



AgEcon SEARCH
RESEARCH IN AGRICULTURAL & APPLIED ECONOMICS

The World's Largest Open Access Agricultural & Applied Economics Digital Library

This document is discoverable and free to researchers across the globe due to the work of AgEcon Search.

Help ensure our sustainability.

Give to AgEcon Search

AgEcon Search
<http://ageconsearch.umn.edu>
aesearch@umn.edu

*Papers downloaded from **AgEcon Search** may be used for non-commercial purposes and personal study only. No other use, including posting to another Internet site, is permitted without permission from the copyright owner (not AgEcon Search), or as allowed under the provisions of Fair Use, U.S. Copyright Act, Title 17 U.S.C.*

**ECONOMIC ANALYSIS OF THE BAN ON FOREIGNERS ACQUIRING
PROPERTY RIGHTS ON AGRICULTURAL LAND IN SERBIA***Luka Baturan¹***Summary**

In Serbia it is prescribed by The Law on Agricultural Land that foreign legal or natural persons could not become owners of agricultural land. The aim of this paper is to show that such a norm creates an economic environment where an optimal allocation of agricultural land as a production factor could not be achieved. The cost - benefit analysis shows that main gainers are Serbian producers and buyers of land who are able to realize a monopoly profit, whereas sellers of agricultural land are at loss, getting a lower economic rent, as well as foreign buyers. A total loss of domestic sellers only is bigger than a total profit of buyers. In the end, it is being pointed to a relativity of the ban, in the sense of a possibility to easily get past the ban through provisions of The Law on Foreign Trade. The conclusion points out that an eventual suspension of the ban would stimulate efficiency of Serbian economy and an increase in the net welfare.

Key words: agricultural land, Law on Agricultural Land, foreigners, property right.

JEL: K11

Introduction and basic assumptions

Law may be observed and interpreted with various aspects (moral, social, religious, military, political, etc.). Economic Analysis of Law is a scientific discipline involved in studying of legal norms with economic aspects. By applying a microeconomic analysis, an attempt is made to perceive an economic effect of specific legal norms. A relation between law and economy is the relation between a form and content. Legal norms ought to be designed so to allow an efficient allocation of resources. Optimal allocation of resources or maximization of the total social welfare is being achieved at the point of equilibrium on the market of perfect competition. Any other allocation of resources is not optimal, which means that the level of the total welfare is lower in comparison to the level existing in the balance.

A perfect competition market is still only a theoretical abstraction. Every market deviates from a perfect more or less, due to a large number of factors changing at any time. Nevertheless, market mechanisms function, constantly pushing economy toward a point of

¹ LL.M., Assistant, Faculty of Law, University of Novi Sad, Trg Dositeja Obradovića 1, 21000 Novi Sad, Serbia, Phone: +381 63 56 59 41, E-mail: lbaturan@pf.uns.ac.rs

equilibrium. Regulations brought by the state ought to regulate economic relations in such a manner that they create least disturbance to a market mechanism. Individuals, as economically rational persons, aspiring to the increase of personal gain, will lead the economy toward a balanced allocation through free exchange of resources. State intervention in economy may be justified if it is there to correct so-called market failures, but only if the benefits of the intervention are greater than costs it generates.

Serbia in 2013 is still in the process of transition from a socialist to a market economy. Even though a necessity of bringing the transition to an end is generally not being questioned, a large number of examples show that few people in Serbia completely understand the meaning of a market economy. This may also refer to state authorities (or the responsible persons within)² which create an environment for functioning of economy, often making barriers for unhindered exchange. Legal system in Serbia at the time of socialism had been projected in order to allow functioning of economic relation in a completely different environment. One of the tasks of both science and legislation in the transition process is creating a new legal frame for allowing functioning of the market economy.

This paper presents an existing legal frame which sets a ban for foreign natural and legal persons to acquire title to realties, specifically on agricultural land on the Serbian territory. The main hypothesis of this paper is that such a legal norm creates an economic environment where allocation of agricultural land as a resource is not optimal. Even though some economic subjects will gain thanks to this ban, its final result is a violation of market allocation and a decrease of total welfare in society. The paper will also provide an explanation of social and political causes which had led toward such a discrimination of foreign persons, in accordance with Public Choice Theory. Also, there has been presented a possibility for foreign persons to acquire agricultural land indirectly, in accordance with law. A normative and a comparative method will be used for the analysis of legal regulations. A method of neoclassic economy will mainly be used while working out an economic side of the problem, in order to present the essence of the problem through a simplified performance of the price mechanism. Afterwards, a method of neo-institutional economy will be used to perceive a functioning of the system within the existing institutional frame.

