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## The Legal Regulation of Land and Soil Protection – Complexity and the Main Characteristics of the Laws

### ABSTRACT

The regulation of land protection is a fundamental regulatory field of Hungarian agricultural environmental law, and, with an extended interpretation, it is also the regulatory field of environmental law. Land appears as a significant regulatory object in the Hungarian land and agricultural law expressing the land's multifunctional character and its determining role in economic, social, environmental and cultural sustainability. The Hungarian land protection legislation is complex. The most important components of the Hungarian land protection legislation are the Fundamental Law of Hungary, the Act LIII of 1995 on the General Rules of Environmental Protection (hereinafter: Kvtv.) and the Act CXXIX of 2007 on the Protection of Agricultural Land (hereinafter: Tfv.). The Kvtv. involves several protective areas; it includes the fertility and structure of land, water and air balance, as well as the conservation of the biosphere. The Kvtv. enforces a regulatory content with an ecological aspect. The land protection in the Hungarian legislation appears as quantitative or qualitative protection. The quantitative protection of arable land means that the agricultural use shall not be wasteful. The qualitative protection is equivalent to the soil protection. According to the Tfv. the fertility of soil stands in the centre of the definition of soil protection. The obligation to utilise arable land as regulated in the Tfv. greatly supports the enforcement of protective rules, the protection of arable land and appropriate farming practice for it. The utilisation of arable land for other purposes may be temporary or permanent. The aim of the land protection law is to preserve the current rate of the arable land in Hungary.

**KEYWORDS:** land and soil protection, obligation to protect arable land, qualitative and quantitative protection, soil fertility, obligation of arable land utilisation, land user, agricultural land use and utilisation, temporary and supplementary utilisation, reuse of land, land protective procedure, land protection contribution and fine

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## I. INTRODUCTION

Land and soil protection may be considered as a fundamental regulatory field of Hungarian agricultural environmental law, but, with an extended interpretation, it is also the regulatory field of environmental law. At the same time, the topic of land and soil protection is closely related to questions referring to property rights and the usage of land. In the land law<sup>1</sup> and agricultural law of European legal systems, land appears as a special regulatory object expressing the land's multifunctional character and its determining role in economic, social, environmental and cultural sustainability. Contemporary analysts who are experts on this topic emphasize the economic and ecological functions of land and they also point out its social importance.<sup>2</sup> Furthermore, the fact that the constitutions<sup>3</sup> of certain European legal systems pay special attention to land also shows the complexity of the regulation of land protection. The Fundamental Law of Hungary<sup>4</sup> declares the *erga omnes* obligation to protect arable land besides of other natural resources, as the obligation of the State and every person.<sup>5</sup> Based on the findings of interdisciplinary research, this regulatory approach is absolutely correct and

<sup>1</sup> See the German regulation: *Gesetz über Maßnahmen zur Verbesserung der Agrarstruktur und zur Sicherung land- und forstwirtschaftlicher Betriebe (Grundstückverkehrsgesetz – GrdstVG)* vom 28. Juli 1961 (BGBl. I S. 1091) <https://www.gesetze-im-internet.de/grdstvg/BJNR010910961.html> (Last accessed: 31 December 2018). See for the regulation of the Austrian province Vorarlberg: *Landesrecht konsolidiert Vorarlberg: Gesamte Rechtsvorschrift für Gesetz über den Verkehr mit Grundstücken*, <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrVbg&Gesetzesnummer=200005979> (Last accessed: 31 December 2018). See the Swiss regulation: *Bundesgesetz über das bäuerliche Bodenrecht* vom 4. Oktober 1991 (hereinafter: BGBB), <https://www.admin.ch/opc/de/classified-compilation/19910253/index.html> (Last accessed: 31 December 2018). See the land law of some European law systems: Tanka E., *Magyar birtokpolitika az Európai Egyesült Államokban*, (Alterra Kiadó, Miskolc, 2004) 102–121.; Prugberger T., *A termőföldhasználat – hasznosítás és birtoklás, valamint a termőföldforgalom jogi szabályozásának kibátása a természet és környezetvédelemre*. [http://www.vmtt.org.rs/mtn2014/049\\_080\\_Prugberger.pdf](http://www.vmtt.org.rs/mtn2014/049_080_Prugberger.pdf) (Last accessed: 31 December 2018).

<sup>2</sup> E.g.: Fodor L., *Környezetjog*, (Debreceni Egyetemi Kiadó, Debrecen, 2015) 194.

<sup>3</sup> As a glaring example see: Constitution of the Republic of Bulgaria Chapter one “Fundamental Principles” Article 21(2): “Land, as a chief national asset, shall enjoy particular protection on the part of the State and society.” See for it: <http://www.parliament.bg/en/const> (Last accessed: 31 December 2018); See in Hungarian: Szakály Zs. (transl.), *Nemzeti Alkotmányok az Európai Unióban*, (Wolters Kluwer, Budapest, 2016) 135. See moreover Portugal’s Constitution Section (1) Article 93. “d) To ensure the rational use and management of the soil and other natural resources and to maintain their regenerative capability.” [https://www.constituteproject.org/constitution/Portugal\\_2005.pdf](https://www.constituteproject.org/constitution/Portugal_2005.pdf) (Last accessed: 31 December 2018); See in Hungarian: Szakály, *Nemzeti Alkotmányok az Európai Unióban*, 776. See also: Constitution of the Republic of Slovenia Article 71. “(1) The law shall establish special conditions for land utilisation in order to ensure its proper use. (2) Special protection of agricultural land shall be provided by law.” <http://www.us-rs.si/media/constitution.pdf> (Last accessed: 31 December 2018). See for the Hungarian translation: Szakály, *Nemzeti Alkotmányok az Európai Unióban*, 986.

