

CONSTITUTIONAL LAND PROTECTION IN HUNGARY AND IN E.U. MEMBER STATES

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Abstract: *The new Fundamental Law of Hungary, that entered into force in 2012, contains the protection of arable land, at the first time in constitutional level. The Article P includes the natural resources, in particular arable land and its obligation of protection. In this paper I am searching for the appearance of land protection in the EU Member States' constitutions and their effect to the national legal scheme. I determine consequently, that the legislation of the Hungarian way is not unique. The concept of the Hungarian regulation differs from the other EU States. This fact has political and legal regulatory reasons.*

Key words: *land protection, constitution, agricultural law*

INTRODUCTION

The Fundamental Law of Hungary has been in force since 1 January 2012; unlike the former text, the new Fundamental Law contains a definition for arable land: in *Article P* of the chapter „FUNDAMENTALS” it is stated that natural resources, particularly arable land, forests and water resources, as well as biological diversity, in particular native plant and animal species and cultural values shall comprise the nation's common heritage; responsibility to protect and preserve them for future generations lies with the State and every individual.

In this study the constitutions of the European Union member states are examined to compare the Hungarian regulation with other member states' constitutional rules.

MATERIALS AND METHODS

I used the tools of comparative law to examine the constitutions of the respective member states for the preparation of this study. I examined whether the constitutions contain specific rules for arable land just like the Hungarian Fundamental Law and if they do, then what are the common grounds of the foreign regulations and the rules applied by the Hungarian legislator.

In the study, the conclusions are based on the examination of the primary literature dealing with this subject, analytical studies and monographs published in the Hungarian legal doctrine in this field of law, as well as on analyzing empirical data obtained from the judicature. In describing each legal institution, the possible interpretations of law makers' intention were taken into account as well.

RESEARCH RESULTS

As I pointed it about above, the basis for the Hungarian arable land law, including the arable land protection, is Article P of the Fundamental Law [1]. The supreme source of law in Hungary, the Fundamental Law mentions the arable land and its special protection, expressis verbis, in an article that is basically environmental law oriented. Mentioning natural resources in the Fundamental Law and indicating same as part of the national assets creates the impression that arable land has extremely important role in the state economy [6]. Among the natural resources, the arable land is mentioned in the first place implying its highlighted role. Arable land is a “limited asset” in economic terms as the size of arable

land as a natural resource is restricted and cannot be expanded or replaced (Constitutional Court ruling no. 35/1994. (VI. 24.)) and it is also such a crucial resource, being the basis of the agricultural economy, that deserves the accentuated protection set out in the Fundamental Law. However, taking into consideration that the Fundamental Law enlists (as a catalogue of values) the principals, the protection of which is held extremely important by the legislator, the declaration in the Fundamental Law has a wide-ranging meaning [3] and the most important task is to facilitate the implementation of the norm as extensively as possible [3]. In this case the vague constitutional wording [7] might have such effects that are counteractive to the intention of the legislator; the level of protection that is not defined accurately questions the method of protection [2].

Regarding arable land, this non-elaborated protection questions the necessity of the declaration of arable land and its protection in the constitution. On the other hand, the vagueness also originates from that the Fundamental Law emphasizes the importance of preservation in an asset policy aspect and not primarily from an environmental or sustainability point of view. Based on this, the protection can be defined as a constitutional restriction on acquiring the ownership or right to use of arable lands. If we examine the process of the creation of and the voting on the Fundamental Law, then it can be stated that mostly this aspect was highlighted during the preparation phase and the parliamentary discussions [8]. Based on this interpretation, the constitutional protection of arable land in Hungary creates the basis for the new arable land transactional system that entered into force simultaneously with the act on the transaction of arable and forestry lands and its accompanying laws in 2013, including primarily the restrictions on the acquisition of arable land. Based on this, upon the examination of Article P of the Fundamental Law as a whole (both paragraphs) it can be ascertained that for the arable land the “protection” primarily means the protection of national assets and interests by way of determining the ways of legislation (by setting out law-making majority requirements); it contains a certain agricultural asset policy aspect mostly [4].