Legal analysis

One of the most important activities of the state is setting a legal frame for companies and individuals to interact economically (Stiglitz, 2013:27). Basis of the economic system of the Republic of Serbia are proclaimed in the Third part of the Constitution.³ It says there that *“economic system of the Republic of Serbia stands on market economy, open and free market, freedom of entrepreneurship, independence of economic subjects and equality of*

² This is in accordance with the theory of a methodological individualism which implies that decisions are made by an individual, not a collectivity.

³ Constitution of Republic of Serbia, Art. 89-90.

private and other forms of property”.⁴ Therefore, a form of economic organization which enables an efficient allocation of resources has been accepted.

Foreign persons in accordance with international agreements have all the rights guaranteed by the Constitution and laws in Serbia (except rights reserved by the Constitution and laws only for citizens of Serbia).⁵ Nevertheless, as far as the right to acquire realties is under consideration, the Constitution proclaims that “*foreign natural and legal person may acquire property over realties, in accordance with the law or an international agreement*”.⁶

The *Law on Basis of Ownership and Proprietary*⁷ says that foreign natural and legal persons who conduct its activities in Serbia, under the condition of reciprocity, may acquire the right of property over realties on the territory of the Republic of Serbia which are necessary for them to conduct those activities. The Law does not mention agricultural, nor any other activity as an exception (Keča, 1993:34). However, the *Law on Agricultural Land*, as *lex specialis* in accordance with the Law on Basis of Ownership and Proprietary, strictly proclaims that “the owner of agricultural land may not be a foreign natural and legal person”.⁸ Thus, foreigners are practically disabled to acquire agricultural land in order to conduct agricultural activities on the territory of Serbia.

Many states in its constitutions allow a possibility of limiting rights to acquire property for foreign persons, as Serbian Constitution does it. When it comes to the EU countries,⁹ only Hungary (Csák, Nagy, 2011; Somogyi, 2004), Poland (Dadak, 2004) and Croatia (Josipović, 2003) have retained a (temporary) ban for EU citizens (valid in a transitional period), while minority retained limitations only for third country citizens (EU Institute Florence, 2005:83). This action was a reply from new EU members to a temporary ban of employment of their citizens in old Union members (Prokopijević, 2009:572).

Considering that the National Assembly of the Republic of Serbia has proclaimed “*accelerated entering*” into the European Union for a “*strategic and national goal*”¹⁰, the state has a duty to fulfill all the criteria that has been set in that sense. One of the so-called “Copenhagen criteria” that Serbia has to fulfil in order to be accepted into membership of the EU is to build a functional market economy, as well as capability to endure the pressure of competition and market forces within the EU (Prokopijević,

⁴ Ibidem, Art. 82 (general principles), paragraph 1 (translation L.B.).

⁵ Ibidem, Constitution, Art. 17 (position of foreigners).

⁶ Ibidem, Art. 85 (foreigners’ property rights), paragraph 1 (translation L.B.). Even though a land is a natural resource, the term “*natural wealth*” from the paragraph 2 of this Article does not refer to parcels of land which represent reality, but to soil as a matter, in the sense of Article 87 of the Constitution.

⁷ Law on Basis of Ownership and Proprietary, Art. 82a paragraph 1.

⁸ Law on Agricultural Land, Art. 1 paragraph 3. “*Agricultural land is the land which is used for agricultural production (fields, gardens, orchards, vineyards, meadows, pastures, fish ponds, swamps) and the land which could become suitable for agricultural production*” (translation L.B.). The Law on Agricultural Land, Art. 2, paragraph 1.

⁹ On provisions of the EU which regulate limitations on trading with agricultural land, see: Sparkes (2007:76-79) and Josipović (2003).

¹⁰ Resolution on Accession to the European Union.

2009:560).¹¹ During 2008, Serbia signed and ratified the Stabilisation and Association Agreement (SAA). It is stated there that instantly after entering into force of the Agreement subsidiaries of companies from the Union will be entitled to acquire and enjoy property rights on realties under the same condition as Serbian companies.¹² Also, Serbia has made a commitment to alter its legislation referring to an acquisition of property over realties in Serbia, in order to ensure the same treatment for citizens of the European Union members as for its own citizens within a period of four years since the day SAA entered into force.¹³ SAA is to enter into force on the first day of the second month following the date on which the Parties notify each other about completion of the procedure for approval.¹⁴ At the moment of this paper being finalized (June, 2013), Lithuania has ratified SAA as the last member of the EU.

