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In the footsteps of the agricultural product sales contract or the survival of the provisions of the agricultural product sales contract in the new Hungarian Civil Code

1. Introduction

In Hungary, which is also known as the breadbasket¹ of The Monarchy, the agricultural and food industry, have always played a key role. Natural conditions are excellent on the basis of international comparisons, and its climate allows the growth all of temperate crops.² Regarding to the importance of national agriculture and the particularities of agricultural products, the agricultural contracts require creation of special regulations, continuous revision of the rules and a strong role of judge-made law in domestic legal developments. Regulation of the agricultural contracts including the product's sales contract was radically transformed by the products of the legislative starting with the first law in 2013.

On the one hand changes mean the reform of the land trade rules because the Act CXXII of 2013 on Trade of Arable land came into effect. The act wants to set up a regulation which corresponds to the principle of the free movement of the capital and the principle of the free residence of the European Union.³ On the other hand changes mean the new Hungarian Civil Code which opened a new era in the history of the Hungarian private law.

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¹ Scott Eddie: Mit bizonyítanak az 1882-1913-as statisztikai adatok: Magyarország valóban csak a Monarchia „éléskamrája” volt?, in: http://www.tti.hu/images/kiadvanyok/folyoiratok/tsz/tsz1982_3/eddie.pdf (12.12.2014.)

² Pap Melinda: A magyar mezőgazdaság lehetőségei a XXI. században, in: http://elib.kkf.hu/edip/D_13863.pdf (13.12.2014.)

³ About the trade of arable land Kurucz Mihály: Gondolatok a termőföldjog szabályozás kereteiről és feltételeiről, *Geodézia és Kartográfia*. 2008/9, 16., in <http://www.fomi.hu/honlap/magyar/szaklap/2008/09/2.pdf> (13.12.2014.); Holló Klaudia: Az elővásárlási jogról mint a földforgalom korlátozásának közvetett eszközéről, in http://www.ajk.elte.hu/file/THEMIS_2014_jun.pdf (13.12.2014.); Holló Klaudia: A termőföldről szóló 1994. évi LV. törvény, valamint a mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény földhasználatra vonatkozó egyes rendelkezéseinek összehasonlító elemzése, in http://www.ajk.elte.hu/file/THEMIS_2013_dec.pdf (2014.12.11.); Olajos István – Szilágyi Szabolcs: Az agrárjogot érintő legfontosabb változások Magyarországon 2011 és 2013 között, *Agrár- és Környezetjog*, 2013/15, 111-127.; Szilágyi János Ede: A földforgalmi törvény elfogadásának indokai, körülményei és főbb intézményei, in: Korom Ágoston (edit): *Az új magyar földforgalmi szabályozás az uniós jogban: Budapesten, 2013. júli. 11-én azonos címmel rendezett konferencia szerkesztett előadásai*, Budapest, Nemzeti Közszolgálati Egyetem, 2013, 109-119.; Csák Csilla: A földtulajdoni és földhasználati viszonyok változása a rendszerváltástól napjainkig, *Agrár- és Környezetjog*, 2007/2.

This study attempts to examine the enforceable rules of the agricultural product sales contracts⁴ focus on the characteristics of agricultural product, comparing them with the results of previous legislation and case-law. The examination of the subject is limited to the domestic private law. The detailed analysis of the public restrictions like provisions of the Act CXXVIII of 2012 or the Act CLXVIII of 2011 will take place in an other study.

2. The concept of agricultural contracts, the agricultural product sales contracts in the system of agricultural contracts

A contract is concluded upon the mutual and congruent expression of the parties' agreement intended to give rise to obligations to perform services and to entitlements to demand services.⁵ The definition also covers the scope of agricultural contracts. To illuminate the difference between a classic civil law contracts and agricultural contracts we must consider the specificities of agricultural law. It is a branch of law which based on private law, but the private autonomy is restricted. The reason for its limitations is the special importance of the agricultural land and agricultural product as regulatory subject. Limits deal with the property and property's inner content elements. The regulation of civil law gives the owner the freedom to do what they please, they can decide whether to use the thing owned or not, specify the manner in which they use it. The only limitation of the owner's decision is the obligation of proper exercise of rights. In contrast, the function of the property in agricultural law is subordinated to its use. The public law regulating the right of utilization is different as they refer to agricultural utilized land – as the basic, subject and instrument of activity–, or concern agricultural product and foodstuffs - as the result of agricultural activity. ⁶In the majority of agricultural contracts the freedom of contracts is restricted by the provision of a legal act. Based on the principle of freedom of contracts, we may assume that the parties are free to determine the contents of the contract. Dealing with the contents of agricultural contracts we often find mandatory provisions and if certain content items of the contract are prescribed mandatory by law, the contract shall come

⁴ Although nowadays we cannot find this contract under this title.

⁵ Act V of 2013 on the Civil Code 6:58. §

⁶ Kurucz Mihály: Az agrárjog tárgya, fogalma, alapelvei és rendszere, *Agrár-és Környezetjog*, 2007/2, 42.; Szilágyi János Ede: Az agrárjog dogmatikájának új alapjai: Útban a természeti erőforrások joga felé?, *Jogtudományi Közöny*, 62/3, 112-121.; Szilágyi János Ede: Gondolatok az agrárjog jogágiságával kapcsolatban, *Magyar Jog*, 51/9, 535-544.; Tanka Endre: Az agrárjog fogalma és helye a magyar jogrendszerben, *Magyar Jog*, 52/7, 394-404.; Fodor László: *Agrárjog: Fejezetek a mezőgazdasági életviszonyok sajátos szabályozása köréből*, Debrecen, Kossuth, 2005; Bobvos Pál – Hegyes Péter: *Földjogi szabályozások: Egyetemi jegyzet*, Szeged, JATEpress, 2014; Bobvos Pál – Hegyes Péter: *Agrárjog: egyetemi jegyzet*, Szeged, JATEpress, 2011; Szilágyi János Ede: Az agrárjog dogmatikai alapvetései, in: Csák Csilla (edit.): *Agrárjog: A magyar agrárjog fejlődése az EU keretei között*, Miskolc, Novotni, 2010; Szilágyi János Ede: Az agrárjog dogmatikja, in: Csák Csilla (edit.): *Agrárjog: A Közös Agrárpolitika megvalósulása Magyarországon*, Miskolc, Novotni, 2008; Szilágyi János Ede: Agrárjogi dogmatika, in: Csák Csilla (edit.): *Agrárjog*, Miskolc, Novotni, 2006; Szilágyi János Ede: Az agrárjog jogágisága, fejlődése, tárgya, módszere és rendszere, in: Csák Csilla (edit.): *Agrárjog I.*, Miskolc, Bíbor, 2004.

