

60 let Evropske socialne listine in 25 let Spremenjene Evropske socialne listine*

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UDK: 349.2/.3:341.176(4)
349:342.7

Letos praznujemo 60. obletnico Evropske socialne listine, ki je bila podpisana 18. oktobra 1961 v Torinu, veljati pa je začela po zadostnem številu ratifikacij 26. februarja 1965.

Leta 1996, natančneje 3. maja 1996, je bila v Strasbourgu podpisana Spremenjena Evropska socialna listina, ki jo je ratificirala in zavezuje tudi Slovenijo. Po zadostnem številu ratifikacij je začela veljati 1. julija 1999. Tako letos obeležujemo tudi 25. obletnico Spremenjene Evropske socialne listine.

Evropska socialna listina, ki skupaj z Evropsko konvencijo o človekovih pravicah in drugimi pomembnimi konvencijami Sveta Evrope vzpostavlja zavezujoč katalog človekovih pravic v Evropi in je pogosto poimenovana kar Socialna ustava Evrope, je v Sloveniji, vsaj na področju delovnega in socialnega prava, dobro poznana in je ob tej priliki ni treba podrobneje vsebinsko predstavljati. Za to je zaslužnih več dejavnikov in ljudi. Vsekakor bi na tem mestu rada izpostavila profesorico Polonco Končar, tudi nekdanjo članico in predsednico Evropskega odbora za socialne pravice, ki je obsežno publicirala o njej in jo vključevala tudi v študijski proces in kurikulum študija prava, ter s tem generacije študentk in študentov, sedanje pravnice in pravnike okrepila s potrebnim znanjem in razumevanjem o Listini. S tem je pomembno prispevala k njeni prepoznavnosti in poznavanju njene vsebine ter posledično k njeni praktični uporabnosti. Tudi zato in zaradi številnih drugih, ki so vsak na svojem mestu prispevali k uveljavljanju Listine kot pravno zavezujočega instrumenta človekovih pravic, je Slovenija danes v družbi evropskih držav, kjer se Listino citira/uporablja v sodnih odločbah na vseh ravneh, v sodbah delovnih in socialnih sodišč, Višjega delovnega in socialnega sodišča, Vrhovnega

* Uvodni nagovor na XX. Dnevih delovnega prava in socialne varnosti, Portorož, Slovenija, 28. 9. 2021.

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sodišča, pa tudi v odločbah Ustavnega sodišča. Prav tako so standardi, ki izhajajo iz Listine, utemeljevali in argumentirali prenekatero rešitve v predlogih zakonov s področja delovnega in socialnega prava, tudi veljavnega zakona o delovnih razmerjih in drugih. Poznavanje interpretacij Evropskega odbora za socialne pravice glede vsebine posameznih določb Listine in minimalnih zahtev, ki iz njih izhajajo, so npr. – poleg drugih dejavnikov, zlasti aktivne sindikalne akcije v tej zvezi – utemeljevali tudi znatnejši dvig zneska minimalne plače in njeno ustrezno uskladitev v smeri zavezujočih standardov iz Listine. In še bi lahko naštevali. Evropska socialna listina je torej v Sloveniji prepoznana kot pomemben evropski pravno zavezujoč instrument človekovih pravic.

Ostajajo pa področja, kjer je Evropski odbor za socialne pravice ugotovil, da Slovenija krši minimalne standarde temeljnih socialnih pravic, kot izhajajo iz Listine, a Slovenija še ni ustrezno odreagirala. In zdi se, da v zadnjem obdobju, iz enega nadzornega cikla v naslednjega, število ugotovljenih primerov kršitev Listine s strani Slovenije narašča. Situacija še ni alarmantna, vendar te ugotovitve ne gre zanemariti. Pomen delavskih in socialnih pravic je pod nenehnim pritiskom dogem o učinkovitosti trga, zagotavljanju mednarodne konkurenčnosti, krepitvi oblastne moči delodajalca, itd. Zato je treba delavske in socialne pravice vztrajno utemeljevati, krepiti in braniti, sicer se ti težko pridobljeni civilizacijski standardi lahko hitro izgubijo. Tudi socialna država ni nekaj samoumevnega. In pravice, ki jih zagotavlja Listina, za katere se je tudi Slovenija pravno zavezala, da jih bo spoštovala, niso nekaj samoumevnega. Čeprav se zdi, da bi morale biti.

