

SOME NORMATIVE AND INSTITUTIONAL DEVELOPMENTS IN THE FIELD OF COMMON AGRICULTURAL POLICY AND THEIR CONSEQUENCES ON THE PROTECTION OF THE EUROPEAN CITIZENS' INTERESTS

Gabriela Alexandra Oanță¹

Abstract. *This paper intends to briefly comment on some changes in the field of Common Agricultural Policy, especially regarding the safety of agricultural products and foodstuff. Within the framework of the CAP the food safety has managed to progressively constitute its third pillar, currently boasting an outstanding place in the attainment of its objectives. CAP has been progressing in its mechanisms and legal instruments towards a more relevant integration of the concerns relative to the consumer's health protection and to the food safety in the objectives to be reached.*

Key words: *Common Agricultural Policy, food safety, protection, agriculture*

Introduction

The Common Agricultural Policy (CAP) is, by excellence, an integrative policy of the European Union (EU). It has been one of the major areas of the European integration project for years, always representing a great concern for the EU.

This policy presents, without a doubt, a great importance for the average citizens. It is estimated that each family living in the EU dedicates, on the average, 20% of its disposable income to the purchase of food and drinks. On the other hand, the Union is, on a worldwide scale, the main importer of food and the second exporter. Agriculture in the EU represents approximately 3% of its Gross Domestic Product (GDP). In addition, the CAP continues to play a very important social factor. For example, before May 1, 2004, when the fifth EU enlargement took place, 4 to 5% of its active population was

developing its activity in this field. In recent years, this percentage has been enlarged considerably since a large part of the active population of some of the countries which recently joined the EU, like Poland and Romania for instance, is involved in agriculture.

Through this paper, we propose to briefly comment on the changes that have arisen in the CAP, especially from the early nineties, when it adopted a third pillar in regards to the security of agricultural products and foodstuffs, considering it as one of the best means to protect the interests of food safety of the European citizen (1); emphasize the intents of "modernization" of this Community Policy, carried out in the framework of the European Convention (2); finally, to get closer to the elements that, to our understanding, are the most significant regarding the attainment of the protection objective of the interests of European citizens in this field, such as the quality of

¹ *Gabriela Alexandra Oanță is Doctor in Law, researcher in the area of Public International Law at the University of A Coruña, (Spain), Member of the University Institute for European Studies "Salvador de Madariaga".*

the agricultural products and foodstuffs, and the matter of the controls carried out by the Member States in order to ensure that it complies with the requirements of quality of these products (3).

1. Food Safety the third pillar of the Common Agricultural Policy

If we start with the basic objectives of the CAP, provided for in the EC Treaty, as it is to increase the agricultural productivity through the promotion of the technical progress, the rational development of the agricultural production and the optimum employment of production factors, in order to guarantee a fair standard of living to the agricultural population, to stabilize the markets, to guarantee the security of the provisions and to ensure reasonable stock prices to the consumer, the first thing to point out is that at the beginning of the European construction, the Community legislator had not considered necessary to make any reference to the characteristics which the agricultural products should comply with from the perspective of the food safety². On the other hand, the EC Treaty does not define the CAP. It only provides its field of application³ and its objectives⁴. Neither the Treaty establishing a Constitution for Europe introduced any changes in that regard⁵.

In this context, the legal judgements of the Court of Justice of the European Communities (CJEC), that tried to cover somehow the existing legal void relative to

the requirements that agricultural products should meet in order to assure the Community consumer's health, were more significant. Thus, this Court considered that the objectives of the CAP, mainly in the framework of the Common Organization Markets, would not be able to be reached unless they considered the demands of general interest, for instance, the consumers' protection or the health and life of people or animals. These are all requirements that the EU Institutions should respect when practising their competences⁶, in spite of the extensive faculty of appreciation that the Council has in order to obtain the different objectives enumerated in the art. 33 EC⁷.

Regarding all this and starting from the basic and commonly admitted idea that as long as these "primary" objectives were being achieved, the consumer's demands about agricultural matters also increased. We must admit that, at this stage, the perception that the consumer has of the CAP has experienced a significant change. It is enough to mention that the results of a recent special survey carried out on these matters point out the consumer's conviction that the essential function of this Policy is, above all, to guarantee healthy food products. On the other hand, it is noticed that matters such as the respect for the environment, the safety and quality of food products, the animals' welfare, etc., have achieved a special meaning. It is to say that the Community consumer's concerns have changed regarding agricultural products and

² The main objectives of the CAP provided by the Community legislator are collected in art. 33.1 EC.

³ Art. 32.1 EC: "The common market shall extend to agriculture and trade in agricultural products. 'Agricultural products' means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products".

⁴ Art. 33 EC.

⁵ Treaty establishing a Constitution for Europe, OJ C 310, 16.12.2004, p. 1-474.

⁶ Vid.: Judgement of the Court, of 23 February 1988, United Kingdom/Council, 131/86, Rec. 1988, p. 905, para. 17; judgement of the Court, of 23 February 1988, United Kingdom/Council, 68/86, Rec. 1988, p. 855, para. 12. Vid. also: judgement of the Court, of 15 September 1994, KYDEP/Council and Commission, C-146/91, Rec. 1994, p. I-4199, para. 61.

⁷ Judgement of the Court, of 15 September 1982, Kind/CEE, 106/81, Rec. 1982, p. 2885. Vid. also KYDEP/Council and Commission, cit.

foodstuffs. For instance, it has been confirmed that 52% of consumers are willing to pay more for better quality products.⁸ This survey helps to understand why food safety has achieved an increasingly more noticeable position in the EU framework, particularly along the last decades.

One of the most significant reasons that led to reach this new situation was the contagious illnesses of animal origin, like “mad cow” disease, the hoof and mouth disease, the H5N1 avian influenza, etc., which have been highly affecting the domestic market, particularly since the nineties. All these began to cause an unprecedented general anxiety regarding food safety in the EU. In fact, the capability of the existing Community legislation on the matter to truly achieve the objective of a high level of protection regarding the public health and the European consumers has never been so closely scrutinized before.

