

Csilla CSÁK* – Bianka Enikő KOCSIS** – Anikó RAISZ***
Vectors and indicators of agricultural policy and law from the point of view of
the agricultural land structure****

1. The new rural development period of the EU 2014-2020 and the maintenance of rural communities

After a long negotiation, the Rural Development Programme of Hungary pertaining to the 2014-2020 period was approved by the European Commission in August of 2015. The Rural Development Programme (RDP)¹ exercises the priorities determined by the European Regulation.²

According to this, the following support orientations and resource proportions are contained in the Rural Development Programme (Operational Programme): (a) Promotion of knowledge transfer and innovation in the field of agriculture, forestry and rural areas 3%; (b) Improving the capacity of existence of agricultural holdings and raising competitiveness in all of the regions and in case of all types of agricultural production, additionally promoting innovative farm technologies and sustainable

* PhD associate professor, University of Miskolc, Faculty of Law, Institute of Civil Sciences, Department of Agricultural and Labour Law, e-mail: jogkincs@uni-miskolc.hu

** PhD student, Deák Ferenc Law Graduate School, e-mail: kocsis.bianka7@gmail.com

*** PhD assistant professor, University of Miskolc, Faculty of Law, Institute of European and International Law, Department of International Law, e-mail: raiszaniko@yahoo.com

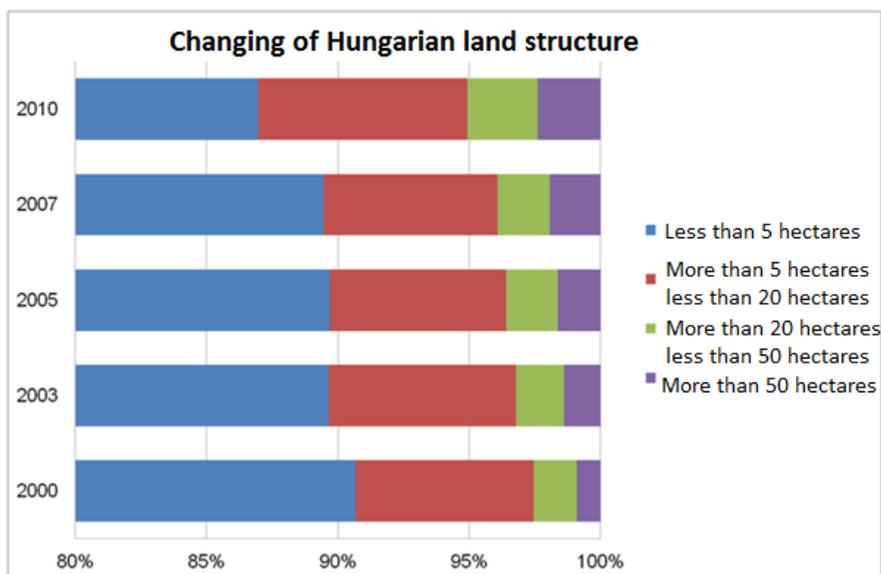
**** This research was (partially) carried out in the framework of the Center of Excellence of Mechatronics and Logistics at the University of Miskolc.

¹ Olajos István: *Támogatási rendszereink és a megújuló energiák*, Miskolci Egyetem, Miskolc, 2012, 14.; Csák Csilla: Cross compliance, avagy környezetvédelem a támogatás feltételeként, *Publicationes Universitatis Miskolciensis Series Juridica et Politica*, 2012/2. 423-433.; Csák Csilla: A támogatások intézményrendszere, in: Olajos István (edit.): *A gazdasági és társadalmi kohézió politikája az Európai Unióban és Magyarországon*, Miskolc, Novotni Alapítvány, 2009, 50-68.; Csák Csilla – Olajos István: The application of the single payment by national administrations and national courts - Hungarian National Report, *Agrár- és Környezetjog*, 2008/5, 31-42., Csák Csilla: The Hungarian National Report on the legal forms of agricultural undertakings, with attention to traditional and industrial cultivation, *Agrár- és Környezetjog*, 2010/8, 21-24.; Csák Csilla: A vidékfejlesztés foglalkoztatási és szociális kérdései, in: Olajos István (edit.) *Videkfejlesztési politika támogatásának joga*, Miskolc, Novotni Alapítvány, 2008, 120-166.; Jakab Nóra – Szilágyi János Ede: *Legal status of cohabitants and their children in the agricultural enterprise: National report of Hungary, European Congress on Rural Law*, CEDR Congress 2013 Lucerne, 1-18.; Szilágyi János Ede: Magyar Nemzeti Jelentés a gazdálkodó tevékenységének diverzifikációját érintő jogi ösztönzőkről és jogi akadályokról, *Agrár- és Környezetjog*, 2010/8, 3-20., Horváth Gergely: A környezetjog és az agrárjog közeledése, találkozási és metszete a magyar jogrendszerben, *Allam- és Jogtudomány*, 2007/2, 333-355.; Horváth Gergely: A vegyes szakjogok vegyülete, az agrár-környezetvédelmi jog legfontosabb alapkategóriái, *Jogtudományi Közlöny*, 2008/2, Nagy Zoltán: A termőfölddel kapcsolatos szabályozás pénzügyi jogi aspektusai, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Alapítvány, 2010, 187-197.

