

Food sovereignty, food security and right to food

Silence from the Netherlands

Bernd van der Meulen¹ and Bart Wernaart²

Introduction

At the XXIII European Congress and Colloquium of Rural Law in Røros (Norway) 2005 Commission I addressed 'The right to adequate food'.³ General Rapporteur was prof. Asbjørn Eide (Norway). It seems fair to consider prof. Eide the founding father of legal thinking on the right to food.

The 2005 report from the Netherlands⁴ provides rich detail on background, law and policies in the Netherlands with is still relevant. The emerging picture was rather bleak.

In 2007 FAO dedicated the celebration of World Food Day (16th of October) to the Right to Food. In the Netherlands, this theme of the day was relabelled 'food or fuel'. The human rights perspective was largely ignored in the official celebration. Telling is an email one of the government's advisers wrote in this context, stating among others: "Otherwise I consider any opinion based on 'right' to be fundamentally wrong, whether this be the right to food or to fuel. Both, if taken seriously, boil down to a right to a minimum income. This right is recognised in the Netherlands, but we contribute towards the cost of this together through politics (financial basis) and we have a social fiscal number (administration). As a means to combat poverty and hunger worldwide it is for the present nonsensical and misleading. Apart from that in the past the right to food has been established a few times in connection with the UN without anyone taking it seriously."⁵

The official programme of the Netherlands on World Food Day 2007 triggered FIAN Netherlands and the chair group of Law and Governance at Wageningen University – in cooperation with the European Institute for Food Law – to organise a one-day conference during which the human rights approach was given centre stage. This alternative Dutch celebration of World Food Day was labelled 'World Hunger Day'. The discussions on this day resulted in an edited volume: Otto Hospes and Bernd van der Meulen (eds.) Fed up with the right to food? The Netherlands' policies and practices regarding the human right to adequate food.⁶ Again, the emerging picture was rather bleak.

¹ Prof. dr. B.M.J. van der Meulen (www.BerndvanderMeulen.eu) is food legal consultant at the European Institute for Food Law (www.food-law.nl), professor of EU Food Law at the University of Copenhagen (Denmark) (<https://ifro.ku.dk/english/staff/?id=662880&vis=medarbejder>) and at the University of Eastern Piedmont (Italy) and professor of Comparative Food Law at Renmin University of China School of law.

² Dr. Bart Wernaart (LL.M) is senior researcher & lecturer in law and ethics at Fontys University of Applied Sciences, Eindhoven. He is also a professional musician (drums & mallets), composer and conductor (<http://www.drwernaart.com/>).

³ See: <http://www.cedr.org/events/xxiii-european-congress-and-colloquium-of-rural-law/>.

⁴ B.M.J. Van Der Meulen and F.M.C. Vlemminx, The Netherlands: abundant in food, wanting in law http://www.cedr.org/wp-content/uploads/2019/04/CI_NED_EN-2.pdf.

⁵ Bernd van der Meulen (eds.) Fed up with the right to food? The Netherlands' policies and practices regarding the human right to adequate food, Wageningen Academic Publishers 2009, doi.org/10.3920/978-90-8686-674-8, p. 19.

⁶ Wageningen Academic Publishers 2009, doi.org/10.3920/978-90-8686-674-8.

The theme of Commission I of the 2019 CEDR congress provides us the opportunity to update the findings from the first decennium of this century. Unfortunately, not much seems to have changed in the Netherlands.

Human rights in the Netherlands

When the Netherlands had⁷ a ministerial directorate for human rights, it was a directorate at the Ministry of Foreign Affairs. This situation is illustrative of the fact that the Netherlands largely consider human rights in general and social, economic and cultural rights in particular not a domestic issue but an element of development cooperation and assessment of the quality of foreign governance structures.

The Constitution of the Kingdom of the Netherlands opens with a chapter on fundamental rights.⁸ Furthermore, the Netherlands is state party to most regional and international human rights treaties such as the European Convention on Human Rights and Fundamental Freedoms (ECHR), the European Social Charter (ESC), The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Treaty on the Rights of the Child (ICRC), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD).

