

Decision 24/2023. (XII. 5.) AB

on establishing a constitutional requirement related to section 34 (3) of the Act CXXII of 2013 on the Trade in Agricultural and Forestry Land, and establishing the existence of a conflict with the Fundamental Law of, and annulling the judgement No. Kfv.III.37.563/2022/6 of the Curia and the judgement No. 8.K.700.206/2022/6 of the Szeged Regional Court

In the subject-matter of a constitutional complaint, the plenary session of the Constitutional Court has adopted the following

decision:

1. The Constitutional Court holds that it is a constitutional requirement under Article XIII (1) of the Fundamental Law that, pursuant to section 34 (3) of the Act CXXII of 2013 on the Trade in Agricultural and Forestry Land, in the case of acquisition of ownership of land by way of a testamentary disposition, the heir's capacity to contract must exist during the probate proceedings.

2. The Constitutional Court establishes that the judgement No. Kfv.III.37.563/2022/6 of the Curia and the judgement No. 8.K.700.206/2022/6 of the Szeged Regional Court are contrary to the Fundamental Law and, therefore, annuls them.

The Constitutional Court orders the publication of its decision in the Hungarian Official Gazette.

Reasoning

I

[1] 1 The petitioner (represented by Dr. Edit Erzsébet Pálfi, lawyer) filed a constitutional complaint under section 27 of the Act CLI of 2011 on the Constitutional Court (hereinafter: ACC), seeking a declaration that the judgement No. Kfv.III.37.563/2022/6 of the Curia and the judgement No. 8.K.700.206/2022/6 of the Szeged Regional Court were contrary to the Fundamental Law and the annulment of the judgements on the grounds of violation of Article XIII of the Fundamental Law.

[2] 2 According to the facts of the case on which the petition is based, on 6 June 2018 the estate leaver made a testamentary disposition in a public deed, naming the petitioner as the heir of several plots of land in the event of his death. The estate leaver died on 16 December 2020. At the time of the opening of succession, the petitioner was not entered in the national register of farmers. The notary public who dealt with the succession sent the will and the declaration of the petitioner as testate heir to the agricultural administration agency for the purpose of issuing an official certificate attesting that the conditions for acquisition of

ownership had been met. In the meantime, the land registry authority has registered the petitioner in the register of farmers with effect from 20 July 2021.

[3] The agricultural administration agency refused to issue the official certificate by its decision of 3 August 2021. It stated that the heir would acquire the estate on 16 December 2020, the date of the estate leaver's death, and therefore the authority had to examine the petitioner's capacity to acquire the property as existing on that date. Since he was not a farmer at that time and the amount of land to be acquired exceeded the area of land that could be acquired by a non-farmer, his acquisition of property was subject to a statutory restriction. The petitioner then brought an action for the annulment of the decision of the authority and obliging the authority to conduct a new procedure. In his view, the existence of his capacity to acquire property should be examined not at the time of the opening of succession but at the time of its acquisition, in the proceedings before the authority. He stressed that he had been registered as a traditional farmer since 2013, but that the registration as a farmer with the Land Registry had only taken place after the death of the estate leaver. In his petition, he referred to the judgement No. Pfv.II.21.577/2019/6 of the Curia and the Constitutional Court Decision 24/2017 (X.10.) AB (hereinafter: CCDec1).

[4] The court of first instance dismissed the petitioners' action. In the grounds of the judgement, it shared the view of the authority and stated that inheritance occurs immediately and automatically by operation of law upon the death of the estate leaver, and the estate leaver's property passes to his heir at the moment of death. In the case of a testamentary succession to land, the heir should have the capacity to acquire property at the moment of the estate leaver's death, which was also stated in principle by the Curia in its judgement no. Kfv.VI.37.028/2018/4. It also emphasised that the CCDec1 cited above found a violation of the Fundamental Law manifested in an omission in the event of the State's succession by way of intestate succession as a result of the refusal to approve the acquisition of property by testamentary disposition, but did not find a violation of the Fundamental Law in the specific issue subject to the dispute.

