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New dimensions of the Hungarian agricultural law in respect of food sovereignty

This study was made as a Hungarian reflection to the topics examined by Commission III of the XXIX CEDR Congress. In the last few years, conceptions of food security and food sovereignty[1] examined by the Commission have become substantial in the Hungarian agricultural law as well. In accordance with the Hungarian forms of these conceptions, in our opinion especially the followings must be emphasized.

1. Pending examination of the Hungarian land acquisition regime from an EU law perspective

In order to properly analyse the recent developments connected to the Hungarian land regulation in a global and EU law context alike, firstly we aimed to interpret (I.) the relation between food security and land transfer through documents of (I.1.) the European Economic and Social Committee (EESC) and (I.2.) the European Parliament (EP). After that we will examine (II.) the concrete Hungarian regulation.

I. In our opinion, during the examination of the following documents, analyses of Commission II of the 2015 CEDR Potsdam Congress related to transboundary land acquisition must also be taken into consideration, because it has several statements in this context in its general report[2] and conclusions.

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[1] "Food sovereignty: Food sovereignty is the right of people, regions, states or their union to determine their own agricultural and food policy themselves, without flooding other nations' markets with dumped products." Draft of the Second National Climate Change Strategy of Hungary, no. OGY H/15783. parliamentary scrutiny, 238.

[2] Szilágyi János Ede: *Rapport général de la Commission II*, 2017, in: Roland Norer (edit.): *CAP Reform: Market Organisation and Rural Areas: Legal Framework and Implementation*, Baden-Baden, Nomos, 2017, 175-292.

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I.1. After certain antecedents – e.g. UN,[3] FAO,[4] European Coordination Via Campesina (ECVC) initiative[5] – in 2015, in its opinion, the European Economic and Social Committee (EESC) drew attention to the close relation between the usage and ownership of lands, and food security. It refers to that *"Agricultural land provides the basis for food production and is thus the prerequisite for ensuring food security in accordance with Article 11 of the United Nations International Covenant on Economic, Social and Cultural Rights and with Article 25 of the Universal Declaration of Human Rights."*[6] *"The EESC sees a serious risk arising from the concentration of land in the hands of large non-agricultural investors and large agricultural concerns, including in parts of the European Union."*[7] *"Risks associated with food safety and soil degradation are exacerbated by industrialised agriculture, which also reduces food security."*[8] After that, the EESC draws the attention to land grabbing[9] in the territory of the EU: *"Europe is embedded in global processes, so these processes also unfold within Europe: in some areas visibly, in others unnoticed. Land grabbing takes place primarily in the countries of central and eastern Europe"*[10] *"Existing studies show that the food and non-food crops produced on farmland that has been bought up are mainly exported to the countries of the investors. Only a small fraction of these products are destined for the local market. National food security deteriorates in proportion to the degree of land grabbing."*[11]

Beside the abovementioned, the EESC passes remarks which are important in connection with the Hungarian infringement procedure detailed hereunder, related to land ownership acquisition of legal entities. As according to the EESC *"there is often insufficient transparency on land transactions between companies, for example in the case of purchases by subsidiaries and partner companies"*.[12] During the analysis of the process of land grabbing, it makes further remarks related to land ownership acquisition of legal entities: *"Apart from conventional purchases, one way of getting control of agricultural land is to acquire companies owning or leasing areas of agricultural land, or to attempt to purchase shares in such companies.*

[3] Report of the Special Rapporteur on the right to food, Olivier De Schutter: *Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge*, UN General Assembly, A/HRC/13/33/Add.2.

[4] Food and Agriculture Organization of the United Nations: *Voluntary Guidelines on the Responsible Governance of Tenure of land, fisheries and forests in the context of national food security*, Rome, 2012, free access.

[5] See about this: free access.

[6] European Economic and Social Committee (EESC): Opinion: *Land grabbing – a warning for Europe and a threat to family farming*, NAT/632 – EESC-2014-00926-00-00- AC-TRA (EN), Brussels, 21 January 2015, 1.2, free access.

[7] EESC 2015, 1.4.

[8] EESC 2015, 1.5.

[9] Definition of land grabbing according to the EESC *„There is no internationally recognised single definition of land grabbing. Land grabbing is generally understood to mean a process of large-scale acquisition of agricultural land without consulting the local population beforehand or obtaining its consent. Ultimately, this diminishes the scope of the local population to manage a farm independently and to produce food. The owner also has the right to use the resources (land, water, forest) and the profits arising from their use. This can lead to a situation in which established agricultural land use is abandoned in favour of other activities*; EESC 2015, 2.2.

[10] EESC 2015, 3.1.

[11] EESC 2015, 4.2.

[12] EESC 2015, 2.7.

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As a result, there is increasing concentration of land ownership by large companies, with industrialised agriculture developing in some central and eastern European countries."[13] According to the EESC, *"there is a creeping process of land grabbing and concentration in the European Union, which is impacting on human rights, and especially the right to adequate food. Land grabbing has been most extensive in Hungary and Romania. However, the same process can be observed in other central and eastern European countries."*[14]

At the and of the document, according to the EESC, *"the Member States must be given more opportunities, based on a sustainable farming model, to regulate and limit their respective markets for agricultural land with an eye to food security and other legitimate objectives."*[15] *"The EESC […] calls on the European Commission and European Parliament to actively address the issue of land use governance."*[16] According to the EESC, *"research should […] look at the risks of land concentration for food security."*[17] However, the EESC sees the solution in family farms: *"small family farms are at least as efficient as large-scale producers. The assertion that land concentration leads to larger yields is also inaccurate"*;[18] *"the Committee has been involved in various ways in drawing attention to the strategic role of family farms for food security and the development of rural areas"*.[19] *"Although we do not have a generally recognised definition of the family farm either in the EU or internationally, the EESC calls on the European Commission, the Parliament and the Council to define this term."*[20]

I.2. Answering the aforementioned, as well as having regard to the infringement proceedings against the Member States Bulgaria, Latvia, Lithuania, Poland, Slovakia and Hungary, which the Commission is either planning or has already brought, on 27th April 2017 the European Parliament (EP) adopted a report[21] on farmland concentration. EP itself warns of the phenomenon of land grabbing in the EU.[22] Besides, the EP took into consideration the followings in the report: (a) "*land is on the one hand property, on the other a public asset, and is subject to social obligations*";[23] (b) "*land is an increasingly scarce resource, which is non-renewable, and is the basis of the human right to healthy and sufficient food, and of many ecosystem services vital to survival, and should therefore not be treated as an ordinary item of merchandise*";[24] (c) "*sufficient market transparency is essential… and should also extend to the activities of institutions active on the land market*"[25];

[13] EESC 2015, 3.2.
[14] EESC 2015, 3.6.
[15] EESC 2015, 6.10.
[16] EESC 2015, 6.14.
[17] EESC 2015, 6.19.
[18] EESC 2015, 4.6.
[19] EESC 2015, 5.1.
[20] EESC 2015, 5.2.
[21] European Parliament (EP): *Report on the state of play of farmland concentration in the EU: how to facilitate the access to land for farmers*, Committee on Agriculture and Rural Development A8-0119/2017, 2017.03.30, free access.
[22] EP 2017, point AM and page 14.
[23] EP 2017, point G.
[24] EP 2017, point J.
[25] EP 2017, point P.

