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Social Rights and Dignified Work in Labour Law Relations¹

Abstract

Human rights are important within the labour law relations. For years, the attention of the labour law theory has been focused on the area of social rights which acquired a new dimension after the adoption of the Treaty of Lisbon and the Charter of Fundamental Rights of the European Union Treaty. In the paper, the Author pays more attention to the importance of exercising social rights in the conditions of the present instability at the labour market, at the time of the moral values' decline and disregard of the natural and economic relations in human activities, which affect very adversely the social situation of common people.

Key words: *social rights, a right to work, dignified work*

Prawa społeczne i godna praca w stosunkach z zakresu prawa pracy

Streszczenie

Prawa człowieka odgrywają istotną rolę w stosunkach pracowniczych. Doktryna prawa pracy od lat koncentruje się na obszarze praw społecznych, które po wejściu w życie Traktatu z Lizbony i Karty Praw Podstawowych nabyły nowego wymiaru. Autorka niniejszego opracowania zwraca szczególną uwagę na to, jak ważna jest rzeczywista możliwość korzystania z praw społecznych w warunkach obecnego braku stabilności na rynku pracy, w czasie upadku wartości moralnych oraz nieposzanowania dla stosunków gospodarczych, co niekorzystnie wpływa na sytuację społeczną zwykłych ludzi.

Słowa kluczowe: *prawa społeczne, prawo do pracy, godna praca*

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Preface

The world globalization involves both many social goods and evils, which impinge the continents, nations, families, youth and so on. Countries face the crossroad where they must choose among the alternatives of economic, legal, political and social development. Searching for „a critical condition“ remedy options, they reach for the measures which multiply uncertainty, disturb the social connections and cut existing guarantees of a humanly dignified life. We are afraid of ignorance in respect of the observance of the standards of the social rights which have been reached, of a departure of social security and of the alarming preference which is given to economic goals instead of social certainties for people. In this connection, the problems of social rights are opened to a rational perception, since after the adoption of the Treaty of Lisbon, the social rights perception gains a different character and it is the incentive for paying the attention to questions of theoretical and legal nature in the labour law theory.

1. Social Rights from the Point of View of the Government Legal Position

The irreplaceable criteria of democracy and social advance include the problems of rights and freedoms of individuals, namely the forms of their constitutional confirmation and practical implementation in a respective country. In other words, the key question of the constitutional (state) law of each country is the confirmation of fundamental rights and freedoms. It is a specification of both, the autonomous space of a citizen protected against the state authority (a liberal state) and the opportunity given to a citizen to participate in the public affairs administration (a democratic state), as well as of the task of the government to provide certain fulfilments to a citizen (a social state). Based on this statement, a modern state of the contemporary time is assigned an attribute „a country (state) of the fundamental rights“. That is to say, the purpose of a state is to facilitate a cohabitation of citizens in the society instead of making such cohabitation complicated².

A legal state prefers the rights and freedoms of citizens and society over the state rights. The legal state is not to be an authoritarian state, but it is to assist citizens, instead of a vice versa situation, i.e. where citizens serve a state. A modern concept of the human rights is based on the existence of the universal and undeprivable human rights and freedoms. The leading idea of the constitutional concept of the fundamental rights and freedoms is the respect for their natural and legal perception. In this perception, the requirement of

² I. Palúš, E. Somorová, *Štátne právo Slovenskej republiky*, Košice 2008, p. 133.

inviolability, inalienability, imprescriptibility and indefeasibility of fundamental rights and freedoms³ is stated in the Constitution of the Slovak Republic in Article 12.

