

Artículo de investigación

Ensuring Everyone's Right to Food: Humanitarian, Environmental Legal and Organizational Aspects²⁶

Обеспечение права каждого на питание: гуманитарные, эколого-правовые и организационные аспекты
Garantizar el derecho a la alimentación de todos: Aspectos humanitarios, legales, ambientales y de organización.

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Abstract

Provision of population with a sufficient amount of high-quality food is one of the objectives of the modern welfare state. Everyone's right to food, despite the relatively recent proclamation, is of a complex nature, serving as a necessary component of everyone's right to decent living conditions. The article deals with establishment of everyone's right to food in international and national law orders, as well as the main areas of its exercise and protection. Peculiarities of constitutional legal regulation of the right to food in some countries are identified due to the comparative legal method. With consideration of the provisions of food security regulations, the author distinguishes three main areas of guaranteeing and protecting the right to food: ensuring accessibility of food; quality and safety of food products; formation of a healthy food culture. In the context of environmental law theory, special attention is paid to issues of acceptability of using genetically modified organisms when ensuring the right to food, their influence on public health and the state of the environment.

Keywords: Human rights, social rights, right to food, food security, environmental security, genetically modified organisms, food quality, nutrition security.

Аннотация

Обеспечение населения достаточным количеством качественного продовольствия является одной из задач современного социального государства. Право каждого на питание, несмотря на сравнительно недавнее провозглашение, имеет комплексный характер, выступая необходимой составляющей права каждого на достойные условия жизни. В статье рассматривается закрепление права каждого на питание в международном и национальных правовых порядках, а также основные направления его реализации и защиты. При помощи сравнительно-правового метода обозначается специфика конституционно-правовой регламентации права на питание в некоторых странах. С учётом положений актов о продовольственной безопасности, автором выделяются три основных направления гарантирования и защиты права на питание: обеспечение доступности продовольствия; качество и безопасность пищевой продукции; формирование культуры здорового питания. В контексте теории экологического права особое внимание уделяется проблемам допустимости применения при обеспечении права на питание генно-модифицированных организмов, их влияние на общественное здоровье и состояние окружающей среды.

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Ключевые слова: Права человека, социальные права, право на питание, продовольственная безопасность, экологическая безопасность, генно-модифицированные организмы, качество питания, безопасность питания.

Resumen

La provisión de una población con una cantidad suficiente de alimentos de alta calidad es uno de los objetivos del estado de bienestar moderno. El derecho a la alimentación de todos, a pesar de la proclamación relativamente reciente, es de naturaleza compleja, y constituye un componente necesario del derecho de todos a tener condiciones de vida dignas. El artículo trata sobre el establecimiento del derecho a la alimentación de todos en los ordenamientos jurídicos internacionales y nacionales, así como a las principales áreas de su ejercicio y protección. Las peculiaridades de la regulación legal constitucional del derecho a la alimentación en algunos países se identifican debido al método legal comparativo. Al considerar las disposiciones de los reglamentos de seguridad alimentaria, el autor distingue tres áreas principales de garantía y protección del derecho a la alimentación: garantizar la accesibilidad de los alimentos; calidad y seguridad de los productos alimenticios; Formación de una cultura alimentaria sana. En el contexto de la teoría del derecho ambiental, se presta especial atención a las cuestiones de aceptabilidad del uso de organismos modificados genéticamente al garantizar el derecho a la alimentación, su influencia en la salud pública y el estado del medio ambiente.

Palabras clave

Derechos humanos, derechos sociales, derecho a la alimentación, seguridad alimentaria, seguridad ambiental, organismos modificados genéticamente, calidad de los alimentos, seguridad nutricional.

Introduction

The fundamental nature of the human need for the required amount of food predetermines the necessity for the state providing and protecting the interests of its population to provide the sufficient amount of food that complies with the quality and energy value requirements. The need for food is connected with satisfaction of the needs that are “higher” in the general hierarchy. As rightly noted in classical works in social philosophy, “none of human needs can be considered in isolation from other needs and desires” [Maslow A., 2019, p. 141].

In a similar way, the interrelation of the right to food and other individual social rights is obvious, since it is the adequate amount of high-quality food products that can ensure the level of health (both of an individual person and the public), provide people with physical possibilities for full participation in economic and social life of the country. Nutritional need is satisfied by behavioral responses based on abstract and logical thinking. People set the corresponding goals, create the necessary tools (or use the available ones), join the system of social, economic relations [Momdzhyan K.Kh., 2015, p. 87]. The duty of the state is to give access to

such means, effectively regulate relations associated with provision of food.

