

Part IV

– Case notes

The Recent Fight Over Usufruct Rights in Hungary

What Insights Does the CJEU's Judgment in Nemzeti Földügyi Központ (C-419/23) Offer?

Hajnalka Szinek Csütörtöki*

Abstract

Recent developments in land acquisition rules have been increasingly shaped by international and European law, with the EU playing a central role in influencing national land law regulations, including those of Hungary. The country's land law has gradually evolved into a more structured system, driven mainly by the requirements of EU law. However, the regulation of usufruct rights over agricultural land, inter alia, remains a recurring point of legal contention. This is precisely what resurfaced in the recent judgment of the CJEU in Nemzeti Földügyi Központ (C-419/23), where the Court addressed the reinstatement of usufruct rights over agricultural land in Hungary. Furthermore, this case also brings some 'innovations' when compared to the CJEU's earlier jurisprudence, including in SEGRO and Horváth, Commission v Hungary, and Grossmania.

Keywords: land law, national land law, usufruct, arable land, agricultural land

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1. Introduction

To begin with, it is essential to note that while Hungarian land law had undergone dynamic changes until the end of the 20th century, it nevertheless remained under-regulated in certain aspects. To address these 'gaps', the Hungarian legislator undertook significant reforms, including re-regulating Act LV of 1994 on Arable Land. Simultaneously, a parallel land restitution process was undertaken to resolve historical land ownership issues. While these measures addressed many concerns, they also created new chal-

* Hajnalka Szinek Csütörtöki: senior research fellow, Central European Academy, Budapest; Ph.D. Candidate, Ferenc Deák Doctoral School of Law, University of Miskolc, hajnalka.szinek.csutortoki@centraleuropeanacademy.hu.

lenges.¹ Additionally, Hungary's accession to the EU marked a significant turning point, bringing substantial changes to, *inter alia*, its land law.²

As part of the largest enlargement round in the EU's history, Hungary and other Member States were required to harmonize their national legislation with EU law. A specific feature of the 'enlargement process' is that the issue of agricultural land acquisition has consistently been a priority in Accession Treaties.³ In this context, Hungary enacted several acts to ensure compliance with EU law – including Act CXXII of 2013 on the Transfer of Agricultural and Forest Land (commonly known as the Land Transfer Act). This legislative framework, supplemented by additional legislation, was designed to implement EU law while simultaneously safeguarding property rights and protecting agricultural land⁴ – a national asset of vital importance and a natural resource enshrined in the Fundamental Law of Hungary.⁵

Newly joined Member States, including Hungary, were given derogation to maintain national restrictions on the acquisition of agricultural and forestry land for a transitional period⁶ under their Accession Treaties.⁷ While

- 1 János Ede Szilágyi, 'Hungary: Strict Agricultural Land and Holding Regulations for Sustainable and Traditional Rural Communities', in János Ede Szilágyi (ed.), *Acquisition of Agricultural Lands: Cross-border Issues from a Central European Perspective*, Central European Academic Publishing, Miskolc-Budapest, 2022, p. 336.
- 2 János Ede Szilágyi & Hajnalka Szinek Csütörtöki, 'The Past, Present, and the Future of Hungarian Land Law in the Context of EU Law', *Hungarian Yearbook of International Law and European Law*, Vol. 11, Issue 1, 2023, pp. 318–334.
- 3 Unlike 'older' EU members, countries that joined in 2004 or later had agricultural land acquisition explicitly addressed in their Accession Treaties, making it a key part of their legislative frameworks. For further details on this topic, see János Ede Szilágyi, 'European legislation and Hungarian law regime of transfer of agricultural and forestry lands', *Journal of Agricultural and Environmental Law*, Vol. 12, Issue 23, 2017, p. 151.
- 4 Tamás Prugberger, 'Földvédelem és környezethez való jog', in József Szalma (ed.), *A Magyar Tudomány Napja a Délvidéken 2016: A vidék népességmegtartó erejének fokozását elősegítő társadalmi, jogi és természeti tényezők*, Dialóg Campus, Budapest, 2016, pp. 69–106.
- 5 The Fundamental Law of Hungary uses the term arable land. Hungarian land law has undergone significant reforms, especially in regulating agricultural holdings and land. Act LXXI of 2020 is a key example, introducing clear rules for terminating undivided co-ownership and addressing intestate succession of agricultural land. In connection with the topic, see also Zsófia Hornyák, *A mezőgazdasági földek öröklése*, Bíbor, Miskolc, 2019; Zsófia Hornyák, 'Legal frame of agricultural land succession and acquisition by legal persons in Hungary', *Journal of Agricultural and Environmental Law*, Vol. 16, Issue 30, 2021, pp. 86–99.
- 6 Szilágyi 2017, p. 158.
- 7 János Ede Szilágyi, 'The Accession Treaties of the New Member States and the national legislations, particularly the Hungarian law, concerning the ownership of agricultural land', *Journal of Agricultural and Environmental Law*, Vol. 5, Issue 9, 2010, pp. 48–60.

most countries had a seven-year transition, some new Member States secured extensions – Hungary, for example, negotiated an additional three years,⁸ extending the derogation to ten years to align its land laws with EU law.⁹

Following the end of the transitional period, the European Commission assessed the land laws of the new Member States¹⁰ and found that specific provisions in their revised legislation restricted fundamental EU economic freedoms, notably the free movement of capital and the freedom of establishment. Consequently, in 2015, the Commission launched infringement proceedings against several new Member States.¹¹ It is worth noting that such proceedings related to land transfers were relatively rare in the past, with preliminary ruling procedures having been initiated instead.¹² Furthermore, the Commission's investigation and subsequent actions were focused exclusively on Member States that joined the EU in 2004 or later. This is significant because these countries had typically based their land laws on those of the 'older' Member States. This selective litigation approach of the Commission was criticized by a Hungarian expert, suggesting it could be discriminatory.¹³ In light of this, it is worth conducting further investigations, and as some authors highlighted, it would be worth bringing the matter to the European Ombudsman for clarification.¹⁴

8 For instance, Poland had a longer transitional period, while most countries could extend theirs by three years with EU approval. Romania and Bulgaria, for example, were exceptions, with no extension allowed beyond the initial seven years. See Szilágyi 2017, p. 158.

