Forests and Nature Protection in Hungary
Summary of the Constitutional Court Decision 14/2020. (VII. 6.)

1. Introduction

The Hungarian Constitutional Court reached a verdict on the nature protection case concerning the 2017 amendment of the Act XXXVII of 2009 on the Forest, Forest Protection and Forest Management. The Commissioner for Fundamental Rights had received a complaint from several environmental non-governmental organisations. Exercising his constitutional right, he filed a request to the Court to examine the conformity of particular parts of the Act with the constitution. Such constitutional review has no deadline.

The judge-rapporteur Justice Sulyok decided to request opinions from stakeholders, namely the Minister of Agriculture (who, in the Hungarian constitutional and administrative system, is the member of government responsible for environmental protection and nature conservation[1]), the Minister of Interior, the Minister of Defence, the National Council for Sustainable Development, the National Environmental Protection Council, and the Pro Silva Hungaria Association. WWF Hungary, together with the Hungarian Ornithological and Nature Conservation Society (MME) and the Association of Hungarian Conservationists (MVTSZ – Friends of the Earth Hungary) filed an *amicus curiae* briefing. The Hungarian Chamber of Agriculture (NAK), the National Agricultural Research and Innovation Center (NAIK), and the Hungarian Association of Agricultural Machinery Manufactures (MEGOSZ) also filed such documents. Their points of view are recognizable in the decision.[2]

The test which the Court uses to determine whether the reviewed text is unconstitutional or not regarding most fundamental rights is the following: a fundamental right may be restricted to allow the exercise of another fundamental right or to defend any constitutional value to the extent absolutely necessary, in proportion to the desired goal and in respect of the essential content of such fundamental right.[3] With slight changes, this is applied in environmental matters.

In compliance with the settled case-law of the Court, there is a generally followed formula when the Court declares the legislation or part of it unconstitutional in the review process. Even though the Commissioner invoked rule of law requirements – more precisely, the principle of legal certainty – in connection with several topics, if the Court finds the reviewed text incompatible with the constitution

[1] Government decree 94/2018. (V. 22.), Article 79 (9-10)
[2] Constitutional Court decision 14/2020. (VII. 6.), [11]
[3] Constitution, Article I (3)

based on a certain other article, it is not obliged to analyse the other noted infringements. This frequently happens when petitioners present issues connected to legal certainty. In this summary I only wrote about legal certainty in the cases where the Court examined it specifically.

2. Article P (1) of the Constitution: common heritage of the nation, public trustee for future generations in the Hungarian constitutional system

All natural resources, especially agricultural land, forests and drinking water supplies, biodiversity – in particular native plant and animal species – and cultural assets shall form part of the nation's common heritage, and the State and every person shall be obliged to protect, sustain and preserve them for future generations.[4] The Hungarian constitution, expressively referring to forests, creates a system of protection from an intergenerational perspective. It is based on the conception of public trust in which the property is the natural and cultural heritage and the state manages them as a trustee for the beneficiary: future generations. The state therefore has an obligation to limit the use and exploitation of the mentioned resources. That is to say, the legislative bodies shall consider the interests of future generations besides taking the interests of present generations into account.[5]

The Court elaborated on the importance of forests as an ecological system, an essential condition for a healthy human life. Protecting forests is not only an obligation of the state but everybody. Due to the common heritage of the nation status, the state, forest landowners, forest managers, and even anybody walking in the forest have responsibilities. The first three stakeholders are affected as they cannot do anything with the forests. Instead of a complete freedom, they shall follow the rules of sustainable forestry.[6] The Court also highlighted the function of forests in combating climate change. The Court acknowledged the nature protection aspect of forests as being habitats for many plant and animal species. Peremptory norms of international law and international conventions also recognise their value, as well as the relevant European Union law. Plus, the Court appreciated how forests play a part in biological diversity conservation. The Court also described the historical background.[7]

