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Constitutional issues of land transactions regulation**

Constitutional Court has dealt with the issues of land transactions regulation in several decisions. Within this paper I would like to discuss two Constitutional Court decisions – appeared in 2017 – which set up unconstitutionality caused by the legislator's omission. Both decisions were on agricultural land with the difference that one of the decisions[1] focused on succession (testamentary disposition) provisions related to land transaction, so focused on the right to property and succession; while the other decision[2] focused on the regulation of environmental protection and natural conservation of Nature 2000 areas – became private ownership –_and protection of environmental resources. These Constitutional Court decisions are progressive for judicial practice and jurisprudence as well in the aspect of further regulation and defining the regulatory framework.

1. Constitutional Court Decision No. 24/2017. (X.10.) on the regulation of testate succession of agricultural lands

The Constitutional Court considered two issues as having fundamental constitutional significant: on one hand how the act restricts the acquisition of arable land by testate succession; on the other hand how the new act – came into force in 2013, which restricts the acquisition – impacts the previous provisions of will.[3]

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[1] Constitutional Court Decision No. 24/2017. (X.10.) on the unconstitutionality manifestating in omission connecting to § 34 (3) of the Act CXXII of 2013 on Transaction in Agricultural and Forestry Land and on the unconstitutionality and disaffirmation of the last sentence of § 34 (3) of the Act of 2013 on Transaction in Agricultural and Forestry Land.

[2] Constitutional Court Decision No. 28/2017. (X.25.) on the unconstitutionality of Natura 2000 areas' – that is not classified as a protected natural land – sale and utilization manifesting in omission due to the lack of validation of nature conservation aspects; and Government Decision No. 262/2010. (XI.17.) on detailed rules of parcels of lands 'utilization belonging to the National Land Basis, § 31 (3) Point 9. on the refusal of the motion's annulment.

[3] In the case the testator died on 2 October 2015 and made his will on 6 October 2012 in which he named the initiating agent of the Constitutional complain as his heir of three periphery croplands. The initiating agent was the person who cultivated these lands in the life if the testator. The testator had no relatives. The initiating agent studied agriculture in the economics

The operative part of the Constitutional Court Decision stated that on one hand the following provisions of the Act on Transactions of Land (2013) are not unconstitutional: (a) the term of farmer, (b) right to land acquisition by other than the farmer domestic natural persons or EU nationals and (c) special regulation of land acquisition by testamentary disposition. On the other hand, the Constitutional Court Decision stated that the provision of the Act on Transactions of land (2013) is unconstitutional which defined the invalidity of a will if the authorial approval was refused Thirdly, the Constitutional Court Decision stated the omission of the legislator and the necessity of adopting the incomplete regulation when the competent authority refuses land acquisition by testamentary disposition.

1.1. Constitutional bases

In this case the right to property and succession considered to be fundamental rights according to Article XIII (1) of Fundamental Law. Limitation of the right to succession means the exclusion of testamentary disposition.[4] The regulatory elements of this limitation are the term of farmer, land possession limit, land acquisition limit, the requirement of the approval by the competence authority and the provisions of testate succession. The possibility of limitation, as a reference bases, is derived from Article P of Fundamental Law. According to Article P (1): *"natural resources, particularly arable land, forests and water resources, as well as biological diversity, ... shall comprise the nation's common heritage; responsibility to protect and preserve them for future generations lies with the State and every individual."*[5]

The Article P defines arable land among natural resources and the nation's common heritage and in favour of sustainable development and protection and preservation of future generation's life conditions mentions it in environmental protection and natural conservation context. These thoughts are found in the National commitment and belief of the Fundamental Law which says, that: *"We pledge to treasure and preserve our heritage: our unique language, the Hungarian culture, the languages and cultural heritage of ethnic groups living in Hungary, and the man-made and natural riches of the Carpathian*

technician and owed about 1 hectare land since 1958 and moreover acquired land through auction for the purpose of indemnification which was also cultivated by him. However, in the last three years revenue did not materialize for the agricultural activity. He is primary agricultural producer as well. Despite these, on the request of notary the Government Office refused the issue of the official certificate on the grounds that the initiating agent was not qualified as a farmer and found that the land owned by him exceeded 1 hectare. The notary found invalid the provisions of the will in the probate proceeding according to the § 34 of Act on Transactions of Land in which the testator would have transferred land for the initiating agent. Thus, the Hungarian State acquired the ownership of these lands by intestate succession. The appeal court confirmed the notary's order. The initiating agent requested that the Constitutional Court establish the unconstitutionality of § 5 Point 7, § 10 (2), § 34 (1) and (3) and annul them. He alleged that these provisions breach Article B (1), Article I (3), Article XIII (1) and (2) and Article XV (1) of Fundamental Law.

