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**DÉVELOPPEMENT SCIENTIFIQUE ET PRATIQUE DU DROIT
RURAL DANS L'UE, DANS LES ÉTATS ET LES RÉGIONS ET
DANS L'OMC – SCIENTIFIC AND PRACTICAL DEVELOPMENT
OF RURAL LAW IN THE EU, IN STATES AND REGIONS AND IN
THE WTO – WISSENSCHAFTLICHE UND PRAKTISCHE
ENTWICKLUNG DES RECHTS DES LÄNDLICHEN RAUMS IN
DER EU, IN DEN STAATEN UND REGIONEN SOWIE IN DER
WTO**

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Summary

The changes in agricultural policy as well as in agricultural law having occurred in Hungary cannot be understood without factors (reasons) beyond agricultural policy. The most important reason beyond agricultural policy having caused serious changes in agricultural law is that Hungary has not managed to take advantage of its accession to the EU. On the contrary, the disadvantages of the EU accession (2004) conjoined with problems that Hungary was incapable of solving since the political-economical change of systems in 1989-1990.¹ In 2010, the majority of the country's voters understood that the main reason for our resultlessness lays in ourselves and understood that it is us Hungarians who have to set things right about our own country, including its agriculture. For this purpose, in 2010 the coalition governing for the past eight years was replaced by the party alliance who gained in the democratic elections (!) a two-thirds parliamentary majority.

The greatest change was that the new Hungarian Parliament adopted a *new Constitution* entering into force on January 1, 2012. In the new Constitution of Hungary there are several dispositions dealing with agriculture. The most significant provisions are the following:

Article XX of the new Constitution guarantees the right to physical and psychic health. According to further provisions contained in Article XX, Hungary helps to give effect to this right among others through GMO-free agriculture, guaranteeing the access to healthy food and drinking water, as well as the protection of the environment. This provision of the Constitution closes a long debate in Hungary. That is, whether GMOs are harmful to the environment and human health. Although the Constitution does not come to a decision, defines the country basically as a GMO-free area. In the background of this provision may be the recognition that as a significant part of the European consumers opposes the GMO products, Hungary may profit economically from producing provably GMO-free agricultural products.

¹ This research was carried out as part of the TAMOP-4.2.1.B-10/2/KONV-2010-0001 project with support by the European Union, co-financed by the European Social Fund.

Another important provision (*Article P*) of the new Constitution says that 'Protection and preservation for future generations of natural resources, especially arable land, forests and drinking water supplies, biological diversity, including the native flora and fauna as well as cultural values which all form part of the common national heritage is an obligation of the state and all others.' Interesting is that this provision provides a distinguished protection to natural resources and biological diversity.

Unfortunately, the past twenty years' agricultural and rural development policy lacked a comprehensive concept when trying to deal with agricultural and rural issues. Therefore, beside the new Constitution, the Hungarian government began to work out a National Rural Development Strategy. Expectedly, this will be adopted by the Parliament in autumn 2011. According to the authors of the strategy, the case of rural areas needs a comprehensive approach. Therefore, the National Rural Development Strategy provides – instead of a differentiated, sometimes even conflicting sectorial approach – a common strategic frame based on the relationship between the specialities for (a) rural development, (b) natural and environmental protection, water issues, (c) agricultural economy, as well as (d) food chain and food processing.

One of the events having the most far-reaching consequences of the examined period was when the EU Commission agreed that Hungary could maintain until 2014 the provisional regulation restricting for foreigners the purchase of agricultural lands. Besides this, the Hungarian regulation on agricultural lands stands before a major change. Presumably the regulation that until now concentrated on agricultural lands has to focus in the future on agricultural holdings. Hopefully this regulation is going to be eligible to reach the objectives declared in the National Rural Development Strategy.

Introduction

I. Explanatory note to the study.² With regard to the fact that in the different legal systems the legal material subject to examination has several names (*Agrarrecht, rural law, agricultural law, droit agraire, droit rural*), the authors of the present study deem it important to determine what this field – in the following referred to as 'agricultural law' – means in the Hungarian law.³

The Hungarian agricultural lawyers understand basically three – interrelated – phenomena under agricultural law ('agrárjog'). First, agricultural legal norms, second, agricultural jurisprudence as a branch of social sciences, and third, agricultural law as a discipline during university studies. In Hungary, the third approach raises the least debates.

In 2005, at the National Conference of Agricultural Lawyers, the discipline of agricultural law and the fields of agricultural law have been determined (five out of the six then existing departments teaching agricultural law signed the resolution).⁴ According to the concept in force until today, the followings may be determined:

1/ The participants of the Conference defined agricultural law as a mixed legal field that includes in a specific way the institutions of both private and public law, and that is also particular and original in its subject.

2/ It is beyond doubt that the discipline of agricultural law is significant in the undergraduate legal education, especially as to the European Union membership of the Republic of Hungary, as in the law of the European Union the agricultural legal institutions are of outstanding importance. These institutions differ namely to such an extent from other fields of the European Union's public law that the undergraduate law students may only learn it in the frame of a special discipline. Agricultural law contains furthermore important institutions complementing civil law, administrative law, financial law, European law and environmental law.

3/ Within agricultural law, we deem the following legal institutions to be especially important:

² This research was carried out as part of the TAMOP-4.2.1.B-10/2/KONV-2010-0001 project with support by the European Union, co-financed by the European Social Fund.

³ For a further analysis of the present problem in English see the following article: SZILÁGYI János Ede: The dogmatics of agricultural law in Hungary from an aspect of EC law. *European Integration Studies*, 2009/1, pp 41-55. Source (1.6.2011): http://www.matarka.hu/koz/ISSN_1588-6735/GTK_vol_7_no_1_2009_eng/ISSN_1588-6735_vol_7_no_1_2009_eng_041-055.pdf

⁴ See the *Resolution of the National Conference of Agricultural Lawyers on the Standard Conception concerning Agricultural Law as a Discipline of Legal Education* (Miskolc, 14.1.2005).

- the common agricultural and rural development law of the EU;
- ownership, use, succession and trade of agricultural lands;
- agricultural landregisters;
- agricultural contracts;
- definition and types of agricultural holdings;
- definition and production of agricultural products
- provisions of agricultural administrations;
- system of agricultural administration;
- agricultural financial system;
- food law.’

It is important to mention that the notions ‘agricultural law’ or ‘agricultural policy’ in the frame of the Hungarian regulation basically include forestry as well as fisheries. According to our experience, these often differentiate namely from other fields of agriculture.

Scholars have nevertheless developed differing concepts on the two other approaches (i.e. agricultural legal norms and agricultural jurisprudence).⁵ To go into the details in this regard is not possible within the frame of this study. We may establish though altogether that the most wide-spread method among Hungarian scholars for determining agricultural law is through determining its regulated objects.

The objects are typically the following: agricultural holding, agricultural producer, agricultural activity, agricultural product, foodstuff, rural area.⁶

II. Reorganisation of the Hungarian agricultural law (since 2010): In order to be able to understand the changes having occurred in recent years and expected to happen in the upcoming ones in Hungary, we deem it necessary to present the following explanations.

II.1. The changes in agricultural policy as well as in agricultural law having occurred in Hungary cannot be understood without factors (reasons) beyond

⁵ KURUCZ Mihály: Agricultural law’s subject, concept, axioms and system. *Journal of Agricultural and Environmental Law*, 2007/2, pp 41-84; TANKA Endre: Transformation of Hungarian Agricultural Law (1985/1990-2005). In: JAKAB András – TAKÁCS Péter – TATHAM, Allan F. (edit.): *The Transformation of the Hungarian Legal Order 1985-2005*. The Netherlands, 2007, Kluwer Law International, pp 391-394; CSÁK Csilla: Az agrárjog rendszerbeli sajátosságai és fejlődési tendenciái. In: MISKOLCZI BODNÁR Péter (edit.): *A Civilisztika fejlődéstörténete*. Miskolc, 2006, Bibor Publisher, pp 75-91; FODOR László: *Agrárjog*. Debrecen, 2005, Kossuth University Publisher, pp 9-54; HORVÁTH Gergely: A környezetjog és az agrárjog közeledése, találkozása és metszete a magyar jogrendszerben. *Állam- és Jogtudomány*, 2007/2, pp 333-355.

⁶ On the definition of the subjects of agricultural legislation, see SZILÁGYI: The dogmatics of agricultural law in Hungary from an aspect of EC law. *Op. cit.* pp 48-55.

agricultural policy.⁷ The *most important reason beyond agricultural policy* having caused serious changes in agricultural law is that Hungary has not managed to take advantage of its accession to the EU. On the contrary, the disadvantages of the EU accession conjoined with problems that Hungary was incapable of solving since the political-economical change of systems in 1989-1990.