[5] In the review proceedings initiated on the petitioner's request, the Curia upheld the corrected decision of the court of first instance. The reasoning of the judgement emphasised that in Hungarian inheritance law there is no dormant estate as a result of the *ipso iure* inheritance principle, according to the rules of the Act V of 2013 on the Civil Code (hereinafter: Civil Code), the heir acquires the estate, or the part or specific object of the estate allocated to him or her, without acceptance or any other legal act. The Curia referred to its previously published case-law, according to which the Curia had held, and the reasoning of CCDec1 left no doubt, that in the case of testamentary succession, too, the capacity of acquiring property specified in the Act CXXII of 2013 on the Trade in Agricultural and Forestry Land (hereinafter: "Land Trade Act") should be assessed by taking into account the facts existing as of the moment of the death of the estate leaver. According to the Curia, this is also supported by the reasoning of the Decision 3135/2021 (IV.22.) AB (hereinafter: CCDec2). The Curia, recalling the propositions of CCDec1, stated that the law-maker opted for property compensation as a means of achieving the proportionality requirement of restricting the right to inherit, but at the same time failed to provide sufficient time to remove the obstacle to the testate heir's

acquisition of property by means of a legislative amendment. According to the principle of the decision, in the case of the acquisition of ownership of land by means of a testamentary disposition, the statutory restrictions of acquisition shall be examined as of the time of the estate leaver's death.

[6] 3 The petitioner subsequently brought a constitutional complaint before the Constitutional Court. In the constitutional complaint, the petitioner argued that the competent authority and the courts had not assessed the legal situation in accordance with the Fundamental Law and the case-law of the Constitutional Court. In the petitioner's view, the Civil Code rules applied in the absence of any *lex specialis* led to an overall result that was contrary to the Fundamental-Law. Referring to the case-law of the Constitutional Court, the petitioner points out that the right of succession includes, as a fundamental right, the active right of succession and the passive right of succession. In assessing the constitutionality of the legislation, the test under Article I (3) of the Fundamental Law should be applied, which the trial courts failed to do. Although the Curia refers to the fact that the Constitutional Court has already ruled on the question of capacity of acquiring property, it does not indicate in its judgement the part of CCDec1 from which it has derived the concrete interpretation of the law. According to the petitioner, the date of the death of the estate leaver is always an uncertain future event, and it is therefore not reasonable and unrealistic to expect that at that date the heir should have the necessary conditions for the acquisition of the estate. Nor does it follow from the legal vacuum identified in CCDec1 that the capacity to acquire property should exist at the time of the estate leaver's death. The interpretation of the law which fills in the gaps in the rules as to the date unduly restricts the right of an individual to make a testamentary disposition and to acquire property. In particular, the question of proportionality arises if the State acquires ownership of land at the time of the existence of the restriction of acquisition of property. The final result of this interpretation of the law is that the estate leaver's passive will in respect of the land is frustrated as early as at the moment of his or her death, a result which is in conflict with the Fundamental Law.

[7] The Constitutional Court held a personal hearing on the case on 10 July 2023.

II

[8] 1 The affected provisions of the Fundamental Law:

"Article P (1) Natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artefacts, shall 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.

(2) The limits and conditions for acquisition of ownership and for use of arable land and forests that are 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."

"Article XIII (1) Everyone shall have the right to property and inheritance." Property shall entail social responsibility."

[9] 2 Relevant provisions of the Land Trade Act:

"Article 34 (3) The agricultural administration body shall examine whether the capacity of the heir to acquire property exists and whether the testamentary disposition of the property does not result in a breach or circumvention of the restriction on the acquisition of property. The agricultural administration body shall also notify the notary public of its decision."

III

[10] 1 During the examination of the admissibility of the constitutional complaint, the Constitutional Court found the following.