This situation was necessarily reflected in the activities developed in this field by the EU Institutions. In relation to this, the CAP is involved in a deep process of reform since 1992. Thus, we have to mention the prominent contribution of the Agenda 2000, which was adopted in the framework of the financial perspectives set up for the period 2000-2006.⁹ The results of a survey carried out in that period reflected that a great number of Europeans sought a change so the CAP could help the EU farmers. And they also wanted that this Policy guaranteed them healthy agricultural products. At the same time, they considered that the CAP priority should be to guarantee

the safety of the agricultural products and foodstuffs (90%), to promote the respect of the environment (88%) to help the farmers to adapt its production to the consumer's expectations (80%), etc.

It is from that moment when the quality of food products and the Food Safety adopted a new dimension, since they became a third pillar of the CAP, turning into one of the main objectives of this Policy. This was about a coordinated answer from the EU to the demands of the European population to access to a wider variety of food quality, safe for health and produced at reasonable prices by farmers with adequate guaranteed incomes. Likewise, it was acknowledged that it was not possible to have a communitarian market of agricultural products and foodstuffs without pay attention to food safety; the rural development came to be the second pillar of this Policy, along with the agriculture. Thus, even the European Commission pointed out that the instruments at the disposal of the CAP to favour the health and quality of the food, continued to be limited. On the other hand, all the responsible involved in these sectors agreed that further could be done by the CAP to reach all the new objectives fixed in the Agenda 2000 in this field¹⁰.

At the same time, the European Union began to lower the subsidies to the production in order to favour direct payments to farmers. This reform also contained some important elements of regulatory simplification in different sectors, and the adoptions of regulations were preferred as an alternative to the Directives. In fact, currently, there are some areas where

⁸ European Commission: “Special Eurobarometer: European Union citizens and agriculture from 1995 to 2003”, September 2004 (http://ec.europa.eu/agriculture/survey/2004/rep_en.pdf).

⁹ COM(97) 2000: Agenda 2000 - Vol. I: For a stronger and wider Union - Vol. II: The challenge of enlargement, Brussels, 15.07.1997, Bol. EU 7/8-1997.

¹⁰ COM(2002) 394 final: Communication from the Commission to the Council and the European Parliament - Mid-Term Review of the Common Agricultural Policy, Brussels, 10.07.2002. Vid. Also: European Commission: “Europe's Agenda 2000: Strengthening and widening the European Union”, Priority Publication Programme 1999, X/D/5.

the dispositions of a single framework regulation are applied instead of the numerous legal documents previously adopted.

Therefore, with regard to these concerns, the Community legislator adopted a legislative package on the reform of the CAP during the meeting of the Council of Agriculture and Fisheries (Luxembourg, June 11-26, 2003).¹¹ It was meant to transfer, since January 1, 2005, a significant part of the direct payments linked to the production to the regime of a unique payment for exploitation.

Without a doubt, we are dealing with a fundamental reform of the CAP that tries to totally change the way in which the EU supports its agricultural sector. This meeting of the ministers of the Member States responsible for Agriculture and Fisheries, constituted the real turning point that led the Council to adopt, on September 29, 2005, a series of regulations which took into consideration the food safety, the animals' health and welfare, and good agrarian and environmental conditions.¹² One of the most important changes provided by these normative acts was to provide for that in those cases that did not

comply with the basic requirements, the Member States had the obligation to withdraw, totally or partly, the direct aids, taking into consideration objective and proportional criteria following a progressive scale. However, this withdrawal does not prevent other sanctions from being imposed at any time or in the future, on the basis of other dispositions of the Community or national legislation.¹³

This is a scope that the Community legislator has been dealing with more thoroughly. For that reason, at the present time, the CAP boasts the widest normative of the whole EU. Thus, approximately 60% of the total volume of the secondary Community law has been legislated referring to the aspects of food safety as a third pillar of the CAP. Moreover, the CJEC is carrying out a wide judicial activity in this area. For instance, a third part of its judgements was dictated considering elements relative to this Policy.¹⁴

One of the most outstanding principles that were introduced in the Community scope by the consecutive reforms of the EC Treaty is the principle of integration of the different Community policies (such as: the Environment Policy¹⁵,

¹¹ COM(2003) 554 final: *Communication from the Commission to the Council and the European Parliament - Accomplishing a sustainable agricultural model for Europe through the reformed CAP - The tobacco, olive oil, cotton and sugar sectors*, Brussels, 23.09.2003.

¹² *It is about the further Regulations: Council Regulation (EC) n° 1782/2003, of 29 September 2003, establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) n° 2019/93, (EC) n° 1452/2001, (EC) n° 1453/2001, (EC) n° 1454/2001, (EC) n° 1868/94, (EC) n° 1251/1999, (EC) n° 1254/1999, (EC) n° 1673/2000, (EEC) n° 2358/71 and (EC) n° 2529/2001, OJ L 270, 21.10.2003, p. 1-69; Council Regulation (EC) n° 1783/2003, of 29 September 2003, amending Regulation (EC) n° 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF), OJ L 270, 21.10.2003, p. 70-77; Council Regulation (EC) n° 1784/2003, of 29 September 2003, on the common organisation of the market in cereals, OJ L 270, 21.10.2003, p. 78-95; Council Regulation (EC) n° 1785/2003, of 29 September 2003, on the common organisation of the market in rice, OJ L 270, 21.10.2003, p. 96-113; Council Regulation (EC) n° 1786/2003, of 29 September 2003, on the common organisation of the market in dried fodder, OJ L 270, 21.10.2003, p. 114-120; Council Regulation (EC) n° 1787/2003, of 29 September 2003, amending Regulation (EC) n° 1255/1999 on the common organisation of the market in milk and milk products, OJ L 270, 21.10.2003, p. 121-122; Council Regulation (EC) n° 1788/2003, of 29 September 2003, establishing a levy in the milk and milk products sector, OJ L 270, 21.10.2003, p. 123-136.*

¹³ Regulation (EC) n° 1782/2003, cit., para. 2.