The constitutional structure severely limits the possible impact of human rights in the Netherlands. First of all, the Constitution bars the judiciary from testing the constitutionality of Acts of Parliament.

Article 120

The constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts.

By consequence, only lower legislation and administrative actions can be voided for unconstitutionality.

As regards international treaties, the Constitution provides a system of restricted monism. The Dutch system is monistic in the sense that international treaties that meet certain conditions can be applied directly without any need of implementation. This monism is restricted in that only provisions fit for direct application can be invoked in a court of law.

Article 93

Provisions of treaties and of resolutions by international institutions which may be binding on all persons by virtue of their contents shall become binding after they have been published.

Article 94

Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties or of resolutions by international institutions that are binding on

⁷ Due to budget cuts, the directorate was integrated into other departments in 2011.

⁸ For a translation of the Constitution into English (and German, French and Spanish), see:

<https://www.government.nl/documents/reports/2019/02/28/the-constitution-of-the-kingdom-of-the-netherlands>.

all persons.

As a consequence of the monism, no systematic implementation of international treaties takes place. However, in the courts, recourse to international treaties is often unsuccessful as many provisions are considered unfit for direct application. Provisions that on the one hand are not recognised as fit for direct application and on the other hand are not implemented into national law, remain suspended in some kind of vacuum.

Food sovereignty

According to the Dictionary of Food Security,⁹ the concept of food sovereignty is opposed to liberal policies governing the production and trade in agricultural products. It “has been defined by Via Campesina as the right of peoples to define their own policies on food and agriculture, to protect and regulate production and domestic agricultural trade in order to achieve their sustainable development goals, to determine to what extent they wish to be independent and to restrict the dumping of products into their markets. These policies are said to be ecologically, socially, economically and culturally appropriate to their unique circumstances.”

In the discussions preceding the WTO Bali package, India demanded to allow exceptions for the purchase of foods from local producers to be used for distribution in a food security programme. India’s policies could be framed in terms of food sovereignty.¹⁰ Like most of the rest of the world, the Netherlands opposed but ultimately gave in to India’s demands.

The Netherlands generally favour trade liberalisation. The Netherlands is the second largest food exporter in the World after the USA, but ahead of France.¹¹ No endorsement of trade barriers favouring food sovereignty is to be found in the Netherlands.

- 1.1. The Constitution of the Kingdom of the Netherlands does not refer to food sovereignty directly or indirectly. No need for modification ever occurred.
- 1.2. The word ‘voedselsoevereiniteit’ does not appear in any official Dutch legal or political document.
- 1.3. In the official database of Dutch case law¹² the word does not appear. Even the Dutch ‘College voor de rechten van de mens’ (human rights board) does not mention this word in any of their official documents.

Food security

⁹ François Collart Dutilleul and Jean- Philippe Bugnicourt (eds.) Legal dictionary of food security in the world, Larcier 2013; Thomas Bréger and Frédéric Paré, Food Sovereignty (p. 182-187).

¹⁰ See on details regarding food security for indigenous people in India: Purabi Bose, India’s Right to Food Act: human rights for tribal communities’ forest food, chapter 3 in: Altinay Urazbaeva et al. The functional field of food law. Reconciling the market to human rights, Wageningen Academic Publishers 2019, p. 55-72.

¹¹ WRR Towards a Food Policy (Report no. 93, 2014)

<https://english.wrr.nl/publications/reports/2016/12/13/towards-a-food-policy, p. 19>. This includes substantial transit trade. The Netherlands is the 22nd producer in the world.

¹² Available at www.rechtspraak.nl.

