

The Right to Food

its social need and its constitutional legal dogmatics

Thesis of PhD dissertation

written by
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I. Resume of research tasks

The world surrounding us is full of contrasts: while people of the one half of the world suffer from famine, the life of people gets in danger because of the food-safety risks serving for the increased claim for food of the modern welfare societies, as well as because of the illnesses caused by the overweight in the other half of the world. The unlimited wasting of food products and the shortage of food are present at the same time. It is one of the gravest problems of the 21st century that 794.6 million people suffer from quantitative famine,¹ while the number of people suffering from illnesses radically increase (e. g. diabetes, sickly sensitivity to gluten, as well as to lactose, other intolerances to food products or different sorts of food allergy among others).

The primary aim of my research is to disclose the social needs making it necessary to approach the problem of food supply as a fundamental right. My main aim is the systematic arrangement of the right to food according to the dogmatics of fundamental rights, as well as the examination of becoming effective and the possibilities of making effective this right a basic subjective right, subjectively on the one hand, and from the aspect of objective obligation of the State, on the other hand; to systematize the requirements relating to the subject-matter of the right to food, as well as the relations of basic rights, aims and self-engagements of the State connected with the right to food, as provided for by the Constitution of one to another and within their system.

¹ The State of Food Insecurity in the World. FAO, Rome, 2015. <http://www.fao.org/3/a4ef2d16-70a7-460a-a9ac-2a65a533269a/i4646e.pdf>

II. The short description of the performed examinations, the method of collection of material.

The subject-matter of the research

In order to reach the aim of the research, I began the work with clarification of concepts where I wished to put light to the relation of the food and the security at first, as well as to some of their connections namely to the clarification of concepts of the security of food supply (quantitative aspect), as well as to food-safety and the security of food chain (qualitative aspect). Then I examined the challenges connected to the insufficient food provision, the different dimensions of the quantitative (absolute) famine and the qualitative (relative) one, as well as the different dimensions of the underfed status.

In the third chapter of the dissertation I considered one by one the social claims calling for the sufficient food provision as for claim of human right, as well as the paradigms of starvation theory treating the problem of starvation after the disclosure of the historical antecedents of the right to food. At the end I tried to disclose the roots of the right to food in international law.

In the fourth chapter of the dissertation I made an attempt to elaborate the constitutional legal dogmatics of the right to food. In this way, I attempted at first to arrange the right to food in the system of concepts of basic rights, then, having brought in compliance with the criteria of establishing the basic rights, I examined to what extent can the right to food be defined as a basic right. Having done this definition and arrangement in the dogmatics, I attempted to arrange the right to food in the system of basic rights then I examined whether the right to food has any character of a collective or political right, and in case it has, how determinative these characteristics are in the examined basic right. For the sake of the dogmatic systematization I examined, who are the subjects and addressees of the right to food. Then I attempted to clarify the content of the right to food as basic right. As the basic rights – as consequence of their character of Constitutional law – are destined to define rights for the individual in relation of the individual to the State on the one hand, and they prescribe fulfilment of active and passive obligations for the State on the other hand; I mention also, which obligations of the State appear in the foreground in connection with the enforcement of the right to food.

Considering the fact that the problem of food supply is connected to a number of other basic rights, Constitutional values and targets of the State, in the fifth chapter of the dissertation I

submitted to examination the connection of the right to food with other basic rights and Constitutional values through the classification of basic rights into generations. In the last chapter of the dissertation I considered one by one the legal, institutional and economic guarantees of the quantitative and qualitative aspects of the right to food.

The applied methods of research

I leaned prevalingly on The General Comment of the Commission on Economic, Social and Cultural Rights issued in 1999 providing the definition of the content of the right to food and the obligations of State stemming from this right². I used also the document of Voluntary Guidelines adopted by the FAO Council in the year 2004, as well as the relevant foreign legal literature in English. There is no such an accurate and wide-spread definition of the right to food presented in any single international document of obligatory character. Neither the Hungarian Constitutional Court nor the European Court of Human Rights has yet elaborated the dogmatics of the content of the right to food.

