

The Issue of Consumers' Food Safety: Comparative Legal Analysis

1. Introduction

Food safety is extremely important for human's normal existence, since contaminated food evolves life-threatening conditions, such as widespread diseases,¹ which are still a serious problem.² Consequently, production risks forces states to provide food safety.³ In this respect, the World Health Organization's data is crucially important, according which: Food causes over 200 diseases,⁴ one out of every ten men die from contaminated food, resulting in 420 000 deaths annually in the world; Food contamination affects econom-

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¹ Annually these diseases are revealed at roughly 130 million Europeans. Elizabeth C. Redmond and Christopher J. Griffith, *Consumer Food Handling in the Home: A Review of Food Safety Studies*, Journal of Food Protection, No. 1, 2003, p. 130.

² *Ensuring Safe Food: From Production to Consumption*, Committee to Ensure Safe Food from Production to Consumption (John C. Bailar III-Chair, Authors Collective), National Academy Press, Washington, D.C. 1998, p. 1.

³ *Strengthening Food Safety and Nutrition Policies and Services in South-eastern Europe*, Eds. Dorit Nitzan Kaluski, WHO Europe, 2009, p. 5.

⁴ *Five Keys to Safer Food Manual*, WHO, Department of Food Safety, Zoonoses and Foodborne Diseases, ISBN 92 4 159463 2, 2006, p. 4.

ics and the society (reduces exports and tourism, lowers economic progress of states); Consumers' awareness is essential for food safety, as they must make informed decisions and identify risks.⁵

As it seems, food safety significantly influences to the states public interests, consumers' well-being and health. Therefore, it constantly maintains the actuality and according to new challenges, needs periodic research.

Based on the abovementioned, the aim of present article is to discuss consumers' food safety issue; namely to review EU food legislation, analyze current challenges and precedents in this field; assess food safety standards and hazards in Georgia and finally to determine a way out from these challenges.

2. Food Safety Policy

Foodstuff Production is one of the largest industries in EU. According to the scope, it is on the second place, after the Metal Production and employees 14% of personnel in the entire manufacture. There are approximately 310 000 companies in the EU food market, with about 4 million worker employed. At the same time, the EU is the largest exporter of food in the world (its share constitutes 20.8% of Total Food Export).⁶

Food safety in the EU is an element of Agricultural Policy. As Europe faced a real threat of hunger after World War II, accordingly food production, foodstuff quality and accessibility have gradually increased.⁷ Already in 2000 the European Regional Committee approved A Five-Year Action Plan on food products and nutrition, which had suitable feedback. Namely, 16 member states have informed the Committee about establishing relevant administrative structures for implementation of Nutrition Strategy and 28 countries had introduced Food Safety Councils or their equivalent organs.⁸

⁵ http://www.who.int/features/factfiles/food_safety/en/, (accessed 30 March 2018).

⁶ <http://www.foodqualityandsafety.com/article/food-safety-in-europe/>, (accessed 30 March 2018).

⁷ *EU Food Security Policy: Development and Prospects*, Rasa Melnikene, Artem Volkov, Vilma Dapkute, Lithuanian Institute of Agrarian Economics, Lithuania, 2010, p. 2, (translated from Russian).

⁸ *Comparative Analysis of Food and Nutrition Policy in European States (Members of WHO)*, Summary Report on Program of "Food and Food Security", European Regional Bureau of WHO, Denmark, 2003, p. 2, (translated from Russian).

The EU Food Safety Policy covers all stages of foodstuff production, till it reaches the consumers. This implies the law enforcement and supervision in the fields of food, animal nutrition and hygienic standards, also consulting consumers. This Policy aims to provide food safeness in such a way, that the member state's national products were kept in the EU market. I.e., on the one hand, the quality of production or supply should be kept and on the other hand, the EU market's diversity must be preserved.

Food safety policy is assisted by European Food Safety Authority (EFSA), which advises the European Commission and Member States while lawmaking. In addition, Committee on the Environment, Public Health and Food Safety of the European Parliament and Department of Health and Food Security of the European Commission serve to the same policy. Also, the European Court of Justice (ECJ) discusses important cases⁹ and plays its part in promoting food safety.

Food safety policy in Georgia is mainly determined by the healthcare and agriculture spheres and it includes food safety, health care, foodstuff quality and safeness; creating social guarantees, also establishing relevant legislation. Local Self-Governments have a competence to regulate the organization of nursing schools. The Ministry of Education and Science ensures the integration and implementation of health-related programs. NGOs are carrying out food related programs in healthcare, agriculture and educational spheres.

