Food Security, Right to Food, Ethics of Sustainability

Legal, Economic and Social Policies

Edited by
Licia Califano

Collana di Diritto

FrancoAngeli

SAGGI E RICERCHE

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1. Methodological foreword

There is an inseparable link between healthy eating and respect for environmental balance, just as there is a growing awareness of the close relationship between eating habits and food production methods. A necessary transition towards sustainable farming and food systems can only be achieved through serious and thorough intervention by politics and law.

From this perspective, a study on food security finds its reason and its proper place within the broader "right to food" which, by its very nature, requires a multidisciplinary approach, capable of highlighting specificities, profiles of mutual integration and overlaps, and, even more importantly, knows how to grasp the potential balance between contrasting interests that follow paths that are not necessarily linear and coherent. In addition to food security, the right to food intersects with other important subjects: from the protection of health to relations between the State and the European Union, from public order and international prophylaxis to the protection of the environment. And if

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a fundamental role in this path towards sustainable development must undoubtedly be played by citizen-consumers, our study cannot disregard market analysis and the profiles of civil and criminal liability aimed at protecting the consumer.

On the other hand, if in less evolved societies the main problem regards the quantity of food, in advanced societies the issue of food quality exists, because of the globalisation of the markets and technological progress applied to obtaining cheaper "unconventional" substitutes for traditional food present numerous risks to people's health.

It is also a well-known fact that, partly because of this, the organisational principle that characterises the discipline at the EU level is the distinction between the assessment of the risk to human health and the management of that risk. In short, the organisation of the sector is functional to the pursuit of the public interest in the protection of health, considered to be a fundamental right of European citizens and a founding criterion of risk monitoring and management.

Against the backdrop of research, the first unavoidable general question is whether, looking at the future of our societies, which are indeed richer but are strongly attacked by the commercialisation of every aspect of life including, as already noted, cheap mass-produced food, we want to continue entrusting our world to the logic of an economy based exclusively on profit, compressing and confusing the identity of the person with that of the consumer, or whether, starting from an evolutionary interpretation of the constitutional provisions, it would not be preferable to refine the legal and political instruments to provide a better guarantee of fundamental human rights for all.

If we accept a logical and methodological approach that considers food security only in terms of safety, to satisfy consumers in terms of the protection of food quality and consequently of health, there is a risk of increasing mechanisms of exclusion and social inequality based on the possibilities of access to the purchase of healthy food.

If, on the other hand, we follow an orientation that accepts a broad concept of food security, extended to all its possible meanings (food security, food safety and the right to food according to personal preference), like the profile characterising this research project, food becomes a key to accessing the world: a point of view from which to critically observe the life system of our societies, in relation to

economic and development models concerning food production and marketing, the protection of the natural environment, and public policies pursued through regulatory choices.

2. "We are what we eat": a philosophical approach to building a bridge between the legal perspective…

If we agree with the famous statement by German philosopher L. Feuerbach that "We are what we eat", it is the philosophical study approach that guides and traces the coordinates of our study.

As we are reminded by Paola Mittica, food security, understood in its broadest sense as the right to food, is one of the most fundamental of all fundamental rights, as it is a prerequisite to respect for the right to life: "*no human being can be guaranteed the right to life if the right to access to food, and to food that is safe, i.e.: sufficient in quantity to satisfy the essential human need for food in satisfactory health and hygiene conditions, is not simultaneously guaranteed*".

In 2015, the United Nations endorsed the plan of action known as the 2030 Agenda, broken down into 17 points, of which "no hunger" is the second, immediately after "no poverty".

Looking at it from an analytical perspective, food security as a whole is currently interpreted on the basis of three distinct profiles: food security in the specific sense, i.e.: the availability of food supplies, the quantities of food necessary to satisfy man's natural and undeniable need to eat in order to live (the right to food *tout court* or quantitative food security); food safety, on the other hand, looks at food from a health and hygiene point of view (the right to healthy, high-quality food, or qualitative food safety); and, last but not least, the right to food according to personal preference, in the sense that there is not only the right to food, but also the right to food that conforms to a person's cultural traditions.

All three of these aspects share the ethical precondition of the value of the right to food also, and perhaps above all, about the existential dimension. The principle of the right to food, in this analytical perspective, superior to the concept of food security, is essential to orienting policies, as it enables the systematic investigation of the limits

of a socio-economic model that is not based on rights, but on the oppression of the weakest by the strongest. Hunger is not a random accident but the product of a system that does not work, of policies that are not aimed at satisfying the right to food, that do not recognise the pre-eminence and centrality of small-scale farmers and food producers, of women, of the most disadvantaged and vulnerable groups, of the importance of sustainable consumption models, of trade models that respect rights and people, as indicated by the "leave no one behind" principle at the heart of the 2030 Agenda.

Important experiences like that of the *Global Network Against Food Crises*[1] stem from this vision, which is certainly significant in terms of the analysis of the complex and diverse situations of food crises at the global level about the elaboration of potential intervention policies. Nevertheless, from a theoretical point of view, everything always moves within the same political-economic paradigm, without succeeding in generating a different perspective, a different way of knowing and building the world. This latter perspective explains the significance and importance of investigating the reasons for the legal foundation of the right to food, going to the heart of its very nature as an "existential" right, capable of challenging the entire existence of human beings, who experience and learn about the world through food and simultaneously realise themselves within society and the political community.

Following the thread of Paola Mittica's contribution, food is at the centre of existence, in the most complete sense of being in the world, and not only of surviving: a gateway to the world through the most real Self, i.e. the body, in a perspective that observes the body no longer merely as a machine to be kept in perfect working order, but as the place of the most complete and authentic experience of the world and relationships.

1. The Global Network Against Food Crises was founded by the European Commission for International Cooperation and Development, the Food and Agriculture Organisation of the United Nations (FAO) and the World Food Programme (WFP) in 2016, during the first World Humanitarian Summit. The Global Network Against Food Crises is an alliance of humanitarian and development players united by a commitment to address the root causes of food crises through increased sharing of analyses and knowledge and strengthened coordination. Among the many institutions, this one stands out for its excellent website – *https://www.fightfoodcrises.net/* – which also reports the more recent news on the 26-28 July 2021 Pre-summit at the FAO in Rome in preparation for the September summit in New York.

Access can be both positive and negative, concerning the nourishment that every individual receives, gives themselves, or can give themselves. Hence the need to create and implement the prerequisites so that food can be realised as self-care and care for the world in the relationship with others.

Reasoning in terms of the right to food that intercepts ethics, not only in terms of commitment to the realisation of the most inclusive conditions possible of access to food (in quantity, quality and possibility of choice), but also in the capacity to mature, through the understanding of the value of food in the experience of the sentient body, a more intimate and direct apprehension of oneself and the world and, as a reflection of this new awareness, the critical distance necessary to assess human choices. A concept of responsibility that expands and deepens, flowing into the challenge that the contemporary world has long posed to ethical thinking, so that future generations are guaranteed the right to exist.

3. … and the economic dimension

The subject of food certainly presents numerous aspects that can be studied using categories of analysis typical of economic science. If we take another look at the three definitions used above, that of food security (guaranteed supply of sufficient quantities of food for all), food safety (guaranteed supply of adequate quality food) and food for all according to personal tastes and preferences, correlations immediately emerge with some of the categories typical of the economic analysis that Paolo Polidori's essay leads us through.

The first consideration is closely linked to the identification of the quantum to be guaranteed for everyone. From a purely quantitative point of view, this exercise does not seem to be too difficult as this parameter can be considered technical: e.g. daily calorie requirements for physiologically balanced growth. Everyone should have more than or (at least) the amount of food that is required daily to ensure growth and healthy life.

A second, much more complex consideration, concerns the identification of the best institutional (or market) arrangement capable of ensuring this quantum. This is where the difficulties escalate. As

we all know, the food commodities market is a vast universe that contemplates: a) the physical production of foodstuffs, their procurement, distribution and marketing; b) the 'volatile' dimension of this market studied by specialised financial economics (derivatives, futures, forward contracts, etc.); c) the impact that economic policy and regulatory policies have had and continue to have on the current structure of the commodities market, such as the European Union's agricultural policy and the strategic role that has always been played by food independence in the political choices of national states.

All three of the above-mentioned profiles, as will be well understood upon reading the contribution, are shaped by the rules that regulate their operation. In this perspective, talking about the right to food within the institutional framework, correlated to the quantum to be produced, undoubtedly appears to be a complex exercise which, as far as the aspects more in keeping with economic analysis are concerned, requires the identification of a well-defined production framework.

This said, the institutional framework of reference can only be that of free market economies, within which reflection on how to successfully meet the goal of food security on a national and supranational level must take place. After all, as recalled in the foreword of the National Recovery Plan (NRP) "*An essential factor for economic growth is fairness and the promotion and protection of competition. Competition does not only respond to the logic of the market but can also contribute to greater social justice*". Therefore, competition can and must be put in a position to ensure not only efficiency in how much is produced, but also fairness in the redistribution of what is produced.

It is important to address the issue of how a liberal economy can contribute to meeting the goal of food security in terms of both production efficiency and redistribution at the national and supranational levels.

The second dimension, that of food safety, can also have an inevitable impact on economic reflection. Unsafe food, understood as food that is incompatible with proper nutrition, represents a negative externality (in the traditional sense) linked to the food production and distribution process. The control of negative externalities by applying standards, subsidies or taxation has always been the main subject of economic analysis, particularly in the public economy.

On the other hand, if the association between unsafe food and diseconomy is easy and immediate (even if the identification of the most suitable instruments for controlling negative external effects is anything but simple), from an economic point of view, the definition of the boundary between what is safe and what is not, and the identification of the balance or, if you like, the acceptable degree of substitution, once we abandon the basic definitions of quantity and quality, appears to be more complex. The matter of identifying and defining the rules (imperative, soft, of moral suasion or default) best suited to dealing with the issues at hand returns forcefully. An analytical profile that, as will emerge from the considerations made, tends to partly overlap with the third dimension of the research proposed above, that of food for all according to personal tastes and preferences.

A theoretical-qualitative analysis of the efficiency and effectiveness of the current legislation on the adulteration of foodstuffs, more specifically linked to assurance of the quality of the food placed on the market, will be flanked by matters linked to the freedom of choice of what to consume according to personal tastes and preferences, through the study that the rules of default can have in guiding individual choices towards consumption styles capable of reducing external effects in the medium term with regard to both environmental protection (e.g. reducing the consumption of meat from intensive farming – a topic that also intersects with the theme of food safety), and individual health (e.g. favouring a healthy diet that does not endanger human health).

4. The Italian constitutional model and its legislative and legal developments in the exchange with the European Union

It has already been mentioned that issues such as environmental protection, sustainable development and the rights of future generations are of extreme interest to today's legal systems and thinking. These can be joined by food security, which is assuming major importance, also due to the contingency. Not only in view of the pandemic context and that of war, which have characterised the last three years and can naturally have a knock-on effect, but more generally as a corollary of fundamental rights.

The Italian Constitution does not offer a definition of fundamental rights, not even in Article 2. However, although there is some uncertainty as to what they are, they can be considered the basic needs of every individual.

It is precisely our fundamental text that contains an extensive catalogue of rights, emerging as a real "Charter of Rights". Although food security cannot be explicitly identified among these, it can be inferred, through a broad interpretation, from a multiplicity of principles and rights. Besides the 'open character' of Article 2, on the nature of which doctrine is almost unanimous, it is possible to corroborate the right to food security in Articles 3, 9, 32, 36, 38 and 41. From this perspective, it is possible to understand how the right to food security takes on full constitutional value today. There has been a real evolution because, if in the past the legislator merely regulated food security from a strictly economic and health-hygiene point of view, introducing supervisory and control instruments, over time measures have been adopted with a dual purpose, aimed not only at supporting food production, but also at guaranteeing an adequate supply of food on the market (on this point, see the observations of Massimo Rubechi, Edoardo Alberto Rossi and Roberta Bonini).

If we were to recall Jellinek's famous classification of the generations of rights that have obtained co-constitutional recognition, in the Italian legal system, food safety – as Massimo Rubechi rightly observes – could be considered in three ways: as a negative freedom – and therefore ("freedom from the state") – according to which, respecting their own autonomy, the individual chooses to eat according to their own needs and intentions, also respecting their own beliefs (an element explored by Alberto Fabbri); as a social right, because it is only thanks to the public intervention of the state that it is possible not only to guarantee all citizens a healthy diet, but at the same time to reduce any social inequalities in access to food. Undoubtedly, food security is also – and perhaps above all – linked to the right to health, to ensure that the population has access to quality food, preventing malnutrition.

Moreover, the affirmation of the food culture, which has been particularly strong in recent years, represents, in its evolution, a valid key to understanding the level of protection reserved by the legal system for the socio-cultural pluralism of society.

This is more important if the food dimension is valued not only as a guarantee of the correct application of a supply chain process based on traceability, but also as a space in which the social and religious identities of the community are expressed.

In this process in which food is called upon to interact with the dimension of food security and relative rights, the school canteen takes on the significance of space for integration and sharing. As observed by Alberto Fabbri, the possibility of choosing religiously qualified food, based on the right to religious freedom, is included among the guarantees that the state system must activate, to promote a sphere of inclusion, also on the model of the personalisation of school menus. In this perspective, it is possible to speak of a model aimed at grasping two aspects related to the food offered in school canteens, determined on the basis of religiously oriented choices. The first aspect is connected to the exercise of religious freedom over the possibility of being able to dispose of religiously qualified food, and the significance of the legal elements and institutions involved in activating this process.

A second profile concerns the aspects related to the productivity, packaging and storage of "religious" food, and which regulatory provisions must be complied with to be proposed.

Without forgetting that food can play an important role as an instrument of cultural mediation, to highlight the positive function of food diversity in the multicultural school space.

Based on what has been said so far, it is easy to see how there a progressive evolution has been not only with regard to food itself, but above all in terms of legislative discipline. Indeed, if, until the 19th century, food was mainly functional for self-consumption and the survival of the farmers themselves, the development of industrial civilisation marked the growth of the complexity of the relationship between producer, food and consumer.

In the Italian case, the first organic regulatory intervention about the right to food and, more specifically, food hygiene is represented by Royal Decree No. 1265 of 1934, which introduced the Consolidated Text on Health Laws; a measure aimed at reorganising the muddled and fragmentary 18th and 19th century regulatory production of the Italian states.

In terms of the analysis of constitutional law, it is first necessary to focus on the concept of security and the many meanings that the best doctrine has developed over time.

In this perspective, it should be remembered that while individual security concerns the protection of the fundamental rights guaranteed by the legal-constitutional system, collective security involves the definition of the limits placed on the actions of individuals in relation both to the protection and promotion of other subjective legal spheres, and to the performance of specific services in favour of the community. However, if the concept of security contains the limitation of the freedom of others, to be legitimate this limitation can only come from a public power, be it legislative or administrative.

On the other hand, it is no less true that, in the elaboration of the right to food security today, defensive measures are joined, or rather must be accompanied, by propulsive interventions, to achieve well-being and quality of life in general.

This consideration shifts the analysis towards verification of the extent to which security, as previously interpreted, in the form of safety as well as security, is adequately pursued in the current precautionary legal system.

It is emphasised in many quarters that the precautionary principle that guides the decisions of the EU and the Member States themselves in the field of safety is far from effectively satisfying the goal of security understood as the widespread, universal possibility of access to a quantity of food sufficient to lead an active, healthy life: this is the concept of human dignity affirmed by the democratic-social constitutions of post-World War II.

If food safety refers to the aspects of hygiene and the wholesomeness of food for the protection of human health – given that it is self-evident that unsafe food is altered food, contaminated by toxic substances that are harmful to humans – the regulatory basis is represented by Article 32 of the Constitution. This is a rule that, when correctly interpreted, protects the right to health not only as a right for the needy to obtain treatment, but as a general right to well-being and quality of life.

Moreover, the very principle of sustainable development finds a solid construction capable of supporting a perspective of public action

that can combine law and ethics and, in this way, a connection between environmental protection and solidarity as a prerequisite for a discipline on food security capable of addressing those who do not yet have sufficient access to food in the principle of solidarity set out in Article 2 of the Constitution.

In consideration of a regulatory framework that struggles to meet changing social needs, several parties have recently called for a constitutional intervention which, starting with the clarification of environmental protection in the Constitution, can ensure the protection of the right to food in a modified relationship between the individual-community and the territory in the complex balancing of new rights. Said clarification was insisted upon on various occasions, including during the 18th legislature, during which several constitutional bills were presented. To this end, the First Constitutional Affairs Committee of the Senate of the Republic was engaged in the examination of four drafts of constitutional laws[2], all aimed at introducing an explicit reference to the defence of the environment into the Constitution, integrating Article 9. Despite differences in content – which are in any case consistent with recent developments at international and supranational levels and in the comparative framework – a consolidated law that incorporates the content of several proposals presented and combined, and approved by a large majority, was drafted[3].

2. The bill S. 212 (in consolidated law S. 2160, S. 1632, S. 1203, S. 83, S. 938, S. 1532, S. 1627) was approved by the Senate in the session held on 9 June 2021. It was then transmitted to the Chamber of Deputies, which began examining the proposed law C. 3156, combined with C. 15, C. 143, C. 240, C. 2124, C. 2150, C. 2174, C. 2315, C. 2838, C. 2914, C. 3181, on 14 June 2021. The parliamentary procedure ended with the final approval on 8 February 2022. As a result, Constitutional Law No. 1/2022 of 11 February 2022 was published in the Official Bulletin on 22 February 2022. Article 9 of the Constitution therefore bears an additional paragraph worded as follows: "It protects the environment, biodiversity and ecosystems, also in the interest of future generations. The law of the state regulates the ways and forms of animal protection". Article 41 of the Constitution has also been amended, so that the second and third paragraphs also have new wording: "2. It may not be carried out in conflict with social utility or in such a way as to be detrimental to health, the environment, safety, liberty or human dignity". "3. The law determines the appropriate programmes and controls so that public and private economic activity can be directed and coordinated for social and environmental purposes".

3. The aim of the De Petris *et al.* bill (A.S. 212) is to introduce in the Constitution not only the protection of the environment, biodiversity and ecosystems, but also the programmatic goals, as it is up to the Republic to pursue "the improvement of the conditions

Environmental law and the right to food present multiple connections which make it hard to conceive one without the other. It is a well-known fact that production processes are affected by the scarcity of available resources produced by irrational consumption, climatic factors and pollution. It is necessary to devise new models to ensure sustainable development of the production system, capable of meeting the growing demand for food on one hand and reducing the impact of human activities on the climate and the ecosystem on the other. The role of the law in this process is twofold and ambivalent: on one hand, the science of food security must endeavour to precisely redefine the food model, taking on a new meaning that goes beyond interpreting "food" as nothing more than a mercantilist and consumerist value, also playing an active role in contributing to the development of a new paradigm between environment, food and innovation. A panorama in which law is called upon to embrace a regulatory function as complex as it is central in shaping a sector where public-state action and private initiative coexist.

The National Recovery Plan (PNRR) draws attention to "environment and food", identifying green transition as one of the six areas of intervention. In fact, the European Action Plan on Circular Economy and "*From the Producer to the Consumer*" will be at the heart of the European Green Deal initiative aimed at achieving a new balance between nature, food systems, biodiversity and circularity of resources.

of the air, water, soil and territory, as a whole and in terms of its components". Furthermore, the constitutional bill specifies some directive criteria that should steer the activity of the ordinary legislator in the protection of a "fundamental right of the individual and the community", as precautions, preventive action, responsibility and correction of damage caused to the environment. Accordingly, the bill in question also contemplated the inclusion of the protection of animals in Article 117, paragraph 2, letter s), merely recognising the protection of biodiversity and promoting a more general "respect for animals". With specific regard to this last aspect, the bill envisaged that animals be recognised as sentient beings, with the promotion and guarantee of "respect for an existence compatible with their ethological characteristics". Senator De Petris has presented another bill (A.S. 83) that has similar contents in terms of environmental and ecosystem protection but leaves out the protection of the animal world. The third bill, presented by Senator Perilli (A.S. 1203), on the other hand, is oriented towards a less pronounced intervention, as it merely adds a paragraph to Article 9 of the Constitution, which states that "the Republic protects the environment and the ecosystem, defends biodiversity and animals, and promotes sustainable development, also in the interest of future generations". The fourth and final proposal is presented by Senator Gallone (A.S. 1532), 1532), which has less content, because it merely adds the word 'environment' to the second paragraph of Article 9 of the Constitution.

The second strategic line intends to pursue the goal of a "sustainable agrifood supply chain, improving the competitiveness of farms and their climate-environmental performance, strengthening the sector's logistical infrastructure, reducing greenhouse gas emissions and supporting the spread of precision agriculture and the modernisation of machinery. The aim is to exploit all the new opportunities that the transition brings to one of the sectors of excellence of the Italian economy" (PNRR).

In view of the very recent PNRR, the aim could be to analyse the complex Italian regulatory framework, in the light of Italian constitutional case law and EU legislation, trying to understand whether it is possible to speak of models and, in this case, taking some constitutional experiences in the comparative framework as a reference.

Turning our gaze to the supranational level, we ought to remember that, within the framework of the European Union, the environment is one of those areas of responsibility shared between the Union and the Member States. Moreover, not only is environmental protection a goal of the European Union, but it is also a right that has been recognised in the Charter of Fundamental Rights. And it is because of this close connection that legislation on the production of foodstuffs includes both the protection of the environment and its defence. In this perspective, while the main goal of food legislation focuses on the protection of consumer interests, consideration must also be given to the environment, as set out in Regulation (EC) no. 178/2002 of the European Parliament and of the Council of 28 January 2002, which not only laid down the general principles and requirements of food legislation, but also set up a dedicated European authority and established certain procedures in the field of food security.

The Charter of Fundamental Rights of the European Union also covers the matter. Article 37 specifically states that both a high level of environmental protection and the improvement of environmental quality must be incorporated into the Union's policies and guaranteed in compliance with the principle of sustainable development.

The Treaty on the Functioning of the Union also places considerable emphasis on the latter aspect: while Title XX envisages a high level of environmental protection integrated and guaranteed by EU policies, Article 3 states that the European Union should aim for a high level of environmental protection.

It is therefore clear that the Union's policies are primarily oriented towards environmental protection.

Analysing European food safety legislation, is strongly oriented by the need to guarantee food safety and quality, and it is in this sense that the importance placed on the qualitative aspects of food safety, especially with regard to the marketing of agri-food products, can be explained. The large number of thematic areas covered by European institutional initiatives include the origin and traceability of products exported and marketed in the EU, certification programmes and quality marks for agricultural and food products, labelling legislation to guarantee informed choices and safe food for consumers, restrictions on the use of pesticides in agriculture and on the production of GMOs, safety measures in the packaging and transport of agri-food products, the complex system of monitoring and control against food fraud and, lastly, regional and international trade agreements, also within the WTO, which Edoardo Rossi will cover in detail, with provisions on food safety cooperation.

It is precisely this last area of action that seems to be the most significant for this topic, as it is suitable for recognising the role of the European Union as an important player in the global trade of agri-food products through the signing of numerous agreements with non-EU states, contributing to the development of international standards in the area of 'food security', both in terms of quality and quantity.

Among other things, the EU has very recently developed the Farm to Fork Strategy, a key instrument of the European Green Deal. Food production is not only to be seen as an essential service that has to be provided, but also a source of income. The EU's agri-food supply chain, which guarantees the security of supply for around 400 million citizens, is an important economic sector of the EU. It has, however, been scientifically proven that this sector has a direct impact on the environment, with the Intergovernmental Panel on Climate Change (IPCC) having observed that food systems account for approximately one-third of global greenhouse gas emissions. Based on the assumption that all aspects of food production – from processing to sales, from packaging to the transport of food – contribute significantly to pollution, and taking into account the close connection between the environment and the food system, with this Strategy the Union aims to reduce the carbon footprint of food systems and, at the same time, not only

strengthen resilience to crises, but also continue to ensure that healthy food is available at affordable prices for future generations.

The Farm to Fork strategy is a 10-year plan drawn up by the European Commission to guide the transition to a fair, healthy and environmentally friendly food system. It is not binding per se, but is intended to guide Member States through the amendment and implementation of the rules and laws already in force

5. An overview of the profiles of comparative law

Environmental protection and the implications it generates on food security acquire considerable importance in the comparative framework, with specific regard to the "intergenerational vocation". The instruments put in place for protection must not only consider the present but look at things from a long-term perspective, in order to properly take into account the consequences on future generations and tangibly apply the principle of solidarity.

Even with the natural differences resulting from the different historical, cultural and social paths, many constitutional charters, as pointed out by Giuliaserena Stegher, protect the environment and the rights associated with it.

Some cases, such as the German case, are mentioned by way of example. In the German legal system, Article 20 of the *Grundgesetz* stipulates that it is the State, responsible to future generations, that protects the fundamental natural conditions of life [*natürlichen Lebensgrundlagen*] and animals through the exercise of legislative power, within the framework of the constitutional order, and of executive and judicial powers[4].

4. On 24 March 2021, the German Federal Constitutional Court declared certain provisions of the Climate Protection Act of 12 December 2019 (KSG) to be unconstitutional. Specifically, the controlling body found the national climate protection targets and the annual emission volumes permissible until 2030 to be incompatible with fundamental rights. On this subject see A. De Petris, *Protezione del clima e dimensione intertemporale dei diritti fondamentali: Karlsruhe for Future?* Available at *https://ceridap.eu/protezione-del-clima-e-dimensione-intertemporale-dei-diritti-fondamentali-karlsruhe-for-future/?lng=*.

The Portuguese Constitution not only includes the protection and development of the cultural heritage of the Portuguese people, the defence of nature and the environment, the preservation of natural resources and the function of ensuring proper land use among the fundamental tasks of the State, but also includes a specific provision to protect the environment, which states that: "*Everyone has the right to a humane, healthy and ecologically balanced living environment and must defend it*". Within the framework of sustainable development, this task falls to the state, to be implemented through own bodies and with the involvement and participation of the general public, with the aim of "to prevent and control pollution and its effects and harmful forms of erosion; [...] to promote the rational exploitation of natural resources, safeguarding their capacity for renewal and ecological stability, while respecting the principle of solidarity between generations; [...] to promote the incorporation of environmental goals into the various sectoral policies; to promote environmental education and respect for the values of the environment; […]".

Within the European framework, however, it is the Hungarian constitution that is particularly innovative and specific, with Article XX stating that not only does everyone have the right to physical and mental health, but also that "*the state shall promote the effective implementation of this right through agriculture free of genetically modified organisms, guaranteeing access to healthy food and drinking water, organising occupational safety and the provision of healthcare, supporting sport and regular exercise and guaranteeing environmental protection*".

An explicit constitutional focus on food safety can also be discerned in other comparative legal systems. Even with the natural differences resulting from different historical, cultural and social paths, many constitutional charters protect the environment and the rights associated with it.

While many constitutions dedicate specific provisions to the subject of food, it is presented in many different forms and ways, with some legal systems protecting the "right to food", some protecting "freedom from hunger" and others protecting "food sovereignty". These clauses take on meaning and significance because of specific experiences, as they are very common in systems where malnutrition rates and difficulties in accessing drinking water are very high.

Although the need to include specific provisions at the constitutional level is a recent trend, the most peculiar innovations are to be found in the most backward areas. Indeed, Latin American constitutionalism offers peculiar cases in which nature, as the recipient of special rights, is recognised as having genuine legal subjectivity. Although the textual formulation is presented in different ways, the Latin American "Buen vivir" theme, while hard to define, is implemented in the cases of Ecuador and Bolivia. This concept, which in the South American model not only represents an idea-guide for the action of movements or the implementation of policies, but even assumes constitutional importance and is placed at the foundation of state institutions, could become a theoretical and political reference for European societies.

What is preponderantly emerging is a not insignificant pairing, which places two diametrically opposed visions of the world in competition (if not in opposition): the Western vision on one hand and the Latin American one on the other, in the complex balancing act of the relationship of individuals with society, nature, culture, the economic system, climate change and dwindling resources. The current crisis, first economic and then pandemic, highlights how the trajectory of the current path is unsustainable and must be steered in completely different directions.

6. Civil and criminal liability in the food sector and consumer defence

This brings us to the analysis of the legal and cultural evolution of food law at the civil level; an investigation which, starting with the study of the sources, must consider their fragmentary and inconsistent nature, which has not been overcome by their codification at first and second level. In the Italian experience, an initial intervention with the law that pursued the reorganisation of consumer disciplines (Law no. 281/1998) was followed by the drafting of the broader Consumer Code. This dual organisation was also accompanied by the work of the European legislator, who was also involved in highlighting the stratification and consolidation of the EU law on the subject, known as the *acquis communautaire* (with reference also to draft common frame of reference, von Bar Commission, Dir. 83/2011/EU).

The representation of integration and coordination between the EU sources ranked alongside those at the national level (which some authoritative civil lawyers effectively describe in terms of Italian-EU law), appear meaningful and central to the overall construction of this study.

Significant in this perspective is the slant offered by Roberta Bonini's contribution, which explains how principles destined to extend to sectors that are not purely consumer-oriented, and with such effectiveness as to affect more general categories, appear in the Consumer Code, which expressly declares itself to be in line with and obsequious to the hierarchy of EU sources. Various examples of this can be found in the opening provisions, but further details are found in clusters of provisions designed to regulate some of the issues that have the greatest impact on people's lives: Articles 102-113, covering safety, Articles 114-127, covering liability, and Articles 128-135 covering the subject of guarantees, are of particular note.

The reflection aimed at researching – and assessing – the influence that consumer principles can have on other rules already present in the legal system is therefore extremely topical and interesting.

In the context outlined, particular importance is assigned to the analysis of the civil law scholar, focused on matters of civil liability in the agri-food sector, guided by the precautionary principle as the supreme guarantor of the right to health, and that on producer liability converged in the Consumer Code.

In reconstructing the discipline, the author pays particular attention to the particularities that characterise the food product, considering that the national legislation on producer liability was drawn up for industrial products. Although food is a consumer product, unlike other products food does not simply come into contact with the consumer, but penetrates their organic structure, insinuating itself into their body, and the enjoyment of food is closely related to the right to health, as well as to the right of self-determination in the life choices of each individual.

Moreover, the cultural evolution regarding nutrition and food and the development of "movements" (such as vegetarians and vegans) that have become real lifestyles have emphasised this second aspect, so much so that some have claimed that food consumption can be considered as "sensitive data" for privacy.

Consequently, also in food law, the right to information is functional and essential to the individual's right to self-determination as a manifestation of a constitutionally protected fundamental right: self-determination in choices regarding their own health and food choices. In other words, the consumer has the right not only to enjoy products that are not harmful to health or otherwise harmful, but also to choose them knowledgeably and consciously.

Knowledge of all food-related information is essential, not only to avoid an incorrect and/or harmful diet for the consumer, but more simply to enable the realisation of a certain lifestyle.

The question remains as to what extent compensation for damages is a suitable solution – though probably not the only one – both for cases of products that are harmful/noxious to health, and in the event of a breach of the different right to self-determination in food choices.

And again, in civil liability, the study will lead us to verify whether compensation for damages, which is undoubtedly a useful remedy for the individual and direct victim, is sufficient to protect other profiles and situations closely linked to the harmful event.

This is complex research which, as these preliminary considerations already make clear, accompanies a more traditional methodological approach, which considers the role that public and private subjects are called upon to play in guaranteeing food security, with the analysis and definition of the areas in which the context of food administration takes on specific meanings, in relation to the situation and emerging values.

The important role and the control methods that public subjects have to play in food security are flanked by that of private subjects, especially if we consider the choices made by the legislator to allow, following the logic of self-control, many aspects related to food safety to be substantially delegated to subjects involved in causing the risk. In short, the legislative decisions regarding the identification of risks, the subjects assigned to carry out checks, and the greater or lesser areas of freedom of action by private individuals (profiles which, according to some, could amount to substantial acts of taking responsibility out of the hands of the public body), which, as noted, have a definite impact in terms of compensation.

Furthermore, the perspective of criminal law in the agri-food sector, as emerges from the reflections of Cecilia Ascani, is now increasingly

oriented towards a propulsive role aimed at guiding the conduct of those working in the sector, rather than limiting action to the traditional repressive function of the offence.

But there are new areas in relation to emerging values, in which the context of the administration of food substances takes on specific meanings: likewise issues concerning safety related to forms of nutrition in the context of healthcare and schooling, and also quality and safety related to the artificial nutrition of vulnerable individuals who are unable to feed themselves normally, which may highlight specific forms of responsibility on the part of the facility, medical and paramedical personnel, and first and foremost the manufacturer of the substance used.

This also extends to the procedures linked to the choice of foodstuffs and their quantities and, more recently, to the debate on the possible choices related to diets (necessary or intentional) and the appropriate nature of requesting exemption from the corresponding service, to be replaced by forms of self-management and/or self-production.

On the other hand, it would be simplistic and partial to limit the subject of research into food security to profiles directly related to the individual. Today, the topic must be addressed in a planetary, global dimension that takes the broader environmental context into account, embracing subjects that are not only human and giving the environment its rightful importance. A principle of expansion of the investigation related to the supply chain and the food chain is also made evident by the latest legislation on animal feed, products used in agriculture, and the protection of animal species imminently influencing the agri-food sector and the food chain, for example. Last but by no means least, the space devoted to the relationship between information-awareness-consensus (seen as a combination and concatenation of legally significant moments), as any shortcomings are loaded with implications both in terms of civil and criminal liability and in terms of the validity of legal transactions. Deficiencies in the information that may relate to the indication of the product, its components, its origins, brands, production regulations, promised qualities and other characteristics that determine consent.

An informative profile is linked to the awareness of the consumer and all those involved, which must necessarily accompany the stages "of the life" of the food product.

II. The Duty to Nourish

M. Paola Mittica

Summary: 1. Foreword. – 2. Acknowledgement of the right to food. – 3. Words and words. – 4. Nutrition as experience of the world.

1. Foreword

In 2001, Jean Ziegler, a sociologist and member of the Swiss parliament appointed as special rapporteur for the right to food at the UN, noting that there was still a lack of a clear idea of what should be meant by the "right to food", defined it as "The right to food is the right to have regular, permanent and unobstructed access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free from anxiety"[1].

Regarding the link between the right to food and food security, the report stated that the definition adopted included important elements of the notion of food security assumed a few years earlier, in 1996, in the first paragraph of the World Food Summit Plan of

1. Cf. UN Commission on Human Rights (Commission), *The right to food. Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler* (7 February 2001), Doc. U.N. E/CN.4/2001/53, paragraph 14: *www.righttofood.org/publications/un-reports*.

Action presented with the FAO Rome Declaration, which identified food security[2].

In short, the right to food and food security, considered as food security and food safety[3], have coincided for some time, embodying an idea based on freedom from hunger, first of all, accompanied by the guarantee of quality in terms of hygiene and the nutritional value of food, as well as the further adequacy of food in the perspective of each individual's cultural preferences, and particularly highlighting for this last aspect the fact that the "preferences" that have an impact on the "active and healthy life" referred to in 1996 are those most directly implicated in the relational life of the individual.

It is no longer a question of stating the quantity or quality of food for the sake of survival, but of recognising a right also linked to the identity and values of the person eating, i.e. no longer and not only the victim of food crises, or the affluent consumer, but also the person acknowledged as having the right to food that conforms to their cultural traditions or religious beliefs and conventions. Guaranteeing the right to food, i.e. food security, ultimately means moving from a right built around the disadvantaged and excluded, when not reduced exclusively to the category of consumers, to a right that becomes a fundamental social right linked to individual and collective self-determination, and a prerequisite for democracy itself[4].

Nevertheless, there is still a gap still between the two notions, and not only at formal level. On one hand, the right to food awaits

2. See the original text: "*Food security exists 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*". Cf. *Report of the World Food Summit*: *www.fao.org/3/w3613e/w3613e00.htm*.

3. With regard to the distinction between food security and food safety, we would like to point out that we take food safety in its conventional meaning, because of the emphasis placed by the expression on the 'qualitative' profile of the notion of food safety, i.e. as the set of measures implemented with a view to protecting human health, which generally includes many aspects of the handling, preparation and preservation of food to prevent diseases that are carried by food; and we employ the broader concept of food security according to the FAO's formulation, i.e. as: guaranteeing physical and economic access to a sufficient, safe, nutritious and adequate "quantity" of food to satisfy people's "dietary needs" and "food preferences".

4. A. Sen, *Resources, Values, and Development*, Harvard University Press, Cambridge Mass., 1984.

adequate legal recognition in many countries to guarantee its direct applicability as a fundamental human right. On the other hand, a right to food security that supplements the demand for the defence of access to and quality of food, incorporating, partially or at least not to the same extent, all the constituent aspects of the right to food, develops.

This is the case, in particular, in the EU, where the regulation of food security has undergone considerable development, but without the right to food, which not only still lacks formal recognition, but is also partly disregarded.

Evidently, in a multidimensional context like that of the food system, within a framework of balances between conflicting needs of a global magnitude, the tangible realisation of this right is confronted with a myriad of shared causes that make things extremely complex, exceeding any formal recognition that has already taken place. However, the particularity of the European case invites us to return to the reasons for the legal foundation of the right to food, also in view of the fact that this right, unanimously considered "existential", has not yet found complete effectiveness in Europe, traditionally the cradle of human rights.

After critically observing, at least in relation to the fundamental lines, the choices that have guided European policy on food security, we will try to examine the very concept of the right to food, as the right to adequate access to nourishment in an even more elevated sense. "If we want to say that food invests the human condition as a whole"[5], this means that the right to food is not the most fundamental of rights only because food is the substance that keeps us "biologically" alive, but because it is an "existential" right, in that it touches upon the entire existence of the human person, who, through food, learns about the world and gains the experience that precedes sociality and political community. It might be important, in other words, to return to thinking about of "nourishment", placing food at the centre of "existence", in the fullest sense of "being in the world" (and not of mere survival) as being

5. S. Rodotà, *Il diritto al cibo*, Fondazione Corriere della Sera, Milano, 2014. See also Id., *Diritto al cibo*, Lectio magistralis – Festival della Filosofia Modena/Carpi/Sassuolo 2015 edition: *https://www.festivalfilosofia.it/video-lezioni?canale=2015.*

at the heart of the quest for "real life"[6], and, with this in mind, launch a dialogue on a vision that can assist politics, which cannot neglect its priority obligation to provide answers for the future.

2. Acknowledgement of the right to food

Going back in the history of ideas, Rodotà identifies Montesquieu as the turning point in the conception of freedom from hunger as a fundamental right of a person to a dignified life. In *The Spirit of the Laws*, he states that giving alms to a naked man in the street does not replace the obligations of the State, which must ensure that all people are able to survive, have food, adequate clothing and a way of life that does not conflict with their health. This is a crucial step: from relying on the generosity of private or public subjects animated by a spirit of mercy, we progress to the duty of State institutions to guarantee survival and health, which thereby become a "legitimate claim". Rodotà points out that the dignity of the person arises when something one receives is not just the effect of benevolence, which perhaps becomes the privilege of those who have been chosen but is a right[7].

The right to food is recognised as a fundamental right for the first time in the *Universal Declaration of Human Rights* drawn up in 1948. Article 25 states that: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".

In 1966, the contents of this provision became an integral part of the *International Convention on Economic, Social and Cultural Rights*, which recognises in Article 11 "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous

6. F. Jullien, *De la vraie vie*, Editions de l'Observatoire/Humensis, Paris, 2020.
7. S. Rodotà, *Il diritto al cibo*, cit.

improvement of living conditions", along with "the fundamental right of everyone to be free from hunger"[8]. This should be read also in the light of *General Comment* n. 12 of 1999 (entitled *Right to adequate food*) of the Committee on Economic, Social and Cultural Rights (Cescr)[9] which specifies, with reference to human dignity, the three essential elements of the right to food: adequacy, availability and accessibility.

The third pillar of the assertion of the right to food is the Rome Declaration mentioned in the foreword, which emerged from the 1996 FAO World Food Summit approving the *World Food Summit Plan of Action*, outlining the notion of food security, highlighting the notion of the right to food.

Of course, the right to food is also mentioned in other sources within the framework of international protection[10], but for the purposes of our interest those highlighted already comprehensively summarise its meaning. Guaranteeing the right to food means allowing everyone to eat available, accessible and adequate food, where availability indicates the ease of procurement; accessibility refers to the fulfilment of economic and physical requirements (including for the more vulnerable, such as children, the elderly or the handicapped); while adequacy indicates the appropriateness of food in relation to the physical and health requirements of a person at the various stages of their life, as well as the needs associated with belonging to certain cultural and

8. The unabridged version of the *International Convention on Economic, Social and Cultural Rights* can be found at:
https://unipd-centrodirittiumani.it/it/strumenti_internazionali/Patto-internazionale-sui-diritti-economici-sociali-e-culturali-1966/12

9. The text can be found at: *www.refworld.org/docid/4538838c11.html*. The UN Committee on Economic, Social and Cultural Rights is the monitoring body in charge of ensuring that the States that are party to the Convention fulfil their obligations. They have to submit periodic reports to the Committee on the measures taken and the progress made to ensure that the rights governed by the Convention are respected. Currently, 173 countries have ratified the Convention.

10. For a review of the most recurrent references in literature, see F. Alicino, *Il diritto al cibo. Definizione normativa e giustiziabilità*, in «Rivista AIC», no. 3, 2016, pp. 2-22. For a complete picture, see M. Bottiglieri, *Il diritto al cibo adeguato. Tutela internazionale, costituzionale e locale di un diritto "nuovo"*, PhD thesis discussed in 2015 at the Università del Piemonte Orientale and published in «Polis Working Papers», no. 222, online journal, 2015.

religious groups in a context aimed at enabling the fundamental right of each person to freely construct their personality[11].

In these terms, the right to food has undergone a progressive constitutionalisation which has allowed many countries to translate the generalised "duty to feed", envisaged by international charters, into specific legal obligations, thanks to which it can be fulfilled through targeted public policies or constitutional rulings. Nevertheless, today, the right to food is acknowledged directly in the Constitutions of just twenty-four states around the world, mostly characterised by low income, while in the national Constitutions and supranational Charters of the rich West, including Europe, it is at most implicit, embedded in the principles of dignity, equality and solidarity[12].

On this last aspect, Lupo argues that the scant attention in terms of effectiveness given to the right to food stems mainly from its legal nature, as it falls within the category of economic, social and cultural rights, the full implementation of which – in compliance with Article 2.1 of the *International Covenant on Economic, Social and Cultural Rights* – is entrusted to the "discretion" of the signatory states.

Going into greater detail, the obligation undertaken is to work "both individually and with international assistance and cooperation, especially in the economic and technical fields", with the maximum resources available, "[...] including in particular the adoption of legislative measures"[13]. The author insists that the point is that the discretion that characterises these "progressively realisable" obligations

11. L. Giacomelli, *Diritto al cibo e solidarietà*, in «Osservatorio Costituzionale AIC», no. 1, 2018, pp. 1-27.

12. In the FAO Report by L. Knuth and M. Vidar, *Constitutional and Legal Protection of the Right to Food around the World*, FAO, Rome, 2011, there are one hundred Constitutions including those that indirectly guarantee the right to food. These include the Italian Constitution. On the matters of the direct and indirect justiciability of the right to food in Italy in particular, see F. Alicino, *op. cit.* For up-to-date data and a proposed interpretation of the Italian Constitution in the light of the "*Right to food approach*", see M. Bottiglieri, *The protection of the Right to adequate food in the Italian Constitution*, in «Forum di Quaderni Costituzionali», Review no. 11/2015, on *www.forumcostituzionale.it.*

13. For the unabridged version of Article 2.1 of the International Convention on Economic, Social and Cultural Rights see: *https://unipd-centrodirittiumani.it/it/strumenti_Internationalism/-internazionale-sui-diritti-economici-sociali-e-culturali-1966/12.*

– obligations that are not immediately enforceable, which also allow for the satisfaction of interests in competition with the right to food, in terms of the economic resources to be employed for their realisation – can be configured thanks to the fact that food is essentially qualified as a commodity: this allows for the possibility to decline even the adoption of legislative measures, such as the recognition of the right to food as a fundamental right, the harbinger of significant elements of complexity[14].

But there's more. The fact of conceiving of food as a commodity reveals a substantially equivocal way of observing (or perhaps better "not observing") the right to food by politics. By linking the concept of commodity to that of "consumer", food is seen in relation to the consumer and not the "person", introducing a significant *vulnus* in the configuration of the very duty to guarantee food, which should be a priority obligation. It is impossible, moreover, for the semantics of the term "consumer" to be oriented exclusively by the meaning strictly referring to "food consumption" and not also by the more articulate meaning that embodies the 'consumer' as the subject invested by the dimension of the food market. It is therefore clear that commodifying food reduces it to profit-oriented logics, with the further aggravation that food production and distribution may take second place to other economies assessed as priorities.

The outcome, there for all to see, and despite various proclamations in principle, is the delay in incorporating the right to food into the legal systems and administrative practice of numerous states, with the consequent failure to create the legal and economic conditions under which the fulfilment of international obligations undertaken can be made effective.

The European experience fits into this framework, highlighting an important gap between the right to food and food security.

First of all, unlike the international regulatory context, the European panorama has not revealed fundamental provisions expressly dedicated to guaranteeing the right to "adequate" food except in the last ten years, and still keeping food security as the main reference. In this sense, the

14. Cf. A. Lupo, *Diritto al cibo e cambiamenti climatici: quale futuro per la sicurezza globale?*, in «Rivista di diritto alimentare», no. 1, 2022, pp. 54-67, p. 57.

indication in which the right to food is fully and directly recognised is contained in Resolution no. 1957, on *Food Security*, approved by the Parliamentary Assembly of the Council of Europe on 3 October 2013, in which "food security" is specifically defined as "a permanent challenge that concerns everyone", and food is considered a "basic necessity" as well as a real "right", in the knowledge that, if it is not possible to ensure sufficient access to healthy and adequate food for present and future generations, "our health" as well as "development and fundamental rights will be compromised"[15]. This resolution is important, even though it is an act of guidance and therefore not binding, if only because, as suggested by Alicino, it grafts the right to food as the right to an adequate diet into the semantics of the concept of food security used in European legal language, allowing the European Court of Strasbourg, which is usually attentive to the Assembly's indications, to make use of it, interpreting the provisions of the ECHR in an evolutionary way[16].

The use of the notion of food safety is, moreover, rooted in the culture of the EU, not least because of the tradition that accompanies what is perhaps the most advanced food legislation in the world today. We need only think of the fact that the reference in European law to food security is already present in the conception of the drafters of the Treaty establishing the European Economic Community, who, in the aftermath of World War II, were concerned with food security to ensure the availability of food supplies for each Member State. It is in this perspective, in fact, that the Common Agricultural Policy (CAP), the instrument used to define the conditions for food self-sufficiency so that we can rely on adequate food resources and reserves, was created in the EEC, and that model of agricultural development – now being called into question – which, by intensifying the production process, will end up prioritising the logic of yield in response to market demands, becoming unsustainable for the natural and social environment, was introduced and implemented. Thereafter, the notion of security continued to be used when the problem of quantity of

15. Resolution no. 1957/2013, approved on 3 October 2013, in *https://www.un.org/depts/los/general_assembly/contributions_2014/Resolution_1957_2013.pdf*

16. Cf. F. Alicino, *op. cit.*, p. 17.

supply took a back seat and, prompted particularly by the food scandals of the 1990s, the need to ensure the quality of food through food safety policies, which remains to this day the most evolved aspect of European food security legislation, emerged. Until more recent times, when the notion of security, made more complex in the registration of the resurgence of the problem of supply by Resolution no 1957/2013, described by the new definition of "food insecurity", with respect to which Regulation No. 1305/2013, which indicates the goals to which the European Agricultural Fund for Rural Development (EAFRD) is committed, represents the most significant response[17].

With considerable synthesis and the uncertainty that this entails in such a complex subject and history, let us attempt to roughly outline how food security is conceived in Europe.

At the moment, the concept of food security continues to find its most accomplished expression in the profile of food safety, the main source of which is the White Paper on Food Safety, instituted by the Commission in 2000[18] and the prelude to Regulation (EC) no. 178/2002[19]. The latter, besides establishing the general principles and requirements of food law and defining procedures in the field of food security, set up the Efsa (European Food Safety Authority) with the aim of creating and adopting an integrated action plan, capable of combining quality and safety while respecting typical European productions[20]. The aim is to use scientific research to promote sound policies. Efsa mainly employs a staff of independent scientists and technicians who carry out research focused on food safety, starting with

17. For a concise historical reconstruction of the circumstances of the emergence and development of the concept of food security in European law, see M. Giuffrida, *Il diritto fondamentale alla sicurezza alimentare tra esigenze di tutela della salute umana e promozione della libera circolazione delle merci*, in «Rivista di diritto alimentare», no. 3, 2015, pp. 34-44.

