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Topical legal questions of the food chain and its authority supervision¹

I have written the present article about the regulations of food chains, in the frame of which I would like to give a review on the current questions of the examined area as a summary of conclusions of my research as well as solutions for the problems in the field of legal regulations.

The topic of my work is the regulation of food chains, focusing on the administrative legal area, and in addition to the substantive legal regulations within this area, special emphasis was placed on the rules of procedure as well as their application.²

The main objective of my research was to prove my hypothesis, i.e. there is a number of problems in the field of legislation and the application of the law, which fact hampers the achievement of general and special legislation goals although the regulations regarding food chain safety are rather strict in Hungary and certain areas are regulated in detail. In the course of the research work I aimed to reveal the problems in the legislation of food chains, as well as the possible coherence issues, for the solution of which I hereby present my proposals.³

The subject of food chain regulations chosen by me as the topic of my research is the food on the one hand, and the behavioural forms and social relations related to it on the other hand, which mark the fundamental parts of agricultural⁴ and administrative legal areas to be assessed.

When approaching the topic of my work from the point of view of administrative law – in addition to the basic premises of administrative law, the taxonomic placement, and the presentation of characteristic features – I put the main emphasis on the regulatory elements of warranty in procedure law as, in my opinion, this is one of the main elements of the relationship between the entities in a hierarchical

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² Gellén – Patyi – Péterfalvi – Révész – Szalai – Takács – Temesi: *A közigazgatás funkciói és működése*, Nemzeti Közszolgálati Egyetem, Budapest, 2014, 56-57.; Ficzer Lajos: *A közigazgatási jog helye a jogrendszerben*, in: Fazekas Marianna – Ficzer Lajos (edit.): *Magyar Közigazgatási jog Általános rész*, Osiris Kiadó, Budapest, 2004, 55-57.

³ Andréka Tamás: *Az élelmiszerlánc jogi szabályozása*, in: Szilágyi János Ede (edit.): *Környezetjog II. kötet*, Novotni Kiadó, Miskolc, 2008, 14.; Olajos István: *Az élelmiszerlánc jogi rendszere*, in: Csák Csilla (edit.): *Agrárjog. A magyar agrárjog fejlődése az EU keretei között*, Novotni Kiadó, Miskolc, 2010, 443.

⁴ Szilágyi János Ede: *Az agrárjog dogmatikai alapvetései*, in: Csák Csilla (edit.): *Agrárjog. A magyar agrárjog fejlődése az EU keretei között*, Novotni Kiadó, Miskolc, 2010, 33-37.; Fodor László: *Agrárjog. Fejezetek a mezőgazdasági életviszonyok sajátos szabályozása köréből*, Debreceni Egyetem Kossuth Egyetemi Kiadó, Debrecen, 2005, 43-50.

structure, and this eventually affects the real objectives of legal consequences applied in administrative law to be achieved, i.e. special and general prevention.⁵

My research also covered the content analysis of some special old and new procedure law institutions, as well as the practical application, criticising the latter to reveal risks and problems. Considering administrative law I believe it is important to present the structure and organizational units of the related formations of the executive system, which are the part of the area that is necessarily related to the complete picture of regulations.⁶ Considering procedural law I just touched upon the system of legal remedies, which is, however, the most striking element of warranties in procedural law. However, I did not wish to emphasize the option of remedy against substantive and procedural legal sanctions, I would rather criticise the field of regulations in substantive law. In this effort I particularly focused on the issues related to administrative basic procedures, indicating questions of the regulation of implementation as well as its revealed problems.

Due to the diverse areas of regulations related to food chains, I primarily dealt with the regulations about production and distribution of food, as other fields like plant and soil protection would not fit within the frames of my work.

