

# IS ENVIRONMENTAL RACISM TRULY RACIST?

## JE ENVIRONMENTÁLNY RASIZMUS SKUTOČNE RASISTICKÝ?

Kristián ČECHMÁNEK\*

### I. Introduction

In the eighties and nineties the new wave of social awareness emerged. The modernity represented mainly by capitalism, which without a doubt has brought several wonders, started to be questioned. Fulfilment of material and immaterial needs and decrease of global poverty were no longer the question since new burning issues have arisen. The one concerning environment was among the most significant issues. Speaking of environment we mean it in a broader sense including environmental justice particularly environmental racism, which took place in a vivid social discourse during early eighties in USA. As Diaz suggests, the environmental injustice in the United States is given by higher cancer rates, asthma rates, mortality rates and overall poorer health of poor people and people of colour in comparison with their affluent and white counterparts<sup>(1)</sup>. The Environmental Justice Movement, Diaz adds, links these health disparities to higher concentrations of environmental pollution sources in these communities<sup>(2)</sup>. The exposure to environmental harms in low-income, minority communities is disproportional and inherently unjust constituting environmental injustice<sup>(3)</sup>. The notion of justice has several connotations since it is connected to certain prescriptive theory of what is good and right to do. As it is indicated, the concept is based on distributive justice holding that benefits and burdens are to be distributed according to a specific manner. In the case of environmental justice, the key is strict

material equality. The rationale behind this ideal is moral equality of human beings born with the same intrinsic value. Thus, burdens and benefits should be distributed evenly. The environmental reality is although different. There are groups of people who suffer from pollution and environmental harm more than others. The available literature discussing topic of environmental justice suggests that those who are statistically affected by the environmental burdens the most are people of colour. At the same time, literature asserts that the main reason of this affection is not just urbanist, economic, ecologic, cultural reasons or merely coincidence but something much more serious - racism. That brings us to the main goal of our paper which is critical review of the concept of environmental racism. As it will be obvious, it is widely presumed and presented in descriptive manner that environmental racism is a social fact. This although does not result from available data and information. The environmental justice is admittedly one of the most widespread topics in environmentalism. However, we are concerned that findings of the existence of particularly racism may not be reliably proven. As we will try to show further, proponents of the environmental racism theory are possibly biased in their assumptions on racism, which may cause from *cum hoc ergo propter hoc logical fallacy* (with this, therefore because of this). Our aim is not to question the described condition state of environmentally affected people, we just challenge the idea that it is caused on racial basis. As we believe, identifying the problem and the cause correctly is the first step towards the effective and successful solutions. Therefore, we assume that addressing potentially existing bias may significantly assist in not just academic inquiry but also in real life situations.

<sup>(1)</sup> Diaz (2017)

<sup>(2)</sup> *Ibid.*

<sup>(3)</sup> Pellow (2000)

#### Abstract (EN)

The paper aims to critically analyse the theory of environmental racism as a part of the concept of environmental justice in order to point out possible overuse of the term racism. Through theoretical analysis, the author tries to prove that labelling any negative impacts of the environmental burden on racial or ethnic minorities with racism is an unnecessary overwork which moreover might be, according to available data, inconsistent with reality.

#### Abstrakt (SK)

Príspevok si kladie za úlohu kritickú analýzu teórie environmentálneho rasizmu ako súčasť konceptu environmentálnej spravodlivosti s cieľom poukázať na možné nadužívanie pojmu rasizmus. Prostredníctvom teoretického rozboru sa autor snaží poukázať na skutočnosť, že označovať akékoľvek negatívne dopady environmentálnej záťaže na rasové alebo etnické minority rasizmom je zbytočnou nadprácou, ktorá navyše, vzhľadom na dostupné data, nemusí zodpovedať realite.

#### Keywords (EN)

environmental justice, injustice, environmental racism, bias, causality, correlation, critique

#### Kľúčové slová (SK)

environmentálna spravodlivosť, nespravodlivosť, environmentálny rasizmus, predpojatosť, kauzalita, korelácia, kritika

\* Slovak University of Agriculture in Nitra, Slovakia

Within the limited space, we will focus mainly on the Bullard's perspective of environmental racism. Choosing Bullard has several reasons. First of all, he was one of the most important persons who initiated the environmental justice movements in early eighties. Secondly, it was Bullard who has formulated requirements and standards for the movement. Without Bullard the renown of environmental justice would be uncertain. It could be objected that environmental justice and environmental racism are solely American concepts which are not relevant in European or specifically Slovak environmental and agricultural politics and practical management of pollution burden or that they are at least not challenged as a problem. It is true that European public debate on this topic could not match that's in USA, however the problem is not non-existing research but the fact that the robust research has begun only recently<sup>(4)</sup>. As we believe, theory of environmental justice is emerging and considering its ideological (universalistic) logic, it will be popularly applied on any place on the planet in the near future. Therefore, even though we focusing solely on American social reality, we suppose that under similar assumption as are present in USA results which are proposed in this paper may be applied anywhere else. In order to achieve the goal of our paper we will assess the notion of racism in terms of its practical consequences. Therefore, we decided to split the paper into four sections, introduction counting as the first one. In the second part we define the concept of environmental racism according to Bullard and others advocates of environmental racism theory. The third one deals with alleged environmental racism and the logic behind it focusing on the first famous case regarding environmental justice issue. This part also discusses logical incoherence in the theory of environmental racism and arguments against conclusion of environmental racism existence mainly based on available evidence. The last part - the conclusion contains main findings.

## II. The theory behind: What is considered as environmental justice and environmental racism?

Environmental justice could be defined in many ways all respecting social justice principles. One of the most popular definitions was, however, provided by Bullard who defined it as *"fair treatment and meaningful involvement of all people regardless of race, colour, national origin or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. Fair treatment means that no group of people, including racial, ethnic or socio-economic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal and commercial operations or the execution of federal, state, local and tribal programmes and policies."*<sup>(5)</sup> As Bryant asserts, environmental justice refers to certain cultural norms, values, regulations, decision ensuring sustainable communities with safe environment and con-

currently providing the highest potential of all people.<sup>(6)</sup> The term has relatively short existence. It is believed that one of the catalysts which caused grow of the environmental justice movement was increasing visibility of hazardous waste.<sup>(7)</sup> It is dated since eighties when a social movement, focused on the fair geopolitical distribution of environmental benefits and burdens, had been founded. It is indeed one of the fastest growing, and most successful, sectors of the environmental movement (including movements, groups, and networks) in the USA which are according to Schlosberg divided mainly to two major groups: antitoxic movement and the movement against environmental racism.<sup>(8)</sup> Environmental racism is a part of environmental injustice. If we consider environmental justice as a base for problem solving, then there has to be a problem that has to be solved. According to Pellow, environmental racism as a disproportionate impact of environmental hazards is the problem identified.<sup>(9)</sup> Bullard as the "father of environmental justice" in his famous article: "Justice in the 21st Century: Race Still Matters" asserts that environmental racism *"refers to any policy, practice, or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups, or communities based on race or colour."*<sup>(10)</sup> He provides even more specific definition when he insists that the racism is given by providing advantages and privileges to whites while *"perpetrating segregation, underdevelopment, disenfranchisement, and the poisoning of their constituents"*.<sup>(11)</sup> He does not even hesitate to use much more emotional vocabulary suggesting that described could be denoted as genocide.<sup>(12)</sup> Bullard also mentions alleged targeting communities of colour for the siting of unpopular industrial facilities which is according to his opinion dumping on the black communities<sup>(13)</sup> and a form of environmental racism.<sup>(14)</sup> This type of institutionalized racism is present practically everywhere combining public policies and industry practices with only one either explicit or tacit goal: to provide benefits for whites while shifting industry costs to people of colour reinforced by governmental, legal, economic, political, and military institutions (which all are, as a state institution, racial institutions).<sup>(15)</sup> From the stated above it is quite obvious that environmental racism is defined extremely vague potentially including practically any action of officials or whites resulting into negative consequences counted on distributional basis involving racial or ethnic minority. To get a more accurate impression of what is regarded as environmentally racist action let us move on to investigate the phenomenon on the practical example.

<sup>(4)</sup> Petrić (2019)

<sup>(5)</sup> Bullard (1999)

<sup>(6)</sup> Bryant (1995)

<sup>(7)</sup> Pulido (1996)

<sup>(8)</sup> Pulido (1996)

<sup>(9)</sup> Pellow (2000)

<sup>(10)</sup> Bullard (2001)

<sup>(11)</sup> Bullard (1993)

<sup>(12)</sup> *Ibid.*

<sup>(13)</sup> Bullard (2000)

<sup>(14)</sup> Bullard (1993)

<sup>(15)</sup> Bullard (2000)

### III. For and against the case of environmental racism

It is not too difficult choosing real life cases of alleged environmental racism since the overwhelming number of scholars provide various examples of it. As Paulido implies there are several studies that found correlation between hazardous waste sites and blacks, specifically: U.S. General Accounting Office, 1983; United Church of Christ, 1987; Gelobter, 1992; Wernette and Nieves, 1992; Burke, 1993, Citizens for a Better Environment, 1989; Friedman-Jimenez, 1989; Ong and Blumenberg, 1993; Been, 1993; Hurley, 1995 and Lavelle and Coyle, 1992.<sup>(16)</sup> The origin of the environmental justice movement however could be traced to early eighties when set of protests against the dumping of PCB-laden dirt in a new hazardous waste landfill in Warren County, North Carolina took part.<sup>(17)</sup> Warren County belongs to the most underdeveloped regions in North Carolina and simultaneously the major population is formed by African-Americans. In other words, the incentive of officials was aimed to build hazardous waste landfill in the place where there is majority of African-Americans.<sup>(18)</sup> These are, according to many, unambiguous expressions of environmental racism. There is although strong belief that so-called empirical evidence shows differently. Diaz for example brings out “infamous” Carrell Report elaborated by advising company Cerrell Associates. The outcome of the report was advisory on what social groups are the most opposing towards Waste-to-Energy conversion plant siting was mainly following: “*The kind of person who is most likely to oppose the siting of a major facility is young or middle aged, college educated, and liberal. For the purposes of this analysis, liberal specifically designates a welfare state orientation in political philosophy. The person least likely to oppose a facility is older, has a high school education or less, and adheres to a conservative, free market orientation.*”<sup>(19)</sup> The report among other things stated that “*Members of middle or higher-socioeconomic strata (a composite index of level of education, occupational prestige, and income) are more likely to organize into effective groups to express their political interests and views. All socioeconomic groupings tend to resent the nearby siting of major facilities, but the middle and upper-socioeconomic strata possess better resources to effectuate their opposition. Middle and higher-socioeconomic strata neighbourhoods should not fall at least within the one-mile and five-mile radii of the proposed site.*”<sup>(20)</sup> This revelation struck down the proponents of environmental justice theory as it appeared as clear evidence of targeting the poorest and consequently as intentional racism.<sup>(21)</sup> Statistically among the poorest there is significant number of the people of minority (people of colour). Presumably that is why Diaz<sup>(22)</sup> and others jumped to the conclusion of racist practices.

However, if the Cerrell Report is examined in more detail the only thing which is asserted is a description of moods of various groups of people towards hazardous structures which is standard inevitable component of cost-benefit analysis for such a project and investment. Implicating that construction of hazardous structure in a certain community is more or less risky referencing to resources is purely descriptive and it does not give rise to any racial affection or preference. The analysis explicitly highlights potential costs of building such a site in certain territory not by using racial card but possible future costs of legal and other disputes. Consequently, it would be naïve and irrational to expect choosing not to build hazardous structures on the places with the least cumulative negative effects solely on the racial criteria. This approach of using rather non-racial criteria is paradoxically understood as technocratic and it is criticized as approach without broader social valuation of the concerned.<sup>(23)</sup> As an example of technocratic way of thinking it is provided a case where risk managers try to lower the risk of exposure of people harm by accidents using for instance low density areas for siting hazardous waste facilities. The problem, Bailey asserts, is that according to these criteria the ideal place for placing the facility correlates with rural poverty which tends to be settled by high proportion of African Americans.<sup>(24)</sup> It seems to us that Bailey is trying to say that technocracy is not enough racial oriented as it should be. This opinion corresponds with the idea of distributive justice which, in the case of environmental policies, demands even distribution of environmental burdens between white people and people of colour. From the Bailey’s perspective it is quite obvious that victimizing smaller number of people in general is less just than victimizing higher number of people provided that significant representation of victims would be Caucasians. The belief that hazardous wastes sites are located in a discriminatory manner mainly in minority communities is although held by a significant part of researchers.<sup>(25)</sup> On the other hand, there are researches that did not find the relationship between the degree of pollution and minority (racial) settlement.<sup>(26)</sup> Downey focusing on the hypothesis of conditionality between poor and coloured neighbourhoods and pollution in his study found out that residential segregation does not necessarily produce environmental racial inequality but surprisingly may in some cases “advantage” minorities by putting them further from environmental hazards in comparison with whites.<sup>(27)</sup> Downey emphasizes that conclusions and evidence produce by the study is nothing new since older researches conducted in Baltimore and Colorado<sup>(28)</sup> yielded comparable results.<sup>(29)</sup> Downey accordingly summarizes that “*neither residential segregation nor racial income inequality does a good job of explaining metropolitan-area variation in environmental inequality outcomes in the US.*”<sup>(30)</sup>

<sup>(16)</sup> Pulido (1996)

<sup>(17)</sup> Schlosberg (2007)

<sup>(18)</sup> Bullard (1999)

<sup>(19)</sup> Cerrell Report

<sup>(20)</sup> Ibid.

<sup>(21)</sup> Following this logic, Cerrell Report was not discriminatory only towards poor or people of color but also elder, people with lower education, or conservatives.

<sup>(22)</sup> Diaz (2017)

<sup>(23)</sup> Bailey et. al. (1995)

<sup>(24)</sup> Ibid.

