István TEMESI[1] – Ágoston KOROM[2]

Lessons Learned From Askos Properties Eood Judgement[3]

Force majeure, exceptional circumstances, definition of expropriation of agricultural holding in the scope of EAFRD

Abstract

The main proceedings concern a farmer in Bulgaria who, under a rural development programme, undertook to maintain the lands leased through agreements concluded for five years with the municipality in good agricultural and environmental condition and engage in agricultural activities in those areas. After the amendment of national legislation, meadows or grasslands owned by municipalities or the state were to be leased exclusively to owners or users of farms with herbivorous animals based on the number and type of their declared livestock. Since the concerned party of the main proceedings failed to meet these requirements after the amendment, the municipality terminated the agreements in question. The paying agency of the member state claimed reimbursement of 50% of the amount already paid under the rural development programme. In contrast, the concerned party of the main proceedings considered that the amendment to the national legislation constituted force majeure, exceptional circumstances or expropriation of agricultural holding. The present study examines the CJEU's decision on this matter.

Keywords: force majeure and exceptional circumstances, expropriation of agricultural holding, deprivation of property provided for in Article 17 of the Charter, obligations undertaken under EAFRD, definition of reparcelling measures

1 | Dr. Habil. TEMESI, István, Head of Department, MATE AGI Department of International Regulation and Business Law

2 | Dr. KOROM, Ágoston PhD, assistant professor, Károli Gáspár University, Faculty of Law, Institute of Private Legal Sciences

3 | Court of Justice of the European Union (2024) *Case C-656/22, Askos Properties EOOD v Zamestnik izpalnitelen direktor na Darzhaven fond "Zemedelie"*, ECLI:EU:C:2024:56.

István TEMESI – Ágoston KOROM: Lessons Learned From Askos Properties Eood Judgement. *Journal of Agricultural and Environmental Law* ISSN 1788-6171, 2025 Vol. XX No. 38 pp. 457–473

https://doi.org/10.21029/JAEL.2025.38.457

Introduction

The research primarily seeks to answer the question of whether, within the scope of the EAFRD, if an agricultural producer undertakes a multiannual commitment concerning a specific plot of land, the subsequent abandonment of this commitment – due to an amendment of national legislation – can be considered a circumstance that may create an exemption from the repayment obligation, especially in light of the relatively strict repayment practice established in the case law.[4] The main proceedings concern a Bulgarian farmer who applied for rural development support between 2013 and 2015. In that context, the farmer undertook to maintain.[5]

The Bulgarian legislation was amended in 2015, according to which the lands of the state or the municipality were to be leased or distributed exclusively to owners or users of agricultural holdings who owned herbivores concerning the number and type of their declared livestock. In connection with the amendment, a deadline of February 2016 was given to comply with this amendment, which the party of the main proceedings did not meet. Therefore, the municipality terminated the lease contracts that were concluded. The national paying agency decided that the economic operator had to repay half the amount paid between 2013 and 2015.

The concerned party in the main proceedings considered that the termination of the lease agreements due to national legislation constituted force majeure or exceptional circumstances, and the aid shall not be reimbursed accordingly.

The first question referred for a preliminary ruling was essentially whether the relevant provisions of the applicable regulation[6] must be interpreted as meaning that the termination of the lease of the agricultural land in question, which was the subject of aid granted under the EAFRD, and the new conditions imposed by the new legislation of the Member State, constitute *force majeure,*[7] exceptional circumstances or expropriation of the agricultural holding within the meaning of the relevant regulation.

The relevant interpretation is that where the Member State may recognise the existence of *force majeure* or exceptional circumstances, it may not require repayment of all or part of the aid.

The judgment stands apart from the land policy framework, where EU law considers national land policy measures regarding fundamental economic freedoms, including the free movement of capital, the freedom of establishment, or

4 | For more about the practice of national and EU law, see: Ujhelyi-Gyurán, Lele & Pártay-Czap 2024, 203; Korom 2023, 86; Szinek Csütörtöki 2023, 128.

5 | In the light of the decision, Regulations 1974/2006, 1305/2013 and 1698/2005 apply.

6 | Article 47(1) of Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (hereinafter referred to as Regulation (EU) No 1974/2006)

7 | Article 47 of Regulation (EU) No 1974/2006

the Services Directive.[8] While these principles are generally applicable, the key difference lies in the necessity of a cross-border element, which is not required under the Services Directive.[9]

In contrast, it also diverges from applying the principles of legitimate expectation and legal certainty in the context of the EAFRD, particularly concerning subsidies that are wrongly paid or unduly granted. These principles typically do not apply except in exceptional circumstances. Nonetheless, the judgments in question may grant exemptions from sanctions related to repayment.

The paper's determining method is the analysis of the judgment, from which we can learn how similar cases should be resolved in the future and what legal practice should be taken into account. In this regard, some uncertainty remains, which will most likely be clarified by future similar decisions. Regarding the literature review, it can be concluded that this topic has not been addressed before, it represents a new perspective.

