PAWEŁ WOJCIECHOWSKI

Administrative liability of a farmer acting as food business operator

1. Introduction

Agriculture is currently ascribed a number of functions, its multifunctional nature has become a subject of interest. As pointed out in the literature of the subject, two primary functions of agriculture are the production function (growing or raising products of plant and animal origin) and the related commercial function (commercialisation of the obtained products. However, the food-related, environmental, social and territorial functions are also indicated.[1] Owing to the variability over time of the terms 'agriculture' and 'agricultural activity', the limits of agricultural law which regulates social relations in agriculture shift.[2] Alongside agricultural law, also food law is developing. Although deeply rooted in agricultural law and strongly tied to it[3], it is cur-

---

[1] Cf. R. Budzinowski, *Problemy ogólne prawa rolnego. Przemiany podstaw legislacyjnych i koncepcji doktrynalnych* [General Issues in Agricultural Law. Transformations of Legislative Bases and Doctrinal Concepts], Poznań 2008, p. 203; J. Mikołajczyk, *Współczesne funkcje obszarów wiejskich na tle koncepcji multifunkcjonalnego rolnictwa* [Contemporary functions of rural areas against the background of the concept of multifunctional farming], „Studia Iuridica Agraria" 10, 2012, pp. 374ff.

[2] Cf. R. Budzinowski, *Problemy ogólne prawa rolnego…*, p. 192.

[3] Cf. P. Czechowski, M. Korzycka-Iwanow, A. Niewiadomski, *Ewolucja ustawodawstwa prawnorolnego* [Evolution of agricultural law legislation], in: P. Czechowski (ed.), *Prawo rolne* [Agricultural Law], Warsaw 2013, s. 40. To read more about the links between agricultural law and food law, see also, e.g.: A. Jurcewicz, *Związki prawa żywnościowego z prawem rolnym – wybrane problemy* [Connections between food law and agricultural law – selected issues], „Studia Iuridica Agraria" 3, 2002, pp. 84ff.; M. Korzycka-Iwanow, *Prawo żywnościowe – relacje do prawa rolnego* [Food law – relations with agricultural law], „Studia Iuridica Agraria" 5, 2005, pp. 74ff.; M. Korzycka-Iwanow, *Obszary ryzyka w regulacjach prawa rolnego i żywnościowego* [Risk areas in regulations of food law and agricultural law], „Studia Iuridica

rently gaining autonomy owing to the special object of its regulations, overlapping the regulation of social relations associated with all stages of production, processing and distribution of food and owing to its special objectives, that is the protection of human health and life, as well as protection of consumers' interests, the animal health and welfare, the health of plants and of the environment.[4]

One of the objectives of this article is to present, with the illustration of institution of administrative liability of a farmer acting as food business operator, the close connections between agricultural law and food law, with the simultaneous emphasis on the divergences stemming from the different scopes of both branches.

The extent of legal regulations of food law in the European Union (EU) is growing at a very swift pace. Entities that partake in the production and distribution of food, including farmers, are burdened with numerous duties that are to ensure the protection of human life and health, the protection of consumers' interests, but also of the protection of animal health and welfare, the protection of the environment and the free movement of wholesome food.

However, regulating only the requirements, without providing a system of liability for their breach, would not enforce their observance, and thus the provisions introduced would not be effective.

The fundamental objective of this article is to present the scope of administrative liability of a farmer as food business operator.

2. The definition of a farmer

Both domestic and EU legislation applies the term 'farmer' broadly. However, there is not a single general legal definition of this term, neither in EU primary law, nor in the Constitution of the Republic of Poland or any oth-

---

Agraria" 2, 2001; R. Budzinowski, *Problemy ogólne prawa rolnego…*, pp. 219f.; D. Gadbin, *Wpływ prawa żywnościowego na prawo rolne* [Impact of Food Law on Agricultural Law], „Przegląd Prawa Rolnego" 2010, no 2, pp. 25ff.

