The Right to Food and Food Diversity in the Italian Constitution

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1 Introduction

"It is necessary to contrast the economic globalisation with the globalisation of solidarity. It is necessary to take advantage from the expo experience in order to think on the right to food, striving to see behind the *faces.* A hidden presence, but that actually shall be the real protagonist of the event: the *faces* of the men and women who are hungry, and that get sick, and even die, from a too poor or harmful alimentation.(. . .) My hope is that this experience will allow entrepreneurs, merchants, scholars, to feel involved in a great project of solidarity: to feed the planet in the respect of every man and woman who live there and in compliance with that natural environment, of that territory, which has been given to us".[1]

"The right to food is the right of every person to have regular access, permanent, free, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food, corresponding to the cultural traditions of the population to which the consumer belongs and be able to ensure a psychic and physical life, individual and collective, free of fear, fulfilling and dignified".[2]

I wanted to start this work with two quotes, expressed at different times, from two very different personalities: Pope Francis when greeting for the opening day of Expo 2015, and Jean Ziegler, as the UN special rapporteur on the right to food, in 2011.

Both contributions point out why, albeit from different cultural assumptions, they summarize in a similar manner the rights, the values involved, the interests that underlie the right to food: nourish, respecting; guarantee a right, protecting the area where materially is expressed.

[1]Bergoglio (2015).
[2]Ziegler (2004), p. 49.

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In these statements, however, an essential profile for this research is subtended: the necessary distinction between the right *of* food that has the task of studying the rules of production and marketing of food and the right *to* an adequate food. If the right to food governs *how* the right should be produced and distributed, the right to adequate food rule *on what* the human being has the right to access.

The right to adequate alimentation, *rectius* the right to adequate food, comes always before the right of food, which is, therefore, serving in respect to the first.

But these "extra order solicitation" are especially useful because of them the researcher can make good use to wonder about the nature and degree of protection that the right to food has in their own Country, starting from its constitutional foundation.

In fact, the correlation between the right to food and the Constitution is *in re ipsa*: the first looks like a premise of the second, just like the right to life. The right to food is, thus, an aspect of the "right to a dignified existence," which seems to be not only essential, but also prejudicial, because, in hindsight, "the right to be able to use the rights".[3]

Not by chance a recent study shows how, according to a survey conducted by FAO in 2011, the right to food is enshrined at constitutional level in more than one hundred Constitutions.[4] Sometimes it is recognized explicitly (and is emblematic that this happens mostly in poor countries), and sometimes implicitly by referring to concepts such as the right "to an adequate standard of living", "well-being", "the development"; other times, the right to food is protected in a *mediated* manner by virtue of the recognized value in international treaties that foresee it.[5]

The Italian Constitution falls within the latter ones, for the postponement, operated, from the first paragraph of Art. 117, to the "constraints deriving from EU and international obligations".

But such location of our Charter, as will be seen, does not satisfy completely.

2 The Right to Food in a *Laborist* Constitution

In the Italian Constitution there is no explicit reference to the right to food.

Following the constitutional amendment of 2001, there was only the introduction, in Art. 117, III° c. Const., of the *alimentation* matter, whose ownership is shared between State and Region; but the effects of such entry have been disappointing. Indeed, the transversal character of the matter has made and makes it difficult to

[3]Ruotolo (2011), p. 403.

[4]Pizzolato (2015), p. 135.

[5]Ibidem.

identify its boundaries[6]: it connects to a number of expertise areas, from which often, in these 14 years of implementation of the Constitutional novella, it was compressed, struggling to establish itself as an autonomous title of competency.[7]

Because of its own nature, in fact, the nutrition comes in contact with other materials contexts: some of the exclusive competence of the Regions (agriculture, industry, trade); other of exclusive competence of the State (competition, determination of the basic level of benefits relating to civil and social rights), other of concurrent competence (health protection).

Well, with its rulings, the Constitutional Court has often attracted the discipline concerning the nutrition in the context of health protection. An example is the decision no. 104 of 2014, in which the Court is invested by the question of constitutional legitimacy of the law of the Valle d'Aosta region, which subordinates the exercise of trade activity of the food product sector to the possession of specific professional requirements.

The constitutional judge rejects the question, on the assumption that "these requirements appear functional to ensure that those who carry out activities in the food industry sector are provided with specific training and experience to the evident purpose of safeguarding the health of consumers in a sensitive and fundamental sector such as that of food".

It seems, then, that to the food matter, incident—by its nature—on other matters, has been given a *recessive* trait, by which it has been absorbed by other title of competencies.[8]

This phenomenon is due just to the circumstance that there is no explicit recognition of the right to food among the fundamental principles of our Charter.