In 2010, the majority of the country's voters understood that the main reason for our resultlessness lays in ourselves and understood that it is us Hungarians who have to set things right about our own country, including its agriculture.

After all that, it is worth examining the *factors inside agricultural policy*, and pose a question. Why can the Hungarian agriculture be regarded as unsuccessful? Beforehand we have to mention that there have been and there are agricultural enterprises that have overcome the obstacles of the EU accession with success. Nevertheless, in general the country's agriculture has performed deep under its facility. A country having less than 10 million inhabitants and at the same time – according to calculations – a producing capacity that could feed 17 million people (a) fell back on the import of numerous – beforehand locally produced – products (e.g. sugar) after the accession to the Union. (b) The country's processing industry has largely diminished; the production of primary products is dominant. (c) In important subsectors the livestock has significantly decreased. (d) The amount of lands used for agricultural purposes has also decreased. (e) Both agriculture and rural areas have been able to employ less and less people.⁸

The changes having occurred and occurring in Hungary in the given period (i.e. between 2009 and 2011) are therefore not reacting on external influence, but on internal challenges. This of course does not mean that the country's legislation would have ignored international and European tendencies.

⁷ Numerous points of the present study's conclusion are based on the following papers: OLAJOS István – RAISZ Anikó: The Hungarian National Report on Scientific and Practical Development of Rural Law in the EU, in States and Regions and in the WTO. *Journal of Agricultural and Environmental Law*, 2010/8, pp 39-56; CSÁK Csilla: The Hungarian National Report on the legal forms of agricultural undertakings, with attention to traditional and industrial cultivation. *Journal of Agricultural and Environmental Law*, 2010/8, pp 21-38; SZILÁGYI János Ede: The Hungarian National Report on Legal Incentives and Legal Obstacles to Diversification for Farmers. *Journal of Agricultural and Environmental Law*, 2010/8, pp 3-20.

⁸ In connection with this assessment, see CSÁKI Csaba (edit.): *Élelmézbiztonság*. Budapest, 2010, Hungarian Academy of Sciences, pp 35-59.

The hoped changes began in April 2010. It was namely then when the coalition governing for the past eight years⁹ (Hungarian Socialist Party – Alliance of the Free Democrats) was replaced by the party alliance (Alliance of the Young Democrats – Christian Democrat People’s Party) who gained in the *democratic elections* (!) a *two-thirds parliamentary majority*. This two-third majority has therefore the widest mandate that can be given to a parliamentary majority under the Hungarian Constitution in force (Act XX of 1949); it may adopt even a new Constitution. The new Hungarian Parliament used this mandate and began to build up a new Hungary, including a new Hungarian agricultural policy and agricultural law...

II.2. In the new Constitution of Hungary entering into force on January 1, 2012, there are several dispositions dealing with agriculture. Article XX guarantees the right to physical and psychic health. According to further provisions contained in Article XX, Hungary helps to give effect to this right among others through GMO-free agriculture, guaranteeing the access to healthy food and drinking water, as well as the protection of the environment. This provision of the Constitution closes a long debate¹⁰ in Hungary.¹¹

That is, whether GMOs are harmful to the environment and human health. Although the Constitution does not come to a decision, defines the country basically as a GMO-free area. In the background of this provision may be the recognition that as a significant part of the European consumers opposes the GMO products, Hungary may profit economically from producing provably GMO-free agricultural products.

⁹ Officially, the Alliance of Free Democrats had only been part of the coalition until 2008, but supported the socialist government then in minority also afterwards with its parliamentary votes.

¹⁰ The debate took place in many forums and ways, the experts have recently published each a book comprising their arguments for and against GMOs. These books are the following; in favour: BALÁZS Ervin – DUDITS Dénes – SÁGI László (edit.): *Genetikailag módosított élőlények (GMO-k) a tények tükrében*. Szeged, 2011, Barabás Zoltán Biotechnology Association; against: DARVAS Béla – SZÉKÁCS András (szerk.): *Hungarian Background on Views of 1st Generation Genetically Modified Plants*. Budapest, 2011, Agricultural Committee of the Hungarian Parliament. Both the legal arguments and those concerning natural sciences have been analysed at high level by ZSIROS László: A mezőgazdasági géntechnológia jogi szabályozása a géntechnológia szemszögéből. In: DOBRÓKA Mihály – GYULAI Ákos – DABASI HALÁSZ Zsuzsanna (edit.): *Diáktudomány. A Miskolci Egyetem tudományos diákköri munkáiból*. Miskolc, 2010, Miskolc University Press, pp 162-167.

¹¹ In connection with the European background of the question, see SZILÁGYI János Ede: A géntechnológia jogi szabályozása. In: SZILÁGYI János Ede (edit.): *Környezetjog*. Volume II. Miskolc, 2010, Novotni Publisher, pp 109-110 and 114-128.

Another important provision (Article P) of the new Constitution says that 'Protection and preservation for future generations of natural resources, especially arable land, forests and drinking water supplies, biological diversity, including the native flora and fauna as well as cultural values which all form part of the common national heritage is an obligation of the state and all others.'

Interesting is that this provision provides a distinguished protection to natural resources and biological diversity. The concrete applicability of the present article is expected to be provided in new laws and other legal norms adopted in the future.

II.3. After the 2010 elections, a new governmental structure has been established in which a concentrated ministry, the *Ministry of Rural Development* (in the following: MRD) united two former ministries, the Ministry of Agriculture and Rural Development and the Ministry of Environment and Water. We consider the designation of the new ministry as somewhat inadequate, as many of its functions are not solely connected to rural areas. Nevertheless, the so far one-year work of the new government shows that agriculture and rural development prevail over environmental issues.

Parallel to the reorganisation of the ministries, the Hungarian government has concentrated the administration at county level (with a few exceptions) in so-called *county governmental offices*. The land registry office has become part of it, just like many other county agricultural offices with certain agricultural administration functions.

II.4. National rural development strategy. Unfortunately, the past twenty years' agricultural and rural development policy lacked a comprehensive concept when trying to deal with agricultural and rural issues. This lack of a comprehensive, purposeful and consistently executed strategy has also been a reason for the bad performance of the Hungarian agriculture and rural areas in the past twenty years.

The current government aims at changing this situation when planning a national rural development strategy, involving those affected. While writing the present lines, the strategy is in the phase of social dispute. The working paper's official title is '*Conception of National Rural Strategy – 2020. Theses of the strategies concerning agriculture, foodstuffs, environment and rural development*', but the government often calls it the 'constitution of the Hungarian rural areas'.

Orientating to the European Union's Europe 2020 Strategy and the period of the 2014-2020 EU programme financing phase, national programmes and measures of the National Rural Strategy aim at having a significant amelioration in the rural area's social and economical processes as well as in the quality of rural life that is perceivable for the locals by 2020. According to the authors of the strategy, the

case of rural areas needs a comprehensive approach. Therefore, the National Rural Strategy provides – instead of a differentiated, sometimes even conflicting sectorial approach – a common strategic frame based on the relationship between the specialities for (a) rural development, (b) natural and environmental protection, water issues, (c) agricultural economy, as well as (d) food chain and food processing. The integrating conception of the National Rural Strategy may be reinforced by the current set-up of the Ministry of Rural Development, the necessary organisational conditions may be provided by the uniform administration of the mentioned specialities.¹²

Consequently, the concept determines four fields in order to have a perceivable amelioration until 2020 in every aspect. The strategy afterwards determines aims and necessary programmes for agricultural economy, rural development, food economy and environmental protection.

The National Rural Strategy determines the following comprehensive aims:¹³

1. to maintain and increase rural employment;
2. to maintain the rural population and restore the demographic equilibrium;
3. to guarantee alimentative and food security, to abolish the bondage;
4. to augment the viability, to ameliorate the market position of our agricultural and food economy, to restore the balance between plant-growing and stock-farming;
5. the protection of aquifers, the maintenance of water supplies, soil as well as natural habitat and countryside, the augmentation of environmental security;
6. power-supply based on local resources and systems, energy security, reduction of bondage;
7. to ameliorate the quality of rural life, to reinforce rural economy through diversification;
8. to restore the close relationship between the town and its rural areas.

