

Edit SÁPI*
Protection of agricultural products with intellectual property rights**

1. Introductory remarks

The aim of this study is to provide a comprehensive overview about the legal institutions belonging to the intellectual property law, whose essential purpose is to ensure the protection of agricultural products, alongside other similar products. Having regard to the fact that the legal literature has already analyzed this topic several times,¹ we only intend to delineate the main focal points and the most important features of the topic within the framework of this paper.

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* dr. jur. scientific researcher, University of Miskolc, Faculty of Law, Institution of Civil Sciences, Department of Civil Law, e-mail: jogsapi@uni-miskolc.hu

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¹ The Hungarian legal literature has already dealt with the geographical indications and plant variety right. Including but not limited to, see e.g.: Csécsy György: A földrajzi árujelzők oltalmának új irányai, *Collectio Iuridica Universitatis Debreceniensis*, 2006/6, 77-95; Jókúti András: A földrajzi árujelzők közösségi oltalma, *Védjegyvilág* 2005/3, 11-21; Kókai-Kunné Szabó Ágnes: A növényfajták állami elismerésének és forgalomba hozatalának közigazgatási szabályai, *Új Magyar Közigazgatás*, 2011/12, 31-38; Kókai-Kunné Szabó Ágnes: *A növényfajta-oltalom és a növényfajták nemesítéséhez, termesztéséhez kapcsolódó aktuális jogi kérdések (PhD értekezés)*, Miskolc, 2013; Kókai-Kunné Szabó Ágnes: A szellemi tulajdon jogintézményei az agrár- és vidékfejlesztési jogban, in: Csák Csilla – Hornyák Zsófia – Kocsis Bianka Enikő – Olajos István Kókai-Kunné Szabó Ágnes – Szilágyi János Ede: *Agrárjog. A magyar agrár- és vidékfejlesztési jogi szabályozás lehetőségei a globalizálódó Európai Unióban*, Miskolc, Miskolci Egyetemi Kiadó, 2017, 287-303; Szilágyi János Ede: *Eredetvédelmi kérdések a borjogban - Változó közösségi szabályozás 2009-től*, Miskolc, Novotni Kiadó, 2009; Szilágyi János Ede: Földrajzi árujelzők szabályozása a multilaterális nemzetközi megállapodásokban, különös tekintettel a TRIPS Megállapodásra, *Miskolci Jogi Szemle*, 2008/2, 95-120; Szilágyi János Ede: A tokaji földrajzi árujelző jogi védelme, *Magyar Jog*, 2005/12, 732-740; Tattay Levente: *A bor és az agrártermékek eredetvédelme*, Budapest, Mezőgazda Kiadó, 2001; Tattay Levente: Eredetvédelem Franciaországban I. – A Cognac, Champagne és a Bordeaux-i bor nyomában, *Élelmiszeri Ipar*, 2000/4, 111-113; Tattay Levente: Eredetvédelem Franciaországban II., *Élelmiszeri Ipar*, 2000/5, 148-152; Tattay Levente: A földrajzi árujelzők oltalma és a bor-eredetvédelem, *Gazdaság és Jog*, 2012/1, 21-24; Tattay Levente: Eredetvédelem Franciaországban – A Cognac, Champagne és a Bordeaux-i bor nyomában, *Külgazdaság*, 2000/3, 29-42; Tattay Levente: Gondolatok a földrajzi árujelzők jogi oltalma bevezetéséről – Az eredetvédelem egységes szabályozása, *Magyar Jog*, 1997/4, 193-200; Tattay Levente: *Az árujelzők kialakulásának és felhasználásának kezdetei*, Budapest, Gépirat, 1999; Vida Sándor: Földrajzi árujelző és védjegy ütközése: Castel, *Iparjogvédelmi és Szerzői Jogi Szemle*, 2015/6, 97-111.

The importance of this topic is on the one hand that the land as a natural resource plays a particular importance in the economy of our country, since the agriculture and forestry land forms nearly 30% of the whole national property.² From the legal point of view, natural resources can be considered relevant which the mankind can use for his own benefit, or which can ‘passively’ affect human beings, because the human life would cease in their absence.³ In the light of our subject, it can be stated that foods, wines and plants cultivated in the agriculture can be considered as products that the mankind can use for his own benefit. It is important for the economic factors in itself to protect the agricultural land and the agricultural products with appropriate legal guarantees from several directions by the legislator. Furthermore, in recent years the members of the society increasingly pay attention to the healthy lifestyle, which includes the consumption of good quality foodstuff produced from natural ingredients. In this respect, geographical indication plays a special role, because – like the trademarks – it also attests the quality of the marked product.⁴

