

Food Must be Controlled

Siniša Franjić*

Faculty of Law, International University of Brcko District, Brcko, Bosnia and Herzegovina

***Corresponding Author:** Siniša Franjić, Faculty of Law, International University of Brcko District, Brcko, Bosnia and Herzegovina.

Received: July 12, 2019; **Published:** August 08, 2019

DOI: 10.31080/ASNH.2019.03.0400

Abstract

Nutrition is one of the needs of every man on Earth. The most important thing is to enter a sufficient quantity of nutrients every day so that the human body is kept in a healthy state. The opposite is malnutrition, which weakens the immune system of humans and makes it suitable for various diseases, from cold to pneumonia. Healthy or proper nutrition is a nutrition that provides optimal entry of calories, vitamins, minerals and fluids, and an optimal ratio of proteins, carbohydrates and fats to ensure body's needs for energy and protective substances.

A food business entity responsible for food information is an entity under his name or name of a company food placed on the market. The food business entity is responsible for providing food information and must ensure the presence and accuracy of food information in accordance with applicable food information regulations and the requirements of the relevant national regulations. Food business entities that have no influence on food information may not receive food that, on the basis of information they have as experts, know or assume that they does not meet with the applicable food information regulations and the requirements of the relevant national regulations. Within their business, food business entities may not change food information if such information could cause the ultimate consumer to mislead or otherwise reduce the level of consumer protection and the ability of the final consumer to be informed when choosing. Food business entities are responsible for any changes in information that accompanies food.

Keywords: Food; Law; Health; Business

Introduction

Over the years, a growing number of scholars have been involved in different aspects of agricultural law, which is an inspiring and challenging field [1].

It is challenging from a "technical" point of view because it embraces international, national, and subnational norms and institutions. It also involves several other related disciplines, such as commercial law, contract law, administrative law, law on finance and credit, labor law, the legal framework of insurance, intellectual property regulation, trade law, to mention just a few.

It is also challenging from a "political" viewpoint because it tackles key complex issues, such as the governance of the global food system, the maintenance of agricultural natural resources, the world trade of commodities, the agribusiness sector. As recently reported, "a strong agricultural economy is the key to a peaceful

society. Without a reliable supply of safe, affordable food, the future will be one of famine, disease, and disorder on a global scale." In fact, good agriculture policies and the modernization of the agri-food sector play a huge role in one of the most significant political and socioeconomic challenges that States are currently facing, notably in the area of migration, which usually originates from rural regions.

This branch of law is inspiring because it deals with fundamental rights and values. It looks at the management of natural resources and securing the very basic needs of human beings in every corner of the world. Agriculture is an economic activity that not only produces food and fiber but also creates both tangible and intangible values. Regulating agriculture also involves rural development and, in most cases, the role of women and gender equality. It also means securing safe food and water, protecting the environment, and preserving the landscape.

The right to adequate food is intensely embedded in the international human rights system that evolved in the period after the Second World War, but also strongly interrelated with complex matters – both from a global practical perspective and from a legal theoretical point of view – that are not easily solved [2]. Therefore, it appeared to be not easy to give meaning to the content of the right to food, and to help Member States of the United Nations to implement this right in a suitable way in their national legal systems. It is no surprise then, that a large web of international institutions, each functioning within their own competences and mandates, are involved in the process of further developing the right to food. To establish a tertium comparationis for this research, it is necessary to discover what the right to food as a global right encompasses, especially on the matter of enforceability.

Food security

It appears likely that the world will continue to experience a convergence of multiple biophysical, biochemical and societal changes that have the potential to impact greatly on food security in the future [3]. For instance, the global population is expected to swell by almost one-third by 2050, and combined with overall increases in wealth (especially in developing countries), some have estimated that the actual demand for food could increase by up to 100% before the end of the century. However, the ability to meet this growing demand under the current trajectory will be severely limited by a number of factors, including potentially irreversible climate change, loss of biodiversity and the lack of available land suitable for agricultural expansion, to name a few. Moreover, the situation is further compounded by the sheer environmental impact of modern agriculture, which has the potential to further exacerbate climate change and has indeed already been responsible for a considerable share of the biodiversity loss that has occurred during the past century. In other words, the externalities of agriculture are no longer limited to bringing about societal instability and collapse, as was the case in pre-industrial times. Rather, recent studies indicate that there is ample reason to believe that the pervasive effects of 'conventional' agriculture have been extended to include the disruption of the very planetary systems and processes that have enabled agriculture to flourish through the ages.

