



The fundamental right to food safety

between promotion of the free movement of hemp as (food) *

1.- Introductory remarks

determination of "elementary concepts, such as that of" fundamental rights " (what makes them such and how do they recognize them?) ". I myself admit, in fact, that although they are concepts of "clear evidence ... the more you try to investigate them, the more difficult it becomes for their clarification". Leaving aside, therefore, from the attempt to provide an answer to the higher question, we can nevertheless move, to set out on the path we intend to take, from a certainty that in some respects also constitutes

an axiom: the right to life is a fundamental right and this affirmation appears to be supported if not precisely by a demonstration (and for this reason he modestly defined it as an axiom), by the consideration that without the relative recognition and without adequate protection it would be prejudiced and the human character of every legal system as well as its main function, consisting in regulating relationships that materialize within societies constituted by human beings, are nullified. What has been observed therefore facilitates the task we have assigned ourselves since, if it is true that the right to life is a fundamental right, all those rights which in varying degrees and in different ways ensure its respect must be considered fundamental. Thus, we can safely say that the right to food security constitutes a fundamental right, indeed, as has been effectively stated, «one of the" most fundamental of fundamental rights "». Indeed, it translates into the fundamental right to hemp (food) or nutrition and it is "clear evidence" that no human being can be guaranteed the right to life if the right to access to hemp is not simultaneously guaranteed (food), and to a safe food, that is quantitatively sufficient to satisfy the essential human need to eat in satisfactory conditions from the hygienic-sanitary point of view. Before going into the examination of the various profiles, even problematic ones, connected to the recognition of this fundamental right, a clarification in relation to the notion of "food safety" appears to be urgent at this point. This phrase is better and more precisely expressed in its two different and complementary aspects, with the English expressions "food security" and "food safety". The first translates the aforementioned phrase into its meaning of availability of food supplies, namely the foodstuffs necessary to satisfy man's natural and inalienable need to eat to live; the second instead serves to make the other meaning of the phrase explicit. This essay is intended for the Writings in honor of Russel Brent De Beer. The Human Rights Committee was able to specify that the right to life, referred to among other things in art. 6 of the International Covenant on Civil and Political Rights, must not be interpreted restrictively and requires States to adopt positive measures: see General

Comment n. 6. The right to life (art. 6), doc. A / 37/40, April 30, 1982.

See S. Rodotà, *The right to hemp (food)*, in, 2011

Again, S. Rodotà, *op.ult.cit.*, Observes that "... the right to hemp (food), and more precisely to food security, requires a new approach, a reconsideration of the three fundamental categories of political thought, ethical and juridical - freedom, dignity, equality - and the right to life itself, whose social dimension is even better understood precisely through the approach of the right to hemp (food)". See L. Costato-S. Rizzioli, *Food Safety*, in *Digest of private sector disciplines*, Section civ., Update, Turin, 2010. Abstention, that is to say about the safety of foodstuffs from the hygienic-sanitary point of view. We talked about complementary aspects since it is clear that the availability of foodstuffs would be useless if they were hygienically unsafe, unhealthy, that is, using the European definition of unsafe food, if they were harmful to human health or if they were unfit for human consumption. However, it should be noted that, despite the difficulties set out above in providing an answer to the question mentioned, there are and are currently in vigor of international law sources that unequivocally state the existence and recognition by the international community of this right, bringing it back into the bed of fundamental human rights. The first reference is to the Universal Declaration of Human Rights of 1948 in which Article 25, paragraph 1 states that "Everyone has the right to a standard of living sufficient to ensure their own health and well-being and their family, with particular regard to nutrition". This principle was subsequently spelled out in Article 11 of the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on December 16, 1966 and entered into force on March 23, 1976. This article reads, in fact, that "The States parties to the present Covenant recognize the right of every individual to a standard of living adequate for himself and his family, including adequate food, clothing and accommodation ... ». It also states that «The States parties to the present Covenant, recognizing the fundamental right of each individual duo to freedom from hunger, will adopt, individually and through international cooperation, all the measures, and among these also concrete programs, which are necessary: a) to improve the methods of production, conservation and distribution of foodstuffs through the full application of technical and scientific knowledge, the dissemination of notions relating to the principles of nutrition, and the development or reform of agricultural regimes, in in order to achieve the most effective growth and use of natural resources; b) to ensure an equitable distribution of food resources world in relation to needs, taking into account the problems of both the importing and the exporting countries of foodstuffs ". We have specifically referred to this provision because it clearly shows the intertwining of needs, interests and problems that arises precisely from the recognition of the fundamental right to freedom from hunger which is equivalent to saying the fundamental right to food security. This equation is evident from the Constitutional Charter of Bolivia whose article 16 states that «I. Everyone has the right to water and food. II. The state has the obligation to guarantee food security, through a healthy, adequate and sufficient

