

**XXVIe Congrès et Colloque Européens de Droit Rural  
Bucarest – 21-24 septembre 2011**

**XXVI European Congress and Colloquium of Agricultural Law  
Bucharest – 21-24 September 2011**

**XXVI. Europäischer Agrarrechtskongress mit Kolloquium  
Bukarest – 21.-24. September 2011**

Organisé par le Comité Européen de Droit Rural en collaboration avec  
l'Université Ecologique de Bucarest

Organized by the European Council for Agricultural Law in collaboration with University of  
Ecology Bucharest

Organisiert durch das Europäisches Agrarrechtskomitee in Zusammenarbeit mit der  
Universität für Ökologie Bukarest

**Commission III – Kommission III**

Individual Report – Rapport individuel – Individueller Bericht

**Pologne – Poland - Polen**

DÉVELOPPEMENT SCIENTIFIQUE ET PRATIQUE DU DROIT RURAL DANS L'UE,  
DANS LES ÉTATS ET LES RÉGIONS ET DANS L'OMC – SCIENTIFIC AND  
PRACTICAL DEVELOPMENT OF RURAL LAW IN THE EU, IN STATES AND  
REGIONS AND IN THE WTO – WISSENSCHAFTLICHE UND PRAKTISCHE  
ENTWICKLUNG DES RECHTS DES LÄNDLICHEN RAUMS IN DER EU, IN DEN  
STAATEN UND REGIONEN SOWIE IN DER WTO

**Małgorzata Korzycka-Iwanow**

Professor of Law, Warsaw University

Faculty of Law and Administration

Head of Food Law Department

# Evolution and Development of Food law; Connections with Agricultural Legislation

## 1. Food law in Poland and in the EU

Historically, in Europe, food-related legislation concerned both the sphere of commerce (fraud, falsification in production and trade), and human health. Most evident were regulations dedicated to the former, pertaining to - as we would now say - market practices that were misleading to consumers or dishonest. Moreover, protection of the good constituted by human life and health, currently termed food safety, though contained in legislation in the past, principally began to be developed in the form of detailed legal acts in the 19th century.

Food is not only a commodity which is marketed but primarily a product with the unique function to be eaten by humans. Legal provisions devoted to food, existing since ancient times within the domain of European legislation were initially focused on product quality, as we would call it today, and particularly directed against fraudulent practices and falsifications of composition or weight and measure (a considerable number of the provisions concerned wine, beer, as well as dairy and bakery products). But not only that, already in the 15th century Polish law began to cater for "corporate monopoly", e.g. members of a fraternity (guild) responsible for the making of meads and liquors were also endowed with certification (to use the contemporary term) of the products in their range<sup>1</sup>. Codification was also applied to the rules of the food trade, including - what is worth recalling - a ban on trade on holidays<sup>2</sup>. With time, provisions related to food began to concentrate to a large extent on protecting the life and health of consumers. Starting with the nineteenth century, following the expansion of technology along with growing international exchange, sanitary issues, now described as food safety, began to find their way to legislation. One can mention here the Austrian law of 1896 on trade in "foodstuffs and certain objects of use"<sup>3</sup>, the Russian medical law of 1905 that contains provisions on food<sup>4</sup>, or the Polish fundamental sanitary law of 1919<sup>5</sup>, which treats legislation on food as a section of the sanitary code. The twentieth century and especially its second half, brought a dynamic development of those branches of science

---

<sup>1</sup> On old food law see: M. Korzycka-Iwanow, *Prawo żywnościowe. Zarys prawa polskiego i wspólnotowego*, Warszawa 2007 (second edition), p. 35 et al.

<sup>2</sup> Thus in: *Inwentarz Praw, Statutów, Konstytucji Koronnych y W.X.L.*, Warszawa 1789.

<sup>3</sup> *Journal of Laws of the year 1897*, No. 89)

<sup>4</sup> *Collection of Russian laws vol.XIII*, edition 1905 (in particular articles 659, 660 and 668).

