



# **Fundamental Rights and Climate Change**

## **Exploring New Perspectives and Corresponding Remedies**

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EDITED BY

**Alicja Sikora-Kalèda · Inga Kawka**

Krakow Jean Monnet  
Research Papers



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and Corresponding Remedies**

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**4**

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# INTRODUCTION

*The environment is where we all meet;  
where we all have a mutual interest;  
it is the one thing all of us share.*

Lady Bird Johnson

The monograph outlines the growing importance of fundamental rights in the European Union, particularly in the context of environmental protection and the fight against climate change. These rights have become a cornerstone in shaping policies that address ecological challenges while balancing economic and social aspects. The European Green Deal (EUGD), a landmark initiative, embodies the EU's commitment to transitioning into a climate-neutral, modern economy by 2050. This ambitious goal requires comprehensive legislative action and coherence in implementing policies across various sectors, ensuring that all measures align with and uphold fundamental rights as enshrined in the EU legal framework.

This monograph is the culmination of scholarly work inspired by discussions from the conference titled 'Fundamental Rights and Climate Change in EU Law and Beyond – Mapping Fundamental Rights, Nature's Rights, and Corresponding Legal Remedies,' organized in September 2023 as part of the Jean Monnet Module project, 'Sustainability and Climate Change in EU Law.' This academic event, hosted by the Chair of European Law at the Jagiellonian University, brought together experts from diverse fields to discuss and exchange perspectives on sustainability and the legal frameworks within the EU. The insights shared during the conference laid the foundation for the analyses presented in this book, highlighting the complex interplay between fundamental rights, environmental challenges, and legislative coherence.

The chapters of this book reflect a collective scholarly effort to explore diverse aspects of fundamental rights and their intersections with environmental law within the EU framework. The opening chapter, authored by Alicja Sikora-Kalèda investigates the limits of human rights as instruments to advocate for global climate action. It examines how climate litigation impacts human rights and evaluates the potential evolution of environmental rights in EU law. Ilona Przybojewska contributes with an analysis of how poor environmental conditions can lead to state liability, referencing a notable 2021 Polish Supreme Court resolution. Her work probes the extent to which environmental issues can be recognized as affecting personal rights and the broader implications of this recognition.

This monograph aims to serve as a comprehensive resource for legal practitioners, scholars, and policymakers, encouraging further dialogue on the integration of environmental and human rights within the EU legal system.

*Alicja Sikora-Kalèda*  
*Inga Kawka*

OLGA HAŁUB-KOWALCZYK<sup>1</sup>

## FOOD SECURITY AND THE RIGHT TO FOOD IN THE EUROPEAN UNION

**ABSTRACT:** In recent years the discussion on food security in the European Union (hereinafter the “EU” or “Union”) seems to have intensified and has begun to be one of the leading issues in the EU-agenda. The reason for it might be especially, i.a., the climate crisis. The EU food safety policy is based on the following pillars: food hygiene, animal and plant health, and contaminants and residues. Despite the urgent need to undertake actions towards the aforementioned directions, the new approach linking food security with access to food for each individual is needed. Moreover, this approach, based on the paradigm of food as a fundamental need, is not new in law. Already the 1948 Universal Declaration of Human Rights as well as the ICESCR relate to nutrition as a prerequisite to enjoyment of other human rights. The same tendency was confirmed by the European Court of Human Rights (hereinafter the “ECtHR”), which stated that a lack of access to food can constitute a serious breach of Art. 3 of the ECHR. Meanwhile in the European Union law there is no legislation which classifies food as “public/common good” or “human right”. Therefore, the aim of this chapter is to verify how the process of recognition and implementation of the “right to food” in the EU progresses against the international standards.

**KEYWORDS:** right to food, food law, food security, freedom from hunger, The F2F Strategy

### 1. Introduction

In recent years the discussion on food security in the European Union (hereinafter the “EU” or “Union”) seems to have intensified and has begun to be one of the leading issues in the EU-agenda. The reason for it might be especially, i.a., the climate

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crisis. The concerns on its long-term negative consequences were expressed in the Union particularly in the European Parliament resolution of 28 November 2019 on the climate and environment emergency.<sup>2</sup> The agriculture sector and the food industry intensively experience changes caused by climate degradation. Current EU legislation on food safety mainly addresses this issue in terms of ensuring a hygienic and “healthy” chain from the production of food to getting it directly into the hands of the consumer. The definition of food security enclosed in the Rome Declaration on World Food Security and Plan of Action stipulates that “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.”<sup>3</sup> It emphasizes not only its biological safety, but its physical and economic accessibility, as well.

