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Theoretical and practical issues of restraints of land acquisition in Hungary¹

1. Introduction

The land is a finite commodity, and as a natural object is available to a limited extent, non-reproducible, irreplaceable, the indispensability, its renewable capacity, specific risk-sensitivity and low profit yield.² The land has particular social strings attached, so its different legal treatment from other objects is appropriate, and these conditions may be justified by the protection of public interest against the ownership rights. The Hungarian Basic Law emphasizes the protection of arable land in section P.

Restraints and restrictions on land acquisition are based on ground policy of possession of each state. The ownership means full control over the thing, getting the the ownership means creating the power of the owner over the thing. The issue of the property possession and use arises in connection with the land restrictions and prohibitions. The question of the land use is discussed only in extent of how it affects the legal fate of land and during previous land regulations induced the occur of pocket contracts.

The Constitutional Court examines the right to property³ with the necessity-proportionality test, however, a general reference to the public interest⁴ is not sufficient for the restriction of fundamental rights, it should have a concrete foundation.⁵

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² 35/1994. (VI.24.) Constitutional Court Decision, it is referred either nowadays including e.g. the Decision of the Curia No. Knk. IV.38.133/2015/3.

³ For analyzing the right to property as a basic constitutional right and its protection and limitations, see Téglási András: Termőföldvédelem az Alkotmánybíróság gyakorlatában és az Alaptörvényben, in: Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közszerkesztési Intézet, 2013, 93-107.; Téglási András: The constitutional protection of agricultural land in Hungary with special respect to the expiring moratorium of land acquisition in 2014, *Jogelméleti Szemle*, 2014/1, 155-175.; Téglási András: Az Alkotmánybíróság alapjogvédelmi gyakorlata az Alaptörvény hatálybalépése után, *Közjogi Szemle*, 2015/2. 17-23. See about the provisions of Civil Code on the protection of ownership: Téglási András: Tulajdonvédelem az új Ptk.-ban, in: Keserű Barna Arnold – Kóhidi Ákos (edit.): *Tanulmányok a 65. éves Lenkócs Barnabás tiszteletére*, Eötvös József Könyv-és Lapkiadó Bt., Budapest, 2015, 542-553.; Téglási András: Az alapjogok hatása a magánjogi viszonyokban az Alkotmánybíróság gyakorlatában az Alaptörvény hatálybalépését követő első három évben – különös tekintettel a tulajdonhoz való jog alkotmányos védelmére, *Jogtudományi Közlemény*, 2015/3, 148-157.

⁴ „Free property means, it does not make a harm in other persons' rights or in the public interest” Sebess Dénes: *Hungarian agri-evolutions MDCCCCII MDCCCCXXXII 26 Agricultural Study*, Royal Hungarian University Press, 1933, 22.

The right to property does not equal with the right to acquire property. The public and private legal restrictions on land acquisition are considered as a limitation of acquisition that is not a fundamental right. The Constitutional Court ruled that besides the case of a discrimination on a legal base, the requirement of unequal treatment should have a reasonable cause, that does not constitute arbitrary.⁶ Thus, in respect of a fundamental right the discrimination is unconstitutional when it has no reasonable cause. „*The content of property protected as a fundamental right must be understood together with the current (constitutional) public and private legal constraints. The scope of the constitutional protection of property is always specific; it depends on the subject and the object of the ownership, on its function and the way of the restriction. For the other side: according to the same constitutional aspects, the possibility of intervention in the property by public authority is different.*”⁷

The Hungarian Constitutional Court interpretes the restriction of the acquisition in accordance with the developing activity of European Court of Human Rights (ECHR) in Strasbourg of Justice, which raises the issue of proportionality due to the property damage cases cause by deprivation.⁸

The public law restrictions on property rights have got various manifestations and classification possibilities, but the public interest lies behind them, which is enforced by state public authorities in case.

Besides constitutional approach we should examine the private law dogmatics to land acquisition and administrative law legislation⁹ should be applied in official procedures. Basic legal institutions should be dogmatically clarified.

