

*American University of Armenia*

# The RA law on “Food Safety”: expired foodstuff and food

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*Yerevan, 2011*

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## INTRODUCTION

In summer of 2010, an article was published about mass violations in the public catering services at primary and secondary educational institutions of Armenia<sup>1</sup>, detected during a joint inspection of the State Inspectorate on Food Safety and Veterinary Services (a body within the structure of the Ministry of Agriculture of Armenia) and the “Protection of Consumers’ Rights” non-governmental organization. The joint inspection was initiated after a number of food contamination cases reported earlier at different educational institutions. The most outrageous fact that such violations occurred in a sector, where, the state authorities should have focused more attention. The extent and geographic coverage of the so called: “violations of statutory requirements” for food safety were found in 231 schools and 146 kindergartens of only three selected regions of the Republic, and included, in particular, sales of products of unknown origin and expired shelf-life. The action, which the authorities undertook was an order issued to eliminate the detected cases of violations.

The RA Law on Food Safety, governmental decrees and the RA Law on Protection of the Consumers’ Rights regulate the field of Food Safety. The adoption of the laws was required by the country’s transition to the market economy.

Article 8 of the law on Food safety establishes that the labeling in Armenian of foodstuff, materials in contact with food and food additives placed on the market in the Republic of Armenia shall include the day, month and year of production, storage terms, special instructions for storage (if any) and **the date of minimum durability**.

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<sup>1</sup>[http://www.armenianow.com/social/human\\_rights/23836/food\\_safety\\_violations\\_armenian\\_schools](http://www.armenianow.com/social/human_rights/23836/food_safety_violations_armenian_schools), 20 Sep. 2010

#1282 governmental decree of 2007 on ‘conforming the technical regulations of the requirements concerning the type and content of labeling in Armenian of foodstuff, materials in contact with food and food additives’ in its 49 section point 9 states, that the labeling in Armenian of foodstuff, materials in contact with food and food additives placed on the market in the Republic of Armenia **shall include** the following particulars-**if necessary** the day, month and year of production, storage terms, special instructions for storage (if any) and **the date of minimum durability**.

**The RA law clearly states that procedural issues concerning the labeling and technical requirements are regulated by the decisions of RA government<sup>2</sup>.**

Thus the whole process of labeling and repackaging of foodstuff, materials in contact with food and food additives is based on governmental decisions, while the latter contradict the mentioned provision of the law on Food Safety, according to which it is compulsory to state the day, month and year of production, storage terms, special instructions for storage (if any) and **the date of minimum durability**.

**During** a joint inspection of the State Inspectorate on Food Safety and Veterinary Services and the “Protection of Consumers’ Rights” non-governmental organization it was also concluded that the actions of schools and canteens had been incomparable with the lawfulness. The inspectors on their reports state that unclear provision of the RA law on Food Safety served as a basis for violators to bypass the law<sup>3</sup>.

At first glance, the example above may seem to deal with unconscientious producers/sellers exposing the most vulnerable groups – the children – to health hazards. However, deeper reviews of the problem, as well as the extent and the spread of such violations, explicitly demonstrate

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<sup>2</sup> The RA law “On Food Safety, □ Article 6

<sup>3</sup> [http://www.news.am/events/human\\_rights/food\\_safety\\_violations\\_armenian\\_schools](http://www.news.am/events/human_rights/food_safety_violations_armenian_schools), 28 Jan. 2011

existence of gaps in the legal environment. First of all the act is not formulated sufficiently clear, precise and foreseeable and that makes impossible for a person to conform his/her behavior to that act. What immediately alternates it are the lack of adequate control and monitoring tools directed at prevention/early detection of violations, inadequate measures of liabilities and absence of enforcement mechanisms.

The problem discussed became more outlined during the last years especially because of the global crisis, when the producers/sellers in Armenia and in different countries did not have enough funding to replace the expired foodstuff with new, fresh food<sup>4</sup>.

Though the RA “Law on Food Safety” was adopted, the practical application of it shows the picture of problems. There are many issues, still need to be addressed and solved in the future.

This Master’s Paper is primarily focused on the issues mentioned above and suggests some legislative amendments necessary to resolve the problems raised.