[4] See the 23. point of the examined decision (23).

[5] Comp. Article 38 of Fundamental Law.

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Basin. We bear responsibility for our descendants; we shall therefore strive to use our material, intellectual and natural resources prudently so as to protect the living conditions of future generations."
All these Fundamental Law provisions provide bases for environmental interpretation and application of ban of withdrawal.[6]

According to Article P (2): *"the regulations relating to the acquisition of ownership of arable land and forests, including the limits and conditions of their use for achieving the objectives set out under Paragraph (1), and the rules concerning the organization of integrated agricultural production and on family farms and other agricultural holdings shall be laid down in an implementing act."*

The Fundamental Law regulates the regulatory framework of implementing acts.[7] The Act on Transactions of Land defines the regulatory conditions and limitations of land acquisition and land use in favour of purposes laid down in (1). The protection of nation's common heritage beyond the environment protection-centered approach can be drawn from the aspect of expressing the national unity which is essentially defined in land policy principles in relation to land regulation.

1.2. Principles of land possession policy and principles specific regulatory principles

Economic policy decisions are not examined by the Constitutional Court, the Court considers them as state aims which may be reference bases of limitation of constitutional fundamental rights. The assessment of the state's economic policy ideas may come to the fore when the reasonableness of limitation, its consistency and proportionality with public interest is evaluated. Land – as it was defined in many Constitutional Court decision – is a limited amount of available goods and resource with specific features as emphasized by the literature too. Károly Ihring stated in his work published in 1941 that the land is the most valuable treasure of our nation, "the land is a national treasure". "[8]...every country's land distribution, as usually its order is a historical formation. It is the result of centuries, more over thousands of years development... However, that is in such an organic relationship with the nation's past and present, a greater change of that may result in the whole life of the nation, the nation's all social and economic aspects and even to its future."[9]

On this basis it can be concluded that land possession policy – which determines the relationship between man and land (property, use and land protection issues) – which is the part of land policy has crucial importance. According to the above mentioned things the cogent regulatory provisions of public law get into the private law framework of law of obligations and rights in rem. It also means that certain

[6] See more: Fodor László: *Környezetvédelem az Alkotmányban*. Budapest, Gondolat Kiadó – Debreceni Egyetem ÁJK, 2006; Note: The term of arable land cannot define clearly, it can give answer for agricultural cultivation, agricultural economy aspects. The Act on Transactions of Land (2013) does not use the term of arable land but it is used in the Act of Land Protection (2007).

[7] In addition to the Act on Transactions of Land (2013) the Act on the organization of integrated agricultural production and on agricultural holdings has not been adopted yet.

[8] Ihrig Károly: *Agrárgazdaságtan*, Budapest, Gergely Kiadó, 1941, 214.

[9] Ihrig 1941, 210.

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constitutional fundamental rights and other rights are limited.[10] Provisions which limit fundamental rights can be accepted as the reason of limitation only in the case if the public state intervention is appropriate to estate policy. Different types of land possession policies exist such as external land possession policy (GATT-WTO), CAP) and internal land possession policy, the determination of purposes and instruments set by a state.[11]

Land possession policy principles are found within the aims of the Act on Transactions of Land (2013).[12]

The dogmatic basis of the regulation of succession is similar to the regulatory methods of the Act on Arable Land (1994) and Act on Transactions in Agricultural and Forestry Land (2013). Intestate succession does not belong to the scope of either act, the general rules of succession have to be used and the limitative provisions of land transaction rules cannot be applied. In respect of testate succession both act maintain in force the application of limitative provisions. The main difference between these two acts that Act on Transactions of Land (2013) introduced the 1 hectare land possession

[10] Ihrig 1941, 190.

[11] Parliamentary Decision No. 2/2010. (II.18.): Hungary is attempting to extend the seven years moratorium considering – inter alia – that: (a) Community's agricultural support given to Hungary will only reach the average of Member States' support from 2013; (b) the average Hungarian land prices are still significantly behind the majority of Member States' land prices which threatens with serious disturbance on the market of agricultural lands after 2011; (c) land consolidation process started after the change of regime did not complete. The Commission contributed to the maintenance of the Hungarian moratorium until 2014 in its Decision No. 2010/792/EU (2010.12.20.)

