



Reports of Cases

Joined Cases C-52/16 and C-113/16
‘SEGRO’ Kft. v Vas Megyei Kormányhivatal Sárvári Járási Földhivatala
and
Günther Horváth v Vas Megyei Kormányhivatal

(Requests for a preliminary ruling from the Szombathelyi Közigazgatási és Munkaügyi Bíróság)

(References for a preliminary ruling — Article 63 TFEU — Free movement of capital — Rights of usufruct over agricultural land — National legislation permitting such rights to be acquired in the future only by close family members of the owner of the land and cancelling, without providing for compensation, the rights previously acquired by legal persons or by natural persons who cannot demonstrate a close family tie with the owner of the land)

Summary — Judgment of the Court (Grand Chamber), 6 March 2018

1. *Free movement of capital — Provisions of the Treaty — Scope — Acquisition of rights of usufruct over agricultural land — Included*

(Art. 63 TFEU; Council Directive 88/361, Annex I)

2. *Free movement of capital — Restrictions on immovable property transactions — National legislation providing for the extinction of rights of usufruct acquired over agricultural land if the status of close relation of the owner of that land is not demonstrated — Not permissible — No direct discrimination*

(Art. 63 TFEU)

3. *Free movement of capital — Restrictions on immovable property transactions — National legislation providing for the extinction of rights of usufruct acquired over agricultural land if the status of close relation of the owner of that land is not demonstrated — Not permissible — Justification — None*

(Art. 63 TFEU)

1. See the text of the decision.

(see paras 56-60)

2. According to settled case-law, Article 63(1) TFEU generally prohibits restrictions on movements of capital between Member States (judgment of 22 October 2013, *Essent and Others*, C-105/12 to C-107/12, EU:C:2013:677, paragraph 39 and the case-law cited). In the present instance, it must be found that, by virtue of its very subject matter, legislation such as that at issue in the main proceedings, which provides for the extinction of rights of usufruct acquired by contract over agricultural land, including those held as a result of exercise of the right to free movement of capital, restricts that freedom on account of that fact alone. The possible adoption, envisaged by the referring court in its

second question in Case C-52/16, of a measure compensating the persons who, after acquiring such rights, have been deprived of them in this way by that legislation would not be capable of affecting that finding.

That legislation deprives the person concerned both of the ability to continue to enjoy the right which he has acquired, by preventing him, in particular, from using the agricultural land concerned for the purposes for which he acquired that right, and of the ability to dispose of that right. By depriving in that way nationals of Member States other than Hungary, who are entitled to benefit from free movement of capital, of enjoyment of the property in which they invested capital, the national legislation at issue in the main proceedings constitutes a restriction on such free movement. Furthermore, as is clear from settled case-law, the measures prohibited by Article 63(1) TFEU, as restrictions on the movement of capital, include those which are likely to discourage non-residents from making investments in a Member State (judgments of 25 January 2007, *Festersen*, C-370/05, EU:C:2007:59, paragraph 24 and the case-law cited, and of 1 October 2009, *Woningstichting Sint Servatius*, C-567/07, EU:C:2009:593, paragraph 21). It follows that national legislation such as that at issue in the main proceedings constitutes a restriction on the fundamental freedom guaranteed in Article 63 TFEU.

As to whether that legislation must, in addition, be regarded as discriminatory, a matter to which the second question in Case C-113/16 relates, it should be noted, as the Advocate General has done in point 72 of his Opinion, that a requirement relating, as in the present instance, to the existence of a close family tie between the usufructuary and the owner of the productive land makes recourse to a criterion which is ostensibly independent of the usufructuary's nationality and the origin of the capital, and which therefore is not directly discriminatory.

(see paras 61-67)

3. Article 63 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which rights of usufruct which have previously been created over agricultural land and the holders of which do not have the status of close relation of the owner of that land are extinguished by operation of law and are, consequently, deleted from the property registers.

In that regard, first, as the Commission in particular has contended and as the Advocate General has observed in points 111 to 113 of his Opinion, legislation such as that at issue in the main proceedings, which permits existing rights of usufruct over agricultural land to be preserved only if the usufructuary is a close relation of the owner of that land, does not appear appropriate for the purpose of pursuing the objectives relied upon by the Hungarian Government, objectives with which that legislation has no direct connection. The fact that the required family tie exists does not guarantee that the usufructuary farms the land concerned himself and that he has not acquired the right of usufruct at issue for purely speculative purposes. Similarly, it cannot be assumed that a person outside the owner's family who has purchased a usufruct over such land would not be in a position to farm that land himself and that the purchase would necessarily have been made for purely speculative purposes, without any intention to cultivate the land.

Second, even if adoption of the legislation at issue in the main proceedings was, even partly, driven by the desire to penalise infringements of the applicable exchange control rules, a matter which will, as the case may be, be for the referring court to establish, it would still remain necessary to check that the measure cancelling rights of usufruct which is laid down by that legislation is not disproportionate to that objective. As the Advocate General has also observed in points 95 and 98 of his Opinion, it is clear that other measures with less far-reaching effects than the cancellation of the rights *in rem* concerned could have been adopted for the purpose of penalising from the outset any infringements of the applicable exchange control legislation, such as, for example, administrative fines (see, by analogy, judgment of 1 December 2005, *Burtscher*, C-213/04, EU:C:2005:731, paragraph 60).

As regards the prevention of practices intended to circumvent national law, the Court has already accepted that a measure restricting a fundamental freedom may in appropriate cases be justified where it is designed to combat wholly artificial arrangements, aimed at circumventing the national legislation concerned (judgment of 1 April 2014, *Felixstowe Dock and Railway Company and Others*, C-80/12, EU:C:2014:200, paragraph 31 and the case-law cited). In order to comply with the principle of proportionality, a measure pursuing such a specific objective of combating wholly artificial arrangements should enable the national court to carry out a case-by-case examination, having regard to the particular features of each case and taking objective elements as a basis, in order to assess the abusive or fraudulent conduct of the persons concerned (see, to that effect, judgment of 17 September 2009, *Glaxo Wellcome*, C-182/08, EU:C:2009:559, paragraph 99). It is apparent that legislation such as that at issue in the main proceedings does not satisfy any of the requirements noted in paragraphs 115 to 117 of the present judgment.

First, whilst the extracts from judgment No 25 of 21 July 2015 delivered by the Alkotmánybíróság (Constitutional Court) which are set out in paragraph 25 of the present judgment seem to show that the legislation at issue in the main proceedings had the aim, at least in part, of eliminating the legal effects of a practice for the acquisition of agricultural land by virtue of which the right of usufruct had been applied in a dysfunctional manner, those extracts also reveal that their elimination was above all considered necessary for the purpose of achieving fully the national strategic objective pursued by the new legal arrangement put in place, namely that productive land was to be owned solely by the natural persons who work it. Accordingly, the view cannot be taken that such legislation pursues the specific aim of combating conduct that consisted in the creation of artificial arrangements aimed at circumventing national legislation relating to acquisition of agricultural land. Second, assuming that the legislation at issue in the main proceedings can be regarded as having been adopted with such a specific aim of combating artificial arrangements, it cannot reasonably be inferred from the mere fact that the holder of a right of usufruct over a parcel of agricultural land is a legal person or a natural person who does not have the status of close relation of the owner of that land that the conduct of such a person when acquiring such a right of usufruct constituted an abuse. As has been pointed out in paragraph 116 of the present judgment, the enactment of a general presumption of abusive practices cannot be allowed.

(see paras 86, 87, 105, 106, 114, 117-121, 129, operative part)