The most widespread geographical indications are usually related to wine products⁵ and it can generally be observed that the number of protected products is increasing throughout the European Union.⁶ Among the well-known and recognized agricultural products of Hungary, the following products are under designation of origin of the EU: ‘alföldi kamillavirágzat’, ‘hajdúsági torma’, ‘kalocsai fűszerpaprika-őrlemény’, ‘makói vöröshagyma’, ‘makói hagyma’, ‘szegedi fűszerpaprika-őrlemény’, ‘szegedi paprika’, ‘szegedi szalámi’ and ‘szegedi téliszalámi’. Geographical signs under EU protection are currently the following: ‘budapesti téliszalámi’, ‘csabai kolbász’, ‘csabai vastagkolbász’, ‘gönci kajsziparack’, ‘gyulai kolbász’, ‘gyulai pároskolbász’, ‘magyar szürkemarha hús’, ‘makói petrezselyemgyökér’, ‘szentesi paprika’ and ‘szőregi rózsató’.⁷

² Szilágyi János Ede: Az agrár- és vidékfejlesztési jog elmélete, in: Csák Csilla – Hornyák Zsófia – Kocsis Bianka Enikő – Olajos István Kókai-Kunné Szabó Ágnes – Szilágyi János Ede: *Agrárjog. A magyar agrár- és vidékfejlesztési jogi szabályozás lehetőségei a globalizálódó Európai Unióban*, Miskolc, Miskolci Egyetemi Kiadó, 2017, 17.

³ Prugberger Tamás: A természeti erőforrások védelmi és felhasználási jogának szakjogági megjelenése, in: Görgyényi Ilona – Horváth M. Tamás – Szabó Béla – Várnay Ernő (edit.): *Collectio Iuridica Universitatis Debreceniensis IV.*, Debrecen, Lícium Art, 2004, 203.

⁴ Tattay Levente mentions that ‘Professionals believe that the market is showing increasing interest in the unique and original festive, welcome products.’ „A szakemberek véleménye, hogy a piac növekvő érdeklődést mutat az ünnepi, vendégváró egyedi és eredetű termékek iránt.” Tattay Levente: *Eredetvédelem Franciaországban I. – A Cognac, Champagne és a Bordeaux-i bor nyomában, Élelmezési Ipar*, 2000/4, 111.

⁵ Szilágyi János Ede: Észrevételek a borok földrajzi árujelzőinek joggyakorlatához, in: Barzó Tímea – Juhász Ágnes – Leszkoven László – Pusztahelyi Réka (edit.): *Ünnepi tanulmányok Bíró György professzor 60. születésnapjára*, Miskolc: Novotni Alapítvány, 2015, 549. In relation to the designation of origin of wines, see also: Szilágyi János Ede: Az új borpiaci rendtartás kihívásai, *Sectio Juridica et Politico, Miskolc, Tomus XXVII*, 2009/2, 593-612.

⁶ Tarjányi Petra: A földrajzi árujelzők joga, különös tekintettel az Európai Bíróság gyakorlatára, *Iparjogvédelmi és Szerzői Jogi Szemle*, 2017/2, 7.

⁷ <http://eredetvedelem.kormany.hu/foldrajzi-arujelzok> (Downloaded: 2018. 03. 21.)

2. Systemic outline and delimitations

Geographical indications⁸ belong systematically to one of the sub-areas of the intellectual property law, i.e. to industrial property rights and to the so-called ‘company and product indications’. The legal literature of the intellectual property law classifies the trademarks and the geographical indications to this category. The similarity between trademarks and geographical indications can be seen on the one hand by the systematic allocation of the relevant provisions, as they are regulated by the same act,⁹ and on the other hand by the common attribute of their function, i.e. the certification of a particular feature – and usually the quality – of the given product. At the same time, it should be taken into consideration – as Csécsy György also emphasizes –, that the trademark does not express the quality in itself, as its function as quality indicator only indirectly applies.¹⁰ A difference between trademarks and geographical indications is that trademarks are used to distinguish goods or services¹¹, while the aim of the geographical indication is mainly – but not exclusively – to designate agricultural products and to certify their quality.¹² Several representatives of the legal literature emphasize that although it is common knowledge that geographical indications are intended to protect agricultural products, they do not belong exclusively to agricultural products.¹³

Distinction has to be made between collective and certification trademarks and geographical indications. Collective trademark means a trademark which is used by an association, public body or association (hereinafter referred to collectively as ‘association’) for distinguishing the goods or services of its members from the goods and services of others on the basis of the quality, origin or other characteristic of the goods or services bearing the trademark.¹⁴ Csécsy György says that earlier – prior to the amendment of the Trademark law in 2003¹⁵ – it was theoretical possible that a

⁸ See the historical development of the legal instrument in: Csécsy György: A földrajzi árujelzők oltalmának új irányai, *Collectio Iuridica Universitatis Debreceniensis*, 2006/6, 77-81.

