

# FOOD SOVEREIGNTY AND FOOD SECURITY IN HUNGARY: CONCEPTS AND LEGAL FRAMEWORK

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## Abstract

*Within the European Union, the institutions have recently started to refer to concepts such as food security or the right to food, concepts which we have formerly not seen in documents of similar level related to land governance in the European Union. The significance of this phenomenon goes way beyond land law, with its origin in the FAO-inspired “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)” of the Committee on World Food Security (CFS) of 12 May 2012. Since several issues arise as to implementation on the ground this policy initiative, the following study searches for answers as to the relationship between the newly promulgated theoretical concepts and their appearance in the Hungarian national law and legal practice. This study examines how the concepts of food sovereignty and food security are transposed/interpreted in the Hungarian national law (both legislation and implementation), and the extent to which the right to food finds effect in the legal system of Hungary. The study also focuses on the implementation of certain dispositions of the VGGT in the Hungarian national law.*

**Keywords:** *food sovereignty, food security, food safety, right to food, agricultural law, Hungarian national law.*

## 1. The appearances of the right to food at the Hungarian national law

Hungary's Fundamental Law which came into force on the 1st of January 2012, has placed the constitutional regulations on

agriculture to a completely new basis. Unlike the previous constitution, the new Hungarian code contains a number of provisions that regulate the subjects of agricultural law.<sup>1</sup> Within the constitutional framework thus changed Article XX. of the

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<sup>1</sup> For details on this topic, see: Hojnyák Dávid: Az agrárszabályozási tárgyak megjelenése az Európai Unió tagállamainak alkotmányában, különös tekintettel a magyar Alaptörvényben megjelenő agrárjogi szabályozási tárgyakra. *Miskolci Jogi Szemle* (14) 2, pp. 58-76.; Hojnyák Dávid: Az Alaptörvény agrárjogilag releváns rendelkezéseinek értékelése az Európai Unió tagállamainak alkotmányos szabályozása tükrében. *Diáktudomány* (11), pp. 153-159.; Szilágyi János Ede: Változások az agrárjog elméletében? *Miskolci Jogi Szemle* (11) 1, pp. 47-49.; Csák Csilla: Constitutional issues of land transactions regulation. *Journal of Agricultural and Environmental Law*, 13 (24), pp. 5-7.

new constitution which declares the right to food, therefore this subchapter is primarily the detailed analysis of this section of the Fundamental Law that will be undertaken.

Article XX. is contained in the Fundamental Rights chapter of the Fundamental Law that is entitled Freedom and Responsibility. Paragraph (1) of this section declares that everyone has the right to physical and mental health. Paragraph (2) sets out the ways and means by which the State promotes the right to health, thus defining the objective institutional protection side of that right. On this basis Hungary shall enforce this constitutional right through agriculture free from genetically modified organisms (GMO-free agriculture), access to healthy food and drinking water, the organization of healthcare, ensuring safety at work, the promotion of sports and regular physical exercise, and by protecting the environment.

It can thus be concluded that the right to food is not recognized directly by the Fundamental Law as an autonomous social right but rather indirectly as part of the right to physical and mental health<sup>2</sup>, in essence similar to the right to water, it is an *expressis verbis* type task of the state. And by enshrining the right to food in the Fundamental Law, Hungary has fulfilled its obligations under international treaties.<sup>3</sup>

At the same time, it can be seen that the section of the Fundamental Law declaring the right to health has undergone significant changes compared to the previous Constitution.<sup>4</sup> In the case of current legislation we can find that the objective institutional protection side of this right has been expanded. In addition to the right to food which is the main subject of this analysis the Fundamental Law also includes the concept of the right to water<sup>5</sup>, and the concept of the GMO-free agriculture.<sup>6</sup>

<sup>2</sup> See Szemesi Sándor: Az élelemhez való jog koncepciója a nemzetközi jogban. *Pro Futuro* (3) 2, pp. 97-98.; T. Kovács Júlia: Az élelemhez való jog társadalmi igénye és alkotmányjogi dogmatikája. PhD Thesis, Pázmány Péter Catholic University, Budapest, 2017, pp. 89-90.

<sup>3</sup> Among all the international treaties the International Covenant on Economic, Social and Cultural Rights, adopted in 1966 shall be highlighted. Although the right to food has already been recognized in the Universal Declaration of Human Rights of 1948 [25. Article 1 (1)], but to define the content of this fundamental human right in the Convention [Article 11 (1)] and in its General Comment No 12 on the right to food, drawn up by the Committee on Economic, Social and Cultural Rights.

<sup>4</sup> See 70/D of the Constitution of the Republic of Hungary Paragraph (1): *People living in the territory of the Republic of Hungary have the right to the highest possible level of physical and mental health.* Paragraph 2: *The Republic of Hungary exercises this right by organizing occupational safety, health institutions and medical care, providing regular physical exercise, and protecting the built and natural environment.*

<sup>5</sup> As far as this provision of the Fundamental Law on water is concerned, it is worth noting that a narrower concept of the right to water has been enforced by the constitutional power by declaring the right to drinking water, as an *expressis verbis* state task, at the constitutional level. For more information on the topic see: Fodor László: A víz az Alaptörvény környezeti értékrendjében. *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica* (31), pp. 329. and 344., Raisz Anikó: A vízhez való jog egyes aktuális kérdéseiről. In: Csák Csilla (ed.): *Jogtudományi tanulmányok a fenntartható természeti erőforrások témakörében*, University of Miskolc, Miskolc, 2012, pp. 156-157.

