

EU social policy – its development and perspectives

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1. THE NOTION AND SIGNIFICANCE OF SOCIAL POLICY IN THE EUROPEAN COMMUNITIES

From the point of view of historical development, human society functioned and functions as a structurally and functionally complex rational auto-regulating or regulated open system that is composed of people and institutions. The surroundings of the social system are always formed by the system of nature, which provides the material sources for it. In such form and symbiosis with nature the human society exists and develops, from the auto-regulating systems to the systems regulated by the state.

The state and the society are not identical institutions. Society may be defined as a complex, open socially-economically-culturally managed system that is composed of individuals and institutions connected by on-going activity and relationships that happen in accord with the ethical, technical, religious, and legal norms. The state, from the point of view of the historical development as well as from the point of view of the relations to the nature and society, can be defined as an open system of sovereign political-power-managing bodies and institutions that manage the society through legal norms secured by the threat of enforcement. This is a system that is composed of people-bureaucrats and bodies-institutions and which governs the society through law.¹

Since the prehistoric times, human beings cherish the need for social security, which is a natural, both conscious and subconscious, constant in human behaviour. To begin with, a human being seeks protection and the securing of the physical essence, but as the time changes, this need is enlarged to the security against possible risks of the economic life and gradually,

the requirement of a certain standard of living and basic conditions for the development of the personality begin to materialise. In this process, it is not only the quantitative and qualitative change in the satisfaction of social needs, but at the same time the change in the participation of the state in this process. The impact of the state in the area of securing social needs of a human being is changing from the situation when the state does not interfere with the social and economic sphere, to the situation when the state is significantly socially engaged, and when it supports and regulates social development.

In modern history of the development of the society we meet the notion of a social state or a welfare state as a kind of a strong social state. Many definitions hold concerning the essence, character, and extent of the welfare state. For the purposes of this contribution we will start only from the basic definition. While a state respecting the rule of the law considers the greatest value to be freedom, social state obliges the individual to take part in the common coping with life. At the same time, social state has as one of its objectives the creation of a certain social system in the name of the implementation of social justice. It is the role of social state to look after the securing of a dignified life of a human being (existential minimum) for everybody. This state is obliged to keep social equality and justice and to improve the general welfare. The notion "social" obliges the state to take care of its citizens with regard to basic risks of the life, i.e. illness, job injury, unemployment, disability, and old age. Social state does not only secure basic rights, but is also obliged to act positively, develop "social activity" and create a social system directed at the implementation of social justice. It must work against the economic hardship of all the groups of citizens and must contri-

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¹ For more details see PRUSÁK J.: *Vybrané kapitoly z modernej teórie štátu a práva* [Selected chapters from the modern theory of the state and the law], UK, Bratislava 1992, p. 8 and following.

bute to the just compensation between the economically and socially weaker and stronger members of the society.² Some countries, as e.g. the Federal Republic of Germany and France, have the fact that they are a social state respecting the rule of the law anchored in the constitution.³

At present, all the advanced economies count on the participation of the state in the economic and social development. The state enters the economic and social developments and regulates them. In this sense, the state in all the advanced economies is also a social state. The question at present thus is not put whether there should or should not be a social state, but what kind of social state it should be, how “social security” oriented it should be, to what extent these features are to be fulfilled. The policy of each state that wants to be a social one must look into the future and must change the economic and social conditions by appeal and guarantee social security and freedom in this way. Each state creates its own concept of social policy and the tools for its implementation are determined by its historical and geographical factors and also by social, political, and economic conditions.

The relation of the European Union to social policy may be characterised as a gradually developing one. In the first phases of the existence of European Communities, social issues did not play an important role. Originally, the opinion that economic integration will automatically improve social conditions and therefore the social issues need not be regulated was prevalent. The activity in the economic area was a priority and the almost exceptional clauses in the employment law and social security were the ones on the free movement of employees. Only during the development of the European Communities it has become apparent that the conflict-free development and functioning of the common market cannot be expected without at the same time paying attention to social issues, which are on the other hand deepened as a result of the common market. The idea of renewing the social dialogue as an important prerequisite of economic growth began to be asserted.

2. DEVELOPMENT OF SOCIAL POLICY OF THE EUROPEAN COMMUNITIES

The development of social policy in the European Communities can be divided into three phases:

- the first phase (1957 to 1974) was characteristic by its very cautious approach to the solution of the social issues;
- the second phase (1974 to 1990) was, to begin

with, the so-called “golden period” for the social security policy, which was true until 1980, when the conditions changed radically;

- the third phase (since 1990) is the period of the Charter of Basic Social Rights of Employees, whose content has influenced all the subsequent important documents of the Community, and further it is a period of intensive fight against unemployment.