The EU food safety policy is based on four pillars: food hygiene, animal health, plant health and contaminants and residues.<sup>4</sup> Despite the urgent need to undertake actions towards the aforementioned directions, the new approach linking the food security with access to food for each individual is required. Moreover, this approach, based on the paradigm of food as fundamental need and good, is not new in law. Already the 1948 Universal Declaration of Human Rights as well as The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) relate to nutrition as a prerequisite to an enjoyment of other human rights. The same tendency was confirmed by the ECtHR, which stated that lack of access to food can constitute a serious breach of Article 3 of ECHR.<sup>5</sup> Meanwhile in the European Union law there is no legislation, which classifies food as a social good or “human right”. Therefore, the aim of this chapter is to verify how the process of recognition and implementation of “right to food” in the European Union progresses against the international standards.

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<sup>2</sup> European Parliament, *European Parliament Resolution of 28 November 2019 on the Climate and Environment Emergency (2019/2930(RSP))*, [https://oeil.secure.europarl.europa.eu/oeil/en/procedure-file?reference=2019/2930\(RSP\)](https://oeil.secure.europarl.europa.eu/oeil/en/procedure-file?reference=2019/2930(RSP)) (11.01.2024).

<sup>3</sup> Cf. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0021:FIN:PL:PDF> (11.01.2024). Compare: S. Motala, *Giving Realisation to the ‘Right to Food’*, “Agenda: Empowering Women for Gender Equity” 2010, vol. 24, pp. 3-7.

<sup>4</sup> Cf. [https://european-union.europa.eu/priorities-and-actions/actions-topic/food-safety\\_en](https://european-union.europa.eu/priorities-and-actions/actions-topic/food-safety_en) (11.01.2024).

<sup>5</sup> C. James, *Food, Dignity, and the European Court of Human Rights*, “Legal Studies” 2023, vol. 44, no. 3, pp. 1-18.

## 2. Urgent need for the “right to food” for each individual

The discussion on the right to food could, at first glance, appear to be strictly theoretical, a manifestation of the problem that is the inflation of human rights and thus the devaluation and “blurring” of already existing and evolutionarily emerging new rights. Meanwhile, it is difficult to imagine a more basic good, without which the existence of human being could be possible. Along with water, shelter, or sanitation, access to food is a fundamental need, without the provision of which it is difficult to speak of securing other goods inherent in the civilization of 21<sup>st</sup> century, such as privacy, freedom of economic activity, voting rights, or freedom of speech. Thus, the obvious conclusion is that the provision of both quantitatively and qualitatively adequate food conditions the ability to realize other freedoms and rights.<sup>6</sup>

In international law, this right is explicitly stated in the Universal Declaration of Human Rights,<sup>7</sup> which, in Article 25, treats nutrition as an element of the right to a standard of living that ensures health and well-being, listing it alongside such goods as clothing, housing, medical care, basic social benefits and the right to insurance against extraordinarily adverse circumstances.<sup>8</sup> The same provides Article 11 of the ICESCR, which is the source of the right of everyone to an adequate standard of living. In addition, protection limited only to selected groups is ensured *expressis verbis* by the Convention on the Rights of the Child (Article 24(2)(c) and (e), and Article 27(3))<sup>9</sup> and the Convention on the Elimination of All Forms of Discrimination against Women (Article 12(2)),<sup>10</sup> the Convention on the Rights of Persons with Disabilities (Article 28),<sup>11</sup> and the Geneva Conventions.<sup>12</sup>

In the aforementioned legal acts, the approach to treat food as an element that ensures the realization of the “right to adequate living conditions” is noticeable. The failure to give the right to food an autonomous character in the key sources of

<sup>6</sup> Also worth mentioning is the problem of the so-called interdependence of the right to food with other individual rights: M.A. Szkarlat, *Prawo do właściwego wyżywienia jako przykład współzależności praw człowieka*, “Annales Universitatis Mariae Curie-Skłodowska Lublin-Polonia” 2014, vol. 21, no. 2, pp. 65-83.