into effect with such mandatory items included.⁷The most typical appearance of the mandatory provisions can be observed in relation to the trade of agricultural utilized land. The provisions of the Civil Code and the XXV. PED are supplemented with mandatory provisions of the Act CXXII of 2013 on Trade of Arable Land. The legal act limits the scope of persons who can acquire the arable land,⁸ form the content of the contract. As the person who acquire the arable land must assume the obligation to use the arable land, right of use will not be assigned in the contract, in the notarized deed or in a private document providing conclusive evidence. He must fulfil the obligation of land-use, and assume that the land will not be sold within five years after the acquisition of property,⁹ there is no existing owed land use fee,¹⁰ and his entry into a legal transaction compassing the acquisition restrictions within five years prior to the acquisition wasn't established in court.¹¹

Not only does the mixed nature of the regulatory mechanism pry the agricultural contract out of plenty of private law, but the agricultural nature of a contract is based on the subject, object and the content of the contract. One side the subject of the contract is a farmer or a farm¹² and on the other side there is the acquirer, the processing companies, cooperatives, and warehouse or insurance companies. The direct object of the contract cannot be other than human behaviour, which is to exploit the land, agricultural products production, processing, distribution and warehousing.¹³First of all, if we want to examine the system of agricultural contracts we must focus on the legal effect that the parties want to achieve. We can distinguish contracts that intent to (a) use the arable land, (b) production of agricultural product, (c) process, (d) sale, (e) storage, (f) insurance.¹⁴

Looking at the sources of law we can see that some of the agricultural contracts – leasehold contract, agricultural services contract – are regulated in the Civil Code and others are regulated by special legal acts. Metayage, shared farming, courtesy of land use are 'sui generis' agricultural contracts regulated by the Act CXXII of 2013 or the

⁷ Civil Code 6:60. §

⁸ Act CXXII of 2013 on Trade of Arable Land 9-11. §

⁹ Act CXXII of 2013 on Trade of Arable Land 13. §

¹⁰ Act CXXII of 2013 on Trade of Arable Land 14. §

¹¹ Act CXXII of 2013 on Trade of Arable Land 10. § (2). There is an Act on the prevention and exploration of the acquisition restrictions, this Act is the Act VII of 2014.

¹² Act CXXII of 2013 on Trade of Arable Land 5. § 20. section says this: agricultural farm: organizational basis for agricultural production factors operated for the same purpose (land, farm equipment and other assets), which is a basis for management because of the economic cohesion. Of course this concept only prevails in respect of the relevant Act but it can be considered as a starting point. The concept of agricultural farm can be examined from more points of view: the subject of concept, assets, entitlement to rights and duties. For details see Kurucz Mihály: Az agrárüzem, in: Vass János (edit.): *Agrárjog. Egyetemi jegyzet ELTE ÁJK*, Budapest, Osiris Kiadó, 1999, 14.; furthermore Orlovits Zsolt: A mezőgazdasági üzem fogalmának agrárjogi értelmezése, *Gazdálkodás*, 52/4, 364; Kurucz Mihály: Gondolatok egy üzemszabályozási törvény indoklásáról, *Gazdálkodás*, 2012, 56/2, 119; Olajos István: Agrárüzemrendszer, in: Csák Csilla (edit.): *Agrárjog: A magyar agrárjog fejlődése az EU keretei között*, Miskolc, Novotni, 2010, 195-201.

¹³ Vass 1999, 175.

¹⁴ Vass 1999, 175.

warehouse contract.¹⁵ The legislation relating to civil law shall be interpreted in accordance with the provisions of Civil Code.¹⁶ That is why we must pay attention to underlying principles of the Civil Code like Principle of good faith and fair¹⁷ dealing, Principle of reasonable conduct,¹⁸ or the Prohibition of abuse of rights.¹⁹ Furthermore, we have to observe the fundamental principles of contracts like the freedom of contracts,²⁰ Presumption of reciprocity²¹ or the Duty to cooperate and communicate information.²² Examining the specific characteristics of the agricultural product sales contract we can consider that this agreement is an agricultural contract because of its object, and this special feature in itself may call for different rules. The main subject matter is the sale, but other services like process or storage can be part of the contract. The basis of the legislation is the Civil Code – although this contract has not got a separate name – but the provisions of the Civil Code can be modified by Act of CLXVIII of 2011 on weather and other natural hazards affecting the management of agricultural production.

We can see that in the contractual system the agricultural contracts form a separate part. The subject, the direction and the purpose of the activity are those attributes that make an agricultural contract. In civil law, the agricultural products are considered to be consumable property ('res consumptibilis')²³ or fungible property ('res fungibilis').²⁴ In contrast with the method of the civil law, the agricultural law, and the agricultural contracts regulate the personal, the objective, the productive and the distributive terms of the production in regard to the purposes of the public security and public sanitation.²⁵ The fact patterns of the private law are influenced by the provisions

¹⁵ Act XLVIII of 1996 on Warehousing

¹⁶ Civil Code 1:2. § (2)

¹⁷ Civil Code 1:3. §

¹⁸ Civil Code 1:4. §

¹⁹ Civil Code 1:5. §

²⁰ Civil Code 6:59. §

²¹ Civil Code 6:61. §

²² Civil Code 6:62. §

²³ This category has already appeared in Roman jurisprudence and remained ever since. „May be consumed (or expendable) in general, any item with a proper use is the fact that consumes all or part" – writes Kolosváry Bálint in Szladits Károly (edit.): *Magyar Magánjog*, Budapest, Grill Károly Könyvkiadóvállalata, 1942, 18.

²⁴ Szladits 1942, 20.

²⁵ Food safety and public health rules today cover the entire trajectory of agricultural products, refer to the topic: Komári Ágnes: Gondolatok a GM-szervezetek jogi szabályozásáról, különös tekintettel az élelmiszerbiztonságra, *Agrár- és Környezetjog*, 2008/6., 3-25.; Tahyné Kovács Ágnes: A GMO-jelölés jogi jelentősége és a '37-es számú javaslat' bukása, *Agrár-és Környezetjog*, 2013/14, 99-116.; Szilágyi János Ede: A zöld géntechnológiai szabályozás fejlődésének egyes aktuális kérdéseiről, *Miskolci Jogi szemle, A Miskolci Egyetem Állam- és Jogtudományi Karának Folyóirata*, 6/2, 36-54.; Fodor László: A GMO szabályozással kapcsolatos európai bírósági gyakorlat tanulságai, in: Csák Csilla (edit.): *Jogtudományi tanulmányok a fenntartható természeti erőforrások témakörében*, Miskolc, Miskolci Egyetem, 2012, 65-75.; Olajos István: Az élelmiszerlánc jogi rendszere, in: Csák Csilla (edit.): *Agrárjog: A magyar agrárjog fejlődése az EU keretei között*, Miskolc, Novotni Alapítvány, 2010, 441-471.; Reiterer Zoltán: Hatósági tevékenységek az élelmiszerláncban, in:

of the public law and this system is the same in the case of the agricultural product sales contract.

