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The new Hungarian land transfer regulation from the aspect of examination of the European Union**

A scientific conference, called „*The new hungarian land transfer regulation from the aspect of examination of the European Union*" was arranged on May 6, 2014, in the building of Ludovika by the mutual organization of the Faculty of Public Administration of the National University of Public Service and the CEDR – Hungarian Association for Agricultural Law. The Act[1] CXXII of 2013 on the Transfer of Lands used for Agriculture and Forestry[2] which was came into effect on 1 May, 2014 added several reforms in connection with regulation of lands used for agriculture and forestry, for this reason some other conferences[3] was also arranged with the same subject. This conference was held by reason of the European Commission had started to examine whether the Act is in harmony with the legislation of the EU, approximately two months ago. First part of the conference was chaired by Prof. Dr. *István Bukovics* (head of Doctoral School of Public Administration Sciences), while the second part of the conference was chaired by Dr. *Csilla Csák* (president of CEDR – Hungarian Association for Agricultural Law). Several well-known theoretical and technical specialists took part in this occasion. I will summarize their lectures and comments in this article.

The preliminary lecture, titled „Regulation of agricultural land ownership from the perspective of EU legislation and practice of courts" was held by Dr. *Ede János Szilágyi* (PhD, University of Miskolc – Faculty of Law[4], associate professor).[5] He talked

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[1] Relating to the analysis of this see: Horváth Gergely: Protection of Land as a Special Subject of Property: New Directions of Land Law, in: Smuk Péter (edit.): *The Transformation of the Hungarian Legal System 2010-2013*, Budapest, Complex Wolters Kluwer – Széchenyi István University, 2013, 359-366.; Kecskés László – Szécsényi László: A termőföldről szóló 1994. évi LV. törvény 6. §-a a nemzetközi jog és az EK-jog fényében, *Magyar Jog*, 1997/12, 721-729.; Raisz Anikó: *Women in Agriculture – Country Report Hungary*, to appear; Tanka Endre: Történelmi alulnézet a magyar posztszocialista földviszonyok neoliberális diktátum szerinti átalakításáról, *Hitel*, 2013/január, 109-136.; Zsohár András: A termőföldről szóló törvény módosításának problémái, *Gazdaság és Jog*, 2013/4, 23-24.

[2] Hereinafter referred to as TL. Act.

[3] See conference volumes published: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Kiadó, 2010.; Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közszolgálati Egyetem, 2013.

[4] Hereinafter referred to as UM-FL.

[5] See in particular writings of János Ede Szilágyi in this topic: Jakab Nóra – Szilágyi János Ede: New tendencies in connection with the legal status of cohabitees and their children in the agricultural enterprise in Hungary, *Journal of Agricultural and Environmental Law*, 2013/15, 52-57.; Raisz Anikó – Szilágyi János Ede: Development of agricultural law and related fields

about four topics. Firstly, he delineated what could be the main reasons of a special legal protection of agricultural lands nowadays. According to his opinion these are the followings: growth of the population, rising demand for foods, degradation of soil,[6] and land grabbing (which is increasingly a world-wide problem).[7] After that he showed the Western European models of the transfer of agricultural lands regulation. In this context he stated that the Hungarian regulation has two shortcomings comparing with other Western European countries: on the one hand the regulation of agricultural holdings, on the other hand the special agricultural rules of inheritance (which is in a close connection with the first shortcoming). In the third part of his lecture he outlined the relevant EU legislation and the main elements of the practice of the Court of Justice of the European Union,[8] which must be take into consideration. Finally, in the fourth part of his lecture he talked about the special elements of the Hungarian legislation, which are unique compared to other states' regulation. In this context he emphasized the regulation of ownership in connection with corporate bodies.

Dr. *Ágoston Korom* (PhD, National University of Public Service – Faculty of Public Administration, assistant professor)[9] emphasized in his lecture (Land policy

(environmental law, water law, social law, tax law) in the EU, in countries and in the WTO, *Journal of Agricultural and Environmental Law*, 2012/12, 119-123.; 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 Közszolgálati 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.; Szilágyi János Ede: Földbirtok-politika és szabályozás az európai uniós normákban, in: Csák Csilla (edit.): *Agrárjog*, Miskolc, Novotni Alapítvány, 2010, 89-101.

[6] Relating to the Hungarian legal background and current challenges of land protection see: Farkas Csamangó Erika: Az agrártámogatások és a földvédelem, továbbá a talajvédelem összefüggései, in: Csák (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Kiadó, 2010, 91-106.; Farkas Csamangó: A kölcsönös megfeleltetés természetvédelmi és környezetvédelmi követelményrendszere, in: Bobvos Pál (edit.): *Reformator iuris cooperandi*, Szeged, Pólay Elemér Alapítvány, 2009, 155-180.; Fodor László: Kis hazai földjogi szemle 2010-ből, in: Csák (szerk.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Kiadó, 2010, 115-130.; Fodor László: Gondolatok a földvédelem agrárjogi és környezetjogi kapcsolódási pontjairól, in: Csák (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 (edit.): *Reformator iuris cooperandi*, Szeged, Pólay Elemér Alapítvány, 2009, 209-229.; Pánovics Attila: A védett természeti területek visszavásárlása Magyarországon, in: Bobvos (edit.): *Reformator iuris cooperandi*, Szeged, Pólay Elemér Alapítvány, 2009, 419-431.

[7] Relating to the topic see in particular: Tanka Endre: Hogyan lehet Magyarország földje a magyarságé, *Kapu*, 2012/3, 32-42.; Tanka Endre: A föld nemcsak a mezőgazdaság ügye, hanem a nemzetvédelmi stratégia alapja, *Társadalomkutatás*, 2005/1, 5-26.; Tanka Endre: A globális tőkeuralom új korszaka a hazai birtokpolitikában, *A Falu*, 2004/3, 21-38.

[8] Hereinafter referred to as ECJ.

