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The special asset management right of nature conservation areas, the principal
of the prohibition of regression and the conflict with the ownership right in
connection with the management of state-owned areas**

1. The constitutional basis of nature conservation

The problems of nature conservation state areas were occurred in the hungarian law firstly by the implementation of transitional act on cooperatives. When the nature conservation regulations became general and related to the establishment of the system of national parks, a principle, wherein together with the territorial protection, a special management right is created for the directorates of national park on the restricted areas of the national park, immediately appeared. In these areas, by the properly validation the principle of territorial protection, related to the use of land, it will be under the nature conservation interest. In practise it meant, that for example in the area of Hortobágy National Park, if a special non-replaceable ecosystem was created on an artificially established pond, then in the interest of nature conservation, after the condemnation proceeding, the intensive fisheries management incompatible with ecosystem protection was become prohibited.¹

This proceeding until the change of regime (I mean the ratification of the act of 1991 on compensation,² the act of 1991 on transformation of cooperatives,³ the act of

István Olajos: The special asset management right of nature conservation areas, the principal of the prohibition of regression and the conflict with the ownership right in connection with the management of state-owned areas – A természeti védettség alatt álló területek speciális kezelői joga, és a visszalépés tilalmának elve, valamint a tulajdonosi joggyakorlás jogának ütközése az állami tulajdonú területek kezelése kapcsán. *Journal of Agricultural and Environmental Law* ISSN 1788-6171, 2018 Vol. XIII No. 25 pp. 157-189 doi: 10.21029/JAEL.2018.25.157

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¹ See the promotion process of the branch office of Hortobágyi Halgazdaság Ltd. to be a national park core area between 1993 and 1996.

² See about the compensation, as a process and the legal aspect processing of compensation: Kovács Csaba: Átalakítás vagy szétverés?: a szocialista jellegű mezőgazdaság végnapjai és a kárpótlás utáni gazdálkodás néhány sajátossága, *Levéltári Közlemények*, 2011/1, 239-260.; Gulácsy Katalin: A kártérítés, a kártalanítás és a kárpótlás adójogi megítélése, *Adó*, 2009/8., 15-18.; Mencer Gusztáv: A kárpótlás, mint jogintézmény, *Gazdaság és Jog*, 2005/4, 13-19.; Szirmai Márton: A magyar kárpótlás gyakorlati problémái, *Tudományos Közlemények*, 2000/2. 167.; Fertő Imre – Mohácsi Kálmán: A politikai kárpótlás folyamata és következményei, *Európa Fórum*, 1996/2, 85-106.

³ See about the transformation of cooperatives: Karner Ottó: Átalakulás és működés (Szövetkezeti jogi praktikum), *Gazdaság és Jog*, 1998/2, 21-23.; Becz Miklós: A szövetkezeti

1992 on cooperatives and the act of 1993 on land allocation and land settlement committees⁴ under change of regime) was a relatively simple process, because under the legal framework of land act built upon the primacy of state and cooperative property, this proceeding, by which this nature conservation of public wealth management prevailed, with a simple land exchange, could be solved ignored by the condemnation proceeding.

The act on compensation, the act on transformation of cooperatives and the act of 1992 on cooperatives are the basis of change of regime, and in the processes of these acts, the nature conservation regulation is only secondary applied. The essence of regulation is that in addition to the abolition of cooperative property, the cooperative land property shall direct to a compensation member-employee, member and state land fund.

Related to the designation of land funds, the cooperative had absolutely no regard to its own concluded contracts, so for several years, areas be in plantation settlement and in others' exclusive use were also designated to the compensation fund. In case of this proceeding, other restrictions such as restrictions granted to nature conservation of land use, have not been taken into account.⁵ So the nature conservation areas could be privately owned in such a way, that with a special land use clause, the new owner was only informed from a later provision restricting its ownership and made by national parks directorates.

átalakulás, *Gazdálkodás*, 1994/1, 17-22.; Varga Gyula: A mezőgazdaság és a szövetkezetek átalakulása, *Társadalmi Szemle*, 1993/4, 32-41., Váradi Monika Mária: Keskeny az ösvény. Esettanulmány a 'Harmónia' Mgtsz átalakulásáról, *Replika: szociológiai viták és kritikák*, 1998/33-34, 121-135.; Rác Zoltán – Kenderes György – Tatár Irén – Szilágyi Sándor: *Mezőgazdasági szövetkezetek átalakulási kézikönyve*, Miskolc, Regiocon, 1992, 227.

⁴ Welcome address of state secretary on "Részarány földkiadás során keletkezett osztatlan közös tulajdon megszüntetése projekt tapasztalatai" conference, *Geodézia és kartográfia*, 2015/11-12, 28.; Halász Imre László: Gondolatok és tapasztalatok a részarány földkiadás során keletkezett osztatlan közös tulajdon megszüntetésének eljárásáról, *Geodézia és kartográfia*, 2006/11, 37-39.; Only the statutory decision of the land allocation committee is qualified as a substantive decision, only those can be reviewed by the court: Act II of 1993 6. §, 11. § (1) Points a)-d), *Közigazgatási-Gazdasági Döntvénytár*, 1996/5, 71-72.; The land allocation committees work as an authority defined by the law: Act III of 1993 11. §, *Közigazgatási-Gazdasági Döntvénytár*, 1999/3, 5-7.; The purchase right of lessee cannot be exercised in respect of a real estate property setting out to the shared land fund. The annulling decision on the decision of land allocation committee on land allocation does not give rise to a right in good faith: Curia (Supreme Court of Justice) Kfv. VI. 28 309/1998, *Közigazgatási-Gazdasági Döntvénytár*, 2004/4, 27-31.

