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The farm model based on constitutional value****

Abstract

The social farm, which also has a history of more than a decade in Hungary, cannot be called a new operating model. In its content elements, it combines the system of agricultural activity, social aspects and environmental values in a novel approach. The system of connection points creates the essence and novelty of social farms. The presentation and analysis of the constitutional foundations of each pillar highlights the values that strengthen the identity of social farms.

Keywords: sustainability, social farm, disadvantaged people, natural resources.

1. Introduction

In Hungarian parlance, the farm system primarily means an agricultural model based on family farming. Within the framework of this study, the farm model is used in a different sense, it represents an activity framework based on agricultural activity, that combines the essential elements of social economy and multifunctional agriculture with the incorporation of a new conceptual element, which can be defined as social farm service. Through their activities, social farms combine social and environmental protection aspects, thus increasing social and economic usefulness and efficiency.

2. The essence of the social farm

There are several determinations of the term and definition of social farm in Europe. Within the framework of this study, we consider the Hungarian name and content definition as the starting point. Accordingly, the definition of the social farm, which was created by a group of experts in 2015: *“A form of cooperative farming that operates in accordance with social and solidarity principles and in order to promote social and environmental awareness, which carries out agricultural production, processing and service activities involving disadvantaged people; respectively, it carries out awareness-raising additional activities related to*

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*agriculture for a wider circle of society.*¹ The functional element of the operation of the social farm is provided by the fact that people with disabilities and with reduced capacity to work carry out various agricultural and agricultural supplementary activities within its framework, which activities typically assume an atypical employment² relationship.³ In addition to the classical forms of employment, the employment here can be considered a new type of social innovation⁴ employment⁵ solution⁶ based on agricultural activities,⁷ the purpose of which is strongly social,⁸ that is, the integration of disadvantaged persons through agricultural activities.⁹

The essence of the social farm model is related to agricultural activities, environmentally friendly and sustainable activities and values related to the countryside,¹⁰ embracing and employing¹¹ disadvantaged people, the root and basis of which can be traced back to constitutional values. These characteristics of the social farm, resulting from its multifunctional nature, social and ecological function, are linked to the regulatory subjects of agricultural and environmental protection and ensuring equal opportunities. This study draws attention to the constitutional regulatory subjects which, in our opinion, establish the operation of social farms, as well as their significance through the constitutional values they represent. Namely, among the regulatory subjects of environmental protection, we highlight the regulatory subjects that ensure the protection of natural resources, physical and mental health and the right to the environment, as well as the related sustainable development. Among the agricultural regulatory subjects, we mention the provision relating to the agricultural holding, the provisions relating to

¹ The concept was formulated by the working group set up in the framework of the project "Establishment of Social Farms in Hungary NCTA-2014-8221-C". See Jakubinyi 2015, 28.

² For details on atypical employment in agriculture, see Prugberger 2021, 5–19.

³ For details on the employment of disadvantaged people, see Csák & Kenderes 2016, 141–152.

⁴ For more on social innovation, see Bozsik, Szemán & Olajos 2020, 3–19.

⁵ Csák 2018, 12.

⁶ In addition to employment within the framework of the social farm model, this also includes public employment, employment by social cooperatives and start social cooperatives.

⁷ This is confirmed by the opinion of the European Economic and Social Committee (EESC) in 2012, which states in point 1.1 that "*Social agriculture is an innovative approach that combines two concepts: multifunctional agriculture on the one hand and social services and health care at local level on the other. In the context of agricultural production, it contributes to the well-being and social inclusion of people with special needs.*" See European Economic and Social Committee: *Social agriculture: „green care”, social and health politics* (own initiative opinion), NAT/539CES1236-2012_00_00_TRA_CA (EN), Brussels, 12 December 2012 (hereinafter: EESC Opinion 2012).

⁸ It is important to note that we are not talking about social employment, as it has not existed in Hungary since 1 April 2017. In terms of its purpose, we are talking about a social form of employment in the case of social farms.

⁹ Many people often confuse the concept of the social farm model with the social cooperative and identify the services provided on social farms with the employment offered by the social cooperative. However, these two concepts must be separated from each other, they are not synonymous with each other. For employment in individual types of Hungarian cooperatives, see Orosz & Hornyák 2018, 232–238.

