

AGRO-FOOD FRAUDS BETWEEN CONTROLS AND “OTHER” FORMS OF PROTECTION: THE ROLE OF NON- PROFIT INSTITUTIONS

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The analysis of the relationship between trade and consumer protection, attempts to highlight the issues relating to food safety in order to ensure the highest consumer protection. The theme is not the promotion of an economic globalization but the certainty of rules. Where some problems are not solved by the authorities in charge, "other" actors come into action. The non-profit organization of the agro-food sector encourages the use of minimally invasive methods of cultivation and transformation, without the use of techniques that are potentially harmful to the environment and to the consumer's health.

Keywords: Food safety, consumer protection, food frauds, non-profit organization, control measures

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1. FOOD SAFETY AND PROTECTION REQUIREMENTS

The aim of this short reflection, which inevitably sacrifices the exhaustiveness of the subject, is the European and national legal scenario without, however, neglecting the implications that derive from it on the local horizon. In this direction the tension between global and local (1) should not be faced using a prevailing / losing logic but rather in a logic of compatibility and balance (2) between *trade* and *consumer protection*. "Agriculture" and "trade" tend to express inseparable (3) concepts; this is clear if you read the art. 38 TFEU (Treaty on the Functioning of the European Union), stating about the beginning of the Common Agricultural Policy (CAP), which states that «the internal market includes agriculture, fisheries and trade in agricultural products»; therefore, it combines in a single functional moment the basic production, the commerce and the transformation of products. It points out the existence of a law that covers the vital worlds (4) and reaches a unified vision of the production process, disentangling itself in a relationship of mutual dependence between agricultural production and food (5), and in a finalization of the first to the second, which produces a vigorous influence on the global system. This reconstruction is inspired by the need for synthesis, therefore it won't have many law references (6) related to the subject of agro-food (7) law in general (8)

In discussing food security, as an expression that tends to highlight the concern for food availability in terms of quantity, an interesting question is the "right to food" (9) which, however, goes beyond the merely quantitative aspects and recalls the right to quality food. Hence the reference to the Green Book on the general principles of food law in the European Union (10), in which the Commission, in addition to guaranteeing the safety conditions along the entire agro-food process (11) through the development of simplification tools and harmonization of the discipline (12) uses the expression "from the field to the table", in order to draw attention towards the need to ensure a high degree of consumers' protection in trading quality foods products. The importance of the topic of product quality has led the European Union to adopt regulatory measures relating to the labeling of food products (13), in order to let the consumer make a choice which is "responsible" and "informed". The food consumer, therefore, is obliged to combine the certain, which comes from the authority (eg. All the provisions on labeling and the quality of the products), and his choice which derives from the need to know exactly the kind of food he is eating, a knowledge as a perfection of the soul, as Dante states in his work *Convivio*, when, explaining the different knowledges (14) states that «All men naturally desire to know» (15). But here we have to be aware that even if there is an European law upon the right to information (16), misleading advertising (17) and comparative advertising (18), the consumer often buys counterfeit products or products that come from countries which do not respect the European standards. Think about, for example, the Sicilian agricultural products, especially the Pachino tomato, which will be discussed later, which, on the basis of trade agreements between European Union and some third countries, is heavily affected by the competition of Extra EU tomato. This story becomes exemplary and makes us better understand how the "defense" of the market, in terms of controls, must be the defense of private companies, and that economic activity must pursue social utility targets and take place in a way no to harm security, freedom and human dignity.

2. FOOD FRAUDS AND CONTROL MEASURES

Regarding food law, the free movement of safe and guaranteed products is a fundamental principle for the proper functioning of the internal market (art. 26 TFEU) (19). From this we understand that the attainment of a high level of protection of life and human health is one of the fundamental objectives of food law as established by Regulation (EC) n. 178/2002 (20). The promotion of quality products (21) is an advantage for the rural world, as it allows the improvement of farmers' incomes (22) and, at the same time, ensures the consumer high standards of information, in terms of quality and safety of the production process and of the final product (23). At this point the matter is brought on a scenario that involves different aspects related to the violation of the rules aimed at protecting the quality and safety of foods that recall the issue of fraud in the food sector. There is no precise definition of food fraud (24); it is clear from the reading of the regulation (CE) n. 178/2002 which defines the general principles and requirements of food law, stating that the labeling, advertising, presentation and packaging of products must not lie to the consumers. The most common cases of food fraud towards the consumers comes through false declarations of origin, quality, composition and characteristics of a food.