Economic Analysis

Economic effects of banning foreign natural and legal persons from acquiring property rights on agricultural land will be presented through costs and benefits analysis. An existence or a non-existence of the ban does not influence supply directly. It does not matter to sellers whether they sell the land to domestic or foreign persons. First of all, they are interested in getting the highest price for the good they are selling. The amount of agricultural land in one area is fixed.¹⁵ Due to a growth of price not being able to lead toward increase or decrease of the amount of land on the market, its supply is considered perfectly inelastic.¹⁶ A model of supply and demand for agricultural land in Serbia may be presented graphically. The supply of land is presented by the curve S.

A demand for a land as a production factor has been derived from a demand for products or services it has an ability to offer. A market demand for agricultural land therefore

¹¹ Even if it was not implied as a condition for accession, each government has to put this goal of economic policy among other most important priorities.

¹² “*Subsidiaries of Community companies shall, from the entry into force of this Agreement, have the right to acquire and enjoy ownership rights over real property as Serbian companies (...), the same rights as enjoyed by Serbian companies respectively where these rights are necessary for the conduct of the economic activities for which they are established* (translation L.B.). SAA, Art. 53, paragraph 5, subparagraph b and v.

¹³ “*As from the entry into force of this Agreement, Serbia shall authorize, by making full and expedient use of its existing procedures, the acquisition of real estate in Serbia by nationals of Member States of the European Union. Within four years from the entry into force of this Agreement, Serbia shall progressively adjust its legislation concerning the acquisition of real estate in its territory by nationals of the Member States of the European Union to ensure the same treatment as compared to its own nationals.*” SAA, Art. 63, paragraph 3.

¹⁴ SAA, Art. 138, paragraph 2.

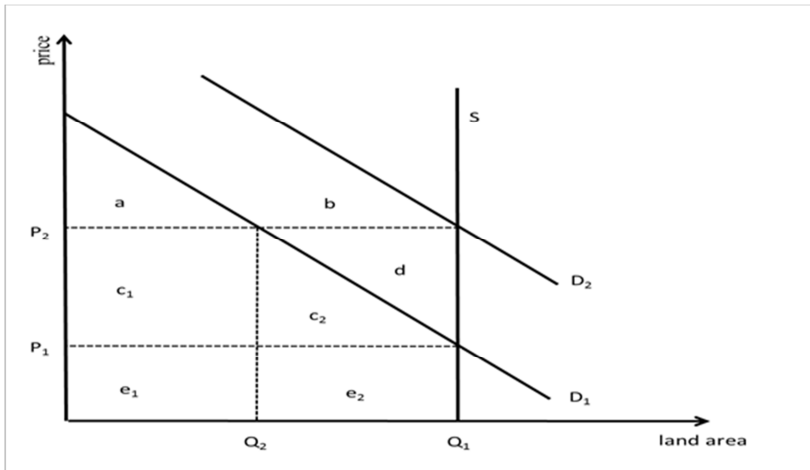
¹⁵ In Serbia total area of agricultural land is about 3.355.859 ha, Republički zavod za statistiku, 2013:8.

¹⁶ Inelasticity means that a change in price would not lead toward a change in the amount of the agricultural land existing in Serbia. Generally, some minor changes in supply are possible considering the possibility of reuse of other types of land, but we shall neglect it in this paper.

represents a summary of all marginal revenues of land products. The law of demand is absolutely functioning: the higher the price, the lower the demand and vice versa.

Establishing the ban from economic point of view does not represent anything else but establishing a monopoly¹⁷ - predominance of domestic agricultural producers forming a demand over foreigners. As being prevented from acquiring the land as one of production factors, foreign agricultural producers or buyers in this case could not compete with domestic due to a legal barrier. Domestic demand for agricultural land is presented by the curve D_1 on the Graph 1.

Graph 1. Price, Quantity and Welfare Effect of the Ban



Source: Bjelić (2004), p. 386.

In an interaction between buyers and sellers, a market price of agricultural land has been formed. Everyone willing to sell the land at a given price has a possibility to do so, and the land is, by a given restriction, allocated only to domestic persons. In the graph the equilibrium price is presented in the point P_1 .