[11] 1.1 The legal representative of the petitioner received the judgement of the Curia on 28 November 2022, and submitted his constitutional complaint on 24 January 2023 – within the sixty-day deadline set by section 30 (1) of the ACC. The judgement on the issue of the official certificate is a decision on the merits of the case; the petitioner has the right to lodge a constitutional complaint as a petitioner, was a party to the underlying action, is therefore a party concerned and has exhausted his remedies. The legal representative's valid power of attorney has been attached.

[12] 1.2 The petition complies with the criteria listed under section 52 (1b) of the ACC.

The request contains (a) the statutory provision that establishes the competence of the Constitutional Court to rule on the motion and the provision establishing the petitioner's entitlement to file the motion (section 27 of the ACC); (b) the grounds for initiating the proceedings (the petitioner's application was dismissed on the ground that it was allegedly contrary to the Fundamental Law); (c) the judicial decisions to be examined by the Constitutional Court (judgement No. Kfv.III.37.563/2022/6 of the Curia, judgement No. 8.K.700.206/2022/6 of the Szeged Regional Court); (d) the provision of the Fundamental Law that is allegedly infringed [Article XIII (1) of the Fundamental Law]; (e) the reasons why the challenged statutory provision or judicial decision is contrary to the said provision of the Fundamental Law; and (f) an explicit request that the Constitutional Court declare the judgements of the Curia and the Szeged Regional Court to be contrary to the Fundamental Law, and annul the judicial decisions.

[13] 1.3 The CCDec1 examined in part the legislative provisions invoked in the present constitutional complaint. The CCDec1 has set out certain aspects of the examination of the capacity of acquiring property in general (CCDec1, Reasoning [23]), with particular reference to the subject-matter, which is also the subject of the present constitutional complaint: the restriction of the enforcement of the right of passive succession. The CCDec1 found the statutory provision which declared the will invalid in the absence of the testate heir's capacity to acquire property and provided for the succession of the State as a restriction being contrary to the Fundamental Law (CCDec1, Reasoning [35]). In addition to annulling the relevant

statutory provision, the CCDec1 found an omission contrary to the Fundamental Law in breach of Article XIII (1) of the Fundamental Law, because the Act did not provide for compensation as a proportionality criterion for the restriction applied in the public interest. The CCDec1 stated that “to remedy the omission, all that is necessary is that the testate heir ultimately obtains a pecuniary compensation from the State.” The Constitutional Court added that the provision of compensation does not preclude the State from allowing acquisition of the inheritance under the will (CCDec1, Reasoning [41] to [42]). In CCDec1, the Constitutional Court thus examined the conceptual provision of the Land Trade Act, which concerned the conditions for the State to inherit land by testamentary disposition. The decision did not directly examine the capacity to acquire the estate.

[14] By section 89 of the Act XL of 2020 on the Settlement of Ownership of Land Portions under the Cooperatives’ Right of Use of Land and the Amendment of Certain Land Acts, the Parliament enacted the provisions of section 34 (3) to (5) of the Land Trade Act, which also govern the present case, and which entered into force on 1 July 2020. The operative part of CCDec2, also referred to by the Curia, dismissed the petition and made the following findings on the points of law raised in the present petition. The Constitutional Court examined, first of all, whether the law-maker had fulfilled its obligation under CCDec1, that is to say, whether it had remedied the omission. According to the Constitutional Court, the law-maker has complied with the obligation laid down in CCDec1, that is to say, the rules which have been laid down and are still in force provide a guarantee of value for the inheritance situation of the State when the testate heir is excluded from the succession. The CCDec2 found the following in relation to the date of capacity to acquire property: “there is no indication that the decision of the administrative body refusing to issue the official certificate of capacity to acquire property – including the authority’s interpretation of the date on which capacity to acquire property should exist – was challenged by the petitioner before the courts” (CCDec2, Reasoning [37]); furthermore, “there is no sufficient basis for concluding that the Budapest-Capital Regional Court of Appeal, as the court of second instance, or the notary public who acted in the new proceedings in the case, would have acted contrary to the provisions of CCDec[1] and would have applied any rule the application of which was excluded by CCDec[1]. The new decision of the administrative body refusing to issue the official certificate of capacity to acquire property was, according to the information available, based on the interpretation of the law that it had examined, at the time when the succession was opened, whether the petitioner in the specific case had the capacity to acquire the arable land in question.” (CCDec2, Reasoning [39])

[15] To sum up: the Constitutional Court did not examine the merits of the question whether the date of examining the capacity to acquire property, as applied in the case-law of the authorities and courts, constitutes a constitutional restriction of the right to inherit, and it could not even examine this according to paragraph [37] of the reasoning of CCDec2.

