

THE CONCEPTS OF FOOD SECURITY AND THE RIGHT TO SAFE FOOD FROM THE INTERNATIONAL AND EUROPEAN PERSPECTIVE

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Abstract: *Food security and the right to safe food are two concepts largely exploited in the international and European discourse and also two juridical realities that have become a matter of ever increasing international and regional concern. In analysing both the conceptualization and the normative settlement of food security and the right to safe food in the United Nations Organization and European Union, this paper suggests that improvements and progresses should be achieved in order to enhance a proactive cooperation between national and international institutions in this particular area.*

Key words: *food, security, safe, right.*

1. Introduction

Economic globalization represents a significant challenge for the fulfilment of the food security – the main issue to address in this article. Structured in seven chapters and using the concepts of food security and the right to safe food as an entry point, this article argues that international law is in need of rethinking under globalization.

Chapter 2 of the present article presents an international perspective upon food security. Chapter 3 articulates the normative content of the right to safe food in the international law while Chapter 4 presents the European normative framework of food security. Chapter 5 analyses the similarities and distinctiveness of the two concepts in order to create the background for militating

for the right-based approach to food security, an approach that makes food security not just a desirable goal but an effective juridical concept.

2. The Concept of Food Security in the International Discourse

The concept of food security was developed in the 1970s, being the topic of public discourse for a few decades. It has acquired a number of different meanings over the time. It is estimated that approximately 200 definitions and 450 indicators of food security exist in the juridical literature [1].

At the 1974 World Food Conference, food security was defined as the “availability at all times of adequate world food supplies of basic foodstuffs ... to

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sustain a steady expansion of food consumed ... and to offset fluctuations in production and prices" [2]. The main goal of that conference was on strengthening food production in order to meet increasing demands, due to population growth and the perception that the world was moving towards overall food shortage. In line with the perception of food shortage the Universal Declaration on the Eradication of Hunger and Malnutrition adopted at the 1974 World Food Conference concluded that "every man, woman and child has the inalienable right to be free from hunger and malnutrition" [3].

In 1983, the Food and Agriculture Organization (FAO) explicitly expanded its definition of food security and included in the definition of the concept the idea of individual "security of access to supplies on the part of all those who need them" [4]. In the light of this definition it became clear that the individual food security is not guaranteed.

In 1980s, in the United Nations (UN) discourse we encounter the interrelationship between food security on the one hand and the individual right to food and right to health, on the other hand. Following this trend, the juridical literature considered food security as only one component of the wider goal, namely adequate nutrition or nutrition security and also adequate care and adequate prevention and control of diseases [5].

The definition of food security that is most widely used and recognized was adopted at the 1996 World Food Summit. Accordingly, food security, at the individual, household, national, regional and global levels is achieved when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life [6]. According to FAO, the definition encompasses three aspects of

food security, namely: availability of essential foods, stability of supplies and access for all to these supplies.

The 1996 definition represents a shift in thinking about food security. While initially the main concern was availability of essential food supplies, gradually the importance of other factors such as food quality, safety and micronutrients was recognized, and finally, non-food factors, such as adequate care, health and hygiene practices have received attention [7].

3. The Right to Safe Food in the Discourse of the United Nations

The right to safe food, as already mentioned before, is closely interrelated with the right to food and the right to health.

The right to food is included in a large number of binding and non-binding instruments. Article 25 Paragraph 1 of the Universal Declaration of Human Rights states that everyone has the right to a standard of living adequate for the health and well being of himself and his family, including food, clothing, housing. But the international document that deals most comprehensively with the fundamental right to food is the International Covenant on Economic, Social and Cultural Rights. Article 11 Paragraph 1 of the Covenant concludes that the States Parties recognise the right of everyone to an adequate standard of living, including adequate food. While Paragraph 2 of the same article concludes that States Parties recognize the fundamental right of everyone to be free from hunger. The normative content of the right was developed in General Comment No.12 of the Committee on Economic, Social and Cultural Rights (CESCR), the supervisory body of the International Covenant on Economic, Social and Cultural Rights. General Comment No.12 defines the right

to food as the right of everyone to have physical and economic access at all times to food in adequate quantity and quality or to means of its procurement. The right to food implies the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture and the accessibility of such food in ways that are sustainable and do not interfere with the enjoyment of other human rights.

Article 12 Paragraph 1 of the International Covenant on Economic, Social and Cultural Rights enunciates the right to health as the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In General Comment No.14 of CESCR on the domestic implementation of Art.12, the Committee interprets the right to health, as defined in Article 12.1 as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and an adequate supply of safe food. The States Parties are under the obligation to adopt domestic laws aimed to ensure the underlying determinants of health, such as nutritiously safe food and potable drinking water and to provide for implementation of such legislation. The Committee draws attention to the obligation to safeguard all individuals under the States Parties' jurisdiction from health hazards deriving from the activities of third parties, including the duty to protect consumers from dangerous practices by food manufacturers.

4. Food Security and the Right to Safe Food in the European Union

As we have discussed previously, food security is a vital concern in UN discourse, "but nowhere else has it been brought into such sharp relief as in contemporary Europe" [8]. A series of food-related crisis,

such as mad cow disease, dioxin contamination, beef hormones and GMOs dispute, have made the European consumers very sensitive to food security policies. These food scandals dramatically showed the inadequacy of the way in which food laws are created and implemented by European Union institution and member states, highlighting the complexity of the European system of governance and the limits of its functionalist approach to integration. The European regulation of food sector was a long process, which found its accomplishment in the adoption of EC Regulation No.178/2002.

