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## REVIEW ARTICLE

# FOOD SECURITY AS A GUARANTEE OF THE REALIZATION OF THE RIGHT TO HUMAN HEALTH

DOI: 10.36740/WLek202111236

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## ABSTRACT

**The aim:** To investigate the theoretical and legal framework governing the relevant areas of food security, ensuring healthy, adequate and safe nutrition. To consider human rights to food security as a basis for health care, a basis for the realization of the right to health and life.

**Materials and methods:** The study analyzes and uses the normative legal acts of national legislation, international acts, data from international organizations and the results of scientific work of scientists. With the help of scientific methods, medical and legal point of view, the problems of ensuring food security are identified as a guarantee of the realization of the right to human health.

**Conclusions:** Food security and nutrition are central to the individual and fundamental factor to the whole of society in respect of human right to health. An adequate level of food security must be ensured by individual governments and the international community through the development, approval or implementation of an appropriate regulatory framework, as well as through the establishment of a political and institutional framework.

**KEY WORDS:** Food security, right to health, right to food

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## INTRODUCTION

The problem of ensuring food security has acquired a global scale, indicating the existing shortcomings of governments in fulfilling their international obligations to ensure affordable, adequate, and quality food and to ensure the highest possible standards of health for their citizens [1, p. 22]. This issue is globalized, and it is needed to find answers for health care ensurance, that require a global approach, specifically, cooperation with the international community and the development of an effective international legal framework for food safety [2, p. 1]. In addition, national human rights guarantees need to be continuously improved.

The human right to adequate food is not respected for more than a billion people in the world today [3].

According to forecasts, the world's population will continue to grow and it will be 9.1 billion by 2050 [4, p. 2]. Increasing the population means increasing food production, as well as improving their quality and safety, in order to provide people with access to high-quality and healthy food to maintain good health. Nutrition ensures normal development, contributes to the prevention of diseases, prolongation of life, and creates conditions for adequate adaptation of a person to the natural environment.

In his scientific work Damtew Bekele defines the role of human nutrition. It is the provision of essential nutrients that are necessary for the maintenance of human life and health. Proper nutrition is substantial for health and disease prevention [5].

It is human rights that create the universal framework for the realization of global justice in the availability, sufficiency, and safety of food. The realization of the right to health directly depends on the provision of quality, healthy, sufficient, safe food, within the appropriate level of food security. An appropriate level of food security must be ensured by individual governments and the international community. However, not everyone receives adequate and quality food every day, which necessitates additional attention to the problems of ensuring food security in countries within the framework of ensuring the right to health.

## THE AIM

To investigate the theoretical and legal framework governing the relevant areas of food security, ensuring healthy, adequate, and safe nutrition. To consider human rights to food security as a basis for health care, a basis for the realization of the right to health and life.

## MATERIALS AND METHODS

The study analyzes and uses the normative legal acts of national legislation, international acts, data from international organizations, and the results of the scientific work. With the help of scientific methods, considering medical and legal points of view, the problems of ensuring food security are identified as a guarantee of the realization of the right to human health.

## REVIEW AND DISCUSSION

The Constitution of the World Health Organization states that the enjoyment of the highest possible level of health is one of the fundamental rights of every human being and states are responsible for their peoples' health [6].

Taking into account global trends, in order to cover human rights to food security, the content of human rights to health and food security has changed significantly over the last 70 years. The right to health began to be based on the possibility of guaranteed and safe nutrition [7].

Article 11 of the ICESCR defines the right of everyone to an adequate standard of living for themselves, including adequate food. Against this background, states recognize the fundamental right of all people to be free from hunger and include specific commitments to guarantee that the world's food is distributed in a way that meets demand [8].

Article 12 of the ICESCR, in turn, defines the specific obligations of countries to take all necessary measures to ensure the right of all to enjoy the highest possible level of mental and physical health [8]. Thus, at the level of international law, it is determined that nutrition and food are connected to health.

Scholars agree with the above provisions of international documents. Thus, as the scientist Maria Anna Coniglio rightly points out, nutrition determines the relationship between food and health [9]. People who get enough food are more productive. After all, malnutrition (in any form) is a substantial threat to human health [10]. Food scarcity is a situation where people do not have reliable access to sufficient amounts of safe and nutritious food to grow and develop normally and also for healthy and active lifestyles [11]. Malnutrition reduces resistance to infections, including parasites. Malnourished children grow up slowly. It means that poor nutrition can cause poor health, and cause poor school performance; also poor schools can cause unemployment [5]. This situation arises at the intersection of food and health rights, creating cross-sectoral opportunities for the implementation of human rights provisions, food security policies, and programs.

Thus, food security directly affects general security and human rights, which inevitably affects economic and financial security. Unemployment will further reduce the income of the population, which, in turn, due to lower purchasing power, will further reduce the level of food security. At the same time, the threat may start from the regional and single-industry level and gradually globalize. For example, threats to economic security in one or more industries in a region are rapidly reflected in declining overall performance across the country [12].