¹⁴ Vid.: MASSOT MARTÍ, A.: "La Política Agrícola Común", en MORATA, F. (ed.): *Políticas públicas en la Unión Europea*, Ed. Ariel, Barcelona, 2000, p. 91.

¹⁵ Art. 174.2 EC: "Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community [...]".

the Public Health Policy¹⁶, the Consumer Protection Policy¹⁷, and the Policy of Economic and Social Cohesion¹⁸) in the other Community actions and policies. The CAP has been enriched with a series of contributions from other policies, as for instance, the policy dealing with the exigencies of food safety. These policies have been extending the traditional objectives of the CAP with no need to modify the EC Treaty. This has led to this policy being equipped with a third pillar dedicated to food protection.

2. The third pillar of the Common Agricultural Policy and the European Constitution

In recent years, several tasks have been developed in order to manage that the present dispositions of the EC Treaty were modified so the matters relative to food safety as the third pillar of the CAP could be introduced.

The working document "Contribution to a Preliminary Draft Constitution of the European Union", commonly known as "Penelope", was submitted to the European Convention on behalf of the European Commission on December 4, 2002¹⁹. The basic line of this document was to classify the EU policies in main policies and in

policies to take supporting and complementary actions. And, at the same time, it gave to the External Relations Policy an important role. In regards to the CAP, it is necessary to mention that this document made a distinction between the competences of the Community Institutions and the competences of the Member States. When establishing the objectives of this Policy pointed out that, along with the Fisheries Policy, the PAC was "designed to ensure the sustainable development and the competitiveness of production, to develop rural and coastal areas, to preserve natural resources, the countryside and species, to ensure a fair standard of living for the communities concerned, to supply consumers with healthy products of good quality at reasonable prices and to guarantee security of supplies".²⁰

The second significant contribution to be considered regarding the contents of the aforesaid document refers to the measures to be established by law, in order to achieve the indicated objectives, such as: "[...] g) the food safety, the quality and the promotion of products; h) the veterinary and phytosanitary scopes [...]".²¹

Later, the European Commission stated its opinion once again on the need that the content of the dispositions of the EC Treaty relative to Agriculture was reformed

¹⁶ Art. 152.1 EC: "A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities".

¹⁷ Art. 153.2. EC: "Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities".

¹⁸ Art. 159 EC: "[...] The formulation and implementation of the Community's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 158 and shall contribute to their achievement [...]".

¹⁹ This work was developed at the request of the President of the European Commission, Mr. Romano Prodi, and in agreement with Mr. Barnier and Mr. Vitorino, by a work team constituted under the responsibility of François Lamoureux and constituted by: Marie Lagarrigue, Paolo Stancanelli, Pieter Van Nuffel, Alain Van Solinge, with the technical assistance of Marguerite Gasse; text available on the web page: http://europa.eu.int/constitution/futurum/documents/offtext/const051202_en.pdf. On the doctrinal contributions on the same issue, vid.: TOGNON, G.: *La tela di Prodi: una Costituzione per un'Europa più democratica*, Baldini & Castoldi, Milano, 2003; BIANCHI, D.: "Une PAC <<dénaturée>>, <<délaissée>> et <<malmenée>>?", *Revue trimestrielle de droit européen*, vol. 40, n° 1, 2004, p. 80-86; LAMOUREUX, F.: "La Constitution <<Penélope>>: une refondation pour en finir avec les replâtrages", *Revue de droit de l'Union européenne*, n° 1, 2003, p. 13-37; MATTERA, A. (dir.): "Penélope": *Projet de Constitution de l'Union européenne*, Clément Juglar, Paris, 2003

²⁰ "Contribution to a Preliminary Draft Constitution of the European Union", cit., art. 15.

²¹ *Ibidem*, art. III-23.

in order to agree with the fundamental elements of the reform of the CAP, whose objective consists in fomenting the high quality of food production.²²

Unfortunately, these particular references to the food safety and the quality of food products were not included in the draft of the European Constitution. This decision led to a failed opportunity to regulate these questions in the EU, at the level of the original Law. However, we must agree that there are other scopes in which the European Constitution contributes with new features on the CAP²³ and, for that reason, are worthy of our attention. There are two main points.

Firstly, the European Constitution introduced some changes in the CAP in regards to competences. The fact that the Member States are granted a competence shared with the EU in such an important field as it is the agriculture, which has always been considered as a Policy with an exclusive competence in the Union, constituted, without a doubt, one of the most outstanding novelties which the European Constitution contributed to the material Community law.²⁴ In relation, article I-14 of the European Constitution regarding the scopes of shared competences, mentioned explicitly, all

those scopes that will be subject to this new distribution between the Member States and the Union. Thus, along with the questions referred to agriculture and fisheries, with the exception of the conservation of the marine biological resources, this article contained both scopes of shared competence already well-known after the reform carried out in Maastricht (consumers protection, environment, etc.) or policies with a mixed nature after the European Constitution (public health) and policies that would be exchanged as a result of this Constitutional Treaty (space of security, freedom and justice).

Secondly, the European Constitution provided a new procedure of adoption of decisions in the scope of the CAP, that is to say, the codecision. Thus, art. III-231.2 stipulates: *“European laws or framework laws shall establish the common organisation of the market [...] and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy. They shall be adopted after consultation of the Economic and Social Committee”*.²⁵ Nowadays, art. 37.2 EC stipulates that the normative acts in the field of this Policy are adopted by qualified majority in the Council, after a proposal of the Commission

²² COM(2003) 548 final: *Communication from the Commission - A Constitution for the Union - Opinion of the Commission, pursuant to Article 48 of the Treaty on European Union, on the Conference of representatives of the Member States' governments convened to revise the Treaties, Brussels, 17.09.2003, p. 13-14.*

²³ Art. III-227 of the European Constitution.

