

ANNA KAPALA

# Protection measures for protected designation of origin, protected geographical indications and traditional specialities guaranteed under Polish law

## 1. Introduction

Today, production activity is largely associated with the expectations of consumers and with the regulations governing the quality of agricultural products.<sup>1</sup> That is why ‘the agri-food aspect cannot be ignored in the study of modern agricultural law.’<sup>2</sup> Geographical indications for agricultural products and foodstuffs occupy an important place in contemporary agri-food law, and most probably also will in the future. The reason for the increase in their significance is the growing consumer demand for food products of high quality and traditional character or with strictly defined specifications, strongly associated with their geographical origin. Another reason is the need to continuously strengthen the competitiveness of producers in the global market. As was noted in the doctrine, increasing globalisation enhances the locality and links of agricultural activities with a specific territory, while this link is used to identify the product.<sup>3</sup>

---

<sup>1</sup> R. Budzinowski, *Problemy ogólne prawa rolnego. Przemiany podstaw legislacyjnych i koncepcji doktrynalnych*, Poznań 2008, pp. 18 and 134–135.

<sup>2</sup> Idem, p. 32 after A. Germanò in a review of: *Production Rights in European Agriculture*, D. Barthèlemeny, J. David (eds.), Amsterdam, London and Tokio 2001, „Rivista di Diritto Agrario” 2001, no 1, p. 204.

<sup>3</sup> R. Budzinowski, op. cit., p. 27 after A. Jannarelli, *Il diritto agrario tra profilo globale e profilo locale: spunti sul metodo e sull’oggetto della ricerca*, „Rivista di Diritto Agrario” 2002, no 4, p. 729; and R. Budzinowski, op. cit., pp. 183 and 240.

The added value of geographical indications and traditional specialities guaranteed is based on consumer trust. It is only credible if accompanied by effective verification and controls. The EU legislator has never introduced protection measures in the event of an infringement of the protected designation of origin (PDO) or the protected geographical indication (PGI) or the traditional speciality guaranteed (TSG).<sup>4</sup> Instead, it requires from Member States that they provide for appropriate protection measures according to the obligations set in EU law.<sup>5</sup> The issue of protection of PDO and PGI in the Member States became urgent specially after the Parmesan case<sup>6</sup> which revealed gaps in EC law with regard to the obligations of Member States to put in place effective instruments for the protection in their territory of geographical indications of products coming from the area of another Member State. The new Regulation No 1151/2012EU obliges Member States to provide the protection *ex officio* of PDO, PGI or TSG which are produced as well as marketed in their territory.

In Poland, geographical indication as a legal category has found its place only recently. The reason is the long lasting lack of tradition of identifying goods or services from the designated geographical area. This was influenced by historical conditions (lack of statehood for almost two hundred years) as well as political and economic ones (almost half a century of centrally con-

---

<sup>4</sup> As noted in the doctrine: '[...] the lack of a single EU sanctions regime is "due to the competition of two different concepts of granting protection to geographical indications on the continent". According to the Romanesque model the protection consists in continuous monitoring and application of administrative measures in the event of non-compliance with prescribed rules of proceedings. In the Germanic model instead, where geographical indications are treated essentially as an instrument of market competition, it provides for the use of mainly civil protection measures in the cases of infringement of right holders' interests or the public interest.' R. Skubisz in: idem (ed.), *System prawa prywatnego*, vol. 14b: *Prawo własności przemysłowej*, 1<sup>st</sup> ed., Warszawa 2012, p. 9.

<sup>5</sup> See Article 13(3) and Article 24(2) of 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 EU L 343/1, 14.12.2012) or Article 10 Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ EU L 93, 31.3.2006, Article 14 Council Regulation (EC) No 509/2006 of 20 March 2006 on agricultural products and foodstuffs as traditional specialities guaranteed (OJ L 93/1, 31.3.2006), Article 10 Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ EU L 208, 24.7.1992).