Static, mandatory legal regulations of the property law regulates the issues of land ownership and the dynamic dispositive side of civil law dogmatics deals with legal relationships. The rules of civil law are concerning to regulating the ownership and use of land. The Agricultural Law, that was separated from the Civil Law field, is the field of law which synthesizes relevant legal provisions concerning the agricultural land and it

⁵ For the test of necessity-proportionality, see also the 30/1992. (V.26.) Constitutional Court Decision, 39/2007. (VI.28.) Constitutional Court decision.

⁶ 35/1994. (VI.24.) Constitutional Court Decision.

⁷ 64/1993. (XII.22.) Constitutional Court Decision IV.1. section.

⁸ For the practice of the European Court of Human Rights (Strasbourg) see Raisz Anikó: Földtulajdoni és földhasználati kérdések az emberi jogi bíróságok gyakorlatában, in: Csák Csilla (edit): *Az európai földszabályozás aktuális kihívásai*, Novotni Alapítvány, 2010, 241-253. Here, 13 individual case will take place in connection with specifically the deprivation of property, land ownership, land use – the land traffic in classic sense. These are the judgments, by which the difference can be seen in the amount of compensation paid to the Eastern or Western European countries due to illegal property withdrawal. This is well-known by the case Papamichalopoulos Greece (31 October 1995, No. 14556/89.) And Maria Atanasiu and Others contra Romania (12 October 2010, No. 30767/05. and 33800/06.) where the facts were very similar but there was 200,000. euro difference between the damages awarded.

Due to practice of european courts see Téglási András: A tulajdonhoz való jog védelme Európában – az Európai Unió Bírósága, az Emberi Jogok Európai Bírósága és a magyar Alkotmánybíróság gyakorlatának fényében, *Kül-Világ*, 2010/4, 22-27.

⁹ Act CXL of 2004 on General Rules of Administrative Proceedings and Services.

is in the relationship of *lex generalis-lex specialis* with other law fields. Taking into respect the rules of land lease laid down in the Civil Code which gives the background regulations of the land traffic issues.

It is worth to analyse how the Act CXXII of 2013 on Trade of Arable Land (Land Traffic Act-Fftv) transformed the legal constraints of land ownership and the right of land use taking this last issue only from the point of the control over the land. Other question is, whether the Fftv regulations are really suitable to prevent abuses related to land acquisition, to close the loopholes that gave an opportunity to break through the restrictions. This question can be measured from the side of the constitutional aspects of the right to property and the right to acquire property rights in relation to the land acquisition. And in the cohesion of the civil property and contract law, moreover from the comparative-historical perspectives of Western Europe states and Hungarian land regulations.

And finally in the light of all these, whether Fftv Act that was born with demand of European standards of non-discrimination¹⁰ requirements does not complicate the land acquisition with its rigor.

2. Methodological approach of restraints on land acquisition

Methodologically the acquisition of land can be approached from several prospects.

ad1. From an interdisciplinary approach the main questions is the land acquisition, or acquisition itself. Constitutionally the right to get a property can be derived from the right to property and several details may be grabbed by analyzing property and contract law rules as well as the rules of agrarian law. We meet administrative law rules either taking into respect the Code of Administrative Procedure or Land Registry.¹¹ Moreover a new Act was born in order to identify and prevent the circumvention of restrictive acquisition of the ownership or land use by using criminal instruments¹² in case. The legislature determined an independent statutory definition to evaluate this behaviour. (Zstv.)¹³

¹⁰ Kecskés László – Szécsényi László: A termőföldről szóló 1994. évi LV. törvény 6. §-a a nemzetközi jog és az EK-jog fényében, *Magyar Jog*, 1997/12. szám, 721-729.

¹¹ Act CXLI of 1997 on the property register.

¹² The existing Criminal Code devotes a whole Section in 349. § to the pocket contracts. The legal subject of crime is complex because it is the public trust in the reality of land contracts, and secondly the protection of the Hungarian land. The Section 349 of the Act C of 2012 on the Criminal Code (Btk) came into force from the 1st of July 2013, as illegal acquisition of land, that was renamed as acquisition of agricultural and forestry land from the 1st of May 2014.