[9] See writings of Ágoston Korom in this topic: 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 Közszolgálati Egyetem, 2013, 13-24.; Korom Ágoston: Nemzeti érdekek érvényesítése a birtokpolitikában, *Notarius Hungaricus*,

uncertainties in the Union legislation) that Land policy is situated in intersection of positive and negative forms of integration. He enhanced that the main reason of the uncertainties is that just a few number of preliminary rulings have been given by the ECJ in this matter yet. In these preliminary rulings the advocate-general of the ECJ pronounced that statements having reference to certain Member States shall not been applied to other states' ruling automatically. As compared with the others, the system of lands of the old Member States is stable, that is why there is a few litigation in connection with delimination of transfer of lands. If the Commission brought more actions against the Member States for failure to fulfil an obligation, more preliminary rulings would be given in this matter. Further reasons of the low number of litigations are as follows: the number of individual disputes is also low, and national supreme judges interpret the criteria of the doctrine of *acte claire* too widely. Moreover, in this matter a significant changing had been occurred in the practice of the ECJ, since making the sentences in connection with land policy of old Member States: economic freedoms can be restricted by national coercive public interests, which were incompatible with the uniform internal market up to the present. The ECJ emphasized two principles of its examination relating to the admissibility of these restrictions: (a) a system of official authorization shall not be introduced, if the potentially concerned parties also take part in the authorization (b) a restriction is only could be introduced, if it is applied not only to the foreign states, but also to the existing institutions (which means that a gradual transformation of the existing institutions is also needed to set out the admissibility of the restriction). Finally, Dr. Ágoston Korom stated that the new Member States of the Union are more exposed to land policy uncertainties than the old Member States, because in their case the potential conflict of interests and the opportunity of legal disputes and litigations are more probable – in his opinion the Commission must take into consideration this.

Dr. habil. *János Vass* (CSc, Eötvös Loránd University – Faculty of Law,[10] head of department, associate professor)[11] enhanced the following specialities in his lecture which was about the changes of the content of land use agreements: (a) lending was abolished from legal titles applicable to use of agricultural lands (until December 31, 2014 existing legal relationships also must be terminated). (b) number of persons eligible for beneficial interest and usufruct was also reduced – according to the Act V of 2013 on the Civil Code[12] beneficial interest could be established only for close relatives

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.

[10] Hereinafter referred to as ELU-FL.

[11] See writings of János Vass in this topic: Vass: *A termőföldek, az erdők a természetvédelmi területek szabályozása és tulajdoni, használati korlátaik*, habilitation thesis, Budapest, ELTE-ÁJK, 2007; Vass: A földtörvény módosítások margójára, in: Vass (szerk.): *Tanulmányok Dr. Domé Mária egyetemi tanár 70. születésnapjára*, Budapest, ELTE-ÁJK, 2003, 159-170.; Vass: *A földtulajdoni és földhasználati viszonyok a polgárosodó Magyarországon, rendszerváltás és földtulajdon*, CSc thesis, Budapest, MTA, 1994; Vass: Termőföld magántulajdon és földhasználat, *Magyar Jog*, 1993/11, 674-677.

[12] Hereinafter referred to as new CC.

(by contract), and for a maximum 20 year period. (c) Administrative organs became more significant by the new regulation. An approval of the agricultural administration body is needed to conclude a land use agreement. In Dr. János Vass's oppinion it could be a problem in the future, because obligation of use is prescribed for agricultural lands thus a long administration term could cause difficulties. Whether the public administration detains or helps the operation of agriculture will be turned out in the future. It is a serious intervention to civil relationships of the parties that an approval of the agricultural administration body is needed to conclude a land use agreement, because this body has also the right to refuse the approval, which obstructs the formation of land use relationships. In certain cases the agricultural administration body is bounded to refuse the approval – e.g. if the real objective of the agreement of the parties is the evasion of law (in his opinion this case is defined too wildly), or the real objective of the land use agreement of the parties is the acquisition of ownership of the agricultural land. According to Dr. János Vass these cases are subjective refusal reasons, because concluding a leasehold contract is unsuitable for a subsequent acquisition of ownership. (d) He said that on behalf of supervision of legality the land use registration operating for years could be suitable for the supervision of land use relationships.

After Dr. János Vass's lecture dr. *Klaudia Holló* (ELU-FL, PhD-student)[13] in her referral explained the rules of co-ownership of lands. She underlined the use of lands by co-owners. The basis of use of lands by co-owners is the settlement of the order of use and the agreement on division of use, as in case of leasehold of a part of the real estate in favour of a third party. Unanimous decision of all co-owners is needed to this. Act CCXII of 2013 stipulates that in certain cases approval of division of use must be regarded as granted (e.g. when the address of the co-owner is unknown hence he couldn't be noticed about the division offer). Cartograph is an inseparable part of the agreement on division of use. After making these documents, co-owners must to register to the land use registration. The real estate supervisory authority shall have the right to fine on behalf of urge the settlement on the order of use. However it could be a problem when the approval of certain co-owners must be regarded as granted to conclude the land use agreement and the co-owners use only a part of the land which fits to their share of property. Although the co-owners have the right to use the estate in a divergent measure, they mustn't be obliged to do it. According to dr. Klaudia Holló an amendment of the TL Act on behalf of duty of use could be prescribed to this case too.

Dr. *Csilla Csák* (PhD, UM-FL, head of department, associate professor)[14] started her lecture (Possibilities and limits of legal recourse in the field of transfer of

[13] See writings of Klaudia Holló in this topic: Holló: A termőföldről szóló 1994. évi LV. törvény, valamint a mező- és erdőgazdasági földek forgalmáról szól 2013. évi CXXII. törvény földhasználatra vonatkozó egyes rendelkezéseinek összehasonlító elemzése, *Themis*, 2013/3, 145-163.; Holló: A termőföldről szóló 1994. évi LV. törvény, valamint a mező- és erdőgazdasági földek forgalmáról szóló T/7979. számú törvényjavaslat egyes rendelkezéseinek összehasonlító elemzése, *Themis*, 2013/June, 111-140.; Holló: A kiemelt oltalom alatt álló természetvédelmi területek állami tulajdonba vételéről, *Themis*, 2013/March, 111-128.; Holló: Az elővásárlási jogról mint a földforgalom korlátozásának közvetett eszközéről, *Themis*, 2014/1, 42-59;