⁵ See Act L of 1992 4. §: For the purposes of compensation land fund, a nature conservation area may be appointed except a nature conservation core area and an area under nature conservation based on international convention. This modification mitigated the provisions of Act II of 1992 and the parallel Act XXVI of 1991, which gave the nature conservation area to the treatment of the national park directorates and required to replace these areas with state exchange land.

The conflict of the two types of land use and two approaches which are the base of land use was realised and interpreted by the Constitutional Court of first period in its Constitutional Court Decision no. 28/1994 (V.20.) which is the base of the principal of the prohibition of regression.⁶ The application, which is the base of the aforementioned decision, based on the provision, which determines that a nature conservation area can be designated to the compensation land fund to satisfy the increased compensation claims. Here the regression was perfectly contrary to an established nature conservation regulation and practice. The nature conservation regulatory was in the background against the increasingly applied compensation claims, which the government tended to accept. However, the nature conservation management of lands has been the part of the Hungarian legal system since the 1970s. At the time of the establishment of our environmental regulation, the President of the Constitutional Court, László Sólyom⁷ – in his own legislature practise – realized how difficult it was to develop the emergence of a nature conservation approach in case of land use. He considered the special asset management right of national parks such a value, which was qualified as a retained value and was to be considered as an important, institutional and unique legislation of the Hungarian environmental protection legislation.

The aforementioned Constitutional Court Decision no. 28/1994. (V.20.) considered the right to a healthy environment not only a subjective fundamental right, but also "independent and self-contained protection of institutions."

⁶ See about the interpretation of the prohibition of regression: Fodor László: A visszalépés tilalmának értelmezése a környezetvédelmi szabályozás körében, *Collectio Iuridica Universitatis Debreceniensis*, 2006/6, 109-131.; Halmos Gergő: Ne legyen visszalépés! *Madártárlat*, 2015/2, 3.; Bándi Gyula: Környezeti értékek, valamint a visszalépés tilalmának értelmezése, *Iustum Aequum Salutare*, 2017/2, 159-181.; Csák Csilla: Környezetjog, Novotni kiadó, 2009, Miskolc; furthermore see about the whole monographic evaluation of this area: Fodor László: Környezetvédelem az alkotmányban Gondolat kiadó, Debrecen, 2006, 106-163.

⁷ Sólyom László környezetjogi jellegű írásai a következők: Sólyom László: The Rights of Future Generations, and Representing them in the Present *Acta Juridica Hungarica*, 2002/1-2, 135-143.; Sólyom László: A jövő nemzedékek jogai és ezek képviselője a jelenben, in: Jávorka Benedek (edit.): *A jövő nemzedékek jogai*, Védjegyet, Budapest, 2000, 37-46.; Sólyom László – Szabó Máté (edit.): *A Zöld Hullám: Olvasókönyv a környezetvédelmi társadalmi mozgalmakról*, Budapest, ELTE, 1988, 282.; Sólyom László: A környezeti kockázatok elosztásának néhány előkérdése, *Jogtudományi Közöny*, 1987/5, 221-226.; Sólyom László: Hans Engelhardt: Bürger und Umwelt, *Jogtudományi Közöny*, 1986/10, 510-511.; Sólyom László: A társadalom részvétele a környezetvédelemben, *Medvetánc*, 1985/5-6, 217-242.; Sólyom László: A polgári jogi bíróságok környezetvédelmi ítélezése és a polgári jog lehetőségei a környezetvédelemben, in: Trócsányi László (edit.): *Környezetvédelem és a jog*, Budapest, Akadémiai Kiadó, 1981, 148-179.; Sólyom László: Der zivilrechtliche Umweltschutz und die Möglichkeit einer Bürgerklage im ungarischen Recht, *Acta Juridica Academiae Scientiarum Hungaricae*, 1980/1-2, 19-55.; Sólyom László: Környezetvédelem és polgári jog, Budapest, Akadémiai Kiadó, 1980, 170.; Sólyom László: Egy környezetvédelmi populáris akció elvi lehetősége polgári jogunkban, *Jogtudományi Közöny*, 1978/11, 672-682.; Sólyom László: Biztosítás és egyéb technikák a környezeti károk fedezésére, *Állam- és Jogtudomány*, 1978/3, 306-338.

In connection with this, it increased the fulfillment of the state's environmental protection obligations and its guarantees to the level of fundamental rights.⁸ *"The State does not reduce the degree of the protection of nature as guaranteed under law, unless this is unavoidable in order to enforce any other fundamental right or constitutional value. Even in the latter event, the point to which the degree of protection is reduced cannot be disproportionate to the goal to be achieved."* The Constitutional Court defined the principle of the prohibition of regression in such a way, which has since been continuously prevailed in the jurisprudence of the Constitutional Court and is one of the greatest limit of the state's environmental protection activity. Later this right extended to the protection of the built environment (Constitutional Court Decision no. 27/1995. (V.15.), and this right also meant the opportunity of the significant restriction of ownership for environmental protection reason (Constitutional Court Decision no. 64/1993. (XII.22)).¹⁰ From this principle it is deducible that the environmental interest can not be subordinated to the regional development interest: the important is to maintain the balance between the development of economy and environmental interest.