¹² *Conception of National Rural Strategy – 2020. Theses of the strategies concerning agriculture, foodstuffs, environment and rural development.* Volume II. Working paper. Budapest, 8.4.2011, p 3. The National Rural Strategy therefore builds on the cooperation of different policies and the responsible ministries. The Strategy is accordingly related to numerous existing or planned comprehensive (e.g. *New Széchenyi Plan, National Rural Development Concept, National Land Planning Plan, National Environmental Programme #3, Public Health Programme, National Climate Change Strategy*) and sectorial (e.g. *Energy Strategy, Hungarian Transport Policy*) national strategic aims. Hungary's energy strategy is also under elaboration. There is a very close link between rural strategy and energy strategy, especially in three fields: climate protection, energy efficiency, as well as the production of renewable energy. Source (10.6.2011): <http://www.kormany.hu/hu/videkfejlesztési-minisztérium/hirek/a-nemzeti-vidékstrategia-a-vidék-alkotmánya>

¹³ *Conception of National Rural Strategy – 2020. Theses of the strategies concerning agriculture, foodstuffs, environment and rural development.* Volume II. Working paper. Budapest, 8.4.2011, p 12.

We hope that the rural development strategy that is expected to come before the Parliament in autumn is going to be able to guarantee consequent decisions and measures also for the long term.

III. In Hungary, the adoption of a new Civil Code is in progress, but with the new government coming to power, the case of the new Civil Code is dragging, and for now the end of the process is not visible.

IV. Finally, while examining the given questions, we often refer to the online journal of the C.E.D.R.'s *Hungarian Association of Agricultural Law*, the *Journal of Agricultural and Environmental Law*, where the cited materials may be read besides in Hungarian in English (and sometimes in German) language as well. The journal's archive is accessible via the following homepage: <http://epa.oszk.hu/html/vgi/kardexlap.phtml?id=1040>.

A. Legal developments since the last congress (September 2009)

1. What are the main legal developments (legislation and jurisprudence), including the WTO, EU and national law in the following areas, seen from your national view:

1.1. Rural economic law and rural structure law

We deem important to mention the followings with regard to rural economic law and rural structure law.¹⁴

I. Three main groups of agricultural and rural development subsidies are financed from Hungary's 2011 budget:¹⁵ (a) Subsidies financed directly by the EU added up to 323 billion HUF. (b) Subsidies co-financed by the European Union or having compensational support (e.g. school fruit) added up to 205 billion HUF (compared to 134 billion HUF last year). (c) The amount of national subsidies (including the top-up subsidies to the SAPS subsidies) is 64 billion HUF (compared to 52 billion HUF last year). For orientation: June 10, 2011 1 € was 264 HUF.

II.1. Hungary after the 2004 accession to the European Union – just like other newly acceded countries – introduced not the SPS (*Single Payment Scheme*), but the SAPS (*Single Area Payment Scheme*) support scheme. In addition, they received from the EU a lot less money compared to the old member states; it was

¹⁴ This part of the present article is based on the following papers: OLAJOS István: The provisions of the Rural Development in connection with the agriculture in Hungary. *Journal of Agricultural and Environmental Law*, 2006/1, pp 3-22; SZILÁGYI János Ede: Common Agricultural Policy, new rules of WTO and regional equilibrium. *Journal of Agricultural and Environmental Law*, 2008/5, pp 3-18; WOPERA Zsuzsa: Certain Procedural Questions of Remedy Against Agricultural Supports Decisions. *Journal of Agricultural and Environmental Law*, 2008/6, pp 90-97; OLAJOS István: *A vidékfejlesztési jog kialakulása és története*. Miskolc, 2008, Novotni Publisher, pp 78-92; OLAJOS István: A KAP második pillére: a vidékfejlesztés. In: CSÁK Csilla (edit.): *Agrárjog*. Miskolc, 2010, Novotni Publisher, pp 423-440; OLAJOS István: A támogatási eljárás. CSÁK Csilla (edit.): *Agrárjog*. Miskolc, 2010, Novotni Publisher, pp 371-384; OLAJOS István: A rendszerváltás és az agrártámogatások kapcsolata. CSÁK Csilla (edit.): *Ünnepi tanulmányok Prugberger Tamás professzor 70. születésnapjára*. Miskolc, 2007, Novotni Publisher, pp 279-289.

¹⁵ See Act CLXIX of 2010 on the national budget of Hungary; see furthermore (10.6.2011):

[http://www.vm.gov.hu/main.php?folderID=2290&articleID=16973&ctag=articlelist&iid=](http://www.vm.gov.hu/main.php?folderID=2290&articleID=16973&ctag=articlelist&iid=1)

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for this that the new member states received the possibility to complete the SPS supports with a certain amount of national subsidies (that is the so-called *top-up* subsidy). In 2008, the Hungarian Parliament adopted the act introducing the SPS. The law was nevertheless not promulgated by the President of the Republic, who sent it to the Hungarian Constitutional Court for a so-called constitutional norm review. The Constitutional Court declared (for formal reasons) a certain part of the legal act in 2010 to be contrary to the Constitution.¹⁶ In the meanwhile, a new government came to power, and abandoned the plan to introduce the SPS for the time being.

II.2. The new government modified the Law on Hungarian agricultural market organisations (Law XVI of 2013).

'Null is such a conventional provision according to that if the producer is in whole or in part not capable of delivering the agricultural products produced by himself because of a *vis maior*, he is obliged to purchase the missing agricultural products in order to deliver it, or is obliged to deliver another service instead.' (Art. 8/A) The provision is explained by the circumstance that in 2010 the Hungarian agriculture was hit by an extraordinary number of natural disasters (floods, drainage, hail, wind-storm). According to the information of the MRD, certain enterprises dealing with crop purchase nevertheless did not accept the *vis maior* certificates, and claimed the payment of penalty, or delivering products from the producers being in contract with them. The producers came close to insolvency, as the majority or even the whole of their products was perished. The MRD has therefore – seeing the resultlessness of several former measures – decided to modify the rules on agricultural market organisations.

II.3. The Hungarian Government started to prepare the modification of the mentioned Law XVI of 2003 on agricultural market organisation in order to introduce the rules of *sectoral organisations*. The Hungarian Government realized namely the opportunity laying in sectoral organisations regulated in Council Regulation 1234/2007/EC, and in order to utilize these advantages, it started to elaborate the rules for the new legal institution.

III.1. In the field of rural development, the above mentioned National Rural Strategy for the period until 2020 is under construction. As in the European Union the current budget period is for 2007-2013, the Hungarian state – the former government – has already created the New Hungary Rural Development Programme for this period, therefore the new government of 2010 had little to say in determining the distribution of the Union's supports for rural development.

¹⁶ See Decision 142/2010. (VII.14.) AB of the Constitutional Court of the Republic of Hungary on the introduction of the SPS.

III.2. Regarding the fact that the new government declared the functioning of the Hungarian National Rural Network, working during the former government as intransparent, they reorganised it.¹⁷

III.3. The new government, after the exposure of certain anomalies, also reregulated the LEADER Local Action Groups (LAG).¹⁸ According to the new regulation, the LAG may only work in the form of an association (in Hungary, in 2011, the majority of the LAGs fulfilled this requirement). The LAGs working previously only in form of economic companies had to be adapted. The government expects that due to this step, anybody may join the LAG without restriction, and so participate in planning and realizing the local developments. In Hungary, the LAGs have a major role in the third pillar of rural development (e.g. village renewal, conservation of rural heritage) and the execution of the LEADER programme.

1.2. Rural environmental law

I. As we have already noted, since 2010 the functions concerning environmental protection, agriculture and rural development are concentrated in one ministry; namely the *Ministry of Rural Development*.

II. In the new member states, the cross compliance requirements – the requirements for acquiring the different agricultural and rural development supports – are being introduced progressively. In Hungary, the provisions concerning 'good agricultural and environmental condition'¹⁹ and eight of the principles and regulations of the 'statutory management requirements' (SMR) have been introduced in 2009. From 2011 on, seven further SMR legal norms are going to be introduced. The remaining SMR rules are expected to be introduced from 2013 on.

III. In 2011, during the Hungarian EU presidency, the *new water strategy of the EU* – linked to the EU's water framework directive – has been established. We

¹⁷ See Decree 36/2010. (XI.30.) VM of the minister of rural development on the Hungarian National Rural Network. See (10.6.2011): <http://www.kormany.hu/hu/vidékfejlesztési-minisztérium/vidékfejlesztés-felelősség-ért-felelős-allamtitkárság/hirek/egyszerubb-hatekonyabb-lesz-a-magyar-nemzeti-vidéki-hálózat-működése>

¹⁸ See Decree 54/2011. (VI.10.) VM of the minister of rural development on the operation LEADER Local Action Group. See (21.6.2011): <http://www.kormany.hu/hu/vidékfejlesztési-minisztérium/vidékfejlesztés-felelősség-ért-felelős-allamtitkárság/hirek/tisztújítás-es-korlátozásmentes-tagfelvétel-az-újjaszerveződő-leader-helyi-akciócsoportoknál>

¹⁹ See Decree 50/2008. (IV.24.) FVM of the minister of agriculture and rural development on the system of a 'good agricultural and environmental condition'.

consider the EU strategy in progress to be important from Hungary's point of view, even so as in the second half of 2011, the Hungarian water strategy is expected to be born. Hungary disposes of an exceptional water asset, but has to deal with all the negative aspects, i.e. drainage, floods and drought. Sometimes we meet in one year, at the same place with all of them!²⁰ Therefore, the concentration of water management functions crumbled after the change of systems has started.