<sup>6</sup> Judgment of the Court (Grand Chamber) of 26 February 2008. Commission of the European Communities v Federal Republic of Germany, C-132/05, see <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-132/05> [accessed: 18 July 2016].

trolled economy). Despite this, since 1919, geographical indications have been protected under Polish law but protection applied primarily to foreign geographical indications. The protection was based on the convention and agreements to which Poland has been a party.<sup>7</sup> International instruments did not designate an appropriate model, but suggested minimum protection that should be determined by the signatories. After Poland's accession to the European Union in 2004, the awareness of the role of geographical indications as an instrument for ensuring economic benefits has increased significantly as exemplified by the growing number of Polish geographical indications registered at the European Union level.<sup>8</sup>

The issue of geographical indications is very popular, mostly among the representatives of the doctrine of intellectual property rights.<sup>9</sup> Polish agrarian lawyers also studied this topic,<sup>10</sup> but in the Polish literature of agricultural law, contrary to, for example, Italian literature,<sup>11</sup> a comprehensive and compact study of geographical indications in the context of the rights of the agro-food sector and rural development is missing.

---

<sup>7</sup> Poland is a party to: The Paris Convention of 20 March 1883 for the Protection of Industrial Property, the Madrid Agreement of 14 April 1891 Concerning the International Registration of Marks, the Agreement on Trade-Related Aspects of Intellectual Property Rights of 15 April 1994.

<sup>8</sup> I. Barańczyk, *Ochrona oznaczeń geograficznych*, „Studia Prawa Prywatnego” 2011, no 8. Currently 37 Polish products have been registered by the European Commission: 9 GTS, 9 PDO and 20 PGI. See on: <http://ec.europa.eu/agriculture/quality/door/list.html> [accessed: 18 November 2016].

<sup>9</sup> See e.g. the compact study: I. Barańczyk, *Ochrona prawna oznaczeń geograficznych*, Difin, Warszawa 2008; chapters in the comments: M. Kępiński (ed.), *System prawa prywatnego* vol. 15: *Prawo konkurencji*, 1<sup>st</sup> ed., Warsaw 2014; R. Skubisz, op. cit.; E. Nowińska, K. Szczepanowska-Kozłowska (eds.), *System prawa handlowego*, vol. 3: *Prawo własności przemysłowej*, 1<sup>st</sup> ed., Warsaw 2015.

<sup>10</sup> See e.g.: A. Baer-Nawrocka, A. Suchoń, *Ochrona produktów regionalnych i tradycyjnych w Unii Europejskiej. Wybrane zagadnienia ekonomiczne i prawne*, „Wież i Rolnictwo” 2014, no 4, pp. 115–130; K. Leśkiewicz, *System jakości produktów rolnych i środków spożywczych według nowej regulacji prawnej*, „Przegląd Prawa Rolnego” 2013, no 1, pp. 119–133; I. Lipińska, *System chronionych nazw pochodzenia i oznaczeń geograficznych produktów rolnych*, „Journal of Agribusiness and Rural Development” 2008, no 4(10), pp. 37–46; A. Kapała, S. Minta, B. Tańska-Hus, *Selected quality signs of food products in Poland, legal and economic aspects*, „Journal of Agribusiness and Rural Development” 2015, no 2, pp. 281–288; A. Kapała, *Ochrona oznaczeń geograficznych produktów rolnych i środków spożywczych w prawie międzynarodowym*, „Przegląd Prawa Rolnego” 2007, no 1, pp. 149–166.

<sup>11</sup> I. Trapè, *I segni del territorio. Profili giuridici delle indicazioni di origine dei prodotti agroalimentari tra competitività, interessi dei consumatori e sviluppo rurale*, Milan 2012; L. Petrelli, *I regimi di qualità nel diritto alimentare dell'Unione Europea; prodotti DOP IGP STG biologici e delle regioni ultraperiferiche*, Naples. 2012.