[16] 1.4 Section 29 of the ACC specifies as a substantive condition of admissibility that the constitutional complaint – which complies with other statutory conditions – should refer to a violation of the Fundamental Law or a question of fundamental constitutional significance that has a substantial impact on the judicial decision. These two conditions are of alternative character, thus the existence of either of them shall form the basis of the Constitutional Court's

procedure in the merits of the case. It is for the Constitutional Court to assess whether these conditions are met.

[17] On the basis of the above, the Constitutional Court considered as a question of fundamental constitutional importance whether the provisions of the Land Trade Act and the interpretation of the law by the courts are in conformity with the protection of the right to inherit guaranteed by Article XIII (1) of the Fundamental Law. In other words, it is a question of fundamental constitutional importance whether the examination of the capacity to acquire land property carried out retroactively to the date of death of the estate leaver constitutes a restriction of the right to inherit that is contrary to the Fundamental Law.

[18] 2 In view of the foregoing, pursuant to section 31 (1) of the Rules of Procedure, in the light of section 56 (1) of the ACC, the panel of the Constitutional Court has granted admission to the constitutional complaints.

IV

[19] The petition is well-founded.

[20] The petitioner alleged a restriction of the right to inherit, and the Constitutional Court reviewed the relevant case-law on the right to inherit.

[21] 1 The Constitutional Court examined the restriction of the right to inherit in both CCDec1 and CCDec2, in which it referred to its previous case-law. "The Fundamental Law refers to the right to inherit in Article XIII (1): »Everyone shall have the right to property and inheritance.« Thus, the Fundamental Law regulates the right to inherit in the provision on the fundamental right to property, and this context suggests that the law-maker who adopted the Fundamental Law considered this right as a special sub-entitlement of the right to property. This solution of the Hungarian Fundamental Law is parallel to the German Grundgesetz [»Article 14 (1) Property and inheritance are guaranteed.«], as one of the European constitutions." {Decision 5/2016. (III.1.) AB, Reasoning [14]; quoted in CCDec1 Reasoning [18]}

[22] The Constitutional Court interpreted the relationship between the right to property and the right to inheritance in CCDec1. "The Constitutional Court took into account the fact that the Fundamental Law, although in a single provision, specifies the right to property and the right to inheritance separately. Therefore, it had to base its constitutional doctrine of the fundamental right to inheritance on new aspects compared to its previous decisions. The Fundamental Law defines the right to inherit as a fundamental right and regulates it together with property. The Fundamental Law protects as a fundamental right the active and passive right of inheritance and the acquisition of property by inheritance. This means that the right to inheritance includes the right to make a testamentary disposition (freedom to dispose of property or other marketable right in the event of death) and, on the other hand, the right of the beneficiary to acquire the inheritance. The latter is protected by the Fundamental Law, as opposed to the right to acquire property. The right of inheritance also includes inheritance by relatives (spouse, descendant, parent), with restrictions on the freedom of testamentary disposition. As interpreted by the Constitutional Court, the estate leaver's and the heir's right

to inherit is protected by the Fundamental Law, therefore any rule – including the ones examined in the present case – restricting the acquisition of property under the title of inheritance is an intervention into the heir's passive right of inheritance." (CCDec1, Reasoning [22])

[23] The Fundamental Law guarantees the right to inherit, as described above, including the right to dispose of property upon death (active right of inheritance) and the right to receive a share in the disposition of property upon death (passive right of inheritance). The Constitutional Court points out that, although the right to inheritance and the right to property are regulated in a single provision of the Fundamental Law, the two fundamental rights are nevertheless mentioned separately. Therefore, both the right to property and the right to inherit are independent in their capacity as fundamental rights. The right to inherit is necessarily linked to the right to property, since inheritance is a title to acquire property, and thus, in addition to the necessary civil law relationship, the two fundamental rights may also be linked under constitutional law, since the passive right to inherit also implies the acquisition of property.