<sup>6</sup> With regard to the regulation of genetic engineering, it is to be noted that the provisions of the Fundamental Law on GMO-free agriculture are unclear. In Hungarian jurisprudence, several interpretations have emerged as to the binding nature of this provision of the new Hungarian constitution, its behavior and product ranges, and its relation to EU law. For more information on the topic see: Fodor László: A GMO szabályozással kapcsolatos európai bírósági gyakorlat tanulságai. In: Csák Csilla (ed.): *Jogtudományi tanulmányok a fenntartható természeti erőforrások körében*, University of Miskolc, Miskolc, 2012, pp. 74.; Fodor László: A precíziós genomszerkesztés mezőgazdasági alkalmazásának szabályozási alapkérdései és az elővigyázatosság elve. *Pro Futuro* (8) 2, pp. 42-64.; Raisz Anikó: GMO as a Weapon – a.k.a. a New Form of Aggression? *Hungarian Yearbook of International Law and European Law 2014*, Eleven International Publishing, The Hague, pp. 275-276. and 279-281.; Szilágyi János Ede – Raisz Anikó – Kocsis Bianka: New dimensions of the Hungarian agricultural law in respect of food

However, it is important to note that the Constitutional Court has stated in its decree no. 3132/2013. (VII.2.) that Article 70/D of the Constitution, and Article XX. of the Fundamental Law, and based on this, its previous jurisprudence is laid down within Article XX. of the EC Treaty.<sup>7</sup> In a somewhat contradictory way, constitutional judge András Zs. Varga pointed out a *contra legem* state in his separate opinion no. 13/2018. (IX.4.). In this separate opinion he stated that the Constitutional Court practice of justifying decisions taken under the Fundamental Law by recalling former constitutional decisions and interpreting constitutional texts should be abolished. A petition shall be judged solely on the basis of the Fundamental Law, which in practice, in his view, may be departed from only in exceptional cases and under certain circumstances.<sup>8</sup> He based his position on the Fourth Amendment to the Fundamental Law, after which it was established that decisions of the Constitutional Court made before the new Fundamental Law came into force shall cease to apply.<sup>9</sup>

At the same time the Hungarian Fundamental Law is unique among the constitutions in which this right is explicitly reflected as a task of the state. The reason for

this is that in most constitutions (including the constitutions of non-EU states) the declaration of this right is linked to hunger and poverty as serious social problems, while the Hungarian Fundamental Law defines this right as a state responsibility for promoting the right to health. In other words, the Hungarian Fundamental Law approaches the right to food from its quality side, with the aim of providing food of sufficient quality, while other constitutions enshrining such a right focus primarily on its quantitative side.<sup>10</sup> However, regarding the right to healthy food, its fundamental nature is questionable since different positions have emerged with regard to the constitutional recognition of this right: some see it as a state task or a state objective while others see it as a fundamental right.<sup>11</sup> For our part we agree with the former view that the concept of the right to food – thus emphasizes the qualitative dimension of this right – is considered to be a state task or a state objective which this way does not confer a subjective right on the addressee and cannot be enforced.

The statement above is reinforced by the fact that judicial enforcement of the right to food is limited not only in the Hungarian legal practice (meaning the jurisprudence of

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sovereignty. *Journal of Agricultural and Environmental Law* 12 (22), pp. 160-180.; Szilágyi János Ede – Tóth Enikő: A GMO-mentes mezőgazdaság megteremtésének újabb jogi eszköze: A GMO-mentes termékek jelölése Magyarországon. *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica* (35), pp. 482-483.; Tahyné Kovács Ágnes: Gondolatok a GMO szabályozás alaptörvényi értelmezéséhez, az új európai uniós GMO-irányelv, valamint a TTIP tárgyalások fényében. *Journal of Agricultural and Environmental Law* 10 (18), pp. 88-104.; T. Kovács Júlia: A GMO-mentes Alaptörvény hatása a mezőgazdaságra - különös tekintettel a visszaszerzett EU tagállami szuverenitásra és a TTIP-re. In: Szalma József (ed.): *A Magyar Tudomány Napja a Délvidéken*, pp. 308-309.; T. Kovács Júlia: Az Alaptörvény GMO-mentes mezőgazdaságra vonatkozó rendelkezése. In: Cservák Csaba – Horváth Attila (ed.): *Az adekvát alapjogvédelem*, Porta Historica, Budapest, pp. 147-150.

<sup>7</sup> For more details, see 3132/2013. (VII.2.) Constitutional Court Judgment, Reasoning [57].

<sup>8</sup> For more information see 13/2018. (IX.4.) Constitutional Court Judgment, point 132. It should be noted that two other constitutional judges, Béla Pokol and Mária Szívós, joined the dissenting opinion of András Varga Zs.

<sup>9</sup> See Article 5 of the Fundamental Law, Final and Mixed Provisions.

<sup>10</sup> See T. Kovács Júlia: *Az élelemhez való jog társadalmi igénye és alkotmányjogi dogmatikája*. PhD Thesis, Pázmány Péter Catholic University, Budapest, 2017, pp. 77-78.

