

# GENERAL ASPECTS CONCERNING SOCIAL POLICY

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**Abstract:** *Social policy at European Union level represents a fundamental and indirect aspect of the final regulation of the internal market.*

*Thus, the closer it is to achieving a harmonisation at the level of European Community of certain principles such as that of non-discrimination based on any arbitrary criterion, of the principle of social welfare within labour relations, respectively of the principles governing the matter of social security, the more it contributes to fulfilling the objective of the European Union, which is to establish a single market that presupposes, among other things, the freedom of services and the free circulation of people.*

*The aim of the present work is to explain the level of protection ensured at present by the regulations of Community law in the matter of labour relations, of the observance of the non-discrimination principle as an essential component in increasing competitiveness, respectively the way in which social security for the insurance holders included in the social security scheme of the member states is ensured.*

**Key words:** *the labour legal relation in Community law, the principle of non-discrimination, the social security scheme in the EU.*

## 1. Evolution of the Community Social Policy

Social policy did not represent, unfortunately, a preoccupation among the founders of the three European Communities in the 6<sup>th</sup> decade of the 20<sup>th</sup> century. Thus, the ECSC treaty (Treaty establishing the European Coal and Steel Community signed on 18 April 1951 in Paris), as well as the Treaties establishing the European Economic Community (EEC) and the European Atomic Energy Community (EAEC or EURATOM), signed on 25 March 1957, did not include any provisions regarding a European social system, the speculation being, as shown by the doctrine, that economic integration would in time ensure an optimal social system<sup>1</sup>.

Subsequently, the actions of some Member States, particularly France, whose national law is more generous as concerns workers' protection, determined the development up to a certain degree of a social policy at Community level, but an uneven one, against the background of other states' conception that either had a national law which was less protective towards workers or considered social policy as integrated part of national sovereignty and wanted to maintain it within the sphere of national competences.

In The Treaty establishing the European Community (TEC), social policy is regulated in articles 117-125 (current articles 136-148), of which the most important for the evolution of social policy is article 119 (current article 141) of TEC, which sanctions equality between men and women in the world of work, a principle that has been promoted first and foremost in order to avoid a price distortion due to differences in the costs of production.

As, after the establishment of the European Communities, France was the only member country that granted by law equal pay to workers, it insisted for the implementation of this principle among the other Member States for fear that its business environment might become more expensive than that of the other Member States.

Consequently, a deadline was established for enforcing article 119, which was prolonged until year 1964, but, as an uneven application of this principle was noticed, a directive was adopted with regard to this, namely the Council Directive no. 75/117/EEC of 10 February 1975 on the

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<sup>1</sup> T. Ştefan, B. Andreşan-Grigoriu, *Community Law*, Publishing House C.H.BECK, Bucharest, 2007, p. 639.

approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

This directive also harmonised Community legislation with the International Labour Organisation Convention no. 100.

Subsequently, in order to ensure equality as concerns working conditions, Council Directive no. 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, was adopted.

Also, as a continuation of the Union's efforts to ensure an optimal social climate, several measures for the harmonisation of legislations and social policies were adopted, as follows: Council Recommendation regarding the 40-hour working week and 4 weeks' paid leave (1975); Recommendation regarding Retirement Age (1982); Recommendation regarding Hygiene, Safety and Health Protection in the Workplace (1987); Directive no. 77/187 of 14 February 1977 regarding the safeguarding of employees' rights in the event of transfer of undertakings; Directive no. 80/987 of 20 October 1980 on the approximation of laws of Member States relating to the protection of employees in the event of the insolvency of their employer; Council Directive no. 80/1107 of 27 November 1980 on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work; Directive no. 75/129 amended by Directive no. 92/56 of 24 June 1992 on the approximation of the laws of the Member States relating to collective redundancies; Regulation no. 1365/75 of 26 May 1975 on the creation of the European Foundation for the Improvement of Living and Working Conditions; Directive no. 91/533 of 14 October 1991 on the employer's obligation to inform the employee of the conditions applicable to the contract and employment relationship; Directive 93/104 of 23 November 1993 concerning certain aspects of the organisation of working time, replaced by European Parliament and Council Directive no. 2003/88 of 4 November 2003; Regulation no. 2062 of 18 July 1994 issued by the Council on the creation of the European Agency for Safety and Health at Work; this Regulation was replaced by Council Regulation no. 1654/2003 of 18 June 2003; Decision no. 97/16 of 10 January 1997 establishing the Employment and Labour Market Committee, for the purpose of assisting the Council in fulfilling its responsibilities in this field; this Directive was replaced by the Council Decision no. 200/98 of 24 January 2000 establishing the Employment Committee, on grounds of article 130 EC; Commission Decision no. 95/319 of 12 July 1997 setting up a Committee of Senior Labour Inspectors; Commission Decision 95/320 of 12 August 1995 setting up a Scientific Committee for Occupational Exposure Limits to Chemical Agents; Directive no. 2002/14 of the European Parliament and of the Council establishing a general framework for informing and consulting employees in the European Community; Parliament and Council Decision no. 50/2002/EC of 7 December 2001 establishing a programme of Community action to encourage cooperation between Member States to combat social exclusion; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