18. The unabridged version of the *Libro bianco sulla Sicurezza alimentare* can be found on the official website of the Italian Ministry of Health: *www.salute.gov.it/imgs/C_17_ pubblicazioni_1553_allegato.pdf.*

19. The unabridged regulation can be found at *https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CoNSLEG:2002R0178:20060428:IT:PDF.*

20. For more details on the structure and functions of this institution, please see the official Efsa website: *https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/efsa_it.*

the many environmental factors that influence its performance, ranging from animal health and welfare to the health of the plant world, and are called upon, based on their analyses, to provide scientific advice on food-related risks. In this sense, the Efsa publishes opinions on current and emerging food risks that feed into European legislation, regulations and political strategies, to the benefit of both consumers exposed to risks in the food chain and the political institutions of EU countries engaged in the identification of policies tailored to EU guidelines[21]. Evidently, the commitment of European bodies in this sense is primarily an expression of their interest in problems related to food production, market and consumption in general from a qualitative rather than quantitative perspective. One only has to think of the measures in place to control food quality, the safety of the food chain, the respect of native productions and, more generally, of fair trade. Labelling, tracking, monitoring, risk management, also in terms of dealing with conflicts that may arise in the field of the production and sale of food, are the keywords of this undertaking.

In Europe, however, the most recent attention to food security in terms of access to food is also confirmed, with renewed awareness that the problem of quantity has not only never been completely overcome, but is resurfacing even in "rich" European societies as a result of new causes of hardship, largely ascribable to an unsustainable development model[22]; nor is it a marginal phenomenon, if the increasingly alarming

21. It goes without saying that an identical mission is pursued at national level, thanks to a network of bodies that each country has undertaken to set up, which is also reflected in the many other organisations which, following the guidelines of these institutions, in our country as well as in other EU countries, have placed the issue of food safety at the centre of their interest. Specifically, the Italian interface of the Efsa is the Cnsa ("Comitato nazionale per la sicurezza alimentare" or National Food Safety Committee), created on the basis of an agreement between the State, Regions and Autonomous Provinces on 17 June 2004. For a description of the responsibilities of this body, please see the official website of the Italian Ministry of Health: *https://www.salute.gov.it/portale/rischioAlimentare/menuContenutoRischioAlimentare.jsp?lingua=italiano&area=Valutazione%20rischio%20catena%20alimentare&menu=comitato.*

22. Some research contributions published in 2019 by the Lancet show that, although global food production has been directly proportional to population growth, more than 820 million people do not have enough food and many more consume low-quality diets with serious harm to their health, contributing to the increase in obesity and cardiovascular disease. Cf. *https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31788-4/fulltext#back-bib7*

data on absolute poverty, of which "food poverty" is one of the essential indices, reveal the impossibility of having adequate food as a structural condition[23]. It is precisely on this point that the aforementioned Regulation no. 1305/2013 intervenes, stating that: "The CAP of the future will not therefore be limited to being a policy that provides for a small, albeit essential, part of the Union's economy, but will also be a policy of strategic importance for food security, the environment and territorial security".

Reading even just the general goals and the six priorities identified in the summary of the regulation, one can understand their magnitude[24]:

Goals. The EAFRD aims to: 1) stimulate competitiveness in the agricultural sector; 2) ensure that natural resources are managed sustainably and that measures to tackle climate change are implemented effectively; 3) achieve a balanced territorial development of rural areas throughout the European Union, including the creation and preservation of jobs. *Priorities.* The European Union supports actions to meet the six priority goals: 1) promotion of the transfer of knowledge and innovation; 2) improvement of profitability and of the competitiveness of agriculture in all its forms and of sustainable forest management; 3) promotion of food chain organisation, including the processing and marketing of agricultural products, animal welfare and risk management; 4) restoring, preserving and improving ecosystems related to agriculture and forestry; 5) encouraging the efficient use of resources and the transition to a low-carbon economy; 6) promotion of social inclusion, the reduction of poverty and economic development in rural areas.
EU countries and regions can also include issues of particular importance in their area such as: young and female farmers; small farms; mountain areas; women in rural areas; climate change mitigation, adaptation and biodiversity.

Once again, there is no mention of the right to food, nor does the notion of food security adopted integrate its comprehensive meaning.

23. As far as Italy is concerned, the Istat report published on 15 June 2022 indicates that, in 2021, more than 1.9 million households (7.5% of the total) and about 5.6 million individuals (9.4% like the previous year) live in absolute poverty. Cf. the report in *https://www.istat.it/it/files/2022/06/Report_Povert%C3%A0_2021_14-06.pdf.*

24. The text of the summary, as well as the unabridged regulation is available in Regulation (EU) no. 1305/2013 of the European Parliament and of the C… – EUR-Lex (europa.eu).

What is missing is the European legislator's attention to one of the fundamental elements that characterise the guarantee of respect for the dignity of the person, the provision of protection of access to adequate food, also based on each person's cultural preferences, where food choice is anchored to identity and encapsulates the very dignity of the person. This said, the great attention devoted to the sustainability of the policies to be drawn up, taking into account the multidimensionality of the food system in a global and local perspective, suggests that the conditions to be put in place to guarantee food security may also indirectly affect the accomplishment of the fundamental right to food. In this sense, the implementation of legal and economic instruments aimed at promoting strong and sustainable agriculture, considered essential not only for the entire agri-industrial sector of the Union but also for food security beyond Europe, at global level, shows great potential.

Europe's food safety experts are moving towards the development of innovative policies to also address the latest issue of food insecurity, gambling on an ambitious paradigm shift, at least in their intentions.

It is worth mentioning, by way of example, the EU's commitment to the 2030 Agenda for Sustainable Development and, in particular, to two specific goals[25]: SDG2.4, which specifically addresses the areas of agriculture, food security and food quality, envisaging the implementation of sustainable food production systems and resilient agricultural practices that "increase productivity and production, help protect ecosystems, strengthen resilience to climate change to extreme weather, droughts, floods and other disasters, and progressively improve soil quality"; and SDG12.3 which promotes the implementation of zero food waste processes at retail and consumer level, as well as the reduction of the loss of food during the production and supply chains

25. The programme known as the 2030 Agenda was formulated in 2015, when the world leaders of the United Nations decided to take steps to combat climate change by drawing up a development plan geared towards global sustainability. The 2030 Agenda sets out a list of seventeen points, of which "zero hunger" is the second, immediately after "no poverty", divided into one hundred and sixty-nine specific targets to be achieved on the three fronts of economic, social and ecological sustainability. The complete programme can be found at *https://unric.org/it/agenda-2030.*

(including post-harvest losses)[26]. According to Lupo[27], these are the targets that have most affected the Union's fight against climate change, as well as the proposal of a model of action aimed at strengthening the eco-sustainability of the European economy, with priority being given to the strategic sectors of energy, industry (including construction), mobility and agriculture, as part of what is now being hailed as Europe's Green Deal, with the ambition of transforming Europe into the first climate-neutral continent by 2050[28]. And it is clear that, in order to achieve this ambitious goal, the design of a fair, healthy and environmentally friendly food system is a priority, so much so that strategies like "*From farm to fork*"[29], "Biodiversity 2030"[30], or the new CAP planned for 2023[31], are of central importance, as is, Napolitano reminds us, "*Food* 2030", the European project aimed specifically at ensuring a more sustainable food system over time[32], perhaps the most ambitious programme, but one which, by implying a huge change in the systems of production, distribution, control and consumption of food, still seems quite far off[33].

26. Of extreme interest are the policies to combat food waste that have been implemented in Italy in the face of a still vague European framework, as early as 2003 with Law no. 155 known as the "Good Samaritan Law", followed by no. 147 of 2013 and more recently by no. 166 of 2016 entitled "Provisions concerning the donation and distribution of food and pharmaceutical products for social solidarity purposes and for the limitation of waste". For more details, see L. Giacomelli, *op. cit.*

27. A. Lupo, *op. cit.*, p. 62.

28. The *European Green Deal* is the investment and funding programme launched by the EU Commission in 2019, destined also – among others – to producers in the food chain to support their "greener" choices. The document, containing the roadmap and key actions to promote the efficient use of resources to move towards a clean and circular economy, restore biodiversity and reduce pollution, can be found at *https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en*

29. For more details see: *https://food.ec.europa.eu/horizontal-topics/farm-fork-strategy_en.*

30. For more details see: *https://environment.ec.europa.eu/strategy/biodiversity-strategy-2030_it.*

31. The text can be found at *https://ec.europa.eu/commission/publications/natural-resources-and-environment_it.*

32. For the unabridged text see: *https://research-and-innovation.ec.europa.eu/research-area/environment/bioeconomy/food-systems/food-2030_en.*

33. "Food 2030 stems from the awareness that food production and consumption in Europe will play a decisive role in ensuring food and nutrition security, despite the

3. Words and words

Although the legal recognition and the full effectiveness of the right to food remain in the background of the Union's policies, what is moving forward is, nevertheless, an important prerequisite for a worldwide policy, in which Europe promises to and really could play an important role in promoting the recognition of the fundamental right to adequate food, and tangibly creating the conditions for it to be fulfilled.

As always happens in the affairs of the human world, words do not occupy a marginal space in this game. It seems appropriate, therefore, to return to the meaning of at least two key words in this matter, which illuminate a vision of food security that needs to be supported by more complex semantics. These words are "risk" and "vulnerability".

3.1. More generally, "risk" is one of the most recurrent terms in use in public discussion, as security has become a central theme, almost the "pivot", we might say, around which most of the narratives disseminated at the level of common sense and institutions revolve[34]. It is no coincidence that the phenomenon has been under the lens of the social sciences for several decades, so much so that it has led to the coining of an expressly dedicated line of research[35]. With the progressive instability of living contexts in the post-modern globalised society[36], risk, which is increasingly omnipresent, appears as a

multiple and deteriorating impacts of climate change, lack of resources, land degradation, declining biodiversity, malnutrition and overeating, population growth, and even geopolitical instability. Safeguarding food and nutrition security, in the medium to long term, will, however, require the transformation of productive systems, together with the constant monitoring of today's food systems characterised, at the moment, by significant fragmentation and disorganisation". See Clara Napolitano, *Il bene alimentare: necessità e sostenibilità*, in «Il diritto dell'economia», no. 1, 2021, pp. 176-177.

34. Also with reference to the bibliography mentioned, to which reference should be made, cf. Thomas Casadei, *L'universo concettuale della sicurezza. Note sul recente dibattito*, in «Cosmopolis», no. 1, 2021 – online:
https://www.cosmopolisonline.it/articolo.php?numero=III22008&id=4

35. M.C. Federici, A. Romeo (a cura di), *Sociologia della sicurezza. Teorie e problemi*, Mondadori, Milano, 2017.

36. Z. Bauman, *Liquid Fear*, Polity, Cambridge-Oxford (UK) and New York-Boston (US), 2006.

"magical" notion, so to speak: while for the ordinary citizen this is anxiety about a future they cannot foresee (an undefinable sense of danger, widespread uncertainty), at policy level it is a notion devoid of any content of its own, waiting to be defined in a precise manner in response to specific contexts. The first and most serious effect of this tendency is to weaken the assessment of the deep-seated reasons that provoke insecurity (and therefore exposure to risk), against the strengthening of a "technical" elaboration of the management of said risk. In other words, rather than reasoning about the causes and possible changes to be introduced into the choices, changing purposes and instruments, attention is focused on the treatment of risk.

The subject has, evidently, a particular cogency also within the scope of food security, especially on the profile of food safety, where the reference to risk is largely interpreted as the management of said risk, as can be seen from the impressive European protocols engaged in the adaptation of risk management techniques borrowed from the sciences of economics for the purpose of identifying, classifying, monitoring and dealing with all kinds of risk in the food sector.

Certainly, the positive aspect of this approach is that it analyses risk to the point of translating it into a calculable object, which makes it possible to adopt the most appropriate strategies for the prevention and possible treatment of undesirable events. However, it also has a limit: the more risk is viewed from this perspective alone, the more it appears as a condition in itself, i.e. as an object with its own autonomy, almost independent of human will. Not only that, however. Thanks to the fact that it can be calculated, risk appears to us (*or risks appearing to us*) also as something that we can govern, and this is even more ambiguous: it can put us in the paradoxical condition of positively assessing decisions that generate dangers, i.e. – with all due respect to the cost-benefit law – of approving choices that are incorrect in principle.

In sociological literature, the category of risk is the focus of a work by Niklas Luhmann from 1991[37].

Albeit with a view to deepening further elements of his theory of society, with the lucidity that distinguishes him, the German sociologist

37. See the English translation N. Luhmann, Risk: *A Sociological Theory*, De Gruyter, Berlin, 1993.

poses a fundamental distinction between danger and risk, which can be summarised as follows: if the concept of danger corresponds to the ever-present possibility of an undesirable event, of varying severity, but independent of our will, then risk is always a consequence of decision. First of all, therefore, we must never lose sight of the fact that risk, however it is assessed, is a product of our choices.

Another more refined line of thought comes from Luhmann concerning the calculability of risk, which partly reveals the limits of risk management techniques. Luhmann sees calculating risk as a paradoxical measure. Having to take place in the present, risk assessment entails the need for a rationalisation of the future based on the predictability of certain dangers. The point is that this is an illogical operation, which cannot be rationalised precisely because it involves danger, which is, by its very nature, unpredictable. In other words, risk assessment is a groundless operation, which does not mean that it is useless or ineffective per se, but that it simply needs to be considered within its limits and not only in terms of the benefits it offers.

All this means that the notion of "risk", even in the area of food security, should be able to draw, on one hand, on an idea that more accurately integrates the profiles of the subjectivity of decisions and of the responsibility for assuming the risks that every decision involves, and, on the other, on the awareness that risk management techniques, while offering excellent models for risk prevention and treatment, must be fully understood within their boundaries. In short, no technique, however clever, can be a substitute for the "value" that man is required to identify. All the more so if man's very existence is at stake.

In this sense, it is impossible not to agree with Urlick Beck, who makes risk the paradigm of contemporary global society, when he states that, as uncontrollability is the most characteristic feature of risk, the failure of politics is determined precisely by the fact that political institutions base their authority on the supposed control of dangers and risks, rather than on the appreciation of responsibility as the capacity to see the future in a global perspective[38].

38. U. Beck, *Risk Society: Towards a New Modernity*, Sage, Thousand Oaks, 1992. See also J. Yates, *Paura e società del rischio. Un'intervista a Urlich Beck*, in «Lo sguardo - Rivista di filosofia», II, 2016, pp. 209-218.

3.2. The notion of insecurity is also linked to the idea of fragility, understood in its more correct and complex meaning of "vulnerability". Human beings are constitutively exposed to wounding: not because they are weak in the ordinary sense of the term, but because of their very being in the world, because of their *thrownness*, Heidegger would say, which exposes them existentially.

Like risk, vulnerability has also been embraced by an extensive amount of sociological and philosophical literature as a paradigm of the precariousness and fragility that characterise life in contemporary society, becoming so relevant as to be referred to as the "vulnerability turn".

In a recent paper, Pastore reconstructs the extremely articulate semantics of the term, attempting to explain this turn that has invested the contemporary legal philosophical debate and beyond. On one hand, writes Pastore, the notion of vulnerability requires attention to be paid to the subject from a real perspective, responding to the practical and diversified situations of life, listening to the instances of recognition that invest the various spheres of human existence, and refer to a complex set of identifications, assessments and behavioural expectations. On the other hand, in terms of legal experience, this recognition is characterised "as an inclusive figure of the demands for justice, placed between the primacy of the individual and the intersubjective dimension of coexistence", which, when seen in a negative light, becomes injustice, when the demand for recognition is disregarded[39].

On the specific merits of the philosophy of entitlement, we could say that vulnerability intervenes in the intersection between entitlement and morality, becoming a condition of practicability and of the very conceivability of entitlement. This means that vulnerability makes it possible not to lose the foundation of entitlement; that by founding entitlement on the capacity to respond to vulnerability, its purpose is not lost, as one is led to embody entitlement in a complex of techniques aimed at protecting essential values and assets guided by choices of value. This at least in theory and in the perspective of

39. B. Pastore, *Semantica della vulnerabilità, soggetto, cultura giuridica*, Giappichelli, Torino, 2021, p. 27.

constitutionalism, to be understood as a movement of progressive affirmation of rights.

Entitlement encounters vulnerability, therefore, whenever it is necessary to provide protection in certain existential situations, with a view to rebalancing subjective positions, forbidding discrimination and remedying power symmetries[40].

The same framework concerns the need to guarantee the right to food and to protect food security in every respect. Consequently, the question that should guide the political and legal choice should be aimed at identifying, first of all, the vulnerable subject and what causes the wound, and, secondly, the protections that need to be activated.

First of all, in our case, we would have to identify the vulnerable subject as a "person" and not as a "consumer". As mentioned above, although it may refer to food consumption, the term consumer is strongly implicated in the lexicon used to describe market dynamics. As such, it is a word that needs to be redefined and restricted in its use, so that there is no misunderstanding as to what we should mean by the term "citizen". Rodotà is right to state forcefully that not only "a starving person, a person imprisoned by poverty, does not have the same chance of participating in public life as people who have fully satisfied this primary need", but that "food is also what allows us dignity" and "concerns everyone" because "only by fully recognising the right to food can a country recognise itself as civilised and democratic"[41].

More specifically, a vulnerable person is someone whose right to food is not recognised, in the triplicate sense that (a) they do not have access to food, or (b) they may have access to food without, however, enjoying food with the necessary nutritional qualities or controlled in terms of hygiene and health, or, lastly, (c) they may not have access to the choice of food they would like to eat according to their preferences.

As for the interventions to be put in place, the notion of vulnerability opens up a further vision of entitlement, connecting it to care giving relationships and from here, again, directly to the concept of

40. Therein, p. 80, also for the numerous bibliographic references.
41. S. Rodotà, *Il diritto al cibo*, cit.

responsibility. Entitlement cannot ignore the dimension of responsibility, having, as summarised by Pastore, "a salient role in structuring places in support of the capacity to care: it legitimises them, regulates them, supervises them, orients them and can encourage them". In other words, more in general, "it performs the job of strengthening the structure of the processes of recognition to protect people's dignity, in the reality of their existence"[42].

Here we enter into the deepest sense of entitlement. What makes the juridical nature explicit, writes Bruno Romano, is the assumption of responsibility, which makes man an *Individual* in the sense not so much of identity, but of accountability, i.e. an *Individual* who is a man to the extent that he takes upon himself *the duty to answer-for-to*. It is duty that allows us to stand before another human being, making us responsible for our every action, with a view to living as part of a community. Entitlement becomes part of the choices, the formulas in which care, the responsible choice, becomes tangible in the identification of a measure to be grasped with the *courage of responsibility*[43].

Rather than speaking only of rights, it would seem more important to go back to speaking also of duties: duties that are certainly incumbent on politicians and institutions, called upon to recognise and protect rights that are embodied primarily in the human person, but which affect everyone more broadly and not only in terms of entitlement. The duty to guarantee adequate food for everyone is also a duty of every citizen in relation to every other citizen. Responsibility is at the heart of the ethics of coexistence, materialising as the ability

42. B. Pastore, *op. cit.*, p. 82.

43. Romano's pages on the correspondence between entitlement and accountability, which are anchored in the idea of man, are valuable in this regard: "When one mentions entitlement, one mentions accountability and refers exclusively to the sphere of man, speaking in the responsible choice of meaning of words and their coexisting effects, and therefore never innocent. It is to the lexicon of accountability that intention, decision, programme and action belong, dimensions that are only manifested in the existence-coexistence of those who speak in a language that is communicative discursiveness, not 'innocent' but chosen with responsibility by the free subjects who answer-for-to". Cf. B. Romano, *Scienza giuridica senza giurista: il nichilismo giuridico perfetto*, Giappichelli, Torino, 2006, p. 175.

to undertake the moral obligation to be accountable. This is why it is at the foundation of the law: a visible symbol of the social bond, as is taught by Durkheim.

Without wishing to diminish in any way the idea of the "good use of human rights"[44], Greco is right to point out that human rights, for decades a universally recognised source of legitimisation of legal systems and of verification for every interest or value that demands recognition, have progressively become the only alphabet of social, political and legal relations in advanced societies with a constitutional system, to the point of creating an equally progressive inability to articulate a serious discourse on duties as well. Instead, it is possible, and indeed right, to go back to thinking about duties, directly referring them not only to institutions and systems, but also in terms of social relations[45].

In this perspective, the return of duties represents the specifically legal approach to the inescapable task of "taking care", to which we are called as citizens of the world[46], and a call for further awareness that the action carried out by politics or institutions is always and still the work of men and women who assess, choose and therefore decide within those institutions.

4. Nutrition as experience of the world

Responsibility. Duty. Care. Even before the entitlement, these are all words that, far from cheap rhetoric and ill-concealed cynicism, should return to the political and legal lexicon, to be embodied in actions that commit everyone to life in common, both at institutional level and at the level of each individual person. If, for example, the opulent food habits of the rich countries were to be changed even if only

44. A. Supiot, *Homo juridicus. Essai sur la fonction anthropologique du droit*, Points, Paris, 2009.

45. Cf. T. Greco, *Il ritorno dei doveri*, in «Cultura e Diritti. Per una formazione giuridica», no. 1, 2012, pp. 91-98.

46. E. Pulcini, *La cura del mondo. Paura e responsabilità nell'età globale*, Bollati Boringhieri, Milano, 2009.

"bottom-up", so to speak, in the name of sustainability, many global food production and trade policies would have to be revised. We would perhaps go back to talking about principles and assessing the real risks, those that are wiping out the future, because food security would be observed as a fundamental right to food for all, and actions such as land grabbing would no longer be admissible, nor would the logic of food sovereignty that justifies it, or the exploitation of labour, made possible by the impoverishment of entire populations from whom land or water is taken away[47]. Rhetoric aside, it is a matter of answering the questions posed by the ethics of responsibility, which applies to everyone and can be answered in every action.

What remains to be clarified is what food, understood as a source of nourishment, consists of.

The way the right to food has been understood up to now, referring to food security as a guarantee of quantitative and qualitative access to food, including the availability of food that responds to a person's specific cultural identity, food invests, as we said, the human condition as a whole.

The concept of food as nourishment allows us to progress further in our reasoning, placing food at the centre of "existing" in the fullest sense of "being in the world", meaning. that through food, a person experiences and learns about the world, and at the same time, is fulfilled at social and political community level.

In this sense, food, "sustenance", should be understood as a "total sensory object"[48]: a gateway offering access to the world through the more real Self, that is, the body, from a perspective that sees the body no longer and not only as a machine to be kept in efficient working order, but as the place of the most complete and authentic experience of the world and relationships[49].

This access can be both positive and negative, depending on the nourishment that every individual receives, gives themselves, or is able

47. On this point, for informative purposes only, please see the 2022 Focsiv (Federation of Christian Organisations Italian Voluntary Service) report entitled "I Padroni della terra. Rapporto sull'accaparramento della terra 2022: conseguenze sui diritti umani, ambiente e migrazioni". It can be found at *www.focsiv.it/i-padroni-della-terra-2022*.

48. D. Le Breton, *Le saveur du monde*, Métailié, Paris, 2015.

49. J.-L. Nancy, *Corpus*, Métailié, Paris, 1992.

to give themselves. This implicates the need to create and implement the prerequisites so that food can be realised as self-care and care for the world in the relationship with others.

An initial outline for developing this idea is offered by Ricoeur, who approaches nourishment in relation to the relationship with other human beings in a passage of his philosophy of the will:

> Justice, equality are always living rules of integration of people into "us" Ultimately, it is the other person that matters. It is always necessary to make a return to them. So, it is the other that I am missing. The self is deficient in relation to the other self, which completes me in the same way as nourishment. The being of the subject is not solipsistic, it is being-in-common. This is how the sphere of intersubjective relations can be the *analogue* of the vital sphere and how the world of needs provides the fundamental *metaphor* of the appetite: the other self, like the non-self – like nourishment for example – comes to complete the self[50].

Nourishment is obviously used here in a metaphorical sense, but it is already significant in itself, insofar as it highlights, starting from the analysis between living in the biological sense and living in the relational (and therefore social, political, legal) sense, the connection between nourishment and ethics, as cultivation of the self that precedes and substantiates the relationship with the other. On this point, Ricoeur's idea of *Cogito* as an "integral and integrated vision of man", in which the dualism between thought and body returns to unity, restoring centrality to the body as the place of the subject's existence, is still and perhaps even more interesting:

> the whole experience of *Cogito* encompasses the I wish, the I can, the I live, and in general, existence as a body[51].

If one accepts this radical idea of man, nourishment becomes true experience of the world. Every thought, desire and passion passes

50. English translation (from Italian edition *Filosofia della volontà 1*, Marietti, Genova, 1990, pp. 128-129) edited by M. Bonato. For original text see: P. Ricoeur, *Philosopie de la volonté 1* (1950), Points, Paris, 2009.

51. Ivi, p. 13.

through our flesh. From the gesture with which it is written or the sound with which it is articulated, the thought that conceives it, the word, which is our most original symbolic construct, is an expression of the body. And this also applies to entitlement: at "carnal" level, and not only because of the reflection it has on experience, on the living of men, as Paolo Grossi has so often well stated, but also for the very fact that it is the fruit of a thought that is the thought of the body[52].

In this key, reasoning on the right to food intercepts ethics, not only in terms of commitment to the realisation of the most inclusive possible conditions of access to food (in terms of quantity, quality and possibility of choice), but also in terms of the ability to understand the value of the experience of the sentient body that passes through nourishment. Eating does not only mean avoiding hunger, it also means having access to a more intimate and direct apprehension of oneself and the world, something that most certainly cannot disregard food security, which ensures the conditions for survival, but cannot replace the right to food in the perspective of a global policy that "does not want to leave anyone behind" – as long as this is not just a catchy slogan from the 2030 Agenda.

It is in this awareness that the critical distance needed to weigh up human choices, those of our political institutions, but also those of the individual, lies. Because ethics is not only the duty of states or others: just like the need for food, ethical behaviour involves us personally.

Hence the concept of nourishment in a more complex sense. On one hand, as the key to accessing experience, which contemplates the two movements of turning to the other from oneself and then returning to a self that grows increasingly aware of its limits, thanks to its experience of the other. On the other hand, as the ability to learn to look at the world from the different perspective of being a body, which coincides with that of vulnerability, leading straight to the heart of the Us. "Corpus ego" (I am my body) is the expression used by Nancy to identify a principle of personal identity devoid of *egoity* in the perspective of the Us of the political community[53].

52. On this matter, I take the liberty of referring to M.P. Mittica, *Il pensiero che sente*, Giappichelli, Torino, 2022.

53. J.-L. Nancy, *op. cit.*

Vulnerability is the main characteristic of our existence, as every human being is an exposed body. In this exposure, we eat, live and relate to others, constantly taking risks for the sake of true life. In this exposure, we observe the duty of care from the perspective of the relationship of solidarity.

The right to food is, in its truest sense, the right to nourish oneself with awareness, and the ability to respond in terms of responsibility.

Politics and the practice of law, as well as of its justice, must therefore be able to avail themselves of a different learning of the world, which passes precisely through a conscious nourishment that does not stop at the ingestion of nutrients, but is a way of being, of thinking, of knowing that begins in the body and that, as such, can draw on a sensory learning, restoring value to the contribution of the senses and emotions in the understanding and construction of our worlds of life[54].

In this scenario, in which we are all vulnerable, the scope of the duty of care and the very notion of responsibility are broadened and deepened, converging in the challenge that contemporary thought has long posed to ethical thinking to ensure that future generations have the right to exist[55].

And it is again and again the right to food.

54. On sentient sensitivity, see S. Borutti, *Filosofia dei sensi*, Raffaello Cortina Editore, Milano, 2006; M. Nussbaum, *Upheavals of Thought. The Intelligence of Emotions*, Cambridge University Press, Cambridge, 2012. While an argument about the sentient body awaits development within the framework of Italian philosophical-legal reflection, see S.H. Hamilton et. al., *Sensing Law*, Routledge, London, 2017; A. Pavoni *et al.* (eds.), *See*, University of Westminster Press, London, 2018; C. Nirta *et al.* (eds.), *Touch*, University of Westminster Press, London, 2020; A. Pavoni *et al.* (eds.), *Taste*, University of Westminster Press, London, 2018.

55. H. Jonas, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age*, University of Chicago Press, Chicago, 1985.

III. Environmental protection, constitutional review and food security. Considerations accompanying Constitutional Law No. 1 of 2022

Massimo Rubechi

Summary: 1. Environmental protection and food security: a close link. – 2. The protection of the environment in the Italian constitutional system (outline). – 3. Environmental protection, food security and the right to food. – 4. Constitutional revision, environmental protection and food security. – 5. A first assessment and some perspectives.

1. Environmental protection and food security: a close link

There is undoubtedly a close interconnection between the right to the environment, food security and the right to food. An attempt will be made to investigate it, starting from a constitutional framework of the evolution of environmental protection in our legal system (§ 2), to outline, albeit briefly, the context with respect to which the constitutional review approved at the end of the 18th Legislature of the Italian Republic (2018-2022) was framed.

Secondly, we will reconstruct the essential features of the intersections between environmental protection in the context of a legal-publicist definition of food security (§ 3), the vision of which also contemplates an openness to the hypothesis of the recognition of a real right to food. The aim is to attempt to better appreciate the potential inherent in Constitutional Law no. 1 of 2022, both from a static and a more appropriately programmatic point of view (§ 4).

Lastly, space will be devoted to the possible lines of development of the protection of the environment and ecosystems in the context of

the new constitutional principles (§ 5) and the particular interpretation that can be given to them in the light of the need to provide precise protection for food security.

2. The protection of the environment in the Italian constitutional system (outline)

Environmental law originated in the context of administrative law studies, although it has been characterised as a strongly interdisciplinary subject since the first structured approaches in the 1990s. Structurally, it has to do with in-depth studies on ecological protection, but also, for example, on the impact of pollution on the subsoil or water; studies that imply knowledge that is often different from that of the legal sciences. From this last point of view, the environment can be considered, in general terms, as a common asset with widespread ownership – recovering the theory of legal assets as configured by civil law doctrine – the protection of which is the responsibility of all "the users". Taking a more strictly publicist approach, on the other hand, Italian Constitutional Court has defined it as a "primary constitutional value"[1] susceptible to different interpretations depending on the situations. Environmental protection engenders a long series of subjective rights, including, by way of example[2], the right to a healthy environment, the right of access to information on environmental matters[3], the right to compensation for environmental damage for which public officials and administrators are responsible, the rights of environmental associations or the right to environmental education[4].

1. Beginning with sentence no. 151 of 1986.

2. See also the reconstruction in S. Curreri, *Lezioni sui diritti fondamentali*, FrancoAngeli, Milano, 2018, p. 354 et seq.

3. The right of access to environmental information allows, for example, knowledge of the conditions of the environment, the factors that may affect it as well as the measures taken by public authorities to protect it (pursuant, in particular, to Legislative Decree no. 195 of 2005).

4. Here, we can also mention the right to environmental education to promote respect for the environment, with the involvement of schools as well (see Art. 13 Decree Law no. 90 of 2008).

Until the revision approved through Constitutional Law no. 1 of 2022, the Italian Constitution mentioned the environment exclusively with reference to the division of legislative powers between the state and the regions, following Constitutional Law no. 3 of 2001, which had explicitly contemplated this[5]. Environmental protection is in fact configured as belonging to the so-called third wave of rights[6], which finds precise recognition in contemporary democratic systems at a time chronologically subsequent to the affirmation of civil and social rights[7] and, therefore, in a historical phase much more recent than the preparation of our Constitutional text. This, however, did not prevent the Constitutional Court from intervening by way of interpretation, even in the absence of a direct parameter, as early as the 1980s, configuring a network of relationships between environmental protection and numerous principles that find direct constitutional protection. This case law was also able to lean on a very advanced discipline at the international and supranational level, where movements towards ever-increasing protection[8] had long been codified and gradually integrated.

In positive law, issues related to the protection of the environment and the ecosystem emerged, particularly because of the industrialization process in the 1960s, to counteract the various pollution phenomena that were beginning to be observed, the first of which was atmospheric

5. Following Constitutional Law no. 3 of 2001, Article 117, paragraph two, letter s) of the Constitution, "protection of the environment, ecosystem and cultural heritage" is included among the matters of exclusive state jurisdiction.

6. See in this sense L. Cuocolo, *Dallo stato liberale allo "Stato ambientale". La protezione dell'ambiente nel diritto costituzionale comparato*, in «DPCE online», no. 2, 2022, p. 1072.

7. See infra for early codifications in twentieth-century constitutional texts (§ 2).

8. An important profile but one that it is not possible to investigate here. Remember, however, that at European level, Article 37 CFR states that "a high level of environmental protection and the improvement of the quality of the environment shall be integrated into the policies of the Union and guaranteed in accordance with the principle of sustainable development". With regard to the ECHR, the right to a healthy environment does not, on the other hand, have a precise codification, but has been drawn interpretatively from Article 8 on the right to respect for private life, from which it follows that the state is obliged to take measures to prevent or limit the harmful effects that may occur to the environment and the health of people for economic reasons. On the subject, with a constitutionalist perspective see also D. Porena, *La protezione dell'Ambiente tra Costituzione italiana e «Costituzione globale»*, Giappichelli, Torino, 2009.

pollution, followed by water and noise. Without any pretensions to analyse all the sectoral regulations introduced[9], the system of environmental protection has been characterised over time by a stratification of legislation that has not always been easy to interpret, especially since it involves heterogeneous profiles that often encompass the competence of different levels of government.

The Constitutional Court has reconstructed the right to a healthy environment by extensively interpreting the reference to the protection of the landscape and cultural heritage in Article 9, paragraph 2 of the Constitution in close connection, in particular, with Articles 32 and 2[10].

First of all, in fact, Article 9 was interpreted with reference to the protection of health, in the sense of the need to guarantee the conditions necessary to live in a healthy environment[11], referring both to conditions in the workplace and, more generally, in private and in community living conditions. Subsequently, Article 2 served as a parameter for the Constitutional Court to bring environmental protection back to the sphere of personal dignity, the guarantee of which triggers a duty of social and economic solidarity[12] also in favour of future generations (so-called intergenerational solidarity).

The environment cannot therefore be considered exclusively as an asset that can be protected, as it must be more appropriately configured as a fundamental value of the community[13], capable of inspiring concrete transpositions in positive law.

Moreover, Article 3, paragraph 2 of the Constitution provides a legal basis for considering the environment as one of the elements that can

9. On which see also B. Caravita, L. Cassetti, A. Morrone (a cura di), *Diritto dell'ambiente*, il Mulino, Bologna, 2016.

10. B. Caravita, A. Morrone, *Ambiente e Costituzione*, in B. Caravita, L. Cassetti, A. Morrone (a cura di), *Diritto dell'ambiente*, cit., p. 17 et seq.

11. Obligations for the conservation and development of natural resources, for example, or the protection of areas of natural value, can be made part of the broader framework of the right to a healthy environment.

12. In this sense F. Fracchia, *La tutela dell'ambiente come dovere di solidarietà*, in «Il diritto dell'economia», no. 3-4, 2009, p. 491 et seq.

13. Cf. the reconstruction in M. Cecchetti, *Principi costituzionali per la tutela dell'ambiente*, Giuffrè, Milano, 2000 and S. Grassi, *Problemi di diritto costituzionale dell'ambiente*, Giuffrè, Milano, 2012.

affect the full development of the personality, in terms of health and also from a social and economic point of view. By invoking it, it could be possible to establish a State intervention aimed at removing these obstacles.

Most recently, articles 41, 42 and 44 have constituted a further test bench for the environment, as protection can be, according to the Constitutional Court[14], configured as one of the possible causes for placing restrictions on private economic initiative and the right to property, especially private land, in the name of social utility, social function and rational exploitation of the land, as well as the equity of social relations[15].

Therefore, the multidimensionality of the constitutional value of the environment is, therefore, an intrinsic factor, even though it must be characterised by a unitary connotation. It constitutes a single intangible asset, although it can be enjoyed in various forms and it is possible to isolate various components, each of which could also be the subject of separate protection, also using intervention by the various levels of government to which it is entrusted by the Constitution.

After the reform of Title V in 2001, as mentioned above, the environment found precise constitutional recognition, but several titles of competence insist on environmental matters, i.e. "the protection of the environment" and the ecosystem, characterised as a matter of exclusive state legislative jurisdiction on one hand, and, on the other, "the development of cultural and environmental heritage" together with "territorial government", as matters of shared jurisdiction between the state and the regions. Even though the value of the environment is factionally relevant, it is possible to distinguish a general competence of the State, relating to its protection, which is transformed into a transversal title for intervention. At the same time, a wide margin of intervention is also granted to the regions, both through their shared competence in the field of development and through the residual competence clause in Article 117, paragraph 4, which allows them to

14. See sentence no. 184 of 1983.
15. On this matter, see also S. Curreri, *op. cit.*, p. 352.

include matters of traditional regional competence such as hunting[16] and inland fishing.

Art. 148 of legislative decree no. 112 of 1998, although issued before the review, partly inspired its contents and therefore provides an important hermeneutical key[17] to distinguish between protection and development, as the Constitutional Court itself has pointed out (starting from sentence no. 94 of 2003). Protection is "any activity aimed at recognising, conserving and protecting [...] environmental heritage", while development is considered to be "any activity aimed at improving the conditions of knowledge and conservation of [...] environmental heritage and at increasing its enjoyment".

In more recent decisions, the configuration of the environment as a constitutional value is given[18]. Considering the environment as a value implies not only that it is a principle aimed at directing the interpretation of laws, but that it is one of the fundamental elements that characterises society in each period of history and on which it bases its legitimisation[19].

Therefore, taking a comprehensive approach to environmental protection, therefore, the multiple dimensions that characterise it appear strong, leading to the definition of the protection of the ecological balance of the territory as the goal of preserving the conditions necessary for the survival of present and future generations. To consider, in other words, the environment as the true habitat of human beings, understood in its different interpretations, environmental and of a different nature.

16. It was precisely with respect to a regional law that intervened on the hunting calendar, with reference to the hunting period for ungulates, that the Constitutional Court (sentence no. 536 of 2002) first had the opportunity to configure the protection of the environment under Article 117, paragraph 2, of the Constitution as a transversal matter, to allow intervention even in the context of residual regional competences, such as hunting.

17. As stated by S. Curreri, *op. cit.*, p. 353.

18. In this sense, before the review of Title V, Part Two of the Constitution, G. Morbidelli, *Il regime amministrativo speciale dell'ambiente*, Various Authors, *Studi in onore di Alberto Predieri*, Milano, 1996, p. 1122 et seq.

19. B. Caravita, A. Morrone, *op. cit.*, p. 34.

In this context, the connections with food security, in the definition we will see shortly, are evident, being closely linked to the sustainability of ecosystems.

3. Environmental protection, food security and the right to food

The constitutional dimension of food security will be investigated in a separate chapter of this volume – see for more details Licia Califano's introductory essay in more detail – but it is useful here to go over some of the key features that characterise it, as they allow us to fully appreciate its interrelationship with the environment understood as value. This goal is of particular importance to assess the possible impact of the constitutional amendment performed by Constitutional Law no. 1 of 2022 on both.

The issue of food security is closely connected to the issues concerning the protection of the environment and ecosystems, both from the point of view of sustainability and because of how it has imposed itself in contemporary legal systems.

First of all, also about food safety, the first regulatory interventions were driven by health protection issues, with particular reference to food health and hygiene profiles. Already at the beginning of the last century, the legislator was confronted with issues concerning the prevention and treatment of food-related illnesses on one hand and, on the other, with the establishment of supervisory and control systems and the introduction of specific sanctions. This interpretation of the discipline of food security was the first to be established chronologically, but naturally it continues to evolve over time due to new requirements and, particularly in recent years, to the ever-accelerating movement of goods and people. It has been defined by doctrine as food safety.

Over time, a different approach to the issue of food security has developed, involving two distinct but closely interconnected profiles. The first concerns the framework of provisions aimed at supporting food production, and the second is the need to ensure an adequate supply of food on the market. With this second chronological and logical step, the issue of food safety transcended the boundaries of the

private space and regulation of a strictly economic context to become a public objective. One of the main goals of institutions has become that of guaranteeing the presence of food for the sustenance of the entire population. In this sense, the approach based solely on food safety has also expanded to what is generally referred to as food security, i.e. the set of rules that aims to guarantee the safety and the availability of food for the population as a whole.

In the current context, the theme of food security is therefore also closely linked to the configuration of a right to food, which is protected differently in the various legal systems, even though it has a precise and detailed definition at the supranational level[20], which has also clearly influenced how the principles of the constitutional charters have been interpreted over time[21]. In particular, the recognition of a right to food – without being able to further elaborate on a theme that deserves much more in-depth study – is part of the broader movement of post-World War II constitutionalism, focused on the need to guarantee every individual a free and dignified existence, also through the guarantee of minimum conditions. It is natural, therefore, that the interpretation of this right takes on very different connotations depending on whether we are faced with recently democratised countries, characterised by reduced social and economic development, or more advanced societies, where needs have evolved in different directions, and with them the need for protection.

In our legal system[22], the right to food can be characterised in three main ways.

In a first profile, it can be considered as negative freedom, i.e. the freedom of each individual to choose the food best suited to their needs and personal preferences, in close connection with the principle of self-

20. See also F. Alicino, *Il diritto al cibo. Definizione normativa e giustiziabilità*, in «Rivista AIC», no. 3, 2016.

21. See, for example, the analysis in M. Bottiglieri, *La protezione del diritto al cibo adeguato nella Costituzione italiana*, in «Forum di Quaderni costituzionali», 2 March 2016.

22. See the reconstruction in A. Morrone, *Lineamenti di una Costituzione alimentare*, in A. Morrone, M. Mocchegiani (a cura di), *La regolazione della sicurezza alimentare tra diritto, tecnica e mercato: problemi e prospettive*, Bup, Bologna, 2022, in particular p. 18 et seq.

determination and, therefore, of the freedom to opt for the lifestyle one considers best suited to personal preference.

In a second aspect, on the other hand, the right to food can be recognised as a social right, as its fulfilment requires State intervention to ensure that all citizens have an adequate diet. It is, therefore, through the public policies put in place by the institutions that the right to food finds its tangible definition and precise dimension. In this sense, it may also be possible to configure a real duty to make the right to food incumbent on the institutions effective[23], consequently generating the need to also consider the economic profiles and financial coverage required to meet these needs, which in our legal system are anchored to the principle of a balanced budget under Article 81 of the Constitution.

In this sense, the need to guarantee a quantitatively sufficient diet for all citizens is of primary importance, to reduce the social inequalities that would physiologically arise in the presence of areas where a minimum basic diet is not guaranteed.

Secondly, the need to ensure a qualitatively adequate diet for the entire population is central, to reduce the risk of contracting diseases linked, for example, to a diet excessively rich in sugar or fat. From this point of view, therefore, assessments linked to the impact of certain lifestyles, also in terms of health, are essential and can lead the institutions to implement specific, targeted interventions.

As far as quality is concerned, the profile linked to the sustainability of crops and livestock reared for human consumption is also significant. In this sense, food security fully intersects with an intergenerational perspective and overlaps with broader profiles related to the sustainability of ecosystems and the environment, also due to different cultivation and breeding methods and their relationship with land use. It is in this context and to respond to similar needs, but starting from an approach aimed at protecting the needs of developing countries as a priority, that the concept of food sovereignty was developed. This expression – cleansed of the controversies linked to

23. Cf. M. Bottiglieri, *op. cit.*, p. 6.

political contingency[24] – links the need to identify alternative forms of agricultural production that pursue the goal of environmental, social and economic sustainability[25], as opposed to those that are predominantly profit-oriented.

Lastly, also in close connection with the intrinsic link between food security and the protection of health, the solidarity profile enshrined in Article 2 of Italian Constitution may be reflected, as the availability of food in sufficient quantities and of adequate quality is appropriately configured as an interest to be pursued collectively.

In the constitutional text, this profile of solidarity does not take the form of a precise State competence aimed at protecting unitary demands[26], as food is recognised exclusively in the third paragraph of Article 117, within the scope of concurrent competences between State and regions. Rather, the instrument of intervention in the matter of diet consists in the possibility of identifying the fundamental principles of the matter, rooted in a full competence only in the presence of profiles that directly concern the protection of the environment and the ecosystem, under letter s) of the second paragraph of Article 117, or concerning the essential levels of services concerning health profiles (letter m).

24. Reference is made, for example, to the journalistic debate sparked by the change of name of the Ministry of Agricultural, Food and Forestry Policy (Mipaaf) to the Ministry of Agriculture, Food Sovereignty and Forestry by Italy's Meloni government.

25. The Declaration of the International Forum on Agroecology (the so-called Nyéléni Declaration from the country of Mali, where it was signed in 2007) defines food sovereignty as "the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems", establishing, in open opposition to neo-liberal principles, that "Food sovereignty prioritises local and national economies and markets and empowers peasant and family farmer-driven agriculture, artisanal fishing, pastoralist-led grazing, and food production, distribution and consumption based on environmental, social and economic sustainability".

26. The constitutional reform approved in the 17th Legislature (published in Official Journal no. 88 of 15 April 2016), in the context of the nominal abolition of matters of concurrent competence, explicitly recognised food security, giving the State exclusive competence for the introduction of "general and common provisions for health protection, social policies and food security".

4. Constitutional revision, environmental protection and food security

Before dealing with the changes introduced by Constitutional Law no. 1 of 2022, it may be useful to summarise the main *acquis* of case law, particularly constitutional case law, which has characterised environmental protection to date and which can be traced back to three general profiles[27].

The first is the consideration that the environment should be qualified as a *primary constitutional value*, rather than a fundamental right, and consequently its qualification as a principle that also guides the activity of interpretation and directs the legislator's choices should emerge.

The second conclusion, closely interrelated to the first, is that environmental protection must be configured as a *public interest of constitutional importance*, considering its implicit foundation at least in Articles 9 and 32 of the Constitution. It follows that its protection cannot be ascribed exclusively to the individual profile of law, but also to its characterisation as an interest of the community.

Lastly, the third observation is that such protection is *transversal*, with regard to the subjects, the interests underlying them and the objective spheres it covers, with regard to the division of responsibilities between the various levels that have the power to intervene in the matter, in a multilevel context like ours.

As already seen (§2), specific protection of the environment as a transversal value has existed in our legal system for years, even though there is no explicit constitutional provision recognising it. As has already been partly mentioned, the evolution of environmental value has long since reached an advanced stage of definition, in line with its possible inclusion in the so-called third generation of rights, affirmed more recently than the constitutional charters approved in Western democracies after World War II. As shown by a brief analysis of the

27. Taking as reference the conceptualisation of M. Cecchetti, *La revisione degli articoli 9 e 41 della Costituzione e il valore costituzionale dell'ambiente: tra rischi scongiurati, qualche virtuosità (anche innovativa) e molte lacune*, in «Forum di Quaderni costituzionali», Rassegna, n. 3, 2001, p. 285 et seq.

comparative panorama[28], starting with the constitutional texts approved in the 1970s, environmental protection has now been given precise constitutional coverage in an almost generalised manner, partly due to growing sensitivity also at supranational and international levels.

This codification entered our legal system at the end of the 18th Legislature (2018-2022), by means of a specific constitutional revision, which concerned Articles 9 and 41 of the Constitution[29].

First of all, Constitutional Law no. 1 of 2022 intervened on Article 9, finally introducing a new paragraph, which states, in the first sentence, that the Republic: "Protects the environment, biodiversity and ecosystems, also in the interest of future generations".

Before analysing the individual provisions, it is worthwhile placing the constitutional revision in the categories developed by doctrine[30], with particular reference to the distinction between "budget" and "programme" revisions. Schematically speaking, the former refers to those amendments that formalise changes that have already taken place in the social and institutional context and have already been codified in the decisions of the constitutional judge; the latter refers to those interventions that change a given discipline in order to steer interpretative trends in a future perspective.

The reformulation of the first part of the new paragraph of Article 9 of the Constitution can be congruously included in the first type of revision. The references to the environment, ecosystems and diversity are included in an additional paragraph with respect to the landscape and the historical and artistic heritage and sanctions that the Constitutional Court and interpreters had already recognised, not as distinct elements, but as the most relevant declinations of the more general constitutional principle. The new wording specifies that the Republic – and therefore all the entities that make it up – "protect the environment, biodiversity and ecosystems", not intending to qualify

28. See also L. Cuocolo, *op. cit.*, and the essay by G. Stegher in this same volume.

29. This intervention was preceded, as we have seen, by a further revision in 2001, which introduced an explicit reference to the environment and the ecosystem for the first time.