<sup>5</sup> *Journal of Laws of the Polish State No 63*, item 371

which are significantly present in the production and processing of food. This development is progressing in the twenty-first century; next to the domains of biology, food technology, chemistry and agricultural sciences, impacting on food products in a dynamic way is biotechnology and most recently - nanotechnology.

An observation of tendencies in legislation of the 21st century indicates that there is an increasing spectrum of rules to protect the interest of consumers as well as producers. Searches for a balance between the interests of consumers and producers are accompanied by creation in food law of principles of application of novelties to the needs of human nutrition. In law this is translated into regulations of risk analysis, and in particular risk assessment and risk management in the process of formulating and executing law. Searches are also underway for proper solutions as to competition between subjects operating on the food market. Within the scope of *Corporate Social Responsibility* for the food sector, an area for so-called self-regulation was opened, to include codes of ethics for business enterprises; nonetheless these mechanisms mainly serve marketing objectives.

Considering new developments which are or may be threatening to human wellbeing (also because of short periods of use of certain substances and products in practice, such as genetically modified foods), public law continues to expand the food law domain. True, the law becomes difficult to assimilate because of the great number of regulations and specialized terminology. Furthermore, also expanding is the area which overlaps with other fields, what alongside positive implications, such as evaluations of introduction of GMO foods on the market also required to consider environmental aspects, brings about certain problems in commercial exchange within the European Union. For example, a food product which is introduced on the domestic market as a diet supplement may be recognized in another EU country as one with medical properties. In this instance, vague EU law generates a situation which interferes with free commerce, at the same time "producing the risk" of a threat to consumers' health. This happens because food law is applied to a dietary supplement (considered to be a food), which - although it entered the EU market as a food - may be classified in any given country as a medical product and then is subject to far more restrictive regulation than the food law: the law on pharmaceuticals. And so, the consumer becomes subject to risk until the completion of proceedings to determine the status of the product; rendered powerless, nor even with any awareness of the product's misleading qualification<sup>6</sup>.

---

<sup>6</sup> For more on this subject see: M. Korzycka-Iwanow, M. Zboralska, *Never-ending Debate on Food Supplements: Harmonisation or Disharmonisation of the Law?*, European Food and Feed Law Review, no 3 of 2010.

In this case, the European legislator is responsible for ambiguous, doubt-arousing regulations, described in literature as "bad law".

Food law has roots and strong associations also with agricultural law<sup>7</sup>. The connection between agricultural law and food law is the agricultural product, fundamental to agricultural production, and the beginning of - food. Primary production is thus covered by food law provisions, especially since the expanding of the scope of regulations to cover the entire food chain "from field to table", including provisions on animal feed. This connection has been enhanced recently, with Council Regulation of September 29, 2003 on support for rural development from the European Agricultural Guidance and Guarantee Fund<sup>8</sup>, addressed - according to the preamble - mainly at young farmers. The European legislator states "experience has shown that the range of instruments to promote food quality in rural development policy needs to be reinforced" by introducing new Community standards on e.g. environmental protection, public weal, health of animals and plants, animal welfare and occupational safety. The measures which the Regulation introduces are to encourage participation in Community or national food quality schemes. This direction has been maintained, and recently a whole "package" of documents and draft laws has appeared on food quality and quality systems<sup>9</sup>. Of particular interest is the proposal for a Regulation of the European Parliament and Council on agricultural product quality systems<sup>10</sup>. Before we go on to a synthetic presentation of the evolution of Polish food legislation, attention should be drawn to the legal tradition which is common to our entire continent and which, in respect of food, was realized over centuries, as a rule in all European countries, protecting two fundamental issues of public welfare