¹⁰ On the constitutional interpretation of the countryside, see Szilágyi 2019, 451–470.

¹¹ On social responsibility in agriculture, see Csák & Hornyák 2016, 49–60.

agriculture free of genetically modified organisms in the case of agricultural foodstuffs,¹² and the provisions relating to natural resources closely linked to the agricultural regulatory subjects, including specifically the provisions relating to agricultural land.¹³ Among the regulatory subjects related to equal opportunities, we mention social security, equal treatment and the right to work. In order to examine certain regulatory subjects, it is necessary to examine the 'provisions' of the National Creed,¹⁴ which can be regarded as the preamble of the Fundamental Law, and also several articles of the Fundamental Law.

However, within the framework of this study, only the environmental and agricultural regulatory subjects will be examined in relation to the topic. However, the aim of the publication is not to provide a complete, in-depth analysis of these regulatory subjects, it only focuses on highlighting the constitutional provisions that, in our opinion, are relevant to the operation of social farms.

3. Environmental regulatory subjects

The right to the environment and the protection of the environment are important parts of the constitutional value system, which also forms a kind of basis for the protection of other values, such as the protection of natural resources, health, and the interests of the future generation.¹⁵

The question of the protection of natural resources is considered a special subject of regulation, because it cannot be considered to belong only to the scope of environmental protection, it goes beyond that, since we are dealing with a subject of regulation closely related to agricultural law. This stems from the fact that environmental protection and agriculture are related areas and have mutual effect on each other's regulatory areas and protected legal subjects (e.g. nature conservation, biological diversity, etc.)¹⁶ In Article P) of the Fundamental Law, which contains the protection of natural resources, this duality is partially separated. While paragraph (1) contains provision related to both environmental protection and agricultural law, paragraph (2) is purely related to the field of agricultural law. Aware of this dual classification, the provisions belonging to the environmental protection regulatory subjects are analysed here, while the provisions relating to agricultural law are analysed under the agricultural law regulatory subjects.

The social farm model uses the positive aspects provided by nature and natural resources to integrate and employ the target group. The Fundamental Law attaches great importance to the protection of the environment and natural resources. It already appears in the National Creed, and is considered a constitutionally protected value pursuant to

¹² For product labelling of agricultural products, see Hornyák, Olajos & Szilágyi 2015, 826–836.

¹³ Regarding the limited use of agricultural land, see Hornyák 2015, 289–299.

¹⁴ András Patyi draws attention to the fact that naming the texts that make up the National Creed is problematic. The question arises whether the turn, thesis, declaration, principle, declaration of values or provision would be the correct designation? For more on this, see Patyi 2019, 9–10.

¹⁵ Fodor 2015, 103.

¹⁶ For details on the connection between environmental law and agricultural law, see Horváth 2007, 333–355.

paragraph (1) of Article P), and also appears in Article 38. According to paragraph 7 of the National Creed “*We pledge to treasure and preserve [...] the man-made and natural values of the Carpathian Basin. [...]; we shall therefore strive to use [...] natural resources prudently so as to protect the living conditions of future generations.*” The provisions that are also included in the National Creed predict their special importance for us. As a result, according to András Jakab, the protection of natural resources declares a value system, namely an environmental value system, according to which our existing natural values must be protected and preserved.¹⁷ Furthermore, János Ede Szilágyi also noted that these provisions cannot be regarded as purely symbolic steps, as they can contribute to the interpretation of other sections of the Fundamental Law.¹⁸ Paragraph (3) of Article R) of the Fundamental Law states that certain provisions of the Fundamental Law, including Articles P) and 38, must be interpreted in accordance with the National Creed. The category of natural resources is further defined in paragraph (1) of Article P) as the common heritage of the nation, which expresses Hungary's commitment to the protection of our natural values, in order to preserve them and pass them on to future generations.¹⁹ The constitution defines tasks related to natural resources within the framework of task triad, such as protection, maintenance and preservation. With this provision, environmental protection is expanded, on the one hand, with maintenance, which can be interpreted as the maintenance of the previous level of protection, or as the joint interpretation of environmental protection and sustainability, and on the other hand, with preservation, which means taking responsibility for posterity.²⁰ All of these constitutional obligations also provide an absolute standard of content, which is not only the obligation of the Hungarian state, but of everyone,²¹ that means, of all people, and even of all legal entities (including legal persons and legal entities without legal personality).²² However, Article P)²³ does not give a clear answer, as it does not exhaustively list the natural values to be protected, it does not give a full delimitation, see the phrase ‘in particular’.²⁴ Furthermore, in connection with the protection of biological

¹⁷ Jakab 2011, 180.