² Regulation (EU) no 1305/2013 of the European Parliament and of the Council

management of forests 42%; (c) Promoting the organisation of the food chain, including the processing and marketing of agricultural products, animal welfare, and risk management in agriculture 3%; (d) Restoring, preserving and improving ecosystems that are related to agriculture and forestry 26%; (e) Promoting resource efficiency and the shift towards a low carbon economy which resists to the effects of climate change in the agricultural, food and forestry sectors 5%; (f) Promoting social inclusion, poverty reduction and economic development in rural areas 17%.

The highest achievement of the Rural Development Programme³ is to emphasize the significant development of small and medium-sized entrepreneurships and family farms instead of large farms. It means that in the new period, these entrepreneurships will get 80% of project resources. The global resource of the RDP is 1300 billion HUF – including the national co-financing and the single area payment transferring from large holdings. The most important objective of the RDP is to preserve rural workplaces and to create new workplaces. For this reason, the development of micro, small and medium-sized entrepreneurships and family farms with significant employment potential is in the focus of the Programme, namely with special support of the labour-intensive sectors, especially animal production, gardening, and food processing.



³ See more in connection with the topic of rural development: Szilágyi János Ede: Köztestületek az agrár- és vidékfejlesztésben, in: Csák Csilla (edit.): *Agrárjog: A magyar agrárjog fejlődése az EU keretei között*, Miskolc, Novotni Alapítvány, 2010, 265-296.; Szilágyi János Ede: A támogatások rendszere az agráriumban és a vidékfejlesztésben, in: Csák Csilla (edit.): *Agrárjog: A magyar agrárjog fejlődése az EU keretei között*, Miskolc, Novotni Alapítvány, 2010, 355-371.

Beside family farms, new young agricultural producers will be one of the greatest winners of the new support period.⁴ The Government helps the qualified, young farmers with separated amounts, higher support intensity and within the frame of a special thematic sub-programme. 38 billion HUF is available for establishing new agricultural entrepreneurship, and further 40 billion HUF is disposable to support investments of young and qualified agricultural specialists. (Generational change in agriculture!)

The European Commission, upon strict conditions, but made it possible to promote new investments in irrigation aiming at raising the scale of irrigated areas (54 billion HUF), and for investments in agriculture, food industry, and forestry to get extremely high, more than 40% of the RDP resources.

75 billion HUF will be available for the modernization of existing and the creation of new animal husbandry farms as well as for procuring machines necessary for stock-raising. 72 billion HUF will be available for the horticultural sector for creating plantations and greenhouse gardening, technological upgrading of extant horticultures.

A significant part of investment resources serve the energy efficiency, and the promotion of using renewable energy. With this not only the concerned sectors' competitiveness could be raised, but also their greenhouse gas emission and – mostly imported – fossil energy dependence could be reduced.

The Prime Minister's Office formed a uniform procedure in each Operational Programme – it helps the process of tendering and the consumption of sources. For this reason, applications may be attended by less administration in the future.

2. Specific topic: cross-border acquisitions and acquisitions by non-agricultural capital of agricultural land

In Hungary, 35% of the National Assets belong to natural resources, 75% of which consists of land – hence, 26% of the general National Assets are land. While some elements of National Assets could be increased, the land, as a special natural resource could not be increased. The field size of Hungary is: 9.303.000 hectares. Regulation of ownership and usage of arable land concerns 80% of lands.⁵

⁴ Hegyes Péter: Links Between Rural Development and Direct Payments based on the “CAP Reform” of 2013, *Agrár- és Környezetjog*, 2014/17, 47.

