

C.E.D.R.



**European Council for Agricultural Law
Comité Européen de Droit Rural (C.E.D.R.)
Europäisches Agrarrechtskomitee**

**XXIII^d European Congress and Colloquium of Agricultural
Law – Roros (Norway) – 6-10 March 2005**

**XXIII^e Congrès et Colloque Européens de Droit Rural – Roros
(Norvège) – 6-10 mars 2005**

**XXIII. Europäischer Agrarrechtskongress mit Kolloquium –
Roros (Norwegen) – 6.-10. März 2005**

Commission I – Kommission I

THE RIGHT TO ADEQUATE FOOD – SELECTED LEGAL ASPECTS

**LE DROIT A UNE ALIMENTATION ADEQUATE – ASPECTS
JURIDIQUES**

**DAS RECHT AUF ADÄQUATE ERNÄHRUNG – AUSGEWÄHLTE
RECHTLICHE ASPEKTE**

General Report – Rapport général – Generalbericht

Asbjørn EIDE

dr.juris h.c., formerly Director and currently Senior Fellow of the Norwegian Centre of Human Rights at the Faculty of Law at the University of Oslo, as well as Torgny Segerstedt Professor at the University of Gothenburg, Sweden

General Report – Rapport général – Allgemeiner Bericht

Asbjørn EIDE

1. The right to food in international human rights law and the corresponding state obligations

International human rights law emerged after World War II and started with the adoption of the Universal Declaration of Human Rights in 1948. The right to food is implicit in Article 25 of the Declaration. From that time on, economic, social and cultural rights have been an integral part of international human rights law together with civil and political rights.

For purposes of differences in monitoring and implementation, the rights contained in the Universal Declaration were split in two main international conventions – the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The United Nations has consistently made it clear, however, that all human rights and fundamental freedoms are indivisible and interdependent and that equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights.

The right to adequate food is set out in ICESCR article 11 (see below). Under normal circumstances, particularly in developed countries such as in Europe, most individuals are able on their own to secure access to food. In less developed countries, the situation is very different. Nearly 800 million persons still suffer from serious shortcomings in their access to food.

In the developed countries, the right to food is first and foremost a question about giving every person the freedom to find her or his own way to ensure access to food for himself and his family. It is the responsibility of the State to respect this right, and to protect that right if it is threatened, and to ensure that the available food is safe and nutritionally sound.

When individuals cannot on their own have a secure access to food, the state has an obligation, alone or in cooperation with the international community, to provide food for those who are not able to provide for themselves.

Since these are rights set out in an international treaty, States parties have in accordance with the Vienna Convention on Treaties an obligation at all times act in good faith to fulfil the obligations they have accepted under the Covenant. States parties are accountable both to the international community and to their own people for their compliance with the obligations under the Covenant. All European states as well as those of South America and many from Africa and Asia have ratified the ICESCR.

Evolution concerning the right to food

The International Covenant on Economic, Social and Cultural Rights (ICESCR) article 11 (1) says: *“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”*. Article 11(2) says: *“The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger...”*.

During the Cold War, a polarization emerged within the international community. The West, led by the United States, gave priority to civil and political rights, whereas the East led by the

Soviet Union tended to claim priority for economic and social rights. With the end of the Cold War, that simplistic division has been largely overcome.

A major impetus for the recognition of the right to food was given at the World Food Summit, held in Rome in 1996. At that summit, attended by 112 Heads or Deputy Heads of State and Government, and by over 70 high-level representatives from other countries, it was proclaimed by consensus that everyone had a right to adequate food. The very first words of the Declaration makes this clear:

“We, the Heads of State and Government, or our representatives, gathered at the World Food Summit at the invitation of the Food and Agriculture Organization of the United Nations, reaffirm the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.”

It was recognised that states so far had given insufficient attention to the implementation of the right to food, and that there was a need to clarify the content of that right and the corresponding state obligations to implement it. Consequently, the Declaration and Programme of Action of the World Food Summit made it one of their core commitments, in Objective 7.4 of the Plan of Action,

“To clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger, as stated in the International Covenant on Economic, Social and Cultural Rights and other relevant international and regional instruments, and to give particular attention to implementation and full and progressive realization of this right as a means of achieving food security for all”.

It called on all states to implement Article 11 of ICESCR and requested the UN High Commissioner in consultation with the relevant treaty bodies, in cooperation with FAO and other agencies, to ‘better define the rights related to food in Article 11 of the Covenant and to propose ways to implement and realize these rights as a means of achieving the commitments and objectives of the World Food Summit, taking into account the possibility of formulating voluntary guidelines for food security for all’ (from World Food Summit, Programme of Action, Objective 7.4)

This was followed up energetically by the UN High Commissioner for Human Rights. A number of consultations were held with relevant experts, international food agencies including FAO, World Food Programme and others, and with representatives of states. This served as a background for the work of the UN Committee on Economic, Social and Cultural Rights, which at its 20th session, in May 1999 adopted its General Comment 12: The right to adequate food. This is an authoritative interpretation of Article 11.

Breakthrough: General Comment 12, on the right to adequate food

General Comment no. 12 is distributed together with this report, but some of its main points need to be included here:

It provides, for the first time, a detailed description of the content of the right to food. Next, it clarifies the nature of the corresponding obligations, and explains what would constitute violations of those obligations. It then proceeds to call for the adoption in every country of a strategy for the implementation of the right to food, giving detailed recommendations for the process in elaborating such a strategy and its main contents, including the desirability of framework legislation to address the right to food. It ends with some recommendations concerning international co-operation required to ensure for everyone the enjoyment of the right to food.

Content of the right to adequate food

The content is described by the Committee as follows (paras 6-14 of General Comment 12):

“6. The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. The right to adequate food will have to be realized progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters.

“Adequacy and sustainability of food availability and access

“7. The concept of adequacy is particularly significant in relation to the right to food since it serves to underline a number of factors which must be taken into account in determining whether particular foods or diets that are accessible can be considered the most appropriate under given circumstances for the purposes of article 11 of the Covenant. The notion of sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations. The precise meaning of "adequacy" is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while "sustainability" incorporates the notion of long-term availability and accessibility.

“8. The Committee considers that the core content of the right to adequate food implies:

“The availability of food in a 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 do not interfere with the enjoyment of other human rights.

“9. Dietary needs implies that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation. Measures may therefore need to be taken to maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns, including breast-feeding, while ensuring that changes in availability and access to food supply as a minimum do not negatively affect dietary composition and intake.