The right to a healthy environment stipulated in the constitution[8] has close connections with the common heritage system. It is clearly stated in the judicial practice that protecting life and health is unimaginable without protecting the nature and the environment. Therefore, Article P (1) is a guarantee of effectiveness of this fundamental right and a *sui generis* obligation whose significance goes beyond Article XXI (1). In the challenge of future generations interests versus temporary economic benefits, in

[4] Constitution, Article P (1)
[5] Constitutional Court decision, [21-23]
[6] Constitutional Court decision, [23]
[7] Constitutional Court decision, [25-29]
[8] Constitution, Article XXI (1)

accordance with the constitution, there is a possibility that the first one wins.[9] There are objective requirements of the conduct of the state in environmental matters deriving from Article P (1) of the Constitution. In line with the relevant case-law of the Court, the environmental protection laws shall be accessible, unambiguous, and legally enforceable. The precautionary and preventive principles are inferred from this article, with the substantive content *i.a.* of a prior environmental impact assessment based on the best available scientific knowledge. Moreover, the state shall guarantee that no environmental derogation takes place as a consequence of a certain measure. The legislator has to justify that the measure does not constitute regression. In such cases the damages are often irreparable; even the sole possibility of causing damages, the risk of environmental deterioration alone could eventually lead to the breach of the constitution.[10]

The non-derogation principle is derived directly from Article P (1) and Article XXI (1) of the Constitution. The principle shall be applied to the substantive, procedural, and organisational rules as well, this is how its effectiveness can be ensured. The non-derogation principle is relevant and shall be taken into consideration also in individual legal cases. It can be learned from the case law that even a slight change from prior authorization to ex-post control in environmental matters can be considered as derogation. Nevertheless, this is not an absolute rule. To decide if the derogation is justifiable or there has been a violation of the constitution, the Court will apply a test. First, the Court shall decide whether the rules or decision in question falls within the scope of Article P (1) or Article XXI (1) of the Constitution. Second, if there is derogation or not, third, if yes, whether such restriction allows the exercise of another fundamental right or defends any constitutional value. Fourth, whether the necessity and proportion of the environmental derogation is justifiable.[11]

3. Considerations concerning rights of landowners and forest managers to their property

3.1. Natura 2000 sites and the Hungarian law

3.1.1. Regulatory questions

The petitioner argued that the National Assembly introduced a new definition reducing the size of Natura 2000 sites, furthermore, limited nature protection requirements in an unjustifiable way. The Court analysed the matter.[12] In Hungary, where the whole country is part of the Pannonian Region, the definition of Natura 2000 sites is given in a government decree.[13] Previously, all forests on Natura 2000

[9] Constitutional Court decision, [34-36]
[10] Constitutional Court decision, [37-38]
[11] Constitutional Court decision, [38]
[12] More information about where the Court stands regarding Natura 2000 regulation in Constitutional Court decision 28/2017. (X. 25.).
[13] Government decree 257/2004. (X. 8.)

sites had protection function, meaning *i.a.* that the production function did not or only partly prevailed. However, economic activities were allowed until they did not threaten the nature protection objectives. As one of the modification's result, forests fulfilling the Natura 2000 functions on the basis of the Birds Directive did not get protection. The National Environmental Protection Council was alarmed that not only the territory of protected sites will decrease but also the habitat of such birds will not be protected. This infringes also European Union law. [14]

Another dilemma arose from the following. Not all forests on Natura 2000 sites got the Natura 2000 protection function. This is problematic, because the forest and the conservation authority only have the right to restrict or place conditions upon economic activities in the sites which got the Natura 2000 protection function, and on the sole ground of nature protection on sites of community importance. Regarding forest administration procedures, the Ministry of Agriculture drew attention to the obligation of conducting a preliminary test, which the Court recognized, however, (i) the forest authority only has the right to ensure the protection of species or habitats which has nature protection or Natura 2000 function, (ii) the forest authority cannot lay down legally binding land use rules in such test.[15] All in all, the modification did not pass the non-derogation test. Natura 2000 sites legal status constitutes the protection deriving from Article P (1) of the Constitution, and the Court also stated that it creates a direct obligation on the state and on every person to effectively protect and preserve those heritages.[16]