[14] See writings of Csilla Csák in this topic: Csák Csilla – Szilágyi János Ede: Legislative tendencies of land ownership acquisition in Hungary, in: Roland Norer – Gottfried Holzer

agricultural lands) with the definition of legal recourse – which is a legal instrument of enforcement of rights. There is a wide range of variety of these instruments: settlement made in extrajudicial procedure or in litigation; to start official or court proceedings; other special possibilities (e.g. alternative conflict management, conciliation, etc.). Arbitration proceeding is distinct from normal court proceeding, rules of normal court proceeding are not applicable to it (e.g. while arbitration court proceeding has only one grade, the normal court proceeding could have several grades). The link between them is the tight possibility to declare arbitration sentences null and void in a court proceeding. Act LXXI of 1994 stipulates the conditions of initiating arbitration proceedings, and situations when arbitration proceedings shall not be initiated (e.g. cases in connection with national assets). Arbitral tribunal operating next to the chamber of agriculture has exclusive competence in two situations, which means that in case of consent to arbitration proceeding alone the arbitral tribunal operating next to the chamber of agriculture could be chosen, and could proceed. In default of this consent or in case of illegal choice, the normal court shall proceed. These two situations are as follows: (a) Act CXXVI of 2012 on the Hungarian Agro-, Food Economy and Rural Development Chamber stipulates that in case of consent to arbitration proceeding the arbitral tribunal operating next to the chamber of agriculture has exclusive competence in legal disputes in connection with agro- economic activity. (b) According to the Act VII of 2014 only the arbitral tribunal operating next to the Hungarian Agro-, Food Economy and Rural Development Chamber could be chosen in agreements on ownership and right to use of agricultural lands. In the future, jurisdiction has to answer several questions raised in connection with the new complex regulation of transfer of lands correlate to arbitration and normal court proceedings alike. In course of administrative proceedings, judgement of approval of the authorities (perhaps of the statement of the local land committee) and in case of remedy review of the content of the approval are fundamental questions. Taking into consideration that there are official examination aspects on virtue of the approval could be or must be refused. Examination of the terms is complex and in many cases could be determined hard in an exact way. Legal recourse in arbitration and normal court proceedings raises

(edit.): *Agrarrecht Jahrbuch – 2013*, Wien – Graz, Neuer Wissenschaftlicher Verlag, 2013, 220-224.; Csák Csilla – Hornyák Zsófia: A mezőgazdasági földek használatának új szabályai, in *Őstermelő*, 2014/1, 8-12.; Csák Csilla – Hornyák Zsófia: A földforgalmi törvény szabályaiba ütköző mezőgazdasági földekkel kapcsolatos szerződések jogkövetkezményei, in: *Őstermelő*, 2014/2, 10-11.; Csák Csilla – Hornyák Zsófia: Az új földforgalmi törvényről, in: *Őstermelő*, 2013/4, 7-10.; Csák Csilla – Hornyák Zsófia: Az átalakuló mezőgazdasági földszabályozás, in: *Advocat*, 2013/1-4, 12-17.; Csák Csilla: Die ungarische Regulierung der Eigentums- und Nutzungsverhältnisse des Ackerbodens nach dem Beitritt zur Europäischen Union, in: *Agrár- és Környezetjog*, 2010/5, 20-31.; Csák Csilla: A termőföldet érintő jogi szabályozás alkotmányossági normakontrollja, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai = Current challenges of the European legislation on agricultural land = Aktuelle Herausforderungen der europäischen Regulierung über den landwirtschaftlichen Boden*, Miskolc, Novotni Alapitvány, 2010, 69-79.; Csák Csilla – Prugberger Tamás: A termőföldek megszerzésére irányuló egyes jognyilatkozatok érvénytelensége, in: Pusztahelyi Réka (edit.): *A magánjogi kodifikáció eredményei*: POT XV. tanulmánykötet: Edited material of lectures presented on the XV. National Meeting of Civil Law Professors, Place and date of the Conference: Miskolc, Magyarország, 2009.06.12., Miskolc, Novotni Kiadó, 2010, 7-19.

several questions- the practice of sentencing will have great significance in answering them.

Approvals of the authorities were evolved in a special way, by two cases in the referral of dr. *Zsófia Hornyák* (UM-FL, PhD-student).[15] In the first case (Budapest Capital Court, 2007) an agreement on creation ownership in favour of a Canadian citizen (about sale of an estate, concluded in 1992), while in the second (Supreme Court, 2011) case an agreement on creation ownership in favour of a Germanic citizen (about sale of an estate, concluded in 1996) was declared null and void by the court, because of the lack of approval of the authorities. In both of the cases Section 215. (1)-(3) of the Act IV of 1959 about the Civil Code[16] was the basis of reference (in case of default of approval of the competent authority it declares agreements null and void, if the approval is needed to conclude these agreements). The Court stated that agreements in case had no legal effect, because these are non-existent according to the CC. Although since the accession to the EU in 2004 the Act LV of 1994 on Arable Land[17] was added with the provision on which foreign and native citizens shall acquire the ownership of estates with equal conditions (and it was in force when these cases were considered), but this provision of the Act had no relevance in these cases.

Dr. *István Olajos* (PhD, UM-FL, associate professor)[18] started his lecture with the construction of proceedings on exercising the rights of preemption and first refusal

[15] See writings of Zsófia Hornyák in this topic: Hornyák Zsófia: Einige neuralgische Punkte des neuen Grundstückverkehrsgesetzes, in: Stipta István (edit.): *Miskolci Egyetem Doktoranduszok Fóruma: Állam- és Jogtudományi Kar szekciókiadványa*, Miskolc, Miskolci Egyetem Tudományszervezési és Nemzetközi Osztály, 2013, 5., Place and date of the Conference: Miskolc-Egyetemváros, Magyarország, 2013.11.07.

[16] Hereinafter referred to as CC.

[17] Hereinafter referred to as AL. Act.

[18] See writings of István Olajos in this topic: Olajos István – Szilágyi Szabolcs: The most important changes in the field of agricultural law in Hungary between 2011 and 2013, *Journal of Agricultural and Environmental Law*, 2013/15, 93-110.; Olajos István: A termőföld használata az erdő-és mezőgazdasági földek forgalmáról szóló 2013. évi CXXII.törvény alapján, in: Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közszolgálati Egyetem, 2013.; Olajos István – Gyurán Ildikó: Magyar Nemzeti Jelentés – Földhasználat és földvédelem a tagállamok jogában = The Hungarian National Report on Rural Use and Protection of Land in the Countryside, *Journal of Agricultural and Environmental Law*, 2012/12, 79-107.; Olajos István – Raisz Anikó: The Hungarian National Report on Scientific and Practical Development of Rural Law in the EU, in States and Regions and in the WTO, *Journal of Agricultural and Environmental Law*, 2010/8, 39-57.; Olajos István – Prugberger Tamás: Termőföldbirtoklás, hasznosítás és forgalmazás a családi gazdaság elősegítésének új jogi szabályozása tükrében, *Magyar Jog*, 2002/5, 286-295.; Olajos István: A termőföldről szóló törvény változásai a kormányváltozások következtében: gazdasági eredményesség és politikai öncélúság, *Napi Jogász*, 2002/10, 13-17.; Olajos István: A termőföldről szóló törvény módosítása – avagy mi fér bele a száz napba?, *Napi Jogász*, 2002/8, 8-12.; 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.