The World Health Organization has emphasized that micronutrient deficiencies are a significant contributor to the global burden of disease and represent a wide range of non-specific physiological disorders that lead to decreased resistance to metabolic disorders, infections, as well as delay or impairment of psychomotor functions [13]. For example, a 2012 Public Health Nutrition study found that those who eat unhealthy foods are 51 percent more likely to show signs of depression. And the more unhealthy and low-quality food you eat, the more likely it is that your brain will malfunction [14].

Human health is influenced by many reasons of a different nature. Various authors [1; 2; 5; 9; 14; 15; 16; 17; 18] conducted research on the impact of certain factors on human health. These studies reflect relevant analyzes of the effects of various factors on human health.

Among other factors, we recognize and support the opinion of Damtew Bekele, expressed in the scientific work, that if there is no food security and people are prone to disease, people's health deteriorates [5].

The right to food as a human right is formally acknowledged in the 1948 UDHR 9 (Article 25) [19]. Since then, the right to food or some aspects of this right has been included in a number of international human rights treaties. For example, Article 2 of the ICESCR obliges States parties to take the necessary measures to gradually achieve the full realization of the rights recognized in the Covenant [20].

Thus, Article 12 of the CEDAW determines the right of mothers and infants to food [21]. As malnutrition is the leading cause of child mortality in the world, the Convention on the Rights of the Child pays considerable attention to the protection of the right to food [22].

An important aspect in ensuring food security was the creation of the Committee on World Food Security in 1974. It was established as the most open international and intergovernmental platform for the collaboration of all stakeholders in order to ensure food security and nutrition for all [23]. Also, it was from 1974 that various criteria and definitions of the concept of food security began to form, which, given its multidimensionality and multifaceted nature, underwent significant changes over the following years. In 1974, the original definition appeared at the World Food Conference. Attention was focused on the availability of sufficient global stocks of basic foodstuffs to support sustainable growth in food consumption and compensate for fluctuations in production and prices at all times [24].

The right to adequate food as a fundamental right to protection against hunger was also reaffirmed at the 1996 World Food Summit, which promoted better ways to exercise food rights and asked states to ratify the ICESCR. On this occasion, the heads of state adopted a declaration confirming the right of everyone to have access to nutritious and healthy food [25].

In 1996, at the World Food Summit, the main concept was to highlight the need for nutrition as the basis of health. Food security was related to the situation, when all people have economic and physical access to sufficient, safe, and nutritious food in order to meet their nutritional needs



and dietary preferences for an active and healthy life [26]. According to this definition, four main aspects of food security can be distinguished: physical availability, food utilization, physical and economic access to food, stability of the other three dimensions over time. In order to achieve food security goals, all four aspects must be carried out simultaneously [27].

The 2009 Rome Declaration on World Food Security also identified the components of food security: physical and economic affordability, food independence, seasonal and weather resilience, and sustainability of production growth [28], which differs from those defined in 1996. According to the Rome Declaration on World Food Security, each country has a responsibility to ensure the human right to adequate nutrition and to take urgent action to eradicate hunger, malnutrition, and food shortages. In the 2009 Rome Declaration on World Food Security supports the general concept of food security [28].

Based on the above provisions, most national laws enshrine four pillars of food security. They are availability, access, utilization, and stability. For example, in Ukraine, the constitutional level enshrines the right to an adequate standard of living for oneself and one's family, which includes adequate food, clothing, and housing (Article 48 of the Constitution of Ukraine), but internationally defined food security criteria are unfortunately not enshrined in the national legislation of Ukraine.

The content of the concept of food security should be disclosed in the system of criteria and indicators that give a comprehensive description of its current state, dynamics, and trends of change. At the same time, the availability of formalized indicators and criteria is especially important, with the help of which it is possible to assess the level of food security of the state both qualitatively and quantitatively.

Similar processes to guarantee the right to health through the prism of food security are taking place at the international and regional levels. For instance, the general principles of current food law came into force in 2002 by Regulation (EC) No 178/2002 [29]. The regulation also established the EFSA, which was responsible for assessing and reporting all risks associated with the food chain [30]. For the purposes of this Regulation, the concept of "food law" is introduced (Article 5) [29], which reaffirms the focus of European countries on consolidating and ensuring a level of food security that can guarantee everyone's right to health.

Another example of regionally related development of human rights to health and food security is the issuance of the Latin American Declaration of Human Rights, stating that "the Latin American's people have a right to food" (Article 7, 11) [25].

Since the RtFG was adopted, countries around the world have seen significant changes in legislation and case law. The RtFG has been developed as a practical tool for states seeking to realize the right to food [31].

Scholars determine three main ways of defining the right to food at the national level: first, by creating a constitutional right to food; second, by adopting a framework law on the

right to food or food safety; and third, by ensuring that sectoral legislation promotes the right to adequate food [31].

It is important to focus on the provisions of the Constitutions of those countries that recognize and explicitly enshrine the right to food and food security. There are 23 national constitutions around the world, in which the right to food is recognized [32, p. 1]. For example, in accordance with Article 15 of the Constitution of the Republic of Bangladesh, food and health care are recognized as basic necessities [33]. The Republic of Niger's Constitution provides for the right to health, healthy and adequate food (Article 12) [34]. The Constitution of the Republic of Maldives includes the right to food (Article 23) [35]. Bolivia's Constitution of states that the State must guarantee food security (Article 16) [36]. The Ecuadorian State shall promote food sovereignty (Article 13 of the Constitution of Ecuador) [37]. Such constitutional provisions provide the necessary basis for the development or reform of national legislation for the promotion of food security.