The Netherlands suffered famine and food insecurity in the Second World War. This inspired Sicco Mansholt, when he was appointed Minister of Agriculture, Fisheries and Food Supply in 1945 to a policy aimed at 'never again hunger'. He had the opportunity to lift this policy to a European level when he became the First Commissioner for Agriculture of the EEC in 1958. He stayed on his post until 1978. His policy was based on production support through guaranteed intervention prices. The efforts to ensure food security in the Netherlands and in the EU were so successful that the topic disappeared from the political agenda.¹³

2.1 The Constitution of the Kingdom of the Netherlands does not refer to food security directly or indirectly.

Now climate change places it back there. Most future scenarios assume an average increase of temperature of at least 2°C by 2050 (compared to 2000).¹⁴ This may cause the Sahara Desert to cross the Mediterranean. Much of agricultural production in Southern Europe is likely to be lost, challenging food and water security.¹⁵

In 2015 the Netherlands' Scientific Council for Government Policy (Wetenschappelijke Raad voor het Regeringsbeleid – WRR) issued a report calling for the introduction of a food policy.¹⁶ The report points to the scarcity of essential raw materials, to the adverse effects of food production on the environment, the climate and biodiversity, to the consequences of these effects for food production itself, to problems associated with food security and public health, and to the vulnerability of the world food system as a whole. These issues are then grouped and discussed under three headings: (1) ecological sustainability, (2) public health, and (3) robustness. The WRR recalls that The Social and Economic Council¹⁷ of the Netherlands has advised the Dutch government to regard food security as a 'system responsibility'. The WRR observes: "The Netherlands does not have an institutionally embedded food policy that takes a comprehensive approach to the various policy objectives. Its food-related policies are a patchwork of objectives, measures and institutions that has developed over time and is derived from a range of policy domains: agriculture, trade, food safety, public health, environmental protection, and knowledge and innovation."

The WRR calls for such policy, but so far, the government has not taken the required initiatives.

We searched the database of Dutch legislation¹⁸ for the keyword 'food security'. There were twelve hits. All of these are ministerial regulations, mostly adopted on how to spend subsidies to contribute to food security in developing countries. These Regulations have no 'internal' focus, but an international focus.

¹³ Rather surpluses became a problem to deal with.

¹⁴ See for example JRC foresight study 'Delivering on EU food safety and nutrition in 2050 - future challenges and policy preparedness' 2016 <https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/delivering-eu-food-safety-and-nutrition-2050-future-challenges-and-policy-preparedness>.

¹⁵ According to a very recent report (September 2019) of the European Environment Agency, however, food security is not under threat: EEA Climate change adaptation in the agriculture sector in Europe, EEA Report No 04/2019, <https://www.eea.europa.eu/publications/cc-adaptation-agriculture>.

¹⁶ WRR Towards a Food Policy (Report no. 93, 2014)

<https://english.wrr.nl/publications/reports/2016/12/13/towards-a-food-policy>.

¹⁷ Sociaal-Economische Raad (2008) Waarden van de Landbouw, The Hague: SER.

¹⁸ See (in Dutch): <https://wetten.overheid.nl/>.

2.2. Dutch regulations explicitly referring to 'food security' address situations in Third World countries, not domestically.

We also searched the database of Dutch case law for the keyword 'food security'. There was just one hit.¹⁹ In the ruling at issue – a case on the dismissal of a civil servant – the word was used only to describe the specialisation of the civil servant at issue. The ruling did not deal with the issue of food security.

2.3. Case law in the Netherlands does not explicitly refer to food security.

The right to food

The authors of the present report see the right to food as the individual and subjective legal dimension of food security. For this reason, we would like to amend the definition proposed in General Comment nr. 12.²⁰ According to this General Comment at 6: "The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement." This definition is directly derived from the definition of food security proposed in the first World Food Summit.²¹

In our view, the subjective and legal characteristic of the right to food is at issue if and when an individual or group can successfully uphold an *entitlement* to (access to) food or to means to its procurement. In this line of thinking the right to food may be realised for some and not for others. While mere access to food (including charity) will do for food security, in our view the right to food is only realised if this access is recognised and protected under the law.²²

The Dutch Constitution does not recognise food as a human right. What the Constitution does do, is lay the foundation for a social security system.