Pravica do pravičnih pogojev dela, do zdravih in varnih delovnih razmer, do pravičnega plačila, pravica do sindikalnega organiziranja in kolektivnega pogajanja, pravica do stavke, ter druge delavske pravice, pravice do posebnega varstva v zvezi z materinstvom, starševstvom, otrok in mladine, starejših, ljudi z ovirami, ki naj omogočajo dejansko enako obravnavanje in možnosti ter dejavno enakopravno vključevanje vseh ljudi v družbo, pravica do socialne varnosti, do varstva zdravja, pravica do varstva pred revščino in socialno izključenostjo, pravica do nastanitve in primerne stanovanja itd. Listina, v njeni revidirani verziji iz 1996, zagotavlja 31 ekonomskih in socialnih človekovih pravic, tudi poimenovanih temeljnih socialnih pravic.

Listina je najbolj celovit instrument Sveta Evrope o ekonomskih in socialnih človekovih pravicah: pravicah, ki so bistvene in nepogrešljive v vsakdanjem življenju ljudi, za vsakega posameznika, tekom celotnega življenja, in ki vsebinsko napolnjujejo koncept človekovega dostojanstva.

Po 60-ih letih od njenega sprejema oziroma po 25-ih letih od njene posodobljene, spremenjene verzije, Listina ni izgubila svojega pomena in aktualnosti. Naslavlja aktualne probleme, odločitve Evropskega odbora za socialne pravice odgovarjajo na številna konkretna vprašanja.

Posebna pridobitev ob letošnjem pomembnem jubileju Listine in hkrati odraz njene aktualnosti je tudi to, da sta letos dve državi ratificirali Spremenjeno listino, in sicer Nemčija in Španija, Španija je sprejela tudi sistem kolektivnih pritožb. To je pomembno mednarodno sporočilo tudi drugim državam, ki še čakajo in so še vedno zavezane s prvotno Listino, ki naj bi jo postopno vendarle v celoti nadomestila novejša revidirana verzija, posodobljena in nadgrajena z dodatnimi pravicami. 36 evropskih držav je zvezanih z Revidirano Listino, 7 s prvotno. 16 držav je sprejelo tudi sistem kolektivnih pritožb, med njimi tudi Slovenija.

Vendar naj poudarim v tej zvezi, da potenciala sistema kolektivnih pritožb Slovenija zaenkrat še ni izkoristila. Postopek kolektivnih pritožb, specifičen mehanizem nadzora nad spoštovanjem pravic iz Listine v praksi, je vzpostavljen zato, da se uporablja. Vendar pa se v Sloveniji upravičeni vlagatelji, zlasti imam v mislih nacionalne socialne partnerje, zlasti sindikate, ne odločajo za vlaganje kolektivnih pritožb. Zakaj ne? Zoper Slovenijo so bile do danes vložene le tri kolektivne pritožbe, nobena s strani upravičenih vlagateljev iz Slovenije, vse s strani mednarodnih nevladnih organizacij. Vložitev kolektivne pritožbe ne sme biti (narobe) razumljeno kot neugodno ravnanje vlagatelja v razmerju do svoje države, ali dojemano kot dejanje »zoper državo« na mednarodnem pravnem parketu. Ravno nasprotno! Je v korist državi. Sistem kolektivnih pritožb je treba razumeti kot dodatni instrument, kot dodatno možnost, ki lahko prispeva k izboljševanju stanja v določeni državi kar zadeva spoštovanje temeljnih socialnih pravic. Prispeva lahko k odpravljanju problematičnih rešitev, k odpravljanju kršitev delavskih in socialnih pravic v državi in pomeni koristen prispevek k razvoju države in družbe kot celote. Nevlaganje kolektivnih pritožb s strani upravičenih vlagateljev iz Slovenije, ob siceršnjemu poenostavljenemu sistemu rednega nadzora na podlagi poročanja za države, ki so sprejele sistem kolektivnih pritožb, namreč pomeni, da nadzor nad spoštovanjem pravic iz Listine v Sloveniji ostaja okrnjen, morda zato celo neučinkovit. Pomembno vlogo v sistemu nadzora nad izvrševanjem Listine imajo namreč reprezentativni nacionalni socialni partnerji, ne le v sistemu kolektivnih pritožb, tudi v sistemu na podlagi poročanja, ko ti lahko dodajo svoja opazanja, komentarje k poročilu države, kar je koristno za državo. Zato tudi ob tej priliki spodbujam upravičene vlagatelje, nacionalne socialne

