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Commission/Kommission I

**Rapport national pour/National report/Landesbericht: SPAIN
(état/country/Land)**

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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 concept of food sovereignty was primarily coined by members of *Via Campesina* in 1996 and widely spread since then during the World Food Summit. Coming into force on the 29th of December 1978 and only amended twice as far as June 2019¹, Spanish Constitution does not refer to the concept of food sovereignty, neither directly nor indirectly.

The need for this concept inclusion at constitutional level has never been considered in Spain. Due to its entry into force moment, in 1978, and its little relevance amendments, Spanish Constitution is more linked to concepts already developed in the late seventies, such as green revolution², rather than cutting-edge concepts currently putted into the firing line of the legal debate, such as food security or, mainly, food sovereignty.

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

Notwithstanding its newly widespread acknowledgement, there are a handful mentions to food sovereignty in Spanish strategic documents and institutions.

¹ Spanish Constitution 1978 has been amended twice:

- the first amendment was held on 27th August 1992, triggered by the Spanish newly UE membership, in order to modified article 13.2 regarding the addition of the right to be elected in municipal elections in cases established by treaty or by law, in accordance with the principle of reciprocity. Amendment document available on: <https://www.boe.es/buscar/doc.php?id=BOE-A-1992-20403>

- the second Spanish Constitution 1978 amendment, also triggered by UE affairs, was inextricably linked to the need to fit Spanish’s budgetary stability to the European Economic and Monetary Union requirements of this regard. Amendment document available on: <https://www.boe.es/buscar/doc.php?id=BOE-A-2011-15210>

² MCMICHAEL, Philip, 2009. “A food regimen genealogy”, *The Journal of Peasant Studies*, vol. 36, n° 1, p. 141.

As far as national issues is concerned, there is only one legislative act directly referring to food sovereignty: the Spanish Royal Decree 199/2017, approved on the 3 March 2017, regarding the Regulation of National Program for the Conservation and Sustainable Used of Plant Genetic Resources for Agriculture and Food (*Real Decreto 199/2017, de 3 de marzo, por el que se aprueba el Reglamento del Programa Nacional de Conservación y Utilización Sostenible de los Recursos Fitogenéticos para la Agricultura y la Alimentación*)³. On its Single Interim Provision, it is stated that the main aim of the National Program for the Conservation and Sustainable Used of Plant Genetic Resources for Agriculture and Food is conservation and sustainable use of genetic resources for agriculture and food as a basis for sovereignty and food security.

Another legislative act at national level is referred to food sovereignty but in an indirect way. The Ministerial Order ARM/3367/2010, approved December 22th 2010, that establishes the organization of the National Rural Network (*ARM/3367/2010, de 22 de diciembre, que establece la organización de la Red Rural Nacional*) in its Preamble sets forth that, clearly, most of the Spanish territory is still a scenario of rural nature that mainly concentrates both, the primary productive activity and, consequentially, the Spanish capacity to ensure independence and food sovereignty⁴.

At regional level it is found the most plentiful quantity of mentions as to concept of food sovereignty is concerned⁵. The most relevant ones are summarized below.

“Island Council of Gran Canaria” (*Cabildo Insular de Gran Canaria*) has an office called “Primary Sector and Food Sovereignty Office” (*Consejería de Sector Primario y Soberanía Alimentaria*). Island Council is an insular administrative authority that now exclusively exists in Canary Islands (Spain).

³ A Royal Decree is a legal norm in the Spanish Legal System that is approved by the National Executive Power (*el Gobierno de la Nación*) by virtue of its legal competences given by the Spanish Constitution.

Hierarchically speaking, due to its approval by the Executive National Power, not by the Legislative one, a Royal Decree has a position in the normative pyramid one step after primary legislation, regulations having the force of Law or that are ranked as Laws (three different ways to translate the Spanish concept of *normas con rango de Ley*), and one step previously than Ministerial Order (*Orden Ministerial*).

⁴ In this case, the previous clarification applies.

⁵ In the Spanish’s distribution of competences system, both the State and the Regions (*Comunidades Autónomas*, which is the first-level political and administrative division in Spain, after the State) have power to act and legislate. The distribution of competences is mainly set in articles 148 and 149 of the Spanish Constitution.

There are seven Island Councils, each governing one of the seven main islands of the archipelago⁶.

Another mention to the concept of food sovereignty is done by Zaragoza Council (*Ayuntamiento de Zaragoza*, a Spanish city). In its “Ordinance regulating the use and management of «Huerta de Zaragoza» brand” (*Ordenanza reguladora del uso y gestión de la marca huerta de Zaragoza*), that came into force on the 29 June 2017, creates a Food Sovereignty Commission, being the responsible body for channeling participation processes of all economic sectors involved and interested in the use of «Huerta de Zaragoza» brand.