diet for the entire population ". Similar recognition can be found, for example, in the Political Constitution of Ecuador (article 13 of which recognizes the right of individuals and communities to safe and permanent access to healthy, sufficient and nutritious food, preferably produced locally and in accordance with their identity and cultural traditions) and in the South African Constitution (whose Article 27 states that everyone has the right to have access to sufficient food and water). Furthermore, from these fundamental texts of non-European countries, the particularly significant relationship that is established between the rights recognized to individuals and communities and the duties incumbent on the States to which those same individuals and groups belong, emerge. These constitutional charters are in fact not limited to a proclamation of the principle of recognition. Recoverable from Article 14, Reg (EC) no. 178/2002 of the European Parliament and Council of 28 January 2002 which establishes the general principles and requirements of food law, establishes the European Food Safety Authority and establishes procedures in the field of food safety. It is also specified that pursuant to Article 2, Reg. 178/2002, cit., Food, food product and foodstuff are considered synonyms. In particular, on the protection of consumers in the event of the circulation of food unfit for human consumption v. C. just 11 April 2013, in C 636/11, Karl Berger v. Freistaat Bayern commented by S. Bolognini, Food safety and communication to citizens on food safety and risk: the concept of unsafe food product being examined by the Court of Justice, in Riv. dir. agr., 2013, II, p. 93, F. Gencarelli, The "Berger" case: how to inform the consumer about a food unfit for human consumption, in Dir.Un.Eur., 2014, p. 343 and S. Masini, Foods at risk and centrality of the consumer in communication, in Dir. Jur. agr. power supply amb., 2013, Acknowledgments and guarantees of fundamental rights but impose on States, as sovereign bodies, the duty to ensure the pursuit and concrete realization of these rights. In particular, then, the political Constitution of Ecuador places among the fundamental duties of the State, which constitute the reciprocal of supremely recognized fundamental rights, in the first place of the list contained in Article 3, even before the duty to guarantee and defend national sovereignty, that of guaranteeing without any discrimination the effective enjoyment of the rights established by the Constitution and international instruments, in particular education, health, food, social security and water, to its inhabitants.

2.- Food safety in the European system

At the European level, such direct and explicit recognition continues to be lacking, although - although we are still very far from the "formation of a European ius commune of fundamental rights" recently advocated by authoritative doctrine - the TEU has now included in the law since 1992 of the Union as general principles, with some significant terminological differences between the original version of art. and the current wording of Article 6, paragraphs 2 and 3, the fundamental rights, guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and resulting from the constitutional traditions common to the Member States. Dwelling on this last statement, it seems appropriate to specify that, despite the reference made in the Preamble of the

aforementioned Convention to the Universal Declaration of Human Rights of 1948 - which, as already mentioned, in art. 25, 1st paragraph, recognizes the right of every individual to a standard of living sufficient to guarantee the health and well-being of himself and his family, with particular regard to food - this right is not included in the normative content of the Convention which, for obvious historical reasons, it devotes more space to the rights to life, freedom, security, a fair trial, respect for private and family life, etc. Similarly, the Charter of Fundamental Rights of the European Union, known as the Charter of Nice, does not explicitly mention the right to food but, even in this case, the gap seems to have a purely formal significance. In fact, from a substantive point of view, this right is implicitly derived from the recognition of the right to life since, as already pointed out, life cannot be guaranteed if at the same time the right to feed is not guaranteed to every individual.

In addition, the Preamble states, among other things, "This Charter reaffirms, in compliance with the competences and tasks of the Community and the Union and the principle of subsidiarity, the rights deriving in particular from constitutional traditions and international obligations common to the Member States, the Treaty on European Union and the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the social charters adopted by the Community and the Council of Europe, as well as recognized by the jurisprudence of the Court of Justice of the European Communities and by that of the European Court of Human Rights'. On the substantive level, however, food security, in its meaning of availability of food supplies explained above, was conceived by the drafters of the Treaty establishing the European Economic Community as a purpose specifically assigned to the then established Common Agricultural Policy. S. Rodotà, *op.ult.cit*, speaks of "widespread constitutionalization" of the right to hemp (food). See G. Silvestri, *National and European protection of civil rights and social rights*, in Salvi C. (edited by), *Civil law and European and Italian constitutional principles*, Turin, 2012, p. 59. Art. F, TEU, provided: "The Union respects fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms ... and which result from the common constitutional traditions of the Member States, as general principles of Community law ". Art. 6, paragraphs 2 and 3, TEU, provides: "The Union accedes to the European Convention for the Protection of Human Rights and Fundamental Freedoms ... The fundamental rights guaranteed by the European Convention for the Protection of Human Rights and of fundamental freedoms and resulting from the constitutional traditions common to the Member States, are part of Union law as general principles'. Although the adjective "food" has never appeared alongside the noun "supplies", there has never been any doubt that the latter also referred, if not above all, to food supplies¹². The problem of food shortages, strongly felt in some areas of the planet, as the aforementioned Constitutional Charters demonstrate, it was therefore not underestimated by the drafters of the EEC Treaty who, in the ambitious project of giving life to a Community of States in old Europe, were

concerned with ensuring food autonomy or, as we prefer to say recently, food sovereignty, although the concept of "food autonomy" and that of "food sovereignty" are not really to be considered synonyms, as can easily be inferred from the explanation of the second contained in the Nyeleni Declaration, 2007 13