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(d) "*the sale of land to non-agricultural investors and holding companies is an urgent problem throughout the Union, and whereas, following the expiry of the moratoriums on the sale of land to foreigners, especially the new Member States have faced particularly strong pressures to amend their legislation, as comparatively low land prices have accelerated the sale of farmland to large investors*";[26] (e) "*farmland areas used for smallholder farming are particularly important for water management and the climate, the carbon budget and the production of healthy food*";[27] (f) "*there is a substantial imbalance in the distribution of high-quality farmland, and whereas such land is decisive for the quality of food, food security and people's wellbeing*";[28] (g) "*small and medium-sized farms, distributed ownership or properly regulated tenancy, and access to common land… encourage people to remain in rural areas and enable them to work there, which has a positive impact on the socio-economic infrastructure of rural areas, food security, food sovereignty and the preservation of the rural way of life*";[29] (h) "*farmland prices and rents have in many regions risen to a level encouraging financial speculation, making it economically impossible for many farms to hold on to rented land or to acquire the additional land needed to keep small and medium-sized farms viable*";[30] (i) "*differences among the Member States in farmland prices further accentuate concentration processes*";[31] (j) there are numerous findings concerning speculations[32] and abuse[33]; (k) "*limited companies are moving into farming at an alarming speed; whereas these companies often operate across borders, and often have business models guided far more by interest in land speculation than in agricultural production*".[34]

With regard to the abovementioned, the EP (a) "*recognises the importance of small-scale family farms for rural life*",[35] and "*considers that local communities should be involved in decisions on land use*".[36] (b) The EP "*calls for farmland to be given special protection with a view to allowing the Member States, in coordination with local authorities and farmers' organisations, to regulate the sale, use and lease of agricultural land in order to ensure food security…*".[37] (c) Furthermore, the EP – among others – calls on (c1) "*the Commission to establish an observatory service for the collection of information and data on the level of farmland concentration and*

[26] EP 2017, point Q.
[27] EP 2017, point S.
[28] EP 2017, point T.
[29] EP 2017, point V.
[30] EP 2017, point AB.
[31] EP 2017, point AC.
[32] "*the purchase of farmland has been seen as a safe investment in many Member States, particularly since the 2007 financial and economic crisis; whereas farmland has been bought up in alarming quantities by non-agricultural investors and financial speculators*"; EP 2017, point AJ; and "*the creation of speculative bubbles on farmland markets has serious consequences for farming, and whereas speculation in commodities on futures exchanges drives up farmland prices further*"; EP 2017, point AL.
[33] *"a number of Member States have adopted regulatory measures to protect their arable land from being purchased by investors; whereas cases of fraud have been recorded in the form of land purchases involving the use of `pocket contracts´, in which the date of the conclusion of the contract is falsified; whereas, at the same time, large amount of land has been acquired by investors"*; EP 2017, point AK.
[34] EP 2017, point AQ.
[35] EP 2017, point 14.
[36] EP 2017, point 18.
[37] EP 2017, point 38.

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tenure throughout the Union";[38] (c2) "*the Commission, on this basis, to report at regular intervals to the Council and Parliament on the situation regarding land use and on the structure, prices and national policies and laws on the ownership and renting of farmland, and to report to the Committee on World Food Security (CFS)…*".[39]

II. After the 1st May 2014 termination of the union transitional regulation, Hungary – like several other countries accessed to the EU in 2004 and 2007 – adopted a new regulation on land transfer. Several detailed foreign language studies have been published about the analysis of this new regulation on land transfer and its antecedents; e.g. in German (Csák,[40] Szilágyi,[41] Olajos,[42] Hornyák,[43] Nagy and Holló[44]) and in English (Bányai,[45] Csák,[46] Jakab,[47] Kocsis,[48] Kurucz,[49] Nagy,[50] Olajos[51] és Szilágyi[52]).

[38] EP 2017, point 2.
[39] EP 2017, point 8.
[40] Csák Csilla: Die ungarische Regulierung der Eigentums- und Nutzungsverhältnisse des Ackerbodens nach dem Beitritt zur Europäischen Union, *Journal of Agricultural and Environmental Law (JAEL)*, 2010/9, 20-31., free access.
[41] Szilágyi János Ede: Das landwirtschaftliche Grundstückverkehrsgesetz als erster Teil der neuen ungarischen Ordnung betreffend landwirtschaftlichen Grundstücken, *Agrar- und Umweltrecht*, 2015/2, 44-50.
[42] Olajos István: Die Entscheidung des Verfassungsgerichts über die Rolle, die Entscheidungen und die Begründetheit der Gründen der Stellungnahmen der örtlichen Grundverkehrskommissionen, *Agrar- und Umweltrecht*, 2017/8, 284-291.
[43] Hornyák Zsófia: Grunderwerb in Ungarn und im österreichischen Land Vorarlberg, *JAEL*, 2014/17, 62-69., free access; and Hornyák Zsófia: Die Voraussetzungen und die Beschränkungen des landwirtschaftlichen Grunderwerbes in rechtsvergleichender Analyse, *CEDR Journal of Rural Law*, 2015/1, 88-97., free access.
[44] Holló Klaudia – Hornyák Zsófia – Nagy Zoltán: Die Entwicklung des Agrarrechts in Ungarn zwischen 2013 und 2015, *JAEL*, 2015/19, 56-72., free access.
[45] Bányai Krisztina: Theoretical and practical issues of restraints of land acquisition in Hungary, *JAEL*, 2016/20, 5-15., doi: 10.21029/JAEL.2016.20.5, free access.
[46] Csák Csilla – János Ede Szilágyi János Ede: Legislative tendencies of land ownership acquisition in Hungary, *Agrarrecht Jahrbuch 2013*, Wien-Graz, NWV, 2013, 215-233.; Csák Csilla – Kocsis Bianka Enikő – Raisz Anikó: Vectors and indicators of agricultural policy and law from the point of view of the agricultural land structure, *JAEL*, 2015/19, 32-43., free access.
[47] Jakab Nóra – Szilágyi János Ede: New tendencies in connection with the legal status of cohabitees and their children in the agricultural enterprise in Hungary, *JAEL*, 2013/15, 39-57., free access.
[48] Kocsis Bianka Enikő: The new Hungarian land transfer regulation from the aspect of examination of the European Union, *JAEL*, 2014/16, 95-110, free access.
[49] Kurucz Mihály: Critical analyses of arable land regulation in Hungary, *JAEL*, 2007/3, 17-47., free access.
[50] Csák Csilla – Nagy Zoltán: Regulation of Obligation of Use Regarding the Agricultural Land in Hungary, *Zbornik radova Pravnog fakulteta u Novom Sadu*, 2011/2, 541-549., free access.
[51] Olajos István – Szilágyi Szabolcs: The most important changes in the field of agricultural law in Hungary between 2011 and 2013, *JAEL*, 2013/15, 95-97., free access.
[52] 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, *JAEL*, 2010/9, 48-60., free aceess; Szilágyi János Ede: Acquisition of the ownership of

Recently, *Anikó Raisz*[53] has dealt with the novelties of the Hungarian regime of acquisition of lands by the occasion of the 60th anniversary of the CEDR. Especially, the EU infringement procedure should be emphasized from her study (with regard to the topic of this study): *„The EU Commission launched infringement procedures against numerous Member States (Latvia, Lithuania, Slovakia) having joined the EU in 2004 or after (Bulgaria), among them against Hungary as well. In this regard, the jurisprudence calls the attention that it may partly be caused by some uncertainty in connection with the interpretation in the land policy determined by the EU law.*[54] *There are Hungarian authors (Ágoston Korom, Réka Bokor) speaking of transparency problems.*[55]*"*[56] Here we would like to note that the 2017 EP report equally promotes bigger transparency,[57] and also "*calls on the Commission, in conjunction with the Member States and stakeholders, to publish a clear and comprehensive set of criteria, including farmland transactions on capital markets, that ensure a level playing field and make it clear to the Member States which land market regulation measures are permitted*".[58] After that, the Raisz-study continues as follows: "There is an author, *Szilágyi*, who considers this large number of infringement procedures unusual in the land field, because earlier the EU Court decisions typically (but not exclusively) were born in preliminary procedures.[59] János Ede Szilágyi[60] draws the attention to the fact that in the judgements of the EU Court on cross-border acquisition the assessment aspects – e. g. public interest objective, the question whether the measure of the national law cannot be exchanged for less restrictive measures – are surprisingly similar to those aspects applied by federal

agricultural lands in Hungary, taking the EU's and other countries' law into consideration, *Zbornik radova Pravnog fakulteta u Novom Sadu*, 2016/4, 1437-1451, doi: 10.5937/zrpfns50-12226, free access.

