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**The most important changes in the field of agricultural law in Hungary between  
2011 and 2013**

## 1. Introduction

The analysis of agricultural and environmental law is a frequent part of the CEDR conferences. The application of recurrent categories is very important for an organisation dealing with comparative law, because answering the similar questions, not only compare the changes in the countries' legislation in the last 2 years, but also compare the legal experts' different answers. Analysing the categories, it is important, that the practitioners and the theoreticians have different opinions in connection with the categories.

The completion of analysis was very difficult, because some parts of our written material are not the integrated part of the academic agricultural law, so we have need to use other legal areas' results. The viewpoint of our analysis is agricultural and environmental law. We focused on the new legislative parts, but consequentially we dealt with the different amendments.

## 2. The comparison of the most important legal areas

### 2.1. Agricultural economy and law

Between 2011-2013<sup>1</sup> a significant revulsion was occurred in connection with the direction of agricultural economy. The right-wing, who possesses two thirds majority,

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<sup>1</sup> The most important acts adopted in the above period: Act CXXII of 2013 on *transfer of agricultural lands and lands of forestry*; Act CII of 2012 on the fishing and the protection of fish; Act CCXIX of 2012 on the wine communities; Act CXLVII of 2012 on the itemised taxes of small enterprises and small companies; Act CXXVIII of 2012 on the interprofessional organisations and certain aspects of the regulation of agricultural market; Act CXXVI of 2012 on the the Hungarian Chamber of Agriculture, Food Economy and Rural Development; Act XLVI of 2012 on the surveying and mapping activities; Act II of 2012 on the offences, the procedure of offences and the administrative system of offences; Act CCIX of 2011 on the water utility service; Act CLXVIII of 2011 on the handling of weather and other natural risks concerned the agricultural production.

The most important governmental and ministerial decrees adopted in the above period: Decree of the Hungarian Government no. 405/2012 (XII.28.) on the particular rules of the annulment of undivided common property issued in the symmetry rent of land; Decree of the Hungarian Government no. 2/2012 (II.29.) on the National Food Chain Safety Office; Decree of the Hungarian Government no. 220/2011 (X.20.) on the properties under the common ownership as the Act on National Land Fund; Ministry Decree of Rural Development no. 63/2013

has proceeded to follow out a significant revulsion in the field of the legal regulation of agricultural economy.

The kernel of the revulsion is, that the concept of land ownership and land use has been separated in Hungary. The majority of this land was owned by the persons, who were not closely related to agriculture and has been recovered their majority of lands in the form of lease. The tenants were companies and cooperatives owned by natural persons, which had right to use the lands free taking the advantage of unlimited usage<sup>2</sup> provided by law. After using the machines, the equipments and the required investments, these tenants paid a part of the the ever-increasing simplified area payments for the lessor as rental fee. The rental fee was fixed fairly in advance in the 20-year leasehold contracts, so the rising supports increased the profits of users. The previously mentioned farming persons were confirmed by this structure, however the

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(VII.25.) on the particular rules of recognition and controlling of the interprofessional organisations; Ministry Decree of Rural Development no. 60/2013 (VII.19.) on the planning principles of district forest planning and the sylviculture performed by the district forest plannings; Ministry Decree of Rural Development no. 53/2013 (VI.17.) on the safeguard clause procedure of the inbreeding lines derived from the MON 810 maize and the seeds of hybrids; Ministry Decree of Rural Development no. 52/2013 (VI.17.) on the safeguard clause procedure of the potatoes modified the aim of the increasing of amylopectin component; Ministry Decree of Rural Development no. 38/2013 (V.24.) on the potential of viticulture; Ministry Decree of Rural Development no. 150/2012 (XII.28.) on the fruit and vegetable producer organisations and producer organisations; Ministry Decree of Rural Development no. 140/2012 (XII.22.) on the animal welfares rules of killing and slughtering of animals; Ministry Decree of Rural Development no. 68/2012 (VII.13.) on the payment of the livestock breeding fine; Ministry Decree of Rural Development no. 65/2012 (VII.4.) on the particular rules of production, release, consumption of crops; Ministry Decree of Rural Development no. 63/2012 (VII.2.) on the rate of administrative service fees paid in the procedures initiated in the National Food Chain Safety Office and the agricultural administrative authorities of governmental offices, and the regulations of the payment of administrative service fee; Ministry Decree of Rural Development no. 51/2012 (VI.8.) on the food safety conditions of mongering in the local producer markets; Ministry Decree of Rural Development no. 45/2012 (V.8.) on the statement of the animal health rules concerned about animal nature secondary products marked out of the non-human consumption; Ministry Decree of Rural Development no. 40/2012 (IV.27.) on the rules of payment and avowal of the food chain contolling fee; Ministry Decree of Rural Development no. 30/2012 (III.24.) on the particular rules of rural developmental support for the supply of tasks of of the LEADER local action groups, provided from the Agricultural Rural Developmental Fund; Ministry Decree of Rural Development no. 21/2012 (III.9.) on the issues in connection with the requisition of compensation benefit and the payment of compensation contribution; Ministry Decree of Rural Development no. 143/2011 (XII.23.) on the conditions of requisition of support elongated to the agricultural insurance fee; Ministry Decree of Rural Development no. 141/2011 (XII.23.) on the importation and increased magisterial controlling of the non-animal origin foods and crops.

<sup>2</sup> The exempted maximum usage of land was a 2500 hectares sized agricultural land or 50000 gold crown cadastraled agricultural land. If a company or cooperation leased the land, there were no maximum. See from the interpretation of the Act of Land: Raisz Anikó – Szilágyi János Ede: Development of agricultural law and related fields (environmental law, water law, social law, tax law) in the EU, in countries and in the WTO, *Journal of Agricultural and Environmental Law*, 2012/12, 108-110.

structure did not contribute to the strengthening of the management in the form of self-employed farmers. The profits of the organisations and persons farming in the forms of company and cooperative were increased by the fact, that the Hungarian National Asset Management Inc. (HNAM), who utilizes the soils and demesne lands as the part of national property, focused on these organisations and persons in connection with the HNAM's public tenders.