Trading, even beside the existence of the ban, brings benefits to both sellers and buyers. Area e_1+e_2 presents the economic rent which is being appropriated by land owners, while utility increase of domestic buyers is area $a+c_1+c_2$.

Abolition of the ban would mean a reversal of absolute dominance of domestic producers¹⁸ by establishing an open and free market of agricultural land. Market price of the land will set at the break-even point of supply and total demand).

If domestic producers have got the same efficiency¹⁹, or productivity²⁰ of production factors as the foreign do, a supply curve would not change then. A price of the land will

¹⁷ The term “monopoly” is used in its widest meaning here. However, when there is a dominance of several economic entities on the market on the side of the demand, it is called oligopsony.

¹⁸ It is assumed that all domestic buyers are agricultural producers at the same time. This assumption will be questioned and abandoned later.

¹⁹ Efficiency represents a relation between the output and total costs of production.

remain the same as if there is no ban, and there will also be no changes in the allocation and the level of welfare.

However, this hypothesis does not have to be correct. According to some researchers (Zekić et al., 2009:194-198)²¹, foreign producers have a more efficient production, which means that their production costs are lower.²² Therefore, there may be ready to pay more for an extra land unit in comparison to domestic producers – buyers. In that case, a total demand curve (domestic and foreign) is shifting to D_2 . Both domestic and foreign buyers now have to set aside more money for purchasing the land, so its price rises to the level P_2 . The amount of land which would be acquired by domestic buyers would fall to the level Q_2 , while foreigners would purchase the difference $Q_1 - Q_2$. The increase in the utility for domestic buyers (producers) from trading would be presented by area a in the graph, the increase in the utility for domestic sellers (now owners) by areas $c_1 + c_2 + d + e_1 + e_2$, and the utility increase for foreign buyers (producers) by area b. Therefore, abolition of the ban on foreigners to acquire property over agricultural land would increase net welfare of domestic entities (buyers and sellers) for an area d, and at the expense of foreign entities.

So, as far as the efficiency of domestic and foreign producers is equal, the ban has got no purpose and its abolition would bring no damage to the domestic economy. If the efficiency of foreign producers is higher, a gainer from the ban abolition would be (along with them) Serbian agriculture and the whole country economy. A possibility of an entrance of foreign agricultural producers would primarily mean an inflow of foreign capital into the country, in the form of investments.²³ Producers who would decide to acquire agricultural land in Serbia, would not carry plots to their native lands, but they would initiate a modern agricultural production which would only justify high investments. That means that agricultural production in Serbia would be more efficient and the land productivity as a production factor would be increased. Considering that a total amount of agricultural land is relatively constant, that would mean a higher level of the total agricultural production in Serbia, as well as (probably) higher export,²⁴ which would stimulate an economic development of the country (Popov, 2008a).

²⁰ Productivity represents a relation between the output and a unit of the used productivity factor.

²¹ Here it is possible to find on information that labor productivity in agriculture is still significantly lower than in the EU.

²² A demand, besides the price, could be affected by other factors. One of these is future expectations. In the case of (expected) accession of Serbia to the European Union and its Common Agricultural Policy, there will be an increase in land incomes due to extensive subventions received by agricultural producers (Baturan, 2010, 2010a). However, it is sensible to presume that future expectations of both foreign and domestic persons are the same in that sense.

²³ If an attraction of direct foreign investments is wanted, one of the basic measures and techniques is a general lack of control over property (Popov, 2008:43).

²⁴ This opinion Prokopijević (2009:572) shares as well. According to this author, foreign “*investments into realities would increase prices of these resources and bring significant flow of capital, which would later on induce financial markets and economic development*”, (translation L.B.).

Reasons for the ban

The reason for which the legislator has banned foreign entities to acquire property on agriculture land could not be anticipated from the Law on Agricultural Land, and even less from the National Strategy of Agricultural Development²⁵. The most common reason for the countries introducing such limitations is the national security. Thus, some countries forbid foreigners to acquire property over realties which are situated in some borderline areas, coastal areas or in some strategically important areas. This mostly referred to Latin American countries (Bonsal, Borges, 1943:725-726). The reciprocity represents another common reason for a potential limitation of property acquisition.

When it comes to science, local experts who are pro ban often state a “*strategic importance*” of agriculture as an economic branch or they call upon the “*national interest*”.²⁶ At the same time there is no definition of that national interest. There is no explanation how the national interest would be endangered by the fact that foreign investors have bought (not abducted) the land, for the price which they have agreed on with the sellers; in what way is the increase in investments, production and efficiency opposite from the national interest; should it be banned for the foreigners to buy factories in accordance with that national interest and if not, where is the difference; there are no comments on the opportunity cost which exists due to such a ban, etc.