The aim of this paper is to answer whether Polish law properly implements the EU obligation to ensure effective protection of protected denomination of origin, protected geographical indications and traditional specialities guaranteed registered in the EU. The issue is the more justified because recently Polish law has been amended in this respect to adapt to the last EU Regulation No 1151/2012.<sup>12</sup> In order to answer the question posed in this paper a model of protection provided for under Polish law will be presented. The analysis will concern the provisions on the control of products marked as PDO, PGI or TSG, competent control bodies, administrative and criminal penalties and civil law instruments in the event of breaches of the registered designations.

## 2. System of official controls

Regulation (EU) No 1151/2012 sets out a system of protection to ensure that products bearing protected designation of origin or protected geographical indications as well as traditional speciality guaranteed are genuine (Article 36(3) of the Regulation). It obliges Member States to carry out official control at the request of the producer as well as to ensure *ex officio* protection. The former is to verify the product's conformity with the specification of production prior to release (Article 37). The latter consists of taking appropriate administrative and judicial steps to prevent or stop the unlawful use of PDO, PGI or TSG that are produced or marketed in that Member State (Article 13 (3)). The production specification is the parameter on which to base the checks.

Member States shall designate the national authorities responsible for inspections which must be performed according to the requirements determined by Regulation (EC) No. 882/2004<sup>13</sup> (pursuant to Article 36(1) points 1–2 of Regulation No 1151/2012). It defines the modalities of the implementation of official controls in respect of the legislation on foodstuffs. By virtue of its Article 3, Member States should ensure periodic checks, carried out at an appropriate frequency, taking into account any information that might indicate non-compliance. The checks may be delegated to control bodies.

---

<sup>12</sup> The last amendment has been introduced very recently (see Ustawa z 10 czerwca 2016 r. o zmianie ustawy o rejestracji i ochronie nazw i oznaczeń produktów rolnych i środków spożywczych oraz o produktach tradycyjnych oraz niektórych innych ustaw, Dziennik Ustaw 2016, item 1001), and until then there had been in force provisions adapted to the previous Regulations (EC) No 509 and 510 of 2006.

<sup>13</sup> Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, OJ EU165/1, 30.4.2004.

Under Polish law the procedures and competent control bodies are defined in the Act of 17 December 2004 on the Registration and Protection of Denominations and Indications of Agricultural and Food Products and on Traditional Products (hereinafter Law on Registration)<sup>14</sup> and by Act of 21 December 2000 on Commercial Quality of Agri-food Products<sup>15</sup> (hereinafter Law on Commercial Quality).

### 3. Control at the producer's request

Article 39 of the Law on Registration refers to the control at the request of the producer. It consists of checking the conformity of the production process of agricultural products and foodstuffs with the specification of PDO, PGI or TSG before placing the product on the market or in event of the expiry of the certificate of compliance. Such a provision is in line with Article 36(3b) of Regulation EU No 1151/2012.

Polish law designates two types of control bodies competent in matters of control at the producer's request and certification of agricultural products and foodstuffs (Article 39 of the Law on Registration): 'the state control authority, that is voivodeship inspectors of commercial quality of agri-food products and authorised certification bodies. The voivodeship inspectors check the conformity of the specification of the production of agricultural products and foodstuffs with PDO, or PGI or TSG and issue the quality certificate' (Article 39 para. 1 point 4). The certification bodies, pursuant to Article 2(1) point 5 of Regulation No 882/2004, are independent third parties to which the competent authority has delegated certain control tasks (Article 39 para. 1 point 3). The authorised certification bodies carry out inspections and issue or cancel certificates of compliance. They are authorised by the Minister responsible for agricultural markets (Article 39 para. 1 point 1), accredited in accordance with the Polish Standard PN-EN 45011, and supervised by the Main Inspector of the Inspection of Commercial Quality of Agri-Food Products (Article 39 para. 1 point 2).

The structure of the authorised bodies is to conform with the EU Regulations, which allows the discharge of control by both: state control authorities, as well as private entities. It is dictated by the concern to ensure wider availa-

---

<sup>14</sup> Ustawa o rejestracji i ochronie nazw i oznaczeń produktów rolnych i środków spożywczych oraz o produktach tradycyjnych z 17 grudnia 2004 r. (Dziennik Ustaw 2005, No 10, item 68).

