| Chapter 3 |

The European Union's Legal Framework on the Member State's Margin of Appreciation in Land Policy – The CJEU's Case Law After the "KOB" SIA Case

Ágoston KOROM

ABSTRACT

Several studies and scientific workshops have considered the member states' rules—within the framework of EU law—on the ownership and use of agricultural and forest property, taking into account that this area is significant not only for the member states that acceded after 2004, such as Hungary, but also for the founding members. These examinations have focused on the public interests acknowledged by the Court of Justice of the European Union (CJEU), such as the preservation of the rural population; the promotion of small and middle-sized, livable properties; and the easing of the speculative pressure on the land market, which should be achieved in practice without compromising EU law—especially its fundamental freedoms. This characteristic of the CJEU's relevant case law primarily led to the application of the free movement of capital; nevertheless, the CJEU's judgment in the "KOB" SIA case resulted in a significant change in this area, which is the main subject of the current examination.

KEYWORDS

Member state's margin of appreciation in land policy, free movement of capital, targets of the CAP in the land policy, legal development in the KOB SIA case, freedom of establishment, Services Directive

1. Introduction

Several studies and scientific workshops have considered the member states' rules—within the framework of EU law—on the ownership and use of agricultural and forest property, taking into account that this area is not only significant for the member states that acceded after 2004, such as Hungary, but also for the founding members.

Korom, Á. (2022) 'The European Union's Legal Framework on the Member State's Margin of Appreciation in Land Policy – The CJEU's Case Law After the "KOB" SIA Case' in Szilágyi, J. E. (ed.) *Acquisition of Agricultural Lands: Cross-border Issues from a Central European Perspective.* Miskolc–Budapest: Central European Academic Publishing. pp. 77–90. https://doi.org/10.54171/2022.jesz.aoalcbicec_4

These examinations have focused on the public interests acknowledged by the Court of Justice of the European Union (CJEU),[1] such as the preservation of the rural population; the promotion of small and middle-sized, livable properties; and the easing of the speculative pressure on the land market, which should be achieved in practice without compromising EU law—especially its fundamental freedoms. This primarily meant the application of the free movement of capital; nevertheless, the CJEU's judgment in the "KOB" SIA case resulted in a significant change in this area, which is the main subject of the current examination.

The member states' margin of appreciation[2] refers to how they can regulate ownership rights and the use of agricultural property and how EU law limits this. Today, according to the development of EU law, we cannot talk about an "EU land policy" because, similarly to the Common Agricultural Policy (CAP),[3] common EU regulations do not exist. The member states are those who have the power of regulation in this field. However, this does not indicate that the area is free from EU control.

It should be stressed that all the member states' measures, which can affect and be a possible barrier to the operation of the internal market, fall within the scope of EU control. In this context, the CJEU developed a practice by which all the member states' measures that can prevent the free movement of production factors—such as capital, workforce, and goods—are subject to EU control. Within this type of control, the CJEU did not assume that the measures introduced by the member states were not intended to compromise the rules of the internal market; therefore, it created a consistent case law that prevents the regulations aiming to violate the internal market's rules. Denys Simon's considerations about the negative and positive relationship of integration forms should be considered. The most significant element of the integration kept together by the law is the negative integration that maintains the internal market. Without the positive integration, the negative form cannot be maintained; therefore, the internal market helps to balance the disparities caused by the internal market. Agriculture, which has been aided in all the developed countries for at least 100 years, should be mentioned. The expenditure of the CAP is equal to at least 40% of the EU's budget. It should be added that the least developed member states' aiding systems were also developed from the CAP.[4]

1 On this subject, see Kurucz, 2012, pp. 118–130.; Kurucz, 2015; Korom and Gyeney, 2015, pp. 289–306.; Szilágyi, 2021.

2 János Ede Szilágyi explains that EU law and the CJEU's case law create a powerful framework for agricultural and forestry and emphasizes that rules on land use and land ownership should be distinguished. Szilágyi highlights the European Agreement of 1994 during Hungary's accession phase, which—contrary to the acquisition of ownership—required the principle of national treatment. Linked to this matter, the Act of Accession provided exemption until 2014 in the case of agricultural lands' ownership. The issue is detailed in Szilágyi, 2017, p. 165.; Korom, 2013, pp. 11–25.; Szilágyi, 2013, pp. 109–121.