Is this modification justifiable then? It can be learned from the explanatory memorandum that the legislator partly argued that such protection is not stated in European Union norms, partly highlighted forest management interests. The Minister and the Hungarian Chamber of Agriculture argued strongly in favour the modification. Eventually, it is stated by the Court that besides the Article P (1) obligations, the state shall recognise and enforce the right of every person to a healthy environment; hence the fact in itself that the European Union law may not declare the non-derogation principle in Natura 2000 sites, is not a requirement to do so. The Court found no other fundamental right or constitutional value to justify the derogation.[17] The Court also emphasised the European Union norms on the procedure to follow when a site loses Natura 2000 characteristics and cited the relevant case-law of the Court of Justice of the European Union.[18]

3.1.2. Right to property on Natura 2000 sites

[14] Constitutional Court decision, [44]
[15] Constitutional Court decision, [45-47]
[16] Constitutional Court decision, [48].
[17] Constitutional Court decision, [54], [56].
[18] Case C-441/2017 *Białowieża*, ECLI:EU:C:2018:255.

The Court elaborated on that the obligation of the costs of protecting, sustaining, and preserving the nation's common heritage shall be borne by the state and by every person, including the landowners and forest managers.[19] The constitution only protects the property already owned, and does not declare an expansion of economic nature within the system of the right to property. The Court also noted that owning or managing a forest land always implicates extra responsibilities. The owner or manager shall recognize that the forest is not another one of his or her business objectives and manage it as some kind of an average enterprise, however, it is in the interest of the whole society.[20]

The compensation system for Natura 2000 private owners was working too generously. Grants – which compensate for legal restrictions causing economic problems – could be awarded to them even concerning Natura 2000 sites without Natura 2000 protection, where, as mentioned above, the forest authority had no right to intervene and restrict economic activities. The Court pointed out, as a matter of principles, that the forest managers rights were not restricted: grants were given while the were no threats on their economic activities.[21] With respect to the case-law regarding the relevant articles and the specifically mentioned social responsibility, this part of the modification could not be justified by the right to establish and conduct a business or by the right to property.[22] The regulations in force states that all forests on Natura 2000 sites are entitled to the Natura 2000 protection function which is established *ex officio* by the forest authority. The restriction on forest management shall be made serving the purposes of the Birds and Habitats Directives.[23]

3.2. Production purposes: economic activities on protected natural areas

In the original text of the Forest Act, it was not allowed to determine further production functions in forests with nature protection function on protected sites. The modified law precludes establishing the production function only at specially protected natural areas, so it is realizable on 'simple' protected sites. The Court had to decide whether the scope of economic activities has changed in those forests. If yes, there has been a derogation.[24] Due to the fact that promoting business activities on conservation sites is the opposite of the regulatory purpose, and the lack of rights of the forest authority on protection sites – meaning that there are part of protected forests where it is impossible to introduce any unilateral restriction of economic activities – the non-derogation principle is violated.[25] Afterwards, the Court

[19] Constitutional Court decision, [57].
[20] Constitutional Court decision, [58].
[21] Constitutional Court decision, [60].
[22] Constitutional Court decision, [61-62]
[23] Constitutional Court decision, [63]
[24] Constitutional Court decision, [105]
[25] Constitutional Court decision, [108]

sought for justification. There is no clarification in the explanatory memorandum, however, the Court figured out that the forest managers and landowners' interests are on the other side of the scale.[26]

The freedom to choose an occupation and right to engage in work does not constitute subjective right to a certain job or activity. For that reason, there is no obligation inferred from Article XII (1) of the Constitution requiring the state to enable forest managers and landowners to carry out economic activities on sites from where they had been practically banned before. At the same time, the forest authority lost its powers of restricting economical activities on all protected sites, the consent of the forest manager is needed for a restraint. The Court also pointed out that even the legislator could not come up with an explanation regarding the necessity of such regulation.[27] Another problem is that while the legislator allows carrying out economic activities, there is no sign of any special legal rule regarding how to do business in a nature protection site, and most of the time economic interests do not overlap conservation concerns.[28] In conclusion, this part of the modification is not justifiable, and does not satisfy the requirements for legislation in Article P (1) and Article XXI (1) of the Constitution.[29] After the annulment, the legislation in force states that is it not allowed of protected and specially protected natural areas to have further production function.[30]

