

The European Social Charter and the Employment Relation Evropska socialna listina in delovno razmerje¹

BRUNN, Niklas, LÖRCHER, Klaus, SCHÖMANN, Isabelle, CLAUWAERT, Stefan (eds./ur.): *The European Social Charter and the Employment Relation*. Oxford/ Portland, Oregon: Hart Publishing, 2017. 536 p./str., ISBN 978-1-50990-632-1.

*Fundamental social rights, including labour rights, have been under a strong pressure, especially during the recent economic crisis. Therefore, this book is out just at the right moment. It brings a comprehensive and in-depth analysis of the European Social Charter (the Charter/the ESC) and its provisions relevant for the employment relations. It aims to – as the authors and editors **Niklas Bruun, Klaus Lörcher, Isabelle Schömann** and **Stefan Clauwaert** explain in the introduction – make the Charter more widely known in legal circles. It addresses the potential of the Charter to promote and safeguard social rights in Europe. The case-law of the European Committee of Social Rights (the Committee/the ECSR), the Charter's supervisory body, is systematically taken into account and analysed, as well as the relationship between the Charter and other European human rights instruments, such as the European Convention on Human Rights and the EU Charter of Fundamental Rights.*

*The Charter has been lately even more often described as the social constitution of Europe and the awareness of its importance for the protection of fundamental social rights is increasing. However, on the other hand, the Charter is faced with numerous challenges, one of them being – as **Régis Brillat** points out in the foreword – the relationship between the EU law and the Charter. Brillat explains that the Committee has found situations not in conformity with the Charter as a result of the implementation or effect of EU law, whereby the examples of discrepancies between the two legal orders concern the Working Time Directive, the Posted Workers Directive, the Directive on the Right to Family Reunion, and the impact of 'austerity' measures on the rights guaranteed by the Charter. Other challenges concern the level of unemployment in the State Parties, the problem of the on-going*

¹ Slovensko besedilo recenzije sledi v nadaljevanju, za angleškim besedilom.

transformation of the notion of employment relationship and the problem of effective implementation of the Charter's rights in practice.

The message of the authors in the Conclusion is clear: the Charter's legal value is to be further developed, since there is an urgent need for the Charter and all its related activities to contribute to act effectively against regression, moreover, to enhance the 'social progress' referred to in the Preamble of the Charter in the state parties, and particularly in the EU.

*The book is divided into two parts. The first part addresses general questions. The role, the context and the legal nature of the Charter and, especially, the relationship between the Charter and the EU legal order is analysed by **Olivier de Schutter** in the chapter 'The European Social Charter as the Social Constitution of Europe'. In the same part, different aspects of the interpretation of the Charter are dealt with by **Lörcher**, the implementation by **Teun Jaspers**, the restrictions by **Aristea Koukiadaki** and the Charter's supervisory procedures by **Clauwaert**.*

It is impossible to give an overview of the entire book and to present the legal richness of detailed analyses and argumentations of the authors. Due to limited space, I will quote just one of the Committee's decisions, which Lörcher refers to: "The Charter was envisaged as a human rights instrument to complement the European Convention on Human Rights. It is a living instrument dedicated to certain values which inspired it: dignity, autonomy, equality and solidarity. The rights guaranteed are not ends in themselves, but they complete the rights enshrined in the European Convention on Human Rights ... according to the Vienna Declaration of 1993, all human rights are 'universal, indivisible and interdependent and interrelated' ... thus, the Charter must be interpreted so as to give life and meaning to fundamental social rights. It follows inter alia that the restrictions on rights are to be read restrictively, ie understood in such a manner as to preserve intact the essence of the right and to achieve the overall purpose of the Charter..." (ECSR decision on the merits, 8 September 2004, FIDH v France, Complaint No. 14/2003).

In the conclusion of his chapter, Clauwaert explains that ensuring the effectiveness of social rights laid down in the Charter is a genuine shared responsibility of the players at the Council of Europe level and at the national level and that, referring also to O'Cinneide, 'it is not the dry text of a human rights instrument that is ultimately decisive in its success or failure, but whether it is in fact taken up and used by the various stakeholders'. After

quoting Thorbjørn Jagland that 'irrespective of whether budgets are austere or not, protecting social rights is not a policy choice, it is a moral obligation', he adds and points out that protecting social rights is also a legal obligation.

The second part of the book deals with the specific articles/provisions of the Charter and rights and obligations stemming from them. This part follows the structure of a commentary and covers the following rights: the right to work (**Simon Deakin**), the right to just condition to work and the right to safe and healthy working conditions (**Lörcher**), the right to a fair remuneration (**Zoe Adams and Deakin**), the right to organise (**Antoine Jacobs**), the right to bargain collectively (**Filip Dorssemont**), the right of children and young persons to protection (**Schömann**), the right to women to maternity protection (**Csilla Kollonay-Lehoczky**), the rights of disabled people (**Schömann**), the rights of migrant workers and their families (**Clauwaert**), the right to equal opportunities and equal treatment of women and men (**Kollonay-Lehoczky**), the right to information and consultation (**Bruno Veneziani**), the right to take part in the determination and improvement of the working conditions and working environment (**Bruun**), the right to protection in cases of termination of employment (**Mélanie Schmitt**), the right to dignity at work (**Kollonay-Lehoczky**), the right of workers with family responsibilities to equal opportunities (**Schömann**), the right of workers' representatives to protection (**Bruun**), the right to information and consultation in collective redundancy procedures (**Veneziani**), non-discrimination (**Kollonay-Lehoczky**).