The constitutions of some countries do not explicitly guarantee the right to adequate food and food security and the recognition of international law is sufficient for them. Thus, Article 25 of the Basic Law for the Federal Republic of Germany establishes the primacy of international law – general provisions of international law shall be an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory [38]. In 1973, the Federal Republic of Germany became a State party to the ICESCR through ratification. And this is precisely what is sufficient for the recognition, consolidation, and ensuring the right to food, food security, and, consequently, the right to health in the country.

Some countries took a different path and did not enshrine the right to food security at the constitutional level. Several countries adopted framework laws on food security that establish an institutional framework. They are the Republic of Guatemala, the Republic of Indonesia, the United Mexican States, the Republic of Nicaragua, etc. [31]. At the regional level, the Latin American Parliament adopted a Regional Framework Law on the Right to Food, Food Security, and Food Sovereignty (November 2012) [25, 40].

Among the above three ways of enshrining the right to food security at the national level, it is important to ensure the existence of sectoral legislation that can either hinder or promote the realization of the right to food security and nutrition. Sectoral legislation is of great importance because it regulates the economic environment in which people are or are not able to adequately feed themselves [3, p. 24]. An example of sectoral food legislation is the Global Food Security Act of the United States of 2016. The Act defines the concept of the term "food and nutrition security", which means access to, and availability, utilization, and stability of, sufficient food to meet caloric and nutritional needs for an active and healthy life [39].

A fourth way of enshrining and enforcing human rights to food security, food, and health is a state-guaranteed possibility to file a complaint before a court or other independent body for violations of their right and to obtain appropriate means of recourse and remedy [3]. Virtually

all legal systems for judicial protection of human rights have only indirect access to justice to protect the right to food security and nutrition based on the protection of the right to life, health, or property. However, this has not prevented the development of significant jurisprudence in the African and American continents, which shows that access to justice for thousands of victims of violations of the right to food is ensured [40, p. 37].

The most famous cases are the Khosa & Ors vs Minister of Social Development [41]; the Ogoni case [42]; the Kenneth George vs Minister of Environmental Affairs and tourism [43]; the Sawhoyamaxa vs. Paraguay [44]; various cases decided by the Swiss Federal Supreme Court [40, p. 21]. In all the above cases, it is necessary to ensure respect and guarantee states the right to food.

At the national level, there is much more potential to protect the right to food security, as in most countries this right is enshrined in domestic law. However, in most cases, national courts do not recognize the possibility of judicial protection of food rights. But it is the real and guaranteed access to justice that makes the rights to food security and health more effective and tangible.

In conclusion, it should be emphasized that the right to food security and food to some extent, in various ways described above, is enshrined in the national legislation of most countries. But there is a significant difference between the state's official recognition of food security as a human right and its full implementation in practice.

States are obliged to respect, protect and fulfill the human right. The state itself should not deprive anyone of access to adequate food. Also, it must protect everyone from being deprived of such access in any other way. And when anyone is in fact without adequate food the state must proactively create an enabling environment where people become self-reliant for food or, where people are unable to do so, must ensure that it is provided. Everyone has the right to demand that the state fulfill these obligations.

The state's approaches to food security, as well as approaches to development in general, can be called "human rights-based" only if they consider these points as fundamental. The rights-based approach sees governments guaranteeing food security as a duty, not a form of benevolence. It insists that the holders are accountable to the rights holders. The human rights concept places particular emphasis on the active participation of all stakeholders in policy-making, on government transparency, and on ensuring that people have access to effective remedies through an independent legal framework when they have not received what they should have. It is important not only that the state recognizes all persons as right holders, but also that persons see themselves equally and know how to act accordingly. Thus, a rights-based approach is a key tool in achieving an appropriate level of public health.

The human rights-based approach to food security suggests new ways to identify, analyze and combat the causes of hunger and poverty, as well as an alternative method of promoting development. Approaching development from the perspective of the right to food and other inherent

human rights is not only necessary for human survival; it is a new way to meet the millennium development goals.

## CONCLUSION

Food security and nutrition are central to the individual and fundamental factors to the whole of society in respect of human rights. Food security is a component and guarantor of the realization of the right to health. All other components of the right to health depend on its proper condition. Therefore, studying the requirements that provide the conditions for maintaining and improving healthy, sufficient, nutritious, safe human nutrition is essential. An adequate level of food security must be ensured by individual governments and the international community through the development, approval, or implementation of an appropriate regulatory framework, as well as through the establishment of a political and institutional framework.

States should enshrine the right to food security in their domestic legislation and, if possible, in their Constitutions. Equally important is the adoption of a framework law on food security or the creation of appropriate sectoral legislation.

States should provide mechanisms that offer adequate, effective, and timely remedies in cases of violations of the right to food security.

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