From the attribute of the status dignity of every human being, the inviolable rights which express our relation towards another person and form our behaviour towards him/her, are deduced. They pertain to everybody and are natural rights, i.e. based on a social contract, a state is obliged to recognize and provide for the same personal freedom, civil and political rights for all. It is the so-called first generation of human rights, the goal of which is to protect the free sphere of citizens towards the state and provide for the equality before the law for everybody. As opposed to the liberally understood rights and freedoms of the first generation, which required a restriction of the state power operation, the second generation rights are socially conditioned, i.e. they require the social justice guarantees from the state, which will enlarge its functions, positive engagement in economy and social area in order the liberal human rights and freedoms could be implemented really equally for all the people, including poor social classes. It includes economic, social and cultural rights confirmed by Articles 35 to 43 of the Constitution of the Slovak Republic, the generation of which was conditioned by the industrial revolution, excessive utilization of cheap labour working under inhuman working conditions. For those subjects and also for other people living in poverty and misery (i.e. near the subsistence level) the so-called freedoms were only an empty clause. The second generation of human rights lays the emphasis on humanly dignified working conditions, social environment and social guarantees of the human rights equality⁴.

The theoretical idea of defining the term “a social right” is yet ambiguous and disputable, while, however, there has never aroused a doubt about their existence if we use the historical excursion to the past. They has been created both a constitutional status of a citizen through their content, along with economic and cultural rights, and a citizen’s legal status which is identical for all. The argument that a citizen exercises the fulfilment from the part of a state results from the nature of the social rights as from the fact that they are based on the *positivus* and *activus* statuses and, in accordance with Article 51 of the Constitution of the Slovak Republic, require an activity from the part of state. For their feasibility and implementation in practice, the state, as a liable subject, must take some specific positive action. Considering Article 55 of the Constitution of the Slovak Republic, according to which „The economy of the Slovak Republic is based on the principles of socially and ecologically oriented market economy“, the social state binds an individual to participate in the common

³ I. Palúš, *Štátne právo porovnávacie*, Košice 2002, p. 16.

⁴ See in Z. Macková, *Liberalizácia pracovnoprávných vzťahov a dopad na sociálne zabezpečenie zamestnancov*, in: E. Janičová, M. Dolobáč, *Liberalizácia pracovného práva a nové trendy vo vývoji pracovných vzťahov*, Košice 2010, p. 260.

coping with life. A liberal view on the state's duties consists of creation of identical presumptions for all. The practice testifies that the legal equality is of no sense if it does not provide for real chances of free development. Considering this understanding, the social rights have an intermediating function between freedom and equality. They are the prerequisite for the freedom exercise, since the actual free development of a human being is not possible without the implementation of social rights⁵.

2. Social Rights in Labour Law Relations

The identity of the labor law is connected with the second generation social rights from the very formation of it. It is rather untraditional to consider the fundamental human rights in the labour law as the first generation rights from the point of view of the approach of domestic labour law theory. Barancová deems the differentiation of the fundamental human rights obsolete and she claims that the first generation human rights are also exercised in the area of labour law relations and their legalistic structure is different as opposed to the fundamental social rights, since they are based on the qualitatively different position of the state⁶.

The equality, social security and social justice create the basis of social rights, contrary to the constitutional freedoms of citizens, the basic substance of which is a freedom⁷. Freedoms are based on the will of the state which is, as a matter of principle, passive and intervenes only in the moment when they are endangered or violated. Freedoms represent a space for a citizen to exercise a private autonomy, which the state is authorized to intervene. The social rights, although understood in a certain contradiction to basic constitutional freedoms in the legal literature, however, the given contradiction is of a relative nature only. In practice, there are no substitutions of freedom and equality, freedom and social security, but there is an optimal symbiosis between the degree of freedom and social security and social justice⁸.

On the other hand, if the social rights have a constitutional confirmation, the state cannot be a passive actor only, but it must make some activity so as to provide for their feasibility in practice. In this connection, the normative action of the state is also acceptable through imperative legal standards ensuring the implementation of the citizens' social rights confirmed by the Constitution.

⁵ H. Barancová, *Slovenské a európske pracovné právo*, Bratislava 2004, p. 37.

⁶ H. Barancová et al., *Základné práva a slobody v pracovnom práve*, Plzeň 2012, p. 19.

⁷ H. Barancová, *Slovenské a európske ...*, p. 39.

⁸ See in Z. Macková, *Liberalizácia pracovnoprávných ...*, p. 260.