After the revulsion the governmental agricultural policy was changed. The main objectives are the partiality of persons, who works as agricultural farmers, in the field of the acquisition of ownership of land and land use, furthermore the promotion of farming of young people, who have appropriate qualifications, and the usage of material items required to agricultural farming as a single system. The new system considers the soils as the part of the national property, however does not discriminate in the course of acquisition and creates the opportunity of acquisition and utilisation of land for EU farmers, who wish to settle down and farm, furthermore the European Economic Space (EES) farmers and citizens.

In addition to the Act of Land, which is qualified as cardinal act and accepted in preparing this national report, but has not come into effect yet, an Act of Agronomy is also part of the system. This Act operates the soil with instruments, equipments and properties as a financial denomination. This system is supplemented by the Act on organisations of agricultural productions.<sup>3</sup>

The new system ensures for the EU farmers to acquire the opportunity of land's ownership up to 300 hectar. This provision narrows the right of acquisition of land's ownership to 1 hectar for the hungarian citizens, who do not practise agricultural activity professional and have not got agricultural qualification.

The number of parcels of land, which are in the scope of the Act, increases, namely it's not just the rural agricultural cultivation areas, rather than the registered branch of all land used for agriculture, will be included in the scope of the Act.

However, the ponds were taken out of the scope of the Act and now, the pound are in the scope of Act of 2013 on fishing. This new act's most important provision is, such as many European countries, that only allow the use of a type of fishing waters, if there is no valid use for fishing contest.

The most important innovation of the land registration rules, that in addition to the registration procedure, the condition of land registration is the effective conduction of the authorisation procedure of the administration bodies.

However, the use of land and acquisition of land's ownership is only possible, if the citizens, who have right of preemption and leasehold, do not wish to entitle to these rights. The entitled citizens can indicate for the local government's notary within 60 days of outplacement of the posted contract, if they wish to entitle to the right of preemption. The notary bounds to supervise personally the credentials of the right of

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<sup>3</sup> National Rural Developmental Strategy 2012-2020, in: <http://videkstrategia.kormany.hu/download/4/37/30000/Nemzeti%20Vid%20A9kstrat%20A9gia.pdf> (11.07.2013); Szilágyi János Ede: A földforgalmi törvény elfogadásának indokai, körülményei és főbb intézményei, *Új Magyar földforgalmi szabályozás az uniós jogban*, Conference issue, 2013, Budapest, 1.

preemption.<sup>4</sup> In the declaration of acceptance, the citizen, who has the right of preemption, shall be entitled to declare on, that he/she wish to use the area himself/herself, furthermore he/she has not got liabilities in connection with the charges of land use in the last 5 years, and he/she lives habitually in a territory and no fine in connection with the land was not imposed by the authorities.

The registry of entitled citizens, who wish to take advantage of their right of preemption is sent by the notary to the official agricultural authority appointed to magisterial approval.

In the first round, the official agricultural authority supervises private law validity of the concrete contract, furthermore the declaration of the customer, who is in the contract, or the citizens, who have got the right of preemption, and the administrative procedure of the notary. If the notary finds problem, he/she makes a decision on the refusal to the approval.

If there is no such problem, the notary forwards the documents and the registry on the ranking of the citizens, who have got the right of preemption to the Local Land Committee.

The members of the Local Land Committee are the elected representatives of the territory. They make a decisions on the adequacy of the contract in connection with the evasion of the limitation of acquisition, furthermore that the contract is not a formerly concreted and invalid, but legalized form and are there any situation, when the citizens, who have got the right to preemption, practise their right abusively. If these points are existed, the Local Land Committee must refuse the approval of the sales contract. Furthermore the Local Land Committee has right to refuse the approval of the sales contract, if it is provided, that the author acquires property without an economic necessity, for the purpose of agglomeration and if the quid pro quo of the property and the extent of the property are disproportionate to each other to such an extent that these are capable to keep away the citizens, who have got the right to preemption, to practise their right.

The Local Land Committee makes a decision within 15 days. If the Committee do not refuse all the ranked citizens, the official agricultural authority balances again the aspects of the compulsory rejection and supervises the ranked citizen, that are they meet the requirements. If the citizen, who has got the right of preemption, meets the requirements, the authority approves the contract with him/her. If he/she does not meet the requirements, the authority approves the contracts with the original purchaser. In connection with the approval, the authority makes a decision (adjudicate) and after marks on the contract as a reservation. The contracts with a reservation is suitable to submit to the Land Register Office as an incorporated document to start the registration procedure.

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<sup>4</sup> The following persons have pre-emption: (a) The resident farmer; (b) the owner of the animals keeping park in case of the farming branches of arable land, meadow, pasture, area covered trees, who utilizes the territory for the aim of crop cultivation; (c) The farmer in case of the farming branches of meadow, grape and fruit cultivation, who utilizes the territory for the aim of preparation of processed products assigned geographical and original indications; (d) The neighbour of resident farmer (e) The farmer, whose park is approached in a occupation road or public road from 15 km to the territory.

The Act determines the rules of the other types of assignment similar to the sales contracts, but considers the specialities of the different types of assignment. In case of the monitoring of acquisition with a last will, the court supervises, that the last will considers the rules of acquisition. In the case of purchase auction, the court also supervises the right of preemption of the buyer. In the different procedures, the administrative body is the agricultural administrative body. In the case of usucaption the civil court, in the case of devise the notary, in the case of auction the executor will take the final decision.

The new act recognizes the sanctity of private property, and does not enroach in the proportions of property, limits solely the purchase and use of lands for the future.<sup>5</sup> The aim is the standardization of the ownership and usage of lands. The side-effects of the regulation, that the numbers and productivity of holdings, which deal with livestock production and have a huge acreage are decreased in the short run.<sup>6</sup> However, in the longer term, this provision is a more serious perspective and more calculable career for citizens, who wish to begin to farming in Hungary in the future because of the favourable climatical relations and geopolitical situation of Hungary.

## 2.2. Agricultural and environmental law

In the 2011-2013 period, the agricultural environment did not get into the center of legislation. The planning in connection with this area was started and we can find regulations in the field of this area in the new regulations of supported cycle. The most practise in connection with the planning of the supported cycle was slipped out. The most agricultural-environmental measures materialize in the second, rural developmental centre line. The operational programme between 2014 and 2020 has 6 priorities. The fourth priority is the restoration, reparation and correction of the ecosystem depended on the agriculture and forestry.