Ensuring and creating conditions for decent life and free development of an individual is the most important value and the goal of the state power activity. In modern realities, the essence of a welfare state is not so much maintenance of a balance of interests in society, prevention of social conflicts, as “one of the guiding principles of rulemaking and law-enforcement activity” [Klishas A.A., 2018, p. 32]. Moreover, implementation of the social policy is the response of the state power to changes in economic and social fields, fulfillment of the assumed duty to protect individual rights and freedoms, the highest value of the modern state.

The complex and multifaceted nature of the right to food, ensuring and protection of which are associated with the functioning of economic, social and legal mechanisms of the state, predetermines the necessity of its comprehensive study, identification of the most acute and current problems of implementation of already available regulatory prescriptions, pointing out of the prospective areas of further rulemaking. This study is especially important against the

background of the globalizing postindustrial society, when international interests in the area of provision of food to the entire population of the Earth clash with the interests of national food security systems. Moreover, it appears necessary to examine the influence of modern technologies on ensuring of the right to food, to determine their positive and negative impact on the organizational infrastructure, formation of population needs, the state of the environment. In addition, it is necessary to take into account that activity to ensure food security is associated with implementation of rules of several law branches at the same time: first of all, administrative and financial (in terms of organizing work of authorities in this field, as well as financial support measures for national producers, education and regulation of food prices); agricultural, land and environmental (since it is agriculture that is the “basic” branch for production and sale of food products); social security law (in terms of domestic food aid); some other branches.

Methodology

The dialectical method of research is the basis for the work. The dialectical method (G.W.F. Hegel) implies consideration of any phenomenon through duality of its properties and characteristics, identification of their conflicts and interrelation (casuality, unity, dependence). Properties of any phenomenon are split into opposites and appear before the researcher as similarities and differences, quality and quantity, cause and effect, content and form, etc.

Application of the dialectical tools makes it possible to consider peculiarities of emergence of the right to food and other social rights in their development more comprehensively, to outline the processes of involvement of foreign states (directly or indirectly) in the system of global food security.

The systemic approach (L. Bertalanffy) is also one of the theoretical and methodological fundamentals of the research; it allows consideration of ensuring of the right to food as a complex and multi-level system, as well as analysis of the structure and the operation of the mechanism of national and international food security in a more effective and comprehensive manner.

Considering peculiarities of the social and food policy of individual states, it is also reasonable to refer to the comparative legal method. Tracing its roots in works, first of all, by legal scholars (K. Zweigert), the comparative method – based on

comparison of statistical data, legislative provisions and specific measures and actions of governments of individual countries – makes it possible to evaluate the degree of effectiveness of the national system ensuring the right to food and participation of the state in ensuring of this right at the international level in the most objective manner.

Other methodological fundamentals of the work also include logical (analysis, synthesis, induction, deduction) and other theoretical methods (historical legal, sociological, etc.)

1. The Right to Food in the Context of the Modern Concept of Social Rights: History and Modern Times.

The transition to new social principles of the state policy became not only relevant to modern law orders but also objectively necessary in the light of the objective historical process. Analyzing development of ideas of ensuring individual social rights and freedoms, in our view, it is necessary, to focus attention on the idea of the “welfare state” as a required prerequisite for protecting and guaranteeing rights and satisfying human needs.

The concept of the welfare state was first theoretically conceptualized in European political science in the first half of the nineteenth century. The fundamental political changes provoked by the French Revolution and Napoleonic Wars, the crisis of the restored monarchies required a new understanding of the relationship between the state and society, development of new mechanisms of guaranteeing human rights. The concept “welfare state” was first formulated in the work by the Prussian researcher R. von Mohl titled “Police Science According to the Principles of the Constitutional State”. According to von Mohl, social rights and possibilities must be equally recognized for all citizens in the modern state; provision of the population segments in need becomes a duty of the state power [von Mol R., 1844, p. 291].

The search for new sources of funds for implementation of social programs became one of the areas of development of the welfare state. Initially such funds were received by means of introduction of new taxes. For example, in 1842 Britain introduced an income tax aimed at compensation for the citizens’ income lost in connection with the Continental Blockade as well as the increase in fees for imported goods after the Napoleonic Wars [Webber A., Wildavsky A., 1986, p. 352]. The so-called

“dirigiste” (with the help of tax mechanisms, an additional tax burden for the wealthiest population segments) *domestic* policy till the beginning of the 20th century was the main means of solving social problems of the population. International regulation of the post-war social policy is characterized by the transition to awareness of the food problem as a global problem requiring an integrated approach of the international community.