⁹ Act XI of 1997 on the Protection of Trademarks and Geographical Indications (henceforward abbreviated as: Trademark Act).

¹⁰ Csécsy 2006, 84.

¹¹ § 1 (1) of the Trademark Act.

¹² Tattay Levente: A földrajzi árujelzők oltalma és a bor-eredetvédelem, *Gazdaság és Jog*, 2012/1, 21.

¹³ E.g.: Tattay Levente: Gondolatok a földrajzi árujelzők jogi oltalma bevezetéséről – Az eredetvédelem egységes szabályozása, *Magyar Jog*, 1997/4, 195; Kókai-Kunné Szabó Ágnes: A szellemi tulajdon jogintézményei az agrár- és vidékfejlesztési jogban, in: Csák Csilla – Hornyák Zsófia – Kocsis Bianka Enikő – Olajos István Kókai-Kunné Szabó Ágnes – Szilágyi János Ede: *Agrárjog. A magyar agrár- és vidékfejlesztési jogi szabályozás lehetőségei a globalizálódó Európai Unióban*, Miskolci Egyetemi Kiadó, Miskolc, 2017, 295.

¹⁴ § 96 (1) of the Trademark Act.

¹⁵ Act CII of 2003 on the amendment of certain acts on industrial property and copyright law.

collective trademark consists of a geographical name, but there was no example for this in the practice.¹⁶

The act also helps to separate trademarks from geographical indications, as it regulates the absolute grounds for refusal of trademark protection. In relation to this, the law states, that a sign shall be refused trademark protection if it is not capable for making a distinction, in particular, if it consists exclusively of signs or information which may serve, in commercial circulation, to designate the type, quality, quantity, intended purpose, value, geographical origin, time of production or fulfillment, or any other characteristic of the goods or services, or which are permanently and customarily used in colloquial language, or in trade practices.¹⁷ Therefore, the act expressly prohibits the registration of a designation relating to the geographical origin as a trademark.¹⁸

The seventh chapter of the Act deals with the rules on geographical indications, where it first contains definitions. Accordingly, the geographical indication¹⁹ is a collective term within which two categories are known: the geographical sign and the designation of origin.²⁰ The common features of the two legal institutions are that their function is to indicate the geographical origin and that they can only be applied if the product concerned is on the market.²¹ *Tattay Levente* states that geographic indications actually contain concentrated information because they distinguish goods produced in a given area and indicate their authenticity and their similar quality, and therefore they 'serve as a symbol for collective advertising.'²²

The Act gives the definition of the geographical indication and of the designation of origin.

A geographical indication is the name of a region, specific place or, in exceptional cases, a country that is used for marking products that originate from such area – i.e. are produced, processed or prepared in the defined geographical area – and whose exceptional quality, reputation or other characteristic is essentially attributable to that geographical origin.²³

A designation of origin is the name of a region, specific place or, in exceptional cases, a country which is used for marking products which originate from such area – i.e. products which are produced, processed or prepared in the defined geographical area – and whose exceptional quality, reputation or other characteristic is exclusively or

¹⁶ Csécsy 2006, 84.

¹⁷ § 2 (2) point a, of the Trademark Act.

¹⁸ Vida Sándor analyzes the so-called Castel-case in relation to this rule. *Vida Sándor*. Vida Sándor: Földrajzi árujelző és védjegy ütközése: Castel, *Iparjogvédelmi és Szerzői Jogi Szemle*, 2015/6, 97-111.

¹⁹ Previously the terminology of 'Indications of source' was also used, but this expression became outdated. *Tattay*, 1997, 194.

²⁰ § 103 (1) of the Trademark Act.

²¹ § 103 (1) of the Trademark Act.

²² *Tattay Levente*: Eredetvédelem Franciaországban I. – A Cognac, Champagne és a Bordeaux-i bor nyomában, *Élelmiszeri Ipar*, 2000/4, 111.