The program contributes to the solution of domestic problems: unfavourable practise of water management; inadequate water management of supply water; lack of water management in connection with the landscape framework; surface waters bothered by nutriments and chemicals; unfavourable land use; land use in excess of the rate of renewable capacity of the soil; inadequate scales of soil protection measures; unfavourable consistency of forrests; intense exposure for the climate change; the spread of invasive and stranger species; and low-level of consumers' health and environmental awereness. The preserve of habitats and areas, which are very important in many ways (preserve of natural values), is needed active attendance. The scale of the natural areas and biodiversity was decreased, the services of ecosystem were impaired.

The priority aims at the adaptation to climate change, as well as the achievement of environmental protection and resource efficiency. Special attention to be paid to the preservation of natural values, ecosystems and resources and the execution of sustainable farming. In this context, it is focused on the following areas: payments in connection with agricultural-environment and climate; support of organic

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<sup>5</sup> See the point 1.4. on the usage rules of the Act on the circulation of land.

<sup>6</sup> Kapronczai István: Az új szabályozás hatása az agrárpolitikára, *Új Magyar földforgalmi szabályozás az uniós jogban*, Conference issue, 2013, 1.

farming; support of the preservation of agricultural genetic resources; maintenance and protection of biodiversity; preservation of NATURE 2000 areas; quantitative and qualitative water protection; protection and sustainable recovery of soils; protection and development of forest biodiversity in the important forests; and introduction of quality systems (PEFC) and other system in connection with the origin classification of timber.<sup>7</sup>

The second major pillar of the agricultural-environmental management is called 'zöldítés', which is belonged to the direct supports. The second compulsory support element's (the green component) most important aim is the encourage of the producers to environmental awareness and the enlargement of the ecological sustainability. The draft separates the 30% of the direct payments for it, but only those farmers come in for this support, who are eligible for the following three criteria: (a) According to the current proposal, if the economy's area of arable is more than 10 hectares, then the farmer needs to sow minimum of two plants each year, if the economy's area of arable is more than 30 hectares, then the farmer needs to sow minimum of three plants each year in such a way, that one of the scale of area does not get 70%, and must get a minimum 5%. (b) The permanent conservation of grassland, which may be reduced by 5% in a 7 years' time. (c) The utilization of the 7% of eligible arable area for environmental purposes, for example 'kunhalom' (landscape element) or rest of the area.<sup>8</sup>

The areas involved in the agricultural-environmental management are an exemption from the second major pillar of the agricultural-environmental management, if these areas' environmental benefits are more than the second pillar. The economy is also exempted from the second pillar, if the 75% of the constant areas are pasture. According to the Hungarian attitude, the main aim is, that the requisition of sources is to be uncomplicated, furthermore the mortgages are considerable, and the competitiveness is not be restricted.<sup>9</sup> The second major pillar of the agricultural-environmental management called 'greening' will be more successful in countries where there are still frontrunners in this area, such as Germany, and there are more pastures, such as Austria. However, the second major pillar of the agricultural-environmental management called 'greening' discriminates the European Union, in the field of the competition of food production.<sup>10</sup>

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<sup>7</sup> Rural Developmental Programme 2014-2020, in: <http://www.mnvh.eu/vidékfejlesztési-program-társadalmi-egyeztetés> (04.07.2013).

<sup>8</sup> Vásáry Miklós: A Közös Agrárpolitika reformja 2014-2020, *MCTE general meeting*, Üllő, 23.05.2013.

<sup>9</sup> Vásáry Miklós: A Közös Agrárpolitika reformja. Közvetlen támogatások, *Presentation in Cserkeszőlő*, 27.11.2012.

<sup>10</sup> Taskó-Bóta Melinda: Az agrár-környezetgazdálkodási rendszer jövője a Közös Agrárpolitika reformjának tükrében, Miskolc, *Miskolci Egyetem*, 2013, 20.

### 2.3. The agricultural relations of food chain

The regulation of food chain was in a significant interest in the Hungarian agricultural legislation.<sup>11</sup> The religious type of slaughters are exempted from the EU regulations in connection with the obfuscation, if the appropriate saving slaughter is proved by the supervising church. People can get qualification for the appropriate saving slaughter of animals after the completion of courses organized by National Food Chain Safety Office (NFCISO) and the county administrative authority on food chain control and animal health.<sup>12</sup>

The other important question in connection with the food security, that the Hungarian agricultural authorities enforce in practice the GMO exemption, which was declared by the Hungarian Constitution.<sup>13</sup> The contributors of the Governmental

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<sup>11</sup> Ministry Decree of Rural Development no. 140/2012 (XII.22.) on the animal welfare rules of killing and slaughtering of animals; Ministry Decree of Rural Development no. 68/2012 (VII.13.) on the payment of the livestock breeding fine; Ministry Decree of Rural Development no. 65/2012 (VII.4.) on the particular rules of production, release, consumption of crops; Ministry Decree of Rural Development no. 63/2012 (VII.2.) on the rate of administrative service fees paid in the procedures initiated in the National Food Chain Safety Office and the agricultural administrative authorities of governmental offices, and the regulations of the payment of administrative service fee; Ministry Decree of Rural Development no. 51/2012 (VI.8.) on the food safety conditions of mongering in the local producer markets; Ministry Decree of Rural Development no. 45/2012 (V.8.) on the statement of the animal health rules concerned about animal nature secondary products marked out of the non-human consumption; Ministry Decree of Rural Development no. 40/2012 (IV.27.) on the rules of payment and avowal of the food chain controlling fee; Ministry Decree of Rural Development no. 30/2012 (III.24.) on the particular rules of rural developmental support for the supply of tasks of the LEADER local action groups, provided from the Agricultural Rural Developmental Fund; Ministry Decree of Rural Development no. 21/2012 (III.9.) on the issues in connection with the requisition of compensation benefit and the payment of compensation contribution; Ministry Decree of Rural Development no. 143/2011 (XII.23.) on the conditions of requisition of support elongated to the agricultural insurance fee; Ministry Decree of Rural Development no. 141/2011 (XII.23.) on the importation and increased magisterial controlling of the non-animal origin foods and crops.