¹³ Act VII of 2014 on revealing and prevention of transactions designed to circumvent the legal restraints of land ownership or use.

ad2. The comparative method is a well-known methodological technique to compare different legal systems; so the rules of acquisition in Western European states,¹⁴ and a good opportunity to compare the historical evolution of the Hungarian land acquisition rules. With own classification there are Western European states with restraints on land acquisition (special qualification, residence etc.)¹⁵ and States with liberal regulation that have no regulation of restraints.¹⁶ It is useful to show the variability of regulations. The EU regulation does not include special rules for the land acquisition. It can be derived from the main principles - the free movement of capital, freedom of establishment which is part of the free movement of persons, the general prohibition of discrimination – that regulates the borders of national legislation.¹⁷ The regulation on land traffic should be realized without harming the property rules¹⁸ of a Member State and principles like free movement of capital should be implemented. This the principle determines the property policy¹⁹ of the Member States.

ad3. A descriptive and historical-analytic methods is important to look over Hungarian land acquisition rules after the World War II then the change of the regime and to take the features of limitations, restraints and possibilities emphasizing the instruments of realization. The main question is how the land traffic instruments changed in the light of the aims of land regulations. Dogmatically the differentia

¹⁴ Burgerné Gimes Anna: Földhasználati és földbirtok-politika az Európai Unióban és néhány csatlakozó országban, *Közgazdasági Szemle*, L. évf., 2003. szeptember, 819-832. About land policy questions see Prugberger Tamás: Földügyletek Európában, *Az Európai Unió Agrárgazdasága*, 1999/7-8, 11-14.; Prugberger Tamás: A mező-és erdőgazdasági földingatlan tulajdonának, használatának-hasznosításának és jogát ruházásuk szabályozásának lehetőségei az uniós jog tükrében, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kibívásai*, Novotni Kiadó, Miskolc, 2010, 211-239., Prugberger Tamás: Szempontok az új földtörvény vitaanyagának és a parlament által elfogadott szövegének értékeléséhez a nyugat-európai megoldások tükrében, *Polgári Szemle*, 2014. október 10. évf. 3-6. szám, 162-169. Továbbá Prugberger Tamás – Szilágyi János Ede: Földbirtokszerkezet és szabályozás Nyugat-Európában, *Az Európai Unió Agrárgazdasága*, 2004/8-9. szám, 38-41.; Prugberger Tamás – Szilágyi János Ede: Földbirtok-politika az európai uniós és tagállami normákban, in: Csák Csilla (edit.): *Agrárjog*, Novotni Kiadó, Miskolc, 2006, 89-94.; Szilágyi János Ede: Földbirtokszerkezet és szabályozás Nyugat-Európában, *Az Európai Unió Agrárgazdasága*, 2004/9, 38-41. About the land lease regulations of Western European countries see Olajos István: A nyugat-európai államok haszonbérleti szabályozása, *A Közgazdasági és Államigazgatási Egyetem német nyelvű továbbképző intézete által megtartott TEMPUS tanfolyam zárókiadványa*, Miskolci Egyetem, Miskolc, 2004, 202-222.

¹⁵ Following states are considered the: Denmark, France, Switzerland, Germany, Austria, Norway, Sweden, Finland.

¹⁶ Spain, Portugal, Italy, the Netherlands, Belgium, Luxembourg, England, Ireland, Scotland.

¹⁷ Szilágyi János Ede: Az Európai Unió termőföld-szabályozása az Európai Bíróság joggyakorlatának tükrében, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kibívásai*, Novotni Alapítvány, Miskolc, 2010. 269-281.

¹⁸ Article 345 of TFEU (ex Article 295 of TEC) says: The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership.