There has, then, perhaps never been more pressing reason to ensure the sustainability of agricultural systems and to consider the role of farming in preserving the ecological resource base that current and future generations depend on for food security. In the European context, the need to pursue sustainable agriculture was definitively acknowledged in the Community's fifth environmental action programme (EAP), which stressed that the Common Agri-

cultural Policy (CAP) should strike a more sustainable balance between agricultural activity and the natural resources of the environment. More importantly, the EPA also provided a fundamental endorsement of the sustainable development paradigm, which has been central in defining the environmental scope of CAP objectives and legal instrument ever since.

Yet more than two decades after the adoption of sustainable development as the guiding growth paradigm, the ecological effects of agriculture remain significant, while reductions of its externalities continue to be incrementally integrated and pursued by the EU. In other words, although certain improvements have been made by successively 'greening' the CAP through the process of environmental policy integration (EPI), many aspects of European agriculture continue to display unsustainable outcomes given their negative effects on the ecological systems, services and processes that enable food cultivation and production.

The ever growing world population (nine billion by 2050) with its simultaneous increase in longevity, places substantial demands on agricultural production, the food industry as well as on the agricultural and food trade [4]. Added to this, are the growing middle classes in many countries in the world with changing demands and consumer preferences regarding qualitative supply and high quality food. The future central task of agriculture to provide food for a growing world population in sufficient and differentiated measure will become all the more important by reason of this increased quantitative and qualitative demand for food. Here, food security and food safety are intertwined to a high degree. From a fundamental perspective, the universal human right to food norm must be referred to. This includes the basic security of human existence with food (food security) as well as guaranteeing that no health risks emanate from food, including from drinking water (food safety).

In spite of all advances achieved in the war against hunger, food security and food safety are still not fully guaranteed globally. It was undoubtedly a success that, against the backdrop of the United Nation's millennium goals, the number of over one billion hungry people could be reduced. In the period from 1990 to 1992, 23.6% of the world population suffered from hunger, while it was 14.3% in the years from 2011 to 2013. This development has continued. While 842 million people in 2013 were affected by absolute hunger, 795 million people presently suffer from hunger and chronic malnutrition, primarily in the so-called developing countries and specific regions of the world. A further reduction in this number of starving people presents a great challenge for the world community in regards to food security and food safety. Furthermore,

around two billion people suffer from inadequate nutrition within the sense of the relative so-called “Hidden Hunger”. Here, there is a significant deficiency in vitamins, minerals and other vital substances (micronutrient deficiencies). Pursuant to the Sustainable Development Goals (SDG) of the United Nations, the following target goal was set for the Right to Food: “End hunger, achieve food security and improve nutrition and promote sustainable agriculture”.

In addition to providing food, the agricultural sector has the potential to alleviate poverty in developing countries as on average the contribution of agriculture to raising the incomes of the poorest is estimated to be at least 2.5 times higher than that of non-agriculture sectors [5]. In the transition towards the green economy, the food and agricultural sector will reduce negative environmental effects while increasing productivity and farmer incomes all the while ensuring food security for all, where food security is defined by the Food and Agriculture Organization (FAO) as ‘all people at all times have physical, social and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active, healthy life’. A key aspect of achieving food security is recognising that while intensifying crop production can boost the food security of millions of people around the world, increasing food production can contribute to problems including land degradation, water pollution, and depletion of water resources, all of which in turn threaten food security.

Food products

In its broadest terms food law is about protecting the public [6]. Nearly everyone in modern society relies on someone else growing or making the vast majority of the food we eat. We trust this food will not make us sick and will be exactly as declared on the label. In food we trust. This protection against harmful products in the enforcement or postmarket surveillance context is known as adulteration. The safeguard against fraudulent products, those whose labels do not accurately describe what the product contains, are known as misbranded, in the enforcement context. Prior to an enforcement action, both are considered under a broader umbrella known as the premarket approval process. The overarching aim remains the same—protect the consumer. The primary mechanism to achieve this goal is to ensure that the agencies tasked with enforcing food safety laws can inspect facilities and use enforcement tools to remove harmful or fraudulent products from the market. The enforcement tools also act as a deterrent. Deterrence and inspection together build trust and allow consumers to shop with confidence. The two also protect a brand’s reputation.

While food law is mainly regulated at the European level and despite the fact that free movement of goods is one of the most essential pillars of the European Union, technical obstacles to the free movement of food products are still widespread [7]. They occur when national authorities lay down specific and local requirements to be met by a given product, regardless of the fact that this product comes from another Member State where it is lawfully produced or marketed. Such national requirements may, amongst other things, relate to the designation, form, size, weight, composition, presentation, labelling or packaging of a product.

Such obstacles can considerably hamper food business operators in their commercial strategy. It is therefore of primary importance to anticipate such difficulties by examining how the free movement of goods is actually implemented by the Member States and to what extent they are allowed to adopt specific national measures.