<sup>15</sup> Consolidated text: Dziennik Ustaw 2005, No 187, item 1577, as amended.

bility of inspection services for producers.<sup>16</sup> Moreover, the Inspection of Commercial Quality of Agri-Food Products exercises the supervision over the production of products designated as a PDO, PGI or TSG (Article 39 para. 1 point 5 of the Law on Registration). Under this competence it can also carry out, independently of the control bodies, checks of producers marketing such products. The Inspection shall publish on the internet site, a list of producers with a quality certificate confirming compliance of the production process of an agricultural product or foodstuff with the specification or the certification of compliance. This is to ensure transparency of the system and facilitate contact between producers and consumers.

The innovation introduced by the recent amendment of the Law on Registration provides for the control not only of the producers but also of certification bodies to ensure that all of them apply the same level of control (Article 40 of the Law on Registration). Moreover, they are subject to a system of fines in the event that they fail to comply with the tasks imposed on them by the Act (Article 58a). This is an important intervention which harmonises Polish law to EU requirements, because control bodies, like State authorities, must provide guarantees of objectivity and impartiality, and prove to have qualified personnel and resources adequate to perform the functions assigned (as required by Articles 4 and 5 of Regulation No 852/2004).

The producer chooses the controlling entity and bears the cost of control. If the result of the control is positive, the controlling entity certifies that the procedure for the production, processing and preparation of a product registered as PDO, PGI or TSG meets the specifications. Precisely, voievodship inspectors issue 'quality certificate' and authorised certification bodies issue the 'certificates of conformity'.

Under Article 54 of Regulation No 882/2004, where it identifies non-compliance, the state authority shall take action to ensure that the operator remedies the situation. It may apply measures ranging from monitoring, withdrawal of the goods, or restriction or prohibition of trade, to the destruction of the products concerned to crack down on illegalities found.

According to Polish law, if inspection at the request of a producer reveals that the agricultural product or foodstuff does not meet the requirements set out in the specifications, inspecting bodies (both state or private) must urge the producer to remove the deficiencies within a prescribed period. If the pro-

---

<sup>16</sup> See the grounds for the amendment to the law: Uzasadnienie do ustawy o zmianie ustawy o rejestracji i ochronie nazw i oznaczeń produktów rolnych i środków spożywczych oraz o produktach tradycyjnych oraz o zmianie niektórych innych ustaw z dnia 24 października 2008 r. (Dziennik Ustaw, No 216, item 1368).

ducer fails to remove the deficiencies, a certification body shall withdraw the certificate of compliance and immediately inform the Main Inspector, the minister responsible for agricultural markets and other authorised certification bodies (Article 44 para. 2 of the Law on Registration). The Voivodeship Inspector, being a state authority, may issue a decision prohibiting the use of the names, symbols, phrases or abbreviations of designations of PDO or PGI or TSG, or prohibiting the placing of the agricultural product or foodstuff on the market or requiring the withdrawal of the agricultural product or foodstuff from the market (Article 44 para. 3 of the Law on Registration).

#### **4. *Ex officio* protection**

Article 13(3) of the Regulation (EU) No 1151/2012 requires Member States to take appropriate administrative and judicial steps to prevent or stop the unlawful use of PDO or PGI that are produced or marketed in that Member State. Therefore the control refers to any product bearing protected name regardless of its geographical origin. ‘To that end Member States shall designate the authorities that are responsible for taking these steps in accordance with procedures determined by each individual Member State.’

In the respect of the *ex officio* control, the above analysed Law on Registration refers to administrative measures introduced in another act: the Law on Commercial Quality. According to its provisions, controls *ex officio* are run by the Inspection of Commercial Quality of Agri-Food Products (Article 17 para. 1 point 1 of the Law on Commercial Law). It controls agri-food products labelled as PDO or PGI or labelled with names that invoke the registered PDO, PGI and collaborates with entities exercising such control in other countries (Article 17 para. 1 point 1e).

