



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 65/19**

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Judgment in Case C-235/17  
Commission v Hungary

**In cancelling the rights of usufruct over agricultural land in its territory that are held, directly or indirectly, by nationals of other Member States, Hungary has failed to fulfil its obligations arising from the principle of the free movement of capital and the right to property guaranteed by the Charter**

*A Member State seeking to justify a restriction of a fundamental freedom under the FEU Treaty must also ensure compliance with the fundamental rights guaranteed by the Charter*

In 2013, Hungary enacted legislation providing that rights of usufruct over agricultural land located in Hungary may be granted or maintained only in favour of persons having a close family tie with the owner of the agricultural land concerned. That legislation, which affected in particular the situation of nationals of Member States other than Hungary, provided that the rights of usufruct created in favour of natural or legal persons not having such a family tie with the owner would be cancelled as from 1 May 2014.

By its judgment of 6 March 2018 in two joined references for a preliminary ruling<sup>1</sup>, the Court of Justice held that the legislation at issue constituted an unjustified restriction on the principle of free movement of capital.

In the present infringement proceedings, the Commission requests the Court to find that, in providing for the cancellation of the rights of usufruct created in favour of persons not having a close family tie with the owner, Hungary has infringed both the principle of the free movement of capital and Article 17 of the Charter of Fundamental Rights of the European Union ('the Charter') relating to the right to property.

By today's judgment, the Court finds that, inasmuch as the cancellation at issue affects the rights of usufruct directly or indirectly held (through a legal person) by nationals of other Member States, that cancellation constitutes a restriction on the principle of the free movement of capital which, in the present case, cannot be justified, in accordance with the principle of proportionality, either by the fact that Hungary seeks to restrict ownership of agricultural land to persons who farm it and to prevent the land being acquired for speculative purposes, or by an alleged desire of the Hungarian legislature to penalise infringements of the national rules on exchange controls and the acquisition of agricultural land allegedly committed by the foreigners acquiring rights of usufruct.

The Court also states that, where **a Member State seeks to justify the restriction, by national legislation, of one or more fundamental freedoms, the compatibility of that legislation with EU law must be examined in the light both of the exceptions provided for by the Treaty and the Court's case-law in order to justify an obstruction of the freedom at issue, and of the fundamental rights guaranteed by the Charter.** Those fundamental rights are applicable in all situations governed by EU law, including that in which a Member State wishes to benefit from a derogation from the general principle prohibiting any restriction of the abovementioned freedoms.

In that regard, the Court finds that **the cancellation of usufructuary rights brought about by the contested legislation constitutes a deprivation of property** within the meaning of the Charter. On that point, the Court considers that, while the Charter provides that such deprivation may occur

<sup>1</sup> Cases: [C-52/16](#) and [C-113/16](#) SEGRO and Horváth, see also Press Release No. [25/18](#).

where it is in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for loss sustained, the cancellation of the rights of usufruct at issue does not meet those criteria.

Although the grounds of justification put forward by Hungary may theoretically constitute such public-interest grounds, the restriction concerned does not seem genuinely to pursue the objectives asserted by that Member State, nor does it satisfy the requirement of proportionality. In addition, the contested legislation contains no terms ensuring that the usufructuaries who have been deprived of their property receive compensation.

Consequently, **the deprivation of property arising from the contested regulation** cannot be justified on the ground that it is in the public interest, nor are any arrangements in place whereby fair compensation is paid in good time, with the result that that deprivation of property **infringes the right to property guaranteed by the Charter**.

Accordingly, the Court holds that, in enacting the contested legislation, **Hungary has failed to fulfil its obligations arising from the principle of the free movement of capital and the provision of the Charter relating to the right to property**.

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**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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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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