After the adoption of the Maastricht Treaty (MT), social policy gained a more important role as compared to previous regulations.

Thus, in its Preamble, MT emphasizes the fact that the States, by deciding to establish the European Community, confirm their attachment to the fundamental social rights and are and are determined to foster economic and social progress, as well as a high level of workforce employment.

Also, it is mentioned in article 2 of the TEC as amended by the MT, that the mission of the Union is to foster a harmonious and balanced development of economic activities in the entire Union, a sustainable and non-inflationary growth respecting the environment, a high level of workforce employment and social protection, an increase in the living standard and quality of life, economic and social cohesion and solidarity among the Member States, by establishing a common market, an economic and monetary union and by applying the common policies or actions stipulated in articles 3 and 3a (having in view the establishment of an economic policy based on the

close coordination of the economic policies of the Member States, on the internal market, and on defining the common objectives, and guided by the principle of an open market economy, in which competition is free, the elimination, among the Member States, of customs duties and of quantitative restrictions when getting the goods into or out of the country, as well as any other measures of equivalent effect, a common commercial policy, an internal market, a common policy in the fields of agriculture and fishing, a common policy in the field of transportation, the strengthening of economic and social cohesion, a policy in the environment field, the strengthening of the Union's industrial competitiveness, a policy in the field of development cooperation, encouragement of the creation and development of trans-European networks, a contribution to strengthening consumer protection, measures in the fields of energy, civil protection and tourism).

In applying these legal texts, Title XI of the 3<sup>rd</sup> Part of the Treaty presents in detail all the elements of social policy, thus giving an additional concrete regulation of such matters as education, occupational training and youth, as these are fields on which the efficiency and coherence of social policy largely depend.

It is worth noting that social policy was the object of an annexed Protocol to the Maastricht Treaty, as Great Britain did not agree to the Treaty's provisions on this matter.

This Protocol establishes, first of all, the objectives, the purpose of social policy at Union level. It also regulates the fields in which the action of the Union complements the action of the Member States, instituting the right of the Council to adopt Directives for this purpose, respectively minimal progressive prescriptions, as well as the fields in which the Union has full competence.

This Protocol reiterates the principle of equal remuneration and working conditions for men and women.

The same Maastricht Treaty introduces article 123 which stipulates that, in order to improve the possibilities of employing workers on the internal market and contribute this way to increasing the living standard, in accordance with the provisions presented as follows, a European Social Fund is established, whose aim is to foster, within the Union, employment opportunities and workers' geographic and professional mobility, as well as to facilitate their adaptation to industrial changes and to the evolution of production systems, especially through professional training and reorientation.

As the competence of the Union to take direct action against discrimination was contested through the Amsterdam Treaty, article 13 was introduced which thus allows the Union to adopt a series of measures against discrimination, stipulating as follows: "Within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation".