[4] Cf. M. Korzycka-Iwanow, *Prawo żywnościowe – nowa dziedzina prawa* [Food law – a new branch of law], in: M. Korzycka-Iwanow (ed.), *Studia z prawa żywnościowego* [Studies in Food Law], Warsaw 2006, p. 26; P. Czechowski, M. Korzycka-Iwanow, A. Niewiadomski, *Ustawodawstwo prawnorolne – przeszłość, teraźniejszość i przyszłość* [Agricultural law legislation – past, present, future], in: H. Izdebski (ed.), *Nauka i nauczanie prawa. Tradycja i przyszłość* [Legal Science and Teaching Law. Tradition and Future], Warsaw 2009, p. 270; eadem, *Prawo żywnościowe – relacje...*, p. 84; P. Czechowski, M. Korzycka-Iwanow, A. Niewiadomski, op. cit., p. 41; P. Wojciechowski, *Model odpowiedzialności administracyjnej w prawie żywnościowym* [Model of Administrative Liability in Food Law], Warsaw 2016, p. 39.

er Polish or EU legislative act of a lower level. Some legislative acts use this term without providing its definition, others do contain legal definitions, but these are only applicable to the needs of the individual legal regulations, for example in the Polish law for the needs of social security of farmers (only applicable to natural persons)[5] or in EU law for the needs of regulation of the direct support schemes.[6] Without a detailed analysis of each of the definitions, it may only be concluded generally that in both cases a farmer is a person (with the reservation that as regards the Polish Act on social security, this person may only be a natural person, while the regulation on the direct support schemes applies to both, natural and legal, persons), who runs 'an agricultural activity'[7] at an agricultural holding. In light of these definitions, the concept of a 'farmer' is determined by two different concepts – of agricultural activity and of an agricultural holding. These definitions allow for adopting the conclusion that a farmer is a person who runs an agricultural activity in the form of an agricultural holding. The mutual relationship between these concepts reflects the relationship between three research problems covered by

[5] Pursuant to Article 6(1) of the Act of 20 December 1990 on the Social Security of Farmers, Uniform text: Journal of Laws 2015, item 704 as amended), a farmer is understood as an 'adult natural person, residing and carrying out, personally and for himself, an agricultural activity within the territory of the Republic of Poland, at an agricultural holding which is in possession of this person, as well as within a group of agricultural producers, as well as a person who has designated land at an agricultural holding ran by them for afforestation.'

[6] See: Article 4(b) a of Regulation of the European Parliament and Council No 1307/2013 of 17 December 2013, establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Regulation of the Council (EC) No 637/2008 and Regulation of the Council (EC) No 73/2009 (OJ EU L of 20 December 2013, p. 608 as amended), pursuant to which a 'farmer means a natural or legal person, or a group of natural or legal persons, regardless of the legal status granted to such group and its members by national law, whose holding is situated within the territorial scope of the Treaties, as defined in Article 52 TEU in conjunction with Articles 349 and 355 TFEU, and who exercises an agricultural activity.' On the other hand, pursuant to Article 4(b) of Regulation No 1307/2013, an 'agricultural holding means all the units used for agricultural activities and managed by a farmer situated within the territory of the same Member State.'

[7] In the Act on Social Security of Farmers, an 'agricultural activity' is defined as 'activity in the scope of production of plant or animal origin, including gardening, orchard keeping, beekeeping and fishery'. Under Regulation No 1307/2013, 'agricultural activity means production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, (ii) maintaining an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries, based on criteria established by Member States on the basis of a framework established by the Commission, or (iii) carrying out a minimum activity, defined by Member States, on agricultural areas naturally kept in a state suitable for grazing or cultivation.'

agricultural law, that is: (i) the issue of the indication of the 'object' and thus the agricultural holding within the subjective meaning, understood as a special complex of measures and property serving the maintenance of agricultural production; (ii) issues related to the determination of the type of human activity which may be grouped under the special category of activities termed 'agricultural activity', (iii) the legal forms of conducting an agricultural activity.[8] These three issues overlap and strongly influence one another other. The issue of the determination of agricultural activity raises particular doubts.[9] The most standard approach is to identify agricultural activity with the agro-biological nature of production of plant and animal origin, associated directly or indirectly with the use of nature's forces and resources.[10] This definition, however, may not be narrowly interpreted as agricultural activities (i.e. 'normal conduct of agriculture'), as it involves not only pre-production and production activities ('inherently' agricultural activity), but also the sale of products, and even their pre-processing (connected with the sale),[11] as well as activities consisting in keeping the agricultural areas in good agricultural condition in compliance with protection of the environment, even in the absence of production activity.[12]

It should also be noted that provisions of food law (Article 3(17) of Regulation No 178/2002) define the term 'primary production', as meaning: 'the production, rearing or growing of primary products including harvesting, milking and farmed animal production prior to slaughter. It also includes hunting and fishing and the harvesting of wild products'[13]. Primary production, which is the first link of the food chain, certainly forms part of agricultural activity.

