

54. Food security and symbolic legislation in Switzerland: a false sense of security?

C.E. Blattner^{1*} and O. Ammann²

¹University of Bern, Faculty of Law, Schanzeneckstrasse 1, 3012 Bern, Switzerland; ²University of Zurich, Faculty of Law, Rämistrasse 74/64, 8001 Zurich, Switzerland; charlotte.blattner@oefre.unibe.ch

Abstract

In 2017, 78.7% of the Swiss people voted to enshrine the concept of ‘food security’ in the Federal Constitution. Originally prompted by agricultural interest groups for reasons of protectionism and then revamped by the Swiss Parliament, the new article 104a includes a wide array of demands for food policy, including protection of agricultural land, local production, conservation of natural resources and their effective use, responsiveness to market demand, and trade relations contributing to sustainable development. As a one-of-its-kind constitutional norm on food security, the now four-year-old article still raises questions about its precise scope and normative content. In particular, it is often said that the norm is largely symbolic. We shed light on these developments by examining the emergence of the norm and embedding it in the broader international discourse on food policy. We show that Switzerland’s understanding of food security is greatly flawed, as it seeks to secure its own access to goods without regard to their environmental footprint and effect on human rights abroad. In line with Switzerland’s climate and human rights commitments, we propose new ways to interpret food security, including moving away from market needs, distinguishing foodtypes based on whether they thwart food security in the long term, paying attention to food security elsewhere, and giving effect to considerations of distributive justice.

Keywords: constitutional law, direct democracy, agriculture, Swiss Constitution

Introduction

Switzerland is in the midst of an intense debate about food and agriculture. Between 2018 and 2020, no less than three popular initiatives related to food and agricultural policy were voted upon.¹ In 2017, with a record approval of 78.7%, Swiss voters agreed to include a new provision on food security in the Constitution. While this new article 104a was drafted by the Swiss Parliament, the proposal to adopt a constitutional norm on food security came from the Swiss Farmers’ Union (SFA). This proposal was largely driven by protectionist motives, despite the fact that high-quality food in Switzerland is highly accessible and household spending on food is, in comparative perspective, very low. Unlike billions of other people, the Swiss have, throughout the last century, not experienced food insecurity at any point in time (the last famine in this country took place in 1918 during the onset of the Spanish flu). How come, then, that close to 80% of voters recently chose to adopt a new constitutional provision on food security?

Article 104a of the Swiss Constitution

On 24 September 2017, an overwhelming majority of Swiss voters (78.7%) and all Swiss cantons accepted the federal decree on food security, thereby agreeing to enshrine the concept of food security in article 104a of the Swiss Constitution. This provision reads as follows:

¹ I.e. the ‘Fair Food Initiative’, the ‘Food Sovereignty Initiative’, and the ‘Horned Cow Initiative.’

Section 5

In order to guarantee the supply of food to the population, the Confederation shall create the conditions required for: (a) safeguarding the basis for agricultural production, and agricultural land in particular; (b) food production that is adapted to local conditions and which uses natural resources efficiently; (c) an agriculture and food sector that responds to market requirements; (d) cross-border trade relations that contribute to the sustainable development of the agriculture and food sector; (e) using food in a way that conserves natural resources.

The constitutional norm is the result of a longer back-and-forth between the SFA's initial proposal (which was later withdrawn), the Federal Council's direct counter-proposal in favour of strengthening domestic production (which was eventually abandoned), and the direct counter-proposal by the Swiss Parliament. The latter provision, which is the one that was finally put to vote, emphasizes the need to protect agricultural land, while taking the entire food production chain into account and being more market-oriented. Political parties and interest groups almost unanimously recommended accepting article 104a, but for different reasons: conservative farmers hoped for protectionism, while mixed progressive and liberal farmers hoped for fair trade and sustainable production. Due to its vague wording and the lack of knowledge about its precise scope and normative demands (especially vis-à-vis the legislature), article 104a was supported by a majority along this spectrum, as it 'can be invoked by almost any interest group to support its policy preferences' (Hettich, 2019: N 8; see also Schöchli, 2017).