3. The agricultural product sales contract

3.1. The doctrinal position of agricultural products sales contract

The introduction of the new Civil Code made a lot of major changes in our domestic legal-life. The experts of the agricultural contracts immediately noticed that the agricultural product sales contracts, which previously were listed as a separate type of contract in the Civil Code lost its autonomy, the rules have been placed in the rules relating to other types of contracts. Based on the freedom of contract,²⁶ the oral explanation and the general provisions on contracts the function of the creation of contract types is simply to make a frame for the differences from common rules and direct the parties and the application of law to create a well-finished and reasoned contract.²⁷ Dr László Villányi says the same about the contract types in the book of Hungarian Private Law: „*The Austrian Civil Code, the Prussian Land Recht and Code Civil have defined these traditional forms of contract in consideration of the pandectist jurisprudence of the 18th century, and the purpose of the creation of these contract types was to give an assortment of the provisions of the most common contracts, and these provisions were mainly interpretive rules of legal transactions.*”²⁸ The chief principle of the pandectist type-creation is the content of the contract, the type creation which focuses on the behaviour of the obligor of the main subject matters. Accordingly, the contract may be: (a) ‘dare’ (give), (b) ‘facere’ (make), (c) ‘non facere’ (tolerate), (d) ‘praestare’ (obligation to fulfil one’s commitment).

Of course, each contract cannot be classified into four groups for example the articles of associations do not form part of this types, and we cannot ignore the fact that a number of atypical, mixed or nameless contract born day after day. However, returning to the above standpoint, the purpose of the type creation is to support the parties, and accept the fact that we cannot select the perfect type-creative principle we can establish that the most common contract types of the capitalism have been placed in the Civil Code. Naturally, the type creation can follow other principles, and types can be created by the subject or the object of the contract. In the Civil Code we can just meet the separate category of agricultural contracts if the legislative body had committed other organizing principle.

Stipta István (edit.): *Doktoranduszok fóruma: Miskolc*, Miskolc, Miskolci Egyetem Tudományszervezési és Nemzetközi Osztály, 233-237.

²⁶ Vékás Lajos: *A szerződési rendszer fejlődési csomópontjai*, Budapest, Akadémiai, 1977.

²⁷ Bíró György: *Átruházó szerződések Polgári Jogi Kodifikáció*, 2003, 5/2, 15.

²⁸ Villányi László: *Kötelmi típusok. Vegyes szerződések*, in Szladits Károly (edit.): *Magyar magánjog Kötelmi jog különös része*, Budapest, Grill Károly Könyvkiadó vállalata, 1942, 1.

3.2. The agricultural product sales contract as a separate type of contract in the system of the Act IV of 1959 on the Civil Code

The first and original text of the Act IV of 1959 on the Civil Code had included the agricultural product sales contract in the chapter XXXVI. The rules on crop production and distribution contract were mandatory provisions, and the parties could not depart from the common provisions relating to the right and obligations of the parties except the possibility when the deflection was permitted by the Act.²⁹ Three main subtypes had made: (a) crop production contract, (b) animal rearing and fattening contract, (c) crop sales contract.

On the basis of the crop production contract the farmer had the obligation to grow plants and release the plants or parts of plants, and the contracting party had the obligation to cooperate, to take the crop and pay the consideration.³⁰ The Act contained similar provisions in respect of the animal rearing and fattening contract. The breeders or the farmer undertake an obligation for the supply of livestock defined by type and quantity, release the livestock, and the contracting party had the obligation to cooperate, to take the crop and pay the consideration. Overall, the public or the cooperative company – who distributed the agricultural products – defined the production and the details of the production.³¹ The Act itself has stated that only socialist organization could be the contracting party. In comparison, the agricultural sale contract - where the farmer can sale his crops or livestock produced of his own³²without control of the socialist enterprise - was overshadowed.³³ During this period the agricultural sales contract was the tool of the collection and redistribution of agricultural products.³⁴ These essential characters of the contract were changed by three comprehensive amendment of the Act. Those legal acts were Law-Decree No. 39 of 1967 on amending certain rules of civil law, Act IV of 1977 on the amendment and standard text of the Act IV of 1959 on the Civil Code of the Hungarian People's Republic and the Act XII of 1993 on amending certain rules of the Civil Code. The amendments of 1967 fundamentally changed the intended purpose of the contract. Of course, these changes were the results of the change of the country's economic order, especially the change of the economic management mode. Because of this amendment the crop sales contract became the most popular form, the crop production contract was used for make products with special properties. Based on the agricultural product sales contract the farmer undertook an obligation for the supply of agricultural goods

²⁹ Civil Code 422. §

³⁰ Civil Code 410. §

³¹ Prugberger Tamás: A mezőgazdasági termékértékesítési és szolgáltatási szerződés a gazdasági változások tükrében, *Jogtudományi Közlöny*, 1997, 52/9, 384.

³² Based on the agricultural product sales contract the farmer undertook an obligation for the supply of agricultural goods and/or produce of his own production or livestock that he himself had raised at a future date, and the contracting party had the obligation to take the crop and pay the consideration. Civil Code 422. §

³³ Sárándi Imre: Világgazdasági korszakváltások és a mezőgazdasági termékforgalom, *Szövetkezeti Kutató Intézet Közlemények*, 1986/192.

³⁴ Sárándi Imre: *A mezőgazdasági termékforgalom joga*, Budapest, Közgazdasági és Jogi Könyvkiadó, 1986, 152.

and/or produce of his own production or livestock that he himself had raised at a future date and the contracting party had the obligation to take the crop and pay the consideration.³⁵ We can see that the most important elements of the contract had become the supply of own produced agricultural goods, services at a later date which I discuss in detail later. Furthermore, when the mandatory regulation system had ended, the parties could depart from the provisions of the agricultural sales contract upon mutual consent, provided it was not prohibited by a legal act.³⁶ The possibility of this departure was not satisfying, because there were four mandatory legal acts relating to this contract. These legal acts were Government Decree 54/1967. (XII.17.) on the agricultural product sales contract, Cabinet-Council Decree 3/1976. (II.7.), MÉM Decree 11/1967. (XII.31.) on arbitration preceding the enforcement of the claim arising from the agricultural product sales contract and Cabinet-Council Decree 14/1978. (III.1.). The above-mentioned legal acts regulated the specific performance,³⁷ the order of quantitative and qualitative objection,³⁸ and the transfer of the product³⁹ or the default in detail.⁴⁰ After the amendments of the Act XII of 1993 the agricultural product sales contract still remained an integral part of the Civil Code, totally integrated into the capitalism, although in many cases it was treated with proviso.⁴¹ With reference to this contract type the oral explanation of the private law was definitely enforced. Therefore, depending on the will of the parties either the sales-related or the work-related nature of the contract dominated.⁴²