²³ § 103 (2) of the Trademark Act.

essentially the result of the particular geographical environment and the characteristic natural and human factors of this environment.²⁴

The abovementioned two concepts are very similar, there are one or two words difference, however, this slight difference is not a mere stylistic question, but it results in an important difference in content. The difference can be captured by the ability to certify the quality. While the geographical indication is only indirectly capable to certify the quality for the place of origin only refers to the geographical link, the designation of origin makes a more direct reference to the quality of the product.²⁵ The act expresses this fact that in case of geographical indication, the exceptional quality, reputation or other characteristic is *essentially* attributable to that geographical origin, while in case of the designation of origin, the exceptional quality, reputation or other characteristic of the product is *exclusively or essentially* the result of the particular geographical environment and the *characteristic natural and human factors* of this environment. It is not a coincidence and it is in compliance with the legal regulations and the legal logic that serious knowledge and established traditions are behind the production of domestic wines under protection of designation of origin.²⁶ This difference can also be captured by the fact that in the case of designation of origin there is a *direct and inseparable link* between the quality and the properties of the product and the geographical environment, while in case of geographical indication, this link is 'only' *accidental*, because the reputation of the product is independent from the natural conditions and the human factors.²⁷ It is also a designation of origin when the ingredients of the agricultural product concerned originates from a more extensive geographical area than the designation of origin.²⁸

From the difference outlined above also stems the fact that the concept of the designation of origin is necessarily narrower than the scope of the geographical indication. Therefore, it can be said that all designations of origin are geographical indications, but not all geographical indications are designations of origin.²⁹

3. The legal regulation of the geographical indication

A general characteristic of the intellectual property right, which can be observed in connection with the legal background of geographic indications as well, is that the regulation appears in several different levels. In connection with both copyright and industrial property rights – including product indications – it can be stated that in

²⁴ § 103 (3) of the Trademark Act.

²⁵ Csécsy György: *A szellemi alkotások joga*, Miskolc, Novotni Kiadó, 2007, 230.

²⁶ Szilágyi 2015, 550.

²⁷ Szellemi Tulajdon Nemzeti Hivatala: Földrajzi árujelzők oltalma. http://www.szttnh.gov.hu/sites/default/files/04_foldrajzi_arujelzok_2016.pdf (Downloaded: 22.03.2018.)

²⁸ Csécsy 2006, 85-86.

²⁹ Vékás Gusztáv: Iparjogvédelem, in: Lontai Endre – Faludi Gábor – Gyertyánfy Péter – Vékás Gusztáv: *Magyar polgári jog, Szerzői jog és iparjogvédelem*, Budapest, Eötvös József Könyvkiadó, 2012, 307.

addition to domestic law EU legal acts and international conventions and agreements also contain relevant rules.³⁰

3.1. Domestic legal environment

The Preamble of the Trademark Act also refers to the fact, that the protection of trademarks and geographical indications has a great importance for the Hungarian market economy because on the one hand, they improve the level of consumer information and on the other hand, they strengthen the conditions for fair competition.³¹ The importance of the trademark law can also be observed through the fact that this act has introduced the *sui generis* protection for the geographical indications.³² Szilágyi János Ede points out that the legal history of the *sui generis* protection of origin can be found in the law of wine.³³

As a special rule, the modification of the Trademark Act of 2009³⁴ added that geographical indications of spirit drinks may be subject to protection if those products using the geographical indication meet the conditions set forth in the product specification, as provided for in specific other legislation.³⁵

However, it is important to emphasize that, although the main and fundamental rules relating to geographical indications can be found in the Trademarks Act, it is not the only legal act which deals with the designation of products.³⁶

³⁰ See in details: Tattay Levente: A szellemi alkotások teljeskörű újraszabályozása Magyarországon, *Iustum, Aequum, Salutare*, 2009/2, 149-164; Boytha György: A hatályos szerzői és szomszédos jogi szakegyezmények, In.: Gyertyánfy Péter (edit.): *A szerzői jogi törvény magyarázata*, Budapest, KJK-Kerszöv Jogi és Üzleti Kiadó Kft., 2000, 511-552.

³¹ Trademark Act preamble.

³² Kókai-Kunné Szabó 2017, 295.

³³ Szilágyi János Ede: Eredetvédelem és borjog. A Miskolci Egyetemen 2008-ban írt „Borjog, különös tekintettel az eredetvédelem kérdéseire” c. PhD Értekezés téziseinek megjegyzésekkel ellátott verziója, *Agrár- és Környezetjog*, 2008/6, 68.

³⁴ Act XXVII of 2009 on the amendment of certain acts on industrial property law.

³⁵ § 103 (3) of the Trademark Act.