Finally, the Agrarian Law of the Balearic Islands 2/2019, approved on the 31 January 2019 (*Ley 3/2019, de 31 de enero, Agraria de las Islas Baleares*)⁷ offers a definition of the concept of food sovereignty in its article 5, which is in line with the international notion: agricultural and food policy that respects peoples right to define their own sustainable strategies for the production, distribution and consumption of food, that guarantees access to food for the entire population. Food sovereignty also respects the own culture, the commercialization and management forms of spaces that belongs to local peasantry and fishermen. In all of this, woman plays a fundamental roll.

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)?

Despite its relatively large presence in terms of strategic documents and institutions, legal practice in Spain does not usually explicitly refer to food sovereignty. Since this notion encompasses, apart from its main direct meaning, «the right of peoples to culturally appropriate food» –meaning the right to have food that fits with the cultural background of the people consuming it–, the world-wide relevance of *Spanish cuisine*, as part of the Mediterranean diet, leads to the fact that Spain is a cutting-edge trendsetter in the field of gastronomy.

⁶ Hierarchically speaking, Island Council is an administrative authority that exercises a level of authority between Autonomous Community (*Comunidad Autónoma*, the first-level political and administrative division in Spain, after the State) and Local Council (*Ayuntamiento*, the basic and more citizen-linked level of Spanish administrative authorities). In almost all mainland of Spain, the power exercised by Island Council is exercised by a provincial deputation (*Diputación Provincial*, governing body of a province).

⁷ Balearic Islands is a Spanish Region (*Comunidad Autónoma*) comprised by islands part of the Balearic archipelago allocated in the Mediterranean Sea.

Notwithstanding the unavoidable influence of food patterns and trends globalization, this Spanish privilege situation makes it possible for Spain to determine to a greater extent than other Member States its food and agriculture systems.

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?

Tightly-knit to the notion of food sovereignty but in a more primitive stage, the concept of food security was coined roughly two decades before, during the first World Food Conference, which was held in Rome in 1974 under the auspices of the UN Food and Agriculture Organization (FAO).

Even though the notion of food security was born before than food sovereignty concept, and even took its legal form previously than the Spanish Constitution coming into force (1978), Spanish paramount legal text lacks of any notion of the concept of food security.

The closest Spanish Constitutional mention of food security can be found in article 45, first and second paragraph: «1. Everyone has the right to enjoy an environment suitable for personal development, as well as the duty to preserve it. 2. The public authorities shall safeguard rational use of all natural resources with a view to protecting and improving the quality of life and preserving and restoring the environment, by relying on essential collective solidarity».

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

First of all, it is necessary to clarify the problem triggered by the ambiguous meaning of the concept of food security when translated into Spanish. Food security is translated into Spanish as “*seguridad alimentaria*”, idiomatic expression which is the translation not only of food security but also of food safety⁸. This situation leads to the complexity (or even, the impossibility) of strategic documents and legislation search regarding food security or food safety.

⁸ This situation is not exclusively linked to the Spanish language. At least, Italian, French and Portuguese languages translate notions of food security and food safety with the same expression: *sicurezza alimentare* in Italian, *sécurité alimentaire* in French and in *segurança alimentar* in Portuguese.

In addition, being in a rather startup or growth phase and, consequently, having enjoyed a much less widespread that the notion of food safety, the concept of food security lacks of any references in Spain, neither in strategic documents nor in other legislative documents. All references done to the concept of “*seguridad alimentaria*” are done meaning food safety⁹.

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)?

As a consequence of the disregard of food security concept in Spanish Constitution, Spanish Constitutional Court (*Tribunal Constitucional*, commonly abridged as TC) has not issued any resolution taking into account this concept. In the same way, there is no special human rights commissioner/committee in Spain specially focused on food security.

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

Spanish Constitution does not offer any direct reference to any issue linked to food. Nevertheless, based on the idea of the interdependence, interrelationship and indivisibility of all human rights, it is partially accepted that the right to food is indirectly protected by the article 43, where it is stated that «The right to health protection is recognised», being part of the Spanish Constitution that rules the Governing Principles of Economic and Social Policy.

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

As stated, as the consequence of the absence of direct recognition and protection, right to food is only indirectly protected in Spain by virtue of the right to health protection.

As so, since 2014, Spain has been implementing the Operational Program of the European Aid Fund for the Most Disadvantaged Persons 2014-2020 (*Programa Operativo del Fondo de Ayuda Europea para las Personas*

⁹ For example, Law 2/2014, of Action and of the Foreign Service of the State (*Ley 2/2014, de 5 de marzo, de Acción y del Servicio Exterior del Estado*) stated in its article 2.2.e as goal of the Spanish Foreign Polity «The defense of the environment and the protection of biodiversity, the fight against climate change and the concern for food safety».

más Desfavorecidas 2014-2020, known as FEAD), which represents an important effort by the public authorities to deal with the food needs of certain sectors of the population. The Aid Fund, for which the European Commission provides 85% cofinancing, will allocate approximately 650 million € between 2014 and 2020 for the purchase and distribution of food through 6,000 non-profit agencies of different types throughout the national territory¹⁰.