<sup>11</sup> See Juhász Gábor: *A gazdasági és szociális jogok védelme az Alkotmányban és az Alaptörvényben*. *Fundamentum* (16) 1, pp. 43.; T. Kovács Júlia: *Az élelemhez való jog társadalmi igénye és alkotmányjogi dogmatikája*. PhD Thesis, Pázmány Péter Catholic University, Budapest, 2017, pp. 73-75.

the Constitutional Court or the Supreme Judicial Forum of the state, the *Kúria*) but also in the international legal practice. Moreover, in Hungary, neither in the case law of the Constitutional Court nor in the case law of the *Kúria* can we find a single case in which the provision of the right to food enshrined in the Fundamental Law appears.

Although it has been stated above that the former Constitution did not establish the right to food in any way, still the case law of the Constitutional Court had raised the issue of food and nutrition on one occasion. The Constitutional Court has concluded in its no. 42/2000. (XI. 8.) decree that no specific sub-entitlements (such as the right to housing, the right to adequate food, sanitation, clothing) were expressly identified with regard to the right to social security, nor the obligation and consequently liability of the state.<sup>12</sup>

The concept of the right to food cannot be found *expressis verbis* at other forms at the level of Hungarian national law, but there is no reference to this right at any other documents (such as various sectoral strategies, declarations, etc.).

## 2. The emergence of concepts of food security and food sovereignty at the level of Hungarian national law

The concept of food security<sup>13</sup> is not *expressis verbis* either in the Fundamental Law or at the level of other legislations but neither on the level of the Constitutional Court jurisprudence or at the Supreme Court, the *Kúria*. However, food security appears in several domestic strategy papers dealing with agriculture of which we consider it important to highlight and briefly analyze the following two: the *Hungarian National Rural Strategy*<sup>14</sup> (hereinafter: NRS) and the *Hungarian Food Development Strategy*<sup>15</sup> (hereinafter: FDS).

The NRS sets out global challenges which the Hungarian countryside faces, setting rural policy objectives, including the particular issues of climate change, drinking water and food supply, environmental sustainability, biodiversity, the changing rural-urban relationship and the rural context of the demographic crisis were regulated.<sup>16</sup> Responding to the unfavorable changes the document identified the Hungarian rural population's ability to improve the capacity of rural areas to maintain their numbers as an overarching objective.<sup>17</sup> In order to achieve this overarching objective the NRS sets five additional strategic objectives, one of which

<sup>12</sup> Paragraph 70/E of the Constitution of the Republic of Hungary Paragraph (1): *Citizens of the Republic of Hungary have the right to social security; in the event of old age, sickness, invalidity, widowhood, orphanhood, and unemployment beyond their control, they shall be entitled to the subsistence allowance.*

<sup>13</sup> Given that we cannot speak of a single concept in terms of food security, we consider it important to record what we mean by this category in the context of this study. The definition is based on the definition adopted by the Food and Agriculture Organization of the United Nations (FAO) at the World Food Summit in 1996. Based on this, food security means the situation where every person has physical and economic access to sufficient, safe and nutritious food at all times to ensure an active and healthy life, in accordance with their nutritional needs and eating habits.

<sup>14</sup> The National Rural Strategy known as the "constitution of the Hungarian countryside", was adopted by the Government in 2012, which contains Hungary's rural development concept for 2012-2020.

<sup>15</sup> The strategy adopted by the Government in 2015, which contains Hungary's medium and long-term food industry concept for 2014-2020.

<sup>16</sup> See NRS pp. 9-17.

<sup>17</sup> See NRS pp. 57-58.

is to ensure food and food security.<sup>18</sup> However, the NRS is inconsistent in separating the two categories – which is necessary and justified. Within the objective relevant to our subject the following priorities shall be identified as priorities: (a) environmentally-friendly food production based on high quality and diversity of food, based on domestic and local raw materials; (b) the production of good quality and sufficient food for export; (c) increasing the presence of the internal and external market in the food industry; (d) improving the prestige of Hungarian food.<sup>19</sup> With these – and among other things too – the NRS goes beyond rural areas and the interests of industry by producing healthy food and guaranteeing food security, and thus the regulation affects the lives of all residents of the country. In the context of this strategic paper it is important to mention that in order to achieve these goals the document attaches a great importance to the cooperation with the FAO and the participation at international agricultural and food related programs based on Hungary's interests.<sup>20</sup> In FDS the issue of food security arises within the context of the national importance of the food processing industry. The FDS identifies the national importance of the food processing industry under three circumstances: the sector's share of GDP production; the sector is the largest upstream market for agricultural inputs; and the prominent role of the sector in food security.<sup>21</sup> Thus, the sector plays a central role within the security of domestic food supply (ie. guaranteeing *food security*) and

in the supply of safe food (ie. guaranteeing *food safety*). Like the NRS, the FDS attaches great importance to the promotion of national and even European interests on various international forums. The FDS identifies the interests of the European and Hungarian food economy properly represented and defended at EU and WTO level negotiations as a priority, which ultimately has one main purpose: to maintain food security at European and national level and to prevent potential dependency. On central government level, care must be taken not to sacrifice sectors important to the European agricultural economy and food security for the benefit of other sectors.<sup>22</sup>

Regarding the concept of food sovereignty we also consider it important to record its main conceptual elements. In this sense food sovereignty means that states and citizens have the right to decide independently on their own agricultural, food, and farmland regulations, while respecting their ecological, social, economic and cultural conditions.<sup>23</sup> Examining this definition two important conclusions can be drawn: on one hand, the realization of food sovereignty is a prerequisite for the food security discussed above, that is, the content of the two categories overlaps within several cases. On the other hand, it can be seen that from the viewpoint of constitutional law and international public law this category is closely related to the issue of state sovereignty. In Hungary, food sovereignty also appears only at the level of strategic documents, emphasizing the sovereignty of the concept, but it is not consistently

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<sup>18</sup> Protecting natural values and resources has been identified as another strategic objective; creation of diverse and viable agricultural production; ensuring the foundations of the rural economy and increasing rural employment; and strengthening rural communities and improving the quality of life of rural populations.