<sup>4</sup> Fundamental Law of Hungary (25th April 2011); See for it: <https://net.jogtar.hu/jogszabaly?docid=A1100425.ATV> (Last accessed: 31 December 2018).

<sup>5</sup> See as above Article P).

essential. Considering the current data, 80% of the territory of Hungary is arable land,<sup>6</sup> the preservation of which is a key issue.<sup>7</sup>

Several documents<sup>8</sup> published by international organizations also highlight the global importance of land protection. In the frame of the regulatory reform<sup>9</sup> of the Common Agricultural Policy<sup>10</sup> (hereinafter: CAP), which is one of the European Union's policies, "greening" is a glaring example for the tendency to regulate the protection of land.<sup>11</sup>

## II. ON THE REGULATORY SYSTEM AND THE MAIN FEATURES OF HUNGARIAN LAND PROTECTION

The Hungarian regulation of land protection depends on two main correlative acts. One of them is Act LIII of 1995 on the General Rules of Environmental Protection (hereinafter: Kvtv.) and the other is Act CXXIX of 2007 on the Protection of

<sup>6</sup> See the current data: *Statistikai Tükör*, 3rd August 2017, 1., <https://www.ksh.hu/docs/hun/xftp/gyor/vet/vet1706.pdf> (Last accessed: 31 December 2018). "On 1st June, 2017 almost 80% of the country's area was covered by land of 7 million 371 thousand ha, which has slightly dropped compared to the previous year. Almost three-quarters of the land (5,4 million ha) is considered to be agricultural land, which is registered as field, kitchen-garden, vineyard, fruit garden and lawn." Current data for forests: "Forests [...] along with areas which serve the performance of silvicultural activity cover altogether 2 059,7 thousand ha; the proportion of national forestry is 20,8%." See it: Erdőtörvény, (2017) (12) *infojegyzet*, 1–4., [http://www.parlament.hu/documents/10181/1202209/Infojegyzet\\_2017\\_12\\_erdotorveny.pdf/8dd07f2a-741c-4acb-992b-c3fad1128909](http://www.parlament.hu/documents/10181/1202209/Infojegyzet_2017_12_erdotorveny.pdf/8dd07f2a-741c-4acb-992b-c3fad1128909) (Last accessed: 31 December 2018) 1. See the former data: Agrárgazdasági Kutató Intézet, A magyarországi birtokstruktúra, a birtokrendezési stratégia megalapozása, (2004) (6) *Agrárgazdasági Tanulmányok*, 42. "83% of the country's 9,3 million are in total land, 63% is cultivated land, most of which – almost the half of it – is used as fields. The rate of forestry is relatively low, 19% of the area is covered by forest and 1-tenth of it is registered as lawn." See data of the 1990s: Bakács T., *Magyar környezetjog*, (Springer Verlag, Budapest, 1992) 24–25.

<sup>7</sup> Fodor L., Gondolatok a földvédelem agrárjogi és környezetjogi kapcsolódási pontjairól, in Csák Cs. (szerk.), *Ünnepi tanulmányok Prugberger Tamás professzor 70. születésnapjára*, (Novotni Kiadó, Miskolc, 2007) 108–117.

<sup>8</sup> E.g. UN General Assembly A/RES/70/1 "Transforming our world: the 2030 Agenda for Sustainable Development" <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement> (Last accessed: 31 December 2018). We emphasize that sustainable agriculture besides stopping global famine and the requirement of food security exactly appears as a second aim from the 17 global overall aims defined by the United Nations: "End hunger, achieve food security and improved nutrition and promote sustainable agriculture". 33.

<sup>9</sup> Halmai P., Közös agrárpolitika, in Kende T. and Szűcs T., *Az Európai Unió politikái*, (Osiris, Budapest, 2001); Halmai P., *Az Európai Unió agrárrendszere*, Harmadik átdolgozott, bővített kiadás, (Mezőgazda Kiadó, Budapest, 2007); T. Oppermann, *Europarecht*, (Verlag CH Beck, München, 1991) 475–503.

<sup>10</sup> See for the regulatory regime of the Common Agricultural Policy: The Treaty on the Functioning of the European Union, Part III, Art. 38–44.

<sup>11</sup> Csák Cs., Cross compliance, avagy környezetvédelem a támogatás feltételeként, (2012) (2) *Publicationes Universitatis Miskolciensis Series Juridica et Politica*, 423–433.; M. Réti and K. Bak, The Common Agricultural Policy with and without the United Kingdom – CAP Brexit, (2016) (1) *ELTE Law Journal*, 163–182.

Agricultural Land (hereinafter: Tfv.). The Kvtv. includes frame-like regulatory provisions in respect of land protection. In addition, by establishing special requirements, other rules of law are connected to it.<sup>12</sup> The determining element of the special law material is the Tfv. The provisions of the Kvtv. and of the Tfv. comply with the provisions of the Fundamental Law, which is a determining factor for the regulatory system of Hungarian land protection. Act CXXII of 2013 on arable and forestry land trade (hereinafter: Földforgalmi tv.) and the Act CCXII of 2013 on laying down certain provisions and transition rules in connection with Act CXXII of 2013 concerning arable and forestry land trade (hereinafter: Fétv.) are also parts of the regulatory system.

