



Doc. 16041

13 September 2024

Guaranteeing the human right to food

Report¹

Committee on Social Affairs, Health and Sustainable Development

Rapporteur: Mr Simon MOUTQUIN, Belgium, Socialists, Democrats and Greens Group

Summary

The report highlights a striking paradoxical reality: despite an abundance of food, hunger and malnutrition persist in Europe, revealing inequalities in access to healthy food. These disparities are aggravated by climate change. Distribution and marketing systems disadvantage small producers, favouring market logic over the fundamental right to food.

The present report advocates a legal approach based on human rights to guarantee this right, drawing on Article 11 of the International Covenant on Economic, Social and Cultural Rights. It notes that although solid international instruments exist, none of the Council of Europe member States' constitutions recognises an autonomous right to food. Current initiatives, such as food aid, focus on emergencies rather than autonomy and remain insufficient and ineffective.

The report therefore calls on member States to include the right to food in their constitutions, to adopt framework laws consistent with this right, and to move from a charity-based approach to a rights-based approach. Finally, it recommends that the Council of Europe reintegrate this issue, including the right of access to drinking water, as one of its priorities, in collaboration with other relevant international organisations, first and foremost the Food and Agriculture Organisation (FAO) of the United Nations.

1. Reference to committee: [Doc. 15580](#) et [Doc. 15595](#), Reference 4678 of 10 October 2022.



Contents	Page
A. Draft resolution	3
B. Draft recommendation	5
C. Explanatory memorandum by Mr Simon Moutquin, rapporteur	6
1. Introduction and working methods	6
2. The human right to food, a reality in international law	7
2.1. Introductory remarks: food, a subject of law?	7
2.2. Robust standards and tailored implementation policies	8
3. The human right to food: strangely absent in Europe	11
3.1. Hunger and malnutrition, what are the issues in Council of Europe member States?	11
3.2. The patchwork of European Union law	15
3.3. The Council of Europe, a driver of change?	16
4. Conclusion	17

A. Draft resolution²

1. The Parliamentary Assembly is struck by the extremely paradoxical phenomenon on the European continent as regards access to food: namely that hunger and malnutrition are still present even though there are ample supplies of foodstuffs. This coexistence of plenitude and hunger highlights persistent inequalities that affect access to healthy, adequate, and sustainable food, despite the resources available.
2. The Assembly believes that climate change, by exacerbating extreme weather events, agricultural crises and disruptions to supply chains, is likely to further aggravate these inequalities and pose growing challenges to ensuring equitable and sustainable access to healthy, adequate, and sustainable food – including drinking water – in the decades to come.
3. The challenges surrounding food in Europe are major. People's access to reliable and sufficient sources of supply is often compromised by the absence of effective self-production systems. Distribution, processing and marketing systems are unbalanced, penalising small-scale food producers and failing to adequately protect their rights, in particular depriving them of fair remuneration. The market logic, which is predominant in certain regions of Europe, gives priority to commercial and agricultural interests, which are often in tension with the imperative of the right to food. Instead of placing at the forefront individuals, as holders of fundamental rights as regards access to food, this approach tends to prioritise economic potential and global agricultural activities, which compromises full recognition of the right to food for all.
4. The Assembly is convinced that only a rights-based approach can provide a cross-cutting and consistent understanding of all the social, political, economic and cultural factors affecting access to food and reliably ensure that policies relating to food systems at all territorial levels are in line with the core content of the right to food for all.
5. The Assembly notes that this rights-based approach is underpinned by a robust framework in international law. The right to food is a fundamental human right enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights, which all Council of Europe member States have ratified and are bound to respect, protect and implement.
6. General Comment No. 12 of the United Nations Committee on Economic, Social and Cultural Rights gives practical substance to the right set out in Article 11 of the Covenant. This interpretation is recognised by the international community as authoritative. According to this definition, the right to food includes the basic guarantee of protection from hunger, and the obligation of States to progress towards the full realisation of this right by ensuring that food is available, accessible, sustainable and adequate for everyone.
7. The Assembly notes that, on this basis, the United Nations bodies have for more than twenty years been developing tools to provide a framework and explain the specific features of an approach grounded in the right to food, with the aim of defining and raising awareness of this right and guiding States in the strategies to be adopted for its realisation.
8. The Assembly attaches particular importance to the conceptual and strategic framework developed by the High-Level Panel of Experts on Food Security and Nutrition for transforming food systems to meet the requirements of an approach based on the right to food and to enable progress to be made towards achieving all the Sustainable Development Goals.
9. In the Voluntary Guidelines on the right to food adopted by the United Nations Food and Agriculture Organisation (FAO) in 2004, States recognised the need to undertake a constitutional (or legislative) review that facilitates the progressive realisation of the right to adequate food. As far back as 1999, the United Nations Committee on Economic, Social and Cultural Rights recommended that States adopt a framework law as a major instrument in the implementation of their national strategies concerning the right to food.
10. The Assembly affirms that a constitutional right to food provides the strongest possible foundation, by setting an obligation for all with regard to the right to food. It obliges public authorities to take measures to respect and protect it by adopting the necessary laws and policies and programmes which will ensure the respect, protection and progressive implementation of this constitutional right.
11. The Assembly further underlines the need to adopt framework laws setting out the conditions for the governance of food systems, in line with the FAO's recommendations. These laws should cover intersectoral co-ordination, establish guiding principles to guarantee the right to food, and include budgetary provisions for their implementation.

2. Draft resolution adopted unanimously by the committee on 12 September 2024.

12. The Assembly notes, however, that none of the constitutions of the Council of Europe member States explicitly recognises a distinct right to food, and that there are few constitutions from which it can be deduced that the right to food is protected as a component of the right to dignity, health or the environment. Similarly, there are few legislative provisions that take a global view of the food chain based on the right to accessible, sustainable and adequate food.

13. On another note, the Assembly points out that positive food law, namely the standards applicable to the agrifood sector, food safety and consumer protection, has developed significantly in Council of Europe member States and in European Union law, although none of the branches of this law aims to ensure access to food for all.

14. The Assembly welcomes domestic legislation in many member States which has encouraged the redistribution of agricultural surpluses and unsold food from supermarkets and restaurants as food aid for the most vulnerable, linking also this practice to the fight against food waste. Schemes such as these enable the right to be fed, but do not necessarily go towards the goal of being able to obtain food to sustain one's needs in full autonomy.

15. In the light of these considerations, the Assembly calls on Council of Europe member States to:

15.1. explicitly include the right to food in their constitutional provisions, including the right of access to drinking water. This constitutional recognition would guarantee a solid legal basis for the protection of this fundamental right and would oblige all branches of government to place people's rights at the heart of food policies and to take concrete steps to respect, protect and progressively realise this right;

15.2. adopt national framework laws covering the right to food. These laws should provide a framework for and co-ordinate the different branches of law and public policies relating to food systems, in order to ensure a consistent and integrated approach that meets the requirements of available, accessible, sustainable and adequate food for all;

15.3. give priority to a coherent legal framework to make food distribution, processing and marketing systems fairer and more stable, by reducing economic imbalances between public and private players, aligning agricultural issues with the objectives of the ecological transition and supporting farmers in this transition in a inclusive way, while ensuring fair remuneration and greater protection of their rights;

15.4. draw on the international legal framework provided by the International Covenant on Economic, Social and Cultural Rights and other existing international instruments, such as the Voluntary Guidelines on the right to food of the FAO and the work of the High Level Panel of Experts on Food Security and Nutrition, so as to develop and implement national and local strategies aimed at the full realisation of the right to food in line with the United Nations' One Health objective, which interlinks the health of people, animals and ecosystems;

15.5. move from a charitable approach to food aid and food provision for the more vulnerable members of society towards a rights-based approach ensuring autonomous access to healthy, adequate and sustainable food for all. This shift should lead to diversification of the forms of food solidarity, to a situation where emergency aid is no longer seen as the primary response.