30. G. Silvestri, *Spunti di riflessione sulla tipologia e sui limiti della revisione costituzionale*, in Various Authors, *Studi in onore di P. Biscaretti di Ruffia*, II, Giuffrè, Milano, 1987, p. 1187 et seq.

them as subjects characterised by specificity, but rather as the main, although not exclusive, interpretations that the environment can assume.

The latter finds an appropriate place among the Constitutional principles rather than among the rights themselves, specifically because it is a value. Although this is the first constitutional revision ever undertaken on the first twelve articles of the Constitution dedicated to the Fundamental Principles, the characterisation of the environment as a value and the balanced connotation of its content makes it possible to exclude limiting interpretations of the scope of the 1948 text[31], on the contrary, expanding its scope.

The constitutional revision of Article 9 also introduces the precise recognition of the protection of animal rights, establishing that the "law of the state regulates the ways and forms of animal protection"[32]. This is not the appropriate place to address this last topic in a comprehensive manner, although some of the profiles concerning it may also be of interest in this work. Consider, for example, the rules laid down for the protection of farm animals, their care, as well as the prophylaxis regarding possible infectious diseases. In any case, as has been pointed out, the new configuration of Article 9 combines[33] rather effectively a classic anthropocentric vision[34] with a new, more "ecocentric" vision[35] if only because it defines the environment both with reference to its healthiness and with respect to the human person and to the protection of ecosystems and, therefore, of nature itself[36], fully including animals too.

31. See T.E. Frosini., *La Costituzione in senso ambientale. Una critica*, in «Federalismi.it», *paper*, 23 June 2021.

32. Also establishing in art. 3, that said state law apply to regions and autonomous provinces.

33. M. Cecchetti, *op. cit.*, p. 309 et seq.

34. Which, on the other hand, is still considered strongly prevalent by F. Rescigno, *Quale riforma per l'articolo 9*, in «Federalismi.it», Paper, 23 June 2021.

35. This last profile is emphasised by M. D'Amico, *Una riforma costituzionale importante*, in «Rivista Giuridica dell'Ambiente».

36. As the 2001 reform had already begun to do when it had flanked the classic, albeit new in the constitutional text, protection of the environment with protection of the ecosystem. See, also with reference to the first two significant decisions of the Constitutional Court, S. Calzolaio, *L'ambiente e la riforma del Titolo V (Nota breve a due sentenze contrastanti*, in «Forum di Quaderni costituzionali», 11 June 2003.

However, it seems clear that this provision does not introduce a discipline that aims to fully complete the protection of animals by considering them as sentient beings[37], but rather configures a peculiar reservation of the law, which would probably have found a more appropriate place in Article 117 of the Constitution[38] within the division of legislative competences between the State and the regions.

Going back to the types of constitutional revision mentioned at the beginning, we can, however, consider the pursuit of protection of the environment "also in the interest of future generations" as a programme revision. This is a topic that[39] has already been carefully addressed with reference to the broader issue of a balanced budget[40] and social rights[41] – all the more so concerning the formulation of Article 81 after the 2012 constitutional revision – and which could also provide the basis for an expansive interpretation of the provisions contained in the new Article 9 of the Constitution, also taking into account the time profile. The idea of sustainable development and, in part, to be differentiated in its tangible scope depending on whether we are dealing with newly democratised states or with established experiences has been affirmed in international law, culminating, in our legal system, in a precise codification in the environmental code in Legislative Decree no. 4 of 2008. In this context, the introduction of the concept of intergenerational solidarity directly into the constitutional text may lead to the

37. In compliance, for example, with Article 13 TFEU, which refers precisely to the need for states to take «into full account the welfare requirements of animals as sentient beings» when drawing up policies on agriculture or fisheries for instance.

38. In this sense, see G.L. Conti, *Note minime sulla sopravvivenza dei valori ambientali alla loro costituzionalizzazione*, in «Osservatorio sulle fonti», no. 2, 2022, p. 203.

39. As stated by E. Di Salvatore, *Brevi osservazioni sulla revisione degli articoli 9 e 41 della Costituzione*, in «Costituzionalismo.it», no. 1, 2022, p. 8 et seq.

40. See also M. Luciani, *Generazioni future, distribuzione temporale della spesa pubblica e vincoli costituzionali*, in R. Bifulco, A. D'Aloia (a cura di), *Un diritto per il futuro. Teorie e modelli dello sviluppo sostenibile e della responsabilità intergenerazionale*, Jovene, Napoli, 2008, p. 423 et seq.

41. In this sense, see also L. Califano, *Spazio costituzionale e crisi economica – Relazione di sintesi al XXVIII convegno dell'AIC: in tema di crisi economica e diritti fondamentali*, in «Rivista AIC», no. 4, 2013.

identification of the interest of future generations in a healthy environment as a potential substantive parameter of legitimacy for the Constitutional Court[42].

It is precisely this programmatic profile of the 2022 revision, which directly addresses the issue of sustainability and responsibility, also at the intergenerational level, that is probably the closest point of contact with food security and its sustainability. In addition to safety profiles, which have always linked the environment and food safety in their close connection with the protection of health, it is the perspective of food security, in particular, that is involved, with regard, for example, to issues such as fairer exploitation of land, containment of the impact of livestock farming for food purposes on the ecosystem, or the configuration of production methods that reconcile producers' need for profit with those of a balanced distribution of basic commodities for everyone.

Lastly, the constitutional reform establishes that freedom of economic initiative cannot be exercised in any way that is detrimental to health and the environment, alongside values that are traditionally attributable to the centrality of the person such as safety, freedom and human dignity. In this sense, Constitutional Law no. 1 of 2022 also envisages, with an amendment to the third paragraph of Article 41, that economic activity may also be aimed at environmental purposes, where this is provided for by law.

These two amendments to Article 41 of the Constitution[43] confirm the jurisprudential trend that, already in the 1990s, – as seen above (§ 2) – had considered environmental protection to be a potential limit to the economic freedoms envisaged by the Constitution[44].

42. M. Cecchetti, *op. cit.*, p. 311.

43. See also E. Mostacci, *Proficuo, inutile o dannoso? Alcune riflessioni a partire dal nuovo testo dell'art. 41*, in «DPCE online», no. 2, 2022, p. 1123 et seq., which considers the changes made to be disappointing, as they lack concrete tools for bearers of general interests, such as those of an environmental nature, to influence decision-making procedures.

44. In this sense see also L. Cassetti, *Salute e ambiente come limiti "prioritari" alla libertà di iniziativa economica?*, in «Federalismi.it», *paper*, 23 June 2021.

5. A first assessment and some perspectives

The constitutional revision introduced at the end of the 18th Legislature can, on the whole, be welcomed[45], because, despite the fact that much of its content had already emerged in the case law of the Constitutional Court, it mitigates all the possible uncertainties of a law of praetorian formation. Moreover, it brings our legal system into line with the main trends emerging from international and supranational law, as well as what has recently been enshrined in contemporary Constitutions[46].

However, it undoubtedly defines a new point of balance, the stabilisation of which will be an important test for interpreters in future balancing operations with other constitutional principles. Its impact will become more fully appreciable with the passage of time, after verifying the way the new formal arrangement of values will be translated into legislative acts and the Constitutional Court will have begun to provide initial interpretative inspiration.

Also, of interest to scholars will be the effects of this new constitutional set-up with the, now consolidated, configuration of environmental protection as a value, which implies a policy approach that recognises a central role for public authorities, inspired by the decision-making models of the European Union[47]. In this sense, the identification of tangible balances is left to the institutions, which are called upon as active participants in the preparation of public defence policies. This profile is, moreover, particularly accentuated in the context of the National Recovery Plan, which makes the ecological transition towards environmental sustainability one of the central

45. I. Nicotra spoke of a "minor institutional miracle" regarding the completion of the parliamentary process to approve the amendment, after numerous attempts in the past, in *L'ingresso dell'ambiente in Costituzione, un segnale importante dopo il Covid*, in «Federalismi.it», *paper*, 30 June 2021. Much more critical was G. Di Plinio, *L'insostenibile evanescenza della costituzionalizzazione dell'ambiente*, therein, *paper*, 1 July 2021.

46. In this sense D. Porena, *Sull'opportunità di un'espressa costituzionalizzazione dell'Ambiente e dei principi che ne guidano la protezione. osservazioni intorno alle proposte di modifica dell'articolo 9 della Carta presentate nel corso della XVIII legislatura*, in «Federalismi.it», no. 14, 2020, p. 332.

47. M. Cecchetti, *op. cit.*, p. 308.

pillars of its overall strategy, also following the general public policy approaches pursued by the European Union[48] well before the Covid-19 pandemic.

The challenge for Western democracies is therefore twofold as, on one hand, they need to focus on and structure internal systems that are sustainable both from an environmental and a dietary point of view, also partly by converting production methods and lifestyles.

On the other hand, in a context in which there are still very clear gaps in relation to developing countries, they must make themselves increasingly responsible both during the time in which they operate and with respect to future generations, addressing both the issue of ecological transition and the inescapable profile of the generalisation of the right to food, to protect the freedom and dignity of every individual.

The constitutional revision introduced in 2022 certainly does not provide all the answers to contemporary environmental, climate and food issues, but it does help bring our country into line with global needs, marking a new starting point rather than a point of arrival.

48. I. Rivera, *Le tonalità dell'ambiente e le generazioni future nel cammino di riforma della Costituzione*, in «Biolaw Journal - Rivista di BioDiritto», no. 2/2022, p. 241.

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IV. Food, Religion, School: Sustainable Impact in the Multi-Ethnic Society

Alberto Fabbri

Summary: 1. Religious food culture. – 2. The right to food choices. – 3. The management of multiculturalism at school in terms of food education and canteen service. – 4. Open scenarios: a possible new integration model?.

1. Religious food culture

The natural association of religion with food[1] stems from an inescapable connection of the sacred with elements that constitute human nature itself, without which man cannot operate in the fullness of his capacities. In particular, food becomes the first fundamental parameter for the very existence of the person, in which the fundamental relationships between creator, creature and creation, also in terms of availability and willingness to use the resources that

1. A.G. Fucillo, *Il cibo degli dei*, Giappichelli, Torino, 2016; D. Pavanello, *Cibo per l'anima. Il significato delle prescrizioni alimentari nelle grandi religioni*, Edizioni Mediterranee, Roma, 2005; M.C. Giorda, L. Bossi, E. Messina, *A tavola con le religioni*, Quaderni di Benvenuti in Italia, 5, Torino, 2015; *Daimon*, Diritto comparato delle religioni, *Regolare il cibo e ordinare il mondo Diritti religiosi e alimentazione*, 2014; F. Alicino, *Cibo e religione nell'età dei diritti e della diversità culturale*, in «Parolechiave», no. 2, 2017; A. Valletta, *Il diritto al cibo religiosamente orientato al tempo di pandemia*, in «Stato, Chiese e pluralismo confessionale», online journal (*www.statoechiese.it*), no. 13, 2020; N. Marchei, *Cibo e religione*, in B. Biscotti, M. Lamarque (a cura di), *Cibo e acqua, sfide per il diritto contemporaneo. Verso e oltre expo 2015*, Giappichelli, Torino, 2015, p. 105 et seq.; A. Iacovino, *La libertà religiosa alimentare e tutela giuridica delle diversità*, in «Diritto ecclesiastico», I, 2021, p. 267.

are present on earth, are grafted and developed for the believer. This connection proves to be very profound, certainly not limited to food merely as sustenance, acquiring a meaning that characterises, conditions and guides the very spiritual practice to which the believer is called in pursuit of the ideals and principles of the chosen faith.

The action of eating structures a multi-grade relationship, firstly with the divinity, in showing the level of fulfilment and fidelity to the fideistic indications and prescriptions, then with other believers, in a journey among peers, subject to the same indications; and lastly with the community, in the contribution that the individual attitude can bring to the path of growth of the community.

The process that religions activate towards food produces effects with regard to diet as a pathway that acquires valorisation and sacralisation because it is elevated to the status of instrument of adhesion and model of participation in the creed. The mere presence of the same food in different geographical contexts, its preservation or display, irrespective of its consumption, is capable of manifesting a strong community presence and adherence, with a clear incidence of identity.

The relevance of food in the fideistic structure confers a condition of sacredness to food itself, a sacredness that is expressed in all the different uses of the individual foodstuff. Food takes on meaning insofar as it is envisaged by the religious order, regardless of its actual consumption. The practice of fasting and abstinence, as a gesture of the renunciation of a food or a dietary attitude, in which detachment from certain foodstuffs or the renunciation itself constitute the very condition of adherence to faith, is rightly included in this framework.

Another aspect to be considered in this relationship is mediation with the divine, in the sense that food, in its positive (permitted) or negative (forbidden) interpretation, takes on the presence and revelation of the divinity.

Again, the use of food in rituals, in order to connect the divine dimension with the human dimension through a food which, even in the action of its consumption, expresses a physical internalisation of what the food represents.

Lastly, nourishment as a path to perfection, in the lawful use of respect for dietary practices, a marker of an increasingly complete religious adherence.

Every religion promotes its own dietary rules, in which all conduct relating to food or eating behaviour converges. Within this framework, in which only the religious nature linked to the creed becomes relevant as the only subject capable of intervening on the matter, in its natural evolution in time and space, there is a place for all the elements that have food as their object, in the different dichotomies, good/bad, licit/illicit, compulsory/forbidden, and in the distinct processes that constitute corollaries for its consumption, such as production, preparation, distribution and marketing.

The individual aspects mentioned, each presenting its own precise regulatory and procedural framework, constitute the religious dietary rules[2] specific to every creed. Rules that engage the designated religious authorities in the production of provisions, the dissemination of indications and the supply of the most detailed information for their acquisition and fulfilment by the community. In this way the food will correctly assume its proper religious value and will be properly implemented by the communities and by the faithful for the aspects within their competence.

The food codes that come to be produced by the various religions, precisely because of their uniqueness in representing that creed or spirituality, acquire, in their fideistic character, identity value, as bearers of principles and values, and the character of instruments for the defence of the same culture. The attitude that is expressed in eating or not eating that particular food, in abstaining from certain dietary practices, in respecting the indications given or attributed to the divinity in the preparation of the various foods, identifies an affiliation and a sharing to be assumed, which is naturally manifested in the community aspect, as a sharing of the same dietary rules.

2. The right to food choices

Religious dietary rules do not exhaust their scope in the internal forum, but precisely because of their all-embracing and imperative

2. Cf. A.G. Chizzoniti, *La tutela della diversità; cibo, diritto e religione*, in A.G. Chizzoniti, M. Tallacchini (a cura di), *Cibo e religione: diritto e diritti*, Libellula, Tricase, 2010, p. 20 et seq.

capacity they must be shared and respected by the faithful in all spheres of life. The choice of the dimension assumed and played by food for religion is the full prerogative of the Church, with respect for the principle of the distinction of orders and denominational autonomy[3]; however, the very coexistence of the community within a legal system activates a series of social and institutional relations that must be regulated.

There is a natural interaction of these rules with the civil dimension, their inclusion in the state order as an expression of spiritually grounded dietary behaviour.

The resulting analysis questions the confessional and state/local dimensions. On the ecclesiastical front, those attitudes that are necessarily externalised, such as dietary conduct that the individual maintains, will be relevant to the need to presuppose active behaviour on the part of the state or private subjects involved in the various dynamics that food choices generate. The stance taken by state/local or private players in regulating the dietary phenomenon becomes important in relation to the effects of the active or passive policies adopted.

This triggers a continuous confrontation with state or local provisions regulating the legal dimension, as in the case of school canteens, on the degree of guarantees provided and implemented in balancing the different interests at stake[4].

The continuous state/confessional osmosis presupposes the full application of the legal framework concerning the exercise of the right to a religiously oriented choice.

The possibility of following a dietary pattern that complies with precise canons is not the exclusive prerogative of religions.

Vegetarians and vegans[5] for example provide cultural reasons for their choices that are worthy of consideration; however, the religious

3. Most recently I. Zuannazzi, M.C. Ruscazio, M. Ciravegna, *La convivenza delle religioni negli ordinamenti giuridici dei Paesi europei*, Giappichelli, Torino, 2022, pp. 98 and 165.

4. In particular, the guarantees linked to the promotion of a canteen service as part of food policies aimed at the wellbeing of students, and the non-obligation for students to eat food that is not allowed by their religion.

5. The range of possibilities is much broader, including crudism, reducetarianism, ketogenic diets or plant-based choices, which are rapidly growing on the food purchasing front.

aspect gains significance because it is linked to a right, that to religious freedom, which anchors it to a spiritual dimension, linked to a genre of conscience and considered as a contributing element to the development of the human personality.

Dietary conduct finds an initial form of protection in Article 19 of the Constitution. The "forms" of faith, which the legislator recognises as a way of expressing the right to freely profess, include diet, observing the instructions, methods and timing indicated[6].

In considering the formal and substantial complexity that food choice generates, the first factor from which to begin the analysis is linked to the recognition of a negative state guarantee, that of not being forced to make use of foodstuffs that are not recommended or, worse still, forbidden by religion. Respect for personal dietary choices, even before taking on a positive connotation, in requiring the intervention of third-party elements, generates the right not to have the individual's choice annulled and not to be obliged to consume foods that are discouraged or forbidden. The legal context is applied before the potential verification of the limit of morality that the article of the constitution refers to[7], though this is not easy to apply in the case of the food-morality binomial.

The anticipation of the right is supported by the principle of equality, expressed in Article 3 of the Constitution, as an incentivising background, in which dietary choices, among other things, cannot be the subject of discrimination. Confirming the value of the elements indicated, substantive equality, as expressed in paragraph 2, invokes a duty on the part of the State to eliminate the obstacles that preclude full development of the human personality and full participation in the social organisation of the country, understood here as belonging to a civil community.

Continuing with the substantial front, the reform of Title V of Part Two of the Constitution[8] indicated dietary issues among those

6. M. Bottiglieri Longhi, *Le garanzie costituzionali del diritto al cibo adeguato*, in G. Boggero, J. Luther (a cura di), *Alimentare i diritti culturali*, Aracne, Roma, 2018, p. 19 et seq.

7. In terms of the restrictions that the State may impose to curb the ways in which religion or beliefs may be manifested among those indicated in Article 9 of the ECHR, that of public health is more responsive to the possible implications of religiously oriented dietary choices.

8. Const. Law no. 3 of 28 October 2001.

subject to concurrent legislation, recognising as a general criterion the legislative power of the Regions, while allowing the State to determine the fundamental principles, in full compliance with the constraints of the European Union and international obligations. The general approach adopted, including the component linked to food security and food safety[9], allows dietary prescriptions to be included within the topic.

The absence of a framework law on the subject to define the scope of action[10], has not prevented the regions from operating[11], regulating the sector also on the basis of the interventions promoted by the European Union[12].

In 1974, the EU had already set out in Directive no. 74/577[13] measures to ensure that animals would be stunned before being slaughtered. In its implementing law, no. 439 of 1978[14], Italy envisaged the possibility of adopting "special methods of slaughter in observance of religious rites", methods that would have to be authorised by decree of the Minister of Health in agreement with the Minister of the Interior.

The decree was issued in 1980[15], and clearly shows the attention

9. P. Borghi, *Sicurezza alimentare e commercio internazionale*, text available at *www.geocities.ws/paoloborghi/sicur.pdf* (14 November 2022).

10. The legislative power of the state to determine the essential levels of services concerning civil and social rights, which are to be guaranteed throughout the national territory, on the basis of Article 117, paragraph 2, letter m), becomes a guarantee for a national intervention plan.

11. A. Ginfreda, *Alimentazione e religione: l'azione degli enti locali in ambito scolastico ed ospedaliero*, in A.G. Chizzoniti (a cura di), *Religione e autonomie locali*, Libellula, Tricase, 2014, p. 169.

12. Cf. "Regulation no. 178/2002 Regulation (EC) no. 178/2002 of the European Parliament and of the 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".

13. Council Directive of 18 November 1974 on the stunning of animals before slaughter (74/577/EEC), considering, however, that account must be taken of the specific requirements of certain religious rites.

14. A. Roccella, *macellazione e alimentazione*, in S. Ferrari (a cura di), *musulmani in Italia. La condizione giuridica delle comunità islamiche*, il Mulino, Bologna, 2000, p. 217.

15. Ministerial Decree 11 June 1980 *Autorizzazione alla macellazione degli animali secondo i riti religiosi ebraico ed islamico*, in Official Gazette no. 168 of 20 June 1980. See Abdu Rahaman Pasquini, *Codice alimentare islamico*, Edizioni del Calamo, Milano, 2002; A. Asha Tiozzo, *La certificazione halah*, in R. Schiavoni, A. Aramu (a cura di), *L'internazionalizzazione delle imprese L'Italia e la sfida dei mercati esteri*, Arkadia editore, Cagliari, 2016; P. Lojacono, *I marchi «Casher»* and «Halal» tra ius *singulare*

paid to the religious institutions involved[16] and to the hypothesis of exporting from Italy meat slaughtered on Italian territory in accordance with Islamic rites.

The primogeniture of the document justifies the structure adopted, which prioritises an inseparable collaboration with religious institutions, to allow them to operate legally and in full respect of religious indications in relation to slaughter by way of exception.

The regulation was subsequently repealed following the new 1993 Directive[17] implemented by Legislative Decree no. 333 of 1 September 1998. The system was not changed, but there was a tendency to involve the competent religious authorities, under the responsibility of the official veterinarian, for the application and control of the special provisions (Art. 2 h) of the decree). The regulation of the slaughter of halal and kosher meat does not, however, impose an obligation on schools that provide a canteen service to encourage the consumption of these meats.

In this brief overview of the sources of the right to food choices, the bilateral system holds a position as a state instrument to meet the needs of religious denominations.

The agreements make it possible to show the civil order the religious particularities that, precisely because of the value they hold for the entire community, must be dealt with in a public dimension with intervention by the state to promote their full realisation.

e diritto comune (con riferimento alla situazione italiana e spagnola), in *Anuario de derecho eclesiástico del Estado*, 1999; E. Toselli, *Le diversità convergenti. Guida alle certificazioni alimentari kasher, halal e di produzione biologica*, FrancoAngeli, Milano, 2015; E. Toselli, *Kosher, halal, bio. Regole e mercat*i, FrancoAngeli, Milano, 2018; L. Ascanio, *Le regole alimentari nel diritto musulmano*, in A.G. Chizzoniti (a cura di), *Cibo, religione diritto. Nutrimento per il corpo e per l'anima*, Libellula, Tricase, 2015, note 30.

16. These are the Union of Italian Israelite Communities and the Cultural Islamic Centre of Italy, referred to in the text with reference to their nature as recognised moral entities. Cf. C. Gazzetta, *Società multiculturali e tutela dell'identità alimentare: alcune riflessioni sulle macellazioni rituali*, in «Stato, Chiese e pluralismo confessionale», online journal (*www.statoechiese.it*), no. 17, 2020.

17. Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing, which confirmed that "For animals subject to particular methods of slaughter required for certain religious rites, the conditions laid down in paragraph 1, letter c) shall not apply" (animals stunned before slaughter or slaughtered instantaneously) (Art. 5, paragraph 2).

With regard to food, the issue was given little consideration in the agreements, except in the case directly involving the Jewish religious community, which wished to invoke the regulatory provisions introduced by the State on slaughter[18].

On the Islamic front, the lack of an agreement does not reduce the level of guarantees recognised by the legislation on food, expressed in the practices of slaughter and the issue of certification, which fall within denominational authority.

3. The management of multiculturalism at school in terms of food education and canteen service

The ethnic, religious and cultural pluralism that characterises and identifies the current social reality presents itself as a rooted aspect in continuous evolution on the numerical and placement front, capable of permeating and surfacing in the various public spaces. Schools, in particular, due to their compulsory nature, become a point of coexistence in which the search for continuous moments of interaction to carry out educational and training activities for and with the students is encouraged[19].

The need to promote a process that tends to foster and encourage interpersonal relationships, in supporting a "government of pluralism and policies to promote integration"[20] finds an ideal place in schools,

18. Law no. 101 of 8 March 1989, Article 7, paragraph 2, states that "Jews in the conditions referred to in paragraph 1 have the right to observe, at their request and with the assistance of the competent Community, Jewish dietary requirements without any charge to the institutions in which they are located".

19. The document drawn up by the Ministry of Education in September 2021, entitled "Pupils with non-Italian citizenship a.s. 2019/2020" notes a stable presence of pupils with non-Italian citizenship in state schools of 789,066 students, about 10% of the total. The regions with the most foreign students are Lombardy, followed by Emilia Romagna, Veneto and Piedmont, *www.miur.gov.it*. The *Dossier Statistico Immigrazione 2022*, on a population of 5,193,669 residents with foreign citizenship, minors make up around 20.2% of the total.

20. N. Fiorita, *La libertà religiosa alimentare nelle scuole*, in A.G. Chizzoniti (a cura di), *Cibo, religione and diritto. Nutrimento per il corpo e per l'anima*, cit., p. 298; L. Mentasti, C. Ottaviano, *Cento cieli in classe*, Unicopli, Milano, 2008, p. 163.

where living in the same environment and following the same educational programme are conditions for activating policies and initiating paths aimed at fostering integration processes[21].

In this context, food education at school, supplied as education on food, health and personal well-being, also expressed in the catering service, can be a valid tool to reach a number of targets, in particular to promote proper nutrition, to fight malnutrition often linked to the combination of immigration/marginality, to protect the food cultures of the students' different families of origin, to promote a sense of identity and acceptance in the social context.

The sharing of a transversal path to be included within the different subjects has the merit of promoting a growing awareness of the value of food, as an objective element that is subjectivised in its different forms and contents in relation to the community of production and consumption.

The acquisition of food value produces its effects not only on the student, but involves the families themselves in the role of the first food educators[22].

Food education at school and the canteen service involve two different application models, as only the former completes the entire school chain, interpreted in the manner and at the times established by each educational programme; the canteen service, on the other hand, is not proposed for the various educational levels, being offered in particular to nursery and primary schools.

In spite of this divergence, the paradigm shift that is affecting canteens, with particular attention also paid to religious needs, and

21. A. Giuffrida, *La scuola nella società multiculturale. Diritto al Cibo adeguato e libertà religiosa*, Giappichelli, Torino, 2020, p. 105 et seq.

22. We can mention the convention agreement signed in October 2015 between the Ministry of Health, Directorate General for Hygiene and Food Safety and Nutrition, and the Higher Institute of Health for the launch of the project "Sperimentare Salute" the aim of which is to develop new tools for food education, aimed at pupils in primary school. Similarly, in the Marche region, since 2004, the Food Hygiene and Nutrition Services (Sian) of Asur have developed a nutritional monitoring and anthropometric survey project; of particular importance is "Il Mercoledì del Frutta" (Fruity Wednesday), which required the involvement of School/Family/Sian, with an invitation to families to provide their children with fruit to take to school at least on Wednesdays, or to provide children directly with single-portion packs of ready-to-eat fruit.

the investment made in the promotion of a healthy diet based on a Mediterranean diet, show how the two realities interact and complement each other, also in terms of the results produced and the benefits in terms of quality and guarantees for religiously based food choices.

The school experience proposed includes an education in pluralism that also passes through food education, which necessarily also includes a religious education, in recognising that certain food choices have a religious basis.

Food qualified in this way, included in the school programme, takes on the role of a source of knowledge, exchange, dialogue, contamination, in becoming an inclusive educational tool.

The importance acquired by the right to religious freedom in the area of food, in the school canteen, presupposes a series of national, regional and municipal protocols aimed at identifying the various possibilities that the legal system is able to provide for and guarantee.

In short, it is a matter of indicating which choices the system is able to recognise for a student, who, through their parents[23], expresses a religiously founded food choice for the canteen service that differs entirely or partially from the planned menu.

In 2010 the Ministry of Health published the *Linee di indirizzo nazionale per la ristorazione scolastica* (National Guidelines for School Catering)[24], with guidelines for the formulation of contract

23. The differentiation of the figures between those who choose or manifest special dietary needs, the parents or those exercising parental authority with respect to the pupil using the service, does not assume legal relevance. This model is already present in the choice of religious instruction, albeit with the due distinctions linked to the personal choice of the student, envisaged from high school onwards. The effects of a dietary deficiency due to a religious choice is not, as it should be, the responsibility of the parent, but must be carefully assessed by the canteen service providers when they receive the proposal to change the student's personal menu.

24. The introduction to the document states that it was drafted by a technical team and "is aimed at all school catering operators and focuses attention on a number of substantive aspects, in order to provide guidelines for improving various aspects of quality, in particular nutritional quality, at national level", *www.salute.gov.it*. It should be noted that, in 2006, the National Committee for Bioethics at the Presidency of the Council of Ministers, produced a document entitled *Alimentazione differenziata e interculturalità. orientamenti bioetici* (Differentiated diet and interculturality. bioethical guidelines), which pointed out that "the issue of diet within institutions such as schools, [...] while not belonging to the group of the most divisive bioethical issues, such as the 'big questions'

specifications for the school canteen service[25]. The aim of the document is to set the standards of the service, including the right of access "also for users with special health and ethical-religious needs". In indicating the various criteria that the specifications must satisfy, it is pointed out that the operating model required must also be identified in relation to the population to which it is addressed and to ethical and religious needs, among others; the specifications must include not only basic menus, but also special diets, including those requiring a medical prescription, without including requests for meals based on cultural and religious reasons. This omission is partly offset by the inclusion of the possibility to change the menu on religious festivities and/or special occasions, where tradition requires the use of special foods and preparations, and by the request to "also ensure adequate substitutions of foods related to ethical-religious or cultural reasons", specifying that "these substitutions do not require medical certification, but simply the parents' request".

More recently, the Ministry of Health issued the "National Guidelines for Hospital, Care and School Catering" in November 2021[26].

The document unites in a single text the planned courses involving people who, due to their particular situation, cannot freely decide which type of diet to follow. For the school sector, the need to provide specific meals for certain conditions, either clinical or for ethical, cultural and religious requirements, with particular attention to the need for adaptation from a nutritional point of view, is emphasised. The aim is to show how the intercultural and transcultural perspective "i.e. of

concerning life and death, does activate significant ethical and conscientious dilemmas, which it would be reductive and even naive to underestimate. The level of bioethical awareness of a country and a society should be perceived starting from the sensitivity that can be activated also regarding issues that are only apparently of a marginal nature, such as the issue to which the text presented here is dedicated", *Bioetica.governo.it.*

25. Contracts "to be implemented in compliance with the provisions of the Prime Minister's Decree of 18 November 2005 (Public Contract Code) and Law Decree no. 173 of 12 April 2006 as well as Law Decree no. 50 of 18 April 2016, (new Public Tender Code)", A. Fuccillo, F. Sorvillo, L. Decimo, *Diritto e religioni nelle scelte alimentari*, in «Stato, Chiese e pluralismo confessionale», online journal (*www.statoechiese.it*), no. 18, 2016, p. 14.

26. The full text can be found at *www.salute.gov.it.*

meeting, exchange and comparison between cultures, means not only limiting intervention to compensatory measures, such as diets required for cultural and religious reasons, but organising a strategy of real growth in quality based also on health and prevention criteria".

Within the framework of safeguarding existing processes on religiously based choices, even though they are on an equal footing with those of an ethical and cultural nature, the text draws attention to an emerging aspect, linked to increasingly present and particular demands, in which it is not always easy to distinguish the aforementioned justifications from "orthorexic fashions or trends".

It should be stressed once again that exclusion diets with respect to the standard programme (in which individual foodstuffs or entire food groups are absent) must only be undertaken on the basis of specific indications and following a specific, validated and documented diagnostic programme with a doctor's prescription.

For these reasons it is advisable to name the types of menus provided only with reference to specific pathologies (diet for coeliac disease, lactose intolerance, type 2 diabetes, etc.) and to envisage a menu with a minimum of nutritionally equivalent alternatives or two menus with interchangeable dishes.

Concurrent legislative jurisdiction in the field of food, as envisaged by the Constitution[27] has encouraged the regions to promote more or less "inclusive" and explanatory procedures in relation to school catering on possible requests, also in the light of non-coercive ministerial guidelines. A common element in terms of procedure is a clear distinction between special menus motivated by medical and clinical reasons, for which it is essential that the parent or guardian submit medical documentation, a medical certificate drawn up by the attending physician – paediatrician or general practitioner – or by a specialist doctor employed by the national health service. In this case, the application must necessarily go through the health district and then be translated into a customised diet plan.

Things are different when presenting an application for a special diet for religious reasons; in this case the application only goes through

27. See above, par. 2.

the municipal administration, which will handle its transmission to the company providing the meal service.

In terms of classification, the categories drawn up at regional level to include religiously based menus show marked differences, with only the request for a religiously justified special menu being included, or ethical-religious and cultural choices being included in a single model. In this way, applications for a vegan, vegetarian or religious diet are placed on the same procedural and value level[28]. On the timing front, applications must be submitted at the beginning of the school year, to avoid an automatic renewal of the diet drawn up for previous school years.

The need to promote the formalisation of common standards at organisational level, also with regard to supply contracts, has focused the attention of administrations on medical diets, leaving the other cases as residual, including all of them, albeit with the necessary distinctions related to specificities, under the same formal umbrella.

28. The choice adopted by the Marche Region's Area Vasta 1, when presenting the "New procedure on Special Diets in School Catering in ASUR Area Vasta 1", in June 2020 is representative. The general classification of Special Diets due to ethical-religious-cultural choices, includes:

a) The vegetarian diet, of which there are several variants, differing from each other in their ideological approach and in the foodstuffs that may or may not be consumed; in particular, the lacto-ovo vegetarian variant (lov) excludes animal foods such as meat, fish, molluscs, shellfish and their by-products but allows the consumption of milk, dairy products and cheese, eggs and honey. The ovo-vegetarian variant excludes milk, dairy products and cheese but not eggs. The lacto-vegetarian variant excludes eggs but allows milk, dairy products and cheese.
b) The vegan diet, which only includes the intake of foods of plant origin and therefore completely excludes foods of animal origin.
c) Special diet with exclusion of pork and pork products, which requires the exclusion of pork and pork products from the menu, both as ingredients in a pasta course and as a main course.
d) Special diet with exclusion of beef and beef products, which requires the exclusion of beef and beef products from the menu, both as ingredients in a pasta course and as a main course.

Special diet with complete exclusion of meat and its by-products, which requires the exclusion of meat in general and its by-products from the menu, both as ingredients in a pasta course and as a main course.

4. Open scenarios: a possible new integration model?

The first scenario that emerges is linked to the balancing of interests involved in the provision of the canteen service. The aim of offering the service in a public establishment, even a non-state one, is to offer regulated meals, with a nutritional plan for different age groups, to lend continuity and complement the educational activity carried out in the morning. The educational task of the school is also expressed in the provision of meals to pupils requiring them, in taking care of the person as a whole. The pupils' well-being therefore also passes through the dietary dimension. This dynamic includes the possibility given to the student to request variations from the standard menu. In this case, with due differences for health-related menu prescriptions on doctor's orders, the satisfaction of the spiritual/ethical/cultural dimension in the public space acquires value for the full realisation and development of personality.

The search for a balance between interests also progresses through the indication of the limits that each interest presents. As far as the school is concerned, the protection of healthy, complete and adequate nutrition, supported by nutritional education, is the minimum guarantee to be promoted, and this is something that cannot be abandoned; this is evident in the various documents that have been drawn up, in which the request for a substantial modification to the ordinary meal, which is already calibrated according to approved parameters, must be medically justified, or, if based on ethical-religious or cultural reasons, outlined and codified. For greater protection in the event of a deviation between the ordinary planned menu and the variation/substitution requested, the institution receiving the declarations of Variation reminds the child's family in the same document of the responsibility for application of all food restrictions and variations to the basic menu requested.

As far as the user is concerned, the limit is expressed in the right to not be "forced to ingest food against their will", never to be faced with "the alternative of eating or violating their religious or philosophical convictions"[29]. This is a limit that allows the student to be treated

29. This is how the National Bioethics Committee expresses itself in its report «Alimentazione differenziata e interculturalità». Bioethical Guidelines of 27 March 2006, a concept taken up and developed by D. Milani, *Le scelte alimentari nelle società*

in a dignified manner, with full respect even for food choices. The guarantees attached to the right to religious freedom are not limited to a negative dimension, i.e. not being forced to abandon one's own regulations or prohibitions, but also include the possibility of exercising one's own faith-based choices. In this sphere, linked to the necessary preparation and activation by public institutions of practical actions, the need for those in charge to formalise the case arises, in order to guarantee a point of balance between the underlying interests, in codifying the cases of the most evident requests, those the fulfilment of which makes it possible not to violate the limit set and thereby enter the realm of administrative discretion. Outside these cases, the authorities must envisage the possibility to make proposals in line with religious reasons, such as the presence of a single dish, a menu with alternative choices of equal caloric value or two menus with interchangeable dishes, up to and including the plan of consultation between the local authority and the families concerned.

The school cases that are envisaged by the doctrine, such as religiously based requests related to the preparation of food, the choice of personnel employed in the various steps, the assessment of possible environmental contamination, reveal the research potential of the phenomenon.

Their projection also encourages an analysis of the degree to which the type of request submitted can be extended to third parties. The first reference to parties who indirectly benefit from requests which have been met by the institutions, is of course linked to the minority denominations, which could agree and accept as valid the solutions adopted by the school with regard to applications for dietary variations already received from other "religious parties" rather than submit new ones with the risk of having them rejected[30]. The expandability for the benefit of other parties is different. In this case, it is considered that the dietary result achieved, by changing or adding something to the standard menu, can also be acquired for other reasons, be they cultural,

multireligiose, in A.G. Chizzoniti (a cura di), *Cibo, religione e diritto. Nutrimento per il corpo e per l'anima*, cit., p. 353 et seq.

30. The Court of Cassation has identified this process as additive secularism, Court of Cassation, United Sections, ruling no. 24414 of 9 September 2021.

philosophical or ethical, being considered as an ordinary process in the classification of the various menus that can be enjoyed. The case outlined, however, will enjoy a different regulatory coverage from the religiously founded choice, only the latter is presented as an expression of the right to religious freedom.

An open question, but one that has not yet emerged in the public arena, concerns the costs that local authorities incur in fulfilling religiously founded requests. One wonders whether the principle that emerges in the agreements with denominations other than Catholic in relation to the study of a religion in schools, such as, for example, Judaism[31] in which it is possible to teach Jewish culture without this activity imposing a burden on the State, could be applied to the implementation of certain particularly costly cases. The way in which this is activated corresponds to the procedures adopted in both the case of the choice of school meals and that of religious instruction at school; they are activated on the basis of a request by a party. Differently in substance, where in the case of food, the public body does not promote an ordinary route for Catholic food, structured as an ordinary meal, placing the other religiously founded demands on a juridically inferior level, but equates religious motivations of whatever magnitude with those of a cultural ethics and philosophical nature. The exclusion of costs for the State is to be interpreted, in the case of food, as the cost of the service performed by the body providing that service; consequently, the cost of the service should be charged to the requesting party, or directly to the parent, if they personally provide their child with the meal in accordance with their professed beliefs. This hypothesis, in which the right to self-determination would certainly come into play, could highlight discrimination against the party who is unable to guarantee food that is "different" because it is expensive; the provider would also see its educational role restricted, in being subjected to a food imposition that would annul the very model and meaning of the school canteen.

With regard to satisfying the requests that are presented, what criteria should the provider adopt in assessing interests and priorities

31. As provided for in paragraph 4 of Article 10 of Law No. 101 of 8 March 1989.

when it comes to preparing codified menus, so as not to risk a stiffening of the system or an excessive compression of the right to food freedom?

A result that would tend to establish a condition of satisfaction for both parties, a codified healthy diet and freedom of religiously motivated meal choice, particularly for those cases that currently fall outside the cases codified by the provider, could be achieved with the provision of collaborative consultation. This formal instrument, to be adopted as the first level of activation by the local institutions and the families concerned, when the special requests are significant and not formally catalogued, could promote new models of integration at the dietary and, before that, institutional level, in order to arrive at the codification and structuring of alternative meal models that enjoy the same food standards (particularly from a nutritional point of view) as the other meals provided, at a later stage.

Excessive fragmentation of the food model proposed, however, if not duly justified and shared, reveals the limits of an individualism that institutions must respond to in order to promote social peace. The related risk of promoting food as an element of segregation should not be underestimated; differentiated menus, if not duly introduced first and foremost with respect to the people using the canteen service, and included in a food programme linked to education on diversity as a source of enrichment, can become a form of exclusion.

On the other hand, failure to comply with requests for menu changes based on religious grounds could be used as an instrument of propaganda and ideological struggle, in order to emphasise the lack of respect and fear generated towards those who are religiously different.

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V. Food Security as a Means of Shaping Environmental Constitutionalism

Giuliaserena Stegher

Summary: 1. Introductory considerations on environmental issues. – 2. Food safety – 3. Constitutional transformations towards a green constitution? – 4. Some summary notes.

1. Introductory considerations on environmental issues

In recent times, it has been possible to observe a renewed growing constitutional sensitivity to issues closely related to the environment, a law that can be defined as highly complex and transversal as it embraces several specific disciplines, constituting a veritable crossroads. These include the specific issue of food security, the leading theme here, which is functional to individual well-being. Its importance can be inferred if we consider the particularly numerous implications both in terms of health and from an economic point of view.

More generally, over the last half-century, thanks to the attention paid to the environment by international and supranational organisations – but also by those at the regional level – as a result of the multiple phenomena of pollution, the various national legal systems have developed a certain awareness of the urgency of protecting the environment in its various forms.

Just as a reminder, on the one hand, we remember the *Charte de l'environnement* adopted in France in 2004, on the other, we recall not

only Article 20 of the German *Grundgesetz*[1], but also the well-known ruling of 24 March 2021 with which the German Federal Constitutional Tribunal declared the unconstitutionality of some provisions of the Climate Protection Act of 12 December 2019 (KSG)[2].

To understand the underlying complexities of the topic and the issues connected to it, it would be helpful to remember some current events: firstly, in Italy, the reform of Articles 9 and 41 of the Constitution was recently approved. The constitutional bill A.S. 83 and related "Amendments to Articles 9 and 41 of the Constitution on environmental protection"[3], after double approval by both Houses of Parliament, was published in the Official Journal on 9 March 2022.

The reform aimed to corroborate the constitutional dignity of environmental protection (and to include that of animals) to give it solid anchorage, in addition to the mention of the "protection of the environment, the ecosystem and cultural heritage" already envisaged by Article 117, paragraph 2 of the Constitution[4].

In the Italian case, the regulatory protection of the environment is not expressly referred to, except in several different and multiple

1. In the German legal system, Article 20 of the *Grundgesetz* stipulates that it is the State, responsible to future generations, that protects the fundamental natural conditions of life [*natürlichen Lebensgrundlagen*] and animals through the exercise of legislative power, within the framework of the constitutional order, and of executive and judicial powers.

2. Specifically, the controlling body found the national climate protection targets and the annual emission volumes permissible until 2030 to be incompatible with fundamental rights. On this subject see A. De Petris, *Protezione del clima e dimensione dei diritti fondamentali: Karlsruhe for Future?*, in *https://ceridap.eu/protezione-del-clima-e-dimensione-intertemporale-dei-diritti-fondamentali-karlsruhe-for-future/?lng=*.

3. The unified text incorporates the content of several proposals presented and combined (C. 15, C. 143, C. 240, C. 2124, C. 2150, C. 2174, C. 2315, C. 2838, C. 2914, C. 3181), which, following a wide-ranging debate, made it possible to overcome certain oppositions and find a unanimous consensus. On the constitutional profiles, see Massimo Rubechi's contribution in this volume.

4. See M. Cecchetti, L. Ronchetti, E. Bruti Liberati, *Tutela dell'ambiente: diritti e politiche*, Editoriale Scientifica, Napoli, 2021; A. Riviezzo, *Diritto costituzionale dell'ambiente e natura umana*, in «Quaderni costituzionali», no. 2, 2021, p. 301 et seq.; L. Salvemini, *Dal cambiamento climatico alla modifica della Costituzione: i passi per la tutela del futuro (non solo nostro)*, in «Federalismi.it», no. 20, 2021; R. Montaldo, *La tutela costituzionale dell'ambiente nella modifica degli artt. 9 e 41 Cost.: una riforma opportuna e necessaria?*, in «Federalismi.it», no. 13, 2022. See also G. Grasso, *L'espansione della categoria dei doveri costituzionali nella riforma costituzionale sull'ambiente*, in «Menabò di Etica ed Economia», no. 169, 2022.

regulatory interventions at primary and secondary levels, unlike many countries, such as Spain, Germany and France, which have long since introduced specific constitutional provisions[5].

The constitutional definition of environmental protection is not set in stone but is something that evolves and is destined to change over time. As you might guess, this topic not only evolves over the years but is also subject to the various sensitivities and influences of other dimensions, particularly those of a non-legal nature.

Today, in the same way that the legal framework has evolved, the needs have also changed, so much so that we speak of "environmental constitutionalism", aimed at understanding the complex relationship between the individual community and territory, in the difficult balancing act between new rights. It is a well-known fact that the world's population has increased dramatically, now reaching 8 billion[6], but in the meantime resources have dwindled. At the same time, climate change and pollution are issues that cannot be overlooked considering the decisive impact they have on social cohesion. The protection of the environment, ecosystems, and biodiversity, besides being closely connected with the issue of health, is an intra- and inter-generational right. In the first case, it is indeed a fundamental right that belongs to the individual, but at the same time, it is also a right that implies an individual responsibility towards the community. In the second case, it is the duty of the current generation and the right of future generations[7].

This is a step forward from what has already been innovated with constitutional (but also ordinary) jurisprudence, which has introduced additional social rights to those expressly provided for thanks to an

5. L. Cuocolo, *Dallo Stato liberale allo "Stato ambientale". La protezione dell'ambiente nel diritto costituzionale comparato*, in «DPCE online», v. 52, no. 2 July 2022.

6. On 15 November 2022, the world population will surpass the threshold of 8 billion people.

7. On the topic of future generations, albeit read from an economic perspective, see M. Luciani, *Generazioni future, distribuzione temporale della spesa pubblica e vincoli costituzionali*, in «Diritto e Società», no. 2, 2008, pp. 145-167. See also G. Palombino, *La tutela delle generazioni future nel dialogo tra legislatore e Corte costituzionale*, in «Federalismi.it», no. 24, 2020. With particular reference to the Italian constitutional reform in intergenerational terms see the contributions of L. Bartolucci, *Il più recente cammino delle generazioni future nel diritto costituzionale*, in «Osservatorio costituzionale AIC», no. 4, 2021, p. 215 and G. Sobrino, *Le generazioni future "entrano" in Costituzione*, in «Quaderni Costituzionali», no. 1, 2022.

extensive interpretation of the Constitutional text, including the right to a healthy environment, inferred from the protection of the landscape[8]. In the Italian case, despite the foresight of the Constituent Fathers, the right to the environment has not so far been expressly mentioned in the Constitution. This is because, at the time, no particular attention was paid to the issue, both in consideration of the type of economy, predominantly agricultural, on which Italy was based and because of the scant attention paid to the phenomena of pollution, climate change and the effects they have on the planet and human beings.

Today, the national and international context has changed, resulting in the inclusion of the environment among the inviolable rights of the human being, due to its multidimensional nature. In this way, this right can take various forms: from the protection of the landscape and soil to the right to live in a healthy environment.

It is worth remembering that the Italian Constitution rests on certain principles, including that of pluralism (political, territorial, linguistic and religious). In this way, we go beyond the individualist conception typical of conventional liberalism, but the individual must be considered at the center of a relationship with the various social formations with which they interface. It is for this reason that the right to the environment, to be understood as an inviolable human right, must be given adequate consideration: both as a duty of social and economic solidarity in favour of future generations, to preserve the conditions necessary for survival, and as a fundamental right, as it can affect the full development of everyone's personality.

The second topical issue, with specific regard to food security, relates to the Russian-Ukrainian conflict. While, on one hand, the war has led to the naval blockade of vessels full of wheat[9], on the other,

8. Ever since ruling no. 641/1987 on the protection of the environment as a primary constitutional value, the Constitutional Court has recognised the environment as "a legal asset in that it is recognised and protected by law [and] is protected as an element that determines the quality of life. Its protection does not pursue abstract naturalistic or aesthetic purposes but expresses the need for a natural habitat in which man lives and acts and that is necessary for the community and citizens, according to widely accepted values; it is imposed first and foremost by constitutional precepts (Articles 9 and 32 of the Constitution), thereby making it a primary and absolute value".

