

PROTECTED GEOGRAPHICAL INDICATION FOR AGRICULTURAL PRODUCTS AND FOODSTUFFS – OBJECT OF INTELLECTUAL PROPERTY RIGHT

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Abstract

In this paper are presented in a synthesis the most important legal aspects regarding the protected geographical indication of the agricultural products or foodstuffs. Also, I emphasized that in the category of intellectual property rights, the right of geographical indications is also found, by which the name of a certain geographical territory is protected, which is used for describing a certain product originating in the respective area. Finally, we point out that the concerns of Romanian farmers' or farmers' groups', habilitated authorities and institutions for the protection of geographical indications for agricultural products and foodstuffs are mitigated.

Key words: protected geographical indication, intellectual property, traditional agricultural products and foodstuffs

INTRODUCTION

Both at EU and national level, four descriptions attesting the quality of agricultural products and foodstuffs are defined, namely *organic farming*, *indication of the protected geographical name (protected geographical indication)*, *protected appellation of origin* and *the specificity certificate*.

The protected geographical indication (PGI) is used for describing a certain agricultural or product and foodstuff and can be the name of a region, a locality, a specific place or a country. To receive the PGI status, the agricultural product or foodstuff has to simultaneously meet the following conditions:

- It must originate in the respective region, locality, specific place or country;
- It must possess a specific quality, a reputation or other characteristics attributable to its geographical origin;
- The raw materials used may also come from outside the defined geographical area;

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- At least one of the stages in the production, processing or preparation process must take place in the defined geographical area. Certain operations of the production process, such as packaging, freezing, storage, etc. may also take place outside the defined geographical area (Council Regulation (EC) No 510/2006).

In the category of *intellectual property rights*, the *right of geographical indications* is also found, by which the name of a certain geographical territory is protected, which is used for describing a certain product originating in the respective area, which is produced, processed or prepared in the respective area and has a specific quality, a reputation or other characteristics attributable to the respective area (Roş, V. & all, 2003).

1. PROTECTED GEOGRAPHICAL INDICATION – GENERAL APPROACH

In the year 2008, The European Commission transmitted to the European Parliament, to the Council and European Economic and Social Committee, the Communication no. 465 of 16.07.2008 on the Strategy of industrial property rights (eur-lex.europa.eu, 2011) to ensure Europe has a high quality industrial property rights system in the years to come. EU needs intellectual property rights to protect its policy in the quality and innovation field so as to remain competitive in the world economy and to fight against counterfeit and piracy.

It should be specified that protection registration and acquisition applies to designations and not the products *per se*. The protection provided by the geographical indications has in view to prevent the abuse of the designation that might mislead consumers with regard to the origin of agricultural products and their quality or characteristics.

The registered designations are protected against:

- any commercial use of a registered name that might permit the exploitation of its reputation (e.g. *Salam de Sibiu – Sibiu salami*);
- abusive use, counterfeit or origin evocation;
- any false or misleading indication with regard to the origin, nature or essential qualities of the product;
- any other practice susceptible to mislead the consumer with regard to the true origin of the product (Council Regulation (EC) No 510/2006).

In Romania, there are two registered products with protected geographical indication, namely *Cârnații de Pleșcoi (Pleșcoi sausages)* and *Magiun de prune Topoloveni (Topoloveni plum marmalade)*; only the latter received Protected Geographical Indication certification from the European Commission (The European Commission granted on 8 April 2011 “Topoloveni plum marmelade” first certification a geographical indication for a Romanian traditional product).

Thus, we can say that the Romanian farmers’ or farmers’ groups’ concerns for the protection of geographical indications for agricultural products and foodstuffs are almost non-existing, in the conditions when France has 102 registered products with protected geographical indication, Italy has 83 registered products, Spain has 74 registered products, Germany has 48 registered products, Great Britain has 19

registered products, Poland 13 registered products, Hungary 4 registered products (ec.europa.eu, 2011).

Out of the EU Member States, only Bulgaria has no product with EU certification.

2. LEGAL AND INSTITUTIONAL FRAMEWORK

The legislation in the field of geographical indications is represented at Community level and, also at national level by the following laws:

Council Regulation (EC) No 510/2006, on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

The Regulation contains norms referring to the protection of designations of origin and of geographical indications for the agricultural products and foodstuffs for human consumption specified in: *Annex I to the Treaty Establishing the European Community* (live animals, meat and edible offal's, milk and dairy products; poultry eggs; natural honey, vegetables, plants, food roots and tubers, grains, bakery products; malt; starches; gluten; vegetable preparations, vegetables, fruit and other plants or parts of plants, wine from fresh grapes; must from fresh grapes stopped from fermentation, cider, pear wine, hydromel and other fermented drinks, etc.); *Annex I to the present regulation* (beers, beverages made from plant extracts, bakery products, pastry, confectionery, biscuits, natural gums and resins, mustard paste, pasta), *Annex II to the present regulation* (hay, essential oils, cork, cochineal, flowers and ornamental plants, wool, wicker, scutched flax).

A certain agricultural product or foodstuff, in order to get the protected geographical indication (PGI) status, must fulfill a series of conditions, which are included in the product specification. The specification sheet includes the following items: name of agricultural product or foodstuff, description of the agricultural product or foodstuff, geographical area delimitation, evidence that the agricultural product or foodstuff originates in the delimited geographical area, description of the method used in obtaining the agricultural product or foodstuff, elements that should justify: the link between the quality or characteristics of the agricultural product or foodstuff and the geographical environment, name and address of authorities or bodies that check up the application of dispositions from the specification sheet, any specific labeling rule of the respective agricultural product or foodstuff, the eventual requirements that must be applied in conformity with the EU or national dispositions.