Vukićević and others (2011:534-535), in a paper dealing precisely with this problem, also ask the question why the legislator decided that agricultural land could not become a property of foreign persons. They see the reason in a significance of this good for every country and so for Serbia as well. Without bringing into question an extraordinary importance of agriculture for Serbian economy at any moment, it is not quite clear what have happened to the agricultural production if foreigners acquired land in Serbia? Would they neglect the land (they have paid for) and suspend the production? The paper also brings out a fact that agricultural land represents “*the most valuable potential of a country and therefore Serbia as well*”, and that “*The Republic of Serbia is taking a complete care of a protection, improvement, regulation and the most rational usage of agricultural land. In the domain of states’ interest for agricultural land certainly belong measures that the state takes in order to keep the social welfare in the ownership of its own citizens, so it does not become alienated or sold to foreigners*”²⁷ (Vukićević et al., 2011:535). It is correct that agricultural land represents a significant potential, but somehow does not get used: domestic entities obviously do not have enough assets. If the will actually exists in Serbia to enable improvement and rational usage of potential-resources, than it has to be enabled that these

²⁵ Strategy of Agricultural Development. On the contrary, the necessity of establishing a market mechanism for allocation of resources is highlighted everywhere in the Strategy. An impression is being made that article 1 paragraph 3 of the Law on Agricultural Land is completely opposite from the spirit of the Strategy, as well as each letter in it.

²⁶ For e.g. “*It is not recommendable for agricultural land to be presented to foreign markets, as it is a strategic resource, and therefore favoring domestic capital and management secures a protection of national interests in an extremely significant sector of economy*” (Rikalović, 2003: 154), (translation L.B.).

²⁷ Translation L.B.

resources come into a property of the entities that value them the most in a trading process (and therefore ready to pay), regardless of their citizenship. Under the assumption that citizens who own the land behave economically rationally, they will be the best to know whether it would pay off to sell it or not, so there is no need for the state to limit them in that way. Otherwise, it would be the best for the state to nationalize the land and then start “*using it rationally*” – which had proved to be absurd in the period of socialism.

In daily newspapers, but also in scientific literature, there is another argument in support of this ban which deserves to be commented mainly because of a frequency of occurrence. It is being claimed that by selling the agricultural land to foreigners, the country where the land exists will “*lose sovereignty over a significant part of its territory*”²⁸ (Vukićević et al., 2011:542). It is not clear which sovereign right would have been lost?! If, for example, English Queen was to buy a field on the Serbian territory, would English law start being applied on that territory instead of Serbian from that moment on? The answer is, of course, no.²⁹ If it is about a possibility of big capital endangering the monopoly of force of sovereign citizens on the territory of the Republic, then what is the difference whether this capital is foreign or domestic? Why is it dangerous if the foreign capital is being invested into agriculture, and it is not dangerous if it is being invested into, for e.g. an industrial production or banking system? Is it possible for the rich foreign countries to affect the political scene in some country even if their citizens do not own the land in that country? Is it easier to influence the government of an economically poorer or richer country?³⁰

The reason for introducing the ban on foreigners acquiring property on agricultural land should be sought after within arguments offered by Public Choice Theory.³¹ Main gainers from the existence of the ban are big agricultural producers in Serbia. Their economic power is great, and considering a small number and common material interest, they have managed to obtain introducing of regulations which enables them to set a monopoly position by using coordinated activities and lobbying.

Benefits from such a ban belong to another very important and influential group. These are owners of a big capital, who use this ban to buy large lots of agricultural land cheaply, often using money of a suspicious origin.³² Thus they gain double benefit. Firstly, money earned through suspicious deals is being returned to legal flows by investing into realties (a so-called “money laundry”). They are not interested in organizing agricultural production, but they are renting this land to agricultural producers, patiently waiting an (inevitable) suspension of the ban, which would probably increase the value of their assets drastically.

²⁸ Translation L.B.

²⁹ For a more detailed explanation of sovereignty, see Marković (2008:151-163).

³⁰ Considering the fact that authors who represent this attitude do not provide a single argument to explain it and support it, it is meaningless to continue the discussion and assuming what is the meaning of “*loss of sovereignty on the significant part of the state*” (translation and underline L.B.).