[12] With the purpose of (a) the renewal of villages with a view to maintaining population levels, to cut the flow of migration to larger cities, hence to improve the age structure of the local population, (b) having a more appreciable impact by enhancing the income potential of villages through progress and improvements achieved in the conditions of farming and agricultural services, (c) channelling revenues generated in the agricultural sector towards rural development, thus allowing such revenues to facilitate, where possible, employment growth locally, (d) enhancing further the agricultural community through the organization of development production groups within rural family partnerships and through the growth of local businesses, (e) facilitating the development of medium-size farms in the agricultural sector, and ensuring the stability and further development of small farms, (f) expanding farming operations building on own work and direct production and service activities, (g) allowing self-employment to prevail among farmers so as to provide a true alternative by - among others - the potential expansion of local food trade and by improving the conditions for own farm work and other related secondary activities, such as agrotourism and the like, (h) offering a better potential for farming by way of sustainable land use, focusing on the protection of the natural environment of production (soil, water, natural habitats) and the cultivated landscape, (i) effectively promoting the operations of newly developed farming bodies through transactions in agricultural and forestry land, and through the use of agricultural and forestry land as collateral for mortgage loans, (j) the creation of estates sufficient in size for viable and economically feasible agricultural production, (k) eliminating the detrimental consequences of a fragmented estate structure in terms of ownership, hence to permit farmers to ply their trade without unwarranted obstructions, Parliament has adopted the following Act.

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limit instead of a maximum of 300 hectares in the case of other than the farmer legatee's succession. This limitation considering the level of it means a significant limitation which fundamentally questions the realisation of the testator's will considering the former act's provisions and this restriction fundamentally change the realisation of the heir's will. On the basis of the provisions of Act on Transactions of Land (2013) different versions of testamentary disposition can be set up. Only farmers can inherit a larger land by testate succession but other than farmers can inherit only 1 hectare. The third option is that other than farmer may inherit a larger land if the testator names more heirs in his will with a maximum of 1 hectare land (shared ownership). Finally, if the legatee may consider being heir, then according to the rules of intestate succession there is no limitation or obstacle of land acquisition deriving from the Act on Transactions of Land_since the limitative provisions of the Act does not apply to intestate succession. In the latter case the rules of testate succession are valid and applicable to which the limitation of farmers resulting public invalidity do not apply, the existence of farmer status do not have to be examined and territorial limits are also released by virtue of the act.[13]

It is fact that limitations of testamentary disposition – 1 hectare land possession of other than farmer – are also applied to other kinf of land acquisition, e.g. sales contract. However, if land acquisition is between close relatives, the acquisition of other than farmer is an exception because the limit of land acquisition shall be 300 hectares. In this case the requirements applying to the farmer are not applied (principles of land possession policy) and close relative may be non Hungarian citizen, so EU national as well. It means that speculative land acquisition cannot be excluded and the act favours the acquisition of close relatives by realising the 1 hectare limit. This regulation can also be interpreted that keeping the acquired property within the family is a more important state interest than self cultivation.

If it is accepted that the main reason of land acquisition limitation based on testamentary disposition is public interest – which is originated in the principles of land possession policy (speculate, etc.) – and in other cases the close relative status provides the basis for extended acquisition then the rethink of the testamentary gift – based on the enforcement of the testator's will – can be accepted in the case of testate succession. If the justification and necessity of fundamental right limitation is based on the principles of land possession policy and therefore the focus is on to strengthen the property of a person who is capable for cultivating arable land then the different provisions of testate succession and intestate succession cannot be accepted. Farmer status and cultivation obligation are not conditions of intestate succession. However, in the case of testamentary disposition (when acquisition exceeds 1 hectare) the lack of acquisition conditions excludes the acquisition of property by succession. Therefore, the only justification for regulation of testamentary disposition is that it is intended to serve the exclusion of speculative land acquisition which is applied equally to any legal statements inter vivos or causa mortis.

[13] See § 8 of the Act CCXXII of 2013 on certain provisions and transitional rules in connection with the Act CXXII of 2013 on Transactions in Agricultural and Forestry Land.