⁵ Fodor László: Gondolatok a földvédelem agrárjogi és környezetjogi kapcsolódási pontjairól, in: Csák Csilla (edit.): *Ünnepi tanulmányok Prugberger Tamás professzor 70. születésnapjára*, Miskolc, Novotni Kiadó, 2007, 108-117.; Horváth Gergely: Az agrár-környezetvédelmi jog földvédelmi részterületének „tárgyi és területi” hatálya, in: Bobvos Pál (edit.): *Reformator iuris cooperandi*, Szeged, Pólay Elemér Alapítvány, 2009, 209-229.; Pánovics Attila: A védett természeti területek visszavásárlása Magyarországon, in: Bobvos Pál (edit.): *Reformator iuris cooperandi*, Szeged, Pólay Elemér Alapítvány, 2009, 419-431.

The land structure of Hungarian agriculture has a dual nature. On the one hand, there are a few joint large holdings and some cooperative large holdings operating with large areas, on the other hand, there are small farms – with smaller land size – based on the direct work of family members balancing on the edge of viability.⁶ By the examination of the ownership structure, it could be determined, that arable land is owned by: natural persons 67%, public ownership 26%, cooperative and corporate companies 3%, other 3%.

Speculative, illegal transactions, which are basically null and void contracts – e.g. in case of arable land purchased under the name of stooges – are hard to trace legally, because none of the parties is interested in terminating the contract. Speculative transactions are divided to two main categories: (a) so-called fraudulent contracts⁷ (illegal transactions aiming at evading the land acquisition rules), which are normally false transactions having appeared numerously after the Act of 1994 on Arable Land, which excluded foreigners from land acquisition. (b) contracts which are null and void because of other legal aspects (illegal transactions aiming at acquiring some advantages – e.g. evasion of pre-emption right).

Achievements of the Courts in this field are shown by the fact that in 11 years only in one case did they manage to reveal a fraudulent contract. Due to the nature of fraudulent contracts, only estimated data are available about the number of the transactions and the size of arable land concerned. In Hungary, seven hundred thousand – one million hectares of arable land may have ‘foreigner owners’ or

⁶ Kurucz Mihály: Gondolatok a termőföldjog szabályozás kereteiről és feltételeiről, *Geodézia és Kartográfia*, 2008/9, 13-22.; Kurucz Mihály: Gondolatok a termőföldjog szabályozás kereteiről és feltételeiről – part II, *Geodézia és Kartográfia*, 2008/10, 3-9.; Kurucz Mihály: Gondolatok a termőföldjog szabályozás kereteiről és feltételeiről – part III, *Geodézia és Kartográfia*, 2008/11, 10-17.; Kurucz Mihály: Gondolatok egy üzemszabályozási törvény indoklásáról, *Gazdálkodás*, 2012/2, 118-136.; Kurucz Mihály: A mezőgazdasági üzem, mint jogi egység, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Kiadó, 2010, 151-176.; Kurucz Mihály: Az ún. agrárüzem-szabályozás tárgyának többféle modellje és annak alapjai, in: Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közszolgálati Egyetem, 2013, 55-77.; Olajos István – Szilágyi Szabolcs: The most important changes in the field of agricultural law in Hungary between 2011 and 2013, *Agrár- és Környezetjog*, 2013/15, 101-102.; Bobvos Pál: A szerződésen alapuló földhasználati jogok, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Kiadó, 2010, 37-49.; Bobvos Pál: *A termőföldre vonatkozó elővásárlási jog szabályozása*, Acta Universitatis Szegediensis de Attila József Nominatae Sectio Juridica et Politica, 3. füzet, 2004; Bobvos Pál: A földhaszonbérlet, a felesbérlet és a részesművelés szabályozása, in: Tóth Károly (edit.): *In memoriam Nagy Károly egyetemi tanár*, Szeged, SZTE-ÁJK, 2002, 55-79.; Bobvos Pál: *A birtokrendezés szükségessége a gazdaságos és ésszerű mezőgazdasági termelés tükrében*, Acta Universitatis Szegediensis de Attila József Nominatae Sectio Juridica et Politica, 2. füzet, 1998; Bobvos Pál: A termőföld árumozgásának változásai, *Magyar Jog*, 1989/9, 779-786.; Bobvos Pál: A magánszemélyeket érintő termőföld-tulajdonszerzési korlátozások, *Magyar Jog*, 1988/7-8, 636-646.

⁷ Act VII of 2014 on Exposure and Prevention of Legal Transactions Aiming at Evasion of Laws Limiting Acquisition of Ownership or Usage of Arable Land (shortly called Act on Fraudulent Contracts) determines special rules on null and avoid arable land transactions or shortly on fraudulent contracts. This includes contracts on ownership acquisition and usage obligations, contract terms, and all of the legal transactions related to.