for lease before the notary.[19] TL. Act added several reforms, although these rights were established previously. Prior that the notary only aggregated the preemption and first refusal for lease offers, however the notary is obliged to upload the agreements in force, signed by the parties to the Government Portal, and then to post it to the bulletin board of the local government for a 60 or 15 day period term. The notary has to draw out the sensitive personal data in the agreements in both cases. According to Dr. István Olajos uploading to the Government Portal and the electronic posting could be equal in two ways: (a) if the NFA does not want to exercise the right of preemption, only after the electronic upload would have to post the agreement to the bulletin board of the local government. Lawyer of the NFA would have one week to make this statement in e-mail. (b) Prescription of confidentiality of seller and of direct upload of anonymised agreements. The person entitled to exercise right of preemption is obliged to make personal statement by the TL. Act. He has to make this statement before the notary after certifying his identity. The notary shall make a minute about this. In course of this proceeding the notary needs to know the definition of farmer, and what certifications are needed to verify this status. However at this time the notary has not got suitable means to know these, for this reason right of inspection should be ensure to them to the registrar of farmers. In the third stage of the proceeding the notary examines that are there any legal statements connected to the statement of acceptance (but the notary does not examine the content of the statement). If there is any failure in the notary proceeding, the agricultural administration body will be obliged to refuse the approval of the agreement. A question is raised: do the parties enforce their claim against the notary or the agricultural administration body in this case? According to the TL. Act, proceeding on exercising rights of preemption and approval of sales contract by the competent authority are associated proceedings, and in the course of these proceedings the notary sends the docket to the agricultural administration body or to the seller directly. Thus the best alternative of the solution of this question could be if the notary makes the docket in the form of a decision, and afterwards he should send it to all of the clients and to the agricultural administration body. After that persons interested should have an 8 day appeal deadline. Dr. István Olajos talked about the proceedings of Local Land Committees in the second part of his lecture. A big question in connection with this, that will this committees be established. Since the notaries could not establish these committees, the local organs of the chamber of agriculture were authorized to exercise their competences. The European Commission has cons against the establishment of the Local Land Committees, because these committees will be made up of local farmers, hence their impartiality is questionable. Therefore according to the lecturer, the subjective reasons for exclusion should be expanded to all reasons of impartiality in the act. Since the Local Land Committees are not independent administrative bodies, their decisions could be reviewed by the charge of the ruling of agricultural administration body. It is problematical that the Local Land Committee has

[19] Relating to rights of preemption and first refusal for lease see: Hegyes Péter: Értelmezési és jogintézményi kérdések a termőföldre vonatkozó elővásárlási jog szabályozásával összefüggésben, in: Bobvos (edit.): *Reformator iuris cooperandi*, Szeged, Pólay Elemér Alapítvány, 2009, 199-207.; Leszkoven László: A termőföldet érintő elővásárlási jog egyes kérdései, in: *Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica*, Tomus XXII (2004), 393-403.

not got duty on reasoning in course of making its resolution. However since the agricultural administration body is an administrative body, the Act CXL of 2004 sets the duty to reasoning to it. That is why it may be occurred, that the agricultural administration body has to decide and reasoning without the knowledge about the reasons of the Local Land Committee. Thus in Dr. István Olajos' opinion, the Local Land Committees could be suitable for do their tasks, if they will have members who are practised in interpreting agreements to.

Mrs. *Farkas dr. Mónika Molnár* (notary, Kesznyéten – Girincs)[20] examine the problems mentioned in the lecture of Dr. István Olajos by a practical aspect in her referral. In her opinion the new laws change the basis of the notary proceeding. At present the most significant problem for the notaries is that as long as they do not know these new laws, they cannot help to the clients. At this time notaries have to fight with the following problems: (a) they are obliged to check the status of farmer – they know the legal definition of it, but they do not have the right of inspection to the registrar concerning. (b) Agreements in connection with agricultural lands must be written on security paper – although lawyers are liable for the validity of them, but the notaries also need to look them, in order to check them. (c) Prior that, if not the person entitled handed the agreement in for posting, the notary had the right to consider whether to post the agreement or not. – However under the new laws the notary is obliged to refuse the posting. (d) It is also questionable: what is happening with the Local Land Committees established illegal. (e) Although laws are ensure the right to limited acquisition of ownership for local governments in order to implement public employment objectives, but it has not regulated that how long have to the local governments use this areas for this purpose (since it has to ensure the public employment, until the state provides support). (f) Until 30 April, 2014, several application were requested in the old schema – do the notaries obliged to post them or not?

`Fraudulent contracts´[21] in relations with the new Hungarian regulation of lands was the title of the lecture of Dr. *Pál Bobvos* (CSc, University of Szeged, associate professor).[22] In his opinion `fraudulent contracts´ are contracts hidden from the real

[20] See Dr. Farkasné Molnár Mónika: Termőföldvédelem a gyakorlatban, in: Csák (szerk.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Kiadó, 2010, 107-113.

[21] These are typically false transactions aiming at evasion of regulations limiting the acquisition of ownership or use of agricultural lands. These contracts can embody several transactions which are normally disguised and fraudulent contracts. Hereinafter referred to as `fraudulent contracts´.

[22] See writings of Pál Bobvos in this topic: Bobvos: A szerződésen alapuló földhasználati jogok, in: Csák (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Kiadó, 2010, 37-49.; Bobvos: A termőföldre vonatkozó elővásárlási jog szabályozása, *Acta Universitatis Szegediensis de Attila József Nominatae Sectio Juridica et Politica*, 2004; Bobvos: 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: A birtokrendezés szükségessége a gazdaságos és ésszerű mezőgazdasági termelés tükrében, *Acta Universitatis Szegediensis de Attila József Nominatae Sectio Juridica et Politica*, 1998; Bobvos: A termőföld árumozgásának változásai, *Magyar Jog*, 1989/9, 779-786.; Bobvos: A magánszemélyeket érintő termőföld-tulajdonszerzési korlátozások, *Magyar Jog*, 1988/7-8, 636-646.