The adopted text of the Fundamental Law of Hungary was required the reinterpretation of the own role of Constitutional Court. Where the Fundamental Law relieved the liability of the state for fundamental rights, there the judges did not follow the stricter interpretations of their predecessors. Whereas the environmental protection, beyond the National Avowal, also appears in Fundamental Law of Hungary Article P and Article XXI with a stronger content than in the Constitution, thus related to this area, the Constitutional Court determined in its Constitutional Court Decision no. 3068/2013. (VI.17.), that the Constitutional Court accepts to be bound by its previous decisions. This can be deducted from that "the Fundamental Law of Hungary contains significantly more provision compared with the Constitution, so the Fundamental Law of Hungary can be considered the development of Constitution."¹¹

2. May special asset management right of national parks be considered as a basic institution?

Next time, the issue has been raised related to the Constitutional Court Decision no. 16/2015. (VI.5.). The question for Constitutional Court was, whether regarding the protected areas there is any right to the legislator to transfer the asset management right of a nature protection area to the National Land Fund with the introduction of Act CCIV of 2015 on the Modifications of Acts on Management of State Land Asset (hereinafter referred to as Módtv.).

⁸ Constitutional Court Decision no. 28/1994. (V.20) 134. és 138., and Sulyok Katalin: Az Alkotmánybíróság előzetes normakontroll döntése a nemzeti park igazgatóságok vagyonkezelői jogkörének csorbítása tárgyában (hereinafter referred to as Sulyok 2015, 19).

⁹ Constitutional Court Decision no. 28/1994. (V.20) 141.

¹⁰ Sulyok 2015, 19.

¹¹ Sulyok 2015, 19.

The rules of environmental protection asset management are regulated by the Governmental Decree no. 262/2010 (XI.17.) (hereinafter referred to as Nfavhr.) 43/A and 43/B §, as the follows:

"The primary purpose of nature protection asset management is the implementation of nature protection public purposes on state owned lands, the conservation of living and inanimate natural values, the preservation of landscape and cultural historical values, the preservation of the consistency and value of nature wealth, furthermore the enlargement of the value of nature wealth in a sustainable way. In the case of nature protection asset management, the Agricultural and Forestry activity (hereinafter referred to as activity) in the field of protected area can be done with respect to nature protection aims. The application of traditional (landscape-nature), nature-friendly, close-to-nature activities should be privileged, the sustainability of the indigenous and domesticated animals as a gene reservation shall be ensured and the area sustainability and care of protected area according to the nature conservation interests in the way of livestock (in case of appropriate headcount, species and variety composition).

The national park directorate (hereinafter referred to as directorate) keeps the registry of asset management protected areas up-to-date in the Nature Conservation Information System.

The directorate carries out its asset management activity taking into consideration the long-term (10-year-old) nature conservation asset management plan approved by the minister of nature conservation and the annual nature conservation asset management plan prepared based on the aforementioned plan.

The directorate related to the protected area be in its own asset management or get into its own asset management, exercises the right of possession, use and utilization (hereinafter referred to as own use), if

(a) The protected area is an area, which is under nature conservation protection covered by climax and similar communities, in which farming activity is not possible because of the nature conservation aspects (significantly important, protected nature areas and values) or which does not require nature conservation maintenance activity, therefore, the utilization of protected area is prohibited or highly limited (in particular, some biosphere reserves core areas, scientific reserves, some natural areas, some highly protected natural areas).

(b) In the protected area, the validation of the nature conservation interests requires special activity or existence of special knowledge or equipment and without them the leasing of protected area would be expected to endanger the destruction of natural values, threat or dissolution of their growth.

(c) If in the protected area the nature conservation targets is rationally manageable with the equipments and personnel possessed and realistically obtainable by the directorate in accordance with the other state functions of the directorate, and there are indispensable for the maintenance and catering of the livestock, provision and maintenance of livestock be in the ownership, asset management and use of directorate.

(d) According to the real estate registry the protected area is registered in the forest cultivation branch or in the absence of it, for which the legal nature fact of the protected area, registered in the National Forestry Database as a forest, is registered in the real estate registry, and according to the National Forestry Database this protected area is primarily qualified as an economic purpose forest.

(e) The nature conservation authority suspended the recovery obligation in the protected area."

Analyzing the aforementioned provisions: a possible way of asset management is that the directorate assigned for the asset management leases out the state owned areas to others. The other possible way is that the directorate can solve the asset management with its own equipments, if a special protection is registered to the area, if the area is a forest or if in the protected area, the recovery obligation required to an other farmer was suspended because it was not adequate.

According to the Módtv. 1-6. §, the special right of asset management is ended and regarding to the general rules the National Land Fund could have exercised the right of asset management and preemptive right based on the 8. § on these areas. On the other areas, the right of asset management would have been restricted to areas which are directly connected to the completion of the basic duties of national park directorates or be directly in their deed of foundation or statutes.¹²

Interpreting this provision, the National Land Fund does not get nature conservation asset management, this institution is ended and merges into the general asset management, which is previously belonged to the National Land Fund. This statement is not correct perfectly, because the general right of asset management is extended a preemptive right, and on the nature conservation core areas and related to the completion of its duties, it is remained in the scope of the national parks. So the national park, if this regulation would have entered into force, would have exercised its nature conservation regulatory and restrictive activity only at the highest level of the nature conservation and it would not have had the right to expand the nature conservation, monitoring the changes in the natural environment, to areas owned by others or be in others' asset management. So the opportunities to expansion would be strongly bounded. The regulation would lose not only its legal framework, but at least minimize it, but the land use zone system, which is considered as one basis of

¹² Constitutional Court Decision no. 16/2015 (VI.5) 4-9.

agricultural-environmental protection since its elaboration 1999, made based on the land use pyramid scheme would have fallen.¹³

As the scientific basis of zone system, the lands of Hungary simultaneously undergoes an environmental rating, which grounds an agricultural economic use and determines the nature conservation level of lands. Such areas, which are qualified important in nature conservation aspect beyond economic aspects, according to the current rating, can require further support in order that these areas maintain their nature conservation character. In these areas, agricultural-environmental economic or Natura 2000 based supports can be required beyond the the production and the related agricultural basic supports, which condition is the takeover of the nature conservation activity be typify to the special area from the state beyond the continuation of production.