⁵ Váci Péter: A jó közigazgatási eljáráshoz való alapjog és az új Alaptörvény, *Magyar Közigazgatás*, 1st edition, June 2011, 31-35.; Szabó Lajos – Gyergyák Ferenc – Darák Péter: *A közigazgatási hatósági eljárás és szolgáltatás általános szabályai (Komentár a jogalkalmazóknak az új törvényhez)*, Unió Lap-és Könyvkiadó Kereskedelmi Kft., Budapest, 2005, 19-20. (hereinafter referred to as Comment 1); Kilényi Géza: Alapelvek, alapvető rendelkezések, in: Kilényi Géza (edit.): *A közigazgatási eljárási törvény kommentárja*, KJK-KERSZÖV Jogi és Üzleti Kiadó Budapest, 2005, 35. (hereinafter referred to as Comment 2); Róth Erika: Az eljárási jogok, in: Halmi Gábor – Tóth Gábor Attila (edit.): *Emberi jogok*, Osiris Kiadó, Budapest, 2008.

⁶ Keresztény Péter: Az élelmiszerlánc-biztonság szabályozása és érvényesítése a bírósági gyakorlat tükrében, Thesis, Pázmány Péter Katolikus Egyetem Állam-és Jogtudományi Kar, Agrárjogi-és Vidékfejlesztési szakjogász képzés, 2015, 4-5.; Laczay Péter: *Élelmiszer-biztonság. Élelmiszer-biztonság*, Mezőgazda kiadó, Budapest, 2008, 3-4.; Dr. Szeitzné dr. Szabó Mária: *HACCP és élelmiszer-biztonsági előírások az Európai Unióban*, Kereskedelmi és Idegenforgalmi Továbbképző Kft., 2013, 12.; Somogyi Árpád – Faludi Roland – Talabér Klára: Az Európai Unió élelmiszer-biztonsági szabályozása, in: Kovács Ferenc – Bíró Géza (edit.): *Élelmiszer-biztonság EU-szabályozás*, Agroinform Kiadó, Budapest, 2003, 15-21.; see: Mikó Zoltán: Állattenyésztési jog és igazgatás, in: Fodor László – Olajos István – Prugberger Tamás (edit.): *Agrárjog II. kötet*, Miskolc, Bíbor Kiadó, 1999, 48-59.; Szabó Ágnes: Élelmiszerek előállítására és forgalmazására vonatkozó szabályok, in: Fodor László – Olajos István – Prugberger Tamás (edit.): *Agrárjog II.*, Miskolc, Bíbor Kiadó, 1999, 68-83.; Jasinka Anita – Prugberger Tamás: Az élelmiszer-szabályozás rendszere, in: Csák Csilla (edit.): *Agrárjog. II. kötet*, Miskolc, Novotni Kiadó, 2005, 154-171.; Csák Csilla: Növényegészségügy, in: Csák (edit.): *Agrárjog*, Miskolc, Novotni Kiadó, 2006, 423-432.; Téglásy Péter: Az állategészségügyi jog és igazgatás, in: Csák Csilla (edit.): *Agrárjog*, Miskolc, Novotni Kiadó, 2006, 436-449.; Jasinka Anita: Az élelmiszer-szabályozás rendszere, in: Csák (edit.): *Agrárjog*, Miskolc, Novotni Kiadó, 2006, 472-486.; Olajos István: Élelmiszerjog, in: Olajos István – Szilágyi János Ede (edit.): *Az agrár- és környezetjog alapjai*, Miskolc, Miskolci Egyetemi Kiadó, 2005, 39-41.; Olajos – Szilágyi 2007, 121-126.; Bajor Rita: Élelmiszerjog, in: Olajos (edit.): *Agrárjogi gyakorlat II.*, Miskolc, Novotni Kiadó, 2006, 62-66.

In my opinion the field of law not having the appropriate rules and/or applied in the wrong way is almost as incomplete as the one with less or no regulations at all, with their harmful consequences for all societies.

At the beginning of my research my hypothesis was that food safety in our country – also due to EU regulations – can be considered as being at a high level in a global sense, and it is as strong as the average in the EU.