IV. In the field of environmental protection, the adoption of the *new waste management act* is in progress. The objective of the new law is to prevent the creation of waste, and to collect and use the created waste at the highest rate possible. The new waste management act is surely going to have a major effect on agriculture and rural development.

1.3. Rural nutrition law and rural food law

I. According to the opinion of the majority of Hungarian consumers,²¹ in Hungary there was a significant deterioration in the quality of food on the market since the accession to the European Union. Therefore, in 2010 the regulation on *secondary food control* came into force.²² The essence of the regulation is that afterwards products may not only be controlled on the place of production (primary food control), but also on the different stations of the merchants (warehouse, cold-store). The point is that the operators of the cold-stores and warehouses have an obligation to report to the controlling authorities high-risk foods (such as e.g. meat, fresh vegetables and fruits, milk, dairy products) 2 working days before arrival. This way, the authorities may follow and control, and if necessary, strictly punish in case of every wholesale food freight. The process – i.e. secondary food control – works in several European countries.²³

²⁰ On the challenges and regulation of waters see SZÚCS Péter – SALLAI Ferenc – JOLÁNKAI Géza – MADARÁSZ Tamás: Bevezetés. In: SZÚCS Péter – SALLAI Ferenc – ZÁKÁNYI Balázs – MADARÁSZ Tamás (ed.): *Vízkezelésvédelem. A vízminőség-védelem aktuális kérdései*. Miskolc, 2009, Bíbor Kiadó, pp 15-20; SZÚCS Péter – TAKÁCS János – VIRÁG Margit: A víz, mint környezeti elem. A vízháztartási egyenlet. In: SZÚCS – SALLAI – ZÁKÁNYI – MADARÁSZ (edit.): *Vízkezelésvédelem. Op. cit.* pp 21-36; CSÁK Csilla: *Előadásvázlatok az általános és különös részi környezetjogi gondolkodás köréből*. Miskolc, 2008, Novotni Publisher, pp 100-115.

²¹ See (10.6.2011):

<http://fvm.hu/main.php?folderID=2290&articleID=16194&ctag=articlelist&iid=1>.

²² See Resolution 3/2010. (VII.5.) VM of the minister of rural development on the traceability and information concerning food production a trade.

²³ See (10.6.2011):

<http://fvm.hu/main.php?folderID=2290&articleID=16194&ctag=articlelist&iid=1>.

II. In Hungary – following the Western European examples – the consumers purchase food more and more consciencely. Local products have become more valuable. Nevertheless, in order to give the consumers the faith in Hungarian products, it is necessary that products designated as *Hungarian products* are in reality products produced and not only packed in Hungary. It is for this that the draft decree of the MRD²⁴ has been made (it is not yet in force while we are writing these lines); this decree would distinguish between different types of Hungarian products (in a broader sense), among others according to the percentage of ingredients of the food in reality originating in Hungary.²⁵ The Hungarian draft decree currently underlies Union notification procedure.

III. A category closely related to the category of a Hungarian product, but at the same time going much further than agriculture and food law, is the *regulation on 'hungarikums'* expected to come before the Hungarian Parliament this year. The essence of the regulation is to register, maintain and with certain measures help to use the values connected to Hungary or the Hungarians. One antecedent of the Hungarian hungarikum regulation is the Union's *Euroterroirs* project, which is based on a French initiative. Developing this initiative, the draft on the regulation of hungarikums works with a broad circle of national values. Therefore, the circle of national values would include e.g. the teaching method of the famous Hungarian composer (*Kodály method*), the life-work of the famous Hungarian football-player (*Ferenc Puskás*), or even the wine present in the Hungarian national anthem (*Tokaji*). According to the draft regulation, local authorities would collect the national values on their territory. Among others, these territorial collections of values would form the national collection, from which the most valuable pieces may receive the title of a hungarikum. Hungarikums are going to be entitled to use an attestative mark.²⁶

1.4. Rural land law and rural land-use planning law

I. One of the events having the most far-reaching consequences of the examined period was when the EU Commission agreed that Hungary could maintain until

²⁴ See (10.6.2011):

http://www.kormany.hu/download/b/13/20000/magyar%20termek%20rendelet%202011_03_04.pdf#!DocumentBrowse

²⁵ The goal of the Hungarian ministry is to define categories of Hungarian/home products. The ministry set up three categories: 'Hungarian product' (from 95% inland raw material), 'home product' (from 70% inland raw material), 'product made in Hungary'. See *Conception of National Rural Strategy – 2020. Theses of the strategies concerning agriculture, foodstuffs, environment and rural development*. volume II. Working paper. Budapest, 8.4.2011, p 48.

²⁶ See version 4.4.2011 of the Bill on *hungarikums* and other Hungarian national values.

2014 the provisional regulation restricting for foreigners the purchase of agricultural lands.²⁷

“During the accession negotiations, candidate countries requested the possibility to maintain existing national provisions restricting the acquisition of agricultural land or forests by foreigners. They considered these derogations necessary in order to protect the socio-economic agricultural structure of the countries from shocks that might arise from the differences in land prices and income with the rest of the union, and to be able to pursue an effective agricultural policy. The derogations were also deemed necessary due to an unfinished process of privatisation and restitution of agricultural land to the farmers in some countries.”²⁸

“On the basis of the Act on Accession of 2003, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland and Slovakia (the seven new Member States, referred to hereafter as NMS7) were each granted a transitional period for maintaining existing legislation restricting the acquisition of agricultural land and forest, by derogation from the freedom of capital movements enshrined in Article 56 of the EC Treaty. By virtue of Article 24 of the Act, these transitional

²⁷ On the Hungarian transitional period in English, see SZILÁGYI János Ede: The Accession Treaties of the New Member States and the national legislations, particularly the Hungarian law, concerning the ownership of agricultural land. *Journal of Agricultural and Environmental Law*, 2010/9, pp 48-60; See furthermore CSÁK Csilla: The changes in the circumstances of arable land’s ownership and land tenure from the time of the democratic transformation to our days. *Journal of Agricultural and Environmental Law*, 2007/2, pp 3-18; CSÁK Csilla: Die ungarische Regulierung der Eigentums- und Nutzungsverhältnisse des Ackerbodens nach dem Beitritt zur Europäischen Union. *Journal of Agricultural and Environmental Law*, 2010/9, pp 20-31; KURUCZ Mihály: Critical analyses of arable land regulation in Hungary. *Journal of Agricultural and Environmental Law*, 2007/3, pp 17-47; TANKA Endre: Draft amendment of the Act LV of 1994 on Arable land by the proposal of the Ministry of Agriculture and Rural Development and the Ministry of Justice and Law Enforcement (no. 41123/4/2007). *Journal of Agricultural and Environmental Law*, 2007/4, pp 42-49; On the analysis of the current problems of the Hungarian and European land-legislation, see CSÁK Csilla (edit.): *Current challenges of the European legislation on agricultural land*. Miskolc, 2010, Novotni Publisher, pp 7-20 (*Andréka*), pp 21-36 (*Bezdán*), pp 37-50 (*Bobvos*), pp 51-68 (*Busse*), pp 69-80 (*Csák*), pp 81-90 (*Erdős*), pp 91-106 (*Farkas Csamangó*), pp 107-114 (*Farkané Molnár*), pp 115-130 (*Fodor*), pp 131-138 (*Hegyes*), pp 139-150 (*Hollo*), pp 151-176 (*Kurucz*), pp 177-186 (*Miklós*), pp 187-198 (*Nagy*), pp 199-210 (*Olajos*), pp 211-240 (*Prugberger*), pp 241-254 (*Raisz*), pp 255-262 (*Rennie*), pp 269-282 (*Szilágyi*), pp 283-303 (*Tanka*).

²⁸ SWINNEN, Johann F.M. – VRANKEN, Liesbet: *Review of the Transitional Restrictions Maintained by New Member States on the Acquisition of Agricultural Real Estate*. Final Report. Centre for European Policy Studies. p 9. Source (15 May 2010): http://ec.europa.eu/internal_market/capital/docs/study_en.pdf

measures are listed in Annexes V, VI, VIII, IX, X, XII, and XIV respectively. The chapters on the free movement of capital in those Annexes stipulate that a general review of these transitional measures shall be held in the third year following the date of accession.”²⁹ Later, in 2007, even Bulgaria and Romania were granted similar, but not the same, legal opportunity by virtue of the Annexes VI and VII of the Accession Treaty of 2005.