3. Concept of a food business operator

The concept of a food business operator has a great significance in food law. The legal definition of 'food business operator' (FBO) is included in

---

[8] See: P. Blajer, *Koncepcja prawna rolnika indywidualnego w prawie polskim na tle porównawczym* [Legal Concept of an Individual Farmer in Polish Law in Comparative Perspective], Krakow 2009, p. 17.

[9] See: R. Budzinowski, *Koncepcja gospodarstwa rolnego w prawie rolnym* [Concept of an Agricultural Holding in Agricultural Law], Poznań 1992, p. 104.

[10] See: ibidem, p. 104.

[11] See: ibidem, pp. 107–108.

[12] See: idem, *Problemy ogólne prawa rolnego…*, p. 201.

[13] Regulation No 852/2004, on the other hand, defines 'primary products' as products of primary production including products of the soil, of stock farming, of hunting and fishing.

Regulation No 178/2002[14] which is of fundamental importance to EU food law (hereinafter referred to as 'GFL' – General Food Law). Pursuant to this definition, food business operators are 'natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control'. It is necessary to closely associate the concept of a food business operator with the concept of a food business, defined in Regulation No 178/2002 as 'any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food'. As regards the relationship between the concept of a food business operator and a food business in reference to the food chain, it must be stated that the functioning of a food business is always connected to the existence of a food business operator.

It may, thus, be concluded that even though a food business is an economic unit understood as conducting any activities in the food chain in an organised, continuous and professional manner (not for private domestic needs), the food business operator is the 'subjective element' singled out in the definition of the enterprise; it constitutes a legal entity to whom the conduct of this activity may indeed be ascribed.

The food business operator is a natural person, a legal person or another organisational unit with legal capacity, who controls the food business by way of exerting the decisive influence on its functioning, and who is simultaneously obliged to ensure that the requirements of food law are met at this enterprise.

4. Farmer as a food business operator

As mentioned above, it may be asserted beyond doubt that agricultural activity in the scope of food production covers primary production within the meaning of GFL. It is also justified to state that an agricultural holding which runs primary production is a food business.

As a consequence, it may be legitimately assumed that, in principle, a farmer who runs an activity whose objective is to produce agricultural raw materials that become food after harvesting is at the same time a food business operator in the scope of primary production.

---

[14] Regulation No 178/2002 of the European Parliament and 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 EC 31 of 1 February 2002, p. 1 as amended).

The concepts of a farmer and of a food business operator are not one and the same, however. Above all, the extent of activities of a food business operator involves not only the primary production of food, which forms part of its agricultural activity, but also all activities in connection with the production and processing of food, including food of non-agricultural origin, as well as activities associated with the broadly understood trade of food. On the other hand, an agricultural activity entails not only production and commercialisation of food, but also the production and commercialisation of feed and plants used for industrial purposes or for the generation of energy. The activities of a food business operator and of a farmer are, then, in a cross-relationship.

Moreover, there are grounds for stating that not every farmer who produces food is a food business operator. Of fundamental significance for this statement are the provisions of GFL which stipulate that food law within the meaning of GFL[15] does not apply to primary production for private domestic use or to the domestic preparation, handling or storage of food for private domestic consumption.[16] It must be underscored that this exclusion is of functional and not subjective nature, that is a certain type of agricultural activity is excluded from the regime of GFL, namely primary production for private domestic use and the domestic preparation, handling or storage of food for private domestic consumption. The exclusion of this type of activity from the scope of GFL automatically means that the person conducting it is not a food business operator. Therefore, if a farmer, within the agricultural activity conducted by him produces products exclusively for private domestic use and for the domestic preparation, handling or storage of food for private domestic consumption, and does not conduct any other activity on the food market (e.g. does not offer his products on the market), he will not be considered a food business operator. This statement is significant inasmuch as in such a case, the farmer, in principle, in not bound by any requirements stemming from food law, and thus he also cannot be held legally accountable for the breach of food law provisions. He is, however, liable under civil law in the event of personal injury caused by the consumption of an unsafe food product origi-

[15] Pursuant to Article 3(1) of Regulation No 178/2002, 'food law means the laws, regulations and administrative provisions governing food in general, and food safety in particular, whether at Community or national level; it covers any stage of production, processing and distribution of food, and also of feed produced for, or fed to, food-producing animals.'