Following this logic and the type creation of the Pandectists, the agricultural product sales contract is not a separate contract type anymore in the new Civil Code; its denuded and remaining provisions are divided into two contract-groups. The sales type agricultural product sales contract is regulated in the chapter entitled the subtypes of sales, among the general provisions of the sales contracts, the work-contract type of the agricultural product sales contract is settled among the work contracts known as agricultural services contract.⁴³

It can be concluded that the contracts tending to the production and the marketing of agricultural products have always been presented in the Civil Code in our country. Aiming to develop the taxonomy of enforceable rules, the legislative body primarily focused on the economical contents of the contracts,⁴⁴ resulting in the provisions of the agricultural product sales contract to be found in the rules of two

³⁵ Civil Code 410. §

³⁶ Civil Code 200. § (1)

³⁷ Decree 54/1967. (XII.17.) on the agricultural product sales contract 10. § or Cabinet-Council Decree 14/1978. (III.1.). 6-9. §

³⁸ Decree 54/1967. (XII.17.) on the agricultural product sales contract 12-15. §

³⁹ Decree 54/1967. (XII.17.) on the agricultural product sales contract 10-11. §

⁴⁰ Decree 54/1967. (XII.17.) on the agricultural product sales contract 17-20. §

⁴¹ Prugberger Tamás: A mezőgazdasági termékértékesítési és szolgáltatási szerződés a gazdasági változások tükrében, *Jogtudományi Közöny*, 1997, 52/9, 385.

⁴² Prugberger Tamás, Csák Csilla: A termőföld és a mezőgazdasági termelési viszonyok korszerű rendezése, *Magyar Közigazgatás*, 1994/8, 489-497.

⁴³ Miskolczi-Bodnár Péter: *Kommentár a Polgári Törvénykönyvhöz*, XXXIV. fejezet, Az adásvételi szerződés altípusai.

⁴⁴ Verebics János: Az üzleti élet szerződésai az új Ptk.-ban, *Magyar jog*, 2013/10, 588.

contract-types. The application of law will decide that these provisions whether or not are safe enough for the parties. However, the prevailing oral explanation in the contractual law, the established contractual practice and case-law and contract-forms can help the parties.

3.3. Characteristics of agricultural products

The essential feature of the agricultural product sales contract is that its object is always an agricultural product. In the course of history, the agricultural product such as special thing got a special importance after World War II because in the devastated world the food become strategic raw materials and agriculture had its renaissance. The legislative body and the application of law from the application of special implied warranty provisions get to the creation of separate contract types.⁴⁵ The trend is similar in the post-war Hungary, and in other European legal developments. The western European countries from the establishment of the common market, and our country from the accession of 2004 were submitted to dual regulation.⁴⁶ In the field of agriculture community law give effect to the principle of national treatment⁴⁷ primarily with negative integration rules in relation to the immovable property, but in relation to the movable property – agricultural product – EU law apply positive and mandatory regulation. ‘Agricultural products’⁴⁸ means the products of the soil, of stock farming and of fisheries and products of first-stage processing directly related to these products.⁴⁹ If we are looking for the answer to the question ‘Why is the agricultural product so special?’, first of all we must examine the cyclic nature of the agriculture. According to the climatic conditions of our country we can grow many species of plants but usually only once a year. Therefore, they can be sold only once a year, when they become commodities. In a contractual relationship these characteristics require quick and precise work from both of the parties. By the time the animals have grown or

⁴⁵ Of course, there were different development paths in the socialist countries and Western European areas, but overall it can be stated that the agricultural sector has become a priority sector. The state interventions were widely accepted in Western countries after World War II. The Treaty of Rome was signed in such period. It had to be rectified those intervention mechanisms which were incompatible with the common market and had to be raised to Community level., and the Common Agricultural Policy was born. in http://www.europarl.europa.eu/ftu/pdf/hu/FTU_5.2.1.pdf (24.02.2015.)

⁴⁶ But we cannot ignore a third level for the agricultural law, nor the international regulatory level, especially where rules established under the General Agreement on Tariffs and Trade (GATT) affect the circulation of agricultural products.

⁴⁷ A consolidated version of the Treaty on European Union and to the Treaty on the Functioning of the European Union Article 18

⁴⁸ Olajos István: A Közös Agrárpolitika kialakulásának és fejlődésének története, in: Csák Csilla (edit.): *Agrárjog: A magyar agrárjog fejlődése az EU keretei között*, Miskolc, Novotni Alapítvány, 2010, 79-88.; Olajos István: *A vidékfejlesztési jog kialakulása és története*, Miskolc, Novotni, 2008; Kurucz Mihály: *Az Európai agrárjog alapjai: Tananyag az Európai Szakjogász képzés számára*, Budapest, ELTE Jogi Továbbképző Központ, 2003.

⁴⁹ A consolidated version of the Treaty on European Union and to the Treaty on the Functioning of the European Union Article 38.

the production cycle has ended, the farmer is in a ‘must sale situation’⁵⁰ because in this time of the year the specific agricultural products are available ‘en masse’ and the farmer has to sell them even if the previous contractual relationship between him and his partner has ended. Although agriculture is cyclical and there is a constant demand for agricultural products, the legislation should help to equalize the relationship between the supply and the demand. There are several solutions for this problem: (a) storage, (b) importation, (c) the process of the product.

The storage and processing require a new contract, but the subject of this contract can be the farmer itself, of course, but other performer of the market can also provide for this. A significant number of farmers do not have a container which is suitable for professional storage so he must ensure that some other way. This could be a solution if he use the container of the cooperative⁵¹ such as cooperative member or leave the goods in a warehouse.⁵² The storage of products is not always possible, and often not practical. Another further important feature is that at the end of the production cycle, the products possess the qualities that the buyer, customer and ultimately the consumer requires only for a short time. For this reason, very detailed regulation is necessary to determine the place and time of the performance, to settle the issue of transportation or to bear risks of damage. The legendary sentence of Sárándi Imre says ‘agriculture is not a factory, tomato is not a nut’ comes through for nearly thirty years later as well. The crop and livestock production are submitted to biological principles, natural factors, and we cannot avoid them even next to the largest human diligence. In many cases, the quantity or quality specified in the contract becomes impossible due to bad weather conditions. On the contrary, better-than-average weather conditions and the increased number of hours of sunshine can affect the duration of the performance in a positive way.⁵³ As already mentioned above, at the end of the production cycle, farmer will be ‘must sale situation’, depending on weather conditions oversupply may occur in the market, which may affect product prices on the producers adversely. In order to ensure a fair income for those who work in agriculture,

⁵⁰ Sárándi 1986, 175.

