

THE SOCIAL RIGHTS IN THE LIGHT OF CONSTITUTIONS OF EUROPEAN COUNTRIES

JOLANTA BUCIŃSKA

Instytut Administracji, Samorządu i Prawa, Akademia Podlaska w Siedlcach, Polska

Abstract in original language

Artykuł dotyczy sposobu ujmowania społecznych praw człowieka w nowych konstytucjach europejskich. Obejmuje konstytucje takich państw jak Bułgaria, Czechy, Estonia, Finlandia, Litwa, Łotwa, Słowacja, Słowenia, Rumunia, Węgry i Ukraina. Analiza praw wskazanych konstytucji pokazuje dwa sposoby regulacji praw społecznych w konstytucji: jako zadań publicznych lub jako praw podmiotowych.

Key words in original language

Konstytucja, prawa człowieka, prawa społeczne.

Abstract

The paper seeks to show the questions of regulation the social human rights in new European constitutions. It covers constitutions of countries such as Bulgaria, Czech Republic, Estonia, Finland, Hungary, Latvia, Lithuania, Slovakia, Slovenia, Romaine and Ukraine. Analysis of rights of these constitutions shows two different ways of approaching social rights in constitution: as public tasks or as subjective rights.

Key words

Constitution, human rights, social rights.

A uniform standard referring to the protection of rights and civic liberties has been maintained on the basis of legal acts issued by institutions and organizations of international and local character. The fact that more and more countries are prescribing to the aforementioned standard adjusting their state law to international requirements ensures its success. The influence of the international order on a domestic order also results from an objective character of international law order. The obligations in the scope of human rights do not assume an interstate character but aim at forming a legal position of the individual in the state order.¹ However, the accepted commitments refer to decisions which by their nature do not raise detailed points but possess a general, directional character. Realization of both the content and particular solutions to the manner of protecting human rights is consigned to the state, namely its legislative body. However, the role of a state in the scope of human rights are defined not only in the case of its entering into international treaties, when it actually becomes a subject committed to protect rights and liberties included therein. The state also possesses powers to impose requirements from individuals and social groups to make their contribution to commonwealth. Hence, the state should not remain passive in its attitude towards developing social relations. The state should include a broadly comprehended social problem in the sphere of its interests and influence and provide an appropriate expression of this in the inner state order issued in the constitution. The exclusion of basic human rights in the constitution gives evidence to a marginal significance which is attached by a state to the issue

¹ See A. Drzemczewski, *European Human Rights Convention in Domestic Law. A comparative Study*, Oxford 1983, p. 22.

of recognition and realization of these rights.² Such proceedings are at variance with the approach of aiming at encompassing and forming modern social problems in the constitution.

Defining the character and the role of a country and its bodies as well as rights conferred on the individual the constitution as the top rank act moulds the status of the individual. Placing social rights in the constitution describes and specifies its content and provides durability. It reflects a philosophical or ideological system accepted by the legislator. It also points at the assumed aims and values in the scope of the state's social policy. Placing these resolutions in the top normative act, which is the constitution, exerts an impact on the legal and political situation of the country since it establishes the limit on state's permissible action and the territory in which the state is committed to respect social rights granted to the individual. The confirmation of social rights in the constitution reinforces their protection owing to the fact that an individual subject may lay claims to the state if infringement of social rights should take place.

Such a result is solely associated with civic and political rights by certain constitutions in force. Social issues are being regulated more frequently in an increasingly broad scope of economic, social and cultural laws. However, they are provided a policy character and not a subjective rights character. Nevertheless, a view of non-binding character of these laws is at variance with the normative character of the constitution as a whole and its rule of direct force. Social and economic regulations defined in the constitution as the aims of the state impose realization of pursuits and tasks included there in a direct or implied manner. Their discretionary character do not hinder the comprehension of its crucial content. If a public body's action does not match the content of the aim without any justification, one may consider them in a certain course to be unconstitutional.³

As long as personal and political rights need to be determined and protected from interference into an agreed appointed territory, the realization of social rights do require from the country to take certain positive actions. Performing these actions often depends on the social and economic situation of a particular country. Therefore one is afraid of defining social rights (e.g. right to work) as subjective rights. It is beyond doubt that forming a constitutional catalogue of social rights exerts a profound impact on taking directions of social policy described in legislation of a lower order. Paying attention to these acts is justified with a special meaning of the constitution as a pattern for ordinary legislation. Thus, further interest will concern the scope and the degree of details of the social rights constitutional catalogue.