The same Amsterdam Treaty reformulates articles 117-120 of TEC, which reaffirm the values established through the European Social Charter signed in Turin on 18 October 1961 and through the Community Charter of the Fundamental Social Rights of Workers, adopted in 1989, reiterating this way the purposes and measures to be taken in order to fulfil them in the field of exclusive action or of the joint action of the Member States.

The Treaty of Nice provides a new numbering of the Regulation regarding social policy, so that the former articles 117-125 are now articles 136-148, and the fields in which the Community supports and complements the action of the Member States are again specified.

This Treaty also provides the setting up of the framework necessary in order to create a Committee of social protection of a consultative nature established by the Council, after consulting the European Parliament, for the purpose of fostering cooperation in the matter of social protection among the Member States and with the Commission.

Also, a second paragraph is added to article 13, which grants competences allowing the adoption of "approximation measures" by co decision.

## 2. Purposes of Social Policy and Means to Achieve It

The purpose of social policy was for the first time defined through the annexed Protocol of the Maastricht Treaty and was included once again in the Treaty provisions when the Amsterdam Treaty was adopted, in article 117, current article 136 by the new numbering established according to the Treaty of Nice.

According to the above-mentioned article 136, "The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion".

To this end, according to paragraph 2 of the same article, the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.

According to paragraph 3, they believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Treaties and from the approximation of provisions laid down by law, regulation or administrative action.

It has been rightly noticed that, in doctrine, the formulated objectives are to be fulfilled through the converging actions of the Community as a distinct entity and of the Member States taken individually, by putting into practice measures that take account of the diversity of national practices, especially in the field of contractual relations and the need to maintain the competitiveness of the Union economy<sup>2</sup>.

In doctrine<sup>3</sup>, several means to achieve social policy have been observed.

A first means identified this way concerns the regulations controlling the functioning of the common market themselves, as they are considered to contribute to the achievement of social policy by regulating the free circulation of workers.

With regard to this, the free forces that affect this market at the level of working conditions, that is employers' and workers' organisations and the resulting collective bargaining, as well as the pressure exerted in relation to the content of government measures in the social field, must be taken into account.

The second means of achieving the objectives under discussion has in view<sup>4</sup> particularly the provisions related to the economic field, such as those regarding the coordination by the Council of the general economic policies of the Member States.

Thus, through article 137 of TEC as amended by the Treaty of Nice included, it is stipulated: " With a view to achieving the objectives of article 136, the Union shall support and complement the activities of the Member States in the following fields:

(a) improvement in particular of the working environment to protect workers' health and safety;

(b) working conditions;

(c) social security and social protection of workers;

(d) protection of workers where their employment contract is terminated;

(e) the information and consultation of workers;

(f) representation and collective defence of the interests of workers and employers, including codetermination, subject to paragraph (5) of article 137;

(g) conditions of employment for third country nationals legally residing in Union territory;

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<sup>2</sup> O. Manolache, *Treatise on Community Law*, Publishing House C.H.Beck, 2007, p. 480.

<sup>3</sup> T. Ștefan, B. Andreșan-Grogoriu, in the work cited, p. 641.

<sup>4</sup> O. Manolache, in the work cited, p. 481.

(h) the integration of persons excluded from the labour market, without prejudice to article 150;

(i) equality between men and women with regard to labour market opportunities and treatment at work;

(j) the combating of social exclusion;

(k) the modernisation of social protection systems without prejudice to point (c)“.

To this end, the Council is empowered, on grounds of paragraph 2 of article 137:

1) to establish measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;

2) in the fields referred to in paragraph 1 items (a) to (i), European framework laws may establish minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such European framework laws shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

According to the same article on this matter, the Council decides in accordance with the procedure stipulated by article 251 of TEC after consulting the Economic and Social Committee and the Committee of the Regions, with the exception of the fields referred to in paragraph 1(c), (d), (f) and (g) of the current article, European laws or framework laws shall be adopted by the Council acting unanimously after consulting the European Parliament, the Committee of the Regions and the Economic and Social Committee.

The Council may, on a proposal from the Commission, adopt a European decision making the ordinary legislative procedure mentioned in article 251 applicable to paragraph 1 items (d), (f) and (g) of the current article. It shall act unanimously after consulting the European Parliament.