Nevertheless, placing our Constitution among those that protect the right in question by virtue of the only appeal to supranational sources *former* Art. 117 Cost., appears a reductive choice.

The right to food, in fact, exist in the *soul* of our fundamental Charter.

It seems difficult to dispute, in fact, the profound relationship between the right to food and human dignity, the latter considered as "cornerstone" (using the famous expression of Giorgio La Pira) of the entire constitutional edifice.

From this perspective it would seem absurd, therefore, to consider the right to food as a right of "new generation", given its inherent coessentiality compared to the Constitution.

But why, then, unlike other Charts, there is no clarification of the right to food in the Italian Constitution?

Indeed, the absence is because of the choice, on the part of Constituents, to build our *welfare* system on the right to work, as a preventive remedy and the general issue

[6]Napoli (2013), p. 401.

[7]Vivaldi (2015), p. 239. About an overlapping of legislative competences, created by an unhappy reform, see at least: Caretti and Tarli Barbieri (2012), D'Atena (2013), Martines et al. (2012) and Mangiameli (2013).

[8]Vivaldi (2015), p. 238.

of poverty and social exclusion. The right/duty to work sanctioned by Art. 4 Const., is in fact the foundation of our republican order, to which the Art. 1 assigns an "force-idea" (using an expression note of Mortati).[9]

Democracy based on work constitutes the conception that is the basis of the whole constitutional architecture, in which the work is considered not only as a tool for the personality affirmation, but also as a source of material and spiritual realization of the person.[10]

In the constitutional perspective, therefore, the right to food exists and must be considered and guaranteed by the right to work, through the right to remuneration (Art. 36 of the Constitution.), to providential protection (Art. 38, paragraphs 2 and 3),[11] the right to social assistance (Art. 39 of the Constitution. 1 paragraph).

3 The "Discovery" of the Right to Food

Well, until a few years ago, the legislature, the doctrine and constitutional jurisprudence had never felt the need to make explicit this right.

Then, the serious economic crisis that began in 2008 (in which we are still immersed) pushed the operators of the right to explicitly intervene on this profile.

Emblematic has been the case of the institution of the so-called social card, which was followed by the Constitutional Court's judgment no. 10/2010.[12]

Particularly, Article 81 of Decree-Law n. 112 of 2008, had set up "a special fund aimed at meeting the priority needs of food nature [and subsequently also energy and sanitary needs of the poor citizens]" (paragraph 29), by regulating the funding (paragraph 30) and stating that, "in view of the extraordinary tensions faced by the food prices, in order to help the weakest segments of the population in a state of special need and demand for these", "is granted to the residents of Italian nationality who are in the greatest economic hardship" "a Purchase Card for the purchase of such goods and services, with burden borne by the State" (paragraph 32).

The regions who complained that the law has disciplined a matter of social policy, of the exclusive regional jurisdiction, the Court replied considering permissible the State intervention as "necessary in order to *effectively* ensure the protection of persons who, pouring in conditions of extreme need, boast a fundamental right" that, as "strictly relating to the protection of the irreducible core of the human person", especially in the presence of an "exceptionally negative economic situation," "must be able to be guaranteed throughout the national territory in a uniform,

[9]Mortati (1972), p. 26.

[10]Vivaldi (2015), p. 243. See also Cantaro (2008).

[11]Violini (2006).

[12]On such decision see the contributions of: Anzon Demmig (2010), Longo (2010) and Ruggeri (2010).

appropriate and timely manner, through a consistent and appropriate regulation purposive".

But which is the law qualified as 'fundamental' that, in this case, the Court considers should be protected at the cost of a derogation to the ordinary division of legislative competences?

It is the "right to achieve the essential services to relieve situations of extreme need - especially food". A right to which it corresponds—as it can be always read in the sent. n. 10/2010—"the duty of the State to determine the qualitative and quantitative characteristics, if the lack of a such provision might prejudge it". A right that the Court gets from the "fundamental principles of Articles 2 and 3, co. 2 Const., Art. 38 Cost. and Art. 117, co. 2, letter. m, Const.".

Well then, to the purpose of this research I find this judgment useful because it has three key points: (1) Firstly, in terms of the nature of the right in question, the Court has explicitly defined the right to food as a "fundamental right linked to the irreducible core of the human person"; (2) furthermore, in terms of the protection of this, as of other fundamental rights, the Court explained that the endorsement of a social law can not be divorced from its effectiveness; (3) Finally, for the exceptional nature of the discharge of duty in question solely from the state: in the final paragraph, in fact, the Court clarifies that, upon termination of "the economic situation that has required a social policy intervention extended to direct delivery of providence, it can not be separated from the participation instruments of the Regions, taking care also to ensure the full implementation of the principle of loyal cooperation, in observance of the distribution of competences defined by the Constitution".