9 Mihály Kurucz, 'Gondolatok a magyar földforgalmi törvény uniós jogi feszültségpontjainak kérdéseiről', in József Szalma (ed.), *A Magyar Tudomány Napja a Délvidéken 2014: Föld- és ingatlanutalajdon, fenntartható mezőgazdasági fejlődés*, Vajdasági Magyar Tudományos Társaság, Újvidék, 2015, p. 151.

10 Except for Poland, given the longer transitional period.

11 See the press release of the European Commission: Financial services: Commission requests BULGARIA, HUNGARY, LATVIA, LITHUANIA and SLOVAKIA to comply with EU rules on the acquisition of agricultural land, at https://ec.europa.eu/commission/presscorner/detail/hu/IP_16_1827.

12 János Ede Szilágyi, 'Magyarország földjogi szabályozásának egyes aktuális kérdései', in József Szalma (ed.), *A Magyar Tudomány Napja a Délvidéken 2017: Migráció, környezetvédelem – társadalom és természet*, Vajdasági Magyar Tudományos Társaság, Újvidék, 2018, p. 185.

13 Ágoston Korom & Réka Bokor, 'Gondolatok az új tagállamok birtokpolitikájával kapcsolatban. Transzparencia és egyenlő bánásmód', in Klára Gellén (ed.), *Honori et virtuti*, Pólay Elemér Alapítvány, Szeged, 2013, pp. 266–267. See also Orsolya Papik, "Trends and current issues regarding member state's room to maneuver of land trade" panel discussion, *Journal of Agricultural and Environmental Law*, Vol. 12, Issue 22, 2017, p. 155.

14 See Szilágyi 2018, p. 186. Several Hungarian experts have proposed different solutions to address the issue of usufruct rights. For example, at the 2015 CEDR congress in Potsdam

As far as preliminary ruling procedures are concerned, the case of *Nemzeti Földügyi Központ*¹⁵ represents the latest development in a series of legal challenges surrounding usufruct rights in Hungary¹⁶ – and it forms the core of this study. The CJEU was asked to rule on the validity of restoring a previously annulled usufruct right, following Hungary's 2021 legislation adopted in response to a prior CJEU ruling. The dispute centered on whether a usufruct right originally granted to a German national had been lawfully registered.¹⁷ This case is particularly interesting because, unlike previous cases where applicants sought reinstatement of their usufruct rights, the German-resident applicant in *Nemzeti Földügyi Központ* challenged the restoration of the previously deleted right.

To provide a better understanding of the issue, this study first briefly outlines the CJEU's jurisprudence on Hungarian land law, presents the infringement proceedings concerning land law legislation of the 'newly joined' Member States following the expiration of the transitional period, and provides a brief overview of the preliminary rulings before the CJEU in connection with the topic. As the primary focus of this study is the recent judgment of the CJEU regarding the rights of usufruct in Hungary, this case will be discussed in more detail. It should be noted that this study does not aim to provide a detailed description of the preliminary rulings or infringement procedures and related case law, as these topics have already been thoroughly covered in a previous issue of the Hungarian Yearbook of International Law and European Law.¹⁸

2. The CJEU's Jurisprudence on Hungarian Land Law

The jurisprudence of the CJEU concerning Hungarian land law legislation has become a significant body of EU case law on land issues. This develop-

and a 2017 Budapest conference, the topic was actively discussed. For additional insights on this subject see also Anikó Raisz, 'A magyar földforgalom szabályozásának aktuális kérdéseiről', *Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica*, Vol. 35, Issue 1, 2017, p. 441.

15 Judgment of 12 December 2024, *Case C-419/23, Nemzeti Földügyi Központ*, ECLI:EU:C:2024:1016.

16 Concerning this, see e.g. Miklós Zoltán Fehér & Réka Somssich, 'The Gradual Shaping of Hungarian Law by Consecutive Preliminary References', *Hungarian Yearbook of International Law and European Law*, Vol. 12, Issue 1, 2024, pp. 37–66.

17 See the press release of the CJEU, No 198/24.

18 See Szilágyi & Szinek Csütörtöki 2023, pp. 318–334.

ment is mainly attributable to the stringent regulatory framework enacted by Hungary, which is among the most restrictive in the region.¹⁹ However, it remains open whether comparable legal constraints exist in the ‘older’ EU Member States – either justifying infringement proceedings against them or, conversely, supporting the argument that Hungary should not be singled out to face such proceedings alone.²⁰

The Hungarian cases before the CJEU originated from the European Commission’s assessment of national land laws across the ‘new’ Member States. It should be recalled that this review occurred following the expiration of the transitional period granted to these states upon their accession to the EU. The Commission identified numerous restrictive measures in the land law regulations of these ‘new’ Member States, which were deemed incompatible with fundamental EU freedoms – particularly the free movement of capital and the freedom of establishment. Consequently, the Commission initiated infringement proceedings against several Member States. According to its assessment, the national rules complained of imposed excessive restrictions on cross-border investment, discouraging the free movement of capital within the internal market.²¹

2.1. Infringement Proceedings and Preliminary Ruling Procedures

For the purposes of this paper, we must briefly examine the infringement proceedings initiated against Hungary concerning its land law legislation. In addition, a brief overview of the preliminary ruling proceedings before the CJEU will be given. Owing to scope of this paper, this analysis will only offer a concise summary of the cases rather than a comprehensive review, as this topic was already discussed in an earlier issue of the Hungarian Yearbook.²² Nevertheless, it is essential to outline their substance to better understand the recent CJEU judgment.

19 János Ede Szilágyi & Hajnalka Szinek Csütörtöki, ‘Conclusions on Cross-border Acquisition of Agricultural Lands in Certain Central European Countries’, in János Ede Szilágyi (ed.), *Acquisition of Agricultural Lands: Cross-border Issues from a Central European Perspective*, Central European Academic Publishing, Miskolc-Budapest, 2022, p. 370.

20 János Ede Szilágyi, ‘The International and EU Legal Dimensions of Agricultural Land Acquisition and the Room for Non-State Action’, in János Ede Szilágyi (ed.), *Legal Protection of Farmers*, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warszawa, 2024, pp. 52–70.

