



Comité européen de droit  
rural – European Council  
for Rural Law – Europäische  
Gesellschaft für Agrarrecht  
und das Recht des ländlichen  
Raums

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**Congrès européen de droit rural – 11–14 septembre 2013  
Lucerne (Suisse)**

**European Congress on Rural Law – 11–14 September 2013  
Lucerne (Switzerland)**

**Europäischer Agrarrechtskongress – 11.-14. September 2013  
Luzern (Schweiz)**

organisé sous la direction du C.E.D.R. par la Société Suisse de Droit Agraire et  
l'Université de Lucerne – organised under the direction of the C.E.D.R. by the  
Swiss Society for Rural Law and the University of Lucerne – organisiert unter  
der Leitung des C.E.D.R. durch die Schweizerische Gesellschaft für Agrarrecht  
und die Universität Luzern

## **Commission II**

Cadre juridique du droit de l'environnement pour la production agricole  
– **Legal framework of environmental Law for agricultural  
production** – Umweltrechtliche Rahmenbedingungen für die  
landwirtschaftliche Produktion

### **Rapport national for Hungary**

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## Part 1. Presentation of the national legal structure

### 1. Integration of agricultural production in the constitutional system (economic and civil law rights, human rights)

Due to its historical endowment, agriculture plays an important role in the economic and social life of Hungary. It reflects in the constitutional system as well, especially in the new constitution of Hungary, the Fundamental Law, that has entered into force on January 1, 2012.

The previous democratic constitution, Act XX of 1949, as amended in 1989 (in force until December 31, 2011), has not addressed the issue directly, only ruled on several related issues, such as the right to property, co-operatives or inheritance. However, the new constitution introduced a new system, directly underlining various national values and the significance of their protection. Its social backing may be found in the so-called national consultation, which touched upon the issue directly or – mostly – indirectly in several points.<sup>1</sup>

The New Constitution touches directly upon the issue of agriculture at the following points. First, general tendencies appear in the National Avowal<sup>2</sup>, then the Fundamental Law takes a stand in Article XX when undertaking to promote the exercise of the right to physical and mental health among others via “ensuring that [Hungary’s] agriculture remains free from any genetically modified organism”. Trying to promote a GMO-free agriculture is partly an environmental issue, but the official reasons for integrating such a disposition in the constitution include also economic reasons: one of the country’s most important sector, agriculture has way better chances if its products are known to be GMO-free, as current surveys indicate that European consumers mistrust GMO-containing foods.<sup>3</sup> Besides agriculture as a whole, the Fundamental Law

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<sup>1</sup> For further reading see A. Raisz, ‘A Constitution’s Environment, Environment in the Constitution – Process and Background of the New Hungarian Constitution’, *Revue Est Europa*, Special Edition 1, 2012, pp. 37-70, pp. 41-46 (hereinafter referred to as Raisz, A Constitution’s Environment). See e.g. Question 10 of the National Consultation (a questionnaire filled voluntarily by the interested Hungarian voters prior to the adoption of the new constitution) which has reached a 97 percent consensus among those who have answered (almost a million people) agreeing on a constitutional protection of arable lands. See [http://static.fidesz.hu/download/156/A\\_Nemzeti\\_Konzultacios\\_Testulet\\_kerdoivenek\\_eredmenyei\\_2156.pdf](http://static.fidesz.hu/download/156/A_Nemzeti_Konzultacios_Testulet_kerdoivenek_eredmenyei_2156.pdf) (last visited 11/05/2013).

<sup>2</sup> See the reference to “*the prudent use of ... natural resources*”.

<sup>3</sup> On the anomalies of this question, i.e. that it does not necessarily mean that Hungarian consumers can completely avoid GMO-containing food, see Fodor, László: A természeti tárgyak helye és szerepe az új alkotmányban. In: T. Drinóczi – A. Jakab (eds.): *Alkotmányozás Magyarországon 2010-2011*. Budapest – Pécs, 2012, PPKE JÁK – PTE ÁJK, L. Fodor: A GMO szabályozással kapcsolatos európai bírósági gyakorlat tanulságai, in: Cs. Csák (ed.): *Jogtudományi tanulmányok a fenntartható természeti erőforrások témakörében*, Miskilc,

also includes a rule on arable land in particular. Article P declares namely arable land to be part of the nation's common heritage which shall therefore be protected, sustained and preserved by the State and every person – another disposition with very strong links to environmental protection. However, the constitution protects other areas linked directly or indirectly to agriculture as well, as seen in the Chapter “Freedom and Responsibility”. The mentioned 31 articles contain among others the general protection of human rights (Article I paragraph (1)), along with their potential restriction (if possible, paragraph (3)); it may have relevance e.g. with regard to agricultural property (and the restriction thereof); paragraph (4) explicitly mentions that legal persons' rights receive also a constitutional protection – also a provision relevant for many figures of agricultural production. Indirectly, the prohibition of slavery (Article III) concerns agriculture as well. Increasingly important is Article V, which was basically introduced due to constant damage caused to agricultural production. It says: “*Every person shall have the right to repel any unlawful attack against his or her person or property, or one that poses a direct threat to the same.*” Even Article XII on the free choice of work, occupation and entrepreneurial activities has relevance in agriculture, as recent efforts try to extend the possibilities to work as an agricultural entrepreneur.<sup>4</sup> Article XIII – on the right to property and inheritance – has clearly been the most significant human rights provision related to agriculture, as proven by the jurisdiction of the Hungarian Constitutional Court, which might serve in general as a compass to determine what human rights are the most significant in this regard.<sup>5</sup>