Constitutional acts presented hereafter constitute examples of their kind due to the presence of social rights problems, their scope and assumed manner of protection and defining states' tasks in the territory. The aim of the present article does not concern the presentation of social rights catalogues encompassed in all constitutions of European countries but the presentation of certain characteristic manners of their formulation. Employing such a criterion justifies the choice of the present constitutional acts.

² Z. Salwa points at this, *Praca oraz prawa socjalne w przyszłej konstytucji* [Labour and social rights in the future constitution], "Państwo i Prawo" 1990, no 9, p.14.

³ Such a view has been developed in German constitution law science. See K. Complak for more about normative way of approaching constitution, *Konstytucyjne postanowienia programowe czy normy o celach państwa?*, [Constitutional program resolutions or norms of state's aims?], *Sześć lat Konstytucji Rzeczypospolitej Polskiej. Doświadczenia i inspiracje*. [Six years of the constitution of Republic of Poland. Experience and inspiration.] L. Garlicki, A. Szmyt (red.) Warsaw 2003, p. 46-61.

In the constitutions adopted in the last decade one can notice a tendency to a “realistic” way of approaching social rights in constitutions, namely as public tasks assuming of which is a constitutional obligation of authorities. However, claims for benefits from the state may not be directly lodged. Such a solution is to avoid a situation that a citizen will be entitled to enforce rights guaranteed in the constitution. However, there will be no such material premises for this procedure. Such a possibility can exist on the basis of other constitutional regulations defined as basic rights and described as directly usable. An excellent example presents the constitution of Switzerland adopted in 1998. This state has deeply influenced development of the constitutional law. The “fundamental laws” are mentioned, in which the right to help in difficult situations is included, as well as the right to elementary education and the right to free legal aid. Other issues were defined as “social aims of the state” and they are not provided a legal status constituting a ground for individual claims. These are the following: the social security guarantee, health protection, family protection, chance to enjoy decent living conditions due to work performed in proper conditions, opportunity to own and provide for a suitable flat, and education. The problems encompassed in this scope have been approached in other constitutional regulations concerning the division of tasks between federation and cantons which have guarantee of realization. The constitution of one of German Lands namely Saxon-Anhalt touches the social issue in a similar manner namely “an institutional guarantee” and “aims of the state” with no the term of social rights use.

Nevertheless, one of the latest constitutions, namely the constitution of Finland issued in 1999 does not include such terms as “tasks”, “aims” or “program norms”.⁴ The basic rights and liberties are approached directly in the constitution without distinguishing a separate group of social rights. The legal regulation of citizens’ social needs is included in the guaranteed rights to form trade unions and organizations whose aim is to care about their interests. It also provides the proprietorship including the possibility of expropriation for public aims and full compensation, the right to free elementary education and opportunity for other educational offers depending on individual abilities and needs as well as conditions to develop, irrespective of financial problems. What is also guaranteed are the following: science, arts and gaining higher education. In terms of the right to work the Constitution mentions solely the right to launch a business or any other activity as a financial source as well as the prohibition to dismiss a worker without a legally justified cause. This is how formulating subjective right to work is avoided. There is no resolution referring to prohibition of forced labour. It also establishes the duties of public authorities in this area pointing at their responsibility for worker protection, promoting employment and labour, aiming at the guarantee of the right to work for every individual. It also refers to the issue of social welfare by means of formulating the right to receive indispensable benefits and social welfare, for citizens unable to obtain means necessary for decent living, in case of unemployment, a disease, an inability to work, an advanced age, a period of child’s birth or in case of the loss of the guardian. It is guaranteed that one is provided with social welfare, health care and medical care as well as health promotion.

The body of public authorities “support families and other institutions responsible for taking care of children” and “ help everybody to exercise their right of a place of residence as well as the possibility to own a place of residence. In the field of environment protection it is emphasized to “be responsible for nature, [...] environment and national heritage”, and after that public authorities commit themselves to “put effort into providing the guarantee of the

⁴ S. Sagan, V. Sarzhanova, *Konstytucja Finlandii*, [The constitution of Finland], Rzeszów 2003.

right for everybody to healthy environment and the possibility of influencing the decisions concerning the environment one lives in.

Another thing worth mentioning is the way constitutions of the post-socialistic countries deal with social issues. During the socialist period the constitutional catalogues of social rights were broadly expanded, the civic and political rights and liberties (liberty rights) being, however, neglected. It stemmed from the juxtaposition of the two groups of rights, caused by an ideologically-political conflict between capitalist and socialist countries. Constitutional regulations of the Eastern Block countries underwent alterations along with socio-political changes in that either amendments or new laws – usually liberty laws - were introduced. However, due to the nature of the ideological manifesto that the sections relating to the social sphere had had until that time a new approach to this group of rights was required. The task was facilitated by the existence of international documents which provided a model of regulation of social issues, for instance Economic, Social and Cultural Rights Pacts, or The European Social Charter functioning on a regional basis. Interestingly, however, the regulations of new or amended constitutions of the post-socialistic countries frequently do not copy all of the solutions included in international acts.