estate supervisory authority, which aim at forbidden legal transactions. That is why we cannot talk about `fraudulent contracts´ in general. Only contracts coming out into the open could be examined which are likely to be disguised transactions, covering illegal acquisition of ownership. Regarding to its origin, these are the followings: (a) agreements ensuring gratuitous use, (b) lending agreements, (c) any other obligations ensuring free use, which are concluded between persons who are not relatives or familiar to each other. By making `fraudulent contracts´ subject to legislation, certain civil transactions were criminalised. Rest of these transactions really do not become public: such as donation or sales contracts without dating, or which are written but not submitted, (a) some of them have never been appropriate for eventuating legal effect (e.g. attempts to apport the ownership of lands), (c) some of them could affect only indirectly, such as acquisition of ownership by forest management association, or disguised loan with mortgage, (d) preemption and option agreements had to pass persons eligible for right of preemption (e.g. the state). Dr. Pál Bobvos enhanced two types of transactions which are potential `fraudulent contracts´: acquisition of ownership by adverse possession, and beneficial interest constituted by agreement. In reference to adverse possession, he emphasized that adverse possession appertains to original property acquisition modes, and it constitutes ownership in favour of the adverse possessor (administrative decision in principle 1551/2006), furthermore good faith is not needed to it, only the continuous possession as his own (a `fraudulent contract´ is sufficient for proving the latter). Since this transaction did not belong to under the regulation of AL. Act, regulation of CC. are applicable to it, for this reason anybody (also the foreigners) could acquire the ownership of agricultural lands. Afterwards two questions are rising: can be expelled the adverse possession in virtue of the land use registration and the regulation of TL. Act. Legal title of land use must be reported to the real estate supervisory authority – the prosecutor has the right to compare the statement of former owner with land use registration. In case of deviation he has the right to act, if a 15-year-long time did not expired until the use of land with legal title. According to the TL. Act approval of the agricultural administration body is also needed to the acquisition of ownership by adverse possession (the agricultural administration body examines e.g. whether the intention of the parties aiming at evasion of limits of ownership acquisition or not). However these provisions of the TL. Act are applicable only to transactions made before 30 April, 2014. But what is happening with applications for registration handed in after this deadline, if the adverse possession occurred before 30 April, 2014? An argument next to the registration is that the Constitutional Court settled in several decisions that pronouncing an activity as illegal with retroactive effect is unconstitutional, furthermore according to the CC. acquisition limiting regulations which are coming into effect after adverse possession had occurred, do not expel ownership acquisition. An argument against the registration is that the Constitutional Court enhanced that the reformed civil laws are applicable to the ongoing transactions. In connection with beneficial interest constituted by agreement Dr. Pál Bobvos emphasized that the AL. Act declares agreements constituting beneficial interest on agricultural lands null and void from 1. January, 2013 (except for in favour of close relatives). This provision is passed the test of constitutionality. TL. Act also sustains this regulation, which shows towards to the termination of beneficial interest of agricultural lands.

Referral relating to the lecture of Dr. Pál Bobvos was held by dr. *Péter Jani* (University of Szeged, PhD-student).[23] First of all, he enhanced that the number of `fraudulent contracts´ cannot be estimated easily, because the most essential element of it is the secrecy and they cannot be defined properly. Actions against them are old problems, which came to the front by the accession to the EU. Section 345. TFEU.[24] declares that the Treaties shall not infringe property ownership of the Member States. However regulations of the Member States must be in compliance with the fundamental principles of EU law. Nevertheless any EU citizen shall not acquire agricultural land ownership in another Member States with the infringement of the laws of this Member State – consequently `fraudulent contracts´ are illegal according to the EU law. Dr. Péter Jani agrees that `fraudulent contracts´ should be punished, if they violate public interests, in virtue of limitation of ownership acquisition will be required – however prohibition of acquisition of agricultural land ownership by foreign citizens and organizations is not such a public interest. Nevertheless restriction of speculation became required at the same time with the elaboration of the Common Agricultural Policy[25]. It is strengthened by the practice of the ECJ under which obstructing investments in real estates aiming at speculation is one of the public interests which are appropriate for limitation of the four fundamental freedoms. With reference to the lecture of Dr. Pál Bobvos, he mentioned that in case of acquisition of ownership by adverse possession applications for registration to the real estate register must be considered on the basis of laws which are in effect at the time of submission. Thus in case of adverse possession had been occurred before 30 April, 2014, District Land Offices should act on the basis of application for registration after the permission of the agricultural administration body (County Land Office).

Dr. *József Alvincz* (PhD senior advisor, Ministry of Rural Development[26])[27] evolved the regulation of holdings. In his opinion TL. Act also could be interpreted as the supplement of Agricultural Holding Act.[28] According to holding economy he underlined the followings: in case of old Member States, rules relating to agricultural

[23] See writings of Péter Jani in this topic: Jani: A termőföld-szerzés hatósági engedélyezésének szabályozása de lege lata és de lege ferenda, in: Ágoston Eszter Ildikó (edit.): *Komplementer kutatási irányok és eredmények az agrár-, a környezeti- és a szövetkezeti jogban*, Szeged, SZTE-ÁJK, 2013, 15-28.; Jani: The right of preemption and arable land: New rules, new methods?, *Review on Agriculture and Rural Development*, 2012/1, 296-301.; Jani: Alaptörvényünk és a termföld védelme, in: Verebélyi Imre (edit.): *Az állam és jog alapvető értékei a változó világban*, Győr, SZE-ÁJK, 2012, 292-301.; Jani: A földbirtok-politika alkotmányossága, *Glossa Iuridica*, 2012/1, 62-66.

[24] Treaty on the Functioning of the European Union.

[25] Hereinafter referred to as CAP.

[26] Hereinafter referred to as MRD.

[27] See writings of József Alvincz in this topic: Alvincz: A földügyi szabályozás téves értelmezése, avagy hiteltelen írás a Hitelben, *Hitel*, 2013/6, 111-121.; Alvincz: A „Földügyi törvénycsomag" jogszabályainak agrárgazdasági háttere, különös tekintettel az üzemszabályozásra, *Polgári Szemle*. 2013/3-6, Alvincz: Agrárkérdések, alapkérdések, a termőföld, *Gazdálkodás*, 2010/6, 650-656.; Alvincz József – Schmidt Rezső: A birtokrendezés főbb kérdései Magyarországon, különös tekintettel a földcserére, *Geodézia és Kartográfia*, 2008/10, 26-32.; Alvincz: Az Európai Unió új agrártámogatási rendszerének várható földpiaci hatásai, *Külgazdaság*, 2008/5-6, 59-73.

