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The issue of land restitution in the Constitutional Court's practice at the time of the political transition

József Antall drove the debate with small farmers to constitutional ways in the fall of 1990, which was essentially related to the redemption of financial grievances - as Péter Mihályi draws the attention to it "perhaps to gain time, perhaps, to disclaim any political responsibility from himself". The question was: will someone from whom the land was taken away get a different kind or a different degree of compensation than someone whose firm or shop was taken away. This implied, as Peter Mihalyi says, asking whether someone, whose land was taken away can get any other kind or other amount of compensation than those whose factories, shops or houses were lost. József Antall's second question was whether it was legal to expropriate soviet producing unions' land and use them without compensation for the remedy of grievances of the past.

Our country was in the same decision situation at the time of the political transition concerning agricultural change like the other countries torn from the former socialist block. People everywhere wanted a real genuine land reform with its economic criteria and to be able to get along. The literature means by land reform, as Endre Tanka points out perfectly[1], that first it has to be civilian and democratic, namely the aim of the revolution should be to restore the unity of the leasehold and the property. This unit has to be realized in a way that the farmer using the land itself becomes a landowner so as the owner of the means of production they acquire power. This, however, has an economic prerequisite, that the reform should allocate the land to the farmers as an operating property, which means that it has a viable plant size and it is together with the factors of production and the capital goods necessary to the usage. Another criterion is the democratic one, which means social interests of the majority of farmers can be ensured. This requires long-term agricultural and land policies that guarantees that the farmer and his family can manage - engaged in a farming career by their own work force - on an acceptable social level. The acceptable level does not mean being under the subsistence level or just above the poverty line but a social and economic appreciation which is an integral component of a strong civil society which assumes the central layer. The post-socialist agricultural transformation offered two rational principles which mostly found social acceptance in the Central European countries. One of them was the in-kind compensation of owners so the return of the land which was taken away, or of its equivalent to the aggrieved person. The international literature calles this principle "*restitutio*". The name refers to "*restitutio in integrum*", that is in civil law to restore the status before the infraction of the law. In Hungary, the concept of "*restitutio*" was established as "reprivatezation" by which on a broad interpretation they mean the ownership remedy of any damage in property. The second organizing principle is built on the compromise of social justice and rational land use and it allocates land to the farmers with no property. Those social groups were involved, whose members were neither individually nor through their ancestors neither before collectivization had land ownership.

The combined application of the two principles is directed to the creation of subjective unity of land ownership leasehold and those two principles are capable to create the land basis of the family farming. If the legislature ensures the basic requirement of viable farm size in the regulation concerning national land policy, which is a basic requirement in case of the second organizing principle, thanks to the two organizing principles the transformation does not mean too much expense to the budget. The Hungarian land policiy rejected the two organizing principles and, as Endre Tanka points out, with its rejection it denied the land reform itself. Hungary met social problems, dissatisfaction, debate and social conflict of national significance triggered by the institution of restitution itself, which affected more than 2 million people, one-third of the Hungarian families directly and even the transborder region.[2]

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[1] Tanka Endre: Föld és elsajátítás. Sorskérdések földviszonyaink múltjában és jelenében. Agroinform Kiadó, Budapest, p. 171-174.

[2] According to the estimation of the Office of the Cross-border Hungarian 250 thousand non-Hungarian citizens got compensation. For them amount of 30 billion HUF were given in compensation tickets. (Heti Prinfo, 1996. 18 June, p. 12-13.)