Analysis of the sections of these constitutions that are devoted to social rights shows two different trends underlying the process of implementation of changes in this sphere. New rights were granted, mainly ones concerning association, forming and joining trade unions as well as union rights, together with the right to strike. At the same time, however, the purposefulness of including social rights in the constitution was occasionally questioned. It was argued that the mere registering of social rights does not guarantee that they will be respected. What is more, the realization of social rights depends upon the economic condition of a particular country. Therefore, the only rights that should be included are those that the state can guarantee and that can be demanded through legal action.⁵ In the abovementioned approach the issue of social rights belongs to the sphere of the duties of the state. Such a formula determines the scope of duties of the state towards the individual, however, it does not create civic rights. Thus there is a tendency to define in the constitution only those duties of the state that can be guaranteed, the economic and organizational efficiency of the country being taken into consideration. However, placing social rights in the constitutions of democratic countries, which are endowed with constitutional jurisdiction, affects at least the process of proclaiming and interpretation of the law. What is more, including the social rights in the constitution influences the shaping and development of the social policy of the country.

The new constitutions of post-socialistic countries can be divided into three groups; acts with particular emphasis on social rights (the constitutions of Belorussia⁶, Bulgaria⁷, Romania⁸, Slovakia⁹, the Ukraine¹⁰), acts that provide only minor regulation of this issue (the

⁵ cf. J. Ciemniewski, *Konstytucja państwa socjalnego czy konstytucja państwa liberalnego?* [The Constitution of a Welfare State or the Constitution of a Liberal State?], (w:) *Prawo w okresie przemian ustrojowych w Polsce. Z badań Instytutu Nauk Prawnych PAN* [The law in the period of political transformation in Poland. From the research of the Institute of Legal Studies of the Polish Academy of Sciences], Warsaw 1995, p. 68.

⁶ The Constitution of Belorussia adopted 15th March 1994, <http://confinder.richmond.edu>.

⁷ The Constitution of Bulgaria introduced 12th July 1991, <http://confinder.richmond.edu>.

⁸ The Constitution of Romania adopted 8th December 1992, <http://confinder.richmond.edu>.

⁹ The Constitution of Slovakia adopted 1st September 1992, (in:) *The Constitution of the Republic of Slovakia*, Warsaw 1993.

constitutions of the Czech Republic¹¹, Slovenia¹² and Hungary¹³) and ones that hardly touch upon it (the constitutions of Estonia¹⁴, Lithuania¹⁵ and Latvia¹⁶).

Constitutions belonging to the third group only laconically mention social rights which are not accompanied by any means of protection. There are no tools that would ensure the realization of already granted rights. The acts guarantee property and inheritance rights, freedom of economic activity, the right to education, health protection and care, social security as well as the right to environmental protection.

The right to work appears far more rarely and usually concerns freedom of choice of occupation, employment and workplace. The documents also introduce union rights and liberties, mainly the right to strike and collective negotiations.

A shared characteristic of most of the acts from the three groups is including the right to environmental protection¹⁷, thereby acknowledging the human right to live in a clean environment. An expanded version of this right entails the duty of every individual to protect the environment and improve its condition. The duties of the state as regards environmental protection, such as economical use of natural resources, maintaining ecological balance and effective conservation of environment, are also specified (Romania, Bulgaria, Slovakia). Some constitutions add the right to information about environmental condition (Slovakia). It is the individual, exceptionally citizen (Bulgaria), that becomes the subject of the right to environmental protection.

A universally acknowledged right is the property right (sometimes called the right of property) along with the right to inheritance, generally perceived as one of the basic human rights and liberties. The institution of expropriation is permitted for the common good, on condition that suitable damages are awarded. Compensation conditions are specified in detail in the Constitution of Romania. There is often a distinction made between private property and state property, for instance in the constitutions of Bulgaria, Lithuania, Latvia, Romania and Hungary. A special type of property is intellectual property, protected by the state, which is mentioned in the Constitution of Estonia. In some acts it is stated that property obliges, which means that it cannot be used in inappropriate way, infringing upon the rights of others, causing harm to human health, nature, environment, cultural monuments. It cannot break the law (Slovakia). Some constitutions impose restrictions upon the property right that refer to certain circles or types of property. For instance, foreigners may have a limited right or be forbidden to purchase land (Estonia, Lithuania, Latvia, Romania). This restriction is accompanied by a ban on purchasing land and its interior, mountains, forests, the seaside,

¹⁰ The Constitution of Ukraine adopted 28th June 1996, <http://confinder.richmond.edu>.