Each right is dealt with in the same way, following a well-structured pattern. After the introduction in which the context and the main content of the provision, relevant international sources and the relationship to other provisions of the Charter are briefly described, the central part of the commentary follows in which a detailed analysis of the content of the provision is given, based in particular on the case-law of the ECSR and its interpretation. The impact on other European human rights instruments is briefly discussed. At the end, the most important aspects and concluding remarks are summarised.

The book is highly relevant and useful, since it describes, analyses and explains in detail all relevant provisions of the European Social Charter dealing with labour rights, both individual or collective, thus providing the reader with all necessary information for proper understanding of the Charter as well as of legal paths which can and should be used to challenge situations which are not in conformity with the Charter's rights. Legally binding fundamental

social rights, including labour rights, should be guaranteed to everyone and should be given full effect in practice. This book is a valuable contribution to this end, empowering the reader with the awareness and knowledge about the fundamental social rights, and at the same time also empowering the fundamental social rights themselves – with an excellent commentary, thus keeping them alive and developing them further.

Temeljne socialne pravice, vključno z delavskimi pravicami, so v zadnjem času, še zlasti od ekonomske krize dalje, pod vse večjim pritiskom. Zato pričujoča knjiga prihaja ob pravem času. Prinaša obsežno in poglobljeno analizo Evropske socialne listine (Listina/ESL) in njenih določb, ki so relevantne za delovna razmerja. Z njo želijo – kot v uvodu pravijo avtorji uredniki **Niklas Bruun, Klaus Lörcher, Isabelle Schömann** in **Stefan Clauwaert** – povečati vidnost in razumevanje Listine v pravniških krogih. Knjiga izpostavlja potencial Listine za promocijo in varstvo socialnih pravic v Evropi. V njej je sistematično upoštevana in analizirana praksa Evropskega odbora za socialne pravice (Odbor/EOSP), nadzornega organa Listine, prav tako pa tudi razmerje med Listino in drugimi Evropskimi instrumenti človekovih pravic, kot sta Evropska konvencija o človekovih pravicah in Listina EU o temeljnih pravicah.

Listino se vedno pogosteje opisuje kot socialno ustavo Evrope, zavedanje o njenem pomenu za varstvo temeljnih socialnih pravic raste. Vendar pa se hkrati Listina srečuje s številnimi izzivi, med katerimi je tudi – kot poudarja **Régis Brillat** v predgovoru – razmerje med pravom EU in Listino. Brillat omeni, da je EOSP ugotovil primere neskladja z Listino v nacionalnih ureditvah kot posledico implementacije ali kot učinek prava EU, pri čemer primeri neskladij med dvema pravnima redoma zadevajo direktivo o delovnem času, direktivo o napotjenih delavcih, ureditev pravice družine do združitve ter vpliv 'protikriznih' ukrepov na pravice, ki jih zagotavlja Listina. Posebni izzivi so tudi stopnja brezposelnosti v državah pogodbenicah, problem transformiranja pojma delovno razmerje in pa problem učinkovite implementacije pravic iz Listine v praksi.

Sporočilo avtorjev urednikov v sklepu knjige je jasno: pravni pomen Listine je treba še naprej razvijati, saj gre za nujno potrebo, da tudi Listina in vse njene povezane aktivnosti prispevajo k učinkovitemu delovanju zoper zniževanje pravic, zoper retrogradni razvoj, in, kar je še bolj pomembno, prispevajo k 'socialnemu razvoju', ki ga izrecno omenja Preambula Listine, tako v posameznih državah pogodbenicah kot zlasti v okviru EU.

Knjiga je strukturirana v dva dela. Prvi del naslavlja splošna vprašanja. Vloga, kontekst in pravna narava listine ter razmerje med Listino in pravnim redom EU obravnava **Olivier de Schutter** v poglavju 'The European Social Charter as the Social Constitution of Europe'. V istem delu **Lörcher** obravnava različne vidike interpretacije Listine, **Teun Jaspers** implementacijo Listine, **Aristea Koukiadaki** omejitve pravic iz Listine in **Clauwaert** nadzorne postopke.