Taking into consideration the contradictions in the interpretation of the legal norms in this field, it is of crucial importance to examine the foreign legal practice and especially the necessary means taken for making the system more efficient and people’s life safer.

The paper includes an introduction, which shows the significance of the topic and its importance for the Armenian reality. It has three chapters corresponding to the main issues discussed in the paper and a conclusion, which sums up all the information discussed and makes some offers to enhance the existing legislation on the basis of the information analyzed in the previous chapters of the work.

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<sup>4</sup> <http://www.globalenvision.org/tags/global-economic-crisis?gclid=CLv0grLR16cCFZBkfAodtGCz9A>, 18 Feb. 2011

## Chapter 1: The RA Law on Food Safety, Article 8

1. *Whether the application of the RA law on “Food Safety,” and article 8 of the law, in particular, does not contradict with the purpose of the law itself (safety of food) without a precise clarification on the nature, scope and implementation of the ‘expired’ foodstuff and food?*

Article 8, Section 3 point d) of Law on Food Safety of the Republic of Armenia stipulates that the labeling in Armenian of foodstuff, materials in contact with food and food additives placed on the market in the Republic of Armenia shall include the day, month and year of production, storage terms, special instructions for storage (if any) and **the date of minimum durability**. Article 8, Section 6 of Law on Food Safety of the Republic of Armenia requires that "expired" foodstuff and food additives shall not be repackaged and placed on the market as foodstuff. Nevertheless, none of the sections of the article of the RA Law on Food and not even the Law itself define what the date of minimum durability is and what are the procedural issues concerning expired food or foodstuff.

It would be reasonable to expect that this problem would have found its solution in the law on “Food Safety” and procedural issues should be regulated by the governmental decrees or sub-legislative act. But the real picture is slightly different. The law on food safety does not regulate the field and the governmental decrees state the same as the law with several misleading words. #1282 governmental decree of 2007 on “conforming the technical regulations of the requirements concerning the type and content of labeling in Armenian of foodstuff, materials in contact with food and food additives” in its 49 section point 9 states, that the labeling in Armenian of foodstuff, materials in contact with food and food additives placed on the market in the Republic of Armenia **shall include** the following particulars - **if necessary** the day, month

and year of production, storage terms, special instructions for storage (if any) and **the date of minimum durability**<sup>5</sup>. The section itself enumerates the **required particulars** and the point adds the word **if necessary** and changes the whole meaning. This also increases the possibility to bypass the law (arguing the fact of necessity) at the same time not violating the requirements of the law and having a lot of defense arguments. Though the fact that the law itself has higher enforcement than the regulations or decrees, the later is based on the law and arises from it and should not contradict the law<sup>6</sup>.

The first law in Food Safety sphere in Armenia was adopted in 1999. In 2005 May 2 an amendment was made to the Law. The goal of the only amendment was to expand the list of main concepts of the law in Article 2. Among the concepts **the date of minimum durability** was defined as **a date until which a foodstuff retains its specific properties when properly stored**<sup>7</sup>. But the existing law approved by the parliament in 27 November 2006 includes all the definitions of concepts except the date of minimum durability. Instead of making the law more clear, precise and foreseeable the lawmakers narrowed the scope and made difficulties to comply with the requirements.

The European Court of Human Rights (ECHR) more than once has mentioned in its decisions that an act cannot be considered a legally binding law if it does not comply with the requirement of legal certainty. In particular, if the act is not formulated sufficiently clear, precise and foreseeable, that makes impossible for a person to conform his/her behavior to that act<sup>8</sup>.