21 See Szilágyi & Szinek Csütörtöki 2023, pp. 318–334.

22 Id.

Regarding the infringement proceedings, it is worth mentioning that the European Commission initiated two infringement proceedings due to Hungary's land law regime: one concerns the *ex lege* termination of usufruct rights between non-close relatives²³ (*the usufructuary case*),²⁴ while the other addressed broader aspects of Hungary's land law (*the global case*).²⁵

In the global case, Hungary successfully defended several provisions,²⁶ leading to the removal of issues such as local land commission procedures, land acquisition limits, pre-emption rights, and lease durations from the scope of the infringement. However, ongoing challenges remain regarding the prohibition of legal persons to acquire agricultural land, the ban on transformation, professional competence requirements for farmers, non-recognition of foreign experience, self-farming obligations, and the approval condition for sales contracts.²⁷ Among these, the prohibition on legal persons to acquire land – an essential element of Hungarian land law since 1994²⁸ – remains particularly significant.²⁹ This rule applies to both domestic and foreign persons,³⁰ restricting ownership but not land use.³¹ Experts argue that lifting this ban could undermine Hungary's rural land structure and require a fundamental legal overhaul.³² A po-

23 Infringement number: INFR(2014)2246, decision date 18 June 2015.

24 For more on the usufructuary case, see Tamás Andréka & István Olajos, 'A földforgalmi jogalkotás és jogalkalmazás végrehajtása kapcsán felmerült jogi problémák elemzése', *Magyar Jog*, Vol. 64, Issue 7–8, 2017, pp. 410–424.

25 Infringement number: INFR(2015)2023, decision date 26 March 2015.

26 Andréka & Olajos 2017, pp. 410–424.

27 János Ede Szilágyi, 'Agricultural Land Law: Soft Law in Soft Law', *Hungarian Yearbook of International Law and European Law*, Vol. 6, Issue 1, 2018, pp. 193–194.

28 Cf. Péter Hegyes, 'A földforgalmi törvény a gyakorlatban', in Klára Gellén (ed.), *Honori et virtuti*, Iurisperitus, Szeged, 2017, pp. 116–121; Pál Bobvos *et al.*, 'A mező- és erdőgazdasági földek alapjogi védelme', in Elemér Balogh (ed.), *Számadás az Alaptörvényről*, Magyar Közlöny Lap- és Könyvkiadó, Budapest, 2016, pp. 31–41; Csilla Csák, 'Constitutional issues of land transactions regulation', *Journal of Agricultural and Environmental Law*, Vol. 13, Issue 24, 2018, pp. 5–32; Csilla Csák, 'Integrated agricultural organization of production system and the organizations carrying that', *Journal of Agricultural and Environmental Law*, Vol. 13, Issue 25, 2018, pp. 6–21.

29 Szilágyi & Szinek Csütörtöki 2022, pp. 362–363.

30 With some exceptions.

31 Martin Milán Csirszki *et al.*, 'Food Sovereignty: Is There an Emerging Paradigm in V4 Countries for the Regulation of the Acquisition of Ownership of Agricultural Lands by Legal Persons?', *Central European Journal of Comparative Law*, Vol. 2, Issue 1, 2021, pp. 29–52. Szilágyi 2022, p. 189.

32 Andréka & Olajos 2017, p. 410–424.

tential CJEU ruling on this matter could set an important precedent³³ at the EU level.³⁴

The decision in the usufructuary case was preceded by a related preliminary ruling. The next sections will present key cases, including *Case C-235/17, Commission v Hungary*.

Turning to the preliminary ruling procedures, the first case to mention is *SEGRO and Horváth*,³⁵ which revolves around the *ex lege* termination of usufructuary rights over Hungarian agricultural land without compensation, a measure introduced by Hungarian authorities with new legislation. SEGRO, a Hungarian-registered company with foreign shareholders,³⁶ and Günther Horváth, an Austrian citizen residing in Austria, both held usufructuary rights over land in Hungary. However, due to changes in legislative, their rights were terminated, as the new provisions stipulated that such rights could only be granted to close relatives of the landowner. Believing this measure to be contrary to the principle of free movement of capital under Article 63 TFEU, they initiated legal proceedings before the Administrative and Labor Court of Szombathely, which referred the case to the CJEU for a preliminary ruling.³⁷ Advocate General Øe examined³⁸ the Hungarian legislation from the perspective of negative integration,³⁹ treating agricultural land primarily as a commercial good. However, a significant flaw in his reasoning emerged as he appeared to conflate usufructuary rights with the instrument of lease, even though Hungarian law distinguishes clearly between the two.⁴⁰ This confusion led him to conclude that Hungary's restrictions constituted indirect discrimination. This position does not fully

33 In its judgment of 23 September 2003 in *Case C-452/01, Ospelt and Schlössle Weissenberg*, ECLI:EU:C:2003:493, the CJEU held that an Austrian law restricting property acquisition by a Liechtenstein foundation was incompatible with EU law. However, the decision is not directly applicable to Hungary's land regime, as the underlying legal and factual circumstances differ fundamentally.

34 Szilágyi 2022, p. 190.

35 Judgment of 6 March 2018, *Joined Cases C-52/16 and C-113/16, SEGRO and Horváth*, ECLI:EU:C:2018:157.

36 *I.e.*, in Germany. *Joined Cases C-52/16 and C-113/16, SEGRO and Horváth*, para. 15.

37 Szilágyi & Szinek Csütörtöki 2023, pp. 318–334.

38 *Joined Cases C-52/16 and C-113/16, SEGRO and Horváth*, Opinion of Advocate General Saugmandsgaard Øe, ECLI:EU:C:2017:410, paras. 71–81.

39 Ágoston Korom, 'The European Union's Legal Framework on the Member State's Margin of Appreciation in Land Policy – The CJEU's Case Law After the "KOB" SIA Case', in János Ede Szilágyi (ed.), *Acquisition of Agricultural Lands: Cross-border Issues from a Central European Perspective*, Central European Academic Publishing, Miskolc-Budapest, 2022, p. 78. and 81.