<sup>19</sup> See NRS pp. 58-59.

<sup>20</sup> See NRS pp. 92.

<sup>21</sup> See FDS pp. 18.

<sup>22</sup> See FDS pp. 84.

<sup>23</sup> This definition is the concept of food self-determination in the Nevelan Declaration, adopted at the World Forum on Food Self-determination which was held in Mali, 2007.

separated from the category of food security in each document. If successfully implemented, the FDS predicts a strengthening of the country's food sovereignty, that is, the reduction of the domestic population's exposure to imported food.<sup>24</sup> Thus, it appears as a priority that the Hungarian food industry must respond to the increasing import pressure from the European Union and global markets, as well as the strategic goal of regaining domestic markets. The NRS mentions food sovereignty within two areas. On the one hand, the document treats food as a strategic thing that has the greatest impact on the health and quality of life of the population. It is therefore a national interest to ensure that the population is provided with safe and high-quality food primarily from domestic sources – at this point we see the concept of food sovereignty being linked to the categories of ensuring food security and food safety.<sup>25</sup> On the other hand, with regard to the regulation of the European single market and the Common Agricultural Policy, the NRS urges that the issue of food sovereignty should be considered and regulated at EU level.<sup>26</sup>

### 3. International obligations and Hungarian relevance

Our international legal obligations consist primarily of human rights conventions<sup>27</sup>, but in our view, they also include provisions on the right to food of conventions for the protection of special groups. In this context, reference may be made to Articles 24 (2) and 27 of the New

York Convention on the Rights of the Children, Article 28 of the UN Convention on the Rights of Persons with Disabilities and Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women. Both the 1951 Refugee Convention and the 1954 Convention on the Status of Stateless Persons refer to the right to food, regardless of nationality, as a right guaranteed to all.<sup>28</sup>

Pursuant to Article 2 of the International Covenant on Economic, Social and Cultural Rights, States Parties are required to progressively secure the rights enshrined in the Covenant, including the right to food, by all means at their disposal and by any appropriate means, including in particular legislative measures. However, the category of eligible assets for these second-generation rights does not only mean the application of legal instruments: the effective reduction of public debt or inflation in Hungary, for example, can also help to promote economic and social rights. Although this wording does not imply an obligation to provide immediate food rights, it is possible to derive an obligation to take immediate action in respect of some of the elements and even to enforce them before a judicial body. Such an immediate obligation to act is that states, including Hungary, are required to prevent any discrimination in access to food between certain social groups or individuals based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other situation. However, the prohibition of discrimination does not, of course, preclude it, but rather requires the temporary

<sup>24</sup> See FDS pp. 3-5.

<sup>25</sup> See NRS pp. 34. It should be noted that Hungary still has about 120% self-sufficiency in basic foods. This level could be raised to 150% by developing our production potential, which would be a major national economic advantage for the country with the expected significant increase in global food demand.

<sup>26</sup> See NRS pp. 121.

<sup>27</sup> See Footnote 5.

<sup>28</sup> See T. Kovács Júlia: *Az élelemhez való jog társadalmi igénye és alkotmányjogi dogmatikája*. PhD Thesis, Pázmány Péter Catholic University, Budapest, 2017, pp. 53.

preference of certain, particularly disadvantaged groups. Hungary, like other states, is also required to take steps to progressively secure the right to food on the basis of international obligations, including the adoption of appropriate legislation, the development of national strategies or regular monitoring of the rule of law. It is also required to ensure that remedies are available to remedy any violation.<sup>29</sup>

The relevant case law of the European Court of Human Rights cannot be invoked in the direct form of the right to food, as it is not mentioned in the European Convention on Human Rights or its additional protocols. At the same time, however, the possibility cannot be excluded, in principle, that the European Court of Human Rights examines the infringement of the right to food in the context of other rights under the Convention. In particular, the right to life, the prohibition of torture, inhuman or degrading treatment or punishment, the right to respect for private and family life, and property rights can be taken into account in this regard. So far, however, issues of access to food in Hungary have so far arisen solely in the context of detention conditions (and thus in violation of the prohibition of torture) in the practice of the Strasbourg court. In these cases, it was not a question of classically enforcing the right to food, but rather of steps taken to defy testimony of persons subject to proceedings.<sup>30</sup>