Article 104a introduces several new terms into the Constitution, i.e. 'food security', 'food sector', 'trade relations', and the requirements that food production/use be 'adapted to local conditions', 'uses natural resources efficiently', and 'conserves natural resources' (Biaggini, 2017: 896, N. 2). This suggests that the provision has autonomous normative content. Yet, commentators described the vote as a 'ballot about nothing' and as having symbolic value only (Schöchli, 2017). Thus far, this assessment is correct to the extent that article 104a has not led to new laws, statutory amendments, new or amended subsidies, or the like. Yet, judgment about the norm being symbolic is premature: in the parliamentary debates, it was stated that the new article 104a 'complements' existing constitutional provisions, namely articles 104, 75, and 102 (Council of States, 2016: 900, 901). Moreover, several MPs across the political spectrum submitted procedural requests to clarify the normative implications of article 104a (e.g. Baumann, 2020; Bourgeois, 2020; Grin, 2017; Schneider Schüttel, 2018; Rytz, 2018).

In Parliament, article 104a was described as 'complementary' to article 104 (National Council, 2017: N 212). While some argue that article 104a is a 'duplicate' of article 104 as both deal with food supply, sustainability, market orientation, and the protection of agricultural land (Renz, 2017), this view ignores the distinctive terminology used by article 104a. Contrary to article 104, it is not limited to domestic production and applies to the entire food chain; further, its notion of market orientation refers not only to agriculture but to the entire food industry.

Article 75(1) provides that the Confederation has the power to 'lay down principles on spatial planning' in order to guarantee 'the appropriate and economic use of the land and its properly ordered settlement'. The Federal Council has noted that this provision implicitly includes the protection of agricultural land (2015, 10), which article 104a highlights explicitly. This focus on the protection of agricultural land should, however, not be conflated with spatial planning, which article 104a does not touch on (National Council, 2017: N 212, 214, 216 f).

Article 102 provides for the supply of essential goods and services 'in the event of the threat of politico-military strife or war, or of severe shortages that the economy cannot by itself counteract' (article 102(1)). Unlike article 104a, it is tailored to respond to acute crises rather than dealing with recurring, longer-term issues (Council of States, 2016: 900, 907).

Thus, article 104a does not merely replicate existing constitutional norms. The Federal Council and Parliament repeated many times that it creates ‘an overall concept for food security’ (e.g. CS-CEAT, 2016: 10) – albeit a concept that remains highly indeterminate at this point in time.

The problem with article 104a of the Swiss Constitution

As of 2018, the most recent estimate, Switzerland’s degree of self-sufficiency was at 58%, a percentage which has been steady since several decades (FAOG, 2020: 114). Due to limited availability of land and a comparatively high number of inhabitants in relation to its size, Switzerland is uniquely dependent on imports. With feed imports of over 1 million tons a year, and substantial parts of its land used for animal production, there is no way Switzerland could become any more food secure. Splitting up self-sufficiency by plant and animal products brings this dilemma to light: per 2018 (and similarly for the previous years), self-sufficiency for animal products was at 100%, while for plant products, it amounted to 40% (FAOG, 2020: 115).

The specific steps envisaged by the Swiss agricultural policy after 2022 to meet its rising demand for food is to limit the supply of raw protein to animals, to reduce ammonia, to let animals be outside more, and to ensure ‘a longer use’ of cows used for milk production (Federal Council, 2020: 11). The credo is ‘let’s do more with less’, showing that food security is primarily understood as producer security (Häberli, 2015: 172). Switzerland thereby follows a long tradition in food policy discourse according to which the central problem of food (in)security is (shortage of) food supply. However, today, assumptions that scarcity and population growth cause hunger, and that food production will eradicate hunger, are slowly withering. For, despite rapid advances in agriculture with high-yielding hybrids, chemical fertilizers, powerful pesticides, and extensive irrigation happening half a century ago, for a significant number of people, producing and accessing enough food remains life’s central challenge (Burke and Lobell, 2010: 13; Holt-Giménez, 2019: 1).

Departing from the earlier ‘productionist policy paradigm’ that shaped food policy, the most authoritative and still widely used definition of food security was enshrined in the Declaration on World Food Security in 1996, defining it as ‘a situation that exists when all people at all times have physical, social, and economic access to sufficient, safe, and nutritious food that meets their dietary needs and food preferences for an active and healthy life’ (World Food Summit, 1996: para. 1). Food security thus is about ‘having, on an individual level, the food one needs and wants’ (Burke and Lobell, 2010: 14), while taking into account broader policies in agro-biodiversity, natural resource decline and depletion, as well as sociocultural complexities and emerging food needs. For people to be food secure, the following four pillars must be fulfilled: (1) ‘food availability’ of sufficient quantities of food of appropriate quality, supplied through domestic production or imports; (2) ‘food access’ by individuals to adequate resources (entitlements) for acquiring appropriate foods for a nutritious diet; (3) ‘utilization of food’ through adequate diet, clean water, sanitation, and health care to reach a state of nutritional well-being where all physiological needs are met; (4) ‘stability’, meaning that a population, household or individual must have access to adequate food at all times and should not risk losing access to food as a consequence of sudden shocks (e.g. an economic or climatic crisis) or cyclical events (e.g. seasonal food insecurity) (World Food Summit, 1996).