After the review of the Hungarian constitutional regulation, now the arable land protection regulation in the national constitutions of the European Union member states will be examined. In my research I examined all the unified chartered constitutions of the EU member states, involving 26 member state regulations, excluding the United Kingdom.

Firstly, we can establish that eighteen out of the examined twenty-six constitutions contain rules for environment protection or for the right to environment, or about the environment and its elements in general. The Czech, Estonian, Finnish, Portuguese and the Maltese constitutions contain similar wordings as the Hungarian Fundamental Law as all of these constitutions highlight the importance of the preserving and protection of natural resources and biological diversity. However, they do not contain a non-exhaustive list as the Hungarian constitution so they do not narrow down the above terms.

The constitutions of nine EU member states mention explicitly the land or the arable land in some context. These member states are the following: Bulgaria, Greece, Ireland, Poland, Lithuania, Italy, Portugal, Slovenia and Hungary.

The Bulgarian constitution is very consistent in the aspect that a difference is made between the land as a natural element and arable land as a piece of legally determined land representing the basis for agriculture. It states: „land as our supreme national asset is under the accentuated protection of the state and of the society. Arable land can be utilized only for agricultural purposes” (Section 21 of the Bulgarian Constitution). The Greek constitution connects the protection of land with the asset policy when it states that “for the purposes of a more efficient use of land it is allowed to reform agricultural areas and to take steps to avoid unreasonable partition of the land or to facilitate the merger of

partitioned lands of agricultural private owners in a special way authorized by law” (Section 18 of the Greek Constitution). The constitution of Ireland can be considered as similar to the Greek example as it states that „when forming the principles, the state pays particular attention to that the land should provide economic security to as many families as possible under the given circumstances” (Section 45 of the Irish Constitution). The Polish constitution also contains an interesting asset policy ascertainment: it defines family farms as the basis of „the state order of the agriculture” (Section 23).

Just like the previous ones, also the Italian constitution lays down asset policy principles. „For the reasonable use of land and for the formation of equitable social relations the law prescribes obligations and restrictions for the private ownership of land and determines the upper limit of the size of lands for each region and agricultural zones, facilitates and obligates the land improvement, the conversion of large farms and the reconstruction of production units, assists the small and medium-sized farms” (Section 44 of the Italian Constitution). The Lithuanian and Slovenian constitutions have something else in common: stipulations for the acquisition of land by non-nationals are included. In Lithuania „foreign citizens may obtain the ownership of land, water, forests and parks based on constitutional laws” (Section 47 of the Lithuanian Constitution). The Slovenian constitution contains the following: „to obtain the right of use for public assets in accordance with the legal requirements. The requirements for the use of natural resources are established by law. The law may order that the natural resources can be used by foreign nationals and the laws shall regulate the applicable requirements”. Then adds: „Laws contain specific conditions for the reasonable exploitation of the land. The special protection of arable lands is regulated by law” (Sections 70-71 of the Slovenian Constitution).

After the short presentation of the EU member states’ constitutions it can be established that the wordings concerning natural resources and the arable land are similar to the Fundamental Law of Hungary, however, the Hungarian regulation is surely outstanding in that way that the arable land is mentioned in a non-exhaustive list of an article dealing with general environment protection issues, highlighting the protection and preserving of the environment. In my opinion the Bulgarian constitution has the best solution in this aspect as it contains specific regulations for the land, the agricultural land and for the protection of the environment.

CONCLUSIONS

Based on the above it can be established that several EU member states have similar solutions as the Hungarian Fundamental Law for the declaration of the protection of arable land. Basically 3 categories can be set up for the examined constitutions: there are members states the constitution of which does not mention land and its protection at all, while there are certain member states where the accentuated protection of the land as a natural element is included among the environmental law clauses. The countries that apply a fundamentally asset policy-oriented declaration just like Article P) of the Hungarian Fundamental Law belong to the third group and these constitutions contain rules for the ownership and utilization matters regarding the land of the given member states.

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