

# SUSTAINING SOCIAL AND ECONOMIC RIGHTS IN TIMES OF CRISIS – FROM THEORY TO PRACTICE

## THE ROLE AND PROTECTION OF SOCIO-ECONOMIC RIGHTS IN THE CYPRUS CONSTITUTION

In the Constitution of Cyprus, in line with the country's democratic and liberal tradition and commitment, fundamental rights and liberties are given a prominent part. Indeed, the entire object of liberal democratic government is the individual and the maximum possible protection of his rights that is consistent with the orderly and effective running of the commonwealth. The prominence given by the Constitution to fundamental rights and liberties is significantly underlined by their inclusion in Part 2, that is, right after Part 1 which deals with the basic structure of the Republic, and is epitomized in Article 35, the last Article of Part 2, which provides that the legislative, executive judicial authorities of the Republic are obligated, within their respective competence, to secure the effective application of the provisions of Part 2. Coming now to the extent of Part 2, one could not overstate the fact that it is certainly most comprehensive. It includes all rights and liberties which refer to person and property in all their manifestations. Further, the express limitations placed by the Constitution upon them are themselves limited, being justified upon universally accepted rational grounds, and, in line with Article 33 and the case-law of the Supreme Court, are interpreted strictly. Finally, under Article 32, it is only in case of a state of emergency that certain fundamental rights and liberties may be temporarily suspended.

This discussion concerns particularly socioeconomic rights, and, more particularly, such rights in times of crisis, but it is well to remember that fundamental rights and liberties are interrelated and no discounts can be made selectively. Indeed, all rights and liberties have, in ultimate analysis, reference to the entire socioeconomic life of the individual. Nevertheless, the concept of socioeconomic rights, concerning primarily those fundamental rights which have reference to the total social welfare of the individual in terms of its wider economic dimension, distinguish themselves in this way and are of primary importance to the quality of all aspects of everyday life in modern conditions. As such, they express the effective safeguard of individual dignity and democratic equality.

The Constitution of Cyprus, established in 1960, has no specific reference to socioeconomic rights. This is understandable, since the development of socioeconomic rights generally, including European countries, has been a gradual process over the last half century. It is well to remember that the European Union itself started as an economic union with very limited reference to socioeconomic rights and that its move in the direction of a political and social union has effectively been a transformation of major order, bringing with it the application of the Charter of Fundamental Rights. In this context, it is also understandable that socioeconomic rights, being conditioned, in the absence of a unified European policy, in terms of national financial capabilities and policies, cannot be precisely defined and that considerable margin is allowed to member states in terms of national policy as to the extent of their implementation. Indeed, the implementation of socioeconomic rights being directly related not only to social but also to economic and political, including partisan, considerations, of itself implies such considerable margin in the individual states' judgment in the matter.

The Constitution of Cyprus, a par excellence primarily liberal political constitution as regards fundamental rights and liberties, consequently places the emphasis on those traditional rights and liberties which accord with liberal democratic government. Thus, prominent among the rights and liberties provided, are those concerning life and personal integrity and dignity, liberty of person, freedom of movement and assembly, freedom of thought, speech and religion, freedom and security of private and family life, home and correspondence, freedom of work, freedom of contract, freedom and security of property, the right to participate in the democratic process, the right of access to the courts and to fair trial, and, of course, the general right of equality and equal treatment.

For the rest, the Constitution of Cyprus contains only certain provisions concerning socioeconomic rights as such. The main provision in Article 9 refers to the right to decent existence and social security. This provision, however, besides being too general, does not by itself confer any specific rights. Article 9, somewhat particularizing the right conferred, proceeds to provide that laws shall provide for the protection of the workers, assistance to the poor and for a system of social insurance. It is, however, to the credit of Cyprus that its record for providing by legislation with regard to such matters, as ordained by the Constitution, has been markedly good, in that a very considerable body of social legislation has been enacted in this respect.

This covers fully the labour aspect, reinforced by a too powerful, one might regrettably say, system of trade unionism, the combat of poverty, and the social insurance section, including unemployment.

Another Article referring to socioeconomic rights is Article 20 which establishes the right to receive and provide education. In this respect, it is again noteworthy that a full system of free public primary and secondary education has existed since, and indeed long before, the Constitution due to a long literary tradition, being extended later to higher education, in parallel with a flourishing system of private education at all levels.

The Constitution in Article 27 also recognizes the right to strike, though subjecting it to regulation by law. The right to strike is, however, denied to the armed and police forces and, by any law that may be enacted, to the public service. The right to strike, which relates to labour conditions, may be a necessary corollary to the right to work, but it is well to observe that, as experience shows, it may easily be abused much to the damage of the economy and all concerned.

It is true that the Constitution does not provide with regard to such basic socioeconomic right as the right to health. However, a system of public health tradition has existed even before the Constitution under the British administration, affording free service to those who could not supposedly afford private treatment – which, as applied, included most of the population – and to all public servants. This system is currently being reformed into a modern public insurance system to cover the entire population

In parallel with the rights and freedoms provided, the Constitution in Article 24 also places a fundamental duty – the duty to contribute to public burdens in accordance with each one's means as the law may provide. This Article is well to remember particularly in relation to obligations rendered necessary in situations of economic crisis.

The overall assessment of the protection afforded by the Constitution of Cyprus to socioeconomic rights is pragmatic rather than theoretical. Although such protection is somewhat limited in terms of today's extensive conception of socioeconomic rights, nevertheless, the ordinary laws of Cyprus have over the decades built up a sufficient body of such rights providing an adequate framework by European standards even before Cyprus became a member of the European Union in 2004, indeed not

infrequently leading to excesses and exploitation of public finances. This process has been conditioned by three basic factors. First, the traditionally humanitarian and liberal spirit of Cyprus society, including the impact of political forces, and accordingly its legislator. Second, the existence of a large middle class forming the main body of Cyprus society and affording its social strength and coherence, motivated by a powerful conception of self-advancement. Third, the soundness of Cyprus economy, resting primarily on orthodox financial lines and marked private initiative. Indeed, it is these factors that, as experience shows, form the perfect recipe for a healthy society and it is their frequent lack in recent years that has led to the anomalies revealed by the crises which we have regrettably witnessed.