4 The Right to Food and Principle of Solidarity

If, therefore, the right to food is *a very essential right* that, under normal conditions, all entities that make up the Republic shall guarantee, it seems appropriate to reflect on the scope of this *duty*.

This is certainly not the place to investigate the complex issues relating to constitutional duties[13]; we just dwell on some profiles that have connections with this research.

First of all it must be recalled that, in the more or less extensive catalog of constitutional duties, there are some that undoubtedly have direct effects on the right to food: think of Art. 4 Const., according to which it is a duty to contribute, through own work, to the material and moral welfare of society, or Art. 30 Cost. according to which the parents have the duty to "maintain" their children.[14]

[13]On the issue see at least: Balduzzi et al. (2007) and Lombardi (2002).

[14]For a classification proposal, see Pizzolato and Buzzacchi (2008), p. 326 ss.

Moreover, from a dogmatic point of view, it appears appropriate to emphasize that the issue of the duties find its natural declination in the principle of solidarity: it is a cardinal-principle of the legal order, which, reflected on our theme, recalls the duty to ensure over time, between generations, access to food and sustainable development.[15]

In fact, on closer inspection, the principle of solidarity seems ontologically created to communicate with the right to food: not only because the *right* to feed can not be fully configured without being coordinated with a *duty* to feed, but also for the vocation of this principle to hold together the two aspects of the right to food, or what implies public solidarity/responsibility and what it implies private solidarity/responsibility, according to the logic of interdependence between duties.[16]

Consider, in this regard, Art. 30 Cost., where different duties dialogue in the two paragraphs: it is the duty of the parents to "maintain" (also from a nutritional point of view) the children (horizontal solidarity); but in the alternative, if the parents do not have the ability, it becomes the duty of the Republic to ensure that maintenance ("public" solidarity).

Dwelling on the vertical solidarity, or public, it would seem to configure, in this field, a kind of *food solidarity*,[17] understood as a duty of the Republic (in all its articulations) to (to paraphrase the Art. 3 of the Constitution) remove all obstacles to equality between citizens in accessing adequate food, preventing the full development of the human person.[18]

This principle of food solidarity seems express itself in two aspects: (1) the duty *to render effective* the right to food, (2) the duty *to protect* it in all its declinations.

5 The Duty to *Render Effective* the Right to Food. The "Vital Minimum"

The sore point for the right to food is its concrete effectiveness; is, to paraphrase Bobbio, the "need to move from the abstract recognition of a right to the guarantee of its effectiveness" in respect to the Republic.[19]

Well, the duty to render effective the right to food requires that the Republic (not just the State) facilitate, with all kinds of positive action (legislative and administrative), access to adequate food especially the most vulnerable groups.

It was previously stated that our Constituent has designed an *welfare* state in which all rights (including food) rotate around the work; and now that work is going through a time of deep crisis, measures to guarantee the right to feed themselves

[15]Giuffrè (2002), Pezzini and Sacchetto (2005) and Tondi della Mura (2010).

[16]Shue (1984), p. 83 ss.

[17]Bottiglieri (2015), p. 246.

[18]Ibidem.

[19]Bobbio (1992).

seem to merge into those against poverty, to ensure the "vital minimum", as an essential core of the right to social assistance (Art. 39 Const. 1 paragraph).

And without doubt, in fact, that today the right to food recalls the theme of *social inclusion*: as has been authoritatively stated by the provisions on the rights and duties, emerges a constitutional design that requires continuous action aimed at the transformation of society, in which the foundation of the duty of the public authorities in the struggle against poverty and social exclusion "can be said to be strengthened by specific constitutional commitment to the removal of inequalities, clearly expressive of the need to place man in a position to exercise the rights and then to carry out his personality".[20]

In this sense, the introduction of a structural measure of income support could be understood as a concrete means of implementation, through legislation, of a true and proper right to food.