<sup>7</sup> United Nations, *The Universal Declaration of Human Rights*, Paris 1948.

<sup>8</sup> See more: K. Mechlem, *Right to Food* [in:] *Max Planck Encyclopedia of Public International Law*, A. Peters, R. Wolfrum (eds), 2008.

<sup>9</sup> United Nations, *Convention on the Rights of the Child*, 1989.

<sup>10</sup> United Nations, *Convention on the Elimination of All Forms of Discrimination against Women*, New York 1979; O. Śniadach, *Czy potrzebujemy prawa do żywności?*, “Gdańskie Studia Prawnicze” 2017, vol. 38, p. 283.

<sup>11</sup> United Nations, *Convention on the Rights of Persons with Disabilities*, 2006.

<sup>12</sup> The Geneva Conventions are referred to in detail by M.A. Szkarlat, *Prawo do właściwego wyżywienia...*, p. 66.

international law on human rights may lead to the conclusion of the negligible interest of the international community in this problem, which may be surprising given its scale. The same tendency is visible at the constitutional level, because among the EU Member States none of them provides a self-standing right to food in the constitution.<sup>13</sup> According to the projections of the UN, by 2030, approximately 670 million people will still be facing hunger – representing 8% of the world’s population.<sup>14</sup> Moreover, the report of five organizations: the Food and Agriculture Organization of the United Nations (FAO), the International Fund for Agricultural Development (IFAD), the United Nations Children’s Fund (UNICEF), the UN World Food Programme (WFP) and the World Health Organization (WHO) detected that access to food in 2021 was increasingly more difficult than in previous years.<sup>15</sup> According to the estimates, this means that almost 10% of the world population had faced hunger.<sup>16</sup> Despite these sobering figures, the right to food is still not universally recognized and is not a self-standing right.

The lack of inclusion of food in the category of an autonomous human right may also constitute a confirmation of the position expressed in legal studies that not every social need must (should) be equated with the need to ensure the right to it. This problem was pointed out by W. Osiatyński, exposing the fundamental differences between the construction of rights and needs, and claiming that “rights serve the realization of human needs.”<sup>17</sup> Consequently, the needs often “force” legislators to undertake some legislative action. W. Osiatyński pointed out that “we should have recourse to rights when – and only when – a given need of a paramount character cannot be satisfied in any other way.”<sup>18</sup> In doing so, the author refers to a list of solely “basic needs” at the top of which are nutritious meals and clean water.<sup>19</sup> It is obvious that apart from the fundamental needs, the term “need” can be understood in a broader scope and be subjective in nature. It can result from an individual’s preferences (such as the need to live at a certain social and financial level that far exceeds the satisfaction of basic needs).

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<sup>13</sup> Cf. <https://www.fao.org/right-to-food-around-the-globe/countries/en/> (11.01.2024).

<sup>14</sup> Cf. <https://sdgreport2023.gsma.com/sdgs/sdg-2-zero-hunger-2/> (11.01.2024).

<sup>15</sup> According to the authors “as many as 828 million people were affected by hunger in 2021 – 46 million people more from a year earlier and 150 million more from 2019”, cf. <https://www.fao.org/newsroom/detail/un-report-global-hunger-sofi-2022-fao/en> (11.01.2024).

<sup>16</sup> Cf. <https://www.fao.org/newsroom/detail/un-report-global-hunger-sofi-2022-fao/en> (11.01.2024).

<sup>17</sup> W. Osiatyński, *Human Rights and Their Limits*, Cambridge 2009, p. 106.

<sup>18</sup> *Ibidem*, p. 150.

<sup>19</sup> *Ibidem*, p. 131.

In light of alarming data on the problem of unequal access to food, child malnutrition, weather phenomena causing prolonged periods of drought or flooding in many areas of the world resulting in restrictions on food production, it is necessary to recognize the urgency of acknowledging the right to food as a fundamental right in international law. In accordance with international solidarity and the principle of sustainable development, the emphasis on helping less developed countries and areas should be appropriately distributed to ensure that all people on the planet have access to the basic goods necessary for survival and protection of human dignity. In the age of space conquest and the development of artificial intelligence, the problem of hunger that exists on such a large scale should be a constant reproach to the international community of the 21<sup>st</sup> century.

