

# The Dilemmas of Agricultural Constitutionalisation in Hungary

## Abstract

*In this study, we review the constitutional process of 2010–2011 in Hungary, which preceded the adoption of the Fundamental Law, focusing on how issues related to agriculture appeared in the work of various professional and political bodies during the constitution-making process. In this context, the study examines the relationship between agricultural law and constitutional law by analysing the process that led to the adoption of the Fundamental Law of Hungary. In our analysis, we primarily apply historical, teleological, and systematic methods of legal interpretation. The study is timely, as no work has yet examined this type of relationship between constitutional law and agricultural law in connection with the constitution-making process.*

**Keywords:** Agricultural Law, Constitutional Law, Fundamental Law of Hungary, Constitutionalisation, Constitutional Process, Constitution-Making Process

## 1. Introduction

The Fundamental Law of Hungary, which entered into force on January 1, 2012, established a completely new constitutional framework for agricultural regulation. Unlike the previous constitution, the Fundamental Law contains numerous provisions that explicitly address agriculture. In this study, we examine the timing, form, and context in which agricultural regulatory issues emerged during the Hungarian constitutional process that began in 2010. In particular, we analyse the work and key documents of the Ad Hoc Committee for the Preparation of the Constitution,

1 | Assistant Professor, University of Miskolc, Faculty of Law, Institute of Legal History and Legal Theory, Department of Legal Theory and Sociology of Law; PhD Candidate, Ferenc Deák Doctoral School of Law, University of Miskolc; ORCID: <https://orcid.org/0009-0003-3103-8183>; e-mail: david.hojnyak@uni-miskolc.hu



review the professional and political opinions expressed in connection with the new constitution, and finally assess the provisions originally contained in the submitted constitutional proposal, as well as how they were amended compared to the text of the Fundamental Law that was ultimately adopted and entered into force.

## **2. The beginnings of agricultural constitutionalisation: the documents of the Ad Hoc Committee for the Preparation of the Constitution and the role of national consultation in the constitutional process**

One of the first noteworthy moments in the constitutional process, from the perspective of our topic, was the establishment and work of the Ad Hoc Committee for the Preparation of the Constitution (hereinafter: the Committee)<sup>2</sup>, two documents of which are worth mentioning: on the one hand, the concept entitled 'Regulatory principles of the Hungarian Constitution' and, on the other hand, the concept entitled 'Preparations for the Adoption of the New Constitution' (hereinafter: Constitutional Concept).<sup>3</sup> Of the two documents, the latter is of practical significance for two reasons: (a) the former concept was never voted on by the National Assembly in its original form, (b) our topic, agricultural regulation, only appeared in the Constitutional Concept, while this issue was not mentioned in any form in the first concept. However, it is important to note that, according to the minutes of the committee's work, the issue of agriculture (with particular regard to the fact that arable land, as a natural resource of particular importance, should be classified as national property and thus enjoy constitutional protection) was raised on numerous occasions during the debate on the original draft, but was ultimately not included in the text.<sup>4</sup> We would also like to note here that the six working groups, which dealt with certain priority issues of constitutionalisation and took a position on the possible directions of constitutionalisation within the framework of sub-concepts, played an

2 | The Committee was established by the National Assembly in June 2010. The primary task of the Committee was to prepare a draft resolution of the National Assembly on the fundamental principles of the new constitution. For further details, see National Assembly Resolution 47/2010. (VI. 29). The work of the Committee and the documents discussed by the body are still available on the official website of the National Assembly.

3 | It should be noted that the two concepts were incorporated into the same draft resolution (draft resolution No. H/2057), but the original concept (entitled 'Regulatory Principles of the Hungarian Constitution') underwent significant changes not only in its title but also in its content as a result of numerous amendments. For the sake of transparency, we therefore considered it better to give the two concepts separate names.

4 | See, for example, the minutes of the Committee's meetings on 16 November and 14 December 2010.

important role in the work of the Committee.<sup>5</sup> However, after reviewing the work of the working groups and studying the partial concepts, we must note that these documents did not specifically address issues related to agricultural regulation.

As for the Committee's other document, the Constitutional Concept, which was adopted by the National Assembly on 7 March 2011 in the form of a resolution<sup>6</sup>, it does contain specific details regarding agricultural regulation issues. Point 11 of the Draft Constitution states: "The Hungarian state's property, as national assets, the inalienable treasury assets belonging exclusively to the state – including arable land, mineral resources and waters – and the scope of exclusive state activities are regulated by law. Arable land and waters, as part of the national wealth, are protected by the Constitution." This wording was included in the text of one of the amendments submitted to the draft Constitution.<sup>7</sup> The amendment simply stated that arable land and water are the most important natural resources of the Hungarian national economy, and therefore, it is important that they be included in the draft and given special protection in the new constitution. However, it is no coincidence that this provision appeared in the draft constitution in this form, as an amendment, since this issue played a central role in the parliamentary debate on the draft resolution. In order to understand the background, it is worth briefly reviewing the most important ideas and arguments that arose during the general and detailed debates on the inclusion of the above-mentioned provision in the draft constitution.

After reviewing the speeches made during the debate, one of our most important findings is that the participating representatives – regardless of their political affiliation – felt that the original draft lacked provisions aimed at protecting natural resources. On the one hand, the idea emerged in the debate that it would be necessary to include natural resources in the category of national assets in the Constitution, thereby placing them under constitutional protection. On the other hand, there was a demand that natural resources of particular importance to the national economy and national sovereignty should be specifically mentioned.

5 | The following six working groups were set up within the Committee:

Working Group I: *Constitutional values*

Working Group II: *Fundamental rights and obligations*

Working Group III: *System of government and forms of power*

Working Group IV: *Justice, constitutional and legal protection*

Working Group V: *Local governments*

Working Group VI: *Public finances.*

The partial concepts prepared by the working groups are available on the Government's official website at the following link: <https://lnk.ink/munkacsoport>

6 | See: National Assembly Resolution 9/2011. (III. 7.) on the preparation for the adoption of the new Constitution.

