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THE EUROPEAN
UNION AND
SOCIAL WELFARE

Difficulties related to cultural differences and also to the philosophy of European Community founding treaties have from the beginning opposed the definition of a global and coherent strategy of a European social welfare policy.

I already wrote in 1992 that this domain was mostly treated at a national level, yet it seems to me that it is not the same today. I propose to reanalyse Europe's social welfare in four chapters entitled as follows:

- I. The economic progress will involve the social progress
- II. The social progress must follow the economic progress (as we give it a little push)
- III. The social welfare cannot establish an obstruction of competition
- IV. The social welfare depends on full activity

THE ECONOMIC PROGRESS WILL INVOLVE THE SOCIAL PROGRESS

In the spirit of its founders, the European Community (originally called the European Economic Community) should enable an accelerated life quality rise by establishing a common market and drawing economic policies of Member States progressively closer together.

The Treaty of Rome leaves little room to affirm an autonomous social policy when it comes to formation of a common market, with logic of liberation and obstacle suppression. The preface and Articles 2, 3 and 117 of the Treaty show that the economic progress should involve social progress automatically. **Nevertheless, only the absolutely necessary measures of social attendance needed for the creation of a great market have already been subject of Member States' restrained dispositions in the Treaty.** Some progress has been made in the social security of migrating workers domain based on these rare ar-

rangements, and also in the equality of men and women social security matters.

The guarantee of free movement of persons principle efficiency in the European economic space, in 1971, stands in the regulation 1408/71 relating to social security of migrating workers. It is an essential principle of the liberal concept since it is meant to assure free movement of all production elements. Labor is viewed in such way here and the intention is not to improve national systems that in principle stay unchanged.

The history of directive 79/7, relating to the social welfare equality of men and women in the legal system, is a bit different. The directive has passed as recognition of Treaty article 119's direct effect on equal remuneration of men and women along with other instruments relating to equality of men and women. The direct effect was recognised because of the principle's fundamental nature in the Community's legal system, having in mind the fear of competition disturbances about female labor cost differences between Member States. But the directive 79/7 reflects a conventional concept of social gender relations based on the "male breadwinner" model.

THE SOCIAL PROGRESS MUST FOLLOW THE ECONOMIC PROGRESS (AS WE GIVE IT A LITTLE PUSH)

After the end of the eighties, we witness a certain deterioration of social achievements. The European Single European Act actually made the economic liberation pack up so the actors became aware of a new "level playing field": the European economic space. The social welfare is almost exclusively understood as an economic cost in the context of increasing competition.

Forms of social dumping unknown until then in Europe are discovered: the displacement of labor (Rush Portuguesa Affair) and displacement of enterprise (Hoover Affair). All the great common market promoted liberties leave room to re-evaluate certain aspects of social welfare with the Treaty's implacable and inherent logic concept. Generally, the Court of Justice has the difficult task to settle the conflict between an economic liberty guaranteed by the Treaty and a social achievement ignored by the same Treaty.

So the question is raised whether the obligation of weekly Sunday closing opposes the free provision of services, whether the obligation of one pension fund by social partners affects the free movement of capital, whether

the designation of a single organization to create a social welfare system constitutes a monopoly contrary to the freedom of competition, etc.

Those days, one rediscovered the considerations which led to the foundation of ILO and the Philadelphia Declaration: any internationalisation (Europeanisation) of economy calls for an internationalisation of the social.

Aimed at reforming the “social deficit” at the end of the eighties and beginning of the nineties, the Commission's initiatives multiplied in the European Union to accompany the economic liberation. That is when the directives about labourer's concern, maternity, European enterprise committee, working hours, The Charter of fundamental social rights, etc. were conceived.

The Recommendations about social welfare matters were adopted in the same context. On the one hand, recommendation on the convergence of objectives and social welfare policy, and on the other hand, recommendation on common criteria related to sufficient resources and benefits of the social welfare system. Let's mention also the “**modes de garde**” recommendation, which is a model of reconciliation of family and professional life in policy matters today.