The registration application can be submitted by a group only for the agricultural products or foodstuffs that it produces or obtains. Group means any association of producers or operators interested in the same agricultural product or foodstuff, regardless of the form or legal componency of the group.

Each Member State investigates by adequate means whether the application is justified and if the applicant meets the conditions of the present regulation.

In the case when the requirements specified in the present regulation are complied with, the Member State adopts a favorable decision and forwards the documents to the Commission in order to get a final decision. The Commission examines within

maximum 12 months, by adequate means, whether the received application is justified and whether it meets the conditions of the present regulation.

In the case when the Commission considers that the conditions specified in the regulation are met, this publishes the single document in the *Official Journal of the European Union* and sends the specification sheet for publication.

Within six months from the date of publication in the *Official Journal of the European Union* any Member State or third country may object to the proposed registration by submitting a duly substantiated declaration to the Commission.

In the case when no admissible objection is received, the Commission shall register the name and the registration will be published in the *Official Journal of the European Union*.

In the case when the Commission considers that the conditions from the specification sheet are no longer fulfilled for a certain agricultural product or foodstuff that has a protected designation of origin, this initiates the procedure to annul the registration, which is also published in the *Official Journal of the European Union*.

Law no. 84 of April 15, 1998, on trademarks and geographical indication.

The law establishes the rights of trademarks and geographical indications, which are recognized and defended on Romania's territory. According to the provisions of the law:

- The geographical indication represents the name serving to identify a product originating in a country, region or locality of a state, in the cases when a quality, reputation or other determined characteristics can be essentially attributed to this geographic origin;
- The register of geographical indications represents the collection of data, administered by the State Office for Inventions and Trademarks (SOIT), which comprises the geographical indications registered in Romania, as well as all the inscribed data referring to these registrations, regardless of the support on which these data are kept;

The geographical indications of products are protected by their registration at SOIT and can be used only by the entities that produce or sell the products for which these indications were registered.

The list of geographical indications the protection of which is registered in Romania will be registered at SOIT in the Register of geographical indications and published in the Official Industrial Property Bulletin. The producers' associations who develop a production activity in the geographic area can apply for the registration of a geographical indication for the products specified in the application.

The protection period of the geographical indications starts from the date of application at SOIT and is unlimited. The right of geographical indication use is granted to the applicant for a ten-year period, with the possibility of unlimited renewal, if the conditions in which this right was acquired are maintained.

The entities authorized to use a geographical indication for certain products have the right to use it in the commercial circuit, applied only to these products, in accompanying documents, advertisements, prospects, and can apply the registered

geographical indication specification. The right to use a geographical indication cannot be object to any transmission.

Decision no. 828 of July 25, 2007 *on the establishment of the System of protection of geographical indications and designations of origin for agricultural products and foodstuffs.*

The decision defines the following terms in use: national logo, certification of agricultural products or foodstuffs, private inspection and certification body, specification sheet, registration application, single document, objection declaration procedure at national level, the register of the designations of origin and protected geographical indications.

The normative act establishes the authorities in charge with checking up the documentation for obtaining the protected geographical indication for an agricultural product or foodstuff and with the control of labeling and use of the national or Community logo on the market.

At the same time, it regulates the checking up of the specification sheet (by private inspection and certification bodies for the agricultural product or foodstuff), the checking up of the documentation for the registration and acquisition of a protected geographical indication for an agricultural product or foodstuff (by the Ministry of Agriculture and Rural Development) and the control of labeling and use of the national and Community logo (by the National Authority for Consumers' Protection).

The institutions and bodies in charge with the acquisition of the geographical indication for an agricultural product or foodstuff, at national level, are the following:

- Private inspection and certification bodies for the agricultural products or foodstuffs – S.C. Certind S.A., Romcontrol S.A., Larex Cert – which have attributions in the control of the specification sheet;
- The Ministry of Agriculture and Rural Development that checks up the documentation for the registration and acquisition of a protected geographical indication for an agricultural product or foodstuff;
- The National Authority for Consumers' Protection – with attributions in checking up the labelling and use of the national and Community logo;
- The State Office for Inventions and Trademarks – for trademark registration and acquiring protection on Romania's territory. SOIT is the specialized body of the central public administration, as unique authority that ensures the protection of trademarks and geographical indications on Romania's territory.

3. CONCLUSIONS

Only one Romanian quality foodstuff product obtained protection at European level and at the same time promotion in the EU Member States, providing consumers with the guarantee that the product is authentic, traditional and it fulfils the EU safety, hygiene, labeling, health control and nutritional information criteria.

It is necessary and opportune for the traditional Romanian products to be protected and registered, out of the following reasons:

- A protected geographical indications system for the Romanian agricultural products and foodstuffs, similar to that from the European Union Member States, will permit the Romanian producers to apply for the registration and protection of geographical indications in the European Union as well;
- It will foster the establishment of producers' groups, which process, produce or prepare the same type of product, to sell it under the same protected designation both on the domestic and European markets, thus also encouraging production diversification;
- It can bring significant benefits both for the rural economy and for the national economy, mainly in the less-favored areas, by increasing farmers' incomes and by creating jobs for the rural population in the respective areas;
- Consumers must be clearly informed about the origin of products, their specific characteristics, based on the geographical areas, about the traditional production methods, thus having the possibility to make the best choice;
- It will ensure a fair competition between the producers of products with these designations and will increase the credibility of products for the consumers.

At present, there are 2493 traditional agricultural products and foodstuffs that are certified according to the current legislation and published by the Ministry of Agriculture and Rural Development. (madr, 2011) Many of these traditional certified products, through the conjugated efforts of farmers and habilitated authorities and institutions, could become products with protected geographical indication status.

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