The checks are carried out regardless of any actions taken by the producer or by competent entities in order to protect their rights of registration of PDO or PGI, as Member States are responsible for the checks. The producer does not bear the cost of control. The participation of the state authorities in the protection of the registered rights significantly distinguishes the right of registration of PDO or PGI from other industrial property rights, like patent rights, the rights of registration of industrial designs or the right of protection of trademarks. Thereby the official controls offer more guarantees of the authenticity of goods designated by the PDO and PGI as they must ensure that the products bearing a protected name are authentic.

The obligation to ensure *ex officio* protection not only in the country from which the product originates, but also where it is marketed has been waited for and expected for many years, especially after the Parmesan case where the European Court of Justice, based on the first Regulation (EEC) No 2081/92, could not conclude otherwise than that the responsibility for monitoring compliance with the specification of the PDO ‘Parmigiano Reggiano’ did not lie with the German inspection authorities (where the product was marketed) but with the inspection structures of the Member State from which the PDO in question came. Therefore state authorities were obliged to stop violations only if the offence was committed against a registered name originating from that Member State.<sup>17</sup>

However, it can be seen that under Polish law, this protection is not complete because of lack of *ex officio* control of all producers, namely farmers. The point is that in practice the Inspection cannot control producers who are farmer’s (i.e. who have not registered a business activity). While the voivodeship inspectors (or certification bodies) may carry out checks at the farmer’s request and issue a certificate of quality, they cannot perform *ex officio* controls to check if the production is still performed in compliance with the specifications, in the case where a farmer has earlier obtained a quality certificate or in the case he has never applied for it but produces and markets products with PDO or PGI. This is due to two provisions of the Act under which the Inspection takes control.

One of the provisions expressly excludes from its application the sale of agri-food products produced at a farm and intended directly to the final consumer (Article 2 para. 3 Law on Commercial Quality). Whilst this exclusion can be justified, the problem is that the Act authorises the Inspection to carry out *ex officio* controls of producers only. Within the meaning of the Act, the producer who markets products is the one who has registered its business activity (Article 3 para. 9 letter b Law on Commercial Quality). Consequently agricultural products with PDO or PGI produced and marketed by farmers as part of their agricultural activity, remain, in practice, beyond the control of the Inspection.

## 5. Administrative measures

The measures to be applied under Polish law, if the control *ex officio* revealed non-compliance with the requirements of Regulation No 1151/2012,

---

<sup>17</sup> See Article 10 Regulation (CE) No 2081/1992.

differ from the measures determined in the case of the control at the farmer's request. In respect of *ex officio* protection, Polish law provides for criminal and administrative penalties. Administrative penalties are determined in Article 29 of the Law on Commercial Quality. In particular, the Voivodeship Inspector may prohibit the marketing of agricultural products or foodstuffs that fail to satisfy the requirements of commercial quality or requirements for transport or storage. Therefore, sanctions are not applied if there is a breach of the registered name due to inconsistency with the production specification but if there is non-compliance with 'commercial quality'.

What is interesting is that the cited Law provides for the definition of commercial quality, not encountered in EU law, because of a perception that 'there is no absolute concept of quality'.<sup>18</sup> The Polish legislation defined the term 'commercial quality' by which is meant the 'characteristics of the agri-food product concerning its organoleptic, physico-chemical and microbiological parameters in terms of production technology, size or weight and the requirements arising from the mode of production, packaging, presentation and labelling, not covered by the sanitary, veterinary and phytosanitary requirements' (Article 1 para. 3 point 5 of the Law on Commercial Quality). Administrative decisions referred to in Article 29 are issued on the basis of the Code of Administrative Procedure.

## 6. Criminal penalties

In the event of a breach of a registered right of PDO or PGI (more precisely for a 'wrongful use of the name') Polish law provides for criminal penalties. Until very recently it provided not only for fines but also for the penalty of restriction of liberty or imprisonment of up to 2 years imposed in court proceedings under the Code of Criminal Procedure<sup>19</sup>. In practice, criminal proceedings were not initiated or were rejected because of insignificant social harmfulness of an act, and besides, they were contrary to Article 55 of Regulation No 852/2004. Pursuant to the provisions of this Article, although the

---

<sup>18</sup> A. Germanò, *Manuale di diritto agrario*, 7<sup>th</sup> ed., Turin 2010, p. 394.