Having brought my research in accordance with *the scientific method of dogmatics* I continued it in accordance with the general principles and systematization of the dogmatics of the Constitutional law. I tried to examine the dogmatics of the right to food as a basic right (chapter IV), its relations in the system of constitutional law (chapter V) and its guarantees (chapter VI). I used Hungarian legal institutions and examples from the case law of the Constitutional court, ombudsman's communiqués and ordinary decisions of court, as well. During the systematization according to the dogmatics of the Constitutional law and that of basic right I tried to define the classing and arrangement of the right to food with the character of basic right in the system of basic rights, I endeavoured to define the subjective aspect of the right to food within the said systematization, as well as the **objective obligation of the State** aspect and the content of the right to food, as well as its guarantees. I considered, however, prior to the dogmatic analysis of the Constitutional law, to perform some clarifications of the basic concepts (chapter II) wherein I submitted the relation of the food and security the different dimensions of starvation and the concept connected to food to dogmatic/grammatical examination.

² The Hungarian translation of the General Comment No. 12 was published in the following article by *Júlia T Kovács: International Unified Document of the Economic, Social and Cultural Rights – General Comment No. 12. The Right to the Adequate Food*; In: Acta Humana: Communications on Human Rights 2014, (Vol 2 (new vol)) No. 4, pp. 55 to 64

The historical, sociological and comparative methods³ belong to the *non-dogmatic methods* of the scientific research regarding to them I found unavoidable to present different paradigms of the problem of food supply (chapter III) as well as the development of historical antecedents of the safety of food products (chapters III and VI) respectively to outline the development of the formation of the right to food in the international law (chapter III). In addition, in connection with the system theoretical problems of the right to food I submitted to examination the social sociologic and political causes of the food supply, as well (chapter III). In order to apply the comparative method of laws I compared firstly the global and regional international treaties, particularly the legal practice, as well as the statutory interpretation of the UNO Commission on Human Rights, the European Court of Human Rights, the European Commission of Human Rights then some national institutions for protection of basic rights (Constitutional courts and ombudsmen) and the provisions of all Constitutions containing *expressis verbis* the right to food, as well.

³ András Jakab – Attila Menyhárd: A magyar jogtudomány helyzete és kilátásai. (The situation and perspectives of the Hungarian jurisprudence). In: András Jakab – Attila Menyhárd (eds.): A jog tudománya – Tudománytörténeti és tudományelméleti írások, gyakorlati tanácsokkal (The Science of Law – Papers on the history of science and on the theory of science with practical advices) HVG ORAC, Budapest, 2015. p. 41.

III. Summary of the new scientific results of the PhD dissertation

A) The social need for creation of security of food supply and that of food products is a State establishing factor.

The obtaining of food or its production has always been a basic task to support human life since the prehistoric ages. The need for creation of external and internal security was one reason among other State establishing ones, which includes among others the claim for the creation of the security of food supply and the safety of food products, as well (chapters II and III). In accordance with that the different institutions guaranteeing the security of food supply even in the ancient times, such as the warehouses and different systems of rules guaranteeing the security of food products (chapters III and VI).

B) The claim for the appearance of food supply having character of basic right came into being as a result of numerous social, economic and environmental factors.

The social, economic and environmental processes, which took place during the last decades and the social claims attached to them gave rise to the need for the approach to the right to food as human right and the factors bringing into being the right to food generate one another (chapter III).

The quantitative aspect of the right to food was mentioned in connection to *the challenges threatening the security of food supply* where the explosion-like increase of population, the taboos of nutrition, the social status of the women, as well as the problems of public health were mentioned among the most important social factors. The neo-liberal economic policy, the debt spirals, the corruption, the lack of agricultural inputs and that of resources for their procurement can be found among the economic and political factors; while the problems of climate change, the unforeseeable aridities and floods, the degradation of biodiversity and the deterioration of arable lands continue to induce the insecurity of food supply on worldwide level from among the environmental factors.

The increasing value of the qualitative aspect of food came into being as a result of the increasing environment contamination, the micro-organisms changed under influence of plant protecting

chemicals, appearance of genetically modified organisms in the environment, as well as by the climate change from among the environmental challenges. The technologies of large-scale food industry and those of agriculture, the global food trade and the large-scale and standardized food production are some from among the economic factors influencing the quality of the food, while from the side of society the urbanized consumer society, the large-scale international personal traffic and the consumers having diminished immunity are the factors inducing the raising of the value of the food supply security. All the mentioned factors influence the quality of food and they more and more generate and cumulate one another impairing the quality of the food.

C) Considering the right to food having the character of basic right I came to the following conclusions.

a) The right to the food of adequate quantity and quality has two aspects, which cannot be separated from one another.

