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Commission I – Kommission I

**THE RIGHT TO ADEQUATE FOOD – SELECTED LEGAL ASPECTS
LE DROIT A UNE ALIMENTATION ADÉQUATE –
ASPECTS JURIDIQUES**

**DAS RECHT AUF ADÄQUATE ERNÄHRUNG –
AUSGEWÄHLTE RECHTLICHE ASPEKTE**

National Report – Rapport national – Landesbericht

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The Right to Adequate Food – Selected Legal Aspects

As part of the preparations and negotiations on accession to the European Union one of Romania's priorities is the safety and security of food in order to ensure a high level of protection for public health and consumer's interests related with food products, taking into consideration the diversity of alimentary offer, including also the traditional produces, as well as an efficient functioning of home market.

The competent authority in this field, respectively the Ministry of Agriculture, Forests and Rural Development, has elaborated the "National Strategy on Food Safety and Security", a document providing an improvement of the existing legislative framework in comparison with the communitarian one on the one hand, which will ensure the increase of legislative coherence in the field of food safety and security, and vise all aspects regarding the production, packing, warehousing, transportation and marketing of food products including the responsibilities of food producers and merchants, and the harmonization of the control and supervision system upon food security with the existing one in the European Union, on the other hand.

Inside European Union, the legislation on alimentary field comprises directives applied to all food products (horizontal-type directives) and directives only applied to some food products (vertical-type directives).

European legislation regarding food safety was partial harmonized with national normative documents and it is applied to the whole alimentary chain "from farm to consumer's table".

The Ministry of Agriculture, Forests and Rural Development together with the Ministry of Health and Family and National Authority for Consumer's Protection have integrally elaborated and transposed into national legislation the settlements applied to both all food products (a horizontal-applied legislation) regarding: labelling of food products; utilization of alimentary additives; admissible level of contaminants; utilization of flavours; utilization of extraction solvents; materials coming into contact with food; hygiene; official control; food with special nutritive destination; food treated with ionizing radiation; radioactively contaminated food and communitarian settlements applied only to some food products (a vertically-applied legislation) regarding: jams, jellies, marmalade and sweet chestnuts purée; honey; various sweetmeats; bottled milk partial or integrally dehydrated; fruit juices; lacto-proteins; caseins and para-caseins for human consumption; coffee and chicory extracts; cocoa and chocolate; mineral and drinking water.

At the same time, there are normative documents adopted in order to establish an unitary juridical framework relating to the production, packing, warehousing, transportation and marketing of food products, food producers and traders' responsibilities, organizing of an official control upon food products and legal sanctions in order to protect their qualities.

In this respect, we can mention two important normative documents: **Law no.57/2002**¹ approving the Government Emergency Decree no. 97/2001 regarding the settlement of production, circulation and marketing of food products and **Law no.150/2004**² regarding the safety of food products.

¹ As published in the Official Gazette no. 349/June 29th, 2002

² As published in the Official Gazette no. 462/May 24th, 2004

The implementation of these two normative documents ensures the protection of consumers against incorrect procedures of manufacturing, warehousing and marketing of food products and provides conditions for their fair and full updating, according to the national legal regulations regarding consumers' protection.

The national legislation in the field of food products is taking into consideration many general aspects regarding the protection of human life and health, consumers' interests, utilization of fair practices in food trade, as well as animals, plants and environmental well-being.

In the elaboration or adaptation of the national legislation in order to ensure an adequate nourishment have been taken into consideration existing, or about to be adopted, international standards providing a high level of protection for the human life and health similar to the one deemed as adequate at European level.

In order to achieve the general objective, ensuring of a high level of protection for the human life and health, the national legislation related to the domain of food products is based on the *analysis of risks*, a process comprising three cross correlated components: valuation of risks, management of risks and communication of risks.

Valuation of risks, a scientific process consisting of four stages: identification of danger, characterization of danger, valuation of exposing and characterization of risk based on available scientific data and performed in an independent, impartial and transparent manner.

Management of risks, is taking into consideration the results of the valuation of risks and opinions of Sanitary-Veterinary and Food Safety National Authority and other factors relevant to the management of risks and principle of precautions.

The national legislations in the alimentary domain is having in view the protection of consumers and their updating in order to be acquainted when they choose their food and prevention of:

- fraudulent and deceptive practices;
- adulterated food;
- any other practices which may mislead the consumer.

In accordance with the Directive 178/2002 of European Union setting forth the general principles and requirements of alimentary legislation, transposed in national legislation by Law no.150/2004 regarding alimentary safety, the farmers as well as operators of food industry, during all stages of production, have to comply with the requirements of legislation in the domain of food products and verify their fulfilment.

According to above-mentioned legal provisions, the farmers have to ensure the fact that the primary production is protected against contamination and take adequate measures in order to maintain the health of the animals and plants affecting human health.

In case that an agent of food industry (including farmers) considers he has reason to believe one of his imported, manufactured, processed, prepared or distributed food products does not comply with the requirements of food safety, he shall immediately withdraw the respective product from the market if it is no more under a direct control of the first agent of food industry and inform the competent authorities.

The agents of food industry have to cooperate with competent authorities with regard to the actions carried out in order to avoid or reduce the risks caused by the food products supplied by them.

In order to have a traceable food product, the agents and operators of food industry have to be able to identify the origin and the source which delivered a food product, an animal destined to the food production or any substance destined or intended to be incorporated in a food product.

All obligations provided by above-mentioned normative document are only formulated as principles, without any legal sanctions in case of their non-observance.