---

<sup>7</sup> For the first time issues of laws for the protection of the health of humans and animals were introduced in 1994 in the textbook comparing Polish and EU agricultural law "Polskie prawo rolne na tle ustawodawstwa Unii Europejskiej". Subsequently, from 2003, already as "food law" it featured in the agricultural law textbook "Prawo rolne". On the subject of connections with agricultural law see e.g.: A. Jurcewicz, Związki prawa żywnościowego z prawem rolnym - wybrane problemy, "Studia Iuridica Agraria" 2002, vol. III, p. 84 et al., M. Korzycka-Iwanow, Obszary ryzyka w regulacjach prawa rolnego i żywnościowego, "Studia Iuridica Agraria", 2001, vol. II, M. Korzycka-Iwanow, Prawo żywnościowe – relacje do prawa rolnego, "Studia Iuridica Agraria", 2005, vol V, p. 75 et al., R. Budzinowski, subsection: Prawo rolne a inne dziedziny prawa, in: Problemy ogólne prawa rolnego, Poznań 2008, p. 219 et al., D. Gadbin, Wpływ prawa żywnościowego na prawo rolne, "Przegląd Prawa Rolnego", 2010, no.2 p. 25 et al.

<sup>8</sup> Council Regulation 1783/2003 amending Regulation 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund

<sup>9</sup> See: "Quality package" linking two drafts of the European Parliament and Council on quality schemes and marketing standards, and two communiques without binding force but of immediate application on voluntary certification and labelling of products with Protected Denomination of Origin or Protected Geographic Indication.

<sup>10</sup> COM(2010) 733 final version 2010/0353 (COD).

## **1) fair trade and**

## **2) the life and health of humans - consumers of food.**

So it has remained to this day; specific legal solutions undergo a natural development, as does the understanding of the scope of protection, hence e.g. present-day food law regulations concerning the health of farm animals, plants and the condition of the environment. Protection against unfair trade nowadays not only encompasses regulations on fraud and falsification of food products. Standardisation of ethical principles for the operation of enterprises active in the food sector is a certain analogy to the common European tradition of Roman law, following the principle "not everything that is permitted is honest"<sup>11</sup>.

## **2. Evolution and scope of Polish legislation**

Polish laws on food traversed a path of development which is proper to the general development of the legislative technique in the various historical epochs. With their first appearance in the laws of medieval Poland, food laws assumed a vantage of protection with regard to fair trade as well as human wellbeing. In an isolated form, food issues began to be regulated in the time when Poland was partitioned between Austria, Russia and Prussia. These were no longer fragmentary regulations embedded in legal provisions of varying rank, but acts of law which comprehensively took up issues of food in a sanitary aspect (as it was then called) and a commercial one. That is why, in the years between World War One and Two, in the Decree of the President of the Republic of Poland from 1928 on supervision of food articles and usable goods<sup>12</sup> the legislator refers to Austrian, German and Russian laws. This decree, even though acknowledged to be restrictive (more than half of the provisions contained penal sanctions), was not repealed until communist times, by the Law of 1970 on health conditions of food and nutrition<sup>13</sup>. In communist Poland, along with the abovementioned Law, which did not span the full compendium of issues, there were parallel rules on testing and certification, normalisation, protection against unfair trading practices, and others.

---

<sup>11</sup> Non omne, quod licet, honestum est, (Lat.) D 50.17.144 (Paulus).

<sup>12</sup> Journal of Laws no.36, item 343 with amendments

<sup>13</sup> Journal of Laws no.29, item 245 with amendments

The Third Republic brought about even profounder changes to the food law sector, both in respect of changed principles on the food market - transformation from a planned economy to a free market - but also association followed by membership in the European Union. An important stage in these changes was the publication in 2001 of a new law, albeit under an old name: on the health conditions of food and nutrition. Subsequent amendments of this Law were carried out in the process of aligning Polish legislation with that of the EU. One should mention here that the law, along with many executive instructions and other important regulations (such as a Law on the commercial quality of agri-food products from 2000, published even before Poland's EU accession<sup>14</sup>) was the main source of Polish food law at the time, and was a legal act of substance. As concerns the law currently in place, the Law on the safety of food and nutrition adopted in 2006 implements dozens of lengthy directives and instructions - no easy task. It transposes EU directives and formulates substantive provisions. Subsequently, in those provisions which execute EU legislation, where the domestic legislator has no authority to put down substantive laws, it sets out standards for certain administrative bodies, such as the Chief Sanitary Inspector. It may also introduce structures which are necessary to execute EU instructions (for instance tasks connected with the monitoring programme for needs of hazard assessment are carried out by a Food Monitoring Council attached to the proper Minister for Health, established by force of the Law on safety of food and nutrition)<sup>15</sup>.