³⁶ See for example:

Act XXX of 2012 on the Hungarian national values and Hungaricums;

Ministry Decree No. 16 of 2004 (IV. 27.) on the detailed procedural rules for the trademark and geographical indication application;

Government Decree No. 158 of 2009 (VII. 30.) on the procedure of the protection of geographical indications of agricultural products, foodstuffs and spirit drinks and on the control of products;

Government Decree No. 178 of 2009 (IX. 4.) on the procedure of the Community protection of geographical indications and designations of origin for wine products and on the control of these products;

Ministry Decree No. 74 of 2012 (VII. 25.) on the use of certain voluntary distinctive signs on foods;

Government Decree No. 484 of 2016 (XII. 28.) on the procedure of the EU protection of geographical indications of aromatized wine products and the control of these products.

3.2. International and EU frameworks

The intellectual property law is in area of law which is inherently under strong international law influence. The actual international cooperation and legal protection – regulated by international treaties and conventions – began in the second half of the 1800's. The universal industrial property law cooperation has been revitalized since the 1950's.³⁷ During this period, the Lisbon Agreement for the International Registration of Appellations of Origin was adopted.³⁸

In addition to the Lisbon Agreement, the 'Paris Convention for the Protection of Industrial Property of 1883'³⁹ also applies as a background regulation. Article 1 of the Paris Convention lays down its scope and states that the purpose of the Convention is the protection of industrial property, which shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products (e.g. wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour).⁴⁰ Consequently, according to the Convention the protection of industrial property covers patents, utility models, industrial designs, trademarks, service marks, trade names, *indications of source or appellations of origin*.⁴¹

In addition to the Lisbon Agreement, the TRIPS Agreement⁴² is also of great relevance, whose Chapter 3 contains the relevant rules relating to the geographical indications. This chapter deals with the protection of geographical indications⁴³ as well as with the additional protection for geographical indications for wines and spirits.⁴⁴ During the analysis of the relevant part of the TRIPS Agreement, *Kókai-Kunné Szabó Ágnes* refers to the fact that the Agreement uses a much more general definition compared with the national and Community concepts,⁴⁵ because according to the

³⁷ Csécsy György: A szellemi alkotások jogának fejlődéstörténete, in: Miskolczi Bodnár Péter (edit.): *A civilisztika fejlődéstörténete*, Miskolc, Bíbor Kiadó, 2006, 102.

³⁸ Lisbon Agreement for the Protection of Appellations of Origin and their International Registration sign on the 31th October 1958, revised at Stockholm on the 14th July 1967 (hereinafter referred as Lisbon Agreement). In Hungary, the agreement was promulgated by Law-Decree No. 1 of 1982. See further: Szabó Ágnes: Lisszabontól Genfig – az agrár termékek földrajzi árujelző oltalmának szabályozására figyelemmel, *Védjegyvilág*, 2016/1;

³⁹ Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on the 14th December 1900, at Washington on the 2nd June 1911, at The Hague on the 6th November 1925, at London on the 2nd June 1934, at Lisbon on the 31th October 1958 and at Stockholm on the 14th July 1967 (hereinafter referred as Paris Convention). In Hungary, the convention was promulgated by Law-Decree No. 18 of 1970.

⁴⁰ § 1 (3) of the Paris Convention.

⁴¹ § 1 (2) of the Paris Convention.

⁴² Annex 1. C) of the Marrakesh Agreement establishing the World Trade Organization, concluded within the framework of the General Agreement on Tariffs and Trade (GATT) (TRIPS Agreement).

⁴³ § 22 of TRIPS Convention.

⁴⁴ § 23 of TRIPS Convention.

⁴⁵ Kókai-Kunné Szabó 2017, 287.

Agreement, geographical indications are indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.⁴⁶ It can be seen, therefore, that the TRIPS Agreement uses the concept of 'geographic origin', which necessarily involves a broader circle than 'geographical environment and the characteristic natural and human factors of this environment'. The concept of geographical origin includes the aforementioned conceptual elements.

In addition to universal international conventions, bilateral agreements also support the relationship of the contracting parties, whose main aim is the clarification of the rules of multilateral conventions relating to certain products in the relationship between the contracting parties.⁴⁷

The most important rules of the European Union are Regulation No 1151/2012/EU⁴⁸, Regulation No 1308/2013/EU,⁴⁹ Regulation No 110/2008/EK⁵⁰ and Regulation No 251/2014/EU.⁵¹

3.3. The protection systems

The protection of geographical indications consists of three systems which work beside each other, complement or exclude each other.⁵² Accordingly, we can speak about national protection, Community protection and international protection.