The reconstruction of the phenomenon, leads us to reduce the target of investigation and to look at the local agri-food sector that undergoes the influences of the dynamics of national and international markets. In fact, the occurrence of certain events such as the fall in consumer prices of agri-food products, the increase in the complexity of supply chains, are favorable factors for the development of frauds.

The mentioned Green Book on the General Principles of Food Law of the European Union, identifies, among the fundamental objectives for the future development of food law, that of giving «the main responsibility for the safety of foodstuffs to the industry, to producers and suppliers, through the use of "risk analysis and critical control points" systems [...] which must be supplemented by effective official control and effective enforcement measures». The control activity carried out by the bodies in charge on a National (think about, for example, the custom agency) and European level (25).

aims at ensuring a unitary and strategic vision of the entire supply chain in which legality and efficiency must be combined in order to let the agro-food sector become more modern and competitive, so that it will be able to face all the challenges of the global dynamics.

3. NON-PROFIT ORGANIZATIONS: A GUARANTEE OF PROTECTION?

If the perspective outlined above is correct, the topic in the epigraph cannot be thought only in terms of respect for "quality", since these are bigger issues that involve situations related to the social, political and economic context considered as a whole. The efficiency of capitalism, as a system that functions only on the basis of «universal rapacity» (26), actually depends on a complex of values and norms. To see in capitalism nothing but a system based on a co-creation of predatory behavior means underestimating its ethical aspect. The nature of the modern economy has undergone a substantial impoverishment because of the distance created between economy and ethics. The economy can be made more productive if more attention is paid to ethical considerations (27), that inform human behavior (28): . Hence a provocation: if the theme is not the promotion of economic globalization at any cost but the certainty of the rules of the game and their respect, then it is difficult to exhaust it empirically. Where some distortions (29) are not solved by the institutions in charge, "other" actors come out, who are capable of producing relationships and weaving non-artificial plots in order to combine often opposing interests. They are the protagonists of the non-profit sector, which, here, play a fundamental role. For reasons of brevity, their analysis of the legal discipline is left out, and we discuss only their function in the agri-food sector. Taking up the aforementioned topic of Pachino tomatoes, the activity carried out by the Protection Consortium I.G.P. (30) "Pomodoro di Pachino", a non-profit organization, which on several occasions reiterated that the trade agreements stipulated between the European Union and third countries (eg Morocco, Cameroon) are likely to

damage not only the agricultural production but also its marketing; in fact, the entry of extra-EU tomatoes in the European territory, not respecting the production standards (think of the uncontrolled use of plant protection products) are put on the market at very low prices (31).

The activity of non-profit organizations in the agro-food sector aims at encouraging the use of production systems that are characterized by minimally invasive methods of cultivation and transformation, free from the use of techniques that are potentially harmful to the environment and to the consumer's health, following up to the increasing attention given by European law to environmental protection and food safety.

In this context, in the stillness of the institutions and in the often passive attitude of acknowledging that nowadays economy rules politics, and that law is now only friend to the market and its needs (32), the Consortium for the protection of I.G.P. "Pomodoro di Pachino" asks for an intervention by the institutions so that economic convenience does not touch the rights, making them appear as a dis-value, leading to a severe reduction of respect towards the small and medium companies in the Sicilian territory between the provinces of Syracuse and Ragusa.

4. SHORT CONCLUSIONS

If it is true that in the agro-food sector non-profit organizations play an important role in terms of safeguards, it must be said that there is a need to control them through self-regulation. Therefore, it becomes more and more evident that every organized social sphere, in order to be recognized and put in relation with the rest of society, must identify itself in a socially recognizable way; self-regulating itself not to allow chaotic internal and external exchanges; limiting itself when producing negative potentialities towards the internal and external environment; become ordered and predictable towards other social spheres (33)..