Despite decade-long international efforts to achieve ‘zero hunger’ (SDG No. 2), the world is anywhere but on track to reach this goal. Updated methods taking into account household data show that the ‘decades-long decline in hunger in the world (...) had unfortunately ended’ (FAO *et al.*, 2020: xviii). As of 2020, nearly 690 million people are hungry (i.e. suffering from undernourishment), which is 8.9% of the world population (id. at 3, 4). This number was up by 10 million people in the last year, and by nearly 60 million in the past five years (id.). By 2030, the number of hungry people is expected

Section 5

to exceed 840 million (id. 8). Climate change significantly exacerbates existing pressures on the global food system due to rising temperatures, increased temperature variability, greater frequency of draughts, heavy precipitations and other extreme weather events, rising sea levels, and the salinization of arable land and freshwater – leading to crop failures, yield losses, new pathogens and diseases, animal health issues, compromised forest management, and losses in fisheries, especially in the Global South (FAO *et al.*, 2020: 5; IPCC, 2019: 10; IPCC, 2018: 9; Tirado *et al.*, 2009: 129, 133). According to the latest IPCC Synthesis Report, ‘All aspects of food security are potentially affected by climate change, including food production, access, use and price stability (high confidence)’ (IPCC, 2014: 69; also FAO, 2016).

Switzerland is significantly adding to the problem of food insecurity, securing its population’s unhindered excessive use of resources while exacerbating food security elsewhere. The demand of consumers for grain and soy-fed animal proteins (meat, eggs, and milk) is, in qualitative and quantitative perspective, one of the biggest threats for food security and efficiency, putting pressure on global food systems, the environment, and public health (Blattner and Ammann, 2019). Food produced in the ‘Global South’ is preferentially given to export countries in the North (mostly as feed for animal production), resulting in a lack of food for local communities. Further, subsistence farmers are pushed to live and work on barren land in mountain terrains for large agricultural producers to let their livestock graze on the flat plains (Gaidetzka, 1997: 13). By excessively supporting their own producers, well-off Northern countries significantly increase global food prizes, which reduces access to food worldwide. Overall, increasing production – despite the fact that there is in fact enough food for everybody – neither increases food security in Switzerland, nor ends hunger elsewhere. Instead, it will push our planet beyond its ecological limits and destroy the lives and livelihoods of billions of people (Holt-Giménez, 2019: 8).

With its inequitable and extractivist food system, Switzerland threatens to violate other people’s right to food, which is protected by the Universal Declaration of Human Rights (art. 25(1)), and guaranteed by various international human rights treaties, most comprehensively by the International Covenant on Economic, Social, and Cultural Rights (ICESCR). In art. 11 ICESCR, parties ‘recognize the right of everyone to ... adequate food’ (para. 1) and ‘improve methods of production ... of food,’ *inter alia* ‘by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources’ (para. 2). States have a duty of progressive realization with respect to this right (art. 2(1)), and they cannot discriminate against specific groups of individuals in this context (art. 2(2)). To be clear, ensuring the right to food and freedom from hunger principally rests with national governments, and considering food security elsewhere is often seen as voluntary. However, under international law, States’ duties with respect to the right to food are owed not only to people within their territories, but also outside. The minimum content of extraterritorial obligations is the duty to respect, meaning that no State is allowed to violate the right to adequate food of a person living in another country. Thus, States must refrain from impairing food security in other countries (Häberli, 2015: 149; Paasch, 2010: 21-22).

New ways to interpret ‘food security’ in Switzerland

One cannot look at a country’s level of food security without considering food security globally, for all States either have to increase their own production or import goods (and Switzerland has, as mentioned, limited choice in this regard). At the occasion of the World Food Summit in 1996, the parties – including Switzerland – committed to implement the annexed World Food Summit Plan of Action. In this Plan, they underlined, among others, the importance of conservation and sustainable use of natural resources (such as land, water, and forests) to achieve this goal (comment one to objective 1.2, para. 15). For this purpose, taking into account ‘the present and future needs of the people as well as the natural resources potential and limitations’ (comment three, para. 27) is key. Eighteen years later, at the occasion of the Second International Conference, Switzerland, among other States, adopted the Rome Declaration

on Nutrition, recognizing 'the need to address the impacts of climate change and other environmental factors on food security and nutrition, in particular on the quantity, quality and diversity of food produced, taking appropriate action to tackle negative effects' (FAO and WHO, 2014: para. 8). As the host state of the UN, the WHO, and other international organizations concerned about food security, Switzerland should lead by example, pay attention to food security elsewhere, and give effect to considerations of distributive justice.