The first phase of the development of social policy in the European communities is typical for its exclusively economic co-operation. The founding countries did not assign to this community any authority in the social security area. This belonged almost exclusively to the individual member states. The European Community was created on the basis of the idea that the process of economic integration will proceed in accord with the free market philosophy. Social security measures were considered to be only tools through which the correct functioning of a common market may be reached, or a logical consequence of the openness of the market. The original clause of Article 117 of the Convention on the Forming of EC which says that the improvement of the living standards and working conditions of the employees that will make their “gradual equalisation” possible can only happen as a result of the common market functioning and the steps foreseen by the Convention. With regard to the absence of any regulation in this area, co-operation was to be reached through consulting, study groups, and only tentative ideas. Due to the fact that the Convention on the Forming of EC eliminated normative interferences in the social security sphere from the sphere of the direct activity of the Committee and anchored unanimous voting of the member states, the creation of rules obligatory for all the member states became very problematic. The main reason for accepting legal regulations related to employment and social security on the level of the Community was especially the effort to secure free movement of people and the protection of the economic competition conditions, later already the efforts to preserve the generally high standards of living and social protection of the EC citizens. Towards the end of the first phase, however, the viewpoint on the social issues changed significantly, which was expressed in the common declaration of the heads of states and governments in Paris in 1972. In this declaration, social policy was put at the same level as the implementation of the economic and monetary union.

The second phase may be divided even further into two parts, the first part from 1974 till 1980, which is

² For more details see MATLÁK J.: Právo sociálneho zabezpečenia v historickom, súčasnom a európskom kontexte [Law of social security in the historical, contemporary, and European context], Vydavateľské oddelenie PrF UK, Bratislava 1996, p. 10.

³ Article 20 par. 1 and Article 28 par. 1 of the Essential Law of the Federal Republic of Germany, Article 2 of the Constitution of the French Republic.

often called the "golden period of harmonisation", and second part from 1980 till 1989, when the neo-liberal approach won in social policy and a new movement in favour of deregulation and higher flexibility of work relationship developed. The first part began by the acceptance of the Social action programme, which focused on the implementation of the following priorities:

- to reach full and quality employment rate in the Community,
- to improve life and work conditions, so that their harmonisation was made possible while preserving the improvements,
- to increase the involvement of the management and the labour force (the representatives of workers) in the economic and social decisions of the Community and the participation of the workers in the life of the companies

In the second part of this phase – as has already been said – the neo-liberal approach, emphasizing deregulation and higher level of flexibility in social policy, won, because according to the neo-liberalists' opinion, the high regulation of the previous period led to unemployment and created drawbacks for employees. In this phase, however, social sphere underwent a significant change by the acceptance of the Unified European Act in 1986, effective since July 1st 1987. The Unified European Act is a reflection of a certain change in European thinking. The tendency to leave the neo-liberalist thinking is apparent from it. It was a manifestation of the change in approaches to the understanding of the market as something "all-solving" and a manifestation of the effort to begin work on social integration of Europe as the necessary prerequisite for reaching adequate level of competition, without which the market that shows significant internationalisation of economy, cannot function smoothly. In other words, the member states reached the conclusion that in the conditions of economic integration, social integration cannot be omitted, since the social conditions of people significantly influence successful economic development and competitiveness of the companies. Thus the necessity to solve the social and economic problems as parallel ones appeared. As a result of gradual enlargement of the European Community with further members, a completely new problem arose – noticeable differences in the economic level of the individual member states, as some new members were economically much weaker, and these differences could not have been ignored, but needed to be counted with when building the economic relations and economic co-operation within the Community. When implementing social policy, the emphasis after the acceptance of the document mentioned is

moved from the harmonisation to the definition of minimum requirement on the European level or at least to the assessment of the essential problems regarding employees.⁴

The third phase – since 1990 until the present – may be characterised as a phase of still stronger tendencies to the support of social solidarity not only in the individual member states, but also between them. The beginnings of these efforts may be seen already in the report of the Committee of September 1998, in which the basic theses, which should have served as a basis for future initiatives, are put more concretely. These were mainly the introduction of entirely free movement of people, removing the still existing obstacles of social harmony in various areas (women, the disabled, and so on), measures to improve the protection of health and safety of employees, renewal of social dialogue, and the Charter of social rights, which would delimit basic social rights of employees in the Community.

