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Transnational Food Justice

*Substantive and procedural subsidiarity in GI procedures before French Courts
and the ECJ*

ABSTRACT

The registration of geographical indications and the amendment of product specifications are based on a system of cooperation between national administrative authorities and the European Commission (and eventually the EUIPO in the future). The management of geographical indications is based on a transnational pattern, since the acts of national authorities produce their effects in the EU legal order as well as in that of the other Member States.

Still, the EU legislator has not proceeded to a clear sharing of powers between national and EU institutions regarding substantive law requirements for product specifications. Thus, it is to courts to fix this balance through adjudication. Besides, EU Law has not clearly fixed the role of national courts (and the ECJ), regarding the respect of procedural guarantees applying to the administrative process of registration, amendment, or cancellation of geographical indications.

Recent court decisions in France and before the ECJ (like the recent Case T-34/2, Consortium des Charcutiers Corses v. European Commission) contribute to the definition of such a balance which can be apprehended in the light of the principle of subsidiarity. The need to respect local specificities and to ensure efficiency in administrative procedures calls for an important role for national authorities. In the meantime, the European Commission and, in fine, the ECJ should be competent only for questions with a clear European dimension.



Nevertheless, judicial practice shows that the risk of conflict is high given that recent EU case-law does not apprehend the role of EU institutions (the Commission and the Court) as dealing only with EU regulatory questions but also as watchdogs of national procedures, not hesitating to turn away national supreme court decisions on the basis of EU legality. In fact, this is a corollary of the transnational effects of national acts in GI administrative procedures.

The outcome of this role for the European judge questions, however, the legitimacy of his action with regard to the sensitive matter of geographical indications as local cultural heritage.