The non-restrained nature is a characteristic of social welfare instruments. The ambition changed from Regulation to directive and then to the Recommendation due to political and legal purposes (lack of foundations in the Treaty). The idea is to install mutual surveillance machinery, which would allow convergence in progress. This machinery looks just like today's much discussed benchmarking, inspired by the idea that the quantitative and qualitative development indicators should permit an evaluation of national systems. Today is the time when everyone talks about studies, like M. Dispersyn's study on the “European social serpent”. This ambition of continuous evaluation has never been achieved due to absence of political will.

Nevertheless, it is important to concentrate on the contents of Recommendation 92/442, also called “convergence”, which (we did not realize at the time) makes a turn in the European social welfare concept. We often presented this recommendation as a model of a functional social welfare definition (as opposed to the analytical definition of ILO's 102 Convention) and as a perfect reconciliation of the Beveridge and Bismarck concepts of social welfare. However, if we take a closer look, there are five assigned missions of social welfare:

- 1 - guarantee of a resource level conformable to human dignity;
- 2 - privileges of a health service system;
- 3 - to protect social integration of all people and integration of those capable of remunerated work to the labor market;
- 4 - to grant benefits to the wage earning about preserving their quality of life when risks occur in a reasonable way related to their participation in social security;
- 5 - to extend social welfare to the unemployed.

What strikes me here is:

- The clear distinction between social welfare and social security, the latter meant only for sectors that allow sustaining workers' quality of life in the system of wage earning.
- The priority order. Whatever we thought, the Beveridge concept holds ground. Even if the number 4 states the need of social security to assure the function of income maintenance, it permits this maintenance to be done by intermediary contracting benefits!
- Potentially, the active social state is there, not only with the priority to guarantee a minimum of resources but especially with the idea of social and professional insertion. We cannot help imagining that the distinction between social and professional insertion is an idea from that era (the minimum welfare support was adopted only five years sooner), while today, only the second could stand in such a declaration.

THE SOCIAL PROGRESS IS SUBSIDIARY: THE SOCIAL WELFARE CANNOT ESTABLISH AN OBSTRUCTION OF COMPETITIVENESS

The Maastricht Treaty was adopted on February 7th 1992 in an almost "social frenzy" context, at least from the European Commission. The Treaty brutally calls out the Commission and overthrows radically the economic manoeuvres of Member States in social welfare matters:

- The subsidiary principle, expressed in article 3 at the demand of Great Britain, questions the legitimacy of a community intervention in social matters and more particularly in social welfare matters.
- The economic convergence criteria will use a quasi-immediate influence onto national social welfare systems.

It might be the moment to resolutely remind in this report's thread that the idea of a financial balance, which presents itself as a postulate today, is in fact a political choice. Whatever the case, the political objective of a so-

cial welfare financial balance appears in the seventies after the oil crisis for the first time. It was emphasised for some time already in some countries by employing organisations. Hence, there will be a direct connection between public finances and the budgetary balance of institutions (as those of social welfare) which partially depend on State subventions.¹

Nevertheless, the Maastricht Treaty, economy policy options adopted by governments is even more closely tied to restraints defined at a supranational level: mostly those established by the Maastricht Treaty, and especially the objective of public deficit reduction. The Economic and Monetary Union imposes a pressure to national economies on behalf of reductions and budgetary adjustments so that the costs of financing and social welfare implementation become much reduced.

Let's go back to the 79/7 directive relating to salary equality of men and women in the social security systems. That is actually the only European substantial (meaning not limited to a single coordination) and restrained legal instrument in the social welfare matter. It should be emphasised that it was implemented when European economies suffered hard blows from the oil crisis consequences. Reckoning the then appearing will to control the social security expenses in the boundaries of a sealed envelope, the elimination of direct discriminations and introduction of women social rights were interpreted in most cases as:

- a reduction of access possibilities to benefits,
- provision of services themselves (rate, top and bottom of service provision) for all of the social insurers, and
- by creating new categorisations of social insurers (personal application range of systems) which occasionally exhibit indirect discriminations towards women.²

Concerning men and women salary equality matters, the new reduction of the budgetary envelope (following the adoption of the Maastricht Treaty) punishes women twice. It makes an obstacle to the equality of men and women in employment access matters,³ and it frequently puts limits to access the social rights of "atypical" jobs as well as a "familiarising" of their rights which is damaging to women. Faced with the sudden arrival of different social eventualities, the economic and social security of women is since then sent back to the "family solidarity" which became even more fragile by evolution of the family structure.