The constitutional system nevertheless includes other relevant norms as well. In particular, the Fundamental Law extended the previously also existing system of cardinal laws – i.e. acts to be adopted by a two-thirds majority in the

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Miskolci Egyetem, 2012, pp. 65-75; W. Erbguth – S. Schlacke: *Umweltrecht*, Baden-Baden, Nomos Verlagsgesellschaft, 2008, p. 336; E. Farkas Csamangó: A géntechnológia agrárjogi aspektusairól, *Acta Universitatis Szegediensis Acta Juridica Et Politica*, Tomus LXVII, 2005, Fasc. 7, I. Olajos: A géntechnológiai tevékenység szabályozása Magyarországon, in: J.E.Szilágyi (ed.), *Környezetjog – Ágazati környezetvédelem és kapcsolódó területei*, Miskolc, Novotni, 2008, pp. 81-85; A. Pánovics: *Szakítópróba előtt Európa GMO ügyben?* source (18.08.2013):

[http://emla.hu/aa2.10.0/img\\_upload/777ad89538966d33b9d5fb7d0e49b91c/Panovics\\_Attila.pdf](http://emla.hu/aa2.10.0/img_upload/777ad89538966d33b9d5fb7d0e49b91c/Panovics_Attila.pdf), Szilágyi: A zöld géntechnológiai szabályozás fejlődésének egyes aktuális kérdéseiről, *Miskolci Jogi Szemle*, 2, 2011, pp. 40-41, 54; Szilágyi: A géntechnológiai jogi szabályozása, in: Szilágyi (ed.): *Környezetjog – Tanulmányok a környezetjogi gondolkodás köréből*, Miskolc, Novotni, 2010, pp. 114-126; Szilágyi: A géntechnológiai szabályozás nemzetközi- és közösségi jogi kérdései, in: Szilágyi (ed.): *Környezetjog – Ágazati környezetvédelem és kapcsolódó területei*, Miskolc, Novotni, 2008, pp. 65-66.

<sup>4</sup> See Raisz, *Women in Agriculture – Country Report Hungary*, 2013, to appear in Esther Muniz Espada (ed.): *Women in Agriculture*.

<sup>5</sup> See e.g. A. Téglási: How is property ownership guaranteed constitutionally in the field of agriculture?, *Journal of Agricultural and Environmental Law*, 7, 2009, pp. 18-29.

Parliament.<sup>6</sup> A new – cardinal – act shall rule on the national wealth as well; it would necessarily include provisions on arable lands as there is still a considerable amount of agricultural lands in the ownership of the Hungarian State. This norm has nevertheless yet to be adopted.

The relevant provisions on agriculture are placed in ‘normal’ Acts of Parliament, but the concerning legislation is undergoing a major change nowadays. In June 2013, the new Act on the transfer of the use and ownership of agricultural lands<sup>7</sup> has been adopted, ruling among others on a restricted acquisition form of the ownership of agricultural lands – one similar to the Swiss solution, i.e. aiming at allowing ownership over arable lands only for agricultural producers, excluding speculation.

## 2. The position of the environment in the constitutional system

Hungary’s new Fundamental Law belongs to those not too numerous constitutions that dedicate various provisions to the countless aspects of sustainability.

First of all, the National Avowal declares that “[w]e bear responsibility for our descendants; therefore we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources.”<sup>8</sup> Furthermore, it states in Article P that “[a]ll 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.”<sup>9</sup> It even refers to international environmental law in Article Q when proclaiming that “[i]n order to [...] achieve the sustainable development of humanity, Hungary shall strive for cooperation with every nation and country of the world.”

Article XX<sup>10</sup> – containing the provision on a GMO-free agricultural production – may be considered as an important environmental issue as well.

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<sup>6</sup> I.e. a two-thirds majority of the MPs present in the Parliament. See Fundamental Law, Article T, paragraph 4.

<sup>7</sup> Act CXXII of 2013

<sup>8</sup> See Szilágyi: Az agrárjog dogmatikájának új alapjai: Útban a természeti erőforrások joga felé? *Jogtudományi Közöny*, 2007/3, pp. 112-121.

<sup>9</sup> On the important role of water supplies in the Hungarian economy see P. Szűcs – F. Sallai – B. Zákányi – T. Madarász (eds.): *Vízkezelvédelem*. Miskolc, Bíbor, 2009, pp. 21-36.

<sup>10</sup> It says: “(1) Every person shall have the right to physical and mental health.

(2) Hungary shall promote the exercise of the right set out in Paragraph (1) by ensuring that its agriculture remains free from any genetically modified organism, by providing access to healthy food and drinking water, by managing industrial safety and healthcare, by supporting sports and regular physical exercise, and by ensuring environmental protection.” On GMO regulation,

This – previously already mentioned – disposition is especially relevant when reflecting on certain events in summer 2011, when thousands of hectares of predominantly corn grown from illegally<sup>11</sup> imported GMO-polluted seeds had to be destroyed in Hungary.<sup>12</sup> The mere declaration in the constitution is clearly not enough to protect the country against this new form of aggression. Although Europe has just started to realize as well that not only the forms declared in UN General Assembly Resolution 3314 (XXIX) may infringe sovereignty, and European countries have begun to elaborate national strategies against hacker attacks (which – see the example of Estonia, 2007 – may be at least as devastating as military attacks), it should not stop there, new forms of aggression surely may be environment-related as well: deliberate, severe pollution of waters, soil, air, etc. or even the smuggling and spreading of GMOs to countries not willing to use them. Although it is an issue under debate,<sup>13</sup> European consumers generally warmly welcome GMO-free products, therefore GMO-free agriculture is not only positive from an ethical or environmental, but also from an economic point of view.<sup>14</sup> Nevertheless, also in Hungary the concrete rules are under elaboration. It was not until the 2011 GMO scandal that

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see the systematic overview in Szilágyi: A géntechnológia jogi szabályozása. in: Szilágyi (ed.): *Környezetjog: Tanulmányok a környezetjogi gondolkodás köréből*. Miskolc, Novotni Alapítvány, 2010, pp. 105-128, and Szilágyi: A géntechnológiai szabályozás nemzetközi- és közösségi jogi kérdései. In: Szilágyi (ed.): *Környezetjog: Ágazati környezetvédelem és kapcsolódó területei*. Miskolc, Novotni Alapítvány, 2008, pp. 61-72.

