

THE LEGAL SYSTEM FROM ROMANIA. THE INSTITUTIONS WITH AN ACTIVE ROLE IN THE IMPLEMENTATION OF FOOD LEGISLATION, THE LIABILITY OF MANUFACTURERS IN THIS FIELD AND CONSUMER'S PROTECTION

Carmen-Mariana MIHALACHE¹

av_carmen_diaconu@yahoo.com

Abstract

The right of the consumer to information is in consonance with the European Union policy on health and safety and food safety of European citizens. The three "S" raise the problem of a real legislative balance and not only between manufacturers and consumers in the context of the industrial revolution that has profoundly changed the way of food production both of the finished product and raw materials, marked by the current use of an intensive agriculture.

Key words: consumers, the principle of equality of rights, the right to health protection

Any legal system is linked to the notion of state, the concept of age organization always associated with that of order, with the report of conformity established between the state and the citizen, who is bound to obey the latter, thus, otherwise it will be obliged to support the application of some legal sanctions depending on the importance of the legal rules infringed. The legal system in Romania is a pyramid one, in terms of the classification of the laws, the Constitution, being the fundamental law that establishes aprioristic the role of each priority institution of the state.

The Revolution from 1989 marked the vote of a new fundamental law, a new Constitution promulgated in the year 1991 and revised in the year 2003. Compared to the current fundamental law, Romania is a republic as form of government; the parents of the Constitution from 1991 didn't take the tradition of a constitutional monarchy. We could say that by keeping the form of government called Republic (Article 1, the Constitution of Romania, called "Romanian state"): (1) Romania is a national, sovereign and independent, unitary and indivisible state. (2) The form of government of the Romanian state is the republic. (3) Romania is a state of law, democratic and social, in which human dignity, rights and freedoms of the citizens, free development of human personality, justice and political pluralism represent supreme values, in the spirit of the Romanian people's democratic

traditions and ideals of the Revolution from December 1989 and they are guaranteed.

(4) The State is organized according to the principle of separation and balance of powers - legislative, executive and judicial - within the constitutional democracy. (5) In Romania, the observance of the Constitution, its supremacy and the laws are mandatory), it was maintained a link with the socialist past, with scoring the fact that it was sought to regulate a democratic republic and not a socialist one. The current constitution is structured into 8 titles: Title I - "General Principles", Title II - "Rights, freedoms and fundamental duties", Title III - "Public authorities", Title IV - "Economy and Public Finances", Title V - "Constitutional Court", Title VI "Euro-Atlantic Integration", Title VII - "Revision of the Constitution", Title VIII - "Final and transitional provisions".

It enshrines as a principle of the current form of government, that of sovereignty, a principle that enshrines democratic republic, the people exercising power through freely elected bodies and by referendum, seen as a form of democratic consultation of the people's will.

According to the Constitution, the territory of Romania is inalienable (It can not be alienated, the territory of the Romanian state through the light of the public side, it cannot be spread through contracts of sale and purchase, but only be administered through contracts such as that of concession or lease;) and is organized into districts,

¹ University of Agricultural Sciences and Veterinary Medicine of Iași

communes and municipalities³(In the light of the current discussions about regionalization and the emergence of new forms of administrative organization, article 3 paragraph 3 from the Constitution it is going to be amended), and the Romanian citizens are equal and free to organize parties, professional organizations and unions respecting the cultural and ethnic identity.

The Romanian Democratic State is organized according to the principle of separation of powers in the state⁴(The legislative power of the Parliament which issues laws, the executive power given by the Government and the President, the Judiciary Power represented by judicial courts which apply the law), its official language being Romanian language and the national symbols: the Romanian tricolor flag, the National Day of Romania -1st of December, the Romanian national hymn - "Wake up Romanian", the coat of arms and the seal of the state being established by organic laws.