53 Raisz Anikó: Topical issues of the Hungarian land-transfer law, *CEDR Journal of Rural Law*, 2017/1, 68-74.

54 See the regarding remark in (in this respect adopted) Part I.2. of the CEDR Potsdam Congress's *Conclusions of the Commission II*: „*The situation definitely refers to some uncertainty in the land law policy in the EU*"; published by Szilágyi János Ede, Conclusions, *JAEL*, 2015/19, 93., free access; see furthermore Korom Ágoston: Az új földtörvény az uniós jog tükrében (The new agricultural law in the mirror of EU law), in: Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közszolgálati Egyetem, 2013, 20-22.; Csák – Kocsis – Raisz 2015, 38-40.

55 Korom Ágoston – Bokor Réka: Gondolatok az új tagállamok birtokpolitikájával kapcsolatban – Transzparencia és egyenlő elbánás (Land policy of the new Member States – Transparency and non-discrimination), in: Gellén Klára (edit.): *Honori et virtuti*, Szeged, Pólay Elemér Foundation, 2017, 259-267.

56 Raisz 2017, 73.

57 EP 2017, point 39.

58 EP 2017, point 40.

59 Szilágyi János Ede: A magyar földforgalmi rezsimet befolyásoló tényezők (The factores affecting the Hungarian land transaction regime), in: Szilágyi János Ede (edit.): *Agrárjog*, Miskolc, Miskolci Egyetemi Kiadó, 2017a, 58.

60 Szilágyi János Ede: Az Egyesült Államok és szövetségi államainak mezőgazdasági földtulajdon szabályozása a határon átnyúló földszerzések viszonylatában (The USA and their constituent states' land regulations in connection with cross-border acquisition of agricultural lands), *Miskolci Jogi Szemle*, 2017b/special edition 2, 574-577.

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courts of the USA.[61] The Commission II of the CEDR Congress 2015 Potsdam pointed out that nowadays several EU member states are interested in cross-border land policy issues, therefore, a non-satisfactory settlement of the problem `*would mean in a way the easing of the integration´*, while a satisfactory solution `*may cease the uncertainty and deepen the integration´*[62]"[63]

"In connection with the infringement procedures launched against Hungary, it is important to note that essentially it is two different procedures. There is a special procedure on the transitional rules of the new land law regime in some usufruct cases, and there is a procedure for the comprehensive investigation of the land acquisition regime. In the followings, this comprehensive problem is to be examined based on the study of *Tamás Andréka* and *István Olajos*.[64] In the comprehensive case, the EU Commission launched its so-called pilot procedure with regard to certain legal institutions which were later, during the negotiations with the Hungarian government found to be in compliance with the EU regulations. Such EU-conform legal institutions are (a) the procedural role of local commission, (b) land acquisition limit of farmers and land possession limit of farmers and agricultural producer organizations, (c) *the system of* pre-emption right and the right of first refusal, and (d) the regulation on the term of leasehold. The even presently going infringement procedures, the following national measures' compliance are questioned by the Commission: (a) complete ban on the acquisition of land by domestic and foreign legal entities, (b) proper degree in agricultural or forestry activities, (c) proper agricultural or forestry practice abroad, (d) obligation on the buyer to farm the land himself, (e) impartiality in prior authorisation for the sale of lands. Among the questioned institutions, the ban on legal entities is the bone of the present land acquisition regime, and, according to Tamás Andréka et al., the `aim of this institution is to avoid the uncontrollable chain of ownership which would be in contradiction with keeping the population preserving ability of the country, since it would be impossible to check land maximum and the other acquisition limits.´[65]"[66] The 2017 EP report also makes important remarks related to the ownership acquisition of legal entities on the land markets of the EU Member States; thus the EP "*encourages all Member States to use such instruments to regulate the market in land as are already being used successfully in some Member States, in line with EU Treaty provisions, such as… restrictions on the right of purchase by legal persons.*"[67]

[61] On the USA system see in detail Margaret Rosso Grossman, Rural Areas: Legal framework and implementation, Report for the United States, XXVIII European Congress of Agricultural Law of the CEDR, 17-20., in: www.cedr.org (23.03.2017)
[62] See the (in this respect adopted) Part I.2. of the CEDR Potsdam Congress's *Conclusions of the Commission II*: published in: Szilágyi János Ede: Conclusions, *JAEL*, 2015/19, 93., free access.
[63] Raisz 2017, 73-74.
[64] Andréka Tamás – Olajos István: A földforgalmi jogalkotás és jogalkalmazás végrehajtása kapcsán felmerült jogi problémák elemzése (The assessment concerning land transaction legislation and its implementation), *Magyar Jog*, 2017/7-8, 410-424.
[65] Andréka – Olajos 2017, 422.
[66] Raisz 2017, 74.
[67] EP 2017, point 22.

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In its 2017 report – similarly to the proposal of Commission II of the CEDR Potsdam Congress (point II.1.2 of its draft conclusion, proposal 1.2.7) – the EP "*calls on the [European] Commission to consider a moratorium on the ongoing proceedings aimed at assessing whether Member States' legislations on farmland trading comply with EU law until the aforementioned set of criteria are published*"[68].

It is not irrelevant as to the outcome of the infringement procedures either that in the meantime the first preliminary ruling procedure related to the Hungarian land acquisition regime has also been initiated (the so-called *Szombathely Case*).

2. The next step towards the realisation of agriculture free from genetically modified organisms: the Hungarian ministerial decree on labelling GMO free goods

In connection with the so-called *green (a.k.a. agricultural) genetic engineering regulation*, the conception of `GMO-free agriculture´ was defined in Article XX of the Hungarian constitution (a.k.a. Fundamental Law). A recent step towards its realisation is the adoption of FM decree 61/2016 (IX.15.) on labelling GMO-free food and feedstuffs. In order to understand the reasons of the adoption of FM decree 61/2016, firstly – essentially based on the work of Anikó Raisz and János Ede Szilágyi[69] – we briefly analyse the `GMO-free agriculture´ conception of the Fundamental Law, then the steps of accomplishment of this. After that – based on the mutual research of János Ede Szilágyi and Enikő Tóth[70] – we briefly review the most important specialities of the 61/2016 decree.

[68] EP 2017, point 40.

[69] See Raisz Anikó: GMO as a Weapon – a.k.a. a New Form of Aggression?, *Hungarian Yearbook of International Law and European Law 2014*, The Hague, Eleven, 2015, 275-288.; Raisz Anikó – Szilágyi János Ede: Development of agricultural law and related fields (environmental law, water law, social law, tax law) in the EU, in countries and in the WTO, *JAEL*, 2012/12, 107-148.; Szilágyi János Ede: A zöld géntechnológiai szabályozás fejlődésének egyes aktuális kérdéseiről (About certain current questions of development of green genetic engineering regulation), *Miskolci Jogi Szemle*, 2011/2, 36-54.; Szilágyi János Ede: *Tudományos munkásság áttekintő összefoglalása (Summary of scientific work)*, Miskolci Egyetem Habilitációs Füzetei, Miskolci Egyetem, Miskolc, 2015, 36-38; Szilágyi János Ede: *A zöld géntechnológia jogi szabályozása (Legal regulation of green genetic engineering)*, lecture in Universitiy of Miskolc, Faculty of Law, 29. September 2016a., 1-44. slides; Szilágyi János Ede: Változások az agrárjog elméletében? (Changes in the life of theory of Agricultural Law?), *Miskolci Jogi Szemle*, 2016b/1, 48-49.