From the main features of the Hungarian regulatory system of land protection, the regulatory approach of the Kvtv. needs to be pointed out because it takes the land as an environmental element, among other ones enforcing ecological aspects.<sup>13</sup> The Tfv. takes the land as its regulatory object, which is also reflected in the title of the Act and it enforces the brief approach of the lawmaker.<sup>14</sup> This Act covers both quantitative and qualitative protection (soil protection) of arable land, besides other regulatory fields. From the main characteristics of the Tfv., it is important to mention that the Act is strongly related to agriculture and farming. The rules of land protection are affected by the imperative to preserve and improve the fertility of the land.<sup>15</sup>

### III. THE REGULATORY PILLARS AND THEIR CORRELATION REGARDING LAND PROTECTION

#### 1. References in the Fundamental Law

Referring to the introduction, the Hungarian Fundamental Law gives key importance to this topic exactly and correctly as it is laid down in the Preamble of the Kvtv.<sup>16</sup> Article P)

<sup>12</sup> We emphasise Act XLVIII of 1993 on Mining considering especially section 36(1): “The mining entrepreneur or the person who is allowed to conduct geological research is obliged to restore gradually the open area which has ceased to exist as a result of mining activity or geological research or it is significantly restricted. Moreover, they are obliged to make the area suitable for its reuset or to develop it, matching its natural environment (hereinafter: landscaping).” See special the rules in Act XVIII of 2004 on wine-growing and viticulture, as well as Act XXI of 1996 on territorial development and spatial planning.

<sup>13</sup> It is worth mentioning that there is progress in the concept of the general regulation concerning land protection. See: Bakács, *Magyar környezetjog*, 27.

<sup>14</sup> Contemporary analysts emphasize the same fact: e.g.: Fodor, *Környezetjog*, 196., fn. 2.

<sup>15</sup> We need to note that the act clearly establishes in all of its provisions that the demand does not extend to the protection of any environmental element. We will return to this topic.

<sup>16</sup> The Preamble of the GR Act clarifies the aim of the lawmaker and it clearly declares that the GR Act is established regarding the content of the Fundamental Law. The Preamble includes the aim system

Section (1) of the Fundamental Law<sup>17</sup> lists arable land in first place in the rank of natural resources, considering it as one of the common heritages of the nation. According to the introduction, protecting and sustaining arable land as well as preserving it for future generations appear as a general obligation in the Fundamental Law. Considering the aims established in the Fundamental Law it is important to pay attention to the content of Article P), which expresses the importance of arable land in the Fundamental Law. According to section 2 of this Article, to achieve the aims established in the previous section, the limits and conditions for acquisition of ownership and for use of arable land shall be laid down in a cardinal Act.<sup>18</sup>

Concerning the Fundamental Law, Article XXI Section (1) shall also be mentioned according to which “Hungary shall acknowledge and endorse the right of everyone to a healthy environment.”<sup>19</sup> The further sections of Article XXI are also important from the aspect of enforcement of general protective rules, such as land protection rules.<sup>20</sup> Article XXI (2) of the Fundamental Law establishes the obligation of

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of the lawmaker matching the content of the Fundamental Law in the followings: “As natural heritage and environmental features are national assets, their preservation, conservation and improvement are fundamental aspects of the biosphere and the health and quality of life of humans and, furthermore, as there can be no harmony between the activities of man and nature without these, neglecting them would endanger the health of present generations, the existence of future generations and the survival of a number of species; the National Assembly, in accord with the provisions of the Fundamental Law, does enact the following law [...]”.

<sup>17</sup> Art. P) “(1) Natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets form the common heritage of the nation; it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations”.

<sup>18</sup> Art. P) “(2) The limits and conditions for acquisition of ownership and for use of arable land and forests necessary for achieving the objectives referred to in Paragraph (1), as well as the rules concerning the organisation of integrated agricultural production and concerning family farms and other agricultural holdings shall be laid down in a cardinal Act.”

<sup>19</sup> We need to note, that Article 70 of the Constitution of Croatia establishes a similar declaration with the following content: “[...] The state shall ensure conditions for a healthy environment. Everyone shall, within the scope of their powers and activities, accord particular attention to the protection of human health, nature and the human environment.” See in Hungarian: „[...] Az állam biztosítja az egészséges környezethez való jog megvalósításának feltételeit. Mindenki köteles a saját hatáskörének és tevékenységének keretében, különös figyelemmel lenni az emberi egészség, a természet és az emberi környezet védelmére.” Translator Jakó N., in Szakály, *Nemzeti Alkotmányok az Európai Unióban*, 433.

Furthermore, see the right to healthy environment: Constitution of the Republic of Slovenia Article 72 “(1) Everyone has the right in accordance with the law to a healthy living environment.” See the Hungarian translation: „(1) A törvénnyel összhangban mindenkinek joga van az egészséges környezethez.” Szakály, *Nemzeti Alkotmányok az Európai Unióban*, 986.

<sup>20</sup> Hungarian Fundamental Law Article XXI

“(1) Hungary shall recognise and give effect to the right of everyone to a healthy environment.

(2) Anyone who causes damage to the environment shall be obliged to restore it or to bear the costs of restoration, as provided for by an Act.

(3) The transport of pollutant waste into the territory of Hungary for the purpose of disposal shall be prohibited.”

the perpetrator to bear the costs of restoration and damage caused to the environment.<sup>21</sup> Moreover, Section (3) describes the prohibition of importing pollutant waste in order to dispose it in Hungary. The content of Article XXI of the Fundamental Law harmonizes with the content of the Preamble of the Kvtv.; moreover, with the land protection provisions in it.<sup>22</sup>

## 2. The main provisions concerning land protection and particular land protection-Rules in Act LIII of 1995 on the General Rules of Environmental Protection

The harmony between the Kvtv. and the Fundamental Law reflects the definition of sustainable development in the Kvtv.<sup>23</sup> The lawmaker considers sustainable development as a basic principle of a multi-pillar system, which is the system of social and economic relations and activities. This system shall continuously preserve natural assets, not only by concentrating on the present situation but considering future generations, too. In order to achieve the aim of preservation, this system shall use natural resources economically and reasonably. The aspect of being in favour of continuity can easily be perceived, because the system of sustainable development from an ecological point of view will improve the quality of life in long term and it will also guarantee the preservation of diversity.<sup>24</sup>