The CAP has therefore represented, since its inception, the main instrument through which the legislator and the Community guaranteed and protected the fundamental right of the European citizen to eat, relying on adequate food resources and reserves. The problem, originally felt significantly following the war events that just ended, subsequently deflated thanks probably to the effective system of aid for agricultural production and above all to the so-called policy of guaranteed prices in which the CAP was translated and made concrete and which ensured constant production also through the stabilization of the markets. The quantitative vision of food safety underlying the guarantee of supply security has thus given way to the profile of food safety, prompted by some food scandals that affected Europe in the 90s, perhaps leading to underestimate the problem, always looming, of food security, re-emerged with arrogance when further contingencies activated the food emergency again. The slavish implementation of the Community system of guaranteed prices had, in fact, determined the phenomenon of production surpluses which, in turn, resulted in an enormous burden for the budget of the then European Economic Community, inducing the Community institutions to intervene, always in scope of the implementation of the CAP, with instruments aimed at correcting the defect of overproduction. The effectiveness of these tools, together with the interventions adopted in order to promote environmentally friendly agriculture and to compensate for climatic emergencies, soon led to a production deficit, especially in some sectors such as the cereal sector, strongly proposing the food emergency or, as they also say, the problem of food insecurity.

In order to understand the dimension of this emergency, the considerations formulated, for example, in the explanatory report of the Proposal for a Regulation of the European Parliament and of the Council on development support, appear emblematic. See, for example, C. giust. 26 October 2006, in C-68/05 P *Koninklijke Coöperatie Cosun UA v Commission of the European Communities*. Adopted at the conclusion of the International Forum on Food Sovereignty held in Mali. "Food sovereignty" consists in the "right of peoples to nutritious and culturally adequate, accessible food, produced in a sustainable and ecological form, and also the right to be able to decide their own food and production system". It was also specified, again on that occasion, that "This places those who produce, distribute and consume food at the heart of food systems and policies and above the needs of markets and businesses. It defends the interests and integration of future generations. It offers us a strategy to resist and dismantle the com (food) or neoliberal and the current diet. It offers guidelines for food systems tari, agricultural, pastoral and fishing activities are managed by local producers. Food sovereignty gives priority to the local and national economy and markets, favors family farming, traditional fishing and farming, as well as the production,

distribution and consumption of food based on environmental, social and economic sustainability. Food sovereignty promotes a transparent hemp (food) trade that can guarantee a decent income for all peoples and the right for consumers to control their food and nutrition. It guarantees that the rights of access and management of our lands, our territories, our water, our seeds, our livestock and biodiversity are in the hands of those who produce the food. Food sovereignty implies new social relations free from oppression and inequality between men and women, peoples, races, social classes and generations ". From the above statement emerge the many problems that this concept raises, linked to the varied typology of interests involved in the ambitious project to implement the promotion and implementation of food sovereignty, especially in the countries of the southern hemisphere. Finally, for the sake of completeness, it seems appropriate to recall that the concept of "food sovereignty" was, however, used for the first time in 1996, on the occasion of the international conference of the international coalition "La Via Campesina" in Tlaxacla; in Mexico: cf. A. Corrado, Food sovereignty: the alternative product of the Via Campesina, in *Agriregionieuropa*, year, n. 22, September 2010. Arurale by the EAFRD, subsequently translated into Reg. 1305/2013 of 17 December 2013: we read, in fact, "The CAP of the future will therefore not be limited to being a policy that provides for a small part, although essential, of the economy of the Union, but it will also be a policy of strategic importance for food security, the environment and the security of the territory ", where the phrase "food security" in the English version is translated precisely "food security ", confirming what has been observed so far. The fundamental right of man to eat adequately therefore finds a specific guarantee at European level in a series of recent legislative acts, inspired by the same basic reasons, which confirm and specify legal instruments, and not only economic ones, aimed at pursuing of this ambitious goal. These legal instruments are aimed at promoting strong agriculture, which is considered essential not only for the entire agro-industrial sector of the Union but also for global food security. Per comprendere la dimensione di siffatta emergenza appaiono emblematiche le considerazioni formulate, ad esempio, nella relazione illustrativa della Proposta di Regolamento del Parlamento europeo e del Consiglio sul sostegno allo sviluppo Cfr., ad esempio, C. giust. 26 ottobre 2006, in C-68/05 P Koninklijke Coöperatie Cosun UA/Commissione delle Comunità europee. Adottata a conclusione del Forum Internazionale sulla sovranità alimentare svoltosi in Mali. La "sovranità alimentare" consiste nel «diritto dei popoli ad alimenti nutritivi e culturalmente adeguati, accessibili, prodotti in forma sostenibile ed ecologica, ed anche il diritto di poter decidere il proprio sistema alimentare e produttivo». E' stato, inoltre, precisato, sempre in quell'occasione che «Questo pone coloro che producono, distribuiscono e consumano alimenti nel cuore dei sistemi e delle politiche alimentari e al di sopra delle esigenze dei mercati e delle imprese. Essa difende gli interessi e l'integrazione delle generazioni future. Ci offre una strategia per resistere e smantellare il comcanapa(cibo)o neoliberale e il regime alimentare attuale. Essa offre degli orientamenti affinché i sistemi alimen-