In Hungary the institution of restitution and its implementation burdened the budget heavily. The Compensation Agency set up to handle cases grew into a nationwide organization whose operating costs were about than HUF 15 billion devoured. 20 thousand people of those who were dissatisfied with the decisions of the Office initiated proceedings and disputes arising from the restitution itself meant more hundred billions of cases, although the introduction of the institution was followed by a greatly magnified political debate. 20% of the respondents were satisfied with the restitution policy but 48% of them specifically expressed dissatisfaction. The Constitutional Court investigation began in 1990 when the Prime Minister, referring to the planned compensation concept, called for the abstract interpretation of the provisions of the Constitution concerning equality of rights and property rights. After its lengthy coalition discussions the government writes in its program published in September 1990 ("The national regeneration program"): "the restitution in kind of the former property is generally not supported by the government". In case of the land, the decision about the settlement of property rights, which takes into account the oroginal ownership conditions (of 1947) may be made on the basis of constitutional investigations. The Constitutional Court dealt with this problem first in its CC resolution 21/1990. (X. 4.), which included also the constitutional opinion of the decision about the government's privatization program. For the Constitutional Court it was obvious that the Prime Minister requested the interpretation of the ownership proviso because of the decision about the conceptual discussion of the proposed restitution. The issues required to the Constitutional Court's answer were complex and the state property which consisted more than 90% of the trade and industry had to be demolished. At the rendering a question was arised that to which of the previous owners should the confiscated property be returned and there was also an evident social demand that the land is necessarily involved in the reparations process as the agricultural areas became the property of the co-operatives due to the laws (1967. IV, III.) qualified unjust. In the land privatization toolbar the Constitutional Court's practice, the decision-making of which may be questioned now argued for the partial compensation and helped the legitimacy of the free land acquisition of the ruling elite, while the peasantry had constitutional rights to be get back their former property, undoubtedly played a major role. However, in addition to these statements, allow me to quote from László Bogár which should also be mentioned here: "It is important to note that the politicians are not the main characters. This is just a semblance and they show the level of domination. Power and domination are not the same things. The sphere of domination is nothing but a system consisting of a professional intelligentsia, which carries out what the real factors of power - so the actual holders of the resources - make them mandatory. The question is what responsibility has the sphere of domination, which of course also has relative autonomy. Apparently, they have neither sufficient knowledge[3], nor adequate moral hold to perceive and deal with the problems."(Bogár) It is important to note that the literature strongly distances itself from the view represented at the time of the political transition that you that the strict requirements of the rule of law do not apply to the facts created during the dictatorship.

1. Abstract decisions

The Constitutional Court test covertly began in 1990 when the Prime Minister, referring to the concept of the proposed restitution, requested the abstract interpretation of the Constitutional Court's provisions declaring the equality of rights and the right to property – said László Sólyom. In the literature there is no evidence whether the Prime Minister requested abstract interpretation indeed. However, it is certainly true that the Constitutional Court had the historical responsibility (Sólyom 173. p.[4]). László Sólyom, the president of the Constitutional Court at the time of the political transition, explains the emerging practice of abstract decisions in the early stages of the constituting process, involving cases concerning compensation, in a way that the Court made abstract decisions in order to distance itself from political decisions during the decision about the issue, so to preserve and declare the Constitutional Court's independence from the daily politics. He answeres the political questions with decisions full of abstract wordings seeming conclusive because he had to make the legal boundaries concerning state ownership within the basic issues of the

[3] Bogár: Egylépésnyire a végső pusztulás A birodalom nem akar megoldást 2008. 29 June p. 20-26, source: http://www.mno.hu/portal/575276 Web issue of Magyar Nemzet, Nemzeti Lap- és Könyvkiadó Kft.
[4] Sólyom László: Az alkotmánybíráskodás kezdetei Magyarországon, Osiris Kiadó, 2001, p. 172-174.