¹⁹ For further reading: Korom Ágoston: What property policy is allowed by community law after the expiry of 'moratorium' for the land acquisition by foreigners, *European Law*, No. 6, 2009, 7-16.

specifics of legal regulatory framework created possibilities for persons to use or abuse their rights to acquire an agricultural land. Cases of non-contractual acquisition of land can also be interesting, since there are several other types of land acquisition. The inheritance should be emphasized and its legal consequences on the land traffic. The need for agricultural inheritance rules was expressed in the discussion material of Land Act,²⁰ but this did not materialize in a legal material. However several states in Western Europe have significant inheritance rules for land acquisition.

3. Prohibitions and restraints of land acquisition

The Hungarian land traffic is bound²¹ just like in the Western European countries. Limitations on the object of acquisition (regional extension limitations, determining the minimum or maximum sizes of properties, areas with protected geographical characteristics, limitations on the utilization of such land etc.) limitations on persons (land acquisition personal abilities, skills and qualifications, residence, cultivation liability, family farm, etc.) as well as restrictions on the acquisition process. (such as official authorization procedure and the registration of land acquisition)

The fundamental agrarian rules and rights should be required to place in the Civil Code, either the agricultural product sales contract was placed in the former Civil Code as a separate type of contracts.²²

In determining the acquisition restrictions and prohibitions the European Union's expectations must also be taken into account, so the protection of the Hungarian land can only be determined to this demand in its national legislation from the signing the Act of Accession till the infringement procedures in connection with the Fftv. From 1st of May 2004 Hungary is the member of the European Union.²³

²⁰ The discussion paper to the new Land Traffic Act the aim can be found in (The discussion paper to the new Land Traffic Act - the protection of the Hungarian land, Ministry of Rural Development), but the effect of Fftv. shall not include statutory inheritance, expropriation and obtaining property by auction for restitution purposes.

²¹ Csák Csilla – Szilágyi János Ede: Legislative tendencies of land ownership acquisition in Hungary, in: Roland Norer – Gottfried Holzer (edit.): *Agrarrecht Jahrbuch*, Wien-Graz, Neuer Wissenschaftlicher Verlag, 2013, 215-233.

²² See Sáránci Imre: *A mezőgazdasági termékforgalom joga*, Közgazdasági és Jogi Könyvkiadó, Budapest, and Papik Orsolya: In the footsteps of the agricultural product sales contract or the survival of the provisions of the agricultural product sales contract in the new Hungarian Civil Code, *Journal of Agricultural and Environmental Law* 18/2015.

²³ The Hungarian accession negotiations were opened in March of 1998, the substantive negotiations began on 10th of November 1998 and were concluded on 16th of December 2002. The Treaty was signed on 15th of April 2003 entered into force on the 1st of May 2004, this is the date of accession.

According to the principle of national treatment²⁴ Annex X of section 3 (2) of the Act of Accession included those transitional rules that Hungary had to fulfill with respect to land. Hungary was given an exemption period of 7 years - then another 3 years – as a 'moratorium' in order to transform and regulate the legal requirement of equal treatment - also the prohibition of discrimination – according to EU manner and to ensure same and equal conditions of land acquisition for the country's own citizens and the citizens of the EU Member States.

Compared to the European land prices in Hungary land prices are lower and there was a fear that foreign agricultural enterprises or natural persons could buy up Hungarian land after the expiry of the land moratorium.

The Act LV of 1994 (Tft) on Land is particularly relevant to the issue because they its effect falls into the scope of a period when the land ownership and use relationships were formed under the conditions of the market economy and not only the national characteristics, but European standards have become dominant. The historical importance of Tft is that, land traffic rules should be created along the new economic conditions and legal environment.²⁵ During its almost twenty years of existence the Tft had been amended several times, depending on how the current power was thinking of the land acquisition and what were the main priorities. But general prohibition on the acquisition of land by foreigners has always been important to protect the Hungarian land. Taking a look at changes it seems to exist possibilities for breaking the rules. The system of pre-emption rights was about to prevent illegal land actions, but the ideas were changeable. There were times when the Hungarian State was on the first place, other times it was the advantage of the tenant.