The second component of the “National Strategy regarding Food Safety and Security” respectively Supervision and Control System for Food Safety and Security, dealing with:

- A. Supervision, control and monitoring of qualitative parameters of food products.
 - elaboration and promotion of the legal framework stating the bodies having prerogatives and responsibilities regarding the supervision, control and monitoring of qualitative parameters of food products;
 - accreditation of the systems of laboratories for the activity of supervision, control and monitoring of qualitative parameters of food products;
 - stipulation of the practices and procedures related to the supervision, control and monitoring of qualitative parameters of food products;
- B. Harmonization of the procedures related to the quality control of food products with communitarian ones, regarding:
 - establishing the modalities of performing inspections;
 - establishing the procedures related to sample taking and testing, including provisions stipulating counter-valuation procedures;
 - establishing afferent sanctions;
 - establishing the right of appeal for those sanctioned against the measures taken by the legal competent authority of inspection;
- C. Development of the substructure for the valuation of quality authentication and the conformity of the quality of food products with legal provisions in the field.
- D. Implementation of quality systems: HACCP (Hazard Analysis Critical Control Point), GMP (Good Manufacturing Procedures) and GLP (Good Analysis Procedures) in units producing and testing food products:
 - elaboration and promotion of a normative document specifying the prerogatives and responsibilities of the operators of HACCP quality system;
 - elaboration and promotion of a normative document specifying the processing procedures for food production;
 - elaboration and promotion of a normative document specifying the procedures for the analysis of the quality of food products;

In order to ensure a coherent functioning of the system of legal control of food products it was set up the Sanitary-Veterinary and Food Safety National Authority as a special body of central public administration, a legal person, subordinated to the Government and co-ordinated directly by the Prime Minister, whose main goal is the achievement of alimentary safety from production of raw materials to the delivery of food products to the consumers.

The system of control regarding food safety and security has as main goal the improvement of the management related to food safety and security in order to comply with the communitarian requirements in the field, the increase of their competitiveness on internal market providing alimentary security.

Although in legislative domain, in the field of alimentary safety, there are various normative documents elaborated according to the directives of European Union, practically these legal dispositions are not uniformly applied throughout the country because the system of supervision, control and monitoring of food safety and security is in the course of adaptation to the requirements of a functioning market economy.

For example, in the field of food labelling, although there are regulations according to the directives of European Union, numerous Romanian producers avoid to write down the alimentary additives of "E" type on the labels of food products preferring the scientific name of these products. In this way the trader complies with labelling law but consumers' right to be informed is violated because they never know that alimentary additive is not recommended for consumption.

In order to provide an alimentary security, at the Ministry of Health and Family was set up the National Committee for Health and Nutrition is elaborating the "National Plan of Action regarding Population's Nourishment and Nutrition".

The aim of this plan is to achieve the improvement of population's state of health, especially in vulnerable groups, reducing and preventing the diseases caused by food products.

The initiators of the plan have considered these wishes can be fulfilled by strengthening institutional capacity of public and privatized components of health system in order to achieve proposed objectives on central, regional and local level, by an inter-sectors tackling of it.

The plan provides actions in the following directions:

1. Actions contributing to the assurance of an optimal nutritional health of the population and preventing nutritional diseases (malnutrition). A special consideration is afforded to the groups of population with low incomes and the critical periods of life (infancy, pregnancy, suckling, old age).

With that end of view, there are physiological alimentary norms in course of elaboration, recommended for our country, taking into consideration the storing of modern knowledge in the field of human nutrition, demographic and occupational structure, tradition and alimentary habits, specific pedo-climatic conditions of this geographic zone, agricultural, zoo-technical and food industry techniques and population's incomes.

These norms will determine the necessary energy (calories), nutrients (proteins, lipids, glucoses, minerals and vitamins) and food stuff (milk, meat, fish, eggs, cereals, vegetables, fats, etc.). They will be used at determination of necessary food products for population's consumption on individual, local, regional and national level.

2. Actions providing sufficient food of good quality for the whole population (food security).

Taking into consideration the existing deficiencies in providing sufficient food of good quality for the population, the National Plan has in view some main objectives for their elimination, as follows:

- direct or indirect stimulation of agricultural producers in order to increase the number of milk, meat, eggs producing animals as well as surfaces cultivated with sunflower, soy, vegetables, fruit trees, cultivated grapes;
- encouraging the production of ecological agro-alimentary produces within a system of durable agriculture, with the observance of legal provisions regarding production, warehousing, processing, transportation and marketing;
- setting up of zonal specific agro-systems where it can be optimized the capitalization of soil quality, climatic conditions and agricultural and zoo-technical potential in order to satisfy adequately local alimentary demand and make available agro-alimentary resources on national level;
- supporting the initiatives aiming to set up small and medium productive units and using mainly the funds obtained from SAPARD program.

3. Actions preventing the sickening by consumption of chemical, microbiological, radioactively contaminated food or infestation with parasites pathological for human being (food safety).
4. Actions for alimentary and nutritional education of population.
5. Actions for stimulation of scientific research in the field of nourishment, nutrition and pathology caused by food consumption.

Although Romania has elaborated and adopted a series of normative documents harmonized with European specific regulations, ensuring both health protection, consumers' interests and a fair competition of food products, we considerate is necessary the continuation of the process of transposing communitarian legislation in internal law as well as making efficient the national system of control regarding food safety and security.

In order to apply the legislation in alimentary domain we consider it is imperative to identify sources of risks and scientific consultancy regarding food safety and security as well as the construction and formation of a working network becoming operational for information and communication systems. At the same time, it must be strengthened the cooperation and communication among central bodies and other subordinated institutions or from their outside, in order to implement accordingly the provisions of harmonized legislation, from central bodies to regional and local levels, related to food safety and security.