<sup>11</sup> I.e. contrary to the regulations then in force on which see Olajos: A géntechnológiai tevékenység szabályozása Magyarországon. In: Szilágyi (ed.): *Környezetjog Vol. II. - Ágazati Környezetvédelem és kapcsolódó területei*, Novotni, Miskolc, 2008. pp. 73-89.

<sup>12</sup> Szilágyi – Raisz: Hungarian National Report, Scientific and Practical Development of Rural Law in the EU, in States and Regions and in the WTO, *CEDR, XXVI European Congress and Colloquium of Agricultural Law*, Bucharest, September 21-24, 2011, accessible at [http://www.cedr.org/congresses/bucarest/pdf/Commission\\_III\\_Hongrie.pdf](http://www.cedr.org/congresses/bucarest/pdf/Commission_III_Hongrie.pdf) (23/01/2012), p. 7.

<sup>13</sup> Even the ECtHR seems to have feared to enter into details and simply declared: “l’impact des OGM sur l’environnement et la santé des personnes n’a pas encore pu (it is not yet known what impact GMOs have on the environment and on people’s health)”. See ECtHR, *Hubert Caron and Others vs. France*, inadmissibility decision, June 29, 2010, No. 48629/08. Its conclusion, that the applicants had no status of victim because of the distance between the GMO contaminated lands and their own, raises several issues that would certainly exceed the scope of this article. Nevertheless, the violation of Articles 2, 8 ECHR and Article 1 Protocol 1 was not excluded *per se* in such cases. For further reading see Raisz, GMO-támadás, mint az agresszió újabb formája? *Polgári Szemle*, 2012/1-2, pp. 168-180, Raisz, A Constitution’s Environment, pp. 48-50.

<sup>14</sup> See furthermore Szilágyi: Környezetvédelem az európai uniós jogban. In: Szilágyi (ed.): *Környezetjog: Tanulmányok a környezetjogi gondolkodás köréből*. Novotni, Miskolc, 2010. pp. 51-72.

a special Working Group was set up to help to clarify the situation also in a legal sense.<sup>15</sup>

Finally, Article XXI states that “(1) Hungary shall recognise and enforce the right of every person to a healthy environment. (2) A person who causes any damage to the environment shall be obliged to restore it or to bear all costs of restoration as defined by law. (3) No pollutant waste shall be brought into Hungary for the purpose of dumping.” This phrasing necessarily has not come out of the blue: the relevance of this article is underlined by certain – even internationally known – sad events in the recent past (the scandal of illegally imported waste from Germany, the red sludge catastrophe, etc.). The above provision is clearly in line with the internationally recognised polluter pays principle<sup>16</sup> as well as the jurisprudence of the ECtHR<sup>17</sup> and the Council of Europe’s efforts<sup>18</sup> in this regard.

Obviously, many draw attention to the fact that the constitution itself is not enough. Other legal acts, as well as the economic actors and members of the society have to make the right choices.<sup>19</sup> Nevertheless, it is more than significant that the New Constitution bears responsibility for future generations, provides protection for the natural environment and declares GMO-free agriculture.

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<sup>15</sup> See an excellent overview of the issue in Szilágyi: A zöld géntechnológiai szabályozás fejlődésének egyes aktuális kérdéseiről. *Miskolci Jogi Szemle*, 2011/2, pp. 36-54, especially p. 41.

<sup>16</sup> Olajos – Csák – P. Bobvos – Szilágyi – Sz. Horváth – T. Prugberger: The polluter pays principle in the agriculture: A szennyező fizet elv megjelenése a mezőgazdaságban. *Journal of Agricultural and Environmental Law*. 2006(1)/1 pp. 29-55.

<sup>17</sup> See among many others ECtHR, *Okyay v. Turkey*, July 12, 2005, No. 36220/97; *Taşkin et al. v. Turkey*, November 10, 2004, No. 46117/99; *Fadeyeva v. Russia*, June 9, 2005, No. 55723/00. See furthermore Manual on Human Rights and the Environment – Principles Emerging from the Case-Law of the European Court of Human Rights; Committee of Ministers, 2005/186 Addendum, December 16, 2005, CDDH, 61st meeting, Final Activity Report, point 2.

<sup>18</sup> Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment, Lugano, 1993 and Convention on the Protection of Environment through Criminal Law, Strasbourg, 1998. So far, both conventions are light-years away from entering into force, although only three ratifications are needed for each...

<sup>19</sup> See e.g. the Position of the National Council for Sustainable Development on the New Fundamental Law of Hungary, May 25, 2011, [http://www.nfft.hu/allasfoglalasok\\_az\\_uj\\_alaportvenyrol\\_es\\_a\\_videkstrategia\\_koncepciojarol](http://www.nfft.hu/allasfoglalasok_az_uj_alaportvenyrol_es_a_videkstrategia_koncepciojarol) (6/8/2011), p.1., Z. Nagy: Fenntartható költségvetési elvonások rendszere a környezetvédelem területén. *Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica*, Tomus XXIX/1, Miskolc University Press, 2011, pp. 247-258.