Risk factors can be identified and their legal solutions are basically appropriate. I suppose the procedural guarantees provided to the customer basically fulfill their functions, and are able to ensure the 'equality of arms', however, the specific nature of the food chain requires the supplementation of substantive law. Having a closer look at certain elements of substantive law and procedural law serving as a guarantee for food chain safety, we can realise that there should be a number of corrections as the stability of currently acceptable results in this field of regulations can be provided only by these necessary interventions in the long run. The first part of my assumptions was related to the procedural guarantees of administrative authorities, according to which the allowances provided to the client are basically appropriate in the course of official procedures related to food chains, and the subordinate position of the client is sufficiently balanced against the state through the legal institutions ensuring claim validation. However, in certain subareas the possible disadvantages for clients typical of the region can be revised by the incorporation of specific procedural rules.⁷ In addition, my hypothesis related to new legal institutions serving the interests of the client introduced in the Administrative Procedure Act, is that some of them still need refining, some are not sufficiently reasoned, thus inappropriate in terms of functionality.

The second main assumption of my hypothesis, i.e. critical points meaning risks for food safety can be identified, substantive rules - as a solution for them - are elaborated in detail, however, in the scope of safety there should be clarifications at the level of EU basic regulations as well.⁸

My third assumption is that the regulation of the domestic food chain – due to EU funds as mentioned above – is appropriately elaborated, but at this level of regulations several substantive legislative elements need corrections. Within the applied food legislative norms, problematic areas and coherence issues can be identified, besides that a part of rules of substantive and procedure law is applied and interpreted

⁷ See: Torma András: Hét tézis az EU és a tagállamok közigazgatása közötti kapcsolatról, in: *Sectio Juridica et Politica*, Miskolc, Tomus XXIX/2. 2011, 323-325.; Torma András: Kísérlet az EU-intézményrendszer működése igazgatástudományi modelljének leírására, *Magyar Közigazgatás*, 7-8/2002, 388-401.; Boros Anita: Uton egy európai közigazgatási (eljárási) jog felé, *MTA Law Working Papers*, Magyar Tudományos Akadémia /Hungarian Academy of Sciences Budapest, 2014/58, 31-34., in: http://jog.tk.mta.hu/uploads/files/mtalwp/2014_58_Boros.pdf (24.02.2016), as well as specific procedural rules.

⁸ See: A Bizottság Jelentése az Európai Parlamentnek és a Tanácsnak a tagállamokban az élelmiszer-biztonság, az állategészségügy és állatjólét, valamint növényegészségügy terén végzett hatósági ellenőrzések végrehajtásáról, COM/2013/0681 final, in: <http://eur-lex.europa.eu/legal-content/HU/TXT/HTML/?uri=CELEX:52013DC0681&from=EN> (24.02.2016), (hereinafter referred to as Report).

in the wrong way, particularly considering specific and faulty regulations related to instant interventions, as well as misapplication of the substantive decisions as interlocutory decisions. On the one hand, they create faulty legal practice, and result in legal uncertainty for clients, on the other hand they threaten the primary objective, i.e. the voluntary law-abiding behaviour, the necessary results of official intervention, the specific and general prevention, thus they lead to undesired legal consequences.

As for the sanctions, further legal institutions can be introduced, considering practical aspects, and according to my assumption, in respect to efficiency and effectiveness in terms of implementation there should be further discussions of legislative work.⁹

In terms of a presupposition it can be identified that in respect to EU regulations of food chains there is a great homogeneity in the field of national regulations of the countries, but the difference between certain elements of legal systems – particularly the differences between executive bodies, the applicable system of sanctions, as well as the special features of procedure law – provide different efficiency, as well as effectiveness for individual state members.¹⁰

I also have an assumption that other regulations related to possible administrative procedures affect food chain safety indirectly. Taking it into consideration, to achieve successful regulations it is worth calculating with criminal aspects of infringement on the most relevant topics, as well as the possible civil law consequences of the official procedure.