¹⁸ Szilágyi 2017, 28–35.

¹⁹ Decision of the Constitutional Court 28/2017. (X.25.) [35]

²⁰ Decision of the Constitutional Court 16/2015. (VI.5.) Justification, Imre Juhász's parallel justification [152]

²¹ The Decision of the Constitutional Court 28/2017. (X.25.) [30] points out that this obligation cannot be entirely the same for each entity. Natural and legal persons, in addition to knowing and complying with the legal provisions in force, cannot be expected in a coercive way to adapt their behavior to an abstract goal not specified by the legislator, the State can be expected to lay down clearly the obligations which both the State and private individuals must observe.

²² Decision of the Constitutional Court 16/2015. (VI.5.) [92]; Decision of the Constitutional Court 13/2018. (IX.4.) [13]

²³ For the analysis of Article P) see T. Kovács & Téglási 2019, 173–175.; Hegyes & Varga 2020, 104–117.

²⁴ It should be noted that for a more precise definition, we need to refer to our Environmental Protection Act, Act LIII of 1995, the scope of which also covers natural resources in § 4. point 3. According to this, with the exception of the artificial environment, all environmental elements or their individual components that can be used to satisfy social needs are to be classified here. Environmental elements are defined in § 4 point 1 as land, air, water, living organisms, the man-

diversity²⁵ mentioned in this circle, it is not clear whether it belongs to the natural resources or forms a separate, independent category from it. We agree with János Ede Szilágyi, who, following Canon's interpretation, sees biological diversity as part of the category of natural resources.²⁶ Article 38 specifically mentions the preservation of natural resources as one of the objectives of the protection of national assets. The aim of the constitution was to protect the finite natural resources as the part of the national assets.²⁷

Among the objectives of the social farm is the improvement and/or preservation and development of the well-being, mental and physical condition of the target group. The right to health is enshrined in Article XX of the Fundamental Law, paragraph (1) of which guarantees everyone's right to physical and mental health. It is a fundamental right²⁸ that *“protects the physical and mental integrity of the individual, and as such serves to preserve human health”*.²⁹ This provision makes an indirect link between environmental protection and health, thus interpreting environmental protection as an instrument of preserving health.³⁰

One of the most important conditions for physical and mental health is a healthy environment. The right to a healthy environment is also a specific fundamental right³¹ that belongs to everyone – it can be considered one of the most important constitutional rights – which is equal to other fundamental rights, but takes priority over provisions that are considered state objectives and tasks. The Fundamental Law provides this right in Article XXI paragraph (1) – identical to the provision in § 18 of the former Constitution. It does not have a subjective side, that is, according to the Constitutional Court, *“the objective, institutional protection side is predominant and decisive.”*³² Accordingly, the

made built environment and its components. Compared to the Fundamental Law, the Act provides a broader definition. In addition, § 3 of the Environmental Protection Act provides an even more detailed list of what natural resources include, but according to János Ede Szilágyi, this is not a complete list either, as it does not include, for example, genetic engineering

²⁵ The Constitutional Court has assessed the designation of biodiversity (Decision of the Constitutional Court 28/2017 (X.25.) [35]) as a constitutional value in the Hungarian legal system, which the legislator must take into account when drafting regulations within the scope of certain sectoral policies.

²⁶ Szilágyi 2018a, 291.

²⁷ Based on the justification attached to Article 38 of the Fundamental Law.

²⁸ The right to physical and mental health is included in the Freedom and Responsibility section of the Fundamental Law, which section can be interpreted as a catalogue of fundamental rights and duties, and this right is a fundamental right.