³¹ It is about Economic Analysis of non-market (political) creation of economic decisions, or creation of decisions on the “political market” (Jovanović, 2008:123).

³² The case of Darko Šarić is publicly the most famous in that sense; see for e.g.: Vasić (2010), Majdin (2010).

On the other side, sellers of agricultural land are mainly owners of small parcels. They are very heterogeneous, and regularly are not only involved in agriculture but parallel in some other businesses. As such, they are not connected nor organized, so they do not represent any respectable political factor in the sense of lobbying, especially in relation to big agricultural producers and owners of a large.

Electorate in Serbia is generally interested in improving the economic position and the overall welfare in society. However, due to a poor average education and knowledge of economic laws, an average voter in this situation is unable to articulate his interests adequately. Similarly to people in other European countries, Serbian population is fairly sensitive when it comes to agriculture. These voters are easily influenced by media, by calling upon economic patriotism, using big words such as “national interest”, “strategic branches” etc. A perception is being created to these people that the local population will become inferior to foreigners who will purchase the land in Serbia cheaply.³³ It should be stated here that this is supported by the fact that in Serbia institutions of market economy are still not well accepted by many voters. This especially refers to older generations, educated in socialist period, who the term of “foreign capital” still associate to an “exploitation of workers”.

For all these reasons, chances for the ban to be suspended by merits of inner political factors are very small. However, external factors’ interest – mainly coming from the European Union, play an important role there. The ban on foreign natural and legal persons acquiring property on agricultural land represents a barrier to agricultural producers from the European Union to invest into Serbia. For this reason European political negotiators who are setting terms for accession of Serbia to the EU insist on the suspension of such a ban.³⁴

Relativity of the ban

The Law on Agricultural Land clearly requires that the owner of the land may not be a foreign legal or natural person. Since Lithuania has finally ratified SAA, subsidiaries of the EU companies will have the right to acquire and enjoy property rights on realties same as Serbian companies on the basis of the international agreement. However, foreigners in Serbia are allowed to establish legal persons. According to the *Law on Foreign Trade* (Art. 3), legal persons (or branches of legal persons) which are seated, or which are registered in Serbia are considered to be domestic persons. So, these subjects may practice any business that they have been established for – and therefore an agricultural activity and they are considered domestic legal persons in that sense. Within this, they are allowed to acquire property rights on agricultural land (Stanivuković, 1996). Thus, foreign natural and legal persons may indirectly through a company registered in Serbia acquire property rights on

³³“(…) *In this way our agriculturalists will be forced to work for a foreign owners as wage earners, while the profit will go to foreigners* (...)” (Vukićević et al., 2011:541), translation L.B. Attention should be paid to the language that are used in the text (“strane gazde” - *foreign owners*, “nadničari” - *wage earners*, “naši poljoprivrednici” - *our agriculturalists*, etc.).

³⁴ Of course, this does not apply only to Serbia, but to other East European countries pretending to became members of the Union, or which have already accessed. Therefore, all these state candidates had to accept suspension of this ban in a certain period.

agricultural land, completely in accordance with the law. Of course, that right will be registered in the name of the company, which again is owned by a foreign person.³⁵

According to the Coase Theorem (Coase, 1960) if property rights were defined clearly and transactional costs were low, interested parts would always reach an efficient allocation of resources through a direct communication, regardless of the initial definition of rights. Efficient allocation of agricultural land means that through a process of voluntary exchange it will come into property of subjects who value it the most, and who are therefore ready to pay for it the most. Due to existence of various norms which in different laws treat this matter differently, it is possible to say that rights for foreigners to acquire property on agricultural land are not clearly defined. It is not completely and unambiguously defined whether foreigners are entitled or not to acquire property rights. This leaves a space for different interpretations, which creates legal insecurity for potential investors and raises the business risk, which further on has to reflect on increased costs of their investments. Therefore, these legislative solutions are not suitable for serious investors, but for those prone to riskier investments, or those previously ensuring a political support.

Conclusion

The provision of the Law on agricultural land which is restricting the right of becoming an owner of agricultural land to foreigners has caused many dilemmas. Observed from a strictly economic point of view, this provision lowers the efficiency of Serbian agriculture. Negative effects on the welfare of certain entities certainly overcome benefits of the gainers, and those are firstly big domestic agricultural producers and owners of big capital.