## 2.1. The CESCR General Comment No. 12

A key document from the point of view of the development of the universal right to food is General Comment No. 12, enacted by the *Committee on Economic, Social and Cultural Rights* (CESCR) in 1999, devoted exclusively to “the right to adequate food.”<sup>20</sup> With the enactment of this Comment, one can observe the process of “unbundling” the right to food from Article 11 of the ICESCR, stating that:

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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Moreover the wording of Article 11 sec. 2 leaves no doubt that it links issues of the right to food with appropriate agricultural programs.<sup>21</sup> What is more, it also introduces a new concept of “freedom from hunger”, which even more fully emphasizes

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<sup>20</sup> The CESCR decided to adopt the Commentary as a result of call from states parties, expressed in 1996 at the World Food Summit, to determine the entitlements stemming from the “right to food”.

<sup>21</sup> According to art. 11 sec. 2 of the ICESCR: “The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

the need to take measures to ensure adequate access to food. The particular importance of the CESCR General Commentary is manifested in decoding the normative content of the “right to food” and, consequently, in defining the obligations of public authorities in its implementation. The Committee stated that “The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.”<sup>22</sup> Moreover, the Committee formulated the definition, according to which this right means “the availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture. The accessibility of such food in ways that are sustainable and that don’t interfere with the enjoyment of other human rights.”<sup>23</sup>

The analysis of the General Commentary makes it possible to distinguish the following features of the right to food:

- a broad subjective scope;
- a physical availability;
- an economic availability;
- an adequate quality and quantity of food;
- sustainable access.

Due to the nature of the ICESCR, the implementation of the states’ obligations under the right to food should be progressive, i.e., taking into account the capabilities of the state in question.<sup>24</sup> As it is clear from the General Comment, the fundamental obligation of the authorities is to take the necessary measures to minimize (mitigate) the incidence of hunger. According to the CESCR the obligations stemming from right to adequate food are as follows:<sup>25</sup>

- obligation to respect meaning that State authorities should respect the mechanisms already in place to ensure access to food and refrain from any action to restrict it;

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<sup>22</sup> United Nations, *CESCR General Comment No. 12: The Right to Adequate Food (Art. 11)*, 1999, <https://www.refworld.org/pdfid/4538838c11.pdf> (11.01.2024).

<sup>23</sup> *Ibidem*.

<sup>24</sup> According to Art. 2 sec. 1 of ICESCR: „Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

<sup>25</sup> See sec. 15 of the United Nations, *CESCR General Comment No. 12...*



- obligation to protect meaning that State authorities should protect the individual from actions by third parties against deprivation of the right of access to food;
- obligation to fulfil meaning a two-pronged nature action, i.e.: on the one hand, through measures aimed at enabling and facilitating access to and use of means of subsistence (including funding for food). On the other hand, this duty is also realized in situations where an individual does not have the means to feed himself, in which case assistance must be provided in a direct sense (e.g., groups particularly vulnerable to discrimination, or victims of natural disasters).

Because of the progressive nature of the right to food, states party to the ICESCR should enact national food and food security programs that take into account the national economic and social context, first addressing the needs of vulnerable groups with limited access to food. This was followed by a call on states parties to enact a framework regulation as a key document for implementing national programs and as a legal basis for judicial enforcement at the national level. In this regard, the Committee did not define any specific guidelines on deadlines, protection mechanisms or institutions responsible for implementing the right to food, leaving states with a wide margin of discretion. Instead, the Committee has explicitly formulated a clear prohibition on food embargoes where this would result in a threat to food production or access in another country (sec. 37). Moreover, access to food should never be an instrument of political or economic pressure (sec. 37).

### 3. Right to food in the EU

EU legislation devotes considerable space to the EU agricultural policy,<sup>26</sup> which has been an area of integration since the early years of the European Communities' development.<sup>27</sup> Meanwhile, the concept of a "right to food" is not mentioned in either the Treaties or Charter of Fundamental Rights of the European Union. The situation is no different under the secondary legislation. None of the legal acts guarantees it *expressis verbis*. In contrast, a lot of space is devoted to food security. The key legal reference in this field is Regulation no. 178/2002 laying down the general principles

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<sup>26</sup> See: Article 38 of TfUE.