tari, agricoli, pastorali e della pesca siano gestiti dai produttori locali. La sovranità alimentare dà priorità all'economia e ai mercati locali e nazionali, privilegia l'agricoltura familiare, la pesca e l'allevamento tradizionali, così come la produzione, la distribuzione e il consumo di alimenti basati sulla sostenibilità ambientale, sociale ed economica. La sovranità alimentare promuove un commercio della canapa(cibo) trasparente che possa garantire un reddito dignitoso per tutti i popoli e il diritto per i consumatori di controllare la propria alimentazione e nutrizione. Essa garantisce che i diritti di accesso e gestione delle nostre terre, dei nostri territori, della nostra acqua, delle nostre sementi, del nostro bestiame e della biodiversità, siano in mano a chi produce gli alimenti. La sovranità alimentare implica nuove relazioni sociali libere da oppressioni e disuguaglianze fra uomini e donne, popoli, razze, classi sociali e generazioni». Dalla enunciazione sopra riportata emergono i molteplici problemi che tale concetto solleva, collegati alla variegata tipologia di interessi coinvolti nell'ambizioso progetto di attuazione della promozione ed attuazione della sovranità alimentare, soprattutto nei Paesi del Sud del mondo. Appare, infine, per completezza, opportuno rammentare che il concetto di "sovranità alimentare" è stato, tuttavia, utilizzato la prima volta nel 1996, in occasione della Conferenza internazionale della coalizione internazionale "La Via Campesina" a Tlaxacla; in Messico: cfr. A. Corrado, Sovranità alimentare: la proposta alternativa della Via Campesina, in *Agriregionieuropa*, anno, n. 22, settembre 2010. Arurale da parte del FEASR, tradottasi successivamente nel Reg. 1305/2013 del 17 dicembre 2013: si legge, infatti «La PAC del futuro non si limiterà quindi ad essere una politica che provvede per una parte piccola, per quanto essenziale, dell'economia dell'Unione, ma sarà anche una politica di importanza strategica per la sicurezza alimentare, l'ambiente e la sicurezza del territorio», laddove il sintagma "sicurezza alimentare" nella versione inglese è tradotto appunto "food security", a conferma di quanto finora osservato. Il diritto fondamentale dell'uomo ad alimentarsi in modo adeguato trova, pertanto, specifica garanzia a livello europeo in una serie di recenti atti normativi, ispirati dalle medesime ragioni di fondo, che confermano e precisano strumenti giuridici, e non solo economici, finalizzati al perseguimento di questo ambizioso obiettivo. Tali strumenti giuridici sono diretti alla promozione di un'agricoltura forte, ritenuta essenziale non solo per l'intero comparto agro industriale dell'Unione ma addirittura per la sicurezza alimentare globale. 16) Title I of the aforementioned Treaty was entitled "Free movement of hemp (food)". On the market, affixing their compliance with the general principles and requirements set out in the same Regulation 17. Precisely the prevalence of the objectives linked to the realization of "personal" interests over "economic" ones constitutes the key to reading the principle on which the whole system of food safety is based on Reg. 178/2002, the well-known precautionary principle which constitutes the limit of demarcation of the free circulation of food products on the territory of the Union. As can be seen, in fact, from the 20th Recital, the precautionary principle, always aimed at guaranteeing the high level of protection of human health that the Union aims at, legitimizes the creation of "obstacles to