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<sup>5</sup> <http://www.arlis.am/>, Gov. Res. No. N 1282N, on ‘The conforming the technical regulations on the requirements on safety, labeling and packaging of foodstuff, materials in contact with food and food additives’ adopted 25/10/2007/ entry into force 28/05/2009, viewed on 01/03/2011

<sup>6</sup> RA Law No. HO-320 ‘On Legal Acts’, adopted 03 Apr. 2002, as amended 05 May 2003

<sup>7</sup> Amendments to the law on Food Safety of 1999 December 8, Article 2, viewed on 09/03/2011

<sup>8</sup> See judgment of 30.05.2000, in case 31524/96, Belvedere Alberghiera S.r.l. [v. Italy, ECHR par. 57-60, as well as judgment of 30.05.2000, Carbonara & Ventura v. Italy, ECHR par. 64, see also judgment of 22.09.1994, Series A no. 296-A, the Hentrich v. France, ECHR par. 42, judgment of 8.07.1986, Series A no. 102, the Lithgow and Others v. the United Kingdom, ECHR par. 110.](#)

Keeping in mind ECHR's provision the RA law on Food Safety should be amended in order to prevent person's in compliance with the law and at the same time to have safer environment in the field of food and not to risk people's health and life.

It is worth mentioning that a legislative proposal to the National Assembly of the Republic of Armenia was made, which suggested to include the definition of the **date of minimum durability** in the law of Protection of Consumers Rights<sup>9</sup>. The concept was defined as a date **after** which **the product according to its significance is not appropriate for use**. RA Law on Protection of Consumers Rights only defined the concept in cases when the date of minimum durability is already passed and the products are not allowed to use. But before turning to the situation **after** the date of minimum durability, the lawmaker should give the definition concerning the condition of food **until the date of minimum durability** (i.e. **a date until which a foodstuff retains its specific properties when properly stored**). This concept definition in the RA law on the protection of Consumers Rights is too narrow and does not correspond to the essence of "the date of minimum durability" as a legal institution, the main policy of which in broad sense is to protect people's life and health. Establishment of such a vague provision, which does not give the definition of the concept, but only turns to an issue of violation of the date of minimum durability does not comply with the requirements set for the valid and certain legal concepts<sup>10</sup>.

Thus, the definition suggested by the RA law On the Protection of the Consumers Rights is too narrow, including only one aspect of the date of minimum durability, and not including even what the date of minimum durability is. Consequently, the proposed definition does not disclose

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<sup>9</sup> Legislative proposal to the RA Law " On Protection of Consumers Rights", 26.06.2001, [www.arlis.am](http://www.arlis.am).

<sup>10</sup> Jr. Rudolph Alexander" Understanding Legal Concepts that Influence Social Welfare Policy and Practice, □ New York, 1999, 15 March 2011

the essence of “the date of minimum durability” as a legal institution properly. The authorities should have placed more attention and regulate the issue not only concerning special types of foodstuff and food, but all the produced/sold goods, which need certain dates and conditions to stay safe.

Based on all mentioned above, it is concluded that RA law on “Food Safety” can properly be implemented only when the scope of expired foodstuff and food shall be defined and comprehensively legislated either by law or by governmental decrees and decisions. The concepts should fully and properly disclose the essence of “expired foodstuff and food” as legal institution. While defining ‘date of minimum durability’ and stating the scope and borders of implementation in the ‘proper’ law (RA law on Food Safety) the legislature shall take into account the International and European best practices, as discussed further in the paper.

## *Chapter 2: Types of Dates: Best practice or necessity*

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### *2. Whether all the dates on the labeling of foodstuff can cause harm to the safety of product?*

Article 8, Section 3 point d) of Law on Food Safety of the Republic of Armenia stipulates that the labeling in Armenian of foodstuff, materials in contact with food and food additives placed on the market in the Republic of Armenia shall include the day, month and year of production, storage terms, special instructions for storage (if any) and **the date of minimum durability**.

From this statement arises an issue, i.e. whether what date of minimum durability should be included on the labeling. The scope of the regulation of the expired foodstuff and food of the RA

law on Food Safety is so narrow and unclear, that it can only be assumed that there are no other dates besides the “ use by □ date. Even in this case, a “ use by □ date is not interpreted comprehensively.

The RA Law on Food Safety only states the day of minimum durability, which is assumed to be the date after which the competent body is obliged to take food products off the shelves. Article 8, Section 6 of Law on Food Safety of the Republic of Armenia requires that expired foodstuff and food additives shall not be repackaged and placed on the market as foodstuff.

Ambiguity and uncertainty of the notion “ Date of minimum durability” and also “ the type of Date” included on the labeling and also no provision about the obligation (either producer/seller or store manager) to take expired foodstuff off the shelves creates a situation when it is left to the discretion of producers/sellers and store managers to decide the issue of consuming the products, which shelf life has expired.