In the Paris Agreement (2015), parties recognized the 'fundamental priority of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change' (preamble, recital 9). The fact that inequitable and extractivist agriculture drives global food insecurity and climate change is accepted by major global players in food discourse. As the UN Environmental Programme stated in 2010: 'Impacts from agriculture are expected to increase substantially due to population growth increasing consumption of animal products'. It is recognized that '[u]nlike fossil fuels, it is difficult to look for alternatives: people have to eat' (82). However, agriculture also has unique potential to contribute to stabilizing the world's climate and securing food security worldwide (IPCC, 2014: 100; FAO, 2016: 5). As part of its mitigation duties under the Paris Agreement (2015, article 4), Switzerland must work towards these goals, through changes in consumption patterns and dietary changes (IPCC, 2014: 100) by 'reducing demand for emission- and resource-intensive food products' (FAO, 2016: 10), which includes – most prominently – animal-sourced foods (FAO, 2016: xv; IPCC, 2019: 24; UNEP, 2010: 82). Consumption patterns and dietary habits must move toward more balanced and healthier diets featuring 'plant-based foods, such as those based on coarse grains, legumes, fruits and vegetables, nuts and seeds' (IPCC, 2019: 24; see also FAO, 2020: xix). The German and Austrian food authorities are already appealing to the public to change their consumption habits away from animal products (German Council for Sustainable Development, 2018; Kumpitsch, 2014: 8), and the EU is funding alternatives to meat as part of its sustainability strategy of the Green Deal, providing 10 billion Euro to promote research on how to source alternative proteins and to increase their availability.

Conclusion

The new article 104a of the Swiss Constitution on food security emerged from protectionist ambitions of the agricultural lobby, which the Swiss Parliament toned down by drafting an alternative provision. Due to its vagueness, the provision received broad political support, but is largely viewed as 'symbolic' and toothless normatively speaking. Yet as we have argued, article 104a introduces new concepts into the Swiss Constitution and has a distinctive normative content. What is deeply problematic is that article 104a provides, both literally and figuratively, a false sense of security to Swiss citizens. It cannot increase food security domestically due to Switzerland's dependency on feed imports. Worse even, it misunderstands food security for protectionism and unbridled consumerism, thereby threatening food security elsewhere.

While Switzerland remain trapped in the old productivist approach to food security, global food policy has taken huge leaps in terms of how food security is understood: from supply to needs, from quantity to quality, from calorie intake to nutrient sufficiency, from production to distribution. Further, there is increasing acknowledgement of the need to address the effects of food security policies on people abroad, e.g. by recognizing the vicious circle of 'bad foodtypes' that contribute to climate change and that exacerbate existing stressors to secure food (Häberli, 2015: 175). As such, overconsumption and overproduction are emerging as the central challenge of our times (Holt-Giménez, 2019: 5), considering that hunger does not just happen but is 'manmade' (Gaidetzka, 1997: 13; Reimann, 2000: 90). Instead of relying on an anachronistic and inequitable concept of food security, Switzerland should reinterpret its new constitutional norm to abide by its climate commitments and obligations under international human rights law.