It is established as rule and principle of acquisition of citizenship that of sanguinity, the Romanian citizenship of the child not being conditioned by the place of birth but by the fact that, at least one of the parents has Romanian citizenship (Article 5 from the Law 21/1991 - Romanian citizenship law, amended and republished (1) Children born on the territory of Romania, from Romanian citizen parents are Romanian citizens. (2) They are also Romanian citizens those who: a) were born on the territory of the Romanian state, even if only one parent is a Romanian citizen; b) were born abroad and both parents or one of them has Romanian citizenship.(3) The child found on the territory of Romania is considered a Romanian citizen, until proven otherwise, if neither parent is known).

We consider that an important title of the Constitution of Romania in title of legal protection of the consumer remains Title II named "Rights, freedoms and fundamental duties". Article 5 from the Constitution of Romania amended in 2003 allows that, the conditions for acquiring the Romanian citizenship to be regulated by the provisions of an organic law such as Law 21/1991, the only constitutional principle that can not be breached in this matter being the impossibility to withdrawn the Romanian citizenship to the person who has acquired it by birth. It is fundamentally how citizens understand how to exercise their rights and fundamental freedoms in close touch with the fundamental duties, balance necessary to not committing an abuse of law or per a contrario not to exercise on abusive and teasing manner the rights enshrined in the Constitution of Romania and other organic laws.

Therefore in consonance with the above written it remains as a principle and a fundamental rule, *the principle of equality of rights* legislated by Article 16 from the Constitution of Romania which states that *no one is above the law and that all citizens are equal before the law*. Thus they can accede to civil public functions or military or public dignities, any person who is a citizen of Romania and is domiciled in the country or any European Union citizen who gathers the conditions of admissibility foreseen by national organic laws.(Law 188/1999 on the status of the public clerk, Law 340/2004, republished in the year 2008 regarding the prefect and the prefect's institution, etc.)

MATERIAL AND METHOD

Given the nature of the legal work we studied the specialised applicable legal texts, such as Constitution of Romania, Law 296 from 2004 regarding the consumption code, OUG 195 from 2002, Regulation (EC) no. 178/2002 of the European Parliament and of the Council from the 28th of January 2002, the Commission, EFSA and the Member States may establish a general plan for crisis management.

RESULTS AND DISCUSSIONS

Articles 20, respectively 21 of the Constitution of Romania revised in 2003 sits the effective Romanian state on a global axis in a spirit of respect for humanity and equality. Consequently, in the event of a dispute, the citizen who has free access to justice (according to article 21 from the Constitution of Romania and with lower costs, at least in terms of contentious administrative matter⁷- In the light of the provisions of the Law no. 146 from 1997 as amended and republished, on stamp duties, in contentious administrative matter, establishes stamp duties, payable in the local budget account of the local administration in which the plaintiff has established his domicile for tax, a fixed amount usually between 4 lei and 39 lei. Free access regarding the tax contentious administrative legislated by the Constitution of Romania according to the Article 21 envisages the procedure prior to challenge administrative or fiscal acts which infringe a right or legitimate interest of the citizen-individual or legal entity had in view by the Law 554 from 2004 on the contentious administrative.) is entitled to international or legislated rights enacted by the European Convention on Human Rights more favorable than those of the internal law.

The Romanian Constituent devoted the following rights and freedoms: **the right to life and to physical and mental integrity** (Article 22 from the Constitution), **the personal freedom** (Article 23 from the Constitution), **the right of defense** (Article 24 from the Constitution), **free movement** (Article 25 from the Constitution), **the right to intimate, family and private life** (Article 26 from the Constitution), **the right to inviolability of the home** (Article 27 from the Constitution), **the right to secrecy of correspondence** (Article 28 from the Constitution), **freedom of expression and implicitly freedom of religion** (is established by articles 29 and 30 from the Constitution), **the right to information** (Article 31 from the Constitution), **the right to education** (Article 32 from the Constitution), **the right of access to culture** (Article 33 from the Constitution), **the right to health protection** (Article 34 from the Constitution with reference to social protection provided for young, minors, disabled persons, covered by Articles 49 and 50 from the Constitution), **the right to a healthy environment** (Article 35 from the Constitution), **the right to vote** (Article 36 from the Constitution), **the right to be elected** (Article 37 from the Constitution), **the right to be elected in the European Parliament** (Article 38 from the Constitution), **freedom of meetings** (Article 39 from the Constitution), **freedom of association** (Article 40 from of the Constitution), **the right to employment and social protection of labor** (Article 41 from the Constitution with reference to article 42 which expressly prohibits forced labor), **the right to strike** (Article 43 from the Constitution), **the right to private ownership** (Article 44 from the Constitution), **economic freedom** (Article 45 from the Constitution), **the right to inheritance** (Article 46 from the Constitution), **the right to petition** (Article 51 with reference to Article 52 which legislates the right of the person aggrieved by a public authority which provides remedies consisting in the cancellation of the administrative act that brought to the lesion of the personal or legitimate interest).