[16] See: Article 1(3) of the GFL, Article(2)(a,b) of Regulation No 852/2004/EC, Article 1(3) of Regulation No 853/2004/EC. Additionally, Regulations No 852/2004/EC and 853/2004/EC specify more situations in which the provisions of food law do not apply.

nating from the domestic production. He may also be held criminally accountable if his actions are qualified as a criminal act.

In all other cases, that is where a farmer conducts primary production but not exclusively for domestic use (i.e. also when a part of the products is designated for domestic use), or when he conducts any other activity associated with the production, processing or distribution of food products, he is a food business operator, and thus he is subject to the requirements of food law.[17] In the event of breach of these requirements, he suffers the negative consequences provided for in food law.

The adopted solution, whereas public law does not apply to the sphere of the domestic household, including primary production for private domestic use, is compliant with the objective of the EU legislator who considers distribution of food to the final consumer, that is the last element of the food chain, to be the last link in this chain that is subject to legal regulation.[18]

5. Administrative liability in food law

The concept of administrative liability poses a number of formidable challenges in both doctrine and practice of law. In most general terms, it may be stated that it constitutes a subcategory of legal liability, marked by the following characteristics: (i) negative consequences (sanctions) provided for by the law for actions or omissions in breach of the orders or prohibitions stipulated in the provisions of law are imposed within forms and procedures specific of administration; (ii) these consequences may be borne by both natural and legal persons, as well as by other organisational units; (iii) administrative sanctions may take on various forms.

Administrative liability does not have a uniform nature and may be classified according to various criteria of division. As regards the criterion of the principle on which liability is based, we may indicate administrative liability based on the principle of fault (which, in the current legal circumstances, is an exception in Poland) or on a principle that does not involve fault (the principle of unlawfulness, or, more broadly speaking, of strict liability).[19] Another

[17] Requirements relating to primary production are more lenient in comparison with the requirements applicable to subsequent stages of the food chain.

[18] See: M. Korzycka-Iwanow, *Prawo żywnościowe. Zarys prawa polskiego i wspólnotowego* [Food Law. An Outline of Polish and Community Law], p. 74; P. Wojciechowski, *Model odpowiedzialności*…, p. 89.

[19] See: P. Wojciechowski, *Model odpowiedzialności*…, p. 230.

criterion is the type of entity that may be held accountable. In the event of administrative liability, this division is not of great significance, however, as it may be borne by both natural and legal persons, as well as by other organisations units, entrepreneurs and persons who are not entrepreneurs (although the legislator may narrow down the subjective scope), which sets administrative liability apart from criminal liability, in Poland borne exclusively by natural persons.[20] What is legally relevant, however, is the division of liability based on the criterion of administrative sanction (legal measure of enforcement of administrative liability), which is a negative consequence of the occurrence of events or states of affairs subject to negative normative qualification. The type of sanction is of significance in relation to the function of administrative liability, its principles and the mode of enforcing administrative liability.[21]

As regards the type of sanctions as the criterion for a division, we may identify the following types of administrative liability: 1) administrative liability based on police sanctions, whose purpose is mainly preventive and restitutive and 2) administrative liability based on repressive sanctions (*sensu stricto*), mainly in the form of monetary fines.[22] The identification of administrative liability based on repressive sanctions, in particular in the form of monetary fines, as a separate category, is justified, as these measures are employed in administrative regulations governing various spheres of life and areas of social reality. This, in a way, makes them a universal tool of administrative law, and moreover they fulfil a special function against the background of other administrative sanctions, mainly the repressive function.[23]

Liability based on administrative sanctions is currently employed in the legislations of European Union Member States. However, there are considerable differences between these individual states, both in terms of the system and procedure and as regards terminology. Primarily, the system of administrative liability based on repressive sanctions is treated differently in various member states; in some it is treated as a branch of administrative law (e.g. Austria, Spain), in others as a branch of criminal law (UK), while in others yet as a branch combining these two elements (Germany, France).[24]

---

[20] Ibidem, p. 225.