¹³ Ángyán József – Podmaniczky László – Ónodi Gábor: Agrár-környezetgazdálkodás és vidékfejlesztés: az európai agrárfinanszírozás új útja a gyakorló gazda szemszögéből, *Falu Város Régió*, 2003/8, 3-12.; Pálvölgyi Kálmán: Mit tehet az agrár-környezetgazdálkodásban (AKG) résztvevő gazdálkodó, ha nem tudja, vagy nem akarja vállalni a szerződésben foglalt kötelezettségeit?, *Agrárágazat*, 2006/8, 8-9.; Dömsödi János: A földértékelés, földminősítés módszertani elemzése, rendszerezése, továbbfejlesztése, *Geodézia és Kartográfia*, 2007/3. 26-33.; Szilágyi János Ede: Common Agricultural Policy, new rules of WTO and regional equilibrium - Hungarian National Report, *Agrár- és Környezetjog*, 2008/5, 3-18.; Farkas Csamangó Erika: Az agrár-környezetgazdálkodás alapjai, *Acta Universitatis Szegediensis: Acta juridica et politica*, 2008/1-17, 151-182.; Gyarmati Ágnes: Az agrár-környezetgazdálkodás támogatása a Nemzeti Vidékfejlesztési Terv bevezetése kapcsán, *Agrártudományi közlemények = Acta Agraria Debreceniensis*, 2006/20, 52-59.; Csák Csilla – Olajos István: The application of the single payment by national administrations and national courts – Hungarian National Report, *Agrár- és Környezetjog*, 2008/5, 31-42.; Szilágyi János Ede: Magyar Nemzeti Jelentés a gazdálkodók tevékenységének diverzifikációját érintő jogi ösztönzőkről és jogi akadályokról, *Agrár- és Környezetjog*, 2010/8, 3-48.; Horváth Gergely: Gondnokság – Az agrár-környezetjog funkciója és felépítése, *Jog, Állam, Politika*, 2012/2, 107-127.; Csák Csilla: Cross compliance, avagy környezetvédelem a támogatás feltételeként, *Publicationes Universitatis Miskolcensis. Sectio Juridica et Politica*, 2012/2, 423-433.; Csák Csilla: A fenntartható természeti erőforrás-gazdálkodás jogi szabályozása, *Műszaki Földtudományi Közlemények*, 2013/2, 73-86.; Marticsek József – Molnár Dániel – Mozsgai Katalin – Podmaniczky László – Skutai Julianna – Tóth Péter: Az agrár-környezetgazdálkodási támogatási rendszer fejlesztési lehetőségei (Hogyan tovább agrár-környezetgazdálkodás?), *Természetvédelmi Közlemények*, 2015/21; 232-242.

Here, the producer undertakes state environmental protection tasks beyond the limitation of his/her own production and carries out state environmental protection tasks, and the this special support is for the cover of the costs of environmental protection as the part of the Rural Development Operational Program.¹⁴ The factual control of the performance of the tasks and the strengthening or weakening of the related producer obligation in accordance with the changing environment were determined and verified by the national park directorates.

If the producer could no longer meet the tightening environmental standards, he/she could have requested the condemnation of his/her area based on the Act XCIII of 1995 on the Restoration of Protection Level (hereinafter referred to as Vszt.) and after the payment of compensation amount, the special asset management right of national park directorates was registered to the mentioned area as a state ownership.

Based on the consensus of the land user and the national park directorates, who required the condemnation and had the amount of compensation costs, this was only initiatable after the payment of complete, immediate and unconditional compensation cost. The amount of condemnation was always determined by the budget resources available for nature conservation.¹⁵

This possibility of the initiation of the condemnation would have been ended in case of the acceptance of Módtv. and would have been the competence of the National Land Fund, which conducts a defensive state land policy (see "Földet a gazdáknak" program, "Land for farmers" programme). This opportunity would have not led to the further expansion of state property, however it would have been together with the additional reduction of nature conservation role because the task definition and controlled function of national park directorates, who have lost their separate ministry structure, is also reduced and the possibility of nature conservation asset management is restricted only to the core area.

¹⁴ Hegyes Péter: Links Between Rural Development and Direct Payments Based on the "CAP Reform" of 2013, *Agrár- és Környezetjog*, 2014/17, 39-49.; Andréka Tamás – Bányai Orsolya – Olajos István: The most changes of the Hungarian Agricultural Market Policy after the 2013th CAP reform, *Agrár- és Környezetjog*, 2015/19, 6-18.; Gyurán Ildikó – Olajos István: Magyar Nemzeti Jelentés - Földhasználat és földvédelem a tagállamok jogában, The Hungarian National Report on Rural Use and Protection of Land in the Countryside, *Agrár- és Környezetjog*, 2012/12, 79.; Olajos István: The provisions of the Rural Development in connection with the agriculture in Hungary, *Agrár- és Környezetjog*, 2006/1, 3.

¹⁵ Andorkó Imre: A kisajátítás a tulajdonjog korlátainak rendszerében Iustum aequum salutare, 2013/2, 241-253.; Horváth Paula: Néhány gondolat a kényszeradásvétele (kisajátítás) tervbe vett új szabályozásához, *Magyar Közigazgatás*, 2005/2, 121-124.; Kampis György: A kisajátítás jogi rendezése és az új Ptk., *Gazdaság és Jog*, 2001/4, 18-21.; Prugberger Tamás: Adalékok a kisajátítás jogintézményének a korszerűsítéséhez, *Magyar Közigazgatás*, 1991/2, 176-180.