Exceptionally, a EC directive can establish the scope to be regulated in national law. For instance, Regulation (EC) 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs obligates member states to issue national regulations on direct supply of small quantities of primary products<sup>16</sup>.

The scope of Polish food law is thus designated by EU law in those matters which are harmonised or unified. One interesting aspect of Polish legislation are norms concerning wild

---

<sup>14</sup> Unified text Journal of Laws 2005, no. 187, item 1577 with amendments

<sup>15</sup> About implementing European law to Polish law see: M. Korzycka-Iwanow, Poland's Food Safety Law of 2006, *European Food and Feed Law Review*, no 6, 2006, by the same: Conditions for the Development of Polish Food Law in: *Agricoltura, Istituzioni, Mercati, Rivista di Diritto Agroalimentare e dell' Ambiente* no 3, 2004, and: *Profili della sicurezza alimentare in Polonia, Agricoltura Istituzioni Mercati, Rivista di Diritto Agroalimentare e dell' Ambiente*, no. 3, 2007.

<sup>16</sup> See Article 68 of the Law of 2006 r. on food and feed safety and the instructions of the Health Minister of 6 June, 2007 on deliveries of foodstuffs, (*Journal of Laws* no 112, item 774).

mushrooms and mushroom preserves (here, among others, requirements for a classifier of mushrooms and mushroom expert). Very important for implementation are structures and procedures - which belong to the sphere of domestic law. Also administrative and penal sanctions are within the rich competence of domestic legislation, as applied to food law.

### **3. Evolution and scope of European food law**

**Initially, food law in the European Union developed as so-called vertical legislation, in an answer to disruptions of free flow of goods caused by differences in standards on these goods in countries of what was then the EEC.** That is why the first act of law, accepted as the beginning of food legislation, was a directive from 1962 on food colouring, aimed at harmonising the substances which had varying legal status in the different countries, forming obstacles to free trade<sup>17</sup>. In the 1960s and 70s subsequent directives were adopted (this was a slow process because of difficulties in obtaining a consensus of all states and market participants as to the composition of products) that were in reality substantive norms, specifications, or even formulas for certain products such as cocoa and chocolate, jams and other fruit preserves, natural mineral waters. These regulations did not develop common principles for all foodstuffs, also it became obvious that it is not possible to in this way regulate standards for every food product, with new ones ever appearing, on the expanding common market. At the close of the 70s the method of regulation was altered, and the horizontal approach adopted, what furnished an option of initiating formulation of principles for all foods. Food labelling was harmonised (1979), as was official food monitoring (1989), hygiene of food products (1993) and other issues of fundamental importance for producers and consumers. The development of food law was accompanied by rulings of the European Court of Justice, more on which below.

Within the framework of *soft law* worthy of attention are two Papers of the Commission (Green 1997 and White 2000), which were an answer to objections that had been voiced since the early 1990s to European food law by public opinion. These were caused by crises following serious breaches of food safety. The biggest was the scandal popularly known as

---

<sup>17</sup> See: Council Directive of 23 October 1962 on the approximation of the rules of the Member States concerning the colouring matters authorized for use in foodstuffs intended for human consumption, Journal of Laws 115 of 11.11.1962, pp. 2645/62.

"mad cow disease" (BSE<sup>18</sup>), at the source of which was the use of animal-derived meal in fodder intended for herbivorous farm animals, and another: the scandal with toxic dioxins, also found to be present in animal feed. Another serious accusation which undermined the trust of consumers in EU food law was its fragmentary character, its vastness, vagueness and lack of coherence.

The publishing of the Papers resulted in an extensive and profound discussion by all interested parties on the objectives, principles and means of regulating food law. The discussion and its conclusions were an introduction (preparation) to a new, still open stage of lawmaking. As of the early 2000s, the EU has carried out a selection of means of regulation, replacing harmonisation with unification. The first and fundamental act of EU food law, because of its form and rank binding in a unified way on EU territory, is the Regulation (EC) 178/2002 of the European Parliament and of the Council, laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

This Regulation, known as the General Food Law<sup>19</sup> describes the scope of European legislation concerning food: 'food law' means the laws, regulations and administrative provisions governing food in general, and food safety in particular, whether at Community or national level; it covers any stage of production, processing and distribution of food, and also of feed produced for, or fed to, food producing animals<sup>20</sup> (Article 3 GFL).