Abolition of this norm could increase productivity and efficiency of domestic agricultural production, as well as the welfare of small parcel owners, whether they were sellers, or they were renting the land. Also, foreign investors, firstly from the European Union, would gain benefits. Of course, domestic owners of a big capital would lose the possibility to acquire agricultural land at low (domestic) prices, and make monopoly rent by selling their products at higher (world) prices.

Already this provision does not contain much sense, considering that there is a simple way to “get around” it in accordance with the law, by establishing a legal person in Serbia. Nevertheless, it causes dilemmas and represents a risk for potential investors, because they can never be certain about the way in which Serbian courts will interpret this norm in the future. For a country in which market economy institutions are still insufficiently developed, a chance for suspension of inefficient regulations comes through the pressure of foreign factors, through the Stabilisation and Association Agreement. If establishing of market economy is wanted, Serbia needs to build such a legal system which enables an undisturbed functioning of market mechanisms. A removal of such a norm from the legal system will be another step in that direction.

³⁵ It would be interesting to do a legal analysis whether by a liquidation of a business company, a foreign natural person – the owner of agricultural land would be able to register his property right in accordance with the law. Holding strictly to the article 1 paragraph 3 of the Law on Agricultural Land, this would not be legal. The opposite possibility is stated with Vukićević et al., 2011:538.

Literature

1. Baturan, L. (2010): *European Union Funds for Financing Common Agricultural Policy*, Zbornik radova, Pravni fakultet u Novom Sadu, Vol. 44, no. 3, pp. 573-583.
2. Baturan, L. (2010a): *Finansiranje zajedničke poljoprivredne politike Evropske unije i njen uticaj na srpsku poljoprivredu nakon priključenja Uniji* (master paper), Pravni fakultet u Novom Sadu.
3. Bjelić, B. (2004): *Principi ekonomije*, Verzal, Novi Sad.
4. Bonsal Dudley, B., Borges Milo, A. (1943): *Limitations Abroad on Enterprise and Property Acquisition*, Law and Contemporary Problems, Vol. 11, no. 4, International Trade Barriers, pp. 725-726.
5. Coase, R. (1960): *The Problem of Social Cost*, the Journal of Law and Economics, Vol. 3, no. 1, pp. 1-44.
6. *Constitution of Republic of Serbia*, the Official Gazette of the RS, no. 98/2006.
7. Csák, C., Nagy, Z. (2011): *Regulation of Obligation of Use Regarding the Agricultural Land in Hungary*, Zbornik radova, Pravni fakultet u Novom Sadu, Centar za izdavačku delatnost, Vol. XLV, no. 2, pp. 541-550.
8. Dadak, C. (2004): *The Case for Foreign Ownership of Farmland in Poland*, The Cato Journal, vol. 24, No 3, Cato Institute, pp. 277-294.
9. Josipović, T. (2003): *Pravni promet nekretnina u Europskoj uniji – Prilagodba hrvatskog pravnog poretka europskom*, Zagreb, Narodne novine.
10. Jovanović, A. (2008): *Teorijske osnove ekonomske analize prava*, Pravni fakultet, Univerzitet u Beogradu.
11. Keča, R. (1993): *Zemljišno pravo i pravni režim poljoprivrednog zemljišta*, Univerzitet u Novom Sadu, Pravni fakultet, Centar za izdavačku delatnost.
12. *Law on Agricultural Land*, the Official Gazette of RS, no. 62/2006, 65/2008 and 41/2009.
13. *Law on Basis of Ownership and Proprietary*, the Official Gazette of SFRY, no. 6/1980 and 36/1990, the Official Gazette of FRY, no. 29/1996 and the Official Gazette of RS, no. 115/2005.
14. *Law on Foreign Trade*, the Official Gazette of RS, no. 36/2009, 36/2011 and 88/2011.
15. Majdin, Z. (2010): *Portret savremenika – Darko Šarić: Visoki službenik međunarodne narko-korporacije*, Beograd, Vreme, no. 1005, April 8th.
16. Marković, R. (2008): *Ustavno pravo i političke institucije*, Pravni fakultet, Univerzitet u Beogradu.
17. *Popis poljoprivrede 2012. godine u Republici Srbiji – prvi rezultati*, Republički zavod za statistiku Beograd, 2013.
18. Popov, Đ. (2008): *Encouragement and Control of Foreign Investment*, Zbornik radova, Pravni fakultet u Novom Sadu, vol. 42, no. 3.