<sup>27</sup> J. Sozański, *Reformy wspólnej polityki rolnej i prawa rolnego Unii Europejskiej po 1990 roku*, "Ius Novum" 2011, vol. 1, pp. 130-161.

and requirements of food law<sup>28</sup> (hereinafter “The Regulation no. 178/2002”), which can be perceived as a framework regulation. The purpose of this legislation was to ensure the free movement of safe and healthy food in order to protect the lives and health of consumers in the Union. The Regulation no. 178/2002 remains to this day a key piece of legislation for the development of EU food law<sup>29</sup> by introducing unified rules for the marketing and circulation of food and feed to raise consumer health protection standards. EU food law is based on a meticulous risk analysis and information about their occurrence, the precautionary principle in the event of knowledge of the possible danger of harmful effects on health in the case of food intake, and consumer protection. The last element means taking preventive measures (Article 8), by protecting people from fraudulent or deceptive practices, the adulteration of food, and any other practices which may mislead the consumer (Art. 8 sec. 1). The Regulation no. 178/2002 also stipulates obligations in the food trade and food safety requirements for products placed on the market. It also led to the establishment of the European Food Safety Authority.

Undoubtedly, the Regulation no. 178/2002 is a gamechanger in the development of new standards for consumer health protection<sup>30</sup> and the product information rights. It is also one of the key (and necessary) pieces of legislation for the development of EU agricultural policy. However, it is difficult to see in it any tendency to facilitate access to food for those suffering from its deprivation. Within its framework, food constitutes a commodity (product), subject to market logic. Thus, while the undoubted contribution of this regulation to enhancing food safety should be appreciated, it does not in any way strengthen the human rights-based approach to food. One would have expected from a framework regulation that it has a broad sub-

<sup>28</sup> *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*, “Official Journal of the European Communities” 2002, L 31, pp. 1–24.

<sup>29</sup> Currently, there is no uniform understanding of the term “food law.” See more: Ch. Parker, H. Johnson, *From Food Chains to Food Webs: Regulating Capitalist Production and Consumption in the Food System*, “Annual Review of Law and Social Science” 2019, vol. 15, pp. 205–225. On the ground of legal science in Poland, as recently as 2017, it was described as a “new field of law.” See: M. Korzycka, P. Wojciechowski, *System prawa żywnościowego*, Warszawa 2017. It should be noted, however, that *Regulation (EC) No 178/2002*... already used it in 2002, establishing its legal definition, according to which food law means the laws, regulations and administrative provisions governing food in general, and food safety in particular, whether at Community or national level; it covers any stage of production, processing and distribution of food, and also of feed produced for, or fed to, food-producing animals” (Article 3 (1)).

<sup>30</sup> Compare: M.Z. Wiśniewska, *Terroryzm żywnościowy oraz obrona żywności w ujęciu formalno-prawnym*, “Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2022, vol. 84, no. 4, pp. 101–120.

ject matter, at the very least, to signal an obligation of public authorities to provide access to food, and thus move beyond a market-based approach, for marginalized or malnourished groups. This would support the anthropocentric nature of EU policies and give impetus to putting the “right to food” on the EU agenda.

Following the enactment of the Regulation no. 178/2002, the following years saw a significant expansion of the EU food law with acts dedicated to the “segments” of food law<sup>31</sup> like: hygiene of foodstuffs,<sup>32</sup> food information,<sup>33</sup> genetically modified food, animal and plant health in food production,<sup>34</sup> water policy.<sup>35</sup> Despite the EU’s legislative heritage in the area of food security, no secondary legislation proclaims the concept of “right to food” in the sense adopted by the CESCR. However, it is important to emphasize the momentous role of these regulations in the expansion of consumer rights. It should also be pointed out that the European Court of Justice (hereinafter the “CJEU”), in one of its rulings, indicated that “efforts to achieve objectives of the common agricultural policy, in particular under common organizations of the markets, cannot disregard requirements relating to the public interest such as the protection of consumers or the protection of the health and life of humans and animals, requirements which the community institutions must take into account in exercising their powers.”<sup>36</sup> The development of perceiving food as a social good is

<sup>31</sup> More detailed information: *Fact Sheets on the European Union: Food Security*, <https://www.europarl.europa.eu/factsheets/pl/sheet/51/bezpieczenstwo-zywnosci> (08.01.2024).