40 The usufructuary rights (*haszonélvezet*) and the instrument of lease (*haszonbérlet*).

align with the structure of usufructuary rights under Hungarian jurisprudence, where such rights are typically granted to family members. Despite this information in the AG's opinion, the CJEU ruled that the Hungarian legislation in question constituted an unjustified restriction on the free movement of capital and failed to satisfy the principle of proportionality.⁴¹ The judgment reinforced the primacy of EU law in governing cross-border investment and property rights while highlighting the limits of national regulatory autonomy in land law issues.⁴² The case also raised expectations regarding the CJEU's potential assessment of the Hungarian legislation under Article 17 of the Charter of Fundamental Rights, which protects the right to property, and Article 47, which guarantees the right to an effective remedy and fair trial. However, the Court declined to examine these provisions, arguing that since the measure had already been found to infringe on the free movement of capital, an additional assessment under the Charter was not necessary to resolve the dispute. This outcome reaffirmed the Court's long-standing approach, whereby it tends to focus on fundamental freedoms under the TFEU before engaging with fundamental rights provisions.⁴³

A related case, *Case C-24/18*,⁴⁴ further illustrated the strict procedural requirements for preliminary rulings before the CJEU. The Hungarian court had referred a question concerning the compatibility of national land law with Articles 49 and 63 TFEU, asking whether the *ex lege* termination of usufructuary rights, in cases where property had changed ownership through execution, constituted an infringement of EU law. However, the CJEU declared the reference inadmissible because the dispute was purely domestic in nature and lacked a sufficient cross-border element to justify an interpretation of TFEU provisions.⁴⁵ This decision underscored national courts' need to demonstrate a clear link between national legal disputes and EU law when seeking a preliminary ruling.⁴⁶

While *SEGRO and Horváth* did not lead to a substantive assessment of Article 17 of the Charter, the case *Commission v Hungary*,⁴⁷ which also concerned usufructuary rights, provided the CJEU with an opportunity to address the right to property directly. The Court ruled against Hungary, hold-

41 See Szilágyi & Szinek Csütörtöki 2023, pp. 318–334.

42 It was also pointed out in a previous study. See Szilágyi 2017, p. 161.

43 Szilágyi 2022, p. 190.

44 Order of 31 May 2018, *Case C-24/18, Bán*, ECLI:EU:C:2018:376.

45 Szilágyi 2022, p. 191.

46 *Case C-24/18, Bán*, paras. 16 and 19.

47 Judgment of 21 May 2019, *Case C-235/17, Commission v Hungary*, ECLI:EU:C:2019:432.

ing that the national legislation amounted to unjustified deprivation of property under Article 17(1) of the Charter. The judgment emphasized that usufructuary rights, recognized under Hungarian law, constituted a legally acquired right subject to protection under EU law. By referencing case law from the ECtHR, the CJEU reaffirmed the principle that property deprivations must be accompanied by fair and timely compensation, which Hungary's legislative measures had failed to provide.⁴⁸ Consequently, the Court determined that the measure was incompatible not only with Article 63 TFEU but also with the fundamental right to property enshrined in the Charter.⁴⁹

Similarly, *Grossmania*⁵⁰ arose from the legislation introduced in 2013 that imposed a blanket termination of usufructuary rights established by contract between non-close relatives. Grossmania, a Hungarian-registered commercial company owned by EU nationals, had acquired usufruct rights over agricultural land in Jánosháza and Duka,⁵¹ but the legislative amendments *ipso iure* terminated these rights.⁵² Grossmania's attempt to reinstate these rights through Hungarian administrative proceedings was unsuccessful.⁵³ The Hungarian Administrative and Labor Court in Győr⁵⁴ raised a key legal question: could a provision previously declared incompatible with EU law still be applied in a different factual context?⁵⁵ This issue challenged the primacy of EU law and whether national courts could uphold national provisions despite prior CJEU rulings. Experts, like Ana Bobić, argued that the CJEU had the chance to clarify whether national courts must disapprove of conflicting laws and render them inoperative for future cases. A decision extending this obligation would significantly shift the balance of power between national and EU legal systems.⁵⁶ *Grossmania* examined the conse-

48 Ágoston Korom, 'Requirements for the cross border inheritance of agricultural property. Which acts of the primary or secondary EU law can be applied in the case of agricultural properties' inheritance?', *Journal of Agricultural and Environmental Law*, Vol. 17, Issue 33, 2022, p. 67.

49 Concerning the topic, see Zoltán Varga, 'A termőföldre vonatkozó tagállami szabályozások az Európai Unió Bírósága előtt', *Európai Jog*, Vol. 20, Issue 1, 2020, pp. 6–7.

50 Judgment of 10 March 2022, C-177/20, *Grossmania*, ECLI:EU:C:2022:175.

51 Id. para. 16.

52 Press release no. 44/22, CJEU, Luxembourg, 10 March 2022, at <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-03/cp220044hu.pdf>.

53 Following the *SEGRO and Horváth* judgment.

54 Decision of Administrative and Labor Court of Győr, 10.K.27.809/2019/7.

55 Id. p. 7.

56 Ana Bobić, 'Constructive Versus Destructive Conflict: Taking Stock of the Recent Constitutional Jurisprudence in the EU', *Cambridge Yearbook of European Legal Studies*, 2020/22, p. 76.

quences of national authorities violating EU law, balancing legality and legal certainty. The CJEU ruled that the infringement was severe and manifest, recognizing restitution as the primary remedy. Compensation was deemed necessary if restitution wasn't possible, which was in line with national law. The Court also reaffirmed that Member States are liable for damages caused by serious breaches of EU law.⁵⁷

These cases reflect the CJEU's evolving approach to land law in Hungary, highlighting the importance of the free movement of capital and the protection of fundamental rights. They limit national control over land ownership and underscore national courts' duty to uphold EU law. The tension between property rights, EU freedoms, and national sovereignty remains a live debate, with the CJEU guiding its direction. Notably, while earlier cases involved Hungarian citizens, the latest judgment concerns two foreign investors.

3. The Recent Fight over the Right of Usufruct in Hungary

As mentioned earlier, the *Nemzeti Földügyi Központ* marks the latest development in a series of legal challenges regarding usufruct rights in Hungary. This case reflects broader tensions between domestic land regulations aimed at protecting national (agricultural) interests and the EU's foundational principles – particularly the free movement of capital and the protection of property rights under the Charter.