Paradoxically, the adoption of directive 79/7 and particularly in the political-economic context of the last years,

we can declare that the social protection of women does not cease to be harmed. In fact, in social protection matters, the Court of Justice has always admitted the economic or institutional objective justifications put forward by the Member States to justify the indirect discriminations that got into the systems. The Commission has never fulfilled its role of control that was assigned to it by the directive itself. In the case of European law, the indirect discriminations will fully subsist with impunity.

This phenomenon raises a fundamental question: Is the implementation of the equality principle depending on the achievement of economic conditions determined at a European level? In other terms, can the achievement of those economic conditions pursue to the contempt of the fundamental principle of men and women equality? To rephrase this question even more clearly, what is the true status of men and women equality in Community's legal system: An ideal to reach or a fundamental principle; A bond of means or a bond of result? As I said on the subject of "objective" justifications receiving to indirect discriminations, the Court of Justice of the European Community has repeatedly decided in favour of the first hypothesis.

THE SOCIAL WELFARE DEPENDS ON FULL ACTIVITY

The Amsterdam Treaty was signed on October 2nd 1997 in a context of economic globalisation, favourable to the exacerbation of domination reports, social risks and uncertainty. That was the moment to remind about a part and importance of a strong social welfare in the European Union.

Now, the social welfare stays submitted to the rule of unanimity and it is assisted at the emergence of a new social priority. The promotion of employment entered into the Community objectives after the coming into force of the Amsterdam Treaty, becoming "a question of common interest" (article 2 of the EC Treaty). The new objective is to reach "a higher employment level" without weakening the competition. A new competence complementary to those of the Member States aims to elaborate a "co-ordinated employment strategy" to attain this objective. The key element of this strategy is made of common guiding lines, defined on the model of those adopted during the European Council of Essen.

Even though the subjects of consumption and the impact of social transfers onto the economy were predominant at the beginning, the subjects of competition and employment were those which guided the decisions.⁴ Those

two imperatives led the European and national decision-makers to brandish a new leitmotiv: reduction of employing costs.⁵ It is then a global reduction of the budgetary envelope of social welfare systems that is assisted. A reduction that is generally performed with a detriment of social welfare rights. Everybody knows today, after many studies made by OECD that the reduction of social costs has no incidence of influence on employment.

Some scientists, as Bernard Friot, start with the idea that the quota, a socialised wage element, sends the employer back to his workers. The use of social quotas for the payment of the unemployment allowance is a result of historical apprehension that dismissing is an unavoidable effect of the capitalist market which relieves the employer's responsibility ever since. We could consider since then that the general and structural reduction of employment is the state's or worker representative's acceptance of the idea that unemployment is not the responsibility of the employer.

It is precisely in this context that the idea of "employment ability" appears and becomes remarkably spread. This idea interprets above all the thought that unemployment responsibility is primarily that of the employer. And that thought passes all of the directing lines for employment. We attend, with regard to the Beveridgien ideal, to two landslides (which I would rather qualify as sideslips):

- 1) The social security is not considered from a viewpoint of worker's compensation (ex-post relating to risk) but rather like a tool of insertion to the work market (therefore ex-ante relating to risk). It should be dependent with integrity and priority to this objective.
- 2) From the idea of full employment, we pass on the implementation of full activity policies. It does not matter much about individuals, their status and in which conditions they will be put to work. The most important is they will cease to pressure the welfare budget and in that case, make admissions for those rare persons which are still considered as unqualified to work with legitimate causes.