<sup>19</sup> It was provided in Article 57(1) point 1 of the Law on Registration and Protection of Names and Designations, repealed by the law of 10 June 2016: Ustawa o zmianie ustawy o rejestracji i ochronie nazw i oznaczeń produktów rolnych i środków spożywczych oraz o produktach tradycyjnych oraz niektórych innych ustaw (Dziennik Ustaw 2016, item 1001).

definition of the sanctions remains under the responsibility of Member States, they must be 'effective, proportionate and dissuasive'.

The new provisions in force since June 2016 have repealed the existing criminal sanctions and introduced only fines imposed by the Main Inspector. The fine varies depending on the offence and may be, for example, up to ten times the average salary (Article 58b of the Law on Registration). The new Law specifies 5 types of offences concerning the wrongful use of the registered name, violating the scope of protection as defined in Articles 13(1), 24(1), 44 (1), 12(3) or 23(3) of Regulation No 1151/2012.

Moreover, the other analysed act, the Law on Commercial Quality, also provides for fines in the case of obstructing inspection, or marketing of agri-food products which do not correspond to the commercial quality specified in the regulations on the commercial quality or to the one declared by the producer on the labelling of these products, or in the case of marketing of agri-food adulterated. In these cases fines are imposed by the decision of the Main Inspector or the Voivodeship Inspector competent for the place of inspection or the Voivodeship Inspector of Trade Inspection (Article 40 of the Law on Commercial Quality). Rulings in these cases follow the provisions of the Law on Commercial Quality.

Regardless of the type of control indicated above, products with PDO and PGI are subject to additional official controls of the Sanitary Inspectorate and, where appropriate, the Veterinary Inspection. The purpose of these inspections is to verify whether the production process has complied with the hygienic and sanitary requirements. This is in line with Regulation (EC) No 882/2004.

## 7. Civil law protection measures

Besides the prohibition of violations of protected names and designations, the Act does not grant the holders any other rights available under civil law, such as claims for damages or reimbursement of unjustified benefits, nor does it refer to other legislation in this area. However, as it has been suggested in the literature,<sup>20</sup> Article 18 of the Law on Unfair Competition may be applied in such cases.<sup>21</sup>

---

<sup>20</sup> R. Skubisz, *op. cit.*, p. 9.

<sup>21</sup> Ustawa z 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji, *Dziennik Ustaw* 1993, No 47, item 211, as amended.

In the light of Article 18 para. 1 the right holder is entitled to the following claims: to refrain from illegal activities, to remove the effects of illegal activities, to make a single or repeated statement of appropriate content and in an appropriate form, to compensation damages, to return unlawful gains to order an appropriate amount of money for a specific social purpose.

In addition, pursuant to Article 18 para. 2 Law on Unfair Competition, at the right holder's request, the court may rule on products, their packaging, advertising materials and other objects directly related to the violation of the registered PDO or PGI. In particular, the court may order their destruction or treat them as a credit for compensation. Adjudication on civil protection measures of the registered PDO or PGI takes place in a civil law proceeding, mostly in separate proceedings in economic cases, in compliance with the Code of Civil Procedure.<sup>22</sup>

As for the other provisions of the Law on Unfair Competition (Articles 8 and 9<sup>23</sup>) which grant protection to registered geographical indications, there are opinions that they cannot apply for PDO and PGI protected under the EU Regulation.<sup>24</sup> The European Court of Justice (now the CJEU) presented its position concerning Regulations No 2081/92 and 510/2006 that designations registered in accordance with EU Regulation are protected only on the basis of its provisions, and national law does not apply to them. EU law is in this respect exhaustive<sup>25</sup> and precludes the application of national law (and thus of the aforesaid provision of Article 9). This fact was highlighted, among others things, in the judgment of the Court in disputes between the Czech beer producer based in Ceske Budejovice and the Austrian entrepreneur R. Ammersin GmbH.<sup>26</sup> Cer-

---

<sup>22</sup> Ustawa z 17 listopada 1964 r. – Kodeks postępowania cywilnego, Dziennik Ustaw 1964, No 43, item 296, as amended.

