

Communication concerning the decision of the Curia of Hungary in the administrative case
X. Global Zrt. (plaintiff) v. Food Chain Safety and Animal Health Directorate of the Regional
Agriculture Administration Office of Heves County (defendant)

The food safety inspector of the defendant held an inspection at the plaintiff's local supermarket in the town of Eger. During the inspection, samples were taken from the product "Forest honey 500 g" (best-before date: 27 August 2011, country of origin: Argentina, quantity: 5 pieces), produced by the plaintiff.

In November 2008, the food safety authority held additional inspections and took more samples from the product "Forest honey 500 g" at the plaintiff's five other supermarkets located in four different counties, furthermore, in three of the four counties, it collected second samples for counter-analysis.

The first instance authority inflicted a food safety fine of 200 000,- HUF and an inspection fee of 6 000,- HUF on the plaintiff. In the reasoning part of its decision, the authority established that the plaintiff's inspected forest honey had not met the requirements for "honey" as defined by the provisions n° 1-3-2001/110 of the Hungarian Codex Alimentarius, since the inspected honey's hydroxy-methyl-furfural (HMF) content had been 69,8 mg/kg instead of the prescribed 40 mg/kg, thus the HMF content had exceeded the prescribed limit value. The collected samples were examined by the central laboratory of the food safety authority. Based on the expert opinion of the Ecological and Botanical Research Institute of the Hungarian Academy of Sciences, the country of origin indicated on the product's packaging could not be justified based on the performed pollen test, consequently the information provided on the packaging could be considered misleading and unfairly manipulative to the detriment of customers.

Acting upon the plaintiff's appeal, the second instance authority confirmed the first instance decision. After rendering its confirming decision, the second instance authority was informed about the plaintiff's complementary appeal to which the expert opinion of the Department of Botany of the Hungarian National History Museum on pollen-analysis was attached. The latter expert opinion contained the results of examinations of second samples for counter-analysis, which samples had been collected during food safety inspections conducted in another county.

In the course of proceedings, the plaintiff raised no objection to the HMF content measured by the authority, given that in the case of tropical honey the measured value remained within the prescribed limit value. Nevertheless, the plaintiff argued that the measurement results concerning the pollen content of the inspected honey were not correct, and added that the honey had been imported in one consignment from the tropical area of Argentina. The plaintiff submitted documents related to the monitoring of the itinerary of the above consignment.

In its judgement rendered as a result of judicial review proceedings, the Curia of Hungary pointed out that the consignment's itinerary had not been completely verified from production to sale. Furthermore, the plaintiff failed to prove that the inspected forest honey had been part of the same consignment, had been produced of equivalent quality at the same time, in addition, failed to prove that the Argentine forest honey examined on the occasion of various inspections had been the same product as those from which samples and second samples had been taken in the course of other inspections. Consequently, the expert opinion attached to the plaintiff's complementary appeal, based on the pollen-analysis of second samples collected during other inspections, could not be considered valuable evidence in court proceedings, and could not result in proving that the samples taken by the food safety inspector of the defendant had been the same as the second samples collected by another inspection body.

Budapest, the 12th of October 2012

Administrative and Labour Department of the Curia of Hungary