1. The applied methods of research

While writing my article it was difficult to find Hungarian or foreign studies and papers dealing with the analysis of regulations in force related to my topic and research.¹¹ The literature concerning my topic primarily takes food engineering and veterinary approach into consideration. In this respect, regulations are not completely ignored, but studies do not give a detailed description. In my opinion the significance of my work is that it approaches the topic from legal aspect as it studies the field of food chains from a new point of view. While doing my research, beyond the normative method I analysed case studies, used the legal comparative method. The information and data come partly from binding administrative decisions and rulings, partly from mandatory guides.

⁹ Szigethy Emma: Biztonságos élelmiszerekkel a lakosság egészségéért, *Élelmiszer-biztonság*, 2/2009, 5-8.; Bíró Géza: A hazai hús- és élelmiszer-vizsgálat története, in: Bíró Géza (edit.): *Élelmiszer-higiéniá*, Agroinform Kiadó és Nyomda Kft., 1999, 8-14.; Török Géza: *Az agrár-szakigazgatás rendszere*, in: Csák Csilla (edit.): *Agrárjog*, Novotni Kiadó, Miskolc, 2006, 501.; Csák Csilla: Agrárpolitika, agrárigazgatás, in: Patyi András (edit.): *Elektronikus képzési és távoktatási anyagok*, Nemzeti Közzolgálati Egyetem, 2014, 36.

¹⁰ See: Report, quoted work, footnote 7.

¹¹ I have found 76 related studies.

The work has four main parts, in the first one I examined the basics and peculiarities of administrative legislative relations, particularly the enforcement of customer rights and warranties, as well as the EU administration, which provide the theoretical foundation of the paper.

I focused on procedural principles within administrative proceedings, especially issues of remedy. I fully placed the new legal institutions of the administrative procedure act under a grammatical interpretation, including short cause, as well as temporary decision and I examined other procedural changes from the point of view of logic and coherence.

Primarily, I applied a normative method, beyond that I used analyses of case studies, in connection with which I studied authority decisions and rulings. In addition to the descriptive method it was also essential for me to use the method of grammatical interpretation. The new legal institutions were tested by a kind of model for legal case study analysis as the experience of their usage as new elements did not provide the material suitable for analysing a case.¹²

In the second part of my work I analysed the scope of questions about food safety being the subject of regulations, also dealing with their health implications, pointing out the most important risk factors. After that I introduced the related issues of the EU and I criticised some of their elements, as they determine the basics and framework of food law regarding the EU judicial environment.

Within the frames of the research I gave a general description of the areas meaning some safety risk, and touching the most important questions I introduced the EU regulations meaning the main points of food law, and as for the 'basic regulation' I studied the definition regarding the safety of food.

Primarily I applied a descriptive method for the analysis, in addition to it I focused on the most important parts of the related legal regulations and wanted to know if there are elements to be corrected in the – otherwise – coherent norms. As I wished to interpret certain legal rules in the right way, within the systematic interpretational method I used the arguments of context-harmonization (concepts of norms).

In the third – most detailed – part of my work I gave an overview of the development and current structure of the Hungarian executive organisation. I criticised the binding Hungarian – and some of the EU's – substantive legal regulations, and revealed deficiencies as well as coherence interferences with the help of analyses. I identified problematic fields which, on the one hand, appear in the content of substantive legal rules, as well as their wrong interpretation, and on the other hand, in the wrong application of the procedural norm, focusing on the specific and wrong regulations, as well as the incorrect usage of substantive decisions as interlocutory ones.

¹² Concerning the methods of legal regulations, see: Nizsalovszky Endre: Fogalomkutató és érdekkutató jogtudomány, a szabad iskola és a tiszta jogtan, in: Nizsalovszky Endre: *Tanulmányok a jogról*, Budapest, Akadémia kiadó, 1984, 12.; and directly: Szilágyi János Ede: *Eredetvédelmi kérdések a borjogban*, Miskolc, Novotni kiadó, 2009, 14-18.