²⁹ Decision of the Constitutional Court 3132/2013. (VII.2.) [61]. The same provision was confirmed by the Decision of the Constitutional Court 3075/2017. (IV.18.) [25] also.

³⁰ Bándi 2020, 15.

³¹ The fundamental nature of the right to the environment analyzes by Varga 2014, 184–187. The analysis shows that the right to the environment is a part of the objective, institutional protection aspect of the right to life, according to the Decision of the Constitutional Court 28/1994 (V.4.), and provides the physical conditions for its realisation. It is not a subjective fundamental right, but a specific, so-called third-generation fundamental right, the enforcement of which must be guaranteed by the State.

³² Decision of the Constitutional Court 28/1994. (V.20.) Part III. Point 3.

guarantees of environmental protection are determined by the State³³ along a general (objective) aim, i.e. in order to protect the natural foundations of life, because it would be impossible to satisfy subjective needs.³⁴ Although the subjective side is missing, the Fundamental Law, like the Constitution, provides who is entitled to the right to the environment: everyone, i.e. every natural person, regardless of nationality, place of residence or stay.³⁵ The means of enforcing the right to the environment is legislation (resulting from the State's obligation), that is, the legislator must create legislation that ensures the constitutional value of this right, and to create the legal framework for the reasonable management of natural resources.³⁶

Finally, when examining environmental regulatory issues, we cannot overlook the issue of sustainability, which is also linked to the characteristics of social farms. Because both the protection of natural resources and the right to the environment are inextricably linked to sustainability and sustainable development.³⁷ In the words of Gyula Bándi, "*Environmental protection is at the center of sustainable development*".³⁸ Although expressis verbis the National Creed does not include the requirement of sustainability, it can be clearly deduced from paragraph 7: within the framework of sustainable development, Hungary is committed to protecting the natural and built environment of the Carpathian Basin; and in addition to the careful use of our material, intellectual and natural resources, which embodies the economic, social and environmental³⁹ dimensions of sustainability.⁴⁰ Thus, it can be inferred from the provision of the National Creed that Hungary is committed to sustainable development.⁴¹ Several articles of the Fundamental Law are also relevant – Articles N), P) and Q), Article XVII, Article 38 – of which, in relation to social farms and environmental regulatory subjects, Article P) should be highlighted, which provides for the maintenance of natural resources (among the task triad of natural resources). At the same time, regarding the issue of sustainability, the Constitutional Court has not yet expressed its in-depth position,⁴² which would serve as a guide to the precise interpretation and content of the constitutional provisions concerned.⁴³ The requirement of sustainability also plays an important role in the case of social farms, because the aim of the farms is sustainable operation.

³³ This was stated in the Decision of the Constitutional Court 996/G/1990.

³⁴ Fodor 2007, 7–9.

³⁵ Fodor 2007, 9.; Fodor 2015, 106.

³⁶ Fodor 2007, 10.; Fodor 2015, 107.

³⁷ For a detailed analysis of sustainable development, see Bándi 2013a, 11–30.; Bándi 2013b, 67–92.; Bándi 2016, 7–25.

³⁸ Bándi 2013c, 1120.

³⁹ For environmental sustainability, see Csák & Nagy 2020, 38–46.

⁴⁰ T. Kovács & Téglási 2019, 167., 171.; Baranyai & Csernus 2018, 80–82.

⁴¹ Decision of the Constitutional Court 16/2015. (VI.5.) [146]. Based on Imre Juhász's parallel justification.

⁴² This is also indicated by Imre Juhász in his dissenting opinion attached to the Decision of the Constitutional Court 16/2015 (VI.5.) [143–145].

⁴³ Bándi 2016, 24.

4. Agricultural regulatory subjects

In the Fundamental Law, the constitutionalist placed the assessment of agriculture on a different basis compared to the previous Constitution, expanding it with numerous provisions,⁴⁴ thus emphasizing the importance of agriculture and the subjects of agricultural regulation. In the operation of the social farm model, plant cultivation and livestock farming, the processing of raw materials into finished products, rural tourism and the agricultural utilization of the land have fundamental importance, in other words, carrying out agricultural activities is one of the basic pillars of the farm's operation. Consequently, it is essential to examine the constitutionality of the agricultural regulatory subjects relating to the social farm.