However, the most important flaw is that there is no agency responsible for developing a Unified State Policy and Interagency Strategic Plan, with relevant programs, which would fully reflect the state's current needs. Also,

⁹ Such recent case was C-282/15 (19.01.2017) – Queisser Pharma GmbH & Co. KG v. Germany. The ECJ declared the German ban with permit reservation on amino acids as food additives incompatible with EU law. In particular, a generalized ban of all amino acids as food additives is not justified where the available scientific data show that only certain specific amino acids present a health risk. What makes the judgement special is the fact that the dispute in the main proceedings concerned a purely domestic case. The ECJ applies the standards of its prior judgements to Articles 34 and 36 TFEU to the interpretation of the general principles laid down in Articles 5 to Regulation 178/2002. *European Food and Feed Law Review (EFFL)*, René Crevel, Agnieszka Serlikowska, Gema Fernández Albújar, Bernd van der Meulen, Benjamin Hiller, The Legal Publisher, Lexxion, Volume 13, Number 1, 2018, p. 34.

there is no unified body, obliged to coordinate and monitor different offices.¹⁰

In response to this challenge, it is advisable to create a document on Uniform Food Safety Policy, which should comprise joint measures of different agencies, also relevant methods and mechanisms. Thereby, the executive authorities (especially, the Ministries of Agriculture; Labor, Health and Social Affairs) must carry out General Food Safety Policy, coordinate and supervise competent agencies.

3. Food Safety Legislation

The EU has a complex food safety legislation which regulates pesticides, food additives, dyes, antibiotics, hormones and etc. In 2006, an important step was taken when “hygienic package” was introduced. It unites euro regulations, which are responsible for food safety/hygiene protection, and lays the responsibility to the entrepreneurs at any stage of Food Production Chain. This package is based on the General Food Law – EU 178/2002 regulation.¹¹ The latter is an information exchange mechanism between competent agencies of EU member states on food and nutrition issues.¹² Articles 168 and 169 of the Treaty on the Functioning of the European Union (TFEU) also touch food safety sphere.¹³ Apart from European directives and regulations, national legislations are also important. For example, in Germany the central

¹⁰ *National Research in Georgia*, research has been prepared within the framework of the British charity organization Oxfam’s “National Food Security Strategy and Small Farmers Support” project funded by the European Union, 2016, p. 40, (translated from Georgian).

¹¹ Regulation (EC) No 178/2002 of The European Parliament and of The Council of 28 January 2002 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.

Official Journal of The European Communities, 1.2.2002, L 31/1.

¹² <http://www.eufic.org/en/food-production/article/food-safety-controls-in-the-european-union>, (accessed 30 April 2018).

¹³ According to Article 168, high level of human health protection will be guaranteed in implementation of all EU policies and activities. By Article 169, the EU will support the consumer’s health, safety, economic interests and their adequate protection. Consolidated Version of the Treaty on the European Union, 26.10.2012, Official Journal of the European Union, C 326/47, Articles 168, 169.

norm is the Food and Nutrition Code, which is harmonized with various EU directives.¹⁴ The main legislation on food in Austria is the Food Safety and Consumer Protection Law, its related decrees (regulating frozen foods, fruit juices, food additions, etc.) and the Austrian Food Code.¹⁵ Like Germany, the Austrian Food Legislation is largely consistent with EU regulations. In Czech Republic many statutory acts relate to food; namely, Food Act 110/1997; Meat Production, Fish and other Marine Products Act 326/2001 and others. Here the Health Minister's orders also apply.¹⁶ It is visible, that food regulations in the Czech Republic are scattered in separate special acts and there is no single coded law, as it is in Germany or Austria.

In Georgia basic food regulations are: Product Safety and Free Movement Code; Administrative Offences Code; Law on Licenses and Permits; Law on Health Care.¹⁷ 20 different orders¹⁸ of the Minister of Agriculture and up to 30 regulations¹⁹ of the Government of Georgia are also essential acts. Additionally should be mentioned, that for fulfilling the obligations of Association Agreement with the EU, several draft laws have been elaborated.

It is clear that for dully performing these obligations, Georgian legislator must fully assess the reception difficulties²⁰ of the European Directives

¹⁴ *EU Food Safety Almanac, Bundesinstitut für Risikobewertung, Federal Institute for Risk Assessment* Klaus Jürgen Henning, Dr. Stefanie Freyberg, Susann Stehfest, Susanne Kaus and PD Dr. Gaby-Fleur Böhl, 2014, p. 40.

¹⁵ *Austria, Food and Agricultural Import Regulations and Standards-Narrative, FAIRS Country Report*, Approved by Emily Scott, Prepared by Roswitha Krautgartner, Last Updated 2017, p. 5, Ibid, Czech Republic, pp. 2-3..