<sup>(25)</sup> Lee (1992)

<sup>(26)</sup> Weinberg (1998)

<sup>(27)</sup> Downey (2007)

<sup>(28)</sup> Boone (2002), Downey (2005)

<sup>(29)</sup> Downey (2007)

<sup>(30)</sup> Ibid.

#### IV. Conclusion

It is reliably proven that there are communities which are affected by environmental burdens significantly more than others. Often, the impacted minority consists of people of colour. Is there any causation between distributing the burden and racial discrimination? We believe there is not. As the evidence suggests the environmental burdens are not distributed according to the racial key. Moreover, according to Downey and others there are cases where the white majority is affected more than people of colour. The problem may be rooted in the belief that any action with potentially negative effect on non-white communities are racially motivated even though that the rationale for constructing hazardous sites is built on absolutely different criteria. This is implicitly suggested by one of the prominent advocates of environmental racism theory Bailey who asserts that the usual reason of siting hazardous waste facilities in low density areas, often inhabited by people of colour, is lowering the risk of exposure of people harm by accidents. Calling it technocratism, he also indirectly admits paradoxical demand for involvement of racial arguments in impact assessment analysis. In other words, protecting as much people as possible does not meet criteria of environmental justice but if the measure was based on race and higher environmental risks exposure of white people the request of environmental justice would be satisfied. Speaking of empirical data, evidence on systemic and structural discrimination with racial context has not been satisfactorily proven. The only thing which has been proven considering relationship between actors in the environmental justice field is higher or lower tendency to correlate but causation has never been shown. There are, however, different pressing questions connected with the topic of environmental justice which are simultaneously and indirectly arisen and would be interesting to explore. Could for example other circumstances (e.g. self-segregation of certain population based on cultural, social and economic reasons or its hygienical, behavioural and civilization standards) be the cause of the uneven distribution of the environmental burden? Examining latter would certainly yield interesting findings suitable for further discussion.

#### References

1. BAILEY, C. et. al. 1995. Environmental Justice and the Professional. In: Environmental Justice: Issues, Policies, and Solutions. Washington, D. C.: Island Press. pp. 35-44. ISBN: 1-55963-417-0.
2. BOONE, C. 2002. An assessment and explanation of environmental inequity in Baltimore. In: Urban Geography. Vol. 23. no. 6. pp. 581-595.
3. BRYANT, B. (Ed.) 1995. Environmental Justice: Issues, Policies, and Solutions. Washington, D.C.: Island Press. p. 278.
4. BULLARD, R. D. (Ed.) 1993. Confronting Environmental Racism: Voices from the Grassroots. Boston: South End Press. p. 259. ISBN 0-89603447-7.
5. BULLARD, R. D. 1999. Dismantling Environmental Racism in the USA. In: Local Environment, vol. 4. no. 1. pp. 5-19. ISSN: 1354-9839.
6. BULLARD, R. D. 2000. Dumping in Dixie Race, Class, and Environmental Quality. 3rd ed. Boulder: Westview Press, Inc. p. 234.
7. BULLARD, R. D. 2001. Justice in the 21st Century: Race Still Matters. In: Phylon. Vol. 49. No. 3/4. pp. 151-171.
8. Cerrell Report. p. 16 [online]. Cit. [14. 6. 2020] Available at: <https://www.ejnet.org/ej/cerrell.pdf>
9. DIAZ, R. S. 2017. Getting to the Root of Environmental Injustice: Evaluating Claims, Causes, and Solutions. In: The Georgetown Environmental Law Review. Vol. 29. pp. 767-798. (768).
10. DIAZ, R. S. 2017. Getting to the Root of Environmental Injustice: Evaluating Claims, Causes, and Solutions. In: The Georgetown Environmental Law Review. Vol. 29. pp. 767-798.
11. DOWNEY, L. 2005. The unintended significance of race: environmental racial inequality in Detroit. In: Social Forces. Vol. 83. pp. 305-341.
12. DOWNEY, L. 2007. In: Urban Studies. Vol. 44. No. 5/6. pp. 953-977.
13. LAZARUS, R. J. 2000. "Environmental Racism! That's What It Is." [online]. [cit. 20.06.2020]. Available at: <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1151&context=facpub>
14. LEE, C. 1992. Toxic waste and race in the United States, In: B. BRYANT and P. MOHAI (Eds.), Race and the Incidence of Environmental Hazards. Boulder, CO: Westview Press. pp. 10-27.
15. PELLOW, D. N. 2000. Environmental Inequality Formation: Toward a Theory of Environmental Injustice. In: American Behavioral Scientist. Vol. 43. No. 4. pp. 581-601.
16. PETRIĆ, D. 2019. Environmental Justice in the European Union: A Critical Reassessment. In: Croatian Yearbook of European Law & Policy. Vol. 15. No. 1. pp. 215-267. [online]. [cit. 02.07.2020]. Available at: <https://hrcak.srce.hr/229901>
17. PULIDO, L. 1996. A Critical Review of the Methodology of Environmental Racism Research. In: Antipode. Vol. 28. No. 2. pp. 142-159. ISSN 0066 4812.
18. SCHLOSBERG, D. 2007. Defining Environmental Justice: Theories, Movements, and Nature, New York: Oxford University Press. p. 46. ISBN 978-0-19-928629-4.
19. WEINBERG, A. S. 1998. The environmental justice debate: new agendas for a third generation of research. In: Society & Natural Resources. Vol. 11. pp. 1605-1614.

#### Contact address/ Kontaktná adresa

**Mgr. Kristián Čechmánek, PhD.**

Department of Law,

Faculty of European Studies and Regional Development,

Slovak University of Agriculture in Nitra,

Tr. A. Hlinku 2, 949 76 Nitra,

e-mail: [k.cechmanek@gmail.com](mailto:k.cechmanek@gmail.com)

# LEGAL INSTRUMENTS TO SUPPORT LOCAL FOOD SYSTEMS IN ITALIAN LAW

## PRÁVNE NÁSTROJE NA PODPORU MIESTNYCH POTRAVINOVÝCH SYSTÉMOV V TALIANSKOM PRÁVE

Anna KAPAŁA\*

### I. Introduction

When explaining the title, it should be noted at the outset that local food systems have not been legally defined. For the purposes of this study, to specify them, the following main criteria were assumed: the production of agri-food products directly by agricultural producers and their sale within short supply chains; the geographical proximity between the food producer and the consumer. According to the EU legislator, short supply chains cover a limited number of economic operators involved in cooperation, bring local economic development, and are characterized by close geographical and social links between producers, processors, and consumers<sup>(1)</sup>.

In addition, EU support is intended to create such short supply chains where there is no more than one intermediary between the farmer and the consumer<sup>(2)</sup>. Whereas, local mar-

kets should be defined by the Member States by determining the distance in kilometres within the radius of the farm from which the product originates, where it must be processed and sold to the final consumer<sup>(3)</sup>. The term “local” is explained in literature as the adjective “used to designate all that is bound to a place in its physical-spatial sense”<sup>(4)</sup>, and “As regards food, it generally means that there is geographical proximity between farmer and consumer, so that food is produced close to where it is consumed, but there is no standardization of the distance

807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions, OJ L 227, 31.7.2014.

<sup>(3)</sup> Article 11(2) of Regulation (EU) No 807/2014.

<sup>(4)</sup> Cit. Strambi G., “Short Food Supply Chain” and Promotion of Local Food in EU and Italian law, in: Isoni A., Troisi M., Pierri M. (eds.), Food Diversity Between Rights, Duties and Autonomies, Springer 2018, p. 134, cit. after Sirsi E., *Regole e implicazioni giuridiche della produzione e del consumo del cibo locale*, in: Nappi P., Sgarbanti G., et al. (eds.) *Studi in onore di Luigi Costato*, vol. 3, Jovene Editore, Napoli 2014, p. 501.

<sup>(1)</sup> Article 1(2), letter m of Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005, OJ L 347, 20.12.2013.

See Article 11 (1) of Commission Delegated Regulation (EU) No

#### Abstract (EN)

The purpose of the discussion is an attempt to determine in what forms, which meet the criteria of local food systems (LFS), it is possible under Italian law to sell agri-food products by the farmer who is their producer. These forms imply a direct sale, or with the participation of at most one intermediary, to the final consumer, in close geographical distance between the place of production and sale. The analysis showed that Italian legislator, national and regional, provides for many instruments that are crucial in creating LFS, such as direct sales of agri-food products, farmers' markets reserved only for the local farmers; the sale of meals consisting of the farmer's products at the agritourism; wine routes; regional designation “products from zero kilometres”, emphasizing the geographical proximity between the place of manufacture and the place of sale; as well as a support for the social initiatives such as Solidarity Purchasing Groups.

#### Keywords (EN)

local food systems, direct sales, law

#### Abstrakt (SK)

Predkladaný príspevok sa pokúša vyvolať diskusiu a určiť vhodný spôsob predaja potravinových výrobkov priamo ich producentom, pri rešpektovaní pravidiel miestneho potravinového systému (MPS) a talianskeho práva. Takáto forma indikuje priamy predaj konečnému spotrebiteľovi alebo predaj s maximálne jedným sprostredkovateľom, pričom miesto výroby a predaja sú geograficky blízko. Analýza ukázala, že talianske zákony, národné aj regionálne, poskytujú mnohé nástroje, ktoré sú kľúčové pri tvorbe miestneho potravinového systému, ide napríklad o priamy predaj potravinových výrobkov, farmárske trhy určené výlučne miestnym producentom, predaj jedál pripravovaných výlučne z farmárskych výrobkov pri agroturizme, vínné cesty, regionálne značenia “výrobok od nula kilometrov”, dôraz na geografickú blízkosť miesta výroby a miesta predaja ako aj sociálne iniciatívy ako “Skupiny nákupov solidarity”.

#### Kľúčové slová (SK)

miestne potravinové systémy, priamy predaj, právo

\* Wrocław University of Environmental and Life Sciences, Poland

that defines it (...) <sup>(5)</sup>”.

The subject of trade under local food systems is food. Its definition appears in the act on food safety and applies to all food producers, regardless of whether they are farmers or food business operators. Pursuant to Article 2 of Regulation (EC) No 178/2002 “food (or foodstuff) means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans”<sup>(6)</sup>.

Whereas products belonging to the sphere of agriculture, i.e. classified as the result of manufacturing activity in agriculture, were listed on the list of agricultural products in Annex I to the TFEU <sup>(7)</sup>. This is an enumerative list with a narrower scope than the definition of food. It lists unprocessed and some processed agricultural products, such as processed meat, processed vegetable, dairy, wine, mead. The production of these products is covered by the common agricultural policy. On the other hand, when it comes to the question of which products can be manufactured and sold by a farmer, within his farming activity, this is regulated by the legislation of individual Member States.

As a rule, the sale of agricultural raw materials, being natural, final stage of agricultural production belongs to agricultural activities <sup>(8)</sup>. Whereas, the processing of agricultural products and their retail sale directly to the consumer are not typically agricultural activities. However, in Italian law these activities are explicitly qualified as “connected” agricultural activity, and, as a consequence, a farmer conducting them retains his agricultural status. In addition to this legal instrument, important for the development of short supply chains, Italian law provides for several other interesting instruments that can contribute to the development of local food systems. This is the reason which justifies the choice of this country legislation for the research.

The purpose of the discussion is an attempt to determine in what forms, which meet the criteria of local food systems, it is possible under Italian law to sell agri-food products by the farmer who is their producer. These forms imply a direct sale, or with the participation of at most one intermediary, to the final consumer, in close geographical distance between the place of production and the place of sale. Thus, regulations re-

garding all forms of short supply chains provided for in Italian legislation will be examined.

## II. Direct sales of agri-food products

Direct sale is the simplest form of short supply chains. In Italian law, it was qualified directly as an activity “connected” to agricultural activity by Article 2135 of the Italian Civil Code, defining agricultural activity and agricultural entrepreneurs <sup>(9)</sup>. Sales can be made by an agricultural entrepreneur who simultaneously conducts basic agricultural activities (cultivation of soil, forestry, animal husbandry). The subject of sale may be not only products in their natural state produced predominantly on the own farm, but also derived products obtained as a result of processing on the own farm, as well as acquired products (in a quantity not exceeding their own). In other words, products in their natural state, as well as processed products (of plant and animal origin), can be sold by an agricultural entrepreneur, provided that they are obtained mainly from agricultural activities as defined in Article 2135 of the Italian Civil Code.

Direct sales are regulated in detail in Article 4 of Legislative Decree No. 228/2001<sup>(10)</sup>. It entitles agricultural entrepreneurs to sell their products without the need for a special commercial authorization, stating that: “individual and associated agricultural entrepreneurs entered in the register of enterprises [...] may sell directly in retail throughout the territory of the Republic, products originating mainly from their own farm, observing the applicable hygiene and health principles.” Agricultural companies, partnerships and limited liability companies in Italy and cooperatives which, according to Article 4 of Legislative Decree No. 99/2004 <sup>(11)</sup>, have the status of agricultural entrepreneurs, are authorized to conduct direct sales on the same terms as individual agricultural entrepreneurs.

Article 4 of Legislative Decree No. 228/2010 provides for four possibilities of direct sales: on a farm or at home, in an itinerant form, or at a permanent point of sale in public places and via the Internet. What is more, immediate consumption of the products being sold is allowed, using the premises and furnishings in the availability of the agricultural entrepreneur, with the exclusion of the waiter service and with the observance of the general hygienic-sanitary requirements<sup>(12)</sup>.

Facilitation of direct sales do not apply if the amount of revenue from the sale of non-farm products in the previous cal-

<sup>(5)</sup> Strambi G., “Short Food Supply Chain”..., p. 134 and see the cited literature there in the footnote No. 4. Another meaning of “local product” can be also distinguished: as food with strong roots in a specific geographical place which gives the product its identity. So that the focus is rather on the nature and specificity of the resources used in the production process, cit. Arfini F., Mancini M. C., Donati M. (eds.), *Local Agri-Food System in a Global World: Market, Social and Environmental challenges*, Scholars Publishing, Newcastle upon Tyne, UK 2012, p. 72.