“10. Free from adverse substances sets requirements for food safety and for a range of protective measures by both public and private means to prevent contamination of foodstuffs through adulteration and/or through bad environmental hygiene or inappropriate handling at different stages throughout the food chain; care must also be taken to identify and avoid or destroy naturally occurring toxins.

“11. Cultural or consumer acceptability implies the need also to take into account, as far as possible, perceived non nutrient-based values attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies.

“12. Availability refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.

“13. Accessibility encompasses both economic and physical accessibility:

“Economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised. Economic accessibility

applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food. Socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes.

“Physical accessibility implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill. Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food. A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened”.

On state obligations

The nature of the legal obligations of States parties are set out in article 2 of the Covenant. The principal obligation is to take steps to achieve *progressively* the full realization of the right to adequate food. This imposes an obligation to move as expeditiously as possible towards that goal. Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.

In General Comment no. 12 para 15, the Committee presents its view of the levels of state obligations:

“15. The right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to *respect*, to *protect* and to *fulfil*. In turn, the obligation to *fulfil* incorporates both an obligation to *facilitate* and an obligation to *provide*. The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to *fulfil (facilitate)* means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfil (provide)* that right directly. This obligation also applies for persons who are victims of natural or other disasters.”

On national implementation of the right to food

The Committee recognises in General Comment 12 that the most appropriate ways and means of implementing the right to adequate food will inevitably vary significantly from one State to another, and that every State has a margin of discretion in choosing its own approaches.

Nevertheless, the Covenant clearly requires that States take whatever steps are necessary to ensure that everyone is free from hunger and as soon as possible can enjoy the right to adequate food.

The Committee considers it necessary that States adopt a national strategy to ensure food and nutrition security for all. For that purpose there is a need for a systematic identification of policy measures and activities, based on the normative content of the right to adequate food and spelled out in relation to the levels and nature of State parties' obligations. This will, according to the Committee, facilitate coordination between ministries and regional and local authorities and ensure that related policies and administrative decisions are in compliance with the obligations

under article 11 of the Covenant. The strategy should address critical issues and measures in regard to *all* aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food, as well as parallel measures in the fields of health, education, employment and social security. Care should be taken to ensure the most sustainable management and use of natural and other resources for food at the national, regional, local and household levels. As part of their obligations to protect people's resource base for food, States parties should take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food.

In implementing the country-specific strategies referred to above, States should set verifiable benchmarks for subsequent national and international monitoring.

The Committee finds it advisable that States consider the adoption of a *framework law* as a major instrument in the implementation of the national strategy concerning the right to food. The framework law should include provisions on its purpose; the targets or goals to be achieved and the time-frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for its monitoring, as well as possible recourse procedures. In developing the benchmarks and framework legislation, States parties should actively involve civil society organizations.

The Committee calls on States to develop and maintain mechanisms to monitor progress towards the realization of the right to adequate food for all, to identify the factors and difficulties affecting the degree of implementation of their obligations, and to facilitate the adoption of corrective legislation and administrative measures.

The Committee further holds that any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels. The incorporation in the domestic legal order of international instruments recognizing the right to food, or recognition of their applicability, could significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases. Courts would then be empowered to adjudicate violations of the core content of the right to food by direct reference to obligations under the Covenant.

On the voluntary guidelines for the implementation of the right to food

In the Declaration adopted at the World Food Summit: five years later (WFS:fyl) in June 2002, the Heads of State and Government reaffirmed the right of everyone to have access to safe and nutritious food and invited the FAO Council to establish an Intergovernmental Working Group to elaborate a set of voluntary guidelines to support Member States' efforts to achieve the progressive realisation of the right to adequate food in the context of national food security. The Voluntary Guidelines, which should serve as practical tools to ensure implementation of the right to food in line with its interpretation given by General Comment 12 discussed above, contain 19 such guidelines, contained in section II of the document, entitled 'Enabling Environment, Assistance and Accountability'. Of practical usefulness are guidelines 3 (strategies) guideline 5 (institutions), guideline 6 (stakeholders), guideline 7 (legal framework), and in particular guideline 8 (access to resources and assets) which deals with labour, land, water, genetic resources for food and agriculture, sustainability, and services. Important is also guideline 9 (food safety and consumer protection), guideline 10 (nutrition), guideline 13 (support for vulnerable groups), guideline 14 (safety nets), guideline 16 (natural and human-made disasters).

Special attention needs to be given to guideline 17 (monitoring, indicators and benchmarks) and guideline 18 (national human rights institutions). From the perspective of global solidarity ,

great attention should also be given to guideline 19 (international dimension) together with section III of the Guidelines, which contain an elaboration of international measures, actions and commitments, spelling out the roles of the international community, addressing technical cooperation, international trade, overcoming the problems of external debts, and addressing official development assistance and international food aid. Under the heading 'Promotion and protection of the right to adequate food' it is stated that the organs and specialised agencies related to human rights should continue to enhance the coordination of their activities based on the consistent and objective application of international human right instruments including the promotion of the progressive realization of the right to adequate food.

It ends by the following statement:

“The promotion and protection of all human rights and fundamental freedoms must be considered a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights including the progressive realization of the right to adequate food, is a legitimate concern of all member states, the international community and civil society”.

2. National implementation: Brief description of the national reports

General

For the purpose of Commission, a questionnaire was prepared together with an explanatory note.

Six reports have been received at the time of writing this report. Of these, two only have based their report systematically on the questionnaire; the four others have approached the issue from a variety of different approaches. While this provides for a number of interesting perspectives, it makes it somewhat difficult to compare the reports. In this section, a description will be given of the main contents of the reports; in section 3, some common observations will be drawn.

In preparing the description of the reports I have been assisted by some of my colleagues within the International Project on the Right to Food in Development: Ms. Siri Damman (the case of Argentina), Mr. Hans Morten Haugen (the case of the Netherlands) and Professor Arne Oshaug (the case of Poland).

2.1 The right to food within the context of human rights in Argentine

The report was presented by María Adriana VICTORIA and Claudia Roxana ZEMÁN (summary by Siri Damman)

The report is thorough and comprehensive. Interestingly, according to the authors, Argentinean jurisprudence “imply the incorporation of criteria of interpretation from international law into the Argentinean juridical order, and, secondly, ratifies, as a Constitutional instruction, the guiding character that must be given to the decisions of the international bodies” (including the CESCR’s GC 12) The argument is found in the text under. After a long presentation of laws and institutions of relevance to the right to food, the authors does however rely quite extensively on the report of FIAN, an international non-governmental organisation devoted to the right to food, for their conclusions and recommendations.

