



Press and Information

Court of Justice of the European Union

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Judgment in 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

## **Depriving persons of their right of usufruct if they do not have a close family tie with the owner of agricultural land in Hungary is contrary to EU law**

*That measure constitutes an unjustified indirectly discriminatory restriction on the principle of free movement of capital*

SEGRO, a Hungarian company owned by persons resident in Germany, and Günther Horváth, an Austrian national, held rights of usufruct over agricultural land in Hungary. In 2014 and 2015, the Hungarian authorities cancelled SEGRO's and Mr Horváth's rights of usufruct without compensation, in reliance upon new national legislative provisions. Hungarian law indeed provides that henceforth such rights can be granted or preserved only in favour of persons who have a close family tie with the owner of the agricultural land concerned.

Since SEGRO and Mr Horváth took the view that those new provisions conflict with the principle of the free movement of capital, they brought actions before the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szombathely, Hungary) for annulment of the Hungarian authorities' decisions. That court asked the Court of Justice whether the legislation at issue is in fact contrary to EU law.<sup>1</sup>

By today's judgment, the Court finds first of all that **the legislation at issue constitutes a restriction on the free movement of capital**, irrespective of whether or not it provides for compensation for the persons who have been dispossessed of their rights of usufruct. The legislation at issue deprives persons from Member States other than Hungary of the ability to continue to enjoy their rights of usufruct and of transferring them to other persons.

Furthermore, the Court observes that the requirement that a close family tie must exist between the usufructuary and the owner of the land **seems to constitute indirect discrimination based on the usufructuary's nationality or on the origin of the capital**.

In this connection, the Court notes in particular that, over many years, foreign nationals wishing to acquire a right of ownership over agricultural land in Hungary were subject to restrictions or were even precluded from acquiring such a right so that the only possibility for nationals of other Member States to invest, during all those years, in agricultural land in Hungary consisted in acquiring a right of usufruct. Thus, the proportion of holders of rights of usufruct is higher in the case of those nationals than Hungarian nationals and therefore **the legislation at issue affects the former more**.

As regards the issue whether the restriction at issue is justified by the fact that Hungary seeks to reserve productive land solely for the persons who farm it and to prevent it from being acquired for speculative purposes, the Court holds that **the restriction at issue is unrelated to those objectives and is therefore not appropriate for pursuing them**. Indeed, the required family tie does not guarantee that the usufructuary is going to farm the land concerned himself and that he has not acquired the right of usufruct at issue for speculative purposes. Likewise, a person who does not have such a family tie may farm the land himself without any intention to acquire it for

<sup>1</sup> Infringement proceedings against Hungary on this matter are also currently in progress before the Court of Justice (see Case [C-235/17](#), Commission v Hungary).

reasons of speculation. Finally, the Court considers that **the restriction at issue is not proportionate to the aforementioned objectives**, as less radical measures could have been adopted in order to attain them.

So far as concerns the restriction being justified by the alleged desire of the Hungarian legislature to penalise infringements of the national rules on exchange controls – infringements said to have been committed by the foreign nationals acquiring rights of usufruct – the Court finds that the restriction at issue **does not seem to pursue that objective and also goes beyond what is necessary in order to achieve it**.

Finally, as regards Hungary's argument that the restriction is justified by the desire to combat practices designed to circumvent, by means of entering into covert contracts ('pocket contracts'), the prohibition on foreign nationals and legal persons acquiring a right of ownership of agricultural land, the Court finds that, **at the time when the rights of usufruct concerned in this instance were established, the creation of rights of usufruct was not prohibited by Hungarian legislation**. Furthermore, in assuming that whenever a person without a close family tie with the owner acquired a right of usufruct his conduct constituted an abuse, **the Hungarian legislation lays down a general prohibition of abusive practices**. However, **the application of such a presumption is not proportionate to the objective of combating those practices**.

Accordingly, the Court holds that **the national legislation at issue is not compatible with the principle of free movement of capital**.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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