[70] See Tóth Enikő: Egy újabb lépés a GMO-mentes mezőgazdaság felé (Another step towards the GMO-free agriculture), Scientific Students' Association – dissertation (consultant: Szilágyi János Ede), Miskolc, Miskolci Egyetem, 2016; Szilágyi János Ede – Tóth Enikő: A GMO-mentes mezőgazdaság megteremtésének újabb jogi eszköze (Another legal instrument of establishing the GMO-free agriculture), *Publicationes Universitatis Miskolcinensis, Sectio Juridica et Politica*, 2017/35, in press.

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In this part of the study we do not examine the international, EU, and Hungarian legal regulation on agricultural genetic engineering activity in details, since a wide range of international[71] and Hungarian[72] legal literature has already been prepared in this topic.

[71] See especially: Luc Bodiguel – Michael Cardwell (edit.): *The regulation of genetically modified organisms*, Oxford – New York, Oxford University Press, 2010; Roland Norer (edit.): *Genetic Technology and Food Safety*, Switzerland, Springer, 2016; etc.

[72] See especially: Balázs Ervin – Dudits Dénes – Sági László (edit.): *Genetikailag módosított élőlények (GMO-k) a tények tükrében (Genetically modified orgaisms [GMO-s] in the light of the facts)*, Szeged, Barabás Zoltán Biotechnológiai Egyesület – Pannon Növény-biotechnológiai Egyesület, 2011; Gyula Bándi: *Környezetjog (Environmental Law)*, Budapest, Szent István Társulat, 2011; Bézi-Farkas Barbara – Jasinka Anita: A géntechnológiai tevékenység szabályozása (Regulation of genetic engineering activity), in: Csák Csilla (edit.): *Agrárjog (Agricultural Law)*, Miskolc, Novotni Kiadó, 2006, 487-495.; Darvas Béla (edit.): *Részletek… a 27. GMO-Kerekasztal ülésén elhangzott hozzászólásokból (Partials… from the comments on 27. GMO-Round Table Meeting)*, Budapest, 25. March 2015.; Darvas Béla – Székács András (edit.): *Az elsőgenerációs géntechnológiai úton módosított növények megítélésnek magyarországi háttere (Hungarian background of the opinion about the first generation genetically modified plants)*, Budapest, a Magyar Országgyűlés Mezőgazdasági Bizottsága, 2011; Farkas Csamangó Erika: A géntechnológia agrárjogi aspektusai (Agricultural aspects of genetic engineering), *Acta Universitatis Szegediensis Acta Juridica et Politica*, 2005/7; Heszky László: Az `Amflora´ GM-burgonya fajta 2010-től termeszthető az EU-ban (`Amflora´ potatoe is allowed to cultivate from 2010 in the EU), *Agrofórum*, 2010/4, 99.; Horváth Gergely: A `zöld´ géntechnológia alkalmazásának gazdasági- és agrár-környezetvédelmi kockázatai (Economic- and agri-environmental risks of application of `green´ genetic engineering), *Külgazdaság Jogi Melléklete*, 2008/7-8, 87-106.; Horváth Zsuzsanna: Védelem a tudományos bizonyosság hiányában: az elővigyázatosság alapelve az Európai Unió környezeti jogában (Protection in the lack of scientific evidence: the precautionary principle in the Environmental Law of the EU), in: Csapó Zsuzsanna (edit.): *Ünnepi tanulmánykötet Bruhács János professor emeritus 70. születésnapjára (Anniversary study volume for the 70. birthday of János Bruhács professor emeritus)*, Pécs, PTE-ÁJK, 2009, 88-115.; Julesz Máté: GMO-mentes alkotmány (GMO-free constitution), *Orvosi Hetilap*, 2011/31, 1255-1257.; JNO (Parliamentary commissioner for future generations): *az új Alaptörvény környezetvédelmi és fenntarthatósági rendelkezéseiből eredő állami felelősségről*, 258/2011. sz. állásfoglalása (No. 258/2011. opinion about *the state responsibility arising from regulations of the Fundamental Law on environmental protection and sustainability*) (25. April 2011.); Kovács Judit Nóra: Észrevételek az USA GMO politikájához (Remarks on GMO politic of the USA), in: Csák Csilla (edit.): *Jogtudományi tanulmányok a fenntartható természeti erőforrások körében (Legal studies among sustainable natural resources)*, Miskolc, University of Miskolc, 2012, 104-115.; Olajos István: A géntechnológiai tevékenység szabályozása Magyarországon (Regulation of genetic engineerging activity in Hungary), in: Szilágyi János Ede (edit.): *Környezetjog (Environmental Law)*, II. vol., Miskolc, Novotni Kiadó, 2008, 73-88.; Pánovics Attila: Génmódosítás-mentes régiók Magyarországon (Regions in Hungary clear from genetic modification), *Környezetvédelem (Environmental Protection)*, 2005/2, 16.; Tahyné Kovács Ágnes: A GMO-k jogi szabályozásáról egyes környezetjogi alapelvek, különösen a fenntarthatóság jegyében (About legal regulation of GMO-s in the light of the environmental protection principles, especially the sustainability), in: Raisz Anikó (edit.): *A nemzetközi környezetjog aktuális kihívásai (Current challenges of International Environmental Law)*, Miskolc, University of Miskolc, 2012a, 196-206.; Tahyné Kovács Ágnes: Génmódosítás a mezőgazdaságban és a genetikai erőforrások fenntartása (Genetic engineering in the agricultural and conservation of genetical resources), in: Csák Csilla (edit.): *Jogtudományi*

The conception of GMO-free agriculture had already been on demand before the adoption of the Fundamental Law in 2011. At first, not long after Hungary joined the European Union, this question was raised only in connection with the cultivation of plants from GM-seeds. Answering to this demand, the Hungarian Parliament adopted its No. 53/2006 (XI.29.) decision with an overwhelming majority of the MPs from all parties (that is especially rare in Hungary!) as they considered that maintaining the GMO-free feature of the country means an increasing competitive advantage on the markets for Hungary, and, furthermore, significantly improves our environmental and food security.[73] In our opinion, the importance of this parliamentary decision is that the Hungarian legislator recognized early the economic opportunities for GMO-free products; in essence, that GMO-free food could be sold at a better price on the market (e.g. in the EU) where it is a value for the consumers.

In 2011, the legislator also ruled in the Fundamental Law that Hungary shall facilitate the enforcement of the right to physical and mental health by – beside many other ways – *ascertaining that the agricultural sector is free of all genetically modified organisms*. *Júlia T. Kovács* drew attention to that the first proposal of the Fundamental Law[74] did not contain the commitment on GMO-free cultivation, it appeared only in an amendment.[75] Originally, the amendment contained the conception of GMO-free healthy food, however, as it could have infringed EU Law the text was changed to GMO-free agriculture.[76]

tanulmányok a fenntartható természeti erőforrások körében (Legal studies among sustainable natural resources), Miskolc, University of Miskolc, 2012b, 180-191.; Tahyné Kovács Ágnes: *A genetikailag módosított szervezetekre vonatkozó szabályozásról egyes környezetjogi alapelvek, különösen a fenntartható fejlődés tükrében (About legal regulation of GMO-s in the light of the environmental protection principles, especially the sustainability),* Budapest, PhD thesis, Pázmány Péter Chatolic University, 2013a; Tanka Endre: Alkotmányos bástya a génhadjárat ellen (Constitutional bastian against the genetic expedition), *A falu*, 2005/1, 37-49.