<sup>(6)</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, OJ L 31, 1.2.2002.

<sup>(7)</sup> Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012.

<sup>(8)</sup> Budzinowski R., *Nowa definicja przedsiębiorcy rolnego we włoskim kodeksie cywilnym*, Studia Iuridica Agraria 2003, vol. 3, p. 101; Idem, *Prawne pojęcie działalności rolniczej*, Prawo i Administracja 2003, vol. 2, p. 167 et seq.

<sup>(9)</sup> Codice Civile Regio Decreto 16 marzo 1942, No. 262. Approvazione del testo del Codice civile, Gazzetta Ufficiale No.79 of 04.04.1942, as amended.

<sup>(10)</sup> Decreto legislativo 18 maggio 2001, No. 228 Orientamento e modernizzazione del settore agricolo, a norma dell'articolo 7 della legge 5 marzo 2001, No. 57 (Gazzetta Ufficiale No. 137 of 15.06.2001, Supplemento Ordinario No. 149).

<sup>(11)</sup> Decreto Legislativo 29 marzo 2004, No. 99 “Disposizioni in materia di soggetti e attività, integrità aziendale e semplificazione amministrativa in agricoltura, a norma dell'articolo 1, comma 2, lettere d), f), g), l), ee), della legge 7 marzo 2003, n. 38”, Gazzetta Ufficiale No. 94 of 22.04.2004.

<sup>(12)</sup> Article 4 (8bis) d. lgs. 228/2001.

endar year exceeds EUR 160 thousand for individual entrepreneurs, or EUR 4 million for companies.

Classification of the activity, which by its nature is commercial, as agricultural, allows the agricultural entrepreneur who performs it to remain within the sphere of agriculture and to preserve his privileged status. Such regulation is a response to the need for farmers to sell products of his core business, and for consumers - to buy products directly from the farmer. It constitutes a valuable legal instrument in the creation and development of local food systems<sup>(13)</sup>.

### III. Food sales at agritourism

Sale of meals and drinks, including alcoholic and spirit drinks, under Act No. 96/2006 on agritourism<sup>(14)</sup>, is one of the agritourism activities that can be carried out by an agricultural entrepreneur. Its subject should mainly be products from own or nearby farms. With particular preference should be sold typical products and those marked as Protected Denomination of Origin (PDO) and Protected Geographical Indication (PGI), and Italian marks: Indicazione Geografica Tipica (IGT), Denominazione d'Origine Controllata (DOC), Denominazione d'Origine Controllata e Garantita (DOCG) or inscribed on the national list of traditional agri-food products (Article 2 (3b) of Act No. 96/2006). Agritourism, according to the purpose of the regulations, should be "an economic phenomenon capable of activating the farm's production capacity, emphasizing its multifunctionality and capable of raising the value of the territory"<sup>(15)</sup>.

The requirement to provide typical products with PDO, PGI, GTS, DOC and DOCG markings and traditional products serves not only to promote them and give the gastronomic offer regional features, but also to value the territory<sup>(16)</sup>. In this way, the Italian Republic also supports agriculture by promoting rural tourism, which is to support and develop local production, high-quality production and associated wine traditions<sup>(17)</sup>.

The offer of an agritourism farm serving typical, local products is certainly consistent with the expectations of consumers and is a form of implementation of the idea of local food systems. It allows the farmer to sell his products directly to the consumer at the place of their production, which ensures that the criterion of geographical proximity between the place

of sale and the production as well as the criterion of close relationship between the producer and the consumer are met.

### IV. Sales of agri-food products at the farmers' markets

Another form of implementation of local food systems, under which farmers can sell their agricultural and food products, are the so-called farmers' markets. They constitute a special type of direct sales, derived from the general regulation of direct sales of agricultural products, laid down in Article 4 of Legislative Decree 228/2001. These are "public or private areas intended for direct sale of agricultural products only by agricultural entrepreneurs", carrying out agricultural activity in the territorial range of farmers' market<sup>(18)</sup>. The definition includes the discussed concept of geographical proximity between the place of production and the place of marketing.

*Farmers' markets* are reserved only for agricultural entrepreneurs selling agricultural products in an unprocessed or processed state, coming from their own farm or from the farm of partners who are agricultural entrepreneurs. The condition is, however, that the income from the sale of non-own products in a calendar year cannot exceed EUR 160 thousand for individual entrepreneurs and EUR 4 million for companies. In addition, cultural, educational, and demonstration events related to traditional, hand-made, and sold food products can be organized on agricultural markets. This form of sale makes it possible to establish direct relations between producers and consumers. Therefore, it can be said that farmers' market is an important instrument of implementation of local food systems, as it ensures direct sales of agricultural and food products by the producer and close geographical and social links between producers and consumers<sup>(19)</sup>.

### V. Sales of agricultural and food products produced within a '0 km' radius („i prodotti a chilometri ero")

An instrument for the implementation of local food systems is also the designation "agricultural products within a 0-kilometre radius". It is aimed to promote and distinguish the products by emphasizing their local origin directly from the producer, and, in particular, that they were produced in close proximity to the place of sale and are sold without the participation of an intermediary. The designation was introduced in all regions of Italy by regional laws, with the purpose to support short food chains and the sale of agricultural products manufactured not further than, depending on the region, 30 to 80 km from where the sale takes place or where the farmers' market is lo-

<sup>(13)</sup> Kapała A., *Sprzedaż wina w ramach lokalnych systemów żywnościowych na przykładzie prawa włoskiego*, Przegląd Prawa Rolnego 2019, No. 2, in course of publication.

<sup>(14)</sup> Legge 20 febbraio 2006, n. 96. *Disciplina dell'agriturismo*, Gazzetta Ufficiale No. 63 of 16.03.2006, as amended.

<sup>(15)</sup> See Article 1 of legge 96/2006, and more on this subject in: Paoloni L., *Commento all'art. 4*, in: Costato L., Graziani C.A., Albisinni F., et al., *Commentario alla legge 20 febbraio 2006, n. 96 «Disciplina dell'agriturismo»*, Rivista di Diritto Agrario 2006, issue No. 4, p. 495.

<sup>(16)</sup> Albisinni F., *Commento all'art. 2*, in: Costato L., Graziani C.A., Albisinni F., et al., *Commentario alla legge 20 febbraio 2006, n. 96 «Disciplina dell'agriturismo»*,..., p. 467. For more on agritourism and typical products in Italy, see Strambi G., *Agriturismo e valorizzazione dei prodotti agro-alimentari tipici*, Diritto e Giurisprudenza Agraria e dell'ambiente 2007, No. 12, p. 746 et seq.

<sup>(17)</sup> This aim is included in Article 1 letter f) of Act No. 06/2006.

<sup>(18)</sup> According to the ministerial decree of November 20, 2007: Decreto 20 novembre 2007 Attuazione dell'articolo 1, comma 1065, della legge 27 dicembre 2006, No. 296, sui mercati riservati all'esercizio della vendita diretta da parte degli imprenditori agricoli (Gazzetta Ufficiale, Serie Generale No. 301 of 29.12.2007).

<sup>(19)</sup> Kapała A., *Sprzedaż wina w ...*, in course of publication.

cated. Some regions, in addition, express the concept of “zero kilometres products” by referring to a limit of CO<sub>2</sub> production during the transport of the products from the place of production to the place intended for consumption. In the case of Umbria region, it is less than 25 kg of CO<sub>2</sub> equivalent per ton, and in any case the products cannot be transported outside the regional territory<sup>(20)</sup>.

At present, the subject of the work of the Italian Senate is a national bill regarding the principles of promoting agricultural and food products from the short supply chain or “from zero kilometres”<sup>(21)</sup>. It aims to introduce uniform rules for all regions. The draft act concerns agricultural products listed in Annex I to the TFEU and foodstuffs within the meaning of Article 2 of Regulation (EC) No 178/2002 and therefore applies to all foodstuffs. Products may use the promotion and awarding instrument, which is the “zero kilometres” marking, when they come from the place of production or processing of agricultural raw materials located not further than 70 km from the place of sale or place of consumption. In contrast, agricultural or food products qualify as coming from short supply chains if they are sold without the participation of commercial intermediaries or with the participation of only one intermediary. Cooperatives and their consortia and producer groups are not considered intermediaries<sup>(22)</sup>.

## VI. „Wine routes” and routes of other “quality products”

An interesting legal instrument in the promotion and sales of wine (but also other typical food products), within the concept of “local food systems”, are the so-called “Wine routes” (*le strade del vino*)<sup>(23)</sup>, as well as “routes aimed at the valorisation, also jointly, of other quality productions, with particular regard to olive oil and in general to typical products”, as regulated by law No. 268/1999<sup>(24)</sup> and supplemented by a decree of 2000<sup>(25)</sup>.

The considerations will concern the legal requirements of creating wine routes, as the cited legal acts relate primarily to them. However, their provisions may also apply to the realisation of olive oil or other “quality products” routes. It is not clear, though, how to understand the term “quality product” for neither national nor union legislator gives its univocal definition<sup>(26)</sup>. In most of the regional legislations they are considered as “agri-food production certified based on national or community systems that guarantee the presence of the requirements, in the production method or in the geographical origin, such as to distinguish the final product from others of the same kind”<sup>(27)</sup>. They could be then, the products covered by the EU quality schemes for agricultural products and foodstuffs, as regulated in Regulation (EU) No. 1151/2012<sup>(28)</sup>, organic products, as referred to in Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products<sup>(29)</sup>. As for the national systems, instead, the cited Decree of 2000 explicitly states that routes may be created for those typical agri-food products covered by Article 8 of the Legislative Decree No. 173/1998<sup>(30)</sup>.

The cited Act No. 268/1999 is a national framework regulation that defines the main principles within which the regional legislator may operate, indicating the goals and criteria for creating “routes”. Wine routes, according to the Decree of 2000, establishing minimum quality standards for them, must pass through places where high-quality products are produced, as well as products covered by the EU quality system (PDO, PGI, GTS) and traditional agri-food products<sup>(31)</sup>.

“Wine routes” are properly marked and advertised routes along which there are areas of natural and cultural value, vineyards and cellars of wine farms open to the public. With this instrument, areas with a particular predisposition for wine production can be advertised in the form of a tourist offer. Wine areas are production areas, especially of high-quality wines, covered by the system of traditional Italian wine terms: *Denominazione d’Origine Controllata (DOC)*, *Denominazione d’Origine Controllata e Garantita (DOCG)* and *Indicazione Geografica di Vini da Tavola (IGT)*<sup>(32)</sup>, and the EU quality system of PDO,

<sup>(20)</sup> See for example: Regione Umbria, Legge Regionale 10 febbraio 2011, n. 1, Norme per il sostegno dei gruppi d’acquisto solidale e popolare (GASP) e per la promozione dei prodotti agroalimentari a chilometri zero, da filiera corta e di qualità, Bollettino Ufficiale No. 8 of 16.02.2001.

<sup>(21)</sup> Il disegno di legge n. 1728 Disposizioni per la tutela e la valorizzazione della biodiversità agraria e alimentare, approvato dalla Camera dei deputati, adopted on October 17, 2018 by the Chamber of Deputies, see more: <http://www.senato.it/leg/18/BGT/Schede/Ddliter/50789.htm>.

<sup>(22)</sup> Kapała A., *Sprzedaż wina ...*, in course of publication.

<sup>(23)</sup> On this topic see more in: Strambi G., *Le strade del vino, dell’olio e dei sapori. Il quadro giuridico di riferimento*, Rivista di Diritto Agrario 2006, issue No. 2, p. 206.

<sup>(24)</sup> Article 5 of Legge 27 luglio 1999 n. 268 Disciplina delle „strade del vino” (Gazzetta Ufficiale, Serie Generale No 185 of 09.08.1999, hereinafter cited as legge 269/1999).

<sup>(25)</sup> Decreto Ministeriale 27 luglio 2000 Fissazione degli standard minimi di qualità per i percorsi individuati ai sensi della Legge 27 luglio 1999 n. 268, recante „Disciplina delle strade del vino” (Gazzetta Ufficiale, Serie Generale No. 175 of 28.07.2000).

<sup>(26)</sup> Strambi G., *Le strade del vino...*, p. 226. See the literature cited by the Author in the footnote no. 40 regarding the concept of “quality product”.

<sup>(27)</sup> Cit. Strambi G., *Le strade del vino...*, p. 226.

<sup>(28)</sup> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, OJ L 343, 14.12.2012.

<sup>(29)</sup> OJ L 189, 20.7.2007.

<sup>(30)</sup> Decreto legislativo 30 aprile 1998, n. 173 Disposizioni in materia di contenimento dei costi di produzione e per il rafforzamento strutturale delle imprese agricole, a norma dell’articolo 55, commi 14 e 15, della legge 27 dicembre 1997, n. 449 (Gazzetta Ufficiale, Serie Generale No. 129 of 05.06.1998).

<sup>(31)</sup> Within the meaning of the cited Legislative No. 173/1998.

<sup>(32)</sup> These are traditional designations of the origin of wines set out in Italian legislation in the act, which is no longer in force: legge 10 febbraio 1992, n. 164 „Nuova disciplina delle denominazioni di origine”, („Gazzetta Ufficiale” No. 47 of 26.12.1992). Since the entry into force of EC Regulation No 1234/2007, EU designations have been in force: Protected Designation of Origin and Protected Geographical Indication, and national wine designations have been repealed. However, the latter can still be used on wine labels



PGI and GTS. The name of the wine route may be the same as the name of the geographical area or the name of a wine produced in a specific area which is associated with the given area<sup>(33)</sup>.