Opinion of the CJEU

According to the case law of the CJEU,[10] "any event being outside the control of the operator, resulting from abnormal and unforeseeable circumstances, and the consequences of which, despite the exercise of all due care, could not have been avoided" may constitute *force majeure* or exceptional circumstances, within the meaning of Article 47(1) of Regulation No 1974/2006, in the context of the EAFRD.[11] As interpreted by the CJEU, it also follows from recital 37 and Article 47(1) of Regulation (EC) No 1974/2006, considering that the list referred to in the latter provision is non-exhaustive, that *force majeure* or exceptional circumstances can cover cases not included on that list. Therefore, they can also cover the conduct of the public authorities.[12] According to the case law,[13] it is also a condition of exceptional circumstances or *force majeure* that the concerned one has taken appropriate measures against the event's consequences.[14]

8 | It should be noted that the ASKOS case is not concerning land policy. For more about the issues regarding land policy, see Korom 2021c.
9 | For more about this issue see: Korom 2023.
10 | In this regard, CJEU referred to judgments of Szemerey case (C-330/14), Zamestnik case (C-343/21) and Greenland Poultry case (C-169/22).
11 | Court of Justice of the European Union, C-656/22, Section 47.
12 | Ibid, Section 48.
13 | Court of Justice of the European Union (2019) *Case C-660/17 P, RF v European Commission*, ECLI:EU:C:2019:509; However, it must be noted that the judgement in question does not fall within the scope of the Common Agriculture Policy.
14 | The criteria developed by the CJEU as set out above must be assessed by the national court in the Member State of origin, as well as whether the concerned party in the main proceedings had the opportunity to acquire a livestock holding, or whether it could have acquired other land, including from private individuals.

Reviewing the question of whether the termination of the agreement in the main proceedings can fall under the concept of "expropriation of agricultural holding", within the meaning of Article 47(1)(c) of Regulation No 1947/2006, the CJEU states that concept is not defined either in that regulation or by reference to the national laws of the Member States. Thus, that concept must be regarded as an autonomous concept of EU law[15] regarding the teleological interpretation of the objectives of the regulation. CJEU referred to the judgement of the Venezuela v. Council case, but that case does not fall within the scope of the Common Agriculture Policy.

As mentioned above, Regulation (EC) No 1947/2006 does not provide any useful information on the expropriation of agricultural holdings. Still, it is clear from the use of a teleological interpretation that this regulation lays down detailed rules for the implementation of Regulation (EC) No 1698/2005,[16] which aims to provide support for farmers in mountainous areas with handicaps who undertake to conclude a lease for a minimum period of five years and to use the agricultural land concerned during that period.[17]

From its case law, the CJEU concluded that the concept of expropriation in Article 47(1) Regulation (EC) No 1947/2006 covers not only measures depriving a person of property rights but also those that are treated in the same way.[18]

The CJEU recalled its case law according to which the forced, total and definitive extinguishment of a usufructuary right may be considered a deprivation of property under Article 17 of the Charter of Fundamental Rights of the European Union[19] where the rights in question confer on the concerned one the right to use the property and to receive the benefits.[20]

From the above, the CJEU derived by analogy that if, in the present case, the examined national legislation definitively and completely abolishes the right of use and the right to receive the benefits of the land in question by the concerned party in the main proceedings, the national legislation in question constitutes a breach of the right to property enshrined in Article 17 of the Charter of Fundamental Rights of the European Union. It must, therefore, be considered to be an expropriation of an agricultural holding within the meaning of the Regulation, i.e.

15 | Court of Justice of the European Union, C-656/22 Section 53.
16 | Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).
17 | Court of Justice of the European Union, C-656/22, Section 55.
18 | CJEU referred to the judgement of Laan-Velzeboer case (C-285/89), which fall within the scope of the Common Agriculture Policy.
19 | It is important to point out that the judgment in this regard examines the applicability of Article 17 of the Charter of Fundamental Rights of the European Union in relation to implementation by Member States. In the context of the application of the CAP, property rights and the general principles of EU law have a much more limited application in the case of review by the CJEU of EU legislative acts. See in Bianchi 2012, 50–72.
20 | Court of Justice of the European Union, C-656/22, Section 57,

Article 47(1)(c) of Regulation (EC) No 1974/2006.[21] However, the legislation of the Member State in question provides for the termination of lease agreements only if they are not brought into conformity with the requirements laid down within the prescribed period.