[73] According to the Parliamentary commissioner for future generations, one of the highest genetic engineering related problems is that its long term effects are unknown; JNO opinion NO. 258/2011, 7. Arguments beside and against GMO are present in the Hungarian scientific life as well: Study against genetic engineering: Darvas – Székács (edit.) 2011. Study beside genetic engineering: Balázs et al (edit.): 2011.

[74] Proposal submitted under No. T/2627.

[75] Amending motion submitted under No. T/2627/157.

[76] See further T. Kovács Júlia: A GMO-mentes Alaptörvény hatása a mezőgazdaságra – különös tekintettel a visszaszerzett EU-tagállami szuverenitásra és a TTIP-re (Effects of GMO-free Fundamental Law on agriculture – with special emphasis of the resumed sovereignty of the EU Member States and the TTIP), in: Szalma József (edit.): *A magyar tudomány napja a Délvidéken (Day of the Hungarian science in South) 2014*, Újvidék, VMTT, 2015, 308-309.

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This sentence of Article XX of the Fundamental Law has been assessed by many scientists in the Hungarian jurisprudence.[77] The main questions among these[78] – inter alia – are as follows: (a) what kind of activities and products are covered by the Fundamental Law, (b) what the binding force of these regulations looks like, and (c) in what relation are they with EU Law. Without debating the statements of the certain studies, our standing-point is the following in connection with the interpretation of the regulation of the Fundamental Law on GMO-free agriculture. According to us, the exact meaning of this order of the Fundamental Law has not been cleared yet. However, it could be ascertained that this rule is *not a directly predominant ban* (more likely an instruction to orient the legislators of the state). At first, this rule was referred to mostly in connection with *restrictions on cultivation of GM-plants* by the Hungarian legislator (this is a narrow interpretation). Thus, this narrow interpretation does not exclude that imported GM-products (e.g. food) could be purchased by Hungarian consumers. However, for about two years, the decision-makers interpret other questions as well as falling under the category of GMO-free agriculture (beside the cultivation of GM-plants), e.g. the intention to establish the *conditions of a GMO-free food production in Hungary*. In our opinion, the category of GMO-free agriculture gives such a wide framework of interpretation that even this latter, wide interpretation could fall under this category.

In favour of implementing the conception of a GMO-free agriculture, the Hungarian legislator intended to take every legal measure. Among these, we especially emphasize the followings.[79]

I. *The safeguard clause applied in relation to the MON 810 corn, the Amflora-potato and other related steps*. This legal step – according to its date, in case of the MON 810 corn – preceded the aforementioned 2006 parliamentary decision too, therefore it could be considered (from certain aspects) as an antecedent, a model of the GMO-free agriculture conception. Basically this EU-based legal institution gives opportunity just for a short time (some months) for a Member State to limit the cultivation of a GMO approved by the EU, however, in the recent practice of the EU law – and the

[77] Fodor László: A GMO szabályozással kapcsolatos európai bírósági gyakorlat tanulságai (Conclusions on practice of the Court of Justice of the European Union related to the GMO regulation), in: Csák Csilla (edit.): *Jogtudományi tanulmányok a fenntartható természeti erőforrások körében (Legal studies among sustainable natural resources)*, Miskolc, Miskolci Egyetem, 2012, 74.; Fodor: *Környezetjog (Environmental Law)*, Debrecen, Debreceni Egyetemi Kiadó, 2014, 113-114.; Szilágyi 2015, 38; Tahyné Kovács: *Jelölti válasz `A genetikailag módosított szervezetekre vonatkozó szabályozásról egyes környezetjogi alapelvek, különösen a fenntartható fejlődés tükrében´ című PhD disszertáció opponensi véleményeire (Answer of the candidate to the opinion of the opponent related to the `About the regulation on genetically modified organisms in the light of environmental principles, especially the sustainable development´ titled dissertation)*. Manuscript, PPKE JÁK Doktori Iskola, Budapest, 2013b. október 10., 3-6.; Tahyné Kovács: Gedanken zur verfassugsrechtlichen Interpretierung der gesetzlichen Regelung der GVOs in angesichts der Verhandlungen der neuen GVO Verordnung der EU und des TTIP (Transatlantic Trade and Investment Partnership), *JAEL*, 2015/18, 72-79., free access; cp. T. Kovács 2015.

[78] Szilágyi 2016a, 30.

[79] About the summary of these steps see further in detail: Szilágyi – Tóth 2017.

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Hungarian MON 810 Safeguard Clause Case is a good example of it – there are indeed some safeguard clauses which have existed for several years. There is a Hungarian safeguard clause in case of the Amflora-potato as well, which resulted in case T-240/10 EGC where– simplifying the story and the legal situation – Hungary requested the annulment of Commission Decisions 2010/135/EU and 2010/136/EU related to the Amflora-potato, with reference to the infringement of the precautionary principle and the incomplete risk assessment. In 2013, the judicial forum acting in this case concluded that the European Commission infringed significant procedural rules, hence it annulled the decisions, and the permission was withdrawn.[80]

II. *Forming of the strict coexistence rules*. The Member States have a relatively large freedom to create their own coexistence rules, i. e. to assign how GM-plants, traditional and bio-plants should be cultivated side by side.[81] In this area Hungary made relatively strict rules; for example the general distance was set as 400 meters in case of these plants, and in certain situations this distance could be larger too (800 meters). An interesting realization of the nation-wide regulation of coexistence was the attempt to set stricter rules (than the nation-wide ones) within their area by the local governments by local government decrees. Finally, the Alps-Adriatic Agreement gave solution to this situation.

III. *The Alps-Adriatic GMO-free zone initiation*. The Parliament decided about the accession to this in parliamentary decision No. 74/2011. (X.14.). In its framework, the concerned groups of farmers in Hungary are entitled to create GMO-free zones by agreements volunteerly. However it is important that if the farmers create a GMO-free zone by agreement, the Hungarian production authority, upon the application of the farmers of the zone, and based on the data supplied by them voluntarily, publishes the data (indicated in the application) and the data of the applicant farmers on its homepage, and on the governmental homepage.[82] However, questions may be raised whether this regulation is EU Law and WTO law conform. In our opinion, the regulation is in harmony with both of these laws based on its voluntary feature.[83]

IV. *Reconsideration of liability rules on genetic engineering*. Reconsideration of liability rules on green genetic engineering occurred after the adoption of the Fundamental Law, when GMO-contaminated seeds and their use were unravelled in Hungary.[84] This caused the reconsideration of the Hungarian liability regime on genetic engineering,[85] and initiated the establishment of criminal sanctions on the infringement of certain rules related to genetic engineering, concretely introducing the `violation of legal

[80] Szilágyi 2016a, 35.
[81] In case of Hungary see especially Articles 21/B-21/E of Act XXVII of 1998 on genetic engineering activity.
[82] 21/F. Articles of the Act XXVII. of 1998 on genetic engineering activity.
[83] Szilágyi 2016a, 31.
[84] About the case in details see: Raisz – Szilágyi 2012, 110-112.
[85] See the point 3 of the No. 1289/2011. (VIII.22.) Governmental decision on the establishment of the GMO Workgroup.