3 See more in Bianchi, 2012.

4 Simon, 1997, p. 92.

It should be mentioned that all provisions that are barriers to fundamental freedoms are generally against EU law, although these rules can be justified. Therefore, the CJEU primarily examines whether the rule contains directly discriminative provisions on citizenship. Next comes the further analysis of the rule. The principle of national treatment means that the member state guarantees its citizens the same rights as those of other member states' citizens. According to case law, a rule that meets the principle of national treatment's requirements can lead to indirect discrimination if it primarily affects the citizens of other member states negatively.

Afterward, the examination decides whether the introduced restriction serves public interests in light of EU law and the introduced measure can be justified. It is a permanent rule related to the internal market that entirely economic reasons cannot serve a legitimate interest in its operation. In land policy, this is less determining compared to other fields because of the positive integration component explained below. Social goals can be accepted as limits to fundamental freedoms. Next, the different control standards are examined, such as whether the rule is suitable and necessary for implementing its goals. According to the principle of proportionality, the measures cannot exceed the extent necessary to reach the targets. The principle of consistency requires the member states' measures to be implemented consistently to address it as a public interest. Thus, the restriction of gambling can be justified by social or other reasons, but if the member state also manages gambling facilities, restricting gambling cannot be regarded as a legitimate public interest in that member state.

The TFEU's Article 345 (ownership autonomy) and the fundamental freedoms remain the same if provisions concern the internal market. Ownership autonomy cannot justify the fundamental restrictions on fundamental freedoms, which means that the member states can maintain their land registers' specific features.

The cross-border element, which has a significant role in the application of EU law, shall also be mentioned. In general, EU law is applied to the internal market if the case has any cross-border element; without this, individuals or economic operators cannot allege EU law. However, the cross-border element cannot be found in all infringement procedures launched by the European Commission. Exceptionally, the CJEU answers without the existence of a cross-border element within the scope of the free movement of capital related to the member states' activity on the property. These cases are exclusions from the general rule.

The consistency of the CJEU's case law on the member states' land policy and the margin of appreciation should also be mentioned. Two aspects shall be highlighted in this context. On the one hand, in the CJEU's judgments—within the monopoly of the authentic interpretation—the CJEU decides how EU law should be interpreted from the date of entry into force by EU actors and the courts of the member states. A judgment related to land policy could guide thousands of cases before the member states' courts.

On the other hand, particularly in the internal market, the CJEU—with a few exceptions—ensures that the developed case law changes as little as possible.

We should distinguish the member states' margin of appreciation related to the land policy. The first layer, where the *erga omnes* effect developed by the CJEU is relevant, covers the following factors: the margin of appreciation for the member states to regulate a specific area; the application of the provisions of the Charter of Fundamental Rights of the European Union and the general principles or the case law of the European Court of Human Rights; and, moreover, the reasons that can serve as public interest in a particular area.

In the second layer, the CJEU examines, in a preliminary ruling or an infringement procedure launched by the European Commission, the member state's regulation on land policy in light of EU law. In this case, the remarks by the CJEU cannot be automatically applied to the regulation of another member state because, in this case, the CJEU aims to take into account the entire system and logic of the regulation.

It should be added that the internal market law is determined by EU law, which sets significant rules from the perspective of the member states' margin of appreciation in land policy, its regulations, and the implementation by its administrative actors. If the rule does not allow a certain level of margin of appreciation in specific situations in which EU law would be applied, that violates EU law. If the member state's administrative bodies have too broad a margin of appreciation, preventing other member states' legal entities from investing there, that could also be against EU law.

The CJEU not only examines the member states' regulations to determine if they align with EU law, but if administrative or judicial practices do not meet the requirements of EU law, the CJEU presumes that the rule is against it.

The examination below addresses the CJEU's case law on the member states' margin of appreciation on land policy and how the "KOB" SIA judgment influenced it.

2. The member state's margin of appreciation is based on the free movement of capital

Turning back to the margin of appreciation in land policy, the case law shows that secondary law cannot be applied with the exemption of the 1988's Directive on the free movement of capital, which is used as a guideline by the case law, even though the Treaty of Amsterdam repealed it.[5] The CJEU addresses the goals mentioned above as a general public interest that can restrict the free movement of capital.

