



**CEDR**

Comité européen de  
droit rural European  
Council for Rural Law  
Europäische Gesellschaft  
für Agrarrecht und das  
Recht des ländlichen  
Raums

**Congrès européen de droit rural – 18–21 septembre 2019  
Poznań (Pologne)**

**European Congress of Agricultural Law – 18–21 September 2019  
Poznań (Poland)**

**Europäischer Agrarrechtskongress – 18.-21. September 2019  
Posen (Polen)**

organisé sous la direction du C.E.D.R.

par l'Association Polonais de Droit Rural

organised under the direction of the C.E.D.R.

by the Polish Association for Rural Law

organisiert unter der Leitung des C.E.D.R.

durch die Polnische Gesellschaft für Agrarrecht

**Commission/Kommission I**

**Rapport national pour/National report/Landesbericht SLOVENIA.  
(état/country/Land)**

**Rapporteur/Berichterstatter (nom, titre, fonction/name, title, function/Name, Titel,  
Funktion) : Franci Avsec**

Veillez ommencer à la page 2 avec votre rapport.

Please start on page 2 with your report.

Beginnen Sie bitte auf Seite 2 mit Ihrem Bericht.

## Questionnaire

### A. – General Part

1.1. Does your country's constitution refer to food sovereignty directly or indirectly? If yes, in what regard? If no, has the need for modification ever occurred?

The notion and term of »food sovereignty« are as such currently included neither in the Slovenian Constitution nor legislation.

The theory of the agricultural law deals with this notion emphasizing that the food sovereignty is a concept developed by Via Campesina “and means the right of people to healthy and culturally appropriate food produced through socially just and ecologically sensitive methods« including the peoples' right »to participate in decision-making, and to define their own food and agriculture systems”.<sup>1</sup> Some authors add that there definitions of food sovereignty and a uniform conceptualization is still missing.<sup>2</sup>

However, this does not mean that the Slovenian Constitution does not refer to food sovereignty as such indirectly and directly at least partly.

First, the Slovenian Constitution dedicates Article 71 to the »protection of land« where the »special protection« is granted to »agricultural land« and this protection has to be »provided by the law« (Art. 71(2)).

The reasons for special protection of agricultural land lay in (1) relatively high scarcity and (2) fragmentation of the agricultural land as well as (3) high share of areas with limited possibilities for agricultural activity (86% of the total surface area).

Compared with other countries and the EU as a whole, several amounts of data show a relatively high scarcity of agricultural land in Slovenia. According to the 2013 census data, the share of utilised agricultural area in the total surface area of Slovenia was 23.5%, in the EU-28 as a whole 40.0%, while the arable land in Slovenia represented only 35.6% of the total utilised agricultural area, while it was 81.6% in neighbouring Hungary and 59.6 % in the EU-28 as a whole.<sup>3</sup>

Secondly, the Slovenian Constitution partly addresses the food sovereignty through the right to drinking water which became a constitutional guaranteed right through the Constitutional amendment amendment from 2016.

According to the food law, water is namely considered to be food if it is intended to be, or reasonably expected to be ingested by humans (Art. 2 Regulation 178/2002/EC).

The constitutionally granted right to drinking water is important from the stand-point of food sovereignty because several provisions aiming to protect drinking water and water supply against the privatisation are built in the Constitution:

- water resources are public good managed by the state,

---

<sup>1</sup> Anna G. Micara, International Law on Plant Genetic Resources for Food and Agriculture: Towards a New Balance? In: M. Alabrese, M. Brunori, S. Riolandi, A. Saba (ed.), Agricultural Law, Current Issues from a Global Perspective, Springer, Cham 2017, p. 77.

<sup>2</sup> Katarina Dirgasova and Jarmila Lazikova, Agricultural Land Ownership as Food Sovereignty: The Case of Slovakia. In: M. Alabrese, M. Brunori, S. Riolandi, A. Saba (ed.), Agricultural Law, Current Issues from a Global Perspective, Springer, Cham 2017, p. 367.

<sup>3</sup> Farm structure statistics, 2015.