[21] Ibidem, p. 230.

[22] Ibidem, p. 236.

[23] See D. Szumiło-Kulczycka, *Prawo administracyjno-karne* [Administrative-Penal Law], Krakow 2004, pp. 25–26.

[24] See ibidem, p. 67.

6. Administrative liability based on police sanctions

Most broadly speaking, police sanctions may be characterised as various measures of exerting sovereign influence on entities in breach of provisions, determined by the norms of substantive administrative law, directly aimed at removing the threats to legally protected rights, imposed under the function of administrative police exercised by the authorities of public administration.

The catalogue of police sanctions applicable in food law has been provided for in EU provisions. Regulation No 882/2004 and other EU provisions of food law stipulate correctional measures of sovereign nature which may be imposed by national authorities of official food control where irregularities are identified. Article 54 of Regulation No 882/2004 lists sanctions such as: a) the imposition of sanitation procedures; b) the restriction or prohibition of the placing on the market; c) ordering the withdrawal of food from the market; d) the authorisation to use food for purposes other than those for which they were originally intended; e) the suspension or withdrawal of the establishment's approval; f) the suspension of operation or closure of the business; g) any other measure the competent authority deems appropriate. The catalogue of police sanctions which may be employed by the authorities of official food control is not exhaustive. This is due to the fact that provisions of Regulation No 882/2004 stipulate that authorities of official food control may undertake 'any other measure the competent authority deems appropriate'.[25]

It does not follow from the EU provisions what form the measures provided for in them must take on (in what form the police sanctions are to be imposed); they do not employ the term 'decision'.[26]

Farmers who are food business operators are subject to administrative liability based on police sanctions. If an inspection conducted at an agricultural holding reveals that the requirements of food law are not met, then, depending on how serious the threat is, the relevant authority of official food control ('OFC') may, by way of a decision, impose certain obligations or prohibitions on the farmer.

---

[25] For more on police sanctions, see: P. Wojciechowski, *Wspólnotowy model urzędowej kontroli żywności* [The Community Model of Official Food Control], Warsaw 2008, pp. 192f.

[26] More on measures that may be taken up by authorities of OFC, see: ibidem, pp. 178f.

7. Administrative liability based on repressive sanctions

The provisions of EU food law oblige member states to establish national provisions determining the principles for applying sanctions in the cases of breaches of food law. Article 17(2)(3) of the GFL, under the header entitled „Responsibilities' (German: *Zuständigkeiten*), stipulates: 'Member States shall also lay down the rules on measures and penalties applicable to infringements of food and feed law. The measures and penalties provided for shall be effective, proportionate and dissuasive'. Similarly, Article 55 of Regulation No 882/2004, under the header 'Sanctions' (German: *Sanktionen*) stipulates that 'Member States shall lay down the rules on sanctions applicable to infringements of feed and food law and other Community provisions relating to the protection of animal health and welfare and shall take all measures necessary to ensure that they are implemented. The sanctions provided for must be effective, proportionate and dissuasive.'

From both of the quoted provisions it follows unambiguously that Member States are to lay down rules on application of sanctions, measures and penalties. These sanctions, measures and penalties are to be 'effective, proportionate and dissuasive'. The EU legislator not only calls for the laying down of 'rules on sanctions', but also for undertaking 'all measures necessary to ensure that they are implemented'. The measures undertaken by member states aiming to ensure full application and effectiveness of EU law may entail both 'administrative sanctions' and 'criminal sanctions'.[27] In essence, member states have been obliged to regulate the principles of administrative or criminal liability in food law. This is because it would have been impossible to regulate only sanctions (negative consequences) without a reference to the events justifying the application of sanctions and the methods of their imposition. The requirement of proportionality of sanctions also determines the necessity to adjust sanctions to the type of breach of food law provisions.