Based on the judgement, the acting national court[22] has to examine whether the lease agreement's termination, under the Member State's law, entailed the compulsory, complete and definitive extinction of the tenant's rights. Still, this court has to examine not only the occurrence of the deprivation of the property regulated by Article 17 of the Charter but also that whether, based on the case law, the situation in question may be considered as a de facto expropriation.[23] The acting national court also has to examine whether the concerned party of the main proceedings had the opportunity to take measures to comply with the new requirements or whether it made such measures, as well as, the effects of the introduction of the new requirements regarding the concerned party of the main proceedings also has to be examined taking into account all circumstances to determine whether the deprivation of the right to property has occurred.[24]

The second question asked in the proceedings was whether Article 45(4) of Regulation No 1947/2006 can be applied in a situation in which the considered party is unable to fulfil its obligations because its agricultural holding is the subject of public land-consolidation measures or of land-consolidation measures approved by the competent public authorities. The CJEU referred to the judgement of Zamestik case,[25] which, inter alia, determined that any operation which has as its purpose the reconfiguration and rearrangement of agricultural parcels to form more rational agricultural holdings in terms of land use and which is decided upon or approved by the competent public authorities is likely to fall within the concepts of 'reparcelling and public land-consolidation measures' or of 'land-consolidation measures' approved by the competent public authorities.[26] CJEU gave a clear answer: the above provision does not apply where the aid beneficiary cannot fulfil its obligations due to the new requirements, i.e. the obligation to have a livestock facility provided by the legislator.

21 | Ibid, Section 59.
22 | Court of Justice of the European Union, C-656/22, Sections 59–60.
23 | Court of Justice of the European Union (2022) *Case C-83/20, BPC Lux 2 Sàrl and Others v Banco de Portugal and Others*, ECLI:EU:C:2022:346.
24 | Court of Justice of the European Union, C-656/22, Section 61.
25 | Court of Justice of the European Union (2022) *Case C-343/21, RS v Pensionsversicherungsanstalt*, ECLI:EU:C:2022:757. E.
26 | Court of Justice of the European Union, C-656/22, Section 65.

Relations to judgement of Järvelaev case[27]

In its judgement in Askos Properties Eood case, CJEU repeatedly referred to the judgement in Järvelaev case. Hence, how it may be relevant to the present case is examined hereby. In the case of Järvelaev, the concerned party of the main proceedings was awarded a grant for purchasing a sailing boat within the frames of a measure related to Leader axis, where the beneficiary. However, no condition in the relevant regulation,[28] also undertook to create jobs. The concerned party, Järvelaev, a not-for-profit association, leased the asset, which led the authorities to claim back the amount of the grant received. Several questions have been raised in the proceedings, including whether this leasing should be considered a substantial operation change. This was a question for the national court to decide. It was also for the national court to decide whether there had been a substantial modification of the operation in terms of job creation, taking into account the fact that the rural development objective pursued by the Leader axis, namely the development of rural tourism services, had been met.

CJEU stated that to protect the financial interests of the European Union and to ensure effective control, the Member State may not require the assets in question to be used for five years without allowing for an individual assessment, but it is for the national court to assess whether the failure to create jobs, which is not one of the objectives of the regulation or of the Estonian legislation but which the beneficiary has undertaken to create, constitutes a significant modification which, because of the irregularity, requires the grant in question to be recovered. This decision can be considered unusual insomuch as neither the Charter of Fundamental Rights of the European Union nor the general principles of EU law, such as proportionality, legal certainty and legitimate expectations, were applied. Still, the CJEU based its decision almost exclusively on the discretion ensured by the relevant regulations.

It is common in the two cases that they concern rural development aid and that there have been some changes to the commitments. However, a difference is that in the Askos case, the farmer could not meet the obligations under the EAFRD due to a change in national legislation. In contrast, in the Järvelaev case, the beneficiary changed its obligations. Neither the job creation nor the leasing of the asset can be considered as entirely bona fide, irrespective of the interpretation of the CJEU, in particular the criteria relating to the discretionary power of the Member State. Furthermore, in the Askos case, the CJEU interpreted the concepts of the

27 | Court of Justice of the European Union (2019) *Case C-580/17, Mittetulundusühing Järvelaev v Põllumajanduse Registrite ja Informatsiooni Amet (PRIA)*, ECLI:EU:C:2019:382.
28 | Council of the European Union (2005) *Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).* Official Journal of the European Union, L 277, 21.10.2005, 1–40.

relevant regulation using the property rights enshrined in Article 17 of the Charter of Fundamental Rights of the European Union and the interpretations applied in the scope of the CAP and in the EU legal order as a whole. In the Järvelaev judgment, the Member States' margin of manoeuvre in implementing the regulations in the Member States played an important role almost exclusively. Consequently, it is not entirely clear what the CJEU "saw as common ground" in Järvelaev and Askos judgments.

Requirements related to reimbursement of aid paid under the EAFRD

The importance of the dispute "decided" in the Askos Properties judgment is that if the amendment of the national legislation in question does not constitute force majeure, exceptional circumstances, expropriation of the agricultural holding, or a possible reparcelling measure, the farmer will have to repay part of the aid received under the EAFRD. The case law examined below analyses the case law on the repayment of aid paid unlawfully or without justification under the EAFRD.