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Constitutional issues based on testamentary disposition did not occur in Arable Land Act (1994). It based on two reasons: the first reason is that territorial limit did not cause remedies for land acquisition of domestic natural persons based on testamentary disposition; the other reason is that testamentary disposition presumably did not occur between foreign people. The Constitutional Court considered the Act on Arable Land constitutional on the basis of the property's features, which act was adopted by the Parliament on 6 April 1994 but not yet promulgated. In this Constitutional Court Decision the Constitutional Court assumed that land ownership is a special property – it is a limited good, limited amount is available, cannot be propagated, not replaceable, etc., due to these features different treatment is justified comparing to other property goods. The requirement of land possession limit is not unconstitutional; furthermore the provision of the act that foreign legal entities are excluded - with some exception- from the acquisition of arable land and protected natural land is also not unconstitutional.[14]

1.3. Right to property

Constitutional Court treats the right to property as a fundamental right and according to it enforces it as a fundamental right. Constitutional Court stated in number of decisions as a principle that the acquisition of property is not regarded as a constitutional fundamental right.[15] Fundamental right protection is granted for (acquired) property and the guarantees of it are determined in the Constitutional Court decision.[16] In relation of limitation the Constitutional Court applies the principles of necessity and proportionality in accordance with the provisions of the act and in regard to public interest. The ability of acquisition is not considered as a fundamental right, therefore it is not protected as a fundamental right. The limitation of this non-fundamental right is unconstitutional only if there is no reasonable justification of it on the basis of objective examine. The state has no obligation to help somebody acquiring or using his property.

With respect to the term of ownership there are differences between civil law and constitutional court's perception. According to the civil law perception the elements of ownership are possession, right of use, the right to dispose over property; while from the viewpoint of constitutional court the protection of fundamental right to property is not restricted by Fundamental Law. Constitutional property protection does not necessarily follow the civil law terms and cannot be identified with the protection of abstract civil law ownership.[17] The owner is entitled to the property protection of the

[14] Constitutional Court Decision No. 35/1994. (VI.24.), ABH 1994, 197.
[15] Constitutional Court Decision No. 743/B/1993, ABH 1996, 417.
[16] Constitutional Court Decision No. 575/B/1992.
[17] Read more about Constitutional interpretation of the acquisition of ownership: Balogh Elemér: A magyar termőföldtulajdon az Alkotmánybíróság judikatúrájában, in: Bobvos Pál (edit.): *Reformator iuris cooperandi*. Szeged, 2016, Pólay Elemér Alapítvány, 29-54; Fodor László: A multifunkcionális és fenntartható mezőgazdaság európai modellje, *Pro Futuro*, 2012/2, 128-137; Szilágyi János Ede: Az Alkotmánybíróság joggyakorlatának értékelése a mezőgazdasági üzemek tulajdoni kérdéseinek változásában, in: Trócsányi László (edit.): *Dikaiosz logosz*, Szeged,

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Civil Code regardless not to everything and the limitation of ownership is constitutional under the same conditions as the limitation of any other fundamental rights.[18] The limitation of property is unconstitutional only if it is unavoidable, so it happens without compelling reason and the restriction is disproportionate to the aim of the restriction. Therefore, the protection against the limitation of ownership is conditional and relative. The limitation of a property element means the limitation of the right of property –as constitutional fundamental right- only if it is unavoidable and the level of limitation is disproportionable compared to the aim of the restriction. So the state has discretion concerning the intervention into the right of property.

The Constitutional Court had a similar position regarding the right of pre-emption. The right of pre-emption based on law means the limitation of the right to dispose over property -deriving from the right of property- without doubt. The Constitutional Court pointed out in several decisions that the right to property can be limited (e.g. the prohibition of the disposition over property). The content of property protected as fundamental right shall be interpreted together with public and private law limits.[19] Constitutional protection is always concrete, depends on the subject, the object and the function of the property and on the method of limitation.[20]

The provisions of the Act on Transactions of Land (2013) limits the right to dispose over property in the case of the heir's acquisition by testamentary disposition. The regulation of testamentary disposition (which is an umbrella term) is uncertain and doubtful concerning the right of property. Its evaluation can be performed from different aspects. On one hand from the testator's side, on the other hand from the heir's side. The heir's "expectation" for acquiring ownership cannot be considered as the viewpoint of the Constitutional Court which would mean the protection of the fundamental right of property. Therefore, it can be interpreted as the limitation of testate succession in the case of testamentary disposition. According to intestate succession such limitation does not occur, the specific limitative provisions of the Act on Transactions of Land (2013) are not applied for intestate succession as its regulation was the same under the scope of Arable Land Act (1994). Intestate succession was regulated as an exceptional legal title which is not covered by the scope of the Act on Transactions of Land. General succession rules are applied for agricultural land as for any other property object. The analysis of issues concerning to testamentary disposition is approachable from the aspect of right to succession as a fundamental right.