The concept of food safety can take many forms [8]. Perhaps the most commonly thought of notion related to unsafe food is the acute illness that follows from foodborne contamination threatening the health of all users of the product. Food might also be unsafe if it contains an undisclosed ingredient that is harmful to a portion of the population, such as a common allergen. Another type of unsafe food might occur when an ingredient is unsafe to consume over time, such as trans fat, or becomes unsafe at high levels, such as caffeine. Finally, certain production practices may result in food of questionable safety, subject to inquiry and debate by scientists, as occurred with the addition of growth hormones and antibiotics to food-animal feed.

Business

The food and drink industry plays a central role within the European economy [9]. Its annual production is worth almost €600 billion, which amounts to approximately 15 per cent of the European community’s total manufacturing output. It also provides employment for over 2.6 million people. In recent years, however, the industry has experienced a series of food scares. Concerns about issues such as avian flu in chickens, eggs infected with salmonella and health risks posed by meat and, in the case of poultry, eggs obtained from animals fed on feedstuffs contaminated by dioxins, have all played a role in denting consumer confidence in food produce. Most recently, for example, concern that some pigs in Ireland had been given dioxin-contaminated feed led to the widespread withdrawal and destruction of Irish pork products. Perhaps the greatest impact upon consumer confidence came with the Bovine

Spongiform Encephalopathy (BSE) crisis that engulfed the European community in the late 1980s and early 1990s.

Trade in food is a major political issue [10]. EU Member States seek to preserve the customary method of manufacture for their traditional and national foodstuffs. National laws often reflect the preferences of consumers in each of the Member States. This, however, tends to fall foul of Community law obligations in one of two ways. Either these national rules inhibit the free movement of food in the Community by making it more difficult for producers in other Member States manufacturing the same or similar products to gain access to the domestic market of the host State contrary to Article 28 EC prohibiting quantitative restrictions on trade or measures of equivalent effect. Alternatively, no Member State can maintain national laws that are out of line with the harmonised EU standard introduced by way of secondary Community legislation. In relation to the former, Member States can plead various justifications for the existence of these trade-inhibiting rules before the Community Courts. Each Member State, or group of Member States, seeks to have the approximated compositional requirement and/or method of production as close to its existing standard as possible. The obvious advantage of this is that the less domestic producers have to modify their own method of production, the more the harmonised Community standard approximates to their existing practices. An example of the duration and intensity of the debate that can surround the introduction of these standardised Community rules was most famously seen in relation to the chocolate directive.

International trade

With increasing international trade in food, it is essential to have at least a general understanding of international food regulation [11].

International initiatives to coordinate international food regulation and facilitate trade can be divided into three categories: cooperation, mutual recognition, and harmonization. Informal cooperation has existed for many years in a variety of forms. For example, various organizations from the Association of Food and Drug Officials (AFDO) to the World Health Organization (WHO) provide opportunities for government officials to exchange information. In addition, FDA and USDA officials periodically meet with counterparts in other countries and regions.

More formal cooperative arrangements are typically put into memoranda of understanding (MOUs). These are much like MOUs between U.S. agencies, except that the U.S. Secretary of State must approve them.

Mutual recognition is perhaps the most desirable from a regulated perspective, because this eliminates duplicative approval requirements. For instance, as a precondition of import, the law requires USDA equivalency recognition for foreign meat inspection programs. Thus imported meats have already been inspected to U.S. equivalent standards before arriving at a point of entry.

The Food and Drug Administration Modernization Act of 1997 required that FDA begin the process of acceptance of mutual recognition agreements to reduce the burden of regulation and to harmonize regulatory requirements. In 1999, the United States and the European Community signed the "Agreement between the United States of America and the European Community on Sanitary Measures to Protect Public and Animal Health in Trade in Live Animals and Animal Products." This agreement covers a wide range of foods (all of animal origin), such as milk and dairy products, sea food, honey, wild game, snails, and frog legs.

Harmonization of food regulatory standards perhaps has played the most prominent role in efforts to facilitate trade. International standards for foods have been important since the 1960s, but newer trade agreements have enhanced the significance of these standards.

The production, distribution, and consumption of food, moreover, have been transformed alongside the globalization of economic activities, advancements in food science, development of transportation technology, and integration and consolidation of agri-food industries, and the creation of the World Trade Organization (WTO) [12]. Such transformed patterns have also posed new challenges to food safety, evidenced in the intensified scale, severity, frequency, and impact of foodborne illness outbreaks. Therefore, risks posed by unsafe food products can originate from a producer in one country and quickly spill over to many others, evolving from a local problem to a global concern within a short period of time. This necessitates effective and efficient international cooperation beyond unilateral efforts of individual countries—including standard setting, information sharing, technical and financial assistance, and collective responses to cross-border outbreaks.