Article 20

1. It shall be the concern of the authorities to secure the means of subsistence of the population and to achieve the distribution of wealth.
2. Rules concerning entitlement to social security shall be laid down by Act of Parliament.
3. Dutch nationals resident in the Netherlands who are unable to provide for themselves shall have a right, to be regulated by Act of Parliament, to aid from the authorities.

¹⁹ ECLI:NL:CRVB:2010:BL8537.

²⁰ E/C.12/1999/5, 12 May 1999, CESCR, General Comment 12, Right to Adequate Food, Section 6.

²¹ Rome declaration on world food security and plan of action, 13 November 1996, Article 1.

²² A similar approach was advocated by various special rapporteurs on the right to food, most notably in: E/CN.4/2002/53, 10 January 2002, Report of the Special Rapporteur on the right to food, section 29-71, and more recently A/HRC/28/65, 12 January 2014, Report of the Special Rapporteur on the right to food, Hilal Elver, Access to justice and the right to food: the way forward, in particular section IV A. See also: George Kent, The silence of the rights holders, chapter 1 in: Altinay Urazbaeva et al. The functional field of food law. Reconciling the market to human rights, Wageningen Academic Publishers 2019, p. 27-39 and George Kent, Global Obligations for the right to food, Rowman & Littlefield, 2008.

This provision, and its implementing legislation, may come close to providing entitlements to means to the procurement of food. Experience of the food banks (among others) show that the financial nature of the chosen structure, in individual cases may run against realisation of the right to food. At the moment of writing (late Summer 2019) 169 food banks in the Netherlands provide support to some 140.000 people each week.²³ Such situations where despite social security people go hungry include financial debts, bureaucratic illiteracy and – of course – cracks in social security system.

3.1. The Constitution of the Kingdom of the Netherlands does not refer expressly to the right to food. Arguably it refers implicitly to a right to be provided by legislation the means of its procurement.

In various Explanatory Memoranda to Bills for the ratification of international human rights treaties recognizing the right to food, the Dutch Government has expressed the view that the National law system already sufficiently complies with these treaties. These treaties include The International Covenant on Economic, Social and Cultural Rights (Article 11),²⁴ the International Convention on the Rights of the Child (Article 27),²⁵ the Convention on the Elimination of all Forms of Discrimination Against Women (Article 12),²⁶ and the Convention on the Rights of Persons with Disabilities.²⁷

Furthermore, the Dutch Government expressed its view on the Dutch compliance with the right to food in various periodic reports on the implementation of these treaties.²⁸

Both in the explanatory memoranda and in the country reports this position is substantiated through reference to existing social security legislation.

In the international arena, the Netherlands endorsed the right to drinking water as human right. In an address to the UN Human Rights Council on 3 March 2008²⁹ the Dutch Minister of Foreign Affairs, Maxim Verhagen, boldly stated: “For people to live their lives in dignity, it is important to fulfil not only their civil and political rights, but also their economic, social and cultural rights. President Roosevelt rightly included ‘freedom from want’ among his famous four freedoms. In that sense I am proud to announce here today that the Netherlands will join the group of countries who have recognised the right to water as a human right.” In the interpretation³⁰ of Green Cross International: “Verhagen called on the Human Rights Council to make haste in reaching consensus on the right to water. He said that recognising the right to water as a human right would not solve the pressing issue of illness and high mortality rates, but was certain that it would be a powerful incentive to increase access to water for the poor. With the recognition of the right to water as a human right, the Netherlands will be able to point out to governments of developing countries that they must do everything in their power to fulfil their people’s right to water.”³¹

²³ See (in Dutch): <https://www.voedselbankennederland.nl/>.

²⁴ Parliamentary Documents, II 1975-1976 13932 (R1037), no 3, pp. 50-51.

²⁵ Parliamentary Documents, II, 1992-1993 (R1451), no. 3, pp. 55-56.

²⁶ Parliamentary Documents, II, 1984-1985, 18950 (R1281), no. 3. P. 26.

²⁷ Parliamentary Documents, II, 2013-2014, 33 992 (R2034), nr. 3, p. 86.