7 | Related amendment proposal No. H/2057/57.

Within the latter category, almost without exception, the categories of arable land and water (resources) were mentioned.<sup>8</sup>

With regard to arable land, it is important to emphasise that the majority of the representatives who spoke considered its inclusion in the new constitution to be important for land and property policy reasons, rather than for environmental considerations.<sup>9</sup> At this point, it should be noted that this issue was raised primarily by opposition representatives in the context of preventing foreigners from purchasing agricultural land in Hungary.<sup>10</sup> It is another matter that, due to Hungary's membership of the European Union, it could not have declared such a constitutional (or any other lower-level legislative) provision in its legal system, as it is contrary to EU law and achievements, primarily the EU's fundamental principle of the free movement of capital, which, following Hungary's accession to the EU, the seven-plus-three-year land moratorium expired, leading to the liberalisation of the land market. Contrary to this position (during the subsequent parliamentary debate, primarily on the part of pro-government representatives), an opinion was expressed that the text of the new constitution awaiting adoption went as far as it could, taking into account EU law and international treaties, and that it would be the task of the cardinal law(s) to be enacted on the basis of the authorisation granted by the constitutional regulation to work out the detailed rules in relation to the protection of agricultural land (and, in principle, all other natural resources of strategic importance). Incidentally, this topic and line of argument permeated the entire constitutional process, as it arose as an important point of debate in the general and detailed discussions of the draft constitution, and even in the final debate.

In summary, therefore, the representatives considered the constitutional protection of domestic agricultural land and water resources to be important primarily because natural resources of outstanding importance to national sovereignty should be protected by the highest level of legislation. It is true that in many cases this was linked to environmental considerations, but this was not the main feature, as reflected in the above-mentioned passage that ultimately appeared in the draft constitution.

8 | In this regard, see in particular the following speeches: László Nyikos, Géza Varga [general debate on the draft Constitution, 65th sitting (15 February 2011)]; Béla Turi-Kovács, Andor Nagy, Sándor Farkas, János Kóvári, Katalin Szili, Tamás Gaudi-Nagy, Dániel Z. Kárpát, Barna Bödecs [general debate on the draft Constitution, 66th sitting (16 February 2011)]; János Bácskai, Ferenc Obreczán [general debate on the draft Constitution, 67th sitting (17 February 2011)].

9 | Péter Jani also comes to this conclusion in his study dealing specifically with the issue of constitutional protection of agricultural land. See Jani 2012, 294–296.

10 | It should be noted here that during the two decades between the change of regime and the drafting of the constitution, the land issue became a topic of great importance in the political arena due to circumstances that also arose in parliamentary debates, as evidenced by the number of referendum initiatives submitted on this subject during the period in question. For more information on the background to the referendum initiatives on agricultural land, see: Téglási 2015, 277–279.

It is also interesting to note that several representatives specifically referred to the constitutional regulations of other European countries as examples that could serve as models for the new Hungarian constitution.<sup>11</sup>

We can see that the draft constitution is the first official document in the constitutional process where the issue of agriculture appears specifically and literally<sup>12</sup>, even if its content has changed significantly compared to the adopted text of the Fundamental Law. In any case, it can be stated that the work of the Committee and the provisions of the Draft Constitution, which essentially concluded that work, are reflected in both the proposed Fundamental Law and the adopted text of the Fundamental Law, also from the perspective of the topic under examination.

In addition to the Committee, it is also necessary to briefly mention the National Assembly's Sustainable Development Committee, which has formulated a number of forward-looking and concrete proposals for the text of the constitution currently being drafted. We would like to highlight just one of these proposals, which was also sent to the Committee as a suggestion during the drafting of the constitutional concept. The proposal was worded as follows: "Natural resources, including arable land, water, energy sources and biodiversity, form part of the national wealth. It is the duty of the state to preserve national assets, pass them on to future generations and increase their value. The protection of the natural and built environment is everyone's responsibility."<sup>13</sup> The first thing that strikes us about this proposal is that it is very similar to the wording of Article P) of the adopted Fundamental Law, and on this basis, we assume that this proposal may have served as an example when the (final) wording of the Fundamental Law was being drafted. Another important observation we have made about the – which, similar to what was said

11 | Below are a few examples from this group. In the general debate [67th session (17 February 2011)], Mihály Varga, a member of the ruling party, mentioned the Spanish constitution as a positive example in connection with the designation of groundwater and major domestic rivers and lakes as state property, as it even lists the seabed among the assets that cannot be alienated or appropriated and are within the scope of exclusive state ownership. Also on this subject, during the general debate, opposition MP Tamás Gaudi-Nagy [66th sitting (16 February 2011)] cited the Slovak constitution as an example, which classifies underground waters, mineral resources, watercourses and natural healing springs as state property. During the general debate, Andor Nagy, a member of the ruling party [66th session (16 February 2011)], also argued in favour of including natural resources in the constitution and protecting them, pointing out that a significant number of European Union member states have enshrined this in their own constitutions, defining them as part of the national wealth.

12 | Even before the draft constitution was made public, it was clear that among the various agricultural issues, arable land and its protection would feature in this document and in the future draft constitution. This is evident from the response given by József Ángyán, State Secretary of the Ministry of Rural Development, to an interpellation in the National Assembly on the subject of the land moratorium, in which he cited the Italian constitution as an example to follow [70th session, 28 February 2011]: "Land reform is essential. [...] We must continue to amend the laws, and we will do so. On the one hand, we would like to see land protection included in the constitution. I would like to refer to the Italian constitution, for example, where this is very clearly stated."