economic system change. With this practice, however, according to the modern view of the literature he did disclaim or mitigate his own responsibility. The weight of the outlined and abstract wordings is increades by the fact that the principles developed on the basis of this practice were used later by the Constitutional Court as a solid formula[5]. Thus, having worked out the details of affirmative action, an abstract and ultimate formulation could be obtained. Sólyom incidentally observes that “the abstract decision is never as abstract as it seems and the question is whether facts influencing the resolution are elements of some particular disputes or they are other political considerations”. (Sólyom 172. o.). The sentence is confirmed and it is clear from the facts above that the “other political considerations” imposed a milestone to the Constitutional Court "but it tries to favor the restoration principle when he notes that in its response to József Antall the Constitutional Court “spoke out” of the conviction and referred to other constitutional ways of distribution of the assets of the producing unions. The practice, however, is not favorable for the restoration principle of practice about which Sólyom tells the reader that during the dawn of the political transition the Constitutional Court which was regulated roughly, “with few restrictions immediately had an opportunity in its discretion to cut the legislative excesses concerning the issue of restitution that specifically targeted to compass the theoretical interpretation of the Constitution aiming to restore the land in kind”. What does Sólyom state with all these? He states that the Constitutional Court can resist and fight firmly against any restorational political legislative’s motions or proposals. However, based on this we should recognize that he contradicted himself puts himself since he wanted to present himself unpolitical in vain, because behind the abstract interpretations he obeyed unwittingly but willingly the ideas of the ruling elite. The Constitutional Court declared long term valid principles concerning the issue of equality and property, which as interpretations were required from everyone, while it also appointed the constitutional leeway of the legislature. At the same time Sólyom draws the attention of an important point, that the Constitutional Court did not answer the question whether the discrimination asked by the Prime Minister was unconstitutional in the absence of constitutional grounds. Additionally, he notes that sufficient grounds which made up the principles were included nor in the proposal nor in the documents made available for the Constitutional Court[6].

2. The “floating” obligation, which is actually not an obligation

The Constitutional Court assumed that “the soviet producing unions are protected like the other property owners”. Sólyom made reference to “the inclusion of soviet producing unions under the guarantees of the Constitution had to be done specifically as a result of interpretation”[7] This raises a question of which was not cleared up by the literature. What duties or obligations were the grounds of the inclusion of the producing unions’ property among the scope of property guarantees, since it was clear that the producing unions’ property would be demolished? Act III. of 1967 “legalized” - aligned with the laws of that time - the integrated and taken farmer members property, the sum of which, as public property, did not have a separate legal entity. The grounds of the Constitutional Court’s statement are also questionable. Since the restitution legislation itself also takes into account that small-scale farmer agriculture land depriving meant not only the damage of individual owners but they were aimed at systematic and complete eradication of the private property. New property was not created at all because the state forced the small farmers owning factories and the clergy to the collectivization of their land with the most humaliating methods, with coercion, force, intimidation, deceit, psychological and physical terror, deportations, maiming families, violating fundamental human rights seriously starting with the No. 4091/1949 Government Regulation during the period between 1951 and 1958. If we consider that, in Act XX. of 1949, in the spirit of the interim Constitution, a Constitution in the rule of law wanted to acknowledge the state and producing unions’ property taken away and acquired at the expense of coercion, violence, killing humans, kulak-qualifications and deportations, then it conflicts not only with that the values of rule of law, but to this proprietary form the nullity rules of the CC can also be applied. Although, of course, this civil thread may be broken down very easily if the land property delivered by the members of the producing unions would be qualified as

[5] Sólyom László: Az alkotmánybíráskodás kezdetei Magyarországon, Osiris Kiadó, 2001, p. 320.
[6] Sólyom László: Az alkotmánybíráskodás kezdetei Magyarországon, Osiris Kiadó, 2001, p. 173.
[7] Sólyom László: Az alkotmánybíráskodás kezdetei Magyarországon, Osiris Kiadó, 2001, p. 173.

original acquisition for the state. The socialist one-party with Acts IV. and III. of 1967 quasi-legalized the institution of the soviet producing unions and its nature endowed with large-scale features of the socialist economy, but Stalin's misleading and patched Constitution was forced to acknowledge the working farmers' property, and this was regulated by the socialist regime overzealously in a way that the members' property taken into the producing unions and to "ensure farmers' rights to the land, the property earned by work and the right to inheritance" was formally acknowledged by entering into the land register. In addition, the social expectation was that the resulting producing unions' property of the state land fund, which was created illegally, contrary to the rule of law was to break down. From these we can conclude that apart from the ruling elite the producing unions' members' property was considered nor in laws, neither in other legislation an independent legal entity and separate public property.