General nature of the restrictions of the NMS7:

“1. Even after accession to the European Union, foreigners can generally not purchase agricultural land for a transitional period in the NMS7.

2. The transitional period is seven years for the Czech Republic, Estonia, Hungary, Latvia, Lithuania, and Slovakia; and 12 years for Poland.

3. There are differences between the NMS7 in the implementation of these restrictions, for example in the way ‘foreigners’ are defined in the legal restrictions, and in the conditions that foreigners have to fulfil in order to (exceptionally) obtain ownership of agricultural real estate. These differences stem from the fact that the various restrictive regimes existing before accession were generally permitted to be maintained during the transitional periods.

4. There are generally no restrictions on renting agricultural land by foreigners.”³⁰

5. At the end of the transitional period, the NMS can request the EU Commission to extend the transitional period for three more years.

The transitional period is seven years even for Bulgaria and Romania. These two New Member States are not entitled to extend the transitional period for three more years though.

Hungary, after having adopted Parliamentary Decision 2/2010 (II.18.), on September 10, 2010 applied to extend with three years the ad interim period for the acquisition of agricultural lands, originally to expire April 30, 2011. It is following this that the European Commission decided in its Decision 2010/792/EU of December 20, 2010 to extend the ad interim period for the acquisition of agricultural lands in Hungary, with the following reasoning:

„Despite the increasing convergence of land prices in Hungary with those prevailing in the EU-15 after Hungary’s accession to the European Union, a 3- to 20-fold difference in average land prices still persists according to information submitted by Hungary. Although the complete convergence in land prices was neither expected nor seen as a necessary condition for terminating the transitional period, the noticeable differences in prices between Hungary and EU-15 are such as they may still hinder smooth progress towards price convergence. Similarly,

²⁹ Commission of the European Communities: *Report from the Commission to the Council: Review of the transitional measures for the acquisition of agricultural real estate set out in the 2003 Accession Treaty*. Brussels, 16.7.2008. COM(2008) 461 final, p 2. Source (15 May 2010):

http://ec.europa.eu/internal_market/capital/docs/2008_0461_en.pdf

³⁰ SWINNEN – VRANKEN: *Op. cit.* pp 11-12.

the gap between the income of agricultural workers and farmers in Hungary and income in the EU-15 decreased but continues to exist. Furthermore, according to data from Eurostat, the agricultural sector of Hungary was hit relatively severely by the recent global financial and economic crisis with real agricultural income per worker falling by the highest rate in the Union (about 30 per cent against a Union average of about 12 per cent) in 2009. Lower income has been coupled with worse credit conditions relative to those in most of the EU-15 countries, both as regards nominal interest rates and the volume of credit available for farmers. The expected increased presence in Hungary of new financial institutions from EU-15 after the accession of Hungary was hampered by the financial and economic crisis.” The Commission nevertheless emphasized the future tasks of Hungary: „In order to fully prepare the market for liberalisation, it continues to be of utmost importance, even amid adverse economic circumstances, to foster the improvement of factors such as credit and insurance facilities for farmers, and the restitution and privatisation of agricultural land during the transitional period, as already emphasised in the Mid-Term Review.”

The Hungarian regulation on agricultural lands stands before a major change. Presumably the regulation that until now concentrated on agricultural lands has to focus in the future on agricultural holdings. Hopefully this regulation is going to be eligible to reach the objectives declared in the National Rural Strategy.

II. The other major change as to the Hungarian agricultural land regulation happened concerning the land policy of the state as land-owner. Therefore the former Law CXVI of 2001 on the National Land Fund was replaced by the Law LXXXVII of 2010. The National Land Fund as part of the fiscal assets consists of the entirety of agricultural lands in state ownership. According to the regulation before 2010, the National Land Fund belonged to the Hungarian National Asset Management Corporation. Since 2010, the rights and obligations deriving from the ownership over the National Land Fund are practiced by the MRD Minister through the National Land Fund Management Organisation (in the following: NLFMO). The NLFMO represents the state in civil legal relationships related to the National Land Fund. Parallel to the establishment of the NLFMO, an accurate registration of agricultural lands in state ownership (since 2010, so far approximately 3000 ha agricultural lands in state ownership have been found), the revision of the leasing contracts for these lands as well as the elimination of the anomalies found has begun.

III. Parallel to the adoption of the new act on the National Land Fund, Act LV of 1994 on agricultural lands (AAL) has been amended as well. The sale of Hungarian agricultural lands had also previously been restricted by the preemptive right of those specified in the AAL. According to the new rules, when selling Hungarian agricultural lands, the Hungarian state has the most powerful preemptive right. The followings have to be emphasized as to the Hungarian rules

concerning preemptive rights: if a landowner wishes to sell their land, and a potential buyer makes an offer to the owner, the landowner shall notify the beneficiaries of the pre-emption of the offer; the beneficiary having the stronger right of pre-emption may purchase the agricultural land at the price given in the offer.

1.5. Rural tax law

The government of 2010 has started significant tax reforms. It decreased the corporate tax, introduced family taxing connected to the personal income tax, and also decreased the degree of the personal income tax. Concerning the taxes in agriculture³¹ nevertheless, there has been relatively small changes compared to 2009. We may summarize the tax regulation in agriculture as seen below.

In actual practice, Act CXXVII of 2007 on Value Added Tax (hereinafter Act VAT), Act CXVII of 1995 on Personal Income Tax (Act PIT) and Act LXXXI of 1996 on Corporate Tax (Act CT) have to be emphasized.

I. The Act VAT provides a sector-neutral legislation, which means that the general rules basically concern the agricultural sector as well and Act VAT provides only some exceptions for agriculture.

With regard to agriculture and rural development, three features of the VAT need to be emphasized. Ad1 The tax rate of certain products concerning diversification (e.g. medicinal herbs) is only 5 percent of the tax base (the average VAT rate is 25 percent since July 1, 2009).³² Ad2 Certain rules also provide special facilities for the 'taxable person who is engaged in agricultural activities'.³³ Taxable persons engaged in agricultural activities shall not be subject to tax payment, nor shall they be entitled to deducting tax. Receiving taxable persons shall pay a 'compensation premium', in addition to the purchase price but as part of the consideration, to the taxable person engaged in agricultural activities for the goods supplied within the scope of such activities (the percentage rate of the

³¹ On the previous rural tax law, see NAGY Zoltán: Az agrárszektor adójogi szabályozása. In: CSÁK (edit.): *Agrárjog*. II. volume. Miskolc, 2005, Novotni Publisher, pp 188-205; NAGY: Az agrárszektor adójogi szabályozása. In: CSÁK (edit.): *Agrárjog*. Miskolc, 2006, Novotni Publisher, pp 309-326; NAGY: Az agrárszektor különleges adójogi szabályozásának alapkérdései. In: CSÁK (edit.): *Agrárjog*. Miskolc, 2008, Novotni Publisher, pp 306-322; NAGY: Az agrárium adójogi szabályozása. In: CSÁK (edit.): *Agrárjog*. Miskolc, 2010, Novotni Publisher, pp 315-335; NAGY: A mezőgazdasági tevékenységet végzők adójogi szabályozása egyes jövedelemadóknál. *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, Miskolc University Press, Miskolc, Tomus XXIII/2 (ann. 2005), pp 333-349.

³² Section 82 of Act VAT.

³³ Sections 197-204 of Act VAT.

compensation premium is 7% or 12%). Ad3 According to Act VAT, the definition of 'agricultural activity' includes a wide range of activities.

II. Act CT also provides a sector-neutral legislation, i.e. the general rules concern the agricultural sector.

With regard to agriculture, two features of the CT need to be emphasized. Ad1 At the 'tax base decrement factors', the rules of 'depreciation' may be emphasized, according to the diversification. The depreciation may be deducted from the prime cost of 'tangible assets' and 'intangible assets' of an investment project.³⁴ The category of intangible assets may include e.g. intellectual products. Forests, plantations, buildings and technical equipments may comprise the class of tangible assets.³⁵ Ad2 According to Act CT, there are some 'tax incentives' granted for investment projects (e.g. projects for the processing and marketing of agricultural products).³⁶

III. Two main features of the PIT may be emphasized. Ad1 The legislator abolished the rules according to which the income from the 'rural tourism services'³⁷ was exempt from the tax.³⁸ Ad2 Act PIT provides favourable tax conditions for the taxable person who is engaged in agricultural activities (e.g. 'small-scale agricultural producer'³⁹). According to the Act PIT, the definition of 'agricultural activity' includes a wide range of activities.⁴⁰

1.6. Rural social law

³⁴ See Annex 1 of Act CT.