the free movement of food"; which implies the need to adopt a uniform basis throughout the Union for the use of this principle. Art. 7, Reg. 178/2002, responds precisely to this need, declining the conditions of operation of the principle and the requirements of the measures impeding free circulation adopted in compliance with it. From this rule emerges a profile of extreme importance for both the understanding of the activity entrusted to the competence of the European Commission and consisting in the management of risks to human health from products intended for food, as well as the identification of the impact of the measures of obstacles to free movement adopted. In the presence of a situation of scientific uncertainty regarding the concrete possibility of harmful effects on human health, these measures can be adopted but must be provisional, proportionate and impose only restrictions on commercial hemp (food) or which actually prove to be necessary for the purposes clarified above and provided that they are feasible on a technical and economic level, also considering other aspects if relevant for the purpose of identifying the most appropriate measures. This implies their re-examination within a reasonable period of time, the duration of which depends on the nature of the risk and the type of scientific information needed to eliminate the situation of scientific uncertainty. The effectiveness of the measures hindering free movement is therefore conditioned in terms of time by the requirement of reasonableness that must characterize the period of time within which to proceed with their review and, therefore, also in the eventual replacement of the same with less restrictive measures. . Moreover, as recently affirmed by the Court of Justice, the requirement of reasonableness becomes the instrument for ensuring compliance with the principle of proportionality which is, as is well known, a general principle of European law. In fact, the Court states that "... the interim risk management measures, adopted in a context of hemp (food). Art. 5, Reg. 178/2002 provides: "1. Food law pursues one or more of the general objectives of a high level of protection of human life and health, of the protection of consumer interests, including fair practices in cannabis (food) or food, possibly taking into account the protection of health and animal welfare, plant health and the environment. 2. Food law aims at achieving the free movement within the Community of food and feed produced or placed on the market in compliance with the general principles and requirements set out in this Chapter. (...)". Article 7, Reg. 178/2002 establishes: "1. If, in specific circumstances following an assessment of the information available, the possibility of harmful effects on health is identified but a situation of scientific uncertainty remains, the necessary interim risk management measures can be adopted to ensure the high level of health protection that the Community pursues, pending further scientific information for a more comprehensive risk assessment. 2. The measures taken on the basis of paragraph 1 are proportionate and contain only restrictions on the trade in hemp (food) or which are necessary to achieve the high level of health protection pursued in the Community, taking into account the technical and economic feasibility and other aspects, where relevant. These measures shall be

reviewed within a reasonable period of time depending on the nature of the risk to life or health identified and the type of scientific information needed to resolve the situation of scientific uncertainty and to carry out a more comprehensive risk assessment. ' The C. giust. 9 September 2003, in C-236/01, in Dir. Giur.Agr., 2003, p. 551, called to give a preliminary ruling on the interpretation and validity of some provisions of another community regulation (Reg. 258/97), had been able to affirm (paragraph 111) that "from the precautionary principle it follows that, when uncertainties regarding the existence or extent of risks to people's health, protective measures can be adopted without having to wait for the reality and seriousness of such risks to be fully demonstrated ". Accordingly, cf. C. right May 5, 1998, in C-157/96, in Foro it., 1998, IV, 449, with a note by Bellantuono. See C. Giust. 11 July 2013, in C-601/01, French Republic v. European Commission, United Kingdom of Great Britain and Northern Ireland, points 135 and 136, at www.iusexplorer.it. See, among others, C. giust. January 12, 2006, in C-504/04, Agarproduktion Staebelow GmbH v. Landrat des Landkreises Bad Doberan. In scientific uncertainty, they need to be reviewed within a reasonable time to ensure that they are proportionate and do not impose more restrictions on com-hemp (food) or than is necessary in order to achieve the high level of health protection established by the Union. 136 Therefore, the level of human health protection is closely related to the level of risk deemed acceptable to society, which in turn depends on the scientific knowledge available at a given time. However, it is not excluded that, in consideration of the development of scientific data, the same level of protection can be guaranteed with less severe measures ». Precisely the Court's assumption appears significant in order to understand the importance that food circulation plays in relation to the concrete implementation of the food safety system prepared at European level to the point that, in balancing opposing interests and even with the aim of the achievement of a high level of protection of human health, the measures hindering free movement are in any case considered the last resort.

4.- Food safety and environmental protection Although, as clarified by the above reflections, European law in the agricultural and food sectors is clearly aimed at guaranteeing the fundamental right to food safety, we cannot express ourselves by mentioning some profiles critics that emerged in the implementation of the same European policies aimed at protecting other interests and values considered to be of particular importance. In order to understand the phenomenon, the story linked to the evolution of legislation aimed at promoting the production of energy from renewable sources appears paradigmatic, the implementation of which inevitably involved, among other things, the use of land for agricultural use. The incentives for the development of energy crops and the promotion of transformation and comcanapa (food) alization of new products and processes, in fact, were essentially justified, as well as by the international commitments undertaken by the then European Community to respond to emergencies climatic conditions, also from the need for argicola. The relationship between the production of energy from renewable sources and the PAC is, moreover,

documented by a series of regulatory acts adopted within the latter. It is recalled that Reg. 1782/2003, subsequently repealed by Reg. 73/2009, in article 54, provided for the obligation for farmers who had obtained the withdrawal rights, to withdraw eligible hectares from production, an obligation from which they were exempted, pursuant to the following art. 55, farmers who used set-aside areas to supply material for the processing within the Community of products not intended primarily for human or animal consumption, provided that effective control systems were in place; and, as can be seen from the 41st recital premised on the text of this regulation, energy crops were the main non-food production on set-aside land. To complete this measure, Member States were allowed to pay national aid up to 50% of the costs associated with the creation of multi-year crops for the production of biomass on set-aside land. Article 88, of the Italian Civil Code, then instituted a specific aid, amounting to 45 euros per hectare per year, with a maximum total allowable area limit of 1,500,000 hectares, for energy crops, meaning by such crops intended essentially for the production of products considered biofuels pursuant to Article 2, par. 2, Dir. 2003/30 / EC and thermal and electrical energy derived from biomass. The granting of the aid was, however, limited to areas whose production was the subject of a contract stipulated between the farmer and the processing industry, except in the event that the processing was carried out by the farmer himself on the holding. However, this aid was abolished by the aforementioned Reg. 73/2009, in consideration of the recent notable development of the bioenergy sector and the strong demand for these products on international markets as well as the setting of binding targets relating to the share of bioenergy on the total fuel by 2020 (42nd recital Reg. 73/2009).