‘foreigner users’ by the help of fraudulent contracts and illegal transactions. Their number probably has not increased since 2004, when Hungary joined the EU – because, due to the accession, foreigners (a.k.a. citizens of the Member States) may, under special rules, acquire arable land ownership by fulfilling certain conditions. Characteristically, speculative arable land ownership acquisitions were intended by Member State citizens. These transactions may concern up to 20% of arable lands and may mean hundreds of transactions. Fraudulent contracts have been criminalized on 1st July 2013. Up to this time, the concerned parties could reveal their concluded – illegal – agreements freely, without sanctions, however after this time they could be punished by a penalty of one to five years of imprisonment.⁸

2.1. Effective Hungarian legal institutions preventing speculative transactions from coming into existence and force

Effective Hungarian legal institutions preventing speculative transactions from coming into existence and force:⁹ (a) arable land ownership and usufruct may be acquired only upon approval of the competent authority, local land committees¹⁰ have a veto right in case of ownership acquisition; (b) farmer status¹¹ – professional farming;

⁸ Olajos István: A 2002. február 22-én hatályba lépő termőföld adásvételéhez kapcsolódó elővásárlási és elő-haszonbérleti jog gyakorlásáról, *Napi Jogász*, 2002/4, 7-12.; Olajos István – Szalontai Éva: Zsebszerződések a termőföld-tulajdonszerzés területén, *Napi Jogász*, 2001/7, 3-10.; Olajos István: A haszonbérleti szabályozás árnyoldalai, *Magyar Jog*, 2001/2, 21-24.; See more in connection with pre-emption and first refusal for lease rights: Hegyes Péter: Értelmezési és jogintézményi kérdések a termőföldre vonatkozó elővásárlási jog szabályozásával összefüggésben, in: Bobvos Pál (edit.): *Reformator iuris cooperandi*, Szeged, Pólay Elemér Alapítvány, 2009, 199-207.; Leszkoven László: A termőföldet érintő elővásárlási jog egyes kérdései, in: *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica, Tomus XXII*, Miskolc, 2004, 393-403.

⁹ From 15 December 2013, the Act CXXII of 2013 on Transactions in Agricultural and Forestry Land (Act on Transactions of Land) regulates not only the criteria of becoming a farmer and the rules of land ownership acquisition and usage, but it also sets certain sanctions in case of concluding an agreement without observing the rules of this Act. Act CCXII of 2013 (Act on Land), which is a supplement of the Act on Transactions of Land, also stipulates details concerned to the monitoring of observance of the conditions and limitations of arable land ownership acquisition, and to regulatory use. Act VII of 2014 was promulgated on 11 February 2014, which is about exposure and prevention of legal transactions aiming at evasion of laws limiting acquisition of ownership or usage of arable land. There is a facts in the Act C of 2012 (Criminal Code) too, which regulates illegal acquisition of arable land as a crime.

¹⁰ See more in connection with local land committees: Csák Csilla – Hornyák Zsófia: A helyi földbizottságok szerepe a mezőgazdasági földek tulajdon-átruházási eljárásában, *Óstermelő*, 2014/5, 8-9.; Olajos István: A mezőgazdasági földek tulajdonszerzéséhez kapcsolódó eljárások (jegyző, helyi földbizottság), *Új Magyar Közigazgatás* 2014/7, 53-55.

¹¹ Act CXXII of 2013 5. § 7. ‘farmer’ shall mean any domestic natural person or EU national registered in Hungary, who has a degree in agricultural or forestry activities as provided for in the decree adopted for the implementation of this Act, or, in the absence thereof, who: (a) has been verifiably engaged in the pursuit of agricultural and/or forestry activities, and other secondary activities in his/her own name and at his/her own risk in Hungary continuously for at

(c) personal farming obligation – prevention of speculative land acquisition (aiming at capital income instead of farming); (d) ranking of holders of pre-emption and first refusal for lease rights¹² tends from inside to outside – gradual restructuring of estates; (e) land acquisition and possession limits; (f) a paper-based document with certain security requirements is needed to transfer arable land ownership or to set out in writing any other legal transaction concerning arable land ownership; (g) act on land property self-declaration and land use registration;¹³ (h) agricultural administration body keeps an official public register of farmers, agricultural producer organizations, and centres of agricultural holdings; (i) examination by the public prosecutor, bringing action for the annulment of a contract, extended sphere of authority to make proposals (e.g. acquisition of concerned land by the State); (j) the Criminal Code regulates illegal acquisition of arable land as a separate facts; (k) limitation of acquisition of ownership or usage of arable land by legal persons.