<sup>32</sup> *Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the Hygiene of Foodstuffs*, “Official Journal of the European Union” 2004, L 139, pp. 1-54.

<sup>33</sup> *Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 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 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*, “Official Journal of the European Union” 2011, L 304, pp. 18-63.

<sup>34</sup> *Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on Transmissible Animal Diseases and Amending and Repealing Certain Acts in the Area of Animal Health (‘Animal Health Law’)*, “Official Journal of the European Union” 2016, L 84, pp. 1-208; *Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC*, “Official Journal of the European Union” 2016, L 317, pp. 4-104.

<sup>35</sup> *Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 Establishing a Framework for Community Action in the Field of Water Policy*, “Official Journal of the European Union” 2000, L 327, pp. 1-73.

<sup>36</sup> European Court of Justice, *Judgment of the Court of 23 February 1988 in Case 68/86*, sec. 12. See also: A. Kubicz, *Europeizacja prawa żywnościowego – zagrożenia i korzyści*, “Zeszyt Studencki Kół Naukowych Wydziału Prawa i Administracji UAM” 2015, vol. 5, p. 152.

observed in the European Union in the grassroots plans for European Citizens' Initiative on the right to food,<sup>37</sup> which is currently under discussion.

### 3.1. The F2F Strategy

From the point of view of food security in the European Union, a significant role is played by the European Commission's document "A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system"<sup>38</sup> (hereinafter "The F2F Strategy"). It was adopted in 2020 as a key element of the European Green Deal<sup>39</sup> and doesn't have the binding force. The aim of the F2F Strategy was to develop a sustainable food system in the first place, and to introduce mechanisms in the food chain that would be friendly and environmentally friendly to consumers, food producers, the climate and the environment alike. In the Strategy, the European Commission pledged to take steps to develop sustainable agriculture, ecological biodiversity and decarbonize the food chain, among other things. Moreover a lot of attention has been paid to food security. In the document, the Commission repeatedly declared its readiness to undertake changes to transform the food industry, as well as to review legislation on, among other things, pesticides, or to adopt new guidelines and formulate new legislative proposals on, for example, food waste. Unfortunately, the document lacked any reference to the right to food. The Strategy treats food as a special kind of commodity that is subject to all the laws of the market, just like any other product. Thus, food in it does not have the character of a good that should be guaranteed to everyone, especially the most vulnerable groups. Such a situation may come as a disappointment given that, according to the Commission's declarations, the Strategy was defined as a major component of the program to achieve the UN Sustainable Development Goals, while it should be mentioned the end of hunger is one of the top priorities of the UN included in this list. According to Goal no. 2, all possible actions should be undertaken "by 2030, end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round" (target 2.1.) and to end "by 2030 all forms of malnutrition including achieving, by 2025, the internationally agreed targets on stunting and wasting in children under 5 years of age, and address

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<sup>37</sup> In May 2024 the second Demopratica Forum of Geneva took place and was exclusively dedicated to the European Citizens' Initiative on the right to food: <https://www.opdemge.org/> (08.01.2024).

<sup>38</sup> European Commission, *Communication on A Farm to Fork Strategy for a Fair, Healthy and Environmentally-Friendly Food System*, 2020.

<sup>39</sup> Cf. <https://www.eea.europa.eu/policy-documents/com-2019-640-final> (08.01.2024).

the nutritional needs of adolescent girls, pregnant and lactating women and older persons” (target 2.2).<sup>40</sup> The “F2F Strategy” also fails to guarantee any preferential access to food for the deprived persons. However, it should be considered important from the point of view of the right to food that in the Strategy it was concluded that ensuring food security, nutrition and public health should be achieved by “making sure that everyone has access to sufficient, nutritious, sustainable food that upholds high standards of safety and quality, plant health, and animal health and welfare, while meeting dietary needs and food preferences; and by preserving the affordability of food, while generating fairer economic returns in the supply chain, so that ultimately the most sustainable food also becomes the most affordable (...)”. Thus, it can be considered that the Strategy refers (but not explicitly) to some of the aforementioned elements of the right to food like broad personal scope, quantity and quality requirements, and affordability. However, it uses these categories to describe the features of food ensured, and not to constitute the elements of a new right in the European Union. From the point of view of a human rights-based approach, further steps by the EU should be observed, in particular, those serving the declared affordability of food, which is of fundamental importance for vulnerable people experiencing poverty. This issue (the affordability of food) can provide some bridge between the realization of agricultural policy goals and human rights. This is made possible by Article 39(1)(e) of the TFEU, which states that one of the objectives of the common agricultural policy is “to ensure that supplies reach consumers at reasonable prices”. Thus, the EU legislator could pay special attention to the needs of consumers in poor financial (living) situations. This approach would correspond to the fundamental rights enshrined in the Charter, like the protection of dignity (Article 1), life (Article 2), but also the prohibition of discrimination (Article 21). Moreover, the Charter, in order to combat social exclusion and poverty, recognizes and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources (Article 34 sec. 3). Therefore, among the mechanisms supporting vulnerable and disadvantaged groups, the access to adequate food could be treated as a form of manifestation of distributive justice.