partnerje, torej zlasti reprezentativne nacionalne sindikate, da začnejo uporabljati postopek kolektivnih pritožb in odgovorno prevzamejo vlogo, ki jo imajo v sistemu nadzora nad spoštovanjem Listine. Za države, zoper katere je vloženih veliko kolektivnih pritožb, je to dvojna korist: po eni strani na ta način lahko identificirajo in odpravljajo težave glede kršitev temeljnih socialnih pravic ter lahko izboljšujejo situacijo v svoji državi v smeri doslednejšega spoštovanja človekovih pravic, po drugi strani pa to prispeva tudi k splošnemu razvoju človekovih pravic in njihovi krepitvi v praksi evropskih držav. Če kršitve niso identificirane, razkrite, še ne pomeni, da jih ni, le prikriti ostanejo in problemi nerazrešeni, kar pa ni v korist dotične države.

Naj sklenem: Razvoj v 60-ih letih obstoja Evropske socialne listine je šel v smeri krepitve in širitve pravic (materialnopravni vidik) ter v smeri nadgrajevanja sistema nadzora (procesnopravni vidik). Evropska socialna listina je živ instrument, ki z zagotavljanjem človekovih pravic na najpomembnejših področjih vsakdanjega življenja ljudi odgovarja na aktualne probleme. Naj tu le omenim Interpretativno izjavo (Statement of Interpretation) EOSP o pravici do varstva zdravja v času pandemije iz lanskega leta in izjavo EOSP o socialnih pravicah v času pandemije Covid-19 iz letošnjega marca. Sicer pa so trenutno najbolj izpostavljena vprašanja Evropske socialne listine vprašanje, kdaj bodo tudi druge preostale države, ki še niso ratificirale Spremenjene Listine, sledile zgledu Španije in Nemčije, kako še naprej razvijati plodno razmerje med Evropsko socialno listino in Evropsko konvencijo o človekovih pravicah, pa tudi malo bolj občutljivo razmerje do prava EU (sicer ni pričakovati, da bi EU v bližnji prihodnosti pristopila k EKČP in Evropski socialni listini, a ta predlog je treba ohranjati na dnevnem redu), ter kako spodbuditi širšo uveljavitev sistema kolektivnih pritožb. Pomemben izziv je tudi ustrezna posodobitev Listine, zlasti njenega nadzornega mehanizma. Predvsem pa kot največji izziv ostaja vprašanje, kako okrepiti dejansko učinkovito uveljavitev ekonomskih in socialnih človekovih pravic, ki jih zagotavlja Evropska socialna listina, v praksi; pri tem imamo nedvomno lahko pomembno vlogo vsi, zlasti pa socialni partnerji, strokovnjaki in raziskovalci, odločevalci na vseh ravneh, posamezni upravičenci in imetniki pravic, ter zlasti tudi nacionalna sodišča, ko odločajo o konkretnih vprašanjih iz vsakodnevnega življenja ljudi in posamezne konkretne pravice interpretirajo v luči zahtev iz Evropske socialne listine. Naj bo to spodbuda za razmislek vsakega izmed nas.