However, as a general rule, in cases where a Member State directly applies EU regulations within the scope of the Common Agricultural Policy, the general principles protecting economic operators[29] are generally given a limited role, and the protection of the financial interests of the European Union is more prominent. In cases where the Member State does not implement the regulations directly but through various implementing measures, the protection of the financial interests of the European Union is generally overshadowed in the event of any irregularity, and the role of the general principles protecting economic operators and agricultural operators is given priority.[30] An exception to this general rule is the area of rural development, including the judgement in Ministru kabinets, Erzeugerorganisation, Martin Huber or SC Avicravil Farms case. In these decisions, as a general rule, rigorous criteria apply to recovering rural development funds paid illegally or without a proper legal basis.

In the judgment of Ministru kabinets case,[31] the rural development programme of the given Member State – i.e. Latvia – allowed that, if the beneficiary

29 | With regard to the discretion of the Member States and the applicability of the general principles, Aude Bouveresse explains the interplay of economic factors. This case law certainly has a dual economic objective: on the one hand, it is intended to prevent abuse and therefore, as a general rule, it imposes very strict requirements on the Member States as regards amounts paid illegally or without justification. On the other hand, it also allows this case law to be nuanced in individual cases, taking into account the economic situation of the farmers who are operators. See Bouveresse 2010, 19–23.

30 | Korom 2021a, 641–656; Korom 2021b, 413–426.

31 | Court of Justice of the European Union (2018) *Case C-120/17, Administratīvā rajona tiesa v Ministru kabinets*, ECLI:EU:C:2018:638.

died during the period of the aid in question, his/her heirs could benefit from an early retirement pension for the remaining period. The national legislation was amended, which meant that heirs who had honoured their commitments also lost their rights. The CJEU concluded, by means of a purposive interpretation of the provisions of the underlying regulation, that the heritability of the aid in question was not lawful. As a general rule, economic operators cannot rely on the principle of protection of legitimate expectations against a clear provision in an EU legal text, nor can the conduct of national authorities give rise to legitimate expectations. However, the CJEU "took into account" the fact that the European Commission had approved the programme in question and that the parties concerned were not informed of the fact that the European Commission had subsequently notified the Member State of its objections to the inheritability of the aid in question. Consequently, the principle of legitimate expectations could exceptionally apply.

In the main proceedings of Erzeugerorganisation case[32], a producer organisation received aid for purchasing food processing equipment. The equipment was installed on the premises of a subcontractor of the beneficiary of the aid, based on a lease contract, under the supervision and responsibility of the beneficiary. It was with this knowledge that the Austrian authorities approved the programme in question and paid the first instalments of the grants. The authorities later ordered the reimbursement of the aid paid, as they found that the person concerned was not entitled to get the aid in question. The CJEU relied on a teleological interpretation to conclude that the person concerned in the main proceedings was not entitled to the aid.[33] As a general rule, the Member State has no discretion to recover aid granted without legal basis or unlawfully and, also as a consequence of settled case law, it follows that an economic operator cannot invoke the general principle of the protection of legitimate expectations against an unambiguous provision of an EU text. Moreover, the cases relating to the bearing by the Union of the costs of the Common Agricultural Policy must be interpreted strictly since otherwise, the Member State would place its operators in a more favourable position. The CJEU, in the light of the circumstances of the case, ordered the application of the general principle of legal certainty, subject to the following conditions: the Union's right to recovery must be taken into account, the good faith of the person concerned must be established beyond reasonable doubt, and the law of the Member State concerned must provide for a similar possibility in the case of aid granted by that Member State alone.

32 | Court of Justice of the European Union (2017) *Case C-516/16, Erzeugerorganisation Tiefkühlgemüse eGen v Agrarmarkt Austria*, ECLI:EU:C:2017:1011.

33 | However, such situations must be decided on a case-by-case basis, as the CJEU has also held that the mere fact that a producer organisation does not own the site of an investment does not necessarily mean that the investment in question was not made for the beneficiary.

In the Martin Huber case,[34] an Austrian farmer received aid, which was withdrawn after three years because the farmer used products prohibited by the relevant directive. The farmer concerned did not contest the use of the prohibited products in question but argued that he had not committed an infringement because the directive in question had not been made available to him, and the authorities had been aware of the use of those products all along. According to the farmer, the information was only available on the Ministry's bulletin board. The European Commission has approved the programme in question, including its content, but this approval does not confer EU status on the Member State's act in question, and, according to the practice of the CJEU, the Commission's approval is only relevant for the Member State in question. In its judgment, the CJEU recalled that, inter alia, the principle of effectiveness must apply in this area in the case of recovery of aid paid without legal basis or unlawfully, which means that national legislation must not render impossible or excessively difficult the recovery of the amounts in question.

In the judgement of the SC Avicravil Farms SRL case[35] the party concerned with the main proceedings has received aid for undertaking animal welfare measures. The European Court of Auditors has carried out audits in Romania, which also found significant overpayments in relation to the measure in question. Subsequently, the authorities reduced the level of the fee in their decisions also for the person concerned by the main proceedings. The application of the general principle of legal certainty was also raised in relation to the reduction of overcharges resulting from calculation errors before the European Commission adopted a decision. The CJEU has applied, inter alia, the principles established in the Erzeugerorganization judgment, according to which Member States do not have discretionary powers to recover amounts unduly or unlawfully paid under the Common Agricultural Policy.

