Polish Food Law in relation to EU Food Law

Małgorzata Korzycka-Iwanow
Professor of Law
Head of Food Law Department
Warsaw University

Viterbo, February 12-25, IP – Erasmus Global Food Law and Quality
Food Safety Law

- Food law is an area of shared competences to which pre-emption applies.
- Member State loses its competences on behalf of the EU - taking over a "field" in a given "area"
Member States must assume the position of executors of high EU standards:

- in protecting the health and life of food consumers by means of **suitable national legislation**
- including regulations concerning **administrative structures**
Polish law expresses the **Europeanisation** of Poland's legal order in respect of food safety.

Polish administrative structures directly execute European law.

Polish legislator is in the role of a "**connector**" between two separate legal orders: EU law and Polish law.
principle of subsidiarity

According to the principle of subsidiarity:

the EU assumed that the projected objectives cannot be effectively reached by Member States and should be realised in a higher degree by the Community- EU
Execution and Transposition

- the Polish legal language will speak of "execution" - in reference to EC instructions and

- "transposition" or "implementation" of EU law (in respect of directives).
Genesis of Polish legislation on food safety

- During the period of socialism, Poland preserved for quite a long time, i.e. until 1970, a highly rigorous pre-WW2 law dating from 1928

- more than half of the act was devoted to penal provisions
The 1970 Act on **health conditions of food and nutrition**, with its many executory instructions, laid down the principles

- mostly concerning the health
- quality of consumable products
- and collective catering establishments
With the late 1980s, as Poland prepared for accession to the European Union, the law required vital amendments (1989, 1992, 1997).
In 2001 the law of 1970 was replaced by a new Act on the health conditions of food and nutrition.

- Its main objective was to fulfil an obligation that arose from the Association Treaty, i.e. to align Polish legislation as completely as possible with EU law.
The particulars of the Polish legislation process

In comparison to other European countries, the Polish system is characterised by

- a considerably weaker role of government acts and administrative regulations vis-a-vis an expanded function of Parliament.
Constitution of RP

The binding Constitution of the Republic of Poland of 1997 reinforced the system even more by increasing the role of acts in regulating various administrative issues and downscaling the rank of government directives and administrative regulations.
This results in elaborate parliamentary acts.

Normative acts issued by the government are published in accordance to guidelines contained in the acts and have a merely executory, often technical, function.
"Public authorities shall protect consumers, customers, hirers or lessees against activities threatening their health, privacy and safety, as well as against dishonest market practices. The extent of such protection shall be specified by statute.,"
Art. 90 of the Constitution of the Republic of Poland

- The implementative nature of the food safety and nutrition Act among others stems from the constitutional provision that

“...the Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority relevant to certain matters”
The relations between EU legislation and Polish legislation in the food safety and nutrition Act

In the introductory general provisions of the fsn Act (Art. 1 and 2) the relations between European legislation and Polish legislation on food safety, fundamental to the legal order, have been set.
The multitude and variety of administrative organs indicates the absence of one "proprietor" of the domain of food safety, and the ensuing need for many procedures of coordination between the administrative entities positioned under the respective ministries.
Terms used in the title of the fsn Act

- "food" is defined by reference to Regulation (EC) No. 178/2002
- "food safety," has not been defined within European law, definition in fsn Act is not adequate to the matter
- term "unsafe food" - harmful to health or unfit for human consumption
- criteria take into account immediate as well as long-term health considerations
"Food safety" refers to a set of conditions, which must be fulfilled, concerning in particular:

a) additives and aromatic substances used,
b) pollutant levels,
c) pesticide residues,
d) food irradiation conditions,
e) organoleptic features

and actions, which must be undertaken at all stages of food production or trade in order to guarantee human life and health.
Europeanisation of the Polish legal order in the domain of food safety

- Structures of Polish administration have become European organs that directly execute European law

- Polish legislation constitutes real grounds for European law to be applied.
Polish Acts can be compared to a "road map"

Shows how to reach the objective:

- many instructions, references
- this does not mean one will learn much about the areas passed through - i.e. issues regulated in EU law
Not until the surroundings of the "road" are well explored is it possible to apply the

- full,
- integrated domain of legislation on food safety