B. Draft recommendation³

1. The Parliamentary Assembly refers to its Resolution... (2024) "Guaranteeing the human right to food". It notes that the Council of Europe was active in the past in promoting a human rights approach to healthy food in co-operation with other international organisations such as the World Health Organisation (WHO) and the European Union (then the European Economic Community).
2. Despite past activities such as the Partial Agreement in the Social and Public Health Field and work on consumer health and food quality, the Council of Europe is today less present in this area, in which the European Union now takes the lead in the development of food law, with the focus on food safety and consumer protection.
3. The Assembly considers that in complement to legislation on food safety and consumer protection, there is room for a wider approach reflecting the full complexity of the issues linked to access to food as a fundamental right.
4. The Assembly is convinced that only a holistic human rights-based approach, centred on the right to food, can ensure the transition to sustainable and inclusive food systems.
5. The Assembly highlights in this respect that the right to food is recognised in international law as an autonomous human right, interdependent and indivisible with other human rights (in particular the right to an adequate standard of living, the right to a healthy environment, the right to water, the right to health, the rights of farmers and the rights of workers in food systems).
6. The human rights framework which has thus developed in international law places the requirements of food availability, accessibility, sustainability and adequacy at the heart of the approach. It is based on the principles of participation, accountability, non-discrimination, transparency, human dignity, the rule of law and solidarity. It also pays particular attention to inequalities at all stages of the food chain and makes it possible to define the shared rights, duties and responsibilities of States, the food industry and, potentially, individuals.
7. The Assembly believes that this approach, fully in line with the core values of the Council of Europe, is an essential lever which the Council of Europe together with other international organisations should (re)activate as a basis to work for the right to food for all.
8. The Assembly therefore recommends that the Committee of Ministers:
 - 8.1. reclaim the subject of the right to food as an autonomous right that is interdependent with the right to a healthy environment, for example by including it in the building blocks for the new Council of Europe strategy for the environment announced in 2024 on the basis of Appendix V of the Final Declaration of the Reykjavik Summit of Heads of State and Government;
 - 8.2. re-establish institutional synergies with the Food and Agriculture Organisation (FAO) and the World Health Organization (WHO) in order to identify areas of complementarity;
 - 8.3. invite the Steering Committee for Human Rights to explore the possibility of supplementing the Organisation's normative framework to guarantee the right to food.

3. Draft recommendation adopted unanimously by the committee on 12 September 2024.

C. Explanatory memorandum by Mr Simon Moutquin, rapporteur

1. Introduction and working methods

1. On 10 October 2022, the Committee on Social Affairs, Health and Sustainable Development received two motions for resolutions entitled “Healthy and sustainable food” and the “Consequences of the aggression of the Russian Federation against Ukraine on world food security”, which the Bureau of the Assembly wished the committee to deal with in a single report entitled “Ensuring a healthy, sustainable and secure food supply”.⁴ I was appointed rapporteur by the committee on 2 December 2022.

2. At its meeting on 19 September 2023, the committee considered an introductory memorandum and changed the title of the report to: “Ensuring safe, healthy and sustainable food for all”. The implementation of the work programme presented to the committee was subsequently readjusted given the committee’s workload and in the light of swift developments in geopolitical events linked to the impact of the Russian Federation’s war of aggression against Ukraine on the agricultural context in Europe. My plans to visit Ukraine were also subject to some uncertainty given security measures surrounding official travel. I have therefore re-oriented my workplan and activities regarding the preparation of this report.

3. To provide input to enrich the explanatory memorandum, I have focused on exchanges of views with recognised experts from academia and research institutions. Ms Magali Ramel, a Doctor of Public Law and Moderator of the *Conseil national de l'alimentation* consultation group on “Preventing and combating food precarity”, Paris (France), spoke about the challenges of a human rights-based approach and the concrete political ideas that can be drawn from this to better protect the right to healthy food. Ms Pauline Scherer, Sociologist, Research & Experimentation Centre, Montpellier (France), presented her experience and views on various aspects of food democracy (measures to combat food precarity, reconsideration of the current production model and the systemic issues of redistribution). Mr Timothée Parrique, research economist at the Faculty of Economics and Management of the University of Lund (Sweden), shared his macro-economic thoughts on the possibilities for changing the dogma of growth in the food sector. The Network of Contact Parliamentarians for a Healthy Environment hearing⁵ with these experts on 4 June 2024 gave me a chance to explore several key points of the introductory memorandum from angles that raise numerous cross-cutting questions about food systems.⁶

4. In terms of working methods, I encouraged the committee to be a pioneer by involving a group of young people from a working-class neighbourhood at every stage of the report-writing process. This was the first time the Assembly had opted for such an arrangement, which is, furthermore, in line with Resolution 2553 (2024) “Strengthening a youth perspective in the work of the Parliamentary Assembly”. On 26 March 2024, members of the Network of Contact Parliamentarians for a Healthy Environment travelled to Bagnolet on the outskirts of Paris to meet with the Young Ambassadors for Food Resilience. This is an educational project run by the association MakeSense, with Banlieues Climat and Unis-Cité, and which offers young people performing civic service opportunities to speak out and take action to help the ecology. The Young Ambassadors then attended the Network meeting on 4 June 2024 to familiarise themselves with its work and meet the General Rapporteur of the Assembly on child participation, Elena Bonetti (Italy, ALDE), before taking part in an awareness-raising activity on food waste with some members of the Network. Finally, they came to Strasbourg on 25 June 2024 for a hearing before the committee, where they shared their experiences and made proposals on several issues, in response to statements from experts: precarity (problems and obstacles), values (deconstruction and opportunities), and consumption (solutions and participation).

5. All these hearings confirmed my initial intention, which was to start with the basics. The experiences and proposals made by the Young Ambassadors resonated with my own conviction that in today’s western world marked by abundance, any endeavour to ensure healthy, adequate and sustainable food for all requires us first to understand the social, cultural and political causes of the barriers to access, and to refrain from reducing it to a question of balance between volume of food and population, or between production and ecosystems.⁷

4. Doc. 15580 and Doc. 15595.

5. The minutes of this hearing have been declassified and can be consulted on [the Network’s webpage](#).

6. The HLPE (Panel of Experts attached to the Committee on World Food Security) offers this definition: “a food system gathers all the elements (environment, people, inputs, processes, infrastructures, institutions, etc.) and activities that relate to the production, processing, distribution, preparation and consumption of food, and the outputs of these activities, including socio-economic and environmental outcomes” (HLPE, Nutrition and food systems. A report by the High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security, coll. “HLPE Report”, No. 12, 2018).

6. When the Council of Europe was still in its infancy, it initiated activities making the connection between human rights and food. Once considered a low priority at European level, the human rights-based approach is now making a strong comeback across the continent, thanks in particular to developments in the international right to food. By putting people at the centre of the debate, this approach flips the way we view the challenges associated with food systems, from a “field to fork” to a “fork to field” perspective. In effect, a holistic, human rights-based approach can correct inequalities and ensure sustainable practices at all stages of the food chain: production, transport, processing, distribution and consumption. It is the condition for a just transition that benefits all citizens and operators and combines social justice and ecological concerns.⁸ Consequently I propose that the title of the report be changed, to focus on “Ensuring the human right to food”.