Depending on the regulation adopted in a given Member State, the liability for breaching provisions of food law, including breaches by farmers, may be, then, regulated in provisions of administrative law, and have the nature of administrative liability (sanctions are various types of fines) or of the national criminal law and have the nature of criminal liability.

---

[27] See: Explanatory memorandum to Proposal for a Regulation of European Parliament and of the Council on Official Feed and Food Controls, COM(2003)52final, 2003/0030(COD), 5.2.2003, p. 25.

The Polish legislator, in exercise of this obligation, has regulated in the national legislation both the rules of administrative and of criminal liability in connection with infringements of food law, introducing both administrative and criminal repressive sanctions. The regulations relating to food law are, however, dominated by provisions introducing repressive administrative liability in the food chain. Such provisions are laid down in, for example, the Act on food and nutrition safety (AFNS), the Act on the trade quality of agricultural and food products (ATQAFP), the Act on products of animal origin (APAO) or in the Act on organic farming (AOF).[28]

It must be stressed that the Polish law has not introduced any special solutions regarding the scope of administrative liability in relation to farmers. Owing to this, farmers who produce food for commercial purposes are subject to the same rules of administrative liability as any other food business operator.

Pursuant to the cited acts, authorities of various inspections that conduct official food control in Poland are authorised to impose monetary fines (i.e. authorities of the State Sanitary Inspection, the Veterinary Inspection, the Agricultural and Food Quality Inspection, the Trade Inspection).[29] In the case of certain acts, the authority competent to impose a monetary fine is the same authority which conducted the inspection and identified the irregularities (e.g. Act on the Trade Quality of Agricultural and Food Products), while other acts stipulate that monetary fines are imposed by an authority of higher instance, at the application of the authority which identified the irregularity (e.g. Act on Food and Nutrition Safety). In the case of agricultural activity, sanctions may me imposed mainly by the Veterinary Inspection and by the Agricultural and Food Quality Inspection, but as regards the direct sale of agricultural products, also the other Inspection bodies are competent to impose sanctions.

Monetary fines are imposed in the event of a specific breach of provisions of food law, which, in the case of agricultural activity, refer mainly to the infringement of requirements laid down for primary production. The applicable liability is borne on the principle of unlawfulness, as none of the acts introducing this type of liability prescribe the prerequisite of fault. Besides the Act on Organic Farming,[30] the other acts dealing with food law do not provide for

---

[28] Monetary fines are provided for in Article 103 of AFNS, in Article 40a of ATQAFP, in Article 26 of APAO and in Article 24 and 25 of AOF.

[29] See more P. Wojciechowski, *Organy urzędowej kontroli żywności w Polsce – struktura, kompetencje i zakres działania* [Official food control authorities in Poland – structure, powers and scope of activity], „Kontrola Państwowa" 2014, no 1.

[30] See: Article 26(5) of the AOF.

special circumstances of release from liability. Acts dealing with food law employ such phrasing as: 'Any person who infringes…', 'is subject to a penalty', which obliges the competent authority to impose the monetary fine in the event of identification of breaches of requirements set forth in the provisions.[31] Decisions imposing monetary fines have the nature of constrained decisions, in which the scope of cognisance of the issuing authority is limited. In the event of identification of a state of facts in breach of a determined provision of food law, the authority may not examine to reasons for its occurrence nor evaluate the degree of culpability of the party.

In light of the adopted regulation, the imposition of a penalty is not influenced by the fact that in relation to a given breach, a decision of the OFC, imposing determined police sanctions that are supervisory measures, has already been issued. This is because the provisions introducing administrative liability based on sanctions in the form of monetary fines do not address any new actions undertaken by the OFC in relation to the breach of law. Such a solution means that even if the party is ordered by the OFC to remove the identified breaches within a certain time limit (this may consists in, for example, the order to introduce proper labelling within a given time limit) in the proceedings conducted on the basis of provisions providing for police sanctions, the authority is not released from its obligation to simultaneously impose a fine, as long as such a fine is stipulated for the given type of breach.[32]

---

[31] See: Judgment of the Supreme Administrative Court of 23 November 2010, II OSK 1749/09; Judgment of the Voivodeship Administrative Court in Warsaw of 20 December 2011, VII SA/Wa 2100/11; Judgment of the VAC in Warsaw of 28 October 2010, VII SA/Wa 1346/10.