⁵¹ Hajós László: *Mezőgazdasági szövetkezetek az Európai Unióban*, Budapest, Mezőgazdasági Szaktudás, 2000; Horváth János: *A Szövetkezeti Gabonarakarék*, Budapest, Stephaneum Nyomda R.T. 1913; Ihrig Károly: *Szövetkezeti Ismeret*, Budapest, Pátria Irodalmi Vállalat és Nyomdai Részvénytársaság, 1926; Bak Klára: A szövetkezeti tagsági jogviszony létrejöttének szabályozásáról egyes szövetkezeti törvények alapján, in: http://www.ajk.elte.hu/file/THEMIS_2013_jun.pdf (21.02.2015.); Bobvos Pál: A szövetkezeti jogi jogviszony főbb jellemzői, in: Juhász Zsuzsanna (edit.), Nagy Ferenc (edit.), Fantoly Zsanett (edit.): *Sapientia sat: iinnepi kötet Dr. Cséka Ervin professzor 90. születésnapjára*, Szeged, Szegedi Tudományegyetem Állam- és Jogtudományi Kar, 2012, 81-92.; Réti Mária: Cooperative Law in Hungary, in: Dante Cracogna (edit.), Antonio Fici (edit.) Hagen Henry (edit.): *International Handbook of Cooperative Law*, Heidelberg, Springer Verlag, 2014, 431-448.

⁵² Harsányi Gyöngyi: A logisztika és a kereskedelmi jog intézményeinek kapcsolódási pontjai a közraktározási jogviszony körében, *Jogtudományi Közlemény*, 2013/4, 203-208.; Szilágyi János Ede: A közraktári szerződés, in: Csák Csilla (edit.): *Agrárjog I*, Miskolc, Bíbor, 2004, 200-207.

⁵³ Szilágyi János Ede: A minőségi mezőgazdasági termelés és élelmiszer-előállítás jogintézményei, in: Csák Csilla (edit.): *Agrárjog: A magyar agrárjog fejlődése az EU keretei között*, Miskolc, Novotni Alapítvány, 2010, 486-496.

in this case community law intervenes to the contractual relationships with mandatory provisions. The market regulatory intervention tool is used by the European Union to avoid market disturbances and thereby stabilize specific product sectors to ensure adequate standard of living. In this context, the European Union agrees to purchase the product offered in the intervening period corresponding to the quantity and quality requirements at an intervention price, store it for a certain time, and then release it through tenders.⁵⁴

Based on the above explained reason, we can see that agricultural products require different, additional regulation. The reason of this different regulation is the strategic importance of agriculture as a significant and essential sector.

3.4. Differences between Forward transactions for the sale and agricultural product sales contract

We cannot find the most important provisions of the supply contract⁵⁵ in the enforceable Civil Code anymore, although the prior Civil Code had some rules concerning it. We can find some of the earlier provisions in the chapter titled the subtypes of the sales contracts, "*Forward transactions for the sale of things defined by type and quantity*". Of course, in respect of the supply contract it was not necessary to define the indirect object of the contract by type and quantity. If the seller undertakes an obligation for the supply in the future of things defined by type and quantity, and the parties stipulate the range of discrepancy as to quantity by which the seller may deviate from the quantity fixed in the contract to either direction, the buyer shall pay the purchase price for the quantity actually supplied.⁵⁶ The subject of the contract is always movable property, often agricultural products. If the object of the sales contract is an agricultural product, we must examine the differences between the sales contract and the agricultural product sales contract. The most important distinction must be sought in the rules of the sales contract. A sales contract means any contract under which the seller undertakes to transfer the ownership of a thing to the buyer, and the buyer undertakes to pay the price thereof, and to take possession of the thing.⁵⁷ The most important motive is the transfer of the ownership, supply things defined by type and quantity in the future. In the case of the supply in the future, often the obligor does not have the object of the service in his possession at the time the contract is concluded, he must get it some way until the delivery date, this condition does not make the contract null and void, and it does not mean this is an impossible performance.⁵⁸ The method of obtaining is the essential difference which bound the forward transactions for the sale from the agricultural product sales contract. Regarding the agricultural product sales contract, the obligor can fulfil his obligation only with only own-produced agricultural goods, but when it comes to the forward transaction for sale, the method of

⁵⁴ Katóné Jancsok Zsuzsanna: A gabonaintervenció létjogosultsága az Európai Unióban phd értekezés 1., in: https://szie.hu//file/tti/archivum/Katone_J_Zs_phd.pdf (25.02.2015.)

⁵⁵ Civil Code 379-386. §

⁵⁶ Civil Code 6:231. § (1)

⁵⁷ Civil Code 6:215. § (1)

⁵⁸ Civil Code 6:107. § (1)

obtainment is not important, the obligor can produce on his own, he can buy it from somebody else, and he is only obliged to deliver the specified quality and quantity at the time of compliance. Those who enter the latter contract often do not have suitable arable land for the production of agricultural goods. The sharpest demarcation issues arise in the apropos of non-performance and impossibility of performance. While in case of an agricultural product sales contract, impossibility of performance can be proven if the amount specified in the contract could not grow because of the weather or other circumstances in the arable land of the obligor. Regarding to the forward transaction for sale, the obligor must obtain the amount of product even if he wished to produce it by himself.

According to the reasons explained above, we can see that in the period of time between entering into a contract and the time of settlement we have to count with a number of uncertainties. Agriculture as a sector depending on weather have a lot of risk, that is why the parties can stipulate the range of discrepancy as to quantity by which the seller may deviate from the quantity fixed in the contract to either direction. The difference can be bi-directional, so the smaller and the larger amount also covers contractual performance. It is necessary to note that the additional services which come up among the provisions of the forward transaction for sale are not the same as the additional services which are regulated in 6:125. § in the Civil Code. According to this if the obligor offers to supply services additional to those contracted, the obligee shall be entitled to refuse such additional services. If the obligee accepts the additional services, additional compensation shall also be provided in proportion to the additional services received according to the provisions on the payment of the contract price in terms of due dates and payment methods.⁵⁹ In the case of forward transaction for sale we have to imagine the amount which is necessary to specific performance in a scale and the amount between the upper and lower limits is acceptable and payment of the consideration will be suitable for the actual amount. In accordance with the foregoing, the additional services regulated in the 6:125. § in the Civil Code can be applied to the performance which is beyond the ends of the scale. If the seller supplies below the minimum prescribed quantity, the consequences for such non-performance shall be determined in due account of the contracted quantity.⁶⁰ In other words, the non-performance shall apply if the obligor gives the amount below the lower limit of the scale and the consequences of non-performance shall be established regarding to the optimal – located in the middle of the scale – amount. Performance exceeding the high end of the scale is not a non-performance, but in my view, provisions relating to the additional services regulated in the 6:125. § in the Civil Code can be applied.