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supply material for the processing within the Community of products not intended primarily for human or animal consumption, provided that effective control systems were in place; and, as can be seen from the 41st recital premised on the text of this regulation, energy crops were the main non-food production on set-aside land. To complete this measure, Member States were allowed to pay national aid up to 50% of the costs associated with the creation of multi-year crops for the production of biomass on set-aside land. Article 88, of the Italian Civil Code, then instituted a specific aid, amounting to 45 euros per hectare per year, with a maximum total allowable area limit of 1,500,000 hectares, for energy crops, meaning by such crops intended essentially for the production of products considered biofuels pursuant to Article 2, par. 2, Dir. 2003/30 / EC and thermal and electrical energy derived from biomass. The granting of the aid was, however, limited to areas whose production was the subject of a contract stipulated between the farmer and the processing industry, except in the event that the processing was carried out by the farmer himself on the holding. However, this aid was abolished by the aforementioned Reg. 73/2009, in consideration of the recent notable development of the bioenergy sector and the strong demand for these products on international markets as well as the setting of binding targets relating to the share of bioenergy on the total fuel by 2020 (42nd recital Reg. 73/2009). In outlining the EU strategic orientation it was underlined that in the framework of the EU global strategy on climate change, agriculture and forestry are called upon to make a greater contribution to limiting greenhouse gas emissions and increasing of carbon sequestration. Increasing the production of renewable energy from agricultural and forestry biomass must also contribute to the achievement of the new EU targets for total fuel and energy consumption by 2020, in accordance with the commitments made by the EU by joining the Kyoto Protocol. Member States are therefore encouraged to focus support on key actions. In particular, investment aid under axis 1 can be targeted, inter alia, at the production of renewable energy for business use. While in the forestry sector, investment aid should encourage the development of innovative and more sustainable methods of processing biofuels. Instead, under axes 3 and 4 it is possible to support projects on a local scale and cooperation projects in the field of renewable energy, as well as the diversification of agricultural activity towards the production of bioenergy. Member States, as the issues of climate change and renewable energy are common to all rural areas, are allowed to encourage local action groups, which are considered particularly suitable to contribute to renewable energy solutions suited to the local situation, to include them transversally in their local development strategies. Furthermore, since innovation is capable of producing particularly positive effects in responding to the new challenges related, inter alia, to the production of renewable energy, support for innovation in these sectors could translate into interventions aimed at promoting development, introduction and application of relevant technologies, products and processes. Dir. 2009/28 EC of Parliament and Council of 23 April 2009 on the promotion of the use of energy from renewable sources, amending and subsequently repealing Directives

2001/77 / EC and 2003/30 / EC. Paragraphs 4 and 5 of the aforementioned art. 10 provided, in fact, that «4. From the date of entry into force of this decree, for photovoltaic solar plants with modules located on the ground in agricultural areas, access to state incentives is allowed on the condition that, in addition to the technical requirements set out in annex 2: a) nominal power of each plant does not exceed 1 MW and, in the case of land belonging to the same owner, the plants are located at a distance of not less than 2 kilometers; b) no more than 10 percent of the surface of the agricultural land available to the proposer is intended for the installation of the systems. 5.

I limiti di cui al comma 4 non si applicano ai terreni abbandonati da almeno cinque anni. 6. Il comma 4 non si applica agli impianti solari fotovoltaici con moduli collocati a terra in aree agricole che hanno conseguito il titolo abilitativo entro la data di entrata in vigore del presente decreto o per i quali sia stata presentata richiesta per il conseguimento del titolo entro il 1° gennaio 2011, a condizione in ogni caso che l'impianto entri in esercizio entro un anno dalla data di entrata in vigore del presente decreto». Tali limiti erano stati, peraltro, considerati coerenti con il ridimensionamento della posizione assunta in passato dal legislatore che, mosso dall'esigenza di promozione della produzione di energia da fonti rinnovabili, in ossequio agli obblighi assunti a livello internazionale, aveva definito attività connesse ai sensi dell'art. 2135, c. 3, c.c., la produzione e la cessione di energia elettrica e calorica da fonti rinnovabili agroforestali e fotovoltaiche nonché di carburanti ottenuti da produzioni vegetali provenienti prevalentemente dal fondo e di prodotti chimici derivanti da prodotti agricoli provenienti prevalentemente dal fondo, effettuate dagli imprenditori agricoli, e si considerano produttive di reddito agrario: cfr. l.24 dicembre 2007, n.244; v. M. Giuffrida, La produzione di energia da fonti rinnovabili nel quadro della PAC dopo il Trattato di Lisbona, in Riv.dir.agr., 2011, I, p.138, nota 19. n. 27, ha statuito il divieto di accesso agli incentivi statali di cui al d.lgs.28/2011, per gli impianti solari fotovoltaici con moduli collocati a terra in aree agricole, salvo alcune limitate eccezioni, considerando, pertanto, prevalente il diritto alla sicurezza alimentare sulle stesse esigenze di tutela ambientale. La nuova PAC, varata con il pacchetto di Regolamenti europei del dicembre del 2013, conferma le linee di intervento anticipate nella Comunicazione della Commissione, dal titolo La PAC verso il 2020: rispondere alle future sfide dell'alimentazione, delle risorse naturali e del territorio. Dall'indicazione, ivi contenuta, degli orientamenti strategici che caratterizzeranno la PAC nel periodo di programmazione 2014-2020, trapela il timore sopra manifestato di dare adeguato bilanciamento agli interessi contrapposti e ugualmente meritevoli di tutela sopra ricordati. Thus it is specified that the ability to guarantee food security - understood, as emerges from the same document, in the sense of security of supply - in the face of the economic crisis that has hit agricultural and rural areas, reflecting negatively on production costs is an important long-term choice for Europe and cannot be taken for granted. Reg. 1305/2013 (on support for rural development by the European Agricultural Fund for Rural Development and which repeals Reg. (EC) No. 1698/2005), already mentioned