3. The dilemmas of practise of general asset management of National Land Fund and the special legal practise in the position of lessee

Another major problem of regulation is that the general nature of the asset management right in case of asset utilization does not include nature conservation aspects and thus the scope of task and authority of the National Land Fund is not broadened. So if the nature conservation value of an area will be increased in the future, further severity of the land use would be needed, which the national park network that lost its nature conservation asset management right cannot do no longer and it also cannot be done by the National Land Fund which has not nature conservation featured scope of task and authority. So the amendment can not be interpreted as *András Varga Zs.* (Judge of the Constitutional Court) explains in his minority report¹⁶ that there is nothing other than the rights and jurisdictions are transferred to an other state body (National Land Fund) from one of the public body (national park directorates).

Strictly interpreting we have to agree with the fact that due to the legislation change the entitlement of the nature conservation, that it can influence other persons' land use based on its own aspects, becomes difficult. The opportunity for land users, that they can join to the economic framework of the agricultural-environmental economic programme financed by the European Union, becomes narrower.

Thus the number of persons used the hungarian environmental economic supports would be significantly reduced, thus serious remaining money would be arised in the Rural Development Operative Programme. This would cause the restart of the rural development-related planning, which way through would be difficult to complete in the available two-year period until 2020.

The concerned provisions of Módtv. interfered to an extant institutional structure, deprived jurisdiction from nature conservation institution system and gave jurisdiction to Land Fund, which ensures the general agricultural asset management, in such a way, by which the area protection and the changing opportunity of changing environment would be ceased. The general asset management right is a narrower legislation compared with the aforementioned and analized nature conservation asset management. In this area, based on the Act on National Land Fund, the state legal practitioner may rely special extra rights ensured only for him and in the exercise of these rights he can ensure special extra opportunities to his contractual party. Before the adoption of Land Transaction Act, in case of state land, the state had the right to give the state-owned land to the usage a selected personal circle in a land leasehold contract against more favourable leasehold fee than the market leasehold fees. This leasehold contract, because the compensation was less, than its real value of leasehold fee, considered a short-term, a few years contract and the National Land Fund on behalf of the state exercising the land use right could determine that it had the right to modify the amount of the leasehold fee in every two years during the term of the contract.¹⁷

¹⁶ Constitutional Court Decision no. 16/2015 (VI.5) 215-218.

¹⁷ See Nfavhr. 36. §

After the adoption of the "Land for Farmers" programme, the land policy on the utilization of state land assets has changed, the state sold the dominant share of its land assets at the market price, the best farmer's offer was accepted in the state land auctions, who had the opportunity to repay the purchase price from discounted state-sponsored bank loans. However, these bank loans typically required even more repayment instalments than the new owner of the purchased land would have been got from the previous user under the legal basis of leasehold fee. The bank, which credited his land acquisition, had already demanded the interest and the repayment installment in the month after the loan from the owner, who had not been able to perform economic activity, which was the condition of bank loan, for years because of the existing lease contract. What could the owner of the purchased land share do? Because it replaced the National Land Fund and exercised the National Land Fund's right as a lessee, it had a right to change the payable leasehold fee by its tenant. Because of it, the leasehold fee could have increased tenfold and bigger unilateral leasehold fee change was not unique in this period. The new owner had absolutely no interest in maintaining the leasehold contract, and utilising his extra opportunities ensured by the inherited contract, he would have liked to force the land user inherited by him to abandon his activity.¹⁸ It is obvious that it is impossible to recover tenfold land use fee in a determined area after a multiannual profit-oriented land use history, so the land user become insolvent was forced to abandon the land use, because if he accumulates land use fee debts, according to the adequate interpretation of relevant provisions of Land Transactions Act,¹⁹ he can not only become a lessee related to a new area, but also it is not possible to get the ownership of agricultural and forestry lands by him. The land user have two options: he initiates the termination of the existing land use contract by an opportunity of mutual agreement or brings an action referred to "clausa rebus sic stantibus" in order that the civil court decides about the content of the contract between him and the new owner. In the statement of the content, it may be an important role that in the period when the legal succession happened, none of the contractual parties had any special rights referred to the Act on National Land Fund and had the right to conclude an Act on National Land Fund based leasehold contract. The leasehold contract, according to the Land Transactions Act 38. § on the usage rules, is on the established contractual legal title, but the special extra rights of state lessor are not applicable for the legal relationship of the parties. Thus, continuing the applicant's argument, only the lease, share-cropping and share-farming contract regulated by Land Transactions Act and the contractual clauses adapted to the Land Transactions Act could have been established by the court. One of these important clause is that the land use fee of the land use contract may only be modified by the contracting parties after five years²⁰ and it concerns to all contracts concluded under the Land Transactions Act.

¹⁸ Based on Nfavhr. 36. §, if the parties cannot agree with the increased lease fee, the leaseholder can terminate the contract.

¹⁹ See Fftv. 14. §

²⁰ See Fétv. 50/A§

So if the court decides that because of the change of person, a leasehold contract due to the Nfavhr. not, but a leasehold contract due to the Fétv. can be concluded by the parties, and on this contract as a contrary with the general legislation, such clause of the contract, that the leasehold fee can be modified unilaterally every two years, and for this kind of amendment, the consent of the agricultural administrative body is necessary, which was also not in this case.

The third option, that according to the contractual freedom ensured by the Fundamental Law of Hungary, right to equitable evaluation of the cases and the principle of minimum intervention of acquired rights, the person contracted by the state may not be in a position, which entails the breach of his acquired rights. In this case, the claim concerned in the case may be challenged by the court at the level of Constitutional Court assuming the harm of the general legal principles. This happened in November 2017, when the Constitutional Court rejected constitutional complaint in a similar case.