13 | Andor Nagy, vice-chairman of the Committee on Sustainable Development, specifically cited the proposals formulated by the committee in the parliamentary debate on the draft constitution [see: 66th session (16 February 2011)].

in the parliamentary debate on the draft constitution, points to complete political consensus among MPs – is that all members of the Sustainable Development Committee (including those from the ruling party, the opposition and independent MPs) unanimously supported the proposal.<sup>14</sup>

If we review the most important events in terms of constitutional development in chronological order, it is important to briefly mention the 2011 National Consultation, which was entitled ‘Questions about the New Constitution’.<sup>15</sup> The National Consultation deserves attention in this case because it can be interpreted as part of the public debate on constitutional development and the drafting of the new constitution, and in this respect, it belongs to the formal stage of constitutional development. The consultation provided an appropriate framework for voters to express their opinions on the specific elements of the new constitution before its adoption, while the constitutional power could take into account the opinions of voters (including the proposals formulated by civil society organisations<sup>16</sup>, independently of the National Consultation) during the constitution-making process.<sup>17</sup> The questionnaire was sent by post to all citizens eligible to vote, and 920,000 people completed and returned it. Three of the twelve questions in the questionnaire are relevant to our topic.

The tenth question (which is most closely related to agricultural regulation issues) asked whether the new constitution should protect national assets, with particular regard to arable land and water resources. The 97% of respondents<sup>18</sup>

14 | Barna Bödecs, an opposition MP, also referred to this in his speech during the parliamentary debate on the draft constitution [66th sitting (16 February 2011)].

15 | The 2011 National Consultation entitled ‘Questions about the New Constitution’ is available at the following link: [https://hu.m.wikipedia.org/wiki/F%C3%A1jl:Nemzeti\\_konzultacio-alkotmany.jpg](https://hu.m.wikipedia.org/wiki/F%C3%A1jl:Nemzeti_konzultacio-alkotmany.jpg)

16 | We would like to highlight one of the proposals submitted by civil society organisations. The proposals formulated by the Hungarian Nature Conservationists’ Association (MTVSZ) were truly forward-looking, placing particular emphasis on the rules governing the ownership and use of certain natural resources (such as arable land, water, mineral resources, biodiversity, etc.). The proposal formulated by the MTVSZ is available at the following link: <https://mtvsz.hu/hirek/2011/03/az-emberiseg-fennmaradasat-szolgalo-normakat-az-alkotmanyba>

17 | This is supported by the keynote speech of János Lázár, leader of the largest governing party, in the general debate on the new constitution, in which he specifically addresses certain elements of the topic under consideration [76th session (22 March 2011)]: “It is very important in the proposal that we affirm that the national consultation and discussions with civil society were not in vain. [...] I would like to draw your attention to the fact that the passage on the protection of a healthy environment, the management of natural resources, in particular arable land, drinking water resources and biodiversity, goes a long way towards satisfying the civil society aspirations that have been expressed by green movements in recent years and decades.” However, some do not share the view that the National Consultation provided an adequate framework for public debate on the new constitution. See, for example, Chronowski 2012, 56.

18 | It should be noted that of all the questions, the affirmative answer to this question received the highest support, with a rate of 97%. This suggests that the citizens participating in the National Consultation almost without exception supported the idea of constitutional protection for natural resources (and within this category, especially arable land and water resources).

agreed with the statement that the new constitution should ‘expressly’ mention and protect national assets, particularly arable land and water resources.

The sixth question in the questionnaire may seem less relevant to our topic at first glance, but the provisions of the adopted Fundamental Law emphasising the interests of future generations<sup>19</sup> are directly related to agricultural regulation issues, which is why we need to mention this question from the consultation. The sixth question of the consultation asked whether the new constitution should include a commitment to future generations. The overwhelming majority of respondents, approximately 86%, agreed that the new Hungarian constitution should include a commitment to future generations – and, as we will see later in the detailed analysis, this constitutional commitment is clearly reflected in the provisions of the Fundamental Law.

We should also mention the ninth question in the questionnaire (for the reasons stated in connection with the previous question), which asked whether the new constitution should protect the natural diversity of the Carpathian Basin, with particular regard to animal and plant species native to Hungary. With regard to this question, 78% of respondents agreed that biodiversity (which, in simple terms, was the subject of the consultation) should be protected by the constitution.<sup>20</sup>

### 3. The draft constitution and Szili’s constitutional proposal

After these events, we arrive at the submission of the constitutional proposal, or more precisely, constitutional proposals, as it is well known that the constitutional proposal submitted by the governing parties (hereinafter: draft constitution)<sup>21</sup>, independent Member of Parliament Katalin Szili also submitted a constitutional proposal (hereinafter: Szili’s constitutional proposal)<sup>22</sup> to the National Assembly. Accordingly, in the following, we will examine what provisions relevant to agricultural law were contained in the two constitutional proposals, while also examining how the original text of the two proposals was amended as a result of parliamentary debates and the amendments submitted.

19 | See in this regard: the preamble to the Fundamental Law entitled ‘National Avowal’ (in particular paragraph 7), Article P) and Article 38.

20 | When analysing the provisions of the Fundamental Law, we will see that this category appears in both paragraph 7 of the National Avowal and Article P).

21 | The submitted constitutional proposal can be found on the official website of the National Assembly under the title T/2627. Bill, entitled ‘The Fundamental Law of Hungary’.

22 | The submitted constitutional proposal can be found under the title Bill T/2628, entitled ‘The Constitution of the Republic of Hungary’, among the documents on the official website of the National Assembly. It should be noted at this point that the National Assembly did not ultimately vote on this constitutional proposal, as the majority of members of the National Assembly did not support the motion to submit it for detailed debate.