In Argentine’s constitutional reform of 1994 (art. 75.22), international human rights treaties ratified by Argentine are given Constitutional standing. Their practical implications are

established by the jurisprudence of the Supreme Court. With this new text, then, all HR treaties are above the law.

In regard to implementation of these agreements, the reform of 1994 has incorporated as criterion of interpretation resolutions coming from the organs that supervise the international instruments. This doctrine was supported by the leading case "Giroldi". In this case, the Court interpreted that: the constitutional hierarchy of the American Convention on Human rights has been established by expressed will of the constituent "in the conditions of its validity/use" (article 75, inc. 22, 2nd paragraph). This is, just as the said Convention applies internationally and considering particularly its effective jurisprudential application by the international courts through competent interpretation and application. Hence the alluded jurisprudence should serve as guide for the interpretation of the Conventional principles since the Argentinean State has recognized the competence of the Inter-American Court in all cases related to the interpretation and application of the American Convention (conf. arts. 75 of the National Constitution, 62 and 64 American Convention and article 2, law 23.054).

Based in this case, the Court confirmed the doctrine of the Ekmekdjian case, on the guiding character of international decisions, but this time, based it on the constitutional expression "in the conditions of its validity/use". Thus, it interpreted the scope to be wider than previously stated (tidligere tolkning er ikke inkludert her- Siri): with a content not only limited to the recognition of the effect of the reservations of the moment of the ratification of an agreement. The Court maintained that the interpretation of the treaty should be guided by the jurisprudence of the Inter-American Court of Human Rights, which has as one of its objectives to interpret the American Convention on Human Rights (Pact San Jose, Costa Rica).

This criterion, established by the court, has a double effect: on the one hand, it ratifies the incorporation of criteria of interpretation from international law into the Argentinean juridical order, and, secondly, ratifies, but now as a Constitutional instruction, the guiding character that must be given to the decisions of the international bodies.

It thus becomes clear that, in conformity with the jurisprudence developed by the Argentinean Supreme Court based in the text of the Argentinean Constitution reformed in 1994, that Argentinean courts not only must apply the international instruments of human rights, but also the interpretational principles of the International HR law. Especially when resolving matters included in international agreements of human rights, they must take into consideration the jurisprudential interpretations developed by the international organs of application.

Extra weight is given to this idea by the constitutional hierarchy of the agreements of human rights established by the art. 75.22 of the National Constitution and, in general, in the philosophy that justifies the adherence of the states to international mechanisms protecting human rights. The international HR instruments establish diverse international mechanisms by which the realization of the obligations assumed by the State are supervised. Through the adoption of these instruments the States delegate competences, among them interpretation, to the international organs of application, like the Committee of Economic, Social and Cultural Rights. This body, having as an objective to better define the content of the rights contained in the ICESCR, resorts to General Comments on certain aspects of concern, and on Concluding Observations to the periodic reports presented by State parties.

The administrative resolutions that serve as instruments of the treaty are those that authorize plans of emergency and food programs in order to make effective the obligation of the national State (preferably) of protecting and to provide suitable food. Likewise there are much questioned resolutions or decisions violate the obligations assumed by the State of Argentina in regard to the right to food by cutting 16.721.947\$ (25%) of the budget of "program 22" (Food aid and family support) of the Department of Social Development and Environment, targeted to the most vulnerable.

In Argentina, at national level, there is a Sub-secretary of Food Politics and a General Board of Food Politics. Even if some food and social plans are established, there is no real, efficient, and transparent food politics. There are programs of direct food delivery, but no food policy cutting across several Ministries, including both production, distribution and consumption. In situations of extreme poverty it is necessary to generate food politics that support that work and favour the ties within the family unit.

Argentina has violated the ICESCR, as is shown in the recent report produced by FIAN International and the Service of the Evangelical Churches in Germany.

Conclusion: The report (FIAN) indicates: a) Lack of protection to the population in situation of extreme vulnerability (girls and indigent children less than 5 years). b) Lack of state support to the productive projects by unemployed workers. c) Absence of politics that promote and create jobs. d) Absolute shortage of the programs of food aid and of income transfers. Arbitrariness, clientism and discrimination in the execution of the programs e) negligence of the State to adopt tax politics that redistribute the wealth and provide the State with the necessary resources to comply with their human rights obligations. f) Reduced social spending and reduced capacity of the Argentine State to mobilize resources to comply with their obligations due to the credit agreements with the International Financial Institutions.

The recommendations are that the Argentine government (national and provincial) respect the access to an adequate diet; assure that no measures impede the access to an adequate diet; that measures are adopted to stop businesses or individuals from depriving people of the access to an adequate diet; That the access and the utilization of productive resources for food security are promoted and strengthened, and that an economic policy be implemented that promote work creation and the production capacity of small farmers; and that sufficient and adequate programs for transfers of incomes and food aid be guaranteed; that productive projects led by the unemployed are supported; that the political national agribusiness is redefined so that priority be given to strengthening the productive capacity of the small producers; That the food programs, the aid offered really reach its beneficiaries without political "clientism" or other problems; that the selection of beneficiaries, the aid and its effects is permanently monitored by the state, NGO's and local communities.

The Argentine State is thus obligated to show that it has not violated the ICESCR by omission by not having carried out all the necessary efforts and utilized all available resources to comply with the minimum obligation of guaranteeing the freedom from hunger in the population.

2.2 The French contribution, by Mme Bernard Mandeville

Me Bernard Mandeville has prepared the report around the two major issues: The right to sufficient food, and the right to qualitatively decent food. It contains important information and analysis. The report has not, however, been organised on the basis of the questionnaire, nor has it drawn on General Comment no, 12 of the UN Committee on Economic, Social and Cultural Rights.

The author, who is Barrister at the Paris bar and Specialist in Land law, sees a major problem in the question of the justiciability of the right to food. Referring to the UN Special Rapporteur on the Right to Food, Professor Jean Ziegler, who has stated that "*to set Economic, Social and Cultural Rights beside Courts competence, would be arbitrary and incompatible with Vienna principle relating to indivisibility and interdependence of rights*". Me Mandeville notes that French doctrine traditionally considers these rights as objective rights which are not likely to found legal actions.