There was one case (Case of Béláné Nagy V. Hungary), where the applicant referred to right to food indirectly in connection to the disability pension. The applicant complained that she had lost her source of income, previously secured by the disability pension, because under the new system, in place as of 2012, she was no longer entitled to that, or a similar, benefit, although her health had not improved; and she submitted that this was a consequence of the amended legislation, which contained conditions she could not possibly fulfil. She contended that between 2001 and 1 February 2010 she had had a possession, in the form of an existing pecuniary asset, specifically the disability pension. She had subsequently retained an assertable right to disability benefit for as long as she satisfied the criteria that were applicable in 2001; in other words, she had a legitimate expectation stemming from various sources. In her view, the former Constitution had conferred on disabled persons an entitlement to social-welfare benefits as of right. According to the Constitutional Court's interpretation, she, as a disabled individual, had an assertable right to some form of welfare benefit. At the hearing, she referred to decisions no. 37/2011 of the Hungarian Constitutional Court and no. 1 BvL 1/09 of the German Federal Constitutional Court, both confirming, in her view, the existence of a right to a social allowance for those in

<sup>29</sup> However, this obligation is far from being a peculiarity of the right to food: a state that respects the rule of law and the living conditions of its citizens (irrespective of its political system) is generally responsible for their establishment and operation. The work of the Special Rapporteur on the Right to Food, subordinated to the UN Human Rights Council, should be highlighted with regard to ensuring the right to food. See Szemesi Sándor: Az élelemhez való jog koncepciója a nemzetközi jogban. *Pro Futuro* (3) 2, pp. 92-93.

<sup>30</sup> See Szemesi Sándor: Az élelemhez való jog koncepciója a nemzetközi jogban. *Pro Futuro* (3) 2, pp. 96. These relevant cases are: Case of Varga And Others V. Hungary, Case of Süveges V. Hungary, Case of Javor And Others V. Hungary, Case Of Á.R. V. Hungary, Ján V. Hungary, Molnár And Others V. Hungary, Hunyadi And Others V. Hungary, Fortuna V. Hungary, Kocsi And Others V. Hungary. In Case of Varga, Mr Varga was held at Baracska Prison which, he claimed, was severely overcrowded at the time of his detention lasting from 17 January to 3 September 2011. In particular, the cell in which he was detained measured 30 square metres and accommodated seventeen prisoners (that is, 1.76 square metres gross living space per inmate). The quality and quantity of the food provided were poor, as a result of which he claimed to have lost 20 kilograms.

need, to the extent that this is required for basic subsistence.

Moreover, she relied on Article 12 § 2 of the European Social Charter, which contains a reference to ILO Convention no. 102, setting forth minimum standards in the field of social security, as well as on the United Nations Convention on the Rights of Persons with Disabilities. In her view, these texts, forming part of Hungary's obligations under international law, also provided for an assertable right to disability benefit.<sup>31</sup>

#### 4. The VGGT and its European and Hungarian relevance

The FAO-inspired VGGT<sup>32</sup> has important relevance in point of view of the Hungarian land policy. Taking this into consideration, it is worth stressing the following.

The Act CXXII of 2013 on transfer of agricultural and forestry lands, which is the essential law of the Hungarian land regime, does not contain *expressis verbis* reference to the relationship between the “right to adequate food” and the “governance of tenure of land, fisheries and forests”. However, in the parliamentary proposal

(draft bill) of the Act CXXII of 2013,<sup>33</sup> there was a direct reference that the new act wants to fulfil the goals of the Hungarian National Rural Strategy, which strategy is connected, in an above-mentioned way, to the food security and food sovereignty. Nevertheless, the Act CXXII of 2013 determines goals, for the fulfilment of which the lawmaker could restrict the acquisition of agricultural lands in a legally acceptable way. Among these goals, there are numerous objects directly connected to the concepts of food security and food sovereignty.

One of the most significant measure of the Hungarian land regime is the provision generally restricting the acquisition of agricultural lands by legal persons. Among others, because of this provision, the European Commission launched an infringement procedure (No. 2015/2023) against Hungary.<sup>34</sup>

The EU's great-significant soft law documents concerning land-acquisition policy and law – i.e. EESC 2015,<sup>35</sup> EP 2017<sup>36</sup> and EC 2017<sup>37</sup> – approach differently to the issue on the acquisition of ownership by legal persons and to other regulatory issues related to it, such as transparency and traceability. In the following part of this

<sup>31</sup> Article 28 on Adequate standard of living and social protection.

„1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:...”

<sup>32</sup> Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), Committee on World Food Security (CFS) of 12 May 2012.

<sup>33</sup> Bill No T/7979 on the transfer of agricultural and forestry lands, Hungarian Parliament, Budapest, July 2012.

<sup>34</sup> Raisz Anikó: Topical issues of the Hungarian land-transfer law. *CEDR Journal of Rural Law* (3) 1, pp. 73-74.

<sup>35</sup> European Economic and Social Committee (EESC): Opinion: Land grabbing – a warning for Europe and a threat to family farming, NAT/632-EESC-2014-00926-00-00-ac-tra (EN), Brussels, 21 January 2015.

<sup>36</sup> European Parliament (EP) resolution of 27 April 2017 on the state of play of farmland concentration in the EU: how to facilitate the access to land for farmers, P8\_TA(2017)0197.

<sup>37</sup> European Commission (EC) Interpretative Communication on the Acquisition of Farmland and European Union Law, 2017/C 350/05, OJ C 350, 18.10.2017, pp. 5–20.



assessment, these approaches will be summarized by the citation of the article Ede János Szilágyi.