²⁴ Art. I-14 of the European Constitution stipulates: *“1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-13 and I-17.*

2. Shared competence between the Union and the Member States applies in the following principal areas:

- (a) internal market;*
- (b) social policy, for the aspects defined in Part III;*
- (c) economic, social and territorial cohesion;*
- (d) agriculture and fisheries, excluding the conservation of marine biological resources;*
- (e) environment;*
- (f) consumer protection;*
- (g) transport;*
- (h) trans-European networks;*
- (i) energy;*
- (j) area of freedom, security and justice;*
- (k) common safety concerns in public health matters, for the aspects defined in Part III”.*

²⁵ *Vid. also art. I-34 of the European Constitution.*

and before consulting the European Parliament. The plan to introduce the procedure of *codecision* within the framework of the CAP had been tried in some occasions before the draft of the European Constitution. Thus, its adoption was unsuccessfully tried within the framework of the 1996 Intergovernmental Conference and during the European Council in Nice (December 9-11, 2001).²⁶ This would mean, without a doubt, a transcendental change of this Policy, since, for the first time, the European Parliament would act as a joint legislator in this matter. It was meant to offer the Parliament the role of a true joint legislator in the whole of the policies of the EU and, at the same time, to get to set a single procedure of adoption of Community rules.

In short, although the European Constitution did not specifically include the objective of food protection as an intrinsic element of the CAP, the truth is that at least it maintained intact the dispositions referred to the “body” of this Policy, as we have seen, and this objective already represents its third pillar. With regards to us, we agree with the opinion of some author²⁷ in the sense that the food dimension still continues to give the agriculture matter significance and a role which nobody wants to part with.

3. The analysis of the third pillar of the Common Agricultural Policy concerning the attainment of the objective of food protection in the European Union

After having seen how food safety has become the third important pillar of the CAP, in the following lines we will show the elements that form it. The EU Agricultural Policy has been equipped with four specific

subjects in the sector of agricultural products and foodstuffs: the durability, the quality of agricultural products and foodstuffs, the well-being of animals and food safety seen from the point of view of this Community Policy. We will not try to develop all these dispositions, since they would separate us from our objective; we will just study those aspects concerning the quality of agricultural products and foodstuffs (3.1.) and the controls carried out by the Member States considered as a guarantee of the performance of that requirement (3.2.). With regard to this, we must point out that we will consider all the products produced both in the Member States and in the third countries which are easily found in the European internal market.

3.1. The quality of the agricultural products and foodstuffs

We do believe that the subject of the quality of agricultural products and foodstuffs is closely related to the complex questions of the protection of the geographical spots, the guarantee of designation of origin of the products and the certifications of specific characteristics of food products.

The coordinated answer of the Community Institutions towards the promotion and protection of agricultural products and foodstuffs was the creation, in 1992, of the systems of the Protected Designation of Origin, the Protected Geographical Indication and the Traditional Speciality Guaranteed. So that, at the present time, more than 500 agricultural products and foodstuffs benefit from these systems.

²⁶ COM(2000) 34 final: *Adapting the Institutions to make a success of enlargement - Commission opinion in accordance with Article 48 of the Treaty on European Union on the calling of a Conference of Representatives of the Governments of the Member States to amend the Treaties, Brussels, 26.01.2000. Vid. also: BIANCHI, D.: cit., p. 87.*

²⁷ Vid. BERMEJO GARCÍA, R.: “La Política Agrícola Común” (<http://iustel.com>).

Both the Protected Designation of Origin (PDO) and the Protected Geographical Indication (PGI), meaning the “geographical designations”, meet their juridical base in the *Council Regulation (EEC) n° 2081/92*. This Regulation provides the norms related with the protection of designation of origin and the geographical indications of the agricultural products assigned to human food in the Annex I of the EC Treaty, and foodstuffs mentioned in Annex I and II of it.²⁸ These are “names used to designate food products that allude to their origin from a specific geographical area”.²⁹

One of the great contributions of the Council Regulation (EEC) n° 2081/92 to the subject we are dealing with is, on the one hand, the creation of a direct bond between the quality or the characteristics of the product for which the authorization is solicited, and, on the other, its specific geographical origin.³⁰ So that, the Community consumer will be able to make a better election since he has clear and concise data about the origin of the product. This reflects the constant concerns of the European citizen towards food quality. And this concern reaches an increasing demand for agricultural and food products from a specific geographical origin that the citizen considers to be healthy and of good quality. On the other hand, the norms that were adopted by the Community legislator

regarding the labelling, the packaging and the publicity of foodstuffs have a special meaning within this subject, too. It is looked for guarantying to the European consumers that the agricultural products and foodstuffs comply with specific qualities.³¹

As the CJEC has stated in its judgement *France/Commission*, the objective of the Council Regulation (EEC) n° 2081/92 is to define, exclusively, the conditions which are necessary to protect a denomination that sets a relation between food and agricultural products, and a specific geographical origin.³² The consequence is the disappearance of the national systems of special protection of the Member States from which a geographical denomination could benefit (PDO and PGI).

Before the Regulation (EEC) n° 2081/92 came into effect, it was taken into consideration the principle of territorialism where the denominations of origin were protected by national dispositions, which were applicable only in the territory of the Member State that had adopted them. All this had to be done as the CJEC provided, together with the International agreements that extended this protection to the territory of other Member States, commonly agreed by the parts of each concrete case.³³ Anyway, this principle of territorialism continues to be operative, but the protection of the geographical denominations refers now to the whole single internal market.³⁴

²⁸ Council Regulation (EEC) n° 2081/92, of 14 July 1992, on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, OJL 208, 24.07.1992, p. 1-8.

²⁹ Vid. Advocate-General RUIZ-JARABO COLOMER in *Canadane Cheese Trading y Kouri*, C-317/95, Rec. 1997, p. I-4681, para. 35.

³⁰ Regulation (EEC) n° 2081/92, cit., art. 2. Vid.: judgement of the Court, of 7 May 1997, *Pistre and others*, -321/94 - C-324/94, Rec. 1997, p. I-2343, para. 35 and 36.

³¹ Directive 2000/13/EC of the European Parliament and of the Council, of 20 March 2000, on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, OJL 109, 6.05.2000, p. 29-42.

³² Judgement of the Court, of 6 March 2003, *Commission/France*, C-6/02, Rec. 2003, p. I-2389, para. 13.