One of the basic provisions of the UN activity is the principle of international cooperation in solving global problems, including those of a social character (par. 4 of Art. 1 of the UN Charter, 1945); full mutual assistance is also proclaimed for all actions undertaken by the Organization (par. 5 of Art. 2 of the Charter).

The risk of possible devastating consequences of the world energy crisis of the early 1970s made countries develop independent regional programs for ensuring economic and social security. Study of economic interrelations between states associated with overcoming of the food problem becomes relevant in theory; the concepts of “food sufficiency” and “food sovereignty” are formed [Malov A.V., 2018, p. 149]. The interrelation of food problems and the overall standard of living is considered for the first time: the 1996 Rome Declaration recognizes poverty as a major cause of the shortage of food products in the modern world. In terms of growing population, geographic conditions, differentiation of a human diet, a single state can hardly fully satisfy the need for food, consequently, particular attention must be given to *international legal* mechanisms of ensuring the right to food (and all individual social rights taken together).

The system of measures for ensuring individual social rights must also comply with the current social environment. Objective social processes contribute to development of the most effective mechanisms of protection of such rights. In the world, there are increasingly wide differentiation processes, emergence of new social groups requiring an individual approach to ensuring rights of each of them. We agree with J. le Goff, who points out the necessity of “unitotality”, which can unite unrelated social groups on the basis of “eternal” values existing objectively from time and political affiliation [Le Goff J., 2012, p. 35]. The need to take into account cultural peculiarities of population when providing food is also mentioned in acts of the UN. For example, according to the Declaration adopted as a result of the Nyéléni 2007 Forum for Food Sovereignty in the Republic of Mali, it is

necessary to ensure the “right of peoples to healthy food” which is characteristic in terms of their cultural peculiarities. While previously consideration of cultural peculiarities was necessary only when providing food aid, now it is also the duty of the state to regulate manufacture and distribution of food products with consideration of historical traditions and religious peculiarities of people residing in its territory. It becomes especially relevant for multinational and multiconfessional states, where in certain regions it is necessary to create conditions for providing citizens with food products made according to their religious attitudes (for example, sufficient manufacture of halal products in Muslim regions).

Natural demographic reasons also serve as a serious factor which significantly impedes proper ensuring of individual social rights in the modern context. The decline in the birthrate, along with a high standard of living, leads to a rapid aging of the indigenous population of most developed countries, which requires the state to increase social spending. According to the United Nations’ World Population Prospects Report, 2017, the number of older persons (aged 60 or over) in the world will increase twice (up to 2 billion people) by 2050; in addition, countries of Europe are leaders both in the elderly growth rate and in their number in relation to the total population (25 %).

Relevance of social security problems is also due to purely political reasons. Consideration of political platforms of parliamentary parties of the countries of Foreign Europe brings to a conclusion about the social (including food) policy as an essential element of their ideology, an instrument of influence on the voter. The thesis of social rhetoric as inherent exclusively to left-wing parties has now lost its indisputable relevance. For example, as a result of the elections to the European Parliament held in late May 2019, political forces of the “right spectrum” received significant support in the most economically developed EU countries (Germany, Italy and France), considerable attention is given to the principles of the social and food policy in their manifestoes. For example, par. 10.11.1 of the manifesto of the Alternative for Germany political party (Alternative für Deutschland, received 10% of the national quota of Germany in the European Parliament in the elections) states the need to improve the quality of food products by establishment of special marking.

Relevance of the issue of social rights and the right to food for the post-Soviet space should be mentioned separately. The transition from totalitarian state management of economic processes to existence under market conditions did not “remove” the duties of the state to properly guarantee and ensure the rights of its citizens in the social field. Comparative analysis of provisions of the 1978 Basic Law of the RSFSR and the current 1993 Russian Constitution brings to a conclusion about not only preservation of the main “catalogue” of individual and citizen social economic rights but also proclamation of new ones (for example, the right to labor disputes, to protection against unemployment); moreover, in contrast to the Soviet period, social rights are guaranteed for everyone, not only for citizens [Aleksandrova A.V., 2016, p. 7]. A large number of social rights requires significant expenditures from the state to ensure them.

In general, we should note that food, as well as other social benefits, mechanisms of their accessibility for all citizens can be the “binding” element capable of solving the problem of social and ideological inequality. This is why problems of ensuring the basic individual social rights (first of all, the right to food) remain, in our view, always relevant for the scientific discourse.