3.3. Derogation from the prohibition of clearcutting

The petitioner was concerned that the modification allows the forest authority considerable freedom in granting the waiver from the prohibition of clearcutting in state-owned forests. It was only prohibited in nature protection, Natura 2000, and landscape protection forests from the group of forests with protection primary function, plus, only in cases when the forest was owned by the state, and even further restrictions were made. The Court stated the forest management plan and its modification may allow clearcutting anytime: all in all, derogation was found. The aim of the legislator was evidently to allow clearcutting – a drastic intervention in the ecosystem – in general in cases where it is not prohibited expressively.[31]

The Court recalled that the precautionary and preventive principles deriving from Article P (1) and Article XXI (1) of the Constitution, and according to them, the state shall prove that the environment is not degraded due to a certain regulation. The state is also responsible for learning the effects of such regulation while taking the current scientific knowledge into account and measuring them with due care

[26] Constitutional Court decision, [110]
[27] Constitutional Court decision, [112]
[28] Constitutional Court decision, [114]
[29] Constitutional Court decision, [115]
[30] Constitutional Court decision, [116]
[31] Constitutional Court decision, [118-121], [123]

before the regulation is adopted.[32] The Court found no scientific of professional reasons supporting the legislation, and the judges also pointed out the difference between the legislative intent (the Minister replied), the explanatory memorandum and the final wording of the text. The state-owned forests with nature protection or Natura 2000 protection are of unquestionable natural value, therefore, clearcutting is an *ultima ratio* method of logging which cannot be justified in this case. The Court confirmed that the impacts of clearcutting on the ecosystem is severe and irreversible impacts. In the end, the Court considered the right of the forest managers to property or other economic interest not sufficient and did not found any other fundamental right or constitutional value.[33] According to the regulation in force, clearcutting is prohibited in state-owned (nature, Natura 2000, or landscape protection) forests, unless it is necessary due to maintaining the health of the forest, elimination of threats, or regeneration of the forest. This is stated in the Forest Act which cannot be overruled by any decision of the forest authority.[34]

3.4. District forest management planning

The district forest management planning system was also changed by the modification. The forest authority had the right to assess the forest managers' room for manoeuvre. Among other things it is also problematic that the restrictions not mentioned in the Forest Act or its executive ministerial decree, cannot be imposed on the forest managers without their agreement. Therefore, the standard is not nature protection, but the economic interests; a regulation acceptable by the forest managers.[35]

In substantive areas the Court assessed first the case of trees left after logging and recognized their importance in providing habitats for wild flora and fauna. Later, the judges turned to observe the impact of leaving dead trees in the forests. Before the modification, they should have had been left in accordance to local features. The main problem here came after, the obligation to leave such trees was maximized in the Forest Act, in a general way – no adaptation –, in some cases, it was even prohibited to leave dead trees in the forest.[36] If the forest authority was about to establish more restrictive measures (for instance in so-called derivative forests, even on sites with Natura 2000 protection objective), an agreement must have been reached with the forest managers.[37] The Court also stated that those general guidelines cannot really take the habitats of species into consideration, the timeframe allowing logging and other activities is also set generally for every district.[38] All in all, a derogation is occurred in the Court's opinion.[39]

[32] Constitutional Court decision, [123]
[33] Constitutional Court decision, [125], [126]
[34] Constitutional Court decision, [127]
[35] Constitutional Court decision, [129-130]
[36] Constitutional Court decision, [134]
[37] Constitutional Court decision, [135]
[38] Constitutional Court decision, [136-138]
[39] Constitutional Court decision, [139]