According to Act CXXII of 2013 10§ (1), Ownership of land may be acquired by domestic natural persons and EU nationals.

(2) Domestic natural persons and EU nationals, other than farmers, may acquire the ownership of land if the size of the land in their possession does not exceed one hectare together with the land proposed to be acquired (except for transactions between close relatives and land acquisition aiming at recreation).

11§ (1) By way of derogation from Section 10, ownership of land may be acquired – in the interest of enforcing the landholding policies provided for in the Act on the National Land Fund, and for the implementation of public benefit employment programs or any objective of public interest – by the State and also by the legal persons specified in Subsection (2) in the cases and under the conditions provided for in Subsection (2).

(2) Ownership of land may be acquired: (a) by a listed church, or the internal legal entities thereof, under a maintenance or life-annuity agreement or an agreement for providing care, or a contract of gift, and also by testamentary disposition; (b) by a mortgage loan company, subject to the limits and for the duration provided for in the Act on Mortgage Loan Companies and Mortgage Bonds; (c) by the municipal government of the community where the land is located, or the Budapest district

least three years, and has verifiably produced revenue by such activities, or revenue did not materialize for the – completed – agricultural or forestry investment project has not yet turned productive, or (b) verifiably holds membership for at least three years in an agricultural producer organization in which he/she has at least a 25 per cent ownership share, and who personally participates in agricultural and forestry operations, or in agricultural and forestry operations and the related secondary activities.

¹² See more: Olajos István: Az elővásárlási és elő-haszonbérleti jog gyakorlásának speciális szabályai a földforgalomban, in: Barzó Tímea – Juhász Ágnes – Leszköven László– Pusztahelyi Réka (edit.): *Ünnepi tanulmányok Bíró György professzor 60. születésnapjára*, Miskolc, Novotni Alapítvány a Magánjog Fejlesztéséért, 2015, 375-386.

¹³ According to the Act on Transactions of Land, land users registered in the land use registration had to supply data to the real estate authority (Land Office) until 30 March 2013. If someone do not fulfil this obligation until the deadline, he will get a fine. Since 1 January 2013 land users have to report the usage of any arable land, agricultural, forestry land within the limits of a settlement (except for forests), without reference to the size of the area, to the Land Office.

government where applicable (hereinafter referred to collectively as municipal government) for the implementation of public benefit employment programs and for urban development purposes.

The size of land that may be acquired by a farmer may not exceed 300 hectares (land acquisition limit). The size of land that may be held in possession by a farmer or an agricultural producing cooperative¹⁴ may not exceed 1,200 hectares, including the size of land already held in possession (land possession limit). In the case of operators of animal farms and producers of seeds for varieties of agricultural and horticultural plant species, the land possession limit shall be 1,800 hectares (preferential land possession limit).

2.2. Practice of the European Court of Justice

EU Laws do not regulate the ownership of agricultural land directly, however, the judicial practice formed by the principles of the Treaty on the Functioning of the European Union (TFEU) sets frames and orientations for the legislation and implementation of laws. Among the general principles of law, prohibition of discrimination, free movement of persons (including freedom of establishment), free movement of capital, etc. could be underlined. According to the above mentioned, ownership acquisition could only be limited by public interest admitted by the EU practice. E.g. retention of rural population, forming viable economic units, and prevention of speculative land purchasing could be admitted as public interest.¹⁵ In order to realize the public interest, several instruments can be applied, which have to be in proportion with the public interest and non-discriminatory. According to the practice of the European Court of Justice, several models have been created by the Member States related to the implementation and application of these instruments, as well as the

¹⁴ Act CXXII of 2013: 5. § 'agricultural producer organization' shall mean a legal person or unincorporated organization established in any Member State and registered by the agricultural administration body under the conditions set out in the decree adopted for the implementation of this Act, (a) where (aa) the organization is engaged in the pursuit of agricultural, forestry activity or secondary activity, as its basic activity, for at least three years continuously, prior to the transaction in question, (ab) more than half of the organization's net annual sales revenue is from agricultural, forestry activity and/or secondary activity, and (ac) at least one executive officer or manager of the organization performs agricultural, forestry activity or secondary activity having regard to its membership in the organization, and has a degree in agricultural or forestry activities as provided for in the decree adopted for the implementation of this Act, or at least three years of work experience verified by the agricultural administration body; or (b) that is construed as a newly established agricultural producer organization;