We can talk about national protection when the geographical indication is registered by the Hungarian Intellectual Property Office (SZTNH), and the related rules are contained by the Trademark Act. The geographical indications under

⁴⁶ § 23 (1) of TRIPS Convention.

⁴⁷ Szilágyi János Ede: A tokaji földrajzi árujelző jogi védelme, *Magyar Jog*, 2005/12, 733.

⁴⁸ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1-29).

⁴⁹ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671-854).

⁵⁰ Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16-54).

⁵¹ Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 (OJ L 84, 20.3.2014, p. 14-34).

⁵² The Hungarian Intellectual Property Office (hereinafter: SZTNH) summarized the relationship and legal basis of the three systems in an overview table. <http://www.sztnh.gov.hu/hu/szakmai-oldalak/foldrajzi-arujelzo> (Downloaded: 20.03.2018.) See: Faludi Gábor, Lukács Péter (edit.): *A védjegy törvény magyarázata*, Budapest, HVG-ORAC, 2014, 519.

Community protected is of particular importance because it provides protection in all EU Member States. The legal basis for the international protection is the Lisbon Agreement for the protection of appellations of origin and their international registration, which results in a protection within the 26 contracting states which remains in force until the designation exists in the country of origin.

From the point of view of our subject, it is important to emphasize that national protection for agricultural products and foodstuffs, as well as for viticulture and wine products cannot be maintained in the Member States of the Union. Alcoholic drinks can obtain geographical indications under national protection and Community protection. Consequently, national protection in itself is reserved solely for non-agricultural, i.e. industrial products (*sui generis* protection), but in this case the EU protection is excluded due to the national regulation. It is also important that both forms of protection (designation of origin, geographical indication) can only be demanded for agricultural products, foodstuffs and wine products, while in connection with spirits and aromatized wines the EU law only regulates the protection of the geographical indication.⁵³ International protection may exist for each categories of the designated products.

3.4. The characteristics of geographical indications and a schematic overview of domestic legislation

Although geographical indications are legal institutions which belong to the intellectual property law, the specific features, which so strongly characterize the copyrights and industrial property rights,⁵⁴ do not appear to be very important within the rules on geographical indications. One of the peculiarities of the geographical indications is that – contrary to the other intellectual properties – the entitled person does not have moral rights, as the law protects only the economic rights, the restriction of the term of protection does not apply to them and they are not merchantable, due to which they cannot be subject of a license agreement.⁵⁵

Beside the aforementioned specialties, we can also find the rules which show the same logic as other industrial property law institutions. Therefore, the act regulates the obligation of registration as the technical criterion of protection⁵⁶ and the system of grounds for exclusion, i.e. the conditions when the protection cannot be granted. Therefore, a geographical indication may not be granted protection, if (a) it has become the generic name of the product on the market, irrespective of whether or not the product originates from the area indicated by the geographical indication; (b) with regard to identical products, a geographical indication that is identical or similar to the

⁵³ Kókai-Kunné Szabó, 2017, 297.

⁵⁴ About the logical structure of the regulation from the point of view of copyright law see: Szinger András – Tóth Péter Benjámín: *Gyakorlati útmutató a szerzői joghoz. Az EU csatlakozástól hatályos szabályokkal*, Budapest, Novissima Kiadó, 2004.

⁵⁵ Tattay 2012, 21; Pusztahelyi Réka: Földrajzi árujelzők, in: Bíró György (edit.): *Új Magyar Polgári Jog I. kötet, Általános tanok és személyek joga*, Miskolc, Novotni Alapítvány, 2013, 493.

⁵⁶ § 108 (1) of the Trademark Act.

earlier geographical indication; (c) with regard to identical or similar products, a geographical indication that is identical or similar to the earlier geographical indication; (d) with regard to a geographical indication that is identical or similar to an earlier trademark where, in the light of a trademark's reputation and good name, and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product; (e) it conflicts with the name of a plant variety or an animal breed that has been registered earlier and, as a result, is likely to mislead the public as to the true origin of the product.⁵⁷

According to the Act, protection of a geographical indication may be obtained by any natural or legal person, or an unincorporated business association which produces, processes or prepares such products in the geographical area indicated in the geographical indication and said products use the geographical indication.⁵⁸ Geographical indication protection shall be granted jointly to those parties that produce, process or prepare products in accordance with the aforementioned conditions. These persons are called proprietors by the Act.⁵⁹

The monopoly right also can be found, according to which the proprietors shall enjoy the exclusive right to use the geographical indication.⁶⁰ This monopoly right is absolute in this field, which means that no license for use may be issued to others.⁶¹ The rules of infringement of protection can also be found in connection with the geographical indication.⁶² Collectivity as a feature of geographical indications plays a key

⁵⁷ § 105-106 of the Trademark Act.

