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The European Social Charter in Bulgaria

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The European Social Charter is one of the main regional international instruments in the social sphere, but, unfortunately, it is not very well known in the European Union Member States, Bulgaria included, in comparison with EU law. I learned this for myself while working for the European Committee of Social Rights from 2015-2020, which was a great professional honour for me. I would like to use this occasion to express my thanks for the exceptionally productive work done by all members of the Committee, and for the invaluable work put in by the Secretariat. I saw for myself the farsightedness of the resolution on drawing up a common European document on social policy in the Council of Europe adopted by the Committee of Ministers in 1953-1954: “Our Committee will endeavour to elaborate a European Social Charter which would define the social objectives aimed at by Members and would guide the policy of the Council in the social field, in which it would be complementary to the European Convention on Human Rights and Fundamental Freedoms”. Bulgaria is a party to the European Social Charter (revised). Bulgaria signed the Charter in 1998, ratified it in 2000 and promulgated it in Government Gazette No. 43, 2000. It took effect on 1 August 2000 and pursuant to Article 5(4) of the Constitution, the provisions of the Charter ratified by our country have become part of the international acts that are directly effective in Bulgaria and that have priority over any current domestic legislative acts that may conflict with them. Unfortunately, those involved in writing and implementing Bulgarian law rarely consult the Charter, as is evident from the grounds for adopting legislative acts and from regulatory practice in the implementation of labour law, insurance law and social benefits legislation, and from case law.

As an international regional treaty, the European Social Charter is the most important social legislative instrument in Europe, but it is frequently overlooked in favour of the Convention on the Protection of Human Rights and Fundamental Freedoms. The Convention clearly does have

its significance, but is a more general piece of legislation which dedicates just two sections to social rights – Article 4, prohibiting forced labour, and Article 11 on the right to form trade unions.

Ratification of the European Social Charter requires the adoption of at least six of the nine articles defined as fundamental (Article 1, Articles 5-7, Articles 12-13, Article 16 and Articles 19-20), as well as at least 16 of the remaining articles, or 63 of the numbered paragraphs. Bulgaria has ratified six of the fundamental provisions (Articles 1, 5, 6, 7, 16 and 20) and 16 of the remaining articles and 64 numbered paragraphs.

According to the Preamble to Part I of the Charter, “The Contracting Parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised...”. In the tradition of international instruments, therefore, the parties to the European Social Charter are obliged to **take the measures necessary** to ensure its implementation in their national legal systems. In other words, the signatory states must take measures and these measures must be necessary (appropriate). The obligation to take necessary measures entails action to this end. These measures can be legislative, administrative, financial, etc.

Legislative measures take the form of legislation or other instruments implementing the provisions of the European Social Charter in domestic law. The nature and character of these measures depend on the significance of ratified international documents in the country’s national constitution according to the dualist or monist system. Bulgaria has adopted the monist system. Under Article 5(4) of the Constitution, international instruments that have been ratified by and become effective for the country after their promulgation become part of the directly applicable legislation. In order for these to be effectively implemented, and to give them priority over any conflicting domestic legislation, the provisions of the relevant international agreement, including the Charter, must be self-executing. The prohibition of forced labour, freedom of association, etc., are examples of Charter norms that have been ratified Bulgaria.

However, the application of non-self-executing norms is a different matter.

Programme standards are a case in point. A typical example of this is Article 1 on the right to work. This provision obliges signatories to ensure that the right to work is effectively exercised by providing or promoting appropriate professional guidance, skills, rehabilitation and other measures in order to achieve and maintain as stable and high a level of employment as possible. Bulgarian law incorporates a wide range of measures like this in the Labour Code (KT), the Employment Promotion Act (ZNZ) and the Vocational Education and Training Act (ZPOPO), etc.

Another category of norms obliges the State to maintain certain departments or institutions. The above provision of Article 1 of the Charter, for example, requires the

establishment or maintenance of free employment services. In Bulgaria, the Agency on Employment (AZ) fulfilled this function even before the ratification of the Charter.

Then there are unenforceable norms which set a legal rule, but which are so general that they have to be fine-tuned before they can be implemented in countries' domestic legislation. For example, Article 19 of the Charter provides for the right of migrant workers and their families to protection and assistance. Due to the economic and organisational difficulties of implementing this provision, Bulgaria has not ratified it.

Like the other ratified international social protection conventions, the European Social Charter also contains rules which are only set out as *minimum standards*. This is explicitly provided for in Part V, Article H of the Charter. There are several instances of higher standards in Bulgarian law. For example, the minimum length of maternity leave required by the Charter is 14 weeks, or 98 days, while Bulgarian law provides for 410 days' maternity leave.

The financial and material measures required by the implementation of the European Social Charter can take the form of monetary or other material means of implementing the provisions of the agreement (for example, implementing the right to social assistance in Article 13), the establishment of technical and other means of protection (e.g. establishing the right to healthy and safe working conditions pursuant to Article 3), etc. In Bulgaria these means are provided for in the Health and Safety at Work Act, the Social Assistance Act, the Child Support Act and other legislation.

Administrative and organisational measures may also be necessary or appropriate for implementing the European Social Charter, such as setting up watchdogs, advisory bodies, etc. Implementing Article 12(1) of the Charter, for example, entails the establishment or maintenance of a public system of social security: in Bulgaria this is the National Insurance Institution and the National Health Insurance Fund.

Monitoring is exceptionally useful for the implementation of the European Social Charter. I will not dwell on domestic supervision under the national laws of the signatory states, but on monitoring by the European Committee of Social Rights.

The most widespread and conventional form of supervision is **report-based supervision**. The findings in relation to Bulgaria are predominantly positive. However, our country does take on board the recommendations of the European Committee of Social Rights. For example, the amended Civil Servants Act now gives civil servants the right to strike, which they previously did not have (Article 5 of the Charter), under certain circumstances.

The signing of the additional protocol in 1995 established an **enforcement procedure based on collective complaints**, effective from 1 July 1998. Complaints filed against Bulgaria relate primarily to the rights of the Roma population – the right to housing, payment of child benefits, etc. Generally, the recommendations of the European Committee of Social Rights take into account the legislative and administrative practice in Bulgaria whenever possible.