3.1. Background of the Case

The events leading up to the dispute began on 30 December 2001, when the company Readiness Kft. and GW entered into a contract establishing a usufruct right over a plot of agricultural land in Kőszeg, Hungary. This usufruct right was duly entered into the Hungarian land registry on 29 January 2002 without any immediate objections, nor was it contested.⁵⁸

Years later, in 2012, CN registered her ownership of the same agricultural land, and her ownership was officially recorded in the land registry.⁵⁹ In 2015, the Hungarian authority – the Szombathelyi District Registry, Vas Re-

57 Szilágyi & Szinek Csütörtöki 2023, pp. 318–334.

58 Case C-419/23, *Nemzeti Földügyi Központ*, para. 20.

59 Id. para. 21.

gion Administrative Department (*Vas Megyei Kormányhivatal Szombathelyi Járási Hivatal*) – deleted GW’s usufruct right from the land register. This decision was based on the Hungarian legal provision that required the usufruct holder to be a close relative of the landowner for the usufruct right to be upheld.⁶⁰ Since GW was not a close relative of the landowner, the usufruct right was deleted from the land register, in line with the provisions of Section 108(1) of the 2013 Act on Transitional Measures, as well as Section 94 of the Act on the Land Register.⁶¹

However, the case took a significant turn in 2018 when the CJEU ruled on *SEGRO and Horváth*, clarifying that Article 63 TFEU (the free movement of capital) precludes national legislation that automatically extinguishes usufruct rights over agricultural land held by non-nationals of the Member State. This ruling emphasized that national laws that cancel usufruct rights solely because the holder is not a close relative of the landowner are incompatible with EU law.⁶² In 2019, the CJEU issued a further judgment in *Commission v Hungary*, where it found that Hungary had violated EU law by adopting legislation that canceled usufruct rights held by non-Hungarian nationals, affirming yet again that such measures were contrary to the principles of the European Union, particularly the free movement of capital and the protection of property rights.⁶³

In response to these rulings, Hungarian law was amended, and on 30 November 2022, the National Land Centre issued an order to reinstate GW’s usufruct right in the land registry. This decision was based on the provisions of Sections 108/B and 108/F of the 2013 Act on Transitional Measures, as amended by a 2021 act⁶⁴ aimed at aligning Hungarian law with EU legal requirements. This reinstatement was crucial because, according to Hungarian law, the deletion of the usufruct right could only be undone if the usufruct holder was not considered to have proceeded in bad faith. CN, the current owner, was deemed to have proceeded in bad faith because she was the owner of the land when GW’s usufruct right had been deleted and, therefore, could not claim good faith in the context of the reinstatement process.⁶⁵

60 Id. para. 22.

61 Until 31 January 2023 Act CXLI of 1997. From 1 February 2023 Act C of 2021. *Case C-419/23, Nemzeti Földügyi Központ*, para. 22.

62 Id. para. 23.

63 Id. para. 24.

64 Act CL of 2021.

65 *Case C-419/23, Nemzeti Földügyi Központ*, para. 25.

Nevertheless, CN contested the decision of the National Land Centre, arguing that the original registration of the usufruct right in 2002 had been unlawful. The argument was based on Section 11(1) of the 1994 Act on Arable Land, which prohibited the registration of usufruct rights over agricultural land in favor of non-Hungarian nationals after 1 January 2002. Although the usufruct right was granted in 2001, it was not entered into the land register until 29 January 2002, when the law was already in force, rendering the registration unlawful in her view. Despite this, the registration decision had become final as it was not contested at the time, which complicated the legal situation.⁶⁶

The National Land Centre and GW argued that the reinstatement of the usufruct right was valid and that there was no need to examine the lawfulness of the original registration. They pointed to the fact that the 2013 Act on Transitional Measures, as amended by the 2021 act, did not require an examination of whether the original registration of the usufruct right was lawful, and that the relevant legislation allowed for the reinstatement of rights that had been unlawfully deleted, provided certain conditions were met.⁶⁷

The national court, Győr High Court (*Győri Törvényszék*), found itself grappling with the conflict between Hungarian national law and EU law, particularly the provisions of Article 63 TFEU and Article 17 of the Charter, which guarantee the right to property. The court noted that CN, a resident of Germany, was involved in an investment in agricultural land located in Hungary, which was subject to EU rules governing the free movement of capital. Additionally, it highlighted that GW's usufruct right, created by a contract signed in 2001 but registered only in 2002, occurred after Hungarian national law prohibited such registrations for non-Hungarian nationals. Although the court acknowledged the potential unlawfulness of the registration under Hungarian law, the decision became final due to the fact that it had not been contested at the time.⁶⁸

The key issue raised at the Győr High Court was whether Hungarian legislation, which mandates the reinstatement of usufruct rights without examining the lawfulness of their original registration, is in compliance with EU law. The court sought clarity from the CJEU on whether Articles 63 TFEU and 17 of the Charter preclude national laws allowing the reinstatement of usufruct rights in the land registry without a mandatory consideration of

⁶⁶ Id. para. 26.

⁶⁷ Id. para. 27.

⁶⁸ Id. paras. 28–37.

their (original) lawfulness. It also raised concerns about the principle of legal certainty and the compatibility of the reinstatement process with the EU's principles of effectiveness and sincere cooperation.⁶⁹

3.2. Opinion of Advocate General Juliane Kokott

The Opinion of AG Juliane Kokott in the present case was delivered on 11 July 2024. Her opinion emphasizes that previous case law has established that national laws that violate EU principles – particularly those that annul usufruct rights to the detriment of EU nationals – are incompatible with EU law. In this case, the National Land Centre of Hungary reinstated the usufruct right following legislative changes adopted after a ruling declared the original law incompatible with EU law. However, the landowner, a German resident, challenges the reinstatement, arguing that the original usufruct registration was unlawful under Hungarian law at the time. The landowner asserts that the National Land Centre should have assessed the legality of the original registration before reinstating the usufruct to protect her property rights and the free movement of capital. This causes a conflict between the landowner's fundamental freedoms and the usufruct holder's rights. The key issue is whether the landowner can invoke EU law principles to demand the deletion of the usufruct despite the Court's prior ruling that protects the usufruct holder.⁷⁰

The AG's Opinion delves deeply into the admissibility and substance of the preliminary ruling request, particularly the interpretation of Article 63 TFEU and Article 17 of the Charter. The case involves the reinstatement of a usufruct right after Hungary was found to have breached EU law. The Hungarian Government argued that the preliminary ruling request was inadmissible, contending that the reinstatement of the usufruct promoted the free movement of capital and did not warrant a review of the original registration.⁷¹

However, the Advocate General disagreed with the Hungarian Government, stating that there is a clear link between the case and EU law, justifying the referral.⁷² The applicant, a legal person residing in Germany, is protected

⁶⁹ Id. para. 37.