[28] Hereinafter referred to as AH Act.

economy (land ownership, use of land, regulation of holdings) reflect to traditions, while in Hungary land structure desirable for the government and the society was endeavoured to shape. Expiry of the land moratorium makes new tasks for the legislators. Determination of legal form, size, and relations to other enterprises of enterprises is one of these tasks. In the EU law three factors must be taking into consideration to decide whether the enterprise is a family homestead or not: scope of activity, sales revenue, number of employees outside the family homestead. According to the Hungarian laws possession size and economic size also must be taken into consideration. Separating systems of lands and holdings is greater in Hungary than in other Western European countries. Another distinction is that e.g. in Germany and Switzerland people also stick to the land emotionally (they sell it to neighbours, or other familiars), in Hungary they do not. Four factors must be taking into consideration to form the regulation of holdings: (a) land policy factors – the objective of it is to obstruct using land in an undesirable size. (b) Agricultural economy factors (taxation[29], credit, mortgage) – determination of sort of things which are suitable for basis of mortgage is needed. Furthermore a lower and an upper economic treshold also must be considered. (c) Personal factors – holding regulation must reflect only to holdings, not to the changing of owner. The sense of holding regulation is to set off the `one person – one holding´ principle. (d) Other factors: making the rules of succession and alienation of certain parts of the holding is also needed to preserve operability and viability of the holding. The evolving holding regulation has two ways: enterprise or civil – politics will choose it.

The title of the lecture of Dr. *Mihály Kurucz* (PhD ELU-FL, associate professor)[30] was the Transfer rules pertaining to types of complex of things[31] according to the TL. Act and other Hungarian laws reflecting to EU law. First of all he examined that from the aspect of agricultural holdings which means complex of things and property (Betrieb) or from the aspect of undertakes (Unternehmen) have to create the

[29] Relating to legal aspects of taxation on agriculture see: Nagy Zoltán: Az agrárszektor adójogi szabályozása, in: Csák (edit.): *Agrárjog*, Miskolc, Novotni Kiadó, 2005, 188-205.; Nagy: Az agrárszektor adójogi szabályozása, in: Csák (ed.): *Agrárjog*, Miskolc, Novotni Kiadó, 2006, 309-326.; Nagy: Az agrárszektor különleges adójogi szabályozásának alapkérdései, in: Csák (edit.): *Agrárjog*, Miskolc, Novotni Kiadó, 2008, 306-322.; Nagy: Az agrárium adójogi szabályozása, in: Csák (edit.): *Agrárjog*, Miskolc, Novotni Kiadó, 2010, 315-335.; Nagy: A mezőgazdasági tevékenységet végzők adójogi szabályozása egyes jövedelemadóknál, *Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica*, Miskolc University Press, Miskolc, Tomus XXIII/2 (ann. 2005), 333-349.

[30] See writings of Mihály Kurucz in this topic: Kurucz Mihály: Gondolatok a termőföldjog szabályozás kereteiről és feltételeiről, *Geodézia és Kartográfia*, 2008/9, 13-22.; Kurucz: Gondolatok a termőföldjog szabályozás kereteiről és feltételeiről – part II, *Geodézia és Kartográfia*, 2008/10, 3-9.; Kurucz: Gondolatok a termőföldjog szabályozás kereteiről és feltételeiről – part III, *Geodézia és Kartográfia*, 2008/11, 10-17.; Kurucz: Gondolatok egy üzemszabályozási törvény indokoltságáról, *Gazdálkodás*, 2012/2, 118-136.; Kurucz : A mezőgazdasági üzem, mint jogi egység, in : Csák (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Kiadó, 2010, 151-176.; Kurucz: Az ún. agrárüzem-szabályozás tárgyának többféle modellje és annak alapjai, in: Korom (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közszolgálati Egyetem, 2013, 55-77.

[31] Universitas rerum.

regulation model. Betrieb type model (Hofrecht) can be used for enterprises which are not structured and have no legal personality. In case of these enterprises, holding type regulation is unnecessary, because the regulation of subjects at law (Act of Cooperatives, CC., etc.) ensure the regulation and the legal certainty in external and internal legal relationships alike. For example in case of transfer of parts of holding they also allowed to use the holding type regulation. In the lack of holding regulation TL. Act has two special rules (evolving in the practice of courts) for 2 transactions inter vitals in connection with complex of things. Primarily it is pertaining to complexes of the same-type-things.[32] However complexes of the different-type-things[33] also appeared in the TL. Act in connection with the regulation of so-called allowances pertaining to transfer of farms. According to the TL. Act complex of things has two types: complex of the same-type-things (universitas rerum coherentium – land parcel regulation model), and complex of the different-type-things (universitas rerum distantium – holding regulation model). According to the TL. Act land parcels are complex of the same-type-things – in case of neighbouring lands and lands belonging to the holding centre too. Potentate rights were expanded by both type of regulation. Redistributive land exchange would embody the first regulation model, but the TL. Act is negligent in this question. However potentate rights are ceased in connection with transfer of holdings/farms. Transfer of holdings means the transfer of whole agricultural complex of property. Changing of internal structure of the subject at law is not transfer of holding, since in case of that the owner or user of the farm/holding is the same person (the subject at law) – only the structure of ownership (general partner becomes limited partner, new partner appears) of it will be changed. Expanding of exercise of preemption and first refusal for lease rights is an essential reform of the TL. Act. It eliminates selection in case of sale and lease of more lands, and the land growing aspirations of the neighbours. If the subject of the legal transaction is the farm, the transaction must be concluded to the whole unit of the farm. In case of universtas rerum distantium unity is established by concerning to the holding centre. TL. Act stipulates the definition of agricultural holdings: *"unity of agricultural production factors (land, agricultural instrument, other elements of property) with the same objectives, which is also a farming unity because of the economic linking*". But the Act does not mention that is it a unity of things or a unity of farmers. Many fields needed to be regulated by the legislator. One of these is that a person how many holdings, holding centres could have (principle of `one farmer – one holding´ or `one farmer – more holdings´). Holding regulation model is alien to the Hungarian legislation practice. According to the TL. Act in regulation of undertakings a direct or indirect ownership limiting regulation (which is also known in capital,- and media markets) is unavoidable.