As it is known, on the issue of "the vital minimum", the doctrine has recently taken to question: for people who find themselves in fragile condition, that is the essential content of the right to social assistance, of which the legislator must take charge by making choices that are characterized by the principle of reasonableness.[21]

In fact, the reading of Art. 38, paragraph I, operated by relying on Articles 2 and 3 Const., leads, simultaneously, to the need to implement this right in ways that safeguard the principle of fulfillment of the mandatory duties of solidarity, to which is intimately linked the recognition of fundamental rights. Conversely, "a supplement to the income that places conditions of reciprocity seems to respond better to the idea of constitutional citizenship, both in terms of rights and in terms of duties".[22]

In argument, it is interesting to note that the German Constitutional Court has given its decision unequivocally that it is the duty of public authorities to guarantee citizens the right to an existential minimum. Invested by the issue of the constitutional legitimacy of the Hartz IV law (related to services on the labor market), the German Court stated that the principles of human dignity and the State of welfare is obtainable that the guarantee of a minimum subsistence is a fundamental right, addressed to ensure the necessary material conditions to existence and a minimum of participation in social, culture life of the country.

A right that is not subject to the availability of the legislature and that must be honored by the legislator who is responsible for the realization and the constant updating of the measures, adapting each time the performance "to the level of development of the community and the existing conditions of life".[23]

However, the doctrine has emphasized that the principle expressed by the German court is worth *a fortiori* in the Italian case, where the foundation of the duty of the public authorities in the struggle against poverty is reinforced by the specific constitutional commitment to the removal of inequalities clearly expressive of the

[20]Ruotolo (2011), p. 403.

[21]Vivaldi and Gualdani (2014).

[22]Tripodina (2013).

[23]Thus BVerfG, 1 BvL 1/09 vom 9.2.2010, cleverly commented by Ruotolo (2011), p. 406.

need to place man in the condition to exercise rights: this translates into a specific policy that the public authorities must necessarily implement to support the income and thereby indirectly to render effective the right to food.[24]

6 The Duty *to Protect* the Right to Food. Food Diversity

It has been said that the concept of "food solidarity" brings with it, for the Republic, also the *duty to protect the right to food.*

Well, the first point clarify is that the protection of this right should not be implemented in a typical assistenzialistic model of a certain idea (clearly ideological) of the welfare State, which confuses the intervention with the *mortification* of individual initiative, the pursuing of substantive equality with the *homologation*.

On the contrary, the protection of the right to food demands above all the respect and protection of the material and cultural conditions that allow, in different territorial realities, the operation and development of local agri-food systems, enhancing not only farm structures established therein, but I would say especially the people of flesh and blood (with their culture and tradition background), "the faces" who insist on those agricultural structures.

The protection of the right to food as the protection of human dignity, also passes through this aspect, then.

In essence, far from detecting it as a right of health care content to be able to assert against the "public" with economic welfare policies, the protection of the right to food is configured as a duty aimed at conforming the action of local institutions in view of the defense of "diversity", intended as peculiarities of the territory; territory intended not only from a material point of view, but also, and I would say especially, immaterial.

For these reasons, the right to food is underlined as a wholly singular fundamental right: if on one hand, as seen above, it includes within itself an universalistic demand that concerns the single individual who has "*the right to a dignified life*", on the other hand, in its practical implementation with respect to different socio-economic realities, is configured as "*the right of food to be protected*"; a right that demands to be conjugated to the territoriality and therefore with multiple social structures present in the area that generate it.

And it is in this sense, then, that acquires significant profile in the protection of "food diversity". This specific scope of protection, as it will be seen shortly, is the synthesis of multiple diversities: it is a value-system, in which converge and jointly compose several legal values of primary constitutional status (independence and territorial differentiation, landscape, cultural heritage, crafts, health and environment).

[24]Ruotolo (2011), p. 408.

The strength of these core values is combined and concentrated in food diversity, thus giving to this last, at least in the eyes of the interpreter, a role of absolute importance in the legal ordering.[25]

6.1 Food Diversity and Culture

A first legal matrix of food diversity is to be found among the fundamental principles of our Charter.

The reference is Art. 9 of the Constitution. That in the first paragraph reads: "The Republic promotes the development of culture." However, any pluralist democracy places at the base of itself "cultural pluralism as a model in which human cultures are not each other's enemy, but in which the predominant one poses the extinction of weaker cultures as a problem to fight and to solve".[26]

This concept is well suited to the cultural dimension of food. The task of the Republic, that is, to protect and promote the development of cultural pluralism in matters of food; this aspect implies, first of all, the duty to protect the diverse food cultures of their individual, as social formations.

This means, however, also a duty of the Republic to promote forms of integration of the different food cultures that coexist on the Italian territory.

Likewise, a foundation of food diversity is to be found in the second paragraph of Art. 9 Const., according to which the Republic "protects the landscape and the artistic heritage of the Nation".