<sup>12</sup> The qualification is prescribed by the member state on the strength of Regulation (EC) no. 109/2009 of the Council.

<sup>13</sup> Raisz – Szilágyi 2012, 109-111. See in connection with the actual literature of the GMO regulation. Bézi-Farkas Barbara – Jasinka Anita: A géntechnológiai tevékenység szabályozása, in: Csák Csilla (edit.): *Agrárjog*, Miskolc, Novotni Kiadó, 2006, 487-495.; Farkas Csamangó Erika: Az élővilág környezetjogi védelme., in: Miklós László (edit.): *A környezetjog alapjai*, Szegedi Egyetemi Kiadó, Szeged, 2011, 103-112.; Horváth Gergely: A zöld géntechnológia alkalmazásának gazdasági- és agrár-környezetvédelmi kockázatai. *Külgazdasági jog – Annex*, 2008/7-8, 87-106.; Komári Ágnes: A koegzisztencia kérdése az Európai Unióban, különös tekintettel a GM-növénykultúrák termesztésével okozott károkért való felelősség szabályozására, in: Bobvos Pál (edit.): *Reformator iuris cooperandi*, Szeged, Pólay Elemér Alapítvány, 2009, 293-297.; Olajos István: A géntechnológiai tevékenység szabályozása Magyarországon, in: Szilágyi János Ede (edit.): *Környezetjog II*. Miskolc, Novotni Kiadó, 2008, 73-88.; Pánovics Attila: Szakítópróba előtt Európa GMO ügyben?, in: [emla.hu/aa2.10.0/img\\_upload/777ad89538\\_966d33b9d5fb7d0e49b91c/Panovics\\_Attila.pdf](http://emla.hu/aa2.10.0/img_upload/777ad89538_966d33b9d5fb7d0e49b91c/Panovics_Attila.pdf) (28.07.2013); Prugberger Tamás: A géntechnológiai tevékenység, in: Fodor László – Olajos István – Prugberger Tamás: *Agrárjog II.*, Miskolc, Bíbor

Ministry of Agricultural plough out the illegal GMO's corn and potato plantations before the harvest of the crop. However, the producer may require the costs of seed, the ejection of crop and the verifiable destruction of the product from the Hungarian authorities.<sup>14</sup>

The legislator in some cases ensures temporary exemption above the requirements of food sanitation towards to the promotion of production by farmers, as the following: (a) It is no necessary to ensure special cleaning or disinfection equipment, if the food business operator does not carry out the cleaning and disinfection of the equipments in the location of release, provided because of the sale, the cleaning and disinfection of the equipments are not required.<sup>15</sup> (b) It is not necessary to ensure the supply of drinking water, if the food business operator does not carry out the cleaning and disinfection of the equipments in the location of release, provided because of the sale, the cleaning and disinfection of the equipments are not required, furthermore a toilet is at service and the opportunity of ablation with running water is ensured.<sup>16</sup> (c) It is necessary to ensure the regular cleaning and disinfection of the storage containers and pots in the area of local farming market. (d) It is necessary to establish an adequate sized, natural and artificial lighting mushroom examining place for the mushroom inspector cause of the marketing of wild grown mushroom. This place is equiped by an adequate sized, securely lockable storage container, which is suitable for the accomodation of the seizure mushroom.<sup>17</sup>

In addition to the regards of consumer protection, the adequate magisterial supervision and control in the field of the food chain safety are an important interest for the controlled organisations. In addition to the correct official controls, the food producer does not cause damage to human health, and thus exempts from the obligation of compensation. The authority fulfills the compulsory authorisation procedure and scheduled controllings in the areas of food chain before the commencement of operation of farms. The controlling, which reveals smaller shortcomings, prescribes the enforcement of proper food hygiene protocol in addition to the imposition of indication. From July 2012, every production, packaging and trading units of food pay food chain controlling fee proportionately with net revenues for the authority as the the supplement of the lost revenues.<sup>18</sup> The food chain person is not exempt from the fine, if the human health is endangered directly by the person's conduct or his/her shortcomings are not remedied before the subsequent controlling.

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Kiadó, 1999, 84-101.; Szilágyi János Ede: A zöld géntechnológiai szabályozás fejlődésének egyes aktuális kérdéseiről, *Miskolci Jogi Szemle*, 2011/2, 36-54.; Tanka Endre: Adalékok a génmódosított növények hazai köztermeszthetőségéhez, *Gazdaság és Jog*, 2007/3, 20-26.

<sup>14</sup> Ministry Decree of Rural Development no. 96/2012 (IX.4) 2-3. §

<sup>15</sup> The abovementioned provision is harmonised with Regulation (EC) no. 852/2004 of the Council, Annex II., Chapter III., Article 2., point c).

<sup>16</sup> The abovementioned provision is harmonised with Regulation (EC) no. 852/2004 of the Council, Annex II., Chapter III., Article 2., point e).

<sup>17</sup> Ministry Decree of Rural Development no. 51/2012 (VI.4) 2. §

<sup>18</sup> Ministry Decree of Rural Development no. 40/2012 (IV.27) 3. § The legal basic of the decree is the Act XLVI of 2008 on the food chain and the magisterial contolling of the food chain 64. §

## 2.4. The rights of agricultural land use

The most important change<sup>19</sup> in the examined period, that the Act CXXII of 2013<sup>20</sup> on the sales of agricultural lands, which has fundamentally altered the rules of using of agricultural lands, was adopted.

One of the most important change, that the soils can be used only by the received claims out of the claims of the land use. So the leasehold, the metayage and the half cultivation. In the case of metayage, the lessor receives the determined proportion of crop because of the resignation of using of the land. In the case of half cultivation, the lessor and also the tenant cultivate the soils and assume the damages. The commodate will be overruled from 2014, so it is not concluded for the use of agricultural lands and the lender does not get quid pro quo. If the leaseholder dies, and his successors continue the lease, the restricted provisions of the law are not concerned to tenure.