The objective system of the Kvtv. establishes ensuring sustainable development and harmony in the relations of humans and society, as well as the high level and correlated protection of the environment as a whole and the protection of its elements and processes.<sup>25</sup> The objective system of the Kvtv. mentioned above, along with the definition of “environment” appearing in the “Definitions,” reflects the aspect expressed

<sup>21</sup> We need to note that the Constitution of the Republic of Estonia enforces, in its Article 53, a similar regulatory aspect as the Hungarian Fundamental Law in the following way: “Everyone has a duty to preserve the human and natural environment and to compensate for harm that he or she has caused to the environment. The procedure for compensation is provided by law.” Translation in Hungarian: „Mindenki köteles megőrizni az emberi és természeti környezetet, és kártérítéssel tartozik az általa okozott környezeti károkozásért. A kártérítés eljárását törvény szabályozza.” Translator Jakó N., in Szakály, *Nemzeti Alkotmányok az Európai Unióban*, 301.

<sup>22</sup> See: Kvtv. sections 14–17; we will return to this topic in more detailed.

<sup>23</sup> Kvtv. under the Title “Definition” “section 4(29) “sustainable development” means a system of social and economic conditions and activities that preserves the natural values for the current and future generations, uses natural resources economically and expediently and, in ecological terms, ensures the improvement of the quality of life and the preservation of diversity in the long run;”.

<sup>24</sup> See sustainable use of land: Olajos I., A fenntartható földhasználat határai – avagy dilemmák az energetikai növények természetességében, in Csák Cs. (szerk.), *Jogtudományi tanulmányok a fenntartható természeti erőforrások témakörében*, (Miskolci Egyetem, Miskolc, 2012) 142–150.

<sup>25</sup> Kvtv. section 1(1) “§ 1(1) The objective of this Act is to create a harmonious relationship between man and the environment, to facilitate the coordinated protection of the environment, its components and processes and to provide for the conditions of sustainable development.”



by the lawmaker in this topic;<sup>26</sup> namely that, according to the definition of the Kvtv., environment includes its elements, systems, processes and structures.<sup>27</sup> As it turns out from the regulatory content, which will be analysed later, the environmental element involves five sub-elements, which interact with one another, and their further components. According to the provision of the Kvtv., the environmental element may mean land, air, water and the biosphere, as well as the built (artificial) environment, along with its components, established by humans.

Regarding the objective of Kvtv., it is important for the lawmaker to ensure an appropriate frame along two principles, namely foresight and equitability in bearing the burden, in order to assert constitutional rights to a healthy environment. It also promotes high-level, harmonious protection, activities that support sustainability, and the processes, procedures, developments, acts, and mechanisms highlighted by the lawmaker.<sup>28</sup>

Comparing the aforementioned general objectives of the Kvtv. to the equivalent provisions<sup>29</sup> of the Swiss Federal Environmental Act (814.01 Bundesgesetz über den Umweltschutz vom 7. Oktober 1983),<sup>30</sup> the similarity of the lawmaker's perception may be seen. The corresponding Swiss act regulates at an overall level, too. However, the

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<sup>26</sup> Kvtv. section 4(1).

<sup>27</sup> Kvtv. section 4(2).

<sup>28</sup> Kvtv. section 1(2).

“(2) In accordance with the principles of foresight and equitable bearing of burdens, this Act creates an adequate framework for the assertion of constitutional rights to a healthy environment and promotes

- a) the reduction of the use, loading and pollution of the environment, the prevention of its impairment, and the repair and restoration of the damaged environment;
- b) the protection of human health and the improvement of the environmental conditions of the quality of life;
- c) the preservation and conservation of natural resources, and rational and efficient management that ensures the renewal of resources;
- d) the harmony of the other objectives of the state with the environmental protection requirements;
- e) international cooperation in environmental protection;
- f) initiatives taken by the public and public participation in activities aimed at protecting the environment, such as exploring and learning about the state of the environment and carrying out the tasks of government agencies and local governments related to the protection of the environment;
- g) the coordination of the functioning of the economy and social and economic development with environmental requirements;
- h) the establishment and development of institutions, the purpose of which is to protect the environment;
- i) the establishment and development of a public administration that serves to conserve and protect the environment.”

<sup>29</sup> „Umweltschutzgesetz Art. 1. Zweck 1. Dieses Gesetz soll Menschen, Tiere und Pflanzen, ihre Lebensgemeinschaften und Lebensräume gegen schädliche oder lästige Einwirkungen schützen sowie die natürlichen Lebensgrundlagen, insbesondere die biologische Vielfalt und die Fruchtbarkeit des Bodens, dauerhaft erhalten.“ “The objective of the Act is to protect humans, animals, plants, their community and territory from the harmful and burdensome effects as well as to sustain the life conditions, especially the biodiversity and *the fertility of soil*, in the long run.” Translator: Mária Réti.