If the seller undertakes an obligation for the supply of things defined by type and quantity in the future, the buyer shall have the right to withdraw from the contract until such time as the seller's offer for the delivery of supplies.⁶¹ Nevertheless, in case of default, the derogatory right of withdrawal is guaranteed by the Civil Code among the general provisions relating to non-performance⁶² but we can see that there is also an

⁵⁹ Civil Code 6:125. §

⁶⁰ Civil Code 6:231. § (2)

⁶¹ Civil Code 6:231. § (3)

⁶² Civil Code 6:140. § (1)

objective right of withdrawal in the Act. This objective right of withdrawal was found among the provisions of supply contract which are similar to the forward transactions for the sale. Under the Act IV of 1959 contracting party could withdraw from the contract anytime but he was obliged to compensate the damage to the supplier.⁶³ This provision was specified by point 'c' of GK number 16 that the contracting party had the general and derogatory right of withdrawal while the handover of the service did not happen. In case of the objective right of withdrawal, the limit is set at the moment of the offer of the performance preceding the moment of the handover. If the seller is to perform the contract in segments, and already offered to deliver a part of the services contracted, the buyer shall have the right to withdraw from the contract with respect to the part not yet offered. The buyer shall be held liable for damages caused to the seller through exercising the right of withdrawal or the right to terminate.⁶⁴ The provisions relating to termination shall apply in case of withdrawal in accordance with the new Civil Code⁶⁵ but if no restitution in kind is possible,⁶⁶ the contract may not be cancelled. If interim payment has happened, there is little chance to restore the original state, and indeed it would be inequitable application of the right of withdrawal that is why the provisions of the right of termination shall apply.

In practice, many farmers conclude agreements called 'sales contracts' or 'purchase contracts'. In these contracts the farmers occasionally have to obtain the missing quantity of the product from someone else, despite the fact that he intended to sell only the agricultural goods produced by himself, and the livestock he himself raised. In order to avoid errors and misunderstandings, it is necessary to distinguish between the two types of contracts we know and we shall enforce them during the construction of contracts, because this is the only way to achieve a contract which is suitable for the will of both parties.

3.5. Sales type of the agricultural product sales contract

A few provisions of the prior agricultural sales contract are also located in the chapter XXXIV, between the types of sales contracts. Accordingly, if the seller undertakes an obligation for the supply of agricultural goods and/or produce of his own production or livestock that he himself has raised at a future date, he shall be entitled to perform ten per cent below the quantity stipulated in the contract.⁶⁷ On this basis, we have to identify four important criteria, (a) the object of the contract is always agricultural goods, (b) product is the own production of the farmer, (c) must assign ownership of the product, (d) and the supply would be at a future date.

The name of the parties significantly changed compared to the rules of the prior Civil Code. Previously, the producer (farmer) and the contracting party had a contractual relationship. The new Civil Code, bearing in mind the doctrinal precision named the parties 'buyer' and 'seller'. However, in my view, the first name rather

⁶³ Civil Code 381. § (1)

⁶⁴ Civil Code 6:231. § (3)

⁶⁵ Civil Code 6:213. § (1)

⁶⁶ Civil Code 6:212. § (3)

⁶⁷ Civil Code 6:232. § (1)

expresses the essence of the relationship, because the most important feature of this kind of agreement is the production by itself, the creation of an achievement, or an intellectual product. Correlating with the forward transaction for sale, the most significant difference is the personal commitment of production. The seller must transfer the ownership of the agricultural goods produced on his own, specified in the contract at a future date, and the buyer has to pay the purchase price and receive the agricultural goods. While in the forward transaction for sale, in case of need, the buyer could purchase the product from anywhere, or he was obliged to purchase; in case of the sales type of the agricultural product sales contract, he is obliged to produce and raise (fatten) of his own, As we recorded in the chapter II of this study, the agricultural product sales contract is an agricultural contract, so sure to find a legal act that extend into dispositive system of civil law and confirm the above-mentioned with mandatory statutory provisions. The third section of the 21. § of the Act CLXVIII of 2011 on the weather and other natural hazards affecting the management of agricultural production⁶⁸ clearly states that under the point b of the second section of the Act LXXI of 1994 on Arbitration shall be deemed to be contrary to public policy the award which obliges the farmer, who in whole or in part is unable to supply the own-produced agricultural goods because of the 'force majeure' to replace the purchase or replace any other service or provide security with respect to the lack of the agricultural goods. In case of a forward sale where the seller is not required to transfer the ownership of own produced agricultural goods, this section cannot be used. The mandatory provisions of this Act – among other things – guarantee to the farmer the reduction of lease payments.⁶⁹ But in the context of the above, it should be noted that the cited provisions of the Act may not be used in all cases and contractual relationship only if the contracting party is a farmer established by the law, a client submitting uniformed application, registered by the agricultural and the rural development authority.⁷⁰ The legislature has taken over the rules of the former Civil Code to some extent, and has also changed it, because the question of quantity tolerance appears in respect of both acts. However, earlier plus / minus 10% deviation was allowed until the new Civil Code regulates only minus 10% tolerance, the transfer of the ownership of product which is 10% less than the amount stipulated in the contract also to be regarded as specific performance. The regulation has other aspects that we can see in the forward transaction for the sale, because there the positive and negative divisions were allowed, but the degree of the division was not stipulated. However, the regulation only influences the parties, since neither in the forward transaction for the sale nor in the sales type of the agricultural product sales contract were we able to find mandatory provisions, i.e. with certain exceptions, the precise definition of the issue of tolerance is left to the contractual freedom of the parties by the legislative body. The seller shall also be entitled to effect performance of the contract before the stipulated delivery date, provided that the buyer is notified in advance of commencement of performance while

⁶⁸ The Act creates a risk community due to managing the risks of natural disasters.