The right to the food of adequate quantity and quality has two aspects: while the attribute of quantity covers the domain of problems of security of food supply (food security) concentrating to the problem of provision with adequate quantity of food, the food safety concentrates to the problem that the food should be safe, as well, so it forms part of the qualitative aspect of the right to food in this way. The infringement of the quantitative aspect of the right to food causes absolute (quantitative) starvation, and as a consequence, health problems related to malnutrition became more and more serious. On the other hand the phenomenon of starvation as regarded in relative (qualitative) sense requires the emphasis of the requirements of food safety and food chain, because their failure can result in serious diseases caused by food products, as well as in obesity, its consequences put serious burdens to public health services and to economy. It can be established that the quantitative and qualitative aspects of the right to food cannot be separated from one another: the food supply security without food safety or the food safety without food supply security cannot result in the enforceability of the right to food (chapter II).

b) The classification of the right to food as a fundamental right into the generations is not unanimous; right to food can be classified into all of the three generations of human rights considering its appearance, as well as its content.

As regards to its appearance the right to food bears the characteristics of the human rights of third generation, whereas also this right appeared earlier in the international scene than in national Constitutions (chapter IV). The third generation of fundamental rights appeared in the 20th century. I divided these rights into the following groups: rights of vulnerable groups, rights appeared as an answer to technological challenges and rights necessary for the biological existence. I classified the right to food into the third group of the third generation basic rights, i.e. among the rights necessary for biological existence.

On the other hand, more than one characteristic of the first two generations of human rights are simultaneously present in the right to food. It includes both the *non-committal attitude of the State* containing the obligations of non-intervention and respect and the *active participation of the State* characterizing the rights of the second generation (the positive legislative regulation of the quantitative and qualitative aspects by providing financial guarantees).

c) The right to food is an independent constitutional right

The State obligation to ensure access to healthy food is regulated in Article XX section (2) of the Hungarian Basic Law as the objective obligation of the State regarding the right to physical and mental health. This obligation can be considered as the qualitative aspect of the right to food. In addition to the right to health the enforceability of the right to food can be connected to a number of basic rights (chapter V), but in view of the special fundamental and universal characteristics, as well as the legal definitions of certain partial elements of this right, it can be “cut out” as independent constitutional right from the remaining basic rights (chapter IV).

The right to regular access to food of adequate quality (adequate in the aspects of both safety and cultural traditions) and quantity (satisfying the physiological needs), respectively the system of guarantees connected to it (chapter VI) are fairly special — however they do not appear in the system of the Basic Law as independently specified basic right — in order to enjoy the protection of the Basic Law as independent constitutional right and we should qualify it as a right ensured in the Basic Law, so – in my opinion - even a constitutional

complaint could be filed⁴ in case of its infringement, ensuring the proper constitutional protection of this right.

d) The regular access to adequate food constitutes the subjective right aspect of the right to food. The essential content of the right to food is the exemption from starvation.

From the viewpoint of *adequacy of food* there are different criteria relating to both the quantitative aspect and to the qualitative one. While the adequate quantity of food depends basically on the physiological needs of a given person, the requirements of food safety and its adequacy to the cultural traditions are connected to the qualitative aspect of the adequacy. On the other hand, however, these criteria have an objective aspect and a subjective one, as well. The requirements of *safety*, absence of unhealthy materials are connected to the objective aspect, while there are significant differences in the viewpoint of adequacy for the individuals in *physiological and cultural* sense. Under the concept of *food*, unprocessed raw materials containing mineral materials, vitamins and nutriments necessary for living of an individual should be understood.

The accessibility of food includes the accessibility both in economic and in physical sense. The regularity of food is, however, an objectively less exactly definable requirement. According to my viewpoint this concept should mean that the individual should have possibility for more than one meal daily.

e) The objective obligation of the State aspect of the right to food is constituted by, in addition to the obligation of respect and protection, the obligation of fulfilment, as well, and the conception of the food sovereignty covers the whole triad of said institutions.

In connection with the right to food a passive attitude is required on the base of the *obligation of respect (non-intervention)*, according to that the State should not restrict the already existing channels of access to food products, respectively it cannot determine such a policy of agriculture and food products, which could glut the markets of other States with dumping goods.