⁵⁸ § 107 (2) of the Trademark Act.

⁵⁹ § 107 (3) of the Trademark Act.

⁶⁰ § 109 of the Trademark Act.

(2) On the basis of the exclusive right of use, the proprietors may take action against any party which, in the course of commercial activities,

- a) uses the protected geographical indication or a designation which could be confused therewith on products which do not originate from the geographical area indicated;
- b) uses the protected geographical indication on products which are not listed in the list of products, but which are similar to such products, and by doing so harms or exploits the reputation of the protected geographical indication;
- c) copies the geographical indication in any way whatsoever or makes reference to it, even if he indicates the genuine origin of the product or if he uses a translation of the designation or uses it with various appendices;
- d) uses any other false or misleading marking in respect of the provenance, origin, nature or essential qualities of the product, regardless of where such marking is located (e. g. on the packaging, in advertising materials or in documents relating to the product);
- e) takes any other action liable to mislead consumers as to the true geographical origin of the product.

⁶¹ Second sentence of § 109 (1) of the Trademark Act.

⁶² § 110 of the Trademark Act.

(1) Infringement of protection is committed by any party which, in violation of § 109, uses a protected geographical indication without authorization.

(2) Any proprietor may take independent action against an infringement. Organizations representing the interests of the proprietors and consumer protection organizations may also take action against an infringement.

role in the exercise of rights, since not only the applicants are entitled to use the protected geographical indication, but anyone who produces the marked product in the geographical area concerned. In connection with this, the Court of Appeal of Szeged also emphasized in a case that everybody is entitled to use of the designation of origin who provides a catering service in the given geographical area for which the geographical indication is used.⁶³ On the other hand, collectivity has an important role in case of the infringement of protection, therefore, it can be seen that it gains its real meaning in connection with these two points.

3.5. The protection of agricultural products and foodstuffs in the light of Regulation 1151/2012/EU

As it was mentioned above, the protection of agricultural products and foodstuffs is not regulated by the Trademark Act but by Regulation (EU) No 1151/2012 (hereinafter referred to as Regulation). Annex I to the Regulation lists the products and foodstuffs which are covered by the scope of the Regulation as designations of origin and geographical indications⁶⁴ or as traditional specialities guaranteed.⁶⁵ The Regulation does not list completely different products and foods, but the two categories overlap. Section II of the Regulation deals with the rules of designations of origin and geographical indications.

According to the Regulation designation of origin is a name which identifies a product originating in a specific place, region or, in exceptional cases, a country; whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and the production steps of which all take place in the defined geographical area.⁶⁶ Geographical indication is a name which identifies a product originating in a specific place, region or country; whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and at least one of the production steps of which take place in the defined geographical area.⁶⁷ As a special category, the regulation also regulates the traditional speciality guaranteed. A name shall be eligible for registration as a traditional speciality guaranteed where it describes a specific product or foodstuff that results from a mode of production, processing or composition corresponding to traditional practice for that product or foodstuff; or is produced from raw materials or ingredients that are

⁶³ Decision No. Gf. I. 30.507/2003. of the Court of Appeal of Szeged (published as: BH 2004. 480.)

⁶⁴ Designations of origin and geographical indications can be beer, chocolate and derived products, bread, pastry, cakes, confectionery, biscuits and other baker's wares, beverages made from plant extracts, pasta, salt, natural gums and resins, mustard paste, hay, essential oils, cork, cochineal, flowers and ornamental plants, cotton, wool, wicker, scutched flax, leather, fur, feather.

⁶⁵ These are the following: prepared meals, beer, chocolate and derived products, bread, pastry, cakes, confectionery, biscuits and other baker's wares, beverages made from plant extracts, pasta, salt.

⁶⁶ § 5 (1) of the Regulation.