<sup>23</sup> Article 8 provides that 'the act of unfair competition affixing of goods or services in a false or deceptive geographical indication indicating directly or indirectly to the country, region or town of their origin or use of such a sign in trade, advertising, trade lists, accounts and other documents.' Article 9(1): 'If the goods or service in a place of origin is protected, and to the origin of a particular region or locality are related their specific qualities or characteristics, an act of unfair competition is false or fraudulent use of such protected geographical indications and protected designations of origin.' Para. 2: 'An act of unfair competition is also the use of the designations referred to in paragraph. 1, even with the addition of "kind", "type", "method" or the equivalent.'

<sup>24</sup> E. Nowińska, K. Szczepanowska-Kozłowska (eds.), op. cit., p. 153.

<sup>25</sup> Ibidem.

<sup>26</sup> Judgment of the Court (Grand Chamber) of 8 September 2009, *Budějovický Budvar, národní podnik v Rudolf Ammersin GmbH*. C-478/07, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-478/07> [accessed: 18 July 2016].

tainly designations covered by the EU Regulation cannot be registered under the Industrial Property Law as well.<sup>27</sup>

## 8. Conclusions

Polish law provides for public law protection measures as well as for protection under civil law. Adjudication on civil law protection measures of the products registered under PDO or PGI, as in the case for a breach of any subjective right, takes place in a civil proceeding and at the request of a person with a legitimate legal interest. However, protection measures implementing the EU obligations set out in Regulation 1151/2012 in Polish law are to be found in public law. It provides for two types of official control: at the request of the producer, and *ex officio*. In Poland the control at the request of the producer is exercised by the state authority (voivodeship inspectors of commercial quality of agri-food products) or duly authorised private certification bodies, which is in line with Article 37 of Regulation No 1151/2012. The controls *ex officio* are run by the Inspection of Commercial Quality of Agri-food Products.

The Inspection of Commercial Quality of Agri-Food Products is an authority that plays the key role in the protection of PDO and PGI in Poland. It is authorised to supervise the production process of products registered as PDO or PGI (under the Law on Registration) and obliged to exercise *ex officio* controls (under the Law on Commercial Quality) of products named as PDO, PGI or TSG marketed in Poland.

To implement the obligation of Article 54 para. 2 of the Regulation No 882/2004 Polish law provides for administrative measures and criminal sanctions. It is worth noting that in the case of a breach of the registered names under Regulation No 1151/2012, administrative measures consisting of issuing a decision (by a voivodeship inspector,) prohibiting the use of names, symbols, phrases or abbreviations of designations of PDO or PGI or TSG, or prohibiting the placing of the agricultural product or foodstuff on the market or requiring the withdrawal of the agricultural product or foodstuff from the market, apply only in the case of the control at the farmer's request. Whilst in the case of an *ex officio* control only criminal penalties, that is fines may be imposed. They are subject to the provisions of the Law on Registration in the case of breach of Regulation No 1151/2012 (by the Main Inspector) or the

---

<sup>27</sup> M. Kępiński (ed.), op. cit., p. 274.

Law on Commercial Quality when the product does not correspond to commercial quality (by the Main Inspector or voivodeship inspector or voivodeship inspector of Trade Inspection).

It is intriguing why the Inspection, being entitled to exercise controls *ex officio*, has not been given a right to issue decisions with regard to such products being in the market and not fulfilling the requirements of EU Regulation No 1151/2012. Instead, a decision on withdrawing the products from the market may be issued by a voivodeship inspector as a result of the control at the farmer's request or on the basis of their non-compliance with 'commercial quality'. If the control *ex officio* reveals a breach of Regulation No 1151/2012 the Inspection may only impose pecuniary penalties.

