

Europe – Third World Centre (CETIM)
non-governmental organization in general consultative status
Melik Özden
0227315963
cetim@bluewin.ch

HUMAN RIGHTS COUNCIL

Thirteenth session

Item 3

Languages : ENGLISH, FRENCH, SPANISH

**Co-sponsors : Women’s International League for Peace and Freedom,
International (WILPF), International Association of Democratic Lawyers (IADL),
non-governmental organizations in special consultative status
Movement against Racism and for Friendship among Peoples (MRAP),
non-governmental organization on the Roster**

SOCIAL AND ECONOMIC RIGHTS IN THE EUROPEAN UNION¹

The current economic and financial crisis has important social consequences. In all member-states of the European Union unemployment is rising and governments are preparing austerity plans in order to reduce their budget deficits following the economic recession and the bailing out of banks. While the profit margins of banks and of major companies, as well as the incomes of their managers are slowly moving back to their former peaks, governments are preparing social security program reforms.

Major social developments in the European Union

The Lisbon strategy was adopted in 2000. It aims at giving the EU the most competitive and the most dynamic knowledge economy in the world. It speaks of ‘modernising’ the ‘European social model’ and of ‘liberalizing social services’.² It led to the adoption at the European Council of Nice in December 2000 of a ‘Social Agenda’. At the same moment, a ‘Charter of fundamental rights’ was added to the Treaty of Nice. The objectives of the Social Agenda are full employment (§ 2) and higher employment rates (§ 3), whereas the text focuses on human resources and the introduction of an active and dynamic social state (§ 7).³ A new social agenda was adopted in 2008 indicating that its fundamental objectives are defined in the Treaty but that the resources needed for meeting them will have to be changed.

New European guidelines for employment policies⁴ have been introduced since 2003 with three major objectives: full employment, the quality and productivity of work, the strengthening of social cohesion and of inclusion.

1 This declaration was written in collaboration with Ms Francine Mestrum, Dr in social sciences, lecturer at Université Libre de Bruxelles.

2 Conseil européen de Lisbonne, *Conclusions de la présidence*, 23 et 24 mars 2000, Bulletin Quotidien Europe n° 2181, 28 March 2000.

3 *Agenda social européen*, adopted by the European Council of 7, 8 and 9 December 2000, JO 157/2 2001/C (F).

4 Communication of the European Commission on strengthening the European Employment Strategy, doc. 2004(COM)239fin.

The Treaty of Amsterdam of 1997 added the fight against poverty and against social exclusion to the competences of the EU, to be monitored through an Open Method of Coordination.

At the level of public services, a directive on the liberalization of services was adopted in 2006.

In 2009, the European Parliament adopted in first reading a draft directive on patients' rights, a first step in the liberalization of health services that raised many important questions. It has to be noted that this directive is not part of social policies, but is seen in the context of the completion of the internal market. The European Court of Justice had repeatedly stated that the provision of health services has to be considered an economic activity.

The European Commission has also presented a communication on flexicurity (2007) and a Green Paper on Labour Law (2006). Both have been strongly criticized by the trade unions and social NGOs because they weaken worker's protection and are strongly focusing on 'activation'.

In 2007 and 2008 four very negative judgements have been given by the Court of Justice (Viking, Laval, Rüffing and Luxemburg) because they put economic liberties before social rights. These four judgements are linked to the national enforcement of the directive on the posting of workers and they are now discussed at the political level. However, the Commission does not plan to modify the directive. It means that a directive which was presented as a protection of workers will become its opposite. 'Social dumping' can become the rule and competition at the level of workers is now being accepted.

A changing philosophy

This brief survey of the major 'social' events of the past years shows that some small steps forwards and backwards have been made. In fact, they are hiding a more fundamental change that took place in the 1990s.

A first major change was institutional. Up till and during the presidency of Jacques Delors at the European Commission, this institution had always been insisting on more social competences in order to balance its activities on the internal market. At the end of the 1980s however, it starts to point to the need of preserving the financial sustainability of social security and of avoiding its negative impact on employment. In all member-states, austerity programmes are being implemented, which does not favor social ambitions at the European or at the national level. In fact, during the 1990s, all heads of state and government had rallied Margaret Thatcher's philosophy of less social protection. The dream of a social Europe is forgotten and the Commission also endorses the new thinking. In spite of the Commission's White Paper of 1994, the social policies were getting integrated into the competition policies.

The second major change is – logically – at the level of the Commission's proposals. In a recommendation of 1991⁵ the Commission states that '*in the current state of affairs*' there is no question of harmonizing social protection systems. However, it also states that social protection is directly linked to the completion of the internal market and that differences between systems should be limited, as far as possible. Consequently, a progressive convergence seems to be desirable. It recommends the Member States to guarantee a level of resources in keeping with human dignity and to do what is necessary in order for social protection systems to help people in need with assistance and resources. The Commission also defines the objective of social protection as ensuring a minimum income, access to health services, economic and social integration and assistance in case of unemployment.

5 COM (1991)228 of 27 June 1991 on the Convergence of the objectives and policies of social protection.

In its 'Strategy for the modernisation of social protection' of 1999 ((1999)347) the objective becomes 'to make work pay', as well as a secure income, the preservation of viable pension systems, the promotion of social integration and the sustainability of health protection. 'To make work pay' becomes the leitmotiv of the 'activation' policies. Social protection becomes a production factor that should benefit employment. In the Social Agenda of 2000 social policies are said to have a double objective: the Agenda has to strengthen the role of social policies as a factor of competition and should allow it to become more efficient while pursuing its own objectives in terms of the protection of individuals, reduction of inequalities and social cohesion (§ 9).