The Constitutional Court no. 27/2017. (X.25) on a completely different basis, attacks the "Land for Farmers" programme related to the undermining of the state asset connected to the cardinal laws. One of the most important element of the program is that the state sells its asset share of agriculturally usable land asset in such a way that these shares are gone to the management of farmers determined in the preamble of Land Transactions Act. In this point the state related to the implementation of land policy operating determined principles sells the significant part of its land shares acquired by the state in other ways. Related to the programme, it endeavors to the standardisation of the land ownership and land use and promotes the realisation of a fact adopted with the declaration system of Land Transactions Act, that only the person can acquire agricultural and forestry land, who is ready and able to cultivate it by its own. The petitioner criticises beyond the legislative issues, that with the operation of the programme, it shallows the Fundamental Law of Hungary Article P) in such a way, that the state owner sells its owned land. Thus it will not have a say that the national common heritage will be preservable for the future generations. In the interpretation of Constitutional Court, the protection of lands can be preservable with a complex system of rules and not limited to the principle of state ownership.

*"The arable land regulation is a multiple and complex: the Act CXXIX of 2007 on the Protection of Arable Land determines the quantitative protection of the arable land, this is independent from the owner and none element is cardinal. The forests are a protected legal item highlighted and named in the Fundamental Law of Hungary Article P), but the Act XXXVII of 2009 on the Forests contains not-cardinal provisions, so that parts of this Act can be modified by a simple majority. The Land Transactions Act is wholly cardinal, and not only in its state-owned section, this Act implements the Fundamental Law of Hungary Article P) (2). Staying the state ownership of the nature conservation lands is guaranteed by the Act LIII of 1996 on the Conservation of Nature, which enables the land exchange with the similar natural value protected natural area by the the approval of the Minister, however the other ways of alienation is not allowed by the Act."*²¹

²¹ See the Act LIII of 1996 on the Conservation of Nature (hereinafter referred to as Tvt.) 68. § (8). The referred provision is arised from the Constitutional Court Decision no. 27/2017 (X.25.) Point 41.

The Constitutional Court similar to the connected provisions of Act on Conservation of Nature interprets the analyzed Act XCIII of 1995 on the Restoration of the Protection Level of Protected Natural Areas as a legal institution ensured the protection of state-owned lands. In addition to this Act, the emergence of the general precautionary principle accepted in environmental law serves the retention of protected natural areas in state ownership, whereby the state shall ensure that the deterioration of the condition of the environment as a consequence of a particular measure does not occur. However related to the validation of the "Land for farmers" programme, the provision of 68. § (8) was consistently enforced in the land selection process, so direct sale from the nature conservation lands has not been taken place. The second essential point of the proposal was that on what the income earned from the sale of state asset protected by cardinal acts can be spent. According to the proposer, this asset can only be used for the purposes of the next generation and can not be used freely for the purposes of the state's current budget. In that regard, the Constitutional Court examined such provisions of the Act on National Land Fund. The Constitutional Court found that the burden, the providing security and providing shared ownership of the land share belonging to the National Land Fund are prohibited, however this prohibition does not apply to the transfer of ownership, so by changing the state's shareholder's share of these lands, the lands are excluded from state asset and no longer be subject to the prohibition of asset management referred to in 38. §. The sales of asset gone from the state asset is not totally free, because the subject is a forable land, which limits determined in personal, material, and obtainable quantities of land provided by the Land Transactions Act, so in the sale process the sales was and is possible in respect of the relevant regulations.

On opposite minority report was made by *Ágnes Czine* (Constitutional Court judge) and she concluded that "the operation of National Land Fund is utmost important for the protection of forable land and forests." According to her interpretation, the National Land Fund only complies with its destination, if the necessary equipments are available to fulfil it. The withdrawal of 203 thousand hectares of land under the "Land for Farmers" is such a loss of asset, which greatly affects the operation of the Land Fund, so the undermining of the institution's asset management duties can only be approved by a cardinal act. According to the interpretation of the constitutional court judge, the income replaced with arable land asset would have to be used for the purposes of the National Land Fund, because the withdrawal of income from sales endangers the protection of the arable land asset remained in National Land Fund and the preservation for future generations. Therefore agree with the petitioner, the constitutional court judge believes that the violation of the purpose of national asset's treatment and protection is possible.

István Stumpf constitutional court judge creates a similar viewpoint, who thinks that the sale of the national land asset and the income arised from it to the repayment of the national debt terminates the special asset nature of national land asset and the possibility that the income arised from it is spent to the special purpose of national land asset. Based on the opinion of István Stumpf constitutional court judge, the legal interpretation adopted by the majority of Constitutional Court questions the existence of Article P).

As you can see the Constitutional Court is not uniform in that in order to the protection of Article P), what kind of safeguarding of asset's obligation the state has. It is clear based on the last two judges' opinion that the question of asset management seems to be more important in their interpretations than the enforcement of the state's agricultural policy, which effectively seeks to the standardisation of the ownership and use and it is also seeks to the land user who actually use the land and the land users ensured their own existence the agricultural production of the country be the owners of the arable lands. In my opinion this purpose is much more important than retention of supermassive areas in state ownership and with the equipments of state asset management the maintenance of a such users, who obviously farms in lands owned by others.

In my opinion, the aforementioned state purpose corresponds most to the implementation of the state agricultural policy indicated in the Preamble of the Land Transactions Act and with the consistent application of this, the functioning of the this strategic sector can be maintained and the related acquisition rules shall be controlled and maintained with the equipments of law and it shall not directly be controlled with the political impressionable equipment of the state owner's decision.