The Tft unintentionally opened small gates to avoid limitations with its system of restraints of land acquisition in subjects or titles. For example little farms could be bought by foreigners, but there was no numerical limitations, or usufruct could be based freely and forestry or meadow holding company could indirectly get agricultural properties. The exchange of land was not consistently regulated. Laws relating to land acquisition have become the basic law material for fighting against pockets contracts.

The Fftv is not the same as the Tft, because it was born in a more mature situation and it was determined by the fight against fraud land traffic, pocket contracts emerged in previous years. The legislature had to establish its rules within the frame of EU founding principles to create adequately land regulation in order to protect the Hungarian land and that is not discriminatory. A new approach has been established for land traffic. Some forms of land use (usufruct, lending) have disappeared. The subjective range of Fftv is concentrated on the farmer and is strongly linked to cultivation.

²⁴ Article 44. 89. of the European Agreement. Each Member State can have their different land acquisition rules in forms and aims. (Case C-370/05).

²⁵ Csák Csilla: A rendszerváltás hatása a földtulajdoni és földhasználati viszonyokra, in: Csák Csilla (edit.): *Agrárjog- A Közös Agrárpolitika megvalósulása Magyarországon*, Novotni Kiadó, Miskolc, 2008.

The Fftv applies commonly accepted techniques of the European Union to support resident farmers at land acquisition. Transactions between close relatives, as well as certain legal persons became in privileged position.

The objective limitations are familiar from the earlier Tft-solutions, but the process of acquisition has never been so complicated.²⁶

The European Union, moreover, took Fftv under criticism in several respects and certain provisions, for example in connection with the de iure termination of the usufruct on land.

Criticism can be defined because the enclosed garden category does not appear in the Fftv, therefore, de lege ferenda it would be reasonable to create a privileged form of acquisition for natural persons to get a hobby property, because in such a way to obtain any simple little realty involves a major procedure, which is not commensurate with the importance of the land acquisition.

This was perceived by the legislature, so the enclosed garden was amended regarding exemption from the property by withdrawal of the land from agricultural cultivation. In 2016 a special situation was created by a rule that an land application can be filed till 31 December for properties registered as enclosed garden to be excluded from cultivation.

The procedure is free of charge. Essentially, it's an opportunity to get rid of the limitations of these areas, such as the traffic restraints, buying and selling bounds or the obligation of cultivation. After the conversion of the property the owner may provoke for an address card or can get credit for the land that can serve as collateral, and the one should not have to fear of fines of non-cultivation.

As a condition for acquiring a property different statements should be taken which affects the land acquisition process. The false, forged or untrue statements are followed by criminal law consequences.

The titles of land acquisition can be classified as acquisition by transfer with derivative nature, or transactions that does not considered a transfer, the original transaction mode from the point of view of regulatory approval in Fftv.

²⁶ About the trade of arable land Kurucz Mihály: Gondolatok a termőföldjog szabályozás kereteiről és feltételeiről, *Geodézia és Kartográfia*, 2008/9, 2008/10, 2008/11; Holló Klaudia: Az elővásárlási jogról mint a földforgalom korlátozásának közvetett eszközéről, http://www.ajk.elte.hu/file/THEMIS_2014_jun.pdf (2016.06.21.); Holló Klaudia: A termőföldről szóló 1994. évi LV. törvény, valamint a mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény földhasználatra vonatkozó egyes rendelkezéseinek összehasonlító elemzése, in http://www.ajk.elte.hu/file/THEMIS_2013_dec.pdf (21.06.2016).

Pre-emption rules²⁷ are specific instruments to express property-policy preferences. A significant change compared to the Tft that while until 2010 the pre-emption holders got only a notice of offer according to the Fftv the proper contracts are should be made and given to the persons with pre-emption rights.

4. Abuses of restraints on arable land

The pocket contracts appeared after the property changes due to the change of the regime. Many forms²⁸ were established in connection with the land regulations. The Fftv as the new land traffic act controls restrictions of breaking the acquisition rules, one of the main aims is fighting against pocket treaties in compliance with the European Union's fundamental principles.