The explanatory memorandum identified the economic interests of forest managers as reasons behind the modification. The Minister of Agriculture is also admitted that in some matters there is a need – based on professional arguments – for greater restrictions than the maximum declared in the Forest Act. After considering the *amicus curiae* briefings and other submissions, a further question was: what is the consequence of the lack of executive ministerial decree in the matter? The Court concluded that this practice violated the Act CXXX of 2010 on Legislation, but such violation is not unconstitutional in itself; there has been no omission.[40]

The state shall involve the least interference possible in property issues. The nature protection objectives require the state to adapt regulation for restricting such manners when activities carried out on sites of natural value. In consequence, a regulation determining the setting of economic activities on nature site districts can fulfil the necessity criterium.[41] However, it is not proportional for the abovementioned three reasons (i) derivative forests, in which case *i.a.* the legislation does not confer rights on the forest authority to complete its nature protection task, (ii) trees left after logging, which became only an option, (iii) the obligation to reach an agreement with forest managers when one is trying to deviate from the restriction period, even is such cases when there is a legitimate reason, a public interest: protecting the nature.[42] The Court framed it as the real aim of the legislation was not to protect the nature and limiting economic activities but the opposite. It also highlighted the possibility of complete ignorance of nature protection objectives even affecting protected species.[43]
Currently, the competent forest authority may put specific – individually decided – constraints regarding trees left after logging and dead trees. After receiving the decision, the forest managers have the right to challenge them and initiate proceedings before court as well.[44]

The Court stated that when protecting the environment, the state shall provide legal and organisational guarantees to ensure the realization of such goals. This also means that the values in Article P (1) of the Constitution get regulative protection. A framework in which the private interests of forest managers inevitably triumph nature protection, that is to say management restrictions based on nature protection purposes cannot be imposed, is not proportionate, not justifiable, therefore it is unconstitutional.[45] Even if those parts of the modification were annulled, the Court stated that the legislator has the right to adapt a bill in the future which takes into account the forest managers economic interests and compensation needs, and the effective nature protection obligation as well.[46]

[40] Constitutional Court decision, [149]
[41] Constitutional Court decision, [153]
[42] Constitutional Court decision, [154-156]
[43] Constitutional Court decision, [158]
[44] Constitutional Court decision, [159]
[45] Constitutional Court decision, [168]
[46] Constitutional Court decision, [169]

The Court further examined the rights of forest managers and landowners, declaring that the constitutional protection deriving from the right to property only protects the owner from an unreasonable interference. The public interest of nature protection prevails the private interests of forest managers and landowners. A regulation, which can pass the necessity criterium, allows the affected persons to challenge for example that there was a public interest anyway, the restrictions were reasonable, or the amount of compensation granted. However, as the Court pointed out, the modification did not create such a system. The result was where forest managers and landowners making deals and decide alone whether they want to be restricted by the authority – due to a justifiable public cause – or not. Thus, the modification could not be considered proportional, the Court found a violation of the constitution.[47]

3.5. Nature protection and periods of conservation restriction

The Forest Act and the Act LIII of 1996 on Nature Conservation introduced a new system in periods of nature conservation. The generally imposed limits not only did not adjust to specific constraints of sites but also the conservation authority had no right to laying down conditions to be met during such periods.[48] While deciding whether this has led to derogation, the Court discovered that according to the modified law there is no need for a permission from the conservational authority. One shall only notify the forest authority about the activities, even though they would affect conservation issues. Concludingly, the answer is yes to the question of non-derogation.