19. Popov, Đ. (2008a): *The Importance Foreign Direct Investments for the Economic Stability of Serbian Economic*, Zbornik radova Pravnog fakulteta, Novi Sad, vol. 42 no.1-2, pp. 29-44.
20. Prokopijević, M. (2009): *Evropska unija: uvod*, dopunjeno izdanje, Beograd, Službeni glasnik.
21. *Real Property Law and Procedure in the European Union – General Report*, European University Institute Florence and European Private Law Forum, Deutsches Notarinstitut Würzburg, 2005.
22. *Resolution on Accession to the European Union*, the Official Gazette of the RS, no. 112/2004.
23. Rikalović, G. (2003): *Privatizacija i zemljišne reforme u poljoprivredi*, Viša poslovna škola u Novom Sadu.
24. Somogyi, S. (2004): *Zemljišna politika Mađarske u sklopu prijema u Evropsku uniju*, Zbornik radova, Naučni institute za ratarstvo i povrtarstvo Novi Sad, br. 40, pp. 23-34.
25. Sparkes, P. (2007): *European Land Law*, Portland (USA), Hart Publishing.
26. Stanivuković, M. (1996): *Ownership and other property rights of Aliens on immovable in Yugoslavia*, Zbornik radova Pravnog fakulteta, Novi Sad, vol. 30, no.1-3, pp. 223-235.
27. Stiglitz, J. E. (2013): *Ekonomija javnog sektora*, Beograd, Ekonomski fakultet.
28. *Strategy of Agricultural Development*, the Official Gazette of the RS, no. 78/2005.
29. *The Law on Confirmation of the Stabilisation and Association Agreement between the European Union and its Member States on one Side, and the Republic of Serbia, on the other Side (SAA)*, the Official Gazette of RS – International Agreements, no. 83/2008.
30. Vasić, M. (2010): *Kriminal i države: Prava slika Darka Šarića*, Vreme, no. 998, February 18th.
31. Vukićević, S., Stepić, D., Savović, D. (2011): *Svojinskopravna ovlašćenja stranaca na poljoprivrednom zemljištu u Republici Srbiji*, Ekonomika poljoprivrede, vol. LVIII, no. 4, NDAEB, IEP, Beograd i ASE Bukurešt, pp. 529-545.
32. Zekić, S., Lovre, K., Gajić, M. (2009): *Transformacija poljoprivrede zemalja Zapadnog Balkana u periodu tranzicije*, Ekonomika poljoprivrede, Vol. LVI, no. 2, NDAEB, IEP, Beograd i ASE Bukurešt, pp. 187-200.

EKONOMSKA I PRAVNA ANALIZA ZABRANE STRANCIMA DA STIČU PRAVO SVOJINE NA POLJOPRIVREDNOM ZEMLJIŠTU U SRBIJI

*Luka Baturan*³⁶

Rezime

U Srbiji je Zakonom o poljoprivrednom zemljištu propisano da vlasnik poljoprivrednog zemljišta ne može biti strano fizičko ili pravno lice. Ova norma izazvala je dosta polemike u javnosti. U prvom delu analizira se mesto zabrane sticanja prava svojine na poljoprivrednom zemljištu u pravnom poretku Srbije. Iako Zakon o osnovama svojinskopravnih odnosa načelno dozvoljava strancima da stiču pravo svojine na nepokretnostima, Zakon o poljoprivrednom zemljištu kao lex specialis derogira ovo rešenje. U drugom delu rada data je analiza troškova i koristi od postojanja ove zabrane, a zatim i efekti do kojih bi došlo ako bi zabrana bila ukinuta. Potom su detaljnije analizirani i argumenti koji govore u prilog, odnosno protiv postojanja zabrane, pre svega sa aspekta teorije javnog izbora. Na kraju se baca svetlo na relativnost zabrane, u smislu njenog lakog faktičkog zaobilazanja kroz odredbe Zakona o spoljnotrgovinskom poslovanju. U zaključku se ističe da bi eventualno ukidanje zabrane podstaklo efikasnost srpske ekonomije i uvećanje neto blagostanja.

Ključne reči: *poljoprivredno zemljište, Zakon o poljoprivrednom zemljištu, stranci, pravo svojine.*

³⁶ Diplomirani pravnik - master, asistent, Pravni fakultet, Univerzitet u Novom Sadu, Trg Dositeja Obradovića 1, 21000 Novi Sad, Telefon: +381 63 56 59 41, E-mail: lbaturan@pf.uns.ac.rs