3. The unsettled authority of the Constitutional Court, which may give some interests disproportionately large ground and may harm the party's neutrality

László Sólyom, the President of the starting Constitutional Court at that time informs the reader about the operation of the Constitutional Court in his recall that: "The Constitutional Court, as a new institution is not just a fresh start. Due to the circumstances of its existence it had unprecedented freedom in developing its own place in the constitutional order, including not only its political weight and role but its legal nature in the narrow sense as well. Its creators had only vague ideas about the constitutional functions and the purpose of the Constitutional Court amidst the political changes. Act XXXII of 1989 about the Constitutional Court was incomplete and contradictory due to its technical preparation in haste. In order to begin the Constitutional Court's jurisdiction the act left the development of the procedural policy to the Constitutional Court in due course." Which means, that the Constitutional Court was left broad political maneuver and it defined its own role. A Constitutional Court which is committed to the rule of law would not have authorized, if it had served the domestic legal system, that postponing the historical reparation supported by the majority of society, it protected the socialist property created by coercion and violence, which did not correspond to the values of the rule of law. It knew its role, that it was the scalebeam and behind political issues it also had to solve the dogmatic problem of the distinction between the civilian property and the constitutional property guarantee and he knew that within the ownership-question it is of great importance whether it gave ground to the the restoration or to the political will.

The question is, if the Constitutional Court had a wide leeway, it apparently would have had the opportunity to query the constitutionality of József Antal question and impose a barrier that it examined the constitutionality of the issue and the Constitutional Court only as the result of the investigation would continue its determination in answers to the question. In what respect judges the it by the same standard in the reparation process the damages caused by the state against the property of the small farmers, and those that were committed against human life, as a fundamental right, by the socialist state, to those the state has caused so-called "non-pecuniary" damage.

The Board in the Constitutional Court decision 21/1990. (X. 4.) interpreted Article 70/A of the Constitution, taking into account Article 9 and Article 12 (1), and it examined the correlation between Article 12(1) and Article 13(1) only in an extent that the motion included data concerning them and was careful not to refer to the Government's drafts.[8] This practice raises the question of why only narrowly dealt with responses to be given in the course of the land restitution. Yet in respect of the church property when the talaric Board decided about discrimination it looked out, i.e., it could look out of the abstract concepts and in case of former church property it let the national assembly to dispose otherwise, even though the restitution principle in this scenario succeeded only relatively, however, national economic considerations were also taken into account. However, Act XXXII of 1991 on the the settlement of church property was not qualified as reprivatisation act (with decision 60/1992. (XI. 17)), since it regulated the putting of the public buildings necessary to the provision of the religious and social functions of churches at their disposal. The Antall government's restitution laws meant intermediate solutions between the two positions that were raised in

[8] Sólyom László: Az alkotmánybíráskodás kezdetei Magyarországon, Osiris Kiadó, 2001, p. 173.

previous discussions. They rejected the process of reprivatization – with the exception of such restitution of curch property.

The question that can be formulated in the simpliest way, can be raised: why were not the constitutional questions examined fully, by taking into consideration the majority of social expectations and national economic interest and with a strong and decisive action. Why was it necessary for the Constitutional Court to narrow down its powers and refrain from any evaluation , independent from the legal text, of the concept of the restitution law? Yet this narrowing of powers was not required by anyone and by any law. It could even attain to its competence to, if the Constitutional Court is responsible indeed, arrogate itself the right to propose constitutional amendments, which would have only drawn the attention of the power leaders publicly that if the basic law could not be reconciled with the expected international economic standards the majority expected, the basic law must have had serious problems that need to be altered in a democratic society.