The strategy promotes sustainable food consumption and a shift to a healthy and balanced diet. Symptomatically, a lot of space in this document is devoted to the problem of overweight, obesity and food waste, however, the document does not

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<sup>40</sup> Cf. <https://sdgs.un.org/goals> (10.01.2024). See also: E. Askin, *SDG 2 'End Hunger, Achieve Food Security and Improved Nutrition and Promote Sustainable Agriculture ("Zero Hunger")* [in:] *The UN Sustainable Development Goals: A Commentary*, I. Bantekas, F. Seatzu (eds), Oxford 2023.

address the problem of hunger and malnutrition in the European Union anywhere. Meanwhile, these challenges are also acute in the Union, where it is estimated that 33 million people cannot afford a full meal every day, but every second day.<sup>41</sup> According to the report “The State of Food Security and Nutrition in the World” the situation in Europe in terms of access to food is the best among all continents (next to North America), however, about 8% of the population still experiences various forms of food insecurity.<sup>42</sup> Moreover, new standards introduced in the EU, whose food industry is the world’s largest food importer and exporter,<sup>43</sup> would set an example and be a gamechanger in the fight against hunger and malnutrition worldwide.

A positive sign that the right-to-food issue may be on the EU agenda is the European Parliament Resolution of 20 October 2021 on a farm to fork strategy for a fair, healthy and environmentally-friendly food system.<sup>44</sup> The EP called on the Commission to translate the Strategy as soon as possible into concrete legislative and non-legislative actions to achieve the transformation goals. Most importantly, reference was made to the right to food, pointing out that an environmentally, socially (including health) and economically sustainable agricultural sector must take into account the “UN right to food.”<sup>45</sup> Moreover, the EP pointed out that the EU shall “champion human rights and the right to food as a central principle and priority of food systems and as a fundamental tool to transform food systems and ensure the rights of the most marginalized to access nutritious foods (...).”<sup>46</sup> This formulation can be considered a breakthrough from the point of view of seeing the right to food, which is not only a “UN-right”, but also should become an “EU-right” and remains in direct connection with respect for human dignity, valid in the broader European legal order, as the European Court of Human Rights has already confirmed on several occasions.<sup>47</sup>

<sup>41</sup> European Commission, *Communication on a Farm...*

<sup>42</sup> FAO, IFAD, UNICEF, WFP, WHO, *The State of Food Security and Nutrition in the World 2023: Urbanization, Agrifood Systems Transformation and Healthy Diets across the Rural-Urban Continuum*, Rome 2023, p. 19.

<sup>43</sup> Cf. <https://www.europarl.europa.eu/news/pl/headlines/society/20200519STO79425/stworzenie-zrownowazonego-systemu-zywnosciowego-strategia-ue> (17.01.2024).

<sup>44</sup> European Parliament, *European Parliament Resolution of 20 October 2021 on A Farm to Fork Strategy for a Fair, Healthy and Environmentally-Friendly Food System (2020/2260(INI))*, Strasbourg 2021.

<sup>45</sup> *Ibidem*.

<sup>46</sup> *Ibidem*.

<sup>47</sup> C. James, *Food, Dignity...* See cases i.a.: European Court of Human Rights, *Case of Necula v. Romania (Application no. 33003/11)*; European Court of Human Rights, *Case of Nencheva and Others v. Bulgaria (Application no. 48609/06)*.