In the judgment of the Ospelt case, the CJEU examined an Austrian[6] rule that created a prior authorization system for the ownership and use of agricultural lands and forests. In the CJEU's interpretation, the rule's targets, such as preserving the rural population and farming establishments, were legitimate. The CJEU mentioned that not only these targets but also the rational use of agricultural lands and the prevention of speculation in the land market were in line with (following the numbering used then) Article 39 of the Founding Treaties, which, among other things, promotes farmers' living standards. This means addressing the CAP's goals in addition to fundamental freedoms, thus acknowledging the negative integration form the positive in the member states' land policy. The CJEU added that this Article emphasizes agriculture's specific characteristics, social aspects, and existing natural and structural differences.

After examining these targets, the CJEU also concluded that the prior authorization system was in accordance with EU law; on the contrary, although EU law only requires prior notification in other areas, according to the CJEU, cultivation by the acquirer and the local residency cannot be systematically obligatory.

In the Festersen case,[7] the Danish regulation limited the acquisition of agricultural property—among others—by requiring ex-posts living in the area and introducing criminal sanctions. According to the CJEU, this legislation did not comply with EU law.

The CJEU allows the member states to introduce restrictions to prevent speculation and preserve the rural populations. However, it could be difficult for the member states to regulate this issue in practice because the negative integration form, related to fundamental freedoms, dominates in case law, which is stronger than the public interest of the member state. The principles developed by the CJEU also make it more challenging to justify the member states' restrictive measures or create a vague environment for them to regulate, as this case underlies.

5 CJEU, C-370/05.
6 CJEU, C-452/01
7 CJEU, C-370/05.

In the judgment[8] of the Konle case, the CJEU examined an Austrian rule on secondary properties in light of the free movement of capital. The member state aimed to regulate the building plots to achieve rural development goals because few building plots can be found in the area. Although the goals are acceptable, the introduced prior authorization system does not seem to be an appropriate and necessary means to meet these goals.

We shall also highlight the CJEU's judgment[9] in the Ewald Burtscher case. The member state's rule was against the free movement of capital, violating EU law. The rule annulled a property transaction on a secondary residency only because of a statement's late submission about the acquisition of the property.

It should be added that the CJEU not only addresses these goals as public interest but admits that they are in line with the CAP's targets for the improvement of the farmers' living standards; therefore, in addition to the negative integration form (fundamental freedoms), the positive integration form (targets of the CAP) is also mentioned. Nevertheless, controlling fundamental freedoms is more significant in the CJEU's practice, undermining the member states' margin of appreciation on regulation; thus, the acknowledged goals cannot be implemented, and therefore, the positive integration form cannot be achieved.[10] In the case law of the CJEU, a difference exists between deciding operations on land policy or property: the prior authorization procedure examined in the Konle case did not meet the requirements of EU law; on the contrary, in land policy, a similar system is compatible with EU law.

It can be concluded that the member states' margin on land policy is subjected to the negative and positive integration form, and their measures promoting public interest will fail due to the CJEU's control; thus, the negative integration form will be more decisive—at least if the CJEU decides about it in an infringement procedure or a request on preliminary rulings. After several scientific events, we concluded that an EU legal framework would be essential for the member states, which acceded after 2004, allowing the creation of a predictable regulation. Of course, we have not mentioned the rules that clearly violate EU law and keep the citizens of other member

8 CJEU, C-302/97.
9 CJEU, C-213/04.
10 See Kurucz, 2015; Szilágyi, 2018, pp. 69–90.; Szilágyi, 2015, pp. 96–102.; Szilágyi, 2017, pp. 107–124.; Szilágyi, 2017, pp. 569–577.

states away, such as requiring the knowledge of the specific member state's language or agricultural qualification within its educational system. The CJEU's case law shows that the public interest addressed by the CJEU restricts or can restrict fundamental freedoms, or the measures aimed to implement them would be against the principle of proportionality, the provisions of the Charter, or the principles developed by the CJEU.

After the Commission concluded the comprehensive review of the new member states, no cases were brought before the CJEU, and other cases related to the above-mentioned situations have not been found. The judgments on the Hungarian-related SEGRO case[12] about the cancellation of usufruct rights and the Commission/Hungary[13] cannot be considered to be related to the member states' margin of appreciation on land policy; rather, they are more connected to the expiration of the Hungarian land market's derogation period.