²⁸ See for instance: E/1994/104/Add.30 (2005), section 329-343; and E/C.12/NLD/4-5 (2009), section 219-232.

²⁹ See: <https://zoek.officielebekendmakingen.nl/kst-31263-6-b1.pdf>.

³⁰ It is not immediately apparent from the wording of the speech as it has been published.

³¹ See: <https://www.gcint.org/blog/2012/03/14/human-rights-the-netherlands-officially-recognises-the-right-to-water/>.

Again, we notice a human rights' focus on the international relation to Third World countries, rather than domestically – although, truth be told, he ended his speech by asking for feedback on the next Dutch periodical report.

3.2 In rare situations documents related to legislation make explicit reference to the right to food. This is mainly the case in explanatory memoranda to Bills for Acts ratifying Human Rights treaties. The gist of the reference is that no implementation beyond social security is required.

The Minister's speech did have an effect domestically. The justice of the peace ('kantonrechter') located in Heerlen made reference to it in a ruling prohibiting to cut off from water supply a family that had failed to pay their water bills.³² This was one of the very rare instances where in the Netherlands the right to food has been directly applied. This moment of glory has been short-lived. The ruling was overturned in appeal.³³

In the Netherlands, the right to food as embedded in international treaties generally is considered not to be directly applicable. Examples of court cases in which this position was affirmed are:

- Central Court of Appeals: 25 May 2004, ECLI:NL:CRVB:2004:AP0561; 1 November 2005, ECLI:NL:CRVB:2005:AU5600; 26 January 2010, ECLI:NL:CRVB:2010:BL1686 ; 2 November 2010, ECLI:NL:CRVB:2010:BO3025; 9 February 2011, ECLI:NL:CRVB:2011:BP6172; 14 March 2011, ECLI:NL:CRVB:2011:BP6843.
- Council of State: 19 April 2007, ECLI:NL:RVS:2007:BA4289.
- District Court Midden Nederland, 4 October 2013, ECLI:NL:RBMNE:2013:4752
- District Court of 's-Gravenhage, 30 August 2000, ECLI:NL:RBSGR:2000:AA6959; 23 January 2006, ECLI:NL:RBSGR:2006:AV0548; 23 February 2017, ECLI:NL:RBDHA:2017:1613
- District Court of Arnhem, 25 May 2007, ECLI:NL:RBARN:2007:BA6562.
- District Court of Rotterdam, 19 September 2007, ECLI:NL:RBARN:2007:BA6562; 24 December 2007, ECLI:NL:RBROT:2007:BC0852.
- District Court Haarlem 8 April 2008 ECLI:NL:RBHAA:2008:BD3399.
- District Court of Amsterdam: 4 August 1999, ECLI:NL:RBAMS:1999:AA4043; 13 March 2001, ECLI:NL:RBAMS:2001:AB0942, 13 April 2017, ECLI:NL:RBAMS:2017:1553.

In this case law, the courts normally reject direct applicability of the invoked treaty provisions referring to previous case law in a short 'business as usual'-type of consideration offering no further explanation. However, in the limited cases where the courts do offer a further motivation of this rejection, they seem to rely on interpretations of treaty provisions by the government in explanatory memoranda to Bills for ratification of human rights treaties.³⁴ Often, the government explicitly takes the position that the provisions at issue are not directly applicable.³⁵

³² District Court of Maastricht (section Heerlen), 25 June 2008, ECLI:NL:RBMAA:2008:BD5759.

³³ Court of Appeal 's-Hertogenbosch, 2 February 2010, ECLI:NL:GHSHE:2010:BL6583. On this issue see (in Dutch): Bernd van der Meulen, *Respect voor de rechter met de rechte rug*, VAR Lex Michiels column 2011, <https://verenigingbestuursrecht.nl/2011/10/respect-voor-de-rechter-met-de-rechte-rug/>. (Bart Wernaart turned this column into a scientific publication (Nederlands Tijdschrift voor Bestuursrecht (8) 2015, p. 262-264.

