Legislation of genetically modified organisms treatment

This thesis deals with the problems of genetically modified organisms (GMOs), especially with the legislation that governs handling them, including international conventions, community law as well as Czech law. At first, an outline of the term GMO is sketched, continued by the description of its use, possible risks and their mitigation.

A genetically modified organism (GMO) is a viable organism whose genetic material has been altered using genetic engineering techniques for the sake of obtaining new desired properties or eliminating undesired ones. GMOs have widespread applications. They are used in biological and medical research, production of pharmaceutical drugs, experimental medicine and, especially in agriculture and food production. They may have many advantages such as resistance against herbicides and insects and high nutrition content, but they use of GMOs may possess risks as well. The concern about the harm to human health or the environment revolves around disputed or unavailable evidence on the risk posed by GMOs. GMOs also provoke a complex range of ethical, political and socio-economical changes. That's why it seems be necessary to regulate it legally to reach peace in this area.

Two different attitudes to GMOs have evolved. The first one, typically used in USA, is based on the assumption that the origin and the process of food production does not matter. Crops are assessed based on their properties only, regardless of their genetic nature.

On the contrary to this liberal approach the attitude of the European Union is conservative, based on common legislature. As a key principle the precautionary principle is taken, according to uncertainty in possible risks. That results in strict rules and limitations including authorization schemes, risk assessments, emergency plans and monitoring. (This attitude is currently questioned by the academia in the White book – Genetical modified crops.)

At the international level, this attitude has led to the Cartageena protocol of biosafety and to Development of the national Biosafety Framework, signed among others by the representatives of the Czech Republic and a related project Building Capacity for Effective Participation in the Biosafety Clearing-House, enabling access to information and its availability, important on the global scale. Availability of the information to the general public is getting more and more important as well as participation of the general public on decisions. Its importance led to Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

European Union legislation on GMOs is based on directives: Council Directive 90/219/EEC on the contained use of genetically modified micro-organisms substantially amended by Council Directive 98/81/EC and Council Directive 90/220/EEC on the deliberate release into the environment of genetically modified organisms. Transboundary movements are controlled by Regulation 1946/2003 on transboundary movements of genetically modified organisms.

In the choice of decision (as well the decision of the European Court of Justice) I have targeted especially the problems of public foreknowledge.

In Czech Republic GMO treatment is set in the Law No. 78/2004 Coll., on treatment with genetically modified organism and products. Due to the necessity of incorporation of the European legislation into the Czech Law, this law has replaced the previous Law 153/2000 Coll. A comparison of these two laws shows an apparent change of the regulation of participation of general public. The change resulted in significantly smaller participation of environmental NGOs on the decision procedure.

Due to insufficient compatibility with European Union legislation the amendment No. 100/2001 Sb. was adopted. This amendment facilitated at least the possibility of legal remedy according to the EIA directive.

As a conclusion, amendmends de lege ferenda are suggested.