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liabilities relating to genetically modified plant varieties´ as a new disposition into the Criminal Code.[86]

V. *Support of EU level regulation on GMO-free areas.*[87] The Hungarian legislators recognised early that the realization of the Hungarian conception of a GMO-free agriculture would have a safe position in the frame of the EU law, if the EU law itself would give opportunity for the Member States to consider whether they would like to form GMO-free zones in their own territory or not. Having regard to this, the Hungarian legislators supported all the initiatives on EU level tending in this kind direction. In this case, the breakthrough was the adoption of directive 2015/412/EU[88] amending directive 2001/18/EC, and the proposal of the European Commission to adopt further legislation (as well).[89] According to directive No. 2015/412, during the authorisation procedure of a given GMO or during the renewal of authorisation, a Member State may demand that the geographical scope of the written consent or authorisation be adjusted to the effect that all or part of the territory of that Member State is to be excluded from cultivation.[90]

Beside these rules, the new directive entitles to use the abovementioned opportunity in case of previously authorised or reported GMOs (this is the so-called *opt-out clause*).[91] 19 Member States used the opportunity – one way or another – based on the opt-out clause. Hungary sent its adjustment request to the European Commission with regard to 8 GM-corns under authorisation procedure or already authorised on 21th September 2015 based on directive 2001/18 or decree 1829/2003. Most of the concerned enterprises (*Pioneer, Syngenta, Dow Agrosciences*) did not answer until the deadline (22nd October 2015), the *Monsanto* answered, but it did not present an objection.[92]

[86] Section 362 of Act C of 2012 on the Criminal Code: "Any person who: (a) unlawfully imports, stores, transports or places on the market in the territory of Hungary the propagating materials of genetically modified plant varieties which have not been authorized in the European Union, or releases such into the environment; (b) unlawfully releases into the environment the propagating materials of genetically modified plant varieties which have not been authorized in the European Union for cultivation purposes; (c) violates the prohibitive measures imposed for the duration of the safeguard procedure in connection with the import, production, storage, transport, placing on the market or use of propagating materials of genetically modified plant varieties which has been authorized in the European Union for cultivation purposes; is guilty of a misdemeanor punishable by imprisonment not exceeding two years."

[87] Szilágyi 2016a, 39-42.

[88] Directive 2015/412 of the European Parliament and of the Council of 11 March 2015 amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of genetically modified organisms (GMOs) in their territory.

[89] COM (2015) 177.

[90] See the new Art. 26b of the directive 2001/18/EC.

[91] See the new Art. 26c of the directive 2001/18/EC.

[92] See the free access resource.

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However, a Commission document warns the Member States of the followings in connection with the WTO law conformity of directive 2015/412: *„When exercising this new competence, Member States remain fully bound by their international obligations, including WTO rules."*[93]

VI. *Protection of the GMO-free agriculture conception during the negotiations of free trade agreements, the world trade's new instruments of development*.[94] Within the law of the World Trade Organization (WTO), several norms are related to the EU and Member State level regulation of GMOs.[95] The *EC-Biotech-case*[96] has an extreme importance in the related practice of the WTO, which added to the better understanding of WTO law in connection with GMO-regulation. In this regard, the consequence can be drawn that the freedom of a country (or another WTO-member) in decision-making related to GMO-free cultivation is limited with regard to the binding rules of the current international trade system.

Since the attempts to a general, multilateral development of the WTO trading system remain relatively hard to be realized in the Doha Round, the importance of free trade agreements between certain countries and regions is ever growing that could fit in the framework of the WTO law, and are typically concluded between two parties of the world market. From our point of view, the *Comprehensive Economic and Trade Agreement* (CETA) concluded between the EU and Canada, and the *Transatlantic Trade and Investment Partnership* (*TTIP*) to be concluded by the EU and the USA are of high relevance. As regards the CETA, it seems that the ideas included in the GMO-free agriculture conception could be realized:[97] „*CETA is fully consistent with Union policies, including those affecting international trade. In this respect, CETA will not lower or amend EU legislation, nor it will amend, reduce or eliminate EU standards in any regulated area. All imports from Canada will have to satisfy EU rules and regulations (e.g. technical rules and product standards, sanitary or phytosanitary rules, regulations on food and safety, health and safety standards, rules on GMO's, environmental protection, consumer protection, etc...).*"[98] However, at present is it not clear what kind of regulations does the TTIP contain in connection with GMOs.[99]

[93] COM (2015) 176, 8.

[94] Szilágyi 2016a, 42-43.

[95] On a detailed analysis see Szilágyi János Ede: WTO-jog és környezetvédelem (WTO-law and environmental protection), in: Bobvos Pál (edit.): *Reformator iuris cooperandi*, Szeged, Pólay Elemér Alapítvány, 2009, 485-512.

[96] WT/DS291/R, WT/DS292/R, WT/DS293/R.

[97] See especially Chapter 22. 1. Annex of CETA (trade and sustainable development), Chapter 24. (trade and environment): Art. 24.1. within the definition of environmental law, Art. 25.1.-25.2. (biotechnology).

[98] COM (2016) 444, 3. See Szilágyi 2016a, 43.

[99] Negotiations were secret for a long time, the European Commission started to publish the negotiating documents and its position only under a high pressure. Answering remarks (underlined by the Commission) of the public, the European Commission published a press release: thus e.g. it disproved that the „*TTIP would coerce the EU to permit cultivation of GM-plants*"; according to the European Commission, the TTIP would not change the related EU-law; see: free access.

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VII. *National rules related to the labelling of a GMO-free cultivation and their possible unification at EU level.* The particularities of FM decree 61/2016 (IX.15.) on labelling GMO-free food and feedstuffs – with regard to the regulation[100] of other countries[101]– can be summarized as follows. (a) The Hungarian regulation – similar to the comparable regulation of several EU Member States – *could be considered as a voluntary system* in the effect that if a product is GMO-free, marking this fact on the product is not obligatory, however, if somebody wants to mark the GMO-free feature, it could be only done according to the provisions of FM decree 61/2016. Relating to the Hungarian decree, the question arises that *„since the EU regulation [about labelling GMO-content] prescribes as mandatory that GMO-content must be labelled on the product, why is it needed to regulate the labelling of GMO-free production at national level. The answer is the following: the union labelling system declares as many exceptions in connection with the labelling of GMO-content, as the Union labelling should rather be called as a regulation of `obligatory marking of a significant quantity of GMO-content´. So according to the EU regulation, marking of a lower quantity GMO-content on the product is not obligatory. With regard to all of that, the reason why the national supplementary regulations are needed is that the obligatory labelling system of the EU contains too many exceptions."*[102] (b) The Hungarian regulation is close to the French regulation on GMO-free cultivation, however, but took a lot of inspiration from the Austrian system as well. (c) Foods (fish, meat, milk, egg, apiarian products, plant origin products) and feeds also fall under the scope of the law. GMO-free label shall not be applied in case of egg and meat of wild, (from the aspect of feed) non-traceable animals, and caught, wild fishes. Basically, food or feed aggregates, technology excipients and enzymes made from GMO shall not been used during the production of food or feedstuff marked with GMO-free label either. (d) According to the Hungarian decree, a product is allowed to contain a maximum of 0,1 percent of a GMO (which is what could be measured based on the current level of technology) which has authorisation for placing on the market in the EU and its presence in food or feed is unintentional or technically unavoidable. (e) Fish, meat, milk or egg, and foods containing these components could be regarded as GMO-free only if the feed given to the animal meets the requirements on GMO-free feeds of the decree. If the feeding of the animal did not meet these provisions, products origined from it could be labelled as GMO-free only when a certain *conversion time* had passed. The Hungarian decree contains detailed rules on the conversion time. Practical implementation of these rules is promoted by the fact that in the framework of the Common Agricultural Policy, the *Hungarian protein programs* is supported which promotes the cultivation of protein crops with compensation, boosting the national GMO-free cultivation of soy.

[100] See about a detailed analysis of the regulation: Szilágyi – Tóth 2017.

[101] European Commission: State of play in the EU on GM-free food labelling schemes and assessment of the need for possible harmonization – Final report, written by ICF GHK, October 2013, free access; European Commission: State of play in the EU on GM-free food labelling schemes and assessment of the need for possible harmonization – Case studies, written by ICF GHK, October 2013, free access. Lásd még Ursula Bittner: *Significance of GMO-free labelling for economic stakeholders*, 8 May 2015, free access.

[102] See Szilágyi – Tóth 2017.