7. The human rights framework aligns food with the core values of the Council of Europe and is a key lever that it is up to our Organisation, and other international organisations, to (re)activate in order to ensure the right to food for all. I propose to initiate this development now in order to guide Council of Europe member States down the path to a just transition to sustainable and inclusive food systems and so obviate the need for them to deploy heavy-handed policies and radical measures later on, in response to social, ecological and economic or even humanitarian emergencies.

2. The human right to food, a reality in international law

2.1. Introductory remarks: food, a subject of law?

8. The link between food and law is not self-evident. Food is about that simplest, most natural of acts, feeding, and is, at the same time, an example of what sociologists term a “total social fact”, that is to say, a phenomenon so complex that it has implications throughout society and its institutions.⁹ As everyone can see, however, law is inextricably linked to social rules, in the sense of necessary behaviours imposed by collective life on members of society that make it possible for people to live side by side, and has the distinctive feature of “being able to appropriate any other social rule”.¹⁰ In the case of food, identifying the legal parameters has the advantage, then, of going beyond traditional issues related to the physiological needs of the human body and the limits of ecosystems to discover the social rules at play and broaden the debate to include the political and cultural factors that influence food. As for elevating the right to food to the rank of a fundamental right, this makes it possible to understand it from an ethical perspective – and not solely in terms of individual choices or handouts – that can legitimately be prioritised over other, competing issues. As E. Lambert rightly points out, such an approach allows us to take the responsibilities of States and non-State actors seriously when the values embedded in the right to healthy and sustainable food are not respected.¹¹

9. That being said, in the case of food, my work and the hearings conducted have shown that delineating its legal contours is a complex exercise. The right to food, as a human right, certainly has an individual dimension but it can also be claimed for future generations. With it comes not only a responsibility on the part of the State to realise it at national level, but also a collective responsibility on the part of States internationally. It is generally referred to as an economic, social and cultural right in connection with decent living standards, health protection or consumer protection. But it ties into civil and political rights, too, when construed in terms of the right to life, protection of dignity or equality in the conditions of access to food. It also dovetails with “third generation” human rights in areas such as development, combating poverty or the environment. In addition, the legal protection afforded varies greatly, moreover, depending on what is at issue: while food safety and consumer protection are highly regulated (through food legislation), the social and humanitarian qualitative aspect of food is infinitely less so. To further complicate the picture, the right to food may bump up against other branches of law such as the provisions advocating free trade in economic law, or against certain aspects of environmental law. This complexity is nothing to be afraid of; it is part of the

7. This approach is in line with the work of the economist A. Sen, winner of the 1998 Nobel Prize in economics for his work on the economics of well-being, and whose book *Poverty and Famines: an Essay on Entitlement and Deprivation* (Oxford University Press, 1981) marked a revival of interest in the 1980s in the causes of famine.

8. M. Ramel (coord.), in collaboration with L. Bodiguel, P-E. Bouillot, P. Claeys, T. Ferrando, C. Golay, E. Lambert and F. Riem, “The Right to Food for a Just Transition Towards Sustainable Food Systems: how the right to food can underpin and guide the European Commission’s work on a legislative Framework for Sustainable Food Systems (FSFS)”, Brussels, Belgium, Food First Information and Action Network (FIAN), 2023.

9. J-P. Poulain, *Sociologies de l’alimentation: les mangeurs et l’espace social alimentaire*, 3^{ème} éd., Paris, France, Presses Universitaires de France, 2013, 287 p.

10. J-L. Bergel, *Théorie générale du droit*, Dalloz, 2003, pp. 19-20 and 51.

11. E. Lambert, *Prendre au sérieux le droit à une alimentation saine et durable*, Peter Lang Verlag, Bruxelles 2024., pp. 27-29.

normative content of the right to food which, as we will see, ranges from a minimal obligation (essentially the right to be free from hunger) to the obligation to progressively incorporate as much meaning as possible, so as to encompass all the issues of availability, accessibility, sustainability and adequacy of food.¹²

10. The evolution of the recognition of the right to food as a human right in international law is a perfect illustration of these paradigms. We now have at our disposal a single conceptual framework that is grounded in international human rights requirements and the practical aim of which is to promote and protect the right to food.¹³ Logically, that should also be the approach adopted by the Council of Europe, as Europe's foremost human rights organisation. As I will show, however, at European level in general and in our Organisation in particular, much work still remains to be done.

2.2. Robust standards and tailored implementation policies

2.2.1. Normative content

11. The right to food is widely recognised in international law as a fundamental right. In its most general terms, it appears in Article 25 of the Universal Declaration of Human Rights (1948) which recognises that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food". The right to food is also enshrined, in fairly similar terms, in Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11.2 of the Covenant describes the – individual and collective – right to be free from hunger as "fundamental" and, in so doing, differentiates it from the right to food. This Covenant is an example of "hard law", namely law that is binding on the States that have ratified it.¹⁴¹⁵

12. The tipping political point came in 1996 when, at the World Food Summit in Rome, more than a hundred Heads of State and Government recognised in the Declaration on World Food Security "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."¹⁶ The Summit Action Plan states that "food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life." Echoing these definitions, with their focus on the quantitative and qualitative dimensions of food, the World Health Organisation (WHO) then proclaimed that "access to enough safe and nutritious food is key to sustaining life and promoting good health"¹⁷ and the United Nations Food and Agriculture Organisation (FAO) defined what was meant by food security.¹⁸

13. In 1999, the monitoring body of the ICESCR, the United Nations Committee on Economic, Social and Cultural Rights (CESCR), adopted General Comment No. 12 on the right to adequate food.¹⁹ This normative interpretation gives practical meaning to the right set forth in Article 11 of the ICESCR and is regarded by the international community as being authoritative. According to this definition, the right to food means the

12. M. Ramel, "Le droit à l'alimentation et la lutte contre la précarité alimentaire en France". Thèse. Droit. Université de Tours, 2022, pp. 235-237; E. Decaux, "Le droit à la vie et le droit à une alimentation suffisante", in *The right to life*, Leiden, Netherlands, 2010, pp. 322 and 327; J-F. Flauss, "Le droit à l'alimentation en droit international: de la juridicisation à la justiciabilisation?", in *Gastronomie, alimentation et droit: mélanges en l'honneur de Pierre Widmer*, coll. "Publications de l'Institution suisse de droit comparé", n° 46, 2003 p. 399.

13. According to the internationally accepted definition provided by the United Nations Sustainable Development Group (unsdg.un.org).

14. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights gives individuals and groups of individuals the right to submit communications (complaints) to the Covenant's monitoring body, the UN Committee on Economic, Social and Cultural Rights, if they believe they have been victims of a violation of a provision of the Covenant. Adopted in 2008, the Covenant, which entered into force on 5 May 2013, has been ratified by 29 States, including 13 Council of Europe member States (state of ratifications as at 10 August 2024).

15. The right to food is also protected by the United Nations Conventions on the Elimination of Discrimination against Women, on the Rights of the Child, on the Rights of Persons with Disabilities, and on the Status of Refugees. International humanitarian law, through the Geneva Conventions, protects access to food in times of war. References to the right to food appear in international criminal law, where food deprivation may be deemed to constitute a crime against humanity or a war crime under the Rome Statute of the International Criminal Court. Some International Labour Organisation conventions protect this right indirectly through social security and minimum wage schemes. A detailed analysis can be found in M. Ramel's thesis, op. cit, pp. 181-186.

16. Rome Declaration on World Food Security, Rome, 13 November 1996.

17. WHO, Key facts on food safety, 31 October 2017 (www.who.int/news-room/fact-sheets/detail/food-safety).

18. The most up-to-date definition of food security for FAO can be found in the "State of Food Security and Nutrition in the World 2024 glossary".

