

A brief introduction to Social Rights

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Introduction

Although social justice is an elusive and imprecise concept, a society may be held to be socially just in so far as everyone contributes according to their ability so as to ensure that everyone's basic needs are met. This implies a society in which income inequalities are not excessive (however this is defined), in which poorer members of society live in dignity and richer members of society accept an obligation to help those who are less fortunate.

Among the means by which governments can seek to move towards greater social justice are social security systems, employment policies, and redistributive taxation. A complementary approach is to enshrine social rights in law. This rights-based approach is based on the recognition that decent conditions of life are a fundamental part of human dignity and that all societies have a duty to strive to achieve this to the greatest extent possible. Social rights can be seen as the legal underpinning of social justice.

Human rights are inalienable rights which guarantee the fundamental dignity of every human being. When considering human rights, pride of place is commonly given to civil and political rights, i.e. the rights set forth in the European Convention on Human Rights and Fundamental Freedoms. Each individual, however lives within a society, and this implies that, in seeking to live their own lives in their own way, individuals must avoid infringing the rights of others.. Social rights, sometimes referred as "second generation rights", are related to and in some ways overlap with cultural and economic rights but tend to come as something of an afterthought.

Churches, however, while not in any way wishing to diminish the importance of civil and political rights, will see rights such as those to employment, fair remuneration, decent conditions of work, housing, the protection of children, women and the elderly, and protection against poverty as being means of applying the biblical imperative to come to the aid of widows, orphans and foreigners and to assist the sick, the poor and the downtrodden.

Although economic and social rights may, therefore, be felt by Christians to be just as important as civil and political rights in ensuring human dignity, it cannot be denied that

the two categories of rights are to some extent different in nature. Thus, on the one hand, civil and political rights are primarily about protecting the individual from the power of the State. They set *limits* on the power of the State. Economic and social rights, on the other hand, tend to place *obligations* on the State to take certain kinds of action aimed at ensuring that individuals benefit from decent jobs, housing, working conditions and so on. Economic and social rights can therefore involve the State in substantial expenditure (as with the right to social security or the right to health) and it has, therefore, always been accepted that more prosperous countries will be able to go further towards ensuring the enjoyment of social rights than poorer countries. In other words, economic and social rights are something to be achieved progressively as countries develop economically. Civil and political rights, by contrast, do not on the whole imply substantial government spending, and should therefore be capable of full implementation everywhere, irrespective of the stage of economic development.

In this article we shall look at several of the main instruments which have been designed to protect and promote social rights in the wider Europe.

The Universal Declaration of Human Rights of the United Nations, 1948

The Declaration is an expression of principles. It is not in itself a binding document and from the first it was recognised that there would need to be a binding covenant - or treaty - to give legal force to the Declaration. Two covenants now exist to this end, although only one was originally intended. They are the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). In the late 1940s while the countries of the West stressed the importance of civil and political rights like the right to choose a government, freedom of expression, conscience and belief, the Communist bloc gave priority to economic, social and cultural rights, such as the right to work, housing and access to health care.

It took almost twenty years before a compromise position was reached and the two covenants were drafted and finally adopted in 1966. It should be noted, nonetheless, that in the last two decades the perceived conflict between civil and political rights on the one hand and economic and social rights on the other has lessened. In 1993 the Vienna Declaration and Programme of Action which resulted from the World Conference on Human Rights in Vienna emphasised that 'all human rights are universal, indivisible and interdependent and inter-related'.

International Covenant on Economic, Social and Cultural Rights (ICESCR) International Covenant on Civil and Political Rights (ICCPR)

Role of Committees

When governments become parties to the ICESCR and the ICCPR, they are required to comply with certain conditions and report back to the special committees which oversee the implementation of the rights outlined within these instruments. These committees meet annually and require each state, once it has ratified a convention, to submit an initial report on the measures it has adopted which give effect to the rights recognised therein. Depending on the committee, each state must report every four to five years on the progress made in the enjoyment of rights by people in their country.

The Committees can also consider communications received from individuals who claim that their rights, as outlined in the treaty, have been violated without domestic redress.