The text of the draft Fundamental Law submitted by the governing parties on 14 March refers to agricultural regulation in a number of places, but the draft underwent significant amendments in several places in the period leading up to the final vote as a result of the amendments submitted. First, in the table below, we would like to illustrate the changes that the submitted proposal underwent during the indicated period compared to the text of the adopted Fundamental Law:

<b>Location in the Fundamental Law</b>	<b>Draft Fundamental Law</b>	<b>Adopted Fundamental Law</b>	<b>Purpose and direction of the amendment</b>
National Avowal	Paragraph 7: "We commit ourselves to promoting and safeguarding our heritage [...] all man-made and natural assets of the Carpathian Basin. We bear responsibility for our descendants and therefore we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources."	No change compared to the draft Fundamental Law.	Not relevant.
Foundation	Article O): "[2] Natural resources, in particular arable land and drinking water supplies, as well as biodiversity and cultural artefacts shall form the common heritage of the nation, which the state and everyone has a duty to preserve for future generations."	Article P): "Natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, and cultural artefacts, shall form the common heritage of the nation, it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations." <sup>23</sup>	The scope of natural resources is expanded (forests and native plant and animal species are also mentioned), while the text of the Fundamental Law is made more accurate and precise.

<sup>23</sup> | The amendment was based on amendment proposal No. T/2627/84 and the unified proposal (T/2627/165).



Location in the Fundamental Law	Draft Fundamental Law	Adopted Fundamental Law	Purpose and direction of the amendment
Freedom and responsibility	Article XIX: “[1] Everyone shall have the right to physical and mental health. [2] Hungary shall promote the enforcement of the right referred to in paragraph (1) by by organising safety at work, health care institutions, medical care, by supporting sports and regular physical exercise as well as protection of the built and natural environment.”	Article XX: “[1] Everyone shall have the right to physical and mental health. [2] Hungary shall promote the effective application of the right referred to in paragraph (1) through agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, by organising safety at work and healthcare provision and by supporting sports and regular physical exercise as well as by ensuring the protection of the environment.” <sup>24</sup>	The objective institutional protection aspect of the right to physical and mental health is expanded: the concept of GMO-free agriculture and a narrower concept of the right to food and water are introduced.
Public funds (the proposal originally included the title 'National assets')	Article 38: “[1] The property of the State and of local governments shall be national assets. The management and protection of national assets shall aim at serving the public interest, meeting common needs and preserving natural resources, as well as at taking into account the needs of future generations.”	No substantive change compared to the draft Fundamental Law.	Not relevant.

1. Table: The draft Fundamental Law and its amendments  
(prepared by the Author)

Below, we review the relevant statements in the explanatory memorandum to the proposed Fundamental Law<sup>25</sup> from the perspective of our topic, and we also examine how and why the text of the proposed Fundamental Law took shape in the period leading up to the final vote as a result of the adopted amendments. As we shall see, in some cases, neither the justification for the draft Fundamental Law nor that for the amendments contains any substantive explanation of the considerations behind certain provisions and amendments. Therefore, in our analysis, we will also refer to the most important criticisms and suggestions made by representatives during the debate on the new constitution, as, after reviewing the

24 | The amendment was based on amendment proposal No. T/2627/96, related amendment proposal No. T/2627/153, and amendment proposal No. T/2627/166 prior to the final vote.

25 | The justification for the draft Fundamental Law can be found in the submitted proposal (draft law T/2627).

topic, we believe that, in some cases, they contributed significantly to the shaping of the text of the adopted Fundamental Law, which is an important consideration in historical and teleological interpretation.

The general justification for the draft Fundamental Law does not, but the detailed justification contains important statements that can help us understand the intention of the constitution. The detailed justification mentions, in connection with Article O) [which, following the subsequent amendments<sup>26</sup>, will be realised in Article P], mentions as one of the important novelties of the Fundamental Law that the proposal specifically names the unique Hungarian ‘environmental values’<sup>27</sup>, the protection of which it makes everyone’s obligation in order to preserve them for future generations.

The table above also shows that this provision of the proposal has been significantly amended compared to the adopted text.<sup>28</sup> On the one hand, two of the natural resources originally specified in the text have been clarified:

- a) the category ‘of drinking water resources’ in the proposal has been replaced by the much broader category of ‘water resources’<sup>29</sup>;
- b) ‘biodiversity’ has been specified by naming the ‘native plant and animal species’ within this category.

However, the amendment proposal, which provided the basis for these textual changes, does not contain any justification as to why the text was amended in this way, which is why the speeches of the representatives referred to are important for understanding.

26 | This change, which can be considered technical, appears in the unified proposal (T/2627/165).

27 | Article O) of the draft Fundamental Law already uses the category of ‘natural resources’, whereas the detailed justification for the proposal refers to the category of ‘environmental value’; however, the two categories are not equivalent and cannot be used as synonyms. For more information on this, see the chapter on the conceptual definition of agricultural regulation in the thesis, which discusses the content elements of the category of natural resources in detail.

28 | These substantive provisions were incorporated into the text of the draft Fundamental Law following the adoption of amendment T/2627/84.

29 | First, Sándor Font, a member of parliament representing the largest governing party, raised the issue during the general debate on the new constitution [76th sitting (22 March 2011)] that it would be appropriate to use the term ‘water resources’ instead of ‘drinking water resources’ in the Fundamental Law: “I would also like to propose an amendment, as protection would apply to both arable land and drinking water resources. In this case, I find the term ‘drinking water’ to be too narrow, and I would like to make this proposal for our entire water resources. After all, why should we exclude our underground waters, such as thermal water [...] or even the diverse variety of mineral water resources, in relation to which we know how many businesses have achieved success with thermal waters, and in the last four to five years, the quality of our mineral water has become a very significant benchmark for Hungary; so I would dare to say that we should extend this protection to our water resources as a value to be preserved, not to mention irrigation water. [...] I would venture to suggest that we extend this to our entire water resources, meaning both surface and underground waters, i.e. all the water that has simply accumulated beneath us here in the Carpathian Basin and is constantly available to us”.