19. General Comment 12 – The right to adequate food, (Art. 11), E/C.12/1999/5, 1999.

minimum that is protected by the fundamental right to be free from hunger and the obligation on States to move towards full realisation of the right to food, whose scope is intended to protect all the elements surrounding access to food (availability, accessibility, sustainability and adequacy of food).

14. Availability implies ensuring that people have permanent access to reliable and sufficient sources of supply, taking into account and protecting the various channels, including self-production, which States are obliged to safeguard. Distribution, processing and marketing systems must also be fair, stable and competitive, and the rights of food producers must be protected, respected and fairly remunerated. It is also necessary for workers in all areas of food systems to have healthy and safe working conditions.

15. Accessibility requires economic and physical access to food. Individuals must be able to afford an adequate diet without having to sacrifice other basic needs such as school fees, medicines or rent. Physical accessibility means that food must also be accessible to physically vulnerable people such as children, the sick, people with disabilities and the elderly.

16. The requirement of sustainability refers to the dual meaning of the word sustainable. It is intrinsically linked to that of sufficient food or food security and implies conditions of production, processing, distribution and consumption that respect human rights and the environment throughout the food chain, for present and future generations. This sustainability extends to several dimensions: it is environmental, protecting and preserving the ecosystem so that food production is not harmful to it; it is economic, by supporting fair trade and local economies; it is social, by guaranteeing equitable and inclusive access to food to respond to the problems of poverty and inequality; it is cultural, preserving traditional food practices and cultural preferences to maintain a diverse and healthy diet; and finally, it is linked to health, promoting food systems that provide healthy and nutritious options, in order to prevent malnutrition and diet-related diseases. On the other hand, the requirement of sustainability also implies that consumers have access to food in the long term, and not one-off or emergency access, which refers to the requirement of accessibility.

17. Finally, the CESCR has added another requirement, adequacy, which is about the properties that food must have. Food must be available “in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture”. This requirement thus harks back, in part, to the imperatives of a healthy and sustainable diet and to the area of food products safety, whose supervision and transparency the public authorities and the private sector have a responsibility to ensure, in order to protect the interests of consumers. It means recognising that the principles governing food systems are a matter of subjective values related to acceptability that have nothing to do with nutrition, food safety or environmental issues: it is also necessary to take into account and protect values relating to the social and cultural dimensions inherent in the way food is produced.

18. Another major step towards defining the right to food emerged from the 1996 World Food Summit. In its Resolution 2000/10 of 17 April 2000, the United Nations Commission on Human Rights decided to appoint a special rapporteur on the right to food. Since then, each of the four Special Rapporteurs has focused on a different aspect, adding to the richness of the definition of the right to food. Of particular note is the contribution made by the current Special Rapporteur on the right to food, Mr Fakhri, who stresses that the right to food is a key element of community life and sovereignty and emphasises the need for sensitivity to the social and cultural dimensions of food when defining these requirements. He also calls for consideration to be given to the capacity of the people concerned to participate in the processes that shape food system policies and governance.²⁰ To have the fundamental right to food means to be endowed with the capacity (cognitive, financial, institutional, etc.) to have access to healthy and sustainable food.²¹

2.2.2. Policy and practice

19. Drawing on and complementing this pioneering work to define the right to food, other innovative approaches in international law have been pursued at policy-making level.

20. Reports of the Special Rapporteur on the right to food, Jean Ziegler. “Preliminary report: the right to food”, 27 July 2001, A/56/210; “Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development”, 10 January 2008, A/HRC/7/5; Report of the Special Rapporteur on the right to food, Olivier de Schutter. “Final report: The transformative potential of the right to food”, 24 January 2014, A/HRC/25/57; Hilal Elver, Interim report of the Special Rapporteur, “the right to food”, 3 August 2016, A/71/282; Interim report of the Special Rapporteur on the right to food, Michael Fakhri, “The right to food in the context of international trade law and policy”, 22 July 2020, A/75/219.

21. E. Lambert, *op.cit.*, p. 27.

20. In 1999, the CESCR also responded to the request from Heads of State and Government to suggest ways in which they could incorporate the right set out in Article 11 of the ICESCR into the human development process and make it workable. To this end, General Comment No. 12 articulates the normative content around three levels of obligations: the obligations to respect, to protect and to facilitate and to fulfil the right to food, namely to give effect to it.²² It is to be realised for the benefit of “every man, woman and child, alone or in community with others”,²³ meaning that specific measures must be taken to support vulnerable groups, to combat the structural causes of hunger and malnutrition, and to create an environment in which food rights can be realised in full. It is inseparable from respect for the inherent dignity of the human person, as the right to food is not “a right to be fed, but primarily the right to feed oneself in dignity”.²⁴

21. On that basis, governments proceeded to devise concrete measures to implement the right to food. On 23 November 2004, this led to the 187 member States of the FAO Council adopting Voluntary Guidelines (that is to say non binding) to support the progressive realisation of the right to adequate food in the context of national food security.²⁵ Drawing on the definition provided by General Comment No. 12, these provide States with a practical guide on how to build human rights into food security policies. Within the FAO, a Right to Food Team was formed. In partnership with the CESCR and the Committee on Food Security (CFS), the special rapporteurs and civil society, the team helps to devise, raise awareness about and further develop tools to support States and stakeholders in implementing policies and programmes, in the legal process, in budgetary analysis, governance, evaluation, monitoring and capacity building.²⁶ The FAO guidance work is based on seven principles (with the first letter of each principle forming the acronym PANTHER²⁷) that should be integrated in the work with the right to food.

22. Following the food crises of 2007-2008, a major development occurred in the global governance of food security when the CFS, set up in 1974, was expanded beyond the member States of the FAO, which continues to provide it with administrative, logistical and technical support. The CFS has been transformed into a major international and intergovernmental platform, open to all the stakeholders concerned, with the aim of achieving greater coherence in the actions and solutions advocated by everyone in the field of food security. The CFS develops and approves recommendations and guidelines based on the reports of the High Level Panel of Experts on Food Security and Nutrition (HLPE).²⁸

23. In a remarkable study conducted in 2018, the HLPE proposes a systemic approach to food security and nutrition. It highlights the role of diets, the decisive importance of the food environment in helping consumers make food choices, and the impact of agriculture and food systems on sustainable development. Drawing on these points, the HLPE highlights the wide range of policy areas involved, as well as the interactions linking them around the issue of human nutrition.²⁹ On this basis, the CFS formulated in 2020 the Voluntary Guidelines on Food Systems and Nutrition that integrate elements of the conceptual framework developed by the HLPE in the form of practical guidance with a view to progressively realising the right to adequate food and achieving the Sustainable Development Goals (SDGs).³⁰

24. Within the HLPE framework, we find the more recent quest to define diets that are both healthy and sustainable. In line with the WHO's One Health approach,³¹ sustainability dictates that human health cannot be dissociated from the health of ecosystems. This environmental dimension was introduced by the FAO in its definition of sustainable diets.³² Recently, too, there has been a general trend towards recognising the right to healthy food as part of the right to a healthy environment. Because of this obvious interdependence, the right

22. A. Eide, “Right to adequate food as a human right”, United Nations Committee on Economic, Social and Cultural Rights, 1989.

23. General Comment 12, paragraph 6.

24. Office of the High Commissioner for Human Rights, “The Right to Adequate Food”, FAO, coll. Fact Sheet No. 34, 2010, p. 3.

25. Available on the FAO website, www.fao.org.

26. FAO, Background, The right to food in FAO, available on the FAO website (www.fao.org/right-to-food/background/en/). The website of the FAO's Development Law Service provides a database and information on studies on the monitoring of the treaty-based, constitutional, legal and jurisprudential recognition of the right to food worldwide and on the various political strategies adopted to implement it (www.fao.org/legal-services/en/).