In order to investigate, monitor and publicly report on human rights abuses in specific countries or territories the Commission has established procedures and mechanisms including rapporteurs, experts and working groups or human rights groups

The ICESCR for example is monitored by the Committee on Economic, Social and Cultural Rights, a body of human rights experts tasked with monitoring the implementation of the Covenant. It consists of 18 independent human rights experts, elected for four-year terms, with half the members elected every two years.

Unlike other human rights monitoring bodies, the Committee was not established by the treaty it oversees. Rather, it was set up by the Economic and Social Council. following the failure of two previous monitoring bodies.

All states parties must submit regular reports to the Committee outlining the measures they have taken to implement the rights affirmed in the (ICESCR) covenant. The first report is due within two years of ratifying the covenant; thereafter reports are due every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations". Interestingly, it has been known that on at least one occasion a number of NGOs co-operated to send in a report when those responsible in their country had failed to do so.

The Council of Europe and social rights

The Council of Europe is a political organisation, founded in 1949, to defend the principles of democracy, human rights and the rule of law. Membership is open to all European states, which undertake to abide by the organisation's principles. At present the Council of Europe has 47 member states.

The European Convention on Human Rights guarantees civil and political human rights and the European Social Charter, its natural complement, guarantees social and economic human rights. It was adopted in 1961 and thoroughly revised 30 years later. Following this revision, the revised European Social Charter, which came into force in 1999, is gradually replacing the initial 1961 treaty. The European Social Charter (from now on referred to as "the Charter") not only sets out rights and freedoms and but has also established a supervisory mechanism to guarantee their respect by the States Parties.

The rights guaranteed by the Charter concern individuals in their daily lives and cover such areas as:

housing, which is taken to mean access to adequate and affordable housing, the reduction of homelessness and a housing policy targeted at all disadvantaged categories together with procedures to limit forced eviction ;

accessible, and effective **health care** facilities for everyone coupled with a policy for preventing illness with, in particular, the guarantee of a healthy environment and elimination of occupational hazards so as to ensure that health and safety at work are provided for by the law and guaranteed in practice; the Charter calls for the protection of pregnant women and mothers;

education which includes free education to all levels, vocational guidance services and special measures for those with difficulties, for example, children with disabilities and foreign residents

employment This area contains measures prohibiting the employment of children under the age of 15 and requires special working conditions for those between 15 and 18 years of age. It gives the right to earn one's living in an occupation freely entered upon and an economic and social policy which is designed to ensure full employment with fair working conditions as regards pay and working hours and the promotion of collective bargaining and conciliation

Further provisions cover social protection, measures to protect people against poverty, protection for disabled people, freedom from discrimination, and the rights of migrants.

The Charter is monitored by a Council of Europe body, the European Committee of Social Rights which is charged with ascertaining whether countries have honoured the undertakings set out in the Charter. It has fifteen independent, impartial members, who are elected by the Council of Europe Committee of Ministers for a six year period. Their mandate may be renewed once. This Committee must determine whether or not national law and practice in the States Parties to the Charter are in conformity with it

This monitoring procedure is based on national reports which the States Parties submit every year to demonstrate how they are implementing the Charter in law and in practice. Each report concerns some part of the accepted provisions of the Charter. The Committee examines the reports, decides whether or the countries concerned are in conformity with the Charter and then publishes its decisions, known as "Conclusions".

If a state does not take action on a Committee decision to the effect that it is not complying with the Charter, the Committee of Ministers may address a recommendation to that state, requesting that it change the situation in law and/or in practice.

A collective complaints procedure was established in the 1990s. Under a protocol opened for signature in 1995, which came into force in 1998, complaints of violations of the Charter may now be lodged with the European Committee of Social Rights by a number of approved organisations. They include many of the non-governmental organisations (NGOs) which enjoy participative status with the Council of Europe.

It is important to note here that the Conference of European Churches (CEC) is one of the approved NGO's. This means in practice that it is open to member churches to bring forward complaints, which will need to have been carefully prepared by their legal experts, and these can then be formally presented under the auspices of CEC.

In twelve years some 60 complaints have been brought against specific countries by such NGOs as the Mental Disability Advocacy Centre on the subject of education for children with disabilities, the European Roma Rights Centre on a number issues concerning treatment of the Roma and the European Federation of Employees in Public Services (EUROFEDOP), which lodged complaints against countries where the armed forces were denied the right the right to organise (Article 5) and the right to bargain collectively (Article 6).