At this point, everything concerning the regulation of exchanges requires legal questions that demand a need for authority. The potential conflict must be brought back to "system" to find, if not the solutions, at least the correct approaches to problems, bearing in mind that the contemporary legal evolution oscillates more and more between "unity and plurality of the statutes" (34).

A global rethinking of market mechanisms seems necessary, reflecting on the essence of the law applied to capitalism. Only in this way will good laws and effective rules follow. The right, with its contrast between universalism and diversity, between efficiency and fundamental rights, must be «at the service of the "art of living ", and thus can be the object of learning, the place of man and not of power» (35).

REFERENCE LIST

1. Globalization pushes the jurist to consider a transnational context even when his analysis is focused on local problems «[...] think global, focus local». On the topic, v. Twining W., (2000), *Globalization and Legal Theory*, Butterworth, p. 255.
2. For a timely analysis on the recognition of the protection of diversity in a glocal perspective, v. DE Vergottini G., (2005), *Garanzia della identità degli ordinamenti statali e limiti alla globalizzazione*, in Amato C. & Ponzanelli G., (eds.), *Global Law v. Local Law. Problemi della globalizzazione giuridica*, Torino, p. 15 s.
3. Casucci F. (1999), *Il modello agricolo europeo sui mercati internazionali*, Napoli, 1999, p. 28.
4. So, Rodotà S. (2018), *La vita e le regole. Tra diritto e non diritto*, Milano, p. 9.
5. On the existence of this link please see Jannarelli A. (2003), *Dal prodotto agricolo all'alimento: la globalizzazione del sistema agro-alimentare ed il diritto agrario*, in Rook Basile E. & Massart A. & Germanò (eds.), *Prodotti agricoli e sicurezza alimentare*, I, Milano, p. 175 ss.
6. Among all we mention Codex Alimentarius as an international regulatory reference for food safety and trade. His code consists of a set of rules adopted by the commission of Codex Alimentarius, established in 1962 by Food and Agricultural Organization (FAO) and World Health Organization (WHO) with the aim of establishing international guidelines - based on the criteria of protection of consumer health and loyalty in commercial transactions - to which national systems can refer in the implementation of the provisions on the production and trade of food products. On the topic, Conforti B. (2014), *Diritto internazionale*, Napoli. Regarding the European law, in addition to the one of primary law contained in the Lisbon Treaty, see also the soft, among the many Green Book sui Principi generali della legislazione in materia alimentare nell'Unione europea, COM(1997) 176 def., dated April 30 1997; White Book sulla sicurezza alimentare, COM(1999) 719 def., dated January 12 2000.
7. For doctrinal references, among all, v. Casucci F. (2017), *Il diritto agroalimentare*, in Benacchio G. & Casucci F. (eds.), *Temi e studi di diritto privato*, Torino, p. 67 ss.; Costato L. & Russo L. (2015), *Corso di diritto agrario italiano e dell'Unione europea*, Milano; COSTATO L. (2011), *Principi e requisiti generali della legislazione alimentare*, in *Trattato di diritto agrario*, diretto da Costato, Germanò e Rook Basile, vol. III, *Il diritto agroalimentare*, Torino, p. 27; ID. (2005), *Dalla PAC al diritto alimentare europeo*, in *Dir. unione eur.*, 4, p. 872 ss.
8. The legal basis for Union legislation on food is set out in Articles 43, 114, 168 and 207 TFEU, wanting to highlight the wide application and the extension of the European discipline upon the entire food production, beyond the agricultural products contained in the Attachment I. V., on this point, Costato L., *Principi e requisiti generali della legislazione alimentare*, in *Trattato di diritto agrario*, (7), p. 19 ss.
9. Upon the topic, widely Rodotà S. (2014), *Il diritto al cibo*, Ebook, *Corriere della Sera*, 10. Green Book Principi generali della legislazione in materia alimentare nell'Unione europea, (6).
10. The concept of an agro-food supply chain dates back to the seventies of the last century and originates from the French school of industrial economics: the systemic approach leads us to consider the supply chains as systems, ie as a set of generalized and interrelated elements: Messori F. (1992), *Economia del mercato dei prodotti agro-alimentari*, Bologna, p. 4.
11. It should be noted that in law, the food safety sector is characterized by a multi-level structure, in which regional, national, European and international sources contribute and integrate with each other. The protection of food security for citizens, once belonging exclusively to the government, is today a function shared with other levels. See, Casucci F., *Il diritto agroalimentare*, in *Temi e studi di diritto privato*, (7), p. 71.