This case law, like the judgments already examined, does not exclude that the Member States apply the principles of legal certainty and legitimate expectations when recovering the aid in question. As regards the question of whether the administrative authorities could have created legitimate expectations in the economic operators, the case law is clear: contrary to a clear provision of EU law, legitimate expectations cannot be based on the existence of a pre-existing situation[36], even if the economic operator in question was acting in good faith. Nor could the principle of legal certainty be applied since the relevant EU legislation is clear that the payments under examination can only be intended to compensate for benefits foregone as a result of the commitment.

34 | Court of Justice of the European Union (2002) *Case C-336/00, Republik Österreich v Martin Huber*, ECLI:EU:C:2002:509.
35 | Court of Justice of the European Union (2022) *Case C-443/21, Avicarvil Farms*, ECLI:EU:C:2022:1234.
36 | The related EU provisions prescribed, inter alia, that the aid in question is to compensate the costs that occurred in relation to the obligation undertaken.

Concept of force majeure and exceptional circumstances

The question is what lessons, besides the specific legal provisions, can be drawn which lessons go beyond the resolution of situations such as the one in the main proceedings of the CJEU judgment under review.

To determine what constitutes force majeure or exceptional circumstances within the scope of Article 47(1) of Regulation (EC) No 1974/2006 for the purposes of the application of the EAFRD, the CJEU has taken as a basis the case law. In doing so, it has considered the judgements in the Szemerey case[37], Zamestnik case[38], and Greenland case[39]. According to these, *force majeure* or exceptional circumstances are defined as any event outside the control of the economic operator, the result of exceptional and unforeseeable circumstances, the consequences of which it could not have been avoided even if it had taken the greatest possible care. Of the judgments cited, the judgment in Szemerey did not apply Article 47(1) of Regulation (EC) No 1947/2006, but Regulation (EC) No 1698/2005 and Regulation (EC) No 1122/2009[40]. In the Zamestik judgment, the CJEU examined the concept of *force majeure* in the context of applying Regulation (EC) No 73/2009. In the Greenland Poultry judgment, the CJEU also examined the conditions for the application of *force majeure* in the context of the application of Article 47(1) of Regulation (EC) No 1947/2006 to the EAFRD. Consequently, the concepts and case law examined above apply only in the context of applying the Common Agricultural Policy[41] and in the field of EAFRD aid.[42]

Recital 37 of Regulation (EC) No 1974/2006 provides for the establishment of common rules for, inter alia, *force majeure* or exceptional circumstances, and Article 47(1) of the same Regulation provides that Member States may recognise categories of *force majeure* or exceptional circumstances in the cases listed by way of example. From these two provisions, the CJEU has deduced that the concepts of force majeure and exceptional circumstances may also include cases not listed,[43] which may thus include the conduct of public authorities.

The CJEU, drawing on case law, has set the additional criterion that the person concerned must take appropriate measures to avoid the event's consequences. The

37 | Court of Justice of the European Union (2015) *Case C-330/14, Szemerey Gergely v Miniszterelnökséget vezető miniszter*, ECLI:EU:C:2015:826.
38 | Court of Justice of the European Union (2022) *Case C-343/21, Zamestnik izpalnitelen direktor na Darzhaven fond "Zemedelie"*, ECLI:EU:C:2022:696.
39 | Court of Justice of the European Union (2023) *Case C-169/22, Groenland Poultry SRL*, ECLI:EU:C:2023:638.
40 | In this case, CJEU applied the concept of force majeure, inter alia, in the scope of Regulation (EC) No 1122/2009
41 | There are principles in the EU legal order that are not specific to one area, but it is not the case here.
42 | The judgement in Szemerey case falls only partly within the scope of EAFRD.
43 | Article 47(1) of the Regulation was permissive in principle, as confirmed by recital 37.

judgment cited in this case, P-RF v Commission,[44] does not fall within the scope of the Common Agricultural Policy, which appears to be a cross-cutting concept of an entire EU legal regulation. It is this practice, developed outside the scope of the Common Agricultural Policy that the national court must take into account to determine whether the person concerned has taken appropriate measures to counter the consequences of the event. In this specific case, it means that the national court had to examine whether the person concerned had the possibility of acquiring a livestock holding or whether it had the possibility of acquiring the land in question from a private individual.

Concept of expropriation of agricultural holding

According to the interpretation of the CJEU, the concept of expropriation of agricultural holding must be regarded as an autonomous concept of EU law and must be interpreted uniformly throughout the territory of the European Union since Article 47(1) of Regulation (EC) No 1947/2006 neither provided a definition regarding the concept in question, nor referred to the law of Member States. CJEU referred to the judgment of the Venezuela v Council case, but this judgment does not fall within the scope of the Common Agriculture Policy but within the Common Foreign and Security Policy (CFSP). However, the CJEU did not refer to the judgment in question in the context of expropriation or expropriation of agricultural holdings, but in the sense that if a secondary EU act does not define a concept, it must be considered as an autonomous concept within the Union, taking into account the objectives and context of the given secondary EU act. It seems that the teleological interpretation applies not only to the provisions of the relevant secondary Union act but also to the implementing regulation of the relevant regulation. The objective of the implementing regulation is, inter alia, that farmers who receive aid in the areas with handicaps should undertake to continue their activity and to use the land in question for at least five years.