4. Different reasoning methods, and legal basis concerning the constitutionality of the the restitution laws

It raises the question: why did the Constitutional Court allow that restitution laws with similar subject were based on contradictory pleas and why did it not fight for the competence of the creation of consistency between the laws?[9] (Sárközy)

According to the Constitutional Court the effect of the once legitimate nationalizations and other deprivations of property is maintained.[10] It raises the question: how would be the nationalization lawful if the nationalization committed against the life, property and health of others is unlawful even under the laws of that time? As the majority of the nationalizations occurred violating human rights – the fact that the state used laws during the course of deprivations would not be legitimate. Then, the argument assumes that the Constitution does not require either the return of property or the compensation. This can be explained by the historical situation at the time of the political transition which required the return of property and restitution in any cases. The fact that it was not written down in the Interim Constitution does not mean that it is out of question because of major socio-economic reasons. And the most important finding, the one of partial restitution - if it does not violate the equality of rights it is constitutional. *A contrario* the Constitutional Court could also declare that the *restitutio* is constitutional if it does not violate the equality of rights.

The Constitutional Court recognized the argument above stood on a shaky ground and during the convictions it suddenly changed the justification of its point of view. It invoked the item that the state, as owner, has the freedom of disposal based on the analogy of the structure of property of civil law. The question is: how can it be an owner, if it gained parts of its property fraudulently, by coercion, force or deceit and this once again brings us to the idea (cf. point b) that why is the land considered an independent state property – we may include the land entered by the members of the producing unipns as well – which viewed from rule of law, in the order of rule of law, respecting the freedom of property could not be state property in any way. At least concerning the entered land of producing unions the state property did not acquire ownership, unless the entitled person registered in the land register transferred the property in favour of the state or acquired by inheritance. (Act IV of 1967) However, with this item, it incorporates the property of the members of producing unions into state ownership, i.e., it enforces the effect of Act IV of 1967. This idea is also supported by László Sólyom when he writes: “On the one hand, the acquisition has been acknowledged the legal basis of which became unconstitutional for now”.[11]

After the endless arguments above, the system features of the political transition replaced the arguments. Yet as it turned out, in the 1970's and 80's the in Kádár regime being in office in Hungary was stunned by the messianic promises of the World Bank and the IMF about economic growth and civic modernization

[9] Sárközy Tamás: A privatizáció joga Magyarországon: Indulat nélküli elmélkedések a tényekről, lehetőségekről. Budapest, 1991, Unio Lap- és Könyvkereskedelmi Vállalat
[10] Sólyom László: Az alkotmánybíráskodás kezdetei Magyarországon, Osiris Kiadó, 2001, p. 620.
[11] Sólyom László: Az alkotmánybíráskodás kezdetei Magyarországon, Osiris Kiadó, 2001, p. 618.

and in order to this aimed notion (construcion of underground, modernization, urbanization, mechanization of collectivized agricultural farms, large-scale production) apart from the World Bank's too generous financial support exceeding its financial efforts it took huge loans which resulted in dependency on neoliberalist interest groups.
This was institutionalized by a financial maneuver, which was considered new that time, the debt trap, with which they reached that Hungary's tight dependence on foreign capital was perpetuated also for today.
The force of debt trap perpetuated, while subordinated the country's economic policy dependence on foreign creditors.[12] Another method which is strongly related to this is the neoliberalism economic shock therapy, which dictates command of output-pressure to the entire economy. Laszló Bogár characterises the particular historical situation in the following way: "The first part of this called itself socialism and the second one defined itself capitalism, but actually both were tools of global capitalism to destruct traditional farmer societies, then to transform into idiots of consumption which were appropriate to globality, that is transform into giant herds of obedient labor and consumer-power animals."