It can result from the problems occurring in the CJEU's practice that the positive integration form would have a more significant role, which would allow the member states' constant regulation and prevent the introduction of protectionist measures. The CAP could serve as an example of this. In addition to the internal market for agricultural products, the main features of the CAP can be retrained.

Next, we will examine a case concerning a member state that acceded in 2004; a rule was brought before the CJEU as a preliminary ruling that violated EU law and caused a significant change in the member states' margin of appreciation on land policy.

3. The examination of the KOB SIA case

KOB is an agricultural company owned by German citizens established in Latvia, with a German citizen as director. Several other companies owned by German citizens have shares in KOB.

The company concluded a sales agreement on approximately 10 hectares of agricultural land in 2018 and asked for a license from the member state's authorities, which refused this. KOB turned to the Latvian courts, stating that the circumstances of the licensing scheme are discriminative based on nationality and incompatible with the free movement of capital or establishment, among other things.

It should be stressed that the regulation mentioned above allows legal persons to acquire agricultural property. In this case, if a legal person is led or represented by another member state's citizen, the Latvian law sets two more requirements to acquire agricultural lands. The citizens of other member states should be registered in Latvia, which includes being required to stay in the state for more than 3 months and prove their knowledge of the Latvian language on a conversational level.

12 CJEU, C-52/16.
13 CJEU, C-235/17.

As we have already mentioned, our examination of the judgment will focus on the changes in the member states' land policy and the fields not concerned by this legal development.

Article 345 of the TFEU does not change[14]: it is commonly agreed that ownership autonomy does not justify the derogation from fundamental freedoms, but it allows the member states to regulate this field. In light of Article 345 of the TFEU, the treaties do not consider the ownership system of the member states. We can conclude that the issues about ownership belong to the member states' regulatory power and are not affected by EU law. It should be also emphasized that the regulation of agricultural lands' ownership is also a prerogative of the member states. On the contrary, it is a specificity of the internal market that the member states should also meet the requirements of EU law related to this field, even if the area falls under the member states' regulatory powers. This principle should be applied in the case of the TFEU's Article 345.

A question was raised before the CJEU: should the free movement of capital or the freedom of establishment be applied? According to the consistent case law of the CJEU, the free movement of capital should be applied in the case of property. Jacques Pertek points out that the strengthening of the free movement of capital was started by the CJEU's case law in the 1980s.[15] A directive also represents, among others, the non-limitative nomenclature and that the operations of the member states related to the free movement of capital should be interpreted broadly. Thus far, in the case law of the CJEU, if it examines a member state's rule in light of the free movement of capital, it does not interpret the regulation in light of other fundamental freedoms; from this aspect, the free movement of capital can be considered the most potent fundamental freedom. However, the CJEU referred to the Van der Weegen judgment of 2017, according to which it examines a member state's measure in light of one fundamental freedom if the others are secondary. The regulation's objective should be examined by taking into account the case law, which the CJEU brought up in the KOB judgment. To this judgment, the CJEU also added that specific regulation not only targets the acquisition of agricultural lands—which is included in the free movement of capital according to the case law in cases with a cross-border element—but it also considers the agricultural lands' continuous use, which is related to the freedom of establishment because it is a permanent economic activity in another member state.

In light of the objectives of the regulations, we cannot conclude that in the CJEU's interpretation of the KOB SIA case, the freedom of establishment or the free movement of capital could be applied.[16,17] Therefore, the CJEU examined[18] the case's factual

14 CJEU, C-206/19.

15 Jacques Pertek.

16 CJEU, C-206/19, para 25.

17 The CJEU adds that, as it appears from the documents, the concerned person of the case aims to acquire agricultural lands for use. Furthermore, not only is the member state's particular regulation related to the acquisition of agricultural lands, but it aspires to provide continuous agricultural use.

18 As an analogy of the CJEU, C-375/12.

basis[19] to determine whether the freedom of capital or the establishment would be applied.