9. It is well known that Ukraine is one of the largest producers and exporters of wheat, as it produces 15% of the world's total. For comments on the Russian-Ukrainian issue, see

combined with the economic effects of the pandemic, it is generating a generalised wave of inflation and stagflation[10], which will manifest its destabilising effects in the months to come.

Indeed, there is a directly proportional link between the environment and food security: the more the environment is damaged, the more food security is adversely affected.

The process of environmental alteration and destruction has its roots in the 20th century, during which it progressively intensified to the point of exacerbation in recent years. The increase in world population and the associated migration processes, along with climate change due to pollution, have a negative impact on the environment and "raw" materials. The depletion of natural resources due to drought (and the ensuing water crisis) and high-impact weather phenomena (e.g. water bombs) affect agricultural production, also leading to higher food prices. The ploys that some countries resort to only make the situation worse because they have led to a latent war on the increasingly uncontrolled exploitation of the planet and the hoarding of 'new' land (the so-called land grabbing phenomenon). Environment and agriculture are not to be seen as mutually antagonistic elements but as directly related and mutually reinforcing. And it is in this sense that a conservative function of the territory and land dedicated to agriculture, which for centuries has been exploited for productive purposes but which today should be oriented towards keeping it in good condition so that it is not only suitable for grazing and farming, takes on meaning and significance.

The unbreakable link between the environment and agriculture/food security is recognisable in the effects affecting both and determines a vicious circle from which it is impossible to escape on one hand, a

the very recent contributions by S. Bonfiglio, *Il diritto del popolo ucraino alla legittima difesa*, in «Democrazia e Sicurezza», year XII, no. 1, 2022; M. Dogliani, *Amica Ucraina, sed magis amica veritas* and G. De Vergottini, *La guerra in Ucraina e il costituzionalismo democratico*, both in «Costituzionalismo.it», file 1/2022. For a reconstruction of the scenarios and geopolitical aspects of the Russian-Ukrainian conflict see P. Sellari, *conflitto russo ucraino: una visione geopolitica*, in «Federalismi.it», editorial dared 29 June 2022.

10. If by the former we mean the process that leads to far-reaching price increases, which result in a lower purchasing power of the currency because its value is reduced (in other words, with one euro you can buy fewer goods and services today than in the past), by the latter we mean a situation where both a general increase in prices (inflation) and a lack of growth of the economy in real terms (economic stagnation) are simultaneously present in the same market.

contaminated environment jeopardises farmland and is harmful to health, on the other – of equal importance – agricultural exploitation damages the environment. In this sense, reasonable and rational use of both would be necessary to avoid and/or reduce negative externalities, maintain a high level of quality and preserve and conserve the ecosystem. However, this is not only from the perspective of the short term for a sufficient and adequate food supply at a given point in time, but also one that is compatible in the long term and thereby considers future generations. The reasoning here naturally concerns the importance of food security, to which the second paragraph is dedicated, and then analyses the most recent constitutional reforms to defend this right, which is to be understood as a necessary condition for the protection of human health. Some summary considerations will then be made about the Latin American model, where nature has its legal subjectivity, to try to understand whether or not the same applies to European societies.

2. Food safety

The Universal Declaration of Human Rights of 1948 expressly 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"[11]. From this, it is possible to infer how the right to food that can be defined as adequate has gradually become established. In this perspective, it is possible to recall what is enshrined by the *Food and Agriculture Organisation of the United Nations*, the specialised agency of the United Nations, which orients its mission towards achieving and improving nutritional standards on a global scale.

However, it would be appropriate to make a distinction at the outset about geography. In "Western" countries, food was initially

11. Cf. art. 25.1, UN, The Universal Declaration of Human Rights *www.un.org/en/universal-declaration-human-rights/*. Two decades on, the right to food was codified in the *International Convention on Economic, Social and Cultural Rights* of 1966, which states that everyone has the right "to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions", along with "the fundamental right of everyone to be free from hunger". To this end, see article 11 paragraphs 1 and 2. On internationalist profiles, see Edoardo A. Rossi's contribution in this volume.

considered as a commodity to be traded, therefore "marketable" and, for this reason, closely linked to issues of economic initiative and the circulation of goods, when in fact it should be considered first and foremost as a basic and fundamental commodity that cannot be ignored.

Moreover, in the past, considerable attention was paid to other fundamental rights such as the right to life, health, work and dignity which, although pre-existing, are nevertheless expressly mentioned in constitutional texts. In the writer's opinion, however, in addition to the right to food, the right to food security can also be included among those fundamental rights worthy of protection as it is closely related to them[12]. In fact, food safety should be understood as the right to a proper diet, which is functional and necessary for a dignified human existence. A fundamental right is a right that preserves the "basic needs of every human being without the recognition – and effective protection – of which there could be no free and dignified existence"[13]. It is therefore possible to infer that these are primary needs that are considered essential and felt keenly by the social body, the fulfilment of which not only guarantees the individual a dignified life but also contributes to the realisation of the person as a human being. At this point, one must ask oneself what the term "food security" means Given that the issue of security has come up again and again in many contexts[14], food security

12. According to some renowned authors, it is possible to speak of a food constitution, to be understood as "a set of principles that give legal form to the founding and fundamental value of food, recognising and guaranteeing in particular the right to food as a human right". To this end see the considerations of A. Morrone, *Lineamenti di una Costituzione alimentare*, in A. Morrone, M. Mocchegiani (a cura di), *La regolazione della sicurezza alimentare tra diritto, tecnica e mercato: problemi e prospettive*, Bup, Bologna, 2022.

13. A. Ruggeri, *Cosa sono i diritti fondamentali e da chi e come se ne può avere il riconoscimento e tutela,* in «Consulta On Line», 30 June 2016.

14. Today, security can be identified not only as a value, but also as an asset related to others: life, dignity and physical safety, which can be endangered by the wrong use of media, tools and technologies. This is why security, which does not have an unambiguous meaning, can be declined from multiple aspects and in different contexts: if at the beginning of the 2000s it was mainly traced back to the issue of internationalist terrorism, today one can speak of medical security, environmental security, digital security, economic security, etc. For a more in-depth look at the theme of security see G. De Vergottini, Perché iniziare l'attività di una nuova rivista giuridica si è scelto il tema libertà e sicurezza and G. Cerrina Feroni, E.G. Morbidelli, *La sicurezza un valore superprimario*, both in «Percorsi costituzionali», no. 1, 2008, p. 9 et seq. See the recent volumes of L. Durst, *Introduzione al ruolo della "sicurezza" nel sistema dei diritti*

is a right and a value that guarantees a supply that avoids inequalities and ensures both the health and well-being of individuals and the protection of the environment.

Therefore, given the right of everyone to have access to food, the next step is that said access must be based on the adequacy and availability of food.

It is widely agreed that the issue of food safety has arisen in connection with various episodes such as bird flu, bovine spongiform encephalopathy (mad cow disease) or the spread of GMOs, which have led to the adoption of shared rules at the supranational level[15].

Undoubtedly, even today, money is still one of the most important factors affecting food security. The difficulty in completing crop cultivation is clear for all to see. Plantations of various types are strained by increasingly unfavourable climatic conditions, and this leads not only to difficulty in finding good quality food but also finding it at reasonable prices. Unfortunately, this is increasingly rare because, naturally, the cost of a product is affected by several factors such as labour, the availability of arable land, the equipment used to cultivate crops, water shortages, the spread of disease and epidemics, and increasingly catastrophic weather events. As a result, the product that arrives on the table has a certain cost which, if families cannot afford it, forces people to give up certain products and prefer "cheap" food, leading to situations of malnutrition or under-nutrition. In this perspective, it is possible to invoke what some authors have called the food divide, in other words, "an unequal condition of availability and access to adequate food, which affects millions of people, and which no longer runs along the North-South axis of the world but is now widespread on a global scale"[16].

In this sense, it would be a good idea to clarify from the outset what is meant by food security. The definition was offered at the 1996 World

costituzionali, Aracne, Canterano, 2019, G. Pistorio, *La sicurezza giuridica. Profili attuali di un problema antico*, Editoriale Scientifica, Napoli, 2021.

15. Starting with the Green Paper on the 'General Principles of Food Law in the European Union' in 1997 and the White Paper on Food Safety in 2000, through to the adoption of Regulation 178/2002, which standardised the rules of the food market in a preventive and precautionary function with respect to the spread of disease, epidemics and other issues concerning food safety. Environmental protection as well as food security are crucial points of European legislation.

16. A. Morrone, *Lineamenti di una Costituzione alimentare*, cit., p. 8.

Food Summit Plan of Action, stating that this term is to be understood as a situation in which "all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and preferences for a healthy and active life"[17]. It can be inferred from this that food security is affected by several factors such as the availability and accessibility of food, the usability of food and timing, for example.

Consequently, food security has long been ambivalently interpreted: either as food safety or food security. The first term refers to a factor based on a logic that aims to satisfy the consumer with respect to the quality of food and, consequently, to their health, because this could increase mechanisms of exclusion and social inequality. The second (food security) refers instead to the availability of food supplies, which must be sufficient, safe and nutritious. It should also be added that the right to food should be understood as a right that considers the preferences of each individual and, therefore, conforms to the person's cultural traditions and religious[18], ideological and ethical convictions.

It seems clear, therefore, how, from this point of view, in addition to the direct involvement of a super-primary and fundamental asset such as health[19], other constitutionally guaranteed values such as human

17. FAO, Rome Declaration on World Food Security and World Food Summit Plan of Action, Document WFS 96/3, FAO, Rome, 1996.

18. On the religious aspect, see Alberto Fabbri's contribution in this volume.

19. In the Italian legal system, the right to health is universally recognised as a "supreme" value of the legal system and as a "primary and fundamental" right (Constitutional Court, ruling no. 445 of 1990) of the individual and an interest of the community, both as a constitutional duty falling on the bodies of the State, which are responsible for its complete enforcement. Health is the subject of a "multi-dimensional" set of rights and interests, which are to be attributed to the person considered as a whole (physical, psychic, but also social sphere, etc.). In this way, the relationship between the two assets, health and physical integrity, is to be constructed in terms of the relationship between "genus" and "species", in which the priority of health means that any aspect of physical integrity enjoys the characteristics of the former. This principle has generated a lengthy series of legal claims against certain public conduct: demands for abstention, subjective situations of advantage, situations of disadvantage aimed at other members of society. See. A. Simoncini, E. Longo, *Art. 32*, in R. Bifulco, A. Celotto, M. Olivetti (a cura di), *Commentario alla Costituzione*, Utet, Torino, 2006, p. 650 et seq. It is necessary to point out that the new protection at the constitutional level has imposed the transcending of a patrimonialist view of the person and, above all, the adaptation of this concept to rapid social change. So, towards the end of the 1960s, the legislator embarked on a long journey to recognise protection for aspects of the person that had previously been

dignity, the rights to physical integrity and self-determination of the individual, as well as, as already mentioned, environmental law and intergenerational rights, are involved. A distorted use of production factors could lead to serious harm, and it is precisely in this logic that precautionary measures and limits are necessary to act as a deterrent. Moreover, the possible use of experimental and manipulative practices can cause serious harm to human integrity and dignity, leading to the manifestation of what is called "biological danger". The release of genetically modified organisms into the environment or the introduction of foodstuffs (consisting of, containing or obtained from GMOs) onto the market must necessarily go through a prior control phase[20]. This gave rise to the need to introduce legal regulation to defend the fundamental assets of the individual, and their physical integrity and dignity, from possible external aggression, without, however, restricting the freedom of research, but trying to direct it in favour of the person's well-being. This is why food security is also to be understood as the care of foodstuffs and products "against inappropriate artificially introduced alterations, precisely in order to ensure the preservation of biological diversity of undisputed intergenerational value"[21] that can put a strain on personal assets.

3. Constitutional transformations towards a green constitution?

If we were to adopt the well-known taxonomic criterion of cycles of constitutions and generations of rights[22], when it comes to food security, it should be counted among the so-called "last wave". In any case,

unregulated, a journey that began with the law on organ donation (Law no. 91/1999) and culminated in the rules on advance treatment provisions.

20. The German legislator, with Law no. 2 of 20 June 1990, established a legal framework for the research, development, exploitation and promotion of the scientific and technical possibilities of genetic engineering in order to protect human, animal and plant life and health.

21. L. Chieffi, *Scelte alimentari e diritti della persona: tra autodeterminazione del consumatore e sicurezza sulla qualità del cibo*, in F. Del Pizzo, P. Giustiniani, *Bioetica, ambiente e alimentazione: per una nuova discussione*, Mimesis, Milano, 2014.

22. Recently, see also the contribution of E.A. Imparato, *I diritti della Natura e la visione biocentrica tra l'Ecuador e la Bolivia*, in «Dpce on line», no. 4, 2019.

irrespective of their belonging to the various cycles of constitutionalism, the fundamental texts have been enriched with extensive catalogues of rights, which can also be found in recently approved constitutions, as there are specific sections devoted to fundamental rights[23].

However, when delving into the content aspect with specific regard to rights, in this writer's opinion it is necessary to take into due consideration a difference of no small importance: most Constitutions place man at the centre of the system and this, which obviously depends on the dominant culture, justifies a different interpretation of the rights themselves. In this case, most Constitutions place the person at the forefront of their values, guaranteeing the individual the pursuit of a condition of well-being and, at the same time, providing adequate instruments for its effective realisation and rejecting any utilitarian conception of it[24]. In this sense, the anthropocentric approach of some constitutional texts, especially those of European origin, makes sense and is meaningful. This vision contrasts with other conceptions that consider man as a "part" of a "whole", as in the Latin American case, where the right to adequate and safe nutrition is made explicit about what is known as "buen vivir".

In the European panorama, there has been a reverse operation in the field of food security, whereby the recognition of this right first occurred by way of legislation (and case law) and only recently, with specific regard to certain cases, constitutionally.

For some time, governments have focused on the adoption of infra-constitutional measures for the protection and promotion of foodstuffs, including, for example, those aimed at preventing fraud about the origin of products to assure consumers of their authenticity[25]. Although there is a supranational and international "umbrella" that dictates guidelines

23. In this case, remember the ever-present clause in Article 16 of the Declaration of Human Rights of the Citizen of 1789, which clearly states that without the two pivotal elements, namely the separation of powers and the guarantee of rights, it is not possible to speak of the Constitution.

24. The utilitarian conception denies the human being the rank of primary value. It even goes so far as to degrade them to the position of mere passive objects of the actions of others, to a "socio-economic entity", functional to the pursuit of a public utility.

25. With specific regard to the issues of trademarks and designations of origin and indications of provenance for food products, see A. Borroni, *La protezione delle tipicità agroalimentari. Uno studio di diritto comparato*, Esi, Napoli, 2012.

and criteria, it is possible to identify reference models regarding recognition and protection at a constitutional level. Recently, in some jurisdictions, there has been a pressing need to positivise or rather incorporate the right to food and/or the right to food security into constitutional texts, as the extensive clauses or general formulations envisaged were not deemed suitable or sufficiently comprehensive.

Given that it would be possible to distinguish between several models[26], here we would like to focus on recent constitutional amendments that have directly entailed the positivisation of food security.

While not mentioned specifically, it would seem helpful to mention the case of the Portuguese Constitution, which not only includes the protection and development of the cultural heritage of the Portuguese people, the defence of nature and the environment, the preservation of natural resources and the function of ensuring proper land use among the fundamental tasks of the State, but also includes a specific provision to protect the environment, which states that: "*Everyone has the right to a humane, healthy and ecologically balanced living environment and has the duty to defend it*". To this end, within the framework of sustainable development, this task falls to the state, "through its own bodies and with the involvement and participation of the public, with the aim of preventing and controlling pollution and its effects and harmful forms of erosion; [...] to promote the rational exploitation of natural resources, safeguarding their capacity for renewal and ecological stability, while respecting the principle of solidarity between generations; [...] to promote the incorporation of environmental goals into the various sectoral policies; to promote environmental education and respect for the values of the environment; […]".

26. While some Constitutions pay significant attention to the right to food or hygiene/health issues, others make a general reference to the protection of the ecosystem. Furthermore, although there are some that do not expressly enshrine a right to food – although they adhere to international acts that make explicit provision for it – this right can be inferred from the more general principles of dignity, human solidarity and the right to health. For a comparative overview see M. Bottiglieri, *Il diritto a un cibo adeguato. Profili comparati di tutela costituzionale e questioni di giustiziabilità*, in P. Macchia (a cura di), *La persona e l'alimentazione: valutazione clinica e diritto alla salute. Profili clinici, giuridici, culturali ed etico-religiosi*, Acts of the Asti Convention, 30 November 2012, Roma, 2014, pp. 217-260.

A reading of the Constitution reveals that no provision has been made for a definition of environment and quality of life, let alone a conceptual distinction between the two notions. Moreover, it can be inferred that the concept of environment is something multi-form and complex, which not only concerns human life, but also numerous other closely related issues.

By contrast, quality of life, a corollary of the right to the environment, can be defined therefore resulting from the interaction of multiple factors and as a situation of psycho-physical well-being that concerns both the individual and the community.

With the constitutional revision of 1997, the second paragraph of Article 66 was substantially introduced, with clear reference to sustainable development[27], to the rational exploitation of natural resources aimed at preserving their capacity for renewal, and to ecological stability, incorporating that which had already been enshrined in several international acts. It is precisely the theme of sustainable development, which ties in well with the theme of food security, that can be traced back to the expressly mentioned theme of intergenerational solidarity. The stock of natural resources must therefore be managed and cultivated responsibly over the long term and by a fair distribution of resources, with due consideration for future generations. The exploitation of the land, air and water by intensive crop cultivation entails the assumption of risks that are not only potential but also have effects that are deferred over time.

Moreover, it is possible to identify a specific connection with the provisions of Article 52 on the right of popular action, which allows not only preventive promotion, but also repressive promotion of all those violations of public health, consumer rights, quality of life and environmental protection. It is precisely this rule that represents a guarantee, a judicial protection in defence of constitutionally protected assets.

Within the European framework, it is the Hungarian Constitution of 2011[28] that is particularly innovative and progressive. Although

27. The term sustainable development was defined in the declaration of the 1972 conference on the human environment in Stockholm. This term is to be understood as the use of the earth's renewable resources in a way that does not jeopardise their depletion and allows all the benefits of their use to be shared with the whole of mankind. Cf. art. 5.

28. The new "Fundamental Law of Hungary" (Magyarország Alaptörvénye) was approved by the Budapest Parliament on 19 April 2011 and came into force on 1 January 2012. It succeeded the Constitution of 1949, which was strongly inspired by the Soviet

recent events suggest a regression of the democratic system[29], in the case of food security one could speak, at least theoretically, of a virtuous and avant-garde model. Indeed, besides "everyone's right to a healthy environment", which is explicitly mentioned in Article XXI, the fundamental text contains a specific promotion of the right to both physical and mental health, which must be based on "agriculture free from genetically modified organisms, ensuring access to healthy foodstuffs and drinking water" (Article XX, no. 2 C.U.)[30].

The appreciable intent to include a provision of this kind in the new Constitutional text[31] failed because, upon close examination, the provision presents problems of both substance and method. Regarding the first profile, the strongly nationalist and Eurosceptic matrix must be noted, as the provision formulated in this way seems to want to ignore European legislation (as well as case law) on the subject. About the methodological profile, however, does not contain formulations that directly implement the principle, although the right to health must be based on the very specific objective of GMO-free food security, based primarily on healthy food. Likely, the decision to openly oppose GMOs, so much to include a reference in the Fundamental Law, becomes significant in relation to the events of 2011, when the scandal that led to the destruction of whole corn crops emerged in Hungary[32].

Constitution of 1939, which was adapted several times in the 1990s. See A. Mezei, *The role of Constitutional building processes in democratization*, IDEA, Hungary, Stockholm, 2005 and A. Vincze, *The New Hungarian Constitution: Redrafting, Rebranding or Revolution?,* in «ICL Journal», vol. 6, I, 2012, pp. 88-109.

29. On recent Hungarian regressions, see F. Vecchio, *Teorie costituzionali alla prova. La nuova costituzione ungherese come metafora della crisi del costituzionalismo europeo*, Cedam, Padova, 2013 and A. Di Gregorio, J. Sawicki, *Come ripristinare il costituzionalismo in una democrazia illiberale. Qualche riflessione sul caso ungherese*, in «Forum di Quaderni Costituzionali», 1, 2022.

30. For the sake of convenience, the text of Article XX is reproduced here: "(1) Everyone has the right to physical and mental health. (2) Hungary promotes the right pursuant to paragraph (1) with agriculture free from genetically modified organisms, ensuring access to healthy food and drinking water, organising protection at work and health care, supporting sporting activity and regular exercise, as well as ensuring environmental protection".

31. G.F. Ferrari (a cura di), *La nuova legge fondamentale ungherese*, in «Quaderni di Diritto pubblico comparato», no. 3, Giappichelli, Torino, 2012.

32. After the GMO scandal of 2011, a special work team was set up. On the GMO issue see A. Stazi, *organismi geneticamente modificati e sviluppo sostenibile: circolazione*

More generally speaking, as renowned scholars have pointed out, the new Hungarian Constitution brings together several provisions of an axiological nature and, at the same time, contains provisions that "take on exhortative value, a call to civic commitment and intergenerational bonding, between past and future, between chiaroscuros and hopes"[33].

Formulations of this kind relate to the more general theme of human dignity – with which the catalogue of rights opens (Art. II) – which concern not only the individual as *uti singoli*, but also in the social dimension. It is precisely in this sense that the theme of the relationship between generations, which must be based on a bond of mutual respect, takes on value, even though it is not made explicit in the provisions mentioned, but can be deduced from the Preamble of the Fundamental Law[34]. Indeed, Article P states that natural resources, particularly agricultural land, forests and water reserves, biodiversity and indigenous plants and animals, as well as cultural values, "form the common heritage of the nation, the protection, sustenance and safekeeping of which for future generations is the obligation of the state and of each individual". This means that all tangible and intangible heritage represents a common value of the nation, which must be protected both by the state and by individual members of the public, also with a view to future generations.

In the comparative framework, another important milestone has been reached in Switzerland. In the Swiss legal system, the protection of the environment has long been the subject of consideration, even as

dei modelli, accesso alle risorse e tracciabilità, in L. Scaffardi, V.Z. Zencovich (a cura di), *Cibo e diritto. Una prospettiva comparata*, Rome3 E press, Roma, 2020, pp. 555-585. The European Union has introduced very strict regulations on the labelling of GMO products. In this sense, reference can be made to Regulation (EC) no. 1829/2003 of the European Parliament and of the Council on genetically modified food and feed and Regulation (EC) no. 1830/2003 of the European Parliament and of the Council concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products made from genetically modified organisms and amending Directive 2001/18/EC.

33. G.F. Ferrari, *Diritti e libertà*, cit., p. 51.

34. It should be observed that the so-called national "Avowal" expressly states a principle of duty towards the descendants. "[w]e bear responsibility for our descendants; therefore we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources".

far back as the Constitution of 1874, which underwent multiple revisions over the years, before being replaced in its entirety in 2000[35].

The "new" text has been revised several times, also recently and often by popular initiative. To this end, it should be mentioned that, in February 2014, a popular federal initiative "For healthy, environmentally friendly and fairly produced foodstuffs (Fair Food Initiative)" was deposited, aimed at adding an article on food security. Even though Article 104 was already in place, assigning the Confederation the task of providing for agricultural matters "using ecologically sustainable and market-oriented production [...]" to "guarantee the supply of the population and preserve the natural livelihoods and the rural landscape", the process of amending the Constitutional text was initiated. Once the necessary signatures in support of the initiative had been collected[36], the Swiss Federal Chancellery ruled on its admissibility, decreeing that it formally met the legal requirements.

The objective of the citizens who promoted the initiative was to strengthen the supply of varied and sustainably produced indigenous

35. The original text of Article 24 has not only been retained in the current Constitution, but also expanded with a series of additional articles (ten in all!) relating to the most diverse issues (afforestation, water resources, electricity, etc.). The most important of these was Article 24 *septies*, introduced in 1971, concerning the protection of man and his natural environment from harmful or disturbing agents, with which the federal legislature was given the power to enact legislation on this subject. It was not until a decade later, in 1983 to be precise, that the Federal Assembly passed the Environmental Protection Act.

36. At the same time as the initiative on food safety, two other initiatives were presented. The first, supported by the Swiss Ecologist Party and entitled "For healthy, environmentally friendly and fairly produced foodstuffs (Fair Food Initiative)", would have given the Confederation the task of strengthening the supply of good quality and safe foodstuffs, produced in an environmentally friendly and resource-friendly manner, with respect for animals and fair working conditions. The second, promoted by the farmers' union Uniterre and entitled "For Food Sovereignty. Agriculture concerns us all" contained a list of measures, including increasing the number of people working in agriculture and banning the use of genetically modified organisms in agriculture. Both were voted on in 2018: while the former was rejected by the people with 1,227,326 votes against (with 774,821 in favour) and by the cantons with 16 6/2 (with 4 votes in favour); the latter was rejected by the people with 1,358,894 votes against (with 62,830 in favour) and by the cantons with the same result (16 6/2 no and 4 in favour). See *www.fedlex.admin.ch/eli/fga/2019/279/it*. On the subject of food sovereignty, to be understood as governance and control over the processes of food production, distribution and sale, see A. Rinella, H. Okoronko, *Sovranità alimentare e diritto al cibo*, in «Dpce», no. 1, 2015, p. 89-130.

foodstuffs using a new Article (104a) prescribing measures to reduce the loss of cultivated land and the implementation of a quality strategy adapted to local conditions and efficient use of resources. The draft, with its second paragraph, also aimed to make the federal government responsible for ensuring that the administrative burden in agriculture was kept low and that adequate investment security and legal certainty were guaranteed.

Although the Federal Council agreed with the substance of the initiative, to the extent that food security is an important issue at the global and national level, it spoke out against the method, considering that the provisions of the Basic Text were sufficient.

In its report, the Federal Council stressed that food safety was already very high both in terms of quantity, with enough foodstuffs, and quality, enabling Switzerland to meet future challenges also in the long term. In addition, the Council also considered the initiative to be lacking in balance, as it was aimed exclusively at the protection of domestic production, without considering the international agricultural markets as well as the relationship of consumers with foodstuffs. For this reason, the Council initially considered submitting a counter-project to incorporate Article 102a into the Constitution, to emphasise the importance of food security and to include a formulation that would take into account various aspects, such as securing the basis of agricultural production (particularly arable land), the production of foodstuffs suited to local conditions and the rational use of resources, a competitive agriculture and food chain, access to international agricultural markets and resource-friendly food consumption. However, as strong support was lacking at the base, the Federal Council renounced the presentation of its own draft and suggested to the Federal Chambers that the initiative be submitted to a vote by the people and the Cantons, urging them to vote against it.

Instead, the National Council declared itself in favour and adopted a counterproposal. On 14 March 2017, the initiative committee therefore informed the Federal Chancellery that it had withdrawn its initiative by a decision taken by the necessary majority of its members.

The popular and cantonal election[37] was held on 24 September 2017 and gained a large majority, reaching 78.8%[38].

It seems clear, therefore, that the idea of introducing a provision to guarantee food safety was widely shared both outside and inside Parliament, even though the original text was considered not only incomplete, but also excessively oriented towards indigenous production. For this reason, the decision was made to submit a more comprehensive project, considering not only the production side, but also the business side.

Following the vote, the Federal Constitution was supplemented with Article 104a. The particularly articulate text is based on five essential points and its main objective is to guarantee the supply of food for the population. To this end, it is the responsibility of the Confederation not only to preserve the basis of agricultural production, in particular arable land, but also to perform further tasks. These include a) the production of foodstuffs suited to local conditions and efficient in terms of the use of resources, fully consistent with sustainable and future-oriented development, b) the provision of a market-oriented agriculture and food supply chain, c) the implementation of cross-border trade relations that contribute to the ecologically sustainable development of agriculture and the food supply chain, i.e. good relations with other countries for increased import-export d) as well as resource-friendly use of foodstuffs.

4. Some summaries notes

As we have tried to highlight with specific regard to the cases dealt with, whether they are reversals taken from more general rights or ad hoc revisions aimed at introducing specific references, contemporary constitutionalism seems to display a certain degree of attention to new issues, including that of food security. Right from the outset, this issue, which intersects various problems, has taken on an international and supranational dimension, given the aspects directly involved and the effects it has on health and the environment. This is because, as already

37. In addition to the popular vote, a cantonal vote was also necessary, as a constitutional amendment was involved.

38. While the popular ballot resulted in 1,943,180 votes in favour (with 524,919 votes against), all of the cantons voted in favour. The results were published *www.fedlex.admin.ch/eli/fga/2017/2279/it*.

mentioned, there is a close link between the environment and the food sector, so much so that we can speak, especially in the European context, of agri-environmental-food law. As mentioned earlier, the perimeter of food security does not end with rules that ensure, among other things, sufficient and proper food consumption and hygiene, but projects their importance with regard to sustainable development, pollution and climate change.

Given that, in the comparative framework, it is not uncommon for Constitutions to contain a direct reference to food, nutrition or food security, what can be deduced is that this issue can become part of the system of values because it directly affects the *ius existentiae*[39].

It should be noted, however, that such a view is strongly anthropocentric, conflicting with other models that place nature at the centre of the system. From this perspective, the models of new Latin American constitutionalism are hard to "imitate". While it is true that, in the eyes of the old continent, the cases of Bolivia and Ecuador are particularly advanced in terms of environmental rights, they constitute a case, the result of a particular evolutionary process. In the Andean countries, there is a particularly strong belief in what is known as "buen vivir", a term that has taken on constitutional importance and cannot simply be translated as 'living well' or used as a synonym for well-being. But what buen vivir, to which the rights of the individual and the community are closely related, means is that human existence is in harmony with nature and the community[40]. It is precisely this view, in favouring a bio-centric conception, that recognises nature as a living being and therefore a bearer of rights, pre-existing the fundamental texts[41].

In any case, the issue of food security remains of unquestionable importance, regardless of whether or not it is constitutionalised, as it is a right, a value and an interest that can be pursued by individual

39. F. Alicino, *Il diritto al cibo. definizione normativa e giustiziabilità*, in «Rivista AIC», no. 3, 2016. However, if one includes the food issue within a system of values, it is easy to enter the realm of food sovereignty, on which A. Rinella, H. Okoronko, *Sovranità alimentare e diritto al cibo*, cit.

40. See S. Baldin, *La tradizione giuridica contro-egemonica in Ecuador e Bolivia*, in «Boletín Mexicano de Derecho Comparado», XLVIII, no. 143, 2015, pp. 483-530.

41. E.A. Imparato, *I diritti della Natura e la visione biocentrica tra l'Ecuador e la Bolivia*, op. ult. cit. and S. Bagni (a cura di), *Dallo stato del bienstar allo Stato del buen vivir: innovazione e tradizione nel costituzionalismo latino-americano*, Filodiritto, Bologna, 2013.

governments "by public authorities via policies that are deemed appropriate in relation to the characteristics of the country's social, economic and political system"[42]. This is of the utmost importance in the current contingency of climate change, resource depletion, the pandemic and the Russian-Ukrainian war. The war, by preventing the export of Ukrainian wheat and causing energy prices to rise, may lead to an unprecedented food crisis. Faced with these numerous destabilising factors, certain measures are being taken by the European Union and some other countries. In this respect, it is worth briefly mentioning the decisions of the French government concerning the International Food Security Strategy and the Plan de résilience économique et sociale (France 2030). If with the former, France had already launched a strategy in 2019 to implement nutrition and agriculture by strengthening global governance, developing sustainable agricultural and food systems, and assisting vulnerable populations[43]; with the latter, adopted on 16 March 2022, the aim is to guarantee the provision of strategic supplies (energy, agriculture and industry) and strengthen energy and food sovereignty in Europe.

In the meantime, a complex supranational operation is being attempted to transform the way food is produced and consumed in Europe, on one hand to reduce the environmental footprint of food systems, and on the other to guarantee healthy food at affordable prices for future generations. In May 2020, under the umbrella of the Green Deal, the European Union launched the 'Farm to Fork' strategy, which envisages the adoption of several legislative proposals based on different targets, such as: ensuring nutritious food (in sufficient quantities and at affordable prices within the limits of the planet), halving the use of pesticides and fertilisers and sales of antimicrobials, increasing the area of land allocated to organic farming, promoting more sustainable food consumption and healthy diets, reducing food losses and waste, combating food fraud in the supply chain, as well as improving animal welfare. With all these initiatives, what is hoped for is the realisation of a common front and a shared approach by governments to protect comprehensive food security.

42. A. Rinella, H. Okoronko, *Sovranità alimentare e diritto al cibo*, cit., p. 92.

43. As stated in the document, the goal is to end inequalities and adequately nourish the world's population, by making agriculture not only sustainable, but also efficient in economic, social and environmental terms, to ensure food security, the health of people and the development of countries.

VI. The Importance of Food Security and Right to Food in International Trade. Reflections on the Renegotiation of the WTO Agreement on Agriculture

Edoardo Alberto Rossi

Summary: 1. Introduction. – 2. The right to food in international law. – 3. The complicated balance between right to food and liberalisation of trade in the renegotiation of the WTO Agreement on Agriculture. – 4. Conclusions.

1. Introduction

In the international scenario, food security is continuing to take on considerable importance, especially in the area of international trade in agri-food products, severely affected by recent events, such as the pandemic, the price crisis and armed conflicts, which have jeopardised the possibility of guaranteeing access to sufficient food resources at a global level.

It is, therefore, the "quantitative" aspect of food security, understood in its close connection with the fundamental right to food, that clashes with the commercial demands associated with the liberalisation of trade[1].

This issue is coming to the fore in the complicated negotiations for the reform of the 1994 Agreement on Agriculture (AoA) of the World

1. V.A. Lupone, *Balancing Basic Human Needs and Free Trade in the WTO*, in A. Lupone, C. Ricci, A. Santini (a cura di), *The Right to Safe Food Towards a Global Governance*, Giappichelli, Torino, 2013, p. 103 et seq.

Trade Organisation, which have been going on for a long time and with little result[2].

The WTO member states have taken very different stances, influenced by the conditions of their national economies, dividing themselves between those that prioritise the need to ensure food security and those that tend to prioritise the needs of international trade[3].

2. Back in 2009 the UN Special Rapporteur, Olivier De Schutter, in his annual report (on which see G. Adinolfi, *Alimentazione e commercio internazionale nel rapporto del 2009 del relatore speciale delle Nazioni Unite sul diritto al cibo*, in «Dir. um. dir. int.», 2010, p. 126) had highlighted some possible consequences of the application of the trade regime governed by the WTO on the food conditions of the world population (see *Report of the Special Rapporteur on the right to food*, Mr. Olivier De Schutter, «*The role of development cooperation and food aid in realizing the right to adequate food: moving from charity to obligation*», A/HRC/10/5, 11 2009, in *https://digitallibrary.un.org/record/648605#record-files-collapse-header*).

3. Within this framework, also the European Union (which has long included in its "food safety and quality" policies many institutional initiatives, such as product traceability, quality certifications, transparency, restrictions on the use of pesticides and monitoring against food fraud) has taken a leading position in the negotiations on the reform of the Agreement on Agriculture, also considering the importance of the many trade agreements it has signed, containing provisions regarding food safety cooperation (see A. Micara, *Norme TRIPs-Plus e sicurezza alimentare negli accordi commerciali dell'Unione europea*, in «SidiBlog», 2016; G.M. Ruotolo, *Gli accordi commerciali di ultima generazione dell'Unione europea e i loro rapporti col sistema multilaterale degli scambi*, in «Studi int. eur.», 2016, p. 329 et seq.; G. Gruni, *EU, World Trade Law and the Right to Food: Rethinking Free Trade Agreements with Developing Countries*, Hart, Oxford, 2018, p. 71 et seq.). After all, the European Union has extensive competence in the area of agrifood policies, which it has exercised broadly over the years. In general, on the Union's agrifood policies see C. Ricci (a cura di), *La tutela multilivello del diritto alla sicurezza e qualità degli alimenti*, Giuffrè, Milano, 2012, p. 227 et seq.; C. Bottari (a cura di), *La sicurezza alimentare. Profili normativi e giurisprudenziali tra diritto interno, internazionale ed europeo*, Maggioli, Sant'Arcangelo di Romagna, 2015; A. Alemanno, S. Gabbi (a cura di), *Foundations of EU Food Law and Policy: Ten Years of the European Food Safety Authority, Routledge*, Londra, 2016; L. Costato, F. Albisinni, *European and Global Food Law*, Wolters Kluwer, Milano, 2016; G. Steier, K.K. Patel (eds.), *International Food Law and Policy*, Springer, Cham, 2016, p. 409 et seq.; B. Van Der Meulen, B. Wernaart (eds.), *EU Food Law Handbook*, WAP, Wageningen, 2020; M.C. Oristano, *L'Unione europea e la sicurezza alimentare: il contributo della nuova politica agricola comune e delle recenti strategie ambientali elaborate dalla Commissione*, in «Studi int. eur.», 2022, p. 383. Also worth mentioning is the approval of the recent Regulation (EU) 2019/452 of 19 March 2019, which establishes a legal framework for the control of direct foreign investments in the EU (see F. Cazzini, L'incidenza del Covid-19 sul settore *agroalimentare nel quadro dell'OMC e dei controlli sugli investimenti esteri*

It is precisely this last sector that seems to be the most central for the purposes of the topic under discussion, in that it is capable of recognising the WTO as playing a role of primary importance in reconciling respect for the logic of trade with the guarantee of the fundamental right to food.

After a brief overview of the protection of the right to food in international law, aimed at grasping its actual scope about its "quantitative" profiles (par. 2), this contribution will focus on the assessment of its impact on the renegotiation of the most important global agreement on trade in agrifood products, the aforementioned AoA (par. 3). This is to establish whether the interests at stake can be adequately balanced, trying to provide some general indications that are relevant to the course of the complicated AoA renegotiation process (par. 4).

2. The right to food in international law

The difficulty in accessing food is still a serious problem, of particular concern in certain areas of the planet and likely to extend and become even more severe in the future[4].

Many international treaties contain provisions aimed at addressing situations of a lack of food or difficulty in accessing it[5],

diretti, in P. Acconci, E. Baroncini (a cura di), *Gli effetti dell'emergenza Covid-19 su commercio, investimenti e occupazione. Una prospettiva italiana*, Bup, Bologna, 2020, p. 146), as well as the imminent approval of a new general regulation on the safety of products, which will replace Directive 2001/95/EC (see Council press release of 29 November 2022, *Council and European Parliament agree on new product safety rules*, in *www.consilium.europa.eu/en/press/press-releases/2022/11/29/council-and-european-parliament-agree-on-new-product-safety-rules*).

4. To this end, refer to the recent report by the FAO, *The State of Food Security and Nutrition in the World 2022. Repurposing food and agricultural policies to make healthy diets more affordable*, Rome, 2022, in *www.fao.org/3/cc0639en/cc0639en.pdf*, p. 1 et seq., which reports how those in the world affected by malnutrition rose to 828 million in 2021, as well as the *Global Report on Food Crises* 2022 of the *World Food Programme*, p. 6 et seq., in *https://docs.wfp.org/api/documents/WFP-0000138913/download/?_ga=2.213940823.1777105945.1670256039-1287649455.1669715197.*

5. Far from considering the right to safe and quality food in terms of hygiene, health

based on the recognition of the right to food as a fundamental human right[6].

At universal level, the 1966 United Nations International Covenant on Economic, Social and Cultural Rights[7] (hereinafter ICESCR) recognises, in Article 11 par. 1, the right "to an adequate standard of

and nutrition (food safety and quality) to be of lesser importance, here we will merely analyse the aspects related to food security, which, as stated in the Rome Declaration on *Food Security* and, above all, in the *World Food Summit Plan of Action* by the FAO (Rome, 13 1996: see *www.fao.org/3/w3613e/w3613e00.htm*), «*exists 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*". On this point, see A. Orford, *Food Security, Free Trade, and the Battle for the State*, in «Jour. Int. Law Int. Rel.», 2015, p. 2 et seq.

6. See A. Ligustro, *Diritto al cibo e sovranità alimentare nella prospettiva dell'organizzazione mondiale del Commercio*, in «Dir. pubbl. comp. eur.», 2019, p. 394 et seq., reminding how the universalisation of the guarantee of the right to food as a fundamental human right is countered at the level of state policies by the claim of "food sovereignty", which can be achieved through the regulation of agrifood policies at international level, so as to ensure fair distribution and accessibility of food resources. On this subject, see also A. Azzariti, *The Right to Food Sovereignty in International Law*, in «Ordine internazionale e diritti umani», 2021, p. 990 et seq.

7. International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations with Resolution no. 2200A (XXI) of 16 December 1966, which came into force on 3 January 1976. Currently, 171 States are party to the Covenant, including Italy, which ratified it on 15 September 1978 (see *https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en*). On art. 11 of the Pact see G. Kent, *Freedom from Want: The Human Right to Adequate Food*, GUP, Washington, 2005, p. 45 et seq. C. Courtis, *The Right to Food as a Justiciable Right: Challenges and Strategies*, in «Max Planck Yearbook of United Nations Law Online», 2007, p. 321 et seq.; S.I. Skogly, *Right to Adequate Food: National Implementation and Extraterritorial obligations*, in «Max Planck Yearbook of United Nations Law Online», 2007, p. 354; S. Söllner, *The "Breakthrough" of the Right to Food: The meaning of General Comment No. 12 and the Voluntary Guidelines for the Interpretation of the Human Right to Food*, in «Max Planck Yearbook of United Nations Law Online», 2007, p. 398; F. Seatzu, *The UN Committee on Economic, Social and Cultural Rights and the Right to Adequate Food*, in «Anuario Español de Derecho Internacional», 2011, p. 572 et seq.; C. Ricci, *Il diritto a un cibo sicuro nel diritto internazionale. Spunti di riflessione*, Aracne, Roma, 2012, p. 21 et seq. C. Morini, *Il diritto al cibo nel diritto internazionale*, in «Rivista di diritto alimentare», 2017, p. 36. On the recent practice of the United Nations General Assembly and the United Nations Human Rights Council on the right to food see C. Di Turi, *Il diritto all'alimentazione nell'ordinamento giuridico internazionale*, Editoriale Scientifica, Napoli, 2021, p. 43 et seq.

living for himself and his family, *including adequate food*" (italics added).

In the second paragraph of the same article, the States committed to recognising the "*fundamental right of everyone to be free from hunger*", adopting the necessary measures to improve methods of production, conservation and equitable distribution of food resources, taking into account the needs of importing and exporting States.

From the wording of these provisions, two elements of particular significance emerge.

First of all, par. 2 qualifies the right to be free from hunger as "fundamental". This expression refers to the right to survival, which is the basic component of the right to food, expressly attributing it "fundamental" nature: States are obliged to take practical measures to ensure that available food resources are fairly distributed in order to guarantee the survival of all[8].

Secondly, par. 1 does not merely recognise the right to food in general terms, but refers to it with the term "adequate food"

8. In General Comment no. 12 "The right to adequate food (art. 11)", E/C.12/1999/5, issued by the Committee on Economic, Social and Cultural Rights (ESCR Committee) on 12 May 1999 (at *https://digitallibrary.un.org/record/1491194*), discussed in more detail below, it was clarified, in point 6, that States have a "core obligation" under article 11 par. 2 of the Covenant to take action against hunger, even in the presence of "natural or other disasters": States are therefore obliged to ensure access to the "minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger". On the genesis of General Comment no. 12 see. F. Seatzu, *The UN Committee on Economic, Social and Cultural Rights*, cit., p. 575 et seq., who also points out how the General Comment clearly distinguishes between "the right to adequate food" and "the right to be free from hunger", although without explicitly clarifying the criteria for determining the content of obligations of States (p. 587). On this point see also S. Söllner, *The "Breakthrough" of the Right to Food*, cit., p. 403, according to which, while not explicitly stating the meaning of "core content", the ESCR Committee's General Comment no. 3 identifies "core obligations" as those obligations aimed at ensuring "at the very least, minimum essential levels" of defence of every right. On the existence of obligations to preserve the minimum essential levels of protection of the right to food, based on the principle of equality and non-discrimination, even in situations of economic-financial crisis see M. Fasciglione, *La tutela del diritto all'alimentazione in situazioni di crisi economico-finanziaria: alcune riflessioni*, in "*Dir. um. dir. int.*", 2014, p. 448 et seq.

without, however, qualifying it as "fundamental". The presence of the adjective "adequate" alongside the right to food, however, denotes the intention to include more articulate and additional content than the fundamental right to food for the purpose of survival, mentioned in paragraph 2[9].

Even within the ICESCR, therefore, a distinction seems to be drawn between food security, understood as food security related to the right to food in terms of quantity, and food safety, which refers to the quality and characteristics of foodstuffs.

Although both these meanings of the right to food are mentioned in art. 11 of the ICESCR, only in relation to the right to be free from hunger is the term "fundamental" used.

Although both the right to be free from hunger (art. 11, par. 2) and the right to adequate food (art. 11, par. 1) are included in the list of economic, social and cultural rights protected by the ICESCR, it can therefore be inferred that there is a ranking of guarantees linked to the right to food[10].

The attribution of the "fundamental" character to a right indicates a desire to elevate it to the status of an absolute right, which is subject neither to the logic of balancing it against other interests that do not possess the same nature, nor to the possibility of exceptions or compression[11].

9. In *General Comment* no. 12, cit., point 7, the ESCR Committee stressed that the notion of "adequate" food, characterised by "*prevailing social, economic, cultural, climatic, ecological and other conditions*", is related to that of "sustainability", which concerns the possibility of access to food also for future generations. According to the ESCR Committee, the right to adequate food also includes the fulfilment of "dietary needs" (which imply dietary regimes suitable for healthy physical and mental development: see point 9), the prevention of contamination and the care of hygienic conditions, as well as the respect of "cultural or consumer acceptability" (see point 11). On the notion of adequate food see also C. Ricci, *Contenuti normativi del diritto a un cibo «adeguato» a livello internazionale*, in C. Ricci (a cura di), *La tutela multilivello del diritto alla sicurezza e qualità degli alimenti*, cit., p. 33 et seq., and Id., *Il diritto a un cibo sicuro nel diritto internazionale*, cit., p. 21 et seq.

10. Cf. S. Söllner, *The "Breakthrough" of the Right to Food*, cit., p. 403, which refers to "*two different levels of core provisions*".

11. See I. Tani, *L'evoluzione del diritto a un'alimentazione adeguata nel diritto internazionale. Riflessioni a margine della sentenza* Lhaka Honhat, in «Ordine internazionale e diritti umani», 2020, p. 965. The consideration of the right to food as

In this way, justified by its link to the fundamental right to health and life[12], and constituting an inalienable prerequisite thereof, the

a fundamental right was already contemplated in article 25 of the Universal Declaration of Human Rights of 1948 (see for all M. Gestri (a cura di), *Dalla Dichiarazione Universale alla Carta di Milano*, Mucchi, Modena, 2015, p. 7 et seq.), which envisages that "[e]ach individual has the right to a standard of living that is sufficient to guarantee their own health and well-being and those of their family, with particular regard to food [...]" (a similar formulation is also found in the Cairo Declaration on Human Rights in Islam of 1990, which in Art. 17, lett. *c*, protects the "right of the individual to a life of dignity which allows them to provide for all their own needs and the needs of those that depend on them, including food [...]), having to distinguish between economic, social and cultural rights and civil and political rights only in the subsequent International Covenants of 1966. The fundamental and absolute nature of the right to food from a quantitative point of view appears is not invalidated by the observation that it has not been expressly recognised in the constitutional charters of many states (including Italy) and in the Charter of Fundamental Rights of the European Union (which merely states in Article 34 that "1. The Union recognises and respects the right of access to social security benefits and social services [...] 3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance to ensure a decent existence for all those who lack sufficient resources, in accordance with the modalities established by EU law and national laws and practices"). Indeed, it cannot be overlooked that it is intrinsically included in the principle of equality, the right to life and social dignity (see F. Alicino, *Il diritto al cibo. Definizione normativa e giustiziabilità*, in «Rivista AIC», no. 3, 2016, p. 2 et seq and 12). For insights into the topic of economic and social rights in national constitutions see S. Söllner, *The* "*Breakthrough*" *of the Right to Food*, cit., p. 395; L. Knuth, M. Vidar, *Constitutional and Legal Protection of the Right to Food around the World*, FAO, Roma, 2011; C. Jung, R. Hirschl, E. Rosevear, *Economic and Social Rights in National Constitutions*, in «American Journal of Comparative Law», 2014, p. 1043 et seq.; A. Rinella, H. Okoronko, *Sovranità alimentare e diritto al cibo*, in «Dir. pubbl. comp. eur.», 2015, pp. 108-109, and the contribution of G. Stegher, *La sicurezza alimentare come formante del costituzionalismo ambientale*, in this volume, and the topical study of 2014 of the FAO drawn up by M. Immink, *The Current Status of the Right to Adequate Food in Food Security and Nutrition Policy Designs*, in *www.fao.org/3/i3890e/i3890e.pdf*. With particular regard to the Italian constitutional order see the introductory essay by L. Califano and the contribution of M. Rubechi, *Tutela dell'ambiente, revisione costituzionale e sicurezza alimentare. Considerazioni a margine della l. cost. n. 1 del 2022*, both in this volume.