It is characteristic for the labour law that not only typical citizens' social constitutional rights but also typical liberal freedoms, which despite a conventional division of the fundamental rights have their specific social substance within the labour law relations, are carried out within its framework. As opposed to the social rights confirmed in the constitution, they are more focused on the basic principles of a civic society, freedom and equality. The examples include the constitutional principle of equality before the law and non-discrimination, the right for human dignity, the right for free choice and performance of a profession⁹.

After gaining its legal validity, the Treaty of Lisbon contributed significantly to the issue of social rights in the area of the labour law, since it awarded the nature of basic principles to a part of the social rights – namely to the rights without a legal claim, and a nature of basic human rights with a legal claim to the other part of rights. Coming into force of the Treaty caused that the Charter of Fundamental Rights of the European Union also became legally binding. A part of the fundamental rights also connected with labour law relations which can supplement other legal quality to the social rights without legal claim and the result will be a subjective right with desirable legal claim, is of crucial importance for the part of the social rights called as the principles in the Charter Preamble. For example, Article 27 of the Charter confirming the right for information to employees which, in connection with a violation of human dignity as the first generation right, can obtain the nature of the right with legal claim. According to Barancová, the abovementioned connection of the social rights and the first generation human rights have recently been increasingly referenced by the Court of Justice of the European Union judiciary, the European Court of Human Rights' judiciary and the judiciary of the Constitutional Courts of the European Union member states¹⁰.

3. Dignified Work Applied in „Protective Legislation“

During the world economy globalization and economic crisis, the labour law can slow down or accelerate economic development. It is historically perceived as the protective law. The legal model of the labour law as the law protecting an employee against his/her employer is obsolete, and now it is an unacceptable model for employers. The unemployment share increase in both Europe and world, and shows a problematic nature of maintaining and deepening of social security and safety of employees. This “social instability” has the significant influence on dependent work performance, family life, solidarity in a working team and so on. The labour law is to protect the human dignity also in a modern yoke of

⁹ H. Barancová et al., *Základné práva a slobody ...*, p. 20.

¹⁰ *Ibidem*, p. 21.

economy as the highest value against “economic indicators” and other values, since the fundamental human rights and human dignity are to present the values in the rule of law of every country which a legislator must respect, since they are the values of a higher order¹¹.

The social rights which are paid attention to in this paper, have, inter alia, also a social base shown in the individual needs of people. An individual does not only act as an individual person, but he is a component part of the society, and hence the social base of the rights specified in that way also consists of moral, ethical, economical and political aspects of the social life. The social rights are, in principle, a tool for the human dignity ensuring¹².

For the work that considers personal, social, economic factors and views the employee person in a complex, the term “dignified work” is used. The dignity of a human being is included in the content of the basic documents of the United Nations Organization, the International Labour Organization and the Council of Europe and I will pay the attention only to those ones which provide a direct guarantee for the dignified work. The requirement of a man’s dignity is included in the whole catalogue of the fundamental human rights. On the Council of Europe’s ground, the right of employees for dignity is confirmed in Article 3 of the European Social Charter and in Article 26 of the Revised Social Charter. The European Union guarantees the dignity in Article 1 of the European Union Charter of Fundamental Rights, according to which human dignity is inviolable, must be respected and protected¹³.

In the present “crisis” atmosphere, in which the Slovak Republic occurs along with other countries, there are indications of the fact that it is not possible to continue to underrate the responses of people earning its living through dependent work up to the extreme limits. A considerable restriction in the availability of work, the worsening working conditions, unbearable price rising, increasing pressure of employers on the preference of atypical working relations which are not, or are only partially covered by social insurance and social security – all these are the signals of potential turbulences of positions of the top political officials and governments and culmination of a social tension. The present society brings new or old, or other social hazards which endanger not only population without participation in the generation of new values and in production, but gradually also the people with full-time jobs. Step by step, but evidently convincingly, the middle class population which has always been a driving force and a holder of economic advancement of a country, is reducing. At present,

¹¹ The problems are elaborated in detail in the publication *Pracovné právo v európskej perspektíve*, Plzeň 2009.

