

TADEUSZ JASUDOWICZ

The European Committee of Social Rights and the EU's legal order

Summary

The European Committee of Social Rights has frequently encountered a situation in which it had to formulate an opinion on the legal order created by the European Union. What must be noted is that all EU Member States have earlier been members of the Council of Europe, signatories of the European Convention of Human Rights, or, although in varying degrees, committed under the European Social Charter. Consequently these states as well as the Communities they created, are obliged to respect and observe the rights protected under the European Convention of Human Rights (ECHR) and the European Social Charter (ESC) and almost all collective complaints before the European Committee of Social Rights concern EU Member States.

The Committee consistently held that restricting the exercise of the rights provided for in the ESC to EU citizens only is inconsistent with the scope of the undertakings covered by the Charter and constitutes its infringement. It also stressed that both, during the making of the law phase as well as in the law implementation phase, all obligations arising from the Charter must be satisfied. Contrary to the viewpoint of the European Court of Justice which adopted an approach of implied compliance of the EU's legal order with the ECHR's system, the Commission did not find any grounds for adopting a similar approach in the ESC's context, which should be considered a shame.

Despite its positive opinion of the legal order created by the EU, the Committee nevertheless emphasises the distinctness of its system and points to the inefficiencies of the law and its practical implementation by Member States which do not always observe the accepted standards of the Social Charter.

Keywords: European Committee of Social Rights – the EU's legal order – observation of ESC standards – implied compatibility with the ESC