12. See *General Comment* no. 6: *Article 6 (Right to Life)*, of the Human Rights Committee (HR Committee) of 30 April 1982, point 5, in *https://www.refworld.org/docid/45388400a.html*, in which it was clarified that art. 6 of the UN International Covenant on Civil and Political Rights in referring to the protection of the "*inherent right to life*" of every human being, also requires States to adopt measures to eliminate malnutrition. In a similar vein see the more recent *General Comment* no. 36 – *Article 6: Right to Life*, of 3 September 2019, CCPR/C/GC/36, par 26, in *https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life*

right to be free from hunger in art. 11, par. 2, of the ICESCR is released from the traditional conception of social, economic and cultural rights according to which their effective implementation must be measured against the economic resources available to individual states[13].

It is worth remembering that compliance with the ICESCR is overseen by the Committee on Economic, Social and Cultural Rights (hereinafter ESCR Committee)[14], which also has litigation functions exercised on the basis of communications from individuals and groups complaining of violations committed by States that have ratified the Optional Protocol. However, in its first seven years of operation (considering that the first rulings on contentious cases date back to 2015), no situations specifically concerning the right to food have been brought to the attention of the ESCR Committee[15].

with which the HR Committee highlighted that "*[t]he duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include […] widespread hunger and malnutrition […]. The measures called for to address adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food […]*". See also F. Alicino, *Il diritto al cibo*, cit., pp. 4-5.

13. This approach also emerges in the Covenant itself, in art. 2, par. 1, which refers to the duty of each State to take measures, individually and through international cooperation, to progressively implement the rights recognised in the Covenant "to the maximum of its available resources", and was confirmed by General Comment no. 3, "The Nature of States Parties' obligations (Art. 2, Par. 1, of the Covenant)", of 14 December 1990, E/1991/23, par. 10 of the ESCR Committee. See S. Söllner, *The "Breakthrough" of the Right to Food*, cit., pp. 401-402.

14. The ESCR Committee consists of 18 independent experts and monitors the implementation of the International Covenant on Economic, Social and Cultural Rights by the States that are party to the Covenant. It was established by the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly by Resolution A/RES/63/117 of 10 December 2008 and came into force on 5 May 2013. The Optional Protocol has been ratified by 26 States (see. *https://indicators.ohchr.org*).

15. See the database available at *https://juris.ohchr.org/BasicSearch*. Marginal references to food are found in very few cases, focused essentially on the right to adequate housing: *López Rodríguez v. Spain*, comm. no. 1/2013, 04 Mar 2016, E/C.12/57/D/1/2013; *Ángela Sariego Rodríguez and Ionut-Cosmin Dincă v. Spain*, comm. no. 92/2019, 12 Oct 2021, E/C.12/70/D/92/2019 (decision of inadmissibility); *Asmae Taghzouti et al. v. Spain*,

The right to food has also found protection in other universal covenant instruments, such as the *Food Aid Convention* of 1999[16] and

comm. no. 56/2018, 22 Feb 2021, E/C.12/69/D/56/2018 (decision of inadmissibility); *Ben Djazia et al. v. Spain*, comm. no. 5/2015, 20 Jun 2017, E/C.12/61/D/5/2015; *M. B. B. v. Spain*, comm. no. 079/2018, 15 Oct 2020, E/C.12/68/D/79/2018 (decision of inadmissibility). On the justiciability of the right to food before the ESCR Committee see, for all, C. Courtis, *The Right to Food as a Justiciable Right*, cit., p. 317 et seq. In any case, albeit in an advisory capacity, in the aforementioned General Comment no. 12 "The right to adequate food (art. 11)", of the ESCR Committee dated 12 May 1999, the right to food was expressly considered indispensable for the enjoyment of all other rights in that it is inextricably linked to human dignity and social justice (see point 4). Recognising the existence of severe and widespread situations of hunger and malnutrition at global level, especially in less developed countries, the ESCR Committee has identified its origin not so much in the lack of food as in the difficulties of access, a problem that is still today – more than 20 years later – extremely persistent (see FAO, *The State of Food Security and Nutrition in the World 2022*, cit., and World Food Programme, *Global Report on Food Crises 2022*, cit.). The ESCR Committee has also defined the scope of the obligations incumbent on States (see also S. Söllner, *The* "*Breakthrough*" *of the Right to Food*, cit., pp. 396-397), requiring them to prove that they have made every effort to meet the minimum essential level required to ensure access to minimum food resources for the survival of the people under their jurisdiction. The obligations of States also include ensuring the "adequacy" of food resources, to be achieved "progressively", in the sense of "as expeditiously as possible" (see par. 14), compatibly with the maximum of available resources (see S.I. Skogly, *The Requirement of Using the 'maximum of Available Resources' for Human Rights Realisation: A Question of Quality as Well as Quantity?*, in «Human Rights Law Review», 2012, p. 393 et seq.). States also have a duty to refrain from engaging in or tolerating discrimination in access to food based on ethnicity, gender, language, religion, social origin, opinion and other facts (see point 18), as well as an obligation to provide an environment that facilitates private contributions, also in associated form, to realise the right to adequate food (point 20). To this end, States have a margin of discretion when choosing the most suitable internal strategies and policies, within the limits set by article 11 of the Covenant (on the obligations of States to "*respect, protect and fulfil*" see also C. Di Turi, *Il diritto all'alimentazione*, cit., p. 62 t seq.). By contrast, in the contentious case law of the HR Committee – which has jurisdiction over violations of the International Covenant on Civil and Political Rights (adopted by UN General Assembly resolution 2200A (XXI) of 16 December 1966 and brought into force on 23 March 1976: 173 States are currently party to the Covenant) under its First Optional Protocol (currently ratified by 117 states: see *https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-civil-and-political*), as well as, for the status of ratifications, *https://indicators.ohchr.org*) – a number of statements concerning the right to food are identified, linking it with the right to life, the prohibition of inhuman and degrading treatment, the right to freedom and security and the right to respect for human dignity (protected respectively in Articles 6, 7, 9 and 10 of the International Covenant on Civil and Political Rights). See the cases of *Womah mukong v. Cameroon*, com. n. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991, 10 August 1994; *ms. Yekaterina Pavlovna Lantsova v. Russian Federation*, com. no. 763/1997, U.N. Doc. CCPR/C/74/D/763/1997, 15 April 2002.

16. *Food Aid Convention*, signed in London on 13 April 1999, which came into force

the *Food Assistance Convention* del 2012[17], albeit often in relation to the protection of individuals in specific vulnerable situations[18]. Consider article 12 of the 1979 New York Convention Against Discrimination Against Women, which requires States who are party to the Convention to ensure adequate nutrition for women during and after pregnancy, articles 24 and 27 of the 1989 New York Convention on the Rights of the Child, in which States undertook to combat malnutrition (art. 24, par. 2, lett. c) and to provide parents with nutritional assistance for their children (art. 27), as well as at. 28 of the 2006 UN Convention on the Rights of Persons with Disabilities, in which States recognised 'the right to an adequate standard of living for persons with disabilities and their families, including adequate conditions of nutrition […]".

Furthermore, even in international humanitarian law there are instruments that take into consideration the protection of the right to food in the context of armed conflicts[19]. Consider, for example, the two 1977 Additional Protocols to the Geneva Conventions of 12 August 1949: both Protocol, on the Protection of Victims of International Armed Conflicts, in art. 54, and Protocol II on the Protection of Victims of Non-International Armed Conflicts, in art. 14, introduced, in similar terms, the ban on "starving civilians" as a method of waging war, as well as the ban on "attacking, destroying, removing or rendering inoperative [...] property essential to the survival of the civilian population, such as foodstuffs and the agricultural areas which produce them, crops, livestock […]"[20].

on 1 July 1999. 25 States are currently party to the Convention. The text is available at *https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XIX-41-c&chapter=19&clang=_en*.

17. *Food Assistance Convention*, signed in London on 14 April 2012. The text is available at *https://treaties.un.org/doc/source/signature/2012/ctc_xix-48.pdf.*

18. See the review by G. Kent, *Freedom from Want: The Human Right to Adequate Food*, cit., p. 163 et seq.

19. S. Söllner, *The "Breakthrough" of the Right to Food*, cit., p. 394; L. Cotula, M. Vidar, *The right to adequate food in emergencies*, FAO, Roma, 2003, p. 52 et seq.; K. Mechlem, *Food, Right to, International Legal Protection*, in R. Wolfrum (ed.), *The max Planck Encyclopedia of International Law*, OUP, Oxford, 2008.

20. It should also be noted that article 8 of the Statute of the International Criminal Court also expressly qualifies acts aimed at "intentionally starving civilians as a method of warfare by depriving them of goods essential to their survival [...]" as war crimes.

At regional level, it should be emphasised that within the scope of the Organisation of American States (OAS), the 1988 Protocol additional to the American Convention on Human Rights in the Field of Economic, Social and Cultural Rights (San Salvador Protocol[21]), which, in art. 12, specifically defends the right to "adequate nourishment"[22], which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development, imposing on States the obligation to promote this right and to eliminate malnutrition by improving methods of production, supply and distribution of food resources, including through international cooperation[23].

By contrast, neither the African Charter on Human and Peoples' Rights nor the European Convention on Human Rights (and its additional protocols) contain specific provisions on the right to food.

21. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol), adopted on 17 November 1988 and brought into force on 16 November 1999 (see *www.oas.org/juridico/english/treaties/a-52.html*). The Protocol is currently ratified by 18 States (for the status of ratifications see *www.oas.org/juridico/English/sigs/a-52.html*).

22. The San Salvador Protocol also contains further references to the right to food. In particular, art. 15, par. 3, lett. *b*, envisages that "*[t]he States Parties hereby undertake to accord adequate protection to the family unit and in particular: […] To guarantee adequate nutrition for children at the nursing stage and during school attendance years […]*"; art. 17, dedicated to the defence of the elderly, states that "*[…] the States Parties agree to take progressively the necessary steps to […] provide suitable facilities, as well as food and specialized medical care, for elderly individuals who lack them and are unable to provide them for themselves […]*".

23. Even before the adoption of the San Salvador Protocol, the Inter-American Court and the Inter-American Commission had already enshrined the right to adequate nutrition through extensive interpretations of the right to life envisaged in article 4 of the Convention ("*Every person has the right to have his life respected […]*"), introducing by way of case-law the notion of "vida digna" (see the recent reconstructions of case-law by I. Tani, *L'evoluzione del diritto a un'alimentazione adeguata*, cit., p. 980 et seq. and C. Di Turi, *Il diritto all'alimentazione*, cit., p. 150 et seq.), of the right to ownership (art. 21) and the right to development (art. 26: "*The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter […]*": see the recent ruling by the Inter-American Court of human rights dated 6 February 2020, relating to the case on *The Indigenous Communities of The Lhaka Honhat (our Land) Association v. Argentina*, commented by I. Tani, *L'evoluzione del diritto a un'alimentazione adeguata*, cit., p. 982 et seq.).

However, the significance of the right to food has been recognised through evolutionary interpretative guidelines in both the African[24] and ECHR[25] systems.

The international community has also seen, especially in recent years, the proliferation of soft law documents concerning the right to food[26]. While it is not possible to mention them in their entirety, it seems useful to recall at least the aforementioned FAO Rome Declaration on Food

24. In particular, the African Commission, in the case concerning the Ogoni community, *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria*, com. no. 155/96, 27 May 2002, acknowledged, in par. 64 et seq., that the right to food is implicitly included in the African Charter on Human and Peoples' Rights and is inseparably linked to the dignity of human beings, the right to life, health and development (on the case see F. Coomans, *The ogoni Case Before the African Commission on Human and Peoples' Rights*, in «International and Comparative Law Quarterely», 2003, p. 749 et seq.; D. Inman, S. Smis, *Rewriting the Social and Economic Rights Action Centre and the Centre for Economic and Rights v. Nigeria: Pushing Indigenous Peoples' Rights in Africa Forward*, in E. Brems, E. Desmet (eds.), *Integrated Hu-man Rights in Practice: Rewriting Human Rights Decisions*, Elgar, Northampton, 2017, p. 401 et seq.). See also the subsequent case examined by the African Commission, *Centre for minority Rights Development (Kenya) and minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, com. no. 276/2003, 4 February 2010; as well as the ruling of the African Court in the Ogiek case, *African Commission on Human and Peoples' Rights v. Republic of Kenya*, com. no. 6/2012, 26 May 2017 (the case, which received a lot of attention in doctrine, was commented on by R. Roesch, *The ogiek Case of the African Court on Human and Peoples' Rights: Not So much News After All?*, in «EJIL:Talk!», 2017; C. Focarelli, *Indigenous Peoples' Rights in International Law: The ogiek Decision by the African Court of Human and Peoples' Rights*, in A. Di Blase, V. Vadi (a cura di), *The Inherent Rights of Indigenous Peoples in International Law*, Roma Tre Press, Roma, 2020, p. 175 et seq.; C. Di Turi, *Il diritto all'alimentazione*, cit., p. 161 et seq.; see also the perplexity of S. Nasirumbi, *Revisiting the Endorois and ogiek Cases: Is the African Human Rights mechanism a Toothless Bulldog?*, in «African Yearbook of International Law», 2020, p. 497 et seq.).

25. Notably, the Strasbourg Court has linked the right to food to the right to life (art. 2 ECHR) and the ban on torture and inhuman and degrading treatment (art. 3 ECHR). See, e.g., *Kadiķis v. Latvia (no. 2)*, app. no. 62393/00, 4 May 2006, par. 55 ("*La Cour estime que l'obligation des autorités nationales d'assurer la santé et le bienêtre général d'un détenu implique, entre autres, l'obligation de le nourrir convenablement*"); *Stepuleac v. moldova*, app. no. 8207/06, 6 November 2007, par. 55 ("*The Court can but note the clear insufficiency of food given to the applicant, which in itself raises an issue under Article 3 of the Convention*"); *Centre For Legal Resources on behalf of Valentin Câmpeanu v. Romania*, app. no. 47848/08, 17 July 2014, par. 143, in which reference is made to a "*lack of […] appropriate food*"; as well as the recent sentence *Tomov and others v. Russia*, appl no. 18255/10, 63058/10, 10270/11, 73227/11, 56201/13, 41234/16, 9 April 2019, par. 188.

26. See C. Di Turi, *Il diritto all'alimentazione*, cit., p. 180 et seq.

Security of 13 November 1996[27] and the UN Millennium Declaration of 2000[28], in which the States proposed to achieve the (unmet) goal of halving the percentage of people suffering from hunger. The goal of ending hunger by achieving food security also appears in the United Nations General Assembly Resolution no. 66/288, "*The future we want*", adopted on 27 July 2012 at the end of the Rio Conference on sustainable development, and was then included among the 17 Sustainable Development Goals (SDGs) of the United Nations 2030 Agenda[29].

Furthermore, in 2004, the FAO Council adopted the Guidelines for the progressive realisation of the right to food within the context of national food security[30], in order to provide States with a tool that could be used as a starting point to establish how to implement the right to food at the domestic level, both individually and through international cooperation, proposing measures and actions to be undertaken to guide national policies, albeit without imposing specific constraints.

3. The complicated balance between right to food and liberalisation of trade in the renegotiation of the WTO Agreement on Agriculture

In recent years, the debate on balancing the need for food security and the implementation of the right to food with the demands for the

27. See above, par. 2.

28. *United Nations millennium Declaration*, adopted by the General Assembly of the United Nations in Resolution no. 55/2 of 8 September 2000, par. 19: "*We resolve further: To halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger [...]*" (see. *https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-millennium-declaration*). On the Declaration, see G. Venturini, *Diritto allo sviluppo e obiettivi del millennio nella prospettiva dei diritti umani*, in A. Ligustro, G. Sacerdoti (a cura di), *Problemi e tendenze del diritto internazionale dell'economia*, Editoriale Scientifica, Napoli, 2011, p. 175 et seq.

29. Particularly *SDG* no. 2 "*End hunger, achieve food security and improved nutrition and promote sustainable agriculture*". See also *https://sdgs.un.org/2030agenda*.

30. FAO Council, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, adopted in the 127th session of the FAO Council, November 2004, *www.fao.org/docrep/meeting/009/y9825e/y9825e00.HTM*.

liberalisation of international trade has been exacerbated by the well-known events of the pandemic and war[31].

One of the areas in which this contrast manifested itself in heated terms was the renegotiation of the 1994 WTO Agreement on Agriculture[32].

31. In general terms, the relationship between food safety and trade in agrifood products can be approached from two different perspectives. Notably, some States support a greater liberalisation of trade, adapting national policies on food safety to the dynamics of the global market; others, on the other hand, consider domestic policies to guarantee food safety as prevalent with respect to market logic. On these two different approaches see, also in terms of historical reconstruction, T.P. Stewart, S. Manaker Bell, *Global Hunger and the World Trade Organization: How the International Trade Rules Address Food Security*, in «Penn State Journal of Law & International Affairs», 2015, p. 113 et seq.; M.E. Margulis, *The Forgotten History of Food Security in multilateral Trade Negotiations*, in «World Trade Review», 2017, p. 43 et seq.; J. Scott, *The Future of Agricultural Trade Governance in the World Trade organization*, in «International Affairs», 2017, p. 1175 et seq., as well as A. Lupone, *Balancing Basic Human Needs*, cit., p. 103 et seq. See also A. Ligustro, *Diritto al cibo e sovranità alimentare*, cit., p. 399, which identifies in this sector a "classic case of fragmentation and incoherence of international law", due to the contrast between the UN's strategic goals of food sovereignty and the WTO's goals of liberalisation, which tend to favour the most industrialised states and the most competitive producers over economically weaker countries and small producers.

32. WTO Agreement on Agriculture (AoA), negotiated in the Uruguay Round, signed in April 1994 and brought into force on 1 January 1995. For the official text of the *AoA* see *www.wto.org/english/docs_e/legal_e/14-ag.pdf.* On its current renegotiation please refer to F. Cazzini, E.A. Rossi, *Recent Developments on the Relevance of Food Security and Right to Food in WTO Latest Agriculture Negotiations,* in «International Order and Human Rights», 2022, p. 566 et seq. On the need to take food security aspects into consideration during the renegotiation of the AoA see, in particular, the reflections of the UN Special Rapporteurs on the Right to Food that have succeeded one another since the establishment of this figure in 2000 (for the 2000-2008 mandate, J. Ziegler, *The right to food. Report by the Special Rapporteur on the right to food*, E/CN.4/2001/53, 7 February 2001; J. Ziegler, C. Golay, C. Mahon, S.-A. Way, *The Fight for the Right to Food. Lessons Learned*, Springer, London, 2011, p. 68 et seq.; for the 2008-2014 mandate, O. De Schutter, *A human rights approach to trade and investment policies*, in *The Global Food Challenge. Towards a human rights approach to trade and investment policies, Institute for Agricultural and Trade Policy*, 2008, p. 14 et seq.; Id., *International Trade in Agriculture and the Right to Food*, in O. De Schutter, K.Y. Cordes (eds.), *Accounting for Hunger. The Right to Food in the Era of Globalisation*, Hart, London, 2011, p. 137 et seq.; for the 2014-2020 mandate*, H. Elver, Developments of the Right to Food in the 21st Century: Reflections of the United Nations Special Rapporteur on the Right to Food*, in «UCLA Journal of International Law and Foreign Affairs», 2016, p. 1 et seq.; for the current mandate see M. Fakhri, *The right to food in the context of international trade law and policy. Interim report of the Special Rapporteur on the right to food,* A/75/219,

This Agreement, as can be seen from its Preamble, was entered into with the aim of laying the foundations for the start of a process of reforming the trade of agrifood products through progressive reductions in agricultural subsidies, correcting and preventing distortions in world agricultural markets, and making the 1947 WTO GATT discipline "*more operationally effective*"[33].

The main contents of the AoA are divided into three areas, which include the improvement of access to the market through the gradual reduction of barriers at borders and minimum access commitments for certain product categories (arts. 4-5)[34], the reduction the differentiated reduction of domestic support according to the type of aid granted (arts. 6-7)[35], as well as the reduction of export subsidies (arts. 8-11).

22 July 2020; Id., *A History of Food Security and Agriculture in International Trade Law, 1945-2017*, in J.D. Haskell, A. Rasulov (eds.), *New Voices and New Perspectives in International Economic Law.* Special Issue "European Yearbook of International Economic Law", 2020, p. 55 et seq.; M. Fakhri, *A Trade Agenda for the Right to Food*, in "Development", 2021, p. 212 et seq.).

33. The *GATT (General Agreement on Tariffs and Trade*) of 1947 was the main instrument for regulating international trade until its institutionalisation in the World Trade Organisation (WTO), which came into being in 1994 with the Marrakech Agreement after a long series of negotiations between the GATT member states, concluded with the Uruguay Round (1986-1994). The WTO is based on the Marrakesh Agreement and its annexes, which include the GATT 1994 (General Agreement on Tariffs and Trade and other Multilateral Agreements on Trade in Goods – ann. I A), the *GATS (General Agreement on Trade in Services* - ann. I B), the *TRIPs* (*Agreement on Trade Related Aspects of Intellectual Property Rights*) other annexes related to the mechanisms the mechanism used to settle disputes (annex II), the trade policy analysis (annex. III) and other multilateral trade agreements (annex IV). For some recent references on WTO law see B. Kieffer, C. Marquet, *L'organisation mondiale du commerce et l'évolution du droit international public. Regards croisés sur le Droit et la gouvernance dans le contexte de la mondialisation*, Bruylant, Bruxelles, 2020, p. 67 et seq.; P. Van Den Bossche, D. Prévost, *Essentials of WTO Law*, CUP, Cambridge, 2021, p. 10 et seq.

34. Market access has been dominated by a process of "tariffication" of protective measures of national industries, converting non-tariff barriers into customs duties to increase the level of transparency and predictability. "Tariffication", according to A. Ligustro, *Diritto al cibo e sovranità alimentare*, cit., p. 405, represents a prerequisite for the liberalisation of agricultural markets, pursued through the progressive and diversified reduction of duties.

35. In particular, the aids have been categorised into three different "boxes" according to their potential impact on the market structure: the amber box, concerning measures that are likely to distort the market and therefore subject to greater reduction commitments; the blue box, concerning measures that are exempt from reduction commitments under

The AoA has been the subject of a reform process for more than twenty years – starting from the Doha Round[36]–, envisaged by its art. 20, lett. *c)*,within the scope of which the States undertook also to consider non-trade aspects[37], such as the special and differentiated treatment of developing countries and, above all, the other issues and aims mentioned in the Preamble of the Agreement, among which "food security"[38].

In this context, delicate questions have arisen concerning certain salient provisions that can make a decisive contribution to achieving a balancing point between the need to liberalise and promote trade with the need to ensure sufficient quantities of food resources, also considering the diversification of the various negotiating positions expressed by the different coalitions of states within the WTO[39].

certain conditions; and, lastly, the green box. The green box includes aid in the field of public services, including the purchase of food for food security reasons and disaster relief programmes, which are generally considered to be WTO-compatible and therefore completely excluded from reduction commitments. On this aspect, see J. McMahon, *The WTO Agreement on Agriculture. A Commentary*, OUP, Oxford, 2006, p. 69 et seq.; B. O'Connor, *L'Accordo sull'agricoltura*, in G. Venturini (a cura di), *L'organizzazione mondiale del commercio*, Giuffrè, Milano, 2015, p. 139 et seq.

36. The Doha Round is the latest round of trade negotiations, including those on agriculture, between WTO members, launched in November 2001 with the fourth Ministerial Conference in Doha (Qatar). According to the Ministerial Declaration of 14 November 2001 (see *www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm*), the common goal is to reform the international trade system, reducing trade barriers and revising existing regulations. The negotiations are coordinated by the Trade Negotiations Committee and y the WTO's thematic committees, including the WTO Committee on Agriculture (see below).

37. J. Scott, *The Future of Agricultural Trade Governance*, cit., p. 1175.

38. On this matter, the Preamble of the *AoA* states that "[n]oting that commitments under the reform programme should be made in an equitable way among all Members, having regard to non-trade concerns, *including food security* […] (italics added). See J. McMahon, *The WTO Agreement on Agriculture*, cit., p. 19 et seq. and 192 et seq.; B. O'Connor, *L'Accordo sull'agricoltura*, cit., pp. 148-149; C. Di Turi, *Il diritto all'alimentazione*, cit., p. 218 et seq.

39. Among the various groups of states that collectively took prominent positions during the negotiations are, for example, the G-10, consisting of states that attach considerable importance to non-strictly trade interests, the G-20, which groups together states with more reformist and liberalist orientations, and the G-33, within which flexible positions for developing countries and specific foodstuffs are preferred. For a complete overview of the groups active in the negotiations see the map of negotiating groups in the Doha negotiations, see the *map of negotiating groups in the Doha negotiations*,

In particular, negotiations are still aimed at adequately regulating certain aspects, such as public stockholdings for food security purposes (PSPs), domestic subsidies and export restrictions.

These issues were explicitly included as points[40] for further discussion by the WTO Committee on Negotiations on Agriculture[41], which adopted a Draft Negotiation Text[42] on 29 July 2021, with the intention of laying the foundation for the renegotiation of the AoA. This document was then updated, taking into account reactions to the July 2021 Draft, with the Revised Draft of 23 November 2021[43].

As regards PSPs, defined in Annex 2 of the AoA as "*Expenditures (or revenue foregone) in relation to the accumulation and holding of stocks of products which form an integral part of a food security programme identified in national legislation*" including also "*government aid to private storage of products as part of such a programme*", it should be pointed out that they are generally allowed (included in the green box), already under the current AoA, as long as operations are conducted in a transparent manner and in compliance with objective and publicly accessible criteria: furthermore, governments are legitimised to purchase, store and distribute food

in *www.wto.org/english/tratop_e/dda_e/negotiating_groups_maps_e.htm?group_selected=GRP009.*

40. The topics of negotiation were divided into seven areas, including: domestic support, market access, export competition, export restrictions, the cotton sector, the special safeguard mechanism and public stockholding for food security purposes. See M. Cardwell, F. Smith, *Renegotiation of the WTO Agreement on Agriculture: Accommodating the New Big Issues*, in «The International and Comparative Law Quarterly», 2013, p. 865 et seq.; M.E. Margulis, *The Forgotten History of Food Security*, cit., p. 27; J. Scott, *The Future of Agricultural Trade Governance*, cit., p. 117.

41. The WTO Committee on Agriculture oversees the implementation of the AoA, monitors the fulfilment of the commitments undertaken by States, and promotes discussion on issues of common concern, including those within the ongoing renegotiation process. See *www.wto.org/english/tratop_e/agric_e/ag_work_e.htm.*

42. WTO Committee on Agriculture, Draft Chair Text on Agriculture (*Draft Negotiation Text*), JOB/AG/215, 29 July 2021.

43. WTO Committee on Agriculture, Draft Chair Text on Agriculture (*Revised Draft*), TN/AG/50, 23 November 2021. The changes introduced with the Revised Draft are the result of five meetings held between July and November 2021 (on 7, 8, 20 and 21 September, 14, 15, 28 October and 15 November: see also documents JOB/AG/217, JOB/AG/221, JOB/AG/222 and JOB/AG/223) and further meetings in small groups.

resources under PSPs as long as they act exclusively for the purposes of "*food security*"[44], also with regard to the predetermination of the volumes that can be purchased[45].

The main concern related to the use of these instruments is the conflict with WTO rules on agricultural subsidies, which could hinder the ability to implement food purchasing programmes when governments set prices (administered prices), and which could conceal forms of public subsidies in favour of the producers from whom foodstuffs are purchased, with the consequent possibility of competitive distortions (strongly opposed by the most industrialised countries)[46].

Over the past few years, the difficulties in settling this conflict have manifested themselves on several occasions, without finding a definitive point of convergence between the States.

This is confirmed by the Ministerial Decision of 7 December 2013[47], adopted in the framework of the Bali Ministerial Conference[48], in which an interim 'peace clause' was agreed upon, containing the commitment

44. Cf. C. Haberli, *Do WTO Rules Improve or Impair the Right to Food*, in J. McMahon-M.G. Desta (eds.), *Research Handbook in the WTO Agriculture Agreement: New and Emerging Issues in International Agricultural Trade Law*, Elgar, Cheltenham, 2012, p. 79 et seq.

45. *AoA*, ann. 2 (*Practice*).

46. See annex 2 to *AoA*, which states that purchases "*shall be made at current market prices and sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question*". PSPs were also the subject of a controversy involving India in 2013, which, through the "Right to Food Act", implemented a programme of assistance to the population with public distribution of food products purchased by the public authorities from small producers at administered prices and distributed at much lower prices to people in need. These measures were considered, especially by the US government, to be contrary to the provisions of the AoA on PSPs, as "implicit subsidies" in excess of the pre-established levels, in breach of the commitments undertaken by the States (on the case see, for all, S. Narayanan, *The National Food Security Act vis-à-vis the WTO Agreement on Agriculture*, in «Economic and Political Weekly», no. 5, 2014, p. 40 et seq.; G. Kripke, *Food fight: What the debate about food security means at the WTO*, in «*La Revue canadienne des études sur l'alimentation*», 2015, pp. 78-79; B. O'Connor, *L'Accordo sull'agricoltura*, cit., p. 149; J. Scott, *The Future of Agricultural Trade Governance*, cit., pp. 1177-1178).

47. See *www.wto.org/english/thewto_e/minist_e/mc9_e/mc9_e.htm*.

48. Ministerial decision of Bali of 7 December 2013, *Public stockholding for food security purposes*, WT/MV. IN(13)/38, WT/L/913, *https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/wt/min13/38.pdf*

of States to refrain from submitting the compatibility of existing PSPs to the WTO dispute settlement mechanism, while maintaining notification, transparency, consultation and surveillance obligations in the implementation of PSPs, with a view to reaching a final solution by the planned Ministerial Conference in Buenos Aires in 2017[49].

In 2015, before the expiry of the commitment made in the 2013 Decision, the opportunity to find a "permanent solution" on PSPs failed. Indeed, although the States celebrated the important milestone of the elimination of subsidies for the export of agrifood products with Ministerial Decision no. 980 of 19 December 2015[50], adopted in the framework of the Nairobi Ministerial Conference[51], with the simultaneous Ministerial Decision no. 979[52] they acknowledged that it was impossible to resolve the issue of PSPs, agreeing to continue negotiations with a view to finding a permanent solution.

Despite the importance of PSPs in combating food shortages, States have not yet been able to strike a balance between the demands of developing countries, which are in favour of widespread use of PSPs to ensure food security, and those of States with more developed economies that fear negative effects on trade[53].

In the Revised Draft of November 2021, it was noted that not much progress had been made on the issue of PSPs (point 1.9), so much so

49. See the material made available by the WTO and published at *https://www.wto.org/english/thewto_e/minist_e/mc11_e/mc11_e.htm#:~:text=The%20Eleventh%20%20ministerial%20Conference%20(mC11,minister%20Susana%20malcorra%20of%20%20Argentina*
The outcomes of the conference were considered a failure (on this point see G.M. Ruotolo, *L'attività dell'OMC nel biennio 2016-2017 e il fallimento della Conferenza ministeriale di Buenos Aires*, in «Com. int.», 2017, p. 655 et seq.; G. Sacerdoti, *Lo stallo dell'Organizzazione Mondiale del Commercio davanti alla sfida di Trump: difficoltà passeggere o crisi del multilateralismo?*, in «Dir. pubbl. comp. eur.», 2018, p. V et seq).

50. Ministerial decision of 19 December 2015, *Export Competition*, WT/MIN(15)/45 – WT/L/980, in *www.wto.org/english/thewto_e/minist_e/mc10_e/l980_e.htm.*

51. *www.wto.org/english/thewto_e/minist_e/mc10_e/mc10_e.htm.*

52. Ministerial decision of 19 December 2015, *Public Stockholding for Food Security Purposes*, WT/MIN(15)/44 – WT/L/979, in
https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=225905,128899,128777,121384&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

53. See on this point the WTO Briefing Note of 13 December 2021, at *www.wto.org/english/thewto_e/minist_e/mc12_e/briefing_notes_e/bfagric_e.htm.*

that it was considered the most complex aspect of the negotiations (point 8.3).

Indeed, all the proposals that emerged during the negotiations[54], including those of a provisional nature[55], were either resisted or not sufficiently agreed upon by the States, which merely recommitted themselves to intensifying negotiations on PSPs[56].

Food security can also be sought by States through domestic support to operators in the sector. Although the gradual reduction of subsidies is included among the long-term goals (see art. 20 *AoA*)[57], the Revised Draft of November 2021, in point 2.2, emphasises that the regulation of domestic support has to be balanced with the pursuit of general political goals, such as food security[58]. On the other hand, the

54. The States of the African Group proprosed simplifying the use of *PSPs* by developing countries, removing certain restrictions of the*AoA* (see *Revised Draft*, point 8.6, as well as the document JOB/AG/204 dated 12 July 2021 and Report IISD of August 2021 "*Procuring Food Stocks Under World Trade Organization Farm Subsidy Rules: Finding a Permanent Solution*", p. 8, in *https://www.iisd.org/system/files/2021-08/food-stocks-wto-farm-subsidy-rules.pdf*). The industrialised countries of the G33, which have made a long series of proposals since 2012 (for a review see the IISD Report of August 2021, cit., p. 5), have recently proposed to confirm the Bali "peace clause" (see above), calling for information, transparency and notification obligations if certain limits are exceeded and introducing some exemptions for food aid exports (see documents JOB/AG/214 dated 28 July 2021 and JOB/AG/214/Rev.1 dated 16 September 2021).

55. The proposal of the Committee on Agriculture – referred to in the July 2021 Draft – to extend the Bali Interim Solution provisionally to the Least Developed Countries and to Developing Countries, possibly subject to specific approval of the PSP by the Committee itself, has been criticised for its tendency to make unjustified distinctions between Developing Countries (see Revised Draft point 8.5).

56. See point 45 of the *Draft ministerial Decision on Trade, Food and Agriculture*, annexed to the *Revised Draft*, cit.

57. See the cited Nairobi Decision of 2015. Developing Countries tend to be critical of restrictions to subsidies for agriculture (see S. Das, *Food Security Amendments to the WTO Green Box: A Critical Re-Examination*, in «Journal of World Trade», 2016, p. 1111 et seq.), in contrast to the current WTO framework, under which, with a few exceptions, they are not allowed because they are likely to affect competition, disadvantaging economic operators in non-subsidised states.

58. The negotiation of the AoA in this regard contrasts the position of exporting States – especially those of the Cairns Group, made up of a group of 19 developed and developing countries from six continents, which define themselves as "agricultural fair-trading" (see *www.cairnsgroup.org*) and representing 27% of the world's agricultural exports – which favour more drastic domestic support reduction commitments than that of the states with emerging economies which propose greater flexibility in subsidy

agrifood market has frequently been protected by government support interventions, also because of certain characteristics that characterise its economic structure, such as the incidence of natural and climatic events and the low mobility of production factors[59].

In order to remedy situations of food shortages, States can also use quantitative restrictions on the export of foodstuffs to ensure that they are destined for consumption within the domestic territory[60].

Conversely, States whose food resources are predominantly dependent on imports may be adversely affected by export restrictions imposed by other States on companies operating domestically, creating risks for the availability of sufficient food resources in importing countries[61]. To this end, Article XI:1 of the GATT generally provides

reductions, leveraging article 6.2 of the AoA. On the debate between the two positions, see points 2.4 and 2.5 of the *Revised Draft*. For more details on the positions that emerged during the negotiations with regard to domestic support see the "*Framework for Negotiations on Domestic Support*" dated 23 January 2020, JOB/AG/177, of Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, Philippines, Thailand, Ucraina, Uruguay and Vietnam (*https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/AG/177.pdf&open=True*), the *Submission* of the United States of 19 February 2020 "*Notification of Select Domestic Support Variables in the WTO"*, JOB/AG/181 (*https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/AG/181.pdf&open=True*), as well as A. Regmi, R. Schnepf, N.M. Hart, *Reforming the WTO Agreement on Agriculture. Report of the Congressional Research Service*, 20 July 2020, pp. 14-15, available at *https://sgp.fas.org/crs/misc/R46456.pdf.*

59. See A. Ligustro, *Diritto al cibo e sovranità alimentare*, cit., p. 401.

60. See M. Cardwell, F. Smith, *Renegotiation of the WTO Agreement on Agriculture*, cit., pp. 868-869. This type of measure were frequently used, also recently, to cope with food shortages during the pandemic period: see on this point WTO Information Note, *Export Prohibitions and Restrictions*, 23 April 2020; A. Regmi, R. Schnepf, N.M. Hart, *Reforming the WTO Agreement on Agriculture*, cit., p. 13; F. Cazzini, *L'incidenza del Covid-19 sul settore agroalimentare*, cit., p. 143 et seq.; W.J. Martin, J.W. Grauber, *Trade Policy and Food Security*, in R. Baldwin, S.J. Evenett (eds.), *Covid-19 and Trade Policy: Why Turning Inward Won't Work*, CEPR, London, 2020, p. 89; I. Espa, *Sicurezza alimentare e commercio internazionale ai tempi del Covid-19*, in P. Acconci, E. Baroncini (a cura di), *Gli effetti dell'emergenza Covid-19 su commercio, investimenti e occupazione,* cit., p. 123 et seq.; G. Adinolfi, A tale of two crises: *quali risposte dell'organizzazione mondiale del Commercio alla pandemia da Covid-19?*, in P. Acconci, E. Baroncini (a cura di), *Gli effetti dell'emergenza Covid-19*, cit., p. 68 et seq.; J. Pauwelyn, *Export Restrictions in Times of Pandemic: options and Limits Under International Trade Agreements*, in «Journal of World Trade», 2020, p. 727 et seq.

61. R. Cardwell, W.A. Kerr, *Can Export Restrictions be Disciplined Through the World*

for a ban on export restrictions – although Article XI:2(a) envisages that foodstuffs may be subject to temporary and direct restrictions to deal with critical and contingent situations – and article 12 of the AoA requires Member States wishing to introduce new export bans or restrictions to take due account of the consequences for the food security of importing countries (lett. a) and to notify the Committee on Agriculture in writing in advance, consulting any other Member State with a substantial interest as an importer (lett. *b*)[62]. In this way, food safety is expressly prioritised over the possibility of restricting or banning exports[63], although doubts as to how to prove that food security has been duly taken into account remain[64].

In this context, emblematic of the bitter debate concerning export restrictions is the issue of exemptions for the purchase of food resources by the World Food Programme (WFP) of the United Nations[65] for

Trade organisation?, in «The World Economy», 2014, p. 1186 et seq.; S. Murphy, *Food Security and International Trade: Risk, Trust and Rules*, in «Revue canadienne des études sur l'alimentation», 2015, pp. 88-89; M.E. Margulis, *The Forgotten History of Food Security*, cit., p. 26. Although such measures are aimed at ensuring that products subject to export restrictions are available domestically at reduced prices, in actual fact the WTO has pointed out that they can lead to an increase in the consumption of the products in question with a consequent decrease in their availability, as well as to the adoption of similar measures by other States, resulting in a general decline in international supply (see K. Anderson, S. Nelgen, *Trade Barrier Volatility and Agricultural Price Stabilization*, in «World Development», 2011, p. 36 et seq.; I. Espa, *Sicurezza alimentare e commercio internazionale*, cit., p. 127).

62. On this point, see I. Espa, *Sicurezza alimentare e commercio internazionale*, cit., p. 131, who points out that these would be inadequate notification and consultation obligations, in view of the absence of precise terms, the restriction to consultation only at the request of the importing state and the absence of review obligations in the event of unsuccessful consultations. Moreover, WTO states tend to disregard these provisions, also due to the lack of an effective monitoring system by the WTO (see I. Espa, *Sicurezza alimentare e commercio internazionale*, cit., p. 132).

63. Cf. M. Cardwell, F. Smith, *Renegotiation of the WTO Agreement on Agriculture*, cit., p. 893.

64. See point 45 of the *Draft ministerial Decision on Trade, Food and Agriculture*, annexed to the *Revised Draft*, cit.

65. As a UN humanitarian agency, the World Food Programme is committed to providing food assistance to local communities in emergency situations, also through specific development projects. It is financed entirely by voluntary donations and is headed by a 36-member Board of Directors that coordinates a staff of over 20,000 employees worldwide, cooperating in particular with the FAO (Food and Agriculture Organisation), IFAD (International Fund for Agricultural Development) and non-governmental organisations (see *https://it.wfp.org*).

humanitarian purposes. On this issue, most States have recently taken a stance in favour of the WFP initiatives, recognising their importance especially during emergency situations – such as those occurring during pandemics, armed conflicts or natural disasters – in geographical areas where there are already difficulties in accessing sufficient food supplies[66].

On this subject, also at the last WTO Ministerial Conference (MC12), held in Geneva from 12 to 17 June 2022[67], the topic of export bans and restrictions was the subject of two measures that confirm its centrality in relation to food safety[68]. These are the Ministerial Declaration on the emergency response to food insecurity[69] and the Ministerial Decision on exemption from export bans or restrictions on food purchases by the WFP[70].

The Declaration emphasises the commitment of WTO Member States to adopt measures to facilitate trade, which is considered essential

66. See the Joint Statement of some 80 WTO States of 21 January 2021, see *Joint Statement on agriculture export prohibitions or restrictions relating to the World Food Programme*, WT/L/1109, available at
www.wto.org/english/news_e/news21_e/agri_21jan21_e.htm
in which they expressly recognised the importance of the humanitarian support provided by the WFP, made more urgent in the light of the Covid-19 pandemic, and pledged not to impose bans or restrictions on the export of food products purchased for humanitarian purposes by the WFP. However, despite the convergence in supporting the WFP, there remain some concerns on some aspects on the part of States where food is purchased by the WFP (see points 5.3 and 5.4 of the Revised Draft, cited above).

67. See *www.wto.org/english/thewto_e/minist_e/mc12_e/mc12_e.htm.*

68. The so-called *Geneva package*, includes measures on fishing subsidies, Covid-19 pandemic response actions, e-commerce and food security. Extensively see the summary *MC12 «Geneva package» - in brief* (available at
https://www.wto.org/english/thewto_e/minist_e/mc12_e/geneva_package_e.htm
17 June 2022, in
https://www.wto.org/english/thewto_e/minist_e/mc12_e/mc12_e.htm

69. WTO, Ministerial Declaration on the emergency response to food insecurity, WT/MIN(22)/28 - WT/L/1139, 17 June 2022, in
https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/28.pdf&Open= True

70. WTO, Ministerial Decision on world food programme food purchases exemption from export prohibitions or restrictions, WT/MIN(22)/29 - WT/L/1140, 17 June 2022, in *https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/28.pdf&Open=True*

to improve food security at global level[71], without imposing bans or restrictions on the export of agrifood products[72], and cooperating to ensure productivity, availability and accessibility of food, especially in humanitarian emergency situations[73]. The option of taking emergency measures to address food insecurity problems was expressly contemplated, while limiting the risks of trade distortions as much as possible[74].

In the Decision, acknowledging the dramatic increase in the number of malnourished people in the world and the crucial humanitarian support provided by the WFP, the WTO States agreed not to impose export bans or restrictions on food purchased by the WFP for humanitarian purposes[75].

Following the adoption of these two acts, the Committee on Agriculture defined, at a meeting on 21 and 22 November 2022[76], a new work programme[77] to establish the methods for their implementation, with particular regard to food security issues[78].

In particular, the States easily reached a consensus on the urgent need to provide aid to those most severely affected by food shortages, with the aim of rapidly identifying tangible solutions, also involving the competent international organisations[79].

71. WTO, Ministerial Declaration, WT/MIN(22)/28 - WT/L/1139, cit., par. 2: "*We agree that trade, along with domestic production, plays a vital role in improving global food security in all its dimensions and enhancing nutrition*".

72. Par. 4.

73. Par. 6.

74. In point 5 of the Declaration, the States agreed to allow these measures, specifying that they should be limited in time, circumscribed and adopted in compliance with the notification requirements of the WTO rules, taking into account the consequences for other States, especially developing and least developed food importing countries. Furthermore, in par. 7, it was reiterated that the export competition discipline of the AoA and the Nairobi Decision on Export Competition must be respected.

75. WTO, Ministerial Decision WT/MIN(22)/29 - WT/L/1140, cit., par. 1-2. The Decision also specifies that it must not be interpreted as precluding the adoption of further government measures to ensure international food security, as long as they comply with the relevant provisions of the WTO agreements.

76. See *www.wto.org/english/news_e/news22_e/acc_22nov22_e.htm.*

77. See the document published by the Committee at *https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/AG/35.pdf&open=True.*

78. The detailed catalogue of all issues addressed is available in the Committee on Agriculture document G/AG/W/226, "*Points Raised by members under the Review Process*", see *https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/AG/W226.pdf&Open=True*

79. Indeed, it appears from the proceedings of the meeting of 21-22 November

4. Conclusions

The compatibility of the current WTO rules with the international protection of the right to food, in spite of some openings at legislative and jurisprudential level[80], presents difficulties linked essentially to the task of reconciling the various positions of the States, which are often very distant from each other, also due to differences in political and social contexts and in economic and trade policy orientations[81].

Furthermore, the affirmation of the right to food in the international community is still influenced by the debate on its nature: although it has been broadly accepted in international treaties and customs, it is still being defined, especially when it comes to the precise clarification of its contents and the obligations incumbent on States[82].

(see *www.wto.org/english/news_e/news22_e/acc_22nov22_e.htm*) that updates on agrifood markets and the current global food security situation were provided by various international organisations, such as the World Bank, FAO, WFP, the International Grains Council (IGC), the Inter-American Institute for Cooperation in Agriculture and the International Monetary Fund. In general on the contribution of international organisations in the economic system of supply chains see P. Acconci, *The Contribution of International organizations to Food Security and Safety through a Healthy Environment*, in S. Negri (ed.), *Environmental Health in International and EU Law: Current Problems and Legal Responses*, Giappichelli-Routledge, Turin-London, 2019, p. 198 et seq.

80. See A. Ligustro, *Diritto al cibo e sovranità alimentare*, cit., pp. 399 and 416, which, notwithstanding the opposition between the primary goals of the United Nations in the protection of human rights and those of a commercial nature of the WTO, underlines how the latter has shown an openness, in terms of regulatory reforms and the jurisprudence of internal bodies, towards non-economic values and principles, highlighted by the attempt to balance commitments to reduce market protective measures (and potentially distorting competition) with food security needs, especially with regard to developing countries.

81. On the complicated connection between trade policies and social policies, related to the problems of coordination between commitments arising from WTO law and obligations to respect human rights, including the right to food, see G. Adinolfi, *Alimentazione e commercio internazionale*, cit., p. 136. As emphasised by M.E. Margulis, *The Forgotten History of Food Security*, cit., p. 28 et seq., the key issue remains to establish what level of priority WTO Member States intend to assign to food security.

82. Cf. P. De Sena, M.C. Vitucci, *The European Courts and the Security Council: Between* Dédoublement Fonctionnel *and Balancing of Values*, in «Eur. Journ. Int. Law», 2009, p. 193 et seq.; G. Adinolfi, *Alimentazione e commercio internazionale*, cit., p. 137, and A. Ligustro, *Diritto al cibo e sovranità alimentare*, cit., p. 394, which excludes that article 25 of the Universal Declaration of Human Rights and the norms of the 1966 International Covenants can be sufficient to prove the formation of a conventional norm with a clearly defined preceptual content.

This factor undoubtedly exacerbates the difficulties in reconciling the demands of international trade with the need to guarantee food security at a global level. Identifying the possible point of equilibrium is therefore a highly complex operation, as shown by the long and troubled renegotiation process of the *AoA*[83].

There is, however, a point that WTO member states must necessarily take into consideration in the context of these negotiations: even if the right to food is not considered to be intrinsically protected by conventional regulations, it is impossible to avoid placing importance on its close connection with the right to life and the right to health, which are imperative values of general international law, prevailing over the provisions of the treaties that conflict with them[84].