²⁷ For pre-emption rules see Bobvos Pál: A termőföldre vonatkozó elővásárlási jog szabályozása, in: *Acta Universitatis Szegediensis, Acta Juridica et Politica*, Tomus LXVI. Fasc.3, Szeged, 2004. 5.; Hegyes Péter: Értelmezési és jogintézményi kérdések a termőföldre vonatkozó elővásárlási jog szabályozásával összefüggésben, in: Bobvos Pál (edit.): *Reformator iuris cooperandi*, Szeged, Pólay Elemér Alapítvány, 2009, 199-207.; Jani Péter: A földbirtok-politika alkotmányossága - A termőföldre vonatkozó elővásárlási jog új szabályairól, *Glossa Juridica* 2012/1. szám, 62-66.; Leszkoven László: A termőföldet érintő elővásárlási jog egyes kérdései, *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, Tomus XXII, 2004, 393-403.; Olajos István: A 2002. február 22-én hatályba lépő termőföld adásvételéhez kapcsolódó elővásárlási, és előhaszonbérleti jogok gyakorlásáról, *Napi Jogász*, 2002/4., 7-12.; Olajos István: Az elővásárlási és előhaszonbérleti jog gyakorlásának speciális szabályai a földforgalomban, in: Barzó Tímea – Juhász Ágnes – Leszkoven László – Pusztahelyi Réka (edit.): *Ünnepi tanulmányok Btró György professzor 60. születésnapjára*, Novotni Alapítvány, Miskolc, 2015, 375-386.; Olajos István – Prugberger Tamás: A termőföldbirtoklás, hasznosítás és forgalmazás a családi gazdaságok elősegítésének új jogi szabályozása tükrében, *Magyar Jog*, 2002/5., 286-295.; Pusztahelyi Réka: Elővásárlási jog egyes kérdései a bírói gyakorlatban, *Miskolci Jogi Szemle* 2009/2. szám, 96-111.; Szilágyi János Ede: A termőföldek törvényes elővásárlási jogának alakulásáról, különös tekintettel a rendszerváltás utáni jogfejlődésre, *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, Tomus XXIV, Miskolc, 2006, 511-525.; Holló Klaudia: Az elővásárlási jogról, mint a földforgalom korlátozásának közvetett eszközéről, *Themis*, az ELTE Állam- és Jogtudományi Doktori Iskola lektorált elektronikus folyóirata, 2013. március, 111-128.; Hornyák Zsófia: Az előhaszonbérleti jog specializációja a mezőgazdasági földek tekintetében, in: Szabó Miklós (edit.): *Doktoranduszok Fóruma, a ME-Deák Ferenc Állam-és Jogtudományi Doktori Iskola kiadványsorozata*, 2015, 127-131.

²⁸ For types of pocket contracts see Kozma Ágota: Zsebszerződések veszélyei, *Magyar Jog* 2012. 6. szám, 350-360.; Olajos István: A zsebszerződésekről, *Héhatár*, 2001/2, 36-38.; Olajos István – Szalontai Éva: Zsebszerződések a termőföld-tulajdonszerzés területén, *Napi Jogász*, 2001. évi 7. szám 3-10.; Roszík Péter: virágzik a "földviracsajt" - A külföldi "zsebszerződések" tizenhétféle típusa, in: <http://www.agromonitor.hu/forum/52-forum/5689-roszik-peter-viragzik-a-qfoeldviracsajtq-a-kuelfoeldi-qzsebszerzdesekq-tizenhetfele-tipusa>, (02.06.2016); Iránytű Intézet elemzés: Országomat euróért? Helyzetkép a magyar termőföld védelméért, in: http://iranytuintezet.hu/sites/default/files/ir%C3%A1nytu%C5%B1%20Int%C3%A9zet_F%C3%B6ldv%C3%A9delem.pdf (21.06.2016); Kurucz Mihály: Gondolatok a termőföldjog szabályozás kereteiről és feltételeiről I., *Geodézia és Kartográfia*, 2008/9. szám, 13-22.; Bányai Krisztina: A zsebszerződések ügyészi szemmel, *Új Magyar Közigazgatás*, 2014. március, 7. évf. 1. szám, 62-71.