³⁵ See Annex 2 of Act CT.

³⁶ See Art. 22/B. § (1) c) and (12) of Act CT.

³⁷ According to previous Section 3 of Act PIT, 'rural tourism services' shall mean services provided by a private individual, not as a private entrepreneur: (a) by providing accommodations, to include not more than ten beds, in his own rural house together with meals and optional programs (including demonstration of the household and the farm's operation) for individual private persons or families for the purpose of earning a profit; or (b) temporary rural and agro-tourism services.

³⁸ Previous Section 74 of Act PIT.

³⁹ According to Section 3 of Act PIT, 'small-scale agricultural producer' shall mean a private individual above the age of 16 who is not a private entrepreneur but possesses a small-scale producer license and is engaged in activities aimed at producing the products listed in Schedule No 6 on his own farm, including private individuals registered as agricultural producers in the register of the body in charge of agricultural and regional development aid and the private individual who qualifies as a family estate farmer under the Arable Land Act, and any members of the family of such private person who participate in the family homestead in a form other than employment, with respect to all of them in connection with the revenue (income) from the activity or activities aimed at producing the products listed in Schedule No 6.

⁴⁰ See Schedule No 6 of Act CT (e.g. production, processing and sale of foodstuffs by smallholders, as well as forestry, planting, etc.).

In the field of rural social law, we basically would like to emphasize three issues:

I. The regulation on simplified employment. The new regulation⁴¹ replacing the previous one⁴² names *agricultural seasonal work* as a certain type of simplified employment that may amount up to 120 days between the same partners. The new regulation amends the previous one in two ways: first, it lays less administrative burden on the participants of agricultural seasonal work, and second, it decreases the tax obligations of the participants of agricultural seasonal work.

II. National Public Employment Programme (2011).⁴³ The new Hungarian government leads a significantly different economic policy than its predecessors, and heavily criticized the former, unjustifiedly liberal governmental economic policy. They explained that it was due to an economic policy that takes into consideration nothing but the point of view of the markets that the economy in Hungary was capable of employing only a very few people (the employment rate was one of the lowest in Hungary; the Prime Minister of Hungary simply called it a shame!). Therefore, the new economic policy is more intervening than the former one, and in addition, it aims at reintroducing in the world of labour that part of the society which – because of its own decision or external factors – was displaced for a longer period of time from the labour market. Public employment is – according to the decision of the government – no final solution, but rather a provisional situation, particularly in regions where it is not possible to find a job at the primary labour market. The regulation on public employment is connected to agriculture and rural development in many ways; in particular, in the fields of water management, forestry and nature protection. In 2011, approximately 200.000 people are going to take part in the public employment programme (in 2010, it was only 100.000). A corner-stone of the programme is the idea that only those people may receive social benefits from the state who are unable to work or who are constantly hindered in their work; everybody else in Hungary has to work!

III. *Comprehensive carrier model for young agriculturers*. Important factor of the carrier model in preparation is that it makes it possible for young agriculturers to receive land from the National Land Fund. On the basis of the National Rural Strategy, the Hungarian government decided to start a demographical land

⁴¹ Act LXXV of 2010 on the simplified employment.

⁴² See Act CLII of 2009 and the analysis of this: MÉLYPATAKI Gábor: Neue Formen der Beschäftigung im Agrarrecht. *Journal of Agricultural and Environmental Law*, 2010/9, pp 32-39.

⁴³ See Decree 375/2010 (XII.30.) of the Hungarian Government on the support of communal work. On the programme and the communal work, see (10.6.2011): <http://www.kormany.hu/download/a/f6/10000/K%C3%B6zfoglalkoztat%C3%A1s.pdf>

programme, in the frame of which they aim at ameliorating the demographic situation and a change of generations in agriculture with the long-term (25-50 years) lease of arable lands, and other measures. In the frame of inheritable leasing rights young couples wanting to work in agriculture could receive lands, if this young family (a) settles there, (b) pursues agricultural activity, and (c) obliges themselves to give birth and raise at least two children.⁴⁴

1.7. Other areas of rural law

A new regulation on the chambers of agriculture is in progress as well. Chambers as public corporations⁴⁵ have two different types according to the Hungarian civil law. One type is professional associations. Professional associations having obligatory membership are among others the Hungarian Veterinary Chamber, the Chamber of Hunters, as well as the Chamber for Phytosanitary. Three distinct legal acts deal with each of the above mentioned three professional associations. The other type of chambers is that of economic chambers, having no obligatory membership according to the regulation in force. One single legal act deals with the economic chambers, including the chamber of agriculture; Act CXXI of 1991. The new draft bill on the chambers of agriculture would (a) regulate the chambers of agriculture in a single, separate legal act; (b) reintroduce the obligatory membership for the chambers of agriculture; (c) regulate them under a new name; i.e. 'chambers of rural development, agriculture and agrifood economy'; (d) serve as a forum of the sector's inner consultation, including producers, processory and vendors.

⁴⁴ *Conception of National Rural Strategy – 2020. Theses of the strategies concerning agriculture, foodstuffs, environment and rural development.* Volume I. Working paper. Budapest, 8.4.2011, p 15; on the system of the Hungarian family supports, see JAKAB Nóra: A családtámogatási ellátások szabályai. In: GECSE ISTVÁNNÉ (edit.): *Szociális jog II. Társadalombiztosítási jog.* Miskolc, 2007, Novotni Publisher, pp 213-220.

⁴⁵ Public corporations are self-governing organisations with registered membership whose establishment has been ordered by law. Public corporations perform public duties related to their membership and/or the activities performed by their membership. Public corporations are legal persons.

B Analysis

2. Which of the above (see point 1) stated legal developments you consider

2.1. as particularly successful? State why?

We do agree with the majority of the above regulations and measures. (a) We consider it to be particularly beneficial that the cited provisions have earned a place in the new Constitution of Hungary. (b) We consider the adoption of a new rural development strategy to be important, as without it agricultural legislation is lacking a compass and a map. A lawyer may only evaluate or ameliorate the law in case it has a templet. National rural strategy may be such a templet. (c) For years, jurisprudence has already drawn attention to the necessity of a different, agricultural holding based legislation instead of the current agricultural land based one. It will hopefully materialize before 2014. (d) To ensure the access to the gold of the 21st century (the blue gold), i.e. water is an essential interest also of the Hungarian agriculture. Legislative steps awaited in this regard are of core importance. At world level, we would encourage the states to participate more actively, for the sake of the public. (e) We deem it important that the inter-professional organisations known by European law would function properly in Hungary as well, and that the country could make use of the related opportunities. But the way of their establishment is decisive. The authors are afraid that the government – instead of modifying the existing, good-working structures – will decide for a completely new structure. So e.g. in the wine sector we consider a smaller modification of the wine community system accepted and known by the wine profession would be enough to be accepted as an inter-professional organisation. It is simply unnecessary to build up a completely new structure, and would only fulfil personal ambitions... (f) We consider it to be good that the legislator lays emphasis on the adaptation of the system of food labelling and the determination of the notion of a 'Hungarian product'. In numerous cases (e.g. in connection with health scandals of imported foreign products) Hungarian consumers had been afraid to buy healthy Hungarian products because they simply could not trust those products (e.g. cucumber) to be in fact really Hungarian, not only (falsely) on the labelling, as it happened before...

2.2. as particularly unsuccessful? State why?

Based on the experience of the past decade we can say that the legislator does not take the results, comments of the jurisdiction properly into account. Many of the legal acts cited above are under construction right now, therefore we would deem it important that the legislator consults the representatives of the jurisprudence more actively. Important agricultural, economical and legal aspects have to be

taken into account during the elaboration of modern agricultural legislation. Until now we can say that from these three aspects the legal one has still often been pushed into the background. Hungarian jurisprudence has already signaled beforehand the necessity of numerous legal institutions to be established soon (regulation of agricultural holdings instead of regulation based on the agricultural land, more accurate dogmatics of the agricultural property rights). If more attention was paid to the jurisprudence beforehand, national agricultural regulation would not be standing here today.

We are worried to see that the ministry for environmental protection has been integrated into the Ministry of Rural Development. This may result in the undue suppression of the environmental aspects because of the economic ambitions of the other part of the ministry. We deem it important that the economic development of the country does not hurt the environment neither on short nor on long-term. In the field of environmental protection there is no backing room...