When situations characterised by the real risk of breaches of the right to food that put human lives at risk arise, the applicability of obligations arising from trade treaties must take into account the existence of a regulation that is imperatively recognised by the international community[85].

83. See above, par. 3.

84. Cf. C. Di Turi, *Il diritto all'alimentazione*, cit., p. 197; I. Tani, *L'evoluzione del diritto a un'alimentazione adeguata*, cit., p. 967.

85. On this subject O. De Schutter nel *Background document prepared by the UN Special Rapporteur on the Right to Food on his mission to the World Trade Organization (WTO),* presented at the Council of Human Rights in March 2009 (*Background study to UN doc. A/HRC/10/005/Add.2*), pp. 18-19, noted that international norms on the right to food have attained an imperative nature and must be considered as prevailing over pactual obligations of a commercial nature also by virtue of article 103 of the United Nations Charter, according to which, in the event of a conflict between the obligations entered into by States – including the obligation to promote, encourage, respect and universally observe human rights arising from art. 1, par. 3 and art. 55 lett. c) of said Charter – and the obligations under any other international agreement, the obligations under the Charter shall prevail (see also L. Niada, *Hunger and International Law: The Far-Reaching Scope of the Right to Food*, in «Conn. Journ. Int. Law», 2006, pp. 131 and 179). It seems, however, at least in a generalised way, that a relevant state practice can be deduced from the trend towards the incorporation of the right to food in national constitutional charters (see above, par. 2), from the dissemination of international conventions and the proliferation of soft law instruments (see above, par. 2), and from the importance assigned to the right to food in the Opinion of the International Court of Justice of 9 July 2004, *Legal Consequences of the Construction of a Wall in the occupied Palestinian Territory*, par. 130 et seq. See also C. Morini, *Il diritto al cibo nel diritto internazionale*, cit., p. 35, according to whom, even in the absence of a "constant and consistent practice of States"

Respect for the right to food and the achievement of food security must therefore also be given priority in the negotiations on the reform of the AoA, recognising food as a right and not only as a commodity[86].

Moreover, WTO law can be interpreted in such a way that commitments arising from multilateral trade provisions do not conflict with previous obligations to respect human rights, as reflected in Article XX of GATT 1994, lett. b), which allows a general exception relating to the application of the obligations to liberalise the government measures necessary to protect human life[87].

Overcoming the problem of balancing the needs pursued by the laws on human rights and the trade provisions of the WTO can therefore be based on an interpretative approach that allows the WTO rules to be interpreted in the light of the international rules on the protection of the right to food, attempting a coordination, as far as possible, between the aims of the WTO and those of protecting human rights[88].

With a view to international cooperation, this approach should also inspire negotiations for the reform of the AoA, the conclusion of which

for the purpose of identifying an ad hoc conventional norm, it is possible to detect "an important basis for the formation of an *opinion iuris* whereby everyone should be allowed to enjoy at least a basic level of access to food".

86. In these terms see F. Cazzini, *L'incidenza del Covid-19 sul settore agroalimentare*, cit., p. 137 (cf. also the considerations of P. Mittica, in this volume). The orientation according to which a general improvement in the ease of access to food automatically follows from a mere improvement in the efficiency of the market for agrifood products and from greater liberalisation is not easy to accept (see in this regard K. Mechlem, *Harmonizing Trade in Agriculture and Human Rights: options for the Integration of the Right to Food into the Agreement on Agriculture*, in «Max Planck Yearbook of United Nations Law Online», 2006, p. 127 et seq.).

87. GATT 1994, art. XX: "*Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:* […] *(b) necessary to protect human, animal or plant life or health* […]".

88. R. Ferguson, *The Right to Food and the World Trade Organization's Rules on Agriculture. Conflicting, Compatible, or Complementary?*, Brill, Boston, 2018, p. 197. See also F. Coomans, *Application of the International Covenant on Economic, Social and Cultural Rights in the Framework of International organisations*, in «Max Planck Yearbook of United Nations Law Online», 2007, pp. 372-373; K. Mechlem, *Harmonizing Trade in Agriculture and Human Rights*, cit., p. 127 et seq.; A. Ligustro, *Diritto al cibo e sovranità alimentare*, cit., p. 417.

becomes even more urgent in the light of recent threats to global food security[89], constantly considering the impact of its provisions on the protection of the right to food and food security[90].

89. See the Declaration of the *WTO Director-General Ngozi Okonjo-Iweala* of 24 October 2022, *DG Okonjo-Iweala urges update to WTO rules to address global food market challenges*, in *www.wto.org/english/news_e/news22_e/agri_24oct22_e.htm*. It has also already been noted above, par. 3, above, that States which have reacted individually with export restrictions to cope with domestic food security problems have not achieved the desired results (I. Espa, *Sicurezza alimentare e commercio internazionale*, cit., p. 123 et seq.), confirming the urgency of a collective and agreed response that can only come through international cooperation (see G. Sacerdoti, Quo Vadis *WTO after the Covid-19 Crisis?*, in P. Acconci, E. Baroncini (a cura di), *Gli effetti dell'emergenza Covid-19*, cit., p. 47).

90. Cf. ESCR Committee, *General Comment* no. 12, cit., par. 36, and in doctrine L.E. Nierenberg, *Reconciling the Right to Food and Trade Liberalization: Developing Country opportunities*, in "Minn. Journ. Int. Law", 2011, p. 633.

VII. Civil Liability of the Producer in Food Law

Roberta S. Bonini

1. Introduction: legislation, liability and products

There have recently been reports of the death of a number of people (later found to be immunocompromised or particularly fragile) and of numerous non-fatal clinical cases caused by the presence of the Listeria ST 155 strain in hot-dog sausages marketed under different brand names, but all produced in the same factory. This was caused by consumers' habit of eating these foods raw, despite the fact that the label expressly stated that they should be eaten after cooking[1]. The Ministry of Health immediately ordered the recall of the foodstuffs in question, also launching an information campaign directly at points of sale. According to the documents of the European Rapid Alert System (RASFF), this is one of the most

1. Failure to comply with the information correctly stated on the label by the manufacturer is likely to have an impact in the context of an eventual claim for damages.

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serious cases of food contamination in Italy in the last fifty years, both in terms of the number of victims and the distribution of the products concerned throughout the territory[2].

It should also be remembered that according to the WHO, every minute, 44 people – more than twenty-three million a year – fall ill as a result of eating contaminated food, approximately 4,700 a year lose their lives, and that food poisoning is a major global health challenge. Despite this, food-borne illnesses are often not detected or reported to health authorities, and, at least in our country, only in a very limited number of cases has compensation been paid out[3].

This last fact, which is particularly relevant for our purposes, is certainly determined on one hand by the preference traditionally assigned to criminal law and administrative law in the protection of consumers of unhealthy or harmful foodstuffs[4], and, on the other, by

2. Only a few days after the news of the contaminated hot-dog sausages was published in most national newspapers, other products, such as cooked ham, gorgonzola, porchetta, pancakes, salmon and mayonnaise sandwiches and, last but not least, mortadella, were also withdrawn because they were suspected of being contaminated. It should be noted that, unlike the former, many of the products that were later recalled are intended to be eaten raw and are therefore potentially even more dangerous.

3. E. Al Mureden, *Danni da consumo di alimenti tra legislazione di settore, principio di precauzione e responsabilità civile*, in «Contratto e impresa», 2011, p. 1501 et seq.: "in particular, under this last profile, the analysis of the case-law directories shows that a rather limited number of decisions were recorded over a period of almost five decades: the well-known 'Saiwa case', a recent similar case in which payment of compensation was ordered for the damage suffered by a person who had contracted food poisoning following the consumption of spoiled sliced bread, a case of botulism poisoning and one of salmonella poisoning in which, however, compensation was not obtained because it was not possible to identify the damaging party with certainty". The author, in turn, cites V. Paliceo, *Il diritto degli alimenti,* Cedam, Milano, 2003, for an extensive review of case law concerning the application of criminal and administrative sanctions, p. 505 et seq.

4. M. Ferrari, U. Izzo, *Diritto alimentare europeo*, il Mulino, Bologna, 2012, p. 264, speak of "a European panorama that has seen injured parties resorting with great parsimony to the instrument of civil liability to obtain compensation for damages linked to the consumption of food. […] Among the many factors at play, however, it is worth noting, at least with reference to the countries of continental Europe, the preference historically given to criminal and administrative law, the instruments of protection that first intercepted the need to protect consumers from unhealthy or harmful food, in line with a historical stance which, in the food industry, has seen the strict effectiveness of the criminal sanction pre-existing administrative rules, absorbing many of the reasons and some of the assumptions of civil protection".

the reluctant approach of the consumer at least in cases of minor food poisoning[5].

Shared by those who emphasise that, in the agrifood sector, the procedures envisaged for the prevention of damage play a far more significant role than the payment of compensation[6], the examination of the issue of civil liability in the agri-food sector is still, however, of considerable interest, given that the legislator (European and national) has decided not to abandon this instrument, in order to better protect the consumer of foodstuffs.

To understand the phenomenon of producer liability in the food industry, it is first necessary to understand the identity of this subject and the legislation applicable to it.

The general principles and requirements of food law were codified with Regulation (EC) no. 178/2002[7] with the twofold aim, among

5. Cf. M. Giuffrida, *Etichettatura e responsabilità*, in Id., *I diritti della terra e del mercato agroalimentare*, II vol., Utet, Torino, 2016, p. 1450, who points out that "moreover, food in and of itself generally, except in exceptional cases, has very low costs and the food market offers a great variety of equivalent products. Therefore, the consumer, even when an inadequately labelled foodstuff causes harm to their health, but which is not particularly serious, might decide not to take legal action and to direct their choice towards other products of the same type".

6. M. Franzoni, *Responsabilità civile e tutela del consumatore nel settore agroalimentare*, in «Danno e responsabilità», 2015, p. 566.

7. European Community Regulation no. 178/2002/EC of 28 January 2002. The regulation lays down the general principles and requirements of food law, procedures in the field of food safety and establishes the European Food Safety Authority. Published in the O.J.E.U., 1 February 2002, no. L 31, it came into force on 21 February 2002. For a careful and comprehensive examination of the regulation see Food Safety in the European Union, commentary by the Institute of International and Comparative Agricultural Law (IDAIC), in *La sicurezza alimentare nell'Unione europea, commentario a cura dell'Istituto di diritto agrario internazionale e comparato* (IDAIC), in «Nuove leggi civili commentate», 2003, p. 114 et seq. 114. Cf. E. Al Mureden, *Danni da consumo di alimenti tra legislazione di settore, principio di precauzione e responsabilità civile*, in «Contratto e impresa», 2011, p. 1498 et seq., who states that, in the context of legislation in the food industry, "undoubtedly the most important intervention is Regulation (EC) no. 178/2002"; S. Masini, *Corso di diritto alimentare*, Giuffrè, Milano, 2018, p. 88, who defines the Regulation as the "final landing point" of the European Union's food safety policy, which "is based on a comprehensive and integrated approach, in particular, by achieving: the clear definition of the responsibilities of the various stakeholders; the full traceability of food, feed and their ingredients; the involvement of all stakeholders in the development of food policy; the application of the three components of risk analysis (assessment, management and reporting); and the use of the precautionary principle", as well as, on

others, of guaranteeing a high level of protection of the interests of consumers with respect to food and human health, and of ensuring the effective operation of the market.

With this in mind, the EU legislator opted for a system of preventive protection based on the precautionary principle and on risk analysis in order to avoid the production of damage at source, attributing – as we have already mentioned – a secondary, but nonetheless important role to the protection of compensation. With reference to this profile, although without renouncing other solutions offered by the system, it was preferred the particular form of civil liability known as product liability (see par. 2 below) introduced by Directive 85/374/EEC of 25 July 1985[8] and implemented in Italy by Presidential Decree no. 224/1988, entitled "Implementation of EEC Directive no. 85/374 on the approximation of the laws, regulations and administrative provisions of the member states concerning liability for defective products, pursuant to article 15 of Law no. 183 of 16 April 1987" (the rules of which are expressly referred to by article 21 of Regulation no. 178/2002), and today included in Legislative Decree no. 206/2005, the so-called Consumer Code[9].

p. 156, "the basis for ensuring a high level of human health protection and defence of consumer interests in relation to food" always taking into account the mechanisms for the effective operation of the domestic market.

8. EEC Directive 85/374/EEC of 25 July 1985, Council Directive on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, published in the O.J.E.U. no. L 210 on 7 August 1985, and brought into force on 30 July 1985. On the subject, ex multis, see G. Alpa, M. Bin, P. Cendon, *La responsabilità del produttore*, Cedam, Padova, 1989; A. Di Majo, *La responsabilità per prodotti difettosi nella direttiva comunitaria*, in «Rivista di diritto civile», 1989, p. 21 et seq.; G. Ponzelli, *Responsabilità del produttore*, in «Rivista di diritto civile», II, 1990, p. 509 et seq.; U. Carnevali, voce *Responsabilità del produttore*, in *Enc. dir.*, agg., vol. II, Giuffrè, Milano, 1992, p. 199 et seq.; Id., *Prodotti difettosi, pluralità di produttori e disciplina dei rapporti interni*, in Various Authors, *Studi in onore di Cesare massimo Bianca*, I, Giuffrè, Milano, 2006, p. 339 et seq.; G. Alpa, M. Bessone, F. Toriello, *La responsabilità del produttore*, Giuffrè, Milano, 2006; G. Alpa, *Prodotti difettosi, risarcimento del danno e regole di sicurezza*, in G. Alpa, A. Catricalà (a cura di), *Diritto dei consumatori*, il Mulino, Bologna, 2016, p. 419 et seq.; M. Giuffrida, voce *Responsabilità per danno da prodotto difettoso*, in *Dig. Disc. Priv., Sez. Civ.*, agg., tomo IV, 2009, p. 453 et seq.; Id., *La responsabilità civile per danno da prodotto difettoso*, in L. Costato, A. Germanò, E. Rook Basile (a cura di), *Trattato di diritto agrario*, vol. III, *Il diritto agroalimentare*, Giuffrè, Milano, 2011, p. 483.

9. Presidential Decree no. 224/1988, published in the Ordinary Suppl. Journal no.

As is well known, the purpose of the directive is to approximate the laws, regulations and administrative provisions of the Member States on liability for damage caused by defective products: the need for this was strongly felt in both the public and private sector, and in particular with regard to civil liability where it was necessary, in order to eliminate the disparities among the rules of the Member States, which were capable of distorting competition, to establish standardised rules to protect companies and consumers[10].

146 of 23 June 1988, was repealed by art. 146 of Legislative Decree no. 206 of 6 September 2005, the so-called Consumer Code. See now articles 114 to 127 of the same decree. On Presidential Decree no. 224/1988 see the comments of R. Pardolesi, G. Ponzanelli, in *Nuove leggi civili commentate,* 1989, p. 487; G. Alpa, M. Bin, P. Cendon, *La responsabilità del produttore*, in *Trattato di diritto commerciale e diritto pubblico dell'economia*, a cura di F. Galgano, Cedam, Padova, 1990; G. Alpa, U. Carnevali, G. Ghidini, *La responsabilità del produttore*, Giuffrè, Milano, 1990.

10. Liability for defective products, was regulated differently in the various legal systems, in which at times it was brought within the scope of contractual liability, at others within the scope of tort. In France, following a path similar to that developed in the United States, product liability was regulated through the model of contractual liability; in Italy and Germany, on the other hand, product liability was brought under the umbrella of civil liability. In Italy, in particular, in the absence of a specific rule, doctrine and case law have tried, in order to mitigate the problems relating to the identification of fault, to bring this liability back to the hypotheses envisaged by articles 2049, 2050 and 2051 of the Italian Civil Code, even if the case was then definitively brought back to the scheme of liability pursuant to article 2043 of the Italian Civil Code. Emblematic on the point is the well-known Saiwa case (Court of Cassation, 25 May 1964, no. 1270, in «Foro italiano», I, 1965, c. 2098; See 1966, c. 13, with note by F. Martorano, *Sulla responsabilità del fabbricante per la messa in commercio di prodotti difettosi*), still considered to be a leading case on the subject, in which the confectionery company's tort was recognised – in response to the doubts opened by articles 2053 and 2054, paragraph 4, of the Italian Civil Code, which attribute liability for damage caused by defects in the construction of vehicles and the ruin of buildings to the owners – for the gastrointestinal disorders suffered by a married couple due to the ingestion of biscuits that later turned out to be spoiled (the biscuits were spoiled by direct admission of Saiwa itself, which had replaced them with another box that was also found to be spoiled, but only after the biscuits had caused a febrile enterocolitis resulting from the ingestion of the adulterated product). In particular, the Court of Cassation recognised the presence of a presumption of guilt on the part of the producer, given that the damage had causally originated from the product which, due to the manner in which it had been stored and distributed, had certainly not undergone any alterations during the retail stage. In short, as the biscuits were sold in sealed packages, the product defect could only be traced back to the manufacturer. No liability was attributed to the retailer, however, precisely because the product was contained in a sealed package. Again in the food industry, the liability under art. 2043 of the Italian

Directive no. 85/374, in its original version, on the assumption, inter alia, that the agricultural product is, as such, incapable of causing harm[11] (a sort of intrinsic safety), excluded from its

Civil Code of the company producing Coca-Cola was ascertained for damages suffered by the consumer as a consequence of the explosion of the bottle on the counter, see Court of Savona, 31 December 1971, in «Giurisprudenza Italiana», I, 2, p. 710. Liability pursuant to article 2043 of the Italian Civil Code was recognised – again prior to the enactment of Presidential Decree no. 224/1998 (the case took place in 1984) – also in the case of a small bottle of blueberry juice, the top of which exploded in the purchaser's face when the bottle was opened, causing an injury to the retina; in this case, the defect of the product was found to be its insufficient pasteurisation, the cause of the fermentation processes that caused the explosion when the bottle was opened. Cf. Court of Cassation, no. 4473 of 20 April 1995, in «Foro italiano», Rep. 1995, voce *Danni civili*, no. 224 which confirmed the ruling in the second degree App. Rome 30 July 1992 (the judgement, by the way, was only challenged in terms of the liquidation of damages). Both sentences are reproduced in «Responsabilità civile e previdenza», 1996, p. 672, with note by A. De Berardinis, *La responsabilità extracontrattuale per danno da prodotti difettosi*. A similar case was dealt with after Presidential Decree no. 224/1998 came into force and concerned the bursting of a bottle of mineral water taken by the consumer from a self-service counter. Also in this case, the judge recognised the defective nature of the product and the consequent liability of the producer, having also found that there was no abnormal use by the consumer of the bottle. Cf. Court of Rome, 17 March, 1998, in «Foro italiano», I, 1998, p. 3665 et seq., with note by A. Palmieri, *Dalla "*mountain bike*" alla bottiglia d'acqua minerale: un nuovo capitolo per un'opera incompiuta*: "a bottle of water which suddenly bursts has a degree of safety incompatible with that which a normal consumer might reasonably expect when he goes to a supermarket and takes the product from a self-service counter. [...] No abnormal use is recognisable in the case in point, where, on the contrary, the abnormal insecurity of the bottle taken by the plaintiff is evident, given that the usual use of the same as described above is logically incompatible [...] with the possibility that the bottle of water bursts in the hands of the person who is destined to acquire its normal availability". In case law, with reference to the applicability of the rules of tort also in the foodstuffs sector, see also Court of Cassation, 13 January 1981, no. 294, in «Foro italiano», I, 1981, c. 1325 and Court of Cassation, 20 July 1979, no. 4352, in «Responsabilità civile e previdenza», 1980, p. 84. In doctrine see P. Trimarchi, *Rischio e responsabilità oggettiva*, Giuffrè, Milano, 1961, p. 12 et seq.; C. Castronovo, *La responsabilità del produttore*, Giuffrè, Milano, 1979, p. 69 et seq.

11. A. Germanò, *La responsabilità per prodotti difettosi in agricoltura*, in E. Rook Basile, A. Massart, A. Germanò (a cura di), *Prodotti agricoli e sicurezza alimentare*, Atti del VII Congresso mondiale di diritto agrario dell'UMAU in memoria di Louis Lorvellec, Giuffrè, Milano, 2003, p. 532; Id., *manuale di diritto agrario*, VIII ed., Giappichelli, Turino, 2016, p. 333; F. Giardina, *La responsabilità civile del produttore di alimenti*, in M. Goldoni, E. Sirsi (a cura di), *Regole dell'agricoltura, regole del cibo. Produzione agricola, sicurezza alimentare e tutela del consumatore*, Atti del convegno, 7-8 July 2005, Il Campano, Pisa, 2005, p. 106. This assumption was later disproved by the case of Bovine Spongiform Encephalopathy.

application – notwithstanding the possibility for States to provide otherwise[12] – agricultural products and therefore the natural products of the soil, livestock farming, fishing and hunting[13], unless they have undergone a transformation with an alteration of their characteristics or by adding other substances, or when they have undergone industrial packaging that is difficult for the consumer to control[14].

12. Art. 15, par. 1, lett. a) of the directive also exceptionally envisaged the case that, in its national legislation, each Member State(s) could consider as a "product" "also natural agricultural products and the products of hunting", but the Italian State did not opt for this solution. In compliance with the directive and adapting to the general rule laid down therein, art. 2, paragraph 3, Presidential Decree no. 224 of 24 May 1988 (now merged into Legislative Decree no. 206 of 6 September 2005, the Consumer Code), in fact, envisaged that "agricultural products of the soil and those of livestock farming, fishing and hunting, which have not undergone any processing, are excluded. Processing is defined as subjecting the product to a treatment that changes its characteristics or adds substances to it. Packaging and any other treatment, if it makes it difficult for the consumer to check the product or creates an expectation of safety, are treated as processing when they are industrial. In this first phase, farmers, livestock breeders, fishermen and hunters could obviously be called to answer for the damage caused, not on the basis of the objective liability of the producer, but rather in application of the ordinary criteria under art. 2043 of the Italian Civil Code. On the decision made by the Italian legislator in 1988 and the other member states, see M. Mazzo, *La responsabilità del produttore agricolo*, Giuffrè, Milano, 2007, p. 124 et seq. See also L. Costato, *Prodotti agricoli ed attuazione della direttiva CEE sulla responsabilità da prodotto difettoso*, in "Giurisprudenza agraria italiana", 1990, p. 71 et seq.

13. Various reasons given by the doctrine for this exclusion, see L. Costato, *Prodotti agricoli ed attuazione della Direttiva CEE sulla responsabilità da prodotto difettoso*, in *Giurisprudenza agraria italiana*, Reda, Roma, 1990, p. 71 et seq.; L. Francario, *La responsabilità del produttore agricolo*, in E. Rook Basile (a cura di), *Il sistema agroalimentare e la qualità dei prodotti,* Atti del Convegno di Verona, 25-26 November 1991, Giuffrè, Milano, 1992, p. 202; E. Ferrero, *Il prodotto*, in G. Alpa, M. Bin, P. Cendon (a cura di), *La responsabilità del produttore*, in F. Galgano (a cura di), *Trattato di diritto commerciale e di diritto pubblico dell'economia*, Cedam, Padova, 1989, p. 247 et seq. For a reconstruction of the different doctrinal positions see M. Mazzo, *La responsabilità del produttore agricolo*, cit., p. 133 et seq.

14. For a definition of transformation relevant to the application requirements of Directive 85/374/EEC see A. Germanò, *Manuale di diritto agrario*, VIII ed., Giappichelli, Torino, 2016, p.. 331. See also Id., *La Direttiva CEE n. 374/85 del 25 luglio 1985. Le nozioni di prodotto e di produttore. La Direttiva n. 34/99 del 10 maggio 1999*, in L. Costato (a cura di), *Trattato breve di diritto agrario italiano e comunitario*, Cedam, Padua, 2003, p. 744 et seq.; V. Pacileo, *Il diritto degli alimenti*, Giuffrè, Milano, 2003, p. 566 et seq. and the bibliography mentioned therein, for some examples of goods considered as simply treated or transformed (freezing of fish, oil, milk and even the wrapping of oranges).

In order to fully implement the harmonisation of national legislations, which was in part thwarted by the use of this option only by certain Member States[15] (which did not include Italy) and to restore consumer confidence[16] in the safety of agricultural production, endangered by the events that have affected certain commodities (such as the bovine spongiform encephalopathy epidemic)[17], Directive no. 85/374 was amended by Directive 99/34/CE of 10 May 1999[18], which sanctioned the applicability of the rules also to defects in agricultural, livestock farming, fisheries and hunting products[19].

15. In particular: France, Greece, Luxembourg, Finland, Sweden and Austria, with sole regard to GMO products.

16. The need to guarantee a high level of food safety in order to restore consumer confidence and to protect consumer health is also at the heart of legislation in the agrifood sector. See M. D'Addezio, *Sicurezza degli alimenti: obiettivi del mercato dell'Unione europea ed esigenze nazionali*, in «Rivista di diritto agrario», I, 2010, p. 379. This, moreover, also follows from the fifth recital in the preamble to Directive 99/34, which states: "that the inclusion of basic agricultural products within the scope of Directive 85/374/EEC will help to restore consumer confidence in the safety of agricultural production".

17. M. Giuffrida, *Dalla responsabilità dell'imprenditore all'imprenditore responsabile*, in «Rivista di diritto agrario», 2007, p. 557; M. Mazzo, *La responsabilità del produttore agricolo*, cit., p. 143.

18. EEC Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999 amending Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, published in the Official Journal of the European Community no. L 141 of 4 June 1999, which came into force on 4 June 1999. See G. Nicolini, *Danni da prodotti agroalimentari difettosi: responsabilità del produttore*, Giuffrè, Milano, 2006; M. Giuffrida, *I nuovi limiti ai poteri dell'imprenditore agricolo. Riflessioni in tema di responsabilità*, Giuffrè, Milano, 2003, p. 222; G. Ponzanelli, *Estensione della responsabilità oggettiva all'agricoltore, all'allevatore, al pescatore e al cacciatore*, in «Danno e responsabilità», 2001, p. 792 et seq.; A. Germanò, *La responsabilità del produttore*, in *Trattato breve di diritto agrario italiano e comunitario*, cit., p. 743; S. Masini, *Corso di Diritto alimentare*, cit., p. 186; M.G. Cubeddu, *La responsabilità del produttore per i prodotti naturali*, in «Responsabilità civile e previdenza», 1989, p. 808; M. Mazzo, *La responsabilità del produttore agricolo*, cit., p. 141 et seq., which, (p. 149) highlights the difficult practices of application of natural product safety regulations, with respect to which it is hard to precisely identify the person responsible for the defect; M. Tamponi, *La tutela del consumatore di alimenti: soggetti, oggetto e relazioni,* in Various Authors*, Agricoltura e alimentazione tra diritto, comunicazione e mercato*, Atti del Convegno di Firenze 9-10 November 2001, Giuffrè, Milano, 2003, p. 304 et seq.

19. This is, among other things, an extension criticised by some. See F. Giardina,

With reference to the author of the process, the European and Italian legislators have attributed to him an important role, characterised by the ownership of numerous rights, but above all of numerous obligations and duties: the fragmentary nature of the legislation and the use of English terms that do not always coincide with the term "responsibility" have certainly made the interpreter's task burdensome.

It is clear from the provisions of legislative decree no. 206/2005 and in particular from the definitions of "professional" and "manufacturer" that the addressee of the legislation is the person who carries out the activity of producing and manufacturing the foodstuff. European legislation (Reg. no. 178/2002), on the other hand, focuses on the figure of the public or private food business engaged in the manufacture, processing and distribution of food, and on the operator, be it a natural or legal person, under the control of the food business.

What is certain, however, is that whoever carries out a manufacturing activity in the food industry is, as the owner of the activity, the addressee of the relative (Italian and European) legislation and, above all, is responsible for any damage that occurs; just as it is equally certain that the liability in question – despite being characterised by the existence of specific mechanisms for the attribution of liability that are necessary due to the particular nature of the food product – occurs according to the conventional dynamics and requirements of the civil liability system.

According to the legislation, therefore, it is the responsibility of the food industry operator to ensure compliance with European legislation, with the duty to compensate for any damage caused by the breach thereof, in line with the dual protection, both preventive and compensatory, pursued by the European legislator in order to ensure a high level of protection of human health and the efficient running of the food market.

La responsabilità civile del produttore di alimenti, in M. Godoni, E. Sirsi, *Regole dell'agricoltura del cibo. Produzione agricola, sicurezza alimentare e tutela del consumatore*, cit., p. 105. See also O.T. Scozzafava, *La proposta di direttiva comunitaria sulla responsabilità per danni da prodotti*, in «Giurisprudenza di merito», 1977, p. 1286 et seq.

2. Liability for damages caused by food defects: defectiveness and safety

When the liability of the food industry operator relates to damage caused by a defect in the foodstuff, the criterion of attribution of liability is deviated from, as the defective nature of the foodstuff constitutes a prerequisite for recourse to that particular extra-contractual liability known as product liability, now regulated under Title II of the Consumer Code[20].

Moreover, it is undisputed that the notion of product envisaged by the Consumer Code is broad and also includes foodstuffs to which, among other things, this legislation also applies thanks to the provisions of art. 21 of the same Regulation no. 178/2002, which allows the application of Directive no. 85/374, requiring the coordination of the two legislations.

Product liability for defective products is objective[21] even if not absolute[22] (given the provision of grounds for exemption), as there is no requirement to prove the existence of the subjective element of wilful misconduct or fault, although many in doctrine have emphasised that, in actual fact, this is more of an inversion of the burden of proof[23]: the injured party must prove the defect,

20. On the notion of the defective product see A. Barenghi, *Diritto dei consumatori*, Wolters Kluwer, Milano, 2017, p. 556 et seq.

21. The qualification in terms of objective liability is affirmed by recital 2, Directive 85/374/EEC: "whereas only the manufacturer's liability, irrespective of his fault, constitutes an adequate solution to the problem, specific to an age characterised by technological progress, of a fair attribution of the risks inherent in modern technical production". The common opinion that the manufacturer bears objective liability is deemed not entirely correct by P. Borghi, *La responsabilità del produttore per prodotto difettoso*, in L. Costato, P. Borghi, S. Rizzioli, V. Paganizza, L. Salvi, *Compendio di diritto alimentare*, Wolters Kluwer, Milano, 2017, p. 28.

22. Cf. G. Alpa, *L'attuazione della direttiva comunitaria sulla responsabilità del produttore. Tecniche e modelli a confronto*, in «Contratto e impresa», 1988, p. 580.

23. The burden of proof on the injured party is governed by art. 4 of Directive 85/374/EEC: "the injured party must prove the damage, the defect and the causal connection between the defect and the damage". The great advantage is therefore that proof of the manufacturer's fault is not necessary, "thereby increasing the chances of judicial success of the weak party in the consumer relationship". Cf. V. Pacileo, *Il diritto degli alimenti*, Giuffrè, Milano, 2003, p. 566.

the damage[24] and the causal connection between the defect and the damage (art. 120 of the Consumer Code)[25]. The provision is particularly unsatisfactory for foodstuffs as they are destroyed with use (consumable goods), so that when consumption has led to their complete disappearance, the judicial decision can only be based on presumptions[26].

The core of the discipline is the notion of defect, taken from art. 117 of the Consumer Code[27] and consists in the lack of the safety that the general public may expect[28], taking into account all the circumstances, including the manner in which the product was put into circulation, its presentation, its obvious characteristics, the instructions and warnings provided, the use for which the product may reasonably be intended and the conduct that may reasonably be expected in connection with it[29], the

24. It must not be forgotten that, in order for the manufacturer to be obliged to pay damages, it is necessary for damage to have occurred, as placing a defective product in circulation is not sufficient.

25. The manufacturer, on the other hand, bears the burden of proving the facts that may exclude liability under art. 118 of the Consumer Code.

26. A. Germanò, *La responsabilità del produttore agricolo e principio di precauzione*, in *Trattato breve di diritto agrario italiano e comunitario*, cit., p. 746.

27. As is well known, European doctrine, through the interpretation of Paragraph III and the criteria of Paragraph I of art. 117 of the Consumer Code, borrowing from German doctrine, has arrived at a tripartition of defects into a) manufacturing defects; b) design defects and c) information defects. On the matter, see A. Di Majo, *La responsabilità per prodotti difettosi nella direttiva comunitaria*, in «Rivista di diritto civile», 1989, p. 38 et seq.; G. Ghidini, *Art. 5 Prodotti difettosi*, in G. Alpa, U. Carnevali, F. Di Giovanni, G. Ghidini, U. Ruffolo and C.M. Verardi, *La responsabilità per danni da prodotti difettosi*, Giuffrè, Milano, 1990, p. 47 et seq. He reminds this distinction and the consequent industrial matrix of the legislation – despite the fact that it now also applies to the agrifood sector, E. Rook Basile, *Sicurezza e responsabilità nella filiera alimentare*, cit., p. 437. He distinguishes manufacturing defects from design defects (the former concern the individual specimen while the latter the entire series), Giud. Pace Monza, 20 March 1007, in «Arch. civ.» 1997, p. 876, with note by V. Santarsiere, within the scope of a damages action brought by a consumer who, while handling a foodstuff into which a metal fragment had fallen, suffered two broken teeth.

28. On the concept of the defective product see P. Trimarchi, *La responsabilità civile: atti illeciti, rischio, danni*, Giuffrè, Milano, 2017, p. 409 et seq.

29. In this regard, it should be recalled that product safety (in general) is assessed not only with reference to the normal and legitimate use of the product, but also to the consumer's own uses, which are, in any event, reasonably foreseeable, with the exclusion, however, of conduct lacking the minimum conditions for compliant use. Cf. Court of Cassation, no. 16808 of 13 August 2015, in the *onelegale* online database.

time in which the product was put into circulation: in short, the product is considered to be defective when it does not offer the safety normally offered by other specimens of the same series[30], the fact that there are more superior products on the market does not automatically make it defective[31].

The need to coordinate the legislation on liability for defective products and that on food safety, as well as the reference to a lack of safety as a synonym for defect made directly by the Consumer Code, implies the need to better specify the safety requirements drawn from art. 14 of Regulation no. 178/2002 dedicated specifically to "food safety requirements". For foodstuffs, in fact, the safety requirements are drawn, unlike for other products, not from art. 103 of the Consumer Code, which defines a safe product, but from art. 14 of Regulation no. 178/2002[32].

This provision expressly forbids the placing on the market of unsafe food, i.e. food harmful to health and food unfit for human consumption; the riskiness depends on the normal conditions of use of the food by

30. E. Bellisario, *Commento all'art. 117*, in G. Alpa, L. Rossi Carleo (a cura di), *Codice del consumo. Commentario*, Edizioni scientifiche italiane, Napoli, 2005, p. 753, note 7.

31. In case law on the notion of the defective product under art. 117 of the Consumer Code, see Court of Cassation, 20 November 2018, no. 29828, in the *Pluris* online database: "Pursuant to article 117 of Legislative Decree no. 206 of 2005 (the so-called Consumer Code), as already envisaged in art. 5 of Presidential Decree no. 224 of 1988, the level of safety below which the product is to be considered defective does not correspond to that of its harmlessness, as reference must instead be made to the safety requirements generally required by users in relation to the circumstances typified by the aforesaid provision, or to other elements that can be assessed and are specifically assessed by the court of merit, which also include any safety standards imposed by industry regulations".

32. E. Al Mureden, *Danni da consumo di alimenti tra legislazione di settore, principio di precauzione e responsabilità civile*, cit., p. 1503, p. 1503, who specifies that "with regard to the food sector, art. 102, par. 6 of the Consumer Code states that 'the provisions' of the title relating to 'product safety' do not apply 'to the foodstuffs referred to in Regulation (EC) no. 178/2002, given that said regulation envisages more specific safety requirements (articles 14 and 21 of Regulation (EC) no. 178/2002)'. Add to this the fact that, in addition to the 'horizontal' rules on food safety, it is also sometimes necessary to refer to rules specific to particular categories of food: so, for example, when products such as milk or eggs are taken into consideration, the public policy rules on food safety will have to be supplemented with the more specific rules dictated with reference to these particular categories".

the consumer at each stage of production, processing and distribution, as well as on the information made available to the consumer, including that on the label or otherwise accessible, aimed at avoiding specific adverse health effects caused by a foodstuff.

Information – in particular that stated on the label – becomes an integral part of the foodstuff as it contains those normal conditions of use to which the assessment of the safety of the product is linked.

The assessment of harmfulness to human health must take into account the probable immediate and/or short-term and/or long-term effects of the food on the health of the person[33], and their descendants; the probable cumulative toxic effects of a food; the particular health sensitivity of a specific category of consumers, if the food is intended for them.

The determination of unsuitability, on the other hand, depends on the unacceptability of the product for human consumption, according to its intended use, as a result of contamination, putrefaction, deterioration or decomposition: these are phenomena that can obviously only imply the manufacturer's liability if they occur when the food is still available or if they are caused by a lack of information that the manufacturer should have provided for the correct storage of the food.

It thus emerges that the food that is at risk (because it lacks the requirements of art. 14) also lacks the safety requirements and is therefore defective, while a food product that complies with the safety requirements of art. 14 of Regulation no. 178/2002, therefore not at risk

33. Damage caused by foodstuffs can be of two types: immediate damage and long-term damage. The former are characterised by the fact that they are perceived by the damaged party at the moment of consumption or shortly afterwards, consisting of poisoning or intoxication due to the ingestion of food that is unfit for human consumption or simply deteriorated; long-term damage, on the other hand, is not perceived at the moment of consumption of the food, consisting of pathologies (allergies or tumours) that arise over long periods of time and following the continuous consumption of a product due to the "bioaccumulation" process. On the point, see E. Al Mureden, *Danni da consumo di alimenti tra legislazione di settore, principio di precauzione e responsabilità civile*, cit., p. 1496 et seq. which speaks of "immediate damages" and "delayed damages". The Author also speaks of "developmental damage, which only emerges after the food has been released onto the market as a completely unexpected consequence of consuming a certain food" and specifies that "this latter problem has been raised, in particular, with reference to the production and marketing of so-called novel foods and genetically modified foods (GMOs)".

at the time of its release onto the market, could subsequently turn out to be defective.

In other words, a food at risk is defective by definition, whereas a non-risk food placed on the market could be defective on the basis of the assessment made in accordance with the parameters envisaged by art. 117 of the Consumer Code, which must be considered valid at all times, regardless of the product to be examined. In other words, defectiveness according to art. 117 can only be ascertained with respect to a foodstuff that complied with art. 14 when it was released onto the market.

With reference to the damage to be compensated, while the riskiness of a foodstuff is assessed exclusively in relation to its possible harmful effects on human health, in the case of a defective foodstuff causing the manufacturer's liability, save for the existence of one of the causes of exoneration under art. 118, the damage caused by death or personal injury as well as the destruction or deterioration of something other than the defective product, provided that it is of a type normally intended for private use or consumption and therefore principally used by the damaged party, is eligible for compensation. The damage, in this second case, is eligible for compensation only to the extent that it exceeds the sum of three hundred and eighty-seven euros[34].

So while the parameters contained in art. 117 aimed at ascertaining the defectiveness of a product echo those outlined in art. 14, they must be related not only to the high level of protection of human health, but also to the protection of things of no small economic value.

Lastly, the eligibility for compensation of non-pecuniary damage is left to the jurisdiction of national legal systems and recognised by case law[35].

3. Those liable, the contribution of the injured party and the other applicable rules of the Consumer Code

Art. 114 of the Consumer Code establishes that the manufacturer is liable for the damage caused by the defective product, while the

34. Art. 123 Consumer Code.

35. Court of Cassation, 27 October 2004, no. 20814; Court of Turin, 2 December 2005; Court of Rome, 26 October 2003, in the *Jurisdata* online database.

following art. 115, par. 2 *bis*[36], specifies that the manufacturer is to be understood as the manufacturer of the finished product or a component thereof, the manufacturer of the raw material, as well as, for agricultural products of the soil and for those of livestock farming, fishing and hunting, the farmer, breeder, fisherman and hunter, respectively.

It is clear that, in order to identify the person liable, it will be essential to ascertain whether the defect causing the damage is directly attributable to the finished product or to one of its ingredients, provided, of course, that the manufacturer of the former is different from the manufacturer of the latter.

It is only when the producer is not identified or identifiable that liability is imposed on the supplier of the foodstuff: in particular, if the supplier does not inform the injured party within three months of the request[37], of the identity and domicile of the manufacturer or of the person who supplied the product, they will be called to answer for the damages in the place of the latter (art. 116 of the Consumer Code).

The possibility of attributing liability directly to the intermediary – according to the Court of Justice[38] – would certainly have facilitated the legal action of the injured party, but this facilitation would have been paid for "dearly, urging each operator to insure themselves to such an extent as to cause a considerable increase in the price of products as well as a significant increase in claims, so that the choice of identifying

36. Introduced by legislative decree no. 221/2007.

37. Pursuant to art. 116, par. II, the request must be made in writing and must indicate the product that caused the damage, the place and, with reasonable approximation, the date of purchase; it must also contain an offer to view the product, if it still exists.

38. On this point see Court of Justice, 10 January 2006, C-402/03, *Bilka*, in «Diritto e giurisprudenza agraria e ambientale», 2007, p. 385, with note by A. Germanò, *Responsabilità per danni da uova con salmonella: la posizione del fornitore finale delle uova prodotte da altri*, in «Responsabilità civile e previdenza», 2006, p. 506, with note by L. Villani, *La responsabilità del produttore-fornitore: nuovi casi italiani ed europei*. The ruling is also commented upon by A. Montanari, *La responsabilità del "fornitore" nella disciplina europea del danno da prodotti difettosi*, in «Europa e diritto privato», 2007, p. 195. For a comment on the *Bilka* and *Lidl* cases, see M. Arbour, *Sicurezza alimentare e prodotti difettosi dopo* Lidl *e* Bilka*: un binomio sfasato?*, in «Danno e responsabilità», 2007, p. 989 et seq. On the subject see Cass., 1 June 2010, no. 13432, in «Danno e responsabilità», 2011, p. 276 et seq., with note by L. Frata.

the manufacturer [...] represents the result of a precise weighting of the roles of the various economic operators"[39].

It is therefore a subsidiary liability, as the consumer is always free to pursue non-contractual or contractual remedies against the supplier in accordance with the general rules[40]: this is a successful choice in the food industry – especially with reference to agricultural products – as here the facilitation ensured by the legislation on producer liability through the mechanism of the latter's objective liability is less effective, "because despite the obligation of traceability and labelling, it is still hard to identify the producer due to the particular structuring of supply, characterised by extreme fragmentation"[41].

Art. 121 of the Consumer Code, in order to guarantee greater consumer protection, and to minimise the risk of being unable to identify the liable party[42], on the assumption that there are several producers, envisages the joint obligation of all the parties liable for the same damage, with the right of recourse in favour of the producer who has fully indemnified the damage against the others, to the extent determined by the proportions of the risk referable to each of them[43].

As always, the culpable behaviour of the injured party takes on particular importance: art. 112 of the Consumer Code expressly refers to the provisions of art. 1227 of the Italian Civil Code. The contributory fault of the injured party – which is ascertained by the court, ex

39. Cf. S. Masini, *Corso di diritto alimentare*, cit., p. 189.

40. E. Rook Basile, *Safety and Liability in the Food Chain,* cit., p. 448. Cf. the ruling of the Court of Justice 10 January 2006, C-402/03, cit.

41. M. Giuffrida, *Dalla responsabilità dell'imprenditore all'imprenditore responsabile,* cit., p. 558 et seq.

42. C. Cossu, sub. *art. 7*, in G. Alpa, M. Bin, P. Cendon (a cura di), *La responsabilità del produttore,* cit., p. 177 et seq.

43. On the provision, see U. Carnevali, *Prodotto composto difettoso e regresso tra produttori responsabili. Il criterio delle "dimensioni del rischio"*, in «Responsabilità civile e previdenza», 2015, p. 360 et seq. E. Bellissario, sub. *art. 121*, in G. Alpa, L. Rossi Carleo (a cura di), *Codice del Consumo,* cit., 2005, p. 764. See also P. Borghi, *La responsabilità del produttore per prodotto difettoso*, in L. Costato, P. Borghi, S. Rizzioli, V. Paganizza, L. Salvi, *Compendio di diritto alimentare*, cit., p. 286, who deduces from the assumption of contributory negligence the qualification of product liability in terms of presumed fault liability and not as objective liability, "consequently, the existence of joint fault by the injured party would have no legal significance".

officio, on the basis of the evidence acquired in the proceedings[44] – can therefore determine a reduction of the compensation due or even exclude the payment of compensation for damages altogether when the person could have avoided them by using ordinary diligence. Compensation may also be excluded in the event of voluntary assumption of the risk, i.e. when the injured party, despite being aware of the product's defect and its dangerousness, voluntarily exposes themselves to it.

Lastly, art. 125 of the Consumer Code (art. 10 of Directive 85/374), according to which the right to compensation expires after three years from the day on which the injured party had or should have had knowledge of the damage, the defect and the identity of the person responsible[45], and art. 126 of the Consumer Code (art. 11 of Directive 85/374[46]), according to which the right to compensation expires ten years from the day on which the producer or importer in the European Union has released the goods into circulation in the European Union[47], can definitely be invoked in the agri-food industry. On one hand, this provision will be difficult to invoke due to the "normally very short life span"[48] of foodstuffs, while on the other, it runs the risk of expiry of the deadline for claiming compensation[49] in the case of damage which

44. Cf. *ex multis*, Court of Cassation, no. 24080 of 25 September 2008, in the *onelegale* online database.

45. Par. (2) of the provision goes on to envisage that, in the case of aggravation of the damage, the limitation period does not commence before the day on which the injured party became aware or should have become aware of damage of sufficient gravity to justify a claim. See E. Bellissario, sub. *Art. 125*, in G. Alpa, L. Rossi Carleo (a cura di), *Codice del Consumo,* cit., p. 775 et seq.

46. See Court of Justice, 19 February 2006, Case C-127/04 affirmed the neutral character of art. 11, the *rationale* of which is to meet the requirements of legal certainty in the interest of the parties involved.

47. Interruption and suspension of limitation periods continue to be governed by the rules of each Member State. With reference to the regulation of limitation and prescription in the Consumer Code, see A. Barenghi, *Diritto dei consumatori,* cit., p. 566 et seq.

48. M. Franzoni, *Civil liability and consumer protection in the agri-food sector,* cit., p. 562.

49. See L. Cabella Fisiu, *Responsabilità civile e tutela del consumatore nel settore agroalimentare*, consulted on 10 April 2019 at
https://www.wto.org/english/news_e/archive_e/mc11_arc_e.htm
which, speaking of the extension of the regulation to agricultural products – also following the case of "mad cow disease" – writes: "It should be noted, however, that the extension

manifests itself a long time after consumption of the foodstuff, as could happen with GMOs[50] , the impact of which on the human organism can only be verified many years later[51]. From this point of view, it would be desirable not so much to change the three-year limitation period, but rather the expiry, which, although fair for some types of products, is certainly too short for others. Furthermore, the legislator seems to be well aware of the fact that foods can be harmful to human health for a long time after their consumption, as proven by art. 14 of Regulation (EC) no. 178/2002, which states that consideration must be given to "not only the probable immediate and/or short-term and/or long-term effects of the food on the health of a person who consumes it, but also on that of descendants", as well as to "the probable cumulative toxic effects of a food".

4. Causes of exoneration from liability

The legislation also envisages (art. 118 of the Consumer Code[52]) causes of exoneration from liability, imposing the relative burden of proof on the producer, and it is this, as we have already said, that means that this particular objective liability is not absolute.

The manufacturer will not be liable if they have not released the product into circulation, thereby referring (art. 119) to the case where the product has not been delivered to the purchaser, the user or an auxiliary of the latter, even on view or on trial, or delivered to the carrier or forwarding agent for dispatch to the purchaser or user.

to agricultural products, which is definitely to be welcomed, does not seem destined to bring great advantages in possible cases of 'mad cow disease', given that this variant of *Creutzfeldt-Jakob* disease manifests itself years after eating infected beef, and this causes considerable difficulties in proving the etiological link, not to mention that the ten-year limitation period also risks precluding an action to claim compensation for damages".

50. On the advisability (denied by the author) of including GMO food production activities among those subject to art. 2050 of the Italian Civil Code, see E. Al Mureden, *Danni da consumo di alimenti tra legislazione di settore, principio di precauzione e responsabilità civile,* cit., spec. p. 1524 et seq. and the bibliography cited therein.

51. M. Pierini, *Emissione deliberata di organismi geneticamente modificati: disciplina e tutela del consumatore*, in «Nuovo diritto agrario», 2000, p. 621.