The new legislation enables the use of the land only to the farmers and the enterprises effected to resumption of agricultural activity. There are some exceptions under this rule, for example some legal entities, but the range of exemptions are narrower than the previous Act of Land.<sup>21</sup>

The Act takes into account that the Hungarian moratorium expires in 30 April 2014, so it does not distinguish between domestic and foreign natural and legal persons.<sup>22</sup>

Every usage on accepted claims, with some exceptional cases,<sup>23</sup> are become registered claim on the official land register by the magisterial approval of the agricultural administration authority. If the title of usage is a leasehold, the certain persons' right of leasing prevent the right of the user be in the contract in connection with the usage of forest<sup>24</sup> and other lands.<sup>25</sup> In the course of the magisterial approval,

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<sup>19</sup> The subsection was made by the presentation of Olajos István: A termőföldek használata az erdő és mezőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény alapján, *Új Magyar földforgalmi szabályozás az uniós jogban*, Conference issue, 2013, 1.

<sup>20</sup> See for the antecedent of adoption of the Act: Raisz – Szilágyi 2012, 122.

<sup>21</sup> The opportunities of leasehold: (a) The forrest companies on the forrest areas of the usage and property of members owned and used by members (b) The top or middle level training centre of the agricultural sector for educational and researcher tasks as a leasehold (c) The established church or legal person of this church on supply of the educational, social, economic activity as a leasehold. (d) The farms are leased by anybody with the exception of public limited companies and organizations carried out non-transparent activities.

<sup>22</sup> See in connection with the Act LV of 1994: Jakab Nóra – Csák Csilla: Regulation of the ownership and use of the agricultural land in Hungary Edinburgh, *CEDR Annual Congress*, Great-Britain, June 5 2010.

<sup>23</sup> The approval of the state is not needed in the followings: (a) The contracts of the state and local governments (b) The division of the usage between partners (c) The conveyance of the supportal contract committed in the law for a farmer or an agricultural farming cooperation (d) The contract between an owner and a user of an agricultural farming cooperation (e) The contract of a forest company (f) The contract of a church (g) The transference of the usage of a farm.

<sup>24</sup> (a) The resident or local neighbour (b) The resident (c) His/her residence or his/her centre of farm was not within the area of the village for 3 years (d) The farmer, who is a joint owner.

the authority shall decide in case of the correspondence of the examined requirements, who enters into the contract as an user. Manufacturers of certain products shall be entitled to practise their right of leasing prior to everybody in connection with the usage of some preferred lands.<sup>26</sup>

The magisterial controlling is a simpler procedure then the controlling of acquisition. The contract is begun after the publication to the persons, who have right to leasing, and the magisterial contribution of the forestry authority is registered after the general controlling in connection with the forests. The document has been received from the forestry authority is supervised by the authority in the aspect of the contracting parties' effective manifestation of will. After then the authority filters again on the strength of the extent of lease fee and the antecedent of the land user. If at the end of the process, more persons, who have right to leasing, will remain, the lessor chooses one of them.

The process is not completed with the administrative controlling of leasehold contract, because the authority also supervises the observances of the commitments imposed by the land users. In the case of inadequate land use, the authority can use the legal instruments of warning, penalties and forcing recovery.

The conversion of the Hungarian system of land use takes the initial steps. After the adoption of the Act on farms and the Act on integrated organisms, a significant conversion will be due to happen in the point of farm structure and legal form of economy. The main aim of the government is, that such producers directly related to the production get the usage of lands, whom the usage is made for the subsistence, and they can contribute the solution of the rural unemployment with employment of further persons.

## 2.5. The agricultural-social law

The first change of the agricultural-social law is the further simplification in connection with the regulations of seasonal job. A foreigner person also registers for seasonal job. The foreigner need to require a work permit from the employment authority of the governmental ministry, who brings out this permit as a free magisterial

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<sup>25</sup> (a) The leaseholder farmer or agricultural farming organisation, which is resident and its centre of farming can find within 20 km and be able to approach in a public road or an occupation road. (b) The resident neighbour farmers (c) The resident farmer (d) The farmer, whose centre of farming can find within 20 km and be able to approach in a public road or an occupation road. (e) The resident neighbourhood agricultural farming organisation (f) The resident agricultural farming organisation The agricultural farming organisation, which centre of farming can find within 20 km and be able to approach in a public road or an occupation road.

<sup>26</sup> In connection with the arable land, meadow, pasture, area is covered with trees, this provision is referred to the resident farmer and resident agricultural farming organisation, which before worked an animal keeping farm and the most aim is the production of crop. On the second hand, in connection with the arable land, garden, grape and fruit cultivation areas, this provision is referred to the resident farmer and resident agricultural farming organisation, whose aims are the preparation of processed products assigned geographical and original indications and the resumption of ecological farming.

warrant. The employment authority contacts to the tax authority and the social security administration authority in connection with the required tax card and social security card for the sake of starting to work in Hungary. The employment of the foreigner's agricultural seasonal job is no more than 120 days.<sup>27</sup> After the seasonal job, the common charge paid by the employer and exempted from every tax and affix is 500 HUF per day. The government spares a highlighted role for the employment cooperatives in connection with the organisation of seasonal jobs. An application, where the employment cooperatives transmit the member of the employment cooperative in the context of labour force lending in such a way that the employer stays in the cooperative, is also the subject of the rules of simplified employment from May 2013.<sup>28</sup>

The other very important provision in connection with the agricultural-social law is the aforementioned sixth priority of the Operational Programme of Rural Development (2014-2020).<sup>29</sup> The priority's name is the promotion of social inclusion, the reduction of poverty and the promotion of economic development in rural areas.

In the context of priority, the hungarian rural developmental government wish to solve the management of the following problems: (a) Adverse socio-demographic and other relevant regional trends, which are the following: wandering of young peoples; insenescence; deteriorating health, extreme poverty; lack of increasing local services; erosion of the cultural heritage; disintegrated local communities. (b) The rural local economy is inadequate, primitive and disorganized, because he sector of small and middle enterprises are underdeveloped and inadequate. The lacks and problems of the local relationships of production and consumption, the local production, the innovation, the cooperation, the exploitation of tourist potential and local agrobiodiversity are inefficient. (c) The adequacy for the considerations of sustainability and climate adaptation is inefficient. Other problems are the full compliance with the fossil energy sources, the degradation of natural resources (unsuitable water management, destruction of soil, decrease of biodiversity) and wasteful farming (energy, water, food and waste). (d) There are significant and increasing territorial developmental differences at the expense of rural territories. (e) The profitability level of the income sources, which is accessible to countrymen, is low. (f) Rural unemployment, the concentration of the inactive working active peoples in rural areas. (g) The weakness of the local infrastructure. The lack of services in rural areas.