The European Union Charter of Fundamental Rights

The European Union Charter is in some senses different from the other instruments mentioned before because it sets out in a single text the whole range of civil, political, economic and social rights of European citizens and all persons resident in the EU. These rights divided into six sections: dignity, freedoms, equality, solidarity, citizens' rights and justice.

These rights are based, in particular, on the fundamental rights and freedoms recognised by the European Convention on Human Rights, the constitutional traditions of EU Member States, the Council of Europe's Social Charter, the Community's own Charter of Fundamental Social Rights of Workers and other international conventions to which the European Union or its Member States are parties.

The Charter is an important development in that it is the first formal EU document to combine and declare all of the values and fundamental rights (economic and social as well as civil and political) to which EU citizens should be entitled. Moreover, it also includes certain "third generation" rights such as the right to good administration or the right to a clean environment. Social rights are mainly found in chapters 2, 3 and 4 which cover, respectively, freedoms, equality and solidarity. The main aim of the Charter is to make these rights more visible and it is important to remember that the Charter does not establish new rights, but brings together in one text existing rights that were previously scattered over a range of international sources.

The Charter applies to the EU institutions (European Commission, European Parliament, European Council, the Council of Ministers, European Court of Justice, European Court of Auditors and European Central Bank) as well as the bodies set up under secondary legislation (such as Europol, Eurojust, the European Economic and Social Committee, and the Committee of the Regions). All these EU institutions and bodies must conform to the rights and principles proclaimed by the Charter.

The Charter also applies to the actions of EU member states, but only when they are acting within the scope of EU law. For example, the Charter would apply to any of the 27 EU member States if it was passing a law about trade regulation, but not if it was passing a law about a purely national matter. Thus, it does not provide, as is sometimes argued, any new freestanding rights, such as a general right to strike. The Charter is accompanied by explanations which provide a guide to its interpretation.

With the coming into force of the Treaty of Lisbon in December 2009, the Charter became directly enforceable by the EU and national courts. Art. 6(1) of the Treaty on the European Union (TEU) provides that "the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights". The Charter has already acted as an important reference document.

Most people do not appreciate the extent to which EU law is part of their everyday lives. The main purpose of the Charter is to make these fundamental rights more visible and accessible to people in the EU. The Charter helps people in the EU to better understand the extent of their rights and, be aware of any violation of them by European institutions, bodies and the member states, when they are making decisions concerning EU law. Since the Lisbon Treaty, the Charter enables people to challenge the way in which a member state has implemented EU law in the courts of their country. This is simpler, cheaper and

easier than taking the case to the European Court of Justice in Luxembourg. A national judge can thus directly enforce the rights guaranteed by the Charter.

The Charter also provides the EU institutions and bodies with a set of standards, against which they can measure their own performance and the performance of member states when implementing EU law into national law. For instance, if the EU Commission is concerned that a particular member state is failing to protect human rights in an area within the scope of EU law, it could use the Charter to challenge that member state to improve its protection of the right.

An individual can use the Charter to complain to the European Ombudsman about their treatment by an EU institution. The EU courts and national courts must take account of the Charter provisions in cases which fall within the scope of EU law. For example, the Charter can be used as a yardstick in a review of EU measures, or as grounds to challenge the legality of national measures implementing EU legislation. Overall, the Charter comprises an additional source of protection that can be used by European citizens in litigation which has an element of EU law.

A breach of one of the rights contained in the Charter could give an individual possible grounds for challenging the legality of a measure. At present people can only complain to the European Court of Justice if they are directly and individually concerned by a measure taken by an EU institution or body. This usually means that the measure must have been addressed specifically to a particular individual, for example about someone's company; however few legislative measures individually and directly concern a particular person. The Lisbon Treaty has broadened the possibility to complain about regulations somewhat (the complainant only needs to be indirectly concerned), but it will still be very difficult to get direct access to the European Court of Justice.

Concluding observations

As part of their commitment to justice in society, European churches can welcome the fact that, in one way or another, all European countries recognise social rights in their national legislation or constitutions. Churches also need to become more aware of the possibilities offered by international treaties for furthering social rights in their countries. The rights-based approach to social justice is one means of protecting the human dignity which is inherent in our existence as creatures of God.