27. Participation, Accountability, Non-discrimination, Transparency, Human dignity, Empowerment, Rule of law.

28. GSF, “Global Strategic Framework for Food Security and Nutrition”, 2017 edition, CFS, 2017/44/10/Rev.1, 2017. The HPLE acts as the scientific-policy interface for the CFS, drawing on the technical work of the FAO, International Fund for Agricultural Development (IFAD), World Food Programme (WFP) and members of the CFS Advisory Group.

29. HLPE, Nutrition and food systems, op.cit.

30. www.fao.org/cfs/vgfsn

31. See in particular: www.who.int/europe/initiatives/one-health.

32. www.fao.org/nutrition/education/food-dietary-guidelines/background/sustainable-dietary-guidelines/en/.

to food is acquiring a “new place in our Anthropocene”.³³ I refer here, in this very widely explored field, to the work of the former Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd,³⁴ and to Resolution No. 50/9 “Human rights and climate” change of 7 July 2022 in which the UN Human Rights Council took a close look at the impact of climate change on the full realisation of the right to food.³⁵

3. The human right to food: strangely absent in Europe

3.1. Hunger and malnutrition, what are the issues in Council of Europe member States?

25. The contrast between the international and European levels³⁶ is striking. The developed countries of the European continent do not imagine that the right to food can be so flouted in the context of abundance that we have in Europe, where hunger and malnutrition coexist with sufficient supplies.

3.1.1. Food precarity: a widely documented European reality

26. Worldwide, some 2.3 billion people, namely about 29.6% of the global population, were moderately or severely food insecure in 2023. This figure is similar to that for 2020, a sign that the situation is not improving, not least because of the ongoing effects of conflict, climate change and economic slowdowns. At the same time, a study of the cost of healthy diets (namely diets that comply with global nutrition guidelines) in relation to poverty lines shows that more than 3 billion people cannot afford the cheapest healthy diet, and that 1.5 billion people cannot afford a diet that meets only the required levels of essential nutrients.³⁷ In 2020, about one in four people did not have access to safely managed drinking water at home, and by 2030 it is estimated that billions of people will not have regular access to safe drinking water.³⁸

27. While the situation is often most serious and acute in so-called developing countries, combating hunger and malnutrition is very much an issue in so-called developed countries, too. More specifically, in North America and Europe, the prevalence of moderate or severe food insecurity³⁹ increased slightly in 2022 to 8%, while severe food insecurity remained stable. In northern Europe, moderate or severe food insecurity increased by around 2 points to 6.6% in 2022, while in southern Europe it fell by 1 point to 7.5 %.

28. In France, the Ipsos/Secours Populaire 2023 poverty barometer reveals that 32% of French people have difficulty affording fresh fruit and vegetables every day, 35% have difficulty affording a healthy diet that would allow them to eat three meals a day, and one person in five is forced to skip meals during the month. In 2023, to get by in France, you had to earn an average of €1 377 net per month (compared with €1 175 in 2021).⁴⁰ This figure reflects inflation in the cost of living, in particular food and energy, which is placing an increasingly heavy burden on household budgets.

29. Even though the issue of food sovereignty is once again to the fore following the pandemic and the consequences of the war of aggression against Ukraine, these worrying figures are not chiefly or directly attributable to the factors that account for food insecurity in other parts of the world (consequences of conflicts, climate change, natural disasters).⁴¹ As in many countries across Europe, nor is it a question of there not being enough food to feed the whole population due to low domestic productivity or inefficient food chains. The causes lie elsewhere: in the accessibility of this food supply.

33. E. Lambert, *op.cit.*, pp. 93-95.

34. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, “Healthy and sustainable food: reducing the environmental impacts of food systems on human rights”, 19 July 2021, A/HRC/76/179 to be read in conjunction with “Framework principles on human rights and the environment” (A/HRC/37/59, annex).

35. A/HRC/RES/50/9.

36. In other regions, the right to food is recognised in the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador, 1988), the African Charter on the Rights and Welfare of the Child (1990) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003).

37. FAO, IFAD, WHO, WFP and UNICEF, “The State of Food Security and Nutrition in the World 2024”.

38. Report of the WHO/UNICEF Joint Monitoring Programme on Water Supply, Sanitation and Hygiene 2000-2020.

39. SDG indicator 2.1.2 – Prevalence of moderate or severe food insecurity in the population, based on the Food Insecurity Experience Scale (FIES) – is used to monitor progress made on SGD Target 2.1 (The State of Food Security and Nutrition in the World 2024).

40. IPSOS, Baromètre de la pauvreté Ipsos / Secours Populaire 2023, www.ipsos.com/fr-fr/barometre-de-la-pauvrete-ipsos-secourspopulaire-2023.

30. The work of Amartya K. Sen has shown the limits of approaches that focus solely on issues relating to agricultural production methods and food supply, without also looking at inequalities in access to food between different population groups, once that food has been produced and made available. Even if all the challenges associated with food systems were overcome, the problem of access to this ready-made supply of food, particularly in the case of people in precarious situations, would remain intact.⁴²

31. Among the consequences of food precarity, the health impacts of "junk food" are among the most well documented. Unhealthy diets are the main risk factor for the overall burden of mortality and morbidity in the European Union. They are responsible for numerous diseases, such as cardiovascular disease, cancer and diabetes, which account for 85% of mortality and 75% of the burden of disease in Europe. Obesity has been identified as the main cause of 80% of cases of type 2 diabetes, 55% of hypertensive disease among adults and 35% of heart disease. The economic costs are commensurate: worldwide, obesity has roughly the same economic impact (around €1.75 trillion or 2.8% of global GDP) as smoking or armed violence, war and terrorism, and chronic diseases already account for up to 80% of healthcare expenditure in the European Union.⁴³

3.1.2. A legal approach that is failing to keep pace at national level in the member States

32. None of the constitutions of the Council of Europe member States explicitly recognises an autonomous right to food,⁴⁴ and few constitutions provide indirect protection for healthy food as part of the right to dignity, health or the environment.⁴⁵

33. Yet as far back as 1999, in Comment No. 12, the CESCR clearly stated that "States should consider the adoption of a framework law as a major instrument in the implementation of the national strategy concerning the right to food." In the same vein, the FAO's Voluntary Guideline 7.1 recommends that States undertake a constitutional (or legislative) review to facilitate the progressive realisation of the right to adequate food. The former Special Rapporteur on food put it very clearly: "[a] constitutional right to food is the strongest possible basis the right to food can have [...] The insertion of the right to food into the constitution is thus not of mere symbolic significance. It imposes on all branches of the State [the obligation] to take measures to respect, protect and fulfil the right to food by adopting adequate laws, and by implementing policies and programmes aimed at the progressive realisation of the right to food."⁴⁶ As we saw in the first part, the conceptual and strategic framework exists, is well developed and has been aligned by the HLPE report on achieving the SDGs.⁴⁷

34. Despite the lack of recognition of the right to food at the constitutional level, several initiatives have been taken in this direction at the legislative level, which show the extent to which the fundamental rights approach to issues of health, dignity and the right to a healthy environment is gaining new support. Promoting a global vision of the food chain based on the law and on a cross-sectoral approach was the ambition of the framework bill on the right to food in the Walloon Parliament (Belgium) in 2014.⁴⁸ In Portugal, in 2018, a parliamentary group presented a bill to create a framework law in favour of a human right to adequate food and nutrition.⁴⁹

41. As identified by the international organisations FAO, IFAD, WHO, WFP and UNICEF in their annual reports on "The State of Food Security and Nutrition in the World".