¹⁵ Andréka Tamás: Birtokpolitikai távlatok a hazai mezőgazdaság versenyképességének szolgálatában, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Kiadó, 2010, 11.; Nagy Zoltán: A termőfölddel kapcsolatos szabályozás pénzügyi jogi aspektusai, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc Novotni Kiadó, 2010, 187-197.; Nagy Zoltán: *A mezőgazdasági tevékenységet végzők adójogi szabályozása egyes jövedelemadóknál*, Publicationes Universitatis Miskolcensis Sectio Juridica et Politica, Miskolc, Miskolc University Press, Tomus XXIII/2, 2005, 333-349.

determination of frames and legal examination thereof.¹⁶ Among the instruments and limitations, there are certain effective solutions, like local residence, qualification requirements, approval of the competent authority¹⁷ or law-based right of pre-emption, etc. Certainly, the Member States sometimes violate the principles of proportionality and legal certainty, which are ranked as incompatible restrictions by the ECJ.¹⁸

The European Commission has started a general examination related to the regulation of the Member States (including Hungary) on the ownership and usage of agricultural lands. From the point of view of the European Law, the land policy¹⁹ margin of the Member States has several uncertainties. Inter alia, this uncertainty could originate in a Member State policy supported by the practice of the ECJ, which – being in harmony with the objectives of Common Agricultural Policy, and tending to the equity-based distribution of agricultural lands,²⁰ mitigation of speculative pressure and retention of rural population – necessarily raises the irreconcilability of the applied measures with the economic freedoms.

According to the practice of the European Court of Justice,²¹ a land policy, which, through an equity-based distribution of agricultural lands, supports the formation of viable small and medium-sized estates and their maintenance, is in harmony with the objectives of the Common Agricultural Policy related to raising the standard of living of agricultural farmers.

¹⁶ Korom Ágoston: A termőföldek külföldiek általi vásárlására vonatkozó 'moratórium' lejártát követően milyen birtokpolitikát tesz lehetővé a közösségi jog, *Európai Jog*, 2009/6., 7-16.; Korom Ágoston: Az új földtörvény az uniós jog tükrében. Jogegyenlőség vagy de facto más elbírálás?, in: Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közszerológati Egyetem, 2013, 13-24.; Korom Ágoston: Nemzeti érdekek érvényesítése a birtokpolitikában, *Notarius Hungaricus*, 2012/2; Korom Ágoston: A földpiacra vonatkozó kettős jogalap tételeinek bírálata, *Magyar jog*, 2011/3, 152-159.; Korom Ágoston: A birtokpolitika közösségi jogi problémái, *Gazdálkodás*, 2010/3, 344-350.; Korom Ágoston: A termőföldek külföldiek általi vásárlására vonatkozó "moratórium" lejártát követően milyen mozgásteret tesz lehetővé a közösségi jog?, *Európai Jog*, 2009/6, 7-16.

¹⁷ Case C-213/04 Ewald Burtscher v. Josef Stauderer [2005] ECR I-10309.

¹⁸ For example, in the case ECJ, C-370/05, according to point 44, the residence requirement, particularly since it is coupled in this case with a condition that residence shall be maintained for eight years, to which the acquisition of agricultural properties of less than 30 hectares is made subject by the national legislation at issue in the main proceedings, does not appear to be a measure which is proportionate to the objective pursued and therefore constitutes a restriction to the free movement of capital; See furthermore: Szilágyi János Ede: A földforgalmi törvény elfogadásának indokai, körülményei és főbb intézményei, in: Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közszerológati Egyetem, 110-111.; Szilágyi János Ede: The Accession Treaties of the New Member States and the national legislations, particularly the Hungarian law, concerning the ownership of agricultural land, *Journal of Agricultural and Environmental Law*, 2010/9, 48-60

¹⁹ Land policy means rules and objectives made by the Member States related to the ownership and usage of agricultural arable lands.

²⁰ Case C-452/01 Margarethe Ospelt and Schössle Weissenberg Familienstiftung, reference to the Court for a preliminary ruling: Verwaltungsgerichtshof – Austria [2003] ECR I-09743

²¹ Case C-452/01 Margarethe Ospelt and Schössle Weissenberg Familienstiftung, reference to the Court for a preliminary ruling: Verwaltungsgerichtshof – Austria [2003] ECR I-09743

Having examined the new practice of the European Court of Justice,²² we have concluded that even though the retention of local residence could be admitted by the European Law as a public interest, the applied measures fail when coming to the filter of proportionality. Compared to the old Member States (and their local agricultural producers), the intention of the new Member States (and their agricultural producers) related to the creation of viable estates distributed on the basis of equity becomes significantly difficult due to the application of European Law, which eventuates de facto distinct consideration, margin beside the de iure equal treatment.