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(f) According to the Hungarian regulation, apiculture products can be labelled as GMO-free if the following requirements are met: GMO-free plants generate the nectar- and pollinic resources in the 5,5 km area of the beehive, and, furthermore, the feed of the bees does not contain GMO or component made from GMO.

With regard to the differences between the regulations on GMO-free labelling in the Member States, we also promote[103] to adopt an EU regulation (directive) in the single market of the EU in order to accomplish of a certain level of unification.

3. New step towards the internationalization of Agricultural Law: the CETA and the TTIP

I. Related to the development of Agricultural Law, the procedure called *internationalization of Agricultural Law* (*Internationalisierung*) by *Roland Norer*[104] is ongiong, and in connection with this procedure some scientists (e.g. *Saverio Di Benedetto*[105]) raise the conception of `*international Agricultural Law*. However, it must be emphasized that despite of the raised conception, the existence of international Agricultural Law has not yet been considered as proven. Nevertheless, especially the following issues should be involved in the – at the present – theoretical category of international Agricultural Law, according to the proposal of János Ede Szilágyi:[106] (a) *Classical bilateral and multilateral international treaties of International Law.* Among these treaties, there are several agreements (also) related to the agriculture with regard to their object. In this context, the practice of the International Court of Justice in The Hague (ICJ) is of utmost importance, e.g. in the topics of water management, fishery, or aerial herbicide spraying.[107] (b) *Practice and law of the Food and Agriculture Organization (FAO). Food security* has a significant role in the activity of the FAO, which was established in 1945 in the framework of the UN. (c) *World Trade Law: agricultural aspects of the World Trade Organization (WTO) and the free trade agreements.* By establishment of the WTO in 1990, serious changes eventuated in the world trade cooperation. Agreements related to various areas of agriculture constitute a great part of the WTO-law. The recent development period of the World Trade Law is represented by the free trade agreements like CETA or TTIP (see in details hereunder). (d) *Multilateral Environmental Agreements (MEA*).[108] (e) *Human rights.* Human rights have several types, among which a lot has agricultural and rural relations. According to their acceptance and enforceability, especially the followings should be emphasized:

[103] For a detailed analysis of the regulation see: Szilágyi – Tóth 2017.

[104] Roland Norer: Agrarrecht – eine Einführung, in: Roland Norer (edit.): *Handbuch des Agrarrechts*, Wien, Verlag Österreich, 2012, 13-14.

[105] Saverio Di Benedetto: Agriculture and the Environment in International Law, in: Massimo Monteduro et al (edit.): *Law and Agroecology*, Berlin-Heidelberg, Springer, 2015, 101-111.

[106] Szilágyi 2016b, 42-45.

[107] Raisz – Szilágyi 2012, 131-132.

[108] In this regard, *Anikó Raisz* emphasizes that although real sanctions and punishments are not likely to be applied against the injurious state, it is sure that after all the number of the related cases in front of the International Court of Justice has also increased in the recent years.; Raisz: A környezetvédelem helye a nemzetközi jog rendszerében (Position of environmental protection in the system of International Law), *Miskolci Jogi Szemle*, 2011/1, 2011, 90-92., 99-102.

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(e1) Among *classical human rights* with agricultural-relevance, the right to property is specially enhanced,[109] nevertheless, other rights (e.g. the right to a fair trial) also could have a significant role in a concrete case.[110] The practice of European Court of Human Rights (ECtHR)[111] has an especially high relevance concerning these classical fundamental rights by the reason of the geographical location of Hungary (e.g. in compensation cases, land usage problems, or in connection with hunting rights). Since judgements of the ECtHR have a binding force, the given states (in principle) have to amend their agricultural regulation – which they did in most cases – in order to suit the judgement of the ECtHR.[112] (e2) However, there are some human rights like the *right to food*[113] or the *right to water*,[114] which are not as much accepted as the abovementioned classical human rights (e.g. for this reason, the ECtHR has no relevant practice in this regard yet), but which are cited more and more often in front of the different forums and in several cases.

II. CETA and TTIP make the recent – EU relevant – elements of the abovementioned World Trade Law. As within the WTO the negotiations aiming at developing the world trade within a multilateral framework are not continuous, the role of individual agreements between trading partners is more and more appreciated. It is for this reason the EU started to conclude free trade agreements with several trading partners. Up to the present, especially two of these agreements received high publicity.

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[109] See its examination from an agricultural aspect in Raisz: Földtulajdoni és földhasználati kérdések az emberi jogi bíróságok gyakorlatában (Questions related to land ownership and use in the jurisprudence of the human rights courts), in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai (Current challenges of European land regulation)*, Miskolc, Novotni Alapítvány, 241-253.; Téglási András: A tulajdonhoz való jog védelme Európában (Protection of right to property in Europe), *Kül-Világ*, 2010/4, 22-47.

[110] Raisz – Szilágyi 2012, 132.

[111] Although the International Court of Justice (ICJ) itself is also entitled to act upon the enforcement of the rights ensured by the human rights agreements, as individuals have no petition rights in front of the ICJ, its relevance is relatively small compared to regional human rights systems.

[112] Raisz – Szilágyi 2012, 132.

[113] About the related topics *Júlia T. Kovács* wrote at last a monography: *Az élelemhez való jog társadalmi igénye és alkotmányjogi dogmatikája (Social demand and constitutional dogmatic of the right to food)*, PhD Thesis, Budapest, Pázmány Péter Chatolic University, 2017; cp. Szemesi Sándor: Az élelemhez való jog koncepciója a nemzetközi jogban (Conception of the right to food in International Law), *Pro Futuro*, 2013/2, 86-99.

[114] See Raisz: A vízhez való jog aktuális kérdéseiről (About current questions of the right to water), in: Csák Csilla (edit.): *Jogtudományi tanulmányok a fenntartható természeti erőforrások témakörében (Legal studies on sustainable natural resources)*, Miskolc, University of Miskolc, 2012, 151-159.; Szabó Marcel – Greksza Veronika (edit.): *Right to water and the Protection of Fundamental Rights in Hungary*, Pécs, University of Pécs, 2013, 2-15., 34-114., 155-211.

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One of them is the CETA, which is to be concluded with Canada[115] (*Comprehensive Economic and Trade Agreement)* and which has been already signed at the end of the year 2016.[116] By contrast, the other agreement, which is planned to be concluded with the United States, the so-called TTIP[117] (*Transatlantic Trade and Investment Partnership)* is in the preparational period at present, and has no officially published[118] version of its text. Only factsheets were published by the EU Commission[119] about the course of the negotiations until now and its text proposals.

Similar to the agriculture experts of other EU Member States, Hungarian specialists also elaborate on the well-known questions in connection with the CETA and the TTIP, like the question of geographical indications or the previously examined GMO-topic. Moreover, Agricultural Law experts assign high relevance to the dispute settlement procedure as well.[120] However, hereunder instead of emphasizing these `classical´ questions we are going to analyse an area which is less examined by the legal literature, namely, the possible effects of free trade agreements on the transfer of agricultural lands. Since only the CETA's full text is available, we will concentrate on this – based on the work of János Ede Szilágyi[121] – during our analysis.

[115] See European Commission – Government of Canada: *Assessing the costs and benefits of a closer EU – Canada economic partnership*, 2008, free access.

[116] See COM(2016) 444.