⁶⁷ § 5 (2) of the Regulation.

those traditionally used.⁶⁸ In 2016, the European Commission entered the name ‘Tepertős pogácsa’ in the register of traditional specialities guaranteed.⁶⁹ The Regulation also regulates the relationship between the geographical indication and the trademarks, according to which where a designation of origin or a geographical indication is registered, the registration of a trade mark the use of which would contravene the protection of the geographical indication and which relates to a product of the same type shall be refused if the application for registration of the trade mark is submitted after the date of submission of the registration application in respect of the designation of origin or the geographical indication to the Commission.⁷⁰

The regulation also speaks about the transitional national protection, according to which the Member States may grant protection to a name under this Regulation at national level, with effect from the date on which an application is lodged with the Commission. As this national protection is transitional, it ceases on the date on which a decision on registration under this Regulation is taken.⁷¹ In Hungary, the following agricultural products and foodstuffs are under transitional national protection ‘szomolyai rövidszárú fekete cseresznye’, ‘újfehértói meggy’, ‘budaörsi őszibarack’ or ‘nagykun rizs’.

4. Closing remarks

Legal disputes concerning geographical indications⁷² emerge most commonly in connection with agricultural products and foodstuffs as well as viticulture and wine products.⁷³ Regarding the subject of the disputes and strong EU harmonization, the Court of Justice of the European Union has and had to make a judgement in many cases. One of the most famous case with domestic relevance related to the designations of origin was the ‘Tokaji wine’ case,⁷⁴ where the Court acknowledged the exclusive use of the name ‘Tokaji’ for Hungary against Italy.⁷⁵ After the ‘Italian Tokaji’, there was

⁶⁸ § 18 (1) of the Regulation.

⁶⁹ Commission Implementing Regulation (EU) 2016/1415 of 24 August 2016 entering a name in the register of traditional specialities guaranteed (Tepertős pogácsa (TSG)).

⁷⁰ § 14 (1) of the Regulation. See: Csécsy György: A földrajzi árujelzők oltalmának új irányai, *Collectio Iuridica Universitatis Debreceniensis*, 2006/6, 84-85.

⁷¹ § 9 of the Regulation.

⁷² We find a comprehensive summary of the most relevant cases in the paper of Tarjányi Petra (see: footnote No. 7).

⁷³ Famous cases are e.g.: Case T-397/02 Arla Foods AMBA and Others v Commission of the European Communities; Case C-87/97 Consorzio per la tutela del formaggio Gorgonzola v Käserei Champignon Hofmeister GmbH & Co. KG and Eduard Bracharz GmbH.

From the recent years, see e.g.: Case T-41/16 Cyprus Turkish Chamber of Industry and Others v European Commission; and the pending Case C-367/17 S v EA and others.

⁷⁴ Case C-347/03 Regione autonoma Friuli-Venezia Giulia and Agenzia regionale per lo sviluppo rurale (ERSA) v Ministero delle Politiche Agricole e Forestali.

⁷⁵ The legal literature analyzed this case several times. See: Tarjányi, 2017, 36-40; Szilágyi, 2005, 732-740; Tattay, 2012, 21-24; Lánzos Petra Lea: A Törvényszék ítélete a Tokaj-ügyben: az E-

bigger problems with the ‘Slovakian Tokaji’, where – contrary to the Italian case – the Court ruled against Hungary.⁷⁶

We have to agree with *Szilágyi János Ede*, who emphasizes that the regulation of the geographical indications is a dynamically developing area.⁷⁷ It can be seen as well by the fact that the Trademark Act has been modified and complemented more than thirty times since its entry into force in 1997. Both the complexity of the regulatory environment and the national economic aspirations affecting agricultural products⁷⁸ aiming at an enhanced protection and recovery contribute in this dynamic development.

Agriculture and forestry lands and related agricultural products can be considered as the basic natural resources of Hungary in accordance with the declaration of the Fundamental Law.⁷⁹ It is not surprising, therefore, that their protection appears in all areas of law, including in the field of intellectual property law as well. According to our point of view – primarily due the excellent quality of Hungarian products – they will play an increasing role in the future.

Bacchus rendelet módosításának megsemmisítése iránti kereset elfogadhatatlansága. *JAEL*, 4. évf. 1. sz., 2013.

⁷⁶ Case C-31/13. P. Hungary v European Commission

⁷⁷ Szilágyi János Ede: Az eredetvédelem egyes aktuális kérdései: a magyar termék és a hungarikum, in: Pogácsás Anett (edit.): *Quaerendo et Creando, Ünnepi kötet Tattay Levente 70. születésnapja alkalmából*, Budapest, Szent István Társulat, 2014, 621.

⁷⁸ It is worth to mention the the Hungaricum and the ‘Traditions – Tastes – Regions’ programme.

⁷⁹ Section P of the Fundamental Law of Hungary.

(1) Natural resources, particularly arable land, forests and water resources, as well as biological diversity, in particular native plant and animal species and cultural values shall comprise the nation’s common heritage; responsibility to protect and preserve them for future generations lies with the State and every individual.