In the light of the rights and freedoms enshrined by the Romanian Constituent and previously exposed, the rights consecrate in favor of the consumer by *the Law 296 from 2004 regarding the consumption code* are a tinting of some rights and freedoms such as: **the right to life and to physical and mental integrity** (Article 22 from the Constitution), **the right to health protection** (Article 34 from the Constitution), **the right to information** (Article 31 from the Constitution), **the right to petition** (Article 51),

freedom of association (Article 40 from the Constitution). Citing the provisions of article 27 from the Law no. 296 from 2004, the consumers have certain rights such as:

1. *the right to be protected against the risk of purchasing a product or carrying out a service that are likely to prejudice their life, health or safety or to affect the legitimate rights and interests*

This special right of the consumer has as a previous frame article 22 and respectively article 34 from the Constitution of Romania grafted on several assumptions:

- a. *the life and integrity of any person, who either has a permanent or temporary residence in Romania, either is visiting it or even if it has no physical contact with our country, but is the recipient of a product "made in Romania";*

Thus the manufacturer that produced a good has as main obligation to produce a safe product that does not endanger the life, health, physical and mental integrity of the consumer as long as the latter respect the use manner of the product specified in the technical instructions that must accompany the product together with the warranty certificate issued by the manufacturer.

- b. *the life and integrity of any person, who either has a permanent or temporary residence in Romania, either is visiting it, but is the recipient of a product "made in Romania";*

The range of services that can be provided is very broad and each type of service has its own characteristics.

We issue as a general principle, that in this case the service provider, which is the equivalent of the manufacturer, in terms of consumer code, would have to comply with the legal conditions envisaged by the authorities at the time of its authorization (ie. in the case of the transport service of any product we can call into question its safe transportation to the destination specified in the contract of carriage or in the written order coming to the transporter by any means of communication, the safety aims once the vehicle, the packing conditions imposed by the fragility of the object delivered on the one hand, and on the other hand, the driver, the vehicle must meet technical operating conditions required by the Traffic Authority and the driver has to have a permit for the category of the vehicle he drives, compared to OUG 195 from 2002).

From our point of view through the regulation manner of Article 27 letter "a" from the Law 296 from 2004, the consumer is protected in two situations:

- a. a possible danger to the life, security, physical and mental integrity, the danger did not occur reasoned by the fact that the product was not effectively consumed but only acquired, and the provision of a service that was not provided, but only required the provision and the consumer, the potential beneficiary considered it to be non-compliant;
 - b. a danger effectively produced and that affected the effective life safety, its physical and mental integrity (possible examples: a drug sold expired and effectively consumed, the consumer being actually admitted to hospital, as a result for consuming these pills expired, the effective consumption of the contaminated food from various reasons, the use in the composition of ingredients not listed on the label of the manufacturer and prohibited by law, keeping the product for sale in improper temperature conditions, etc.).
2. *the right to be informed fully, fairly and accurately*, over the essential characteristics of the products and services, so that the decision to be taken in connection therewith to better meet their needs and also *to be educated as consumers*.

This special right derives from Article 31 of the Constitution and highlights the real possibility for the consumer to opt for a service or product knowingly.

The right of the consumer to information is in consonance with the European Union policy on health and safety and food safety of European citizens.

The three "S" raise the problem of a real legislative balance and not only between manufacturers and consumers in the context of the industrial revolution that has profoundly changed the way of food production both of the finished product and raw materials, marked by the current use of an intensive agriculture.