The first wine routes in Italy arose from a bottom-up initiative of local producers to promote products that are a symbol of Italian wine culture<sup>(34)</sup>. Then, they became the subject of regional regulations. For example, the law of the Lazio Region was intended to identify tourist attractions based on the promotion of local typical wines, original agricultural products from the area, cultural heritage, and local folk traditions, artistic, architectural heritage and monuments<sup>(35)</sup>.

It is important that in the “wine route” participate at least two agricultural entrepreneurs producing a high-quality product, at least one processor of an agricultural product being the basis of a high-quality food product, at least one entity organized to sell products covered by the “wine route” or a museum dedicated to a given product or agricultural production activity. Wine routes should be appropriately marked and advertised to provide tourists with information and to distinguish them from other areas. It is necessary that wine farms are open to tourists, which means, above all, that they should offer their own products directly to visitors. Tourists should be able to visit the farm to see not only the products but also the production methods, equipment, and machinery used<sup>(36)</sup>.

Routes are, therefore, a form of implementation of local food systems, meeting the criteria of direct relations between the producer and the consumer, geographical proximity between the place of production and sale as well as participation of at most one intermediary between the farmer and the consumer<sup>(37)</sup>.

## VII. Solidarity Purchasing Groups (GAS)

Solidarity Purchasing Groups (GAS, “*Gruppi d’Acquisto Solidale*”) have many shared aspects that are close to the common definition of Community Supported Agriculture. CSA experiences in Italy are conceived as groups of farmers and citizens-consumers that cooperate in a common project of food production that respects agroecological principles and social justice. Consumers normally share the economic risks with the farmers and give them financial support by paying in advance. In some cases, consumers are not only buyers but contribute

directly by working in farm activities<sup>(38)</sup>.

The form of the community-oriented agriculture that is mostly developed and has a stronger tradition in Italy is GAS. They are an example of collective consumption which participate in the local food systems and contribute to their creation by making purchases from local producers. They constitute a peculiar bottom-up social innovation that has been spreading over the past 20 years in Italy. In the literature they are described as self-organized groups of citizens who collectively buy food or any other everyday good, selecting suppliers based on solidarity and critical consumption<sup>(39)</sup>.

Although GAS existed for a long time, they have only recently been legally defined for the purpose to solve the issue of the fiscal treatment of the groups. The General Financial Law 2007<sup>(40)</sup> prescribed that GASs who had formalised in associations could not be considered commercial entities as long as they don’t operate any mark-up in the original price and if they limit the purchasing only to those who are members of the association<sup>(41)</sup>. In the Section 47bis “Solidarity Purchasing Groups” are defined as those non-profit associations set up to carry out the collective purchase of goods and distribution thereof, without application of any charge to members, with ethical purposes, of social solidarity and environmental sustainability in a direct implementation of the goals with institutional and ethical objectives to the exclusion of activities of administration and sales”.

In fact, their purpose is not to obtain better prices by making purchases directly from producers and by avoiding intermediaries. What makes GAS peculiar is their concern about the solidarity and ethical principles of critical consumption. They pay attention to fair economic relations and fair prices that meet both the farmers’ needs and are affordable for the consumers and. Other values and principles they respect are labour regulation, preference for local products, sustainability in production (i.e. organic), and transportation of goods (i.e. preference for social cooperatives as providers of services). Their choice for organic and km 0 productions is also a way to promote environment protection<sup>(42)</sup>. They have a close relationship with the farmers, based on trust, transparency, respect, and fairness<sup>(43)</sup>.

The GAS address important social problems, by purchasing goods from minor producers, which, because of their slight

as ‘traditional indications’ pursuant to Article 112 of Regulation (EU) No. 1308/2013.

<sup>(33)</sup> See Article 1 (1) legge 268/1999 and as an example of a regional legislation see Article 1 Decreto del Presidente della Regione 9 agosto 2002, n. 0239 Regalement per l’attuazione del capo IV della legge regionale 20 novembre 2000, n. 21 „realizzazione delle strade del vino” („Bollettino Ufficiale Regionale” No. 37 of 11.09.2002).

<sup>(34)</sup> Strambi G., *Le strade del vino...*, p. 213.

<sup>(35)</sup> Article 1 (6) Legge della Regione Lazio 31 gennaio 1983, No. 12 „Istituzione e gestione delle strade dei vini dei Castelli Romani”, Bollettino Ufficiale Regionale No. 7, of 10.03.1983.

<sup>(36)</sup> Strambi G., *Le strade del vino...*, p. 218.

<sup>(37)</sup> Kapała A., *Sprzedaż wina ...*, in course of publication.

<sup>(38)</sup> Demaldè C. A., Rossi A., Colombara S., European CSA Research Group (2016): Overview of Community Supported Agriculture in Europe, accessible on <https://urgenci.net/wp-content/uploads/2016/05/Overview-of-Community-Supported-Agriculture-in-Europe.pdf> [accessed on 31.05.2020], p. 62.

<sup>(39)</sup> Acanfora M., *Il libro dei GAS. Gruppi di acquisto solidali: come fare la spesa giusta dalla “A” al Km Zero*, Altreconomia, Milano 2015.

<sup>(40)</sup> General Financial Law of 2007: Legge 24 dicembre 2007, No. 244 Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2008), Gazzetta Ufficiale, Serie Generale No. 300 of 28.12.2007, Supplemento Ordinario No. 285.

<sup>(41)</sup> The law solved one of the biggest issues for the groups, regarding who was supposed to pay VAT in the exchange between producers, the GAS as an “intermediation” entity and final consumers, cit. Maestriperi L., 4 Individual case study: „Solidarity Purchasing Group”, CRESSI Working Paper no. 29/2016, p. 337.

<sup>(42)</sup> *Ibidem* p. 338.

<sup>(43)</sup> Demaldè C. A., Rossi A., Colombara S., *op. cit.*, p. 65.

production volumes, are not capable to access regular markets or big retailers. Besides, the latter would use their power position to reduce the buying prices. Small producers would otherwise have difficulties to sell their produce, even through direct sales, especially if they are established in isolated territories which impedes them the access to the farmers' markets.

Moreover, even though their production may be carried out in a sustainable or organic way, their dimensions might hamper their access to organic certification, requiring financial and organizational efforts<sup>(44)</sup>. GAS choose producers who have no official certification although they apply the principles of organic farming to their production. In these cases, the social control carried out by the local networks is the means used to guarantee requirements are respected<sup>(45)</sup>. GAS, therefore, by appreciating and buying products from these kinds of small farmers contribute to maintaining local production and local cultural heritage. All these practices make them a phenomenon that supports sustainable and local food systems.

Some Italian regions, within their legislative intervention to promote agricultural and food products "a chilometri zero" and short supply chains, provide for support to the Solidarity and Popular Purchasing Groups (GASP) (*Gruppi d'Acquisto Solidale e Popolare*), through granting of financial contributions for the running, promotion and organization of each purchasing group<sup>(46)</sup>. They offer, as well, financial contributions to the municipalities which, as in the case of Umbria Region, reserve at least 30% of the spaces for the food sector in the existing markets or at least 50% of the spaces in the newly established markets intended for the food sector, for local agricultural producers or producers registered in the "Regional list of organic farming operators"<sup>(47)</sup>, or if they grant GASPs suitable spaces, identified among their real estate, on loan or for free, for their activities.

## VIII. Conclusions

Italian legislator provides for many instruments that are crucial in creating and developing local food systems, such as direct sales of agricultural and food products produced and processed by the farmer, farmers' markets reserved only for the local farmers selling their own products, the sale of meals consisting of the farmer's products and the regional quality products at the agritourism; wine routes and routes of other quality local products. Under these instruments, the regulations also support the sale of local and area-specific local products marked with recognised EU and national labelling system. At the level of regional legislation, there is also the designation

<sup>(44)</sup> Maestripietri L., op. cit., p. 341.

<sup>(45)</sup> Demaldè C. A., Rossi A., Colombara S., op. cit., p. 65.

<sup>(46)</sup> See for example: Regione Umbria, Legge Regionale 10 febbraio 2011, n. 1, Norme per il sostegno dei gruppi d'acquisto solidale e popolare (GASP) e per la promozione dei prodotti agroalimentari a chilometri zero, da filiera corta e di qualità, Bollettino Ufficiale No. 8 of 16.02.2001.

<sup>(47)</sup> Referred to in Article 8 of Legislative Decree no. 220/1995 Attuazione degli articoli 8 e 9 del regolamento CEE n. 2092/91 in materia di produzione agricola ed agroalimentare con metodo biologico, (Gazzetta Ufficiale, Serie Generale No.12 of 05.06.1995, Supplemento Ordinario No. 69).

"products from zero kilometres", emphasizing the geographical proximity between the place of manufacture and the place of sale, and a national law in this regard is in preparation. The law provides also for the support for the bottom-up social initiatives such as GAS, which are the most developed form of Community Supported Agriculture in Italy. Although they are not governed by any state or regional law or an institution, they are the addressee of financial grants from the regions. The law qualify GAS not as business entities or intermediaries, but as final consumers, and as a consequence, they are not subject to income tax or VAT tax regulations.

The discussed forms of short supply chain realise the idea of local food systems. They contain conditions of close proximity between the place of production and the place of sale, direct or close social relationship between the producer and the consumer and the absence of intermediaries or the participation of at most one intermediary. These criteria are met for all forms of direct sales (except online sales or at large distances from the farm), agritourism, farmers' markets, wine routes, and the designation "products from 0 kilometres". The possibility of participation of one intermediary is provided for by the regulation of "wine routes" and regional laws (as well as a draft national act) regarding sales within short supply chains, and the agritourism law, allowing the serving of wine and the sale of meals and drinks consisting of products from nearby farms<sup>(48)</sup>. Each form of short supply chain enables consumers to have direct relations with producers, though the closest relations link members of GASs and their suppliers, as they imply also the possibility of shaping and impacting the supply offer and even, at the earlier stage, the direction and volume of production.

These instruments that form local food systems are an important support especially for small producers, enabling them to keep their production, often conducted in an extensive and environmentally friendly way. Thus, they contribute to maintaining local production and local cultural heritage, and in a broader perspective, to enhance local economic development and promotion of rural areas. Undoubtedly, it is worth implementing them and introducing into the legal orders, and Italian legislation can be a good example to follow.

## References

1. ACANFORA M., *Il libro dei GAS. Gruppi di acquisto solidali: come fare la spesa giusta dalla "A" al Km Zero*, Altreconomia, Milano 2015.
2. ALBISINNI F., *Commento all'art. 2*, in: Costato L., Graziani C.A., Albisinni F., et al., *Commentario alla legge 20 febbraio 2006, n. 96 «Disciplina dell'agriturismo»*, Rivista di Diritto Agrario 2006, issue No. 4.
3. ARFINI F., MANCINI M. C., DONATI M. (eds.), *Local Agri-Food System in a Global World: Market, Social and Environmental challenges*, Scholars Publishing, Newcastle upon Tyne, UK 2012.
4. BUDZINOWSKI R., *Nowa definicja przedsiębiorcy rolnego we włoskim kodeksie cywilnym*, Studia Iuridica Agraria 2002, vol. 3.
5. BUDZINOWSKI R., *Prawne pojęcie działalności rolniczej*, Prawo i Administracja 2003, vol. 2.
6. DEMALDÈ C. A. - ROSSI A. - COLOMBARA S., *European CSA Research Group (2016): Overview of Community Supported Agriculture in Europe*, accessible on <https://urgenci.net/wp-content/>

<sup>(48)</sup> Kapala A., Sprzedaż wina..., in course of publication.

uploads/2016/05/Overview-of-Community-Supported-Agriculture-in-Europe.pdf [accessed on 31.05.2020].

7. KAPAŁA A., *Sprzedaż wina w ramach lokalnych systemów żywnościowych na przykładzie prawa włoskiego*, Przegląd Prawa Rolnego 2019, No. 2, in course of publication.
8. MAESTRIPIERI L., *4 Individual case study: „Solidarity Purchasing Group“*, CRESSI Working Paper no. 29/2016.
9. PAOLONI L., *Commento all'art. 4*, in: Costato L., Graziani C.A., Albinini F., et al., *Commentario alla legge 20 febbraio 2006, n. 96 «Disciplina dell'agriturismo»*, Rivista di Diritto Agrario 2006, issue no. 4.
10. SIRSI E., *Regole e implicazioni giuridiche della produzione e del consumo del cibo locale*, in: Nappi P., Sgarbanti G., et al. (eds.) *Studi in onore di Luigi Costato*, vol. 3, Jovene Editore, Napoli 2014.
11. STRAMBI G., *“Short Food Supply Chain” and Promotion of Local Food in EU and Italian law*, in: Isoni A., Troisi M., Pierri M. (eds.), *Food Diversity Between Rights, Duties and Autonomies*, Springer 2018.
12. STRAMBI G., *Agriturismo e valorizzazione dei prodotti agro-alimentari tipici*, Diritto e Giurisprudenza Agraria e dell'ambiente 2007, No. 12.
13. STRAMBI G., *Le strade del vino, dell'olio e dei sapori. Il quadro giuridico di riferimento*, Rivista di Diritto Agrario 2006, issue No. 2.

### Acknowledgment

The paper has been prepared  
with the support of the National Science Centre  
in Poland under  
**Grant No. 2016/21/D/HS5/03906**,  
project title: “Legal instruments to support local food systems”.