Also, a Member State may entrust the social partners, at their joint request, with the implementation of European framework laws adopted pursuant to paragraphs 2 and 3 or, where appropriate, with the implementation of European regulations or decisions adopted in accordance with the above-mentioned provisions. In this case, it shall ensure that, no later than the date on which a European framework law must be transposed, or a European regulation or decision implemented, the social partners have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary step enabling it at any time to be in a position to guarantee the results imposed by that framework law, regulation or decision.

It is also stated that the European laws and framework laws adopted pursuant to this article shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof and that they shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Constitution.

It is worth noticing that the provisions of article 135 shall not apply to pay, the right of association, the right to strike or the right to impose lockouts

With a view to achieving the objectives of article 136 and without prejudice to the other provisions of the TEC, the Commission shall, on grounds of article 140 of the TEC, encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields, acting as a factor for bringing together the Member States, particularly in matters relating to:

- employment;
- labour law and working conditions;
- basic and advanced vocational training;
- social security;
- prevention of occupational accidents and diseases;
- occupational hygiene;
- the right of association and collective bargaining between employers and workers.

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations.

Before delivering the opinions provided for in this article, the Commission shall consult the Economic and Social Committee.

In the field of social dialogue, the Commission shall have the task of promoting the consultation of management and labour at Community level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Community action.

If, after such consultation, the Commission considers Community action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation. On the occasion of such consultation, management and labour may inform the Commission of their wish to initiate the process provided for in article 118b (current article 139). The duration of the procedure shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

The procedure in article 118B refers to agreements concluded at Union level which shall be implemented either in accordance with the procedures and practices specific to the social partners and the Member States or, in matters covered by article 118, at the joint request of the signatory parties, by European regulations or decisions adopted by the Council on a proposal from the Commission.

In this case, according to the amendments made by the Treaty of Nice, the Council acts by qualified majority, except for the case where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required by virtue of article 137 paragraph (2). In such situation, the Council shall act unanimously.

The third means to achieve the objectives of social policy is represented by the approximation of the provisions laid down in this field by national laws, by regulation or administrative action.

It was appreciated that there may be differences between national laws especially in the field of social security which may cause significant distortions of competition due to financial expenses in certain economic sectors, being also liable to directly affect the stability or functioning of the common labour market through the advantages or disadvantages that certain national laws might generate.

Also, in doctrine it was pointed out that there are considerable differences in the legislation of the Member States between the regulations whose object is to ensure the safety and health of workers at work. These national regulations often complemented by technical provisions or standards set by convention may lead to the existence of different levels of protection of the workers' health and safety and may favour competition over the protection of employees.

This is the reason why the European Framework Directive 89/391/EEC of June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work was adopted with regard to this.

The Directive contains general principles for the prevention of risks in the workplace, for increased safety, for insurance of a healthy environment, the elimination of risk factors and of circumstances that may lead to the occurrence of accidents.

This Directive shall apply to all sectors of activity, including the public sector, with the exception of certain specific public service activities, such as the armed forces or the police.

As a direct and concrete application of the Framework Directive, the Council has adopted over 20 Directives regarding certain particular situations, such as: the workplace (Directive 89/654), work equipment (Directive 89/655), personal protective equipment (Directive 89/656), Directive 94/33 on the protection of young people at work.

In the same context, of ensuring the protection of the safety and health of workers, the Union has also adopted Directive 93/104 concerning the minimum requests regarding the organisation of working time, establishing minimum standards for daily and weekly periods of rest, the annual paid leave, the number of night work hours, etc.

### **3. Aspects of the European Union Social Policy in the Matter of Social Protection**

#### **3.1. European Social Fund**

As mentioned before, article 123 of TEC, in order to improve employment opportunities on the internal market and so help raise standards of living, regulated the setting up of a European Social Fund whose aim is to promote within the Union employment opportunities and workers' geographic and professional mobility, as well as to facilitate their adaptation to industrial changes and to the evolution of production systems, especially through professional training and reorientation.