'Reducing bureaucracy and unnecessary administrative burdens' cannot be considered as a fundamental right or constitutional value. However, the Court acknowledged that the effects of climate may require rapid intervention. Sometimes small economic interventions, which do not pose a threat to nature, are also imaginable. Therefore, the modification allowing notification passed the necessity criterium.[49] The regulation considered all economic interventions 'small' in regard of its impact on nature is not proportional though. Another thought on that is there was no explanation why the legislator chose not to involve the conservation authority in the process. It has the knowledge and ability to assess the impacts on nature. There were also problems with the deadline: why the forest authority shall get the notification 15 days before the activity, and the conservation authority – which would have a job considering the impacts – only gets them 5 days before? In addition, the conservation authority only has the right to carry out a risk analysis, it cannot even check whether the notification was filed in a proper way. Finally, the Court declared these disproportionate, thus unconstitutional.[50]

[47] Constitutional Court decision, [164-167]
[48] Constitutional Court decision, [171]
[49] Constitutional Court decision, [178-179]
[50] Constitutional Court decision, [181]

Next, the Court examined the necessity of the regulation in Forest Act and in Nature Conservation Act in light of legal certainty. The prior regulations precisely and clearly set the beginning and end of the vegetation and the reproduction and rearing period. The Court found no justification for the necessity of modifying such stable and apparent system. Then it does not comply with the constitution as well.

As a result of the annulation, the conservation authority may give permission to activities during the periods of conservation restriction. Instead of a generally fixed vegetation period, the executive ministerial decree of the Forest Act shall specify the period of vegetation, reproduction and rearing for each nature site district based on professional grounds.[51]

4. Rules concerning registration of protected natural areas of local significance

In Hungary there are protected natural areas of national and local significance. The modification of Forest Act led to a system in which the functions of a forest were established by *ex officio* procedures of the authorities only at the sites of national significance sites. The Nature Conservation Act states that the protection is established by legislation (decree of a minister or a municipal decree).[52] In the cases of locally protected forests, the notary at the local municipality has the right to initiate the procedure of establishing protection functions. The decision concerning the purposes of the forest shall be set later in a municipal decree. However, the whole procedure can start only after the notary has agreed with the forest managers. In other words, the recipients of the restrictions shall consent to the future actions of the authority. Before such agreement is reached, even the forestry authority cannot restrict activities in those areas.[53] The Court stated that if the locally protected forests do not get nature conservation function, the forestry authority cannot restrict any economic activity, and it has the right – albeit in a limited way – to intervene at sites where protection functions were established. Therefore, the Court pointed out that the forming of such regulations has led to a derogation.[54]

The modified text of the Forest Act does not refer to the exact share of ownership needed for the agreement; thus, the co-ownership rules of the Act V of 2013 on the Civil Code apply, which means that the forest manager co-owners may contest the decisions in court. Also, this provision refers to the procedures upon request only (not the ones initiated by the competent forestry or other authority or the public interest procedures), ultimately, the judges thought that the text is fulfilling the non-derogation criteria set out in Article P (1) and Article XXI (1) of the Constitution.[55]

[51] Constitutional Court decision, [183]
[52] Act LIII of 1996 on Nature Conservation, Article (23-24)
[53] Constitutional Court decision, [70]
[54] Constitutional Court decision, [71], [72]
[55] Constitutional Court decision, [73]

In the next stage, the Court observed whether the derogation is justified in accordance with the rules of Article I (3) of the Constitution. The Court highlighted that the forestry authority *ex officio* established the protection functions of the protected natural areas of local significance, after the modification of the Forest Act, nothing could happen without the request of the competent notary. This is problematic due to two main reasons: (i) the substantive prerequisite for the notary to reach an agreement with forest managers in the components and extent of the damage and the additional costs, plus the manner in which they will be paid. Nevertheless, the other party is not subject to such obligation (to reach an agreement with the notary), and there is also lack of an independent authority to settle down disputes if *e.g.* any of the above-mentioned criteria is challenged or cannot be decided. In extreme cases, the forest manager may unilaterally assess the extent of his or her damage which has not even occurred in reality; however, the notary shall agree if he or she wants to recognize the conservation function – and protect the environment.[56] The requirement that (ii) the municipality must agree with the forest managers, even in such cases when they do not carry out any conservation measures, is questionable as well. For instance, it is possible that the municipality carries out such tasks through one of its own companies. Still, unless they sign an agreement, the conservation function cannot be established, hence the forestry authority is not able to restrict any economic activity of the forest manager.[57] The Court decided that there is no other fundamental right or constitutional value which justifies such regulation, therefore it is annulled. In line with the legislation in force, the protected natural areas of local significance are automatically protected in accordance with the provisions of the Natural Conservation Act.[58]