Examining the form of operation of social farms entails the question of whether it can be considered an agricultural holding or not – we will not go into the analysis of this in detail, in this study the constitutional aspect of this will be explained. The constitutional provision related to agricultural holdings was included in connection with the third amendment of the Fundamental Law – which only affected article P) with the insertion of paragraph (2) – which expanded the circle of cardinal acts. As a result, Article P) paragraph (2) of the Fundamental Law establishes that the rules for agricultural holdings must also be defined in a cardinal act, which legislative obligation has not yet been fulfilled by the Parliament. In any case, this provision, which also defines the agricultural holding as a regulatory subject of a cardinal act, embodies a higher level of state protection. The term agricultural holding is currently defined in Act CXXII of 2013 on Transactions in Agricultural and Forestry Land (hereinafter referred to as the 'Land Transaction Act', LTA), according to which agricultural holding shall mean the basic organization unit of production equipment and other means of agricultural production (land, agricultural equipment, other assets) operated with the same objective, functioning also as a basic economic unit by way of economic cohesion⁴⁵ In this context, it should be mentioned that paragraph (2) basically provides for adoption of a cardinal act in relation to three regulatory areas: firstly, in the case of agricultural holdings, secondly, in the case of the acquisition of ownership of agricultural land and forests and the limits and conditions for their use, and thirdly, in the case of integrated agricultural production organisation and family farms, the regulation of which is contained in Act CXXIII of 2020 on family farms, adopted in 2020.

Social farms use agricultural land to carry out certain agricultural activities, so it is inevitable to discuss the constitutional provisions relating to land. When examining Article P) from an agricultural law perspective, it is useful to take into account the category of natural resources analyzed for environmental protection regulatory subjects, which, although not included in the scope of agricultural regulatory subjects, is still directly linked to them. Article P) paragraph (1) of the Fundamental Law lists natural resources illustrative, with special reference to the protection of land,⁴⁶ which refers to

⁴⁴ For the regulation of agricultural regulatory subjects in the Fundamental Law, see Hornyák 2019, 60–65, 72–75.

⁴⁵ Land Transaction Act § 5 Point 20.

⁴⁶ For details on the constitutional protection of agricultural land, see Orosz 2018, 178–191.

its prominent place⁴⁷ among natural resources. This was already expressed in 1941 by Károly Ihrig, who described land as the nation's most valuable treasure, saying that “*land is a national treasure*”.⁴⁸ Also, constitutional judge Ágnes Czine names agricultural land as a special constitutional interest, a natural resource under special protection.⁴⁹ In our view, this level of constitutional protection of agricultural land is a real expression of its significance and the importance of its protection. We find all this necessary, because on the one hand, the protection of the land is essential in the case of a country where agriculture plays an important role in the economy, considering the limited amount of land and its limited availability; on the other hand, in Hungary, agricultural and forestry land represents a rather large percentage of the total national assets (about 26%). By virtue of paragraph (2), the State also fulfils its constitutional obligation of protection under paragraph (1) by enacting a cardinal act. As a result, the Land Transaction Act and Act CCXII of 2013 on certain related provisions and transitional rules were created (hereinafter: Act on Land; AoL).⁵⁰

Article P) is closely related to Article 38, paragraph (1) of which provides that “*the property of the Hungarian State and of municipal governments shall be considered national assets.*”⁵¹ Although this article does not specifically mention the term of agricultural land, it has still great importance in relation to the regulation of agricultural land. State-owned land constitutes a slice of national assets, to which the conservation of natural resources, including (arable) land, is referred in the objectives for the management and protection of national assets set out in paragraph (1).

Finally, among the subjects of agricultural regulation, should mention also the Article XX, paragraph (2) of which embodies the institutional protection side⁵² of the fundamental right, providing for several new instruments compared to the previous Constitution. These include ensuring access to healthy food⁵³ and drinking water^{54,55} agriculture free of genetically modified organisms (GMO-free), and – as a not new provision – specifically ensuring the protection of the environment. The GMO exemption was added to the provisions of the Fundamental Law as a result of amendment T/2627/159. According to the explanatory memorandum of the motion, more than 70% of the harmful effects on life processes enter the body through food and

⁴⁷ Bobvos et al. 2016, 32.