In this phase, the most important steps towards the development and improvement of co-operation of the member states in the social area were made, and in a number of documents, quite concrete aims of social politics of the Community were outlined. The common effort at rapprochement and harmonisation of the processes in social sphere, especially in the employment policy, is apparent from them, as in this phase, the number of the unemployed rose significantly in the member states of the Union, and therefore especially the last years are marked by intense co-operation of the member states in the fight against unemployment. The third phase may also be called the phase of the Charter of basic social rights of the employees, which was signed in December 1989 in Strassbourg. The Charter regulates basic social rights in connection with employment and holds only for the member states of the European Communities. The document is a declaration of the representatives of the member states of the Communities without direct legal consequences.

The acceptance of the Convention on European Union in 1992, containing the Protocol on Social Policy as its part, marked a significant shift for the development of social policy. The importance assigned to social policy is apparent already in the preamble of the Maastricht Treaty, where it is one of the basic objectives. The Union is formulated as a support of balanced and sustainable economic and social progress, among other things also by supporting social solidarity. The basic trends defined in Maastricht were the following:

- emphasizing the importance of collective negotiation and the dialogue of the social partners,

⁴ On the issue of employment law rapprochement see TRÖSTER, P., Sbližování českého pracovního práva s právem Evropské unie [Rapprochement of Czech employment law with the law of the European Union], *Právo a zaměstnání* No. 11/1997, pp. 8 and following; also FUCHS, M., Sbližování pracovního práva [Rapprochement of employment law](1), *Sociální politika* No. 1/1998, p. 3.

- adjustment of parental leave,
- protection of part-time work and on the basis of fixed-term contracts.

A problem connected with Maastricht Treaty and especially with the Protocol on Social Policy was the creation of "dual-speed social Europe". The discussions related to the accepting of this treaty were governed by the fight about the programme for the European Union in the social area. As a result of this, Great Britain decided not to participate in this programme, which was expressed only in the fact that only the remaining 11 member state at that time agreed on the Agreement on Social Policy, and thus founded the new European social dimension. Eleven member states committed themselves to support employment, improve living and employment standards, provide adequate social protection, support dialogue between the management of the companies and employees, development of human resources with regard to high employment rate, and fight against the elimination from the society. The Maastricht Protocol on Social Policy and the subsequent Agreement on Social Policy contain the enlargement of the rights of the eleven member states in social area as well as the enlarged voting by a qualified majority and the possibility of collective contracts on the community level, which under certain conditions might be binding for all the member states. For all these 11 member states, economic and social policy in Europe presented two sides of the same coin; both were to be developed harmoniously and together, under the same conditions. On the other hand, for Great Britain, the developing social policy signified increased rigidity of the labour market, and therefore also the decrease of the necessary flexibility and the growth of unemployment.

Double-track development of social policy only ended after five years by the acceptance of the Amsterdam Treaty in 1997, in whose framework the chapters on employment⁵ and social policy⁶ were included into the Convention on the foundation of the European Communities. The Amsterdam treaty further strengthened social policy of European Union and at the same time ended the exceptional status of Great Britain, as Great Britain, on the occasion of Amsterdam Treaty negotiations, joined Protocol No. 14 on social policy. In accord with the clauses of the Amsterdam Treaty, social policy in European Union focused mainly on the following four spheres:

- employment,
- fight against the discrimination of employees,
- equal opportunities for men and women,
- role of social partners – social dialogue.

Amsterdam Treaty is undoubtedly another important milestone in the development of European social policy. It unquestionably contributed to the modernisation of European employment law, which forms a necessary basis of the economic prosperity and the growth of the employment rate in the Union. At the same time, this treaty as the last phase of the development of social policy of European Communities stimulates thoughts on the limits of social policy and on the possibilities to overcome the difficulties that hinder EC social policy to keep up with the other areas of the Community policy. The changes that the treaty has brought in the social security area show that on one hand, Europe realises the essential importance of solving social problems, especially unemployment and poverty and elimination from the labour market resulting from it, but on the other hand the member state unify the methods of dealing with social issues only with difficulties. Therefore it is often stated that the result of the Amsterdam Treaty did not fulfil the expectations (not only in the social security area, but also with regard to the institutions reform) and that it rather presents a "reasonable" or "successful" compromise. Although on one hand, it is assessed positively that Amsterdam Treaty followed the direction of social policy outlined in Maastricht Treaty, especially by standing up for the basic social rights, by devoting a special chapter to the solution of employment issues, and in the area of social policy, extending the possibility to accept decision by a qualified majority, on the other hand it is necessary to realise that the problems of solving employment costs and related issues as the social security costs, remained fully in the sphere of national competence. The same holds also for the employment policy, although the new Chapter on employment in the Treaty of EC requires co-ordination of national policies when securing employment.