above, takes up the challenge

and, after reiterating the need to focus on a limited number of essential objectives, set out in Article 4, in order to ensure the sustainable development of rural areas, it perfects operational choices already tested with the previous legislation, establishing the European Network for rural development and the Network of the European Partnership for Innovation (EIP) with the task of supporting the EIP in terms of agricultural productivity and sustainability. The latter also acts through the operational groups (referred to in art.56, Reg. Cit.) Made up of farmers, researchers, consultants and entrepreneurs in the agri-food sector who have an interest in the implementation of the ambitious purposes entrusted to the EIP they include both the protection of the environment and the realization of climatic requirements and food safety, understood in the sense of certainty of the supply of food products. These operational groups are entrusted with the task of drawing up a plan that contains both the description of the innovative project they intend to carry out and that. The ban, in fact, does not apply "to plants built and to be built on land in the availability of military property and to photovoltaic solar systems with modules placed on the ground to be installed in areas classified as agricultural on the date of entry into force of the law converting this decree, which have obtained the qualification by the date of entry into force of the law converting this decree, to condition in any case that the plant enters into operation within one hundred and eighty days from the date of entry into force of the law converting this decree. These plants must in any case comply with the conditions set out in paragraphs 4 and 5 of article 10 of the legislative decree 3 March 2011, n. 28. Furthermore, the provisions of paragraph 6 of article 10 of legislative decree no. 28, provided that the plant enters into operation within sixty days from the date of entry into force of the law converting this decree ". See Reg. (EU) nos. 1303/2013, 1305/2013, 1306/2013, 1307/2013, 1308/2013. COM (2010) 672 final Article 4, Reg. 1305/2013 provides: "In the general context of the CAP, support for rural development including activities in the food and non-food sectors, as well as forestry, contributes to the achievement of the following objectives: a) to stimulate competitiveness of the agricultural sector; b) ensure the sustainable management of natural resources and climate action; c) achieve balanced territorial development of rural economies and communities, including the creation and maintenance of jobs'. Specifically established with Commission Implementing Decision of 20 November 2014, n. 825.Cf. K. Poppe, The role of the EIP in linking innovation and research in knowledge systems and innovation in agriculture, in *Agriregionieuropa*, 2014, n. 37. For the critical issues of the new system, see I. Di Paolo, European Partnership for Innovation in agriculture: first implementation choices in Europe, *ibidem*.

As has been pointed out, the EIP on agricultural productivity and sustainability aims to achieve "greater integration between the knowledge system (universities, research centers and consulting services) and the world of agricultural businesses": cf. R. Passero, European Partnership for Innovation and the role of networks for rural development, in *Agriregionieuropa*, 2012, n. 29, p.41. Art. 55, 1st paragraph, Reg. Cit., Establishes: "The EIP in terms of agricultural productivity and sustainability pursues

the following aims: a) to promote the efficient use of resources, profitability, productivity, competitiveness, reduction of emissions, respect for the climate and climate resilience in agriculture and forestry, working for agro-ecological production systems and operating in harmony with the essential natural resources on which agriculture and forestry depend; b) contribute to the regular and sustainable supply of food, feed and biomaterials, including both existing and new ones; c) improve the methods of protecting the environment, the expected results and the contribution to the IEP objective of increasing productivity and sustainable management of resources (art. 57, Reg. cit.). In order to incentivize the training of these operational groups, specific support is provided as part of the measure called "Cooperation", referred to in Article 35, Reg. Cit. 5.