In developed countries besides the final expiration date (used by) of the foodstuff and food, which arises safety issue and is gross violation of the statutory requirements, there are other dates included in the labeling of the foodstuff and food, which consumers are familiar with<sup>11</sup>.

While comparing the provisions of the RA Law on Food Safety and the legal acts of UK, USA and most European countries it becomes obvious that one of the ways of clearly defining the date of minimum durability is stipulation of the types of dates in the special legal guides which helps consumers to understand and protect their rights.

It is common to state the types of dates on the legislation of different developed countries (UK, USA, France etc.). For instance, the Food Standards Agency in the UK makes it illegal for shops to sell food after its '**use by**' date, but it is fairly legal for shops to sell food after its '**best**

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<sup>11</sup> **The Food Economy: Global Issues and Challenges by Frank Bunte, Hans Dagevos Wageningen Pers | 2009 |, pages 95-97, February 22 2011**

**before', 'sell by' or 'display until' date.** The UK definitions which are used for different types of dates are

- A **“Sell-By”** date tells the store how long to display the product for sale. You should buy the product before the date expires.
- A **“if Used By (or Before)”** date is recommended for best flavor or quality. It is not a purchase or safety date.
- A **“Use-By”** date is the last date recommended for the use of the product while at peak quality. The date has been determined by the manufacturer of the product.
- A **“Closed or coded dates”** are packing numbers for use by the manufacturer.

**Best if Used By, Better if Used Before, Best By, Best Before** dates are only advisory and refer to the **quality** of the product. **Use-By** dates label indicates that the product is **no longer safe to** consume after the specified date. **Sell By, Display Until** date is a **guide for stores** to know how long they can display a particular product. **Packing codes** help **manufacturers and grocers** rotate their stock and quickly locate products in the event of a recall. They are not meant to be interpreted as an indicator of either food **safety or quality**.

As it was mentioned the explanation of each date is given in the law and procedural issues are explained in the special legal guides<sup>12</sup>. Consumers are fully protected from the illegal acts of the producers/ sellers and store managers. To purchase the particular product instead of another is left to their discretion. The consumer consciously pays for that product and knows that not safety, but the quality may have suffered a little bit.

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<sup>12</sup> [km.fao.org/fileadmin/user.../SUMMARY\\_Food\\_Safety\\_Mechanisms.doc](http://km.fao.org/fileadmin/user.../SUMMARY_Food_Safety_Mechanisms.doc), last modified on February 10, 2010

In Armenia every day consumers deal with such problem, as the law lacks provisions concerning the expired foodstuffs and food's quality issues. The RA Law on Food Safety does not even straightly prohibit the consumption of the expired foodstuff and food. The only provision stipulated in the law concerns the prohibition to repackage the expired foodstuff and food (Article 8, Section 6 of the law on Food Safety). But the latter also cannot be applied in practice, because of the fact that there should be some mechanisms which will enforce store managers or competent authorities to destroy the expired foodstuff and food. Without the requirement to destroy, the repackaging of expired food is impossible to control and to prohibit to enter the restaurants and schools' canteens. If store managers or producers/sellers are not obligated to destroy the food the fact that vulnerable groups – the children – will be exposed to health hazards, is obvious. And the case detected by the inspection of state authorities and NGO's is the precise evidence of the picture<sup>13</sup>.

In Georgia the issue is regulated thoroughly enough. In order to avoid bad food on sale Georgia's authorities created controlling mechanisms, which promote cooperation between food companies with the National Service of Food Safety (FVP). And in this situation either FVP or food company take back goods already delivered (which have expired) and destroy them. The products, which were not consumed at retail stores for a long time are also taken back and destroyed. In addition, they destroy defective products which can occur during packaging etc., for food to destroy all the conditions exist, and even there is a relevant place, where food is taken and destroyed<sup>14</sup>. On the other hand there are countries (China, Indonesia), which oblige the store

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<sup>13</sup> [http://www.armenianow.com/social/human\\_rights/23836/food\\_safety\\_violations\\_armenian\\_schools](http://www.armenianow.com/social/human_rights/23836/food_safety_violations_armenian_schools), 10 Jan. 2011

<sup>14</sup> [http://www.finchannel.com/Main\\_News/Geo/81893\\_Check\\_the\\_Expiry\\_Date\\_before\\_Buying\\_the\\_Product/](http://www.finchannel.com/Main_News/Geo/81893_Check_the_Expiry_Date_before_Buying_the_Product/) 15 Jan. 2011

managers or food companies themselves to destroy the food at specially designated areas in the company<sup>15</sup>.