The operational programme uses the following solutions to solve the problems: (a) The social economy and village enterprise for the support of new forms of employment to deal with poverty and unemployment. The handling of extreme poverty and reduction of reproduction. Ensuring infrastructure and essential services stimulating by the local economy and supporting by the quality of rural population's life, included in the social basic and additional services. (b) The economic diversification, furtherance of the non-agricultural businesses, development of self-employment, becoming entrepreneur, integration of market garden, utilization of

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<sup>27</sup> See the previous rules of the seasonal job: Raisz – Szilágyi 2012, 124.

<sup>28</sup> See in connection with the simplified employment: <http://www.nav.gov.hu/data/cms/278781/46.InformaciosFuzetEgyszerusítettFoglalkoztatás2013.pdf> (02.07.2013.)

<sup>29</sup> See Rural 2014-2020, 14-16.

capacities and potential of local products, capacities of renewable energy sources. (c) The conservatory utilization and renewal of the varied, cultural, scenery and natural heritage of the rural territories. (d) The development of the services and rural, cultural and public fields. (e) The conservatory utilization and renewal of the rural built and natural heritage. (f) The promotion of social reception and the encouragement of inclusion of the roma integration activities. The promotion of social inclusion and cohesion by the instruments of culture and socio-public developments.

The Government tries to solve the problems found in the agricultural sector, by the renewal of the traditional instruments of the rural development beyond the special instruments of the social law and employment. In the variety of the Act of Land marked out of the public argument, the law-makers have been connected the usage of land of the farmers' cooperative with the employment of the certain casual or permanent number of employee. The proposal would have supported the handling of the rural unemployment, however the introduction of the proposition had decreased the profit of farming cooperations dealing with the large-scale plant production, therefore this governmental proposal removed from the draft in the course of public compliance.

## 2.6. The hungarian renewable energy policy

Examining the legal regulation of renewable energy sources, we need to separate the legal regulation in connection with the certain renewable energy sources and the legal regulation in accordance with the forms of produced energy.

The electricity, the district heating<sup>30</sup> and natural gas regulation are included in the first group. In connection with the electricity regulation,<sup>31</sup> we need to mention the Decree 76/2011 of the Minister of National Development on the financial and technical conditions of connection to public electricity grid. It is determined that the connection fee of the power stations using renewable energy sources is the subject of an agreement concluded by the licensee, but the licensee is liable to work in accordance with the principle of the lowest cost. The connection fee shall not exceed the value of the expansion of the investment.

In general, in connection with this group, the priority of renewable energy sources is outlined in the context of the regulation of the heat energy and district heating. In relation to the natural gas regulations, natural gas quality biogas is appraised by the Decree.<sup>32</sup>

As we mentioned above, the other group is the legal regulation in accordance with the forms of produced energy. In connection with biomass,<sup>33</sup> biogas, solar and wind energy, we do not mention significant changes in the recent years. The most

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<sup>30</sup> See: Szilágyi Szabolcs: A távhőre vonatkozó jogi szabályozás áttekintése, *The issue of Doktoranduszok Fóruma*, Miskolc, 2012, 177-182.

<sup>31</sup> See: Szilágyi János Ede: A villamos energia piac szabályozása, in : Szilágyi János Ede (edit.): *Környezetjog II.*, Novotni Kiadó, Miskolc, 2010, 165-174.

<sup>32</sup> See: Olajos István – Szilágyi Szabolcs: A kistélepléseken létrejövő távhő- és termeltetési rendszerek energiaügyi problémái, *Magyar Energetika*, 2012/6. 2-7.

<sup>33</sup> See: Szilágyi Szabolcs: The legal problems of a biomass energetic system in Csernelly, *Volume of Constant 2013 Conference*, University of Nicolae Titulescu, Bucharest, 2013, 807-811.

substantially change concerned about the legal rules of geothermal energy. We need to mention the Decree 146/2010 of the Hungarian Government on the facilities and activities for the utilization, protection and prevention of waters in the context of the thermal water management.<sup>34</sup>

The most important regulation in connection with the deep geothermal energy is the Act of 2010 on the amendment of the mine act, which outlines, that the exploration, extraction and utilization of the geothermal energy of Earth's crust under 2500 are a mining activity, which achieves only in the context of concession contract. This contract is possible on the strength of a tender in a point of areas determined by the Minister. Duration of the concession is 35 years, which can be prolonged a half of 35 years one time. The research period is not more than 4 years. According to this act, the construction of soil searcher systems is permitted by the mining authority, as a board of housing.

### 3. The conclusions of the analyzed legal areas

#### 3.1. Successful legal areas

We consider the reform of the legal regulation of agriculture on the strength of overall concept successful out of the aforementioned areas.

The first and most important step of the concept is that the trusteeship of the lands owned by the state has been got under the control of the Ministry of Rural Development and the aspects of agricultural economy are emerged in connection with the trusteeship. In the context of the usage of the lands owned by the state, the farmer is preferred against the corporated bodies possessed large stock.

The breakup for the exclusionary nature, permitting regulations of the usage of internal persons seems to be a good direction.

The administrative authorisation of acquisition and usage is the permanent instrument for the elimination of imposition. In the terms of the opinion of monitored aspects are primary, that the experts of the authority performed the supervision are able to evaluate the legal aspects of authorisation and define the made contracts. The construction of new administrative authorization is soluble, but only with a significant reinforcements. Against the persons, whose violate the legal rules, a new, more efficient control system expanded on the procedural elements of jurisdiction seems to be outlined in the form of a new draft.

A well constructed Act on farms contributes for the increase of the achievement of agriculture. This act will aspire the handling of well constructed farms and the increase of economical strength.

The condition of the renewal of hungarian manufacturing and the supply of permanent commodities is the performance of an integrated system based on the local communities. The inrush of the rural producer units related to the agriculture's elements in the production process will be possible.

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<sup>34</sup> See in connection with the relationship between energy and water: Szilágyi János Ede: Energia és víz, in: Szilágyi János Ede (edit): *Vízjog, aktuális kibívások a vizek jogi szabályozásában*. Miskolci Egyetem, Miskolc, 2012, 156-158.