Currently, the specific Union act regulating the concrete activity of the European Social Fund is Regulation 1081 of 5 July 1996 with effect from 1 January 2007.

According to this Regulation, the European Social Fund (ESF) is one of the EU structural funds, set up in order to reduce differences regarding the living and prosperity standards in the regions and Member States of the EU and, consequently, to enhance economic and social cohesion<sup>5</sup>.

ESF is dedicated to promoting workforce employment in the EU. It helps the Member States to better equip European companies and workforce so as to cope with the new world challenges.

The strategy for workforce development and employment is the EU's main strategy to ensure the prosperity and welfare of Europe and of Europeans, at present and in the future. In this context, the European strategy for workforce employment results in the collaboration of 27 Member States in order to increase Europe's capacity to create better and more job openings and to endow people with the abilities required in order to occupy them. This is the strategy guiding the ESF, an institution that spends European money to achieve these objectives<sup>6</sup>.

#### **3.2. Education, Occupational Training and Youth**

The field of education, occupational training and youth was not neglected either, becoming a preoccupation of the Union with the adoption of the Maastricht Treaty, which amended articles 126-128.

Thus, the Union contributes to the development of a high-quality education by encouraging cooperation between the Member States and, when necessary, by supporting and complementing their action, while fully respecting the responsibility of the Member States for the content of education and for the organisation of the educational system, as well as their cultural and linguistic diversity.

To this end, the action of the Community has in view:

- to develop the European dimension in education, especially through the learning and dissemination of the languages of the Member States;
- to foster the mobility of students and teachers, including by encouraging the academic recognition of diplomas and study periods;
- to promote cooperation between educational institutions;
- to develop information and experience exchange concerning problems common to the educational systems in the Member States;
- to foster the development of youth and socio-educational animators exchange;
- to encourage the development of distance education.

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<sup>5</sup> [http://ec.europa.eu/employment\\_social/esf/discover/esf\\_ro.htm](http://ec.europa.eu/employment_social/esf/discover/esf_ro.htm), consulted on 28th January 2008.

<sup>6</sup> [http://ec.europa.eu/regional\\_policy/sources/docoffic/official/regulation/pdf/2007/fse/ce\\_1081\(2006\)\\_en.pdf](http://ec.europa.eu/regional_policy/sources/docoffic/official/regulation/pdf/2007/fse/ce_1081(2006)_en.pdf), consulted on 28th January 2008.

For the same purpose, the EU and the Member States foster cooperation with third countries and with the competent international organisations in the field of education and, especially, with the Council of Europe.

In order to contribute to achieving the above-mentioned objectives, the Council has no possibilities to decide, only to influence, to encourage, recommending, because, as mentioned before, the legal text itself (article 149) limits the Council's action through the reduced competences granted.

Therefore, by deciding according to the procedure established in article 251 of TEC and after consulting the Economic and Social Committee and the Committee of the Regions, the Council shall adopt actions of encouragement, with the exception of any approximation of the laws and regulations of the Member States, adopting recommendations, deciding by qualified majority on the proposal of the Commission.

As regards the policy of occupational training, the Community puts into practice a policy of occupational training that supports and complements the actions of the Member States, while fully respecting the responsibility of the Member States for the content and organisation of occupational training.

To this end, the community action has in view the following aspects:

- to facilitate adaptation to industrial transformations, especially through occupational training and reorientation;
- to improve initial occupational training and continuous training in order to facilitate occupational integration and reintegration on the workforce market;
- to facilitate access to occupational training and to promote the mobility of trainers and trainees, especially of young people;
- to stimulate cooperation in the training field between educational or professional training institutions and companies;
- to develop information and experience exchange concerning common problems within the training systems of the Member States.

Within the framework of professional training policy, the Council adopts measures that exclude any approximation of the legislative and regulatory provisions of the Member States, which are at the same time required to foster, together with the Union, cooperation with third countries and with the competent international organisations in the field of professional training.

In exercising these prerogatives, the Council has adopted several documents that can only be considered as recommendations, such as:

- Conclusions regarding the importance and the object of the quality of professional training;
- Conclusions regarding school efficiency, principles and strategies regarding the promotion of school success;
- The White Card regarding education and training;
- The Green Card regarding education, training and research — obstacles to transnational mobility;
- Conclusions regarding the new indicators in education and training.