The interests of the future generation are ensured by not the high level of state land ownership, but the uniform treated private land ownership and land use. The state can protect the interests of future generations, if in case of the change of generations also creates such rules, which contribute to the maintainence of this unit and the protection of established farm structure.

In particular related to the inheritance of the land, it does not allow the division of the established estate body possessed bodies and the breakdown of the usable estate structure. However in order to the aforementioned comes true, not the maintenance of state land management organizations, but the validation of a well designed and consistently used land inheritance system is necessary.²²

²² See about the rules of special inheritance of Agricultural and Forestry Lands: Csák Csilla – Hornyák Zsófia – Olajos István: Az Alkotmánybíróság határozata a mező- és erdőgazdasági földek végintézkedés útján történő örökléséről. Az örökléshez való jog sérelme, Jogesetek Magyarázata, 2018/1, under publishing; Hornyák Zsófia: Grunderwerb in Ungarn und im österreichischen Land Vorarlberg, *Agrár- és Környezetjog*, 2014/17, 62-69.; Hornyák Zsófia: Die Regeln der Erbfolge auf der Basis einer Verfügung von Todes wegen im landwirtschaftlichen Grundstückverkehr, *Agrár- és Környezetjog*, 2016/21, 4-27., doi: 10.21029/JAEL.2016.21.4; Hornyák Zsófia: A mezőgazdasági földek jogutódlásának anyagi jogi kérdései, *Miskolci Jogi Szemle*, 2017/2, 124-136.; Hornyák Zsófia: A földöröklés szabályozása egyes európai országokban, *Miskolci Jogi Szemle*, 2017/2, 182-188.

4. What is the matter with the asset management of lands part of the Natura 2000 system? Is the Natura 2000 area protected?

The Constitutional Court interested in the question and the problem of the possible transfer of the nature conservation areas and pursuing the idea of petitioner, interprets the correspondence of the Governmental Decree no. 262/2010 (XI.17) on the Usage of National Land Fund's Land Shares Point 9. with the Fundamental Law of Hungary ex officio. They demanded the annulment of Point 9, because according to their statement this provision violates Fundamental Law of Hungary Article P) (1) and Article XXI. The petitioners also complain that the Governmental Decree no. 1166/2015 (IX.21) Point 1/d ("Land for Farmers" programme) does not take out the Natura 2000 areas from the distribution circuit, which violates the emergence of principles set out in the previous sections of the article, and which require special treatment of nature conservation areas.

Related to the petition, the Constitutional Court interpreted the current system of the special rules of the Natura 2000 areas' designation. Related to its interpretation, it can be established that the Natura 200 area is the part of European-nature nature conservation system. It plays an important role to preserve the consistency between agricultural land use and nature conservation land use and in accordance with the purposes of nature conservation, operating as a biological corridor provide opportunity to the maintenance of the current level of biodiversity, if the interests of agriculture aiming to the monoculture are contrary. On the natural condition close areas, the current status of biodiversity may remain with the minimal human intervention or without human intervention, and the obligation of the state related to the designation is that the designation-time protection level of the areas not reduced. On time of the designation of Natura 2000 areas, the supervising European network sought that the biological corridor nature of the areas and the existence of the major species are adequately ensured. At the designation, there was no point, what is the role of the selected areas of in the nature conservation system of the given country: whether there are protected areas or just are suitable to serve the conservation of biodiversity because of the extensive farming? The organizations involved in the designation designated state and non-state areas to Natura 2000 areas the same as where the additional obligation of the user was the the maintenance of the area's current protection level and to insurance of

the framework of land use.²³ The land users were far less limited in the use of these areas than users of natural areas supervised by specific authorities decisions and management controls. Related to the monitoring of the use of Natura 2000 areas, the paying agency (Agricultural and Rural Development Agency) and later its legal successors (the agricultural and rural developments departments of government offices) included the national park directorates responsible for nature conservation tasks in the concrete verification of the use of area. The basic conditions of land use obligations were the farming activity and the fulfilment of special restrictions for a limited time, typically for the end of support cycle.

Related to the supervision, the authorities examined the legitimacy of the support and dealt with the support and delegated tasks absolutely did not take account of the question, whether the owner was a state authority, a natural person or a legal person. The special requirements of biodiversity²⁴ were borne by current user and he could require the state support to the areas used by him. The owner was not financially interested in that the leaseholders meet the requirements provided for the special conditions of the support or not on the areas leased by the owner.

²³ See: Tilki Katalin: A természetvédelem magyarországi helyzete és jogi környezete, a Natura 2000 hálózat, *Beliügyi Szemle*, 2017/9, 72-88.; The obligation of competence and jurisdiction Member States' authorities is to make a proposal to the European Committee related to the requalification of nature area listed on the list of community important nature area in the case, if the owner of area belongs to the this nature area gave an application to the aforementioned authorities referring to the natural degradation of this area, if this application is based on the circumstance that the mentioned nature area, despite of the respect of this modified directive Article 6 (2)-(4), is permanently unable to contribute to the protection of natural habitats, wild animals and plants and the formation of Natura 2000 system: C-301/12 *Közigazgatási-gazdasági döntvénytár*, 2016/3, 54-59.; For the cancellation of application on the compensation support of Natura 2000 area financed from European Agricultural and Rural Development Fund, the rules of European Community directives, which take precedence in their application and scope, shall be applied, because the Member States' regulations impose more serious obligations to the applicant: Curia Kfv. IV. 35 403/2013, *Közigazgatási-Gazdasági Döntvénytár*, 2015/3, 5-7.; Mertens Cordula: Playing at multiple levels in biodiversity governance: The case of Hungarian ENGOs in Natura 2000, *Society and Economy*, 2013/2, 187-208.; Cseke Hajnalka: Zöld a pácban - Az Audi és a Natura 2000, *Figyelő*, 2011/30, 10-11.