“[T]he European Economic and Social Committee clearly highlights the issue of transparency with regard to legal persons, emphasizing that ‘[i]t is difficult to obtain reliable data on the extent of land grabbing as not all land transactions are recorded and there is often insufficient transparency on land transactions between companies, for example in the case of purchases by subsidiaries and partner companies.’<sup>38</sup> In other parts, the European Economic and Social Committee adds that ‘there are now increasing indications that the legal entities are particularly vulnerable to non-agricultural investors.’<sup>39</sup> Thereafter, the European Economic and Social Committee puts forward a proposal to address the issue of transparency; it is another matter that, in my opinion, the proposal would be able to guarantee the transparency of the relations arising from the ownership chain of legal persons, taking into account, in essence, the limited possibilities of the Member States, only to a certain extent: ‘EU Member States should have state institutions with an overview of agricultural land ownership and use structures. To this end, national databases should include information not only on landowners but also on users.’<sup>40</sup> I note that the problem of traceability has been acknowledged also by the European Commission (see below).<sup>41</sup> In respect of the subject hereof, it is a further substantive<sup>42</sup> issue in relation to the acquisition of

ownership by legal persons that the European Economic and Social Committee, while requesting the European Parliament and Council to discuss ‘whether the free movement of capital should always be guaranteed in the case of alienation and acquisition of agricultural land and agribusinesses’,<sup>43</sup> also sets out the task that ‘[w]e need an answer to the question whether the free movement of capital and free markets are compatible with equal access to land acquisition for all natural and legal persons.’<sup>44</sup>

In the resolution of the European Parliament, there are several important findings concerning the acquisition of ownership by legal persons. On the one hand, the European Parliament itself recognizes that a group of legal persons as owners can establish, in essence, an unlimited number of legal persons, thus, certain rules apply completely otherwise in respect of such owners as compared to a natural person; therefore, the European Parliament concludes that ‘existing rules on the capping of direct payments above EUR 150 000 become inoperative if legal persons own multiple agricultural subsidiaries, each of which receives less than EUR 150 000 in direct payments’.<sup>45</sup> Applying this finding of the EP 2017 in an analogous way, the Hungarian position, according to which the provisions on the ceilings set for the acquisition of land and for the ownership of property (considered to be EU-compliant also by the European Commission in respect of the Hungarian legislation<sup>46</sup> and

<sup>38</sup> Point 2.7 of EESC 2015.

<sup>39</sup> Point 3.6 of EESC 2015.

<sup>40</sup> Point 6.18 of EESC 2015.

<sup>41</sup> Point 1. c) of EC 2017.

<sup>42</sup> For example, a proposal that concerns legal entities, but is less important in terms of the Hungarian legislation: Point 6.15 of EESC 2015.

<sup>43</sup> Point 6.9 of EESC 2015.

<sup>44</sup> Ibid.

<sup>45</sup> Point W. of EP 2017.

<sup>46</sup> On the other hand, cf. Point 4. h) of EC 2017.

supported also by the EESC<sup>47</sup> and EP<sup>48</sup>) could not be controlled and would become meaningless if legal persons would acquire ownership, can be strengthened. In respect of the ceilings set for the acquisition of land ownership by legal persons, another important finding of the EP 2017 is that the European Parliament considers it an acceptable restriction and even encourages its application; namely '[the European Parliament] encourages all Member States to use such instruments to regulate the market in land as are already being used successfully in some Member States, in line with EU Treaty provisions, such as state licensing of land sales and leases, rights of pre-emption, obligations for tenants to engage in farming, restrictions on the right of purchase by legal persons, ceilings on the number of hectares that may be bought, preference for farmers, land banking, indexation of prices with reference to farm incomes, etc.'<sup>49</sup> Of course, this part of the EP 2017 should be interpreted in its entirety, which means that the European Parliament places a requirement in respect of all the aforementioned measures that they are applied 'in line with EU Treaty provisions'. Nevertheless, for Hungary, it can be interpreted as significant support that the restriction of land acquisition by legal persons is considered by the European Parliament to be compliant with EU law. This can be considered a serious feat of arms for Hungary in the light of the fact that the European Commission, on the other hand, almost conceptually denies the conformity of the institution with EU law, as detailed below.

The interpretative communication of the European Commission, which is based on the case law of the Court of Justice of the

European Union (CJEU), goes through the restrictions on the acquisition of lands applied by the new Member States and disputed by the European Commission. In this assessment, the European Commission pays special attention to the prohibition of the sale to legal persons and concludes, in this context, that 'a national rule prohibiting the sale of farmland to legal persons is a restriction on the free movement of capital and, where applicable, the freedom of establishment. It can be concluded from the CJEU's jurisprudence that such a restriction is unlikely to be justified... It can be concluded from the CJEU's considerations that such a prohibition is not justified because it is not necessary to achieve the claimed objective. In this context, the CJEU also referred to examples of less restrictive measures, in particular making the transfer to a legal person subject to the obligation that the land will be let on a long lease.'<sup>50</sup> In the light of the fact that one of the grounds for initiating the infringement procedure against Hungary was this restriction, the abovementioned opinion of the European Commission does not contain any novelty. For my part, with regard to this issue, I would highlight – beyond what I pointed out with regard to the anomaly of the monitoring of restrictions to acquisition – that in the case law of the Court of Justice of the European Union, a general restriction to acquisition such as the Hungarian one has not yet been assessed. Moreover, the question also arises how the Court of Justice of the European Union will ultimately decide on such an issue, which includes strong elements of sovereignty (or, in this respect, policy elements), in the interpretative framework at the crossroads of the negative and positive integration

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<sup>47</sup> Point 6.15 of EESC 2015.