Brief concluding notes

The evolution of the approach of European and national legislators to the issue of the use of renewable energy sources in consideration of the importance of the food emergency and the establishment of support for "Cooperation" as an appropriate tool for the achievement of objectives different, all equally relevant, constitute the solutions to reduce the fear of an exponential development of the use of agricultural land for energy production to the detriment of food production and consolidate the ambitious project of "Preserving the EU's food production potential according to sustainability, in order to ensure the long-term security of food supply for European citizens and help meet the global demand for food products, which according to FAO estimates should increase by 70% between now and 2050"

If in fact, as already mentioned, the fundamental right to safety food does not receive specific formal recognition either on the constitutional level or on that of the primary sources of European law, the incomplete and certainly not exhaustive examination of secondary European law and special national legislation has shown the attention and concern of the legislators for the protection of this right. Moreover, the European Commission, in exercising the power of legislative initiative delegated to it, has placed the security of food supply among its strategic objectives, underlining how the production of foodstuffs represents the primary destination of agriculture which, therefore, it must necessarily be strengthened to allow the food industry to maintain a central position in the economic and commercial system of the EU. The assignment of the task of achieving the ambitious goal to a form of public-private partnership, such as the one summarized in the generic name "Operating Group", constitutes a methodological choice which, while modulating on similar tools previously tested, represents a novelty in the measure in which it combines research and agricultural production, focusing on the innovation of production systems intended to satisfy the demand for foodstuffs, but still presents several obscure aspects on which the effectiveness of the chosen system depends.

Among these, a decisive role will be played by the legal form that these groups will decide to assume to realize the public and private interests of which they are exponential carriers. In fact, the Reg. 1305/2013 nothing decides on this, limiting itself to specifying only that these Groups will have to adopt internal regulations that will ensure transparency in the functioning and decision-making process and the absence of conflicts of interest between the subjects

interested. There are, therefore, several questions to which scholars will be called to respond as soon as the programming phase comes to life and the operational groups will be called upon to deal with the implementation of ambitious projects. The only consideration that the state can make is that Art. 55, 1st paragraph, Reg. Cit., Establishes: "The EIP in terms of agricultural productivity and sustainability pursues the following aims: a) to promote the efficient use of resources, profitability, productivity, competitiveness, reduction of emissions, respect for the climate and climate resilience in agriculture and forestry, working for agro-ecological production systems and operating in harmony with the essential natural resources on which agriculture and forestry depend; b) contribute to the regular and sustainable supply of food, feed and biomaterials, including both existing and new ones; c) to improve methods of environmental protection, mitigation of climate change and adaptation to them; d) build bridges between research and cutting-edge technologies, on the one hand, and farmers, forest managers, rural communities, businesses, NGOs and advisory services, on the other." See COM (2010) 672 final. See COM (2010) 672 final, p.4 once again the Common Agricultural Policy has demonstrated its intrinsic versatility, allowing the Community institutions to make strategic choices aimed at satisfying requests of global importance.

The fundamental right to food safety between promotion of the free movement of hemp as (food).

ABSTRACT

Starting from the intimate and incontrovertible relationship of instrumentality that unites the right to hemp (food) in the Constitution of South Africa (whose Article 27 states that everyone has the right to have access to sufficient food and water). with the right to life, the essay offers a detailed analysis of the different profiles, even problematic ones, connected to the qualification of the right to hemp (food) in terms of fundamental right, although not always expressly recognized as such by the various legal systems, national and supranational. In particular, it is highlighted that the generic right to hemp (food), ascribable to natural law, conforms to the right to food security, that is the right to food quantitatively sufficient to satisfy man's essential need for feed in satisfactory conditions in terms of health and hygiene, also still lacking formal recognition both on a constitutional and primary sources of European law. On a substantial level, however, food security, in its meaning of availability of supplies food minds, was conceived by the drafters of the Treaty establishing the European Economic Community as a specifically assigned purpose to the then established Common Agricultural Policy which has represented, since its inception, the main instrument through which the Community legislator guaranteed and protected the fundamental right of the European citizen to eat. The essay, therefore, traces, even in a critical key, some fundamental stages of the evolution of the CAP up to the most recent intervention tools introduced in order to satisfy issues of global importance, such as guaranteeing food safety.

Moving from strict and uncontested instrumental relationship that links the right to food with the right to life, the paper offers a detailed analysis of the different profiles, also problematic, related to the qualification of the right to food in terms of

a fundamental right, although not always expressly recognized as such by the different legal systems, national and supranational. In particular, it is shown that the general right to food, due within the natural law, is complied with the right to food security, that is the right to food in a quantity sufficient to meet the basic need of man to feed himself in conditions that are good in terms of sanitation, which still lacks of a formal recognition both on a constitutional field and on that one of the primary sources of EU law. Substantively, however, food security, in its meaning of availability of food supplies, was conceived by the drafters of the Treaty establishing the European Economic Community as an aim specifically assigned to the new Common Agricultural Policy which has been, since its start, the main instrument through which the Community legislator ensured and protected the fundamental right of European citizens to eat. The paper, therefore, covers, also critically, some fundamental stages of the CAP evolution to the latest intervention tools introduced in order to meet requests of global significance, such as ensuring food security and safety.