## Part 2. Regulation and control of agricultural production

In Hungary, there is no generally prescribed form to pursue agricultural activity, i.e. all entrepreneurial forms are accepted: small or middle/large scale undertakings (e.g. agricultural entrepreneur, family homestead; cooperatives). Integrating organizations nevertheless need to fulfil certain formal requirements in order to gain the recognition of the state. Alongside our currently ongoing land law reform, the regulation on the integrating system is going to change in the near future as well.

The regulation on the liability of agricultural producers may be examined from different aspects, based on: (a) the organization, (b) the rules of agricultural activity, or (c) the degree of the violation.

Specific provisions determine in which cases a permit for the use of the environment is needed.<sup>20</sup>

Agricultural producers are controlled in the frame of the cross compliance, i.e. the norms on agricultural activity and production, a complex audit and sanction system.

## Part 3. Specified environmental rules for agricultural production

### 9. The position of agricultural production in the framework of environmental pollution control

Task of the most important basic categories of agro-environmental law (sustainable agriculture, correct agricultural practice, cross-compliance, good agricultural and environmental state of agricultural lands) is the pursuit on the one hand of the *protection function*, protection against environmental impact, on the other hand of the *restricting function*, i.e. regulation of the agricultural activity in order to fulfil the ecological objectives. Agro-environmental law includes among others norms on water protection, plant protection, the use of chemicals, certain norms determining agrarian structure, on waste management (in particular, guaranteeing appropriate refill of nutrients), feeding stuff, food law, immission and agro-genetic technological activity, in which the dominancy of the restricting function is visible.<sup>21</sup>

<sup>20</sup> Governmental decree (hereinafter referred to as GD) 314/2005 (XII. 25.) on the environmental impact assessment and the standard environment use license procedure

<sup>21</sup> See more in detail G. Horváth: *Az agrár-környezetvédelmi jog elméleti alapvetése és hazai szabályozásának rendszerezése, különös tekintettel agrár-természetvédelmi részterületére*, PhD thesis, Budapest, 2010. G. Horváth: A környezetjog és az agrárjog közeledése, találkozása és metszete a magyar jogrendszerben. *Állam- és Jogtudomány*, Vol. XLVIII, 2007/2, pp. 333-355. Szilágyi: Gondolatok az agrárjog jogágiságáról. *Magyar jog*, Vol. 51. (2004), 9, p. 535. Csák: *Növényegészségügy*. In: Csák – Olajos – Prugberger et al.: *Agrárjog*. Novotni Kiadó, Miskolc,

*The definition of agro-environmental protection is in our view a field of law embracing norms aiming at the maintenance, restoration or amelioration of the status of the environment in territories under agricultural production, preventing its negative aftermath.*<sup>22</sup>

In practice, traditional agricultural production has changed, in three basic directions. (1) The agricultural entrepreneur may 'widen' its scope of activity – previously consisting exclusively of traditional production – e.g. introducing the production of new, innovative products or joining in the rural tourism, or non-food production function. (2) The activities may be 'deepened' through developing effective, nonetheless sustainable agricultural production and its market relations, e.g. via 'ecological' production, direct product marketing. (3) As a 're-establishment', traditional resources are revisited, e.g. part-time farms are established in order to complete the income, or the production bases change, e.g. through starting the energy-producing function of agriculture.

Nowadays, agriculture pursues numerous additional tasks besides its basic activity which – although not belonging strictly in the circle of commodity production – still serve the interest of the whole population. The outputs of these activities are the 'public goods', including social, environmental and nature protection services.

#### 10. Planning provisions and mandatory licenses for the location of production units

From an environmental point of view, licensing procedures are linked to the prevention principle. During the licensing procedures, a proper level of protection shall be provided. In general, the enforcement of environmental protection aspects is provided by a separate legal act.<sup>23</sup>

In case of certain activities (significant environmental impact), the environmental authority pursues impact assessment and standard environment use license procedure. In the license procedure, the environmental protection

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2005, pp. 103-112, Fodor: *Agrárjog. Fejezetek a mezőgazdasági életviszonyok sajátos szabályozása köréből*. Kossuth Egyetemi Kiadó, Debrecen, 2005, p. 50.

<sup>22</sup> G. Horváth: *Az agrár-környezetvédelmi jog elméleti alapvetése és hazai szabályozásának rendszerezése, különös tekintettel agrár-természetvédelmi részterületére*, PhD thesis, Budapest 2010, Farkas Csamangó: *A kölcsönös megfeleltetés környezetjogi aspektusai*, PhD thesis, Szeged 2012 p. 38. Olajos: *A fenntartható fejlődés*. In: Olajos (ed.): *Vidékfejlesztési politika és támogatásának joga*. Novotni Kiadó, Miskolc, 2008, 20–26. G. Horváth: *A környezetjog és az agrárjog közeledése, találkozása és metszete a magyar jogrendszerben*. *Állam- és Jogtudomány* 2007/2, 333–355; Szilágyi: *Az agrárjog dogmatikájának új alapjai – útban a természeti erőforrások joga felé?* *Jogtudományi Közlöny*, 2007/3, 112–121. Zs. Horváth: *Fenntartható termelés, fenntartható fogyasztás az Európai Unió környezeti politikájában*. In: Bobvos (ed.): *Reformator iuris cooperandi*. Szeged, Pólay Elemér Alapítvány, 2009, pp. 247–251.