2. Everyone’s Right to Food: Concept and Regulatory Legal Content, Guarantees for Ensuring.

The necessity of food as the main prerequisite for decent human life was first proclaimed in par. 1 of Art. 25 of the Universal Declaration of Human Rights adopted in 1948: “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”. The right to food was first reflected as a separate provision in the International Covenant on Economic, Social and Cultural Rights; Art. 11 of the Covenant proclaims “the fundamental right of everyone to be free from hunger”.

Everyone’s right to food is not equivalent to everyone’s right to food provision. The right to food is not connected with direct provision of everyone with food. According to Fact Sheet No. 34, compiled by the UN Office of the High Commissioner for Human Rights, the right to food consists, first of all, in provision of everyone with the *possibility* to independently satisfy their need for food. Such satisfaction, in our view, can be implemented due to purchase of

foodstuffs as well as by means of independent production of food products by people, national food security.

Food security must be considered much more widely than a certain state of national economy. The state of food security is directly affected not only by the economic policy but also by international cooperation, domestic regulation of agricultural relations. It is worth agreeing with the authors that point out also activity for achievement of the goals of sustainable development of rural areas as an important factor of maintaining the level of food security.

Accordingly, combination of economic, social and environmental criteria has a direct influence on the income level of rural population, development of agricultural production in specific areas, and, as a consequence, formation of a reliable “basis” for ensuring food security of the country. In our view, it is the social value of food security that will orientate the state policy, first of all, towards the interests of people, their rights and freedoms as the highest value (which follows directly from provisions of the Universal Declaration of Human Rights), including the right to food.

Analysis of provisions of regulations of the UN’s FAO, the corresponding regulatory acts makes it possible to identify at least three main areas of activity of the world community to ensure and maintain food security that immediately relate to ensuring and protecting everyone’s right to food. The category “access” is directly related to the possibility to provide consumers with the amount of food products which will be necessary and sufficient to ensure personal and public health. “Access to food” in the traditional sense means prevention of a deficit in goods and hunger – the so-called “food sufficiency”. Today, both in theory and in legislative acts, “sufficiency” is considered as one of the components of national food security.

Access must be considered in several senses at once. For example, physical access to food products represents the level of development of the commodity distribution infrastructure, with which in all settlements of the country the population can purchase food products or it is possible to organize catering in the volume and in the range that are not less than the established dietary intake levels.

Meanwhile, it is necessary to take into account that social “maintenance” of the access to food is not mentioned in this definition, which impedes

practical implementation of food security rules in the interests of protection of everyone's right to food. The risk of their insufficient provision with food is connected with the effect of a large number of negative factors. For example, "failure to ensure the children's right to food has its social consequences. Hunger often makes children more vulnerable in terms of child labor, including the worst forms of child labor" [Valetova Yu.V., 2018, p. 269].

The concepts "quality" and "safety" of food, as a rule, are not viewed in the current legislation as equivalent. For example, at the level of the Customs Union, "safety" is associated with the "absence of unacceptable risk" for the health of an individual person and future generations. The same document contains additional requirements for raw materials, packaging, storage and transport conditions for food products. In its turn, "quality" is compliance of a food product with the criteria that allow satisfying human food demands to a sufficient extent [Korneiko O.V., Rogaleva N.L., 2018].

It is necessary to take into account that the manufactured products must simultaneously comply not only with the general requirements for products safety but also special conditions stipulated by regulations for individual types of products. Even if "actually" a product is harmless for life and health, formal non-compliance with standards and regulations will be the grounds for its recognition as unsafe, imposing legal liability on the producer. Therefore, in order to provide consumers with the best possible protection from potential risks of food products, the so-called "presumption of unacceptable risk" is applied in practice.

In a similar manner, the liability arises also when information about the goods on their package is wrong. One of the means of ensuring the quality of products is to prevent actions that may mislead consumers regarding the quality, purpose and safety of products, to impose legal liability on those who make mistakes in informing consumers about properties of products. It appears that failure of the state to take preventive measures can cause harm to life or health of citizens.