This constitutional protection of the *landscape*, in fact, has been declined by the legislator in the sense that the landscape assets are those "constituents expression of historical, cultural, natural, morphological and aesthetic values of the territory" (Art. 2.3 Decree. N. 42/2004); furthermore, the landscape "is the expressive territory of *identity* whose character derives from natural and human factors and their interrelations" (Art. 131). However, the combination between the constitutional provision and the punctual normative production, provides protection to the so-called *food landscapes.*

It is about "places" that were characterized by the dynamic interrelation between human, natural and cultural forces: some of these landscapes are better known and valued because of the recognition, formal or informal, of the quality of specific food products that characterize them (just think of the added value of the brand PDO or PGI); in other cases are the social formations, specifically dedicated to food, that allowed to give to places of production of regional and traditional foods an appropriate recognition (think of *Slow food* principals). These realities the Republic (taken as a whole) has the task to protect and enhance.

[25]Monteduro (2015), p. 37.

[26]Betzu (2008), p. 72.

The other subject protected by the Republic, *ex* Art. 9, second paragraph of the Constitution, *the historical and artistic heritage of the nation*, has obvious connections with food diversity. It recalls the complex issue of cultural heritage, which over time has become a large value and inclusive of different types of goods.

For the purposes of this research, will be enough to emphasize that, if before with that term were considered the traditional categories of "artistic things", "antiquity", "things of historical interest", now this term is interpreted in the light of Article 810 of the Civil Code, which defines the goods as things that can be subject to rights. Such norm, in fact, points out that not all entities (tangible or intangible) can be considered, juridically, "goods": such are just the things to which the law attributes importance. The concept of good, therefore, constitutes a suitable qualification to assume the special ability of a thing to satisfy a man's interest (the so-called *utilitas*). Nor should it necessarily be an economic interest. The good in fact, can express extremely different values and interests, just as in the case of cultural heritage.

During the normative stratification, the legislator has shown, in fact, to appreciate and to attribute legal significance to an extremely diverse range of cultural goods in relation to the different interests they can express by aiming to meet the need of "culture" of a given society or mankind or in so far "testimony having civilization value" (this the felicitous expression of the "Franceschini commission").[27]

The relevance of these interests has greatly enriched and diversified over time and, starting, originally from goods of an historical, artistic and archaeological expression, has reached to *"ethno-anthropological goods*" (explicitly mentioned and protected first by the "Unique text on cultural heritage", the d., lgs., October 29, 1999, by the then-called "Urban code" of 2004–2008).

With this expression, the legislator intended to protect that category of goods belonging to the national cultural heritage which are distinguished by being "linked to local cultures and the lives of ordinary people and which constitute an expression of the traditions subject of anthropologists study". This heritage represents in itself the peculiarity that differentiates it from the historical, artistic and archaeological heritage, involving not only movable and immovable goods, but also and most of all the so-called intangible goods. Thus, in addition to sites, buildings, objects, have gradually rise to the object of attention and appreciation also civilization expressions such as language, dialects, music, rituals, symbolic practices, proverbs, food.[28]

It is precisely for this evolution of doctrine and legislative that this concept of cultural heritage is relevant for the purposes of our research: the protection of the right to food, in its declination of food diversity protection, it would seem to have its own cover both constitutional and legislative.

It is true, however, that the concept of the protection of the intangible good has always created more than some concern, because of the "volatility" of this cultural expression: the Constitutional Court has, therefore, repeatedly stressed the need of

[27]Crosetti (2014).

[28]Fiorillo and Silverio (2017), p. 27 ss.

the connection of the intangible good with its material support[29]; the same "Urbani Code" seems to have moved this more "materialistic line", given the continuous reference to a *res,* to a good.[30]

In fact, the Italian legal tradition is based on the concept of cultural emergency protection inasmuch "thing", material and physical object: to apply the same procedures for the protection of a painting, like at a party or to a language, appears very difficult.

In fact such problematic reliefs would seem only partially apply to *food diversity*; as it is easy to understand, in fact, we talk of a good that is not only intangible and, therefore, characterized by a certain abstraction and volatility.

The food, in fact, is a middle way between the tangible and the intangible good: of the latter has the intangible heritage, of the first has the *res*, the thing.

Food diversity, therefore, is an intangible cultural good that, since it is directly linked to the food-matter, has its own special protection under both ordinary and constitutional level.

6.2 Food Diversity and Territory

A second and fundamental matrix, legal and social, of food diversity is represented by the diversity of the territories of origin and their heirs communities and food custodians.