⁴⁸ Ihrig 1941, 241.

⁴⁹ Dissenting Opinion of Ágnes Czine, Judge of the Constitutional Court, to the Decision of the Constitutional Court 27/2017 (X.25.) [106].

⁵⁰ The AoL is partly a cardinal act, certain provisions of which are considered cardinal on the basis of Article P (2) of the Fundamental Law and certain provisions of which are considered cardinal on the basis of Article 38 (1) of the Fundamental Law. AoL § 107.

⁵¹ National property is regulated by Act CXCVI of 2011 (hereinafter referred to as the National Property Act), § 1 Section (2) of which defines the elements belonging to national property. Act LXXXVII of 2010 on the National Land Fund implements the provisions of the National Property Act relating to state-owned land, specifying the manner and conditions of its management and use.

⁵² Decision of the Constitutional Court 3132/2013. (VII. 2.) [58]

⁵³ On the right to food, see T. Kovács 2017a, 70–114.

⁵⁴ On the right to drinking water, see Szilágyi 2018b, 259–272.

⁵⁵ Regarding the protection of food and drinking water, see Fodor 2015, 111–112.

drinking water, therefore one of the most important conditions for preserving health is – in addition to the ones listed –, residue-free, healthy, safe, naturally produced (i.e. GMO-free) food and clean drinking water. Finally, the constitutionalist defined the GMO exemption in a narrower sense, in relation to agriculture, which should not be equated with the disappearance of GM food.⁵⁶ In addition to preserving health, GMO-free agriculture also aims to protect nature, and to preserve biological diversity by avoiding genetic modification.⁵⁷ Although the Fundamental Law does not clarify the nature of the provision on GMO-free status, it can be considered more of an orientational provision,⁵⁸ we agree with Endre Tanka, who argues that regulating the issue at the level of legislation is a necessary but not sufficient guarantee, and therefore it is important to enshrine it in the Fundamental Law.⁵⁹ Consequently, the Constitutional Court has the task of interpreting the provision and recognising the right to adequate quality food, but has not yet interpreted the phrase “*agriculture free of genetically modified organisms*” of Article XX paragraph (2), which complicates the situation.⁶⁰ However, social farms are engaged in GMO-free, organic plant production, and the resulting plants are sold as raw material or processed, or they use them for their own. Another added value is the fact that these plants and finished products are typically the work of people with disabilities and with reduced capacity to work.

5. Closing thoughts

The operating model of social farms is oriented in accordance with the principles and values laid down in the Fundamental Law, which can be considered a specific form of activity, serving social inclusion and sustainability together. This model can be seen as a bottom-up model, which was not formed and developed as a result of legal regulation, but was created and developed into a complex system from a societal, social perspective. However, in the case of bottom-up forms of activity that respond to socio-economic needs, the existing legal regulation does not always create the opportunity for uninterrupted operation. This can also be established in the case of social farms. In the course of operation, legal regulation hinders and does not help or support this activity. In Europe, there are states where the legal regulation has adapted to this form and they operate under a separate legal framework. In Hungary, the existence of social farms is indisputable too, and there are continuous efforts in terms of legal regulation, in order to make social farms more efficient, and forms of support are also available for this activity. Further amendments to the legal regulation are necessary. Land ownership and land use options, the rethinking of the definition of agricultural activity or, for example, the question of using and marketing home-grown products also require consideration in relation to the activity elements.

⁵⁶ Based on the commentary to Article XX of the Fundamental Law.

⁵⁷ Fodor 2015, 112.

⁵⁸ Szilágyi 2021, 228–229.

⁵⁹ Tanka 2005, 37–49.

⁶⁰ On the interpretation of the GMO exemption, see Téglásiné 2014, 300–319.; Téglásiné 2017b, 147–164.; Szilágyi, Raisz & Kocsis 2017, 167–175.; Raisz & Szilágyi 2021.

On the basis of the constructive suggestions of the persons engaged in social farm activities, the revision of the legal regulation has also begun in Hungary.

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