Significant achievements of scientists in the field of genetics and biotechnology in general suggest a complex, including legal, nature of regulation of this technology. In this regard, the legislator faces the task of "development of well-grounded recommendations for improvement of the current legislation aimed at ensuring interests of all

participants of the market" [Malofeev A.O., 2015, p. 25]. Influence of genetic engineering on the quantitative and qualitative composition of flora and fauna objects; production and sale of products containing genetically modified organisms; human consumption of such products and their possible influence on health require determination of the fundamental principles of legal regulation of GMOs. From the point of view of international law, today there are two main approaches to acceptability of the use of GMOs in agricultural production:

1) the principle of equivalence of genetically modified and "natural" products. In this case, safety of GMO-containing products is presumed – if there is compliance with the general requirements for quality and safety of food products, confirmed safety of gene modification of products as well as comparability of the chemical and energy values with the results of "traditional" production. This approach to the use of GMOs is applied by some developed countries (for example, Canada, the USA, Japan). The very product, rather than the technological process, subject to the corresponding marking, is the main object of monitoring in these countries.

2) the precautionary principle for handling genetically modified organisms and the relevant products. This principle, first formulated at the UN Conference in 1992, implies significant restriction (or complete prohibition) of the use and import of GMOs in a broad circulation, due to the lack of awareness of the results of GMOs impact on the environment, human life and health. For example, exactly this principle is applied in the Russian Federation now. Since July 2016 import of genetically modified living organisms (as well as plant seeds modified in the corresponding way) to the territory of the country has been prohibited; moreover, it is prohibited to grow plants containing GMOs, breed animals with a genetically modified code inside the Russian Federation [Anisimov A., Inzhieva B., Popova O., Ryzhenkov A., 2019, p. 123-129].

In our view, this ban correlates to a certain extent with one of the principles of environmental law – the principle of prohibition of economic and other activities the consequences of which are unpredictable for the environment. In the opinion of experts in the area of environmental legislation, existence of this principle is caused by the need to develop additional guarantees of protection of everyone's right to a favorable environment [Ryzhenkov A.Ya., 2018, p. 281 – 282]. Moreover, genetically modified technology can be attributed – in the sense of

private law – to the sources of increased danger creating a higher probability of harm because it is impossible for man to control it fully.

Meanwhile, as a rule, genetic engineering in agriculture is not prohibited completely in the countries that adhere to the prohibition of activity in the area of GMOs within implementation of the precautionary principle. It is allowed to carry out genetic modifications of natural organisms for the purposes of expert examinations, as well as for research purposes.

It appears that this exception is important, since appropriate scientific support of genetic engineering will make it possible in the future to establish more accurately the nature and the extent of impact of GMOs on the natural environment and human health; in addition, the results of such studies must be publicly available – it ensures implementation of the general industry principles of publicity, participation of the public in solving problems of protection of the natural environment, formation and improvement of the level of environmental legal culture of citizens. Accordingly, legal regulation of the use of GMOs in production of food products is multifaceted in nature, it is based not only on the special principles developed in international practice but also on the principles of national legislation (first of all, on environmental protection).

Conclusion

Therefore, it is possible to draw the following conclusions on the basis of the conducted study.

1. The concept of the right to food in the general range of social rights has gone through several historical stages of its development. First formed in the middle of the nineteenth century as the idea of “welfare state”, by the beginning of the third millennium activity to guarantee and protect social rights becomes increasingly global in nature, requiring development of (first of all, organizational and legal) mechanisms that are equally applicable and effective for all countries of the world.

2. Relevance of the issue of ensuring the right to food is caused not only by difficulties of its direct implementation. The interrelation between manufacture of food products and agriculture and food industry causes consideration of the proper agricultural, environmental, labor policy, as the prerequisites for sufficient satisfaction of the population’s need for food. Moreover, the social and agricultural rhetoric is increasingly reflected in manifestoes of political forces of various

kinds, turning exercise of the right to food also into a tool of political struggle.

3. In contrast to the right to sufficiency of food products, the right to food implies, first of all, provision of everyone with the possibility to satisfy the need for food independently. Such satisfaction can be implemented through purchase of food products as well as independent manufacture of food products by people.

4. The system of national food security serves as a prerequisite and a requirement for normal ensuring of everyone’s right to food. Food security is the state of protectability of the main interests of individuals, society and the state from threats in the field of production, redistribution and direct consumption of food products. From the point of view of an individual person, food security criteria include (actual (financial) and social) access to food, compliance of food products with requirements for quality and safety, as well as the appropriate nutritional (energy) value of products.

5. The possibility to use genetically modified organisms and substances in production of food products is viewed by the modern world community in the context of preservation of public health as well as resolution of environmental protection problems. The precautionary principle used in most countries of the world in relation to GMOs (consisting in partial or full prohibition of their use) thereby correlates to the principle of environmental hazard of any economic activity the consequences of which are not completely known in the nature protection legislation.

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