In this context, CJEU has concluded that expropriation within the meaning of Article 47(1)(c) of Regulation (EC) No 1974/2006, in the light of the case law, includes not only the deprivation of property but also measures which are equivalent thereto. The referred judgment in the van der Laan-Velzeboer case[45] falls within the scope of the Common Agricultural Policy, in which a measure of a Member State reduced the territory of land belonging to a dairy farm. In the view of the CJEU, the measure in question could restrict property rights because it could lead to a reduction in milk production.

44 | Court of Justice of the European Union, C-660/17
45 | Court of Justice of the European Union (1991) *Case C-285/89, Metalgesellschaft and Others v Commission of the European Communities*, ECLI:EU:C:1991:361.

Within the meaning of the judgment in the Commission v Hungary case,[46] the forced termination of a right of usufruct can be considered as a deprivation of property within the meaning of Article 17 of the Charter of Fundamental Rights of the European Union, provided that this right confers on its holders the right to use the property and to receive the benefits thereof. The main issue in the referred judgment in the Commission v Hungary case[47] was the abolition of usufructuary rights in agricultural land, which was a measure of a Member State penalising the circumvention of provisions of the Treaty of Accession of Hungary which restricted the acquisition of agricultural land by persons resident in other Member States and which was not aimed at an objective of property policy.[48] In any event, as regards the deprivation of property criterion in Article 17 of the Charter, the case law of the CJEU is based on the private law of the Member State concerned, i.e. if the national law in question abolishes rights which, under the private law of that Member State, guarantee the use of the thing in question, there is a deprivation of property.

This is the practice the CJEU used: i.e. there is a deprivation of property under Article 17 of the Charter, and therefore it constitutes "expropriation of agriculture holding" within the meaning of Article 47(1)(c) of Regulation (EC) No 1974/2006, where the legislation of a Member State, by its very content or because of a coercive measure adopted by the authorities of a Member State, completely and definitively terminates the right of a farmer who has concluded a lease contract to acquire land corresponding to the obligations entered into under the EAFRD to use and benefit from the land concerned.

Several conclusions can be drawn from this finding: the case law does not distinguish between restrictions imposed by Member States in the context of the application of fundamental economic freedoms and the deprivation of property imposed by the CAP, in particular by the EAFRD. In neither case can only the deprivation of property rights be considered as expropriation, but a situation which abolishes the right to use and benefit from the land in question. In the present case, the case law treats as an essential distinction that the deprivation of property provided for in Article 17 of the Charter must be interpreted in the light of the provisions applicable to the EAFRD, within the framework of which the farmer has undertaken an obligation. Within this framework, the recognition of a breach of the right to property because of the obligations imposed under the EAFRD appears to be recognised by the CJEU in the case of less restrictive measures by Member States.

On the other hand, it must also be interpreted in the context of the above that it is not only the "classic" case of Member States having to take into account the

46 | Court of Justice of the European Union (2019) *Case C-235/17, European Commission v Hungary*, ECLI:EU: C:2019:432.
47 | Ibid.
48 | This is understood in the sense that the national legislation in question was not aimed at regulating the structure of agricultural holdings, nor was it directly linked to CAP support.

requirements of the general principles of EU law and the relevant provisions of the Charter of Fundamental Rights of the European Union when implementing secondary EU law provisions,[49] but also the practice of Article 17 of the Charter in relation to agricultural land in the context of the application of fundamental economic freedoms, when interpreting the concepts of the EAFRD Regulation, i.e. the definition of expropriation of a farm.

Meanwhile, the CJEU recalled that the amendment of the relevant national legislation only terminates the leases in question if the new conditions are not met within the prescribed time limit. However, in the context of the application of Article 17 of the Charter, it is necessary to examine not only whether there has been a dispossession or a formal expropriation, but also whether the situation in dispute constitutes an actual expropriation. In this respect, an account should be taken of the judgment in BPC Lux 2 and Others,[50] which examined, inter alia, compliance with Article 17 of the Charter in the area of the Banking Union, Resolution of Credit Institutions. It follows that this concept, i.e. the concept of effective expropriation, must be interpreted in a uniform manner throughout the EU legal order.

The procedure did not reveal whether the concerned party in the main proceedings could comply with the new requirements imposed by the change in national law. Therefore, it is necessary to examine all relevant circumstances, including whether the concerned party in the main proceedings could obtain the missing land from private persons. Thus, the court in the Member State must examine on a case-by-case basis whether there has been a deprivation of property or not.