The Industrial Revolution was marked by finding scientific resolving of a possible global hunger crisis in the context of a growing population and scarce resources and hence depleting that caused both the use of food additives and emulsifiers in order to prolong the validity of food and genetic improvement of plants and animals in order to increase their productivity.

In this context the concept of "safe and healthy" is something relative, everything being in relation to the analyzes that reflect negative or positive effect of certain

Currently, at the level of the European Union, in the area of the human food safety and food standards that must be observed regarding the feed, it is applied the Regulation (EC) no. 178/2002 of the European Parliament and of the Council from the 28th of January 2002.¹The Regulation tries to ensure that the union space opened to free movement of goods is a safe and healthy space in terms of quality and safety of products that are sold. As safety standards, it is established that no food products hazardous to health and, or unfit for human consumption cannot be placed on the market. The criteria taken into account by the European legislator in order to determine if a food product presents or not safety, is related to the normal conditions of use, the information offered to the consumer, the immediate or delayed probable effects on health, the cumulative toxic effects, the specific sensitivity of some consumers.

When a food product which is unsafe is part of a lot or batch of food, it is assumed that the entire lot or batch is unsafe, and consequently it cannot be commercialized anymore. The same in case of the animal feed identified as unsafe, this one cannot be placed on the market or gave to animals from which it is obtained food products.

The Regulation for establishing the principles and general consequences of the food legislation, for the institution of the European Food Safety Authority and for establishing the procedures in the food products safety area, does not exclude the liability of the operators; they are classified as those that apply food legislation at all stages of the food chain, from production and processing to transportation, distribution and supply of food. In this context it is assumed the responsibility of the operators to ensure the compliance of the entire technological and marketing process of the products in all stages of production, processing and distribution, implicitly in terms of substances contained in food or that enters in contact through an improper storage.

In conclusion if an operator considers that a food is harmful to human or animal health, it shall immediately initiate procedures to withdraw from the market and inform the competent authority accordingly. If the product may have reached the consumer, the operator is obliged to inform the consumer and recall products already provided, in order to destroy them.

Despite food safety standards imposed by this regulation, where the importing country does not wish to apply, the consumer becomes vulnerable, only remaining protected by the correct application of the legislation in the labeling area,

regarding the country of origin and the components of the product exposed for sale.

The European Food Safety Authority (named in brief EFSA) has the task to provide scientific and technical advice and assistance in all areas affecting food safety, the authority being an independent source of information and ensures the communication of risks to the public. Thus the participation in EFSA is open to EU Member States and the countries applying EU legislation on food safety.

In the prerogative powers of EFSA there are also included the coordination of risk assessment and the identification of emerging risks, providing scientific and technical advice to the Commission, including in the crisis management procedures, data collection and publication of scientific and technical data from the food safety area, creating European networking bodies involved in food safety.

At the community level functions thus The Rapid Alert System (EN) RAPEX which involves the Member States, the Commission and EFSA, a system that enables sharing information regarding the measures aimed at restricting the placing on the market or market withdrawal of food, actions enterprise together with professional operators for the regulation of food use, rejection of a food batch by a border control from UE. In the case of food risk identification, the information disseminated under the alert system must be made available to the public. Emergency situations can appear when the food, including those imported from a third country, present an irresistible and major risk for human and animal health or the environment, fact for which the Commission is obliged to establish protective measures such as suspension of marketing or use of products from the EU or suspension of imports of products from third countries.

The mechanism also works if the Commission does not act after being informed of the existence of a major risk, the Member State concerned may take protective measures. Consequently to the protection measure applied to the Member State, within ten working days, the Commission shall inform the Permanent Committee on the Food Chain and Animal Health for the extension, modification or revocation of national measures. We appreciate that if a Member State considers that the revocation of the measure of food security at the national level by the Commission characterizes it as abusive, it can address to the European Court of Justice.

In situations involving direct or indirect risks to human health and that are not covered by Regulation (EC) no. 178/2002 of the European

Parliament and of the Council from the 28th of January 2002, the Commission, EFSA and the Member States may establish a general plan for crisis management.