- as a priority and in a sustainable manner, water resources have to be used to supply the population with drinking water and water for household use and in this respect shall not be a market commodity,

- the supply of the population with drinking water and water for household use is ensured by the state directly through self-governing local communities and on a not-for-profit basis (Art. 70a of the Slovenian Constitution).

1.2. Do your country's strategic documents or other legislation (acts, decrees, etc.) explicitly refer to food sovereignty?

Although strategic documents and other legislation, as said, do not explicitly mention the food sovereignty, the Resolution on strategic guidelines for the development of the Slovenian agriculture and food industry until 2020 – »Let's provide food for tomorrow«<sup>4</sup> explicitly defines food security as a determinant of the state political and economic sovereignty: „... providing food to the local population through the sustainable exploitation of domestic production resources, is a strategic decision of the Slovenian state, which also determines its political and economic sovereignty.“ (Sect. 4.1, paragraph 2).

---

<sup>4</sup> Resolucija o strateških usmeritvah razvoja slovenskega kmetijstva in živilstva do leta 2020 – »Zagotovimo.si hrano za jutri«, Uradni list RS, No. 25/2011.

1.3. Does the relevant legal practice of your country explicitly refer to food sovereignty (e.g. the practice of the Constitutional Court/higher courts or, of a special human rights commissioner/committee)?

In the practice of Constitutional Court, a term »food independence« which could be considered as a synonyme of »food sovereignty« has recently appeared in the footnote of a concurring opinion of a Constitutional Judge to the Decision in which the Constitutional Court deliberated another issue, namely the removal of illegally erected buildings and the right to respect for home. The court found that a statutory regulation which does not ensure prior judicial control of the proportionality of an interference with the right to respect for home entails an inadmissible interference with this right. In his concurring opinion, the Constitutional judge Prof. Rajko Knez weighed the protection of agricultural land and the right to respect for home in a case where a building is purposefully erected on the agricultural land. The Constitutional Judge explained the importance of the question in the footnote nr. 32: »I have particularly highlighted farmland because it constitutes the essence of *food independence*, and, since its establishment as an independent state, Slovenia has lost 100,000 hectares of fertile soil – i.e. one fourth of its farmland – due to unsound planning and illegal construction. As a consequence, over the last ten years, 16,000 small farms have perished – i.e. four farms per day. ...The loss of farmland has resulted in Slovenia having the lowest amount of farmland per capita (surpassed only by Finland; interestingly, we have the highest number of m<sup>2</sup> of shops per capita).«<sup>5</sup> (Italics added by F. A.).

2.1. Does your country's constitution refer to food security directly or indirectly? If yes, in what regard? If no, has the need for modification ever occurred?

According to the Declaration of the World Summit on Food Security from 2009<sup>6</sup> »[F]ood security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. The four pillars of food security are availability, access, utilization and stability. The nutritional dimension is integral to the concept of food security.«

The Slovenian Constitution directly, although not explicitly, refers to food security in Art. 71, which grants special legal protection to agricultural land, at least from the legislative operationalisation of this Constitutional provision. Namely, the Agricultural Act states as the first objective of agricultural policy a »*stable production of safe, quality and cheaper food, and ensuring food security and the highest degree of self-sufficiency*« (Art. 2).

---

<sup>5</sup> Rajko Knez, Concurring opinion of Judge Rajko Knez to the Decision U-I-64/14 from 12 October 2011. ECLI:ECLI:SI:USRS:2017:U.I.64.14

<http://odlocitve.us-rs.si/en/odlocitev/AN03862?q=food+independence&sort=date&order=desc>

<sup>6</sup> Declaration of the world summit on food security, Rome, 16-18 November 2009

[http://www.fao.org/fileadmin/templates/wsfs/Summit/Docs/Declaration/WSFS09\\_Draft\\_Declaration.pdf](http://www.fao.org/fileadmin/templates/wsfs/Summit/Docs/Declaration/WSFS09_Draft_Declaration.pdf)

2.2. Do your country's strategic documents or other legislation (acts, decrees, etc.) explicitly refer to food security?

The Resolution on strategic guidelines for development of the Slovenian agriculture and food industry until 2020 – »Let's provide food for tomorrow« from 2011 also places the food security on the first place among the objectives of agricultural policy (Sect. 4.2., paragraph 1).