Summary

The CJEU "summarized" the "decision" in the operative part as follows: The termination of the contracts in question as a result of a change in the legislation of a Member State may be considered to be *force majeure* or exceptional circumstances within the meaning of the relevant regulation, provided that it constitutes an extraordinary and unforeseeable event outside the control of the rightsholder and that the rightsholder has made every effort, without excessive sacrifice, to bring the contracts in question into line with the new requirements.

The case law[51] seems to have developed a uniform interpretation of the concepts of *force majeure* and exceptional circumstances in the context of applying the

49 | Court of Justice of the European Union (2014) *Case C-135/13, Szatmári Malom Kft v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága*, ECLI:EU:C:2014:327.
50 | Court of Justice of the European Union (2022) *Case C-83/20, BPC Lux 2 Sàrl és társai kontra Banco de Portugal és társai*, ECLI:EU:C:2022:346.
51 | Therefore, a de lege ferenda proposal is difficult to formulate, as the very essence of this line of case law lies in providing case-by-case guidance to national courts on how to proceed in similar situations.

EAFRD, irrespective of the regulation concerned. However, the concepts of *force majeure* and exceptional circumstances are interpreted broadly, including, inter alia, acts of the State.

According to the relevant regulation, the CJEU interprets a measure of a member state as an expropriation of an agricultural holding if the termination of the contract constitutes a measure involving the deprivation of property, which deprives the person concerned of the use and enjoyment of the agricultural land concerned. As regards the additional condition that the concerned one must take appropriate measures against the occurrence of the event, a uniform interpretation should be applied not only in the context of the application of the CAP and the EAFRD, but also in the entire EU case law.

The concept of expropriation of agricultural holdings should be considered autonomous and interpreted uniformly throughout the EU, as the relevant regulation neither refers to national law nor defines the concept. In interpreting the law, an account must be taken not only of the objectives and context of the regulation in question but also, where appropriate, of the implementing regulation.

In this case, the CJEU considered the objectives of the implementing regulation, which support farmers in areas with handicaps to ensure the continuation of their activities and the use of the land concerned. This interpretation is linked to the specificities of the case, but it is likely to be a relatively frequent objective in the context of applying the EAFRD.

From the above objective and from a judgment concerning a judgement regarding the reduction in milk production within the scope of the CAP, in which a Member State measure was capable of restricting property rights because it reduced milk production, the CJEU concluded that expropriation within the scope of the relevant regulation includes not only the deprivation of property but also measures which are equivalent to it.

The CJEU has developed a practice in the field of the free movement of capital, according to which a measure of a Member State which abolishes usufructuary rights in agricultural land constitutes a deprivation of property within the meaning of Article 17 of the Charter, if the private law of that Member State ensures the use and enjoyment of the property in question. The principle developed in the above judgment has been given a specific interpretation by the CJEU in the present case, in the context of the objectives of the EAFRD, namely that the relevant regulation constitutes an expropriation of agricultural holding within the meaning of Article 17 of the Charter where, as a result of the legislation of a Member State or of coercive measures taken by the public authorities in application thereof, the right to use and benefit from the land in question is definitively withdrawn from farmers who have concluded leases in respect of the land in question to fulfil obligations undertaken under the EAFRD.

It follows that the deprivation of property provided for in Article 17 of the Charter in the context of the negative form of integration, i.e. both in the judgment in

Commission v Hungary and in the present case, is made conditional on the private law of the Member States according to the same criteria: that is if the measure of the Member State definitively terminates the right to use the land and to receive the benefits of that land.

On the contrary, there are also important differences between the application of the negative form of integration, i.e. free movement of capital, and the application of positive integration in the context of the application of the EAFRD. In the judgment in Commission v Hungary, the national legislation in question permanently terminated the right of the persons concerned to use and benefit from the land in question. By contrast, in the context of the application of the positive form of integration, i.e. in the present case, the expropriation of agricultural holding, i.e. the deprivation of property, is deemed to be the expropriation of a holding if the legislature of a Member State imposes a condition on the leasing of land owned by the municipality or by the state which, in the present case, relating to livestock farming, may prevent the leasing of land necessary to meet the commitments entered into under the EAFRD during the period of the commitment.

This practice can, of course, be applied only in situations relating to the EAFRD commitment, and not to all the conditions imposed by the national legislator which would impose conditions on the lease of public or municipal land. Another interesting difference is that one of the most important results of the judgment in the Commission v. Hungary case is that, in addition to the free movement of capital, the fundamental economic freedoms of the EU were examined independently in relation to the property rights under Article 17 of the Charter, whereas in the present judgment the CJEU "used" the interpretation of Article 17 of the Charter, as developed in the Commission v Hungary case, to interpret the concept of expropriation of agricultural holdings in the EAFRD Regulation. In other words, it is not only the usual, albeit less known, obligation for Member States to take into account the requirements of the Charter and the general principles of EU law when implementing primary and secondary EU acts, but also the interpretation of the Charter provisions, in certain circumstances, that determines the applicability and interpretation of the concepts defined in secondary EU acts.