The point is crucial, because it shows how the "food heritage" are related not only to a specific terrain as a material space portion, with its particular physical-chemical characteristics, climatic and agronomic, but also and especially in a territory intended as a place for settlement and life of a particular community in a long time span.[31]

The relationship between the territorial diversity of the regions and differentiation of food products, which is an expression, manifested in the fact that the territories are demanding a right to self-represent their "food identity"[32] through their different typical products, to defend roots of their food culture models and to value their food diversity as instrument of territorial development (think of topics such as enogastronomic tourism).[33]

This territorial/identity dimension based on collective auto-determination of self-feeding models hinges, in legal terms, in constitutional principles of primary importance, such as the principle of autonomy (Art. 5 and 114 of the Constitution) and the principle of differentiation (Art. 118 Constitution).

[29]Ibidem.

[30]Ibidem.

[31]Monteduro (2015), p. 33.

[32]Ibidem.

[33]Ibidem.

It is interesting to note how these principles have been the subject of a constitutional amendment in 2001; well, at the base of this reform, there had been a socio-cultural debate precisely on the phenomenon of *re-emergence of the territory*, as an area of social and political relations with greater significance and characteristics and own needs.

It happened, in fact, that a number of contributing factors, such as the relief gained from the territorial dimension in economic relations, the fall of the social guarantees conquered in the experience of State performance and the subsequent mounting of a widespread perception of insecurity in the community, as well as the appearance of an "*identity question*" as a response to the failure of some integration policies, favored slowly "reactive phenomena compared with a cosmopolitan vision of social ties", imposing the territory as a place of emergence of more limited interest, but of greater density and consistency.

The very concept of "territory", which in its national declination has always tended to the *homogenization of local conditions*, resulted gradually in the aspiration to manifest their own rules and traditions. Faced with such phenomena the State appeared (and continues to appear) too uniform in its centralism to give recognition to the many differences that move on its territory and which are not reflected only in a political representative type.

Therefore, is the emergence of a related phenomenon, that is, the "rurality question", that did take to the rural areas a new "strategic importance", in which the development goes through the territories as knots in a network system made of interrelations, of additions, of complementarity. Each of these new communities, of these unique characteristics demanded (and demands) a special differentiated and specific protection by the legislator or otherwise by the closest administrator.

In this light seems to be placed the concept of "rural district", coined by Art. 13 paragraph 1 of the legislative decree 228/2001 (which was followed by a number of regional laws), "are defined rural districts, local productive systems (...) characterized by homogenous historical and territorial identity deriving from the integration between farming and other local activities, as well as the production of particularly specific goods and services, coherent with the traditions and natural and territorial potential".

From the socio-cultural background was then fed the boost that led to the reform of the 2001 Constitution, with a reversal of the pyramid that saw the autonomies in first place and the State at the last (although these hopes did not materialize).[34]

A reform that enhances the meaning and the autonomy of the territory that, in a subsidiary optical, restarted from the place, the nearest community to the citizen.

And so the food diversity gets a systematic protection: the "new" Article 114 (which establishes an *equal constitutional dignity* of all organizations-starting from the territory, which constitute the Republic) and 118 (which establishes the principle of subsidiarity, but also that of differentiation), interpreted systematically with the aforementioned Article 9 (relating to the cultural heritage, including the

[34] Among many Mangiameli (2013).

intangible one) and Art. 2, can expand the scope of the right (inviolable) to food; it is also included the value of identity diversity of the territory and the respect of different culinary cultures that generate it.

The Italian Constitution, although it was written nearly 70 years ago, placing the human person (not in abstract, but concretely as he is, with his needs) at the center of all, once again proves to be extraordinarily timely.

It places, in fact, a barrier to an "economic globalization" that tends to standardize and to "depersonalize" the food, reducing it to an anonymous commodity.

Moreover the barrier is represented precisely by that Art. 2 of the Constitution, by that dignity of the human person, inside of which is "covered" the knowledge-based specialties and flavors that make the history and the identity of each community and allow it to open to others. To be protected, then, it is the "territorial capital", within which fundamental it is precisely the "human capital" than their work.

Ultimately, the Constitution protects the right to food, preserving food diversity as cultural heritage of the people working in a given territory.

Under similar profiles seems to be demanding the European Union that, in the European Parliament resolution of 14 January 2014, 2013/2098(INI), called "on the regional brand: towards best practice in rural economies", advocates a coordination of goods (food and non-food) and quality services anchored in the specificities of each territory and particularly of its heritage (historical, cultural, geographical and so on).

This mark is intended to trigger a territorial valorization process that holds together the products and services within a perspective of identity, even compared to meta-economic parameters such as the environment, quality of life, economic and social cohesion and solidarity.

7 The Role of Regions and Local Authorities

It was previously stated that the right to food is a "fundamental right linked to the irreducible core of the human person" that, under the double profile analyzed, the Republic has the duty to implement and protect.