[24] The Constitutional Court finds that in the procedure for examining the restriction of the right to inheritance under Article XIII (1) of the Fundamental Law, it should apply the test for the restriction of a fundamental right under Article I (3) of the Fundamental Law. The right to inheritance as a fundamental right in its own right is separate from the question whether the right to inherit also means the acquisition of property. The constitutionally protected scope of the elements of the right to inheritance, in this case the active right of the estate leaver and the passive right of the heir to inheritance, is separate from the right to property and therefore Article I (3) of the Fundamental Law shall be applied to its restriction.

[25] 2 The contested regulation and interpretation of the law is related to section 34 (3) of the Land Trade Act. According to the Land Trade Act, if a person inherits land subject to the Land Trade Act by way of a testamentary disposition, the notary public shall, in the course of the probate proceedings, send the testamentary disposition to the agricultural administration body for approval with regard to the acquisition of property of the land [section 34 (1) of the Land Trade Act]. The agricultural administration body examines whether the heir's capacity to acquire property exists and whether the testamentary disposition results in a violation or circumvention of the restriction on the acquisition of property. The agricultural administration body shall also notify the notary public of its decision. If the agricultural administration body refuses to approve the acquisition of property for the benefit of the heir, this provision of the will shall be deemed invalid [section 34 (3) of the Land Trade Act]. According to the contested judgement of the Curia, in the absence of specific provisions, succession shall open upon the death of the estate leaver in accordance with section 7:1 of the Civil Code, thus the statutory acquisition limits in the official proceedings shall be examined with regard to the date of the estate leaver's death (judgement of the Curia, [43]).

[26] In the case on which the petition is based, the agricultural administration body refused to approve the acquisition of the property because of the absence of the capacity of acquiring property at the date of the estate leaver's death (16 December 2020). The capacity to acquire

property was obtained with effect from the registration date of 20 July 2021, and the authority therefore refused to approve the acquisition of property by decision of 3 August 2021.

[27] In the case at hand, the right to inherit arises in the process of making a testamentary disposition. The regulation at issue primarily imposes two specific conditions for the exercise of the testamentary disposition. On the one hand, the conditions of the capacity to acquire property are subject to the cardinal statutory requirements in order to enforce Article P of the Fundamental Law. The Land Trade Act, in line with the civil law doctrine of inheritance, did not impose specific conditions on the capacity to inherit, but on the capacity to acquire property. In other words, it specified the conditions under which the heir could acquire the object of the estate by testamentary disposition. According to civil law doctrine, if capacity to acquire property is missing, the heir is excluded from inheritance. The legal consequences of such disqualification are also regulated differently by the Land Trade Act, since in this case the land becomes the property of the State [section 34 (4) of the Land Trade Act].

[28] 3 The Constitutional Court stresses that the interpretation of a provision of the Land Trade Act is generally a question of interpretation of the law, which is outside the competence of the Constitutional Court. However, this is only true as long as the interpretation of the law chosen by the court is within the constitutional limits of the margin of interpretation granted to the trial courts under Article 28 of the Fundamental Law. However, in the event that the interpretation of the law chosen by the court acting in the case at hand goes beyond the scope of interpretation under the Fundamental Law, this necessarily results in the judicial decision being in conflict with the Fundamental Law, an aspect which is within the competence of the Constitutional Court to examine. {Cf. Decision 14/2023. (VII.24.) AB, Reasoning [29] to [30]}. Thus, the subject-matter of the proceedings of the Constitutional Court was not whether the Curia had reached a position different from the contested decision in another case (e.g. Curia Pfv.I.21.677/2019/6), but whether the interpretation of law expressed in the contested judgement and the position of principle was in line with the constitutional enforcement of the right to inheritance guaranteed by Article XIII (1) of the Fundamental Law.