42. M. Ramel, *op.cit.*, p. 21.

43. These data come from summaries produced by Ipes-Food (International Panel of Experts on Sustainable Food Systems, a group of experts dedicated to transforming global food systems by proposing sustainable solutions and analysing the economic, environmental and social impacts of food policies), WHO reports on the impact of non-communicable diseases on global public health and detailed analyses by the Organisation for Economic Co-operation and Development (OECD) of health spending and risk factors in member countries.

44. In contrast, there is a strong constitutional sensitivity to this right in developing countries, particularly in Latin America. FAO, "The Right to Food Around the Globe. Constitutional recognition of the right to adequate food" (www.fao.org/right-to-food-around-the-globe, last updated on 4 February 2021).

45. Article 23 of the Belgian constitution; Article 69 of the Croatian constitution; Article XX of the Hungarian constitution; Articles 37 and 47 of the Moldovan constitution; Articles 48 and 50 of the Ukrainian constitution. The German Federal Constitutional Court has derived from the constitutional principles linked to the welfare state and human dignity an obligation to ensure a minimum subsistence level, including food, Federal Constitutional Court, case 1 BvL 10/10, ruling of 18 July 2012. For further reading, E. Lambert provides an interesting comparative law study of constitutions and several legislative frameworks across Europe, *op.cit.* pp. 89-119.

46. O. De Schutter, "Countries tackling hunger with a right to food approach. Significant progress in implementing the right to food at national scale in Africa, Latin America and South Asia", Special Rapporteur on the right to food, coll. Briefing Note 01 – May 2010.

47. See also FAO, "Guide on Legislating for the Right to Food", Book 1, 2009.

35. There is also real progress. The fundamental rights approach of the Regional Law of Lombardy (Italy) of 6 November 2015 is an exemplary case in Europe. The objectives of this law are to recognise, protect and promote a universal and fundamental right of access to safe, healthy and nutritious food in sufficient quantities. On the constitutional front, in Geneva (Switzerland), after a referendum in 2023, the canton's constitution was amended to introduce Article 38A: "The right to food shall be guaranteed. Everyone shall have the right to adequate food and shall be free from hunger". Drawing on this recognition, a parliamentary initiative proposes to include the right to food in Switzerland's federal constitution.⁵⁰

36. In Scotland, the government has been committed since 2015 to an approach based on the human right to food, as a way to combat hunger and malnutrition. The Good Food Nation Act 2022 requires Scottish ministers and authorities to have regard to the right to food in the preparation of national food plans. In 2024, a proposal for a bill on the right to food to incorporate the right to food into Scots law and provide for a body to be responsible for oversight secured enough support to allow a Member's Bill to be introduced in the Scottish Parliament.⁵¹

37. Finally, in the same vein, I noted the very recent initiative of a French senator to propose the enshrinement of the right to food as a fundamental right by anchoring it in the French Constitution.⁵²

3.1.3. How do the causes of this failure to keep pace provide a case for change?

38. While the main focus on the quantitative challenges of food for developing countries – where the "lack and scarcity of food" is clearly the most worrying – partly explains the reductive vision of the right to food in Europe, other considerations have the effect of overshadowing the added value that recognition of the right to food as a lever in the fight against precarity would bring.

39. Two points are worth noting here. First, the inversely proportional development of positive food law (namely the rules applicable to the agri-food sector and which govern our eating habits) and, second, the fact that none of the branches of this law seeks to ensure access to food for all. A prime example of this can be seen in the legislation around food safety and consumer protection issues. These are concerns related to the "fear of food" that prompted our Assembly to take up the subject very early on (see below). They first emerged in rich countries against the backdrop of food crises, notably mad cow disease, and then grew as reports spread of the link between food additives and cancers, dioxins in chicken, the risks associated with pesticides and genetically modified organisms, and so forth. They shifted the focus of attention to the scientific expertise that creates food standards and technical controls, which have proliferated at national and European Union level.

40. Guided more recently by the UN's One Health agenda, which recognises the interconnection between the health of people, animals and ecosystems, this legislation also encourages the inclusion of environmental issues. While promoting and guaranteeing healthy eating for all is an essential goal, my meeting with the Young Ambassadors for Food Resilience showed me that the way this approach is translated into social discourse around "healthy eating", organic farming, local sourcing or the treatment of farm animals creates social inequality and stigma around the behaviour of those whose eating habits do not fit this dominant discourse. The fact is, however, that there is no universal prescription for "healthy eating" and our attention would be far better directed at the food environment that is examined in the above-mentioned HPLE report,⁵³ and hence at the social, identity and cultural construction of food, if we are to avoid narratives of exclusion and social control.⁵⁴

41. Another paradoxical reason, highlighted by the sociology of food, lies in the institutionalisation of food aid, which is aimed at the poorest members of society and sourced from society's leftovers in line with policy to combat food waste. In many countries, "food aid masks and obscures and has captured the public

48. Parti Ecolo-Groen, M. Gerken and A. Dedry, "Proposition de Loi-cadre instaurant l'obligation d'une mise en œuvre effective du droit à l'alimentation en Belgique", 27 October 2014, Doc 54 0518/001, 2014. This draft legislation is examined in details by E. Lambert, *op.cit.*, pp. 240-244.

49. www.parlamento.pt/ActividadeParlamentar

50. www.ge.ch/grandconseil/gc/parlement/.

51. www.gov.scot/publications/national-good-food-nation-plan-consultation-document/.

52. www.senat.fr/leg/exposes-des-motifs/, Text No. 605 (2023-2024), tabled in the Senate on 16 May 2024.

53. In the sense of the physical, economic, political and socio-cultural context in which each consumer engages with the food system to make their decisions about acquiring, preparing and consuming food (HLEP, "Nutrition and food systems", *op. cit.*).

54. J-P. Poulain, "Dimensions de l'espace social alimentaire", *Dictionnaire des cultures alimentaires*, Presses universitaires de France, 2012, pp. 357-382.

debate”.⁵⁵ Yet introducing a distribution channel specifically for the poor raises a number of questions. The pernicious effects have been widely documented by associations, researchers and interested parties: loss of decision-making autonomy and freedom of expression, stigmatisation and shame, and the risk of creating a vicious circle of dependency on charity.⁵⁶ Such considerations led to a reworking of the Food Aid Convention⁵⁷ while in the European Union, the new European Fund for Aid to the Most Deprived (FEAD) links food aid not, as in the past, to a Common Agricultural Policy objective but rather to poverty eradication, cohesion and social inclusion.⁵⁸ The aforementioned Scottish experience is another example; the group of independent experts accompanying the Scottish process has clearly identified this by insisting on the fact that food aid providers are responding to clear and pressing needs but that they are not a long-term solution to hunger.⁵⁹ Added to that is the fact that in most developed countries and at European level, legislation has encouraged the practice of redistributing agricultural surpluses and unsold items from supermarkets and restaurants as food aid and tied it in with the fight against food waste, putting food aid in the paradoxical position of being dependent on waste and having to compete with schemes that seek to reduce it.⁶⁰

42. The disconnect between legislation and the needs of consumers is also due to the power imbalance around retailing in particular. The role played by private actors in creating unequal access to healthy, sustainable and affordable food is another well-documented fact. The Young Ambassadors conveyed a powerful message about the geographical inequalities in the distribution of healthy food induced by supermarket marketing strategies, with one describing their home town as “a healthy food desert, the New York of junk food”.⁶¹ Where they exist, promotional policies are geared towards ultra-processed, cheap and unhealthy food items,⁶² not to mention the impact of aggressive advertising of low-cost processed food on freedom of choice, or the opportunistic behaviour by major retailers, which is helping to delay the fall in inflation.⁶³

43. The approach outlined above emphasises the many areas of public policy that have an impact on the issue of food and highlights the need for consistency. In so doing, it reveals the importance of providing a broad framework for the “right to food” in order to best organise responses to the multi-faceted challenges posed by food precarity. This legal framework should cover respect for dignity, non-discrimination with regard to access to food, the participation of the people concerned, and State responsibility over and above the responsibility of individuals or associations alone. The right to food is not “a right to be fed, but primarily the right to feed oneself in dignity”.⁶⁴

55. D. Paturel, a researcher on the food aid system in France and Europe, speaking in 2014 at the Mission Agrobiosciences-Inrae's “Histoire de...” series, “L'aide: alimentaire en fin de course?”.