52. The provision reproduces art. 6 of Presidential Decree no. 224/1988 in its entirety.

Liability will not be excluded if the product has been subject to forced sale, unless the manufacturer has specifically indicated the defect by declaration made to the court official at the time of the attachment or by a document served on the previous creditor and filed with the registry office of the court of execution within fifteen days of the attachment.

Liability is also excluded if the defect that caused the damage did not exist when the producer released the foodstuff into circulation: in this case (art. 120, par. II), it is sufficient to provide proof based on the probability that the defect did not exist at the time of release into circulation. This clarification actually seems to be in conflict with the precise obligations of the manufacturer of foodstuffs: the need for circumstantial proof of the non-existence of the defect at the time of release into circulation should be deduced from this, otherwise the manufacturer would have disregarded the obligation to only place safe products on the market[53]. Liability is also excluded when the defect is due to the conformity of the product with a mandatory legal norm or binding measure.

It is also necessary to remember the so-called development risk, which is another reason for exoneration from liability envisaged with reference to the hypothesis that the state of scientific and technical knowledge when the manufacturer released the product into circulation did not allow the product to be considered defective. On this matter, the Court of Justice[54] has made it clear that the reference to scientific and technical knowledge is not limited to the safety practices and standards in use in the sector in which the producer operates, but includes the most advanced level of such knowledge at the time the product in question was placed on the market: in other words, the objective state of knowledge is relevant and not the personal state of knowledge of the producer, as long as it is accessible to him. Defects which are known to be present but which cannot be completely eliminated are excluded from the concept of development risk.

53. M. Giuffrida, *La responsabilità civile per danno da prodotto alimentare difettoso*, in Costato, A. Germanò, E. Rook Basile (a cura di), *Trattato di diritto agrario,* vol. III, cit., p. 631: "After all, the notion of 'release into circulation', as explained in art. 119 of the Consumer Code and as interpreted by the Court of Justice, and the term 'placement on the market', as used for foodstuffs in art. 3, par. 8 of Regulation no. 178/2022, are essentially the same".

54. CJEU, 29 May 1997, in Case C-300/95, at *www.eur-lex.europa.eu/it/index.htm*.

Lastly, in the case of compound products, the manufacturer of a part or of a raw material is not liable if the defect is the consequence of the incorporation.

The presence of one of these exonerations, while excluding the particular form of product liability, does not, however, preclude – once again – the injured party from having recourse to the general legislation on non-contractual liability.

5. Beyond defective product liability

As already mentioned, the system of product liability does not preclude recourse to other forms of protection, nor does it exhaust it: the consumer always has the opportunity to invoke the right to claim compensation envisaged in the Italian Civil Code, inter alia, *in primis* in cases outside the scope of defective product liability.

It is the Consumer Code (art. 127) that confirms that the provisions contained therein neither exclude nor limit the rights attributed to the injured party by other laws.

Acknowledging the effectiveness and validity of ordinary civil liability does not negate the need for harmonisation pursued in this area, but extends consumer protection and consumer health, making the system more efficient overall. In this way, the injured consumer will be able to choose the most suitable instrument for their own protection[55], benefitting – whenever possible – from the advantages offered, especially in terms of evidence, by the special regime or the forms of compensation offered by the national legal system. Moreover, this solution also seems consistent with the doctrinal orientation that has always considered defective product liability as a supplementary regime and not a substitute for the ordinary ones already present in the legal system[56].

55. See A. Gorassini, *Contributo per un sistema della responsabilità del produttore,* Giuffrè, Milano, 1990, p. 317.

56. See R. Pardolesi, *Commento all'art. 15*, in *La responsabilità per danno da prodotti difettosi. Commentario al dpr 24 maggio 1988, n. 224*, R. Pardolesi and G. Ponzanelli (a cura di), in «Le nuove leggi civile commentate», p. 650.

On the contrary, without dwelling too much on this point here, it is worth remembering that the admissibility of recourse to ordinary liability regimes seems more than appropriate, partly because the regulations of the Consumer Code were, for obvious reasons, designed with regard to the typical defects of industrial products in mind; this has resulted in certain inadequacies that limit its potential, such as that concerning the burden of proof[57], as well as the possibility of applying the notion of defect in all its facets to foodstuffs[58].

6. Omission of information on the label

The matter has been raised as to whether the omission of information on the label can be considered an independent form of tort due to breach of the right to information, as well as the right to self-determination in the life choices of the individual[59], in the absence of further damage.

57. L. Costato, *Prodotti agricoli ed attuazione della Direttiva CEE sulla responsabilità da prodotto difettoso*, cit., p. 71; M. Mazzo, *La responsabilità del produttore agricolo,* cit., p. 156 et seq. underlines how little these criteria are adapted to food products. See also M. Sabbatini, *La responsabilità del produttore agricolo e i prodotti OGM*, in L. Paolini (a cura di), *Alimenti, danno e responsabilità*, Giuffrè, Milano, 2008, p. 75: "some of the inadequacies of this discipline [...] derive substantially from the fact that the producer's liability was conceived in relation to the industrial product and therefore is not always adaptable to the agricultural product in general and to GMOs in particular. Examples are the burden for the injured party to prove the existence of the defect in the product, given that the agricultural product is destroyed with use and therefore it is difficult to carry out any examination or inspection on it a posteriori; the burden of identifying the passive legitimised producer, which traceability could remedy; or, again, the ten-year time limit, which risks leaving an absence of cover for damage to health that may occur many years after consumption".

58. Think of the inadequacy of the concepts of "manufacturing and design faults" with regard to natural and unprocessed foodstuffs, which are now also included in the scope of application of the legislation, and to which only the reference to information faults seems to apply. A separate discussion is the applicability of these types of defects to genetically modified agricultural products, which can be equated with processed products. Cf. M. Mazzo, *La responsabilità del produttore agricolo,* cit., p. 167 et seq., who considers that manufacturing and design defects can only be spoken of in the case of GMOs, whereas for other products it is essentially only the defect of information that arises.

59. It is also referred to as the right to consumer self-determination. See Court of Cassation, single sect., 15 January 2009, no. 794, in «Foro italiano», I, 2009, c. 717; in «Nuova giurisprudenza civile commentate», I, 2009, p. 776; in «Corriere giuridico», 2009, p. 770; in «Danno e responsabilità», 2009, p. 853; in «Ambiente e sviluppo», 2010,

What is certain is that, in view of the complexity of the food chain, the final consumer seldom buys the food from the person who produced it and placed it on the market, so it is unlikely that they can have recourse, in the absence of a contractual relationship, to the classic contractual remedies envisaged by the Italian Civil Code or those contained in the Consumer Code.

It is no mere coincidence that, precisely because of the complexity of the food production process, the European legislator (art. 8 EU Reg. no. 1169/2011) has rigorously identified the subject on whom the labelling obligation falls, establishing that this is the operator (or importer if the operator is not established in an EU country) under whose name or company name the product is marketed.

Given that the food safety obligation incumbent on operators in the food industry includes the obligation to comply with the rules on the provision of information, ensuring the presence and accuracy of the label of each product, in order not only to protect health, but also to allow the final consumer to make informed choices, there seems to be no doubt that its breach is subsumed under civil liability (articles 7 and 8 of Regulation no. 178/2002).

Conduct in breach of labelling legislation, in fact, integrates the fault of the operator and is the cause of the unfair damage suffered by the consumer, taking the form of the infringement of their right to be fully and comprehensively informed in order to be able to make voluntary and informed choices also with regard to food law.

In short, the right to be informed in both the food and health sectors. After all, the *ratio* behind the legislation dictated by Regulation (EU) no. 1169/2011[60] on the provision of information on foodstuffs

p. 132 and in «Responsabilità civile e previdenza», 2010, p. 11. See D. Romano, *La coltivazione e commercializzazione di OGM fra sicurezza alimentare del consumatore e tutela del mercato unico*, in «Contratto e impresa», 2018, p. 1474 et seq.: "a real 'right to information' to protect the consumer's self-determination is therefore at stake [...] Protected, therefore, at the same time, are not only the transparency of the food chain but also, and above all, the freedom of the consumer and their right to food, considered to be a real cultural right and, therefore, human as well as social".

60. Regulation of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) no. 1924/2006 and (EC) no. 1925/2006 of the European Parliament and of the Council, and repealing

to consumers is not so far removed from that inspiring the principles on the responsibility of the doctor, developed over time by case law and then transposed by Law no. 219/2017, where informed consent, while becoming, on one hand, essential to prevent the doctor from incurring liability, on the other, and above all, is the instrument for the full realisation of the principle of self-determination of the subject in medical treatment. In both cases, the right to information is functional and essential to the individual's right to self-determination as a manifestation of a fundamental constitutionally protected right: self-determination in choices regarding one's own health as well as in food choices. In the agri-food sector, the consumer therefore has the right not only to enjoy products that are not harmful to health, but also to choose them with awareness and knowledge.

Knowledge of all food-related information is indispensable not only to avoid incorrect and/or harmful nutrition for the consumer, but more simply to enable the realisation of a certain lifestyle[61]. Even if it is not known whether or not a certain food is harmful – because it is genetically modified for example – the consumer definitely has the right to choose or reject it, once they have been informed.

"The breach of the obligation to provide information [...] may be relevant for the purposes of compensation – even in the absence of damage to health or in the presence of damage to health not attributable to the breach of the right to information – whenever it is possible to configure [...] detrimental consequences of a non-pecuniary nature of an appreciable gravity resulting from the breach of the fundamental right to self-determination, provided that such damage exceeds the minimum threshold of tolerability imposed by duties of social solidarity

Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) no. 608/2004 (Text with EEA relevance), published in OJEU no. L 304 of 22 November 2001 and brought into force on 12 December 2011. On 8 February 2018, Legislative Decree no. 231 of 15 December 2017 was published in the Official Journal concerning the sanctioning discipline for the breach of the provisions of Regulation (EU) no. 1169/2011.

61. M. Franzoni, *Responsabilità civile e tutela del consumatore nel settore agroalimentare,* cit., p. 563.

and which is not futile, i.e. consisting of mere inconvenience or annoyance"[62].

On the other hand, it is obvious that when the breach of the right to information has caused or at least contributed to damage to another asset protected by the law, there will be a concurrence between the general discipline of civil liability and the discipline of producer liability for damage caused by a defective foodstuff.

62. Court of Cassation, 9 February 2010, no. 2847, in «Giustizia civile», Mass., 2010, p. 174, cited by M. Giuffrida, *Responsabilità del produttore di alimenti*, in P. Borghi, I. Canfora, A. Di Lauro, L. Risso (a cura di), *Treaty of Food Law of the European Union,* Giuffrè, Milano, 2021, p. 624 et seq.

VIII. The Agri-Food Industry and Legislative Decree no. 231 of 2001. The Instrument of Organisation and Management Models

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1. Foreword

This contribution starts from the perspective of a criminal law which, in the agri-food sphere, rather than "limiting" its sphere of action to the field of the repressive function of the offence, aspires to the highest "pro-active" role in guiding the conduct of operators in the sector[1].

This approach is rooted in the assumption that, in the area we are concerned with here, there is a need to carry out a guided protection of collective interests considered to be fundamental and that the goal can only be achieved where criminal law relates to the social field in order to help maintain the fragile balance between individual freedom and the need to protect public safety.

1. On this topic, see the in-depth contribution by E. Mazzanti, *Circolarità e dinamicità dell'illecito nel diritto penale alimentare (tra presente e futuro)*, in G. De Francesco, G. Morgante (a cura di), *Il diritto penale di fronte alle sfide della "società del rischio". Un difficile rapporto tra nuove esigenze di tutela e classici equilibri di sistema*, Giappichelli, Torino, 2017, p. 297 et seq.

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In this context, the organisation and management models, pursuant to Legislative Decree no. 231/2001, constitute a valid tool for the re) planning of corporate realities, thanks to the preliminary mapping of the areas at risk of offences being committed and the consequent activation of operational proceedings aimed at introducing the appropriate measures to prevent them.

2. The national and supranational framework on the criminal liability of agri-food industries

The agri-food sector sees a multilevel plan of measures to prevent unlawful conduct: administrative sanctions, envisaged by Legislative Decree no. 190 of 5 April 2006 in partial implementation of Regulation (EC) no. 178/2002, and the current contravention structure based on art. 5 of Law no. 283 of 1962[2]. Administrative food offences, although numerous, mainly concern breaches of commercial prescriptions or relate to the subject of packaging, authenticity, composition, hygiene, packaging, record keeping, accompanying documents, labelling, designations, markings, information, authorisations, etc.

The core of prevention in the food sector is clearly entrusted to criminal sanctions, despite which, according to part of the doctrine, an adequate case of prevention is currently lacking, as is a criminal hypothesis for unlawful businesses or commercial organisations, with the total inadequacy of repression of crime by law no. 283/1962[3]. This preventive purpose could be validly reinforced by the introduction of criminal sanctions for failure to withdraw dangerous products that have been culpably placed on the market, while, with the 2020 reform, the hypothesis of a health disaster was expressly envisaged in the case of

2. These rules, introduced to amend articles 242, 243, 247, 250 and 262 of the consolidated text on health laws, approved by Royal Decree no. 1265 of 27 July 1934 and entitled "Hygienic regulation of the production and sale of foodstuffs and beverages", envisage a range of conducts which vary from purely precautionary breaches to outlining situations of tangible and significant danger, such as anticipated forms of public health code offences.

3. M. Donini, *La riforma dei reati alimentari: dalla precauzione ai disastri. Per una modellistica pentapartita degli illeciti in materia di salute e sicurezza alimentare*, in Biscotti, E. Lamarque (a cura di), *Cibo e acqua. Sfide per il diritto contemporaneo. Verso e oltre Expo 2015*, Giappichelli, Torino, 2015, p. 22.

conduct that creates hidden dangers consequential to the commission of commercial fraud, and which may have serious effects on health. The model to prevent offences was already present in the food sector in certain mechanisms for the construction of offences under art. 5, Law no. 283/1962, particularly in the system of incrimination by exceeding the threshold limits on the use of additives and pesticides, in particular lett. f) and lett. g) of the aforementioned article.

Another level of protection of public health/food hygiene is embodied in Legislative Decree no. 70 of 2005, through the envisaging of offences built on collaboration between food operators and public institutions. In this case, sanctions are established for breaches of Regulation (EC) no. 1829 of 2003[4], concerning genetically modified food and feed. The decree aims to guarantee "purely conventional" safety by monitoring the negotiated, participative and dynamic procedure established for the authorisation of the marketing of transgenic food[5] through administrative and penal sanctions. Looking at details of the measures introduced by Legislative Decree no. 70/2005, one can identify cases that protect the administrative procedure, cases that aim to protect a specific measure and, lastly, cases that sanction the failure to adopt specific precautionary measures. In the specific case of the contravention established pursuant to art. 3, par. 1, the conduct of the person who fails to comply with the measure adopted by the European Commission ordering the withdrawal from the market of a product containing GMOs is prosecuted[6]. In this case, the operator authorised to place a foodstuff containing genetically modified organisms on the market, even before the entry into force of the regulation, can "regularise" the situation by means of a notification

4. This regulation, together with Regulation (EC) no. 1830/2003, deals with the traceability and labelling of genetically modified food and feed containing soya, maize and rape, not from Italy, where the ban on cultivation remains unchanged. Specifically, Regulation (EC) no. 1829/2003 deals with genetically modified food and feed, whereas Regulation (EC) no. 1830/2003 deals with the traceability and labelling of genetically modified organisms, as well as the traceability of food and feed produced from genetically modified organisms. The threshold of transgenic ingredients triggering the obligation to label a biscuit, snack or feed "genetically modified" or "made from GMOs" is set at 0.9%.

5. L. Tumminello, *Sicurezza alimentare e diritto penale: vecchi e nuovi paradigmi tra prevenzione e precauzione*, in «Dir. Pen. Cont.», 2013.

6. Pursuant to Art. 8, § 6 of Regulation (EC) no. 1829/2003.

containing some of the elements present in the ordinary application for authorisation, i.e. "*a) in the case of products placed on the market in accordance with Directive 90/220/EEC before the entry into force of Regulation (EC) no. 258/1997 or in accordance with the provisions of Regulation (EC) no. 258/1997, the operators responsible for placing them on the market shall notify the Commission of the date on which they were first placed on the European market, within six months of the date of application of this Regulation; b) in the case of products which have been lawfully placed on the European market but which are not covered by letter a), the operators responsible for placing them on the market shall notify the Commission that the products were placed on the European market before the date of application of this Regulation, within six months of the date of application of* this *Regulation*"[7]. Following the outcome of the notification, the Commission activates the procedure envisaged and, in the event of defects, adopts a measure to withdraw the product and its derivatives, subject to prior exhaustion of the stocks in circulation. The contravening hypothesis envisaged by art. 3, paragraph 1, of Legislative Decree no. 70/2005 sanctions the failure to comply with the measure issued by the Commission following the outcome of the verification process referred to above.

As will be discussed in more detail in § 3 below, numerous legislative definitions in the agri-food sector can be found in Regulation (EC) no. 852/2004, which applies to so-called primary production, including transport, storage and handling activities, understood as operations associated with primary products at the place of production, provided that these do not undergo substantial changes to their original nature. It is also applied to the transport of live animals and, in the case of products of plant origin, products of fishing and hunting, to transport from the place of production to an establishment. With the aforementioned regulation, the boundaries between "unprocessed products" and "processed products", in particular art. 2 (n) and (o), as well as the definitions of "direct supply", "retail"[8], "local level" and

7. See Art. 8 § 1 of Regulation (EC) no. 1829/2003.

8. In particular, as far as the definition of "retail" is concerned, reference is made to the provisions of Regulation (EC) no. 178/2002, Art. 3, lett. 7, i.e. "*the handling and/or processing of food and its storage at the point of sale or delivery to the final consumer, including distribution terminals, restaurants, canteens of companies and institutions,*

"small quantity". On the subject of the application of system 231 for the development of organisation and management models to the agri-food industry, the regulation also fulfils the additional role of promoting the development of guides to good hygiene practice and the application of HACCP principles, as well as encouraging their dissemination and use. Although the preparation and adoption of such guides is voluntary, the importance of their use by food business operators and their dissemination by food industry sectors should be emphasised. This is to facilitate the implementation by food operators of general hygiene rules and the application of HACCP principles. At the same time, Regulation (EC) no. 852/2004 envisages the assessment of guides to good practice in order to verify their compliance with its provisions. Lastly, it emphasises the importance of proper training of staff working in the food business.

The operator must, in fact, ensure that staff are adequately trained in:

- food hygiene, with particular regard to measures to prevent health and hygiene hazards associated with food handling;
- the application of self-control measures and HACCP principles related to the specific food sector and the tasks performed by the worker.

Staff must also be informed about:

- identified risks;
- critical control points relating to the production, storage, transport and/or distribution stages, on the:
  - corrective measures;
  - preventive measures;
  - documentation of procedures.

3. The subject of agri-food offences: food

The fact that certain cases of fraud concern "*foodstuffs or beverages whose designation of origin or geographical origin or whose specific characteristics are protected by the regulations in force*" constitutes

restaurants and other similar catering establishments, shops, supermarket distribution centres and wholesale outlets".

grounds for a special aggravation of the penalty, as envisaged in art. 517 *bis,* paragraph 1 of the Italian Criminal Code.

Starting from the case law, "foodstuff" has been defined as any solid, liquid or gaseous matter intended as food, i.e. for bodily nourishment[9], however, this is a definition detached from any legislative basis, even though it is based on the exegesis of art. 516 of the Italian Criminal Code.

Nor does the generalised use of the definition of "agri-food products" offered by art. *517-quater* of the Italian Criminal Code seem feasible, as it refers only to agricultural products intended for human consumption. Pursuant to Regulation (EC) no. 178/2002 and in the absence of any other specification or clarification, the "food product" category also includes "agri-food product". In fact, art. 2 of the aforementioned regulation outlines the perimeter of the category "food" or "foodstuff", meaning any substance or product processed, partially processed, or unprocessed, intended to be ingested, or reasonably expected to be ingested, by human beings.

The category also includes beverages, chewing gum and any substance, including water, intentionally incorporated into foodstuffs during their manufacture, preparation or processing. It includes water at the points where values must be respected as stipulated in art. 6 of Directive 98/83/EC and without prejudice to the requirements of Directives 80/778/EEC and 98/83/EC. Conversely, the following are not included in the definition of food: feed, live animals, unless they are prepared for release onto the market for human consumption; plants before harvesting; medicinal products as intended by Council Directives 65/65/EEC and 92/73/EEC; cosmetics as intended by Council Directive 76/768/EEC; tobacco and tobacco products as intended by Council Directive 89/622/EEC; narcotic or psychotropic substances as intended by the 1961 United Nations Single Convention on Narcotic Drugs and the 1971 United Nations Convention on Psychotropic Substances; and residues and contaminants. In order to be able to catch any form of fraud the Regulation (EC) no. 852 of 2004 offered two further definitions, that

9. For the jurisprudential definition of foodstuff, see in particular Court of Cassation, Sec. III no. 8662 of 5.06.1998, with a note by L. Mazza, *Imbottigliamento di spumante adulterato e tentativo di vendita di sostanze alimentari non genuine*, in «Dir. Giur. Agr. Amb.», 1998, p. 622.

of "unprocessed products", which are all those foodstuffs "not subject to processing" including products that have been divided, separated, sectioned, sliced, boned, minced, skinned, shredded, cut, cleaned, trimmed, husked, milled, chilled, frozen, deep-frozen or thawed (art. 2 lett. n); whereas the category of "processed products" includes all foodstuffs resulting from the processing of unprocessed products. These products may contain ingredients necessary for their processing or to give them specific characteristics (art. 2 lett. o)[10]. The latter category has often been the subject of fraud, both from the point of view of quality and geographical origin, due to its characteristic position upstream in the food chain and the highest risk of falsification, given the difficulties of detection in investigations and chemical analysis.

4. The main offences that can be committed by entities operating in the agri-food industry

We now come to the analysis of the main offences that can be committed by operators in the agri-food industry and added, pursuant to art. 25 *bis*.1 of Legislative Decree no. 231/2001, to the list of offences for the application of the so-called administrative liability of entities resulting from offences.

This introduction of offences against industry and trade to the sphere of applicability of Legislative Decree no. 231 has, undoubtedly, contributed making entities more responsible by inducing them to self-organise internally in order to prevent these offences from being committed, not to mention a significant macroeconomic measure aimed at supporting the national economy[11].

10. With Regulation (EC) no. 852/2004 on the hygiene of foodstuffs, the European Union aims to ensure food hygiene at all stages of the production process, from farms to processing plants and from retailers to the final consumer. The regulation and its annexes define a set of requirements for the EU that companies working with food must fulfil to ensure that food is safe for consumers. The aim is to ensure that all those working in the food sector must guarantee that food is handled hygienically and safely, i.e. free of contamination from food-borne hazards, at every stage of the production process. This is, of course, achieved through the adoption of correct hygiene practices and procedures based on hazard analysis and critical control points (HACCP).

11. C. Coratella, *La tutela dell'IP e la responsabilità da reato degli enti: l'occasione colta dal DDL S. 1195-B*, in «Rivista231», no. 4, 2009.

The draft law introduced in 2009, besides facilitating the creation of networks or groupings of enterprises, promoted the development of so-called production districts, the reorganisation of the existing provisions on the internationalisation of enterprises, as well as strengthening the fight against falsification and counterfeiting, the criminal protection of industrial property rights and copyrights through the provision, in art. 15, of some significant amendments to the Criminal Code, the Code for Criminal Procedure and to Legislative Decree no. 231/2001.

The innovation of 2009 manifested a changed approach in the fight against commercial and industrial fraud, more focused on combating the underlying economic motivation, and concentrated on repressing corporate policies aimed at distorting competition between companies by circumventing patent rights or commercial behaviour to the detriment of consumers[12].

The combination of these predicate offences with the broader system of Legislative Decree no. 231 represented a strong signal for those contexts of complex organisations in which food-related offences are generated and are increasingly spreading[13].

AC Bill no. 2427 of 2020, following in the footsteps of the Caselli Commission's reform project, envisaged the introduction of new offences to Legislative Decree no. 231/2001 and in particular "Fraud in the trade of foodstuffs" and "Crimes against public health", respectively art. 25 *bis*.2 and 25 *bis*.3, as well as a special organisational model that food companies will have to adopt to avoid or, at least, mitigate their liability for agri-food crimes.

Rather than new regulatory provisions, what the bill has introduced is a "restructuring" of Legislative Decree no. 231/2001, which already contemplated, in art. 25 *bis*.1, the hypothesis of offences in the agri-food sector. The bill has, in essence, split the current art. 25 *bis*.1 into three separate cases: art. 25 *bis*.1, which deals with offences against industry and trade (art. 515 of the Criminal Code), which objectively protects the fair exercise of trade and, therefore, both the interests of consumers and those of producers and traders in terms of unfair

12. A. Natalini, *231 e industria agroalimentare. Diritto penale del cibo e responsabilità delle persone giuridiche*, Pacini, Pisa, 2017, p. 50.

13. *Ibidem*.

competition; art. 25 *bis*.2, which specifically concerns the hypothesis of fraud in the trade of food products, and includes the following cases of counterfeiting of geographical indications or designations of origin of agri-food products (art. 517 *quater of the* Criminal Code); agri-piracy, a new crime of association, for which the legislator has envisaged particularly severe financial penalties and very incisive accessory penalties that go as far as the closure of the establishment or business in the most serious cases or recidivism (new art. 517 *quater*.1 (new art. 517 quater.1 of the Criminal Code); fraud in food trade (new art. 517 *sexies* of the Criminal Code); trade in foodstuffs with misleading signs (new art. 517 *septies* of the Criminal Code); art. 25 *bis*.3 which, on the other hand, concerns offences against public health, already covered by the Criminal Code (in articles 439, 440, 440 *bis*, 440 *ter*, 440 *quater*, 445 *bis* and 452) and by art. 5, par. 1 and par. 2 of Law no. 283 of 1962. Among these, particular mention should be made of the new offence of health disaster (envisaged in art. 445 *bis* of the Criminal Code).

With regard to the individual offences constituting 231 predicate offences, we find the offence of "Disturbing the freedom of industry or trade", governed by art. 513 of the Criminal Code, which prosecutes "*anyone who uses violence against property or fraudulent means to impede or disrupt the exercise of an industry or trade shall be punished, on complaint by the injured party, if the act does not constitute a more serious offence, with imprisonment for up to two years and a fine ranging from 103 euros to 1,032 euros*". The legal asset protected by the provision is of a collective nature and consists in the free exercise and normal course of industry and trade, the disturbance of which reflects on the economic order. If the assets of the individual entrepreneur are also considered as the object of protection, the offence can be considered as a plural-offence of damage, and the violence against the company's property already considered as a damage event resulting from the offence. This would eliminate the need for the adjudicating body to ascertain the existence of a tangible danger to the economic order, a step which, on the contrary, is indispensable if the case is considered as a single-offence crime of danger.

The next offence envisaged by art. 25 *bis*.2 of Legislative Decree no. 231/2001 is "Fraud in the exercise of trade", pursuant to art. 515 of the Criminal Code, which punishes "*Whoever, in the exercise of a*

commercial activity, or in a shop open to the public, delivers to the purchaser a movable item for another, or a movable item in origin, provenance, quality or quantity other than that stated or agreed, shall be punished, unless the act constitutes a more serious offence [440-445, 455-459]*, with imprisonment of up to two years or with a fine of up to 2,065 euros. If it concerns precious objects, the penalty shall be imprisonment for up to three years or a fine of not less than 103 euros*". This is a subsidiary offence which applies only if the act does not constitute a more serious crime, and protects the negotiating relationship between two determined parties, seller and buyer, as well as widespread interests such as good faith in commercial exchanges. By offering protection to the individual commercial act, it actually aims to protect the entire community so that a custom of loyalty and fairness is respected in the conduct of commercial activities. The core of the criminal offences of agri-food significance consists of articles 516, 517, 517 *ter* and 517 *quater* of the Criminal Code.

The offence of "Sale of non-genuine foodstuffs as genuine", envisaged in art. 516 of the Criminal Code, punishes anyone who sells or otherwise markets non-genuine foodstuffs as genuine, the penalty being imprisonment of up to six months or a fine of up to 1,032 euros. This criminal hypothesis, originally included among the offences against public safety, is now included among the offences against industry and trade due to the fact that, in order to be considered, foodstuffs must be passed off as genuine even though they are not, even if they are not necessarily harmful to public health. The sale or marketing of non-genuine substances is necessary for this offence to occur, as their mere preparation or possession is not sufficient.

Art. 517 of the criminal code punishes, for the sale of industrial products with mendacious signs, anyone who offers for sale or otherwise releases onto the market intellectual works or industrial products, with domestic or foreign names, trademarks or distinctive signs, that are likely to mislead the buyer as to the origin, source or quality of the work or product, if the act is not envisaged as an offence by another provision of law.

The material object of the offence consists, in addition to works of art, of industrial products, the notion of which can be derived from articles 473 and 474 of the Criminal Code and which encompasses the

by-product of any manufacturing or agricultural industry, conducted by means of industrial or agricultural facilities. The typical conduct takes place when products are sold or placed on the market with domestic or foreign names, trademarks or distinctive signs, designed to mislead the buyer as to the origin, provenance and quality of the product. The subsidiary application of the offence excludes its concurrence with the offences envisaged in articles 473, 474 and 514 of the Criminal Code.

Law No. 99/2009 also introduced the offence of manufacturing and trading goods by usurping industrial property rights, pursuant to art. 517 *ter* of the Criminal Code. Without prejudice to the application of articles 473 and 474 of the Criminal Code, the offence prosecutes "*anyone who, being aware of the existence of an industrial property title, manufactures or industrially uses goods made by usurping or breaching an industrial property title*", paragraph 1, while the following paragraph punishes the conduct of a person who "*in order to make a profit, introduces into the territory of the State, holds for sale, offers for sale directly to consumers or otherwise puts into circulation*" the goods referred to in paragraph 1. The rule protects the patent holder's exclusive right to the invention and the patent holder's right to economic exploitation of their intellectual property rights. For this offence to take place, it is necessary for the agent's conduct to be characterised, on a subjective level, not only by the purpose of profiting, but also by the awareness of the existence of the usurped title, which can be deduced from concrete factual elements[14].

The offence of "falsifying geographical indications or designations of origin of agri-food products" was also introduced with the 2009

14. On this point, see Cass. Pen. Sect. III, no. 40312 of 13.07.2021, in which it was also stated that the joint reading of the two paragraphs shows that these are two cases which, despite being contained in the same article, introduced by Law no. 99 of 2009 and entitled "manufacture of and trade in goods made by usurping industrial property rights", nevertheless have different structural characteristics, as the offence referred to in paragraph 1 focuses on the manufacture or industrial use of goods made by usurping or otherwise breaching an industrial property right, while the case referred to in paragraph 2, with respect to the same goods, penalises the different conducts of introduction into the State, detention for sale or offer for sale, also requiring in this case the "purpose of profiting from it", which, however, is not required for the integration of the subjective element of the provision pursuant to paragraph 1, for which it is only necessary that the agent be in a position to "*know of the existence of the industrial property right*". In «Cass. Pen.», 9, 2022, p. 3092.

amendment, through the addition of art. 517-*quater* of the Criminal Code. The offence states "*Whoever falsifies or otherwise alters geographical indications or designations of origin of agri-food products shall be punished by imprisonment of up to two years and a fine of up to 20,000 euros. The same punishment shall apply to anyone who, in order to make a profit, introduces into the territory of the State, holds for sale, offers for sale directly to consumers or otherwise puts into circulation the same products with false indications or designations. The provisions of articles 474 bis, 474 ter, second paragraph, and 517 bis, second paragraph, shall apply. The offences envisaged by the first and second paragraphs shall be punishable provided that the rules of domestic laws, EU regulations and international conventions on the protection of geographical indications and designations of origin of agri-food products have been complied with designations of origin for agri-food products*". This is the only offence typified by the Code that considers the agri-food product as a specific object of criminal protection[15]. Falsification or counterfeiting is to be understood as the manipulation of geographical indications or designations of origin in such a way as to mislead the consumer as to the actual origin of the product.

With regard to the definitions referred to in the article: "alteration" is to be understood as the partial modification of geographical indications or designations of origin by adding or removing marginal constituent elements, "offering for sale" with a direct offer to consumers is to be understood as the offering of the goods and not merely the storage in places intended for sale, and "putting into circulation" is to be understood as any hypothesis of placing the products on the market. According to art. 2 of Regulation (EC) no. 510/2006, "designation of origin" shall mean the name of a region, a specific place or, in exceptional cases, a country, which serves to designate an agricultural product or foodstuff originating in that region, specific place or country, the quality or characteristics of which are essentially or exclusively due to a particular geographical environment, including natural and human factors, and the production, processing and preparation of which take place in the defined geographical area. "Geographical indication" means the name of a region, a specific place or, in exceptional cases, a country, which serves to designate an agricultural product or foodstuff

15. A. Natalini, *231 e industria agroalimentare,* cit., p. 77.

as originating in that region, specific place or country and of which a certain quality, reputation or other characteristic may be attributed to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area. Among the offences covered by art. 25 *bis*.1 of Legislative Decree no. 231 of 2001, the offences of "Unlawful competition with threat or violence" under art. 513 *bis* and fraud against national industries envisaged by art. 514 of the Criminal Code should be mentioned as predicate offences. The offence of unlawful competition is *committed by* anyone who "*in the exercise of a commercial, industrial or otherwise productive activity, engages in acts of competition with violence or threats*". This type of offence was first introduced by Law no. 646 of 1982[16] to counter mafia-style forms of intimidation to the detriment of the production system. According to the case law of legitimacy, "*in order for the offence of unlawful competition with violence or threats to be committed, it is necessary that acts of competition, carried out in the course of a commercial, industrial or otherwise productive activity, be characterised by violence or threats and be capable of opposing or hindering the freedom of self-determination of the rival enterprise*"[17]. The offence protects both the economic order and, therefore, the normal conduct of the production activity, and the freedom of the individual to carry out economic transactions through commercial, industrial or productive activities.

This is a real offence, in that the incriminating legislation requires the active party to engage in a commercial, industrial or otherwise productive activity, although this requirement is not to be understood

16. Law no. 646 of 13.09.1982, known as the "Rognoni-La Torre" law, introduced into the Italian Criminal Code for the first time the provision of the offence of "mafia-type association", art. 416 *bis*, and the consequent provision of patrimonial measures applicable to the illicit accumulation of capital. The legislative text originated from a bill presented to the Chamber of Deputies on 31.03.1980, which had Pio La Torre as its first signatory, to which Virginio Rognoni's proposals were added. The Italian magistrates Giovanni Falcone and Paolo Borsellino, who were serving at the Public Prosecutor's Office in Palermo at the time collaborated on its technical formulation.

17. Cass. SS.UU. no. 13178, 28.11.2019, with note by R. Cappitelli, *Lo statuto penale della concorrenza sleale* - The Unfair Competition Criminal Statute, in «Cass. Pen.», no. 9, 2020, p. 3160; also in this sense, see Cass. Pen. Sec. II, no. 15781 of 26.03.2015 and Cass. Pen. Sec. VI, no. 10371 of 4.02.2020.

in a merely formal sense, i.e. it is not necessary to qualify as a trader or industrialist or producer, but it is sufficient, for its configurability, for the aforesaid activity to be performed.

The offence of fraud against national industries, envisaged in art. 514 of the Criminal Code, states "*anyone who, by selling or otherwise releasing into circulation, on domestic or foreign markets, industrial products with counterfeit or altered names, trademarks or distinctive signs* [2563-2574 of the Italian Civil Code]*, causes damage to national industry, shall be punished by imprisonment from one to five years and a fine of not less than 516 euros. If the rules of domestic laws or international conventions on the protection of the industrial property have been observed for trademarks or distinctive signs, the penalty shall be increased* [64] *and the provisions of articles 473 and 474* [518] *shall not apply*". The legal asset protected by the provision is the economic order against the damage that could be caused to national industry by the placing on the market of products with counterfeit or altered names, trademarks or distinctive signs. The conduct of this offence coincides with that described in paragraphs 2 and 3 of art. 474 of the Criminal Code and consists in offering for sale or otherwise circulating in domestic or foreign markets, industrial products with counterfeit or altered names, trademarks or distinctive signs.

Proof of actual negotiations is not required for the offering for sale, it is sufficient that the goods are simply on the premises intended for trade.

Placing in circulation, on the other hand, includes all other cases of placing the falsely branded goods on the market.

As a partial completion of the overview of alleged offences, mention should also be made of the provision set out in art. 25 *octies* of Legislative Decree no. 231/2001 concerning crimes against property by means of fraud. According to case law, the crime of (product) money laundering can be said to have been committed when inedible oils produced abroad are put back on the domestic market as extra virgin olive oil, by means of illicit blending that cannot be detected by official analysis. With this ruling, the offence of money laundering, pursuant to art. 648 *bis* of the Criminal Code, which was previously applied only in cases of "counterfeiting" stolen car chassis, number plates or the corresponding registration documents, was also extended to the agri-food sector[18].

18. A. Natalini, *231 e industria agroalimentare,* cit., p. 87 et seq.

5. The mission of Legislative Decree no. 231/2001 and the preparation of Organisation and Management Models by the agri-food industry

On 8 June 2001, implementing the power referred to in art. 11 of law no. 300 of 29 September 2000, legislative decree no. 231/2001, containing the "Regulations on the administrative liability of legal persons, companies and associations, including those without legal personality", was issued, coming into force on 4 July 2001, with the aim of adapting domestic legislation on the liability of legal persons to certain international conventions that Italy has long adhered to[19].

Legislative Decree no. 231/2001 introduced, for the first time in Italy, the criminal liability of entities (legal persons or associations) for certain offences committed in their interest or to their advantage, by persons who hold positions of representation, administration or management of the entity, such as directors or other executives, or of one of its organisational units with financial and functional autonomy, as well as by persons exercising, even de facto, the management and control of the same and, lastly, by persons subject to the management or supervision of one of the aforementioned persons (employees for example).

This liability, which may occur even if the predicate offence is in the form of an attempt (art. 26 of Legislative Decree no. 231/2001), is additional to that of the natural person who committed the offence and also exists where the perpetrator of the offence has concurred in its commission with persons outside the organisation of the entity. In this perspective, the Confindustria Guidelines point out how there are many business sectors in which the risk of the employee's involvement in complicity can most easily occur. The subsequent Law no. 146 of 16.03.2006, which ratified and implemented the Convention and the Additional Protocols of the United Nations against transnational organised crime, adopted by the General Assembly on 15.11.2000 and

19. Art. 11 of Law no. 300 of 29.09.2000 envisaged the "Delegation to the Government for the regulation of the administrative liability of legal persons and bodies without legal personality", in order to ratify a series of international acts, including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17.12.1997.

31.05.2001, further extended the catalogue of offences relevant to the administrative liability of entities under Legislative Decree no. 231/2001. The Convention, which arose from the need to draw up an international instrument, is suitable for combating organised crime, which, in recent decades, with the progressive opening up of the borders and national economies, has increasingly operated on a transnational level.

Crime, and organised crime in particular, is increasingly engaged in activities that, in addition to having an increasing degree of specialisation, are characterised by a geographically and economically global operating scenario[20].

Art. 6 of Legislative Decree no. 231/2001 introduced a special form of exemption from liability for any offences committed by senior management, if the Entity proves that:

a) it adopted and effectively implemented, prior to the commission of the offence, an Organisation, Management and Control Model capable of preventing offences of the kind committed;
b) it set up an internal body, endowed with autonomous powers of initiative and control, with the task of supervising the functioning of and compliance with the Model, as well as updating it (it should be noted, in this regard, that, according to the Confindustria Guidelines, the effective implementation of the model primarily requires regular verification and possible amendment when significant breaches of the provisions are discovered or when changes occur in the company organisation);
c) the persons who committed the offence acted by fraudulently circumventing the Model;
d) there has been no omission or insufficient supervision by the body referred to in lett. b) above. As clarified by case law, these guidelines do not have the "chrism of incensurability, as if the judge [were] bound to a sort of corporate and/or ministerial *ipse dixit*, in a perspective of privatisation of the regulations to be put in place to prevent the commission of offences"[21].

20. M. De Nigris, *Responsabilità degli enti: profili internazionali*, Pacini Giuridica, Pisa, 25.04.2017, accessed 22.11.2022.

21. On this point, see Cass. Pen. Sec. V, no. 4677 of 30.01.2014, in «Dir. Pen. Proc.», 2014, p. 1430, with a note by Bernasconi, "Razionalità" e "irrazionalità" della Cassazione in tema di idoneità dei modelli organizzativi.

In the case of companies operating in the agri-food sector, the range of possible guidelines that can be used consists, first and foremost, of the document supplied by Confindustria, most recently updated in June 2021, with which methodological indications have been identified for the identification of risk areas, i.e. the sectors/activities within which the predicate offences may be committed, the design of a control system[22] and the contents of the organisation, management and control model. Another useful tool for the adoption of an effective organisational model is represented by the Guidelines drawn up by Federalimentare, which have provided a series of indications on the construction of organisational models for companies operating, in particular, in the food sector.

Lastly, with regard to the November 2015 update of the Guidelines for the drafting of organisation, management and control models adopted by Confagricoltura, Part Two contains an analysis of the predicate offences that can be charged against the Entity. The subject of offences against industry and commerce, introduced with art. 25 *bis*.1 of Legislative Decree no. 231/2001, as amended, is solely concerned with foodstuffs, and the Special Part of the paper sets out the principles of conduct and prohibitions to be adopted, the company areas at greatest risk and, lastly, a brief description of the general offences.

The fact that the world food market is, in fact, managed by multinational companies, and characterised by a strong corporate and financial traction, has meant that the company has become an instrument for facilitating illegal activities.

This resulted in the legislative need to bring forward the threshold for the protection of new legally relevant assets. In other words, the need arose to introduce legal instruments suitable for protecting health and the public economy, therefore, with a view to implementing the system 231 in the agri-food industry, on 6.03.2020, Bill AC 2427[23] was submitted to the Chamber of Deputies.

22. I.e. protocols for the planning of formation and implementation of the entity's decisions.

23. The bill, which originates from the remodelling of the text formulated by the Commission for the elaboration of proposals for action on the reform of offences in the agri-food sector, established at the legislative office of the Ministry of Justice by decree of the Minister of Justice of 20 April 2015, is aimed at introducing "New regulations on agri-food offences" and aims to innovate "*primarily, the criminal code and special sector*

The scope of the bill covered:

1. the systematic reorganisation of the category of food-related offences, which often require the anticipation of the relative offences already at the risk threshold;
2. the development of an intervention system with progressive safeguards, envisaging misdemeanours, felonies and offences of danger to protect public health;
3. the reworking of the food fraud penalty system and the organic arrangement of corporate liability;
4. the introduction of the new delegation of functions of the food business owner (Art. 1*bis*, Law no. 283/1962);
5. the construction of a specific regulation of organisational and management models for food operators and of corporate liability (art. 514).

The aforementioned draft law stems from an implementation activity of the 231 regulation initiated by the Caselli Commission in 2015, which concentrated its work in three areas: extending the liability of entities to more serious food crimes, encouraging the tangible application of the rules on the liability of entities by the judicial police authorities as well as the judicial authorities themselves, and, lastly, encouraging the adoption and implementation of effective organisational models also by smaller companies[24].

As food safety is the consequence of a better production policy, the real addressees of these precepts are agri-food companies. While it is clear that the responsibility of the entities always "passes" through some individual responsibility for an offence, entities continue to be the bearers of the economic and organisational burden of all

legislation with regard to the criminal protection of public health and food safety, as well as the criminal code with regard to the criminal protection of the economy and, lastly, the legislation on the liability of legal persons, carrying out, ultimately, an intervention of overall coordination with a series of institutions (substantive and procedural) of significance for a more useful and profitable intervention activity in the delicate sector subject to reform".

24. For an in-depth examination of the work of the Caselli Commission, see the contribution of M. Donini, *Il progetto 2015 della Commissione Caselli. Sicurezza alimentare e salute pubblica nelle linee di politica criminale della riforma dei reati agroalimentari*, in «Dir. Pen. Cont.», no. 1, 2016 and the work of C. Cupelli, *Il cammino verso la riforma dei reati in materia agroalimentare*, in «*archiviodpc.dirittopenaleuomo.org*», 2.11.2015.

regularisations, therefore, the attribution of individual responsibility is instrumental to safety.

The intent of the legislator in 2020, as well as that of the 2015 Caselli Commission, was, in fact, the introduction, also for the agri-food sector, of a type of liability which, in addition to personal liability, appeared to be potentially suitable to incentivise corporate policies aimed at protecting food safety and fair trade.

With this in mind, it was deemed indispensable, not merely to include a rule extending administrative liability to certain food offences, but rather to construct a special and specific regulation of organisational and management models with express regard to food operators, with a view to exempting or mitigating liability, drawing inspiration from the way in which the regulations on occupational safety are applied.

The introduction of art. 6 *bis* into Legislative Decree no. 231/2001 is certainly the most important novelty for companies operating in the agri-food sector: the regulation establishes an Organisational Model defined as "special", aimed at public and private organisations, working either on a non-profit basis or for profit, which carry out activities related to one of the production, processing and distribution phases of food, which prevents agri-food crimes.

The correct adoption of the model enables the entity to mitigate its liability or exempt itself from it in the event of agri-food crimes.

The aforementioned article requires the agri-food company to adopt a model capable of ensuring the fulfilment of all legal obligations arising from national and European legislation with regard to:

- compliance with requirements in the provision of food information;
- verification of the content of advertising communications to ensure that they are consistent with the characteristics of the product;
- monitoring activities with reference to traceability, the possibility of reconstructing and tracking the journey of a food product through all stages of production, processing and distribution;
- control of food products, aimed at ensuring the quality, safety and integrity of products and their packaging at all stages of the supply chain;
- procedures for the withdrawal or recall of imported, produced, processed or distributed foodstuffs that do not comply with food safety requirements;
- risk assessment and risk management, the result of appropriate prevention and control choices;

- periodic checks on the effectiveness and adequacy of the model adopted.

The organisational model devised by the reformer must, therefore, have specific characteristics, in relation to both the type of activity carried out and the size of the company. In particular, it must provide suitable systems for recording the performance of the activities prescribed by the rules, a structure of functions that ensures the technical competences and powers necessary for the verification, assessment, management and control of risk, as well as a disciplinary system that sanctions non-compliance with the measures established by the model. Lastly, there must be a suitable system of supervision and control over the implementation of the model and the maintenance of the suitability of the measures adopted, with a periodic review of the model and its possible amendment, especially in the event of significant breaches of the rules concerning the authenticity and safety of foodstuffs or fair trading towards consumers, or when organisational changes in the business, driven by technological and scientific progress, make it necessary.

It should be pointed out that the language choice made by the legislator in 2020 was determined by the decision to transpose an all-encompassing definition of foodstuffs, in accordance with the content-oriented purpose envisaged by the European legislator.

Given that the "agrifood" product is a subset of the food product, the expression "agri-food" was chosen because, while remaining strongly evocative, it does not limit the scope of criminal relevance exclusively to the products of agriculture intended for human consumption, excluding, for example, fish products or food products of industrial origin.

The decision was, therefore, made to use the broader notion of "food" (capable of designating any foodstuff, substance or product, whether processed, partially processed or unprocessed, including agrifoods), which can be derived from the general definition of "food" in art. 3 of Regulation (EC) no. 178/2002 of the European Parliament and of the Council of 28 January 2002, or to retain the term "agri-food", where it is already envisaged in the enunciation of the rules in force, dividing the two terms of reference by adopting the expression "agri-food"[25].

25. Bill no. 2427 of 6.03.2020 on "New regulations on agri-food offences", p. 7.

IX. Green Transition in the Food Supply Chain. The Meat Sector

Paolo Polidori, Rosalba Rombaldoni

Summary: 1. Some initial considerations and the work plan. – 2. Food for all? Evolution of under-nutrition. – 3. The effects of food quality on people's health and the environment. – 4. Production, consumption and impacts of the meat sector. – 5. Possible policy interventions: some suggestions.

1. Some initial considerations and the work plan

Climate change, availability of water and land, and biodiversity are some of the greatest challenges of our world, calling for mitigation policies with short- and long-term benefits. Livestock farming has increased considerably since the 1960s and beef production has more than doubled, due to growing demand associated with an increase in population, income, urbanisation processes with rapid changes in lifestyle and eating habits[1]. In the face of a global increase in population, the problem of under-nutrition remains significant, exacerbated by the pandemic and differentiated by geography and gender.