³³ Judgement of the Court, of 20 May 2003, *Consorzio del Prosciutto di Parma and Salumificio S. Rita*, C-108/01, Rec. 2003, p. I-5121, para. 98.

³⁴ Vid.: LÓPEZ ESCUDERO, M.: “Parmigiano, feta, epoisse y otros manjares en Luxemburgo. Las denominaciones geográficas ante el TJCE”, in COLNERIC, N.; EDWARD, D.; PUISSOCHET, J-P.; RUIZ-JARABO COLOMER, D. (coord.): *Une communauté de droit. Festschrift für Gil Carlos Rodríguez Iglesias*, Ed. Berliner Wissenschafts-Verlag, Berlin, 2003, p. 410-411.

On the other hand, as the CJEC has indicated, the Community system of protection provided in the Regulation does not oppose to the existence of a national regime on the matter, as long as this regime is similar to the one resulting from a bilateral agreement about the protection of a geographical indication or a qualified denomination of origin³⁵.

In our opinion, it would be useful to conceptually delimit the “denomination of origin” and the “geographical indication”. It is, without a doubt, a difficult task to carry out since their definitions are not pacific.³⁶ Thus, the Regulation (EEC) n° 2081/92, when considering the intensity of the bond between the characteristics of the product and geographical means of origin³⁷, provides that the “denomination of origin” represents “the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff: originating in that region, specific place or country, and the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area”³⁸; and “geographical indication” means “the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff: originating in that region, specific place or country, and which possesses a

specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area”³⁹.

For these reasons, the main difference between these two concepts refers to the requirements that will have to be met. Thus, in the case of the PDO, the requirements deal with the natural conditions of the place and the elaboration that make possible the creation of agricultural products and foodstuffs that can be obtained only in the aforesaid geographical area⁴⁰; while, as for the PGI, the acquisition of the reputation is, fundamentally, linked to the activity developed by the companies of the delimited area.

On the other hand, it is necessary to indicate that the PDO must not get confused with the indications of geographical origin. In relation, we must stand out the jurisprudential contribution of the CJEC. This Court has considered that the purpose of these indications is just to offer the data about the origin of a place, a region or a concrete country of a certain agricultural product and foodstuff.⁴¹ And that, therefore, there is no direct relation between a specific quality of the product and its specific geographical origin, as it is demanded, in accordance with art. 2.2.b) of the Regulation (EEC) n° 2081/92, in the case of the PDO.⁴² The PDO guarantee the geographical origin

³⁵ *Judgement of the Court, of 18 November 2003, Budějovický Budvar, C-216/01, Rec. 2003, p. I-13617, para. 57.*

³⁶ LÓPEZ ESCUDERO, M.: *cit.*, p. 415. *Vid. also: CORTÉS MARTÍN, J. M.: La Protección de las Indicaciones Geográficas en el comercio internacional e intracomunitario, Ministerio de Agricultura, Pesca y Alimentación, Secretaría General Técnica, Madrid, 2003, p. 349-369.*

³⁷ *All these are criteria used in CORTÉS MARTÍN, J. M.: cit.*, p. 347.

³⁸ *Regulation (EC) n° 2081/92, cit.*, art. 2.2.a).

³⁹ *Ibidem*, art. 2.2.b).

⁴⁰ *Vid.: judgement of the Court, of 20 February 1975, Comisión/Alemania (“Sekt”), 12/74, Rec. 1975, p. 181.*

⁴¹ *Judgement of the Court, of 10 November 1992, Exportur, C-3/91, Rec. 1992, p. I-5529, para. 11. Vid. also: Pistre and others, cit.*, para. 36.

⁴² *Warsteiner Brauerei, cit.*, para. 43 and 44; *Budějovický Budvar, cit.*, para. 54.

of the product and that this product complies with specific characteristics, too.⁴³

With regard to the scope of application of the Regulation (EEC) n° 2081/92, this depends, fundamentally, on the nature of the denomination or indication in question. Therefore, it will be limited to those designations corresponding to a product in relation to which there is a particular bond between its characteristics and their geographical origin.⁴⁴ It also depends to a certain extent, on the Community reach of the conferred protection.⁴⁵ On the other hand, it is considered that a denomination that has an utter general character and that extends national borders will not be subjected to dispositions of this normative act, since, in this case, this direct bond which is required (between the quality or the characteristics of the product and their specific geographical origin) would not exist, as we have previously pointed out.

In practice, it has been demonstrated that this protection of the denominations of origin and the geographical indications, that are so interesting from the point of view of the food safety, can, however, prevent the free movement of goods, as stated art. 28 EC.⁴⁶ In relation to it, it is necessary to mention that the CJEC has considered, firstly, that this article is against the application of a national norm that reserves

the use of a denomination only to products made in the national territory and elaborated with national raw materials.⁴⁷ And, secondly, that, in the present state of the Community law, the principle of free movement of goods is not opposed to the fact that a Member State takes all concerning measures to guarantee the protection of the registered denominations of origin in accordance with the dispositions of the base Regulation in the scope of the PDO and the PGI.⁴⁸ Nevertheless, this Court has considered that a Member State fails to fulfil an obligation concerning to itself, in accordance with the dispositions of the article, when prohibiting the low scale sale of certain products imported from other Member States, unless they are labelled with an indication of origin or are enclosed with one.⁴⁹

Another aspect that has special importance in relation to the scope of application of the Regulation (EEC) n° 2081/92 is the fact that neither wines (except for vinegars of wine and the spirits⁵⁰) nor industrial products are included. Although, in this last case, as it was stated in the doctrine, the own Regulation leaves the door open so that they can included in the future.⁵¹ The lack of inclusion concerning wines and spirits in the scope of application of this Regulation could be justified because is applicable a Community norm relative to

⁴³ *Judgement of the Court, of 9 June 1992, Delhaize, C-47/90, Rec. 1992, p. I-3669, para. 17 and 18; Exportur, cit., para. 11.*