The report is not based on a discussion of the relevant international legal provisions and their validity in French law. The first part – the right to sufficient food – is essentially a reflection based on the principles of assistance in the 1946 French constitution and the ongoing debate

on the scope, strength and benefits of the French welfare system. The author also addresses the question of access to sufficient food thanks to private solidarity – in other words, the notion of charity, which preceded the emergence of economic and social rights. There is some interesting information on the right to sufficient food and the court precedent on ‘the state of need’, though rather marginal to the core issues of the right to food.

The second part deals with European and French legal response to qualitatively decent food, which essentially is the question of food safety. In that part, the author gives useful description of liability for defective food products in private law, the preventive norms on food safety, and the monitoring of food quality. None of these are derived from the right to food but are relevant for the enjoyment of the right to food.

The author ends by an interesting discussion of the possibility that the right to adequate food contains ambiguities that can result in contradictions.

2.3 The Italian contribution, by Eleonora Sirsi

(Summarised by the author herself)

Nowadays the right to adequate food is to be considered in the larger context of food security in its double meanings of food security and food safety.

Food security, that is the possibility to be able to access to food in sufficient quantity and quality to satisfy life needs, has been the object of interest in Italy as well as in other western countries until the end of the second world war, but at the moment time it is considered only in the field of welfare politics.

Welfare system has an administrative organisation inspired to the principle of subsidiarity and it is marked by the development of social security net composed by non institutional and no profit organisations.

As to food security the right to food has got no autonomous dimension and its fulfilment is bound to health protection and to the right of people to live in a dignified and free way in accordance with duties imposed by political, economic and social solidarity.

The fulfilment of the right to food is part of the Italian action in the international organisation aimed at fighting against hunger and poverty in developing countries. In this matter is considered very important to fight in defence of the biological diversity : the idea is that for the poorest farmers, the diversity of life may be their best protection against starvation.

Food safety is very important in Italy, as well as in other European countries. Two different meanings could be referred to food safety: a) food safety meant food must be neither harmful to nor unsuitable for human consumption, b) food safety as nutritional security. According to this last meaning it is necessary to move from a merely negative or defensive action to avoid harmful food, to a positive action in order to promote healthy food by the State.

The Health ministry and Agriculture ministry promote studies to assess connections between inappropriate feeding and the rising of diseases,(like diabetes, cancer, obesity) and carry on informative and educational actions in order to promote a healthy way of life within nutritional security.

Referring to the first meaning of food safety (a) we must say that Italy had already got its own legislation before the European Community took its own.

After many episodic measures, a legislation about food care based on the regulation of inspections to the food production structures was worked out. Another legislation deriving from the implementation of European directives about self-control in food industry has later been jointed which is marked by the singling out of derogations to protect local products.

The recent modifications of European legislation about food care will lead to the extension of self-control to primary phase in Italy too. After the White Paper on Food Safety and the Reg 2002/178, the right to adequate food, meant as safe food, is marked by the statement of some principle (from farm to fork, precaution, risk analysis, accountability of agents in the chain production) by the implementation of some instrument (labelling, traceability, checks) by the renewal of institutional framework (EFSA).

In Italy the authority which will interact with EFSA has not been established yet; at the moment the competences of the future national authority are shared by different bodies.

In stating the different competences of regions and State the Italian Constitution includes food legislation in the so-called “competenza concorrente”; by this we meant that Regions can make laws within the larger context and in compliance with national legislation (art 117 Italian Constitution).

In the Italian framework food quality is closely linked to food safety: all the agents of the production chain have been involved in increasing the value of food products through many different instruments and initiatives.

Part of this valorisation consists of setting off the production process, which includes productions respecting the environment, able to obtain healthier products and to be connected with local values and traditions.

Food law, meant as a set of rules, is the object of growing attention in Academic community as new courses established in many faculties and publications can show.

2.4 The Netherlands: abundant in food, wanting in law

by Prof. dr. B.M.J. van der Meulen, dr. F.M.C. Vlemminx
(summary by Hans Morten Haugen)

The report is very interesting, and the authors have a precise understanding, not only of the status of the right to food in the Dutch legal system, but also of other social human rights.

The right to food as such is not set out in the Dutch Constitution. The government found it unnecessary to mention it separately as it was considered to be implicit in the right to means of subsistence laid down in Article 20 (ref. Article 1.2 of the ICESCR).

The authors examine the influence of the Dutch ratification of the ICESCR, and find this to be very limited. The Dutch government said that the human rights recognised in the ICESCR “...do not offer a fixed standard for the rate and degree of realisation of those rights” (note 13) and do “...not have direct applicability” (note 7). Moreover, they found that the implementation of all ESC rights in the Constitution had almost been realised (note 17). The view expressed by the Government in the 1970s has also influenced the position of the Dutch courts.

The General Comments, including those on the nature of the obligations (No. 3) and on national implementation (No. 9) have not changed this position, and “...appear to play no role at all” (p. 7). In a 1995 ruling from the Central Appeals Court (the highest court regarding social security) there was, however, an acknowledgement that Article 11 ICESCR “...compelled the government to guarantee an adequate minimum” (note 31). This is seen by the authors as a significant step in the right direction, even if the Court did not explicitly say that Article 11 had direct applicability. Later decisions by the Central Appeals Court, both in 2004, have not confirmed this, and the authors find that this implies that the direct applicability of the rights recognized in ICESCR is denied (p. 9).

Moreover, the authors identify the Netherlands to be among the States which most explicitly sought to downplay the significance of the Voluntary Guidelines, by chairing the EU during these negotiations. Also in the last reporting to the Committee on ESCR, the government presented very non-problematising information on Article 11.

The latter part of the paper is devoted to issues relating to food safety, of which there are several EU directives and regulations, with the General Food Law (Regulation 178/2002) being the most comprehensive. The authors state that these regulations "...are not connected to the right to food" (p. 15) and that that "...there are no regulations concerning the quality of food to satisfy the dietary needs of individuals" (p. 17). What the authors mean by these responses is that the EU regulations deals exclusively with food safety, and that they are neither derived from the core contents of the right to food as outlined in General Comment No. 12 on, *inter alia*, food *accessibility*, nor are they related to any standards regarding the *nutritional quality* of food.

Issues relating to legal protection for consumers in the context of food safety, including liability, are addressed in the last sections of the report.