This means that far from being on an equal footing with economic policies, social policies are now at the service of the economy and are subordinated to it. The notions of 'redistribution', 'solidarity' and 'inequality' are still used in different documents, but they have stopped to play a central role in social protection. Income and living standard protection have disappeared as objectives. This is a major philosophical shift, since Western European welfare states had been conceptualized as protections against markets. The new social policies, on the other hand, are presented as allowing individuals to participate in markets.

Trying to explain

This philosophical shift is the consequence of the neoliberal victory in its German 'ordoliberal' version.⁶ The objective of the 'ordoliberals', before and after the Second World War, was to find a third way between socialism and nazism. They wanted to create a just social order within the rule of law. The political order they were thinking about did not only imply economic order but also a societal one. However, the social policies they envisaged are always subordinated to market mechanisms. This explains why they favor a private insurance market and why they do not want proletarians to become socially insured people. On the contrary, they stimulate them to become owners, savers and independent producers.

This is also the logic one reads in the reasoning and the judgements of the German 'Bundesverfassungsgericht' (Constitutional Court) related to the Treaty of Maastricht and to the Treaty of Lisbon.⁷ The European Union has to provide the legal framework for a social market economy, free and non distorted competition and monetary stability, coupled to the four economic freedoms and the rigid rules that accompany them. This legal framework is binding but is considered as being a-political.

And the consequences?

The major consequence of this changing philosophy and of the neoliberal victory is the abandonment of traditional social policies in Europe. In spite of their differences due to cultural and political traditions, these policies also have some common characteristics. One way or another, they are all based on a model of social citizenship, as a necessary complement of civil and political citizenship. The latter can be eroded by economic inequality as a consequence of market mechanisms. Most of the social protection systems in Western Europe are based on a status of equality, the basic principle of citizenship. This is why most policies are universal and not targeted. Another common characteristic that follows from this is the decommodification of certain goods. Education, health, transport, postal services ... have been institutionalized as 'public services'. The specificity of most of these social citizenship services is that in most cases they do not hinder the market to function, but they do not allow the market to decide on who has access to these services

6 See Dardot, P. et Laval, C., *La nouvelle raison du monde. Essai sur la société néolibérale*, La Découverte, Paris, 2009 ; Joerges, C. and Rödi, F., "Social Market Economy as Europe's Social Model" in Magnusson, L. & Stråth, B. (eds.), *A European Social Citizenship ? Preconditions for Future Policies from a Historical perspective*, Peter Lang, Brussels, 2004.

7 Bundesverfassungsgericht, judgements of 12 October 1993 and 30 June 2009.

or goods. Citizens have rights and they are based on a system of solidarity and redistribution of incomes. Hence, taxes play an important role.

However, even if some of these principles are still present in existing national social protection systems, they are slowly disappearing and they are totally absent at the European level. Today, it is an illusion to think they might emerge at the level of the European Commission or Parliament. Policies now focus on poverty, in exactly the same way as 'ordoliberalism' prescribes and totally inconformity with the changing of scale implied in globalisation and European integration.

What to do?

The major consequence of poverty reduction policies is that poverty, in the absence of citizenship and rights based social policies, leads to more inequality. Income inequalities are rising in the European Union and elsewhere⁸. Policies against social exclusion are certainly desirable and welcome, but they do not lead to more just societies as long as income inequalities are rising.

This is the reason why it is urgent to point to the importance of economic and social rights, the major protection against the total dismantlement of social states and of citizenship.

The International Covenant of the United Nations on economic, social and cultural rights recognizes the right of everyone to an adequate standard of living for himself and his family (art. 11), the right to work (art. 6) and to just and favourable conditions of work which ensure fair wages (art. 7), as well as the right to social security (art. 9). These rights have been confirmed in the European social Charter of the Council of Europe and in different ILO Conventions. These texts go far beyond the Charter of Fundamental Rights of the EU. However, different reports of the Fundamental Rights Agency in Vienna, the European Parliament⁹ and the International Confederation of Trade Unions¹⁰ confirm that these limited rights are not respected in the European Union.

Human rights are at the international level the counterpart of citizens' rights at the national level. In times of globalization, rights have to be looked at different levels, from the local to the national, the regional (European) and the global level.

This means that the European population is not only a group of consumers but most of all a group of citizens having the right to have rights and to fight for their rights. Today, this struggle for human rights and for citizens' rights at the European level becomes an urgent necessity for all those who believe in the indivisibility of rights and in the necessary interlinking of solidarity levels. Competition cannot create any social link, certainly not when social dumping is being institutionalized and if workers become competitors even before they are citizens.

The member states of the European Union have signed and ratified the International Covenant on economic, social and cultural rights. It means their policies have to be in conformity with these rights in order to protect the economic, social and cultural rights of their citizens.

8 *Croissance et inégalités*, OCDE, Paris, 2008; *Income inequality in the age of financial globalisation*, Geneva, ILO, 2008.

9 Fundamental Rights Agency of the European Union, *Annual Report*, 2008 and 2009; Resolution of the European Parliament of 14 January 2009 on the situation of fundamental rights in the EU 2004-2008, doc. A6-0479/2008.

10 ITUC, *Internationally recognized Core Labour Standards in the European Union*, Geneva, 6 and 8 April 2009.