⁶⁹ Act CLXVIII of 2011 on the weather and other natural hazards affecting the management of agricultural production 22. §

⁷⁰ Act CLXVIII of 2011 on the weather and other natural hazards affecting the management of agricultural production 22. §

ample time is provided to him to make the necessary preparations. The question of the early settlement is affected by the legislative body in case of the common provisions relating to obligations. According to the 6:36. § of the Civil Code the obligee shall accept performance offered before the delivery date if that does not harm his relevant lawful interests, and if the obligor covers the extra costs which it entails. We can see that the rules of the early performance in the agricultural product sales contract are less strict, because we must guarantee a prior notice to the other party and, in this context, adequate time for preparation. The background of the regulation is the fact that agriculture depends on nature, because the amount of sunny hours and the amount of rainwater significantly influence the quality of the agricultural product. The agricultural products correspond to the characteristics specified in the contract just for a little time, that is why it is not only in the farmer's but also in the contracting party's interest that the received product has perfect quality and quantity even if this happens earlier than expected. A receipt is necessary and inevitable in the case of early performance, and the question is the due date of payment of the purchase price. According to the second section of 6:36. § of the Civil Code if performance is accepted before the delivery date, that shall not affect the other party's services in terms of delivery times. The most practical case happens if the parties settle the question in the contract, and then regulate the contracting party's debt obligations in case of the early performance of the farmer. However, if the contract does not contain a provision to that effect, the question is the applicability of the Civil Code. 6.36. §. In my opinion, the agricultural product sales contract is a contract wherein the variability of the performance date is a key element of the contract, where the parties involved in the legal transaction are aware the practical significance of that. On the other hand, the conclusion of the contract and the date of performance are always different, so there is usually an opportunity for the parties to carefully prepare the performance of the contract, and for separate funds. On this basis, in my view, the early performance of the agricultural product sales contract practically needs to receive the other party's performance. Although in the trade system of agricultural products the forward transaction for sales contract is also a common type of contract. It can be seen that for everyone who intends to purchase own-produced agricultural goods, the sales type of the agricultural product sales contract is more favourable, also providing more guarantees and special forms of regulation, even if the quantity of rules placed in the Civil Code was significantly reduced after the entry into force of the new Civil Code.

3.6. Sales contracts for the supply of agricultural goods produced with the buyer's involvement

If the seller undertakes an obligation for the supply of agricultural goods and/or produce of his own production or livestock that he himself has raised at a future date, and based on the parties' agreement the buyer is required to provide assistance to facilitate performance, and to provide information to the seller in that context, the seller shall cooperate in the provision of such service by following the instructions communicated.⁷¹ Observing the cited sections of the Civil Code we can see

⁷¹ Civil Code 6:233. §

that the sales contracts for the supply of agricultural goods produced with the buyer's involvement strongly resembles work contracts. To prove it, we need to examine the key features of the contract, which are as follows: (a) the object of the contract is always agricultural goods, (b) product is the own production of the farmer, (c) must assign ownership of the product, (d) and the supply would be at a future date, (e) the buyer is required to provide assistance to facilitate performance.

Of course, in this contract type the ownership of the agricultural product is transferred, so it is positioned dogmatically correctly between the subtypes of the sales contracts, but we can see that the other party's services, the advance, the intermediate services mean connecting point for the work contract. The difficulty of separation is not novel question in the Hungarian Civil Law, as Gustav Vincenti in the book *Hungarian Private Law* describes the issue: *"It is possible that the same transaction mentions both components of the work contract and other contract of the private law. Thus, if the object of the contract the production of movable property and services, the transaction can be qualified as a purchase transaction, especially when the object of the contract is to supply fungible property, in which case the performance validly happen with the supply of product produced even before the contract or after, providing that it is in conformity with the agreed conditions. The question is whether such a case, the rules of the sales contract or the work contract should be used when they differ from each other."*⁷²

Looking at the services of the parties, it becomes clear that the buyer (the contracting party) provides an intermediate service, supply seed or pesticide, and above all he is responsible for providing the related information as well. The seller shall cooperate in the provision of such service by following the instructions communicated. However, if we accept the premise that this type of contract is enriched with elements of work contracts, invoking the provisions of the work contract we can conclude that the farmer has the right to examine the services supplied by the buyer (contracting party). If a buyer gives unreasonable or unprofessional instructions, the farmer shall be obliged to warn him thereof. The farmer shall refuse to comply with such instructions if compliance would constitute an infringement of the law or any administrative decision, or it would jeopardize the safety or property of others.⁷³ According to the previous practice of the court, if it subsequently became known that the service provided by the contracting party suffered quality problems, the party providing services was responsible for the damages, too.⁷⁴ Thus the underlying transaction broadens with another cross-obligation.⁷⁵ This cross characteristic means that in most of the cases consideration is required for the buyer's supply and information. The seller shall pay the contracted price for the buyer's service provided to facilitate performance, and shall repay the part of any production advance received from the buyer that is not covered by the purchase price even if the production result is insufficient to cover such payments.⁷⁶ The seller is obliged to account for advance payment given by the contracting party and the services relating to facilitate the performance. This is usually

⁷² Vincenti Gusztáv: A vállalkozási szerződés, in: Szladits (edit.): 1942, 644.

⁷³ Civil Code 6:240. § (2)

⁷⁴ Orlovits Zsolt: *Szerződéskötés, szerződéses kötelmek az agrárpiaconon*, Budapest, Szaktudás Kiadó Ház Zrt., 2012.

⁷⁵ Miskolczi-Bodnár 2013.

⁷⁶ Civil Code 6:233. §

done by offsetting them to the purchase price. Agriculture is also a cost-intensive industry, and the costs mostly appear in the first part of the production process. It is sometimes necessary that producers are helped at the beginning of the production process, and it is important to note that all the risks of production shall be borne by the farmer before the performance.

We can consider that in case of sales contracts for the supply of agricultural goods produced with the buyer's involvement, the cooperation between the parties is particular and in many cases similar to work contracts. The cross characteristic of the legal relationship requires a number of additional rules to be taken into account, among which the Code highlighted the settlement-obligation of the parties. However, the contracting parties can ensure with many other provisions that their legal relationship can be regulated by provisions sufficiently detailed and are appropriate to their will.

