphasized that the various titles to land use (ownership, right of management, lasting land use; derived titles to land use) play different roles in the socialistsystem of land use in the case of the in dividual concrete forms of land use. Every concrete form of land use (either collective or individual use) is characterized basically by one or two titles to leasehold (e.g. the land use by state farms by the right of management; the collective leasehold of the cooperative by its own and the members' ownership etc.) Other titles to leasehold acknowledged by law play only auxiliary roles in the case of either collective or individual land use.

СИСТЕМА СОБСТВЕННОСТИ НА ЗЕМЛЮ И ЗЕМЛЕПОЛЬЗОВАНИЯ В ВЕНГЕРСКОЙ НАРОДНОЙ РЕСПУБЛИКЕ

Д-р ИМРЕ ШЕРЕШ

(Резюме)

В своем труде автор рассматривает действующую в ВНР систему собственности на землю (государственная собственность на землю; собственность на землю сельскохозяйственных производственных кооперативов; собственность на землю членов с/х. производственных кооперативов; личная собственность на землю и частная собственность на землю мелких землевладельцев), а также правовые основания системы социалистического землепользования (право землевладельца на пользование землей, находящейся в своей собственности; основания землепользования, имеющие характер права собственности; производные правовые основания землепользования).

DAS BODENEIGENTUM- UND BODENBENUTZUNGSSYSTEM IN DER VOLKSREPUBLIK UNGARN

DR. IMRE SERES
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Der Verfasser behandelt in der Abhandlung das ungarische Bodeneigentumsystem (das staatliche Bodeneigentum, das LPG Bodeneigentum und das Bodeneigentum der LPG Mitglieder, das persönliche Bodeneigentum und das „kleine" Bodenprivateigentum werden erörtert) sowie den rechtlichen Grund des sozialistischen Bodenbenutzungssystems) das eigene Bodeneigentum, die Bodenbenutzungsrechtsgründe mit Eigentumscharakter, die abgeleiteten Bodenbenutzungsrechtsgrundsätze werden einer Analyse unterzogen.