Pólay Elemér Alapítvány, 2012, 263-268; Szilágyi János Ede: Változások az agrárjog elméletében?, *Miskolci Jogi Szemle,* 2016/1, 30-50; Téglási András: A tulajdonhoz való jog védelme Európában, *Kül-Világ, 2010/* 4, 22-47; Téglási András: Az alapjogok hatása a magánjogi viszonyokban az Alkotmánybíróság gyakorlatában az Alaptörvény hatálybalépését követő első három évben, *Jogtudományi Közlöny,* 2015/3, 148-157; Bányai Krisztina: A földszerzés korlátozásának elméleti és gyakorlati kérdései Magyar-országon, *JAEL,* 2016/20, 16-27, doi: 10.21029/JAEL.2016.20.5; Bányai Krisztina: *A magyar mezőgazdasági föld tulajdoni és használati forgalmának jogi korlátai és azok kijátszása*, PhD-Értekezés, Miskolc, 2016, Miskolci Egyetem.

[18] Constitutional Court Decision No. 424/B/1997.

[19] E.g. with reference to § 18 of the Constitution. See more: Fodor 2006.

[20] Constitutional Court Decision No. 64/1993. (XII.22.), ABH 1993.380.

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1.4. Right to succession

The Constitutional Court's position concerning to the constitutional assessment of the right to property is also relevant for the right to succession with the difference that the right to succession is recognized as a fundamental right by the Constitutional Court. However, considering the content of the two legal institutions (right to property, right to succession) there are overlaps between the elements of them (e.g. the right to dispose over property). The right to succession includes the right to active succession (concerning to the testator's right to testamentary disposition), the right to passive succession (the heir's right to acquire the estate) and the legal institution of succession. The Constitutional Court did not make comprehensive, general decisions so far on the content and scope of the right to succession – as fundamental right – with respect to the restriction of it, so the current decision is considered to be decisive. The Fundamental Law may give explanation to the changed role of succession. The Article XIII (1) of Fundamental Law says: "*Everyone shall have the right to property and to succession. The ownership of property shall entail social responsibility."* In this interpretation the right to succession shall be regarded as fundamental right and thus shall be protected as a fundamental right.

The Constitutional Court established unconstitutionality caused by the legislator's omission which means the lack of regulation and which decision sets down the supplementation of regulation. The lack of regulation caused the breach of the right to succession (Constitutional Court decision 38-39.). The Constitutional Court Decision stated that the requirements of proportionality would be met if the state would give allowance in lieu for the heir who did not inherit (agricultural land property).

However, the financial compensation proposed to solve the balance of interests is doubtful and generates further problems giving rise to abuses.

The use of the term of allowance in lieu looks back at the history of land legislation which cannot be considered to have a positive content. Based on historical background it can be stated that property elements were connected to the complete restructuring of estate policy and appeared as an instrument of it. Allowance in lieu as legal title was regulated by the Hungarian land reform of 1945[21] and then by the laws of

[21] The purpose of land reform is to modify or completely change the legitimate ownership and use provisions. The Hungarian land reform of 1945 completely transformed the legitimate land provisions. The Provisional National Government *Decision No. 600/1945. M.E.* created the legal basis of the reform which regulated the abolition of large farm system and land acquisition of farmers. The *Act VI of 1945* gave legal force to the Decision.
The land reform has three *aims*: the abolition of large farm system, the extension of peasant private ownership and the establishment of smallholding structure. Firstly, as the *legal solution* of land reform a *state land bases* was established. This land bases had three sources: confiscated lands, acquired lands and state-owned lands allocated for this purpose by the state. Lands (estate units) were divided from the land bases for the *entitled people* (claimant). *Allowance* was the legal title of land ownership acquisition. There were not legal relationship between people deprived from ownership and people acquired ownership (acquisition by original acquisition method) because the involvement of the state.

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1967 extending cooperative land property.[22] The price of it could be interpreted as compensation for the owners of state property.