[117] For an analysis see Jeronim Capaldo: The Trans-Atlantic Trade and Investment Partnership: European Disintegration, Unemployment and Instability, *GDAE Working Paper, 2014, 14-03*; European Commission: *Factsheet on Food safety and animal and plant health in TTIP*, 2015, free access; Baranyai Gábor – Szarvas Erik – Wágner Zsófia: *A Transzatlanti Kereskedelmi és Beruházási Partnerségről szóló megállapodás lehetséges hatásai a fenntartható fejlődésre Magyarországon (Posssible effects of Transatlantic Trade and Investment Partnership agreement on sustainable development in Hungary),* NFFT Műhelytanulmányok No 24. May 2015; Nagy Ágnes – Palócz Éva – Tarnai Zoltán – Vakhak Péter: *Az Európai Unió és az Egyesült Államok közötti kereskedelmi és befektetési egyezmény komplex hatásvizsgálata a magyar gazdaságra (Complex impact assessment of the trading and investing agreement between the European Union and the United States over the Hungarian Economy)*, NFFT Műhelytanulmányok No 24, 30. June 2015.

[118] Greenpeace published a not official version of the text; see the free access resource.

[119] See the free access resource.

[120] See about this: free access. See further Szilágyi 2016a, 42.

[121] Szilágyi 2017a, 52-54.; Szilágyi János Ede: A magyar földforgalmi szabályozás új rezsimje és a határon átnyúló tulajdonszerzések (New regime of Hungarian land acquisition and cross-border property acquisitions), *Miskolci Jogi Szemle*, 2017c/klszm 1, 107-124. Szilágyi János Ede: A határon átnyúló mezőgazdasági földszerzés aktuális kérdései (Current questions of cross-border land acquisition), in: ELTE ÁJK 350. jubilee volume, in press.

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III. According to the text of CETA published in the Official Journal of the European Union on 14th January 2017, only one chapter contained detailed rules related *expressis verbis* to `agricultural lands´[122] in the main text of the agreement (which actually means: except for the annexes). Namely, Chapter 19 of the CETA on Government procurement says that the given Chapter does not apply to the acquisition or rental of land, existing buildings or other immovable property or the rights thereon.[123] This phrasing indicates that on the other hand, the provisions of other chapters of the CETA from other aspects could affect agricultural lands. According to the interpretation of János Ede Szilágyi,[124] it means especially[125] Chapter 8 on Investment, which mentions the properties and the related rights by the definition of investments, by their types.[126] Annexes I[127] and II[128] of the CETA connected (also) to Chapter 8[129] contain *reservations* of both Canada and the EU Member States related to certain rules of investments, such as the provisions concerning the principle of national treatment,[130] the access to the market,[131] the most-favoured-nation treatment,[132] the fulfilment requirements[133] and the senior management and the Board of Directors.[134]

[122] According to *János Ede Szilágyi*, it is important to note that according to Art. 1.9 of the CETA – with the title: `Rights and obligations relating to water´ – surface and groundwaters in their natural condition are not typical objects of trade, and this kind of water is „not a good or a product". However, it does not pronounce its `heritage´ feature, as does the EU Law in the premable of the Water Framework Directive. Provisions of the CETA shall apply only restrectedly to waters in natural condition (lakes, rivers, etc.), i.e. only Chapter 22. on sustainable development and Chapter 24. on environment may be applied to these. Still, Szilágyi regrets that no specific status has been defned for lands – and its qualitative aspect, the soil – but rather that it is regarded as a simple object of trade by the parties, principally fallingx under investments; Szilágyi 2017a, 53.

[123] See point a) paragraph 3 of Art. 19.2 of the CETA.

[124] Szilágyi 2017a, 53; Szilágyi 2017c, 122-123.

[125] Cp. Chapter 10. of CETA, on temporary entry and stay of natural persons for business purposes.

[126] f) and h) points of Art. 8.1. of CETA, definition of `investment´.

[127] Title of Annex I: *Reservations for existing measures and liberalisation commitments*

[128] Title of Annex II: *Reservations for future measures*

[129] Title of the Annex: *Reservations for existing measures and liberalisation commitments*.

[130] Art 8.6. of CETA. In this regard in Annex I see e.g. the Canadian federation level I-C-5 reservation, and the Canadian province and territory level I-PT-6., I-PT-38, I-PT-41., I-PT-83., I-PT-129., I-PT-138., I-PT-174., I-PT-183., I-PT-184. reservations. On the part of the EU reservations were made by Croatia, Cyprus, Czech Republic, Denmark, Greece, Hungary, Latvia, Malta, Poland, Romania. In this regard in Annex II see the reservations of Bulgaria, Czech Republic, Estonia, Finland, Lithuania, Hungary, Slovakia.

[131] Art 8.4. of CETA. In this regard in Annex I see the Canadian province and territory level I-PT-6., I-PT-38., I-PT-41., I-PT-129., I-PT-138., I-PT-174., reservations. On the part of the EU reservations were made by Croatia, Cyprus, Greece, Hungary, Latvia, Malta, Poland, Romania. In this regard in Annex II see the from the part of the EU the reservations of Czech Republic, Finland, Lithuania, Hungary, Slovakia.

[132] Art 8.7. of CETA. In this regard in Annex I see e.g. reservations of Latvia and Romania.

[133] Art 8.5. of CETA. In this regard in Annex I see e.g. the I-PT-183. and I-PT-184. reservations.

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The Canadian reservations concerned mostly national rules on *`lands´, `agricultural lands´, and `forestry lands´*. On the other hand, reservations of EU Member States concerned mostly national rules on *`acquisition of properties´* (which is a more comprehensive category).
Although these national rules restrict the land acquisition of the citizens and enterprises of another trading partner compared to domestic persons, as they were appended to the CETA as reservations of the contracting parties, thus the parties of the CETA do not consider these national measures to be the restrictions of the Chapter on Investment of the CETA.

According to János Ede Szilágyi, with regard to the abovementioned, in case of those countries which did not make reservations related to the transfer of their agricultural lands, it cannot be excluded that in the future the provisions of the CETA would apply in connection with the transfer of their agricultural lands in the dispute settlement procedure of the CETA.[135]

4. Conclusion

In Commission III of the XXIX CEDR Congress, several other topics were examined (beside the ones in the Hungarian report) – depending on what the reporter intended to emphasize with regards to the specialities of their own nations. Finally, after a three-days-work, the Commission made several *de lege ferenda recommendations*, which should be considered in the future by the legislators. These are the followings (according to the blog of Ludivine Petetin, general reporter of the Commission):

„First, a cohesive approach[136] to agriculture and the CAP from farm to fork is to be embraced. In particular, further integration of the environment in agriculture is needed to improve the greening and sustainability of the CAP.

Second, the role of science and technologies was identified as both a driver for and barrier to change. Topics like digitalisation, access to broadband, big data (including data sharing, liability and ownership aspects), livestock breeding (and animal welfare), antibiotics and veterinary feed, pesticides and herbicides were critically discussed. The issues of cost to access the technologies and whether these technologies truly help with democratisation were particularly identified as requiring further investigations and research.

[134] Art 8.8. of CETA. In this regard in Annex I see e.g. the I-PT-183. and I-PT-184. reservations. In this regard in Annex II see from the part of the EU the reservations of Hungary with respect to the acquisition of state-owned properties.
[135] Szilágyi 2017a, 54; Szilágyi 2017c, 123-124.
[136] Furthermore, we would like to emphasize that finding the most effective legal instruments raises some difficulties, for this reason the Commission recommended inter alia the following issues: (a) minimalizing the use of compartmental approach, (b) different actors and participants of the food chain should be involved to the decision making process.

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The difficult question of access to land was the third conclusion reached. On this point, disparate developments can be noticed in the EU. In Spain and Germany, land abandonment is increasingly becoming problematic whereas, in France and Poland, the legislator has intervened to prevent land grabbing, where the law precludes the acquisition of farmland by foreigners."[137] Statements of the Commission related to this third topic are especially significant, and must be interpreted as sequences of the work of Commission II of Potsdam CEDR Conference in 2015.

[137] Ludivine Petetin: Developments in rural law following the 2017 European Congress on Rural Law, Cardiff University Blog, in: free access (10.10.2017)

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