The Court applied the freedom of establishment and not the free movement of capital because an economic company can acquire agricultural property in Latvia to conduct agricultural activity on the condition that its representatives and members prove that they have residency in this member state and a certain level of knowledge of the Latvian language.[20]

In the case of Van der Weegen and others, referring to the judgment delivered in June 2017, if a member state's measure is linked to more fundamental freedoms, it should be examined only from the perspective of one fundamental freedom if the others are secondary regarding the circumstances of the case. The CJEU concluded that—contrary to other cases, such as the SEGRO case[21]—this case mostly belongs to the scope of the freedom of establishment; therefore, this fundamental freedom alone should determine the examination of the member state's[22] regulation.[23]

It should be noted that the Court mentioned the SEGRO judgment, in which the member state referred to the land policy's objectives, but the CJEU did not approve it. It has already been mentioned that this judgment does not primarily consider the member state's margin of appreciation on land policy but the expiration of the member states' (which acceded in 2004) derogation period. The CJEU did not mention the Festersen judgment,[24] in which the concerned person also purchased the land for agricultural use.

The CJEU addressed the exclusive application of the freedom of establishment; however, it forwent the application of Article 18 of the TFEU, raising the freedom of establishment to a similarly strong position as the free movement of capital.

The Court also recalled its case law, according to which[25] the measures introduced by the member states that are subject to a complete EU harmonization should be interpreted in the light of secondary law.[26] Thus, Directive 2006/123 will be applied. It must be stressed that, in general, primary law has a stronger position than secondary law; among others, primary law authorizes EU legislators to adopt secondary law.

The Directive sets the requirements for the member states' legislators if they introduce an authorization scheme for specific services. It lists forbidden requirements and presents the complete harmonization in particular provisions.

The Court does not find these requirements justifiable, considering Article 14 and the general requirements[27] for the member states of Directive 2006/123, which was

19 CJEU, C-206/19, para 25.
20 CJEU, C-206/19, para 26.
21 CJEU, C-52/16.
22 European citizenship.
23 CJEU, C-206/19, paras 27–28.
24 See Vauchez, 2019 and Navel, 2021.
25 CJEU, C-206/19 para 30.
26 CJEU, C-205/07, para 33.
27 Ibid. para 38.

supported by the judgments of the Rina Services and others[28] and the Commission/Hungary.[29]

As the plus requirements set by the examined Latvian regulation should be applied in the case of other member states' citizens, the particular provisions violate Articles 9, 10, and 14 of the Directive. Then, the CJEU added that the particular regulation should not be examined in light of the free movement of capital.[30]

4. Conclusions

In conclusion, we should highlight that examining the member state's regulation meant a land policy judgment; however, the provisions were intended to keep the citizens of other member states away, which undoubtedly violated EU law. This is dissimilar to the judgment mentioned in the introduction; thus, public interest, which aims to implement the CAP, cannot be fulfilled in practice because of the strict control of fundamental freedoms.

However, the KOB judgment significantly influenced the member states' margin of appreciation of land policy. It should be added that there would have been more detail of this change had the member state's examined regulation not been discriminative, and the CJEU would have reviewed that the particular provision reflected public interest. The measures meet the control requirements of the negative integration form, such as the principle of proportionality. However, after analyzing the judgments related to Directive 2006/123, we can discern the structure of EU control in this field compared to the CJEU's case law on the free movement of capital.

It was unexpected that the freedom of establishment and Directive 2006/123 were applied instead of the free movement of capital. This kind of legal development is relatively rare in the CJEU's case law. Hopefully, the following judgment—if it does not contain a discriminative provision on citizenship—will create a proper compromise between the control of the internal market and the margin of appreciation of the member states, and it would be consistent with the improvement of the KOB SIA case. For the positive integration form, it is expected that the targets developed in the Ospelt case on the improvement of the farmers' quality of life will be emphasized more.

It seems unanimous that if the member state's legislator bounds the purchase of the agricultural lands to particular conditions, in case the considerations of the KOB judgment will be part of the consistent case law, not the free movement of capital but the freedom of establishment will be applied—in particular, Directive 2006/123.

According to Marc Fallon, the comprehensive reform of the internal market never happened; the Single European Act and the Maastricht Treaty introduced partial

28 CJEU, C-593/13.
29 CJEU, C-179/14.
30 CJEU C-206/19, para 41.

changes to the substantive law.[31] The Single European Act strengthened the freedom of capital compared to other fundamental freedoms. In the judgment on the Festersen case—similarly to the KOB SIA judgment— the land was going to be bought for agricultural purposes, but the free movement of capital was applied. The judgment on the KOB SIA case promoted the freedom of establishment and reduced the significance of the capital's free movement.