<sup>23</sup> GD 314/2005

principles publicity, providing and receiving information prevail. The public's participation and opinion-sharing possibility is provided by local publication or – in certain cases – the institution of a public hearing. The user of the environment – in order to prevent or eventually decrease the impact on the environment –, applying the best available technique, shall a) decrease the use of materials causing environmental loading, but necessary for the activity; b) use effectively the material and energy necessary for the activity; c) prevent or decrease the emission to the lowest level possible; d) prevent or decrease the waste formation to the lowest level possible – both in volume and gravity –, utilize and dispose the waste; e) prevent accidents with environmental impact, or, in case of their occurrence, decrease the environmental consequences; f) when quitting the activity, prevent the pollution and damage to the environment, and restore the eventually damaged environment.

The environmental authority rules in the single environmental permit – in order to achieve the requirements within – on the best available technique. In order to determine the best available technique, the environmental authority pursues consultations with the polluter of the environment, and employs an expert if necessary.

#### Part 4. Mechanisms of environmental law

11. Please describe briefly existing measures for

- The national transposition of the Nitrates Directive 91/676/EEC
- The regulation of water and soil based nutrients
- The treatment and disposal of farm-based sludge

Mechanisms of environmental law may be aggrouped in different ways. According to the state influence, they may be administrative (e.g. permit), economic (e.g. taxes, contributions for the use of the environment, subventions), self-regulating measures (e.g. authority agreement, eco-label, audit systems), measure and standard provisions, technical provisions, which are basically determined on the basis of technical and natural scientific parameters, according to the desired level of protection.<sup>24</sup>

The Hungarian Act on environmental protection contains the basic rules of environmental protection, but separate acts rule e.g. on forests, arable land, fishery, wildlife management, water management, waste, nature and landscape observation, animal protection, furthermore, on animal health, pesticides and plant health.

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<sup>24</sup> Csák: *Környezetjog. Előadásvázlatok a környezetjogi gondolkodás köréből*. Novotni, Miskolc, 2008.

Water – both surface and subsurface water – as an environmental element has particular significance for Hungary, with special regard to its transboundary feature. Therefore, water protection, the quantity and quality protection of waters in our country is of special importance. Agricultural activity has both direct and indirect impact on water management. Water, on the one hand, is a necessary requirement for agricultural production, on the other hand, suffers the consequences of agricultural activity.

With regard to the norms of the European Union, we have to mention that these essentially rule on the quality requirements of water protection. Therefore, Member States have a larger freedom in regulating the quantity than the quality aspects of water protection.<sup>25</sup>

Numerous norms concern the implementation of the European directives or the Hungarian acts. For example, Governmental Decree 220/2004 (VII. 21.) on the rules of quality protection of surface waters, the bases of which are the act on environmental protection and the water management act, is a significant norm for the implementation of the objectives contained in the Water Framework Directive. The legal regulation includes the measures aiming at the a) amelioration of water quality, b) prevention of further impairment of the state of environment (e.g. the licensing system based on standards valid both for waters and emission), and c) rehabilitation, setting aside the already occurred negative effects.

Governmental Decree 219/2004 (VII. 21.) on the protection of groundwater belongs equally to this category, determining the requirements for a good quantity and quality state of subsurface waters, as follows: (a) prohibition of direct introduction of polluting materials in groundwater, (b) prohibition of indirect introduction, i.e. the base of the sludge bin shall be appropriate and leak-proof, (c) prohibition of direct introduction to artificial lakes. In order to protect subsurface waters, legal regulation focuses on the damage of polluting materials in our country, and polluting materials are divided into two lists based on their decay and toxicity. (Typical mistakes are for instance over-fertilization, inappropriate storage of sludge, or improper registries.)

Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources has practically been implemented into the Hungarian legal order in 2001 when introducing an EU-conform regulation. Officially, implementation took place with Governmental

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<sup>25</sup> Szilágyi: *Vízjog, Aktuális kihívások a vizek jogi szabályozásában*. Miskolci Egyetem, Miskolc, 2013, p. 262. See Raisz: A környezetvédelem helye a nemzetközi jog rendszerében – avagy a nemzetközi környezetjog bírói szemmel. *Miskolci Jogi Szemle*, Vol. VI, 2011/1, pp. 90-108. Raisz: Nemzetközi környezetvédelmi kérdések a Nemzetközi Bíróság előtt napjainkban. In: *Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica*, 2011/29 (1) pp. 273-289. Raisz: A felszín alatti vizek határon átnyúló szennyezésére vonatkozó nemzetközi szabályozás. In: *Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica*, Tomus XXX/2. 2012, pp. 371-382.

Decree 27/2006 (II. 7.) on the protection of waters against pollution caused by nitrates from agricultural sources (so-called nitrate decree). The decree determines the notion of an area susceptible to nitrate, the general rules of water protection, as well as the rules on data provision. As all Member States, also Hungary has to report on the implementation of the directive to the EU Commission.

In agricultural areas, activities affecting water and nutritive management – as e.g. irrigation, land reclamation, use of sludge, sewage-water, or non-hazardous waste on agricultural land – may be permitted on the basis of a soil protection plan, made by an expert. The permit may be given by the soil protection authority, depending on the position of the green authority. The producers shall regularly examine the affected environmental elements (soil, groundwater), in order to control the activities permitted on the basis of the soil protection plan. Scope and frequency of these examinations depend on the materials, certain attributes of the given area and the level of groundwater.

One part of the norms created in order to decrease or prevent water pollution caused by nitrate combinations originating in agricultural activity concerns animal husbandry, the other part concerns plant-growing.