³⁴ This is especially done in the Central Court of Appeal verdicts of 25 May 2004, ECLI:NL:CRVB:2004:AP0561; 1 November 2005, ECLI:NL:CRVB:2005:AU5600; 26 January 2010, ECLI:NL:CRVB:2010:BL1686 ; 2 November 2010, ECLI:NL:CRVB:2010:BO3025, 14 March 2011, ECLI:NL:CRVB:2011:BP6843.

³⁵ Examples of Parliamentary History in which direct effect was denied in case of ECOSOC rights are: ICESCR: Parliamentary Documents, II 1975-1976 13932 (R 1037), nr. 3, p. 13; ESC: Parliamentary Documents, II 1965-

Sometimes, the right to food is used as an interpretative norm. This is only done in the context of Article 27 ICRC. The court does not directly review administrative decisions or statutory provisions against the treaty provision, but uses it as an indirect source of interpretation of national law.³⁶

The Netherlands are state party to most international and European human rights treaties. As indicated above, the right to food is included in the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Article 11), the International Convention on the Rights of the Child (ICRC) (Article 27), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (Article 12), and the Convention on the Rights of Persons with Disabilities (Article 28) (CRPD).

4.1. The Netherlands have international obligations on the right to food and the related right to water through ICESCR, ICRC, CEDAW and CRPD.

As indicated above, these provisions are not considered directly applicable in the Dutch legal order because they are not considered to be binding on all persons. The courts heavily rely on the position taken by the government at the time of ratification.³⁷ The courts are usually not swayed by developments in interpretation at UN level such as apparent from the General Comments. In a 2007 case, the Central Court of Appeals even refers to General Comment 12 of the CESCR to support a denial of the direct effect of Articles 9, 11 and 13 ICESCR.³⁸ In one case the Supreme Court makes reference to positions taken by the European Committee of Social Rights and the Committee of Ministers in the context of the European Social Charter, in support of its finding that the State bears responsibility to safeguard rights and interests of minors on its territory, including minors without legal title of residence.³⁹

4.2. International practice, e.g. that of the UN Committee on Economic, Social and Cultural Rights does hardly ever appear in the relevant legal practice of the Netherlands.

Land use policy

The Netherlands is a small and densely populated country. It has an important agricultural economy focussing on quality and added value.

1966, 8606 (R 533), nr. 3, p. 2; CEDAW: Parliamentary Documents, II 1984-1985, 18950 (R 1281), nr. 3, p. 7; ICRC: Parliamentary Documents, II 1992-1993, 22855 (R1451), nr. 6, p. 9; CRPD: Parliamentary Documents, II, 2013-2014, 33 992 (R2034), nr. 3, section 6a.

³⁶ Examples are: judgement of 29 August 2002, District Court of 's-Gravenhage, ECLI:NL:RBSGR:2002:AF2534; Judgements of 17 February 2003 and 19 March 2003, District Court of Zwolle, ECLI:NL:RBZWO:2003:AF4890, ECLI:NL:RBZWO:2003:AF6351 and ECLI:NL:RBZWO:2003:AF6354; Supreme Court, 21 September 2012, ECLI:NL:HR:2012:BW5328.

³⁷ For an analysis of the position of the courts, Bart Wernaart and Bernd van der Meulen, The Right to Food in International Law with Case Studies from the Netherlands and Belgium, chapter 4, in: Gabriela Steier & Kiran K. Patel, International Food Law and Policy, Springer, 2016, p. 67-99; Marca van Dijk and Bart Wernaart, The right to food and *trias politica*: a Dutch reflection, chapter 4 in: Altinay Urazbaeva et al. The functional field of food law. Reconciling the market to human rights, Wageningen Academic Publishers 2019, p. 73-85.

³⁸ Central Court of Appeal, 11 October 2007, ECLI:NL:CRVB:2007:BB5687.

³⁹ Supreme Court of the Kingdom of the Netherlands, 21 September 2012, State v. [Mother and three minor children] ECLI:NL:HR:2012:BW5328.