The other major effort of the rural development government is the attempt of the decrease of agricultural exposure by the weather. On the one hand, the performance of the agricultural compensation was the first step of the aforementioned effort. Only producer can get a compensation, who contributes the costs of the compensation by the deposit of his/her incomings. The second significant step is the conversion of the tasks of irrigation and chanel maintenance, furthermore the fixation as a state task. Therefore the release of the damages caused by floods and inland inundations and the damages caused by droughts is achieved in the same time.

## **2.2. Less successful or unsuccessful legal areas**

We need to highlight the agricultural environment management among the sectors considered unsuccessfully. The tasks obtained and prescribed in the suitable criterias of the farmers are implemented difficulty in certain circumstances. The intensive nature biofarming will be successful with smaller and family work-based systems. Therefore the development of this sector was thrown back by the fact, that the maximum of the properties is 1200 hectares in the case of agricultural farming cooperation and 1800 hectares in the case of certain conditions. Unfortunately, a sector suitable for the preparation of more intensive and quality products will be not adequately supported by the EU agricultural policy in the period of 2014-2020.

The agricultural-social law is the other area, whose some element are mentioned by us in Hungary. The classic legal instruments are the rural development and the law of social support. However, none of these legal instrument's aim is the handling of the loss of incomings implied in the seasonal period of agriculture and affected by entrepreneurs. (In the late period of autumn and winter, there are not any incomings in the field of the plant cultivation's sectors, so many people are forced to take social supports.) The rural development is an ancillary sector for the developmental aims and is not able to the overall handling of the social problems.

The other, in particular unsuccessful legislative effort was the centralization of the head of the wine community system in the new modification of wine community. In connection with the wine community, the danger<sup>35</sup> (the full conversion of the system in connection with the recognition as an interprofessional organization) suggested in the last report has materialized otherwise. The enlargement of the administrative functions of the wine communities, the incomings and the heads of wine communities were grouped for the National Council of the Wine Communities. The second danger is, that the interprofessional organization functioned the tasks of market regulation gets direct administrative tasks and incomings in Hungary.

## **3.3. The role of the courts in relation to the analyzed legal areas**

In general, the international courts examining cases between national governments reach the direct issues in connection with the agriculture. The problems related to the agriculture (for example the resources between countries) are raised as sharing cases in the International Court of Justice.

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<sup>35</sup> See Raisz – Szilágyi 2012, 127.

The most important part of the resources is the waters on the boundaries and the opportunities of the utilization of created and built projects on the aforementioned waters (Case Bős-Nagymaros; Case Kasikili & Seduku; Case Uruguay & Argentina).

In some classic cases, the International Court Justice adjudicated the principle of contracts and observance of contracts more important, than the division of the resources effected on the countries' economy, and the direct implementation is entrusted by the Court to the countries, which are not able to agree. This decision is favourable for the countries, which are in more favourable situation on the strength of status quo (Case Bős-Nagymaros).

Some decisions may have a direct impact on the agricultural and environmental legislation of the countries. For example, after the Case Bős-Nagymaros, the environmental impact monitoring is necessary to the realization of a large project in Hungary. The intensive agricultural cultivation may be subordinated to the aspects of health protection (Case Ecuador & Columbia on the extirpator spraying in the air).<sup>36</sup>

However, the international law is a soft law, so this law is not suitable to solve the strained problems affected to the implementation of member states between two countries.

The cases of European Court of Human Rights have a direct effect on the legislation of countries and go hand in hand with the modifications of legal measures. Some cases are adjudicated in connection with the direct contravention of property relationships in agriculture, furthermore the inadequate judicial system and the implementation of member states. However, the cases, if there are default decisions, are different in financial aspect and legislation effect between the citizens of newly joined EU member states and the formerly joined EU Member States. (Case Malhou & Czech Republic; Case Dimitrov & Bulgaria; Case Harlambie & Romania; Case Tardi & Hungary; Case Papamicholopoulos & Greece).

The European Court of Human Rights<sup>37</sup> adjudicated 16 million Euros compensation for Greece because of the drain of direct usage of land and few thousand Euros compensation for citizens of eastern-european countries because of drain of properties after 10 years.

The Hungarian legislators for the adoption of the Act of Land have taken into consideration the restrictive provisions filtered out in the practise of the European Court, which are not contrary to the EU law. These measures are the following phrased in the study<sup>38</sup> of János Ede Szilágyi:

*„Restrictive measures are configurated by the European Court of Justice related to the acquisition of land, reference to the qualified plausible public interest. Legitimate public interest objectives are the following: (a) observing of rural population, (b) The equitable division of the property*

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<sup>36</sup> See Raisz – Szilágyi 2012, 131-132; Raisz Anikó: Nemzetközi környezetvédelmi kérdések a Nemzetközi Bíróság előtt napjainkban, *Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica*, Miskolc, 2011, 273-289.

<sup>37</sup> Raisz Anikó: Földtulajdoni és földhasználati kérdések az Emberi Jogok Európai Bíróságának joggyakorlatában, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kibívásai*, Conference issue, Novotni Kiadó, Miskolc, 2011, 243-245.

<sup>38</sup> 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 54.

*of lands, which contributes the development of adequate administration of viable farms, green areas and rural territories, (c) The reasonable usage of the possessed territories is favoured against the pressure on the property market (speculation), (d) The execution of aims of CAP (Common Agricultural Policies), such as the support of the proper living standards of the population,<sup>39</sup> (e) The conservation of the utilization of agricultural lands preserved the traditional direct usage in the aforementioned countries, (f) Ensuring of the living and cultivation of the agricultural territories by owners.<sup>40</sup>*

*A restrictive measure is corresponded to the community standards, if it is not substituted by the provisions restricted to the free movement of stock. The restrictive measures acceptable defined by the European Court of Justice are the following: (a) The conveyance of the ownership of lands on the strength of preliminary administrative license,<sup>41</sup> (b) The requirement of residence,<sup>42</sup> (c) The preliminary declaration system,<sup>43</sup> (d) The higher taxation rate of sales of building plot,<sup>44</sup> (e) The requirements of longer minimum period in the leasehold contracts of the agricultural lands.”*