[32] See: Judgment of the SAC of 3 December 2013 II OSK 1555/12; Judgment of the SAC of 23 November 2010, II OSK 1749/09, in which it is expressly stated that 'none of the provisions of the above Act connect the imposition of fine with the lapse of the time limit prescribed for the party by the State Poviat Sanitary Inspector in its decision on the need to introduce proper product labelling'. It must be noted, however, that jurisprudence in this scope varies. In one of previous cases, VAC found that 'issuing a decision imposing a monetary fine on the petitioner in a situation whereas a previous decision had ordered bringing the labelling up to legal requirements within a set time limit – and this time limit has not yet lapsed – is against the basic rules of administrative proceedings, and especially against Article 7, 77, 8 of the Code of Administrative Procedure read in conjunction with Article 4 of the Act on Food and Nutrition Safety' and 'Therefore, it was an acceptable situation where the sanitation authorities – despite the earlier decision on the obligation to adjust product labelling to the requirements of law and having set a time limit allowing the party to comply with this obligation – imposed a monetary fine, without waiting for the time limit to lapse. Since the authorities had set such a long adjustment period, then the sanction mentioned under Article 103 of the Act on Food and Nutrition Safety could not have been imposed before the lapse of this time limit.' See: Judgment of the VAC in Warsaw of 9 September 2009, VII SA/Wa 610/09.

Similarly, where the food business operator, including a farmer, has undertaken actions to remove the breach identified by the OFC, or even if it has removed it (e.g. the improper labelling on a packaging has been changed), it does not constitute the basis for the discontinuation of proceedings regarding the imposition of a monetary fine. This is due to the fact that the breach sanctioned with a monetary fine has already occurred, and it is the sole premise for imposing a fine. Such remedial actions may, however, influence the amount of the fine.

The criteria for choosing the types of repressive liability, as well as the types and amount of sanctions under different food law acts are not fully clear and unambiguous. The solutions regarding the manner of determination of the amount of sanctions are not uniform under the various acts. In many cases, the maximum amount of monetary fines for the different types of breaches has no justification in the light of the requirement to lay down effective, proportionate and dissuasive sanctions in the national legislation, as stipulated by EU food law. The differences are even more visible given that these acts apply different liabilities to similar types of breaches (falsification of a food product, in the Act on Food and Nutrition Safety, is subject to a sanction of a monetary penalty under criminal liability, while in the Act on the Trade Quality of Agricultural and Food Products, it is sanctioned with a monetary fine under administrative liability). Such a situation certainly merits a negative evaluation. One of the main shortcomings of the current regulation in the absence of uniform directives regarding the severity of the penalty, that is circumstances that should be taken into account by an OFC authority in establishing the amount of the monetary penalty. Individual acts account for different circumstances, and, most importantly they approach the prerequisite of fault differently. *De lege ferenda* both the range of administrative monetary fines and the directives regarding the severity of penalty should be determined unanimously in all acts dealing with food law, and the degree of culpability should be considered in establishing the amount of fine. Moreover, in the case of agricultural activity, it is of particular significance to provide for circumstances allowing for the release from liability or for abstaining from imposing a penalty in special circumstances, when the breach of food law occurred for reasons not attributable to the farmer and impossible to avoid (e.g. resulting from environmental pollution).

The Polish legislator, in introducing the repressive sanctions both to administrative and criminal law provisions, has not foreseen collision rules, despite the fact that the scope of many norms determining the sanctioning of a breach are cross-related, which means that the very same occurrence subject

to a negative normative evaluation may be subject to administrative liability provided for by a number of provisions, or to both administrative and criminal liability. *De lege ferenda* it would be justified to regulate, in administrative law, the rules for solving conflicts of laws (resolving concurrence of provisions) introducing administrative liability. It is particularly needed in the case of agricultural activity, where farmer, very often acting as a food business operator, is a natural person, and so he bears both criminal and administrative liability, with the latter one based on monetary fines.

The Polish legislator's solution regarding the possibility of applying both police and repressive sanctions at the same time does not, however, raise any doubts. This is due to the fact that police and repressive sanctions have different functions. The former aim, above all, at reversing the threats to legally protected rights and values, while the objective of the latter are a form of a repression, of a nuisance in relation to the occurrence of a breach of provisions in force.