They also hinder achieving the objectives defined by the a legislative body, this way I offered some solutions to eliminate this problem.

During my research I applied the most important elements regarding food chain regulations in a comprehensive way, and I studied the persons covered by food chain act in detail. Beyond that, the organisational system of food chains, as well as the specific tasks, liabilities and responsibilities of certain participants were introduced without depth. Details were given about the importance of giving information in connection with food, and their regulations. Without specifications, I reviewed the general and particular rules of authority control, but I thoroughly examined the directions of mandatorily applicable authority guide, which are considered to be of concern regarding procedure law.

I analysed the legal institutions of temporary measures, as well as those without the appeal in terms of enforceability declaration. The problem of the accumulation of resolutions was explained in line with its procedural grounding, and the scope of questions about the issues of official sampling and analysis is emphasized due to its significance. Within an international outlook I analysed the regulations of the Romanian food chain, and I also briefly presented the results of the FVO survey concerning the activities of certain Western European countries.

Primarily I used the normative method for the analysis of rules, within it I dealt with grammatical and taxonomical interpretation. I studied the appropriateness of the coherence between rules and used the legal comparative method, and I also tested the enforcement of the related data in terms of logic, and I also examined case studies. They were based on judicial decisions and court documentation.

Beyond the definition of EU regulations of food chain one can find the differences between the elements of legal systems of different countries. They contribute to the food safety of the country or the EU with different efficiency. To prove it, I made a comparison of legal regulations in Hungary and Romania, as an international outlook, and I also briefly touched upon statements about special fields concerning FVO controls in the EU.

In the fourth part of my work I studied the legal consequences, I methodized them to present their features, as well as points to be corrected. A problem was identified in the execution of regulations. Their efficiency is as important as it was in the case of last year's procedures.

Stepping out of the administrative law, on the one hand, I listed the criminal aspects of the activities of food chain participants, as well as civil law consequences coming from administrative law, which are narrower in terms of civil law.

I proved my statement in detail, legal consequences in food chains became systematic, however, I dealt with certain questions in executive procedure in depth. I revealed the food chain bordering administrative and criminal aspects. To prove my assumptions I applied the descriptive method of related acts, as well as the method of grammatical interpretation, also the analysis of case studies.

2. Propositions made during the research

I explained my conclusions made during the examination of food chain regulations, as well as my answers relevant to the revealed problems, and also my recommendations de lege ferenda in the given part of my work.

Among my first propositions one can find the short cause as a procedural correction, as well as my statements in connection with legal institutions. I also drew the attention to the anomalies of illegal appeal rulings, which need solutions due to adverse consequences possibly caused by the first instance authority.¹³

With reference to remedies concerning food chain authority procedures I made a recommendation to introduce *res judicata*, as real decisions can include several types of decisions and out of them those not debated could become binding.

I also recommended the exclusion of food safety in the case of non-traceability as the origin of food like that cannot be detected and the ingredients are not known.

I proposed the expansion of the full personal effect of the food chain law, this way the person selling food without permission could get under effect of the law instead of the current misdemeanor classification.

I called attention to the advantages¹⁴ of the legal regulation of food from wine and wine-based products as well as spirits, beyond that the inclusion of tasks in connection with animal rights, dealing mainly with animal wellbeing.¹⁵

With regard to the labelling of food products and informing customers I gave a proposition in connection with an EU rule, to show the name of the manufacturer – beyond the distributor – as a mandatory indication. In connection with the owner's provisions I recommended the delimitation of legal concepts of owner-holder.

I called attention to the problems of temporary measures of the appeal enforced regardless of declaration, as well as the accumulation of decisions. I also gave procedural responses to these problems.