### Contact address/ Kontaktná adresa

**Dr. Anna Kapala, Ph.D. in law**, professor assistant,  
Wrocław University of Environmental and Life Sciences  
Faculty of Natural Sciences and Technology  
Institute of Economic Sciences  
e-mail: [anna.kapala@upwr.edu.pl](mailto:anna.kapala@upwr.edu.pl)

# AGRI-FOOD CHAIN – – CHALLENGES AND PERSPECTIVES

## POTRAVINOVÉ REŤAZCE – – VÝZVY A PERSPEKTÍVY

Pavol SCHWARCZ\* - Norbert FLORIŠ\* - Loreta SCHWARCZOVÁ\*

### I. Introduction

The CAP is applied at European level i.e. in all Member States thus giving the project an international dimension. The main focus will be on university students as potential future actors in agriculture and food processing in rural areas. To comprehend the nature of problems in agriculture and rural areas and to be able to find appropriate solutions it will be necessary for students to understand essentials of the CAP, its two pillars and its importance for agriculture and rural development. Our main effort focuses on the creation of the Centre of Excellence providing students with best conditions for satisfying their needs concerning studies of the CAP and its influence on all actors in agriculture and rural areas – from large agricultural holdings farming thousands of hectares of agricultural land to small local producers providing their products on local market places. As indicated previously, the CAP will be the central topic of the project, providing the complex expert information on the CAP including an introductory section on EU policies,

the system of the CAP, its reforms, legislation, funding, pillars, implementation on the EU level and in Slovakia, too.

### II. Objective and methodology

In order to provide smart solutions of problems in agriculture and rural areas, it will be necessary to go beyond the topic of the CAP and to explain some effective concepts and approaches starting from the rural development principles – the complementary element to the first pillar of the CAP. Therefore, we plan to involve the topic of short food supply chains as an innovative component – from the methodological point of view – within the CAP issues, as this concept is relatively new in Slovakia and its incorporation into existing topic will be supported by international experts. The concept of short food supply chains is considered to be an appropriate tool for achieving objectives defined by the Slovak Government for implemen-

#### Abstract (EN)

Agri-food sector is one of the biggest and most supported economic sectors in the EU. It is a key sector for sustainable economic development and food safety and security. The EU Common Agricultural Policy (hereinafter CAP) is its backbone – it helps farmers with income support and market measures on the one hand and, on the other hand, it ensures sustainable rural development in individual EU countries. Despite of the huge support agricultural sectors in Member States are facing serious problems – in Slovakia it is especially the low level of domestic agricultural production, low quality of food products, high unemployment rate especially among young people, ageing of population and abandonment of rural areas. Looking for solutions for these problems mentioned there is a great challenge for relevant public authorities and for the academic sector, as well. Based on these facts the initiative to submit a project proposal has arisen within the Jean Monnet Centre of Excellence – which would respond on challenges in this field. The project (Centre of Excellence for European Agri-Food Chain – CEEAG 611446-EPP-1-2019-1-SK-EPPJMO-CoE) has been granted and its main focus will start from important and irreplaceable role of agriculture and food industry in national economies of (not only) Member States via ensuring their food security under conditions given by the EU Common Agricultural Policy (CAP) – one of the most supported policies in the EU.

#### Abstrakt (SK)

Agropotravinárstvo patrí k najväčším a najviac podporovaným odvetviam v rámci EÚ. Ide o kľúčový sektor z pohľadu rozvoja udržateľnej ekonomiky a zabezpečenia potravinovej bezpečnosti. Nosným pilierom tohto sektora je Spoločná poľnohospodárska politika EÚ (SPP) – tá na jednej strane pomáha poľnohospodárom podporou ich príjmov a trhovými opatreniami a na strane druhej zabezpečuje udržateľný rozvoj vidieka v jednotlivých členských štátoch EÚ. Napriek značnej podpore čelia poľnohospodárske odvetvia v členských štátoch vážnym problémom - na Slovensku je to najmä nízka úroveň domácej poľnohospodárskej výroby, nízka kvalita potravín, vysoká miera nezamestnanosti najmä medzi mladými ľuďmi, starnutie obyvateľstva a opustenie vidieckych oblastí. Hľadanie riešení uvedených problémov predstavuje veľkú výzvu pre príslušné verejné orgány a akademickú sféru. Na základe týchto skutočností vznikla iniciatíva na predloženie návrhu projektu v rámci centra excelentnosti Jean Monnet - ktorá by reagovala na výzvy v tejto oblasti. Projekt (Centrum excelentnosti pre európsky agropotravinársky reťazec – CEEAG 611446-EPP-1-2019-1-SK-EPPJMO-CoE) bol schválený a zameriava sa na štúdium nezastupiteľnej úlohy poľnohospodárskeho a potravinárskeho sektora v národnom hospodárstve (nielen) členských štátov, a to v oblasti zabezpečenia potravinovej bezpečnosti za podmienok stanovených Spoločnou poľnohospodárskou politikou- ako jednou z najviac podporovaných politík EÚ.

#### Keywords (EN)

Common Agricultural Policy, agri-food chain, food security

#### Kľúčové slová (SK)

Spoločná poľnohospodárska politika, agropotravinový reťazec, potravinová bezpečnosť

\* Slovak University of Agriculture in Nitra, Slovakia

tation of the Rural Development Programme SR 2014–2020, moreover, there is a high level of support in the Rural Development Programme dedicated to measures encouraging farmers to associate into short food supply chains. The concept of short food supply chains is directly connected with providing and distribution of quality and safe food, therefore risk factors of the food chain will be the another focus area of the project, together with the specific part focus on the food legislation, agro environmental legislation (from the point of view of environmental protection) and land law (from the point of view of protection of soil). Marketing activities are an important factor for distribution and placing food products on the market and for assuring their sales. Therefore, marketing of agri-food products will be the last part we will focus on in the project. Integration of economic, social, legal and biological aspects in the project implementation will assure a multidisciplinary character of the project.

An experienced staff of faculties of the SUA in Nitra – Faculty of European Studies and Regional Development, Faculty of Biotechnology and Food Sciences and Faculty of Economics and Management will carry out activities towards to implementation of the intended Jean Monnet Centre of Excellence, using experiences from the previous Lifelong Learning Programme 2007–2013 and Erasmus+ projects. One of the main outputs of these projects – an e-learning platform – will be used for teaching the courses within the newly created Centre of Excellence. The e-learning platform will thus be another innovative component (from the technological point of view) which will contribute together with the short food supply chains concept to creation of an added value to an academic environment for students to be able fully to use benefits provided by the Centre of Excellence. Thus, the methodology will involve the combination of classical teaching methods with modern methods using the ICT in the teaching process, completed with debates and discussions during project events. Based on findings from the study visit in the DG Agri in Brussels, expert knowledge and target group needs we will prepare syllabuses of new courses which will be offered to students of all faculties. Although the targeted PhD. students do not directly deal with the project focus areas, they all practically deal with agricultural studies and therefore creating the synergy between various disciplines provided in the teaching process within the project will complement their expertise and enhance knowledge necessary for their studies. Content of courses will be prepared by high quality experts and subsequently placed in the e-learning platform.

### III. Expected results

When creating the methodological part of the Jean Monnet Centre of Excellence, both the academic aspects as well as requirements of agricultural practice has been considered to form an appropriate study environment for students. Academic aspects will be especially based on adapting particular courses for students of the PhD. studies:

- Challenges and Impacts of the EU Agricultural Policy,
- Risk Factors of the Food Chain,
- Agri-Environmental and Food Legislation of the EU,
- EU Agrarian Marketing.

In order to achieve expected results within the project there is a need to introduce into existing curricula an approach which starts from needs and requirements of agricultural practice and which contributes to achievement of objectives defined by the Slovak Government for implementation of the Rural Development Programme SR 2014–2020 (e.g. to increase the direct sale on farm from current 3% to 7% until 2020 and to establish 15 farmers' markets in addition to current five). Support of small farmers and producers is thus considered to be the best solution, as they are considered to be a basic building stone of rural areas and their organisation into short food supply chains is considered to be a key prerequisite for increasing the added value of agricultural products, improving social situation of farmers and the quality of life in rural areas. The concept of short food supply chains will be transferred into an academic environment and will be incorporated as a new subtopic into the structure of adapted course Challenges and Impacts of the EU Agricultural Policy. Production of food requires certain procedures and activities towards the safety of food, therefore identification of risk factors of food distributed in the food chain will be an important part of academic activities and will be incorporated in the newly created course Risk Factors of the Food Chain. Knowledge of legal environment is an important factor in relation to any activities connected with farming or food production, processing and distribution. Therefore, this expertise will be provided within the adapted course Agro-Environmental and Food Legislation of the EU. Good marketing assures the sales of any products and can be this way the basis for success of the farmer or food producer. Therefore, the expertise on agrarian marketing will be incorporated into the course EU Agrarian Marketing.

Such innovated courses will be offered to students of the PhD. studies at all faculties by experienced teachers of the SUA in Nitra with an expertise from previous Lifelong Learning Programme 2007–2013, Leonardo da Vinci Transfer of Innovation project “New European Standards in the Context of Reformed EU Common Agricultural Policy – NEWCAP” No. 2012-1-SK1-LEO05-04199, the Erasmus+ KA2 Capacity Building in Higher Education project “Enhancing Competencies of Central Asian Universities in Agricultural Policy focused on Environmental Protection & Land Management – ECAP” No. 561590-EPP-1-2015-1-SK-EPPKA2-CBHE-JP and a TEMPUS project “Higher Education Structures to Enhance Public Health Learning and Teaching in the Republic of Uzbekistan (UZHELTH)” No. 544445-TEMPUS-1-2013-1-IT-TEMPUS-SMHES. However it is necessary to perceive the CAP as a complex issue with an impact on agricultural sectors and rural areas in the whole EU, therefore gathering the expertise, professional knowledge and skills of experts from other European HEIs will be the basic prerequisite for preparation of students to be able to enhance their knowledge and skills by expert information gained from foreign experts and apply this information in their future occupation. The teaching process will be therefore supported by various accompanying events with participation of foreign experts, directing students to complete their knowledge and expertise gained in the teaching process and teachers to broaden their professional profile with further information they will later interpret to students. There are 2 types of events planned for this purpose:

- type - events for students at all levels of university degree and young researchers organised at the SUA in Nitra with participation of experts from abroad and of representatives of public authorities from agricultural sector - workshops, seminars roundtable debates and a conference for students to exchange information and to get the new knowledge on the CAP, its impact on agriculture and rural areas and European food policy in selected EU countries and on possible preconditions of its continuation after 2020;
- type- events such as conferences or study visits organised abroad attended by members of the Centre of Excellence to broaden their expertise and knowledge which will be provided to students within the teaching process. This also involves the study visit at the EC DG for Agriculture and Rural Development.

Farming activities significantly influence an environment in which we live. The CAP therefore integrates mechanisms for environmental protection, food safety and animal protection and welfare. The CAP is thus tightly interconnected with further policies, such as environmental policy, food policy, land policy and also cohesion policy and rural development policy. Considering this, implementation of the Centre of Excellence will require gathering expert information from several resources and their appropriate processing into the form which will be easily comprehensible for students. In the same time the information provided to students must preserve its scientific value so that students will be able to use their knowledge and skills not only in agricultural practice, but even in case they decide for the career in academic environment. We expect gathering the expert information from the following fields:

- a) the field of agriculture and rural development will provide resources for the topic of the Common Agricultural Policy; the subtopic of short food supply chains will acquire information from the field of rural development, regional development and from the field of food hygiene;
- b) the field of food safety, food legislation, land law and environmental legislation - farmers and food producers must comply with some standards regarding the food safety, protection of and environmental protection. Therefore, an expert information within these fields will be provided to students as potential farmers or food producers in terms of above mentioned courses and to farmers during specific events organised within the project;
- c) the field of marketing will offer students with actual problems of enterprise marketing in relation to reach successfulness on market.

Creation of an appropriate synergy between the mentioned fields will be necessary when incorporating the subtopic of short food supply chains into the main topic of the CAP and subsequently in the teaching process. Finally, this approach will be needed when processing results of events organised within the project. These can be categorized in the following thematic activities:

1. *Teaching activities at the home university (SUA)* - Centre of excellence will create new courses related to challenges and impacts of the EU Agricultural Policy, risk factors in the food

production and distribution in the food chain, agri-environmental and food legislation of the EU and in EU agrarian marketing. They will be taught by the SUA in Nitra experts in the field so that the target group will be provided with the most comprehensive view on the subject field.

2. *Research activities* - Centre of excellence will introduce complex research activities related to the subject field of the project and will fully support teaching activities for the target group. Similarly, to teaching activities, research will be conducted within the 2 main areas:

- a) an area of the CAP where we will focus on:
  - Current changes within the CAP and on the outline of the post-2020 period,
  - Synergies between the CAP and other EU policies,
  - Impact of the CAP regulations on direct local sale,
  - An area of short food supply chains - direct local sale contributes to creation of relationships between farmers and consumers within the short supply chain. This way we will focus our research on how regulations of the CAP together with requirements for support of short food supply chains from the Rural Development Programme influence functioning of farmers associated in the short food supply chain.
- b) area of risk factors in the food chain - the research will focus on:
  - analysis of EU and Slovak legal documents in terms related to risk factors of food chain in Slovak and EU conditions;
  - collection and ex post evaluation of data on food/feed quality and safety as well as risk factors of food chain in Slovakia and EU; data will be compared with another EU countries, resources: EFSA, State Veterinary and Food Administration of the Slovak Republic etc.
  - creation of the questionnaire and its distribution to producers;
  - processing collected data, comparison with the situation in other EU countries, proposal of possible changes and improvements.

The importance of the research is in its complementary function towards the teaching activities, i.e. results of the research will be continuously incorporated into the teaching process, and so target groups will be continuously acquainted with impact of one researched area on the other and with synergies between the 2 main researched areas.