On the other hand, the range of natural resources that are specifically named and thus given special importance has been expanded, as forests are now included in the text as a result of the amendment.<sup>30</sup>

Thirdly, the text is further clarified by the inclusion of the protection and preservation of natural resources (as a state obligation) in the text. The original proposal simply stated that the preservation of natural resources for future generations is the responsibility of the state and everyone, while the clarification and expansion of the text (which in some respects reflects the critical comments made during the parliamentary debate) results in a greater obligation on the part of the state and all citizens.<sup>31</sup>

As regards Article XIX of the draft Fundamental Law (which, following subsequent amendments<sup>32</sup>, ultimately became Article XX), although there is no detailed justification, the amendment<sup>33</sup>, which significantly expanded the scope of fundamental rights relating to physical and mental health at the last minute before the final vote, contains an explanatory statement that facilitates interpretation. The amendment justifies the inclusion of the concept of GMO-free agriculture<sup>34</sup> and the right to food<sup>35</sup> and water in the Fundamental Law on the grounds that “the right to physical and mental health, as an inalienable human right [...] requires access to high-quality, healthy food produced from genetically modified-free organisms

30 | The designation of forests as a priority natural resource at the level of fundamental law was proposed by István Jakab, a member of the ruling party, during the general debate on the new constitution [78th session (24 March 2011)]: “There is one thing missing from the designation, namely that the draft does not give special attention to forests. I myself would like to propose an amendment to this effect, so that forests are specifically designated in the constitution and given priority in terms of a healthy environment, as well as being treated as an opportunity to serve the public good.” It should also be noted here that prior to the parliamentary debate, during the work of the Ad Hoc Committee for the Preparation of the Constitution, we encountered a proposal by the Forestry and Wood Industry Workers’ Union calling for a declaration of the inalienability of state-owned forests, thus seeking to enshrine the unique constitutional status of forests in the text of the new constitution.

31 | Several pro-government and opposition members of parliament (such as József Ángyán, Béla Turi-Kovács, Zoltán Balczó, Tamás Gaudi-Nagy, László Nyikos and Zoltán Magyar) drew attention to this during the general debate on the new constitution. In this regard, see in particular the speeches made during the general debate on 22 March 2011 (76th sitting), 23 March 2011 (77th sitting) and 25 March 2011 (79th sitting).

32 | This amendment was made following the adoption of the related amendment proposal No. T/2627/153.

33 | See amendment No. T/2627/166 prior to the final vote.

34 | The issue of GMO-free agriculture and its particular importance was emphasised by numerous members of parliament during the general and detailed debate on the new constitution, which is why this category was ultimately included in the final text of the draft constitution. It should be noted here that this issue had already been raised during the parliamentary debate on the draft constitution (albeit with little emphasis) by Ferenc Obreczán, a member of the ruling party, who proposed that, similar to the Swiss constitution, the new Hungarian constitution should also declare the concept of GMO-free agriculture [67th session (17 February 2011)].

35 | In the general debate on the new constitution [77th session (23 March 2011)] Ferenc Ódor was the pro-government representative who was the first to raise the issue during the debate, expressly lamenting the absence of the right to food (or at least a narrower interpretation of it) in the text of the Fundamental Law and proposing that it be included, primarily for food safety reasons.

that, due to their diversity, meet the needs of society, as well as access to drinking water.”

The detailed justification for Article 38 also contains important statements: the explanatory memorandum, supplementing the text of the proposal to some extent, states that in the management of national assets, particular attention must be paid to “natural resources that need to be protected in view of their finite nature, and to ensuring that national assets are available to future generations to the extent necessary to meet their needs”. In view of this, the proposal stipulates that the detailed rules for the preservation and protection of national assets and the responsible management of national assets should be regulated in a cardinal law.

One day after the ruling parties submitted their draft constitution, on 15 March, independent MP Katalin Szili submitted her own draft constitution, which contained provisions relating to agricultural regulation on a number of points. From the perspective of our topic, the first substantive provision of Szili’s constitutional proposal, which otherwise contains many surprising proposals, concerns the fact that Hungary’s economic system is an eco-social market economy. Within this framework, the proposal stipulates that the state shall provide increased protection for national values, the environment and nature, with particular regard to arable land and water resources.<sup>36</sup> We can see, therefore, that, similar to the draft constitution, this proposal also specifically mentions certain natural resources, the protection of which would be enshrined in the constitution as a state obligation under the proposal. The Szili proposal also specifically mentions the category of natural resources in the context that, in order to ensure the survival of the human race, it is the duty of every human being to use natural resources sustainably, among other things.<sup>37</sup> It is also important to note that, similar to the draft constitution, this proposal also pays special attention to the constitutional representation and enforcement of the interests of future generations, linking this to the issue of agriculture. In this context, we need to examine the justification for the proposal, which states that one of the guarantees of the living conditions of future generations is the protection of arable land and water resources. Another surprising element of Szili’s proposal is the idea of establishing a bicameral parliamentary model, in which the president of the Hungarian Chamber of Agriculture (along with the presidents of several other public bodies, on a rotational basis) could have represented the actors and interests of the agricultural sector in the upper house

36 | Szili’s constitutional proposal, Section 4. At this point, it is worth referring to Katalin Szili’s explanatory statement in the general debate on the new constitution [76th sitting (22 March 2011)], in which she stated the following in relation to this provision of the constitutional proposal: “It was a long-standing shortcoming of the Hungarian constitutional order that [...] it did not include any obligation to protect Hungary’s uniquely rich natural resources. These include water resources, which are of strategic importance in the 21st century, or, as we have put it, part of the country’s agricultural wealth.”