12. Regulation (UE) n. 1169/2011 of the European Parliament and of the Council, of 25 October 2011, about the supplying of information upon food to consumers, which modifies the rules (CE) n. 1924/2006 e (CE) n. 1925/2006 of European Parliament and of the Council and abolishes the directive 87/250/CEE of the Commission, the directive 90/496/CEE of the Council, the directive 1999/10/CE of the Commission, the directive 2000/13/CE of the European Parliament and of the Council, the directives 2002/67/CE and 2008/5/CE of the Commission and the regulation (CE) n. 608/2004 of the Commission. For the doctrine, v. Saija R. & Tommasini A., *La disciplina giuridica dell'etichettatura*, in *Trattato di diritto agrario*, (7), p. 493 ss.
13. Calvino I. (2009), *Lezioni americane*, Milano, p. 123. The author affirms that «la grande sfida per la letteratura è il saper tessere insieme i diversi saperi e i diversi codici in una visione plurima, sfaccettata del mondo». In delineating a parallel between law and literature we perceive that the right to prescribe identifies a project, the literature imagines, in describing, an equally contingent project. So, Perlingieri P. (2001), *Dialogando con due filosofi, ermeneutici del diritto*, in *Rass. dir. civ.*, p. 676.
14. In <https://www.liberliber.it/mediateca/libri/a/alighieri/convivio>
15. In a modern society, characterized by an internationalized economic development and a deep gap in the effectiveness of scientific and technological research, increasingly conditioned by telematic systems, by mass media that tend to cover the maximum possible space, founded on the persuasion that knowing is power, information and being informed represent a structural necessity of the whole system. See, Perlingieri P. (1990), *L'informazione come bene giuridico*, in *Rass. dir. civ.*, p. 326 ss.
16. Upon this topic see Coen L. (2002), *Pubblicità ingannevole*, nota a *Cons. Stato*, Sez. VI, 1° marzo 2002, n. 1258, in *Studium iuris*, 6, p. 805 ss.
17. See the directive of the European Parliament and of the Council of 6 October 1997, n. 55 which modifies the directive 84/450 about misleading advertising in order to include also the comparative advertising. Upon the rules of comparative advertisement, Auteri P., *Definizione della fattispecie della pubblicità comparativa: comparazione denigratoria e per agganciamento; criteri di valutazione*, report held at the conference on "Comparative advertising in the light of the new community legislation", Milan, 21-22 November 1997.
18. Upon the subject Sbolci L. (2013), *La libera circolazione delle merci*, in Strozzi G., (ed.), *Diritto dell'Unione europea*, Torino, p. 10.
19. Regulation (CE) n. 178/2002 Of the European Parliament and of the Council, of 28 January 2002, che stabilisce i principi e i requisiti generali della legislazione alimentare, istituisce l'Autorità europea per la sicurezza alimentare e fissa le procedure nel campo della sicurezza alimentare, in *GU* of 1° February 2002, L 31p. 1.
20. In the difficulty of identifying the elements that characterize the quality of a product in a univocal manner using only the conceptual categories adopted in ISO, see Ventura S. (2001), *Principi di diritto dell'alimentazione*, Milano, which denies the belonging of the requirement of safety to the elements of quality. In the opposite direction, v. De Klerck W. who in the *Consumer and Food Quality Report*, held at the Food Quality Conference in Brussels 9-10, 1993, p. 18, states «Quality is a multifaced concept comprising at least the four aspects of satisfaction, service, health and safety».
21. Consider, for example, the cc.dd. Export subsidies able to equalize, in order to protect the Community industries using agricultural products, the difference between the representative Community prices and the most favorable courses on the world market, thus allowing European agricultural producers to export their products to markets outside the European Union. See, Casucci F. (2000), *Lo scambio internazionale di merci*, Napoli, p. 203.
22. Così, Casucci F. (2004), *La tutela del consumatore agro-alimentare nell'ordinamento giuridico comunitario*, in Perlingieri P. e Caterini E. (eds.), *Il*