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

Alongside with FAO (Food and Agriculture Organization of the United Nations), several Spanish institutions have been intensively working during the last two decades focus on the promotion and support of policies that guarantee the right to food, protect plant genetic resources and food security. These institutions are mainly the Ministry of Agriculture, Fisheries and Food (usually known as *MAGRAMA*) and the Spanish Agency for International Development Cooperation (AECID) under FAO's Associate Professional Officers Programme.

This fact shows that Spain is highly aware of the gaining relevance of all these issues. But, contrary to what it may seem at first sight, this raise awareness is not primarily linked to the Spanish necessities as to the food security and right to food as concerned. Contrary, it is linked to the pressing needs of three high-priority geographical areas, all of which are of the uppermost geopolitical importance for Spain: Latin America and the Caribbean, Near East and Northwest Africa and Sub-Saharan Africa. Already undertaken work on this regard is summarized on the document «Working to guarantee global food and nutrition security»¹¹.

From this statement it is possible to conclude that Spanish institutions regard that issues connected with both, food security and right to food are already resolved as to the Spanish population is concerned, notwithstanding its possible punctual existence.

Nevertheless, civil society does not totally argue with this diagnosis. It is seen in the proliferation of a wide range civil initiatives focused on the right

¹⁰ Available document on: <https://bit.ly/2XrbUZD> (date of reference: June 2019), which corresponds to the “Sixth periodic report of Spain, due in 2017, under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights”

¹¹ Available document on: <http://www.fao.org/3/ax467e/AX467E.pdf> (date of reference: June 2019).

to food. For example, the Observatory of Right to Food in Spain (*Observatorio del Derecho a la Alimentación en España*)¹², an academic forum which has as objectives to guarantee the right to adequate food and the promotion of multidisciplinary research initiatives that may influence public policies.

It is important to note that in the Spanish legal practice, concepts of food security and the right to food are usually taken as synonymous, which leads in the complexity to distinguish among initiatives that work on any of these issues.

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

Taking into account the usual equivalence in Spanish legal practice between concepts of food security and the right to food, together with the lack of references in the Spanish Constitution to neither both concepts, surprisingly, Spain has plenty of international obligations on the field of the right to water.

As part of the Normative Framework of Hydrological Planning, Spain agreed on the 30 November 1998 with Portugal the “Agreement on Cooperation for the protection and sustainable use of the waters of the Spanish-Portuguese Hydrographic Basins”, done "ad-referendum" in Albufeira¹³. «The purpose of this Convention is to define the framework of cooperation between the Parties for the protection of surface and groundwater and of the aquatic and terrestrial ecosystems directly dependent on them and for the sustainable use of the water resources of the river basins Miño, Limia, Duero, Tajo y Guadiana» (article 1).

Another important part of the current Normative Framework of Hydrological Planning of Spain is the “Administrative agreement between Spain and France on water management”¹⁴, signed in Toulouse on 15 February 2006. Based on this agreement, both signatories strive to carry out a sustainable and integrated management of the water courses that flow through the territories of the two countries.

Spain is part since the 8 June 2009 of the “Convention on the Law of the Non-Navigational Uses of International Watercourses”, adopted by the United Nations on 21 May 1997, which «applies to uses of international watercourses and of their waters for purposes other than navigation and to

¹² All information available on: <https://bit.ly/2Xh5jkt> (date of reference: June 2019).

¹³ All information available on: <https://bit.ly/2IEPX17> (date of reference: June 2019).

¹⁴ All information available on: <https://bit.ly/2WXaXc5> (date of reference: June 2019).

measures of protection, preservation and management related to the uses of those watercourses and their waters».

Although all of the above mentioned Conventions do not directly refer to the right to water, they do it in an indirect way since they regulate the uses of watercourses, from which the right to water can be accomplished.

This thorough and conscientious attention on the uses of watercourses has a simply reason. Spain is, alongside Portugal, the European country with the lowest average annual precipitation, according with the European Environment Agency¹⁵, which leads to frequent droughts and all kind of connected issues. On these grounds is why in Iberian countries questions related to water management are at the uppermost public importance.

As to the food security is concerned, on the 5 December 2014 (published on the 20 December)¹⁶ the Kingdom of Spain has issued an instrument of accession to the Council Decision of 13 November 2012, on the conclusion, on behalf of the European Union, of the Food Assistance Convention¹⁷. By being part of it, all signatures agree of the Food Assistance Convention agree on «The objectives of this Convention are to save lives, reduce hunger, improve food security, and improve the nutritional status of the most vulnerable populations» (article 1).

