

The law to Food and international regulations

Prawo do żywności a regulacje międzynarodowe

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Summary

The purpose of this article is to discuss the right to food based on national and international regulations. In the hierarchy of basic needs, striving to satisfy hunger and the desire to feel safe are the basic categories that we satisfy first, only to meet further needs later. The right to appropriate food requires countries to provide appropriate instruments to protect these rights. The provisions of food law and international human rights pacts provide for the protection of the right to food in the basic scope, although they do not always result directly from normative regulations. The right to water, to freedom from hunger, to safe food can be claimed by the state in court. The right to proper nutrition is also interdependent with other human rights, such as the right to non-discrimination, the right to health, education, work, and property, freedom of speech and opinion, information, participation in social, cultural and political life. The article indicates the place of the right to food in the international legal order and defines the entities responsible for the implementation of this law in the international space.

Streszczenie

Celem niniejszego artykułu jest omówienie prawa do żywności w oparciu o regulacje krajowe i międzynarodowe. W hierarchii potrzeb podstawowych dążenie do zaspokojenia głodu oraz chęć poczucia bezpieczeństwa stanowią kategorie podstawowe, które zaspokajamy w pierwszej kolejności, aby dopiero potem zaspokoić dalsze potrzeby. Prawo do odpowiedniej żywności wymaga od państw dostarczania odpowiednich instrumentów chroniących te prawa. Przepisy prawa żywnościowego i międzynarodowych paktów praw człowieka w podstawowym zakresie przewidują ochronę prawa do żywności, choć nie zawsze wynikają z regulacji normatywnych

bezpośrednio. Prawo do wody, do wolności od głodu, do bezpiecznej żywności może być dochodzone przez państwa na drodze sądowej. Prawo do właściwego żywienia jest ponadto współzależne z innymi prawami człowieka, takimi jak: prawo do niedyskryminacji, prawo do zdrowia, edukacji, pracy, własności, wolności słowa i poglądów, informacji, uczestniczenia w życiu społecznym, kulturalnym i politycznym. Artykuł wskazuje miejsce prawa do żywności w międzynarodowym porządku prawnym oraz określa podmioty odpowiedzialne za realizację tego prawa w przestrzeni międzynarodowej.

Introduction

Around 900 million people suffer from hunger worldwide. Its satisfaction is the basic physiological activity allowing further functioning of a human being. „Hunger” is a physiological condition, a pain that is caused by depriving a human being of the access to food in a partial or complete way. On the basis of the PoU (Prevalence of Undernourishment) indicator, the Food and Agriculture Organization of the United Nations (FAO) has developed a map of the world illustrating the problem of hunger in the world.



Figure 1. A world map depicting the problem of hunger in the world [1]
Rysunek 1. Mapa świata przedstawiająca problem głodu na świecie [1]

White indicates areas with very low levels of malnutrition – below 5%
Light grey indicates areas of relatively low levels of malnutrition – 5%–14,9 %
Grey indicates areas with an average level of malnutrition – 15%–24,99%
Dark grey indicates areas with a relatively high level of malnutrition – 25%–34,99%
Black indicates areas with very high levels of malnutrition – above 35%

According to FAO the most threatened areas of hunger are: Sub-Saharan Africa, Caribbean, South Asia, Oceania, East Asia, Southeast Asia, West Asia, Central Asia, Latin America, and North Africa [2].

As early as in 1943 Abraham Maslow in his scientific article „The Theory of Man’s Motivation”, which appeared in the “Psychological Review” journal [3], presented his pyramid of needs, which defines the right to food as one of the basic human needs. Meeting the needs of higher order depend on satisfying the basic ones.

The history of food law

Food in the colloquial meaning is any food products of mineral, vegetable or animal origin, raw or processed, intended in the natural state or after processing for human consumption, as well as sets of these food products in the form of dishes or meals [4]. The beginnings of the development of food law in Europe are connected in particular with the development of sanitary legislation in Germany and Austria in the 19th century [5]. The first Polish sanitary act was the Act of the 8th of February 1919, which stipulated severe punishment for marketing harmful food [6]. Sanitary legislation currently referred to as food safety has over time evolved and began to focus on protecting the lives and health of food consumers. Currently food law also deals with the welfare of farm animals, the health of plants in the natural environment and the economic interests of consumers. This law describes the standards to be followed during the various stages of production, processing and distribution of food [7]. Polish legislation regulating issues related to food and nutrition safety is based mainly on Regulation (EC) No. 178/2002 of the European Parliament and the Council of the 28th of January 2002 laying down the general principles and requirements of food law [8] and the Act of the 25th August 2006 about food safety and nutrition [9].