The case law on the deprivation of property developed under Article 17 of the Charter must examine not only the practice of the Common Agricultural Policy and Member States' operations on agricultural land but also the case law in a broader sense of EU law, which covers cases that are known as de facto expropriation if the case cannot be classified as a deprivation of property or formal expropriation.

In any event, in similar cases, the national court must consider the situation of the farmers in question on an individual basis to determine whether the property has been deprived, for example, whether they have been able to obtain the missing land from private individuals.

Although the CJEU has referred to the Järvelaev judgment, we have not yet found any similarities in the main proceedings or in the legal principles and

jurisprudence applied. The decision's importance is highlighted by the relatively strict case law on the recovery of aid paid without justification or unlawfully in the context of the EAFRD.

On the one hand, it differs from the scope of action in land policy, where EU law controls measures targeting national land policies from the perspective of economic fundamental freedoms. This may involve the free movement of capital, the freedom of establishment, or even the so-called Services Directive. These always apply, with the only difference being the requirement of a cross-border element, which is not necessary within the scope of the Services Directive.

On the other hand, it also differs from the applicability of the principles of legitimate expectation and legal certainty in the area of the EAFRD concerning wrongly paid or unduly granted subsidies, as these principles generally do not apply or only in exceptional cases. The examined judgments, however, may provide an exemption from sanctions related to repayment.

In its judgment in the *Askos* case, the CJEU referred to the right to property enshrined in Article 17 of the Charter, as applied in the *Segro* and *Commission v. Hungary* cases. These decisions are not related to the scope of action in national land policy but rather to the internal market. Nevertheless, they were applied in this case, even though case law interprets property rights within the scope of the CAP specifically.

The essence of the *Askos* case is that a Member State's law which could be considered as a national land policy measure, prevented a farmer from complying with the commitments voluntarily undertaken under the EAFRD. This does not mean that it is affecting the scope of the national land policy and there is no deterrent effect regarding the Member State. In cases like this, the sanctions serve the purpose of ensuring voluntary commitments in a specific area for several years to achieve the desired outcomes. The exemption from sanctions aims to prevent the farmers from being discouraged from making voluntary commitments.

In conclusion, the abovementioned distinctions are relevant, and the Member States' scope of action is not impacted. In a legal dispute, the court's approach and actions are clearly defined.

Bibliography

1. Bianchi, D. (2012) La politique agricole commune (PAC). Bruxelles: Bruylant.
2. Bouveresse, A. (2010) Le pouvoir discrétionnaire dans l'ordre juridique communautaire. Bruxelles: Bruylant.
3. Korom, Á. (2021a) Tagállami végrehajtási hatáskörök gyakorlása a KAP alkalmazási körében: a magyar gyakorlat tükrében [Exercising the Member States' implementing power in the scope of CAP: in the light of Hungarian practice], in Peres, Zs. and Bathó, G. (eds), Ünnepi tanulmányok a 80 éves Máthé Gábor tiszteletére: Labor est etiam ipse voluptas [Festive studies in honour of the 80-year-old Gábor Máthé: Labor est etiam ipse voluptas]. Budapest: Ludovika Egyetemi Kiadó.
4. Korom, Á. (2021b) Példák az uniós jog általános elveinek mellőzésére a Közös Agrárpolitika alkalmazási körében – Szükségesek-e ezen eltérések a Közös Agrárpolitika működőképességének fenntartásáért? [Examples of disregard of general principles of EU law in the application of the Common Agricultural Policy – Are these derogations necessary to maintain the viability of the Common Agricultural Policy?], in Peres, Zs. and Pál, G. (eds), Ünnepi tanulmányok a 80 éves Tamás András tiszteletére: Semper ad perfectum [Festive studies in honour of the 80-year-old Tamás András: Semper ad perfectum]. Budapest: Ludovika Egyetemi Kiadó.
5. Korom, Á. (2021c) Evaluation of Member State Provisions Addressing Land Policy and Restitution by the European Commission. Central European Journal of Comparative Law, 2(2). https://doi.org/10.47078/2021.2.101-125
6. Korom, Á. (2023) How the KOB SIA case altered the Member States' margin of appreciation: with particular attention to the judgment's possibly consistent characteristics and the relevant provisions of Directive 123/2006. Journal of Agricultural and Environmental Law, 18(35). https://doi.org/10.21029/JAEL.2023.35.86
7. Szinek Csütörtöki, Hajnalka (2023) Agricultural land succession rules in the Visegrád countries and the relevant case law of national constitutional courts. Journal of Agricultural and Environmental Law, Vol. XVIII, No. 35, pp. 128–144. ISSN 1788-6171. https://doi.org/10.21029/JAEL.2023.35.128
8. Ujhelyi-Gyurán, Ildikó – Lele, Zsófia – Pártay-Czap, Sarolta (2024) Locus standi in administrative proceedings concerning environment protection, in the case law of the CJEU and the ECtHR. Journal of Agricultural and Environmental Law, Vol. XIX, No. 36, pp. 203–224. ISSN 1788-6171. https://doi.org/10.21029/JAEL.2024.36.203