3. *Events* - which will support teaching and research activities in order to strengthen knowledge and exchange experiences and opinions on the CAP and on short food supply chains in Slovakia and other Member States. They consist mainly of exchanging and comparing experiences between different EU countries and exchange of practical knowledge in implementing the EU CAP and the concept of short food supply chains. Generally, there are following events planned in the project:

- a) study visit to the EC DG Agriculture and Rural Development for consulting possible development of the CAP after 2020 (in the 1st year of the project);

- b) 2 roundtable debates – both in the 2<sup>nd</sup> year of the project, one in the 1<sup>st</sup> semester and second in the 2<sup>nd</sup> semester, will be focused on specific selected components of the CAP, concrete requirements on implementation of the short food supply chains concept, national requirements and rules for direct sale and marketing activities and on risk factors of the food chain;
- c) 1 workshop – in the 3<sup>rd</sup> year of the project and 1<sup>st</sup> semester where current issues on implementation of the CAP and the concept of short food supply chains in Slovakia and other Member States will be introduced;
- d) the conference will be organised in the 3<sup>rd</sup> year of the project and 2<sup>nd</sup> semester and it will be focused on detailed perspectives of the CAP and possible support of short food supply chains in the post-2020 period, as well as on enterprise marketing activities and on risk factors in food production and distribution. It will be attended by experts from abroad, representatives of public authorities from agricultural sector and eventually representatives of farming practice; although the SUA in Nitra will be the organiser of the mentioned events, inviting experts from partner institutions in other EU Member States will be an important factor strengthening a transnational character and approaches in the project;
- e) participation of JM Centre of Excellence members at selected conferences abroad focused on topics of the project; teachers will have an opportunity to attend conferences the entire duration of the project. Their primary role will be to gain and collect expert information in the project focus area and their implementation in the teaching process and research activities at the home university. Their secondary role will be to establish relationships with partner universities abroad and to develop networking activities with experts in similar focus areas.

4. *Project deliverables* – will be produced to provide students adequate tools to enhance their knowledge and expertise:

- Website of the project,
- E – learning platform,
- International conference proceedings,
- Newsletter.

Project deliverables will be placed at the project web page and will be freely accessible to wide public. All of them will be important dissemination tools informing the wide public about the project, its aims, objectives and outputs and about its progress. Dissemination activities will be carried out during the entire duration of the project.

## IV. Conclusion

The food is a vital part of citizens' everyday life. Agri-food sector plays an important role in national economies of the EU Member States, but despite of the support from the 1<sup>st</sup> pillar of the CAP, agricultural sectors are currently facing the long-term problems, such as low quality of food products, insufficient knowledge of legal documents on environmental protection, land protection and food law and very low capability of farmers and food producers to place their products

on the market, to assure their sales and thus achieve the successfulness of their enterprise. Our project meets right these challenges in order to achieve enhancement in partial project fields responding to questions and problems needed to be solved. Thus, the project is going to follow a multidisciplinary approach in the teaching process of PhD. students and provide them professional knowledge and information in the mentioned focus areas, shifting their expertise gained during their master studies onto the higher, European level. Building on this we expect a strong dissemination of project results and outcomes in order to attract students, using traditional tools of promotion together with innovative elements of dissemination. The main impact of the project is expected in the form of the creation of “from farm to fork” experts disposing with a wide range of knowledge and skills usable in different areas of practice and in the academic environment. The project team will systematically work on the ensuring the impact at local and regional level, within the academic environment as well as in forwarding all relevant results and outputs to the field of agricultural practice. On one hand – at national level – the very good starting point for PhD. students of our university will be managed to be able to apply their knowledge in the state and public sphere, either in the decision-making bodies such as ministries (Ministry of Agriculture and Rural Development of the SR, Ministry of Environment of the SR) or state administration bodies (State Veterinary and Food Administration of the SR) or within agencies focusing on environmental protection (Slovak Environment Agency or Public Health Authority of the SR). On the other hand – at European level – in terms of all 4 newly created courses, PhD. students will be also provided with European dimension of focus areas. Moreover, the educational process managed within the project activities is going to be strongly supported by organisation of events with participation of local and international experts, providing students with complementary and practical information on how the European and national support of agriculture and rural areas work and how especially small local producers can benefit from European support schemes.

## References

1. BANDLEROVÁ, A. et al. 2010. EU Agrarian Law. 1. Edition. Nitra: Slovak University of Agriculture, 435 p. ISBN: 978-80-552-1057-5.
2. KOVÁČIK, M. et al. 2016. Current trend in human resources in the sector of agriculture in the Slovak Republic. In: RELIK 2016. Vysoká škola zemédelská, p. 285–292. ISBN 978-80-245-2166-4.
3. SCHWARCZ, P. et al. 2016. European agricultural and environmental policy. 1. Issue. Slovak University of Agriculture in Nitra, 253 p. ISBN 978-80-552-1576-1.
4. SCHWARCZ, P. – BOHÁTOVÁ, Z. 2016. Evaluation of Support for Non-Agricultural Activities in Slovakia in the Period 2007–2013 Through the Rural Development Programme 2007–2013. In Journal of Central European Agriculture, vol. 17 (2), p.467–476. ISSN 1332-9049.

**Acknowledgment**

This paper was prepared  
in the frame of the Jean Monnet project –  
– Centre of Excellence for European Agri-Food Chain no.  
**CEEAG 611446-EPP-1-2019-1-SK-EPPJMO-CoE**

With the support of the  
Erasmus+ Programme  
of the European Union



**Contact address/ Kontaktná adresa**

**Prof. Ing. Pavol Schwarcz, PhD.**

Department of European Policies, Faculty of European Studies and  
Regional Development,  
Slovak University of Agriculture in Nitra, Tr. A. Hlinku 2, 949 76 Nitra  
e-mail: pavol.schwarcz@uniag.sk

**Ing. Norbert Floriš**

Centre of International Programmes,  
Faculty of European Studies and Regional Development,  
Slovak University of Agriculture in Nitra, Tr. A. Hlinku 2, 949 76 Nitra  
e-mail: Norbert.floris@uniag.sk

**Doc. Ing. Loreta Schwarczová, PhD.**

Centre of International Programmes,  
Faculty of European Studies and Regional Development,  
Slovak University of Agriculture in Nitra, Tr. A. Hlinku 2, 949 76 Nitra  
e-mail: loreta.schwarczova@uniag.sk



# LEGAL IMPLICATIONS OF THE NORMS CONFLICT IN THE GOVERNANCE REGULATION OF THE WATER RESOURCES

## PRÁVNE DÔSLEDKY NORMOVÝCH KONFLIKTOV V NARIADENIACH VLÁDY TÝKAJÚCICH SA VODNÝCH ZDROJOV

Indro BUDIONO\* - Moch. BAKRI\* - Moh. FADLI\* - Imam KOESWAHYONO\*

### I. Introduction

Water becomes a vital component that is very important for the life of living things, especially humans. The existence of water maintains the continuity of life, develops civilization and modernization and the discussion of water law becomes a treasure and enrichment for thinkers and legal experts.

The world view of progress in the economic field without regard to the existence of nature causes inequality. The existence of water resources is inevitable for a variety of necessities of life and should be guaranteed so that everyone gets their rights

to these natural resources. The state guarantees the right of every person to water to meet the daily basic needs stipulated in Article 33 Paragraph (3) of the 1945 NRI Constitution as the basis for the constitutional management of natural resources, which states that the utilization of natural resources including water must be utilized for the prosperity of the people. Starting from the description, the state guarantees the availability and regulation of water resources for the people of Indonesia. Therefore, the utilization of water resources must be managed optimally so it can meet the standards of benefit, equality and

#### Abstract (EN)

Arrangements for water resources or irrigation governance designs from the colonial era to the reform order always cause controversies and problems. In physiological issues, there is not known change in the meaning of water as a public good being a private good. Theoretical problems, the basis for the design of the theory of management of chaotic water resources is in line with the existence of Law No. 17 of 2019 concerning water resources. The purpose of this study is to analyze and find the implications of norm conflicts in water resources governance arrangements, both vertically between Law No. 17 of 2019 on Water Resources with Article 33 (2) and (3) with the 1945 NRI Law, and horizontally with RI Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. This research uses normative legal research methods with various approaches, including the statute approach, historical approach and conceptual approach. The analytic part of this research is using an investigation strategy. The results showed that the article in Law No. 17 of 2019 proves that the production branches that are important for the State that control the public interest can not be controlled by the State, therefore the article in Law No. 17 Hold 2019 is contrary to Article 33 paragraph (2) and (3) of the 1945 Constitution of the Republic of Indonesia cause that water is a State asset and national assets cannot be used so much for the prosperity of the people, therefore article 46 paragraph (1), Article 47, Article 48, Article 49, Article 51, Article 52 Law No.17 of 2019 is contrary to Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

#### Keywords (EN)

water Resource, legal implication, regulation, governance

#### Abstrakt (SK)

Opatrenia týkajúce sa vodných zdrojov alebo koncepcie riadenia zavláňovania vždy spôsobovali spory a problémy, a to od koloniálnej éry až po obdobie reforiem. Z fyziologického pohľadu nedošlo k transformácii významu vody ako verejného statku na súkromný statok. Teoretické problémy, ako základ pre návrh teórie riadenia chaotických vodných zdrojov, sú v súlade s existenciou zákona č. 17 z roku 2019 o vodných zdrojoch. Účelom tejto štúdie je analyzovať a nájsť dôsledky normatívnych konfliktov v dohodách o správe vodných zdrojov, a to vertikálne medzi zákonom č. 17 z roku 2019 o vodných zdrojoch s článkom 33 ods. 2 a 3 zákona o NRI z roku 1945 a horizontálne so zákonom RI č. 5 z roku 1960 o základnej úprave poľnohospodárskych princípov. Tento výskum využíva normatívne právne výskumné metódy s rôznymi prístupmi vrátane zákonného prístupu, historického prístupu a koncepčného prístupu. Z analytického hľadiska bola v príspevku využitá stratégia vyšetrovania. Výsledky ukázali, že článok v zákone č. 17 z roku 2019 ukazuje, že výrobné odvetvia, ktoré sú dôležité pre štát, ktorý je nositeľom verejného záujmu, nemôžu byť kontrolované štátom, preto je článok v zákone č. 17 Hold 2019 v rozpore s článkom 33 ods. 2 a 3 Ústavy Indonézskej republiky z roku 1945. To znamená, že voda je štátnym majetkom a národné aktíva sa do veľkej miery nemôžu použiť pre prosperitu ľudí, preto je článok 46 ods. 1), Článok 47, článok 48, článok 49, článok 51, článok 52 zákona č. 17 z roku 2019 v rozpore s článkom 33 ods. 3 Ústavy Indonézskej republiky z roku 1945.

#### Kľúčové slová (SK)

vodné zdroje, právne dôsledky, predpisy, spravovanie

\* Brawijaya University, Indonesia

justice. Despite that, the problem of water governance persists along with the good governance regimes of the colonial period until the reformation period. The problem of water is always compatible with the politics of law.

Therefore, an old problem was identified, namely the regulation of water governance, which was influenced by the interests and political orientation of the law at the time. The output arising from that legal politics did not improve and provide protection for the community when it comes to water needs. The next issue is that the regulation of water resources governance through Law No. 17 of 2019 on Water Resources contains new problems, but substantially contains also provisions that open up new investment opportunities and the sustainability of investment in water resources that reduces the fulfillment of people's rights to water (Chapters III, VI). The supervisory authority should refer to the decision of the Constitutional Court Number 85 / PUU-XI / 2013 (Chapter VIII), whereby the formulation of these rules can be formulated at whole in Law Number 17 of 2019 by adopting Law Number 32 of 2009 concerning Protection and Management Living environment. The SDA Law also does not regulate the evaluation provisions of existing SDA business licenses.

Other problems in the management of water resources governance have also impact on philosophical aspects (ontology, epistemology and axiology), theoretical and juridical aspects. Philosophical problems in water resources governance arrangements lie at the essence of water resources governance. State, in this case the government, should be the main authority, but with the enactment of Law Number 17 of 2019, it is the private sector who is granted the authority to manage water resources. The management of water resources is not guided by the NRI Act of 1945, which gives mandate to the state, which has the obligation to ensure prosperity for the people as mandated by Article 33 paragraph (3).

The 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3) is the basis in the economy and economic activities desired in the country, and the article does not stand alone, but correlates to the objectives of welfare and social justice<sup>(1)</sup>. The article emphasizes that natural resources consisting of earth, water and natural resources in the territory of the Republic of Indonesia are under the control of the State and that their assets are managed to realize the welfare of Indonesian citizens today and in the future<sup>(2)</sup>. Theoretically there must be harmony and synchronization between the legislations, vertical synchronization and horizontal harmonization<sup>(3)</sup>. Vertically, any legislation must not conflict with other legislation, especially, the legislation of lower legal force cannot be in conflict with a higher one. In a hierarchical position the 1945 NRI Act is higher than the Act<sup>(4)</sup>.

Legal problems in the management of water resources are conflicting norms in the management of water resources, both vertically between Law 17 of 2019 on Water Resources with Article 33 (2) and (3) of the 1945 NRI Law, and horizontally with RI Law Number 5 of 1960 concerning Basic Regulations

on Agrarian Principles. Referring to the theory and legal material, the author found out that norm conflicts have occurred in the management of water resources, the politics of resource management law was formulated by the Constitutional Court Decision Number 85 / PUU-XI / 2013.

Another issue is Law Number 17 of 2019 concerning Water Resources, which is not in line with the Constitutional Court's decision, because it does not explain the supervision of the exploitation of water resources. Article 56 Paragraph 3 of the SDA Law states that supervision will be regulated further through a Government Regulation. The formulation of these rules may include formulation in the Act by adopting the Law Number 32 of 2009 concerning Environmental Protection and Management. The Water Resources Act also does not regulate the evaluation of provisions on Water Resources business licensing.

Based on the description above, this study aims to discuss, analyze and find the implications of norm conflicts in water resources governance arrangements, both vertically between Law 17 of 2019 on Water Resources with Article 33 (2) and (3) with Law NRI 1945, and horizontally with RI Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles.