<sup>30</sup> For short: Umweltschutzgesetz, USG, <https://www.admin.ch/opc/de/classified-compilation/19830267/index.html> (Last accessed: 31 December 2018).

protection of soil fertility clearly appears as the objective of the Hungarian Act. From the aspect of our topic, we should also mention that there is one single valid provision regulating the burden of soil in Switzerland.<sup>31</sup>

Referring to the provisions of the Kvtv., we should declare that the unified protection of environmental components<sup>32</sup> is a basic issue defined by Kvtv.<sup>33</sup> According to the Act, each environmental component shall be protected in itself and as a part of all the environmental elements, as well as considering their interrelationship. The Act regulates utilisation and loading of environmental elements by considering their unified protection. Another particular feature of the protection of environmental elements involves their qualitative and quantitative protection as well the protection of the sets of environmental elements and the protection of proportion and processes within the environmental elements.<sup>34</sup> The lawmaker does not allocate priorities: Classification into “protected”, “more protected” and “the most protected” environmental elements does not exist. According to the related provisions of the Kvtv., in the event of the prevention, reduction or termination of utilising and loading of an environmental element, another environmental element cannot be damaged or polluted.<sup>35</sup>

Besides clarifying the general principles relating to protection, the Kvtv. specifies particular provisions under the title “The Protection of Land” the most important of which are related to the extension<sup>36</sup> and content<sup>37</sup> of protection. Land protection includes the protection of the surface and subsurface layers of land; moreover, the conservation of the soil, rock formations and minerals, as well as the protection of their natural and transitional forms and processes. According to the provision of the Kvtv., land protection is complex, as it involves several protective areas; it includes the fertility and structure of land, water and air balance, as well as the conservation of the biosphere. Considering the rules of land protection in the Kvtv., the boundary of the Act regarding activities and disposing materials both on the surface and subsurface is also important. It means that only those activities may be done and only those materials may be disposed which do not pollute and damage

<sup>31</sup> 814.12 Verordnung über Belastungen des Bodens (VBBo) vom 1. Juli 1998, <https://www.admin.ch/opc/de/classified-compilation/19981783/index.html> (Last accessed: 31 December 2018).

<sup>32</sup> Kvtv. Chapter II under the title “Protection of Environmental Components and Factors that Endanger the Components” section 13.

<sup>33</sup> See the interaction of environmental elements and the rules for land and water protection: Kurucz M., *Föld- és vízvédelmi jog Agrárkörnyezeti alapok*, (ELTE Jogi Továbbképző Intézet, Budapest, 2002); see more: Horváth G., A környezetvédelem, a természetvédelem és az élőhelyvédelem viszonyrendszere a hazai jogi szabályozásban, (2013) 68 (7–8) *Jogtudományi Közlöny*, 355–367.

<sup>34</sup> Kvtv. section 13(2).

<sup>35</sup> Kvtv. section 13(3).

<sup>36</sup> Kvtv. section 14(1).

<sup>37</sup> Kvtv. section 14(2).



the quantity and quality as well as the processes of environmental elements both on the surface and subsurface.<sup>38</sup>

In addition, concerning investments (construction and mining), the Kvtv. handles land protection with a correct legislative approach. The time-validity of the related obligation is particularly important from the aspect of land protection. According to the related provision, there are two correlating obligations in the case of an investment. The appropriate removal of the topsoil and its use as agricultural soil shall be ensured before the start of an investment.<sup>39</sup> After the end of the activities concerning the land utilisation, the user of the area shall take care of the scheduled restoration and arrangement, as well as the conditions of recycling. It is important that this obligation already burdens the user of the area in the course of using it if this obligation is stipulated in a legal regulation or in an official decision.<sup>40</sup> The regulatory content provides the aim of the fertility of land and the protection of agricultural soil. We may declare that the regulatory content is practical, and it obviously leads to the fulfilling the related provisions of the Fundamental Law at the same time. In addition, it satisfies the ambition laid down in the Preamble, which aims the harmonization with the Fundamental Law.

### 3. The main provisions of Act CXXIX 2007 on the Protection of Arable Land

#### *a) The structure of the Tfv.*

The Tfv. is built on five chapters. Chapter I establishes the “Introductory Provisions” which include those concerning the scope of the Act and definitions. Chapter II contains provisions regarding the exploitation, protection and assessment of land. Chapter III summarises the most important rules of qualitative protection under the title of “Soil protection”. Chapter IV includes provisions under the title “Cadastral Procedure of Fruit-Growing Region, the Announcement of Plantation and Planting of Fruits and the Cadastral Registry of Fruit Plantation”. Chapter V establishes the provisions of entry into force and the temporal issues, as well as the enabling provisions. We need to mention that the rate of land protection contribution is established in Appendix 1, while the fines for breaching land protection laws are established in Appendix 2 and the amount of soil protection fines is established in Appendix 3.

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<sup>38</sup> Kvtv. section 15(1). It is worth noting the subsidiary rule of Section (2), according to which there is a separate legal regulation for the environmental conditions concerning depositing materials.

<sup>39</sup> Kvtv. section 16.

<sup>40</sup> Kvtv. section 17(3).

### **b) The Scope of the Tfv.**

As clearly appears from the structural characterisation of the Tfv., it establishes provisions concerning the exploitation of arable land, land protection and the assessment of land and soil protection. The scope of the Act relates to arable land as a general rule and to property which is not assessed as arable land when the Act regulates this way. Regarding the urban lands that are in agri- or silvicultural use, it is an important rule that the provisions for arable land shall be applied as a main rule for them, too. The rules are established in relation to land protection and side-exploitation<sup>41</sup> make an exception to the previous rule.<sup>42</sup> The regulation relating to agricultural lands under nature conservation also refers to the extended scope of the Act.<sup>43</sup> Rules related to agricultural lands shall be applied to property registered as a garden-plot in the land registry if certain provisions are complied with.<sup>44</sup>

The scope of the Act also considers its so-called “negative” scope. It means that the scope of the Tfv. does not include the establishment of a forest or its exploitation, its urban development as or as silviculture, as it is determined in the Act XXXVII of 2009 on the Forest and the Protection of Forests and Silviculture (hereinafter: Evt.).<sup>45</sup> There is another prominent rule, according to which the scope of the Tfv. does not include the protection of land as an environmental component. It is worth again drawing attention to the fact that the starting point of the regulatory perception of the Kvtv. and the Tfv. do not completely match. The Kvtv. enforces a regulatory content with an ecological aspect.<sup>46</sup> As an important rule, the Kvtv. involves in the expectation on the basis of which its rules shall be applied along with the soil protective provisions of other acts.<sup>47</sup>

### **c) The double directions correlating with each other and the main definitions concerning agricultural land protection**

The quantitative protection of arable land includes that a particular land shall be protected,<sup>48</sup> its territorial extent shall be properly preserved and the agricultural use shall not be wasteful. For instance, certain economic/farming objectives (investments) shall not overwrite the protection.