Having the types of dates as a requirement is not only the one of the possible ways to avoid selling bad food but also the way to comply with EU requirements in the field of Food Safety. As Armenia wants to approximate and harmonize its legislation with that of EU, it should comply with all the requirements EU suggests, including in this field. EU Directives and Regulations in the field of Food Safety gives comprehensive and precise provisions including all the details concerning the types of the date of minimum durability (European directives 2000/13/EC & 2001/101/EC & 2003/89/EC concerning food labeling)<sup>16</sup>. The types of dates and its explanations are stated so clearly that there is no discretion left to the both parties (producer/seller and consumer). The one has rights which are protected by another's obligation and vice versa.

In any case not only the concepts should be clearly defined in the RA law on Food Safety, but also the margin of appreciation of the state bodies or producers/sellers and store managers should be clearly stated in the law. Without a strict obligation to remove and destroy the expired foodstuff and food the issue of prohibition to consume the expired foodstuff and also the possibility to enter into a restaurants and school canteens cannot be avoided. It should be stipulated in the law strict obligation on the producer to control and call back the foodstuff and food, which shelf life has expired. The obligation is suggested to put on the producer based on international best practices and on the fact that Armenia lacks funding and human resources to have needed amount of inspectorate bodies, which will control store managers not to sell expired

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<sup>15</sup> <http://shanghai.globaltimes.cn/two-cents/word-matters/2011-02/628150.html> ,February 28, 2011

<sup>16</sup> <http://www.bakerssoftware.com/en/european%20food%20labelling%20directive.php>  
European directives 2000/13/EC & 2001/101/EC&2003/89/EC, 19 Feb. 2011

foodstuff. The steps taken will ensure not to have vague conceptions in the RA law on Food Safety.

### *Chapter 3: Consumers as a target*

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#### *3. Whether RA law on Food Safety without amendments fully and comprehensively protects the consumer's rights?*

As it was mentioned there is no provision proscribed in the law on Food Safety that strictly prohibits to sell expired foodstuff and food. The only prohibition concerns the repackaging of the foodstuff and food (Article 8, Section 6 of Law on Food Safety of the Republic of Armenia) without giving the substantive regulations in the field of detriment of the expired foodstuff and food and without requiring either store managers or competent bodies to take food products off the shelves. And the legal system in the field of Food Safety looks like this: there is a law, but there are no clear, precise and foreseeable provisions, which will make the producers/ sellers comply with the law and act accordingly.

On the other hand the RA law on the Protection of the Consumers Rights, contains provisions about the expired foodstuff and food. The legal subject of the law clearly states that the Law regulates the **relationship between consumers and producers or the persons providing services**. It also states that consumers should be provided with the food in proper condition, stipulates the public and private means and mechanisms to protect consumers rights. The law is mainly concentrated on the protection of the consumers rights and the provisions about the date of minimum durability have informative function. The goal of the law is to provide tools to the consumers and assure the protection of their rights in the relationship between the consumers and

producers/sellers. But the gaps existing in the law on Food safety, in particular the absence of the important definitions and the main roles and functions of the producers/sellers, are ground to violate the consumers right and even to deprive from having mechanisms to protect them.

Again the incomplete and vague provisions of the law on Food Safety will not let the other laws existing in this field be implemented correctly. The consumer will cite the law, which applies to producer-consumer relations, stating the fact of violation by the producer/ according to the RA law on the Protection of the Consumers Rights. The producer/ seller as a defense argument will cite the RA law on Food Safety and will prove that he has complied with all the requirements stipulated in the law. The only suggestion remains the required amendments of the Law on Food Safety. There should exist no vague provision in the RA law on Food Safety.