¹² The problems of a human dignity are also analyzed in detail in: M. Barinková, M. Kovalčíková, *Ludská dôstojnosť (aj v pracovnoprávných vzťahoch) optikou Lisabonskej zmluvy*, in: *Právo v európskej perspektíve II. diel: Trnavské právnické dni: 23. - 24. September 2010*, Trnava 2011, pp. 930-940.

¹³ M. Láclaviková, A. Olšovská, *Dôstojná práca (príspevok k vývoju bezpečnosti a ochrany zdravia pri práci na našom území)*, in: A. Olšovská, *Europeizácia a transnacionalizácia pracovných vzťahov*, Plzeň 2009, p. 80.

the number of poor working people is increasing, which are strongly subjected to the social hazards, despite the qualifications they have.

It seems that the new form of a contemporary social problem (in addition to unemployment) consists of increasing threaten of a social status quality of employed persons, while it is the case of not only people with lower levels of education, but also of those with higher qualification (e.g. in auxiliary jobs – social services, some medical professions, teachers, as well as technicians and engineers). Thus, it relates to those, who create “a sound core” of the middle class. Many of them are not able to fulfill their basic living needs, including the ones of their families; many of them fail to establish families due to low earnings, run into debt for decades so as to acquire a decent housing.

In this connection, the question of the application nature of social rights is very alarming. The states of particular countries adopt measures so as to eliminate the “economic crisis impacts”, e.g. by raising taxes, payments to funds of social insurance and so on. However, on the other hand, they potentiate uncertainty and violate the social certainties of humanly dignified life by those measures. We are afraid of ignorance in respect to the observation of standards of the social rights that have been achieved, a departure from maintaining of social safety and alarming preference given to economic goals instead of social certainties of people.

In the system of social rights incorporated into the fundamental principles of the labor law, the right to work has the most important position, since it determines the factual and legal position of a natural person in the society most of all. The right to work is confirmed by the Constitution of the Slovak Republic and by the Labour Code which stipulates in Article 1 that citizens have the right to work and the freedom of choice of employment without any restrictions and discrimination, as well as the right to be protected against unemployment. Another basic platforms of the right to work as the fundamental human right is the Universal Declaration of Human Rights and the International Covenant of Economic, Social and Cultural Rights.

The right to work binds a government to implement active employment policy. It must make efforts to ensure the full employment, since the implementation of the right to work is not only the mean for food supply, but also the mean of development of personality and the whole economic system of the given country. If the government, as an obliged subject, fails to fulfill its liability in connection with all natural persons who are able to work, it is obliged to fulfill this liability by a substitute way, i.e. by an unemployment benefit in order to provide a dignified life for individuals. This is the reason, why the law theory of the right to work is often denoted as so-called alternative law. A society represented by the

government is to create the conditions for employment of natural persons or provide material security where the government is not capable to provide them a job. In this connection, the right to work is still one of the most important rights, even though the economic and political relations changed¹⁴. The Constitution of the Slovak Republic inclines to the need of the governmental interventions into the functioning of economy, emphasizes its shared responsibility for the protection against social risks and for satisfaction of social needs of individuals. The social legal states focused especially on creation of conditions for humanly dignified life of individuals with a subsequent minimization of social differences. However, the labour law can be flexible to a limited extent and in accordance with the legal standards of human rights. Any tools and ways for reaching a flexibility of labour law relations may only be applied provided that they do not violate the right for human dignity the fundamental social rights are attached to¹⁵.

The antidiscrimination law contributes to the increase of flexibility of labour law relations. Even though it alone improves the sense of confidence and safety considerably on the part of an employee, on the other hand, in several respects, it has a significant influence on the labour law relations flexibility increase¹⁶. The antidiscrimination legislation consists of many legal acts, primary or secondary, at the European Union level¹⁷.