⁴⁴ *Regulation (EC) n° 2081/92, cit., art. 2.*

⁴⁵ *Budějovický Budvar, cit., para. 76.*

⁴⁶ *Vid.: LÓPEZ ESCUDERO, M.: cit., p. 410, 414 y 420-422.*

⁴⁷ *Pistre and others, cit., para. 54.*

⁴⁸ *Judgement of the Court, of 4 March 1999, Consorzio per la tutela del Formaggio Gorgonzola y otros, C-87/97, Rec. 1999, p. I-1301. Vid. also: PARDO LEAL, M.: "El Tribunal de Justicia de las Comunidades Europeas anula la denominación de origen comunitaria queso feta", *Gaceta Jurídica de la UE y de la Competencia*, n° 202, 1999, p. 90-91.*

⁴⁹ *Judgement of the Court, of 25 April 1985, Comisión/Reino Unido, 207/83, Rec. 1985, p. 1201, para. 23.*

⁵⁰ *Art. 1.1 of the Regulation (EEC) n° 2081/92 stipulates: "[...] this Regulation shall not apply to wine products or to spirit drinks".*

⁵¹ *The para. 9 of the Regulation (EEC) n° 2081/92 says: "Whereas the scope of this Regulation is limited to certain agricultural products and foodstuffs for which a link between product or foodstuff characteristics and geographical origin exists; whereas, however, this scope could be enlarged to encompass other products or foodstuffs". Vid. also: CORTÉS MARTÍN, J.M.: op. cit., p. 338; BEIER, F. K.; KNAACK, R.: "The Protection of Direct and Indirect Geographical Indications of Source in Germany and the European Community", *International Review of Industrial Property and Copyright Law*, vol. 25, 1994, p. 35.*

these fields. Neither the indications of a geographical origin entered its scope of application either.

In relation to this, it is significant the case of the *generic denominations*. It is not necessary to register them. In accordance with the dispositions of the Regulation (EEC) n° 2091/92, the term “designation that has turned into generic” means “the name of an agricultural product or a foodstuff which, although it relates to the place or the region where this product or foodstuff was originally produced or marketed, has become the common name of an agricultural product or a foodstuff”.⁵² The CJEC has contributed to clarify the situations created by the generic designations. So, the Court considers that in the case of a combined designation, the protection of each element will only be possible as far as it does not refer to a generic word or a common word.⁵³

This Regulation intends to guarantee a uniform protection in the EU, both of the designations of origin and of the geographical indications. Considering these necessities, the Community legislator set the obligation for the Member States to have a *Community registry*. It means that as long as they are registered, those designations and/or indications will be protected in any Member State. Whereas the national protection, that a Member State grants to

geographical denominations that do not fulfil the registry requirements, according to the rule of this normative act, will be governed by the national law of that concrete country and will be limited to its territory.⁵⁴ On the other hand, it is compulsory, that whenever a country asks for the registry of a new designation, this designation is legally protected in its territory or in the territories of the Member States where there is not a protection system.⁵⁵ Thus, the CJEC originally considered that a special importance had to be paid to the existing situation in the original Member State⁵⁶, considering, subsequently, to minimize the meaning given to this designation in the rest of the Member States. So, all pertinence to its national legislations was denied⁵⁷.

We could wonder about the conditions to be fulfilled by agricultural products and foodstuffs in order to be awarded either a designation of origin or a geographical indication. The answer is given by art. 4.2 of the Regulation (EEC) n° 2081/92, that gather the list of the necessary conditions, but not thoroughly, as it was indicated in the CJEC judgement *France/Commission*: the name and description of the agricultural products and foodstuffs, the definition of the geographical area, the elements that prove that the product is original of this geographical area,

⁵² Regulation (EEC) n° 2081/92, cit., art. 3.1.

⁵³ Judgement of the Court, of 9 June 1998, *Chiciak y Fol*, C-129/97 y C-130/97, Rec. 1998, p. I-3315, para. 37; judgement of the Court, of 25 June 2002, *Dante Bigi*, C-66/00, Rec. 2002, p. I-5917, para. 17.

⁵⁴ Vid.: judgement of the Court, of 7 November 2000, *Warsteiner Brauerei*, C-312/98, Rec. 2000, p. I-9187, para. 50; *Budějovický Budvar*, cit., para. 74. Vid. also: Commission Regulation (EC) n° 2400/96, of 17 December 1996, on the entry of certain names in the 'Register of protected designation of origin and protected geographical indications' provided for in Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, OJ L 327, 18.12.1996, p. 11-12; European Commission Directorate-General for Agriculture: "Food Quality Policy in the European Union. Protection of Geographical Indications, Designations of Origin and Certificates of Specific Character for Agricultural Products and Foodstuffs. Guide to Community Regulations", Working Document of the Commission Services, 2nd Edition, August 2004, p. 27-42.

⁵⁵ *Dante Bigi*, cit., para. 28.

⁵⁶ *Exportur*, cit., para. 37.

⁵⁷ Judgement of the Court, of 16 March 1999, *Dinamarca, Alemania y Francia/Comisión ("Feta")*, C-289/96, C-293/96 and C-299/96, Rec. 1999, p. I-1541, para 68 and 87-90.

the description of the method to obtain the product, the factors that credit the bond with the geographical means or with the geographical origin, the references relative to the structures of control, the specific elements of labelling relative to the designation PDO or PGI or the equivalent national traditional mentions, and the possible requirements that must be fulfilled by virtue of the communitarian and/or national dispositions.⁵⁸

This Regulation also provides, in art. 11.4, the conditions in which this Community registry can be annulled. There are two situations: firstly, when the Member State that has submitted the request of original registry verifies that a request of cancellation, submitted by the group or by any affected juridical or natural person is justified, or prefers to send it to the Commission, and, secondly, for justified reasons in which the respect to the conditions of the specifications of an agricultural product or foodstuff that it is awarded the protection of a geographical origin would no longer be guaranteed.⁵⁹

Next, we will deal with the EC protection system in the case of Traditional Specialty Guaranteed (TSG). Its legal basis is set in the *Council Regulation (EEC) n° 2082/92*. It regulates the certification of the specific characteristics of agricultural products and foodstuffs.⁶⁰ It is necessary to mention, from the start, that this system, unlike the one stated in the *Council Regulation (EEC) n° 2081/92*, does not make

any reference to the origin of the agricultural products and foodstuffs, but it intends to stand out a traditional composition of the product or a way of traditional production.⁶¹ Thus, the use of geographical terms in a name for which registry has been requested, in accordance with art. 5. 4 of the Regulation (EEC) n° 2082/92, will be authorized, but as long as these terms are not subject to the Regulation (EEC) n° 2081/92. The scope of application of this normative act is made up both of the agricultural products that appear in the Annex I of Treaty EC, that as we have indicated previously, are aimed to human feeding, and of the food products that are enumerated in the Annex.