Diets in industrialised countries and also in countries with established food traditions, such as the Mediterranean diet in Italy, are characterised by a high consumption of animal products and thus a saturated fat intake well above the recommendations of the World Health Organisation and the World Research Fund of 300-400 grams

1. Food and Agriculture Organization, *World Livestock 2011. Livestock in food security*, FAO, Rome, 2011, *www.fao.org/docrep/014/i2373e/i2373e00.htm*.

of red meat per week (which includes beef, veal, pork, lamb, goat and horse)[2]. Quality food implies consideration of the effects caused on both human health and the ecosystem. In the first case, the consumption of red meat (higher in developed countries) is associated with a higher probability of developing specific diseases. On the other hand, the sector has a weight in terms of emissions that calls upon it to contribute to the fight against global warming.

The food system is a major source of greenhouse gas emissions. Estimates suggest that the agricultural sector accounts for one fifth of global emissions, and 80% of these are attributable to livestock[3]. Of all meats, beef has the largest impact in terms of emissions through the production process (carbon dioxide, CO_2), ruminant fermentation (methane gas, CH_4), fodder cultivation and fertiliser use (nitrogen monoxide, NO). Meat production absorbs a considerable amount of water, which has an impact on the *water footprint and* determines its pollution and scarcity. The water footprint of any livestock product is much larger (up to 20 times larger) than that of a crop with the same nutritional value[4].

A growing body of scientific evidence shows an association between the excessive consumption of meat, particularly red and processed meat, and the increased risk of premature death from heart disease, stroke, type 2 diabetes and certain types of cancer[5]. Some systematic reviews highlight greater risks of obesity for those who eat large amounts of red and processed meat. Although the risks are not so high, the impact is likely to be considerable because the share of the population eating

2. World Cancer Research Fund, American Institute for Cancer Research, *Diet, Nutrition, Physical Activity, and Cancer: a Global Perspective*. Washington, DC. AICR, 2012*, www.wcrf.org/wp-content/uploads/2021/02/Summary-of-Third-Expert-Report-2018.pdf.*

3. S. Clune, E. Crossin, K. Verghese, *Systematic review of greenhouse gas emissions for different fresh food categories*, in «Journal of Clean Production», vol. 140, 2017, pp. 766-783, *https://doi.org/10.1016/j.jclepro.2016.04.082*.

4. M.M. Mekonnen, A.Y. Hoekstra, *A global assessment of the water footprint of farm animal products*, in «Ecosystems», vol. 15, 2012, pp. 401-415.

5. I. Abete, D. Romaguera, A.R. Vieira, A. Lopez de Munain, T. Norat, *Association between total, processed, red and white meat consumption and all-cause, CVD and IHD mortality: a meta-analysis of cohort studies*, in «British Journal of Nutrition», vol. 112, 2014, pp. 762-775, *https://doi.org/10.1017/S000711451400124X PmID: 24932617.*

meat is large, both in high-income countries, but especially in so-called emerging countries, where the trend is growing[6].

In 2009, the Lancet included, for the first time, reductions in the consumption of animal products among policies to reduce greenhouse gas emissions, associating them with significant health benefits. Similar scenarios in Brazil and the UK show how a 30% reduction in livestock production results in a 15% health gain in cardiovascular disability-adjusted life years (DALYs)[7]. Even more global impact assessments predict a 10% reduction in mortality by 2050, precisely due to the reduction of meat consumption. These co-benefits are associated with an approximately 80 percent reduction in greenhouse gases by 2050[8]. Another very interesting recent study showed that even a small change in diet, with a reduction in meat consumption according to nutritional guidelines, can lead to a reduction of around 20% in greenhouse gas emissions from the agricultural sector[9].

Therefore, it is more appropriate than ever to identify alternative development paths and therefore policy interventions (national and international regulations) that reconcile environmental sustainability goals with the related social costs in a highly complex supply chain such as the meat industry. Policies and regulations, both sectoral and industrial, will be all the more effective if they are able to take into account the incentive dynamics associated with them.

The aim of the work is to provide a representation of future scenarios concerning the meat food sector in order to contextualise possible reform interventions for the supply chain in Italy and Europe. With this in mind, the work unfolds using the three meanings relating to food safety.

6. S. Farchi, M. De Sario, E. Lapucci, M. Davoli, P. Michelozzi, *Meat consumption reduction in Italian regions: Health co-benefits and decreases*, in "GHG emissions PLOS ONE", 2017, *https://doi.org/10.1371/journal.pone.0182960.*

7. The DALYs indicator measures the years of life lost due to illness, disability or premature death. It is therefore a quantification of disability-adjusted life expectancy.

8. M. Springmann, H.C. Godfray, M. Rayner, P. Scarborough, *Analysis and valuation of the health and climate change cobenefits of dietary change*, in «Proceedings of the National Academy of Sciences», vol. 113, no. 15, 2016, pp. 4146-4151, *https://www.pnas.org/doi/full/10.1073/pnas.1523119113.*

9. J. Milner, R. Green, A.D. Dangour, A. Haines, Z. Chalabi, J. Spadaro *et al*, *Health effects of adopting low greenhouse gas emission diets in the UK*, in «British Medical Journal Open», vol. 5, no. 4, 2015, *https://bmjopen.bmj.com/content/5/4/e007364*.

The first is that of secure food for all, understood from the perspective of enough food for every human being. The first paragraph quickly examines current development models, trying to understand whether and how the issue of food needs in the world has changed over the years[10]. This first part of the work does not only cover the meat sector.

The second paragraph offers an overview of the demographic dynamics and the evolution of under-nutrition and malnutrition at global level, in order to be able to correctly assess the scale of the phenomenon, with all its climatic and territorial specificities.

In the third section, we address the second meaning, that of safe and quality food for all, taking up the trajectories now strongly investigated in literature, i.e. the effects of food quality on human health and the environment. Ultimately, it is always a question of impacts on human beings divided into direct and indirect impacts or impacts of a primary nature (via food assimilation) and of a secondary nature (via effects on the ecosystem deriving from food production and processing technologies)[11].

A focus on the meat supply chain in Italy, with all the characteristics and peculiarities of the case, is presented in the fourth paragraph: it is an extremely complex supply chain which, nevertheless, has potential circularity benefits, if waste by-products are reused and appreciated.

Lastly, the third meaning, that of food according to individual preference, necessarily leads towards the trade-off between consumption choices, external effects and policy interventions. Economic instruments available to influence policies aimed at the food sector (through incentives and restrictions) should pass through the reduction of food consumption and production with strong negative external effects, the mitigation of redistribution and regressive effects, especially relating to the labour factor, due to the possible downsizing of the meat sector. The transition dynamics triggered in a chain as complex as the meat sector and the right mix of policy interventions to

10. For this purpose, mainly FAO data from the FAO report "The State of Food Security and Nutrition in the World", 2021 were used.

11. The data referred to are FAO (2021), Eurostat and Oxfam (2020).

contain them are the subject of the last section of the paper, containing final considerations and assessments.

2. Food for all? Evolution of under-nutrition

The right to food invokes first and foremost availability, i.e. a sufficient quantity to guarantee a healthy and active life, to which the question of accessibility is linked: it is not enough for food to be available, it is also necessary to ensure that people can get it, both economically and physically, components that jointly define food security. This concept implies that individuals must be able to afford food without compromising other basic needs. When it comes to adequacy, the right to food captures the specificity of people's relationship with food consumption, intercepting a whole series of subjective items ranging from culture to living conditions, health, age and occupation. These are details that can be decisive. If the food that is accessible and available is high in calories and low in nutrients, it will prove to be inadequate especially for children. If a minimum level of food wholesomeness is not guaranteed, food safety will be compromised.

The concepts mentioned, such as availability and accessibility on one hand and safety on the other, are traced back to a joint assessment of demographic trends and malnutrition.

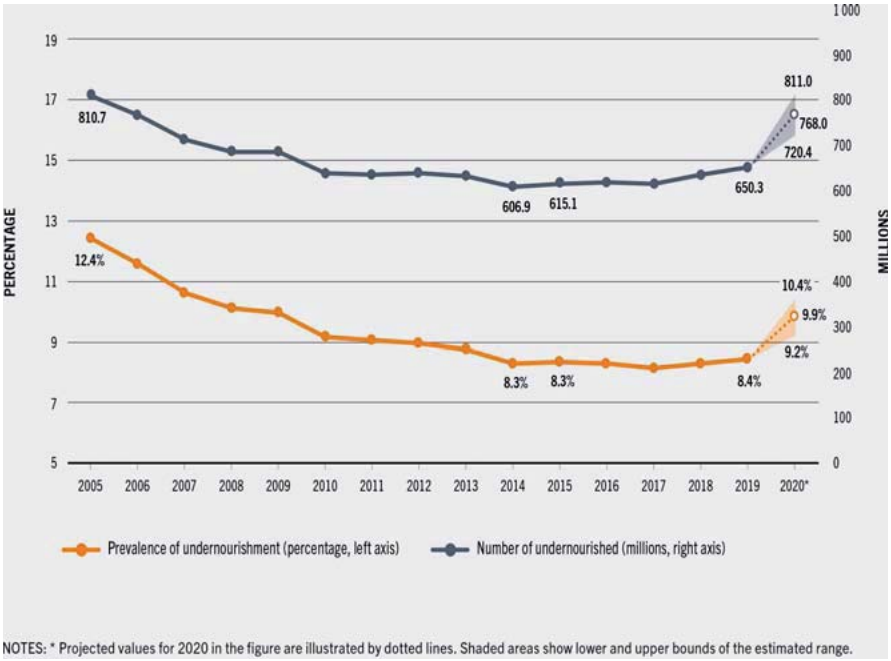
Data on world population trends show an increasing trend for all continents (Asia, Africa, Latin America, North America and Oceania) since 1950, with a projection up to 2050[12].

Only Europe has been showing signs of decline and ageing since the 1990s. This demographic fact (both local and global) must absolutely be taken into account when analysing the evolutionary picture of the population's nutritional needs and habits. The trend of undernourishment is considered in Figure 1: the percentage of undernourished people has decreased from 2005 to 2017, but in absolute terms this phenomenon affects almost 10% of the world population,

12. The data were taken from the website of the United Nations, Department of Population and Social Affairs.

with a differentiated incidence in different areas of the planet and within the same country. In 2017, there was a reversal of this trend, which continued and was reinforced by the pandemic.

Fig. 1 - Evolution of under-nutrition, in % and absolute value, 2005-2020 Source: FAO



NOTES: * Projected values for 2020 in the figure are illustrated by dotted lines. Shaded areas show lower and upper bounds of the estimated range.

Over the past decade, the frequency and intensity of conflicts, the variability of extreme weather events, socio-economic inequalities and political instabilities have increased considerably. The pandemic merely exacerbated these factors, leading to a considerable increase in the number of people in distress and undermining the progress achieved in reducing all forms of malnutrition, especially in low- and middle-income countries. The "global" development model, which, despite significant redistributive limitations, had generated a positive trend in the reduction of hunger in the world, is showing clear signs of weakening and needs an interpretative effort so that it can be understood and corrected. The pandemic substantially affected the trend reversal already underway, particularly for developing countries. Food imports and the various food programmes used to combat malnutrition in the poorest areas of the planet ground to a halt, exacerbating these negative dynamics.

In terms of food insecurity, a distinction must be made both by intensity and by geographical area. The situation is most severe in Africa and Asia, while the phenomenon is almost absent in Western and developed countries (Figures 2 and 3). In the latter, however, there is still a small percentage of undernourished population, around 2%, which although frictional is not justifiable. Inequalities emerge in the various continents, both in territorial terms but also in terms of gender (food insecurity for women, both moderate and severe, is always greater than for men, in all geographical areas).

Climatic and geographical differences, including the availability of productive agricultural land, determine the pattern of comparative advantage in the production of different agricultural products. The latter, together with differences in population density and growth and political factors, determine trade flows between regions. Countries with slow population growth, low population density and favourable natural availability tend to be exporters of agricultural products, whereas when the aforementioned conditions are unfavourable, the country tends to be an importer. In the years to come, the prediction is that the differentiation between net exporting and net importing regions will intensify, with net exporters of agricultural products increasing their trade surpluses, while regions with high population growth or natural resource constraints will experience an increase in their trade deficit.

Fig. 2 - Food insecurity, moderate or severe, globally and by continent, 2020. Source: FAO

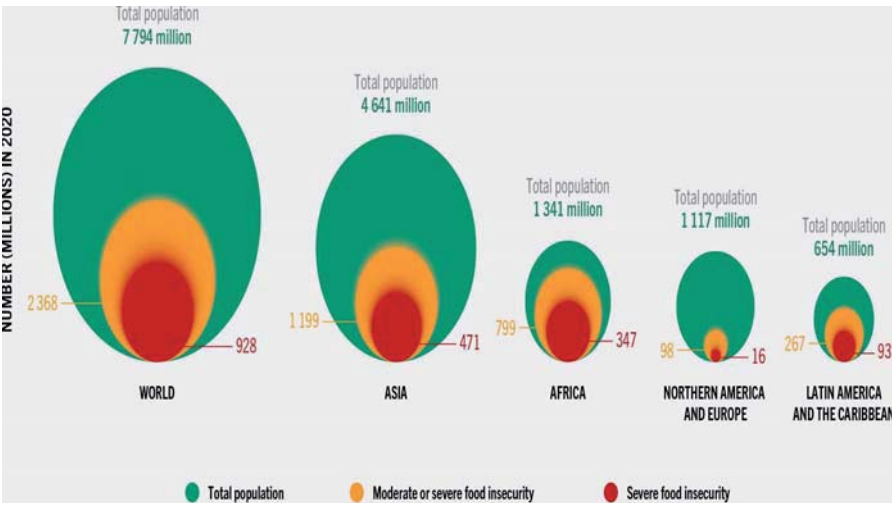
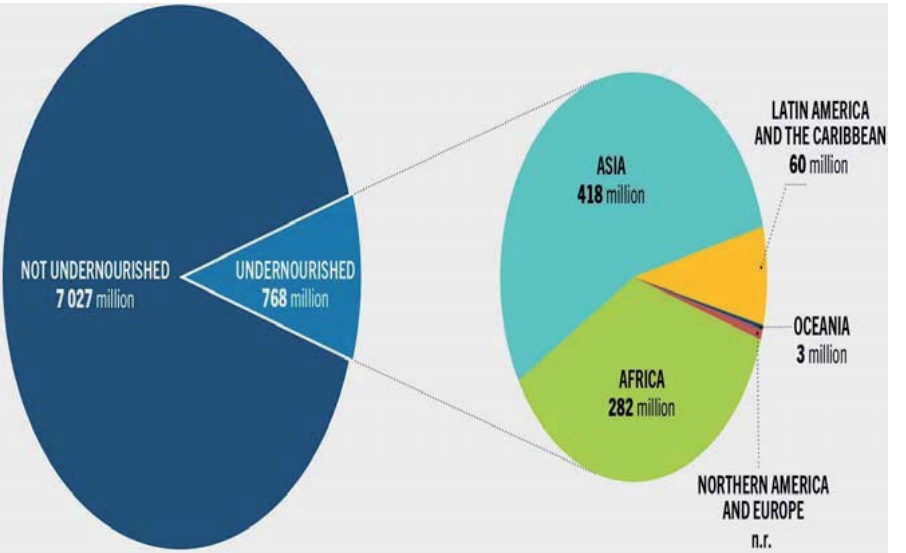


Fig. 3 - Number of undernourished people (in millions), 2020. Source: FAO



NOTES: Number of undernourished in millions. Projected values based on the middle of the projected range. The full ranges of the projected 2020 values can be found in **Annex 2**. n.r. = not reported, as the prevalence is less than 2.5 percent.

Europe and Central Asia have shifted over time from being net importers of agricultural commodities to net exporters in 2014, partly due to a stagnating population and low per capita consumption, limiting domestic demand. The net imports of the largest importing region, Asia Pacific, are expected to increase by 17% between 2018-20 and 2030, mainly due to rising net imports from China (11%). Sub-Saharan Africa, the Near East and North Africa are also large net importers of agricultural products, especially cereals, which contribute to food security both through direct use and as animal feed. Sub-Saharan Africa's net imports are projected to increase by 75% by 2030 due to increased imports of wheat, rice, maize and soybeans, further exacerbating the region's dependence on international markets[13].

Trade can improve the availability and economic accessibility of different foods and broaden consumer choice, and it is particularly

13. OECD-FAO, *Agricultural outlook 2021-2030*, 2021.

important for resource-limited countries, which heavily depend on the import of basic and high-value foodstuffs[14]. In addition to increasing food availability and moderating consumer price pressures, trade can also help smooth out food procurement and buffer any negative shocks to domestic production. It is therefore an extremely significant factor in determining food security when, for example, the country experiences adverse weather conditions[15].

3. The effects of food quality on people's health and the environment

A quality diet determines direct and indirect effects that are mainly expressed in two trajectories: those of a primary nature act on human health through the assimilation of food, those of a secondary nature have an impact on the ecosystem through food production and processing technologies. There is a very close relationship between individual diet, food production systems and impact on the environment, as highlighted by numerous studies since the 2000s. Consequently, among the potentially most effective actions to counter direct and indirect effects, many contributions suggest a change in diet, particularly with the reduction of red meat consumption.

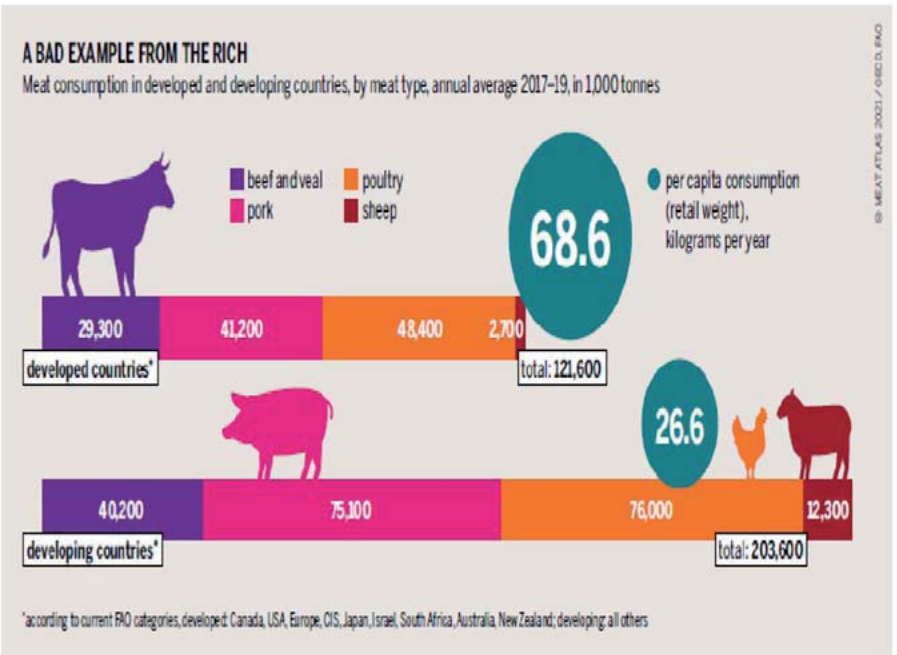
The meat sector therefore becomes the object of considerable attention, and the analysis of elements such as resource consumption and absorption becomes crucial in order to frame potential impacts in prospective terms. As shown in Figure 4, developed countries have the highest per capita consumption of meat, while this value is higher in absolute terms for densely populated developing countries. Both population growth trends and income dynamics, which are linked to dietary habits and therefore consumption

14. Food and Agriculture Organization, *Trade and Nutrition Technical Note,* FAO, Rome, 2018, *www.fao.org/3/a-i4922e.pdf.*

15. It is useful to remember that being a net importing country does not mean that the country in question is unable to produce any food. In fact, as the import-export relationship is predominantly based on value, various elements come into play, such as the share of domestic use of what is produced or the role played by the relative prices of the products traded.

styles, are decisive for hypothesising future scenarios for the meat sector. According to EU estimates[16], world meat consumption will continue to grow by 1.4 % a year, due to population growth and higher income in developing countries. An additional 3.4 million tonnes of global meat imports will be needed to close the gap between domestic consumption and production in many countries. Sustainability will play an increasingly important role in EU meat markets for both producers and consumers. As consumers become more environmentally aware, and based on health and production cost considerations, per capita meat consumption in the EU is expected to drop slightly to 67 kg by 2031.

Fig. 4 - Meat consumption in developed and developing countries, by type of meat, annual average, in thousand tonnes, 2017-19. Source: Meat Atlas 2021



Countless studies investigate the correlation between health risks and high meat consumption[17], with tangible environmental benefits

16. European Union, *Agricultural outlook*, 2021.
17. M. Salehi, M. Moradi-Lakeh, M.H. Salehi, M. Nojomi, F. Kolahdooz, *meat,*

when a significant change in diet is made, especially by reducing red meat consumption[18]. In industrialised countries, including Italy, the diet is characterised by a high consumption of animal products, and therefore saturated fats, above the World Health Organisation's recommended threshold of around 300-400 grams of red meat per week. A recent British study[19] considers different scenarios for reducing certain foods in the diet, assessing the resulting reductions in greenhouse gas (GHG) emissions. The results show that even a modest reduction in meat consumption, according to nutritional guidelines, can lead to a reduction of up to 20% in emissions from the agricultural sector. The importance of diet in reducing risk factors is also reaffirmed by the Global Burden of Disease study[20] and for Italy, the estimate made reveals that 13.5% of disability-adjusted life years (DALY) are attributable to diet, which therefore represents the highest risk factor compared to others.

Figure 5 refers precisely to a scenario of a reduction in meat consumption, distinguishing by gender and macro-area: the variation in life expectancy (days gained) is substantial, especially for men and for processed meat in general.

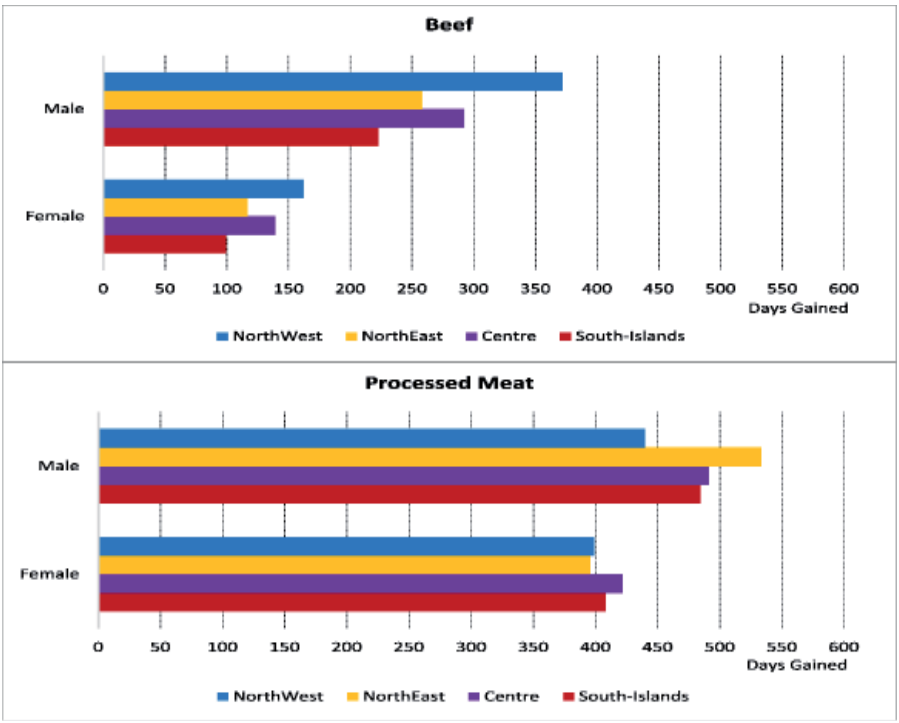
fish, and esophageal cancer risk: a systematic review and dose-response Meat analysis, in «Nutrition Review», vol. 71, no. 5, 2013, pp. 257-267. C.S. Yip, G. Crane, J. Karnon, *Systematic review of reducing population meat consumption to reduce greenhouse gas emissions and obtain health benefits: effectiveness and models assessments*, in «International Journal of Public Health», vol. 58, no. 5, 2013, pp. 683-693.

18. J. Bellarby, R. Tirado, A. Leip, F. Weiss, J.P. Lesschen, P. Smith, *Livestock greenhouse gas emissions and mitigation potential*, in «Europe. Glob Chang Biol», vol. 19, no. 1, 2013, pp. 3-18.

19. J. Milner, R. Green, A.D. Dangour, A. Haines, Z. Chalabi, J. Spadaro *et al*, *Health effects of adopting low greenhouse gas emission diets in the UK*, in «British Medical Journal Open», vol. 5, no. 4, 2015, *https://bmjopen.bmj.com/content/5/4/e007364*.

20. S.S. Lim, T. Vos, A.D. Flaxman *et al.*, *A comparative risk assessment of burden of disease and injury attributable to 67 risk factors and risk factor clusters in 21 regions, 1990-2010: a systematic analysis for the Global Burden of Disease Study 2010*, in «Lancet», vol. 380, 2012, pp. 2224-2260.

Fig. 5 - Change in life expectancy (days gained) for consumption of 150 grams of beef per week and 50 grams of processed meat. Source: Farchi et al. 2017



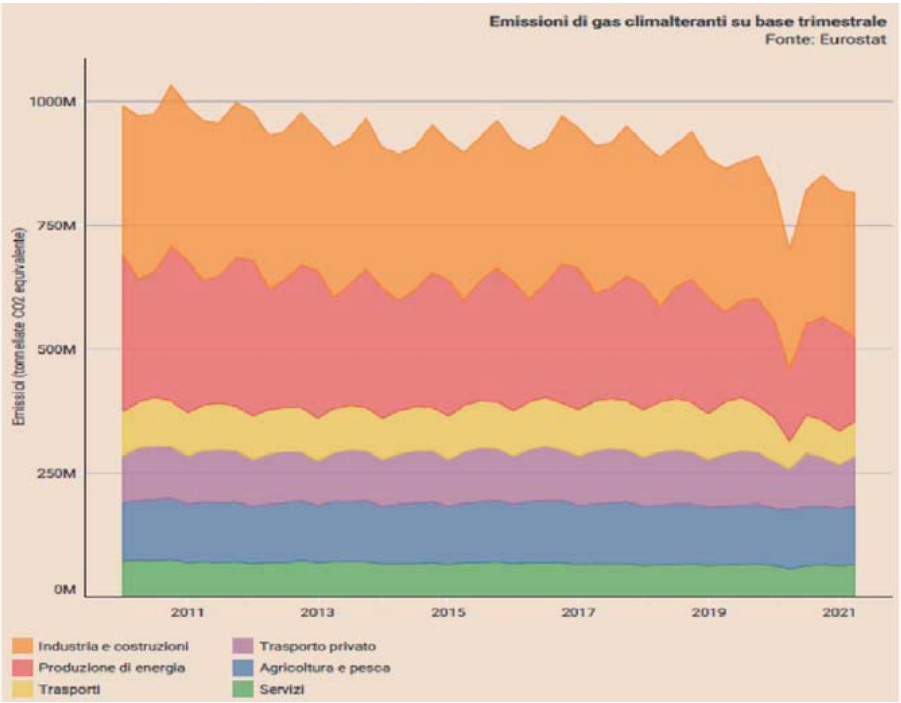
Studies investigating the risks associated with a high consumption of carbs refer mainly to certain specific diseases, such as cancer of the oesophagus, stomach, rectum, cardiovascular diseases and type 2 diabetes. The profound transformation of eating habits in our country shows a shift in recent decades from the traditional Mediterranean diet to a type of diet more similar to that of northern European countries. Recent data, also concerning our country, show a causal relationship between the consumption of red meat (beef, pork, lamb, goat, horse) and processed meats (cured meats, sausages and other processed meats) and the diseases mentioned above. The reported risks result from systematic surveys and meta-analyses with cohort and control studies, and given a baseline meat consumption as lifetime consumption, the risk is expressed per 50 or 200 g/day increment: for each increment of meat consumed daily, an increase in risk is estimated from 19% to 21% and 29% for red meat, from 21% to 42%

and 51% for processed meat, respectively, for colorectal cancer, heart attack and diabetes mellitus[21].

Countries that consume more meat could benefit most from any reduction, and since increasing income and wealth is one of the factors behind the increase in meat consumption over time, it follows that development pathways should be identified through targeted *policies* and interventions (necessarily coordinated between international bodies and institutions) that change the relationship between economic well-being and the composition of food consumption. The need for such actions is even more urgent when we consider the effects on climate change and the ecosystem.

The context of the so-called indirect impacts is shown in Figure 6, which investigates the weight of each economic sector in terms of climate-altering emissions.

Fig. 6 - Climate-altering gas emissions by economic sector (tonnes in Co_2 equiv., 2011-2021) Source: Eurostat



21. S. Farchi, E. Lapuzzi, P. Michelozzo, *Politiche di riduzione del consumo di carne in Italia: contrasto ai cambiamenti climatici e benefici per la salute,* in «Recenti Prog. Med.», no. 8, 2015, p. 354 et seq.

The agriculture and fisheries sectors are fifth, preceded by industry, energy production and transport, and as such will inevitably be called upon to contribute to the fight against global warming. However, the social costs that this will entail in terms of restructuring and reconversion of the sector will have to be assessed very carefully, not forgetting all possible correlations with the other mentioned sectors.

An initial comparison of per-capita emissions in different areas of the planet, by income bracket[22], shows that the rich are more responsible than the poorer classes, but it is then the number of inhabitants that determines the impact on total emissions: China is in first place followed by the USA and the EU.

Europe's green policies, such as the *New Green Deal*[23] with a temperature limitation of 1.5 degrees by 2050 and zero net emissions, represent a very ambitious goal and could have a very important cultural and then real impact on a global scale. The economic sustainability, together with the political and social sustainability of such policies, requires considerable investigation, with all the necessary scenario analyses. The context is certainly complex, e.g. an examination of the greenhouse gas emissions resulting from beef, pork and poultry production for 2021 (due to direct emissions, manure management, enteric fermentation, land-use change) shows a complex composition of the gases produced that can be traced back to CO_2 (carbon dioxide), CH_4 (methane), N_2O (nitrogen monoxide), which respectively generate very different types of impact[24].

According to the FAO, livestock farming is the most land-intensive activity of all, with 80% of agricultural land being used to feed crops or grazing. Agricultural land used to produce feed often replaces forests

22. Oxfam Media Briefing, *Confronting carbon inequality in the European Union*, 2020.

23. The *Green Deal* includes a series of regulations and strategies to regulate several interconnected policies. Two strategies in particular will play a key role in the transformation of our food systems: the EU Biodiversity Strategy 2030 and the *Farm to Fork* Strategy. The latter in particular aims to accelerate the transition to a sustainable food system by adopting an integrated approach to food, to take into account all food-related environmental, social, agricultural and public health impacts. The Action Plan's 27 measures should move towards greener food production, healthier and more sustainable diets and reduced food waste.

24. The reference chart is contained in Meat Atlas 2021.

and uncontaminated areas, putting biodiversity at serious risk. Clark and Tilman[25] calculated how much land is needed for one gram of animal protein: for cattle and sheep 1.02 m^2 , for pigs 1.03 m^2 and for poultry 0.08 m^2. The same is also found for the water footprint, with one kg of beef absorbing over 5000 litres, compared to almost 6000 for pigs and around 4000 for poultry.

All these considerations generate numerous challenges for policy actions aimed at determining how much to reduce emissions and how to identify the point of sustainability, also taking into account the demographic development of the world population and the development needs of a large part of the planet's inhabitants.

4. Production, consumption and impacts of the sector, the characteristics of the meat supply chain

The picture of meat production dynamics shows, from the 1960s to the present, a growing trend for all the countries considered (US, Russia, EU-28, India, Argentina, Brazil) with a strong upsurge since the 1980s for China, confirming the economic and demographic boom that has characterised the Chinese giant in recent decades. In a comparison between European partners, Italy ranks as a producer after Germany, France, Spain and Poland[26]: in terms of emissions, this would imply rather virtuous behaviour, but this is only one aspect to be considered together with others (such as consumption) in order to balance the right level of production with a view to sustainability. In the 1960s, the average consumption per person was less than five kilos a year, settling at around 60 today. In Brazil, consumption has virtually doubled since 1990, while in India the sacredness of the cow means that consumption is around 4 kg, despite economic and population growth. In Central Africa and South East Asia, consumption does not exceed 10 kg per head. For Italy, the average consumption is 79 kg compared to 90 in

25. M. Clark, D. Tilman, *Comparative analysis of environmental impacts of agricultural production systems, agricultural input efficiency, and food choice*, in «Environmental Research Letters», vol. 12, no. 6, 2017.

26. Meat Atlas, 2021.

the EU. With this in mind, when supply and demand are considered jointly (Figure 7), it is interesting to note that in the global production and consumption volumes, greater weight is given to low-income countries, with the poultry sector playing an increasingly greater role than the beef and pork sectors. This growing trend is also evident in evolutionary terms when analysing poultry meat production data over the last 20 years, compared to substantially stable quantities for other types of meat[27].

The meat industry is extremely complex and has a very long supply chain from breeding through to slaughtering, processing and packaging, before arriving at large-scale distribution, with the involvement of production inputs such as the production of feeds and the use of veterinary and pharmacological supply chain control services. The employment provided by the sector is huge and an exact estimate of the number of employees is not an easy task. According to Eurostat data, 257,000 people are employed in the beef and veal sector in Italy, with an estimated market turnover of 6 billion euros, but it is possible to find very different values depending on how one interprets the extent of the supply chain[28].

Undoubtedly, however, the weight in terms of employment is significant, and policies and regulations aimed at promoting quantitative and qualitative safety in the meat sector cannot disregard a careful assessment of the impacts produced and the action-reaction dynamics that policies trigger.

The European Commission has identified the food chain as key to the implementation of circular economy practices, highlighting the need to increase water reuse and improve nutrient management in agricultural activities. As already mentioned, several studies converge in indicating meat and meat products as one of the most impactful elements of diets, promoting a shift to diets with a reduced intake of animal products as a potential solution to reduce the environmental impact of food systems. An improvement in the environmental effects of meat and meat products can be achieved by valorising animal by-products generated along the meat chain.

27. Faostat, *Commodity Balances - Livestock and Fish Primary Equivalent*, 2000, *www.fao.org/faostat/en/#data*.

28. Data taken from Ismea 2020.

The agricultural sector, including livestock farming, plays an important role in the Italian economic system and generates one fifth of the added value of the European agricultural system. In addition, Italy is the leading European country for the number of protected designations of origin (PDOs), protected geographical indications (PGIs) and traditional specialities guaranteed (TSGs)[29]. EU meat production for 2010-2014 showed an increase in the production of pork against a decrease in beef, poultry and lamb and goat meat production. In 2010, Italy was the fourth largest meat producer in the European Union (EU), after Germany, France and Spain; in 2020, it fell to sixth place, behind Poland and the United Kingdom. The largest share of Italian meat production is accounted for by pork, followed by poultry, which has overtaken beef production since 2008[30].

In particular, the Italian meat production system is characterised by a high slaughter weight for pigs and poultry and by the import of live animals and carcasses from other countries for pork and beef, supplementing national production. Special data from the supply chain, from slaughter to consumer, show a production level in 2013 of 6.53 megatons[31] of meat, as slaughtered live weight, and 4.61 megatons when considering carcasses. Pork accounts for 49%, followed by poultry (25%), beef (25%) and then lamb, goat, horse and rabbit (1% each).

A very interesting study[32] takes an innovative approach to assessing the meat supply chain[33], combining material flow analysis (MFA) to identify the waste of natural resources and other materials that would go unnoticed in the conventional economy) with the related environmental impacts, providing the background for the development of ad hoc mitigation strategies. The results confirm that the most

29. B. Coluccia, D. Valente, G. Fusco, F. De Leo, D. Porrini, *Assessing agricultural eco-efficiency in Italian Regions*, in «Ecology. Indicator», vol. 116, 2020 *https://doi.org/10.1016/j.ecolind.2020.106483.*

30. Faostat, *Commodity Balances - Livestock and Fish Primary Equivalent*, 2000, *www.fao.org/faostat/en/#data.*

31. The megaton is equivalent to one million tonnes.

32. G. Ferronato, S. Corrado, V. De Laurentis, S. Sala, *The Italian meat production and consumption system assessed combining material flow and life cycle assessment,* in «Journal of Cleaner Production», vol. 321, *https://doi.org/10.1016/j.jclepro.2021.128705.*

33. The supply chain considers the following segments: slaughtering, meat processing, retail and consumption.

commonly consumed meat is pork, followed by chicken and beef. This is attributable to the fact that pork is processed to produce sausages, many of which are classified as PDO and PGI products. Beef is the category of meat with the greatest environmental impact, mainly due to enteric emissions, which are a physiological characteristic of ruminants, and the lower efficiency in the conversion from live weight to carcass weight for this meat category. The sources of animal by-products and waste substances are identified through the so-called MFA.

The quantification of the former and their disposal shows that the circularity of the system is already high, although optimisation is possible, as the re-use of certain categories of animal by-products[34] is characterised by low or zero health risk. At the moment, certain by-products are used for the production of fertilisers and animal feed. Other by-products (usually carcasses, from which fats and meal are derived) could reduce the environmental impact of using other protein sources (e.g. soya). For the production of animal feed, the use of fat, being suitable for human consumption, could replace the use of other vegetable oils.

The assessment of the environmental impact produced by the consumption of one kg of meat is analysed for each type of meat, for all phases of the life cycle[35]. The effects considered, which are very diverse (from climate warming to water eco-toxicity[36]), reach maximum value for beef. Chicken has a higher impact than pork for most of the categories considered. For all types of meat, the agricultural and slaughter phases are those which, throughout the various phases of the lifecycle, make the greatest contribution to the impact of climate change categories, acidification, eutrophication (terrestrial, freshwater and marine), water use and land use. In the case of climate change, the agricultural and slaughtering phases are followed, again in terms of

34. Specifically, EU Regulation 1069/2009 divides all animal by-products into three categories: live animals and similar, manure and similar, and carcasses and similar.

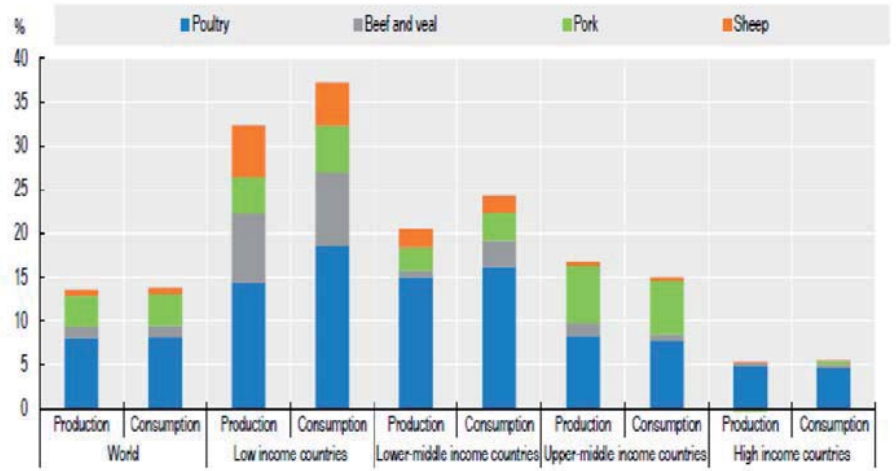
35. The lifecycle consists of the following phases: farming/breeding, industrial processing, logistics, packaging, final stage.

36. The effects of environmental impact can be described as follows: climate change, ozone depletion, particulate matter, ionising radiation, acidification, eutrophication of land, fresh water and sea water, use of fresh water, soil, use of fossil and mineral resources, human toxicity (carcinogenic and non-carcinogenic), water ecotoxicity.

impact, by the logistics phase. The final (end-of-life) phase has higher values for freshwater eco-toxicity and contributes less to the impact on freshwater and marine eutrophication and water use.

The average per capita consumption of meat in Italy of 55 kg (pork, chicken and beef account for 46%, 27% and 25% of total meat consumption respectively) is responsible for the emission of 2.8 kg CO_{2eq}, with beef accounting for 65% of these emissions. The same significance, in relative terms, is also found for other types of meat, also due to the environmental effects mentioned above. The potential benefits from the reuse and valorisation of animal by-products show an efficiency and circularity of the system that must be taken into account when developing ad hoc mitigation policies and interventions.

Fig. 7 - Growth in meat consumption and production, on a protein basis. Source: OECD/ FAO 2021



Note: The 38 individual countries and 11 regional aggregates in the baseline are classified into the four income groups according to their respective per-capita income in 2018. The applied thresholds are: low: < USD 1 550, lower-middle: < USD 3 895, upper-middle: < USD 13 000, high > USD 13 000.

5. Possible policy interventions: some suggestions

The following assessments are initially based on a general European policy approach and then focus on the frame of reference for Italy. The focus on our country tries to describe the trade-off, or rather

the trade-offs, between climate change, environmental benefits, social, employment and restructuring costs of the sector, that each policy package provides.

As regards reducing meat production and consumption, public policy can and must play a key role. In terms of supply, potential measures include: stricter animal welfare standards, targeted subsidies for environmentally friendly products, support for plant-based options and restrictions on the number of animals that can be raised per hectare. When it comes to demand, possible policies refer to discounts for plant-based products, higher taxes on meat, labels reflecting the sustainability of products and rules to increase the share of vegetarian meals in public restaurants, company restaurants and school canteens.

These measures must be present in a broader policy mix. The main obstacle is not technical but political. The dominant theme of "consumer responsibility" often plays into the hands of interest groups that benefit from the current system and seek to limit state intervention in food consumption. Politicians fear conflict with such groups and want to avoid the backlash of policies that directly interfere in people's daily lives. Nevertheless, studies and research into public opinion in various countries around the world (China, Brazil, the EU, India, Japan, South Africa, Switzerland, and the US) show that people are generally inclined to reduce their meat consumption and accept policy changes to a greater extent than previously thought. For example, a recent EIB (European Investment Bank) survey of 30,000 respondents in 30 countries showed that 78% of respondents in China, versus 65% in Europe and 54% in the US, support reductions in red meat consumption to combat climate change[37]. Support by citizens was strongly diversified according to the various policy proposals: support for a certain policy package was 55% higher than for the least preferred package. So the right combination and sequence of policies can reduce political risks and stimulate supporting coalitions. Policy advocates need to explain the rationale behind proposed demand-related measures to reduce meat consumption, e.g. by highlighting the benefits of climate mitigation, rather than attempting to reallocate and hide the costs.

37. European Investment Bank, *The EIB Climate Survey*, 2019-2020.

The same survey shows that production subsidies (for meat substitutes) and tax breaks (such as incentives for plant-based diets) can lead to changes in consumption and attitudes, suggesting demand-related policies such as higher taxes on meat consumption. At the same time, studies show that increased experience with plant-based meat substitutes allows people to reduce their meat intake and endorse policies to reduce it. Increased availability of vegetarian dishes in canteens would lower the cost of consuming vegetable options and create coalitions between producers, retailers, investors, NGOs[38] and consumer groups in this area[39]. A combination of appropriate communication campaigns and effective product labelling programmes, together with the increased availability of meat substitutes and vegetarian dishes on the market, could trigger a virtuous circle of change.

In May 2020, as part of the Green Deal, the Commission proposed the *Farm to Fork* strategy for a "fair, healthy and environmentally friendly food system". One of the goals is to reduce the effects of livestock farming and consumption on climate change, biodiversity loss, pollution, antibiotic use and animal welfare. Current meat consumption patterns in Europe are considered unsustainable in terms of both health and the environment. The average intake of red meat exceeds the recommendations of the World Health Organisation, while the consumption of whole grains, fruit and vegetables, legumes and nuts is too low. The *Farm to Fork* strategy aims to change consumption through information, increased market availability of meat substitutes, price levers and tax incentives. Despite these measures, several civil society organisations criticise this strategy as being insufficient to solve the problems of breeding and consumption at industrial level[40].

It should be noted that many of the policies in conflict with the *Farm to Fork* strategy are still in force. Between 8 and 20% of subsidies under the EU Common Agricultural Policy go to livestock or fodder farms, which encourages the concentration of meat and dairy production in fewer, larger farms. The next funding period of the Common Agricultural Policy places more responsibility for the allocation of funds

38. NGO stands for non-governmental organisation.
39. Meat Atlas, 2021, *https://eu.boell.org/en/meatAtlas.*
40. *Ibid.*

on the states and much will depend on the national strategic plans. So far, no Member State has a dedicated plan to transform the livestock sector and adapt it to the Commission's climate and biodiversity goals.

The analysis of the data presented in the preceding paragraphs suggests a number of considerations. First of all, population growth in the poorest countries and their legitimate prospect of economic growth and the elimination of malnutrition will, as has been the case to date, mark the food policies of the future. The critical element is that, as already mentioned, the increase in wealth is associated with an increase in meat consumption, and the production and consumption of meat produce certain direct and indirect impacts on human and planetary health. However, in estimating the benefits that would accrue from a decrease in meat consumption (and therefore production), in terms of health gain and GHG emission reduction, it is necessary to take into account the diet as a whole and the potential effect of increasing consumption of protein replacement foods for beef or, vice versa, of increasing fruit and vegetables: trends in recent years indicate that beef consumption is declining, while consumption of cheese with a high saturated fat content, pork, eggs and, above all, cheap sausages, which are certainly not quality food, are on the rise. Therefore, measures to reduce beef consumption should try to steer consumers towards a new, more environmentally and health-friendly alternative way of eating. Meat is a food with a high nutritional value which, while not indispensable, is replaceable more theoretically than practically (although this depends on cultural contexts and specific geographical areas). The consideration of alternative types of meat must pay special attention to the environmental impacts caused, in order to promote a consumption model with the lowest possible greenhouse gas emissions and, at the same time, with an adequate supply of proteins and micronutrients. Also not to be overlooked is the impact that the speed of the change in lifestyles may have on employment and production chains.

By differentiating between different types of meat, the specific impact on the environment and economic systems is extremely complex, as is the contribution per producing country and consumer. This can trigger strong trade wars and sectoral resistance. The economic importance of the meat chain in terms of GDP and employment is undisputed. Combining job protection (in quantitative and qualitative terms) and the protection of

the meat chain, also with a view to reconverting the sector, will be the national and European challenge of the next decade.

If intensive cattle farms are to be significantly reduced in the interest of collective welfare, the first question is how to maintain employment in order to be able to divert some of it to the production of replacement food. The FAO's suggestions in this sense are for a removal of state subsidies for the livestock sector in the most developed countries in order to convert land that is currently used for the production of animal feed, with a strong environmental impact. At the same time, the FAO envisages the granting of equipment to those populations with subsistence farming in order to make it more profitable.

Italian agriculture, including the livestock sector, is one of the most sustainable in Europe in terms of greenhouse gas emissions (23% less than Spain and 61% less than France). If a process of further and constant conversion has to be continued, it is necessary to balance the mix of interventions in order to balance the environmental and social benefits and costs of change. One way forward could be to act on lifestyles and food consumption, so as to orientate supply and therefore the production sectors. But how to do this, and above all with what timescale, is far from simple.

Given the global importance of the agri-food sector, international trade rules and policies will be decisive for the future of the supply chain. The structure of national sectoral rules cannot be separated from the international reference context and the dynamic effects of international agreements. It follows that the policy structure has to be multilevel and result from balanced global bilateral and multilateral agreements.

In order to resume the virtuous path of food security, the production, trade and consumption model of the last twenty years will have to incorporate changes in the global value chain and process innovations that are oriented more towards the ecological transition. The same applies to consumption styles. Any changes will have to take into account the enormous differences between geographical areas.

Moreover, sectoral and industrial policies will be all the more effective the more they take into account the incentive dynamics related to them. This transition cannot be separated from a comprehensive knowledge of the supply chain and the interests represented in it, both at production level and with regard to individual consumption (in the three dimensions of local, national and international).

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Food Security, Right to Food, Ethics of Sustainability

Food security, understood in its broadest sense as the 'right to food', is a fundamental right preordained to respect for life itself. No human being can be guaranteed the right to life if, at the same time, the need for qualitatively and quantitatively sufficient food is not respected.

This is a value of food which, in the integrated and interdisciplinary methodological perspective embraced in this book, combines the existential dimension of food with reasoning oriented towards elaborating political choices of intervention. This approach highlights the limits of a socio-economic model that continues to move within a paradigm far removed from the logic of sustainable consumption and respect for fundamental rights.

Chapters by: C. Ascani, R.S. Bonini, L. Califano, A. Fabbri, M.P. Mittica, P. Polidori, R. Rombaldoni, E.A. Rossi, M. Rubechi, G. Stegher.

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