¹⁶ Ibid, Czech Republic, pp. 2-3.

¹⁷ <http://nfa.gov.ge/ge/kanonmdebloba/kanonebi>, (accessed 4 April 2018).

¹⁸ Orders of the Minister of Agriculture of Georgia N2-234, 2-221, 2-198, 2-144, 2-143, 2-14, 182 / N, etc. <http://nfa.gov.ge/en/kanonmdebloba%20/%20ministris-brdzanebebi%20/%20sursati>, (accessed 4 April 2018).

¹⁹ Decisions of the Government of Georgia: №90 – Special Rules for Animal Hygiene; №508-Technical Regulations – About Adding Vitamins, Minerals and Some Other Substances in Food, etc. <http://nfa.gov.ge/en/kanonmdebloba/mtavrobis-dadgenilebebi/mtavrobis-dadgenilebebi-da-gankargulebebi-sursatis-sferoshi>, (accessed 4 April 2018).

²⁰ About this indicates the fact, that the draft law “On Consumer’s Rights Protection” was initiated in 2015, however to ensure compliance with EU Directives, it has significantly modified and is still being edited.

Draft Law of Georgia “On Consumer’s Rights Protection,” 14.06.2018 edition, Draft has been requested and received from the Committee on European Integration of the Parliament of Georgia in 21.06.2018, Contact person: Maia Jorjikia – Invited Specialist of the Committee, Email: mjorjikia@parliament.ge.

and create mechanisms for efficient execution of enacted legislation. For this purpose, increasing the efficiency of administrative bodies is inevitable.

4. Food Safety Challenges

Food safety confronts several threats, which differ by scale of danger, duration and forms. For instance, food waste is one of the basic challenges, which is even more complicated by wrong management of waste. Latter, in its turn creates additional anti-sanitation and morbidity threats. As for European troubles, nowadays it faces following menaces: 1) Population Growth,²¹ which increases food consumption. For the last three decades, International Food Trade has grown significantly and today its turnover exceeds \$1 trillion U.S. dollars. Every state depends on the international trade to a certain degree, in order to ensure its own population with foodstuff.²² So, the EU's safe nutrition also depends on global trade trends. 2) Variation of Consumer Requirements. Generally, consumers expect a permanent increase of food quality and safety. Therefore, information on food package is more demanding recently, as consumers make decisions following this data. Usually, understanding and consideration of consumers' behavior²³ is a significant factor in the food industry. Accordingly, entrepreneurs are trying to adapt their production to consumers' alternating needs.²⁴ 3) Climate Change. According to Risk Assessment Department of the European Food Safety Authority, climate has a short and long-term impact on food safety. For example, in warming conditions, toxic substances may appear in plants and infect consumers, re-

²¹ According to Eurostat in the EU the population is constantly growing. Since 1960, it has increased by 105.1 million and in 2017 equaled to 511.8 million. http://ec.europa.eu/eurostat/statistics-explained/index.php/Population_and_population_change_statistics, (accessed 6 June 2018).

²² <https://resourcetrade.earth/stories/food-security-trade-and-its-impacts#section-86>, (accessed 4 April 2018).

²³ During food purchase, consumers' behavior is significantly defined by the Inflation Rate, because the latter closely links Consumers' Expectations and Market Demands. Rodolfo Arioli, Colm Bates, Heinz Dieden, Ioana Duca, Roberta Friz, Christian Gayer, Geoff Kenny, Aidan Meyler, Iskra Pavlova, *EU Consumers' Quantitative Inflation Perceptions and Expectations: an evaluation*, occasional paper series, European Central Bank, Eurosystem, No 186 / April 2017, p. 76.

²⁴ Vlasta Pilizota, *Consumer Needs for Affordable Food of Good Quality, Serving Consumer Requirements*, UDK 664, Review article, Accepted for press release: May 12, 2012, pp. 77-78.

duce the food production volume, or its quality.²⁵ According to the EU's data, during 1980–2011 climate change damaged more than 5.5 million individuals in Europe and caused an estimated expense of 90 billion Euros.²⁶ In addition, specialists consider that, it has a strong impact on the food market and food safety in Europe.²⁷ 4) Shortfall of Natural Resources. Under globalization, the EU's natural resources cannot be discussed separately, as global tendencies also relate to them and define the nature of ecosystem and climate change.²⁸ Besides, usage of natural resources in Europe is rising, which in parallel grows its dependence on import.²⁹

Considering their scale, Climate Change and Shortfall of Natural Resources are most aggravating circumstances for Europe at present day. Climate change by itself causes a decrease in natural resources. However, the shortage of such resources is also provoked independently (because of their intensive usage). In this case, an existing loss is usually restored by import, though it follows additional expenses and risks (transportation costs, border inspection, timely realization of perishables and etc).