<sup>41</sup> Tfv. section 5(4).

<sup>42</sup> See the scope of the Tfv.: section 1(1)–(3).

<sup>43</sup> Tfv. section (5): “The provisions of this Act shall be applied to protected agricultural land unless otherwise required by the Act on nature protection.”

<sup>44</sup> Tfv. section 1(7).

<sup>45</sup> The rule established in the Tfv. section 1 (4a) helps the explanation in the following way: “The forest authority is entitled to determine and certify, which area is considered to be forest according to the forest act.”

<sup>46</sup> Cf. p 4.

<sup>47</sup> Tfv. section 1(6).

<sup>48</sup> Typical examples are the so-called “greenfield investments” which reduce obviously the amount of agricultural land.

We may talk about soil protection with regard to qualitative protection; otherwise, soil protection appears among the definitions of the Tfv. with the following content: “2(17). soil protection: protecting and improving arable land, as well as preventing it from physical, chemical and biological degradation; (...)” Referring to the introduction of this analysis, international organisations obviously point out the importance of taking acts against soil degradation. They also emphasise the significance of protection from other aspects.<sup>49</sup>

The quantitative and qualitative protection of soil obviously correlate with each other.<sup>50</sup> The fertility of soil stands rightly in the centre of the definition of soil protection. If soil protection is not enforced appropriately by practice, it may logically result in the soil losing its nutrients. It means that the particular part of the land may cease to exist as fertile land.

According to the Tfv.’s main definitions, arable land means the part of the land which is located on the periphery of a settlement and is registered in the real estate register as a field, a vineyard, a fruit garden, a garden, a meadow, a pasture-ground (lawn), a reed-bed or as afforested land. There is one exception: if the part of the land is considered to be a forest according to the definition of the Evt. It defines soil as a conditionally renewable natural resource, which is the fundamental means of agricultural and sylvicultural production. Also, it is the live sphere of the Earth’s solid surface, the most important feature of which is fertility.

#### **d) The obligation of arable land utilisation; the consequences of negligence**

The obligation to utilise arable land as regulated in the Tfv. greatly supports the enforcement of protective rules, the protection of arable land and appropriate farming practice for it. The land user is obliged to use the land in two different ways depending on his choice. Either the land user shall be obliged to utilise the land for the appropriate agricultural production according to its registration in land estate registry or without agricultural production, the land user shall prevent weeds from establishing and spreading and observe the soil protective provisions.<sup>51</sup> Regarding vineyards and fruit gardens, it is worth mentioning that the land user has no choice, because he/she

<sup>49</sup> UN: Transforming our world, point 33. *ibid.*, 39–41.

“33. We recognize that social and economic development depends on the sustainable management of our planet’s natural resources. We are therefore determined to conserve and sustainably use oceans and seas, freshwater resources, as well as forests, mountains and drylands and to protect biodiversity, ecosystems and wildlife. *We are also determined* [...] to tackle water scarcity and water pollution, *to strengthen cooperation on* desertification, dust storms, *land degradation* and drought and to promote resilience and disaster risk reduction.”

<sup>50</sup> Horváth G., Az agrár-környezetvédelmi jog földvédelmi részterületének „tárgyi és területi” hatálya, in Bobvos P. (ed.), *Reformator iuris cooperandi*, (Pólay Elemér Alapítvány, Szeged, 2009) 209–229.

<sup>51</sup> Tfv. section 5(1); The act and the legal regulation for the implementation of the act may establish provisions which have another content as the main rule.

is obliged to use the land for production.<sup>52</sup> The provisions of the Tfv. are regularly checked by the estate authority.<sup>53</sup> If the obligation of agricultural land utilisation is neglected, a land protection fine shall be paid according to the conditions established in the Tfv.<sup>54</sup> In connection with the obligation of agricultural land utilisation, garden-plots as well as the special rules applied to them should be highlighted. The relating provision of the Tfv. may be considered as a valuable regulatory component. According to it, uncultivated garden-plots may be assigned for social land programmes and for municipal public work programmes that include agricultural activity for one year.<sup>55</sup> In this case, the owners of the garden-plots may not claim compensation from the local government for the utilisation of the land as part of either programme.<sup>56</sup> The Földforgalmi tv.<sup>57</sup> and the Fétv.<sup>58</sup> both invoke compulsory land use in the event of failure of the obligation of land utilisation.

When analysing the institution of the obligation of land utilisation, the provisions relating to the conditions of acquisition of property established in the Földforgalmi tv. stand out. It means that, according to this act, as a main rule, upon acquiring arable land, the acquirer shall make a declaration on the use and utilisation of land as well as its utilisation for other purposes. The acquirer shall make the declaration with keeping the determined formalities. This declaration is one of the conditions of acquiring arable land. According to the Földforgalmi tv. the acquirer shall accept that he shall not give the use of the land over to anybody, he shall use the land himself, he meets the requirement of arable land utilisation and he will not utilise the arable land for other purposes (with some exceptions in the act) for five years following the date of acquiring the land. This declaration shall be made in the contract on the transfer of property or in a private document of full probative value as well as in a notarial deed.<sup>59</sup>

As part of the regulatory material of the obligation of land utilisation the conversion of land in the real estate register should be mentioned. Independently from the land conversion, the classification of the arable remains the same and what is more its utilisation is unchanged. The alteration of registration may mean a different kind of farming, which may have serious effects on the environment. Considering the fact that the registration is bound to real estate registry, it shall reflect the alteration. Regarding

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<sup>52</sup> Tfv. section 5(2).

