

Third Round Table
Food Safety: Coordinating European and National Powers and Judicial Review of Rulings in This Area

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To put it frankly, when I made my notes for today's conference, I was excited and constrained in the very same moment. Excited as I was discovering something new - an area of law and regulation that I do not face very often in my judicial work. Constrained for the same reason. To make a long story short, it is very difficult to find examples of a judicial review dealing generally with food safety and it is impossible to find any example of a judicial review dealing specifically with plant protection products in the Czech Republic.

It would be very easy to finish my presentation in this point. Nevertheless, I have tried to analyze some points that might be interesting for us and I am very open to any comments, remarks or questions during the discussion. Lacking sufficient incoming data, I am leaving aside highly interesting question why there are not disputes concerning this area of regulation. It is possible even if not probable that perfection of regulation does not raise questions that would cause judicial activity. It is possible and more probable that relatively limited number of administrative decisions in the area of plant protection products enables close cooperation between applicants and administrative bodies what limits contradictions.

It is quite obvious that other reasons for such a situation can exist. When the Czech Republic faced its biggest food safety affairs, they did not result in judicial proceedings. European cucumber/salad affair, huge methyl alcohol affair half a year ago, technical salt in food products from Poland, or recent horse meat contamination of different meat products are just a few examples of events that provoked activity of administrative bodies, resulted in measures that without any doubt affected rights of number of persons, but none of them found its way to a court. Contrary to these RASFF type of affairs we had a number of cases dealing with food labelling and consumer deception – indicating different than real origin of grapes in wine products etc. There were also other types of court proceedings, ie. criminal proceedings against natural persons in the methyl alcohol affair. Nevertheless, these cases do not match the theme of our conference.

There are few administrative authorities and agencies that have competence in the area of food safety in the Czech Republic. The most important ones dealing with plant protection products are the Ministry of Agriculture and especially the State Phytosanitary Administration, which is subordinate to the Ministry of Agriculture. It is a state plant protection organization in accordance with the International Plant Protection Convention and it is the authority responsible for exercising its powers in the field of phytosanitary care and in compliance with the laws of the European Union.

Following the provisions of the EU legislation, including Regulation (EC) No 1107/2009 of the European Parliament and of the Council (*and Commission Regulation (EU) No 544/2011, Commission Regulation (EU) No 545/2011, Commission Regulation (EU) No 546/2011, Commission Regulation (EU) No 547/2011*) and national legislation, mainly Act No 326/2004, on phytosanitary care (*and amendments to certain related acts, and the Decree No 329/2004, concerning plant protection products and other plant protection means*), main activities of the State Phytosanitary Administration - Plant Protection Products Section are: 1) assessment of the compliance of criteria for authorisation of plant protection products, auxiliary plant protection means and bioagents; 2) evaluation of active substances of plant protection products according to the review programme of the European Commission; 3) control of plant protection products placed on the market (*in cooperation with regional branches of the State Phytosanitary Administration*); 4) keeping an official list of authorised plant protection products, auxiliary plant protection means and bioagents; 5) certification of qualification of natural persons or legal entities for testing of plant protection products according to the principles of Good Experimental Practice (GEP).

Two EU Guidance Documents have been noted which outline the process for intra and inter-zonal work-sharing and the submission format of such applications to all MS that apply at the EU level (1) *Guidance document on a process for intra & inter-zonal work-sharing to facilitate the registration and re-registration of plant protection products following inclusion of an active substance in Annex I of council directive 91/414/EEC (SANCO/6896/2009)*; 2) *Guidance document on the presentation and evaluation of dossiers according to annex III of Directive 91/414/EEC in the format of a (draft) Registration Report (SANCO/6895/2009)*). The Czech Republic follows the procedures as foreseen by these guidance documents.

However, as I have indicated, we have not faced any judicial dispute resulting from these administrative procedures yet.

Having such a dispute, how would we deal with it? It seems that EU aspect or documents coming from another member states would be tested by the national court. There is a decision of the Supreme Administrative Court under which registration of someone in the register of European Carusel Network and dissemination of information about such a registration is subject to a judicial protection in the action against unlawful interference (*decision from 16. 11. 2010, no. 9 Ap 5/2010 - 81*). In accordance with this opinion the same court in another case declared report of OLAF to be written evidence that can be tested by other pieces of evidence but in a very same moment the court fully accepted OLAF's finding and refused reasons of the applicant (*decision from 10. 8. 2011, no. 1 Afs 44/2011 - 85, or decision from 29. 3. 2013, no. 8 Afs 34/2012 - 64*). It seems highly probable that in RASFF type of affairs a judge would evaluate proportionality reflecting precautionary principle. It is quite clear that a preliminary reference procedure would be used if necessary. However, any such a presumption is only speculation as long as we do not have an applicant willing to bring a case to a court.

Following these principles based on case law of the Czech Supreme Administrative Court, we can find answers to the questionnaire too.

Let's presume that it is the Czech Republic, whose administrative bodies checked retailers and food manufactures and issued interlocutory measures in order to protect consumers (ban of selling chicken) and RASFF notification. In such a case, retailers and manufacturers directly affected in their rights and obligations by the administrative acts could bring an action to administrative courts and an action against unlawful interference because of RASFF notification. Nevertheless, if administrative measures would not be addressed to retailers and manufacturers in other member states, they would not have standing because of impossibility to prove direct affection in their rights and obligations.

On the other hand, if administrative bodies of other member state took interlocutory measures in order to protect consumers, there would be a lack of subject of proceedings in front of Czech courts. Of course, if the Czech inspection authority fails in its own investigatory procedure, assessing data from RASFF in inappropriate or inadequate manner etc., there might exist standing of affected persons. The consumer advice made by public authorities could be under certain circumstances considered as unlawful interference.

In any case, media reports might generally lead to compensation of damage based on civil law.

Finishing my PhD thesis, I concluded that judge, reading morning newspapers, often thinks "this would be a great case to work on" – but it takes months and years till life brings such a case to his table and sometimes it brings never. Well, our conference raises many interesting and fascinating intellectual challenges and I can only think – these would be great cases to work on. And I hope that some of them will come to my table.