EC Regulation No.178/2002 lays down the general principles and requirements of food law and establishes the European Food Safety Authority.

The crucial general principles enunciated in the EC Regulation concern: a) the general objectives to be pursued by food law, that is a high level of protection of human life and health and the protection of consumers' interests, including fair practises in food trade; b) resort to risk analysis in food law, with risk assessment being based on the available scientific evidence and undertaken in an independent, objective and transparent manner; c) application of the precautionary principle where the possibility of harmful effects on health have been identified but scientific uncertainty persists; d) protection of the interests of consumers and prevention of fraudulent or deceptive practices, the adulteration of food and any other misleading practices; e) transparency through public consultation and information. The Regulation also sets the obligations of EU Member States with regard to food trade, general safety requirements of food law and traceability, standing the rule that food shall not be placed on the market if it is unsafe.

This regulation represents the first attempt to address all aspects of food security and the European citizens' right to safe food at EU level. It lays down a comprehensive EU food policy horizontally covering all stages of production, processing and distribution of food and feed (from farm to fork), thus encompassing raw materials, intermediate products and finished food products as well as foodstuffs. Being addressed to not only EU institutions but also the member states, the scope *ratione personae* of this policy is unusually broad. The overriding principles of the new EU food regime are that food law enacted by either the community or its member states should seek to achieve a high level of protection of human health and consumers' interest while ensuring the effective functioning of the internal market [9].

As we can notice from this European perspective, there is no borderline between food security and the right to safe food. Actually, European Union managed to set its food security policies in connection with the individual right to safe food. At European level, food security and the right to safe food are the two faces of the same coin. Obviously there is no superposition of the concepts (as we are going to show in the following, there are certain distinctiveness between the two), but these two concepts were perfectly exploited in creating the European food law system, a system that has no other peer at universal and regional level.

5. Similarities and Distinctiveness between Food Security and the Right to Safe Food

There are considerable similarities between the definitions of food security and of the right to safe food. The question to be answered is whether achieving food security and the complete achievement of

the individual right to safe food are in fact two realities implying the same goal. Or, is the achievement of the individual right to safe food an objective that has more dimension than the objective of achieving food security?

Achieving food security and realizing the right to safe food are both concerned with fulfilling the human being basic need for food and nourishment. Both juridical concepts cover food availability, accessibility, safety and cultural acceptability. The approach of this concept is actually what differentiates them. While food security is based on a number of grounds, from moral to economic grounds, the right to safe food finds its main ground in human rights. The human rights law system requires *a priori* value commitment [10] and recognition of the universal and inalienable character of all human rights.

Food security has remained up to now a policy concept in international law being used only in non-binding instruments since it has not been given yet a normative content. The sole exception, that we have already mentioned, can be met at the European Union level, where aspects concerning food security were settled in a binding regulation. The realization of the right to safe food means implementing a legal binding obligation. Therefore, the violation of the right to safe food has juridical consequences, since such violation can be subject of judicial remedies, while non-achieving food security has no juridical consequence.

As it was correctly observed, the concept of food security applies to various levels: the global, regional, national, local and individual one, whereas the right to safe food applies at the individual level and only in specific cases it applies to the group level [11].

Food security is not a subject of special international law, the states having the possibility to choose and regulate the

normative content of this concept. Still, in this matter some global and regional legal restrictions can be applied, i.e. the provisions regarding the access to natural resources, the provisions regarding the international trade. Realisation of the right to food requires human rights law constrains. While it leaves states the liberty to design their own food security strategies that best suit the national context, it also sets minimum requirements that must be taken into account, such as the general human rights principles [11]. These principles underpin other key mechanism such as judicial and administrative procedures and remedies.

6. A Rights-Based Approach to Food Security

Despite the above mentioned distinctiveness the two concepts are closely related. As it was stated before, it is in the context of food security that the right to safe food is more likely to be realised [12]. More than that, the complete realization of the right to safe food implies a rights-based approach to food security.

A rights-based approach acknowledges that the states have international obligations that set requirements, and it also means to clearly recognise and base all policies, programmes, laws and other actions on the state's national and international human rights commitments [13]. If taken, seriously, a rights-based approach means more than adopting "rights language" [13].

That's the reason why, at international level we can witness a clear trend in approaching food security from the human rights point of view. For example, Food and Agriculture Organization (FAO) who deals with aspects related to food security is on its way to adopt a rights-based approach in its programmes and activities.

A progressive affirmation of the human right to safe food requires that international standards and guidelines are voluntarily complied with. From the point of view of both human rights law and international law, there is a strong need to move forward in order to enhance effectiveness of the right to safe food, namely to create an enforcement mechanism.

The present state of international law and food security regulations has faults and drawbacks. International law has serious structural problems of application, definition and enforcement and the existing legal solutions have deep structural faults [14]. In an authorized opinion: food supply insecurity and unsafe food are tolerated, encouraged or even positively promoted by many aspects of current international law. Serious reform is essential if we want to create an international law for adequate and safe food [15].

7. Conclusions

As we have suggested in the previous chapter, the present state of international law on food security regulation is still unsatisfactory. Reform is needed in the human right framework, for a full recognition of the right to safe food would probably determine an increased realization of food security at the international level. Making the case for a human right to safe food through a rights-based approach to food security offers explicit advantages in terms of effectiveness and accountability.

Reform is also needed in the regulatory framework of international trade and health protection. The different perspective on food regulation determines tensions between trading parties. It is probably very difficult to find a consensus at the international level as the one met at the European Union level. The European food

security system is probably the best example of what prioritizing consumer protection over freedom of trade means. Such a positive example couldn't be found at any other regional or international organization.

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