⁴ Similarly e. g. to the freedom of contract regarded by the Constitutional Court as independent (unspecified) constitutional right See the Reasons [26] of the Decision of the Constitutional Court: 33/2015. (XII. 3.) AB

On the base of the *obligation for protection* such legislative measures should be taken — playing active role —, according to that the State determine the requirements of food supply security and food safety, as well as their enforcement (having special regard to vulnerable groups). In order to enforce food sovereignty, the “obligation to protect” also includes that the State should establish a legal environment ensuring that persons under its jurisdiction could not damage food supply security and food-safety of other States.

The *obligation of fulfilment* includes the obligations of the State to promote access to food and ensure access, as well. The State should promote access to the resources necessary for the procurement and production of food products on the base of *promotion of access to food*. The State should take care of the needy people by means of aids either in kind or in financial form (including extraterritorial food humanitarian aid).

IV. List of publications in the subject matter of the thesis

1. *Megvéd-e a jog az ébenhalástól, a XXI. században - avagy létezik-e élelemhez való jog?* De iurisprudentia et iure publico, Vol. 5. No. 4. (2011) HU ISSN: 1789- 0446 (381- 423. p);
2. *Az élelemhez való jog védelme és érvényesítésének eszközei* (OKA – kutatási pályázat) In. Acta Iuvenum Caroliensia I. - 2011. évi hallgatói tehetségnap utókiadványa, Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar kiadványa (Felelős kiadó: Dr. Antalóczy Péter), Patrocinium Kiadó, Budapest 2011. ISBN 978-963-9809-29-7 (56- 70. p.);
3. *Egészség és környezet az Alaptörvényben.* In. Rixer Ádám (szerk.) Közösség és Társadalom. Károli Gáspár Református Egyetem. Lőrincz Lajos Közjogi Kutatóműhely. Budapest 2012. (246- 262. p);
4. *The general rules of the Hungarian food safety system.* In. International Eco-Conference of Safe Food. Ecological Movement of Novi Sad. Novi Sad (Serbia) 2012. ISBN: 978-86-83177-46-2 (337-343. p);
5. Kovács Júlia – Boussard Éva Zója – Vincze András: *Alaptörvényünk a „zöld szemüveg” aspektusából.* („Alaptörvény után – a sarkalatos törvények előtt” c. alkotmányjogi tudományos diákköri konferencia dolgozat) In. Téglási András (szerk.) Tanulmánykötet az Alaptörvény teremtette alkotmányjogi változásokról. Nemzeti Közszerzői Egyetem, Budapest 2012. (89-102. p.);
6. Csink Lóránt –T. Kovács Júlia: *Paradigma váltás a környezet alapjogi jellegében?* Jogelméleti Szemle 2013/4.(42-54. p);
7. Lóránt Csink – Júlia T. Kovács: *Paradigm shift in the Constitutional Character of Environment?* In. Right to Water and the Protection of Fundamental Rights in Hungary – Studia Europaea 2013 Jurisprudentia et Practica 4. (szerk. Szabó Marcel és Greszka Veronika) Pécs ÁJK Európa Központ, Pharma Press, 2013. ISBN 978-963-7038-44-0; ISSN: 2026-5049 (16-33. p);
8. *Gazdasági Szociális és Kulturális Jogok Nemzetközi Egyezségokmánya – 12. számú Általános Kommentár. A megfelelő élelemhez való jog.* Acta humana: emberi jogi közlemények, 2014. 4. sz. (55-64. p.
9. Csink Lóránt – Hajas Barnabás – Kurunczi Gábor – T. Kovács Júlia: *Alkotmányjog.* Jogi Szakvizsga jegyzet. Novissima Kiadó, 2014.
10. *Refugee Crisis in the aspect of the human right to food.* In. Rixer Ádám (szerk.): Migrants and Refugees in Hungary: A Legal Perspective. 161 p. Budapest: Károli Gáspár Református Egyetem, 139-148. p.

11. *A GMO-mentes Alaptörvény hatása a mezőgazdaságra – különös tekintettel a visszaszerzett EU tagállami szuverenitásra és a TTIP-re.* In. Szalma József (szerk.) *A Magyar Tudomány Napja a Délvidéken 2014.* 568 p. Konferencia helye, ideje: Újvidék, Szerbia, 2014.11.15 Újvidék: Vajdasági Magyar Tudományos Társaság, 2015. pp. 300-319. ISBN:978-86-88077-07-1. 300-319. p.