The conclusion by the authors is that in the Netherlands "...it would be relatively easy to develop a working system of respect for the human right to food" (p. 23). While the authors previously have referred to the three levels of State obligations (note 26), this emphasis on 'respect' is unfortunate, as it ignores the 'protect' and 'fulfil' levels.

2.5 The Norwegian contribution, by Marianne Smith

This contribution is organised through a systematic application of the questionnaire. It reflects the extensive discussion that has taken place in Norway on the subject which has led, *inter alia*, to the incorporation of the International Covenant on Economic, Social and Cultural Rights in domestic Norwegian law and which, together with other key international human rights instruments, have precedence over other Norwegian law.

The author points out that Norway's commitment to promoting human rights is reflected in Government policy. The most important document is the National Plan of Action for Human Rights presented to the Storting (Parliament) in 1999 under the title *Focus on Human Dignity*. The main purpose of this Plan is to ascertain how the Norwegian authorities can contribute towards ensuring the best possible protection of human rights now and in the future. The author notes that the economic and social rights did not get as full attention as the civil and political rights, and the right to food was only briefly mentioned. But the Human Rights Act of 1999, which *inter alia* made the economic and social rights part of Norwegian law through the incorporation of the ICECR, was passed as a result of the action plan for human rights.

It has been since been given a follow-up in various ways, especially in the Report no 19 (1999-2000) to the Storting regarding Norwegian National Food and Agricultural Policy

The Plan of Action for Human Rights also makes it clear that human rights may play a role in areas of Norwegian public administration which are not associated with the promotion of human rights. For instance, the Government is seeking to integrate human rights considerations in the fisheries administration's day-to-day policy and work. Similarly, the Government will continue to develop a national food and agricultural policy that is in line with the International Covenant on Economic, Social and Cultural Rights.

This is underlined in the Report no 19 (1999-2000) to the Storting regarding Norwegian National Food and Agricultural Policy, which refers to the ICESCR article 11. It states that food is a human right, and that Norway has a obvious duty to ensure food security for Norwegian citizens, keeping in mind the 3 levels of state obligations; respect, protect and fulfil, and refers to *General Comment nr 12* which was enclosed as a non-printed annex.

The report gives several examples showing a human rights approach to the agricultural policy. It states that a priority area is a consumer oriented agricultural policy, and emphasizes the connection between production and marketing of food, on one side, and nutrition and health on the other side. Norwegian agriculture shall contribute to assure the consumers a stable and

adequate food supply relating to quantity, quality, food safety, and a food production based on ethical and ecological sustainability. To secure the consumers healthy and safe food, the whole food chain shall be subject to quality and in-house control systems, regulations and inspections within the framework of international agreements and in compliance with the precautionary principle. Since Norway is importing about 50% of its food supply, several of these principles apply also to the imported food.

In spite of the recognition of economic and social rights in general and the right to food in particular, there are many open questions to be addressed. The report gives a detailed response to nearly all the questions raised in the questionnaire.

The report provides a detailed overview of regulations relating to the state obligation to respect, protect and fulfil adequate food in the national legal system, organised in correspondence with the content of the right to food as set out in General Comment No. 12.

The author addresses under separate headings the obligation of states to ensure the availability of food in a quantity and quality (1) sufficient to satisfy the dietary needs of individuals, (2) free from adverse substances, and (3) acceptable within a given culture.

This raises the question whether these regulations are connected to the right to food. The author refers to the Proposition to the Odelsting (the relevant chamber of the Parliament) regarding the Act on Food Safety and Food Production (the Food Act) where it was stated:

“The term Food Security is closely connected to the Right to Food. Article 11 in the UN Covenant on Economic, Social and Cultural Rights states that every State party shall recognise the Right to Food as a Human Right. According to the Act relating to the strengthening of the status of human rights in Norwegian Law (the Human Rights Act). The Covenant has the force as Norwegian law.

“The basic content in the Right to Food, with the additional rights and obligations, is clarified in General Comment no. 12. This document states that the Right to Food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to food in a quantity and quality to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture”.

In Norway, the Proposition presenting a Bill for adoption by the Parliament is an important source for interpretation of the Act.

On the crucial question of the justiciability of economic and social rights including the right to food, the author observes that traditionally, the individual as such may not claim that his or her human rights are violated, by referring solely to the Conventions. It is through the incorporation into Norwegian law that the rights of the Conventions may have direct application for the individuals. But what is the situation now that the ICESCR is indeed incorporated?

Many of the rights of the CESCR are vague and imprecise, and are directed towards the Member State itself, as they put obligations on the States to follow up the rights through legislation and in the administration. This may be an obstacle for direct application for individuals.

In the Proposition to the Human Rights Act the question regarding the suitability of the incorporation of CESCR into Norwegian law was discussed. The Ministry of Justice concluded:

“During the consultative round arguments against the incorporation of the CESCR was pointed out. The arguments against it were related mainly to the vagueness of the Covenant, and that most of the articles were mainly suitable as objects clauses. An incorporation would therefore disturb the balance of power between the political elected authority and the judiciary authority.

“The Ministry would like to point out that despite the vagueness, the Covenant also contains articles which are directly applicable and may give legal base for individual rights. (...) Moreover, vagueness is common in Norwegian legislation. (...).

“The Ministry presumes that incorporation of the Human Rights Conventions into Norwegian Law neither should or will have any significant impact on the balance of power between the political elected authority and the judiciary authority. However, the Ministry believes that the judiciary authority will be less willing to set aside decisions made by the political elected authorities in cases where the legislation is extensive and vague with reference to the covenant.”

The Ministry also emphasized that within International Human Rights law, the CCPR and the CESCR make an indivisible union, and are considered equally important.

2.6 The Polish contribution, by Małgorzata Korzycka-Iwanow

University of Warsaw, Law and Administration Faculty
Summary by A. Oshaug (22 February 2005):

The report does not follow the outline of the questionnaire. The focus is solely on food safety, and throughout the report food safety seems to be understood as the same as food security, which is at variance with international terminology. At the end of the introduction, however, food security and food safety apparently is seen as two different issues, as they should, but this is not elaborated in the text itself.

There has not been a direct import into Polish legislation of the “right to adequate food” concept as contained in the Covenant on Economic, Social and Cultural Rights, nor of any equivalent. Nonetheless, one may claim that legislation in place in Poland creates grounds for implementation of “the right to food” both in the respect of food security as well as food safety. (p. 2)

Rights are often understood as equal to ownership and economic freedom (p. 2). There is no attempt to use the definition of food security from the World Food Summit in 1996, neither seems the General Comment 12 to have been taken into account, even if the main elements are included in the questionnaire. There is no attempt to consider what the different levels of obligations in Poland would be. The only level considered is protect, and then in relation to food safety and consumer protection.