The right to food in international documents

When beginning the considerations related to the place of the right to food in the international legal order, one should start with the “declaration of the mother”, from which we can actually speak about codified human rights. The Universal Declaration of Human Rights of the 10th of December 1948 in its article 25 indicates that we have the right to „a standard of living that ensures the health and well-being of people and their families, including meals...” [10].

The Covenant of Economic, Social and Cultural Rights of the 16th of December 1966 formulates the right to food in article 11: „...The States Parties to the present Covenant recognize 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 improvement of living conditions...” [11]. Literature allows observing the separation of two rights in this article [12]. The first of these is the right to an adequate standard of living including food; the second is the right of every man to freedom from hunger. Pursuant to the indicated article, the States are required to take actions that will ensure the implementation of the Pact.

According to the guidelines of the Food and Agriculture Organization of the United Nations the right to food means the right to regular and permanent access to food in line with cultural traditions. In 1996 FAO adopted the Rome Declaration on Global Food Security [13]. The Rome Declaration specifies that the right to food exists when all people have constant and physical possibilities to satisfy their dietary needs and preferences by providing themselves with the right amount of wholesome and nutritious food needed for an active and healthy life.

General Comments No. 12 regarding the right to appropriate food, adopted in May 1999 which constitute a commentary on article 11 of the Covenant on Economic, Social and Cultural Rights [14] indicate the connection of the right to food with human dignity, which places the right to food high in the ranking of human rights and the democratic rule of law. Another instrument that determines the right to food is the possibility to enforce this right in court. Any person whose right to food has been violated should be able to bring appeals to national and international courts. This instrument was strengthened by the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights [15] in 2008, which introduced a procedure for bringing individual complaints to the committee supervising the implementation of the Pact by the parties.

The Convention on the Rights of the Child of the 20th of November 1989 in article 27 paragraph 3 indicates the obligation of each state – the parties to the convention to „...provide, if necessary, to parents and persons responsible for children financial assistance and other assistance programs, especially in the area of food, clothing and housing...” [16]. In turn, in article 12 paragraph 2 of the Convention on the Elimination of All Forms of Discrimination against Women of the 18th of December 1979, states that: „...States Parties shall provide women during pregnancy, childbirth and postpartum with appropriate

services where necessary, as well as adequate nutrition during pregnancy and feeding...” [17].

The Declaration on the Protection of Women and Children in Emergency and Armed Conflict of the 14th of December 1974 provides for the protection of women and children who are in armed conflict or in occupied territories and guarantees them the right to appropriate food [18]. As part of the deliberations of the World Employment Conference in 1976 it was pointed out that thanks to the appropriate pay for employment the family is able to secure access to appropriate food and safe drinking water [19].

The right to proper nutrition and other human rights

General Comments No. 12 [14] regarding the right to appropriate food, adopted in May 1999, indicate that the right to proper nutrition is in strict correlation with other human rights. The most important of these rights are: the right to health, the right to water, the right to non-discrimination, the right to education, and the right to information.

The right to health formulated in article 12 of the ICESCR [11] indicates that: „The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” The close connection of the right to food with the right to health is obvious because without proper nutrition we are not able to enjoy good health. On the other hand, you cannot take full advantage of the right to food without being healthy. Moreover, people struggling with health problems are not able to work so they do not generate the income needed to maintain food independence. According to the Food and Agriculture Organization’s 2004 Guidelines of the United Nations [20], it is recommended that countries should disseminate knowledge about healthy nutrition, fight against malnutrition, obesity and overweight. An inadequate diet is the cause of many diseases and in some cases may even lead to death [21].

Another right related to proper nutrition is the right to water. There is no life without water. The human need for water is very extensive. From satisfying thirst to doing business. The difference between the right to food and the right to water is that water cannot be replaced by anything. Our body is able to cope when we exclude some ingredient from our diet, but the lack of water threatens us with death. Access to water is essential for the existence of all humanity. According to FAO guidelines of 2004 [20] it is the task of states to guarantee their citizens the access to drinking water and sanitation.

According to the 2006 United Nations Development Program data 1.1 billion people suffer from limited access to drinking water worldwide. Most of these people are residents of rural areas. Often, people from third world countries are forced to travel miles to find a drinking water outlet. Unfortunately, a large number of water outlets are infected with deadly viruses and bacteria [22].