8. Conclusions

Agriculture currently fulfils a number of functions, yet it is certain that its most fundamental function is the production and associated commercialisation of agricultural products with the purpose of ensuring food safety and livelihood of farmers. It is also beyond any discussion that the productive activity in agriculture means primary production, which is the first stage of food production. The above means that a great majority of farmers are covered by the requirements of food law. Only those farmers who produce agricultural products that are not the basis for food and farmers conducting primary production only for their private domestic use (i.e. who do not commercialise their products) are excluded from them.

Provisions of food law, in imposing obligations on farmers who act as food business operators at the same time provide for sanctions for the breach of these obligations. In many provisions, these sanctions take on the form of administrative monetary fines, which are imposed by way of administrative decisions by OFC authorities. These sanctions constitute the basic construction element of the institutions of administrative liability. Administrative liability, in turn, means that legal entities bear the negative consequences in forms and within procedures that are specific to administrative law, for actions or omissions in breach of the binding provisions on law, that is for occurrences subject to negative normative evaluation, which may be attributed

to a specific person. Unfortunately, under Polish law there is no uniform administrative liability, and the legislator, in introducing sanctions in the form of a monetary fine, simultaneously determines, in each individual legislative act, also the rules for bearing the liability. Such a state of affairs results in a situation that rules of administrative liability adopted in individual acts of food law are not coherent or uniform, and the differences in this scope allow us to conclude that in the present state of the law, the requirements of EU food law regarding sanctions, that is of effectiveness, proportionality and dissuasion, are not currently fulfilled.

National regulations do not account for the specificity of agricultural activity which, to a greater degree than any other activity in the food chain, is contingent upon external factors, outside of the farmers' control (e.g. condition of the environment, climate) which should be accounted for in shaping administrative liability of farmers as food business operators.

To sum up, it must be concluded that the proper shaping of administrative liability of farmers acting as food business operators conducting a food business, and especially the choice of sanctions, indication of circumstances excluding liability, the proper regulation of rules pertaining to concurrence of liabilities, are of key significance to ensuring the effectiveness and protective functioning of food law norms.

ADMINISTRATIVE LIABILITY OF A FARMER ACTING AS FOOD BUSINESS OPERATOR

Summary

The objective of this article is to demonstrate the scope of administrative liability of farmers as food business operators in the light of European Union law and Polish law. Two concepts that are of essential importance in agricultural law as well as food law are discussed. These two are in a cross-relationship. Farmers who within their agricultural activity produce food for commercial purposes or produce agricultural raw materials which after processing may become food are food business operators subject to the requirements of food law. It is then concluded that the shaping of administrative liability of farmers operating as food businesses and in particular the selection of administrative sanctions and determination of situations in which their liability may be excluded is of material importance for the efficiency of food law provisions that determine requirements related to the running of agricultural activity in the area of food production.

LA RESPONSABILITÀ AMMINISTRATIVA DELL'AGRICOLTORE IN QUANTO OPERATORE DEL SETTORE ALIMENTARE

Riassunto

L'obiettivo delle considerazioni è di determinare l'ambito di applicazione della responsabilità amministrativa degli agricoltori che operano come operatori del settore alimentare alla luce delle disposizioni della legge dell'Ue e quella polacca. L'autore spiega e discute due concetti fondamentali per il diritto agrario e quello alimentare, vale a dire il concetto di agricoltore e quello di operatore del settore alimentare. I due concetti menzionati si intersecano. Gli agricoltori, che nell'ambito dell'attività agricola svolta producono prodotti alimentari da commercializzare oppure tali che diventano cibo una volta trasformati, sono operatori del settore alimentare e in quanto tali soggetti alle disposizioni del diritto alimentare.

Nella parte conclusiva l'autore sostiene che stabilire la responsabilità amministrativa degli agricoltori in quanto operatori del settore alimentare tenendo conto della specificità dell'attività agricola, in particolare una selezione delle sanzioni, circostanze di esenzioni da responsabilità, regolazioni della confluenza della responsabilità, sia di notevole importanza per garantire l'efficacia delle disposizioni del diritto alimentare in materia dei requisiti relativi allo svolgimento dell'attività agricola nel campo della produzione alimentare.