#### **4. The objectives and principles of public and private food law**

Food law is both public and private law. The distinction refers both to the objectives and principles of this legislation. The public (statutory) objectives are realized by way of positive law, and also by Court of Justice rulings. The private objectives are realized by subjects which operate on the food market within the legal means available to them.

#### **Statutory objectives of food law are:**

##### **1. Protection of life and health of food consumers**

---

<sup>18</sup> *Bovine Spongiform Encephalopathy*

<sup>19</sup> *General Food Law, Basisverordnung (German).*

<sup>20</sup> The official translation contains some inaccuracies, the definition of "food law" speaks about domestic animals, what refers to animals bred by humans, but should be livestock, as it is in the whole document.

- 2. Protection of the economic interests of food consumers**
- 3. Protection of health and welfare of farm animals**
- 4. Protection of plant health**
- 5. Protection of the natural environment because of its close relationship with production, processing and distribution of food.**

**The objectives of the private subjects (business operators) are profit-oriented production or distribution, within the scope of free enterprise<sup>21</sup>.** In accordance with GFL, "food business" is any undertaking, whether for profit or not, public or private, carrying out any of the activities related to any stage of production, processing and distribution of food; "food business operator" means the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control (Art.3). One can thus describe the objectives of food business operators as

- 1. primary production**
- 2. food processing**
- 3. food distribution.**

These objectives are realized within the stages of the food chain which correspond to the scope of business activity, and so to the various forms of production: primary or processing of substances mostly derived from agriculture, but these can also be enterprises which produce substances qualified as foodstuffs but of chemical composition, such as dietary supplements.

## **5. Relationship of national food law and EU food law**

Food is not covered by common European policy. In view of EU legislation, member states exercise their competence to the extent that the Union has not exercised its competence, and exercise their competence to the extent that the Union has decided to cease exercising its competence (Article 2, TFEU). Thus the member state is stripped of competence because of the actions of the European legislator (occupying an area of a given field). Consumer

---

<sup>21</sup> Beside business enterprises there are non-profit establishments, the main objective of which is information support. For instance the Frozen Food Association is a non-profit organisation bringing together companies and individuals involved in the process of production and distribution of foodstuffs preserved in low temperatures. Through its activities, the organisation wants to promote the advantages of the use of frozen products in everyday nutrition.

protection as well as common problems of safety in the matter of public health in view of the issues set forth in the Treaty - these competences are shared between the EU and member states (Article 4 TFEU). Importantly, the EU has competence to act to support, coordinate or supplement the actions of the Member States in matters such as protection and improvement of human health (Article 6, TFEU); and also consumer protection requirements are to be taken into account in defining and implementing other Union policies and activities. (Article 12, TFEU). In defining and implementing EU policies and activities, a high level of human health protection is to be ensured (Article 168, TFEU), and the EU also strives to support the interests of consumers and ensure a high level of consumer protection (Article 169 TFEU).

Food law is a law which standardises the individual stages of production, processing and distribution of food, described by the collective term of "food chain" (this has been introduced to EU legislation)

**Food law is a sphere where Polish law and EU law intermingle, with participation of international law important for establishment of food trade standards (such as agreements concluded within the framework of the World Trade Organisation).**

One should keep in mind that regulations on farming and food constitute more than half of the entire complex of EU laws. The "general" part of EU food legislation that is currently being elaborated contains the principles and the terminology of this legislation, and also procedures (see a detailed treatment of this issue in part 7 of this book).