To conclude the presentation of professional training policy, we must mention that, according to the jurisprudence of the Court of Justice, professional training is any form of education that prepares a person in order to qualify for a certain profession, commerce or occupation or which ensures the qualifications (abilities) necessary for such a profession, commerce or occupation, regardless of the age and preparation level of pupils or students, even if the programme does include an element of general education.

### **3.3. The Social Protection Committee**

In the matter of social protection, we must also mention the innovation made through the Treaty of Nice, which regulates in article 144, as amended, the setting up of a Social Protection Committee, created by the Council, after consulting Parliament, having a consulting role in the



field, for the purpose of fostering cooperation between the Member States and with the Commission.

This Committee's attributions are as follows:

- to observe the social situation and the evolution of social protection policies in the Member States and within the Union;
- to facilitate information, experience and best practice exchange between the Member States and with the Commission;
- without prejudice to article 207, to prepare reports, to give legal notice or undertake other activities in its fields of competence, at the Council's or the Commission's request or on its own account.

In fulfilling its mandate, the Committee establishes contact with social partners, every Member State, as well as the Commission which designates two members of the Committee.

In applying this provision, the Council established through Decision 2000/436 of 29 June 2000 a Social Protection Committee, with advisory status, whose task is to supervise the development of social protection policy in the Member States and within the Union, and, subject to article 207 of TEC, to prepare an annual report on social protection that will be submitted to the Council.

### **3.4. Social Security**

In the field of social security as well, the Treaty establishing the European Community assigns competences in favour of Community institutions, stipulating within the content of former article 42, the Council's prerogative to adopt by co decision procedure in the field of social security the necessary measures in order to ensure the free circulation of workers, having in view the entire by allowing and maintaining the right to benefits, as well as the estimation of those benefits, of all the periods taken into account by various national laws and the payment of benefits to persons residing in the territory of the Member States<sup>7</sup>.

However, it has been decided that it falls within the competence of the Member States to elaborate their principles and organise their own systems of social protection.

That is the reason why the Union's role is to coordinate systems applicable to workers passing from one state to another, so that they may claim in one Member State the rights acquired in the territory of another Member State.

This is also the purpose of Regulation 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families, when moving to another Member State to work, respectively its Implementing Regulation no. 547/72.

The doctrine<sup>8</sup> has drawn from the economy of this legislation at Union level the following principles of social security policy:

#### **1. The unity of applicable legislation**

As shown before, the Union's purpose is to coordinate national social protection schemes, therefore, the situations in which a worker is uninsured in any of the Member States or, on the contrary, is insured in several states, are to be avoided. Thus, there is a rule according to which the worker is subject to the social protection norms of the state on whose territory he/she carries out his/her activity, not of the state whose citizen he/she is or where he/she resides.

#### **2. The principle of equal treatment**

According to this principle, persons carrying out their activity in the territory of a Member State and who are subject to the social protection rules of that state shall benefit from the same conditions of application of those rules as the citizens of the state in question.

#### **3. The principle of acquired rights preservation**

This principle expresses the rule according to which the rights acquired within the framework of a social protection scheme may be transferred to the territory of another Member State, so that the payment of certain benefits should not be conditioned by the place of residence of

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<sup>7</sup> O. Tinca, *Community Social Law*, Publishing House Lumina Lex, 2002, Bucharest, p. 275.

<sup>8</sup> T. Ştefan, B. Andreşan-Grigoriu, in the work cited, p. 644.

the entitled person. In other words, the worker who acquired the right to a pension in the territory of another state than that whose citizen he/she is preserves that right even if he/she returns to his country of origin (with a few exceptions: for instance, in the matter of unemployment assistance).

4. The principle of the maintenance of rights in course of acquisition expresses the rule that the periods necessary in order to acquire a certain right are cumulated too even if they were obtained by carrying out one's work in the territory of another state than that whose citizen the worker is.