In accordance with article 2.1 of the Regulation (EEC) n° 2082/92, the concept “specific character” of agricultural products and foodstuffs means “*the feature or set of features which distinguishes an agricultural product or a foodstuff clearly from other similar products or foodstuffs belonging to the same category*”. Nevertheless, the presentation of an agricultural product or foodstuff will not be considered as an element, in the sense of this legal disposition. These specific characteristics of a particular agricultural product or foodstuff will not be limited just to the qualitative or quantitative composition or to a way of production defined by the Community or national norm, neither by norms provided for by organisms of normalization or voluntary norms. However, this disposition will not be applied when the national norm

⁵⁸ *Commission/France, C-6/02, cit., para. 44-45. In this occasion, the CJCE stated there were some essential conditions related to: the description of the agricultural product or foodstuff, the elements that prove that the product comes from this geographical area, the description of the method to obtain the product, the specific labelling elements linked to the mention to PDO or PGI or the equivalent national traditional mentions, and the possible requirements that must be met by virtue of the communitarian and/or national dispositions*

⁵⁹ *The procedure is established by art. 15 of the Regulation (EEC) n° 2081/92, cit.*

⁶⁰ *Council Regulation (EEC) n° 2082/92, of 14 July 1992, on certificates of specific character for agricultural products and foodstuffs, OJ L 208, 24.07.1992, p. 9-14.*

⁶¹ *Vid.: COM(99) 374 final: Report from the Commission to the Council under Article 21 of Regulation (EEC) No 2082/92 on certificates of specific character for agricultural products and foodstuffs on the implementation of the Regulation, Brussels, 19.07.1999, p. 10-12.*

or the specific norm has been provided to define the specific characteristics of a product.⁶²

For this, the Commission has created a new system in the European internal market. This system has a voluntary character. We believe that it can be a useful instrument to guarantee the food health of agricultural products and foodstuffs. It is about the *Register of certificates of specific character* that shows the names of the food products whose specific characteristics have been previously identified on a communitarian scale⁶³, on the one hand. And, once they comply with a list of conditions that will be verified in a very strict way in the phase of manufacture of the product (such as: the name written up in one or several languages, the description of the production method, the elements that allow to evaluate the traditional character, the description of the characteristics of the agricultural products and foodstuffs, indicating its main characteristics, the minimum requirements and the procedures of control of the specific characteristics), on the other hand.⁶⁴ It is also stated that the name will have either to be specific by itself or to express the specific characteristics of the agricultural products and foodstuffs. This is the case of the traditional names that are, at the same time, in accordance with the national dispositions and of the names given by the use. In this sense, the Regulation (EEC) n° 2082/92 provides that the name of a product that refers only to the exigencies of general character used for a set of

agricultural products and foodstuffs or to the exigencies provided for in a specific communitarian regulation could not be registered; or when that name is abusive, specially for making a reference to an evident characteristic of the product or because it does not comply with the list of conditions or with the expectations of the consumer, considering the characteristics of the product.⁶⁵

As far as the request of register of the specific characteristics of agricultural products and foodstuffs, only the groups have this possibility. This means, only those organizations who work with the same agricultural products and foodstuffs, independently of their legal form or its composition, of producers and/or transformers.⁶⁶ These groups will have to go to the competent authority of the Member State in which it is established. This authority will be responsible for forwarding this request to the European Commission, at the time it considers that the requirements indicated in arts. 4-6 of the Regulation (EEC) n° 2082/92 are being fulfilled.⁶⁷ The following step will correspond to the Commission, since it is the one that will transmit the request of register to the Member States. The request will be translated in the official languages of these states, in a term of six months, counted from the date of reception of the request. Immediately afterwards the Commission has to publish the main elements of the request in the Official Journal of the European Union, series C, mainly the name of the

⁶² Regulation (EEC) n° 2082/92, cit., art. 2.

⁶³ *Ibidem*, arts. 3-5. Thus, the agricultural products and foodstuffs to be included in this register, must be produced from traditional raw materials or present a traditional composition or a way of production and/or transformation that belongs to the type of production and/or traditional transformation. For instance, those products whose specific characteristics are not in their origin or geographical origin or which they are not just the result of the application of a technological innovation, will not be registered.

⁶⁴ *Ibidem*, art. 6.

⁶⁵ *Ibidem*, especially art. 5.

⁶⁶ *Ibidem*, art. 2.

⁶⁷ *Ibidem*, art. 7.

agricultural products and foodstuffs and the references of the applicant.⁶⁸

Therefore, this creates the possibility of an opposition law and, on the other hand, that the register is provided by the Commission through a regulation. However, the designations which are registered will not be reserved only to these groups, but they can be used by any producer that elaborates a product and that adjusts to the list of conditions provided for in art. 6. Thus, it is possible to register “generic” denominations for the agricultural products and foodstuffs.

In relation to it, we have to say that the Community legislator has provided two levels of protection that are at the disposal of the producer. Thus, in accordance with art. 13.1 of the Regulation (EEC) n° 2082/92, there is a *partial protection* of the name, and, by virtue of art. 13. 2 of this Regulation, the *absolute protection* of the name is also provided. But, this second possibility has never been used till now. It is also possible to add the protection given by the route of the *Community logo*, which would be published in colour and would be accompanied of an illustrated manual for its use.⁶⁹ Nevertheless, the registered designations, which are also characterized by its shortage of terms, have not been used yet.⁷⁰

3.2. The control conducted by the Member States as a guarantee of the fulfilment of the requirement of quality of agricultural products and foodstuffs

After having raised the subject of the regulation referred to the protection of

agricultural products and foodstuffs by means of a denomination of origin, a geographical indication or a traditional specialty, it seemed useful to indicate, in general lines, the control carried out by the Member States on the matter, as a guarantee of the fulfilment of the existing legal dispositions in this matter since it is an essential component of any food safety strategy.