As concerns consumers’ protection, the Constitution of the Republic of Poland defines such duties of public authority: “Public authorities shall protect consumers, customers, hirers or lessees against activities threatening their health, privacy and safety, as well as against dishonest market practices. The extent of such protection shall be specified by statute.” (Article 76). This provision clearly indicates the protection awarded consumers, including the consumers of food products, in respect of health but not only, citing protection against dishonest market practices, i.e. protecting the economic interest of consumers. (p. 3)

Since the author does not follow the structure of the questionnaire it is difficult to understand what the headlines (I, a, b, c etc) refers to. There might be a language problem.

The highlighted sentences under a) seems to be a conclusion. It states that the Polish Constitution does not provide for the right to adequate food. However it is argued that there are conditions built into the system for the implementation of this right. The use of terms like liberties, rights and obligations of persons and citizens are not followed up in relation to the right to adequate food nor are there any attempts to link it to the deliberations of the CG12 in the questionnaire introduction.

Most of the rest of the report is discussing the link of Polish law to European law, solely on food safety. Nutrition and unbalanced diets with impact on chronic diseases (which has a dramatic effect on health in Eastern Europe) are not mentioned. Thus the food adequacy part of the introduction to the questionnaire seems has not been considered.

In part II. Food Security again only food safety is considered (one footnote is mentioning diabetes but then related to the issue on information of special dietary requirements (footnote 10).

(c) The development of intellectual property in the context of food security, breeders rights are mentioned on page 8. That seemed to have led to a wider understanding then food safety, by stating that:

...sole breeder's rights are primarily intended to support biological development in agriculture, the protection awarded by law more and more often includes the commercial aspect. ... it should be highlighted that this legislation mostly supports the financially-strong private sector, gradually eradicating the rights of users, that is a large group of farmers, increasingly dependent on the suppliers of growing material. There is a concern that development of science, especially in the field of biotechnology, may transfer out from the intellectual centres in the public sector (universities, institutes) to centres which have strong economic standing (financially powerful business which has its own research bodies or which commissions research from academic institutions)... undoubtedly impacts on the implementation of the right to food, as the dependencies and interconnections described above do not, as a rule, serve the objective of filling the health-related and economic needs of consumers of foods obtained from new plant varieties, but rather look to the advantages of marketing novelties.

This is important and could be used as an example of a “food as a human right” challenge taken up by this author. A problem at the end of the report is that again the right of the consumers’ are seen only in the context of dangerous products (p 10).

3. Observations based on responses to the questionnaire for Commission I

Of the six national reports, only three (the report from Italy, Norway and in a somewhat different way the Dutch report) were organised on the basis of the questionnaire. The others chose a different outline. For this reason, a summary of the main elements of the reports were given above in section 2. An effort will nevertheless here be made to distill from the responses the implicit and explicit information relating to the main issues contained in the questionnaire. A problem in doing so would emerge if we were to distinguish precisely between laws and regulations which derive from the human right to adequate food, and those which have been adopted for other reasons but can still have some significance for the enjoyment of the right to food. The Dutch report is the most systematic in this regard in seeking to separate clearly between food-related law in general and laws relating to the right to food in particular.

The presentation here will be less systematic, due to the variations in approach taken by the contributors. For the same reason, it will at this stage be limited to only a few elements from the national reports; more details may be inserted following the discussions in the Commission.

For purposes of presentation, I have grouped the issues under a few main headings:

1. National foundation of the right to food:

Question group 1.A

Is your country a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR)?

How does your country report to the UN on the right to food?

All the six countries are parties to the Covenant. None of the reports provide details on what they report to the Committee on Economic, Social and Cultural Rights, in fulfilment of their reporting duties. Only Norway mentions briefly that it reports in accordance with the guidelines set by the Committee, but without informing of the content of the report given on the right to food. The national report on Italy, however, describes the active role played by the government of Italy in the promotion of the right to food at the international level. It has supported the initiatives related to clear up the content of the right to food, has established co-operation with the UN special rapporteur for the right to food, and it supported officially the drafting of guidelines for the implementation of the right to food. The Dutch report shows that the Dutch government, to the contrary, was reluctant to accept the preparation and adoption of the guidelines and has not shown support for General Comment 12.

Question group 1.B: Domestic implementation patterns

Does your country have a monistic or dualistic approach to international law?

Is the covenant implemented in national law? How is the ICESCR implemented? (Constitutional, Judicial and/ or Administrative). Does your country consider the rights in ICESCR just as equal as the civil and political rights?

Among the six countries, Norway has in principle a dualistic approach to international law (it does not form part of domestic law unless in one form or another being transformed or incorporated in domestic law) but significant modifications to the principle has been made, particularly with regard to human rights law. The main human rights conventions have by a special Act, however, been explicitly incorporated in Norwegian law with priority over other Norwegian law. This also included ICESCR.

It appears from the national reports that Argentina, France, Italy, the Netherlands, and Poland in principle have a monistic approach (international law is generally directly applicable in domestic law). In the Italian response the approach is described as "mixed", which is probably a more adequate description for several of the other countries: Not all provisions in international law are considered self-executing; some of them need to be transformed through some domestic acts into national law, when they appear to be addressed mainly to the government, not to provide subjective rights for individuals or non-state actors. Many of the rights in the ICESCR, including the right to food, are often to be treated in this way. This appears to be the case for Italy, the Netherlands, Poland; I understand the French report in the same way. This is closely related to the question whether these rights by themselves are justiciable, a point to which we return below. At the international level, the six states appear to support the principle of the indivisibility and interrelatedness of all human rights, but in practice there seems in several of the countries to be considerable differences in treatment, with greater attention to civil and political rights than to the economic, social and cultural rights. This seems clearly to be the case regarding the official position in the Netherlands, it emerges also from the report from Poland that civil and political rights have prominence. Norway has traditionally been a supporter of the equality of the two sets of rights; this appears also to be the case for Italy and for Argentina. The French position on this question is somewhat unclear from the report – it appears that the French tradition remains split between two conflicting traditions - the ultraliberal tradition, influenced by the 'laissez-faire' notion (which was

introduced by the French physiocrats) and subsequently picked up by Adam Smith (the Wealth of Nations). That tradition had a strong influence on the drafters of the 1789 French Declaration on the Rights of Man and the Citizen. The other tradition, with several roots in French history, surfaced in the Preamble of the 27th of October 1946 Constitution, which specifies that “*any human being who due to his age, physical or mental state, economic situation, is not able to work, has the right to obtain decent living means from the community. The guarantee of this right is ensured by the creation of public organizations in charge of social security*”(welfare). The 4th of October 1958 Constitution, currently applicable in France resumes the principles stated by the Preamble of the 1946 Constitution.