The Council's Nitrate Directive determines those environmental provisions which the Member States have to introduce to the rules of "proper production practice".<sup>26</sup>

Member States had to appoint areas susceptible of nitrate, and create action programs. These programs had to determine the capacity of the sludge tanks, and the burdens on the utilization of fertilizer had to be set, according to the particularities of the given territory. In Hungary, the national legal act implementing the directive is Agricultural and Rural Development Ministry decree (hereinafter: FVM decree) No. 59/2008 (IV. 29.). A given agricultural territory may not receive more than 170 kilograms of nitrogen agent per hectare per year with organic fertilizers. The sludge tank's capacity has to be enough for six months. When spreading sludge, a certain clearance zone has to be maintained from the shoreline of surface waters. In the case of artificial fertilizers, this zone is 2 ms wide, while in the case of organic fertilizers, 20 ms, and 25 ms from springs and wells. The use of liquid fertilizers preresquires the permission of the soil protection authority, as well as the consolidated environmental use permit issued by the environmental protection authority. On slopes, the incline has to be taken into account as well. In many cases, the amount of nitrogen is not calculated accurately, and the fertilizing prohibition time frame is not respected either.

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<sup>26</sup> See Csák: CROSS COMPLIANCE, avagy környezetvédelem a támogatás feltételeként, *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, Tomus XXX/2. (2012), pp. 423–433.

The Union's so-called framework directives (e.g. Water Framework Directive, Waste Framework Directive, etc.) contain flexible phrasing (see e.g. the notions 'best available technique' or 'reaching a good status'). Implementation leaves a wide margin of appreciation for the Member States. Nevertheless, the procedure of implementation – i.e. the transfer of directives into national law – is not always flawless, originating many times in the specific features of environmental law (multisectoral approach, number of authorities, shared responsibility, etc.). In some cases, the environmental directives of the EU are so detailed that they leave a small margin of appreciation to the Member States during the implementation. Only a stricter regulation may be introduced (e.g. in the field of water protection, when determining the maximum concentrate as to polluting material emission).<sup>27</sup>

## 12. Supervision system of nuisances to neighbourhood (smell, noise, pesticides, insects)

The regulation on neighbours' servitude belongs to the classical fields of civil law. Therefore, the present question needs to be addressed from a civil law aspect, raising basic questions both on legal dogmatics and legal practice.

The examination of nuisances as to agricultural production and its use of environment concerns mainly technical descriptions, determination of standards and burdens. The breach of these provisions brings basically public law sanctions along (e.g. withdrawal of support, fine).

Coming back to the civil law approach: neighbourhood rights<sup>28</sup> or protection of possession?<sup>29</sup> A basic and objective requirement in case of both legal institutions is the examination of the nuisance itself, which – depending on the character of the nuisance – may not be confined in a geographical sense. Nevertheless, in case of a neighbours' servitude, the owner (user) shall refrain

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<sup>27</sup> See furthermore Szilágyi: A vizek védelmének jogi alapjai az EU vízvédelmi jogában. In: *Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica*, Tomus XXX/2. 2012. pp. 477-600, Szilágyi: Vizeink védelme a kétoldalú nemzetközi megállapodások tükrében, In: Raisz (ed.): *A nemzetközi környezetjog aktuális kihívásai*. Miskolci Egyetem, Miskolc, 2012, pp. 185-195.

<sup>28</sup> According to Section 100 of the Civil Code, “*An owner is obliged, while using a thing, to refrain from any conduct that would needlessly disturb others, especially his neighbors, or that would jeopardize the exercise of their rights*”. The general clause of Section 100 is completed with further provisions, the realization of which presupposes the taking into consideration of administrative, environmental protection rules.

<sup>29</sup> According to Section 188 paragraphs 1 and 2, Civil Code: “(1) *If a possessor is deprived of his possession without legal grounds or is restrained in maintaining such possession (illicit power), he shall be entitled to protection of his possession.*  
(2) *A possessor is entitled to protection of possession against anybody, with the exception of the person from whom he has acquired the possession by illicit power.*”

from disturbing the others, while in the case of protection of possession, the possessor is entitled to protection against everybody.<sup>30</sup>

From an environmental legal aspect, nuisance generally occurs in the form of noise, smell, parasites, smell, light pollution or air pollution. Activities connected to husbandry, plant-growing or construction may all be judged using the rules on neighbours' servitude. The settled case-law unequivocally qualifies behaviours that bring along noise, smoke or other environmental pollution as activities violating possession.<sup>31</sup> Typical forms of nuisance change with the time, and social relations and technical development bring new types of nuisances as well.<sup>32</sup>

According to settled case-law, judges consequently seek compromises between those causing and suffering from the pollution. In general, factories and other polluters of the environment are usually obliged to decrease their polluting activity, to install protecting and filtering apparatus, or – less frequently – judges order to forbid or restrain the activity, or to pay compensation.

Environmental responsibility is a differentiated responsibility. For behaviour loading the environment but staying under the standards set by the authority, not administrative liability may be established, but a civil law liability sustains. An administrative permit, an administratively legal activity cannot exclude the civil law sanctioning of the disturbance.<sup>33</sup>

Case-law only requires restraining from an unnecessary disturbing activity endangering the practice of the rights of others. Coexistence – and so social coexistence – necessarily means certain disturbing factors and behaviours, which have to be counted with under normal circumstances. It is in many cases no easy task to determine the limit, the margin of tolerance, as it is based on the circumstances and particularities of the individual case.

Legal consequences of property possession (neighbours' right) are *in integrum restitutio* or the cessation of the nuisance, as well as the determination of who bears the benefits, damages and costs. These possibilities may also be used in case of possessory and petitory procedures.