- diritto dei consumi, Rende, II, p. 63 ss.
23. Upon the doctrine, see Spink J. & Moyer D.J. (2011), Defining the Public Health Threat of Food Fraud, in *Journal of Food Science*, 75, p. 57. The aa. affirm that 'food fraud is a collective term used to designate the deliberate and intentional substitution, addition, tampering or presentation of food, food ingredients or food packaging; or false or misleading statements about a product for the purpose of achieving economic profit. On the basis of this definition it emerges that the main characteristics of food fraud are the following: 1) non-compliance with food law and / or deception of the consumer, 2) intentionality and 3) profit-making purposes ».
 24. Regulation (CE) n. 178/2002 of the European Parliament and of the Council of 28 January 2002, che stabilisce i principi e i requisiti generali della legislazione alimentare, istituisce l'Autorità europea per la sicurezza alimentare e fissa le procedure nel campo della sicurezza alimentare, (20).
 25. Sen A. (1999), *Lo sviluppo è libertà*, Milano, p. 262.
 26. Sen A. (2002), *Etica e economia*, Roma-Bari, p. 14.
 27. We recall upon this point, Caporrino V. (2012), *Pluralismo e tecniche di regolamentazione*, Napoli, p. 108.
 28. «The agricultural situation in our country, and more generally in Europe and more generally in the world is still dramatic. A criminal food system, an overproductivism, begins to show signs of suffering not only in the environmental field but also in the social field [...]. Carrots are paid nine cents a pound, milk is twenty-seven cents per liter, the smallest farms are closing; milk is taken into the industries, skimmed, depleted, and then sold for one euro [...]. We produce food on the planet for twelve billion lives, we are seven billion on Earth, one billion does not eat, one billion seven hundred million suffer from diseases related to overeating. This means that 45% of production [...] is thrown away. [The sacredness of food has been lost]. In the food sector the new paradigms are two: first, respect for those who work, according to respect for the earth». Taken from the lessons of Petrini C., Founder di Slow Food, in www.cronache di gusto.it
 29. These protections testify the existence of the specificity of agricultural products, and are a proof of the existence of a European sectoral legislation aimed at protecting the consumer, who takes his cultural background from the territorial identity. On the subject, for the doctrine, see Sarti D. (2011), *Segni distintivi e denominazione d'origine*, in Ubertazzi L.C. (ed.), *Trattato di diritto privato dell'Unione europea. La proprietà intellettuale*, Torino, 12, p. 158 ss.
 30. Even if the fall in prices is determined by other factors, let's see the protest of Sardinian shepherds who are tight in the grip of low prices and therefore have decided to pour milk into the streets. At the base of the vertiginous fall in the price of milk there are two factors, intimately connected: the overproduction of pecorino romano in the last two years, with a strong stock in 2018, and the crisis (about 40%) of pecorino on the US market, which is the first purchaser of Pecorino romano PDO. The increase in the quantity of unsold product has led to a decline in milk prices, in <http://www.askanews.it/cronaca/2019/02/12>
 31. Perlingieri P. (2005), *Le insidie del nichilismo giuridico. Le ragioni del mercato e le ragioni del diritto*, in *Rass. dir. civ.*, 1, p. 1 ss.
 32. See on this point, Prandini R. (2013), *Sull'auto-costituzionalizzazione del Terzo settore. Quale auto-regolazione per le professioni del "sociale"?*, in *Politiche sociali e servizi*, 1, p. 13.
 33. This expression belongs to Cian G. (2002), *La figura generale dell'obbligazione nell'evoluzione giuridica contemporanea fra unitarietà e pluralità degli statuti*, in *Riv. dir. civ.*, 2002, 4, p. 491.
 34. Literally Rodotà S., *La vita e le regole. Tra diritto e non diritto*, (4), p. 72.