The partial nature of restitution was based on the principle of distributive justice by the Constitutional Court. Since Aristotle there has traditionally been a tendency to make distinction between the distributive (dealer) and commutative (corrective) justice. The distributive justice is in which the goods or the privileges are distributed by the community among its members and that is not subjected to equality but to proportionality (so it depends on what extent did the individual contribute to the common good). Under the concept of distributive justice which is used since Aristotle it is hard to find the common good concerning the particularities of the political transition and that who and to what extent contributed to the common good. It does not turn out anywhere that the redistribution of the goods of the state figuratively depends on what extent somebody's property was withdrawn or taken away by the state. Well, comparing the public goods to common good is not elegant in any way, in particular that the based on the formula of distributive justice the members' entered land property is handled according to public goods and again, it extends the plea offending the order of rule of law. In the notion the significancy of proportionality emerges but the concept refers to what proportion and how much of total social profits the state returns or allocates to those who invest how much energy and effort in the social benefits. The more energy and effort is invested the more of the profits may be due. In the historical background of restitution was, however, there was nothing about social benefits at all, since the members' entered property in the period of collectivizations of land still remained the property of the member as the land registry records showed that. The members of the producing unions had only a common right for usage and law and also according to Act IV of 1967 on producing unions the members and the union did not have undivided common property. In addition, neither the socialist Constitution nor the Constitution of the rule of law does not include financial or economic sections, under which the state takes private property into public ownership, then returns it to the people helping it. The producing union members' entered property remains legally unchanged and static concerning public and private sector.

The Constitutional Court requested further arguments and stated in an itemized way the state's unlimited right to privatization and reprivatisation, which was deduced from the state's freedom of ownership. It said this argument, which is unlimited just between states, in the international law and it can be an important principle that other states do not interfere with a state's intention of privatization and re-privatization, but it forgets, that the source of the power are the people and if offensive actions are born, they are entitled to replace the power elite with indirect power without any additional constraint. The elite, namely, do not respect the people's property. In the rule of law a Constitution needs to contain guarantees for this and it is not simply the question of Article 13 of the Constitution. Interestingly, this was not pronounced during the practice of the Constitutional Court. A state can not privatize or re-privatize the property or land base assumed its own property, including the producing union members' entered land without the approval and empowering of the people so the nation's leading power elite with indirect power can not take this decision arbitrarily, without consultation with the people. The Constitutional Court, from the above, consistently stated that "for the privatization or reprivatisation therefore, without the state's relating decision or in a different form, no one has a subjective right The Constitutional Court's interpretation concerns the legally

[12] Tanka Endre: Megmaradásunk a Föld, Kairosz Kiadó, 2001, p. 15-26.

correct state property." [21/1990. (X. 4.) Constitutional Court resolution] It should be noted that in this resolution the declaration of the unconstitutionality of Act IV of 1967 is missing.

The continuity theory of the Constitutional Court was formed after this, according to which, the closed legal relationships do not follow automatically the state of their underlying standards, i.e., in spite of the declaration of the unconstitutionality and the destruction of the underlying norms they may stay valid. Furthermore, the Constitutional Court can not declare the unconstitutionality of the content of a norm to a date which was before the Constitution came into force (10/1991, 11/1991 Constitutional Court resolution)[13]. So the Constitutional Court distanced itself and ruled out the possibility of the follow-up norm-control of the Constitutional Court of the laws concerning legal relationships before the political transition. Subsequently, it also ruled out the follow-up norm-control of the Constitutional Court, which should have annulled Act IV of 1967 establishing the land property of producing unions under the pretext of unconstitutionality ordering at the same time return in kind of the 3 million 400 thousand hectares of producing unions' land.