Claude Bluman and Louis Dubouis indicate that the Commission proposed Directive 2006/123, and the so-called Bolkenstein Directive faced strong opposition, primarily because of the French referendum on the Constitution for Europe.[32] The Directive aimed to liberalize services, which, on the one hand, resulted in the codification of the case law, and on the other hand, introduced other innovations in regulation. If Directive 2006/123 were limited to the codification of the existing CJEU case law, it would not significantly influence the member states' margin of appreciation on regulation.

In the interpretation of Valérie Michel,[33] providing the negative integration form is an essential role played by EU law, mainly including prohibitions for the member states. For the first instance, the EU legislator does not have a significant part in this relation. Individuals and economic operators can claim their rights (derived from EU law) before the member states' courts; thus, not only do they aim to enforce their interests, but to a certain extent, they become the complementary agent of the Union.[34]

However, the EU legislator has a significant role—the Council and the Commission, with the help of the directives—to clear obstacles before the internal market.[35]

Codifying the case law on the negative integration form facilitates the accessibility of the regulations and strengthens legal certainty. However, the Directive does not remove all the doubts in the specific area of the land market. Nevertheless, the judgment of the KOB SIA case and the related case law can be a starting point.

In the judgment of the Rina Services case[36] referred by the CJEU, among other things, the CJEU aimed to answer the question that a member state's regulation—requiring residency in the member state to conclude certain activities—is compatible with Directive 2006/123, the freedom of establishment, and the free movement of capital. It is not directly connected to the member states' margin of appreciation on land policy; the following research should examine how the EU control's structure applied there appears in land policy.

Even though Article 14 of Directive 2006/123 explicitly prohibits it, the member state aimed to justify this requirement on residency by controlling the concerned

31 See Dubout and Maitrot de la Motte, 2013, pp. 413–455.
32 p. 139.
33 See Azoulai, 2011, p. 283.
34 Robert Lecourt realized first that the most efficient way to force member states to implement EU law is through the procedures started by individuals in work, titled *L'Europe des Juges*, p. 283.
35 Ibid. p. 284.
36 CJEU, C-593/13.

activities.[37] In the interpretation of the CJEU, this requirement is forbidden by Article 14 of Directive 2006/123 and by its general requirements.[38]

The primary considerations of Advocate General Pedro Cruz Villalón's general opinion are worth examining. Pedro Cruz Villalón reminds us that, in general, harmonization measures should be applied, rather than primary law.[39]

The other referred decision is the judgment in the Commission/Hungary case.[40] The general opinion raised the question that Directive 2006/123 could be applied in this case. According to the Advocate General's interpretation, it should be examined that the Directive includes a complete harmonization that ought to be judged in light of case law and not decided by primary law.[41] The Advocate General highlights that deciding whether an area is subject to a complete harmonization would lead to a consequence. In this case, justifications excluded from Directive 2006/123—the ones regulated in Articles 52 and 62 of the TFEU—and the existence of imperative reasons of major public interest could not be claimed.[42] Yves Bot adds, in the general opinion, that this issue is debated in legal literature.[43]

The general opinion[44] mentions the judgment in the Rina Services case, where the CJEU decided that Article 3 para (3) of Directive 2006/123 cannot be interpreted in a way that allows the member states to justify the prohibited requirements of Article 14 by referring to primary law because this would be a barrier to the Directive's harmonization. The general opinion concludes that the Court considered Advocate General Pedro Cruz Villalón's general opinion on the Rina Services case; according to him, the Directive's scope concerns a broad range of services as it is horizontal. However, it does not aim to harmonize the member states' different substantive rules. Nevertheless, certain factors realize complete and accurate harmonization.

In light of the above-discussed factors, we have no reason to suppose that in the case of agricultural land purchase, the KOB SIA judgment would not become a consistent part of case law. In other words, in such cases, not the free movement of capital and the Directive of 1988 on the liberalization of the capital but the freedom of establishment and Directive 2006/123 would have an influential role.

Several uncertainties remain regarding how the new case law could involve the CJEU's formerly developed considerations about land policy, the free movement of capital, and particularly the goals of the positive integration form because in the new case law, the goals of land policy face EU control within the negative integration form and the application of Directive 2006/123.

37 Ibid. paras 26–27.
38 Ibid. paras 28–29.
39 General opinion, paras 21–22.
40 CJEU, C-179/14, paras 68–69.
41 General opinion, C-179/14, paras 68–69.
42 Ibid. para 69.
43 Ibid. para 70.
44 Ibid. para 71.