⁷⁰ Opinion of Advocate General Kokott, *Case C-419/23, Nemzeti Földügyi Központ*, paras. 1–4.

⁷¹ Id. para. 35.

⁷² Id. para. 38.

under EU law, particularly Articles 63 TFEU and 17 of the Charter, guaranteeing the free movement of capital and the right to property. The reinstatement of the usufruct is directly tied to rectifying Hungary's previous violation of EU law, necessitating the referral to the CJEU.

On the substantive point, the AG assesses whether national authorities are required to examine the lawfulness of the original registration of the usufruct before its reinstatement. The main question is whether such an examination is mandated by EU law, even if the original registration was initially considered valid under national legislation. The Advocate General emphasized that, in this case, the rights of the usufruct holder may prevail over those of the landowner, as long as this aligns with EU law and internal market principles.⁷³

The Advocate General further discussed whether the landowner, a non-resident of Hungary, can rely on EU law protections. The landowner benefits from the free movement of capital under Article 63 TFEU and the right to property under Article 17 of the Charter. However, these rights are not absolute and can be restricted if they conflict with the rights of others, such as the usufruct holder. In this case, the reinstatement of the usufruct is necessary to comply with EU law and rectify a previous infringement. The rights of the usufruct holder are equally protected under EU law, limiting the landowner's ability to exercise their right to property fully.⁷⁴

The AG concluded that, in this context, the reinstatement of the usufruct is justified and proportionate under EU law. While the landowner's rights are safeguarded, the overriding objective is to ensure compliance with EU law and protect the usufruct holder's rights. The Court has consistently held that EU law must take precedence in situations like this, where national laws conflict with EU obligations.⁷⁵

In conclusion, the Advocate General affirmed that the request for a preliminary ruling is admissible and that the reinstatement of the usufruct, in compliance with the judgment establishing Hungary's failure to fulfill its EU obligations, is consistent with EU law. The rights of the usufruct holder take precedence, given the need to uphold EU law and protect the free movement of capital and property rights. Additionally, the AG underscored that a landowner whose property is encumbered by a usufruct right that was originally lawfully registered but later deleted in violation of EU law cannot success-

⁷³ Id. paras. 35, 40, 61, and 67.

⁷⁴ Id. paras. 63 and 70.

⁷⁵ Id. para. 76.

fully invoke their rights under Article 63 TFEU and Article 17 of the Charter to compel the competent authority to delete the usufruct once again. This is particularly the case if the original registration of the usufruct infringed Hungarian national rules that were in effect at the time.⁷⁶

3.3. The Judgment and its Reasoning

The CJEU issued its judgment on 12 December 2024. It should be recalled that in this case, the CJEU was asked to assess whether EU law, specifically Article 63 TFEU and Article 17 of the Charter, prevented Hungarian national legislation from requiring the reinstatement of a usufruct right in a land register after it had been unlawfully deleted.⁷⁷

As mentioned earlier, the case concerned a plot of agricultural land in Hungary, which had been subject to a usufruct right created by a contract between a foreign national and a Hungarian company. The usufruct was initially registered in the land register in 2002. Still, it was later deleted in 2015 following Hungarian national legislation introduced in 2013 that prohibited non-Hungarian nationals from holding usufruct rights over agricultural land.⁷⁸

The referring court sought guidance from the CJEU on whether the reinstatement of GW's usufruct right, which had been unlawfully deleted, was compatible with EU law. The Hungarian government disputed the admissibility of the question, arguing that the EU law provisions cited by the referring court were unrelated to the facts of the case and that the applicant's conduct was in bad faith.⁷⁹ However, the Court found that the question referred was admissible, emphasizing that it was not for the Court to assess the merits of the instant case or the applicant's conduct, but to interpret EU law concerning the substantive issues raised.

The Court first considered whether the national legislation involved a restriction on the *free movement of capital* under Article 63 TFEU. It reaf-

⁷⁶ Id. paras. 77 and 78.

⁷⁷ The exact formulation of the question is: "Must Article 63 TFEU and Article 17 of the Charter of Fundamental Rights of the EU be interpreted as meaning that they do not preclude legislation of a Member State that, on reinstatement of a usufruct right, ordered following proceedings for failure to fulfil obligations – subsequent to the deletion of a usufruct right whose registration was unlawful but final –, does not provide for a mandatory examination of whether the usufruct right was registered lawfully?" See *Case C-419/23, Nemzeti Földügyi Központ*, para. 37.

⁷⁸ Id. paras. 20–22.

⁷⁹ Id. para. 38.

firmed that transactions involving non-residents investing in real estate, including agricultural land, fall within the scope of Article 63 TFEU. A national provision that imposes limitations on such investments could restrict the free movement of capital if it affects the position of investors from other Member States, particularly if it discourages investment. The Court found that the legislation requiring the reinstatement of the usufruct rights, which was detrimental to the land's value and reduced the owner's ability to enjoy their property, constituted a restriction on the free movement of capital.⁸⁰

However, such a restriction may still be justified under EU law if it is based on overriding reasons of public interest and complies with the principle of proportionality.⁸¹ The Court noted that the Hungarian legislation in question aimed to implement a previous judgment⁸² in which Hungary had been found to violate EU law regarding the unlawful deletion of usufruct rights.⁸³ The Hungarian legislator's objective was to rectify this infringement and ensure that rights previously unlawfully were reinstated in the land register. The Court found that this objective constituted an overriding reason in the public interest.⁸⁴

The Court then examined whether the national legislation complied with the principle of proportionality, which requires that measures do not exceed what is necessary to achieve the legitimate objective. It determined that the Hungarian legislation was proportionate, as it sought to ensure compliance with EU law by reinstating usufruct rights, even if the original registration had been considered unlawful under national law. The Court also noted that Hungary had amended its legislation in 2021 to allow for such reinstatement, reinforcing compliance with EU law. Additionally, the CJEU acknowledged that when reinstatement is impossible due to objective obstacles, compensation could serve as an alternative remedy. However, in this case, reinstatement was deemed feasible and did not disproportionately affect the property rights of the landowner, CN, who had acquired full ownership of the land after the usufruct was canceled. Moreover, the Court found that the technical illegality of the initial usufruct registration, based on an interpre-

80 Id. paras. 54–58.

81 Id. para. 59.

82 See Case C-235/17, *Commission v Hungary*.

83 The case at hand concerns a recent amendment to Hungarian law, which implements the judgment in *Commission v Hungary*, while previous case law focused on the 2013 Act on Transitional Measures.