Financial compensation raised in the Constitutional Court decision may create a speculative opportunity to obtain financial compensation. There may be a risk that the testator takes his will in the knowledge that his heir will no be entitled to acquire the land ownership of the will because he does not meet the conditions of acquisition but may claim compensation for the value of the land. The introduction of this construction legislation shall answer many questions, such as the methodology for

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The legislation regulated and used two forms of *acquisition*, total and partial acquisition. In the case of acquisition all agricultural property belonging to the owner shall be considered together. (a) Agricultural land exceeds 1000 cadastral Hungarian acres, (b) and the land ownership of partnerships, corporate pension funds and insurance institutions operating under Commercial Law is subject to *total acquisition* (latter „b" is without taking account of the scope of real estate). *Partial acquisition* is: (a) parcel of land exceeding 100 cadastral Hungarian acres in the case of agricultural land between 100 and 1000 cadastral Hungarian acres, (b) estates exceeding 50 cadastral Hungarian acres located 30 kms from the border of the capital, (c) part of vineyards and orchards exceeding 20 cadastral Hungarian acres, (d) part of the forest exceeding 10 cadastral Hungarian acres (forests between 10-100 cadastral Hungarian acres became community ownership, forests exceeding 100 cadastral Hungarian acres became state ownership).
Those people whose property was sold, compensation had to be paid. Claimants acquiring land had to pay compensation price. The owners' compensation was a state responsibility. The state established a land reparcelling fund (financial fund) from compensation prices paid by claimants from which people were compensated whose lands were sold considering capacity. The price of the land was established in 20-fold sum of cadastral income. The value of movable property and buildings was estimated considering the prices of 1938 with the fact that compensation price of buildings and other real estate equipments could not exceed the 30% of the land's compensation price.

[22] Act IV of 1967 on further development of land ownership and land use which purpose was to those people acquire a land who used that. The Act defined the legal titles under which cooperative could acquire land ownership, partly letting the owner to decide and partly by the virtue of the Act: (a) Purchase of leased lands with a 5 year instalment which corresponds to 5 years of land rent. (b) Termination of membership, acquisition of lands of outsiders. The heir of the former member might declare that he joins to the cooperative and can remain his land ownership with common use or he did not want to become member and then the cooperative acquired his land. (c) Pledge of land. The owner could purchase his land to the cooperative. The price could ne exceed the amount of expropriation compensation. Indirectly, the state created a situation to apply the pledge of land in practice. Inheritance tax of heirs was raised up who did not pursuit in agricultural activities as a job. (d) The transfer of state-owned lands could be done for a fee or free of charge. The condition of transfer for a fee was to allow the cooperative to permanently ensure the utilization appropriate to the purpose of land. Transfer did not happen automatically but on request and assuming the state's decision. Free of charge those parts of the land were acquired by cooperative which they used. E.g. the land of grazing committees, land ownership of cooperative, transferred lands as land bases allowance or land transferred free of charge by other titles. (e) Other ownership acquisition titles of Civil law.
On the effect of Act IV of 1967 the cooperative's property gradually increased. Cooperative property increased to 40-50% in common use, while state ownership reduced to 10-20% and membership ownership was about 20-30%.

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determining the consideration which is paid by the state or anybody else even if not the state will be the legal heir. Thus, who will be required to pay if not the state inherits.

A solution, which proposes to treat separately testamentary dispositions taken at different times, seems to be appropriate. Time limit considering the possibility of financial compensation should be connected to the entry into force of Land Transaction Act or to the scope of regulation on financial compensation. According to it the assessment of testamentary disposition shall be regulated in a different way.

As the substantive statement of the Constitutional Court Decision it is possible to formulate the constitutional dogmas of the right to succession. The right to succession as a fundamental right includes the right to testamentary disposition (active right to succession), the ability of succession (passive right to succession) and the legal institution of succession as a derivative way of acquisition and legal title. According to it the right to succession is constitutionally protected so the right to the acquisition of ownership is recognised in this respect. The right to acquisition of ownership is not protected as a fundamental right within the right to property by the case law of the Constitutional Court. Considering the right to succession acquisition is a protected right through the legal institution of succession. The passive right to succession includes a future entitlement, that is the possibility of acquiring goods and goods acquired by succession. The deprivation of legitimate expectations also infringes the right to succession, it deprives of it.

Deprivation of right of succession cannot be justified, cannot be confirmed by public interest, it is necessary to endeavour to the balance of interests in favour of proportionality. There shall be balance between public interest restriction and the enforcement of protected rights. The Constitutional Court places emphasis -the balance of interests- on financial compensation in the justification of its decision and treats this situation as balance if values which can be eliminated by financial compensation.