In the final restitution resolution of the Constitutional Court it clearly stated this following principle "The requirement, that the state will return the property to the original owners which were deprived in the previous system unconstitutionally according to the standards of the new rule of law, can not be deduced from the Constitution. Similarly, the Constitution does not require the state to provide for these damages full compensation or restitution. Finally, the obligation for the state to change civil law, public administrative law or general rules of procedural law retroactively, or allow exceptions in order to the former owners get back their property or receive full compensation, also does not follow the Constitution."(15/1993. (III. 12) Constitutional Court resolution)[14]

The Constitutional Court also knew the legal basis of the reprivatization argument, that the private ownership of the former owner still existed and needs resulting from that are imperishable. It knew that there is constitutional relevance to the fact that with the absorbing of the "working farmers' " land Act IV of 1967 ignored several items of the current Socialist Constitution. It knew that this meant that from the former socialist states the farmers of a country had constitutional right after 1989 to reclaim their confiscated land from the state, so the Hungarian farmers were also entitled to the same legal title and legitimacy (Tanka[15]) It was also aware that the constitutional rights of the rule of law of the Hungarian farmers and their descendants would have been infringed if it had given ground for the compensation, since the grievances meant to be redressed by the compensation law already assumed property loss (Sólyom). The compensation law mostly applies when the state acquired the property right and was responsible for the loss of property held by the state, but the Constitutional Court admitted the unconstitutionality of the law concerning the loss of the property. The different legal basis of these two legal reasonings was released by the compensation law, the debate of which was opened by the power elite, in a way that it introduced a new legal basis, the ex gratia legal basis, which was faithfully supported by the Constitutional Court. One of the basic ideas of the law is that the unjustly caused property damages are redressed by the state by fairness, ex gratia, i.e., on moral grounds and not as a social security entitlement. Nevertheless, László Sólyom himself also notes that "the compensation law did not clarify the legal basis of compensation". The truth itself was defined as the basis for the restitution laws, but he also acknowledges that they "did not satisfy the restitution claimed by former owners or the entire compensation needs". As he notes this contradiction should have been resolved by the Constitutional Court because it had to judge the constitutionality of the partiality. In fact it was not resolved because that "truth" did not not satisfy the majority of the society. If we think about it logically, also a simple sense can see that in a minority interest of the power elite can not be just for the majority. We should not forget about the fact that according to the research and the certified survey of the Cooperative Agricultural Research Institute 95% of the land of the state was the property of the producing unions, which should have been returned in-kind in a viable scale of operation.

[13] Sólyom László: Az alkotmánybíráskodás kezdetei Magyarországon, Osiris Kiadó, 2001, p. 618.
[14] Sólyom László: Az alkotmánybíráskodás kezdetei Magyarországon, Osiris Kiadó, 2001, p. 619.
[15] Tanka Endre: Föld és elsajátítás. Sorskérdések földviszonyaink múltjában és jelenében. Agroinform Kiadó, Budapest, 2000, p. 174.

The Constitutional Court was also aware of the fact that in the program of the government published after long coalition discussions in September 1990 ("The national regeneration program") "the government did not support generally the in-kind restitution of the former property" "Concerning land the decision about the settlement of property rights can be made based on constitutional investigations taking into account also the original ownership status of 1947."

5. Novatio, i.e., the blending of decollectization and the reparations process

During the reparation process and the decollection process the Constitutional Court had to have one last hidden propose to serve the power elite's political will, particularly when it proposed that during the reparations process the damages caused during the history and nationalizations should have been "lumped together" on a common legal basis, the lands of producing unions were also included into this reconcile of different interests. The Constitutional Court stated in the second compensation decision (16/1991) that legislators may also renew in the form of Novatio its different based obligations, with new title, new scope and new conditions, maintaining essentially the same debt.[16] As Sólyom states the Constitution excluded references for old titles, but reconciled the obligations based on old titles with the ex gratia offered compensation. With this great ingenuity of legal policy the Constitutional Court virtually ensured for the compensation laws new, "original legal basis for the property damage and the producing unions' land, the members' entered and lost land and for the remedy of non-pecuniary damages within. The Constitutional Court with this idea, and taking advantage of its broad scope, gave constitutional way to the restitution laws, finally breaking down the restoration efforts. It did not take into account at all the national economy, the majority society will, as from that time it gave ground constitutionally to the government program (National regeneration) – because of national public burdens (external debt, domestic debt, distorted economic structure) "all the state caused non-pecuniary and pecuniary compensation explicated in the form of securities which can be used for the purchase of new property". It ruled out the restoration efforts definitively, possibility of the giving back of producing lands in-kind and it provided way for the abuses, even though it stressed later, back again that it used the Novation concept not as a term technicus and tried to emphasize[17] that the obligation of the state can not be renewed at its discretion. As László Sólyom confessed: "This way the Constitutional Court rather postponed than solved the dogmatic difficulties".