60 years of the European Social Charter and 25 years of the Revised European Social Charter*

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This year we celebrate the 60th anniversary of the European Social Charter, which was signed in Turin on 18 October 1961 and entered into force after the requisite number of ratifications on 26 February 1965.

In 1996, on 3 May to be precise, a Revised European Social Charter was signed in Strasbourg. This is the version that Slovenia ratified and is bound by. After the requisite number of ratifications, it entered into force on 1 July 1999. So this year we are also celebrating the 25th anniversary of the Revised European Social Charter.

The European Social Charter which together with the European Convention on Human Rights and other treaties establishes a binding catalogue of human rights within the Council of Europe, and is often referred to as the Social Constitution of Europe, is well known in Slovenia, at least in the field of labour and social law. Therefore, it does not need to be presented in more detail on this occasion. A number of factors and people can take credit for this. In this respect, I should certainly mention Professor Polonca Končar, a former member and president of the European Committee of Social Rights, who published works on it and incorporated it into the study process and curriculum of legal studies and thus equipped generations of students and current lawyers with the necessary knowledge and understanding of the Charter. With this, she made an important contribution in making the Charter more visible and its content more widely known, consequently enhancing its practical applicability. Thanks to her and many other individuals who contributed in their own way to the promotion of the Charter as a legally binding human rights instrument, Slovenia now ranks among the numerous European countries in which the Charter is cited/applied

* Opening speech at the XX Slovenian Congress of Labour Law and Social Security, Portorož, Slovenia, 28 September 2021 (translation, courtesy of the CoE, published in the series of papers on the occasion of the 60th anniversary of the European Social Charter at <https://www.coe.int/en/web/european-social-charter/60-anniversary>).

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in court decisions at all levels, in the judgments of labour and social courts, the Higher Labour and Social Court, the Supreme Court and also in the decisions of the Constitutional Court. The standards that stem from the Charter have also helped support and justify numerous solutions in draft laws in the field of labour and social law, including the existing Employment Relationships Act and others. The knowledge of the interpretation of the European Committee of Social Rights regarding the content of individual provisions of the Charter and the resulting minimum requirements – together with other factors, in particular the active trade union efforts in this respect – has led, for example, to a significant increase in the minimum wage and its adjustments towards the binding standards of the Charter. And so on. In Slovenia, the European Social Charter is therefore recognised as an important European legally binding human rights instrument.

However, the European Committee of Social Rights has identified other areas where Slovenia is in breach of the minimum standards of fundamental social rights stemming from the Charter, and Slovenia has not yet reacted accordingly. Furthermore, it seems that the number of detected cases of Charter violations in Slovenia is increasing from one monitoring cycle to the next. The situation is not yet alarming, but cannot be ignored. Labour and social rights are under constant strain from dogmatic convictions of market efficiency, the ensuring of international competitiveness, the strengthening of employer power and so on. Labour and social rights must therefore be constantly justified, strengthened and protected, otherwise these hard-earned achievements of civilisation can be quickly lost. The welfare state cannot be taken for granted. The rights protected by the Charter, which also Slovenia has committed to respect, cannot be taken for granted either. Even though they should be.

We are talking about the right to just conditions of work, to healthy and safe working conditions, the right to a fair remuneration, the right to organise and to bargain collectively, the right to strike, as well as other labour rights, special protection rights in relation to maternity, parenthood, children, youth, the elderly and people with disabilities, which should ensure equal treatment and opportunities as well as the active inclusion of all people in society, the right to social security, to the protection of health, the right to protection against poverty and social exclusion, the right to housing etc. In its revised version of 1996, the Charter guarantees 31 economic and social human rights, also known as fundamental social rights.

The Charter is the Council of Europe's most comprehensive instrument on economic and social human rights: rights that are essential and indispensable for people in their daily lives, for each individual throughout their life; rights that give substance to the concept of human dignity.

60 years after its adoption and 25 years after its updated and revised version, the Charter has not lost its significance and relevance. It addresses current challenges and the decisions of the European Committee of Social Rights answer a great many specific questions.