37 | Szili’s constitutional proposal, Section 25 (b)

of the legislative body.<sup>38</sup> Máté Julesz concludes that Szili's constitutional proposal attempted to compete with the ruling parties' constitutional proposal in the field of environmental protection and may have had an impact on the text of the Fundamental Law that was ultimately adopted<sup>39</sup> (this is perhaps not surprising in light of the fact that Katalin Szili began her career as an environmental lawyer and then served as state secretary in the Ministry of the Environment). In addition to this, we believe that this statement is true not only with regard to environmental protection, but also with regard to provisions relating specifically to agricultural regulation.

Although it does not qualify as a constitutional proposal in a legal-formal sense, we nevertheless consider it important to refer to the constitutional concept published by Lehet Más a Politika (LMP) entitled 'Constitution for the Future'<sup>40</sup>. The reason for this reference is that this concept contains a number of elements that more or less overlap with the constitutional proposals analysed above in terms of content. From the point of view of our topic, the most important elements and proposals of the constitutional concept are as follows:

- a) It defines Hungary as an eco-social market economy in terms of its economic system, and the proposal links this to the state's obligation to protect natural resources<sup>41</sup> (as did the Szili's constitutional proposal);
- b) The category of natural resources (as an asset) is explicitly mentioned in the proposal as part of the national wealth<sup>42</sup> (as was also the case in the draft constitution);
- c) The constitutional protection of natural resources also appears in the proposal, specifically naming and highlighting certain areas of strategic importance, such as the protection of drinking water resources<sup>43</sup> (this approach can be observed in both the draft Fundamental Law and Szili's constitutional proposal);

38 | Szili's constitutional proposal, Explanatory Memorandum. At this point, we would just like to point out that several Member States of the European Union currently apply a bicameral parliamentary model with a similar operating mechanism, which constitutional law literature refers to as the second chamber model based on the principle of corporative or functional representation. In this model, the upper house represents the interests of various social groups, interest groups, public bodies, churches, local governments, etc. Slovenia and Ireland are examples of countries that specifically represent the agricultural sector, and we will return to the detailed rules governing this in later sections of this paper when analysing the constitutional regulations of individual EU Member States. 39 | See Julesz 2011, 589–590.

40 | The LMP's constitutional concept is available at the following link: <https://lmp.hu/wp-content/uploads/2023/08/Alkotmany-a-jovonek-az-LMP-alkotmanykonceptcioja-pdf.pdf>

This constitutional concept does not qualify as a constitutional proposal in the formal sense, as the LMP did not officially submit it to the National Assembly. Once the work of the Ad Hoc Committee for the Preparation of the Constitution was completed, the LMP effectively withdrew from the constitutional process (at least as far as the formal, parliamentary stage of the constitutional process is concerned), but it did set out its own ideas in this concept and made them public.

41 | LMP's constitutional concept, 5.

42 | LMP constitutional concept, 9.

43 | LMP constitutional proposal, 9 and 16.

- d) The representation of the interests and rights of future generations at the constitutional level, which the proposal links to the issue of the conservation and economical and expedient use of natural resources<sup>44</sup> (as set out in both the draft Fundamental Law and Szili's constitutional proposal).

## 4. Professional opinions and proposals in connection with agricultural constitutionalisation

During the constitutional drafting process, the Hungarian agricultural and environmental law community made a few comments or proposals that were specifically related to agricultural regulation. It should be noted that it was primarily the issues of environmental law and environmental protection that aroused the intense interest of the profession in the constitutional process, but we will not discuss this here, as it does not fall within the scope of our narrower topic.<sup>45</sup>

However, in connection with the topic under consideration, we must mention Sándor Fülöp, the former parliamentary commissioner for future generations, who was intensively involved in and played an active role in the constitutional process.<sup>46</sup> Of the constitutional proposals formulated by the Green Ombudsman, we consider it important to refer to the package of proposals submitted on 26 November 2010, which was prepared at the request of the National Assembly's Committee on Sustainable Development<sup>47</sup> and which, in certain elements, already reflected the findings of the emerging (and analysed in detail above). The document published by the Ombudsman includes a proposal that natural resources should be classified as national assets, and that this should be regulated at the constitutional level.<sup>48</sup> The proposal also states that it would be necessary to precisely define the assets

44 | LMP constitutional proposal, 5 and 16.

45 | The literature on this subject is abundant, as numerous studies have been published that specifically examine, in connection with the 2010–2011 constitutional reform, what environmental law and environmental protection provisions would be justified and necessary to include in the new constitution; Without claiming to be exhaustive, the following studies are worth highlighting from this group: Antal 2011, 43–51; Pánovics 2011, 117–131; Fodor 2011; Fülöp 2012, 76–87; Fodor 2013a, 89–103.

46 | All of the Green Ombudsman's proposals and comments relating to constitutional law (which focus on environmental protection issues) are available at the following link: <https://www.jno.hu/hu/?&menu=alkotmanyozas>

47 | The Green Ombudsman's package of constitutional proposals sent to the Committee on Sustainable Development is available at the following link: <https://www.jno.hu/hu/?&menu=alkotmanyozas&doc=javaslat-bizottsagnak-101202>

48 | László Sólyom, former President of the Republic, made the same call in his presentation at an international conference organised by the Office of the Parliamentary Commissioner for Future Generations on the topic of constitutional reform ("The right to a healthy environment and the representation of the interests of future generations in the Hungarian Constitution currently being drafted" – Budapest, 14–15 February 2011). László Sólyom's presentation is available in English at the following link: <https://www.jno.hu/hu/?&menu=talalkozok&doc=alkotmany-konz-osszefoglalo-110214>

belonging to the national wealth, and within this circle, to specifically name those natural resources that are of particular strategic importance. In this regard, the ombudsman also makes a proposal by way of example: he identifies arable land, national water resources and biodiversity as natural resources of such high strategic importance. In this context, the ombudsman's proposal defines the protection of national assets as a constitutional obligation and also makes recommendations on the most effective means of ensuring this protection. According to the proposal, one solution could be for the constitutional power to restrict or prohibit the disposal of certain elements of national assets at the constitutional level. The ombudsman makes a further proposal in connection with the restriction, on the basis of which the constitutional power would declare the protection of national assets and their responsible management at the constitutional level and regulate the details by law.<sup>49</sup>