It is notable that food safety challenges in Georgia significantly differ from the EU's problems due to the low level of agriculture, inobservance of food safety standards and scarcity of entrepreneurs' social responsibility. Georgia's most important challenges are: low quality of food production; violation of food preservation and realization rules; deceiving consumers and damaging their health; low-key inspection on food safety and soft pressure on offences; rarity of entrepreneurs' social responsibility; consumers unawareness in food safety issues and dubious quality of imported food.³⁰

²⁵ <http://www.eufic.org/en/food-production/article/climate-change-possible-implications-for-food-safety>, (accessed 4 April 2018).

²⁶ https://ec.europa.eu/clima/change/consequences_en, (accessed 2 July 2018).

²⁷ Berry, P.M., Betts, R.A., Harrison, P.A. and Sanchez-Arcilla, A. (Eds.) (2017), *High-End Climate Change in Europe*, Pensoft Publishers, Sofia, p. 25.

²⁸ EEA, 2015, *The European Environment – State and Outlook 2015: Synthesis Report*, European Environment Agency, Copenhagen, Luxembourg: Publications Office of the European Union, 2015, ISBN 978-92-9213-515-7, p. 35.

²⁹ *The European Environment, State and Outlook 2010*, Synthesis, EEA lead authors: Jock Martin, Thomas Henrichs. Anita Pirc-Velkavrh, Axel Volkery, Dorota Jarosinska, Paul Csagoly, Ybele Hooegeveen, Luxembourg: Publications Office of the European Union, 2010 ISBN 978-92-9213-114-2, p. 69.

³⁰ For instance, in 2018 the Prime Minister of Georgia temporarily banned potato import from Turkey, due to high risk of potato cancer in it. <http://agenda.ge/news/97711/eng>, (accessed 4 April 2018).

Violation of safety norms in canteens also remains problematic, for instance in 2018 the National Food Agency (NFA) checked 19 restaurants and café bars (including popular restaurants: “Taglaura”, Babilo”, “Cruise”, “Mukhambazi”). The Agency concluded that seven of them were critically incompatible with safety norms (i.e. they had inconsistency threatening human life and health and its removal without a temporary suspension of the manufacturing process was impossible). For this reason, restaurants “Taglaura”, “Old Town”, “Cafe kala”, “Plaza Hall”, “Cruise”, “Golden kathaka” and “Mukhambazi” were suspended the production process and nine business operators were fined for various breaches. Finally, positive conditions were fixed only in three canteens.³¹

We see that inspection results are really alarming, especially because checked eateries have the leading positions in nutrition sector, owing enough resources to purchase or renew manufacturing facilities and retrain the staff. Nevertheless, they roughly violate food safety standards and threaten consumers’ health. According to this situation, it is essential to strengthen monitoring over food safety, which must be achieved through intensification of control and advancing inspection mechanisms.

5. Conclusions

As it turned out, the EU pays a proper attention at food safety through normative regulation and policy implementation. This policy is an important instrument for enforcing EU member states’ laws and European directives. At the same time, EU confronts with global difficulties (increased food consumption, shortfall of natural resources or climate change), which cannot be regulated by European policy or legislation alone. For neutralizing existing challenges, it is necessary to improve sectoral co-operation between EU member and non-member states. This means, that food safety should not be regarded as a problem of separate countries, but in the general context and together with other all-inclusive challenges.

³¹ <http://nfa.gov.ge/ge/media-centri/axali-ambebi0/siaxe1/sursatis-erovnulma-saagentom-sazogadoebrivi-kvebis-obieqtebshi-dargvevebi-gamoavlina.page>, (accessed 10 April 2018).

As for Georgia, here food safety perils are systemic. Low quality of food production/realization and their inefficient control are most problematic. Generally, they evolve from defective administrative functions of the state, low development of food market and consumers' passivity, which forces the country to take effective steps.

Of course, compliance of Georgian laws to the European directives will not be enough for solving this large-scale problem. So, strengthening the state's administrative functions is a must, which should be reflected in enforcement of the relevant laws. I.e. for ensuring food safety, entrepreneurs should be more strictly controlled, violations must be quickly reacted and the society - instantly informed. Such measures will be exemplary for other entrepreneurs, who will see that food safety infringement is properly sanctioned every time. Naturally, the Ministries of Agriculture and Healthcare should perform a leading role in this process. Thereby, consumers must be more interested and active in food safety issues, as it creates an additional controlling tool. In conjunction, the above mentioned measures will facilitate to improve negative trends of food safety in Georgia and create an intact environment.