The decision draws the attention of the legislator to create balance accepting other alternatives as well and by eliminating the lack of legislation.

Legal regulation of testate succession also means non-regulation under the decision of the Constitutional Court. This reasoning on the side of jurisprudence raises the necessity for sui generis rules of succession. The preservation of agricultural property (land, agricultural holding) and its operation appropriate to estate policy principles are essential interests of every state. According to these facts West-European countries adopted their special rules of land succession thus ensuring the proper operation and maintenance of agricultural property and the rules of compensation of non-inherit heirs.

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2. Constitutional Court Decision No. 28/2017. (X.25.) on the unconstitutionality of Natura 2000 areas' – that is not classified as a protected natural land – sale and utilization manifesting in omission

The other Constitutional Court Decision deals with environmental protection and nature conservation issues in connection with acquire the state-owned agricultural land's ownership. The Constitutional Court Decision No. 28/2017. (X.25.)[23] set out unconstitutionality of Natura 2000 areas' – that is not classified as a protected natural land – sale and utilization manifesting in omission due to the lack of validation of nature conservation aspects. The Decision set out the legislator's omission clearly because the lack of validation of public interest and provided deadline for remedy until 30 June 2018.

Unconstitutionality manifesting in omission is generated by the fact that the security-guarantee system, providing the effectiveness for nature conservation aspects of Natura 2000 areas' –that is not classified as a protected natural land- sale and utilization, was not created, regulated. It breaches the provision of Article P (1)[24] and Article XXI. (1)[25] of Fundamental Law and thereby endangeres the environmental protection and nature conservation constitutional content of the principle of ban of withdrawal.

The Program of "Land for Farmers!" ensures the acquisition of state-owned land for private persons by Government Decision No. 1666/2015. (IX.21.)[26] on measures to sell state-owned land for farmers and Government Decree No. 262/2010. (XI. 17.) on detailed rules of utilizing parcel of lands belonging to the National Land base. Natura 2000 areas are also concerned with the sales but there are no special substantive and procedural rules of nature conservation interests which would be used in the case of sales and utilizations, nature conservation aspects laid down in the general estate policy principles shall be used for them as well.

[23] Unconstitutionality of Natura 2000 areas' – that is not classified as a protected natural land – sale and utilization manifesting in omission due to the lack of validation of nature conservation aspects; and Government Decision No. 262/2010. (XI.17.) on detailed rules of parcels of lands 'utilization belonging to the National Land Basis, § 31 (3) Point 9 on the refusal of the motion's annulment.

[24] „Natural resources, particularly arable land, forests and water resources, as well as biological diversity, in particular native plant and animal species and cultural values shall comprise the nation's common heritage; responsibility to protect and preserve them for future generations lies with the State and every individual."

[25] Hungary shall recognize and implement the right of all to a healthy environment.

[26] This Government Decision was replaced on 26 February 2016 by the Government Decision No. 1062/2016. (II.25.) then this latter Government Decision was replaced by the current Government Decision No. 1203/2016. (IV.18.) which remained unchanged the provisions of Natura 2000 areas' sale.

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2.1. Biodiversity and Natura 2000 areas

The Decision defines the legal background of Nature 2000 areas, the significance of designation of areas and analyses the relationship of biodiversity and Nature 2000 areas. Natura 2000 is a European ecological network of protected nature areas where certain species of animal and their natural habitats are protected in order to preserve biodiversity that is the diversity of wildlife which includes the genetic diversity of living organism, the diversity between species and their symbiosis and the diversity of natural systems. Natura 2000 network was established by the European Union which basis on one hand is the Birds Directive of 1979[27], on the other hand is the Habitats Directive of 1992.[28]

21.44% of the territory of Hungary is classified as Natura 2000 area which is slightly below the average (18.12%) of the European Union Member States.[29] Natura 2000 areas as European Union significance nature conservation areas are regulated by a special legislation[30] of Special Protection Areas for birds, Special Areas of Conservation and Priority Areas of Conservation and furthermore, special areas of conservation and propriety areas of conservation approved by the European Union.