Market failure

In many cases regulations are introduced to prevent market failure [13]. The regulatory efforts are put in place either to correct this failure, or to ensure that consumers are not adversely affected by the lack of a perfect market in a particular area. Market failure arises where the consumer is not able to play the role of disciplin-

ing the market by exercising choice, which, if safer food is the rational choice of consumers, should result in food businesses that offer unsafe products exiting the market, as consumers will not support such businesses. Consumers are not able to make the choice between safe and unsafe products and safe and unsafe food business operators, because consumers are unable to judge whether a particular product poses a risk.

Consumers who purchase food are exposed to a classical information deficit, with the risk of food-borne illness being impossible for consumers to judge. Food-borne illness organisms are microscopic, and a consumer is unable to see whether a food contains such organisms or not. Of course, consumers are able to identify food that is more or less risky, by considering the style of preparation or examining the physical condition of the food, but this does not provide sufficient information for a consumer to decide whether to purchase food based on its safety attributes.

Similarly, the hygiene conditions of food businesses are difficult for consumers to judge, with food preparation taking place away from public view, even in businesses to which the public have access, such as restaurants. Consumers do not see how food is stored, they do not see the pest control measures that are taken and they do not see the measures taken to prevent cross-contamination. This important information, which would allow consumers to make rational decisions regarding whether to purchase food from a particular food business operator, is simply not available to them.

Conclusion

Healthy foods are foods that are acceptable for consumption, without harmful substances in quantities that could acutely or chronically endanger human health. The criteria for health food safety depend on the type of food and ingredients, the risks to the environment, the use of agrotechnical measures, production technology, storage before and after delivery to the customer. In order to properly evaluate product safety, it is necessary to perform all the analyzes of certain parameters relevant to a particular food category, which are not the same for all foods, but are changed depending on the health safety criteria. Precisely because of this, the complexity of an approach to assessing health safety depends not only on the techniques for determining the presence of harmful substances in food and other ingredients, but also on the expertise of the controllers and their knowledge of any type of food. All these activities related to food control enable laws and other legal regulations at national level. Every country in the world has its own food regulations.

Bibliography

1. Alabrese M. "Agricultural Law from a Global Perspective: An Introduction" (2017).
2. Alabrese M., *et al.* "Agricultural Law - Current Issues from a Global Perspective". Springer International Publishing AG, Cham, Switzerland (2017): 1-2.
3. Wernaart B F W. "The Enforceability of the Human Right to Adequate Food - A Comparative Study". Wageningen Academic Publishers, Wageningen, The Netherlands 8 (2013): 55.
4. Epstein A. "The Ecological and Perpetual Dimensions of European Food Security: The Case for Sustainable Agriculture" in Alabrese, M.; Brunori, M.; Rolandi, S.; Saba, A. (eds): „Agricultural Law - Current Issues from a Global Perspective“, Springer International Publishing AG, Cham, Switzerland (2017): 19-20.
5. Härtel I and Yu H. "Food Security and Food Safety Law" in Härtel, I. (ed): „Handbook of Agri-Food Law in China, Germany, European Union - Food Security, Food Safety, Sustainable Use of Resources in Agriculture“, Springer International Publishing AG, Cham, Switzerland (2018): 59-60.
6. Brears R C. "The Green Economy and the Water-Energy-Food Nexus". Palgrave Macmillan, London, UK (2018): 27.
7. Sanchez M C. "Food Law And Regulation For Non-lawyers - A US Perspective". Springer International Publishing, Cham, Switzerland (2015): 2.
8. Mahy A. "Setting the Scene" in Mahy, A. (ed): "Advertising Food In Europe - A Comparative Law Analysis", Lexxion Publisher, Berlin, Germany (2014): 9.
9. Pomeranz J L. "Food Law for Public Health". Oxford University Press, Oxford, UK (2016): 77.
10. Jack B. "Agriculture and EU Environmental Law". Ashgate, Farnham, UK (2009): 205.
11. MacMaoláin C. "EU Food Law - Protecting Consumers and Health in a Common Market". Hart Publishing, Portland, USA (2007): 6.
12. Fortin N D. "Food Regulation - Law, Science, Policy, and Practice, Second Edition". John Wiley & Sons, Inc., Hoboken, USA (2017): 481.

13. Lin C F. "The WHO in Global Food Safety Governance: A Preliminary Mapping of Its Normative Capacities and Activities" in Steier, G.; Patel, K. K. (eds): "International Food Law and Policy", Springer International Publishing, Cham, Switzerland (2016): 52.
14. Hyde R. "Regulating Food-Borne Illness - Investigation, Control and Enforcement", Hart Publishing, Oxford, UK (2015): 3-4.

Volume 3 Issue 9 September 2019

© All rights are reserved by Siniša Franjić.