We also consider it important to refer to the position of *László Fodor*, who fundamentally disagreed with the attempt to specifically declare the protection of arable land, water resources (or any other natural resources) in the constitution.<sup>50</sup> According to Fodor, there are two reasons why it is not necessary to specify individual elements of natural resources in the new constitution. On the one hand, in his opinion, the case law of the Constitutional Court based on the previous Constitution (which, at the time of publication of Fodor's ideas, was still the constitutional regulation in force) provides a sufficient basis for the protection of these natural resources, given that the Constitutional Court had already included (arable) land, water, forests and all other elements of the natural resource category within the natural foundations of life. According to Fodor, this is reinforced by the fact that the legal regulations in force at the time (with particular regard to Act LIII of 1995 on the general rules of environmental protection) were in line with the case law established by the Constitutional Court. In his reasoning, he specifically refers to the case law of the Constitutional Court regarding arable land, according to which, even in the absence of specific provisions, land ownership is bound by its special characteristics, and behind this binding nature lies some public interest related to agricultural and/or environmental policy. However, Fodor agreed with the intention to classify natural resources as national assets, but did not consider it justified to declare this in the Constitution, as, in his opinion, it would be sufficient to regulate it at the level of law.<sup>51</sup>

49 | The Parliamentary Commissioner for Future Generations – as an expert and public law dignitary invited to participate in the constitutional process – essentially repeats and reinforces these proposals in the general debate on the draft Fundamental Law. See: 76th sitting (22 March 2011) in connection with the speech.

50 | Péter Jani also agrees with this position, particularly with regard to the constitutional regulation of agricultural land. See: Jani 2012, 300.

51 | Fodor 2011, 8; Following the adoption and entry into force of the Fundamental Law, the author also comes to this conclusion in his study analysing the appearance of water and the right to water in the Fundamental Law. See: Fodor 2013b, 338–339.

On 18 April 2011, the National Assembly finally voted on the amended version of the draft Fundamental Law, which was adopted by 262 votes in favour, 44 against and 1 abstention. The Fundamental Law subsequently entered into force on 1 January 2012.

## **5. Continuation of agricultural constitutionalisation: the third and fourth amendments to the Fundamental Law of Hungary**

However, the agricultural constitutionalisation did not end with the adoption of the new constitution, as the third and fourth amendments to the Fundamental Law expanded the scope of constitutional provisions relevant to the subject under review, namely Article P), with important provisions.

The third amendment to the Fundamental Law can essentially be regarded as a clarification and correction of the previous regulation, as it expands the scope of cardinal laws with regard to certain agricultural regulatory issues.<sup>52</sup> The addition to Article P) concerns, on the one hand, the acquisition and use of ownership rights to arable land and forests and, on the other hand, the organisation of integrated agricultural production for the conservation of natural resources and agricultural holdings (as economic units related to agricultural land).<sup>53</sup> The justification for the proposed amendment to the Fundamental Law does not contain any substantive explanation regarding the text of the provision intended to be incorporated into the Fundamental Law<sup>54</sup>, but the opinions and arguments expressed in the parliamentary debate on the proposal can help to understand the (legal) policy objectives behind the amendment.<sup>55</sup> One of the most important arguments in favour of the amendment in the parliamentary debate – if you like, as an agricultural policy objective, or rather as a question of sovereignty – was to make it more difficult for foreigners to acquire agricultural land, in view of the land moratorium expiring in 2014 and the new land transaction law also in progress at that time. There was basically a consensus among the speakers on this objective, with the debate focusing mainly on the different nature of the instruments intended to be used to achieve it. We also see that land policy objectives were also formulated as professional

52 | Gáva 2014, 33–34.

53 | As a result of the third amendment to the Fundamental Law (which was adopted by the National Assembly on 17 December 2012 and entered into force on 21 December), Article P) was supplemented with the following second paragraph: “The restrictions and conditions necessary for the acquisition and utilisation of ownership rights to arable land and forests in order to achieve the objectives set out in paragraph (1), as well as the rules governing integrated agricultural production organisation and agricultural holdings, shall be laid down in a cardinal law.”

54 | The justification for the amendment to the Fundamental Law can be found in the submitted proposal (Bill No. T/9400).

55 | This is based on the speeches made at the 248th session of the National Assembly [general debate on the proposal (10 December 2012)] and the 249th session [detailed debate on the proposal (11 December 2012)].



arguments in the parliamentary debate, primarily meaning the preference for small and medium-sized estates over large estates, which, following confirmation and authorisation in the Fundamental Law, could be specifically reflected in the land transaction law through the creation of detailed rules. It is no coincidence that among the amendments submitted to the original proposal (see below for a brief analysis of these) is one that seeks to give priority to small and medium-sized estates over the large estate system and, in certain cases, over certain forms of integrated agricultural production organisation that are similar to it, by strengthening and supporting family farms. All this reinforces our previously stated position that the protection of natural resources (in this case, arable land) declared in Article P) is primarily intended to enforce agricultural policy objectives, specifically land policy objectives, rather than environmental considerations.