According to the agricultural economists, it is difficult to evaluate the achievement of the food security goal, as the strategic documents do not clearly state exactly what the goal of a food security actually means. If food security is understood in a more lax sense, i.e. as an increase in domestic production and the exploitation of domestic sources, then it could be concluded that the goal has not been attained yet: agricultural production in most of the key agricultural sectors is stagnating, while the coverage of imports by exports is at a level of 50%. The reasons for this the situation appears to be caused by several factors: weak links and consequent stagnation in the efficiency of the value chains, real deficits due to the structural and topographical characteristics of farming and the system of knowledge creation and transfer in agriculture (AKIS) lagging behind. In order to improve the situation, the experts suggest strengthened partnerships between actors in food value chains and competitiveness, incentives for horizontal and vertical integration and consequent strengthening of agro-food chains.<sup>7</sup>

2.3. Does the relevant legal practice of your country explicitly refer to food security (e.g. the practice of the Constitutional Court/higher courts or, of a special human rights commissioner/committee)?

The Slovenian Court of Auditors published in 2013 a Revision report concerning the efficacy of protection of agricultural land as a condition for »the self-supply«<sup>8</sup> - the term could be understood as a synonyme for food security.

3.1. Does your country's constitution refer expressly to the right to food or any of its elements?

The Constitution of the Republic of Slovenia does not explicitly refer to the right to food but explicitly provides, since 2016, the right to drinking water (Art. 70a) which has been already described *supra*.

---

<sup>7</sup> Emil Erjavec, Tanja Šumrada, Luka Juvančič, Iлона Rac, Tomaž Cunder, Matej Bedrač, Marko Lovec, Vrednotenje slovenske kmetijske politike v obdobju 2015–2020 (Evaluation of the Slovenian agricultural policy from 2015-2020), Raziskovalna podpora za strateško načrtovanje po letu 2020. Ljubljana 2018, <https://www.program-podezelja.si/sl/knjiznica/287-vrednotenje-slovenske-kmetijske-politike-v-obdobju-2015-2020/file>

<sup>8</sup> Računsko sodišče Republike Slovenije, Revizijsko poročilo: Uspešnost varovanja kmetijskih zemljišč kot pogoj za samooskrbo. Ljubljana 2013.

[http://www.rs-rs.si/fileadmin/user\\_upload/revizija/295/KmetZemSP.pdf](http://www.rs-rs.si/fileadmin/user_upload/revizija/295/KmetZemSP.pdf)

3.2. Do your country's strategic documents or other legislation (acts, decrees, etc.) explicitly refer to the right to food?

In the Slovenian hierarchy of legal acts, the international treaties rank higher than legislation adopted by the National Assembly. According to the Article 153 of the Constitution, laws must be in conformity not only with the Constitution, but also with generally accepted principles of international law and with valid international treaties ratified by the National Assembly, whereas regulations and other general acts must also be in conformity with Constitution, international treaties and laws.

According to Article 8 of the Slovenian Constitution, ratified and published treaties are applied directly.

The International covenant on economic, social and cultural rights which is in force in Slovenia since 1 July 1992 recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties are obliged to take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent (Art. 14).

In this manner, the right to food is explicitly respected and guaranteed also in the Slovenian legal system.

4.1. Does your country have any international obligations on the right to food and the related right to water, or food security?

More than a decade ago, the Republic of Slovenia entered the circle of developed countries which, in accordance with the undertaken commitments within the United Nations, assume their share of responsibility by providing international development aid to reduce the gap between developed and underdeveloped countries and more coherent development in the world.

Through this transition, Slovenia had to take on internationally established standards on the allocation of official development assistance (ODA) to developing countries. It should take into account the relevant methodology and guidelines of the Organization for Economic Co-operation and Development (OECD).