5. Flood protection, national defence and their relationship to the nature protection

The first question is whether the modification of the Forest Act, in which the flood protection and national defence functions are given priority over the natural conservation and the Natura 2000 purposes, is in accordance of the non-derogation principle. The Commissioner was of the opinion that the national flood protection and defence objectives could be met even if the primary purpose of the forests concerned is protection. As before 1th September 2017 it was not possible to give priority to flood protection or national defence over nature protection, the Court found derogation in the modification, after this, the second question here is whether it is justifiable.

As a result of its geographical location, Hungary is particularly exposed to the risk of flooding, not to mention the effects of climate change.[59] The Minister of Interior suggested that flood control is necessary

[56] Constitutional Court decision, [77]
[57] Constitutional Court decision, [78]
[58] Constitutional Court decision, [79]
[59] Constitutional Court decision, [94]

in the light of the fundamental right to life,[60] right to personal safety,[61] and the right to property.[62] The Court therefore concluded that it can be necessary to intervene due to flood control reasons even in nature protection sites.[63] After analysing the text of the constitution and other legislation along with the reaction of the Minister of Defence, the Court decided that it is also necessary that the modification ensures the realization of national defence purposes even in nature protection and Natura 2000 sites. [64]

The third step is to decide whether such regulation is proportional. The establishment of a flood protection primary function is only viable at sites which are explicitly, geographically appointed by legislation. Even at those sites the flood control activities shall be carried out in compliance with obligations deriving from the nature protection and Natura 2000 purposes. Plus, the requirements of the latter shall be met as long as it is possible regarding flood security concerns. The decision of changing the primary function shall be made after consultations with the water authorities. Finally, the modification is solely applicable at cases where there is irreconcilable conflict between the flood and the nature protection aspect. The regulation and the reasoning in the matter of national defence is practically the same. Additionally, it is also noted that the obligation to draft management plans of Natura 2000 sites and comply with them is still in effect, and the Minister of Defence is not able to modify them alone. Consequently, the Court took the view that the limitations in both subjects are proportional, and it not found the provisions at issue unconstitutional.

6. Concurring and dissenting opinions

Justice Dienes-Öhm shared a concurring opinion in which he found it problematic that the principles deriving from Article P (1) of the Constitution (non-derogation, precautionary principle) are applied automatically in the decision. He proclaimed that in the light of the above, the principles should not have been standards in deciding the constitutionality of the case. In the dissenting opinion of Justice Varga Zs., he mainly argued that the distinction between permission and notification is unconstitutional, due to the lack of difference in their legal effects. He also highlighted the importance of public' confidence in the administration.

7. Conclusion

The environmental NGOs welcomed the decision, they hope that it would reduce clearcuttings and the conditions of the forests will improve. In their press realise WWF affirms its expectation that after this

[60] Constitution, Article II
[61] Constitution, Article IV
[62] Constitution, Article XIII
[63] Constitutional Court decision, [94]
[64] Constitutional Court decision, [95]

judgment deforestation activities ignoring nature protection (*e.g.* Tar-kő in Bükk or the old forests near Tiszazug) will stop.[65]

In Hungary the right to a healthy environment and the interests of future generations – including protecting forests – are declared in the constitution itself. The Court bases its decisions on that texts, plus, though not a case-law based judicial body, uses the findings and reasonings from its previous decision. Therefore, if being optimistic, this judgment is expected to protect nature from economic interests in highest level in the Hungarian system.

[65] Euronews, Veronika Rippel, 'Alkotmánybíróság: visszaállítják a természeti értékek megőrzését a védett és Natura 2000 térségben', https://hu.euronews.com/2020/06/16/alkotmanybirosag-visszaallitjak-a-termeszeti-ertekek-megorzeset-a-vedett-es-natura-2000-te