Question Group 1.C: Education and research

Does your country give education in the rights in ICESCR in general, and the right to food in particular? Are the rights in ICESCR in general, and the right to food in particular discussed in academic fora? Are the rights in ICESCR in general, and the right to food in particular discussed in other fora?

The material provided in the reports do not give a good basis for determining the relative balance of the two sets of rights in human rights education and research in the countries covered by the national reports, but the overall impression is that civil and political rights are given more attention than the economic, social and cultural. Some education and research specifically related to the right to food are reported in Argentina, Italy, the Netherlands and Norway.

2 ICESCR article 11 (1): national regulation relating to state obligation to respect, protect and fulfil adequate food in the national legal system: (ref. GC par. 8-13);

Question group 2. A:

The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, acceptable within a given cultures

In this area, it is difficult to make proper distinctions between food laws in general and laws deriving from the right to food in particular. What we should aim at, is to assess whether existing food laws and their implementing regulations are sufficient to secure the enjoyment of the right to food, even if their particular purposes may have been more specific or particular. It may be useful, in this connection, to refer to the recommendation made by the UN Committee on Economic, Social and Cultural Rights for the adoption of a framework law on the right to food: It might serve to create consistency and comprehensiveness in the widely scattered legislation in this area.

All countries have legislation aimed at protecting the rights of customers against unsafe food. It may be more or less comprehensive, and it would be desirable to examine whether it satisfies the right of everyone to the availability of food which is sufficient to satisfy the dietary needs, free from adverse substances, and acceptable within given cultures.

Food safety laws is an area of extensive activity by states. For some, this seems to be the main aspect which is associated with the right to food. In some places it is probably taken to be so self-evident that it is not seen in the perspective of the human right to adequate food.

Comparing the different approaches to food safety in the different countries would probably take us too long and lead us into considerable detail which is better covered in other contexts. Some highlights can be briefly mentioned, however.

The Norwegian Food Act's purpose, to protect human health, is mainly focused on securing safe food. It contains rules relating to labelling, most of which are based on the Act relating to Food Production and Food Safety (the Food Act). These rules *facilitate* the consumer's ability

to choose an adequate diet. The Food Act also gives the legal base to requirements on food content. In situations where the nutritional aspect is of vital importance, more detailed rules regarding labelling and also requirements relating to nutrient content. To fulfil access to food sufficient to satisfy the dietary needs of individuals, rules can be found in Regulation regarding quality in the nursing service based on the act relating to health service in the local government, and the act relating to social service. The Food Act relates also to the business operator's obligation to prevent hazards, inform, and take necessary action to reduce any risk for hazards. These obligations apply both to food business operators and operators dealing with agricultural inputs like feed, seed, fertilizers and pesticides. The Food Act also gives the legal base for further regulations regarding requirements on hygienic standards relating to all aspects of food production, from primary production to placing on the market. In addition, the Food Act prohibits the marketing of unsafe food, and feed, and gives legal base to prohibit unsafe agricultural inputs other than feed.

Furthermore, the Food Act gives the legal means to the regulatory authority to impose protective measures to prevent unsafe food. Consequently, the authority have the legal base to make the necessary decisions towards the business operators if the requirements are violated. The regulatory authority is also given the legal means to take action itself, if the business operators are unable or unwilling.

In the report from Italy, it is mentioned that at the beginning, food safety was considered exclusively in the frame of penal law and it was regulated by different sources of law: penal code, general legislation, and sector legislation. Later on laws sought to achieve other aims: to increase the value and to protect traditional products, protection of health and fair trade, to guarantee the hygiene and genuineness of food products. The relevant laws in this respect are described, including law n.283/1962 dealing with hygienic condition of production and sale of food stuff and beverage which lays down the criteria to be observed in the preparation of food stuff and beverage.

The EU has made rules which introduces the principle of self-control in the food production. This principle focus the attention on the process of production by adopting a preventive approach. Starting from the stocking of raw materials to retailers all the agents of chain production must conform with fixed behaviours. This reform, which will come in force starting from January 1st 2006, will make new Italian laws necessary to extend the principle of self-control to the primary production sector and to modify Italian set of rules on derogations.

Detailed information about food safety measures are given also in the reports from the other countries: Argentina, France, the Netherlands , and Poland.

There may also be some interesting contradictions between the requirements related to food safety, on the one hand, and food acceptable to the given culture, on the other. The national report concerning France provides the examples of sheep sacrifices on Aïd el Kebir Day, a Muslim practice which may be in conflict with EU food safety directives. Another example is the practice in some French regions of forced feeding of ducks and geese concerning production of "foie gras", a practice which is in conflict not with food safety but with EU directives for the protection of animals from unnecessary suffering. Other examples from different countries could undoubtedly be given to illustrate the need, which is traditional in all forms of law, to find the appropriate balance between conflicting concerns,

Question group 2.B: Regulations concerning the accessibility of such food (economic and physical)

This is the issue which has the greatest interest for poor people, but less so in Europe than in developing countries. According to General Comment 12, economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not

threatened or compromised. Economic accessibility applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food. Socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes.

Physical accessibility implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill. Thus, the cost of food for those who have to buy it must not be so high that they cannot cover their other basic needs; if they cannot, they need to be supported through special programmes. This, in turn, depends on the availability of sufficient social security schemes for those who fall outside the range of persons with an adequate source of income, and social safety nets during stages of economic transitions for groups of persons that temporarily see their sources of income disappear due to changes in the economy. The national reports provide some information on the scope and coverage of the social security systems, which generally are not seen to be linked specifically to the right to food but to the more general right to social security, as set out both in ICESCR Article 9, the European Social Charter and other instruments.