It is also stated, however, that these are tasks that weigh on all the articulations of the Republic.

It is then necessary to wonder about space and mode of action of Regions and local institutions.

Some "broken down" protection attempts are not convincing and seem to be related more to a "protectionist" logic than that of valorization.

For example, the Lazio Region had introduced a "regional" brand of quality designed to mark certain agricultural and food products for promotional purposes of the agriculture and gastronomic culture of the territory. The Court in its sentence no. 66 of 2013 declared the illegitimacy of that law, as capable to address the consumer preference towards products assisted by the brand than other homogeneous, of different origin. Such a user misuse would have product on the free

movement of goods—at least "indirectly" or "in power"—those restrictive effects that the regional legislature is inhibited to pursue based on community ties, ex Art. 117 of the Constitution.

Different initiative has been that of some municipalities protagonists of the so-called "Anti-Kebab ordinances".[35] For example, the resolution of the Board of the City of Bussolengo in the province of Verona that, motivated under Article 34 I.r. Veneto 29/2007 (governing exercise of the activity of administration of beverages and foods), forbids the opening of kebab in the old town and within 150 mt. by religious and places of worship, hospitals and nursing homes, school buildings of any degree, cemeteries.

Another example is provided by the resolution of the City Council of Prato that, in the "implementation" of the Art. 110 of I.r. Toscana 28/2005 (Consolidated Law concerning trade, food and drinks administration), has identified in the "incompatible activities" within the area identified as PUA (Pedestrian Urban Area), craft activities of food cooking, such as kebabs and similar, also exercised also as a secondary activity compared to that prevailing, different from those "traditional".

Even Lucca City Council has moved in this direction: with resolution no. 12/2009, "in order to safeguard the culinary traditions and architectural, structural, cultural, historical and furnishing typicality", prohibited in the old town, "the activation of the administration exercises, whose activity is attributable to different ethnic groups", requiring also that the menu of all commercial establishments must have at least one local dish, prepared exclusively with "commonly recognized products" typical of the province of Lucca.[36]

The *ratio* given of such measures is the protection of "typical" enogastronomic products or of historical centers such places designated of "typical" and "traditional" enogastronomy, invoked as a justification to restrict, explicitly or implicitly, the sale of kebab as a product itself, as it is considered not "safe" and not "typical" or "traditional".

But the concept of "enogastronomic typicality" to be protected, lends itself to more than a few censorship: first, it does not seem certainly protectable by measures that, placed at the lowest level of the hierarchy of sources, intend to sensibly affect on legal interests of constitutional level such as freedom of private economic initiative (even with the limits of Art. 41 paragraph 2 of the Constitution), private property (even with the limits of Art. 42, paragraph 2 of the Constitution), the protection of competition, a matter attributed to the legislative competence of the State by Art. 117, paragraph 2, letter. *e*) Constitution (the notion of which, according to the Constitutional Court, reflects that which operates within the EU, with normative acts provided with primacy over national law, "regulatory intervention, the antitrust regulations and measures to promote an open market and in free competition" sent. n. 11/2004).

[35]Magrassi (2010), p. 325.

[36]Ibidem.

However, theoretically taken, these measures have raised suspicions that the true end pursued is not much the protection of "traditional products", but the corporate protection of commercial "local" businesses, if not a real marginalization in negative of certain determinable operators categories.

This profile, however, has nothing to do with the protection of food diversity, with the protection of "human and territorial capital" that creates the food of which was discussed in the previous paragraphs.

And then it is necessary to move from the abstract protectionist phase of the good, to that of "incentive" and valorizing of *what-the-good-represents;* that is, what the good "means" what "lies behind" the good, in terms of traditions, of knowledge, of culture.

Only in this way could be given proper implementation to a constitutional value of *food diversity* that "lives" within a *subsidiary State.*

In this respect are to be welcomed the initiatives designed to protect the agricultural heritage that are increasingly characterizing the regional regulations. They, starting with the fundamental principle of the integrity of the person, place in interaction environment, food, environment and culture: think of the spread of the so-called open-air museums or eco-museums dedicated to food.

On the same level, at the local level, think of the resolution no. 2/2009 of Prato City Council that, instead of producing a measure "anti," proposed a "pro" act. It adopted a regulation concerning trade based on a points system for the authorization of the activities of administration of foods and drinks in the old town, which recognizes an important score to the exercises that insert in the menu certain units of local products.

These measures are certainly not enough, but they can serve to dictate the way for local administrators or regional legislators: the protection of food diversity is another face of the right to food and should be protected with valorization systems (and thus publicizing) of the area that produces the food.