<sup>53</sup> Tfv. section 5(5).

<sup>54</sup> Tfv. section 5(6), see the land protection fine more exactly: Tfv. sections 24–25 and Appendix 2 for the rate of the fine.

<sup>55</sup> Tfv. section 5/A(1)–(7).

<sup>56</sup> Tfv. section 5/A(7).

<sup>57</sup> Földforgalmi tv. Chapter V. “The official control of the limit of acquisition and compulsory utilisation.”, exactly section 64–67.

<sup>58</sup> Fétv. “Chapter XII The rules of the official control of the limit of acquisition and of compulsory utilisation.”

<sup>59</sup> Földforgalmi tv. section 13(1).

the main rule, the conversion of land shall be declared to the real estate authority. The omission of this declaratory obligation will result in a land protection fine being levied.<sup>60</sup>

**e) The rules on utilisation for other purposes**

The utilisation of arable land for other purposes may be temporary<sup>61</sup> or permanent.<sup>62</sup> The Tfv. obviously defines the cases of utilisation of arable land for other purposes, which may be – the temporary or permanent use of the arable land by which the arable land will be unusable, either temporarily or permanently, for agricultural purposes; – the authorisation of urban development; the use of large-scale afforestation, or manor afforestation, as well as the afforestation related to a road, railway or other technical establishments that are out of the scope of the Tfv.<sup>63</sup> As special rules have also been introduced for garden-plots.<sup>64</sup>

As a main rule, arable land may be utilised for other purposes with the permission of the property authority.<sup>65</sup> The property authority will conduct a so-called land protective procedure.<sup>66</sup> The deadline of this procedure is 30 days it has to be completed within 30 days. A local inspection shall be held as both part of the land protective procedure and by the examination of land protective professional rules. It is an important rule, that according to the provisions of the Tfv., the utilisation of arable land for other purposes may result in a land protection contribution, which shall be paid only once.<sup>67</sup> The authorisation of the real estate authority is needed but this alone does not satisfy the conditions of a lawful procedure, because this does not release the inquirer from acquiring other necessary official permits. There is obviously a need for a protective rule according to Section 11 which states that “Agricultural land may be used for other purposes only in exceptional cases – primarily with regard to lower-quality agricultural land”.<sup>68</sup>

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<sup>60</sup> Tfv. § 3 We note that special rules are applicable to forests and vineyards. The provisions of the Etv. and Act XVIII of 2004 are of fundamental importance for them.

<sup>61</sup> It is considered to be temporary utilisation of agricultural land for other purposes, when, on the area concerned, there is destruction of the unharvested crop, production losses, the necessary agricultural work has been prohibited, or the structure of the soil has become harmful. See: Tfv. section 14(1) We should mention that temporary utilisation for other purposes may be permitted for a maximum 5 years. Tfv. section 14(2).

<sup>62</sup> Tfv. section 9(3).

<sup>63</sup> Tfv. section 9(1) points a)–c)

<sup>64</sup> See as special rule Tfv. section 5/A.

<sup>65</sup> Tfv. section 10(1), see the exceptions in section 10(2).

<sup>66</sup> Tfv. section 8/C.

<sup>67</sup> Tfv. sections 21–23, see Appendix 1 for the rate of the land protection contribution.

<sup>68</sup> See the rules for agricultural lands which have better quality than the average: Tfv. section 11(1)–(3).

If the arable land is re-classified as urban land, it means the permanent utilisation of arable land for other purposes.<sup>69</sup> The classification of arable land as urban land may be requested by the local government according to the Tfv. This is exclusively the local government's right.<sup>70</sup> With its request, the local government shall attach the documents regulated by the Tfv. to the inquiry. It is also an important rule that the local government shall declare that those parts areas specified in the request shall be utilised for the stated purpose within 4 years. The rule on paying the land protection contribution shall apply to the local government, too.<sup>71</sup>

Two supplementary rules should be highlighted in connection with utilisation for other purposes. One of them is called temporary utilisation. According to the provisions established in the Tfv., if the real estate authority has permitted the utilisation of agricultural land for other purposes, either the land user or the applicant is obliged to meet the requirements of its agricultural utilisation until the first use of land – e.g. until a certain investment actually starts. The other form of utilisation called supplementary utilisation, according which the land user shall regularly take care of the vegetation on the property which is not arable land if it does not prevent or limit the appropriate use of the property for other purposes.<sup>72</sup>

The Tfv. includes also the applicant's obligation concerning the termination of utilisation for other purposes. As a main rule, the applicant – according to their own choice – shall make the whole area or at least half of the area suitable for agricultural or silvicultural use. This provision may also be applied to the applicant who is concerned about exceeding the four-year the suspension of utilisation for other purposes.<sup>73</sup> This is the rule on the reuse of land, on the basis of which the particular part of the land may be available for cultivation again.

### **f) The main rules of soil protection**

As we have mentioned before, the Tfv. includes particular definitions concerning soil and soil protection. While the definition of soil concentrates on fertility, which is its most important feature, the complex definition of land protection focuses on the protection of the quality and fertility of agricultural land.<sup>74</sup> The introduction to the act refers to, the change in approach of the regulatory regime of the EU's Common Agricultural Policy; the greening process has affected soil conservation. Without

<sup>69</sup> If the recourse of arable land occurs for the purpose established in Tfv. section 15/B, (namely the arable land is necessary for as a production site, borrow pit or surface-mining activity), it is also considered to be utilisation of arable land for other purposes.