<sup>48</sup> Point 22 of EP 2017.

<sup>49</sup> Point 22 of EP 2017.

<sup>50</sup> Point 4. g) of EC 2017.

models, having regard to the resolution of the European Parliament which is revolutionary in many respects and has moved towards the positive integration model in this regard.”<sup>51</sup>

The transparency of the ownership background of land transfers appears even in the VGGT:

“As indicated previously, cross-border acquisitions of land often appear in international law as investment issues. Accordingly, the relevant guidelines of VGGT, principally set out in Point 12, are also of paramount importance. In this regard, VGGT defines, *inter alia*, the concept of ‘responsible investment’,<sup>52</sup> which ensures the improvement of food security, as an objective to be achieved, in relation to which it formulates guidelines for the states, especially the states which are investors,<sup>53</sup> and also for investors.<sup>54</sup> Important elements of responsible investment are, *inter alia*, the issues of land grabbing and land concentration.<sup>55</sup> Finally, in this work, I wish to refer in more detail only to a specific element of VGGT, namely transparency. In this regard, VGGT considers it important that all forms of transactions in tenure rights as a result of investments in land should be done transparently, and the (registration and licensing) systems, which ensure the

transparency thereof, should also contain the ownership background.<sup>56</sup> Since the accurate mapping of the ownership background of legal persons, in the context of the current conditions of globalization, present serious difficulties (here, the term ‘impossible’ could also be used) for such a small country as Hungary, therefore, in my view, the guideline laid down in VGGT could also strengthen the Hungarian position in our EU legal disputes concerning the restrictions on the acquisition of land ownership by legal persons.”<sup>57</sup>

The Hungarian land policy includes definite elements from the concept of food sovereignty. From this point of view, the more characteristic appearance of food sovereignty in the VGGT might be supportable by the Hungarian land policy. The acquisition of the ownership of lands by legal persons is especially important issue for the Hungarian land policy. The significant elements of this issue are the transparency of the ownership background of the transfers<sup>58</sup> (especially in connection with the cross-border acquisition) and furthermore the measureless and limitless multiplication of legal persons by its owner. These features of the legal persons enable the real owners of the legal persons to neutralize and evade the restricting measures

<sup>51</sup> Szilágyi János Ede: Agricultural land law: Soft law in soft law. In: Szabó Marcel – Láncoş Petra – Varga Réka (ed.): *Hungarian Yearbook of International and European Law 2018*. Eleven International Publishing, The Hague, pp. 201-202.

<sup>52</sup> Points 12.1, 12.4 and 12.8 of VGGT.

<sup>53</sup> Points 3.2 and 12.15 of VGGT.

<sup>54</sup> Point 12.12 of VGGT.

<sup>55</sup> See, in particular: Points 12.5, 12.6, 12.10 and 12.14 of VGGT.

<sup>56</sup> Point 17.1 of VGGT.

<sup>57</sup> Szilágyi János Ede: Agricultural land law: Soft law in soft law. In: Szabó Marcel – Láncoş Petra – Varga Réka (ed.): *Hungarian Yearbook of International and European Law 2018*. Eleven International Publishing, The Hague, pp. 212.

<sup>58</sup> Tamás Andréka and István Olajos determined a similar opinion in their article (Andréka Tamás – Olajos István: A földforgalmi jogalkotás és jogalkalmazás végrehajtása kapcsán felmerült jogi problémák elemzése. *Magyar Jog* (7-8), pp. 422). In connection with the Hungarian legislation, they stressed that the „aim of this institution is to avoid the uncontrollable chain of ownership which would be in contradiction with keeping the population preserving ability of the country, since it would be impossible to check land maximum and the other acquisition limits”; the thoughts of Andréka and Olajos were summarized and translated by Raisz (Raisz Anikó: Topical issues of the Hungarian land-transfer law. *CEDR Journal of Rural Law* (3) 1, pp. 74.).

of national land laws via the nature of legal persons. However and unquestionably, the form of legal persons provide even a good opportunity to prevent the atomization of agricultural holdings deriving from the death of natural persons and its consequence, i.e. from the succession of the agricultural holdings. Nevertheless, the prevention of this atomization also may be solved by other measures existing in the national law of numerous states; namely, the proper solution does not demand the legal person's form. In Hungary, the adoption of specific rules concerning succession of agricultural lands and agricultural holdings has been delayed for years. It means that the Hungarian constitution (i.e. Fundamental Law) includes the special rules how to adopt these specific agri-succession rules but the adoption of specific agri-succession rules has not happened yet. Taking the above-mentioned circumstances into consideration, in our opinion, it would be important to declare in the VGGT (a) the possible legal institute of specific agri-succession rules and (b) a more characteristic determination of the national possibility to restrict the acquisition of the ownership of agricultural lands by legal persons in connection with the enhancement of the transparency of the ownership background which transparency-guideline is already determined in the VGGT.

As far as the EU law's aspect of the topic is concerned, we consider important to assess the opportunities raised in Commission II of the CEDR Congress in 2015.<sup>59</sup> Similarly, there are numerous estimable proposals among the thoughts determined in the frame of Hungarian

Association of Agricultural Law (HAAL).<sup>60</sup> It is worth noticing that in the Eurasian Economic Union (EAEU), which – similarly to the EU – bases its common market on free movement of goods, services, labour and capital, the Member States are able to apply reservation in connection with agricultural land market;<sup>61</sup> namely, the Treaty on the Eurasian Economic Union might also provide an considerable example for the EU. Consequently, if the European Commission's recommendation adopted by virtue of the Point 28 of the EP 2017 will launch substantive and real initiations covering the above-mentioned potential directions (CEDR Congress 2015, HAAL and EAEU), the European Commission's initiations might be supportable by the Hungarian land policy.