References

Azoulai, L. (2011) *Le législateur européen et l'entrave, in L'entrave dans le droit du marché interieur.* Bruxelles: Bruylant.

Bianchi, D. (2012) *La politique agricole commune (PAC).* 2nd edition. Bruxelles: Bruylant.

Dubouis, L., Blumann, C. (2012) *Droit matériel de l'Union européenne*. Paris: Montchrestien.

Dubout, É., Maitrot de la Motte, A. (2013) *L'unité des libertés de circulation*. Bruxelles: Bruylant.

Korom, Á. (2013) 'Az Új földtörvény az uniós jog tükrében. Jogegyenlőség vagy de facto más elbírálás?', in Korom, Á. (ed) *Az Új magyar földforgalmi szabályozás az uniós jogban*. Budapest: NKE. pp. 11–25.

Korom, Á., Gyeney, L. (2015) 'The compensation for agricultural land confiscated by the Benes decrees in the light of free movement of capital', in Láncos, P. (ed.) *Hungarian Yearbook of International Law and European Law.* Hague: Eleven International Publishing. pp. 289–306. https://doi.org/10.5553/HYIEL/266627012014002001019.

Kurucz, M. (2012) 'Gondolatok egy üzemszabályozási törvény indokoltságáról', *Gazdálkodás*, 2012/2, pp. 118–130.

Kurucz, M. (2015) 'Gondolatok a magyar földforgalmi törvény uniós feszültségpontjainak kérdéseiről', in Szalma, J. *A Magyar Tudomány Napja a Délvidéken 2014.* Újvidék: Vajdasági Magyar Tudományos Társaság.

Lecourt, R. (2008) *L'Europe des juges.* Bruxelles: Bruylant.

Navel, L. (2021) *L'argument de continuité jurisprudence de la Cour de justice de L'union européenne*. Bruxelles: Bruylant.

Pertek, J. (2005) *Droit matériel de L'Union européenne*. Paris: PUF.

Simon, D. (1997) *Le systeme juridique communautaire*. Paris: PUF.

Szilágyi, J. E. (2018) 'Mezőgazdasági földjog: Soft law a sof law-ban, Avagy a FAO önkéntes iránymutatása megváltoztathatja-e az uniós jog értelmezési kereteit földforgalmi kérdésekben?', *Iustum Aequum Salutare,* 2018/4, pp. 69–90.

Szilágyi, J. E (2017) 'Az európi jog és a magyar mezőgazdasági földek forgalmának szabályozása', *Agrár- és Környezetjog,* 2017/23, pp. 165–181 [Online]. Available at: https://doi.org/10.21029/JAEL.2017.23.148. (Accessed: 10 July 2022).

Szilágyi, J. E. (2013) 'A földforgalmi törvény elfogadásának indokai, körülményi, és főbb intézményei', in Korom, Á. (ed) *Az Új Magyar Földforgalmi Szabályozás az Uniós Jogban*. Budapest: NKE. pp. 109–121.

Szilágyi, J. E. (2015): 'Következtetések (II. Bizottság)', *Agrár- és Környezetjog*, 2015/19, pp. 96–102.

Szilágyi, J. E. (2017) 'A magyar földforgalmi szabályozás új rezsimje és a határon átnyúló tulajdonszerzések – kérdések a nemzetközi és az európai jog szemszögéből', *Miskolci Jogi Szemle*, 2017/12, pp. 107–124.

Szilágyi, J. E. (2017): 'Az Egyesült Államok és szövetségi államainak mezőgazdasági földtulajdon szabályozása a határon átnyúló földszerzések viszonylatában', *Miskolci Jogi szemle,* 2017/2, pp. 569–577.

Szilágyi, J. E. (2021) 'The Protection of the interest of Future Generation in 10-Year-Old Hungarian Constitution, With Special Reference to the Right to a Healthy Environment and Other Environmental Issues', *Journal of Agricultural and Environmental Law,* 31/2021, pp. 130–144 [Online]. Available at: https://doi.org/10.21029/JAEL.2021.31.130 (Accessed: 10 July 2022).

Vauchez, A. (2019) *Le travail politique du droit, in Le role politique de la Cour de justice de L'Union européenne.* Bruxelles: Bruylant.