Concurrently, The Food Safety Law of the People's Republic of China has paid special attention to this issue and gives adequate regulation in the main law on Food Safety refraining from conflicts. The law contains imperative norms in the sense that it is forbidden to produce or engage in business operation of the food which has been expired. The obligation is put on a producer/seller to store food under the requirements for ensuring food safety, **periodically** check the food inventory and timely clear up the food which has gone bad or which has expired, **otherwise the license of the producer/seller shall be revoked**<sup>17</sup>.

Based on the international best practice, Armenia could succeed in the case when the mechanisms will be correctly implemented. The steps, which will have better results are:

1. The Law should contain imperative norms, which will ban consumption or engagement in business operation of the expired foodstuff and food

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<sup>17</sup>[http://www.procedurallaw.cn/english/law/200903/t20090320\\_196425.html](http://www.procedurallaw.cn/english/law/200903/t20090320_196425.html), 25 Jan. 2011

2. The violators should be punished strictly. This can be assured only when the provisions of the law are clear, precise and unconditional and there is no possibility to bypass the law.

## CONCLUSION

Not diminishing the legal and political importance of the RA law on “Food Safety” it is worth, however outlining some gaps of the above mentioned law. Based on the thorough analysis and examination of the main provisions of the RA legislation, regarding the date of minimum durability, the U.S. case law, as well as the best practices of different developed countries in this field, the following proposals are made to enhance the RA legislation in this field:

1. *To stipulate in the law the definitions of the expression “the date of minimum durability” and to list the types of the dates of minimum durability.* While defining and stating the abovementioned notions the European and International standards should be taken into consideration. State authorities should have greater control in this field and supervise through its competent bodies the correct implementation and application of the Law provisions. At the same time the terms should be defined in the law precisely, in order to avoid unlimited discretion by the competent bodies.
2. *To build efficient mechanisms for indirect enforcement through a campaign to increase consumer and producers/sellers awareness.* The legal conscious of the producers/ sellers and consumers should be raised. This could be achieved through wide communication to consumers (buyers) and producers/sellers via

mass media and through consumer protection groups, of the meaning of food safety, consequences of consumption of unsafe food, possible abuses by processors and sellers, and ways of identifying/avoiding these abuses<sup>18</sup>.

➤ Competent authorities should stress much more attention to remove the expired foodstuff off the shelves and destroy it. *It should be stipulated in the law stricter means to oblige the producers/sellers to monitor and control occurrence of such instances. It is suggested to put the obligation on the producer to control and call back the expired foodstuff and food from the stores because*

✚ It will be cost efficient (Armenia has lack of funding)

✚ It will be possible to control and detect violations

The needed amendment to the RA law on Food Safety will help Armenia to achieve better results and have law in the field of food safety, which is more clear and precise. Involvement of respective international experts and relevant domestic and international NGOs could be extremely helpful and useful. Smart approach to the existing problems will help Armenia to succeed...

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<sup>18</sup>[www.card.am/main/files/fsprojectoverview.doc](http://www.card.am/main/files/fsprojectoverview.doc) *05 March. 2011*

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- Judgment of 21.02.1986, in case N 8793/79, James and Others v. The United Kingdom, [ECHR.](#)
- Judgment of 8.07.1986, Series A no. 102, the Lithgow and Others v. the United Kingdom, ECHR.
- Judgment of 22.09.1994, Series A no. 296-A, the Hentrich v. France, ECHR.
- Judgment of 20.11.1995, in case N 17849/91, Pressos Compania Naviera S.A. and Others v. Belgium, [ECHR.](#)
- Judgment of 30.05.2000, Carbonara & Ventura v. Italy, ECHR.
- Judgment of 05.07. 2009, the State of New York v. [CVS Pharmacy](#)
- Judgment of 20.09.2008, the State of New Jersey v. Wal-Mart Stores Inc.
- Judgment of 10.06.2008, [the State of New Jersey v. Rite Aid Corp](#)
- Judgment of 15.12.2008, The State of New York v. [Rite Aid Corp](#)

## Personal Interview

- **Mkhitar Hakobyan, Senior Food Safety Specialist, Personal interview. 25 January 2011**