It is also important to note that four amendments have been tabled to the original proposal, as follows:

- a) According to the first amendment, the cardinal law to be enacted would apply to 'family farms' and 'cooperatives' instead of 'integrated agricultural production organisations'. According to the explanatory memorandum, both the land policy guidelines laid down in the relevant legislation and the National Rural Strategy, as well as the multifunctional European agricultural model, place family farms and cooperatives at the centre of agricultural and rural policy, which is why it is necessary to enact a cardinal law on these regulatory matters. In contrast to family farms and cooperatives, integrated agricultural production organisation is only a narrow element of the agricultural and rural model, which is why, according to the explanatory memorandum to the amendment, it is not necessary to regulate this area within the framework of a cardinal law.<sup>56</sup>
- b) According to the second amendment proposal, the adoption and amendment of cardinal laws on the acquisition and use of ownership rights to arable land and forests would require a four-fifths majority in the National Assembly rather than a two-thirds majority. According to the justification for the proposal, this is necessary in order to achieve the fullest possible national consensus on legal regulations aimed at protecting natural resources (in this case, agricultural land and forests).<sup>57</sup>
- c) Under the third amendment proposal, the rules on integrated agricultural production organisation would have been removed from the scope of cardinal legislation, and the text of the Fundamental Law would have clearly stipulated that cardinal legislation on the acquisition and use of arable land and forests may only contain restrictions that are absolutely necessary. According to the explanatory memorandum, based on the authorisation

56 | Amendment No. T/9400/1 (submitted by József Ángyán of the ruling party).

57 | Amendment No. T/9400/2 (submitted by Géza Varga of the opposition).

granted by the Fundamental Law, restrictions on property rights cannot be so extensive as to violate the protection of property rights enshrined in the Fundamental Law in general.<sup>58</sup>

- d) The fourth amendment proposal aimed to stipulate that agricultural land could only be owned by the Hungarian state or local authorities, or by natural persons with Hungarian citizenship. According to those who submitted the amendment, the preservation and legal protection of agricultural land, which is considered the “foundation of the nation”, can only be achieved if the Fundamental Law and the cardinal law to be created on the basis of it clearly state that agricultural land may only be owned by Hungarians.<sup>59</sup>

The proposed amendments (regardless of whether they were submitted by pro-government or opposition MPs) were ultimately not passed by the National Assembly and were therefore not included in the Fundamental Law.

The fourth amendment to the Fundamental Law also affected the text of Article P), as the amendment clarified the second paragraph as follows: the phrase ‘agricultural enterprises’ was replaced by ‘family farms and other agricultural enterprises’. In this case, too, the explanatory memorandum to the proposal does not provide any indication as to the circumstances that justified the amendment.<sup>60</sup> In the absence of an explanatory memorandum, we can again rely on the arguments put forward in the parliamentary debate, which show that the arguments put forward in the debate on the third amendment to the Fundamental Law were also of decisive importance in this case.<sup>61</sup> Based on the arguments presented, the inclusion of the category of family farming (as a fundamental mode of agricultural production) into the Fundamental Law and to make the related legal regulations binding is that it should be made the foundation of domestic agriculture and food self-sufficiency, which ultimately serves sustainable rural policy and the interests

58 | Amendment No. T/9400/3 (submitted by Béla Turi-Kovács of the ruling party).

59 | Amendment No. T/9400/4 (submitted by opposition MPs Zoltán Balczó, Tamás Gaudi-Nagy, Csaba Gyüre and Géza Varga). In this regard, we should recall that this idea had already been raised during the parliamentary debates on the draft constitution and the draft fundamental law, and that an amendment with almost identical content had been submitted on this subject. At that time, we already pointed out that, due to Hungary’s membership of the European Union, such legal regulations could not be incorporated into its legal system, as they are contrary to EU law.

60 | The justification for the amendment to the Fundamental Law can be found in the submitted proposal (Bill No. T/9929). As a result of the fourth amendment to the Fundamental Law (which was adopted by the National Assembly on 11 March 2013 and entered into force on 25 March), Article P (2) contains the following provision: “The restrictions and conditions necessary for the acquisition and use of ownership rights to arable land and forests in order to achieve the objectives set out in paragraph (1), as well as the rules governing integrated agricultural production organisation and family farms, as well as other agricultural enterprises, shall be laid down in a cardinal law.”

61 | This is based on the statements made at the 254th session of the National Assembly [general debate on the proposal (19 February 2013)].

of small agricultural producers.<sup>62</sup> However, an amendment was also submitted in this regard<sup>63</sup>, the essence of which was that, in addition to the amendment contained in the original proposal, the category of ‘integrated agricultural production organisation’ would have been replaced by the category of ‘cooperative’. According to the explanatory memorandum, the cooperative model is key to agricultural production, procurement, processing, marketing and agricultural lending, and that this integrating function of cooperatives justifies the inclusion of this category alongside family farms in the Fundamental Law, as well as the fact that the most important rules governing the operation of cooperatives are laid down in a cardinal law. In the end, however, this amendment was not passed by the National Assembly either.<sup>64</sup>

## 6. Concluding thoughts

After reviewing the constitutional process preceding the adoption of the Fundamental Law of Hungary, our most important finding is that regulations related to agriculture underwent significant development during the constitution-making process. At the beginning, agricultural regulatory issues were largely absent or appeared only to a limited extent in preparatory documents and concepts. However, the draft Fundamental Law and its amendments significantly expanded the scope of provisions concerning agriculture in the planned constitutional text. Regarding the Fundamental Law of Hungary, which was finally adopted in 2011 and entered into force in 2012, we can conclude that it provides comprehensive provisions on agriculture, further supplemented by important amendments in 2012 (the Third Amendment) and 2013 (the Fourth Amendment).

62 | In this regard, see in particular the speech by János Bencsik, a member of the ruling party, in the general debate on the fourth amendment to the Fundamental Law [254th session (19 February 2013)].

63 | Amendment No. T/9929/2 (submitted by opposition MPs Gábor Vona, Zoltán Magyar and Géza Varga).

64 | An interesting aspect of the amendment is that it was originally submitted by József Ángyán, a member of the ruling party, who withdrew it shortly afterwards, after which opposition MPs submitted an amendment with the same content and justification. Another interesting fact in this regard is that József Ángyán also submitted an amendment with the same content in connection with the third amendment to the Fundamental Law (see amendment No. T/9400/1).

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