I also revealed regulatory shortcomings after the analysis of the official sampling procedure, therefore I proposed the authentication of official samples.

While systematizing the procedural and substantive legal consequences, I provided a comprehensive picture of the food chain in relation to sanctions, adding new legal institutions, this way introducing administrative spot fines and a more severe sanction of food adulteration.

Considering the issue of enforcement of vicarious liability at the court of first instance I proposed statutory supplement in the case of bankruptcy or liquidation proceedings. Finally, as an indirect means of reinforcing the food chain safety,

¹³ See: Comment 1 and Comment 2, quoted work, footnote 4.

¹⁴ This trend as the possible way of development of wine law can be found in: Szilágyi János Ede: *Eredetvédelmi kérdések a borjogban* Miskolc, Novotni Kiadó, 2009, 361.

¹⁵ A contradictory view is given in: Szilágyi János Ede: *Az állatvédelem különböző megközelítései a magyar jogrendszerben*, in: Szilágyi (edit.): *Környezetjog II: Tanulmányok a környezetjog gondolkodás köréből*, Novotni Kiadó, Miskolc, 2008; as well as in: Olajos István: *Az élelmiszerlánc szereplőinek jogai és kötelezettségei*, in: Csák (edit.): *Agrárjog. A magyar agrárjog fejlődése az Eu keretei között*, Miskolc, Novotni Kiadó, 2010, 456-459.

I proposed the sanction for the failure to comply with the obligation of reporting crime.

All in all, we can state that food chain safety in our country corresponds to the EU average, but to keep the current standard we will need further laws, amendments, more severe regulations, as well as more effective enforcement of rules, considering the shortcomings and problems.

3. Expedience of results

The utilization of the findings in this work is widely available, partly in the creation and modification of national legislation, and partly in the administrative work of food chain supervisors.

Another important field of using the results could be the field of education. It is mainly possible in traditional education, and in the system of internal trainings. Within the framework of administrative affairs the significance of activities in the food chain safety continues to grow, thus their legal and professional conduct is of great importance.

In our country the legal literature pays rather little attention to the questions of food chain safety, this way my research may compensate this lack. The necessity of the findings of my work can be proved by my publications,¹⁶ which also present partial results.

¹⁶ Reiterer Zoltán: A végrehajtási eljárás sajátosságai az élelmiszerlánc szabályozásában, in: Szabó Miklós (edit.): *Doktoranduszok Fóruma: Állam- és Jogtudományi Kar Szekciókiadványa*, Miskolc University, Miskolc, 2015, 235-241.; Reiterer Zoltán: A közhatalom gyakorlásával okozott kár megtétele a közigazgatási hatósági eljárásokban, *Studia Iurisprudentiae Doctorandorum Miskolciensium-Miskolci Doktoranduszok Jogtudományi Tanulmányai* 16/2015, 371-390.; Reiterer Zoltán: Az állami beavatkozás egyes kérdései, *Publicationes Universitatis Miskolciensis Series Juridica et Politica* XXXIII, 2015, 60-75.; Reiterer Zoltán: A hatósági eljárás egyes kérdései az élelmiszerlánc szabályozásában, in: Kecskés Gábor (edit.): *Doktori Műhelytanulmányok 2015*, Győr, Széchenyi István Egyetem Állam- és Jogtudományi Doktori Iskola, 2015, 211-225.; Reiterer Zoltán: Az élelmiszerlánc-szereplők feladatainak egyes kérdései, *Publicationes Universitatis Miskolciensis Series Juridica et Politica* XXXII, 2014, 199-213.; Reiterer Zoltán: Az élelmiszerlánc szabályozásának célja és szervezeti kérdései, in: Csiszár Imre – Kőmíves Péter Miklós (edit.): *Tavaszi Szél 2014 / Spring Wind 2014*, Doktoranduszok Országos Szövetsége, Debrecen, 2014, 200-223.