[29] 4 The Constitutional Court was then required to examine whether the interpretation of the law set out in the contested judgement of the Curia was contrary to the Fundamental Law on the basis of Article I (3) of the Fundamental Law.

[30] 4.1 According to Article I (3) of the Fundamental Law, the rules relating to fundamental rights and obligations shall be laid down in an Act of Parliament. A fundamental right may only be restricted in order to allow the exercise of another fundamental right or to protect a constitutional value, to the extent that is absolutely necessary, proportionately to the objective pursued, and respecting the essential content of such fundamental right.

[31] Article P (1) of the Fundamental Law states that natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artefacts, shall 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. Pursuant to Article P (2), the limits and conditions for acquisition of ownership and for use of arable land and forests that are 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. The Land Trade Act is a cardinal Act. Article P (1) sets out, for the purposes of the present case, the protection and preservation of agricultural land for future generations as an objective of the law-maker adopting the Fundamental Law. {Cp. Decision 16/2015. (VI.5.) AB, Reasoning [92]; Decision 3146/2015. (VII.24.) AB, Reasoning [13]; Decision 25/2015. (VII.21.) AB, Reasoning [43]}. As part of the national strategic objective protected by Article P of the Fundamental Law, the Land Trade Act regulates the detailed conditions under which persons and under what personal conditions may acquire land ownership. The land trade rules at issue in the present case serve the purpose of implementing Article P of the Fundamental Law. Given that Article P has established the protection of arable land as a constitutional objective, Article P (1) constitutes a necessary restriction on a fundamental right under Article I (3).

[32] The Constitutional Court finds that Article P (1) of the Fundamental Law provides for a cardinal legislative provision for the purpose of the special protection of arable land referred to therein, which, having regard to the specific nature of the object of inheritance (asset subject to the Land Trade Act), constitutes a necessary restriction of the right to inheritance under Article XIII (1) of the Fundamental Law.

[33] 4.2 According to Article I (3) of the Fundamental Law, fundamental rights may be restricted to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right. The Constitutional Court has taken the following into account when assessing the restriction of the right to inheritance.

[34] When the Land Trade Act was enacted, the State laid down the conditions for the acquisition by means of a testamentary disposition of the land covered by it in order to protect Article P. The Land Trade Act also laid down the conditions of the capacity of acquiring property and designated the agricultural administration body to examine them in the probate procedure.

[35] The date of the existence of capacity of acquiring property was not regulated, therefore the Curia in the contested decision – referring to further Curia decisions – considered it to be the same as the date of the examination of the existence of the capacity to inherit. The examination of the capacity to acquire property is a question of interpretation on the basis of the Land Trade Act. The Land Trade Act does not lay down any provisions in this respect, therefore the law-maker may examine the date of the existence of capacity to acquire property in the light of Article 28 of the Fundamental Law.

[36] Testate succession, as an aspect of the active right of inheritance, is a right the proper exercise of which cannot be influenced by the estate leaver. It is therefore necessary to devise a regulation which takes the estate leaver's testamentary disposition into account as far as possible (the principle of *favor testamenti*). If the interpretation of the law unduly restricts the estate leaver's testamentary disposition, the estate leaver's active capacity to inherit is also impaired.

[37] According to the case-law followed in the present case, capacity of acquiring property be assessed in respect of the same time as the capacity to inherit. The heir, in addition to the

principle of *ipso jure* inheritance, is in fact placed in the legal position of being in possession of the object of inheritance as a result of several official procedures. This is independent of the date regarding which the authority examines the capacity to acquire property. In other words, the heir is placed in a contingent legal situation in which he has a legitimate expectation as a beneficiary and as a result of which it is established that his capacity to acquire property exists and the estate is transferred.

[38] This form of interpretation of the law in the contested judgement means that, in a subsequent procedure, although it has a declaratory effect on inheritance, capacity to acquire property should exist retroactively to the date of death.