84 Case C-419/23, *Nemzeti Földügyi Központ*, paras. 59–62.

tation of Hungarian case law, did not constitute an insurmountable obstacle to reinstatement.⁸⁵ It emphasized that the principle of legal certainty and the protection of legitimate expectations played a crucial role in the assessment.⁸⁶ The usufruct contract had been concluded in compliance with the law just before the 'restrictive' Hungarian legislation took effect. While the registration was technically unlawful, it remained uncontested for over 13 years, further supporting GW's position under the principle of legal certainty. The Court stressed that technical illegality should not result in disproportionate consequences, particularly when the usufruct had been exercised without objection for an extended period.⁸⁷

Regarding the right to property under Article 17 of the Charter, the Court observed that reinstating the usufruct right did not undermine CN's ownership rights.⁸⁸ Although the original registration of the usufruct may have been contrary to national law, CN's full ownership of the land could not be considered 'lawfully acquired,' as it resulted from the unlawful cancellation of the usufruct.⁸⁹ The Court emphasized that reinstatement merely restored the legal situation that existed before the infringement and did not impose an excessive burden on CN. Therefore, reinstating the usufruct did not infringe upon CN's property rights under Article 17 of the Charter.⁹⁰

In conclusion, the CJEU ruled that EU law does not prevent national legislation requiring the reinstatement of a usufruct right in the land register, even if the original registration was contrary to national law. Such a measure must comply with EU law and the principle of proportionality, aiming to remedy past violations and uphold EU principles.⁹¹ The Court found Hungary's legislation justified,⁹² as it sought to restore the legal situation after the unlawful cancellation of the usufruct right. Notably, the judgment emphasized that restitution should take precedence over financial compensation where feasible, reinforcing the obligation of Member States to fully rectify breaches of EU law. Furthermore, the Court acknowledged that longstanding and uncontested usufruct rights, even if technically unlawful under national law, may still be protected under the principles of legal cer-

85 Id. para. 69.

86 Id. para. 68.

87 Id. para. 70.

88 Cf. id. para. 35.

89 Id. para. 76.

90 Id. para. 68.

91 Id. para. 78.

92 See also paras. 59–77.

tainty and legitimate expectations. In my view, this case underscores the primacy of EU law and the binding nature of CJEU judgments, affirming that national authorities must ensure full and effective compliance. It also sets an important precedent for future cases concerning the enforcement of EU law in the field of property rights.

4. Comments and Proposals

Human rights are inherently linked to land tenure, with property rights being the most relevant. A significant development in this area is the growing influence of the European Union's human rights framework, which now exists alongside the long-established Strasbourg system under the ECHR.⁹³ This shift is evident in recent rulings by the CJEU, where the Charter of Fundamental Rights has been applied in Hungarian land acquisition cases. This highlights that Member States must also align their land policies with the Charter's requirements beyond the legal frameworks shaped by negative and positive integration. This underscores a key issue concerning the relationship between the EU's human rights framework and the ECHR in matters of land ownership. As the legal landscape evolves, Member States must stay vigilant and monitor these developments closely.⁹⁴ Regarding the specific case analyzed in this study, the judgment represents a significant development in the jurisprudence of the CJEU, as it offers an autonomous interpretation of the phrase 'lawfully acquired' within the meaning of Article 17 of the Charter. Notably, this phrase does not appear in the ECHR,⁹⁵ which is interpreted and applied by the ECtHR. As such, the CJEU is engaging with a legal concept that lies outside the established case law, thereby contributing to the evolution of European human rights law by clarifying the scope of property protection under EU law independently of the ECHR framework.⁹⁶

Furthermore, the central issue in the present case was whether, from the perspective of the free movement of capital and the right to property, it is

93 Szilágyi 2024, p. 71.

94 Id.

95 Cf. Article 1 of Protocol 1 to the ECHR.

96 Patrick Leisure & Attila Vincze, 'Undoing undone Injustice: Nemzeti Földügyi Központ and the continuing Saga over Usufruct Rights in Hungary (Case C-419/23)', *EU Law Live*, at <https://eulawlive.com/op-ed-undoing-undone-injustice-nemzeti-foldugyi-kozpont-and-the-continuing-saga-over-usufruct-rights-in-hungary-case-c-419-23/>.

permissible to consider the unlawful nature of the original registration when deciding on the reinstatement of a usufruct right. The Court answered this question in the negative, which aligns well with the established practice of the CJEU. At the same time, this decision did not resolve the remaining concerns regarding Sections 108/F(6) and (7) of the 2013 Act on Transitional Measures. This is evidenced by the fact that a constitutional complaint procedure is currently pending before the Constitutional Court of Hungary,⁹⁷ which – among other things – seeks to establish the unconstitutionality of these provisions.⁹⁸

It is also important to note that Hungarian law lacks provisions on liability for damages caused by legislative actions, raising the question of whether legislators can be held responsible for damages resulting from laws and the implementation of laws.⁹⁹ This also invites consideration of whether law-making itself can be unlawful.¹⁰⁰ It should be added that legislative actions are protected by state immunity and considered part of the state's legitimate authority. Moreover, no legal framework establishes a private legal relationship between the state and individuals harmed by legislative acts or omissions.¹⁰¹ Judicial practice¹⁰² has long hesitated to recognize liability for damages caused by legislation. However, two exceptions are widely accepted: when a law is deemed unconstitutional or conflicts with EU law as determined by the CJEU.¹⁰³

Bodzási pointed out that case law recognizes two scenarios in which liability for damages may arise from legislative acts. In a case related to damages caused by Section 108 of the 2013 CCXII Act, which led to the removal of usufruct rights, the Budapest Court of Appeal (*Fővárosi Ítéltábla*) ruled that the state is not exempt from liability for harm resulting from legislation,

97 No. IV/02518/2024.

98 Károly László Simon, 'A törölt haszonélvezeti jogok nyomában – A visszajegyezhetőség uniós jogi és alapjogi összefüggései az Európai Unió Bírósága Nemzeti Földügyi Központ ítélete (C-419/23) nyomán', *EU jog*, No. 1, 2025.