A special contribution to this year's important jubilee and at the same time a reflection of its relevance is the ratification of the revised Charter by two countries, Germany and Spain, wherein Spain has also accepted a system of collective complaints. This is an important international message to other countries that are still waiting and are still committed to the original Charter, which should be progressively replaced by a more recent revised version, updated and upgraded with additional rights. 36 European countries are bound by the Revised Charter, 7 by the original. 16 countries have also adopted a system of collective complaints, Slovenia among them.

In this context however, I would like to stress that Slovenia has not yet taken advantage of the potential of the collective complaints system. The collective complaint procedure is a specific mechanism for monitoring respect of the Charter rights in practice and has been put in place to be applied. However, eligible complainants from Slovenia, and I am referring to social partners and in particular trade unions, do not opt for collective complaints. Why not? To date, only three collective complaints have been filed against Slovenia, none by complainants from Slovenia, all by international NGOs. The submission of a collective complaint must not be (mistakenly) understood as an unfavourable act by the complainant against their country or as an act "against the State" in an international legal arena. It is quite the opposite! It is to the benefit of the country. The system of collective complaints should be seen as an additional instrument, as another option that can contribute to improving the situation in a given country regarding the respect of fundamental social rights. It can contribute to addressing problematic solutions or violations against labour and social rights in a country and is a useful contribution to the development of a country and society as a whole. In the context of the simplified system of regular monitoring on the basis of reports for countries that have accepted the collective complaints system, the non-submission of collective complaints by eligible Slovenian complainants means

that monitoring respect of Charter rights in Slovenia remains stunted and may, therefore, even be ineffective. In fact, the representative national social partners should play an important role in the system of monitoring the enforcement of the Charter, not only in the system of collective complaints, but also in the system based on reports in which they may add their observations and comments to the country report, which is beneficial to the country. This is why I encourage eligible complainants, all national social partners, in particular representative national trade unions, to start using the collective complaints procedure and responsibly take on the role they have in the system of monitoring respect of Charter rights. For countries that are subject to a large number of collective complaints the benefits are twofold: on the one hand, they can identify and remedy violations of social rights and steer the situation in their country towards a more consistent respect for human rights, and on the other, they can contribute to the general development of human rights and their strengthened role in practice in Europe. If violations are not identified and revealed, it does not mean they do not exist. It only means that they remain hidden and issues unresolved, which does not benefit the country in question.

In conclusion, the development of the European Social Charter during the past 60 years has moved towards the strengthening and expansion of rights (substantive aspect) and towards building a system of supervision (procedural aspect). The European Social Charter is a living instrument that responds to current problems by guaranteeing human rights in the most important areas of people's daily lives. At this point, let me mention the Statement of Interpretation of the European Committee of Social Rights on the right to protection of health in times of pandemic, published last year, and the Statement of the European Committee of Social Rights on COVID-19 and social rights, published in March of this year. In any case, the main issues of the European Social Charter at the moment are when the other countries which have not yet ratified the Revised European Social Charter will follow the recent example of Spain and Germany, how to further develop the fruitful relationship between the European Social Charter and the European Convention on Human Rights, as well as its slightly more sensitive relationship with EU law (even though it is not expected that the EU will accede in the near future to the European Convention on Human Rights and the European Social Charter, such initiatives should be kept on the agenda), and how to encourage a wider enforcement of the collective complaints system. Another important challenge is the appropriate updating of the Charter, especially its monitoring mechanism. Above all, its greatest challenge remains

how to strengthen the actual effective implementation of economic and social human rights guaranteed by the European Social Charter in practice; there is no doubt that everyone can contribute in this respect, especially the social partners, experts and researchers, decision-makers at all levels, individual beneficiaries and rights-holders and, most importantly, the national courts, when they deliberate and decide on concrete issues arising from people's daily lives and interpret individual rights in the light of the requirements of the European Social Charter. Let this be an incentive for each and every one of us to reflect on what we can do.