[39] In any event, the contingent legal situation of the heir exists, irrespective of the date regarding which the authority examines the existence of the capacity to acquire property. In the case of inheritance of land subject to the Land Trade Act, this contingent legal situation exists even if the heir is disqualified from inheritance, i.e. if the ultimate heir is the State. Thus, in this case, the examination of the date of the capacity of acquiring property does not adversely affect the position of the State as heir instead of the disqualified person. Consequently, this situation does not affect the subject-matter of the inheritance either, since the existence of the capacity to acquire property is necessary for the estate to be acquired by someone, which capacity to acquire is only examined in the course of the official procedure.

[40] Inheritance by testamentary disposition represents, from the point of view of both active and passive inheritance, an uncertain future date. From the point of view of the right to passive inheritance, this means that the heir is not necessarily in a position to know whether he will inherit at all, nor is he in a position to know what conditions he must meet in order to obtain the inheritance. According to the interpretation of the Curia, once it is known from which date the heir is heir, he must or should have had the capacity to acquire the inheritance. If he did not have the capacity to acquire property at the time of the estate leaver's death, the estate leaver's will cannot be enforced because it is frustrated and the heir cannot acquire the inheritance, regardless of the fact that the actual exercise of the right of disposal is later in time, and the interpretation of the law does not affect the fact of conducting the proceedings.

In its decision, the Constitutional Court explained that in the case at hand, it could be established that the heir did not have the capacity to acquire the property at the time of the death of the estate leaver, but had it before the decision of the agricultural authority was taken. The interpretation of the law in the present case also indirectly infringes the implementation of Article P of the Fundamental Law. One of the objectives of the Land Trade Act is to ensure that arable land is acquired by those who cultivate it. {Cp. Decision 3146/2015. (VII.24.) AB, Reasoning [13]; Decision 25/2015. (VII.21.) AB, Reasoning [43]}. The legal conclusion of the contested decisions excluded from inheriting the land a petitioner who, in the course of the proceedings, was shown to have fulfilled the conditions laid down by the Land Trade Act as the implementation of the national strategic objective set out in Article P of the Fundamental Law.

[42] When interpreting the Land Trade Act, the competent courts shall take into account which interpretation of a law is in conformity with the Fundamental Law, and apply the law in

individual cases on the basis of that interpretation {See for example: Decision 16/2021. (V.13.) AB, Reasoning [36]; Decision 14/2023. (VII.24.) AB, Reasoning [30]}.

[43] Based on the above, the Constitutional Court finds that the interpretation of the law by the courts in the proceedings disproportionately restricts both the right to active inheritance and the right to passive inheritance, and is therefore contrary to Article XIII (1) of the Fundamental Law. With due account to this, the Constitutional Court declared the judgements of the Curia and the Szeged Regional Court to be contrary to the Fundamental Law as laid down in the holdings of the decision and annulled them.

[44] Section 46 (3) of the ACC authorises the Constitutional Court to specify in a decision, in the procedure carried out in the course of exercising its competences, the constitutional requirements – that result from the Fundamental Law and enforce the provisions of the Fundamental Law – the application of the law reviewed, and applicable in the judicial procedure, has to comply with. The Constitutional Court found that the interpretation of the law by the courts in the proceedings violated the right to inheritance in violation of the Fundamental Law, and therefore, on the basis of section 46 (3) of the ACC, it held that it is a constitutional requirement following from Article XIII (1) of the Fundamental Law that, pursuant to section 34 (3) of the Land Trade Act, in the case of acquisition of ownership of land by means of a testamentary disposition, the heir's capacity to acquire property should exist in the course of the probate procedure. The probate procedure also includes judicial remedies until its final conclusion.

V

[45] The publication of the Decision of the Constitutional Court in the Hungarian Official Gazette is based upon the second sentence of section 44 (1) of the ACC.

Budapest, 14 November 2023.

Dr. Tamás Sulyok, President of the Constitutional Court, rapporteur

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