Bernard Mandeville, in the report on France, informs us that the French social security public system covers 6 fields: Disease insurance: entire or part insurance against disease, pregnancy, disability, death not connected to occupational activity; occupational hazards and occupational diseases insurance: entire or part insurance against disease, disability, death connected to occupational activity; old-age insurance: provide pension payments to persons who had practised an occupation; family allowances: entire or part insurance of family expenses relating to children, housing etc.; unemployment insurance: entire or part insurance of unpaid wages during unemployment periods; welfare support payments: financial support provided to individuals who are too weak to be able to face disability, age, disease, economic and social difficulties expenses, when other solidarity systems (social insurances or family support) are not sufficient or lacking.

French social security intends to be universal, as stated in the 1946 Constitution Preamble.

According to the French law maker, this social security system is a sufficient legal response, equivalent to an individual right to adequate food.

Of interest is also the information in the Italian report about the measure of the minimum income to participate to social life (so called "reddito minimo d'inserimento") for individuals living at the margin of society and who can not take care of themselves and their families because of psychic, physical, social causes, which was studied by the Commission for the analysis of macroeconomic consistencies for welfare expense set up by the Prime Minister Romano Prodi in 1996 and implemented under the name of "reddito minimo d'inseriment" in subsequent law.

Question group 2. C: Justiciability.

Does your country consider the right to food as a justifiable right? Is the right to food immediately applicable or is there any law in order to put this right into practice? Does your country have any enforcement mechanisms relating to the right to food? Can individuals bring any of the following cases to the court when:

- the food is insufficient to satisfy the dietary needs of individuals (ref. Lawsuit in Am. Against McDonalds for not warning against their unhealthy food)
- the food is not free from adverse substances (product liability)

- the food is not acceptable within a given culture (e.g. not labelling content like pork, GMO etc.)
- there is no means to get access to adequate food (physical or economic) (ref. Lawsuit in India)

Have there been any lawsuits concerning any of the abovementioned cases?

Have the results been connected to the right to food cf. ICESCR art. 11?

Reponses in the national reports:

Generally it emerges from the reports that the right to food is rarely treated as justiciable in itself. The situation in the Netherlands is particularly clear: The government of the Netherlands considers the right to food to be neither justiciable nor directly applicable, therefore it does not provide an enforcement mechanism.

The situation is less clear in other countries. In Norway, the ICESCR has been made Norwegian law, which means that it has to be dealt with by courts if an appropriate case is brought before it. It will depend very much on the way in which the case is constructed. It is still likely that the case will emerge under more specific national laws which in one way or another are relevant for the right to food, but which in themselves based on the right to food.

Some particular examples might be mentioned, however: In the Italian report it is stated that while the Italian legal system does not contemplate jurisdictional specific actions to protect the right to food, regarding food insufficiency decisions of courts have stated that basic and elementary living needs, clearly including food needs, are not adversely affected. According to a sentence passed by Pretura of Nardò regarding state of necessity, the one who steals, moved by strong need which cannot be postponed to feed and to treat his family, is not punishable. The French report provides an example of an old decision going in the same direction, but in a recent decision the outcome was different

Apart from this, there are a variety of ways in which cases can be brought when there are allegations of violations of food-relevant legislation. The most systematic presentation of the various ways in which such cases might emerge is given in the report concerning the Netherlands, to which I refer.

3 ICESCR article 11 (2): The right to be free from hunger

Question group 3.A. Emergency preparedness

How is the legal basis for emergency preparedness concerning the right to be free from hunger? Is it any other anchorage for the right to be free from hunger? (Administrative practice, action plans, policy documents etc.)

In the Norwegian report it is stated that in extraordinary emergency situations, an Act from 1956 on supply and preparedness measures gives a legal basis for the Norwegian Government to adopt the necessary decisions in order to secure and distribute supplies of all kind of goods. Furthermore, the Act gives a legal basis to strengthen and utilize the national production- and transport capacity. In a Report to the Storting (Parliament) on the Norwegian National Food and Agricultural Policy, this policy is specified as follows: *"Food security for all citizens now and in the future is a vital goal for the Government. To achieve this goal, it is important to provide for a vigorous agriculture system, a predictable and stable trade scheme, and a scheme for securing safe food"* The report states that the Ministry of Agriculture and Food is obliged to have a long-term policy for safeguarding national food security, covering the plans for civil preparedness. This includes maintaining a national food production and to conserve and protect soil for future generations.

Question group 3.B. International obligations

How is the right to food effected on your country's foreign policy? In trade? development aid? other international aspects?

Aspects of these issues have been covered in the reports on Italy, the Netherlands and Norway.

The Dutch foreign policy seems to show two different faces. On the one hand positions are taken in support of the right to food on the other hand the Netherlands are not willing to enter into binding obligations.

Dutch policies on human rights and development co-operation touch on the right to food. Human rights policy is a part of development co-operation policy. The latter focuses on poverty reduction. In this respect the Netherlands take the Millennium Development Goals (MDGs) as guideline. The Netherlands are convinced that eradication of poverty will contribute to the eradication of hunger, which is seen as an indicator of poverty. In bilateral development relations, the Netherlands opt for 'unbound' food aid. This is to say that, as far as possible, food is purchased locally. This approach is intended to stimulate the local economy and the local possibilities to generate an income. In the Dutch view food shortages usually are not caused by an absolute lack of food, but by a lack in means to purchase the food that is available. At the multilateral level, the Netherlands support initiatives to enhance food security by WHO, UNHCR and FAO. Here also the MDGs are leading.

In these respects, the Dutch policy is rather similar to Norway and largely also to Italy. With regard to the promotion to the advancement of the legal content of the right to food, the recognition of General Comment No. 12 and the Guidelines adopted under the FAO auspices, Italy and Norway actively supported the process while the Netherlands was reluctant. This had particularly strong significance since the Netherlands held the EU presidency during the negotiations and thereby was in a position to influence the drafting of the guidelines to weaken their legal significance.

4 Other aspects

Is the right to adequate food important for and how does it affect the conditions for

- the farmers
- the processing industry
- the distributive trade?

How is the right to food effecting on the area administration?

Are the farmers themselves responsible for food safety and security in any way according to national law?

It is generally recognised that food-related laws, particularly those dealing with food safety, has an impact on farmers, the processing industry and the distributive trade. Special sanitary practices have been regulated in particular sectors. Regulations concerning traceability have long been present. Farmers can be held liable under civil law for damages to person caused by wrong products. As stated in the report on the Netherlands, 'food safety law applies 'from farm to fork'. All food business operators are bound by it. In particular they have to organise their working mode according to the principles of HACCP or similar systems.