Referral connecting to the lecture of Dr. Mihály Kurucz was held by dr. *Orsolya Papik* (ELU-FL, PhD-student). The starting point of her referral was Article P) of the Fundamental Law, which stipulates that agricultural holdings must be regulated in cardinal acts. The rest of the Western European countries have independent agricultural holding acts, however Hungary has not, the TL. Act contains only the elements of it. Thus the definition of agricultural holdings can be approached from three views: (a)

[32] Universitas rerum coherentium.
[33] Universitas rerum distantium.

subject of transfer, (b) complex of property, (c) unity of rights and obligations. Dr. Orsolya Papik applied the first view, so she examined agricultural holdings as complexes of things. Her starting point was the Roman Law, in which the definition simple[34] and multiple[35] things, complexes of things, and instruments[36] were distinguished. According to the Roman Law the land and its instruments have been composing economic unit for ages. In dr. Orsolya Papik's opinion regulation of agricultural holding has all the signs of the complex of things. The land is the basic unit of it – changings in connection with the land have influence on its accessories without special acts, but on its instruments not. Finally she emphasized three problems relating to the current regulation: (a) TL. Act allows to transfer more agricultural lands as unit only between neighbours, or persons pertaining to the same holding centre; (b) fragmentation of lands could be emerged in case of death of a person who possessed more agricultural lands, because heirs has the chance to select in the estate; (c) if an agricultural holding is operated by spouses, it will disintegrate in case of their divorce.

Prof. emeritus Dr. *Tamás Prugberger* (DSc, UM-FL)[37] wanted to answer the question: how could be the Hungarian lands used for agriculture and forestry kept in Hungarian citizens' hands, while the regulation is in compliance with EU law. In the historical introduction he talked about that during the socialism all agricultural land must be taken into collective farms. However the ages '90 was a turning point. According to the Transitory Act (Act II of 1992) collective farms had to take agricultural lands into separated foundations. However people get only compensation tickets instead of their former lands, with which they could take part in auctions. Nevertheless not all of them wanted to crop the lands and forests bought in these auctions. Subsequently stooges from the west were appeared – since then lands had only symbolic price, which the foreign investors doubled, and they acquired the ownership of agricultural lands and forests through stooges, by `fraudulent contracts´. Dr. Tamás Prugberger has two proposals relating to the current regulation: (a) he defined as a problem that the TL. Act does not rule the special succession of agricultural farms and agricultural lands. To solve that problem he proposed to pass the

[34] Res simplex.
[35] Res composita.
[36] Instrumentum.
[37] See writings of Tamás Prugberger in this topic: Prugberger: Szempontok az új földtörvény vitaanyagának értékeléséhez és a földtörvény újra kodifikációjához, *Kapu*, 2012/9-10, 62-65.; Prugberger – Szilágyi: Földbirtok-politika az európai uniós és tagállami normákban, in: Csák (edit.): *Agrárjog*, Miskolc, Novotni Alapítvány, 2006, 82-96.; Prugberger – Szilágyi: Földbirtokszerkezet és szabályozás Nyugat-Európában, *Az Európai Unió Agrárgazdasága*, 2004/8-9, 38-41.; Prugberger – Szilágyi: Földbirtok-politika az EU-ban, in: Csák (edit.): *Agrárjog*, Miskolc, Bíbor Kiadó, 2004, 69-83.; Prugberger: A Nemzeti Földalap kérdése az Európai Gazdasági Térség államaiban, *Cég és Jog*, 2002/10, 3-4.; Prugberger: Földügyletek Európában, *Az Európai Unió Agrárgazdasága*, 1999/7-8, 11-14.; Prugberger: A földhasználati ellenőrzés hiányosságai, *Az Európai Unió Agrárgazdasága*, 1999/11, 26-28.; Prugberger: Reflexiók „A termőföldről szóló 1994:LV. tv. 6. §-a a nemzetközi jog és az EU-jog fényében" c. fórumcikkhez, *Magyar Jog*, 1998/5, 276-287.; Prugberger: A gazdálkodó szervezetek termőföld tulajdon kérdéséhez, *Gazdaság és Jog*, 1997/12, 21-22.; Prugberger: Néhány gondolat a magyar földtörvény-módosítási tervezethez, *Valóság*, 1997/10, 27-44.

Western European model. In these western countries there are special hereditary rules next to general rules, aiming at keep as a unit the land after death of the farmer. (b) In connection with agricultural holdings he proposed to make an AH. Act. This Act should have to determine the followings: conditions and rules of organization, use and utilization of farms and agricultural holdings as economic units by sales contraction or donation; acquisition of ownership by succession; right of use and acquistion of rights based on lease or leasehold; the right of use of the widow in case of the death of the owner or the lessee.

In the last lecture Dr. *Anikó Kátai* (head of department, Internal Market and Legal Department of the EU) examined EU laws pertaining to Lands used for Agriculture and Forestry. She emphasized that objectives of establishment of the EU contained economic goals too besides ensuring the peace, security, and stability. Objectives of the EU encompass setting off market economics, ensuring anti-discrimination, moreover the establishment of a uniform internal market and ensuring the four fundamental freedoms. These can be limited by the Member States only with the reference to public order, public security, and public health. However there are some coercive public interests concerning only to agricultural lands (so on the basis of these interests ownership acquisition also can be limited). The European Commission normally bewares of encroaching to cases of the Member States in connection with agricultural lands, that is why it does not initiate actions for failure to fulfil an obligation when regulation of the Member States infringes EU law in this field. The Commission of the European Community vs. Graceland case (1987) is an exception. According to the Commission the Greece national rule which forbade the acquisition of properties situated next to the borders was infringed EU law. Relating to this case the ECJ enhanced that if a case pertains to special anti-discrimination situations, general anti-discrimination rules shall not be applicable to it. The ECJ categorized the Greece national regulation as falling into these special anti-discrimination situations.

After the lectures the first comment was held by Dr. *István Kapronczai* (PhD, director general, Research Institute of Agricultural Economics),[38] who drew attention to the need of a rapid establishment of a long-term steady land policy, which has to be transmitted to the farmers too. Politics, lawyers and economists have great importance on that. Urgency of the action is confirmed by the bad financial situation of the state – agriculture is one of the most profitable industries in Hungary. Dr. *Zoltán Mikó*[39]

[38] See writings of István Kapronczai in this topic: Kapronczai: Az új földszabályozás hatása az agrárpolitikára, in: Korom (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közszolgálati Egyetem, 2013, 79-92.; Kapronczai: Birtokméret, felszereltség, hatékonyság, *Agrofórum*, 2011/11, 10-16.; Kapronczai: A földbirtok-politika lehetséges irányai, *Gazdálkodás*, 2011/1, 52-69.; Kapronczai: A földbirtok-politika választ igénylő kérdései, *Gazdálkodás*, 2010/2, 191-201.