<sup>70</sup> Tfv. section 15(2).

<sup>71</sup> Tfv. sections 21–23. §, furthermore Appendix 1 on the rate of the land protection contribution.

<sup>72</sup> Tfv. section 5(3)–(4).

<sup>73</sup> Tfv. section 6(1).

<sup>74</sup> Tfv. section 2, points 16 and 17.



aiming at completeness, we need to highlight the set-aside systems, as well as land-use methods that favour of ecological farming which support has been significant. The territorial rules along with restrictions on animal density and silvicultural programmes have all assisted soil protection. Concerning “big steps” we need to point out the MacSherry Reform, the documentation of Agenda 2000, which clearly declared the multifunctional characteristic feature of agriculture by defining rural development as the second pillar of the system. Undoubtedly, the institute of modulation is extremely valuable regarding protective rules. As a result of the requirements, which concentrate on the environment and preserving it, environmental protection aspects are facilitated by financial support. The progress of greening as part of the Fischler Reform (2003) as well as the Regulation package from 2013 with special regard to the Regulation (EU) No 1306/2013 of the European Parliament and of the Council and its Annex II, the rules of Cross-compliance<sup>75</sup> may be considered to be a huge leap in this topic.<sup>76</sup>

The Tfv. establishes the authorities responsible for soil protection. Here we highlight the Soil Conservation Information and Monitoring System, the task of which is to observe the alteration of soil and to classify it with special concern. It greatly serves the protective aims, because it is public and has a common interest.<sup>77</sup>

Soil conservation authorities also have a key importance. The authorisation of the soil conservation authority is essential for certain activities and procedures such as soil improvement, also known as amelioration and landscaping with an agricultural purpose.<sup>78</sup> It is also a significant rule that a soil conservation plan is needed for official land protection procedures, which is determined in a special law.<sup>79</sup> According to the Tfv., a land conservation fine shall be paid if the land user violates the obligations concerning soil protection.<sup>80</sup>

Soil protection is fundamentally the obligation of the land user<sup>81</sup>, who has wide range of duties. The land user must adjust to the ecological features of the agricultural area and align his soil-protective farming or other activity to it.<sup>82</sup> If the area is exposed to damage from either water or wind erosion, the land user has practical obligations to prevent it according to the Tfv.<sup>83</sup> It is obvious that the obligation in connection with a field differs from the obligation on the area of a plantation or on a meadow or grazing-ground (lawn). The related obligations of the land user are practical, because it is clear

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<sup>75</sup> See concretely: Regulation Article 93.

<sup>76</sup> See for the analysis of the process: footnotes 10 and 11.

<sup>77</sup> See for its function and goals: <http://portal.nebih.gov.hu/-/a-tim-azaz-a-talajvedelmi-informacios-es-monitoring-rendszer> (Last accessed: 31 December 2018).

<sup>78</sup> Tfv. section 49(1).

<sup>79</sup> Tfv. section 50(2); See for the definition of soil conservation plan: Tfv. section 2, point 18.

<sup>80</sup> Tfv. section 56–57.

<sup>81</sup> See for the definition of land user: Tfv. section 31(1) a).

<sup>82</sup> Tfv. section 35.

<sup>83</sup> Tfv. section 36.

that, for specific field, plants that match its soil cover and can prevent erosion shall be planted. We need to mention that if erosion cannot be prevented by undertaking the related provisions of the Tfv., the land user will have further obligations. One of these obligations is that the registration of the arable land shall be altered.<sup>84</sup> On the basis of another practical rule, vegetation such as forest belts which ensure the protection of areas endangered by erosion shall be preserved.<sup>85</sup>

The land user is also obliged to consider the needs of cultivated plants on acidic soil or soil that is susceptible to acidity. For example, the soil shall be improved or acidic fertiliser shall not be used on it.<sup>86</sup> There is a special rule for soil protection in the case of saline soil. It is logical, that the land shall be cultivated by the land user without degrading soil quality. The land user also has obligations regarding soil conservation, for example concerning the quality of irrigating water.<sup>87</sup> The provision of the Tfv. oblige the land user to take care of the preservation of the organic content by applying soil conservation methods; by applying rotation; by growing follow-up crops or intercrops; by making use of stubble field remains; by gaining organic materials and by preserving humous topsoil. It is a significant rule that the humous topsoil must not be removed, unless otherwise required by the Tfv. Developing a harmful abundance of groundwater or sub-surface water shall be prevented avoiding and remedying soil compaction. At the same time, the land user is obliged to protect the arable land from foreign materials that damage its quality. It is a general rule that nutrient management, which takes the nutrient supply of the soil while using the land and the growing plants' need for nutrients into account, and which is also environmentally friendly, shall be carried out. Soil protection is evidently essential in the case of investments carried out on arable land or that have an effect on it and are considered to be investments according to the Act on accounting. Investments and any other activities carried out on agricultural land and having an effect on it shall be planned as well as implemented so that the conditions of soil protective farming, especially the humous topsoil on both particular area and "nearby" arable land cannot be degenerated.

## IV. CONCLUSION

Considering the analysed theme, as a final statement we would like to make the suggestion that the content on fundamental rules making up the Hungarian soil protection system could be simplified so that the practice could apply them more efficiently than the current one.

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<sup>84</sup> Tfv. section 36(2).

<sup>85</sup> Tfv. section 36(3).

<sup>86</sup> Tfv. section 37.

<sup>87</sup> Tfv. section 38.