There is a close relationship between the maintenance of nature close habitats and the conversation of biodiversity. Natura 2000 network is intended to serve the maintenance of nature close habitats and species and it contributes to environment protection and nature conservation in addition to regulation. All environment protection rules serve together the maintenance of Hungarian biodiversity in the area of nature conversation, in Nature 2000 areas and in non protected areas. The special nature conservation significance of Nature 2000 areas is that creates the transition between natural ecosystems of agricultural activities, the so called ecological corridors which serve the essential basis for the maintenance of these ecological systems. The Ecological Research Centre of the Hungarian Academy of Sciences set out of the request of the Constitutional Court that in Hungary – and in the European Union- Natura 2000 network is the fundamental and indispensable instrument of preserving biodiversity.[31]

2.2. Ownership relation of Natura 2000 areas

Neither Directives (European Union regulation), nor national legislation (Government Directive No. 275/2004. (X.8.)) contains special provisions on ownership relations of Natura 2000 areas. The Program of "Land for Farmers!" made it legally possible to sell state-owned lands classified as Natura 2000 area but forests and nature conservation lands were not subject of the sales. Natura 2000 areas can be protected

[27] Directive 79/409/EEC
[28] Directive 43/92/EEC
[29] Constitutional Court Decision III (16)
[30] Government Decision No. 275/2004. (X.8.) on nature conservation areas with European Community significance.
[31] Constitutional Court Decision III. Section (22).

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natural areas or Natura 2000 areas qualified as non-protected natural areas. Within the Program of "Land for Farmers" the latter areas that are the Natura 2000 areas qualified as non-protected natural areas made the subject of the Constitutional Court's test.

The sale of state-owned protected lands and protected natural lads is not excluded by legislation but based on strict conditionality. Protected natural areas are limited tradable and the state has right to pre-emption at the sale of them. The sale of state-owned protected lands is possible only with Ministerial Agreement and in the case of exchange contracts or in other cases provided for in the act. The agreement of Minister of Nature is required for the sale or asset management of Natura 2000 areas. This means that private ownership is not excluded in the case of protected natural land's sale by legislation.

The Constitutional Court further examined that which provisions shall be applied during the Ministerial Agreement and stated that *"...for the sale of Natura 2000 areas - that is not classified as a protected natural land- the agreement of Minister of Nature is required but no other special rules or additional requirements shall be applied, thus the purchase of these areas may happen in the same manner as non Natura 2000 areas' sale."* The lack of legislation threats the quantitative and qualitative protection of lands.[32] The Constitutional Court stated that provisions which would ensure the protection of values named in the Article P of Fundamental Law were not regulated during the legislation of state-owned Natura 2000 lands' sale qualified as non-protected natural areas.

2.3. The issue of unconstitutionality regarding the use of Natura 2000 areas

Government Decision N^{0} 275/2004. (X.8.) regulates the general provisions of the use of Natura 2000 areas. The rules governing the use of state-owned Natura 2000 areas are provided at different levels of regulation: (a) Natura 2000 maintenance plans, (b) list containing provisions for the preservation of nature, (c) nature conservation asset management, (d) owner control.

According to the regulation of Natura 2000 areas, environmental protection and nature conservation aspects apply by quantitative and qualitative protection, their guarantee conditions are given and the control procedure is ensured. Such regulation applies to people getting into legal relation with the state in the utilization of state-owned lands and the regulatory conditions of maintaining the protection level are exist. There is no provision for the acquisition of state-owned land and for further sale and utilization of privately-owned land (e.g. leasehold) which would provide a list of requirements for the preservation of nature and the effectiveness of nature conservation asset management.

[32] See more Constitutional Court Decision No. 28/1994. (V.20.) and Constitutional Court Decision No.16/2015. (VI.5.)

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Land use regulation of privately-owned land use was only adopted for grassland[33] (meadow, permanent pasture),[34] such special regulation of other cultivation branch was not adopted and these areas are subject to the general land use regulations.[35]

The institutional level of protection resulting from the lack of regulation may reduce which raises the breach of the ban of withdrawal environmental protection-nature conservation principle.

[33] Government Decision No. 269/2007. (X.18.)

[34] Ministry of Agriculture and Rural Development Decision No. 109/1999. (XII.29.)

[35] Dr. Dienes-Oehm Egon Constitutional Court judge did not agree with the Constitutional Court decision in his Minority Report, he considered the creation of nature conservation guarantees sufficient, he considered further legislation not expected by the legislator and highlighted the priority of management requirements. Dr. István Balsai Constitutional Court judge agreed with this Minority Report and joined to it.

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