Ni mogoče predstaviti celotne knjige in pravnega bogastva natančnih analiz ter argumentacij avtorjev. Naj zaradi omejenosti prostora izpostavim le en citat iz odločitev EOSP, na katerega se sklicuje Lörcher: "Listina je bila predvidena kot instrument človekovih pravic, ki dopolnjuje Evropsko konvencijo o človekovih pravicah. Je živ instrument, namenjen vrednotam, ki so bile navdih zanjo: dostojanstvo, avtonomija, enakost, solidarnost. Pravice, ki jih zagotavlja Listina, niso same sebi namen, temveč dopolnjujejo pravice iz Evropske konvencije o človekovih pravicah ... v skladu z Dunajsko deklaracijo iz leta 1993, so vse človekove pravice univerzalne, nedeljive in medsebojno odvisne in medsebojno povezane' ... zato je treba Listino razlagati tako, da daje življenje in pomen temeljnim socialnim pravicam. Iz tega med drugim izhaja, da je treba omejitve pravic obravnavati restriktivno, razumeti tako, da se zavaruje bistvo pravice in doseže namen Listine..." (EOSP, odločitev z dne 8. 9. 2004; FIDH v. France, kolektivna pritožba št. 14/2003).

V sklepnem delu svojega poglavja Clauwaert pojasni, da je učinkovito zagotavljanje socialnih pravic iz Listine skupna odgovornost akterjev na ravni Sveta Evrope in na nacionalni ravni in da, sklicujoč se tudi na O'Connore, 'ni le golo besedilo nekega instrumenta človekovih pravic odločilno za njegov uspeh ali neuspeh, temveč to, ali instrument dejansko uporabljajo njegovi različni deležniki'. Ob citiranju Thorbjørna Jaglanda, da 'ne glede na to, ali gre za varčevalne/protikrizne proračune ali ne, pri varstvu socialnih pravic ne gre za politično odločitev, temveč za moralno obveznost', Clauwaert doda in poudari, da je varstvo socialnih pravic zlasti tudi pravna obveznost.

Drugi del knjige obravnava posamezne člene/določbe Listine ter pravice in obveznosti, ki iz njih izhajajo. Ta del ima strukturo komentarja in pokriva: pravico do dela (**Simon Deakin**), pravico do pravičnih pogojev dela ter pravico do varnih in zdravih delovnih razmer (**Lörcher**), pravico do pravičnega plačila (**Zoe Adams in Deakin**), pravico do organiziranja (**Antoine Jacobs**), pravico do kolektivnega pogajanja (**Filip Dorssemont**), pravico otrok in mladostnikov do varstva (**Schömann**), pravico zaposlenih žensk do porodniškega varstva (**Csilla**

Kollonay-Lehoczky), pravice invalidnih oseb (**Schömann**), pravice delavcev migrantov in njihovih družin (**Clauweart**), pravico do enakih možnosti in enakega obravnavanja žensk in moških (**Kollonay-Lehoczky**), pravico do obveščanja in posvetovanja (**Bruno Veneziani**), pravico do sodelovanja pri določanju in izboljševanju delovnih pogojev in delovnega okolja (**Bruun**), pravico do varstva v primerih prenehanja zaposlitve (**Mélanie Schmitt**), pravico do dostojanstva pri delu (**Kollonay-Lehoczky**), pravico delavcev z družinskimi obveznostmi do enakega obravnavanja (**Schömann**), pravico predstavnikov delavcev do varstva in ugodnosti (**Bruun**), pravico do obveščanja in posvetovanja v postopkih kolektivnega odpuščanja (**Veneziani**), nediskriminacijo (**Kollonay-Lehoczky**).

Vsaka pravica je obravnavana na enak način, po dobro strukturirani shemi. Po uvodu, v katerem so pojasnjeni kontekst, bistvena vsebina določbe, relevantni mednarodni viri in razmerje do drugih določb Listine, sledi osrednji del komentarja, v katerem je vsebina določbe natančno in podrobno analizirana, zlasti upoštevajoč tudi prakso EOSP in njegovo interpretacijo. Sledi kratka razprava o vplivu Listine na druge evropske instrumente človekovih pravic. Na koncu so zbrani najpomembnejši vidiki posamezne določbe in sklepne ugotovitve.

Pričujoča knjiga je pomembna in uporabna, saj pregledno opiše, analizira in natančno razloži vse relevantne določbe Evropske socialne listine, ki obravnavajo delavske pravice, bodisi individualne ali kolektivne pravice delavcev; bralcu nudi vse potrebne informacije za pravilno razumevanje Listine, prav tako pa tudi pravnih poti, ki jih je mogoče in ki jih je treba uporabiti v primeru kršitev pravic iz Listine. Pravno zavezujoče temeljne socialne pravice, vključno z delavskimi pravicami, morajo biti zagotovljene vsakomur in morajo imeti polni učinek v praksi. K temu lahko tudi ta knjiga prispeva veliko; po eni strani opolnomoči bralca z zavedanjem in znanjem o temeljnih socialnih pravicah, hkrati pa opolnomoči tudi temeljne socialne pravice same – z odličnim komentarjem in jih tako ohranja pri življenju ter razvija naprej.

prof. dr. Barbara Kresal