The Fftv having regard to the expiry of the moratorium uniformly and severely limited the acquisition and the legislator evaluates the legal transactions, actions or contracts with circumventing the laws with various other parallel legal rules. In a paragraph as a matter of fact of the Criminal Code introduced on the 1st of July 2013 uses the unlimited easing provided to those legal acts that are brought to light which has since been modified. The Zstv has introduced a new toolbar against the pocket contracts in the spirit of fighting.

In court practice the legal consequences of invalid contracts can be the solution regarding the model of the state condemnation to solve the previous accounting problems, which arose in relation with restoration, that could give a new direction for invalidity lawsuits and, not least, the prosecutor's actions.

The Fftv's limiting technique, however, seems to settle the issue of abuses that occurred among the previous living conditions, so the topic of pocket contracts may not really appear significantly in the future is so, than along the former regulations.

5. Restraints of land acquisition in the Act on Trade of Arable Land

The prior administrative approval system for land acquisition required by Fftv was not strange in the Hungarian legal thinking and it is accepted by Community case law and dogmatically can be taken as a public law restriction of the owner's disposal rights. The Fftv takes the notary, the agricultural administrative organization and the local land committee to the land acquisition process as actors and the security document is introduced as the formal requirement of the application. With all these actors and requirements the process can extend considerably longer, however, because the case has to go through more stages, and so the process can take up to a quarter or even a half a year. The appeal system is not mature, so de lege the notary's docket²⁹ could be prepared in the form of a decision with an appropriate remedy possibility.

The procedural status of the local land committee³⁰ was not settled. The county chambers of agriculture began to perform its function. The 17/2015 (VI.5) decision of the Constitutional Court analyzed doctrinal issues regarding its status. Regarding it the Court said that - as majority opinion - the local land committee is a private party with a specific private interest and not a public administration organization, so that its democratic legitimacy cannot be requested. Some constitutional court judges, however, missed its democratic legitimacy or found necessary to annul it with ex nunc effect or they would allow it to practice law maximum as a consultative

²⁹ Agreeing with the opinion of Olajos István: Az új földforgalmi törvény speciális eljárásai: az elővásárlási jogok gyakorlására vonatkozó jegyzői, és a helyi földbizottság eljárása (A mezőgazdasági földek tulajdonszerzésének és használatának engedélyezéséhez kapcsolódó egyéb eljárások) című előadása 2014. május 6-án a Nemzeti Közszolgálati Egyetemen, cited by Horváth Viktória: Az új magyar földforgalmi szabályozás az uniós vizsgálat szemszögéből (konferenciabeszámoló), *Advocat*, 2014/1-2. szám, 13.

³⁰ For local land committees Csák Csilla – Hornyák Zsófia: A helyi földbizottságok szerepe a mezőgazdasági földek tulajdon-átruházási eljárásában, *Őstermelő*, 2014/5, 8-9.

body.³¹ However problems and deficiencies in the operation of the local land committee fundamentally were caused by the fact that the intention of the legislator has changed.

In my opinion, however, *de lege ferenda* dogmatically and in order to speed up and simplify the process it would be worth to reconsider the authority and role of local land committees. If the local land committee preserves its administrative legal nature, so it would be necessary to determine it as an administrative body or public authority with adequate rules of procedure and remedies. It could get a consultative right so the local land committee could participate in the proceedings as a party with a private interest, or it could get the possibility to suit an action itself in its own name to prevent legal proceedings for land acquisition with the purpose of misuse. It is possible that this legal institution simply atrophies because several other instruments (Criminal Code, Zstv.) are available to prevent abuses.