According to General Comments No. 15 to article 11 of the ICESCR [23] the right to water is based primarily on universal access to water, which can be used for both food and sanitary purposes as well as in households. This access cannot be limited by water prices, and its implementation also includes activities to prevent water related diseases, fight hunger and even death from dehydration.

The right to non-discrimination is expressed in article 2 of the Universal Declaration of Human Rights. It specifies that: „...Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...” [24]. This rule applies in particular to state bodies that are obliged to guarantee access to food without any kind of discrimination. The right to non-discrimination has also been set out in General Comments No. 12 to article 11 of the ICESCR [14]. In these comments, particular attention was brought to the residents of rural areas, farmers running small and traditional farms, people without own farms, farm workers, fishermen, people living from collecting or hunting.

The attention was also brought to women who not only produce food and feed their family members but also have their nutritional needs related to puberty, pregnancy or breastfeeding [25]. In a special way, issues related to discrimination may apply to children who are unable to provide food for themselves. Malnutrition of children, in particular, in the third-world countries is often associated with cultural conditions, because in many communities women and children eat as the last in the family, getting the smallest and the poorest portions. A common phenomenon is also the work of minors, heavy and dangerous, which is often the only source for getting food for children [26].

The right of every person to education included in articles 13 and 14 of the ICESCR indicates a correlation with the right to food, because thanks to education food is safer, less wasted, better produced, resulting in lower risk of famine epidemic [11]. The States Parties to the Covenant are obliged to ensure equal access to education for all citizens. According to the Food and Agriculture Organization's 2004 Guidelines of the United Nations [20] rural population should have access to training, education (especially girls and

women at least in the scope of primary school) and various types of courses that improve their competences in agriculture. Academics of the developed countries should be involved in the development of research and development potential in developing countries, and educational institutions in each country should provide knowledge about human rights and their protection, including the right to proper nutrition. It is also necessary to provide appropriate training for employees of public administration responsible for the gradual implementation of the right to food.

The right to information has been expressed in the guidelines of the United Nations Food and Agriculture Organization of 2004 [20]. Thanks to this law, every final consumer should have access to the most accurate information about the purchased product., This information, in particular, includes issues related to: the type of food, the method of its preparation, detailed composition, date of production, expiration date, allergens, etc.

The right to food and national regulation

The Constitution of the Republic of Poland in its article 76 [27] states that: „Public authorities protect consumers, users and tenants against activities that threaten their health, privacy and safety and against unfair market practices. The scope of this protection is specified in the Act.”

In article 67 sec. 2 of the Constitution, in turn, we read that „a citizen has the right to social security in the event of incapacity to work due to an illness or disability and after reaching the retirement age”. Article 69 of the Constitution of the Republic of Poland assumes that „in accordance with the Act public authorities grant assistance to the disabled people in securing their livelihoods(...)”. The scope and forms of social security are specified by the Act. The indicated articles do not regulate the right to food *expressis verbis*. They also do not contain guarantees of subjective rights that could be effectively enforced in court. In the light of the above provisions, the possibility of claiming the right to appropriate food on the basis of the Constitution of the Republic of Poland seems to be theoretical rather than practical. Despite the ratification of the Covenant of Economic, Social and Cultural Rights, Poland did not explicitly introduce the term „right to food” into the legal order [19]. Although the „right to appropriate food” was not included in the Polish constitution, the political conditions for its implementation were created. Freedoms, rights and obligations of man and citizen included in chapter II of the Constitution of the Republic of Poland, in particular economic, social and cultural laws, are strictly connected with human

rights established in international law. Therefore, this right should be a subject of protection and implementation.

Conclusions

The presence of the right to food in so many international regulations should guarantee the international community that this right will be enforced by the states. However, the states do not always exhaustively implement this right towards its citizens. Often instruments of international law are insufficient to fully realize this right. Nevertheless, we can see that the recent concept of the right to food has already taken the form of real shape indicated in this paper. This law, inscribed in the constitution of many countries around the world, gives their citizens the protection from hunger, yet it also gives them something much more, in correlation with other human rights it creates a coherent system of rights, inextricably linked with each other. This correlation guarantees the continuity of these rights and their mutual complementarity.

The right to food is a fundamental human right, its implementation indicates the condition of using other rights and freedoms. Certainly, the development of this law in recent years is a response to the growing social needs related to freedom from hunger, the right to water, and in particular the right to safe food.

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