#### 4. Conclusions

The problem of ensuring food security and the right to food in the European Union is complex. Although it is not due to a lack of agricultural resources or the inability to produce food, it strongly correlates with climate change, the general problem of poverty and the lack of resources to ensure the provision of basic needs,<sup>48</sup> the lack of national food programs to support groups particularly vulnerable to suffering from hunger. First of all, it should be noted that the EU's food security priorities and goals oscillate around energy transition and environmental protection. Therefore, the expansion of a human rights-based approach within the EU's strategy framework on food security is a challenging issue, especially when we take into account the limited scope of competence of the European Union in the area of social policy and the lack of a self-standing right to food in the constitutions of the EU Member States. The European Union is more focused on achieving the goals of agricultural policy and unifying the rules of the European food industry. Meanwhile, in the author's opinion, food security should be understood as not only safety in terms of hygiene, freedom from hazardous substances and knowledge of the food consumed, but also ensuring access to food for the vulnerable groups that may suffer from food shortages. In the proposed shape the concept of "food security" might support the development of the human rights-based approach to food in the Union. The problem of preventing hunger and malnutrition should remain at the center of the attention of Member States and the European Union, at least in the secondary legislation. It corresponds directly to the protection of values guaranteed in the Charter: the inherent dignity of every human being regardless of their status, but also life, equality and non-discrimination. Moreover the Charter declares that housing rights should be respected in order to prevent social exclusion and poverty. Therefore, in the author's opinion access to adequate food could be treated as a tool of distributive justice. Additionally, the fundamental nature of access to food determines the realization of other human rights, already acknowledged at the EU level.

Of all the international organizations, the UN has made the greatest contribution to the development of the right to food. In a special way, it is important to point out here the role of Article 11 of ICESCR and the CESCR General Comment No. 12, which made it possible to define the elements of the right to food: a broad subjectivity, a physical accessibility, an economic accessibility, an adequate quality and quantity of food, and sustainable access. In addition, General Comment defined

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<sup>48</sup> See: United Nations, *CESCR General Comment No. 12...*, sec. 5.

the obligations of public authorities under the right to food, which should be implemented in a progressive manner. It should be concluded that the UN *acquis* has not translated into action in the European Union for the proclamation and promotion of the right to food, which is fulfilled “when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.”<sup>49</sup> However, the idea of elaborating the European Citizens’ Initiative on the right to food will certainly initiate the broader discussion on this matter at the EU level. Currently, food products, covered by broad and retail EU regulation, are still treated as a product/commodity in the EU. While this approach still does not preclude a human rights-based approach, there is no provision in EU legislation for access to food for disadvantaged groups. For this reason, the need for an amendment of the Framework Regulation on food law, which was enacted 3 years after General Comment No. 12, in a way that ensures access to food for the vulnerable groups should be considered justified and can be a first step towards implementation of the right to food in the EU agenda. Given the scale and potential of the food industry in the European Union, it does not seem that solutions that satisfy the basic fundamental needs related to access to adequate food are beyond the financial capacity of the EU.

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For many years legal thought and practice focused on the general concept of environmental rights as a legal tool meant to enforce the human right to a healthy and sustainable environment. Whilst there is an undeniable link between human rights and climate change, as illustrated notably by the global phenomenon of the climate change litigation, this monograph focuses on the growing role of potential, sectoral fundamental rights and tailored remedies available in the EU legal order in absence of a substantive fundamental right to a healthy environment in EU law. Against the background of the European Green Deal and its ambitious climate-neutrality goal by 2050, the book echoes the sustainability-based approach and its limits.

Contributors analyse two interrelated perspectives. On the one hand, authors explore the procedural dimension by discussing the climate litigation and the limits of the concept of human environmental rights, state liability for loss and damage caused to individuals as a result of breaches of EU law, national remedies available in case of bad condition of the environment as well as the limits of the public interest litigation and challenges related to climate claims against private actors in national law. On the other hand, contributors discuss substantive aspects from a global perspective of food insecurity, soil monitoring and resilience as well as digitalisation, green skills and climate-induced migration. With insights from leading experts, this work highlights the evolving tensions and expectations within the EU legal framework.

Essential for legal practitioners, policymakers, academics, and students of law and administration, this book offers a comprehensive exploration of the intersection between sustainability, climate action, and the protection of fundamental rights in EU law.



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