References

- Baumann, K. (2020). Interpellation no. 20.4176: Absatzförderung für Schweizer Fleisch im Widerspruch zu den Verfassungszielen zu der Ernährungssicherheit?.
- Blattner, C. and Ammann, O. (2019). Agricultural exceptionalism and industrial animal food production: Exploring the human rights nexus. *Journal of Food Law & Policy* 15(2): 92-151.
- Bourgeois, J. (2020). Interpellation no. 20.3521: Im Ausland verursachte Umweltbelastung.
- Burke, B. and Lobell, D. (2010). Climate effects on food security: An overview. In: Lobell, D. and Burke, M. (eds) *Climate Change and Food Security: Adapting Agriculture to a Warmer World*. Springer, Dordrecht *et al.*, pp. 13-58.
- Council of States (2016). Winter Session, Second Meeting, November 26. 15.050, AB 2016 S 900 ff.
- Council of States, Committee for Economic Affairs and Taxation (2016). 15.050 Für Ernährungssicherheit. Volksinitiative, Gegenentwurf und Fristverlängerung. Bericht [*cited CS-CEAT*].
- FAO (2016). The state of food and agriculture: Climate change, agriculture, and food security. FAO, Rome.
- FAO (2020). The state of food and agriculture: Overcoming water challenges in agriculture. FAO, Rome.
- FAO and WHO (2014). Second International Conference on Nutrition: Rome Declaration on Nutrition. Rome, 19-21 November 2014.
- FAO, IFAD, UNICEF, WFP and WHO (2020). The state of food security and nutrition in the world 2020. FAO, Rome.
- Federal Council (2015). Erläuternder Bericht zum Gegenentwurf des Bundesrates zur Eidgenössischen Volksinitiative 'Für Ernährungssicherheit' vom 14. Januar 2015.
- Federal Council (2020). Agrarpolitik 22+: Botschaft des Bundesrates zur Weiterentwicklung der Agrarpolitik nach 2022 (AP22+).
- Federal Office for Agriculture FOAG (2020). Agricultural report 2020.
- Gaidetzka, P. (1997). Ernährung – Ein Recht für alle? In: Chandy K.T. *et al.* (eds) *Ernährung – Ein Recht für alle*. Horlemann, Aachen, pp. 7-16.
- German Council for Sustainable Development (2018). Der Nachhaltige Warenkorb_Ihr Einstieg.
- Grin, J.-P. (2017). Interpellation no. 17.4173: Strategie des Bundesrates bezüglich der Agrarpolitik 2018-2021 und darüber hinaus.
- Häberli, C. (2015). Ernährungssicherheit in der Schweiz. In: Norer, R. (ed.) *Landwirtschaft und Verfassungsrecht – Initiativen, Zielbestimmungen, rechtlicher Gehalt*. Dike, Zürich/St. Gallen, *Schriften zum Recht des ländlichen Raums/Collection de Droit Rural* 9: 145-175.
- Hettich, P. (2019). Art. 1 LwG. In: Norer, R. (ed.), *Stämpfli Handkommentar: Landwirtschaftsgesetz*. Bern, Stämpfli, pp. 44-56.
- Holt-Giménez, E. (2019). *Can we feed the world without destroying it?* Polity, Cambridge UK.
- IPCC (2014). *Climate change 2014 synthesis report*. IPCC, Geneva.
- IPCC (2018). *Global warming of 1.5°C. Summary for policymakers*. IPCC, Geneva.
- IPCC (2019). *Climate change and land. Summary for policymakers*. IPCC, Geneva.
- Kumpitsch, O. (2014). *Klimagerechte Ernährung: Ein Beitrag zur Reduktion von Treibhausgasemissionen*. GRIN, Norderstedt, Germany.
- National Council (2017). Spring Session, Seventh Meeting, March 7. 15.050, AB 2017 N 212 ff.
- Paasch, A. (2010). Kampf gegen den Hunger – Paradigmen im Widerstreit. In: Gabbert, K. *et al.* (eds) *Jahrbuch Lateinamerika: Analysen und Berichte* 33, *Über Lebensmittel*. Westfälisches Dampfboot, Münster, pp. 16-35.
- Reimann, C. (2000). *Ernährungssicherheit im Völkerrecht*. Boorberg, Stuttgart.
- Renz, F. (2017). Bauer pfeift, Politiker tanzt, *Tages-Anzeiger*, August 17.
- Rytz, R. (2018). Motion no. 18.4394: Freihandelsabkommen zwischen EFTA und Mercosur. Verbindliches Nachhaltigkeitskapitel.
- Schneider Schüttel, U. (2018). Interpellation no. 18.4243: Umsetzung der standortangepassten Produktion gemäss Artikel 104a der Bundesverfassung.
- Schöchli, H. (2017). Ernährungssicherheit: Der Urnengang über das Nichts. *NZZ*, June 29.

Methodology and further challenges to environmental ethics

- Tirado, C., Cohen, M.J., Aberman, N.-L., Thompson, B. (2009). The impact of climate change on nutrition. In: Clapp, J. and Cohen, M.J. (eds) *The Global Food Crisis: Governance Challenges and Opportunities*. Wilfrid Laurier UP, Waterloo, Canada, pp. 129-44.
- UNEP (2010). *Assessing the environmental impacts of consumption and production: Priority products and materials*. UNEP, Nairobi.
- World Food Summit (1996). *Rome Declaration on World Food Security*. Rome, Italy.