3.7. Agricultural services contract

Certain provisions of the service-related nature of the agricultural product sales contract can be found in Chapter XXXVII of the new Civil Code. Under an agricultural services contract the contractor undertakes to keep the customer's animals and to grow crops on the customer's land, and the customer undertakes to pay the contracted fees for such services.⁷⁷ The contract carries the marks of work contracts, that is why the direct object of the contract is a result achieved by work, and the indirect object is agricultural goods. In practice, the customer's day-old chicks, piglets were handed over to the contractor who provides them the time to reach slaughter weight, but often but often pregnant breeding outsourcing is involved, and the task is the education and the fattening of the population. The most significant difference compared to the earlier studied sales type is that in the contractual relationship does not happen - in respect of the main service at least - ownership transfer. The contractor undertakes to rear and fatten the animals of the customer, achieves results using his expertise. Between the parties only the transfer of possession takes place. The transfer of possession will take place twice; first, when the business starts, and then at the time of the fulfilment of the contract, when the contractor delivers it to the customer. If the contractor undertakes to grow crops on the customer's land, it is important to touch upon the basics of rights *in rem*. According to the ultimate provisions of the acquisition of accretions, the owner of a parcel of land shall acquire ownership of everything that has become part of the land subsequently, except if it belongs to another person under any title.⁷⁸ But any person who has a right in respect of a thing of another person, which entitles him to take possession of products, produce or progeny, shall acquire ownership by separation if he has not previously acquired ownership thereof.⁷⁹ We must emphasize, therefore, that the land is not owned by the contractor, and he does not has a legal right which entitles him to get the ownership of the population growth. That is why among other things the legal right cannot be a leasehold contract. In these cases he would be entitled by law to collect the proceeds thereof and necessarily transfer of ownership should

⁷⁷ Civil Code 6:255. § (1)

⁷⁸ Civil Code 5:51. §

⁷⁹ Civil Code 5:50. § (1)

pursue it. In respect of the other contracting party, the leasehold contract also raises a question. The Act uses the expression ‘customer’s land’ so we can infer rightfully that the customer of this contract can only be the owner of the land. In pursuance of leasehold contract, the lessee shall be entitled to collect products, so in this case the agricultural services contract can also be interpreted if we burst the limits of literal interpretation, because in this case there is no transfer of ownership either. The agricultural services contract is a contract of pecuniary interest, where the contractor is obliged to create result achieved by work, and the customer is obliged to pay the contracted fees for such services. Between the provisions of the agricultural services contract the Civil Code does not dispose explicitly of the obligation of acceptance of the customer, but we can infer it on the basis of the general rules on work contracts.⁸⁰ In the event of nullification of the contract due to any disease of the animals or plants, the contractor shall not be held liable if such disease has occurred in consequence of unavoidable circumstances beyond his control. In that case the contractor shall be entitled to commensurate remuneration.⁸¹ We talk about impossibility when the whole crop is destroyed, but even if they only occur in lower growth than expected. Sections 6:179. § – 6:182. § of the Civil Code between the general provisions on contracts dispose the impossibility of performance. If performance has become impossible, the contract shall be terminated. We can find special provisions about the impossibility of performance between the provisions of services contracts, but these provisions are overwritten by rules of impossibility of the agricultural services contract. The codifiers of the Civil Code justified the difference that the application of the general rules of the services contract would be unfair in the agricultural services contract.⁸² We cannot ignore the responsibility and liability for damages in connection with the issue of impossibility of the contract. Liability for damages starts when responsibility ends.

The Contractor shall be exempted from responsibility but only to the relatively strict rules and evidence. Namely the contractor shall not be held liable if such disease has occurred in consequence of unavoidable circumstances beyond his control. Examining the question of responsibility at the customer’s side we cannot find special provisions between the rules of the agricultural services contract. Therefore we must proceed that the impossibility of performance is a case of non-performance. About the relief of liability the provisions of the 6:142. § Civil Code shall apply, and it states that the person who causes damage to the other party by breaching the contract shall be liable for such damage. The said party shall be relieved of liability if able to prove that the damage occurred in consequence of unforeseen circumstances beyond his control, and there had been no reasonable cause to take action for preventing or mitigating the damage. If relating to the rules of liability for any loss caused by non-performance volume loss due to illness, damages cannot be installed anywhere, it automatically enters the rules of liability for damages.⁸³ The owner is entitled to bear the liability for

⁸⁰ Civil Code 6:238. §

⁸¹ Civil Code 6:255. § (2)

⁸² Miskolczi-Bodnár 2013

⁸³ Gyarmati Sándor: Veszélyviselés a termékértékesítési szerződések körében, *Jogtudományi Közlemény* 47/3-4, 1992, 137.

damages for which no compensation can be demanded from anyone.⁸⁴ If the contractor can demonstrate that he is not responsible for the impossibility of performance, he is entitled to a proportionate remuneration. However, the same conclusion can be made if we interpret the rules of impossibility of the services contract. If performance becomes impossible for a reason that cannot be attributed to either party and the cause of impossibility has occurred within or beyond the control of both parties, the contractor shall be entitled to a proportionate amount of the remuneration for the work done and for his expenses.⁸⁵ As we saw in the case of sales contracts for the supply of agricultural goods produced with the buyer's involvement, the customer can help the contractor's work with the number of devices (binder twine, containers, fertilizers, plant protection). In contrast with the animal rearing and fattening or the plant produced whose ownership has never been transferred to the contractor, the ownership of thing delivered in advance or accounted pass to the contractor. However, payment of the consideration for the customer will only be made at a later date, at the same time with the performance of the agricultural services contract. However, the payment of the purchase price at a later date does not depend on the fact that in event of the termination of the contract, the contractor is entitled to remuneration or not. The producer shall not be entitled to refuse the repayment of services performed by the customer on account or as prepayment on the grounds that such repayments cannot be covered by the results of production.⁸⁶

We can see that certain rules of the previous service type of the agricultural product sales contract have been placed here, although less provision govern this contractual relationship, but the earlier case law and legal literature here will help the enforcement of law. And, of course, due to the permissive regulation, the parties can share the contractual risk, if a public norm doesn't regulate differently.

4. Final Thoughts

Initial formations of the agricultural product sales contract have appeared in capitalism, and survived a lengthy development, and they are still present in legal systems. Although the codification of the private law thinned the relevant provisions, they did not disappear. The new code does not have provisions regarding the mandatory phrasing of the contract, and it does not regulate the determination of the quantity and quality, or the method of examination. When it comes to the agricultural product sales contract for several years, the new Civil Code keeps silent. If we only see this contract with a private law approach, we can simply say that the contractual will of the parties can fully prevail because of the lack of mandatory provisions. We must also remember the system of public law restrictions relating to the agricultural law, as a result the regulation of agricultural law is always multi-level, and the private autonomy is limited on several levels. Restrictions on the one hand, of course, bind the parties and limit the room for manoeuvre, but on the other hand, they consider the underlying social and economic conditions of the relationship in a predictable and narrow bed.

⁸⁴ Civil Code 5:22. §

⁸⁵ Civil Code 6:248. § (1) c)

⁸⁶ Civil Code 6:255. § (3)

Thus, the provisions of Civil Code mean the doctrinal foundation, and those mandatory public provisions which are built on the rules of the Civil Code restrict the enforcement of the contractual freedom of the parties, and make the relationship clearly diversifying from the classic civil law contracts. The group of agricultural contracts including the product sales contract stands out from the sea of private law as neither the Civil Code nor any other form of legislation defines them as a group of agricultural contracts. Agricultural contracts do not and cannot disappear, because the agricultural product, the foods as the most basic needs of humans will always keep them alive.