Policies on property are limited. Tax facilities exist for transfer of agricultural land within the family. These facilities are lost when agricultural use is terminated, or the land is sold commercially. The position of lessors of agricultural land is more protected than the position of lessors of other land.

Spatial planning is intensive aiming to strike a balance between all interests involved. For building on land or changing its economic use, permits are required.

At the time of writing CO₂ emissions are a matter of grave concern. On the 29th of May the Council of State issued a series of rulings declaring the government's CO₂ policy invalid.⁴⁰ According to the media,⁴¹ as some 18.000 building projects have come to a standstill. In response, one political party⁴² already proposed to reduce animal husbandry by 50% in favour of urban development.

In the Netherlands, at present food security is not primarily a matter of production but of access.

5.1. In the law of the Netherlands, there is no reference to a relationship between the "right to adequate food" and the "governance of tenure of land, fisheries and forests".

In the opinion of the authors, the FAO "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)" do not address issue that at present require implementation in the Netherlands.

5.2. The VGGT does not contain guidelines which could be relevant for the Netherlands.

The food supply in the Netherlands is diverse. As far as the authors can see, the market allows for sufficient space for non-mainstream food supply. Organic food probably already has become part of the mainstream supply.

5.3. We do not see problems in the Netherlands with regard to people's autonomy in producing and consuming food according to their cultural preferences that would require introduction of food sovereignty based policies.

The last question in the questionnaire is: "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?"

In the view of the authors, it is vital for the EU to recognise that it is rapidly losing credibility and support of its constituency as is evidenced from Brexit, the negative referenda in France and the Netherlands, the abandonment of EU values in Poland and Hungary. Euro scepticism is on the rise. In this context, the EU should not attempt to increase its dominance in the Member States. The EU is

⁴⁰ See among others: ECLI:NL:RVS:2019:1603.

⁴¹ <https://www.nu.nl/binnenland/5988670/stikstofuitspraak-heeft-gevolgen-voor-18000-projecten-in-nederland.html>.

⁴² <https://d66.nl/halveer-veestapel/>.

lacking the legitimacy to establish land use policy. The EU should first become aware that it is in a crisis and regain its credibility and support.

We feel more attracted to point 11 of EP 2017: “Acknowledges that while land policy is essentially a matter for the Member States, it may be affected by the CAP or relevant policy areas, with serious impact on the competitiveness of farms on the internal market; considers that land policy must help to ensure a broad, fair and equitable distribution of land tenure and access to land, as well as the status of tenant farmers within an appropriate framework, as this has direct implications for rural living, working conditions and quality of life; draws attention to the important social function of land tenure and management over generations, given that a loss of farms and jobs will lead to the collapse of European smallholder agriculture and the demise of rural areas, and thus lead to structural changes that are undesirable for society as a whole”.

6. We do not 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

Conclusion

In our view, realisation of the right to food is the most critical issue.

What is needed in the Netherlands is for the judiciary to acknowledge that ratification of international treaties brings legal consequences. Rather than denying direct applicability of the right to food, the courts should require the government on a case-by-case basis to explain why it believes its legislation and actions to be compatible with international obligations. The governments discretion can sufficiently be safeguarded in the scrutiny of such explanation. In the 1960s it was inconceivable that Dutch practices would ever be found infringing on the European Convention on Human Rights and Fundamental Freedoms. Meanwhile, the Netherlands have been convicted repeatedly. It has contributed to improving the quality of the law in the Netherlands and the awareness of civil and political rights. Economic, Social and Cultural rights will only become legally relevant if and when an independent third part is willing and able to hold the government accountable. There is no international forum, therefore it has to come from the national judiciary.

International comparative research has shown that in very few countries the judiciary has this courage. And even if it does, this does not mean that rights holders are actually granted their entitlements.⁴³ But this second step – upholding the court rulings – can never be taken if the first – assessment by the courts – is absent.

⁴³ Bart Wernaart, Enforcing the right to food: how rights-based are the best practices? chapter 2 in: Altinay Urazbaeva et al. The functional field of food law. Reconciling the market to human rights, Wageningen Academic Publishers 2019, p. 41-53.