In order to provide official development assistance, the Republic of Slovenia has recently adopted the new Act on International Development Cooperation and Humanitarian Aid<sup>9</sup> and the new Resolution on international development cooperation and humanitarian aid of the Republic of Slovenia<sup>10</sup>, where the international obligations of the Republic of Slovenia are confirmed.

The priorities mainly concern assistance to the countries of the Western Balkans, the European Neighborhood and Sub-Saharan Africa, focusing on the least developed countries, in the field of gender equality, the fight against climate change, sustainable management of natural and energy resources.

In 2017, Slovenia earmarked 67 million euros, which means 0.16 percent of GDP, for international development assistance. The commitment of the new EU member states is that this percentage will rise to 0.33 by 2030. Of this amount, 45 million went to the multilateral,

---

<sup>9</sup> Official Gazette of the Republic of Slovenia No. 30/2018, ZMRSHP.

<sup>10</sup> Official Gazette of the Republic of Slovenia No. 54/2017, ReMRSHP

ie to the EU budget, various UN funds and the like, and just over 20 million for bilateral assistance.<sup>11</sup>

4.2. Does international practice, e.g. that of the UN Committee on Economic, Social and Cultural Rights appear in the relevant legal practice of your country?

Yes. In 2017, the Slovenian Ombudsman referred to the position of the UN Committee on Economic, Social and Cultural Rights, written in General Comment No. 15 of 2002, according to which access to drinking water must be guaranteed at a reasonable distance from the home.<sup>12</sup>

## **B. – Special Part**

5.1. The VGGT is built upon the tight relationship between the “right to adequate food” and the “governance of tenure of land, fisheries and forests”. In the law of your country (either in the legislative acts and/or in legal practice), is there any reference to the relationship between the two phenomena? If yes, which elements of this relationship are highlighted?

The relationship between the right to adequate food on one hand and the governance of tenure of land on the other hand can be most obviously seen from the explicitly laid down objectives of the Agricultural Land Act and Agricultural Act. That means that all legal provisions and policy measures in the area of agricultural land policy and general agricultural policy are more or less related to and have impact on the realisation of the right to food.

The Agricultural Land Act enumerates three main objectives of its provisions:

- *preserving and improving the production potential and increasing the volume of agricultural land for food production;*
- sustainable management of fertile soil;
- conservation of the landscape and preservation and development of the countryside (Art. 1a, italics added).

The Agricultural Act pursues similar, but more in detail formulated objectives:

- *stable production of safe, quality and cheaper food, and ensuring food security and the highest degree of self-sufficiency;*
- preservation of the settlement and cultivation of the countryside and landscape;
- permanent preservation of the fertility of agricultural land;
- the protection of agricultural land against pollution and improper use, and the preservation and improvement of resources for sustainable food production;
- a permanent increase in the competitiveness of agriculture;
- ensuring a fair income level for agricultural holdings and
- the implementation of the principles of environmental protection and the conservation of nature and the conservation of genetic resources (Art. 2, italics added).

---

<sup>11</sup> Valentina Nakić, Razvojna pomoč usmerjena predvsem k ženskam, Delo, 6 March 2019.

<https://www.delo.si/novice/slovenija/razvojna-pomoc-usmerjena-predvsem-k-zenskam-157790.html>

<sup>12</sup> 23. Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2017. Ljubljana, marec 2018.  
[http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP\\_2017\\_-\\_za\\_splet.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2017_-_za_splet.pdf)

It is interesting and not coincidental that both acts place the food production or food security on the first place.

5.2. Does the VGGT contain guidelines which could be relevant for your country for instance with regard to international, EU or national legislation or national legal practice? If yes, which VGGT guidelines bear such relevance?

Yes. For instance, a proposal to deregulate agricultural lease has recently emerged in Slovenia. Because the nature of lease of agricultural land requires certain protective provisions, protecting, for instance, the agricultural land from over-exploitation, such measure could infringe on or extinguish the tenure rights of the current and future tenants (see, for instance, Sect. 7.3 of the Guidelines).