56. P. Scherer, addressing members of the Network on 4 June 2024 ([Network website](#)). M. Ramel, op. cit., pp. 373-382 and the multiple sources cited by the author.

57. The International Food Aid Convention, which was adopted in London in 2012 and came into force in 2013, has been ratified by 16 States, including 9 Council of Europe member States. The Convention is a renegotiated version of the World Food Programme's Food Aid Convention. While the latter focuses on a limited number of foodstuffs, the Food Aid Convention concentrates on nutritious foods in general (www.foodassistanceconvention.org/en/).

58. Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013. See also the European Court of Auditors, Fund for European Aid to the Most Deprived (FEAD): valuable support but its contribution to reducing poverty is not yet established, coll. Special Report No. 5, 2019.

59. Independent working group on food poverty, Scotland, Scottish Government, and APS group Scotland, “Dignity: ending hunger together in Scotland” – The report of the Independent Working Group on Food Poverty, 2016.

60. Terra Nova report, “Towards sustainable food security: issues, initiatives and guiding principles”, 10 November 2021.

61. Extract from the hearing with the young Ambassadors for Food Resilience, Bagnolet, ([Network website](#)).

62. In France, ultra-processed foods account for around seven out of ten products on supermarket shelves (Contribution of ultra-processed foods in the diet of adults from the French NutriNet-Santé study. Public Health Nutrition, 2018, LaNutrition.fr, “Le bon choix au supermarché”, Thierry Souccar Editions, 2022).

63. Economists from the International Monetary Fund (IMF) reported for example that: “Rising corporate profits account for almost half the increase in Europe's inflation over the past two years” (www.imf.org/en/Blogs/Articles/2023/06/26/europes-inflation-outlook-depends-on-how-corporate-profits-absorb-wage-gains). See also the speech by F. Panetta, member of the Executive Board of the European Central Bank, in which she complained that some producers had been exploiting the uncertainty created by high and volatile inflation and supply-demand mismatches to increase their margins, raising prices beyond what was necessary to absorb cost increases (www.ecb.europa.eu/press).

64. Office of the High Commissioner for Human Rights, “The Right to Adequate Food”, FAO, coll. Fact Sheet No. 34, 2010, p. 3.

3.2. The patchwork of European Union law

44. There is no question that the European Union has built its food legislation entirely around food safety and consumer protection. European Union law – whose cardinal principles in matters relating to food are the market, the precautionary principle and the scientific assessment of health risks – leaves little room for other considerations that reflect the complexity of the issues thrown up by the right to food. Nor is this right recognised in the EU Charter of Fundamental Rights.

45. What the European Union's market-oriented approach does do is give pride of place to the commercial and agricultural aspects of food, which may themselves clash with the realisation of the right to food. To quote the current United Nations Special Rapporteur on the right to food, Mr Fakhri: “The Agreement on Agriculture, which came into force as part of WTO in 1995,⁶⁵ has been a barrier to fully realising the right to food. Rather than focus on people as rights bearers, the Agreement frames people in terms of their economic potential and activity (...) In this respect, the current trade system treats food security as an exception and commercial transactions as the rule, and leaves out the broader right-to-food perspective.”⁶⁶ Mr Fakhri was speaking globally but the same could be said for the European Union.

46. In late 2023 and early 2024, farmer protests erupted all over Europe. The trigger was different in each country, but European farmers everywhere complained of tough working conditions, the difficulty of making a living from farming and the lack of consistency in European agricultural policies.⁶⁷

47. European farmers have long felt trapped in a productivist free-trade model that forces them to expand and intensify their production in order to qualify for sufficient subsidies from the Common Agricultural Policy (CAP) and remain economically viable.⁶⁸ European farmers also fear the green transition. The Farm to Fork Strategy,⁶⁹ the agricultural version of the Green Pact launched in 2020, called for a 50% reduction in the use of pesticides by 2030, a 20% reduction in nitrogen fertilisers, a reduction in the use of antibiotics, and a greater proportion of farmland given over to organic farming, yet the CAP and the subsidy system have not adapted to these new constraints. Farmers thus find themselves caught between soaring production costs due to the energy crisis and spiralling input prices, and the buyers to whom they have to sell their produce on agricultural markets. At the start of 2024, their harvests had lost 40% of their value compared with 2023 as a result of the bursting of the speculative bubble in agricultural produce that formed after the outbreak of the war in Ukraine.

48. It is clear that clinging to the principles of free trade and competitiveness is based on the belief that cheap food and productivity will secure the European Union's position in the global food system, a subject that extends far beyond the compass of this report. It is equally clear from the absence of effective public policies to combat food speculation and prevent big groups from making excessive profits “who” is failing in its obligations.

49. From this viewpoint, what is required is an approach based on human rights as obligations on States (and perhaps one day private actors⁷⁰) together with a legislative framework that ensures policy coherence at European Union and member State levels, and that places food availability, accessibility, sustainability and adequacy at the centre of these policies.⁷¹ So far, however, the European Union has not filled this gap. While it is true that in line with the “Farm to Fork” strategy, the European Union began working in 2020 on a proposal

65. The long-term objective of the multilateral trading system is to establish a fair and market-oriented system of trade in agricultural products on the assumption that this will be achieved through substantial progressive reductions in agricultural support and protection.

66. “The right to food in the context of international trade law and policy”, Interim report of the Special Rapporteur on the right to food submitted to the United Nations General Assembly, 22 July 2020, A/75/219, paras. 22-24.

67. News and data on the CAP and the challenges facing farmers in Europe come from a number of sources, including Touteurope, Politico Europe, Agriculture Stratégies, the French Agency for Ecological Transition (ADEME), the Ipes-Food panel of experts and the NGO foodwatch.

68. If CAP subsidies are to comply with WTO rules, they must avoid distorting international trade. Direct payments under the first pillar of the CAP are therefore designed to be “decoupled payments”, allocated per hectare, regardless of compliance with environmental standards or job creation, for example. As a result, those with large farms receive most of the subsidies, and the production of staple cereals, dairy products and animal source food is encouraged, while fruit and vegetables receive less support. (The State of Food Security and Nutrition in the World 2022”, op. cit.).

69. This roadmap adopted in October 2021 comprises 27 pieces of legislation. By 1 January 2024, nine had been adopted.

70. “United Nations Guiding Principles on Business and Human Rights”, www.ohchr.org/sites/default/files/documents/

71. FIAN report submitted to the European Commission in October 2023, op. cit. 2023 activity report by FIAN Belgium.

for a legislative framework for sustainable food systems (FSFS),⁷² nothing seems to have come of it, despite the outstanding contribution made by civil society to guide the drafting of the FSFS towards a human right to food approach.⁷³

50. That is unfortunate. As pointed out by David R. Boyd: “A rights-based approach, focused on the right to food and the right to a healthy environment, is an essential catalyst for accelerating the transformation from today’s unsustainable food systems to a future where everyone enjoys healthy and sustainable food, workers are treated fairly and degraded ecosystems are restored. This is an obligation for States, not an option.”⁷⁴

3.3. The Council of Europe, a driver of change?

51. In terms of European law, it was the Council of Europe that initiated activities in the food sphere with the Partial Agreement in the Social and Public Health Field adopted on 16 November 1959 to improve quality of life in Europe and boost consumer health protection and food safety.⁷⁵ The task of following up on this ambitious dual mandate was entrusted to the High Level Panel of Experts on Food Security and Nutrition, to whose meetings the European Commission and the WHO were invited.