The lack of a possibility of enforcing, after the *ex officio* control, administrative measures (such as prohibition of marketing and withdrawal from the market products that violate the rights granted on the basis of Regulation No 1151/2012), raises the question of whether such a scope of administrative and criminal sanctions is consistent with the intention of the EU legislator. The Regulation provides that where a complain is made or it has been determined in the course of control that a product fails to comply with the corresponding product specification, Member States are required to 'take the appropriate administrative and judicial steps to prevent or stop the unlawful use of protected designations of origin and protected geographical indications' regardless of the geographical origin of the product (Article 13(3) of Regulation No 1151/2012). Fines are certainly instruments for ensuring that such breaches of law do not pay and although they are meant to achieve preventive and educational objectives they cannot be equalled to executive sanctions of withdrawal from the market and prohibition of marketing that seem to be more efficient in 'stopping the unlawful use' of a registered name. Nevertheless both, Regulation (EU) No 1151/2012 and Regulation (EC) No 882/2004 give the Member States freedom to determine the appropriate measures selected from among those listed in Article 54(2) and Article 55 of Regulation No 882/2004.

Another problem revealed in this analysis of Polish law is the lack of a legal basis to carry out an *ex officio* control of a farmer, and there seems to be no justification for this. Such a state of affairs ought to be considered a legal loophole rather than a deliberate action of the legislator, considering that products with PDO, PGI or TSG are produced and marketed not only by companies, but also by farmers.

## **PROTECTION MEASURES FOR PROTECTED DESIGNATION OF ORIGIN, PROTECTED GEOGRAPHICAL INDICATIONS AND TRADITIONAL SPECIALITIES GUARANTEED UNDER POLISH LAW**

### **S u m m a r y**

The aim of the paper is to answer whether Polish law properly implements the obligations set out in Regulations (EU) No 1151/2012 and 882/2004 (EC) to provide for appropriate protection measures for the quality systems (i.e. protected denomination of origin (PDO), protected geographical indications (PGI) and traditional specialities guaranteed (TSG)). It analyses the measures of protection available under Polish laws, including the provisions on the control of products marked as PDO, PGI or TSG, competent control bodies, and the administrative and criminal penalties and the civil law instruments to be used in the event of a breach of the registered designations. Following the recommendations of Regulation (EU) 1151/2012 there is a system of two types of official control in Poland: at the request of the producer (exercised by the State authorities through voivodeship inspectors of commercial quality of agri-food products and authorised private certification bodies), and an *ex officio* control (carried out by the Inspection of Commercial Quality of Agri-Food Products).

## **GLI STRUMENTI DI TUTELA DELLA DENOMINAZIONE DI ORIGINE PROTETTA, DELLE INDICAZIONI GEOGRAFICHE PROTETTE E DELLA SPECIALITÀ TRADIZIONALE GARANTITA NELLA LEGGE POLACCA**

### **R i a s s u n t o**

L'articolo si propone di rispondere alla domanda se la legge polacca implementi correttamente l'obbligo dell'Ue (definito nel regolamento n. 1151/2012 e 882/2004) a garantire strumenti adeguati di tutela dei sistemi di qualità, vale a dire la denominazione di origine controllata (DOC), l'indicazione geografica protetta (IGP) e la specialità tradizionale garantita (STG). È stata effettuata l'analisi degli strumenti di tutela presenti nella legge polacca, vale a dire sulle disposizioni che riguardano controlli e organi di controllo, sanzioni amministrative e penali nonché sugli strumenti di controllo civico-giuridici in caso di violazione delle denominazioni ed indicazioni protette. La legge polacca, ai sensi del regolamento n. 1151/2012, prevede un sistema di due tipi di controllo: controllo dietro la richiesta del produttore (eseguito da ispettori voivodali per la qualità commerciale degli articoli agroalimentari e da privati organismi di controllo autorizzati) e controllo d'ufficio (eseguito dall'Ispettorato per la Qualità Commerciale degli Articoli Agroalimentari).