¹¹ The Constitution of the Czech Republic adopted 16th December 1992, <http://confinder.richmond.edu>.

¹² The Constitution of Slovenia adopted 25th July 2000, (in:) Official Gazette of the Republic of Slovenia, No 66/2000.

¹³ The Constitution of Hungary adopted 20th August 1949, amended, (in:) The Constitution of the Republic of Hungary, Warsaw 1992.

¹⁴ The Constitution of Estonia adopted 28th June 1992, <http://confinder.richmond.edu>.

¹⁵ The Constitution of Lithuania adopted 25th October 1992, <http://confinder.richmond.edu>.

¹⁶ The Constitution of Latvia adopted 15th February 1922, amended, <http://confinder.richmond.edu>.

¹⁷ Not mentioned in the Constitution of Estonia.

archeological excavations and cultural monuments which can constitute only state property (Bulgaria, Slovakia, Lithuania). Sometimes the state holds monopoly on railway transport, national post and telecommunication, the use of nuclear energy, the production of ammunition and radioactive or highly toxic substances (Bulgaria). Property right is frequently accompanied by freedom of economic activity.

One of the vital issues concerning social rights is the right to work, mentioned in constitutions of Belorussia, Bulgaria, Slovakia, the Ukraine and Hungary. In most cases, however, this issue is approached in terms of the freedom to work, which refers mainly to the choice of occupation and workplace. What is also frequently added is the right to safe and hygienic working conditions and salary ensuring satisfactory standard of life as well as protection from restrictions and discrimination, safety and health care in the workplace. Some constitutions guarantee the minimum national wage (Bulgaria) and determine the maximum weekly working time (Romania). The right to rest and paid holidays is rarely mentioned (Bulgaria, Slovakia, Romania). All of the discussed constitutions introduce the ban on forced labour. Equally popular is the right to associate in trade unions and to strike, for the protection of occupational, economic and social interests of workers. More expanded acts include also the union right to negotiations and collective agreements.

The right to social security is present in almost all of the constitutions. It is formulated in various ways, usually referring to instances of unemployment, disease and old age. Sometimes the right to social care, pension, paid maternity leave is added (Romania).

One of the duties of the state as regards social security is providing publicly-funded medical care (Bulgaria, Lithuania, Latvia, Slovakia, Slovenia). However, the right to health protection is usually treated as a separate issue.

What appears equally frequently in constitutions is the right to education, which usually refers to acquiring knowledge, however in certain instances also to teaching, for instance in the Constitution of Lithuania. Primary education is usually obligatory and free of charge; the constitutions of Bulgaria, Slovakia, Romania guarantee free education also at the secondary level. What post-socialistic constitutions repeatedly fail to mention is the payment of university fees, with the exception of the Constitution of Lithuania which stipulates that education at public universities is free of charge. What is usually highlighted is the autonomy of these institutions. Several constitutions specify the language of instruction and stipulate that minority groups are entitled to receive instruction in their mother tongue (Estonia, Romania). Not all of the abovementioned constitutions take into consideration the right of citizens to establish schools (Bulgaria) and to participate in culture. They also rarely refer to the freedom of artistic activity and scientific research.

Literature:

- Ciemniowski J., Konstytucja państwa socjalnego czy konstytucja państwa liberalnego? [The Constitution of a Welfare State or the Constitution of a Liberal State?], (w:) Prawo w okresie przemian ustrojowych w polsce. Z badań Instytutu Nauk Prawnych PAN [The law in the period of political transformation in Poland. From the research of the Institute of Legal Studies of the Polish Academy of Sciences], Warsaw 1995 r.

- Complak K., Konstytucyjne postanowienia programowe czy normy o celach państwa? [Constitutional program resolutions or norms of state's aims?] (w:) Sześć lat Konstytucji Rzeczypospolitej Polskiej. Doświadczenia i inspiracje [Six years of the constitution of Republic of Poland. Experience and inspiration], L. Garlicki, A. Szmyt (red.) Warsaw 2003, ISBN 83-7059-637-1.
- Drzemczewski A., European Human Rights Convention in Domestic Law. A Comparative Study. Oxford 1983, ISBN 019825525X.
- Sagan S., Sarzhanova V., Konstytucja Finlandii [The Constitution of Finland], Rzeszów 2003, ISBN 8373381422.
- Salwa Z., Praca oraz prawa socjalne w przyszłej konstytucji [Labour and social rights in the future constitution], "Państwo i Prawo" 1990, no 9.

Contact – email

jbucinska@op.pl