52. At the same time, as early as the 1960s and especially in the 1990s, its Assembly warned of the rapid growth of agrifood technologies, the marketing of food products before the necessary information had become available, shortcomings in regulations and controls, and the lack of sufficient harmonisation at European level. The Assembly accordingly recommended that the Committee of Ministers draw up a European framework convention on food safety in co-operation with the European Union and other competent organisations such as the FAO and WHO. Also, in view of the risks to food safety arising from the globalisation of the economy and the liberalisation of trade, it invited the European Union to set up, in co-operation with the Council of Europe, a European food safety agency along the lines of the now European Directorate for the Quality of Medicines & Healthcare. The Assembly also relayed consumers’ growing awareness of the importance of healthy food and information to enable them to make informed choices, and stressed that governments are the ultimate guarantors of healthy food.⁷⁶

53. All these proposals went unheeded. In the late 1990s, the European Union grabbed the lead and the Committee of Ministers of the Council of Europe acknowledged the risk of duplication, noting that the European Commission and WHO were better equipped technically and financially.⁷⁷ After the enlargement, the Assembly made another unsuccessful attempt to demonstrate the added value that the Council of Europe could bring with its pan-European dimension.⁷⁸ Eventually, in 2007, the Committee of Ministers decided to discontinue the Council of Europe’s activities in the field of nutrition and the Partial Agreement was dismantled.

54. Food-related issues are not mentioned in the Final Declaration of the Summit of Heads of State and Government held in Reykjavik in May 2023. In contrast to the tendency at international level to see the right to food as a component of the right to a healthy environment, therefore, early glimpses of the Council of Europe’s new environmental strategy announced in 2024 on the basis of Appendix V of the Declaration provide no indication of any desire to re-engage with the subject for now.⁷⁹

72. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – “A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system”, Brussels, 20 May 2020, COM/2020/381 final.

73. FIAN report submitted to the European Commission in October 2023, op. cit.

74. Report by D. Boyd, op. cit.

75. Resolution (59)23 www.coe.int/en/web/disability/partial-agreement. Resolution 96(35) of 2 October 2006 which revised the Partial Agreement. On 1 April 2004, the agreement spanned 18 States. A historic overview of Council of Europe initiatives and texts can be found in E. Lambert, op. cit., pp. 40-69.

76. Recommendation 1389 (1998) “Consumer safety and food quality” based on the report by the Committee on Agriculture and Rural Development (Doc. 8194, rapporteur: Mr Eisso Woltjer, Netherlands, Soc). The Food Safety Agency was then set up by the European Union. See also Recommendation 1244 (1994) “Food and health”, based on a report by the same committee (Doc. 7083, rapporteur: Mr Richard Alexander, United Kingdom, Conservative).

77. Committee of Ministers, grouped reply to Parliamentary Assembly Recommendations 1389 (1998), 1417 (1999), 1445 and 1446 (2000), CM/AS(2001)Rec1389-final, 27 March 2001.

78. Resolution 1311(2002) “Functional food: serving the interests of the consumer or the food industry?”

79. Website of the new directorate dedicated to social rights, health and the environment created in the Directorate General of Human Rights and Rule of Law (www.coe.int/fr/web/human-rights-rule-of-law/social-rights-health-and-environment-directorate)

55. As discussed and explained in the work of the various United Nations Special Rapporteurs on the right to food, the HLPE and the FAO, the realisation of the right to food must be conceived in synergy with that of other interdependent human rights. While the Council of Europe has a number of mechanisms for the indirect protection of certain aspects of the right to food, the treaties protecting human rights – the European Convention on Human Rights (ETS No. 5, 1950)⁸⁰ and the (revised) European Social Charter (ETS No. 163, 1996)⁸¹ – do not include the right to food *per se*. To support implementation of the right to food, therefore, recourse may be had to the cross-cutting principles of interpretation relating to dignity, non-discrimination, individual participation and the rule of law employed by the Council of Europe's human rights treaty bodies.

56. Developing and promoting a robust and binding right to food framework based on a human rights-based approach to guide a socially, environmentally and economically just transition to sustainable and inclusive food systems seem to me to be fully aligned with the mandate of our Organisation and within its reach on the basis of a normative framework already well worked and developed in international law

4. Conclusion

57. Contrary to my initial ambition, this report cannot not satisfy all appetites. Indeed, if I may continue the analogy, I see this first report on the right to food as an introductory morsel, an invitation to sit down together, see what we can bring to the table and cultivate a taste for the subject of food through human rights under the expert guidance of the Council of Europe, a veritable master chef in the field. The ultimate goal of adopting an ambitious European instrument to guide the transition to sustainable and inclusive food systems based on the right to food is a real opportunity. This objective is in line with the stance taken by many Council of Europe member States and European Union institutions on the international stage since 1996. And as regards content, the Council can refer to the many tools and works that have been produced at international level to define and raise awareness of the right to food and to guide States in the strategies that are needed to make this right a reality.

58. Looking ahead to the future, I would stress the crucial importance of co-operation between the Council of Europe and the FAO. Initial discussions could focus on a landmark event in 2024: the 20th anniversary of the FAO's Voluntary Guidelines on the right to food. Let us hope that this collaboration will help to follow up on our initial work and encourage the creation of synergies for future Assembly reports on the subject of food, based on the guidelines proposed here.

80. The European Court of Human Rights has addressed several aspects of the right to food under the umbrella of rights recognised by the Convention. For example, in *Ireland v. the United Kingdom* (application no. 5310/71, judgment of 18 January 1978), the use of food deprivation, combined with other interrogation techniques, was found to constitute inhuman and degrading treatment (Article 3); in *Messina v. Italy* (no. 2) (application no. 25498/94, judgment of 28 September 2000), where a prisoner sold his food to buy stamps, the Court found a violation of Article 8 (right to correspondence); in *Tătar v. Romania* (application no. 67021/01, judgment of 27 January 2009), the Court examined the impact of industrial pollution on access to clean water and healthy food under Article 8 (right to respect for the home); in *Jakóbski v. Poland* (application no. 18429/06, judgment of 7 December 2010), the prison authorities' refusal to provide meals in accordance with the applicant's religious beliefs was found to be in breach of freedom of religion (Article 9); in *Winterstein and Others v. France* (application no. 27013/07, judgment of 17 October 2013), evictions of Roma communities living in precarious conditions, including lack of access to food, were held to be contrary to Article 8 (right to respect for private and family life); in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC] (application no. 47848/08, judgment of 17 July 2014), the lack of appropriate food and care for a person with mental disabilities was addressed in relation to the right to life (Article 2) and Article 3; in *Mursic v. Croatia* [GC] (application no. 7334/13, judgment of 20 October 2016), the Court considered that prison overcrowding, combined with inadequate food, could amount to a violation of Article 3.

81. References to the right to food can be found in the construction placed by the European Committee of Social Rights on the right of workers to remuneration such as to give them and their families a decent standard of living (Conclusions 2010, Statement of Interpretation of Article 4.1) and on the right to health protection (Article 11.2), which implies a duty on the part of States to incorporate information and education on healthy eating into prevention policies and school curricula and to promote responsible individual behaviour (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, decision on the merits of 30 March 2009, paragraph 43) and to provide balanced school meals (Conclusions Lithuania, 2009; Conclusions North Macedonia, 2013; Conclusions Germany, 2017).