The Hungarian courts adjudicated important issues directly and in many cases ad hoc with affected scope on the most important elements of the legislation. A company filed a suit for the claim of an overconstruction of peripheral and agricultural cultivated parcel of land to acquire the ownership because of an established sprinkler system in Hungary. Since the conditions of the overconstruction were obtained, the civil law judgment gave the land the ownership of the company as the title of overconstruction. There was no appeal against this judgment, but the respondent contested the legally binding decision of the land register office. The respondent referred to the fact, that the title of overconstruction is in the scope of the Act of Land, and this act excludes the acquisition of legal persons. The Hungarian Supreme Court accepted the claimant's argument referred to the fact, that the land register office did not examine, that the document is proportional to the criteria of the registered document. This case is a precedent in Hungary, because the ownership is issued with the decisions of judgments and authorities became legally binding, and not with the registry in the land register office. This decision of the Supreme Court raised the declarative scope of land register office registry to the scope of constitutive and gave chance for the land register office to supervise the judgments.<sup>45</sup>

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<sup>39</sup> See C-452/01. *Margarethe Ospelt and Schloßle Weissenberg Familienstiftung*, points 37, 39-40.

<sup>40</sup> See C-370/05. *Uwe Kay Festersen*, point 27.

<sup>41</sup> See C-213/04. *Ewald Burtscher* kontra *Josef Stauderer* point 57.; C-452/01. points 41-45.

<sup>42</sup> See C-370/05. points 26., 31., 33.

<sup>43</sup> See C-213/04. points 44., 52-54., 59-62.

<sup>44</sup> See C-370/05. point 39.

<sup>45</sup> Judgment III.37. 759./2011/7.

### 3.4. Our attitude on the reform of the Common Agricultural Policy between 2014-2020.

A common political agreement of the European Commission, the European Council and the European Court was created on 26 June 2013 in Brussels on the reform of the Common Agricultural Policy.

Before the agreement, it was clear, that the new common agricultural policy system will be more complex than the previous one and the planned introduction of 2014 is expected to be a year because of financing causes, so the most important elements of the reform package of CAP (Common Agricultural Policy) will be adopted from 2015. Next the creation of European Commission's executive regulations will be introduced and after then the member states can bring their own national legislation.

Since the introduction of the new system to prepare for a major part of the Member States, and both in the legislative, technical and informatical aspects, therefore according to the European Commission's proposal, the member states take their old systems into the next year, so the year of 2014 constitutes a transition<sup>46</sup> between the two systems.<sup>47</sup>

The most important changes in the new CAP reform are the followings: (a) The direct payments will be equitable; (b) In the new member states, the single area payment scheme may be remained in force until 2020; (c) It strengthens the position of farmers in the food chain; (d) The introduction of a new crisis management instruments will be held; (e) The environment-friendly nature of the common agricultural policy intensifies (fight against climate change, zöldsítés); (f) It will be more effective and transparent.<sup>48</sup>

The reforms shall come into force on 1 January 2014, expect the new system of direct payments, because it will only take effect from 2015. The year 2014 will be on a temporary basis to the member states to promote the appropriate training.

The conceived system will become simpler, because it contains two-component and more transparent supported elements. The differences implied in the different accesses of member states of the supports shall be existed, but such member states will be able to use the aforementioned advantages of the new Common Agricultural Policy, whom there are an agriculture possessed a good structure and well structured agricultural legislation. Henceforward we miss the inadequate handling of a green component in both pillars.

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<sup>46</sup> The reform of CAP – The construction of the main elements, in: [http://europa.eu/rapid/press-release\\_MEMO-13-621\\_hu.htm](http://europa.eu/rapid/press-release_MEMO-13-621_hu.htm) (02.07.2013) and Vásáry 2013.

<sup>47</sup> The system of CAP will be more complex. In: <http://www.agrotrend.hu/hirek/agrargazdasag/osszetettebb-lesz-a-kap-uj-rendszere> (12.03.2013) and the rules of CAP will be come into force in 2015. In: <http://www.kormany.hu/hu/videkfejlesztési-miniszterium/agrargazdasagert-felelos-allamtitkarsag/hirek/2015-ben-lephetnek-cletbe-a-kozos-agrarpolitika-szabalyai> (23.04.2013)

<sup>48</sup> Political agreement on the new trend of the Common Agricultural Policy, in: [http://www.agrarhirek.hu/europai\\_unio/15120.html](http://www.agrarhirek.hu/europai_unio/15120.html) (02.07.2013)

#### 4. Final thoughts

In this year, the 27<sup>th</sup> CEDR congress was held in Lucerne, Switzerland, from 11<sup>th</sup> to 14<sup>th</sup> September 2013. In this context, the participating countries presented their national reports and demonstrated the most important changes in connection with agricultural law and other legal areas in the period 2011-2013. Hungary were represented by *Nóra Jakab* and *Ede János Szilágyi* (Commission I), *Csilla Csák* (Commission II) *István Olajos*, *Zoltán Nagy* and *Szabolcs Szilágyi* (Commission III).

The president of the Commission III was Prof Dr. *Esther Muniz Espada* and the General Rapporteur was Prof. Dr. *Michael Cardwell*. We presented our national report on 11<sup>th</sup> September. At the same day, we could hear the presentation of the United States of America, Germany, France and Spain. There were a lot of interesting information in connection with these presentation, which encouraged the presence to put questions to the presenters, who answered satisfactorily and accommodatingly. In Spain, the rural economic and tax law has been changed a lot. The situation is similar in the Unites States of America, there were a lot of important changes in the field of the sector of rural development, but it is worth to mention, that there is a great leap forward in the area of renewable energy sources.

In the next days, national reports were presented by the United Kingdom, Austria, Italy, Norway, Romania, Switzerland and Turkey. We could hear individual reports. From Brasil, Roberto Grassi Neto presented the most important judgements of the brasilian courts in connection with agricultural law and regulation of food chain and outlined the legislation.

To sum up, we could hear professionally trained performers during the 3 days. It is concluded that in the most countries, there were a lot of significant changes in connection with agricultural law, rural law and regulation of food chain. It is positive, that the role of the renewable energy sources is more and more accentuated in the countries' legislation.