8 Conclusions

In front of this evolutionary scenario, it is possible to draft only partial final remarks.

It is no longer under discussion, in fact, the "constitutional cover" the right to food: although not explicitly foreseen, the Constitutional Court, as seen, has clarified it to be a "fundamental right linked to the irreducible core of the human person" and to the *laborist* principle that underlies our Charter.

It is not even in discussion the subject on which burden the corresponding constitutional duty to protect and guarantee this right: there are all entities of the Republic to have this important task of implementation and protection.

On *how* this right to food must be guaranteed, however, there are significant developments on the part of doctrine, jurisprudence and legislators.

An evolution that concerns the "two faces" of "food solidarity", both from a point of view of effective protection towards the weak subjects (the minimum wage is now

on the political agenda of the central government and many regional governments), and from a point of view "of the right of food to be protected".

As it was possible to analyze the concept of food diversity, it is slowly emerging and is inextricably tying—in the constitutional fabric related to the territorial autonomies—even the "right to regional cultural identity"[37] and "the right to development of local food heritage".[38]

We are talking of synergistic concepts that feed each other.

In this perspective, as mentioned, also is placed the "landscape", as "the territory expressive of identity, whose character derives from the action of natural, human factors and their interrelations" (Art. 131, L. decree 42/2004): in it, it becomes apparent the close connection between local enogastronomic traditions and agricultural landscape, being the second, at the same time, the visible result of the molding action of the first over the centuries, and the prerequisite for them to be perpetuated in the future. Hence the rooting in Art. 9 of the Constitution of such dimension—identitary and collective of the territorial food diversity.[39]

From this point of view is to be welcomed that the Ministry of Agriculture, Food and Forestry Policies has adopted a special decree (the Decree of April 9, 2008, entitled "Identification of Italian agri-food products as an expression of the Italian cultural heritage") with which it has established that the traditional Italian food products contained in the lists referred to in the Ministerial decree of 18 July 2000 containing "the National List of Traditional Foodstuffs"(*PAT-Prodotti Agroalimentari Tradizionali*) "are an expression, as well as of inventiveness, ingenuity, and socio-economic evolution process of the Italian local collectivities, even of the traditions and culture of the regions, provinces and generally to the widespread community on the Italian territory, and as such must eligible for protection and preservation by the Italian institutions", as "an expression of the Italian cultural heritage".

Equally worthy of being mentioned is the initiative of the Abruzzo region that has recently proceeded, first among all the regions, by including in the statute a reference to the right to food. The Article 7-bis, in fact, reads: "The Region promotes the right to food and to proper nutrition, intended as the right to have regular, permanent and free access to quality food, sufficient, healthy and culturally appropriate, that guarantees the physical and mental fulfillment, individual and collective, required to lead a dignified life". "To achieve the objectives referred to in paragraph 1 - continues the second paragraph -, the Region contributes to favor and determine measures to combat malnutrition, both in the form of denutrition and that of overweight and obesity, the fight against waste, especially of food, and climate change, as key aspects of the right to health, even in its specification of the right to a healthy environment and it supports information and awareness activities".

[37]Ruggiu (2014), p. 486.
[38]Conte (2014), p. 461.
[39]Monteduro (2015).

Even with all its limitations on the effectiveness of the statutory provisions,[40] I believe it is to be greeted favorably the fact that the right to food, in the two analyzed profiles, has found an explicit recognition in a statutory charter: the "right to have access to food" and that such food has be "of quality, healthy and culturally appropriate".

I think this is the way that the regional legislature (which has seen greatly increased its range of action after the reform), but also local authorities and the State itself (in a subsidiary optic) should go for a full protection of a right that, as is easy to deduce from the various profile analyzed, has to do with the accomplishment of democracy itself.

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[40]On the problematic legal effect of certain norms of the regional statutes, see the judgements of the Constitutional Court nn. 372, 378-379/2004 and, among many of the doctrine reactions, at least: Anzon Demmig (2004), p. 4057; Bartole (2005), p. 11; Bin (2005), p. 15 ss.; Cammelli (2005), p. 21 ss.; Caretti (2005), p. 27 ss.; Cuocolo (2004), p. 4077; D'Atena (2005), p. 2 ss.; Dickman (2005), p. 2 ss.; Falcon (2005), p. 31 ss.; Ferrara (2005), p. 2 ss.; Lippolis (2005), p. 2 ss.; Mangia (2004), p. 4085 ss.; Pastori (2005), pp. 35–36; Pizzetti (2005), p. 37 ss.; Rinaldi (2004), p. 4090 ss.; Rossi (2005), p. 50 ss; Ruggeri (2005), p. 41 ss.

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