The discrimination relates to all fundamental human rights and freedoms and virtually, it relates to all spheres of human life. In the application practice we face the situations when an individual is not able to use a human potential in full extent and thus he/she is obstructed to act in common actions according to his/her own visions. Thus, the restrictions of rights in various spheres of life can occur. Discrimination or restriction of the rights of individuals occurs where there are the factors of dependency on "somebody", where the power of an individual prevails over another individual. The discrimination is often deep-rooted in a society and it even occurs that people facing it do not perceive its existence. In addition, the discriminated individuals often belong to the most sensitive groups of population and the initiation of a legal or other proceedings often presents an unsurpassable obstacle for them¹⁸. Discrimination ban, or "the equality of treatment" belongs to one of the most important and, at the same time, most complicated fields of the European labour law. The aim of the discrimination ban does not consist of reaching of an absolute equality among various

¹⁴ H. Barancová, *Pracovný pomer a poisťný systém*, Bratislava 2008, p. 44 and subs.

¹⁵ M. Barinková, *Sociálna „pseudoochrana“ zamestnanca po novele Zákonníka práce*, in: *Dôstojnosť zamestnanca v pracovnoprávných vzťahoch. Sprint dva*, ed. I. Hodálová, Bratislava 2011, pp. 31-41.

¹⁶ H. Barancová, *Flexibilita pracovnoprávných vzťahov v Slovenskej republike vo svetle európskeho pracovného práva*, in: E. Janičová, M. Dolobáč, *Liberalizácia pracovného ...*, p. 21.

¹⁷ M. Kuril, *Aktuálny vývoj pracovného práva EÚ: zákaz diskriminácie v pracovnoprávných vzťahoch*, http://www.law.muni.cz/sborniky/cofola2008/files/pdf/pracko/kuril_michal.pdf [cit. 2013-03-30].

¹⁸ J. Debrecéniová, *Čo (ne)vieme o diskriminácii*, Bratislava 2008, p. 9.

groups of persons, especially among genders, but in reaching the equality of opportunities, i.e. the equality of “starting conditions” for the representatives of various groups. Despite nearly identical content, there are several terms such as: “a positive action”, “employment equity”, etc. used abroad for the terms “gender equality” and “equal opportunities” set in the documents of the European Union¹⁹.

The antidiscrimination policy in labour law legislation is of the extraordinary importance, its practical enforceability is often complicated and insufficient. The cause lies in several facts, the most important ones include ambiguous interpretations of some basic terms (direct discrimination, indirect discrimination, equal treatment, equal wage for work of the same value); relatively low readiness of judges to apply new legislation; insufficient public’s knowledge about new legislation (moreover, these situations relate especially to natural persons already employed, while there is a sizeable group of potential employees), and so on.

Conclusions

The term “social” binds the government to provide for the citizens in a certain risk life situations, e.g. in case of a sickness, agedness, occupational injury, unemployment, disability, etc. The social government provides not only the fundamental rights, but it is also obliged to make positive “social activity” and create a social system focused on the implementation of social justice. It must counteract the economic difficulties of every citizen and contribute to a fair equalization between the low-income, underprivileged individuals and higher-income individuals²⁰. The policy of each government which intends to have a social state, must face future and be a challenge to change economic and social conditions so as to guarantee security and freedom. The content of social, economic and cultural rights is regulated in the states’ constitutions or acts more generally and it often has a program-like character, representing a certain orientation of the governmental policy. It results from abovementioned that the regularization of particular social rights can be extended or restricted in future above the framework of the content of those rights set by the constitution²¹. I highlight the fact that the implementation of the social rights is to be applied for a satisfaction of individual needs of individual persons preferably. At the same time, it is a sign of economic advancement and development of the society. In case that the conditions for implementation of the social rights at the exercise of the right for human dignity are

¹⁹ Z. Magurová, *Uplatňovanie zásady rovnakého zaobchádzania s mužmi a ženami v sociálnom zabezpečení*, in: *Proceedings of the Scientific Conference Nový model sociálneho zabezpečenia*, Bratislava 2004, p. 66.

²⁰ Z. Macková, *Liberalizácia pracovnoprávných ...*, p. 260.

²¹ I. Palúš, *Štátne právo porovnávacie ...*, p. 52.

insufficient, the legal guarantees of the state will not be exercised and various pathological social phenomena which will not be convenient for both, an individual and the society as a whole, will occur. The degree of advancement of a civic society which guarantees the equality and freedom will directly influence the relation between the law, freedom and equality. It is a continuous dispute which relates to all civic societies.