2.3. Examining the legal recourse exclusively from the point of Procedural Law, we would like to emphasize three regulatory orientations and special regulations

Land cases may mean several procedures, so it is used as a generic term. It includes all the legal disputes rising in connection with the ownership and usage of lands. Legal disputes may evolve according to several legislative provisions, and may be related to several fields of law, e.g. with a character of Civil Law (e.g. accomplishment of a sales contract, annulment), public administration (e.g. question related to the official procedure), or Criminal Law (e.g. illegal acquisition of agricultural and forestry land).

Ad (1) The Act on Fraudulent Contracts (2014) has equally extended the sphere of the authority of prosecutors. On the one hand, the sphere of authority (right of data acquisition, access, and management) of prosecutors has been extended in connection with exposing illegal transactions related to arable lands, on the other hand, their right to bring action for the annulment of a contract has also been supplemented.

Ad (2) Civil Procedure Law sets special regulations on trials related to the annulment of land transactions. Without reference to the value of the case of action, regulations related to priority actions shall be applied and under the whole session of the litigation all the rules of extraordinary procedure shall be observed.

Within 8 days, the real estate supervisory authority and the forestry authority are obliged to take measures in order to register the status according to the judgement into the real estate register, the land use register and the register of foresters.

In civil cases, the Courts make decisions not only about the claims related to the annulment of contracts, cases are much diversified. In the case of land cases, Courts make decisions related to demands and claims derived from contracts, furthermore, they deal with actions for damages, compensation, etc. On the contrary, Administrative and Labour Courts in land cases decide about the re-examination of administrative decisions.

Ad (3) There are several legal options to enforce the rights protected by the law. The instrument of enforcement depends on the character of the claim, however, in certain cases several instruments could be applicable at the same time, the application of which depends on the choice of the eligible person. Optional ways of legal recourse

²² Joined cases C-197/11 *Eric Libert and others v. Gouvernement flamand* (C-197/11) and *All Projects & Developments NV and others v. Vlaamse Regering* (C-203/11) [2013]

are e.g. the followings:²³ (a) settlement in an out-of-Court procedure and in litigation (including e.g. mediation in civil or criminal cases, official mediator); (b) administrative procedure; (c) Court procedure (Constitutional Court, International Court, European Court of Justice, Court, Arbitration); (d) special options for dispute settlement (alternative conflict management, conciliation, etc.)

Arbitration procedure related to land cases could be examined from three aspects: (a) arbitration procedure could be proposed under the general rules of arbitration procedures; (b) in principle, in land cases arbitration procedure²⁴ is not allowed in connection with disputes about lands related to the National Assets; (c) 'privileged exclusivity': only Arbitration courts assigned in law shall make decisions in case of arbitration procedures. According to the statutory authorization, the general arbitral tribunal operating next to the Hungarian Agro-, Food Economy and Rural Development Chamber has exclusivity in two cases: on the one hand, it has exclusive jurisdiction in disputes related to agricultural activities, on the other hand, only the arbitral tribunal operating next to the Hungarian Agro-, Food Economy and Rural Development Chamber shall be selected in contracts related to the right of ownership and usage of arable lands. Terms derogating this are null and avoid.²⁵

²³ See furthermore: Raisz Anikó: Földtulajdoni és földhasználati kérdések az emberi jogi bíróságok gyakorlatában, in: Csák Csilla (edit.): Az európai földszabályozás aktuális kihívásai, Miskolc, Novotni Kiadó, 2010, 241-253. See as curiosity about the relevant parts of Inter-American Human Rights System: Raisz Anikó: Az emberi jogok fejlődése az Emberi Jogok Európai és Amerikaközi Bíróságának kölcsönhatásában, Miskolc, Novotni Kiadó, 2010, 146.; See more in connection with the two court systems: Téglási András: A tulajdonhoz való jog védelme Európában – az Európai Unió Bírósága, az Emberi Jogok Európai Bírósága és a magyar Alkotmánybíróság gyakorlatának fényében, *Kül-Világ*, 2010/4, 22-7., Hornyák Zsófia – Csák Csilla: Igényérvényesítés lehetőségei és határai a mezőgazdasági földforgalom körében – bírósági keretek, in: Szabó Miklós (edit.), *Studia Iurisprudentiae Doctorandorum Miskolciensium, Tomus 14.*, Miskolc, Gazdász Elasztik Kft., 2014., 139-158.; Csák Csilla – Hornyák Zsófia: A jogviták rendezésének eljárási kérdései a földforgalom körében: (Választott) bírósági keretek, *Östermelő*, 2014/4, 5-7.