[39] See writings of Zoltán Mikó in this topic: Mikó: A birtokpolitika megvalósulását segítő nemzeti jogi eszközök, in: Korom (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közszolgálati Egyetem, 2013, 151-163.; Mikó: A föld használatához kapcsolódó vagyoni értékű jogok forgalmazásának várható hatásai a földügyi szabályozásra, *Gazdaság és Jog*, 2008/3, 13-20.; Mikó: A nemzeti vagyon részét képező termőfölddel való gazdálkodás egységes rendjének kialakítási lehetőségei, *Gazdaság és Jog*, 2004/4, 22-27.; Mikó: Új

(National University of Public Service – Faculty of Public Administration, associate professor; president of the Hungarian Chamber of Agriculture[40]) enhanced that land regulation of all EU Member States has elements embodying national land policy value judgements. If the Commission criticized the Hungarian regulation, it would have to examine the land regulation of the other Member States too – however it is unrealistic because of the sensitiveness of the topic. In his opinion the AH. Act should have to regulate farming as enterprises and internal wealth relations of private agricultural undertakings, moreover it should have to set special hereditary rules. In connection with the HCA he emphasized that: (a) the HCA supplies the tasks of Local Land Committees transitionally, and it has established the procedures needed, (b) several land specialists are judges of the Arbitral Tribunal operating next to the HCA , and public trust has a great importance in functioning of the Arbitral Tribunal. *András Téglási* (National University of Public Service – Faculty of Public Administration, assistant professor, Department of Constitutional Law) talked about constitutional aspects of the agricultural land regulation in his comment. Significant Constitutional Court decisions have not been made since coming into force of the Fundamental Law (except for 3199/2013. (X.31.) Constitutional Court decision about the examination of the ex lege termination of beneficial interest on agricultural lands). For this reason former Constitutional Court decisions[41] must be taken as basis, especially the 35/1994. (VI. 24.) Constitutional Court decision – according to this decision limitations of the AL. Act are constitutional, until according to an objective deliberation the considered sensible reasons of the limits are existing[42]. However it is questionable that how long and on what basis have been existing these reasons since coming into force of the Hungarian Fundamental Law (1 January, 2012). In his opinion it is a promising sign, that (in contrast with the former Constitution) text of the Fundamental Law contains rules of agricultural lands – according to the Fundamentals, Article P) agricultural land is one of the natural resources, which have to be protected. Nevertheless we have to

agrárjogi alapfogalmak: a mezőgazdasági termelő, a mezőgazdasági üzem, *Gazdaság és Jog*, 2004/12, 21-24.; Mikó: Termőföld, mint hitelfedezet, *Gazdaság és Jog*, 2003/4, 16-21.

[40] Hereinafter referred as to HCA.

[41] See: Andorkó Imre: A tulajdonhoz való jog védelmének kialakulása, *Debreceni Jogi Műhely*, 2013/1, 1.

[42] See detailed analisys of the decision: Téglási András: A földtulajdon alaptörvényi védelme a 2014-ben lejáró moratórium tükrében, *Jogtudományi Közlöny*, 2012/11, 449-460.; Téglási András: Termőföldvédelem az Alkotmánybíróság gyakorlatában és az Alaptörvényben, in: Korom (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közszolgálati Egyetem, 2013, 93-107. Relating to the topic in English see: Téglási András: The constitutional protection of agricultural land in Hungary with special respect to the expiring moratorium of land acquisition, in 2014, *Jogelméleti Szemle*, 2014/1, 155-175.; Téglási András: The protection of arable land in the basic law of Hungary with respect to the expiring moratorium of land acquisition in 2014., *Acta Universitatis Brunensis Iuridica*, Brno, 2013, No 442, 2442-2465., homepage of Masaryk University, in http://www.law.muni.cz/sborniky/dny_prava_2012/files/pozemek/TeglasiAndras.pdf (2014.05.21.)

take into consideration the practice[43] of the European Court of Human Rights (in Strasbourg), which (like the Hungarian Constitutional Court) protects only the acquired ownership, and not the procedure of acquisition. However the ECJ in Luxembourg also emphasized in its decisions the limitations resulting from social commitments – thus examination the relation[44] of the practices of the two courts will be interesting – since the Treaty of Lisbon stipulated that the Union shall join to the Agreement on protection of human rights and fundamental freedoms. Dr. *Péter Roszík* (managing director – Biokontroll Ltd.) talked about `fraudulent contracts´ as a practising agro-specialist. According to his experiences farmers interpret all transactions as `fraudulent contracts´, which was used for evasion of their right of preemption. These farmers stick to their expectations (agricultural land must to remain in their ownership), but they do not know the frames of the realization of it. In their opinion lawyers have to solve this problem. He recently took part in an Austrian conference, on which he could talk with several Austrian farmers, who agree with the ambitions of the Hungarian farmers.

Péter Tóth (managing director, Agráreurópa Ltd.) underlined that questions relating to agricultural lands have not only legal aspects, but professional, wealth, social, and political too. For this reason finding the balance between the aspects is needed to answer these questions. In connection with the AH. Act he proposed to decide on the basis of competitiveness on determination of maximum size of holdings. Relating to the problem of land ownership acquisition of foreigners he emphasized that actions of speculators must be restricted, and not the actions of people who can develop the Hungarian agriculture. Thus he support the migration of foreign farmers, in order to farming in Hungary (e.g. by lease) – for example calling on Dutch specialists to the pig production sector. Dr. *Tamás Andréka* (head of department, Legal Department, Ministry of Rural Development) underlined the following topics in his comment:[45] (a) e.g. ruling of limitation of agricultural land ownership acquisition of legal bodies, and size-provisions were great challenges in the relation between Hungarian and EU law. (b) Against the opinion of Dr. Mihály Kurucz, he thinks a `minimalist approach´ would have to be applied to agricultural holdings, which means a Taxation Law styled regulation. (c) Prescription of local residence as a condition of agricultural land ownership acquisition infringes the practice of the ECJ. (d) Since beneficial interest is not suitable for agricultural land ownership acquisition, the parties have the right to conclude leasehold contracts for a long-term, and to sustain the existing legal relationship between them.

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[43] See: 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.

[44] See more about practices of the Courts: 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.

[45] See writings of Tamás Andréka in this topic: Andréka: Birtokpolitikai távlatok a hazai mezőgazdaság versenyképességének szolgálatában, in: Csák (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Kiadó, 2010, 7-19.