3. Can you make out, considering the above developments, new or already existing trends? How do you assess future developments in that issue?

I. Old trends. No answer has been found to questions of numerous previously seen tendencies.

Such tendencies are the growth of the Earth's population, restricted supplies (food, energy, water). According to the Balaton Group, besides climate change and biodiversity, the land-question seems to be a similarly problematic field.⁴⁶ The UN Special Rapporteur on the right to food, *Olivier De Schutter*, sees a worrying tendency in some countries buying up other countries' (continents') agricultural lands.⁴⁷ Adding the scarcity of water and energy, in the not too distant future society is possibly going to consist of so-called fortress societies (regarded as the most likely by the Balaton Group). Or are we already part of this process?

⁴⁶ ROCKSTRÖM, Johan et al: A safe operating space for humanity. *Nature*, 461, (24.9.2009), pp 472-475; HUNGARIAN PARLIAMENTARY COMMISSIONER FOR FUTURE GENERATIONS: *Report of the Hungarian Parliamentary Commissioner for Future Generations: 2010*. Budapest, 2011, Office of the Parliamentary Commissioners of Hungary, p 300. The English summary of the report can be downloaded at http://jno.hu/report2010/jno_report_2010.pdf

⁴⁷ DE SCHUTTER, Olivier: *Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge*. Report of UN Special Rapporteur on the right to food, 28.12.2009, A/HRC/13/33/Add.2.; DE SCHUTTER, Olivier: *Access to Land and the Right to Food*. Report of UN Special Rapporteur on the right to food, 11.8.2010, A/65/281.

With regard to this, we consider it to be urgent that e.g. the WTO's purely economic-commercial function (copying the European integration's development) is soon completed by a strong environmental protectional and human rights functions.⁴⁸ Rights to environment, food and water need to be emphasized in this regard. Mankind may be capable of solving these challenges (e.g. that half of the produced food would not go lost;⁴⁹ keep back the speculative capital – more and more, and unduly – present in food commerce,⁵⁰ etc.), it should only want it finally.

II. New tendencies: '*continental & green & family-friendly New Deal for Europe*'. The 2008 financial and then economical world-wide crisis (the end of which cannot be surely predicted) is in our view the beginning of a new economical-social world order. The crisis has had a particularly devastating effect on the economy of Europe. We are not sure whether the EU is dealing correctly with the problem right now (e.g. China as a concurrent has elaborated a significant advantage).

We regard on the contrary the Hungarian change encouraging, as its economic concept focuses on the fight against state debt and to reach a high level of employment. We hope that all this is going to materialize for the sake of future generations and not to their detriment. To ensure this, among others the social basis of sustainability, i.e. healthy families have to be protected and supported in a stronger way. Let us not forget that in Middle-Eastern-Europe, the former Soviet block that could in the future serve as an economic motor of the EU, depopulation causes a real problem; it is not at all sure that a growing immigration would be the sustainable answer (see e.g. the French, German, British problems).

In our view, European economic policy is in need of a stronger intervening economic model; a kind of 'continental, green and family-friendly New Deal'. Of course, not only on the level of programmes, but also when it comes to realization...

⁴⁸ RAISZ Anikó: Az emberi jogok új kihívások előtt – avagy a globalizáció egyes kérdései, különös tekintettel a WTO-ra. *Collega*, 2006/2-3, pp 238-241; SMALLER, Carin: Human Rights Impact Assessments for Trade and Investment Agreements. Report of the Expert Seminar, June 23-24, 2010, Geneva (Switzerland). Source (10.6.2011): http://www.srfood.org/images/stories/pdf/otherdocuments/report_hria-seminar_2010_eng.pdf

⁴⁹ HUNGARIAN PARLIAMENTARY COMMISSIONER FOR FUTURE GENERATIONS: *Report of the Hungarian Parliamentary Commissioner for Future Generations: 2010*. Budapest, 2011, Office of the Parliamentary Commissioners of Hungary, p 270.

⁵⁰ DE SCHUTTER, Olivier: *Agribusiness and the right to food*. Report of UN Special Rapporteur on the right to food, 22.12.2009, A/HRC/13/33.

4. How do you assess the overall role of international and European legislation for the development of rural?

I. Regarding the importance of *biodiversity*, at international level we deem the measures adopted at the tenth summit of the Convention on Biological Diversity (Nagoya, Japan) important; namely (a) the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, (b) the Strategic Plan for Biodiversity 2011-2020, and (c) the Strategy for mobilization of financial resources.⁵¹ All these measures may have significant effect also in numerous fields of the Common Agricultural Policy. We welcomed that the elaboration of the EU's biodiversity strategy until 2020 has started during the Hungarian EU presidency.⁵²

II. We deem it very important that the EU has adopted an outcome document in the field of water policy – a field essential both for agriculture and rural development – also during the Hungarian EU presidency. The document emphasizes that the objectives of water policy have to be integrated during the upcoming reform of the CAP. During this reform – while supporting the environmental and climate advantages in rural areas – solutions have to be supported due to which everybody wins, and which contribute to reach the objectives of the mentioned water strategies and legal measures.⁵³

III. We consider it to be important that in connection with the negotiations on the new fiscal period of the Union starting from 2013, the EU Member States still would like to maintain the Common Agricultural Policy, and its financial frames are not going to be restricted. With regard to the world tendencies of food production, we are convinced that the EU may only fulfil sustainable economical and social objectives with a CAP that is effective and intervening.

Furthermore, we deem it important that the Visegrad 4 countries (V4), plus Romania and Bulgaria stood up united for a non-discrimination in the EU between old and new member states in the next fiscal period in connection with the distribution of agricultural and rural development means.⁵⁴ Such a discrimination ('historically based system of criteria') is a disgrace of the current

⁵¹ See RODICS Katalin – GREGUSS Ditta: A biológiai sokféleség egyezmény 10. konferenciája. <http://www.fvm.gov.hu/doc/upload/201011/20101115084449.pdf>

⁵² See European Commission: *Our life insurance, our natural capital: an EU biodiversity strategy to 2020*. COM(2011) 244 final, Brussels, 3.5.2011.

⁵³ See European Council: *The protection of water resources and the integrated and sustainable water management in the EU and abroad*. 11308/11, Brüsszel, 2011.6.9. (06.16), point 16.

⁵⁴ See *Joint Statement of Bulgaria, the Czech Republic, Hungary, Poland, Romania and the Slovak Republic on the future of the Common Agricultural Policy*. Visegrád, 25 June 2010.

fiscal period. In the future, Middle-Eastern-European countries may become one of the axes of the European economy.⁵⁵

5. How do you assess the overall role of international and European jurisprudence for the development of law in rural areas?

I. The proliferation of international tribunals makes it necessary for us to limit our examination in the frame of this paper only to two international courts: the International Court of Justice (ICJ) and the European Court of Human Rights (ECtHR).

II. The ICJ, as the primary judicial organ of the United Nations, the ‘World Court’ has an influence on practically every single international judicial organ in the world. Therefore, if the ICJ decides on an agriculture-related question, the effects exceed the limits of the actual case. The list of cases involving natural resources is long,⁵⁶ but only some cases dealing with agriculture-related issues are going to be mentioned in the following. The tendency is clear: water management questions may be regarded as the core agricultural disputes in front of the ICJ. The *Gabcikovo-Nagymaros* case (*Hungary/Slovakia*)⁵⁷ is the most famous of them all, and was followed by other cases, including the *Kasikili/Sedudu Island* (*Botswana/Namibia*)⁵⁸ and the *Pulp Mills* (*Argentina/Uruguay*)⁵⁹ cases, as well as the finished and the ongoing *San Juan River* cases (*Costa Rica/Nicaragua*).⁶⁰ Other issues concerned e.g. the collection of turtle eggs, the establishment of natural parks, or aerial herbicide spraying, i.e. *Indonesia/Malaysia*,⁶¹ *Benin/Niger*⁶² and *Ecuador/Colombia*⁶³ respectively. The mentioned decisions

⁵⁵ On the analysis of the future of the CAP, see HUNGARIAN PARLIAMENTARY COMMISSIONER FOR FUTURE GENERATIONS: *Report of the Hungarian Parliamentary Commissioner for Future Generations: 2010*. Budapest, 2011, Office of the Parliamentary Commissioners of Hungary, pp 269-273.

⁵⁶ See Nico SCHRIJVER: *Development without Destruction. The UN and Global Resource Management*. Indiana, Indiana University Press, 2010, pp. 209-211

⁵⁷ ICJ, *Gabcikovo-Nagymaros, Hungary/Slovakia*, September 25, 1997. See furthermore HERCZEGH Géza: Bős-Nagymaros, *Valóság*, XLVII (2004) 2., pp. 1-20; NAGY Boldizsár: Bős-breviárium, *Beszélő*, X (2005) 10.