²⁴ The Act on Arbitration (4. §) and the Act CXCVI of 2011 on National Assets 17. § Section (3) generally set the cases when arbitration procedure is not allowed. "No arbitration – either ad hoc or permanent, with place (seat) either in Hungary or outside Hungary - may take place in the procedures regulated in Chapters XV to XXIII of the Code of Civil Procedure (CCP), furthermore in cases where the subject-matter of the legal dispute belongs to national property falling within the Act No. CXCVI of 2011 on National Property, being on the territory within the borders of Hungary, and any right and claim related to it, respectively, as well as in cases where an act excludes the settlement of a legal dispute in the framework of arbitration." „The national wealth existing within Hungary's borders is governed by a civil law contract, which states that disputes concerning the national wealth are governed exclusively by the Hungarian language and application of Hungarian law, and in case of legal disputes – not including arbitration – Hungarian courts have exclusive jurisdiction. Furthermore, the contract states that in legal disputes concerning those in charge of the national wealth, arbitration proceedings cannot be stipulated.”

²⁵ See furthermore: Mikó Zoltán: A nemzeti vagyon részét képező termőfölddel való gazdálkodás egységes rendjének kialakítási lehetőségei, *Gazdaság és Jog*, 2004/4, 22-27.; Mikó Zoltán: Új agrárjogi alapfogalmak: a mezőgazdasági termelő, a mezőgazdasági üzem, *Gazdaság és Jog*, 2004/12, 21-24.; Mikó Zoltán: Termőföld, mint hitelfedezet, *Gazdaság és Jog*, 2003/4, 16-21., Andréka Tamás: Birtokpolitikai távlatok a hazai mezőgazdaság

3. Summary

Status and development orientations of the land structure are determined by substantive and procedural law concerning the ownership and usage of agricultural lands (holding), and, furthermore, by the agricultural financing and rural development priority connected to the target-device system of agricultural policy. Although the two areas are closely linked, they concentrate on partially distinct problems and focus points. Objectives of the Common Agricultural Policy are (a) viable food production, (b) sustainable farming with natural resources, and (c) equal development of rural areas. 38 per cent of the EU budget will be expended for these objectives during the 2014-2020 term. Two-thirds of the sources getting to Hungary promote Pillar I (direct payments, market measures), and one-third of them promotes Pillar II (rural development programme).

Regulation on the framework, ownership and usage relations of the land structure tries to settle the dominant problems. In this regard, the determination of persons acquiring rights, and the framework and method of the acquisition of rights must be mentioned. Orientation of the new regulation (from 2014) is the formation of a viable land structure and the maintenance of the rural population. In our country, there are two adverse processes relating to the land structure: on the one hand, fragmentation, and, on the other hand, land concentration. However, the two adverse processes strengthen each other. Strengthening the formation of the *sui generis* succession order as well as the young farmers dealing with agricultural act professionally and with habitual residence may have positive effects on the processes.

In our country, measures limiting the right acquisition can be divided into two groups. On the one hand, there are legal institutions which could also be found in the former regulation, nevertheless, with a different regulatory scope (e.g. the right of pre-emption, etc.), on the other hand, certain new legal institutions have been established (e.g. the approval of the authority, etc.).

Member State regulations particularly outline the strict regulation of the right acquisition options. However, the land policy margin of the Member States has several uncertainties from the point of view of the European Law. These uncertainties could *inter alia* arise from the circumstance that a Member States' policy which, being in harmony with the objectives of the Common Agricultural Policy, is supported by the practise of the Court, and which aims at the equitable distribution of agricultural lands, the release of the speculative pressure and the maintenance of the rural population – necessarily raises the irreconcilability of the applied measures with the economic freedoms.

According to the practice of the Court of Justice of the European Union, a land policy which promotes and maintains the formation of small and medium sized lands via equitable distribution of agricultural areas, is in harmony with the objectives of the Common Agricultural Policy relating to increasing the quality of living of agricultural producers.

By analysis of the new practice of the Court of Justice of the European Union, we concluded that although the maintenance of local communities could be perceived as a public interest by the European Law, the applied measures fail on the proportionality test. Compared to the old Member States (and their local agricultural producers), the intention of the new Member States (and their agricultural producers) related to the creation of viable estates distributed on the basis of equity becomes significantly difficult due to the application of the European Law, which eventuates de facto distinct consideration, margin beside the de iure equal treatment.