The legal institution outgrew its classical frames. 'According to this legal relation, nowadays the protection of possession does not expressly protect the

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<sup>30</sup> Gy. Bándi: *Környezetjog*, Szent István Társulat Az Apostoli Szentszék Könyvkiadója, Budapest 2011, p. 363.

<sup>31</sup> Court Review (hereinafter: BH) 1992. 100., BH 2002. 179., BH 2002. 357.

<sup>32</sup> Pécsi Ítéltábla (High Court of Pécs), case Pf.III.20.303/2007/6.

<sup>33</sup> The High Court of Győr in case Pf.I.20.090/2006/35 determined that – according to the case-law – the circumstance that the investment met the requirements of the construction permit, does not acquit of compensating the caused damage. The High Court of Szeged in case Gf.III.30.212/2007/6 determined that the rules of neighbours' servitude may be violated even having a construction permit in force, therefore examined whether the road construction unnecessarily disturbs/disturbed the possession of the claimant.

undisturbed practice of power on the object, but protects the environment of the possessor, ensuring those circumstances, among those the possessor possesses an object.<sup>34</sup> The relation of the possessor with the object is pushed into the background, and the elimination of damaging environmental effects becomes the primary aspect.

### 13. Zones of protection

- Coastal and waterfront protection
- GMO-free areas; others?
- How is participation organized in those situations?

Hungary disposes of an EU-conform regulation on the zones of protection. This regulation was created on the one hand (a) based on the transposition of EU norms and on local particularities, on the other hand (b) there are Hungarian provisions including exceptionally strict disallowances as to agricultural activity and the use of the environment.

Concerning the first category (a), there are also norms in Hungary for instance in the field of biodiversity on the maintenance of genetic bases and the biological bases of plant-growing. In case of producing agrestial and horticultural plant species' seeds – under certain circumstances –, closed (production) areas may be appointed applying clearance zones in one or more production cycles.<sup>35</sup>

The seed producers may enter into contract with the user of the arable land situated within the given clearance zone before the sowing's start on the way of land use and upon which requirements does the user of the arable land oblige themselves not to produce plant species endangering the seed production. The contract shall include the obligations as regards the production restriction as well as the way and scale of compensation. The Ministry decides on the permission of a closed zone. If there is a forbidden plant species within the closed area, the land user shall bear the costs of the destruction of those plants. If no such contract was concluded, the rules of the Civil Code apply for the compensation of the land user in case of production restriction or ban.

Concerning the second category (b), in Hungary, there is a moratorium forbidding the agrestial production of genetically modified industrial crops since 2006. Our country has started the battle against the production and trade of genetically modified potato "Amflora", a campaign to which several other European countries have adhered to.

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<sup>34</sup> KOMMENTÁR. *A Polgári Törvénykönyv magyarázata Vol. I.*, Complex, Budapest, 2007. p. 668.

<sup>35</sup> Act LII of 2003 on the state recognition of plant species as well as the production and trade of seeds, Article 18 paragraph (1)

In 2011, Hungary joined the Croatian initiative aiming at the creation of an Alps-Adria GMO-free zone, including GMO-free plant-growing, husbandry, food production and the conservation of biological diversity. At the same time when voting for this decision, the Parliament asked the municipalities to ban on their territories the use of genetically modified organisms in agriculture. The issue of the new Hungarian Fundamental Law and GMO has already been addressed in Part I.

#### 14. Available court procedures for solving agro-environmental issues

In case of (eventual) environmental damages caused by agricultural production, different judicial and administrative procedures may be pursued, depending on the character of the violation. With regard to the complex liability system of environmental law, administrative law, civil law and criminal law procedures may be launched. When the necessary requirements are fulfilled, the procedures may even be combined.<sup>36</sup>

A typical sanction in administrative procedures is a fine, for instance in case of emissions exceeding the limits. The administrative decision may be attacked in a judicial procedure before so-called administrative and labour courts, according to the special rules of procedure of administrative proceedings. The court proceeding focuses on the legality of the decision. When aiming at amending the decision, a complaint shall be filed before a civil court, and not the administrative and labour court, as in this case, the legal basis of the civil claim (i.e. the protection of possession) is examined.

In case of activities endangering or impairing the environment, (administrative or judicial) decisions may oblige the respondent to restrict, suspend or cease their disturbing activity. Such decisions may be adopted in both administrative procedures and civil court procedures.

Courts and authorities very rarely adopt forbidding decisions; therefore, the possibility of ceasing the polluting activity has practically disappeared in such cases. It results in no retentive effect vis-à-vis the polluter, leaves the pollution unpunished, and deprives the party who has suffered damage no remedy for future damages. Law has only reparative, but unfortunately no preventive effect here.

The settled case-law unequivocally qualifies behaviours that bring along noise, smoke or other environmental pollution as activities violating possession. It consistently seeks compromise between the damaging and the damaged person, and no judicial decision is known where the inhibition of an environment polluting industrial activity would have been adopted. Instead, factories and other polluters of the environment are usually obliged to decrease their polluting activity, to install protecting and filtering apparatus or to pay compensation. Case-law obliging factories to shut down is practically non-

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<sup>36</sup> Csák: *A környezetjogi felelősség magánjogi dogmatikája*, Miskolci Egyetem, Miskolc 2012.

existent. Especially in case of constant, continuing environment polluting behaviours would be a final and effective solution to cease the functioning, which may affect either certain parts of the factory or the whole company as well.