## II. Research Method

This type of research is normative juridical research, which asks about the application of rules or standards in positive law<sup>(5)</sup>. The research approach used is the statute approach, historical approach and conceptual approach<sup>(6)</sup>. The legal material from normative research can be divided into three parts, namely,

1. primary legal material, is the main legal material in this study, made up of the NRI Constitution of 1945, the law relating to water resources,
2. secondary legal law, academic texts, draft Law on Water Resources, the results of research related to water resources governance laws,
3. tertiary law materials are legal materials that provide an understanding of primary and secondary legal materials, consists of legal dictionaries, legal encyclopedias and index lists of court decisions or judicial institutions relating to water resources governance arrangements.

The technique of searching primary and secondary legal materials is done by studying literature, which is a way to gather information by looking at and examining library materials (literature, previous research results, scientific magazines, scientific bulletins, scientific journals, webpages of Ministries or institutions) and internet searching<sup>(7)</sup>. The analysis technique in this research is investigation strategy<sup>(8)</sup>, by using the deduction method which is based on explaining a general thing and then drawing it to a more specific conclusion. Furthermore, inventorying and identifying the laws and regulations, and then analyzing the relevant cases and the laws and regulations by interpreting the law were used in order to draw conclusions

<sup>(1)</sup> Bagir (1995)

<sup>(2)</sup> Bambang (2007)

<sup>(3)</sup> Zainuddin (2013)

<sup>(4)</sup> Muchsin (2006)

<sup>(5)</sup> Marzuki (2011)

<sup>(6)</sup> Johny (2006)

<sup>(7)</sup> Sutjipto (2000)

<sup>(8)</sup> Abdilatif and Hasbi (2012)

from the results of the analysis. Interpretation of the law used in this research is Grammatical Interpretation (interpreting the law according to the meaning of words (terms)) and Systematic Interpretation (connecting one article with another article in a law or with other laws)<sup>(9)</sup>.

### III. Results and Discussion

#### 1. Implications of Conflict of Norms to the Rule of Law in the Management of Water Resources

According to Arief Sidharta (2009), Scheltema, formulating his views on the elements and principles of the rule of law in a new way, which includes following:

1. Recognition, respect and protection of human rights rooted in respect for human dignity.
2. The validity of the principle of legal certainty. The rule of law is aimed at ensuring that legal certainty is realized in society. The law aims to implement legal certainty and high predictability, so that the dynamics of shared life in society are 'predictable'.
3. Validity of the equality (Similia Similibus or Equality before the Law) in a state of law, the Government may not privilege certain people or groups of people, or discriminate against certain people or groups of people.
4. The principle of democracy in which everyone has the same rights and opportunities to participate in government or to influence government actions.
5. The government and officials carry out the mandate as a public servant in order to realize the welfare of the community in accordance with the objectives of the state concerned.

Brian Tamanaha (2004), as quoted by Marjanne Termoshuizen-Artz in the Jentera Law Journal, divides the concept of 'rule of law' into two categories, "formal and substantive". Each category has three forms, so that the concept of the rule of law itself has six forms as follows:

1. Rule by Law (not rule of law), where law only functions as an "instrument of government action".
2. Formal Legality, which includes characteristics that are (i) the principle of prospectivity (rule written in advance) and may not be retroactive, (ii) are general in the sense that it applies to everyone, (iii) clear, (iv) public, and (v) is relatively stable.
3. Democracy and Legality - dynamic democracy is balanced by laws that guarantee certainty. But, according to Brian Tamanaha, as "a procedural mode of legitimation" democracy also contains limitations similar to "formal legality." As in "formal legality", democratic regimes can also produce bad and unfair laws.
4. Substantive Views that guarantee "Individual Rights".
5. Rights of Dignity and / or Justice.
6. Social Welfare, substantive equality, welfare, preservation of community.

In the sense that the legal norms apply, sourced and based on higher legal norms, and higher legal norms apply, sourced and

<sup>(9)</sup> Yudha (2012)

based on higher legal norms, and so on until it reaches a basic norm of the Indonesian state, namely: Pancasila (the legal aspirations of the Indonesian people, the basis and source for all legal norms below)<sup>(10)</sup>.

The building of this legal pyramid is to determine the degree of norms of each arrangement - of higher legal norms and lower norms. The consequence of building a legal pyramid is that if there are conflicting legal / regulatory norms (conflicting norms), then higher degree is what is declared to be applicable. In this context the legal principle of the *lex superior derogat legi inferiori* (a higher degree law overrides a lower degree law) applies. In addition, the consequence of the legal pyramid is the harmonization between various layers of law (for example, the level of Law), in the sense legal norms in the same layer / level may not conflict with each other<sup>(11)</sup>.

The Indonesian legal system forms the pyramid, the prevailing legal norms are in a tiered, multi-layered and grouped system<sup>(12)</sup>. Legal norms are sourced and based on higher legal norms, and higher legal norms are valid, sourced and based on higher legal norms. So that legal issues in water resources management are conflicting norms in water resources governance arrangements, both vertically between Law 17 of 2019 on Water Resources with Article 33 (2) and (3) of the 1945 NRI Law, and horizontally with RI Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles.

Based on Nawiasky's theory, A. Hamid S. Attamimi then compared it with Hans Kelsen's theory and applied it to the structure of the prevailing legal system in Indonesia. Attamimi shows the hierarchical structure of Indonesian law based on the theory, viz<sup>(13)</sup>:

1. *Staatsfundamentalnorm*: Pancasila (Opening of the 1945 Constitution).
2. *Staatsgrundgesetz*: The body of the 1945 Constitution, MPR Decree, and the Constitutional Convention.
3. *Formell gesetz*: Laws.
4. *Verordnung en Autonome Satzung*

Hierarchically starting from the Regulation, placing Pancasila as the *Staatsfundamental-norm* was first delivered by Notonagoro. Pancasila is seen as a legal ideal (*rechtsidee*) as a guiding star. This position requires the formation of positive law and can be also used to test positive law. With the enactment of Pancasila as a *Staatsfundamentalnorm*, the formation of law, its application, and its implementation cannot be separated from the values of Pancasila.

Placing Pancasila as a *Staats-fundamentalnorm* is placing it above the Basic Law, then Pancasila is not included in the definition of the constitution, because it is above the constitution. Discussion about this problem can be done by tracing back the concept of basic norms and constitutions according to Kelsen and the development made by Nawiasky, as well as looking at the relationship between Pancasila and the 1945 Constitution.

The effort to realize Pancasila as a source of value is to make the basic values of Pancasila as a source for the preparation of

<sup>(10)</sup> Jazim (2006)

<sup>(11)</sup> Bagir and Susi (2014)

<sup>(12)</sup> Maria (1998)

<sup>(13)</sup> Attamimi (1993)

legal norms in Indonesia. This is in accordance with its position as a basic (philosophical) state as stated in the opening of the 1945 Constitution Paragraph IV, which is further elaborated in the provisions of Article 2 of Law No. 12 of 2011 which states that Pancasila is the source of all sources of state law.

The State of Indonesia has a national law, which is a unified legal system. The Indonesian legal system originates from and is based on Pancasila as the basic norm of the state. Pancasila is located as a grundnorm (basic norm) or staatsfundamentalnorm (state fundamental norm) in the level of legal norms in Indonesia. The values of Pancasila are further elaborated in various existing laws and regulations, in the form of laws, decrees, decisions, government policies, development programs, and other regulations which are essentially instrumental values as a translation of values basic Pancasila.

Explanation of the implications of regulating water resources governance is as follows:

First, the results of the study of primary legal materials show that there is a conflict in the regulation of water resources governance, namely Law No. 19 of 2019 concerning water resources with Article 33 of the 1945 Constitution.

Both the results of the primary legal study show that the enactment of Law Number 17 of 2019 is a contradiction with the constitution and Law Number 12 of 2011 concerning Formation of Legislation.

## 2. Implications of Norm Conflict Over Legal Politics in Water Resources Governance Arrangements

The political law of the state produces a constitution, while the products of legislation are the product of the law politics. Understanding the legal politics and philosophy of a country and the goals of the country can be done through the state constitution. Political law is an instrument of encouragement for all elements of the national legal system, so that it serves in accordance with the objectives of the state, the ideals of the nation, the ideals of the law and the guiding principles contained in the Preamble of the 1945 Constitution. The constitution can be interpreted as “moral reading” or moral rules and messages. The constitution is no longer understood merely as a legal document, but also as something that is “metayuris” that is a charter of humanitarian statements, statements of expression of the cosmology of the nation, the ideals of the nation and the basis for the purpose of where the country is taken. After the amendment of the 1945 Constitution, Indonesia embraced the rule of law which had implications for the policy to accept a combination of the “legism tradition” and the “common law” tradition in the legal system in the future (constituendum). The willingness to accept the combination of the two traditions has an impact on the policy of strengthening the DPR and the judiciary through the provision of adequate human resources. The aspired Indonesian law politics (“iusconstituendum”) is depicted in the Indonesian scientific law tree, which contains the Pancasila Philosophy as the root of law or the philosophy of law, while the Preamble of the 1945 Constitution as the basis of legal politics.

Satjipto Rahardjo<sup>(14)</sup>, defines politics as the activity of choosing and the means to be used to achieve a certain social and

legal objective in society. According to Satjipto Rahardjo, there are several fundamental questions that arise in the study of legal politics, namely: (1) what goals are to be achieved with the existing legal system; (2) which methods are considered best to be used to achieve these objectives; (3) when the law needs to be changed and through which ways the change should be made; and (4) can there be a standard and established pattern formulated, which can help deciding the process of selecting goals and ways to achieve these goals properly.

Whereas legal politics is a legal policy that has been or will be implemented nationally by the Indonesian government which includes: 1. Development of law with the core of making and updating legal materials to be in accordance with needs 2. Implementation of existing legal provisions including affirmation of the functions of institutions and fostering law enforcement.

In the study of legal politics in the management of water resources, researchers use the benchmarks and indicators of legal politics by Bernard L. Tanya, among others:

1. Idiological basis;
2. Normative basis;
3. Constitutional basis;
4. Moral basis.

In the macro-political scale, the law on resource management can be seen from the constellation of Law Number 17 of 2019, which refers to Article 33 paragraph (2) and paragraph (3) of the 1945 NRI Law. However, the study of legal politics always places interpretation of meaning in accordance with the rules of the regulation outside, the political analysis of the law of water resources management also examines the issues that underlie all the ideas that animates the laws and regulations is the practice of water privatization adopted in Law 19 of 2019 on Water Resources.

## 3. Implications of Norm Conflict Over Legal Politics in Water Resources Governance Arrangements

Howard<sup>(15)</sup> states pro argumentation which fully supports that the concept of welfare state can be understood as follows, they are based on:

- 1) humanitarianism is the idea that people do not suffer;
- 2) ethical-reciprocity is a universal moral principle and most welfare systems are based on a “mutual” pattern. Altruism or helping others is a moral obligation in almost all cultures, and assistance and support for poor people is a universal moral principle;
- 3) utilitarianism is a theory in terms of normative ethics, which states that an appropriate action is that which maximizes use (utility). “Use” or “utility” is usually defined as happiness or prosperity
- 4) the failure of the private sector, provides advocacy regarding the social provisions that are required in the private sector that are contrary to social goals. The counter arguments or those which reject the concept of welfare state base their concepts on:
  - 1) libertarians (state intervention violates individual freedom; individuals should not depend on other parties’ subsidies for their interests);

<sup>(14)</sup> Satjipto Rahardjo (2007)

<sup>(15)</sup> Howard (2001)

- 2) conservative (social expenditure gives unfavorable effects on behavior, fostering dependence, and reduce morale);
- 3) economic (social expenditure requires high costs and high taxes. Welfare state imposes an unfavorable effect on the economy so that paradoxically has a negative effect on people's welfare);
- 4) individualist (social spending reduces freedom of enjoying prosperity and individual success by sharing part of his prosperity with others. This argument is also important for libertarians and conservatives);
- 5) anti-regulatory (welfare state is the justification of greater state control over business, limiting growth and creating unemployment); 6) the free market - advocating for markets which will encourage more effective and efficient production compared to organizing social programs.

By the beginning of the 20th century, the heyday of individualist anarchism had passed. HL Mencken and Albert Jay Nock were the first prominent figures in the United States to describe themselves as libertarians because they believed Franklin D. Roosevelt had co-opted the word liberal for the New Deal policies they opposed and used libertarians to signify their loyalty to individualism. The critic HL Mencken wrote that it was editorial for three short years Freeman set a sign that no one else in his trade had ever reached. They are knowledgeable, but there is never the slightest trace of the pedantry in it. Executive Vice President of the Cato Institute David Boaz wrote: "In 1943, at one of the lowest points for freedom and humanity in history, three outside women used to publish books that could be said to have spawned modern libertarian movements." *God of Machines* by Isabel Paterson, *Discovery of Freedom* from Rose Wilder Lane, and *The Fountainhead* by Ayn Rand each of which promoted individualism and capitalism. None of the three used the term libertarianism to describe their beliefs and Rand specifically rejected the label, criticizing the growing American libertarian movement as "hippies of the

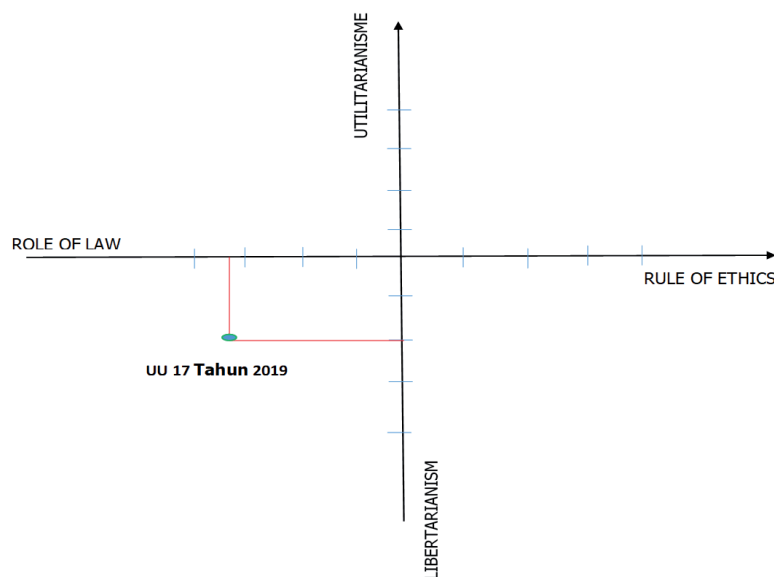
right". Rand's Objectivism philosophy was very similar to libertarianism and he accused libertarians of plagiarizing his ideas.