Although the consumer policy is centered on the principle of consumer information, of his education, in order to turn him in a smart player on the market, in order to assume his choices on long term and not just on short-term, the policy of sanctioning the economical operators who don't comply with food safety and implicitly human health is focused on the precautionary principle referred to in Article 191 of the Treaty on the functioning of the European Union (EU).

The regulation of the precautionary principle is intended to ensure a high level of environmental protection by taking preventive decisions in case of risks. However, in practice, the application area of this principle is much broader and applies also to the policy of consumer's protection, the European legislation on food, human, animal and plant health.

Defining the precautionary principle aims to establish a positive impact also internationally on ensuring an adequate level of protection of health and the environment in international negotiations. In fact, it has been also recognized by different international conventions, in particular the Agreement on Sanitary and Phytosanitary Measures (SPS) concluded within the World Trade Organization (WTO).

According to the Commission, the precautionary principle may be invoked when a phenomenon, a product or process can have dangerous effects, identified by a scientific and objective assessment, and this assessment doesn't allow the determination with reasonable certainty of the risk. The application of the precautionary principle thus falls in the general framework of **risk analysis** (which includes, in addition to risk assessment and management and risk communication), more exactly in the context of **risk management**, which corresponds to the phase of taking a decision. The Commission stresses that the precautionary principle may be invoked only in the event of a potential hazard and can not justify, in any case, an arbitrary decision

Therefore, the application of the precautionary principle is justified only if **three prerequisites** are met: identification of potential adverse effects, assessment of the available scientific data, scientific uncertainty degree.

The authorities responsible for risk management may decide to act or not to act, according to the degree of risk.

If the risk is high, it may take several categories of measures, which may include

proportional legal documents, financing some research programs, public information measures etc.

The application of the precautionary principle must be guided by three **specific principles**: a complete scientific assessment and determination as far as possible, the degree of scientific uncertainty, an assessment of risk and possible consequences in case of inaction, the participation of all the parts interested in the examination of the precaution measures as soon as the results of the scientific assessment and/or risk assessment are available.

In addition, the **general principles** of risk management remain applicable when invoking the precautionary principle. It is about the following five principles:

- proportionality of the adopted measures with the desired level of protection;
- non-discrimination in applying the measures;
- coherence of the adopted measures with the measures adopted previously in similar circumstances or using similar approaches;
- examination of the advantages and costs in case of action or inaction;
- review of the measures in the light of scientific progress.

As regards the burden of proof in most cases, the European consumers and the associations that represent them are the ones who must demonstrate the danger associated with a process or a product placed on the market, excepting the situations targeting drugs, pesticides or food additives. However, in case of some actions initiated under the precautionary principle, the manufacturer, the producer or the importer may be asked to prove the absence of danger. This possibility must be considered from case to case and cannot be extended to a general manner at all the products or processes placed on the market.

CONCLUSIONS

In conclusion, so that such a principle become applicable de facto and not ope legis in our country requires the consumer's education, awareness of its rights, encouragement of non-governmental organizations which have as objective the implementation of programs to inform consumers of their rights and legal means that they must access from the simple petition addressed to the County Commissioner of

Consumer Protection who must collaborate with the authorities such as the Department of Public Health or the Sanitary Veterinary Department up to Actions in tort Civil Responsibility in court of law, which should not be bearing the stamp fee.

From the perspective of jurisprudence, we see that the only processes with echo in the consumer's protection area are those regarding unfair bank fees from the perspective of the fee calculation and the established economic imbalance, regarding the bank credit agreements, due on Ordinance 50 from 2010 in conjunction with Law 193/2000 on abusive terms in contracts concluded between traders and consumers that held that the clauses for which the negotiation isn't proved can be regarded as abusive.

In Romania, unlike other European countries we do not find an actual civic consciousness and formation of a powerful educated food consumer. Without powerful non-governmental organizations in the food security area, it cannot be discussed by judicial decisions, potential judgments tort facts committed by the manufacturers through their manner of using food additives which in other countries are already considered harmful for health on long term.

At this moment the consumer's behavior is dictated by the price, by its financial possibilities, the only cases brought before being the toxic-infectious food and certainly not the recipes used by different producers that comply with the food law in force but can attack the long-term health of the population.

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