This new context puts an end to an old illusion: the restraining nature (or the absence of the restraining nature) of European instruments is not concerned with the evolution of national systems. In fact, we witness the passing of a *soft law* in the forms of traditional instruments (communications or resolutions, not even more questions of recommendations) either in the form of new methods as the "directing lines" or the "open co-ordination method". Philippe Pochet thinks that it is all about a response to

the subsidiary principle of Maastricht. We also witness a reappearance of fundamental rights in the most constructive and least restraining form.

The European systems have never so admirably acted conservatively towards the new and only authorised model of the Active Social State in all of these documents. What are the remarkable characteristics?

1. Employment of some unoccupied population categories, presented as an expense for the social security system (the long time unemployed, those claiming minimal wage, elderly workers, single mothers, etc.). This employment is simultaneously stimulated by action on the offer (more and more unconditional social cost reductions) and demand of work (salary raise of lowest incomes by fiscal and parafiscal means, improvement of some employment statuses as part time work, stricter conditioning of some social allowances, etc.). Nevertheless we should emphasise that this employment would practically and generally take place in problematic situations. That is mainly because it submits the least qualified labour (in order to respond to the work demand) to more and more uncertain employment statuses. Sometimes we ask ourselves whether those employment statuses respond to the demands of fundamental social rights.
2. Those measures are set to respect the demands of the Maastricht Treaty and the competition of enterprises.
3. The tendency to give more benefits of the social security system for the sake of persons whose incomes are the weakest under the condition that they are “really” unable to work (the handicapped, the disabled, the old and retired, etc.). We witness an increasing looseness of the “professional” character (or Bismarck character) of the legal system, and the application of contract prices for services.
4. Measures are foreseen (at the top of the socio-professional scale) to assist the establishment of a private or professional prudence. They come in the form of pension funds of an enterprise or a sector, on the one hand, and a stimulation of workers for financial participation in the company's capital or profit, on the other hand. These types of professional prudence benefit from fiscal and social stimulation, a natural policy to reduce the cost of social security or at least to win over an important deficit. Social security justifies the provision (“forfeiture”) of service failure in the legal system in two aspects: financing the system is one point of view and fiscal and parafiscal stimulation of private prudence is the other.

CONCLUSION

At the end of the eighties, the development of awareness of the need to give more social competence to the European Union held ground in concern to assure social progress at a European scale to respond to the Europeanisation of economy. Since then, history has shown that taking social welfare into consideration at a European level has risen, stimulated, and required a slow but certain deterioration of national systems.

It is also significant that it was considered to be about time to complete article 137 of the Treaty in Nice. It was written as follows: “the held dispositions in the property of the present article cannot refrain a Member State from maintaining or establishing stricter measures of welfare compatible with the present treaty”. Henceforth, it goes “...to define the fundamental principles of their social security system, nor to maintain or establish measures of welfare...”.

Philippe Pochet interprets this disposition as reference to actual polemics in the framework of European debates on the public pension systems. Some states would like to preserve themselves with this disposition from eventual privatisation. But this fear of such cunning irregularity and the national collapse reflex brought by it are denials of a need for social internationalisation as a necessary response to the internationalisation of economy. And we all know that in fact, there is not even a least effort of social welfare improvement at a national level today.

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NOTE

FOOTNOTES

¹ VIELLE, Pascale (1999) *Introduction au droit de la sécurité sociale*, Louvain-la-Neuve: Presses de l'UCL.

² DALY, Mary (1996) *The gender division of Welfare - The British and German welfare states compared*, Florence: European University Institute.

SOHRAB, Julia (1996) *Sexing the benefit - Women, social security and financial independence in EC Equality Law*, Dartmouth Publishing Company (Socio-Legal Studies Series).

VIELLE, Pascale, *Le cout indirect des responsabilités familiales (...)*, *op. cit.*

³ See conclusions of the report *Modèles de temps de travail dans l'Union européenne: politiques et innovations analysées dans une perspective de genre*, *op. cit.*

⁴ VIELLE, Pascale, *Introduction au droit de la sécurité sociale*, *op. cit.*

⁵ See the directing lines for employment 1998 and 1999, particularly the chapter “*Make the fiscal system more favorable to employment*”.