In this context, we must define the legal notion of "worker" in the light of Union acts and of the jurisprudence of the Court of Justice.

First of all, a worker is any person insured on grounds of a compulsory or an optional insurance for a continuous period against one or several risks covered by the branches of a social security regime applicable to employees.

Secondly, a worker is also the person with a compulsory insurance against one or several risks covered by the branches that are subject to the above-mentioned Regulation, within the framework of a social security scheme applicable to all residents or to the entire occupationally-active population, when that person is insured by a compulsory or an optional insurance for a continuous period against another risk.

Finally, the notion of "worker" also designates the person insured voluntarily against one or several risks covered by the branches that are subject to the above-mentioned Regulation within the framework of a social security scheme of a Member State, regarding employees or all residents or certain categories of residents, if that person has previously had a compulsory insurance against the same risks, within the framework of a regime for the employees of the same Member State<sup>9</sup>.

#### **4. Social Policy in the light of the Charter of Fundamental Rights of the European Union and of the Treaty of Lisbon**

The Charter of Fundamental Rights of the European Union was proclaimed during the European Council of Nice of 7-11 December 2000 as "an essential example of the ambivalent, complex and often contradictory nature of the constitutional development of the European Union"<sup>10</sup>.

The Preamble to the Charter makes known the fact that "the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice".

The rights belong to three categories:

- civil rights: human rights and rights regarding legal procedures, as those guaranteed by the European Convention on Human Rights and established by the Council of Europe;
- political rights specific to European citizenship as established through Treaties;
- economic and social rights as stated by the Community Charter of the Fundamental Social Rights of Workers adopted in 1989.

In the Charter, the rights are divided into six chapters: Dignity, Freedoms, Equality, Solidarity, Citizen's Rights and Justice. A seventh chapter defines the general provisions<sup>11</sup>.

*Equality* is a principle referring to:

- equality before the law, non-discrimination, cultural, religious and linguistic diversity,
- equality between men and women, the rights of the child, the rights of the elderly, integration of persons with disabilities.

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<sup>9</sup> T. Ştefan, B. Andreşan-Grigoriu, in the work cited, p. 646.

<sup>10</sup> G de Burca, *The Drafting of the European Charter of Fundamental Rights*, European Law Review, 2001, p.126, cited by T. Ştefan, B. Andreşan-Grigoriu, in the work cited., p. 155.

<sup>11</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0001:0016:EN:PDF>, consulted on 19 January 2008.

In the matter of *solidarity*, the following rights are guaranteed: the right to information and consultation within the undertaking, the right of collective bargaining and action, the right of access to placement services, protection in the event of unjustified dismissal, fair and just working conditions, prohibition of child labour and protection of young people at work, family and professional life, social security and social assistance, health care, access to services of general economic interest, environmental protection, consumer protection).

This title regarding "Solidarity" also reaffirms the rights of any worker to protection against unjustified dismissal, in accordance with Union law and with national laws and practices, the right to working conditions that respect his/her health, safety and dignity, as well as the right to a limitation of the maximum working hours and to daily and weekly periods of rest, and to an annual period of paid leave.

Also, in the matter of social security, The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.

Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.

In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

The Charter was included with a few amendments in the Treaty establishing a Constitution for Europe, and it should produce legal effects once the Constitution comes into force through the ratification of the Treaty by all Member States.

The Preamble to the Treaty establishing a Constitution for Europe, in articles 1-2 regarding the Values of the European Union specifically provides that the Union combats social exclusion and discriminations and promotes justice and social protection, equality between men and women, solidarity between generations and protection of children's rights.

It is remarkable that the Treaty of Lisbon also provided the amendment of article 6 paragraph 1 of TEU in the sense that "The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adopted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties".

Therefore, despite its amendment when being adopted on 12 December 2007, the Charter of Fundamental Rights, according to article 6 paragraph 1 of TEU amended, is part of the texts of the Treaties, having the same legal value as they do.

This integration in one single document of a true "European Declaration of Human Rights" represents just as well the bringing together in one single legal document of the most important principles governing Union social policy included in primary treaties, respectively in the derived legislation (directives, regulations, etc.).

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