
DISCUSSION

REFLECTIONS ON THE NATURE OF CZECH SOCIAL LAW

Margerita Vysokajová*

Abstract: *Social law is not a single branch of law, but rather the social rights of individuals and groups. From this perspective social law can be defined as those fields of law the aim of which is to implement and apply citizens basic social rights. Social law includes the regulation of labour protection, social (security) insurance, state social support and social aid. Contemporary Czech social law has been also significantly influenced by the relevant documents of international organizations relating to the protection of human rights, which also include social rights.*

Keywords: *social law, social protection, social security, Union legislation*

Although the term *social law* is not frequently used in Czech legal theory, it is quite a complex field, covering not only legal rules but also overlapping into other fields such as sociology and social policy.

Leading academic experts in the Czech Republic in the field of social law include Prof. JUDr. Igor Tomeš, CSc. and Doc. JUDr. Kristina Koldinská, Ph.D., whose opinions this article primarily refers to.

Social law is, by its nature, connected to the term *social protection*, which is one form of the implementation of social policy. Its aim is to provide protection to citizens (and their families) threatened by a socially unfavourable situation or who already find themselves in such situations. Social protection thus comprises all measures that should prevent the occurrence of unfavourable social situations, or at least moderate the impacts of such situations on the lives of individuals and their families where they have already occurred. According to Doc. Koldinská, social protection encompasses “not only social security benefits and services but also, for example, occupational health and safety, prohibition of child labour, special working conditions for women and juveniles, social-legal protection of children, and so on”.¹

The term ‘social law’ is then defined as “the set of all legal rules that regulate social protection”. As the author states in her work, “it is not a single branch of law that is at the centre of attention, but rather the social rights of individuals and groups”. From this perspective, she then defines social law as “those fields of law the aim of which is to implement and apply citizens’ basic social rights”.²

From the perspective of the above-described approach, social law includes the regulation of:

* Doc. JUDr. Margerita Vysokajová, CSc. Faculty of Law, Department of Labour Law and Social Security Law, Charles University, Prague, Czech Republic

¹ KOLDINSKÁ, K. *Sociální právo*. [Social Law]. 2nd edition. Praha: C.H. Beck, 2013, p. 21.

² *Ibid.*, p. 22

- labour protection,
- social (security) insurance,
- state social support,
- social aid.
- According to Doc. Koldinská, **labour protection** covers
 - *protection of health* (occupational health and safety, regulation of working hours and rest periods, including holidays),
 - *protection of wages* (an employer's duty to pay wages for the work done and an employee's right to enforce the payout thereof),
 - *the right to associate and bargain collectively*,
 - *the right to work* (arrangement of employment services, pro-active employment policy, security in unemployment).

Social insurance encompasses the system of contributory qualifying benefits funded from *health, sickness, and pension insurance*.

State social support is represented in the Czech Republic by the system of (non-contributory) *state social support* benefits paid from the state budget.

Social aid consists of *support in cases of material destitution, disability benefits, and the system of social services*.

Contemporary Czech social law has been significantly influenced by the relevant *documents of international organisations* relating to the protection of human rights, which also include social rights, as well as, quite understandably in connection with the Czech Republic becoming a member of the European Union, by *Union legislation*.

The most important of the international documents referred to in this context is the **European Social Charter**, adopted by the Council of Europe in 1961. In addition to such rights as the right to social security, social and medical aid, and the use of social services, the Charter includes rights from the field of employment relationships (the right to work, to fair remuneration, to safe and healthy working conditions, the right to associate for the protection of one's economic and social interests, and the right to bargain collectively). The European Social Charter is thus “the first international expression of social law as a comprehensive set of rules for both the ‘active’ (i.e., employment) and ‘passive’ (i.e., social security) social protection of citizens”.³

The particular influence of European legislation on Czech social law stems from the relevant obligations binding on each Member State in terms of both primary and secondary legislation. In Article 2 of the **Treaty on European Union** (TEU) it is said that the Union “shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child”.

Similarly, the **Treaty on the Functioning of the European Union** (TFEU) provides in its Article 9 that “in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training, and protection of human health”.

³ KOLDINSKÁ, K. *Sociální právo*. [Social Law]. 2nd edition. Praha: C.H. Beck, 2013, p. 33.

Under Article 153 of the TFEU, EU social policy further concerns the improvement of the working environment aimed at the protection of workers' health and safety; the working conditions, social security, and social protection of workers; the protection of workers when their employment is terminated; the provision of information to and consultation of workers; the representation and collective defence of interests of workers and employers, including co-decision-making; the conditions of employment for nationals of third parties who are legally residing in Union territory; equality between men and women on the labour market and equality of treatment at work; the combatting of social exclusion; and the modernisation of the systems of social protection.

Another document that is considered primary EU law is the **Charter of Fundamental Rights of the European Union**; it provides for the social protection in Article 34 as follows:

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

As for the secondary EU legislation that had a huge impact on Czech social law with respect to the harmonisation of law, we should primarily mention **Regulation (EC) No. 883/2004** of the European Parliament and of the Council, **on the coordination of social security systems**, and **Regulation (EC) No. 987/2009** of the European Parliament and of the Council, **laying down the procedure for implementing Regulation (EC) No. 883/2004**.

These directly binding pieces of legislation serve as a guarantee for persons migrating for work or education, as well as for members of their families, that their social rights will not be restricted in consequence of their migration.

Social law is naturally also influenced by EU directives that are continuously transposed into the Czech legal system.

What is the contemporary attitude to social law? Among legal experts in the Czech Republic, there still prevails an opinion that social law needs to be understood as “an aggregate of legal rules falling under employment law and legal rules comprised in social welfare law”. “Social law is an integrating term for the fields of employment law and social welfare law rather than an independent branch of law.”⁴

According to Doc. Koldinská, the majority of contemporary theoreticians separates employment law from social welfare law and consider the two to be independent branches of law. However, their mutual interconnection is indisputable; contemporary legal theory also observes that employment law contains numerous elements that connect it closely

⁴ BĚLINA, M. et al. *Pracovní právo*. [Labour Law]. 6th edition. Praha: C. H. Beck, 2014.

to social welfare law. What can serve as a typical example is the legal regulation of employment which is traditionally classified as falling under employment law, although employment services are of the social services provided by public law entities nature; unemployment is traditionally considered a social event and support in unemployment is of the social-benefit nature.⁵ (These reasons also served as an argument for transferring the instruction on ‘Legal Relations of Employment’ at the Law Faculty of Charles University from the course on Labour Law to the course on Social Welfare Law.)

Prof. Tomeš has a clear opinion on social law. According to him, “drawing a line between labour law and social welfare law is social anachronism, the remains of the past when such a division was grounded in various historical courses of both branches of law. [...] At present, the difference between the protection of working conditions and protection in the case of social events is slowly, but clearly, vanishing as social insurance loses its ‘insuring’ nature and becomes merely another form of social protection by way of reallocating a part of citizens’ income. The situation is heading towards the integration of labour law and social welfare law into *social law* that provides social protection to citizens, thereby reflecting their inalienable social rights. [...] Social law would determine all circumstances of citizens’ life and work by way of regulating both private law relationships (i.e., public law intervention therein) and statutory conditions of work, collective relationships, as well as dignified social working and living conditions for citizens”⁶

⁵ KOLDINSKÁ, K. *Sociální právo*. p. 23.

⁶ TOMEŠ, I. Předmět práva sociálního zabezpečení. In: TRÖSTER, P. et al. *Právo sociálního zabezpečení* [Social Security Law]. 6th edition. Praha: C.H. Beck, 2013, pp. 5–6.