One of the main objectives outlined in the Amsterdam Treaty was the employment policy. A special meeting of the heads of the states and governments of the European Union in Luxembourg in 1997 was devoted to its compilation; on this meeting, the so-called Luxembourg process was started, i.e. the way to more effective and more objective-oriented European employment strategy, within whose framework it was supposed that the open method of co-ordination was to be used. The focus on the creation of new jobs and decreasing unemployment rate was stated as the main objective of European Union employment policy. During the Luxembourg process, a catalogue of concrete objectives, stating the main directions of the employment policy in European Union was agreed upon. Each member state has to accept and implement its own programme of activities, which will be based on the

⁵ Compare Chapter VIII. – Employment.

⁶ Compare Chapter XI. – Social policy, general and vocational education and the youth.

economic situation in the country and on the structure and specific qualities of its labour market; on the level of the Community, then, common strategy will be compiled, which should secure reaching higher employment rate. The check-up on observing the accepted measures and the assessment of the situation on the labour market is performed annually in the member states.⁷

The Luxembourg process was further developed on the meeting of European Council in Lisbon in March 2000 – the so-called Lisbon strategy – a ten-year programme whose aim is to “become the most competitive economy of the world, based on knowledge, which is capable of sustainable development and offers more and better jobs and more extensive social solidarity”. In this programme, the problem of Europe’s lagging behind in the context of globalisation and the onset of new economy was open vehemently. Within the framework of the social pillar of the programme, attention was focused on increasing the employment rate and modernisation of the European social model as well as the fight against social elimination and more intensive co-operation in the area of social protection.⁸ One of the most important objectives within the new strategy is the so-called social solidarity, which is looked upon as preventing any form of elimination or discrimination and is one of the essential values of the European social model.

The basic development of the work on social policy of the European Union was then accepted at the meeting of the European Council in Nice in December 2000. At this meeting, the document called European social agenda was accepted. It focuses on the following issues:

- the inevitability of improving qualification and improving the access to lifetime education including vocational training,
- creating more and better jobs,
- predicting the changes in work environment and its use by creating balance between flexibility and security,
- fight against poverty and all the forms of elimination from the society with the aim to support social integration,
- modernisation of social protection,
- support of the equality of sexes,
- supporting social and political aspects of enlargement and exterior relations of the European Union.

The European social agenda should be an important step towards strengthening and modernisation of the European social model, which is typical by its indivisible connection of economic efficiency and social progress. The agenda emphasizes the interconnection of the economic, social, and employer policy.

The last development (meeting of the European Council in March 2005 in Brussels) shows that the aims of the Lisbon strategy have been set too high and their fulfilling rate is slow. However, the interconnection of the economic growth and softening their social impact is considered to be a necessary prerequisite for securing social solidarity and sustainable growth.⁹

3. SOCIAL POLICY AND EMPLOYMENT LAW IN THE EUROPEAN COMMUNITIES

The clauses on social policy in the document of the European Union already nowadays form only a basis for two separate legal branches – employment law and the law of social security. European Communities are rather consequently avoiding the notions of “employment law” or “social security” in the general sense. The theory of European law, however, works with the notions employment law and social security¹⁰ on a quite regular basis. Defining employment law within the European Communities is very difficult. With regard to the social and economic influences on the employment law, it does not form a systematic unit within the European Communities; quite on the contrary, it is limited to certain connections and institutions and is always bound with economic agenda.

Employment law is considered to be a law of a special kind, as it is destined to protect the employees. If assessed from the point of view of the purpose of the European Communities as it is defined in Article 14 of the Convention on the EC, employment law is a significant tool corresponding to the creation of common market. Employment law must with its clauses correspond to smooth and effective production of good and providing services with regard to the competitiveness in all the relevant areas and to the securing of sufficient economic growth. On the other hand, on the European level, it is unanimously accepted that employment law interferes also with the private-law sphere, i.e. the relationship between the employers and employees, and this is because of the protection of the employees. Employment law should, not only by its

⁷ See KOLDINSKÁ, K., Otevřená metoda koordinace – nová cesta evropské sociální politiky [Open method of co-ordination – a new way of European social policz], *Právo a zaměstnání* No. 7–8/2002, p. 35.

⁸ Compare European social agenda – COM (2000)379, chapter 1.

⁹ Similarly also KOTÝNKOVÁ, M., Sociální souvislosti vstupu České republiky do Evropské unie [Social consequences of the Czech Republic’s joining the European Union], *Právo a zaměstnání* No. 6/2005, p. 18.