Financial compensation as a solution is only partly satisfying. The polluting behaviour usually sustains, the polluters themselves mostly feel unjustly punished, the damaged party is consoled with the money, but not content, either as the damage goes on or as the polluted environment cannot be restituted, eventually only by Mother Nature, in several decades.<sup>37</sup>

Nevertheless, concerning case-law consists almost exclusively of compensation cases, as it seems to be the ‘cheapest’ solution. On the one hand, the amount of financial compensation is always smaller than the price of a filtering apparatus or the cost of closing down, on the other hand, the broader contexts (e.g. economical) does not have to be taken into consideration. At the same time, the new dimension of environmental law presupposes the consideration of social interests.

Finally, as regards the complex liability system, we have to refer to the possibility of criminal proceedings. Since July 1, 2013, a new Criminal Code has entered into force, introducing – besides the crimes of damaging of environment, damaging of nature, violation of waste management order – further dispositions regarding environment and nature protection.

15-16. Producers’ liability for environmental damage (including liability for diffuse water pollution and eutrophication)

With regard to the complex liability system of environmental law, there exists liability according to administrative law, civil law and criminal law. Administrative sanctions are used when an administrative decision or provision has been violated.

Our act on environmental protection<sup>38</sup> and our Civil Code determines the basic liability rules of punitive damages. During the use of environment, damages caused to others follow the objective liability model. Therefore, the aggrieved person is only to prove the damage and the causality between the damage and the damaging behaviour. As to the jurisprudence on the liability for punitive damages, several difficulties arise, regarding e.g. the determination of the causality in the case of continuing pollution, or the cessation of the damaging person.

In environmental protection, the individualization of the liability causes problems in many cases, therefore – also as to the enforcement of the liability –

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<sup>37</sup> B. Lenkovics: *A polgári jog lehetőségei a környezetvédelemben*, <http://www.kvvm.hu/szakmai/karmentes/egyeb/kjogalk/02.htm> source (25/01/2012)

<sup>38</sup> Act LIII of 1995 on the general rules of environmental protection

the collective approach has become prevailing. Environmental damaged often accrue from the – individually irrelevant – polluting behaviour of several emitters, or from the years-long cumulation. In such cases, the – universal – condemnation of the damaging individual(s)' first burden is already to 'find' the damaging person.

Our Act on environmental protection introduced special universality rules.

Introducing universality<sup>39</sup> has been motivated by the fastest possible reparation of the aggrieved, so clearly aims at balancing the position of the aggrieved.

The case-law consistently uses universal liability in the case of damaging activities on immovables as to owners and users. According to the case-law, it seems that the legal interpretation of the courts is univocal and definite.

### Summary

Due to its historical endowment, agriculture plays an important role in the economic and social life of Hungary. It reflects in the constitutional system as well, especially in the new constitution, the Fundamental Law, that has entered into force on January 1, 2012. It touches directly upon the issue of agriculture in the National Avowal, in Article XX promoting a GMO-free agriculture, as well as in Article P declaring arable land to be part of the nation's common heritage which shall therefore be protected, sustained and preserved by the State and every person.

Furthermore, Hungary's new Fundamental Law belongs to those not too numerous constitutions that dedicate various provisions to the countless aspects of sustainability. Besides the goal-setting National Avowal, Article P states that "*[a]ll 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.*" International environmental law appears in Article Q when proclaiming that "*[i]n order to [...] achieve the sustainable development of humanity, Hungary shall strive for cooperation with every nation and country of the world.*" The GMO-prohibiting Article XX is followed by Article XXI stating that "*(1) Hungary shall recognise and enforce the right of every person to a healthy environment. (2) A person who causes any damage to the environment shall be obliged to restore it or to bear all costs of restoration as*

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<sup>39</sup> The acts of several respondents have contributed to the damage, therefore, a universal condemnation is not illegal. BH.1995.21.

*defined by law. (3) No pollutant waste shall be brought into Hungary for the purpose of dumping.”*

In Hungary, there is no generally prescribed form to pursue agricultural activity, i.e. all entrepreneurial forms are accepted. Nevertheless, integrating organizations need to fulfil certain formal requirements in order to gain the recognition of the state. It is important to mention that our land law is currently under reform, and so are many other related areas.

In practice, traditional agricultural production has changed: it has widened, deepened and been re-established. Nowadays, agriculture pursues numerous additional tasks besides its basic activity which serve the interest of the whole population. The outputs of these activities include social, environmental and nature protection services.

It is the Act on environmental protection that contains the basic rules of environmental protection, but separate acts rule e.g. on forests, arable land, fishery, wildlife management, water management, waste, nature and landscape observation, animal protection, furthermore, on animal health, pesticides and plant health.

During the licensing procedures of agricultural activities, a proper level of protection shall be provided. In general, the enforcement of environmental protection aspects is provided by Governmental decree 314/2005 on the environmental impact assessment and the standard environment use license procedure. As to the environmental liability, agricultural producers are controlled in the frame of the cross compliance, i.e. the norms on agricultural activity and production, a complex audit and sanction system.

From an environmental legal aspect, nuisance generally occurs in the form of noise, smell, parasites, smell, light pollution or air pollution. Activities connected to husbandry, plant-growing or construction may all be judged using the rules on neighbours' servitude. The settled case-law unequivocally qualifies behaviours that bring along noise, smoke or other environmental pollution as activities violating possession. Typical forms of nuisance change with the time, and social relations and technical development bring new types of nuisances as well. According to settled case-law, judges consequently seek compromises between those causing and suffering from the pollution. In general, factories and other polluters of the environment are usually obliged to decrease their polluting activity, to install protecting and filtering apparatus, or judges order to forbid or restrain the activity, or to pay compensation. Unfortunately, courts and authorities very rarely adopt forbidding decisions, therefore, law has only reparative, but no preventive effect.