²⁴ See about biodiversity: Kis József – Barta Sándor – Elekes Lajos – Engi László – Fegyver Tibor – Kecskeméti József – Lajkó Levente – Szabó János: A pásztorok tudásának és világnézetének szerepe a biodiverzitás és az ökoszisztéma-szolgáltatások fenntartásában, *Természetvédelmi Közlemények*, 2016/22, 96-111.; Némethy Sándor – Walas Bartłomiej: Bioenergy Crops as New Components of Rural and Agricultural Landscapes: Environmental and Social Impact, Biodiversity, Cultural Heritage and Economy: Bioenergia termények, mint a vidéki és mezőgazdasági kultúrtájak új komponensei: környezeti és társadalmi hatás, biodiverzitás, kulturális örökség és gazdaságosság, *Journal of central European green innovation*, 2015, 111-124.; Puskásné Jancsovicska Paulina: A KAP „zöld komponense” és a biodiverzitás, *Lépések a fenntarthatóság felé*, 2015/1, 12-13.; Gencsi Zoltán: Biodiverzitás és természetvédelem a magyar Alföldön, *Erdészeti Lapok*, 2011/12, 374-375.

This is a different situation, if in case of these areas the land ownership and the land use are merged in the hands of the owner, because in this case the special use obligations provided for the conditions of the support requirements will be borne by the owner. Because of this fact, in case of sale, it is important to take into account that the land user and the owner, who undertakes the commitments for it be aware of the fact that the preservation of a special rules of land use is not only a support requirement, but also the preservation of the national obligations of the sales state.²⁵

So by the sale of the aforementioned-nature area, the land use of it will be restricted and the omission of which can result the loss of support and possible administrative sanctions too. In case of the general-nature sale of Natura 2000 areas not qualified as a nature conservation areas, the sales National Land Fund did not call the attention of the farmers applied for the area to meet the requirements and thus the National Land Fund committed a default, so to the remedying of it, the Constitutional Court found the infringement constitutional violation of the system of regulation. The Constitutional Court provided a deadline until 30 June 2018 for the adoption of special rules of the regulation of the aforementioned areas, but due to the fact that Natura 2000 areas are not part of the hungarian nature conservation system, the Constitutional Court rejected the initiative based on the petition.

Resulting from the serious work of referring *Marcell Szabó*²⁶ constitutional court judge, the Constitutional Court has made a decision, which is exemplary in the aspect of nature conservation and environmental law and which may be the basic of legal researches related to the Natura 2000 areas. Related to this decision, the different regulatory object and the regulatory method of domestic and European nature conservation law can be interpreted well in the field of nature conservation. While the domestic nature conservation law is based on the territories protection and species protection systems, the european nature conservation law is based on a systemic nature regulation similar to environmental protection, and a strange overlapping of these systems is the Natura 2000 areas, which are well identified with the concept of biological corridor regulated in the nature conservation act and explained in the previous part of this article. The Constitutional Court has interpreted strictly the action obligations created in the system of domestic environmental law related to nature conservation areas. It has only the responsibility for the state management and taking state ownership of nature conservation areas, the prohibition of regression only applies to the regulation system of these areas, the Natura 2000 area is not a nature conservation area guaranteed by the Fundamental Law of Hungary.

²⁵ See Constitutional Court Decision no. 28/2017 (X.25) Points 15-18.: Several international legal instructions are analysed by the Constitutional Court.

²⁶ Szabó Marcell: Az európai jog és a nemzetközi jogrend – hierarchia és összefonódás, *Állam- és Jogtudomány*, 2012/2-3, 191-211.; Szabó Marcell: The Implementation of the Judgment of the ICJ in the Gabčíkovo-Nagymaros dispute, *Iustum Aequum Salutare*, 2009/1; 15-26.

The Hungarian nature conservation law creates a transition between the nature conservation areas and free arable areas. However for the special treatment of such areas, the state has a special obligation related to the requirements in connection with the fulfilment of the relevant European Union directives. This obligation is clearly defined as the system of the requirements of the special rural development supports related to the Natura 2000 areas. However the compliance of these requirements is embodied for the state in legislative obligation, having regard to the obligations related to the proper transposition of the Birds Directive 79/409/EEC and the Habitats Directive 43/92/EEC. Here the special situation derives from the fact that the new natural person owner becomes the individual user of the area at the same time. Since these two legally regulated status merged in one hand, so special rules shall be created to the legal compliance of special requirements. In my opinion, by the end of "Land for Farms" programme this new instruction system is qualified as a subsequent regulation and if the land use of unlimited land use owner is got heavy related to these obligations, resulting from the subsequent-nature of the regulation, it may also raise the possibility of the enforcement of the damage caused by contract. The other possibility is that due to the constraints of the circumstances, the owner, by the withdrawal from the contract, may require the repossession of the area by the state.

However in this case, the establishing of the payable compensation amount shall be based on the adequate compensation of the injured party, not on the actual value of the area.

In summary, the protected areas are owned by the state and the related special asset management and the ambition for the protection of this can be considered as an acquisition of the hungarian nature conservation law which has been the part of the hungarian legal system since 23 years and for the protection of it, different from other established institution,²⁷ the Constitutional Court consistently applies the prohibition of regression related to the determination of legislative freedom of the state bodies.

²⁷ By the termination of Parliamentary Commissioner for Future Generations and the significant decrease of the official apparatus and budget of the deputy ombudsman responsible for the area, a retrocession happened at the significant and institutionalized area of environmental protection. This fact was not observed by the Constitutional Court *ex officio* (the opinion of the author).