#### 4. Implications of Norm Conflict Over ULR2 (Utilitarianism, Libertarianism, Rule of Law and Rule of Ethics) in Water Resources Management Arrangements

Our public policy is deficit in two ways, firstly it does not understand what is called injustice and secondly it intentionally embezzled the history of the poor in the process of making public policy. The dominant theory position is used as the basis of public policy. These principles can be found in two groups of philosophical theories, namely utilitarianism and libertarianism. Utilitarianism was conceived by Jeremy Bentham in the seventeenth century to show that happiness can only be called fair if it satisfies the majority, a society is called fair if the majority of the majority gets the most happiness from national products or community products. The critical question is then who is justice for? The idea of the majority regards all humans as equal in their needs. During the New Order era, the measurement for calculating human utilities to formulate basic needs was stated that human needs were measured based on the needs of the rich, so fuel was included as a basic need, while water was not considered a basic need. So, the state budget is allocated based on the physical needs of the rich, because they are the productive ones. From the beginning we can see that there is a bias in the theory of justice and that bias is infiltrating into public policy. But the principle of utilitarianism was quite egalitarian in its time because at that time justice was only determined by the mercy of aristocrats or determined by the laws governed in theology. At that time, the right was only for a king, feudal lords, or priests. Today, this theory is undemocratic because it does not pay attention to the type of injustice that works in societies of minority. However, current public policy practices still use the principles of utilitarianism as happened in the process of preparing the APBN or APBD.

Another theory cluster that also dominates public policy making is libertarianism. If utilitarianism views justice based

**Figure 1** Analysis of the Governance of Water Resources Management Law No. 17/2019



on the greatest amount of happiness a society can enjoy, libertarianism's view of justice is based on the right of each individual to produce happiness for himself. Libertarians see everyone as having their own preference for happiness, so it is impossible for happiness to be accumulated and counted in the aggregate. According to Immanuel Kant man is a complete subject, so he must be respected, including if he chooses to be poor. Evidence of the effectiveness of public policy can be seen from the output.

Public policy is often held not with a critical theoretical position, so that injustice grows and we can only see the consequences after one or two periods in the future. In addition, public policy also cannot distinguish between injustice in society. If a prosperous person experiences injustice, he may only experience misfortune but if poor citizens experience injustice it is called suffering, a concept that cannot be understood by wealthy citizens.

Suffering for the rich is suffering due to lack of rights, while suffering for the poor is the culmination of all kinds of suffering, including suffering for the hope of future. From the beginning we can see that the distinction is not included as a consideration in public policy making. Legal systems and ethical systems need to be built in complementary, mutually supportive relationships to create clean, fair and civilized lives<sup>(16)</sup>. Then the idea of positivation and ethical functionalization in the justice function for the occurrence of linkages and partnerships between the two systems. In law there is a rule of law principle consisting of a code of law device, in an ethical system it is necessary to introduce a rule of ethics with a code of ethics device and a court of ethics.

Figure 1 illustrates the position of Law No. 17 of 2019 overlaying between the values of philosophical utilitarianism, libertarianism, rule of law and rule of ethics. The position is in the lower left quadrant that is part of the rule of law, then the arrangement as an effort of political termination and legal politics by the makers of the Law, the regulation of water resources governance with Law No. 17 of 2019 that has been enacted is a re-ignorance of the Constitutional Court's decision at points one to five. The controversy and criticism of the decision of the Constitutional Court on the 6th phrase is an entry point and an opportunity for the private sector to get back involved in water management. Substantially Law No. 17 of 2019 resides in the theory of libertarianism and the content and message are no different from Law No. 7 of 2004.

## V. Conclusion

Implications of conflicting norms governing water resources governance.

1. Whereas the article in Law No. 17 of 2019 shows that production branches, which are important for the State (that control the people's interests) may not be controlled by the State, the article in Law No. 17 of 2019 is contrary to Article 33 paragraph (2) and (3) of the 1945 Constitution of the Republic of Indonesia. This causes that water is a State asset and national assets can not be used as much for the people's prosperity. Therefore, article 46 paragraph (1), Ar-

ticle 47, Article 48, Article 49, Article 51, Article 52 of Law No.17 Year 2019 is contrary to Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

2. The global rule of the game that is applied is that mastering must be by possessing. The subject matter of Article 33 is to control, if control cannot be done without ownership, then the government should have it, at least 51 percent towards Indonesianization in order to save the interests and sovereignty of the state.
3. Consideration of the legal history of water resources governance arrangements since the colonial era Algemene Water Reglement (AWR 1936) until the reform era, water resource management is a political tool and the legal political objectives of the ruling/ruling government.
4. Law No. 17 of 2019 is the implementation of a shift in meaning over the governance of water resources as an ethical political tool in the colonial era, as a fulfillment of the centralistic desires of the new order era, as a commitment to donors by carrying out economic liberalization in the reform era, and as a repeat of economic liberalization in the regulation of Law No. 17 of 2019.
5. As the ruling of the Constitutional Court Number 85 / PUU-XI / 2013 of the principle of natural resource management indicates, the management of natural resources is absolutely carried out by the state, the phrase "it is possible to give permission to private businesses to carry out water acquisition after meeting certain conditions and restrictions" 6th point principle of the Decision MK, the phrase "If all the above restrictions have been met and it turns out there is still water availability, the government is still allowed to give permission to private businesses to do business on water with certain conditions and restrictions" is the entry point for private parties to do business on water because there is no stipulation:
  - a. Indicator restrictions for points 1-5
  - b. Indicator of water availability.

## References

1. Alauddin, R. (2012). *Tanggung Jawab Sosial dan Lingkungan Pelaku Usaha Pertambangan Emas dan Nikel di Provinsi Maluku Utara*, Malang: Brawijaya University.
2. Ganner, Bryan A. (1999). *Black's Law Dictionary*, St. Paul, Minn: West Group.
3. Andersen, J.G., (2012). Welfare States and Welfare State Theory, Centre for Comparative Welfare Studies, *Working Paper*.
4. Mardikanto, T., (2014). *Corporate Social Responsibility (Tanggungjawab Sosial Korporasi)*, Bandung: Alfabeta.
5. Marzuki, P.M., (2007). *Penelitian Hukum*, Jakarta: Kencana.
6. Sefriani, Sri Wartini, (2015). "Corporate Social Responsibility Dan Tanggung Jawab Negara Terhadap Hak Ekonomi, Sosial, Dan Budaya Di Indonesia", *Journal of Yustisia*, 4(2).
7. Soebagio, M. and Slamet Supriatna, (2010). *Dasar-Dasar Filsafat, Suatu Pengantar ke Filsafat Hukum*, Jakarta: Akademika Presindo.
8. Sunggono, B. (2000). *Penelitian Hukum*. Jakarta: CV. Mandar Maju.
9. Suriasumantri, J. S. (2005). *Filsafat Ilmu Sebuah Pengantar Populer*, Jakarta: Pustaka Sinar Harapan.
10. Wahyudi, I. and Busyra Azheri, (2011). *Corporate Social Responsibility: Prinsip, Pengaturan dan Implementasi*, Malang: Setara Press

<sup>(16)</sup> Jimmy (2014)

## Laws and Regulations

1. Indonesia, the Constitution of the Republic of Indonesia, 1945.
2. Indonesia, Naskah Akademis Rancangan Undang-undang Tentang Sumber Daya Air, DPRI, 2018.
3. Indonesia, Law Number 11 Year 1974 Concerning Irrigation.
4. Indonesia, Law No. 7 of 2004 concerning Water Resources.
5. Indonesia, Law Number 23 of 2014 concerning Regional Government.
6. Indonesia, Constitutional Court Decision Number 85/UNDANG-UNDANG-XI2013.
7. Indonesia, Algemene Water Reglement 1936 (AGR 1936).
8. Indonesia, Law Number 11 of 1974 concerning Irrigation.
9. Indonesia, Law Number 7 of 2004 concerning Water Resources.
10. Indonesia, Law Number 17 Year 2019 concerning Water Resources.
11. Indonesia, Law Number 5 of 1960 concerning Basic Principles on Agraria.

## Contact address/ Kontaktná adresa

### **Indro Budiono**

Doctoral Candidate at Faculty of Law,  
Brawijaya University, Veteran Street no. 1 Post code: 65125,  
Malang City, Indonesia,  
Phone Number +6285646411567,  
e-mail: indrobudiono.fhub@gmail.com

### **Moch. Bakri**

Lecturer at Faculty of Law, Brawijaya University,  
Address: Veteran Street no. 1 Post code: 65125, Malang City, Indonesia

### **Moh. Fadli**

Lecturer at Faculty of Law, Brawijaya University,  
Address: Veteran Street no. 1 Post code: 65125, Malang City, Indonesia

### **Imam Koeswahyono**

Lecturer at Faculty of Law, Brawijaya University,  
Address: Veteran Street no. 1 Post code: 65125, Malang City, Indonesia

---

REVIEW OF THE BOOK  
“THE PURSUIT OF SUSTAINABLE AGRICULTURE  
IN EU FREE TRADE AGREEMENTS”  
BY LUCHINO FERRARIS

RECENZIA KNIHY  
“THE PURSUIT OF SUSTAINABLE AGRICULTURE  
IN EU FREE TRADE AGREEMENTS”  
OD AUTORA LUCHINO FERRARIS

.....  
Monika BUMBALOVÁ\*

.....  
The concept of sustainability has been an emerging issue in different fields within the last decades. It is a topic that has been resonating not just among scientists, academics and international organizations but also among general public. Indeed, this topic is primarily linked to the natural environment and to agriculture among other economic activities. It is, therefore, clear that there exist a need and public order for the types of publication as the presented monograph titled “The pursuit of sustainable agriculture in EU free trade agreements” written by Luchino Ferraris is.

As the title indicates, the monograph predominantly analyzes the concept of sustainability in agricultural matters within the arena of the European Union. More precisely, the focus is on the bilateral free trade agreements (FTAs) that the EU has enclosed with third countries worldwide.

It is only logical that such important global player, as the EU, is trying to address sustainability within its trade activities. The author even claims that EU environmental standards are the highest in the world. But the question is till what extent individual countries and other stakeholders should adjust their actions in order to comply with requirements imposed on them. By other words, how the free trade agreements are influencing the state of environmental sustainability in the countries involved in FTAs. The presented monograph is trying to respond to the questions and it offers a broad reasoning for justifying the author’s standpoint. The content of the monograph is divided into three ideological sections, while each of these sections is covered by two chapters.

The first section is dedicated to creation of the theoretical background for further development of the topic. Within this part, the author tries to clarify the paradigm of sustainability. The approach to the concept consists of conceptual, philosophical and legal angle. Then, the focus shifts to the observation of how sustainability is embedded in the fundamental documents of the EU. These documents are further analyzed for notions of the agricultural and environmental references and the depth of such notions, or more precisely the lack of them.

Sustainable agriculture per se, together with its reflection in the Common Agricultural Policy (CAP), its reforms and measures, is the main subject of analysis of the second chapter. Here, the author focuses on the potential imprints that the CAP can have in the activities of the partner countries when it comes to sustainable agriculture.

Within the second section, the focus is on the researched subject but from the economic and trade angle. Author argues that the enclosed FTAs are aiming at promoting EU values such as sustainable development, human rights and good governance. The main findings from analyzing FTAs are here confronted with the broader scope of the World Trade Organization’s law. Further, close attention is paid to studying the notion, regulation and enforcement of Trade and Sustainable Development (TSD) chapters within FTAs. These chapters can be seen as an important tool of TSD implementation in the third countries, however, the author stresses out that formulations of the chapter are always reflecting the unique circumstances and there was not observed any “blueprint approach”.

Finally, the last section of the presented monograph is of a more practical nature. Within this section there are 6 case studies elaborated. These are divided into two parts – first one including FTAs enclosed with developed and the second one with developing countries. The pattern from the previous chapter is maintained also here, meaning that within the case studies, the focus is on provisions that include description of TSD chapters, the regulation and enforcement.

The analysis showed that the concept of sustainability is, in one way or another, presented in all studied agreements. Furthermore, the EU is trying to increase the environmental standards of the partners’ countries however, these attempts are not legally binding.

The structure of the monograph is topped by summarizing and concluding chapter where author replies to the stated research question(s) and indicates the possible further development of this research.

The theoretical discussion covered within the monograph is

.....  
\* Slovak University of Agriculture in Nitra, Slovakia



rather exhaustive and holistic what undoubtedly contributes to widening general knowledge about the discussed subject. Further, it brings approach, which has not yet been seen in the legal literature. On the other hand, some sections are missing straightforwardness. This minor critique, however, is addressed by the fact that there is a summary after every ideological part, which brings the readers back on track. The language of the publication is with no doubt highly professional but this does not decrease the general readability of the monograph. Contrary, it can serve not just to scientists within or outside of

the legal sphere but also to general public. References are another part of consideration when assessing a scientific publication. In case of this book, the author used a very good set of references. The used sources are relevant, exhaustive and up to date. Further, I would like to highlight that despite the author was moving in a rather blurry sphere he succeeded in developing and maintaining clear and comprehensive approach and methodology of the research. Overall, I believe that this publication represents a very useful addition to the existing library.