New tendencies in the development of food law are connected with stronger integration of the food chain and fall within the principle of interdependence (*cross compliance*) which is now being developed in the EU, linking payments specific to certain areas of production, to respect of standards and requirements by farmers. Information passed on to consumers (also in third countries) about the quality of European food is also to include systems of food quality, setting standards distinguished by unvarying features in respect of the environment, animal welfare, primary product quality, method of production. Quality systems are voluntary, open to all producers in the EU as well as outside Europe, subject to certification and control. EU Food Quality Assurance Schemes aim at securing farmers' and food producers' access to markets, inform consumers exhaustively about the quality of food, its origins, protection of the natural environment, plant health and animal welfare. They are also to impact on the effectivity of agriculture, and development of rural areas: infrastructure, tourism, preserving local culture and tradition, maintaining social links in rural areas.

Agricultural law and policy have a strong bearing on the food sector and, ensuingly, on the instrumentalisation of food law. The development of production and processing

methods again conditions the directions of development of the Common Agricultural and Fisheries Policy. Enough to indicate that progressing industrialization of farming binds the agricultural producer with the agri-food industry (often this is economic dependency). The globalisation tendency does indeed constitute a threat to food production by natural methods but currently a parallel tendency is observed to manufacture products by small local communities, with a limited degree of processing and distributed to consumers nearby.

In the sphere of sources of law, there is strong significance attached to the rulings of the European Court of Justice, which interprets EU legislation against a given case and "precises" the interpretation of the integrational character of EU law and policy. One might say that in respect of food law there is a "dialogue" of the legislator on the international, European and national plane, with significant input from the CJEU judiciary.

The multi-level arrangement of food law norms means that the Polish legislator is a connection between two separate legal orders: Polish and EU. Right now, this is mainly a connective function for legislation introduced in Poland, as for over ten years now the European legislator publishes a majority of food law acts in the form of regulations. Unifying regulations are executed in Polish law in acts and implementing regulations, and mainly refer to administrative structures and competences vis a vis EU regulations.

## **6. Remarks on the current and future status of food and agricultural law**

The present day is still characterised by a strong presence of administrative-legal regulations in the domain of agricultural law. Enough to mention subsidies, licences or certificates which need to be obtained by administrative decision. More examples: production quotas are allocated by the administration, awarding of structural pensions also requires participation of administrative bodies. European standards within the Common Agricultural and Fisheries Policy are based on principles which are shared by all member states and are characterised by significant contribution from the public law method: for instance proceedings on awarding financial support from EU funds are regulated mainly by the administrative law method. Similarly in the matter of rules of competition put to the CJEU, which may concern the market, but translate into statutory constructions. In food law, enough to mention the food safety system, containing orders and bans, entirely composed of norms of an administrative nature.

Agricultural and food law also has areas regulated by the civil law method: sale and inheritance of farms, sale of food, agreements typical to agriculture (lease of agricultural land,

annuity, transfer to a successor, contract farming, direct payments). Particular to food law are agreements on supplies of produce to distribution networks, which as a rule contain provisions on product quality. The civil law method is also proper for liability regimes concerning dangerous products, agricultural products or food as may be. Norms derived from civil law not only contribute to economic development and liberalise the market, but mainly allow for the contribution of farmers, agricultural and food industry operators to developing civil law relations in agriculture and in the food chain. The condition of this social sphere nowadays depends not only on the state, but before all on the individual legal subjects - participants in the agricultural and food market (so-called stakeholders).

Agricultural and food economy requires new regulations both because of the dynamic development of agricultural sciences and those pertaining to food, as well as because of the new interdisciplinary links with other legal domains, such as intellectual property and related laws (patents, trademarks, geographical status, plant variety protection).

Administrative and civil regulations overlap and link in many legal constructions, within agricultural as well as food law. It would be impossible and unnecessary to choose just one model in a situation when different areas of social and economic relations have their aims, to which law adapts the method of regulation. Sometimes this is a combination of methods, to include also criminal procedure.

Agricultural and food law evolved in various historical periods. Facing new challenges, primarily answering the needs and expectations of entrepreneurs, but also consumers of agriproduce and foodstuffs - requires careful selection of proper method and legal instrumentation, all the while with consideration to protection of social and ethical values. One must harbour the hope that the contemporary legislator is up to the task.