⁵⁸ ICJ, *Kasikili/Sedudu Island, Botswana/Namibia*, December 13, 1999

⁵⁹ ICJ, *Pulp Mills on the River Uruguay, Argentina/Uruguay*, April 20, 2010

⁶⁰ ICJ, *Dispute regarding Navigational and Related Rights, Costa Rica/Nicaragua*, July 13, 2009, and *Certain Activities carried out by Nicaragua in the Border Area, Costa Rica/Nicaragua*, November 19, 2010 (application). For further reading see RAISZ Anikó: Nemzetközi környezetvédelmi kérdések a Nemzetközi Bíróság előtt napjainkban, to appear, in: SÁRY Pál (ed.): *Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica, Miskolc University Press, 2011, Tomus XXIX*.

⁶¹ ICJ, *Sovereignty over Pulau Ligitan and Pulau Sipadan, Indonesia/Malaysia*, December 17, 2002

⁶² ICJ, *Frontier Dispute, Benin/Niger*, July 12, 2005

have influenced not only the concerning countries' agricultural legislation, but some of the statements included within have effectively changed priorities in national agricultural laws and going to do that in the future, see e.g. environmental impact assessment or water management principles in case of shared watercourses.

III. Nevertheless, agricultural issues may not only rise in a real international context in international jurisprudence. Purely internal problems may be dealt with at the regional human rights courts, in our continent at the European Court of Human Rights. The ECtHR faces complaints about the violation of certain civil and political rights; agricultural questions arise above all as to the procedural rights and the right to property. Land indemnisation problems⁶⁴ arose among others in the *Malhous v. Czech Republic*,⁶⁵ *Dimitrov v. Bulgaria*⁶⁶ and the *Haralambie v. Romania*⁶⁷ cases, in which the indemnisation of agricultural lands expropriated during the communist regime was discussed. As to Hungary, among others the *Tardi et al. v. Hungary*⁶⁸ case may be mentioned, concerning the reallocation of the expropriated people's former vineyards. Besides, politically neutral cases landed before the ECtHR as well, such as the *Richet and Le Ber v. France*,⁶⁹ a case dealing with land use problems in the French Riviera. Even the question of discrimination arose in some cases, e.g. in the *Chassagnou et al. v. France*,⁷⁰ involving hunting rights. As the ECtHR's decision is binding, the concerning nations needed to and – in an overwhelming majority of the cases actually – did amend their agricultural legislation in order to fulfil the requirements of the ECtHR's judgment.

IV. In sum, in connection with the related international jurisprudence, we deem it to be the most important to underline those decisions dealing with land indemnification and water management. The decisions have had direct effect on the concerned countries' national legislation, but both mentioned tribunals being so influential, we may easily risk the statement that these decisions created

⁶³ ICJ, *Aerial Herbicide Spraying, Ecuador/Colombia*, April 1, 2008 (application)

⁶⁴ For further reading on this see RAISZ Anikó: Földtulajdoni és földhasználati kérdések az emberi jogi bíróságok gyakorlatában. In: CSÁK Csilla (ed.): *Az európai földszabályozás aktuális kihívásai: Current challenges of the European legislation on agricultural land - Aktuelle Herausforderungen der europäischen Regulierung über den landwirtschaftlichen Boden*. Miskolc, Novotni Alapítvány, 2010. pp. 241-253.

⁶⁵ ECtHR, *Malhous v. Czech Republic*, July 12, 2001, No. 33071/96.

⁶⁶ ECtHR, *Dimitrov v. Bulgaria*, September 23, 2004, No. 47829/99.

⁶⁷ ECtHR, *Haralambie v. Romania*, October 27, 2009, No. 21737/03.

⁶⁸ ECtHR, *Tardi and others v. Hungary*, October 23, 2007, No. 19478/03.

⁶⁹ ECtHR, *Richet and Le Ber v. France*, November 8, 2010, Nos. 18990/07 and 23905/07.

⁷⁰ ECtHR, *Chassagnou and others v. France*, April 29, 1999, Nos. 25088/94, 28331/95 and 28443/95.

international precedents, thus having a wider and, more importantly, a developing effect on other national agricultural legislations.

6. How do you assess the overall influence of your national legislature on the development of rural law?

See Part A. of the paper.

7. How do you assess the overall influence of your national jurisprudence concerning the development of law in rural areas in your country?

I. During dispute settlement in Hungary, the role of arbitration has been classed up,⁷¹ the agricultural arbitral tribunal works besides the National Agricultural Chamber.

II. The Hungarian Constitutional Court (Alkotmánybíróság, AB) – as detailed in point A.1.1 – has come to an important decision⁷² related to the introduction of the SPS.⁷³

III. The Tokaj wine region – which is part of the UNESCO World Heritage – is object to a legal dispute since 2006, as in Szerencs, a town belonging to the wine region, the building of a straw-fired power plant was/is planned. In order to build the investment, even the idea to quit the World Heritage programme came up. The wine-makers of Tokaj – being afraid that the microclimate giving the speciality of their wines having the designation of origin ‘*Tokaj*’ – opposed the investment, and attacked the planned investment at various fora. The Parliamentary Commissioner for Future Generations (Jövő Nemzedékek Országgyűlési Biztosa, JNO) entered the legal debate, and delivered a related statement,⁷⁴ judging the investment as problematic from numerous aspects.

⁷¹ ERDŐS Éva – JAKAB Nóra – RAISZ Anikó: Jurisdiction and alternative dispute settlement resolution in agriculture. *Journal of Agricultural and Environmental Law*, 2008/5, pp 19-30.

⁷² The AB also delivered a decision on agricultural registers: Decision 12/2011. (III.23.) AB of the Constitutional Court of the Hungarian Republic. We deem the concurring opinion of Constitutional Court judge Péter Kovács to this case as particularly precious.

⁷³ CSÁK Csilla – OLAJOS István: The application of the single payment by national administrations and national courts. *Journal of Agricultural and Environmental Law*, 2008/5, pp 31-42; TÉGLÁSI András: How is property ownership guaranteed constitutionally in the field of agriculture? *Journal of Agricultural and Environmental Law*, 2009/7, pp 18-29; MIKÓ Zoltán: Pro és contra. SPS az érdekek és érvek hálójában. In: BOBVOS Pál (edit.): *Reformator iuris cooperandi*. Szeged, 2009, Pólay Elemér Foundation, pp 397-410.

⁷⁴ See Statement J-3737/2008 of the Hungarian Parliamentary Commissioner for Future Generations on the straw-fired power plant planned to be established in the town of Szerencs, which town is part of the Tokaj wine region and the Tokaj world heritage zone.

Nevertheless the court case, started in 2010, in which the civilians and the JNO complained about the authorisation procedure, strengthened the position of the investor. In 2010, the UNESCO examined the case as well, opposing the power plant investment in Szerencs in its report.⁷⁵ Nevertheless, the investor seems to maintain its intentions, and plans to realize the project with certain modifications.⁷⁶

8. Current question: In your country, what expectations and misgivings are associated to the discontinuation of the Milk Quota system in 2015?

In Hungary, many fear that the discontinuation of the milk quota would lead to the collapse of milk prices, and so to ruin the milk producers. Therefore, on a civil forum dedicated to this issue, the idea appeared that the milk quota system – with significant changes – should be maintained.⁷⁷ May 31, 2011, in Debrecen, at an informal meeting of the EU's agricultural ministers, the Hungarian Minister for Rural Development (*Sándor Fazekas*) emphasized: the 2015 discontinuation of the milk quota system would lead to the growth of milk production in certain competitive areas, but could completely disappear in some other, less privileged regions. So they agreed to maintain milk production in these unprivileged regions even after the discontinuation of the milk quota system. Some urged to introduce in this end income supports or any other motivation to produce.⁷⁸

⁷⁵ *Report of a UNESCO-ICOMOS Advisory Mission 20th-25th September 2010*. January 2011. Source (23.6.2011):

http://www.vilagorokseg.hu/portal/download/tokaj_%20unesco_icomos_mission_report_2011_engl.pdf

⁷⁶ Source (23.6.2011): <http://www.bhd.hu/eng/plant.html>

⁷⁷ TAKÁCS Tibor: *A tejkvóta maradjon, csak alakítság át*. Source (10.6.2011):

<http://www.mr1-kossuth.hu/hirek/gazdasag-110405/a-tejkvota-maradjon-csak-alakitsak-at.html>

⁷⁸ Source (23.6.2011): <http://www.eu2011.hu/hu/hir/informalis-agri-05-31>