¹⁰ If we started from the exact translation of the term used in the theory, we would have to speak about “social law”. In this article, however, we will further use the term “social security”, which is closer to our legal terminology.

clauses, create a space for free movement of labour force, but it should also anchor the minimum labour and living standards of employees, which would be respected by all the employers. If the obligations related to employment law have an evenly distributed impact on all the employers, the impact of employment law on competition would be neutralised. From the economic point of view as well as on European level, it is justified to see employment law functioning as a cartel with the purpose to soften the competitive pressures between employers.¹¹

The importance that is now put on the regulation of the labour and living conditions is reflected in the clauses of the Charter of basic rights of the European Union declared in 2000 in Nice. In Chapter II Freedoms, Article 12 anchors the freedom of assembly from which the freedom of assembly in trade unions with the purpose to protect social and economic interests derives, and Article 15 anchors the right to work and to be active in a freely chosen or accepted environment, which is applicable within all the EU countries. In Chapter III – Equality, Article 23 anchors a very important principle that influences the implementation of legal relationships related to employment and is reflected in all the regulations, namely the equality of men and women regarding employment, jobs, and pays, including the possibility to implement special steps that would balance inequalities eventually occurring in some areas. For the development of labour law and the social security system and for the explanations of all the regulations accepted so far, Chapter IV – Solidarity is very important, in which Articles 27 to 35 express the essential principles on which the approach to the status of employees in EU is built. Articles 27 and 28 form the basis for the development of social dialogue as an important tool for status of employees, Articles 29 to 33 delimit the basic approaches to the protection of an individual in the labour process – from entering the labour process up to its end: the right to the free mediation of job (Art. 29), the right to the protection in the case of unjust dismissal (Art. 30), the right to safe and just conditions for labour (Art. 31), the prohibition of child labour and protection of the young in labour (Art. 32), protection during motherhood and childcare (Art. 33). Finally, Articles 34 and 35 anchor the right to social security and healthcare.

Regardless of the above-stated, the notion of community labour law is not quite stable. When using the legal-dogmatic point of view, community labour law may be looked upon as a supra-national regulation of the individual institutes of the employment relationship, resulting from the need for the functioning of the common market in such a way that the objectives of

the European Communities were fulfilled. Community labour law in the first place aims at the harmonisation of national regulations. Community regulation does not mean the suppression of national regulations, but getting them closer on the basis of respecting certain minimum standards on which the European Communities' member states have agreed.

It is of course not possible to expect that the community labour law shall regulate all the institutes in a complex way. At present, we may divide community labour law into the individual labour law and collective labour law. The individual labour law devotes attention especially to:

- legal regulation of the free movement of the labour force,
- some issues of the origin and ending of a job relationship change,
- equality before the law for men and women in legal relationships related to employment,
- legal regulation of working time,
- health and safety regulations during work,
- legal regulation of special labour conditions for women and the young,
- social protection of employees when changing an employer and in case of the insolvency of the employer.¹²

Collective labour law deals more closely with the regulation of social dialogue and with the participation of employees on the employer's decision taking.

4. CONCLUSION

As was already stated above, social policy, for which labour law presents one of the basic tools for implementation, belongs to a very important area, to which extraordinary attention is devoted from the part of the European Union. At the same time, however, opinions questioning whether the wide regulation, especially of labour conditions, is not an overly limiting factor for the economic development appear. The stated double view on the given issue is, however, nothing new. The whole modern society is continually encountered with the question of the measure of labour force protection and the intensity of interferences with the labour process. The economic policy and social policy are – in my opinion – inseparably connected areas. It is quite impossible to develop economy without in an adequate way developing also the social area; the only question – with no final solution,

¹¹ For more detail see e.g. FUCHS M., *Základy evropského pracovního práva* [The elements of European employment law], *Právo a zaměstnání* No. 3/1998, p. 2.

¹² See also SCHRONK, R., *Pracovné právo Európskej Únie* [Employment law of the European Union], PrF UK, Bratislava 1998, p. 70.

however – is the intensity and extent of the interference in the social security area (i.e. also in the area of the regulation of the participation in labour process) in such a way that the social security of the employees is kept and the economic development is not limited or hindered by it. The task to be solved in the following period is the examination of the community labour law and of the Czech labour law especially in those

parts and institutes that deal with employment. Further research will be directed mainly at the changes of labour relationship both from the point of view of the community law and from the point of view of Czech labour law, but also on the possible development of the legal regulation of the legal relationships related to employment with regard to the changes happening in the organisation of labour itself.