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?

International Covenant on Economic, Social and Cultural Rights was signed in 1976 and ratified in 1977 by Spain¹⁸. As stated in the “Sixth periodic report of Spain, due in 2017, under articles 16 and 17 of the International

¹⁵ All information available on: <https://bit.ly/2KwLyzd> (date of reference: June 2019).

Another figure that catches the attention is the one that shows the projected changes in water-limited crop yield in Europe, which means the expected changes in crop yields across Europe for the 2050s (compared with 1961–1990). The simulations include effects of changes in temperature, precipitation and CO₂ concentration on crop yields of three main crops assuming current irrigated area. Information available on: <https://bit.ly/2La5G9N> (date of reference: June 2019).

Once again, Spain, along with Portugal and part of Greece, are the countries where this projected changes in water-limited crop yield reach the highest decrease.

¹⁶ All information available on: <https://bit.ly/2KxXvVk> (date of reference: June 2019).

¹⁷ All information available on <https://bit.ly/2kCVsnE> (date of reference: June 2019). On this document, the Council approved on behalf on the Union the Food Assistance Convention.

¹⁸ All information available on: <https://bit.ly/2XrbUZD> (date of reference: June 2019).

Covenant on Economic, Social and Cultural Rights” (the last available annual report), the Convention has been invoked on numerous occasions before the Spanish national courts, both by the parties and by the judges themselves, as legal grounds for the defence and protection of the rights enshrined therein. The most usual Convention’s articles alleged are 10.2 (special protection to mothers before and after childbirth) and 13 (the right of everyone to education and liberty of parents to choose for their children schools).

As stated before, this sixth periodic report of Spain of the International Covenant on Economic, Social and Cultural Rights take into account the right to food on its title 18. This fact strengthens the conclusion that the right to food is a positive development from a human rights perspective, in particular in the field of Economic, Social and Cultural Rights.

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?

There is no reference to the relationship between the “right to adequate food” and the “governance of tenure of land, fisheries and forests” in the Spanish Law.

Indeed, this is only one reference to “governance of tenure of land, fisheries and forest” in the Law of Spain, but at regional level. The Law 5/5019, of 5 May, of agrarian structures of Valencia (*Ley 5/5019, de 25 de mayo, de estructuras agrarias de Valencia*)¹⁹ directly states that its content is consistent with the principle 3.1.2 of the VGGT regarding the States’ obligation to safeguard legitimate tenure rights against threats and infringements. Nevertheless, this Law does not consider any aspect of the right to adequate food neither to the broader right to food.

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?

One of the main objectives of the VGGT, listed in the first point of the document, is to «strengthen the capacities and operations of [...] organizations of farmers and small-scale producers, of fishers, and of forest users». This objective is tightly linked to the European agricultural production sector reality, as being highly fragmented. And, in the case of Spain, all statistics show that the fragmentation is especially alarming²⁰.

¹⁹ All information available on: <https://bit.ly/2IFAjCk> (date of reference: June 2019).

²⁰ As it is said in the preamble of the Law 12/2013, of 2 August, measures to improve the functioning of the food supply chain and in the State Plan for Associative Integration 2015-2020, of the Agricultural Ministry (*Ministerio de Agricultura, Alimentación y Medio Ambiente, Dirección General de la Industria Alimentaria. «Plan Estatal de Integración Asociativa 2015-2020»*, p. 3).

As an example, the average turnover in the whole agri-food cooperative sector in Spain is 6.7 million euros, while the average turnover of the 10 largest cooperatives in the European Union reaches 380 million euros.

So that, any measure suggested focused on tackling this question is utterly relevance for Spain, such as point 11.8: «Given the importance of small-scale producers for national food security and social stability, States should ensure that when facilitating market operations of tenure transactions, they protect the tenure rights of smallscale producers».

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?

As stated before, at least partially due to the world-wide relevance of *Spanish cuisine*, legal practice in Spain does not usually explicitly refer to food sovereignty, taking into account its meaning as the right of peoples to culturally appropriate food. Regarding the direct meaning of food sovereignty as the right of peoples to healthy [...] food produced through sustainable methods and their right to define their own food and agriculture systems, its possible explicit consideration in VGGT would not have significant relevance with regard to the improvement of land policy.

In accordance to that, I do not consider important or relevance to Spanish's needs that the VGGT move explicitly in the direction of food sovereignty.

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?

I fully support the initiative of the Euroepan Parliament regarding its suggestion to the Commission to adopt recommendations on EU land governance based on the VGGT.

This recommendation shall tries to revert the alarming situation in Europe regarding agricultural production sector fragmentation.