5.3. Nominally, the VGGT was based upon the concept of food security, but several elements of the concept of food sovereignty are also apparent. Would you consider it to be important – with regard to the land policy of your own country – that the VGGT move explicitly in the direction of food sovereignty? If yes, how would you improve the VGGT?

Although the VGGT emphasize that »no tenure right, including private ownership, is absolute« and that »tenure rights are also balanced by duties and that »all should respect the long-term protection and sustainable use of land, fisheries and forests«, the sustainable use of agricultural land presupposes efficient protection of production potential from the quantitative and quality point of view. The duties of the states and other stakeholders in this regard are not tackled to the extent that seems to be necessary.

6. For EU-Member States: Do you support the initiative of the European Parliament represented in Point 28 of EP 2017, according to which the European Parliament suggests that the Commission adopt recommendations on EU land governance based on the VGGT? In your opinion, what shall such a recommendation contain?

Such a recommendation could contain best practices regarding the protection of agricultural land and preserving its productive potential (measures against water and wind erosion, pollution and degradation) through spatial planning, use, legal transfer of tenure rights and official monitoring.

## Summary

Although the legislation and strategic documents on agricultural and food policy in Slovenia do not mention food sovereignty, the Slovenian Constitution tackles this notion indirectly through constitutionally granted *special* legal protection of *agricultural land* (Art. 71(2)) and the right to drinking water (Art. 70a), which became an explicitly granted constitutional right in 2016.

The reasons for constitutional special protection of agricultural land lay in (1) relatively high scarcity and (2) fragmentation of the agricultural land as well as (3) high share of areas with limited possibilities for agricultural activity (86% of the total surface area).

Compared with other countries and the EU as a whole, several data show a relatively high scarcity of agricultural land in Slovenia. According to the 2013 census data, the share of utilised agricultural area in the total surface area of Slovenia was 23.5%, in the EU-28 as a whole 40.0%, while the arable land in Slovenia represented only 35.6% of the total utilised agricultural area, while it was 81.6% in neighbouring Hungary and 59.6 % in the EU-28 as a whole.

The constitutionally granted right to drinking water is important from the stand-point of food sovereignty. On one hand, the water is, insofar as it is intended or reasonably expected to be ingested by humans, considered to be food. On the other hand, several provisions aiming to protect drinking water and drinking water supply against the privatisation were built in the Constitution through its amendment from 2016.

According to the Resolution on strategic guidelines for development of the Slovenian agriculture and food industry until 2020 – »Let's provide food for tomorrow« from 2011 food security is considered to determine of the state political and economic sovereignty: „... *providing food to the local population through the sustainable exploitation of domestic production resources, is a strategic decision of the Slovenian state, which also determines its political and economic sovereignty.*“ (Sect. 4.1, paragraph 2).

*Food security* is directly, although not explicitly, referred to by the constitutional provision on special legal protection of agricultural land (Art. 71(2)), at least as far as the legislative operationalization of this constitutional norm is concerned. The Agriculture Act, namely, states that the first objective of agricultural policy »*a stable production of safe, quality and cheaper food, ensuring food security and the highest degree of self-sufficiency*« (Art. 2).

According to the agricultural economists, it is difficult to evaluate the achievement of the food security goal, as the strategic documents do not clearly state exactly what the goal of a food security actually means. If food security is understood in a more lax sense, i.e. as an increase in domestic production and the exploitation of domestic sources, then it could be concluded that the goal has not been attained yet: agricultural production in most of the key agricultural sectors is stagnating, while the coverage of imports by exports is at a level of 50%.

More than a decade ago, the Republic of Slovenia entered the circle of developed countries which, in accordance with the undertaken commitments within the United Nations, assume their share of responsibility by providing international development aid to reduce the gap between developed and underdeveloped countries and more coherent development in the world.

In order to provide official development assistance, the Republic of Slovenia has recently adopted the new Act on International Development Cooperation and Humanitarian Aid and the new Resolution on international development cooperation and humanitarian aid of the Republic of Slovenia, where the international obligations of the Republic of Slovenia in this area are confirmed.