We are talking about a complex coordinated program of control conducted in the field not only of the human consumption but also of animals, being a reflection of the new approaches followed by the EU referring to the fulfilment of the requirement of quality of agricultural products and foodstuffs and, therefore, of the own food safety. One is the well-known with the name of “Hazard analysis and control of critical points” (HACCP).

The control system fixed in the Regulation (EEC) n° 2081/92 is identical to the one provided for in the Regulation (EEC) n° 2082/92. The objective of this system is to guarantee that the agricultural products and foodstuffs that show a protected denomination or that have a certification of specific characteristics, can meet the requirements of the list of conditions. It is looked that these products respect the conformity control.⁷¹ In this sense, a structure of control will be created in each Member State to guarantee that the products that benefit from a PDO or a PGI or that have a certification of specific characteristics fulfil the requirements of the list of conditions, in accordance with the mentioned dispositions.

⁶⁸ *Ibidem*, art. 8. Vid. also: COM (99) 374 final: cit., p. 5-8.

⁶⁹ Commission Regulation (EC) n° 2515/94, of 9 September 1994, amending Regulation (EEC) n° 1848/93 laying down detailed rules for the application of Council Regulation (EEC) n° 2082/92 on certificates of specific character for agricultural products and foodstuffs, OJ L 275, 26.10.1994, p. 1-2.

⁷⁰ COM (99) 374 final: cit., p. 7.

⁷¹ Regulation (EEC) n° 2081/92, cit., para. 10.1; Regulation (EEC) n° 2082/92, cit., art. 14.1.

The control structure will comprise one or several designated control services and/or private organisms authorized to this purpose by the Member State; once these control services are provided, each Member State will send to the Commission the list of authorities and/or authorized organisms and their respective competences. Immediately afterwards the Commission will publish all this information in the Official Journal of the European Union. These services and/or control organisms will have to offer sufficient guarantees of objectivity and impartiality to the producers or transformers submitted to their control. For that reason, its organizational chart had to permanently have experts and the necessary means to carry out the controls of the agricultural products and foodstuffs that show either a protected denomination or a specific certification.⁷² As regards the costs caused by the controls carried out, they will be paid by the consumers, which, in practice, brought about a lot of criticism since the expenses were quite high, especially for medium and small producers.

Five years after the Regulation (EEC) n° 2082/92 came into effect, on the basis of the art. 21, the Commission submitted a report to the Council about the profits achieved in the field of the certification of the specific characteristics of agricultural products and foodstuffs. Thus, among other considerations, the assessment of the Commission was positive since it considered that the norms regarding the controls organized and conducted by the Member States adjusted to the conditions imposed by art. 14 and, on the other hand, it

recognized that complaints had not been submitted, which led to think that the controls had been made correctly, totally respecting the considerations of objectivity and impartiality.⁷³

Obviously, all these aspects are directly related to the questions of food safety that, so far, have been object of study on the part of the CJEC in few occasions. In our opinion, this situation is related, to a great extent, to the novel character of the application of the HACCP on an EU scale. Although, we think that the number of subjects raised to this Court about situations related to this system of control will increase soon.

Among the judicial uprising of the CJEC we could extract that this Court has considered which of the controls carried out outside the production region offer less guarantees of security for the quality and the authenticity of the product that the ones carried out in the production region, respecting, also, the procedure provided in the list of conditions.⁷⁴ This position could be understood from a double perspective: on the one hand, the controls conducted according to this last procedure have a meticulous and systematic character. For that reason, it is necessary that these operations of control are in the hand of professionals with a specialized knowledge of the characteristics of a specific food product. And, *on the other hand*, it is hardly imaginable that the representatives of the beneficiaries of the PDO can effectively establish such controls in the other Member States. The CJEC has also considered that the risk for the quality and the authenticity of the

⁷² There is also the possibility that the control is carried out by another organism that resorts to the designated authorized service. In this situation, this organism will have to present the same guarantees that the one that had the initial authorization to do it, although the responsibility of the conducted controls is not delegated in the new organism in charge to carry out the control at issue.

⁷³ COM (99) 374 final: cit., p. 21.

⁷⁴ Judgement of the Court, of 16 May 2000, Belgium/Spain, C-388/95, Rec. 2000, p. I-3123, punto 67; *Consorzio del Prosciutto di Parma and Salumificio S. Rita*, cit., para. 75.

product which is finally available to the consumption is higher when some operations of its production are carried out outside the production area rather than when they are made inside the area.⁷⁵

Conclusions

Throughout this paper, we have intended to draw the route of the objective of food protection within the framework of the CAP, all along the Treaty signed in Rome in 1957 to the present time. As we have pointed out, although the profit of a viable protection of the Community consumer has always been intimately related to the accomplishment of the internal market (within the framework of the free movement of goods), its later reception by other Policies of the Union has been, to our point of view, the logical evolution of the integration process that the EU has

experienced, mainly along the last two decades. It would be enough to mention that within the framework of the CAP the food safety has managed to progressively constitute its third pillar, currently boasting an outstanding place in the attainment of its objectives.

As we could see along this paper, the concept of food protection of the European citizen is considered in all the EU framework, not only in an isolated Community Policy, but it inspires different Community Policies, CAP being one of the most outstanding.

Of all that has been said, the CAP has been progressing in its mechanisms and legal instruments towards a more and more relevant integration of the concerns relative to the consumer's health protection and to the food safety in the objectives to be reached.

⁷⁵ *Belgium/Spain, cit., para. 74; Consorzio del Prosciutto di Parma and Salumificio S. Rita, cit., para. 76.*