## 5. Conclusions

Hungary's Fundamental Law which came into force on the 1st of January 2012, has placed the constitutional regulations on agriculture to a completely new basis. Unlike the previous constitution, the new Hungarian code contains a number of provisions that regulate the subjects of agricultural law. Within the constitutional framework thus changed Article XX. of the new constitution which declares the right to food. It can thus be concluded that the right to food is not recognized directly by the Fundamental Law as an autonomous social right but rather indirectly as part of the right to physical and mental health, in essence similar to the right to water, it is an *expressis verbis* type task of the state. The Hungarian

<sup>59</sup> Szilágyi János Ede: Conclusions (Commission II). *Journal of Agricultural and Environmental Law* 10 (19), pp. 91-95.

<sup>60</sup> Papik Orsolya: "Trends and current issues regarding member state's room to maneuver of land trade" panel discussion. *Journal of Agricultural and Environmental Law* 12 (22), pp. 143-145.; Szilágyi János Ede: Cross-border acquisition of the ownership of agricultural lands and some topical issues of the Hungarian law. *Zbornik Radova Pravnog Fakulteta Novi Sad* 51 (3/2), pp. 1067-1069.

<sup>61</sup> Szilágyi János Ede: The international investment treaties and the Hungarian land transfer law. *Journal of Agricultural and Environmental Law* 13 (24), pp. 202-203.

Fundamental Law approaches the right to food from its quality side, with the aim of providing food of sufficient quality, while other constitutions enshrining such a right focus primarily on its quantitative side. In Hungary, neither in the case law of the Constitutional Court nor in the case law of the *Kúria* can we find a single case in which the provision of the right to food enshrined in the Fundamental Law appears. However, the Constitutional Court has concluded in its no. 42/2000. (XI. 8.) decree that no specific sub-entitlements (such as the right to housing, the right to adequate food, sanitation, clothing) were expressly identified with regard to the right to social security, nor the obligation and consequently liability of the state.

The concept of food security is not *expressis verbis* either in the Fundamental Law or at the level of other legislations but neither on the level of the Constitutional Court jurisprudence or at the Supreme Court, the *Kúria*. However, food security appears in several domestic strategy papers dealing with agriculture of which we consider it important to highlight and briefly analyze the following two: the Hungarian National Rural Strategy and the Hungarian Food Development Strategy. In Hungary, food sovereignty also appears only at the level of strategic documents, emphasizing the sovereignty of the concept, but it is not consistently separated from the category of food security in each document.

The relevant case law of the European Court of Human Rights cannot be invoked in the direct form of the right to food, as it is not mentioned in the European Convention on Human Rights or its additional protocols. At the same time, however, the possibility cannot be excluded, in principle, that the Court of Justice examine the infringement of the right to food in the context of other rights under the Convention. In particular, the right to life, the prohibition of torture, inhuman or

degrading treatment or punishment, the right to respect for private and family life, and property rights can be taken into account in this regard. So far, however, issues of access to food in Hungary have so far arisen solely in the context of detention conditions (and thus in violation of the prohibition of torture) in the practice of the Strasbourg court. In these cases, it was not a question of classically enforcing the right to food, but rather of steps taken to defy testimony of persons subject to proceedings. There was only one case (Case of *Bélané Nagy V. Hungary*), where the applicant referred to right to food indirectly in connection to the disability pension.

The Act CXXII of 2013 on transfer of agricultural and forestry lands, which is the essential law of the Hungarian land regime, does not contain *expressis verbis* reference to the relationship between the “right to adequate food” and the “governance of tenure of land, fisheries and forests”. However, in the parliamentary proposal (draft bill) of the Act CXXII of 2013, there was a direct reference that the new act wants to fulfil the goals of the Hungarian National Rural Strategy, which strategy is connected, in an above-mentioned way, to the food security and food sovereignty. Nevertheless, the Act CXXII of 2013 determines goals, for the fulfilment of which the lawmaker could restrict the acquisition of agricultural lands in a legally acceptable way. Among these goals, there are numerous objects directly connected to the concepts of food security and food sovereignty. One of the most significant measure of the Hungarian land regime is the provision generally restricting the acquisition of agricultural lands by legal persons. Among others, because of this provision, the European Commission launched an infringement procedure (No. 2015/2023) against Hungary. The Hungarian land policy includes definite elements from the concept of food

sovereignty. From this point of view, the more characteristic appearance of food sovereignty in the VGGT might be supportable by the Hungarian land policy. The acquisition of the ownership of lands by legal persons is especially important issue for the Hungarian land policy. The significant elements of this issue are the transparency of the ownership background of the transfers (especially in connection with the cross-border acquisition) and furthermore the measureless and limitless

multiplication of legal persons by its owner. These features of the legal persons enable the real owners of the legal persons to neutralize and evade the restricting measures of national land laws via the nature of legal persons. However, and unquestionably, the form of legal persons provide even a good opportunity to prevent the atomization of agricultural holdings deriving from the death of natural persons and its consequence, i.e. from the succession of the agricultural holdings.

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