6. Final Thoughts

Based on all these the Fftv has radically transformed the legal constraints of acquisition of land ownership and attached to this getting the land use rights with a national legislation that is determined in accordance with European Union requirements. It strictly regulated the acquisition in the spirit of non-discrimination for Hungarian citizens also. The objective and subjective limitations of the land acquisition are determined with emphasize on being a farmer and the cultivation, and only gives certain exceptions for close relatives, its existence was induced by the combat against pocket contracts.

For the question whether the Fftv closes all loopholes to prevent the land-related acquisition abuses, the answer is yes. Yes, if we look that it employs a wide range of subjective and objective constraints and procedural guarantees – such as security documents³² for example – into the land acquisition process, not mentioning the nature of the land use registration sanctions. The Fftv's extensive regulation in both objective and subjective sense means a strictly bound possibility of acquiring land. The abuses are about to be covered by Constitutional law, Civil law, Administrative law and Criminal law dimensions to reveal abuses that solving techniques are well-known from land acquisition control regulations of Western European countries.

The compliance with European Standards, such as non-discrimination of land acquisition are realized in Fftv regulation, however, the acquisition itself is limited by the degree that Fftv burdens the getting of a land. Besides the subjective and objective limitations of land acquisition the procedure of getting is what complicates the land acquisition. In addition the prolonged time of procedure and the status or the rules of

³¹ See dissenting opinions of László Kiss or Ágnes Czine Constitutional Court Judges attached to the 17/2015. (VI.5) Constitutional Court decision.

³² The purchase contract must be submitted to the notary of the local government where the land lies. The security document is a paper with security elements containing iridescent prints, which excludes photocopying, and this paper can be bought from the land office with specific numbering solely by an advocate.

procedure and remedies of the participating organizations and persons, also raised other issues to solve, such as the local land committee in which the Constitutional Court attempted to settle logically and dogmatically.

Especially considering that the Commission launched infringement proceeding against Hungary on the 16th of October 2014³³ for ceasing land use right of cross-border investors in agricultural land and ceasing ex lege some usufruct rights. It deprived both foreign and domestic investors of their acquired rights and of the value of their investments without providing them with compensation. The Commission considers that the termination of certain contractual rights limits the investors' rights dealing with cross-border activities in such a way that violates EU law on free movement of capital and freedom of establishment. The process has entered the second stage on the 18th of June 2015,³⁴ by issuing a reasoned opinion, and since then an action took place.³⁵

The Commission launched another infringement proceeding against Hungary on the 26th of March 2015³⁶ for the restrictions on farmlands including the whole Land Traffic Act (Fftv) examining the restraints of land acquisition, because of the concern that the legislation is discriminatory or not proportionate to the aim pursued.

The issue of limiting land acquisition comes up again to the light. And the legislator is expected to make the final settlement not only in theoretical questions but in connection with the essential moments of regulation taking into account the harmonization either.

³³ The European Commission's press release: Free movement of capital: Commission launched infringement proceedings against Hungary in relation to cross-border investors' rights to use the land for agriculture, in: http://europa.eu/rapid/press-release_IP-14-1152_hu.htm (26.06.2016).

³⁴ The case number 20142246, in: http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&r_dossier=&decision_date_from=01%2F01%2F2014&decision_date_to=21%2F11%2F2015&EM=HU&title=&submit=Keres%C3%A9s+ (26.06.2016).

³⁵ Free movement of capital: Commission refers Hungary to the Court of Justice of the EU for failing to comply with EU rules on the rights of cross-border investors in agricultural land, Brussels, 16 June 2016, in: http://europa.eu/rapid/press-release_IP-16-2102_en.htm?locale=EN, (26.06.2016)

³⁶ Case No. 20152023 of the Commission (21.11.2015).

See: A Bizottság megindította a formális eljárást a magyar földtörvény miatt, 2015. március 26. Bruxinfo, in: <http://www.bruxinfo.hu/cikk/20150326-a-bizottsag-meginditotta-a-formalis-eljarast-a-magyar-foldtorveny-miatt.html> (26.06.2016).