6. The relation of the policy mix and the Constitutional Court

The Constitutional Court has still not called the policy makers' attention to the fact the financial, economic chapter concerning the state is missing from the Constitution. The compensation did not have any legal basis deriving from the constitution, while the farmers before Act IV of 1967 had constitutional right to reclaim its land from the soviet producing unions.[18] The Constitutional Court did not call the legislature to the duty that if it could regulate on the constitutional level how the private property would become public (Article 13) than how would the nationalized property become private property. The power elite did not ask the Hungarian people how to regulate this issue, and nor did ask whether it was acceptable that the sale of public property by was decided only one Plc. These powers are unclear to this day and may realize absolutism. To the collection of land-privatization belongs Act II of 193 about the land-settling and land-delivering committees. This legislation should have met the constitutional duty of the state, namely the in-kind giving back of land of 3,6 million hectares partially-owned by producing unions to their former owners. Although until 2005 this law has been amended sixteen times, it still has not met its intended purpose: until the end of 2000 from the lands of such status for 1,5 million hectares even the ownership relations were not clarified. From the above we can see that the Constitutional Court could not "produce" any convincing, virtually flawless dogmatic argument. With the recommendation of the *Novatio* it only cut the ground from under the feet of the *restitutio*-argument, but could not break down the original owners'

[16] Sólyom László: Az alkotmánybíráskodás kezdetei Magyarországon, Osiris Kiadó, 2001, p. 622.
[17] 27/1991. (V.20.) Constituional Court Resolution, see the paralell opinion of László Sólyom
[18] Tanka Endre: Föld és elsajátítás. Sorskérdések földviszonyaink múltjában és jelenében. Agroinform Kiadó, Budapest, 2000, p. 174.

needs. In conclusion, to the Constitutional Court's practice I quote László Sólyom's personal note: "If there is no convincing and perfect dogmatic argument, it is almost inevitable that the decision is attributed as politically motivated. To an external observer, what else could it be based on?"[19]

7. Conclusion

With all of these during the compensation such a large estate system has emerged, in which 8% of the largest Hungarian factories has 90% of the total land base and 92% of the farms have 10%[20] of the production area - and due to the nature of the securities the 85% of the 2.2 million hectares allocated to the restitution is not owned by the people originally entitled to compensation, but by the narrower power group of the agricultural elite. Szelényi points out perspicaciously that "one of the significant weaknesses of the political transition rejecting modernization chances is the mass proletarization of the dioecious private farmers and the partially individual small-scale producers, their decay into penniless wage labourers". It can also be concluded that by the fact that the power elite considered almost as an obligation to abolish state property, 90% of which was of producing unions' and it was given into private ownership, a minimum portion of state land basis was left and without a doubt the Hungarian land-holding policy was moved towards and approached the neoliberal model. Also according to the representatives of social research the developments of the post-1989 period prove rather the institutional crisis of the post-socialism then the transition into a market economy (D. Stark. 1992-Kornai, 1992)[21].

[19] Sólyom László: Az alkotmánybíráskodás kezdetei Magyarországon, Osiris Kiadó, 2001, p. 622.

[20] According to the Agricultural Research and Informatics Institution from the 6.186.000 hectares agricultural land about 5.420.000 hectares (88% of the total area) got into private ownership until 1999. This involved that 80% of the new owners had land of one hectare or even less, widely scattered.

[21] Stark, David: Path Dependence and Privatization Strategies in East-Central Europe, East European Politics and Societies, 1992

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