99 Balázs Bodzási 'Az Európai Bíróság a korábban törölt haszonélvezeti jogok ingatlan-nyilvántartásba történő visszajegyzéséhez kapcsolódó kérdéseket vizsgálta', *Magyar Jogász Egylet*, at https://jogaszegylet.hu/jogelet/az-europai-birosag-a-korabban-torolt-haszonelvezeti-jogok-ingatlan-nyilvantartasba-torteno-visszajegyzesehez-kapcsolodo-kerdeseket-vizsgalta/#_ftn6.

100 Ádám Fuglinszky, *Kártérítési jog*, HVG ORAC, Budapest, 2015, p. 579.

101 Attila Menyhárd, 'Az állam kártérítési felelőssége és állami immunitás', in Tibor Nochta et al. (eds.), *Ünnepi tanulmányok Kecskés László professzor 60. születésnapja tiszteletére*, Pécsi Tudományegyetem Állam- és Jogtudományi Kar, Pécs, pp. 400–401.

102 Particularly that of the Supreme Court (*Legfelsőbb Bíróság*).

103 Fuglinszky 2015, p. 582.

as no legal provision grants such immunity. However, additional factors, such as a ruling from the Constitutional Court of Hungary or the CJEU declaring the law unconstitutional or in breach of EU law, are required for the legislation to be deemed unlawful. Bodzási also highlights that even if the Constitutional Court does not annul a law but finds it unconstitutional due to omissions, this deficiency can still render the legislation unlawful. In this instance, the state failed to correct the identified shortcoming retroactively. While the Constitutional Court and CJEU decisions confirmed the unlawfulness of Section 108, the necessary conditions for establishing liability for damages were not entirely fulfilled.¹⁰⁴

Moreover, Bodzási also pointed out that on the occasion of the reform of the Civil Code the proposal put forward by the Civil Code Committee aimed to establish rules on liability for damages caused by legislative acts. Under this proposal, the legislator would have been held responsible if the Constitutional Court of Hungary annulled an unconstitutional law *ex tunc*. If the annulment took effect later, liability would have applied only to damages occurring after that point. Furthermore, the proposal stipulated liability for damages arising from unconstitutional legislative inaction, precisely when the legislator failed to meet a deadline set by the Constitutional Court of Hungary. However, these provisions were ultimately not included in the Civil Code.¹⁰⁵

Under EU law, compensation may be sought from a Member State if a directive is incorrectly transposed, leading to damages.¹⁰⁶ The ECtHR has also found Hungary liable in cases involving deficiencies in its legislative framework. Based on this, experts believe compensation for damages caused by legislation is possible, with Section 6:519 of the Civil Code as a potential basis.¹⁰⁷ However, applying this provision is challenging, as the *Kúria's* (the Hungarian Supreme Court) decision shows.¹⁰⁸ In this case, although the violation and breach of EU law were established, state liability for damages was not established. The court had to verify the causal connection between the unlawful conduct and the damage, which could not be established, leading to the rejection of the claim.¹⁰⁹

104 Bodzási 2025. See also Court of Appeal No. 5.Pf.20.405/2019/8/II.

105 Bodzási 2025.

106 See the CJEU judgments of 5 March 1996 in *Joined Cases C-46/93 and C-48/93, Brasserie du Pêcheur and Factortame*, ECLI:EU:C:1996:79.

107 Bodzási 2025.

108 See Case no. Pf.v.VI.20.837/2022/9.

109 Fuglinszky 2015, p. 585.

Bodzási noted that Menyhárd proposes an objective liability framework, rather than a fault-based one, to solve damages caused by legislation. This framework should be outlined in a separate legal provision.¹¹⁰

In practice, the legislator has taken steps toward objective liability, notably by introducing provisions to compensate beneficiaries of cancelled usufruct rights.¹¹¹ As a general rule, the provision states that compensation is based on the annual value of the cancelled usufruct right. This annual value is defined as one-twentieth of the market value of the property encumbered by the usufruct right at the time of its deletion from the land registry. Importantly, in connection with this compensation, additional elements typically required under the Civil Code do not have to be evidenced – such as actual damage or a causal link between the legislative act and the harm suffered.¹¹²

5. Conclusions

Hungary's land law regulation has undergone significant reforms, particularly following its accession to the EU. These reforms included the revision of Act LV of 1994 on Arable Land, land restitution to address historical ownership issues, and the adoption of the 2013 Land Transfer Act to harmonize national law with EU regulations while protecting agricultural land as a national resource. As part of its accession negotiations, Hungary secured a transitional period during which it could uphold restrictions on the acquisition of agricultural and forestry land.

Following the expiration of this period, the European Commission launched infringement proceedings against several new Member States, including Hungary, for violating EU principles such as the free movement of capital. In parallel, preliminary ruling procedures were initiated to assess the compatibility of relevant national legislation with EU law.

This study set out to examine the evolution of Hungary's land law in light of EU legal requirements, focusing particularly on the challenges surrounding usufruct rights. Central to this analysis was the most recent case, *Nemzeti Földügyi Központ*, which builds upon earlier CJEU decisions such as *SEGRO* and *Horváth, Commission v Hungary* and *Grossmania*. These cases established that Hungary's termination of usufruct rights – particu-

110 Bodzási 2025.

111 See Section 108/K(1) of the 2013 Act on Transitional Measures.

112 Bodzási 2025.

larly those held by non-Hungarian nationals – constituted unjustified restrictions on fundamental freedoms, including property rights and the free movement of capital.

In its 2024 judgment, the CJEU ruled on the reinstatement of a previously cancelled usufruct right over agricultural land in Hungary. Hungary's 2013 law, which extinguished the usufruct rights of non-family members, was found to violate EU law. Hungary later enacted provisions to restore such rights. The CJEU confirmed that EU law allows for reinstating these rights, even if the original registration was unlawful, as the national law aimed to comply with an EU ruling. The Court emphasized that the reinstatement didn't limit the landowner's property rights, as the usufruct was registered before their ownership. It also introduced an autonomous interpretation of the term 'lawfully acquired' under Article 17 of the Charter of Fundamental Rights – offering a distinct EU perspective not found in the ECHR.

This study also highlights the unresolved issue of state liability in Hungary. While Hungarian law currently lacks a comprehensive regime for compensating damages caused by legislation, emerging proposals – particularly those advocating for objective liability – reflect a growing recognition of the need to modernize national law and align it with broader EU principles. Initiatives such as the 2013 Act on Transitional Measures offer partial remedies in this regard and suggest a direction for future legal development.