

INNOVATIONS AND CHANGES BROUGHT BY THE LISBON TREATY: THE SOCIAL ASPECT

Abdulla Azizi

SEE University

Professor

Tetovo, Ilindenska bb, 1200, Macedonia

a.azizi@seeu.edu.mk

—Abstract —

The Lisbon Treaty is an attempt to overcome the difficulties faced in the functioning of previous treaties of the European Union. It aims, through its provisions, at offering better opportunities for action including the social scope, but the inter-governmental nature of decision-making continues to prevail.

This paper focuses on provisions for social policy in the Lisbon Treaty and important changes that deal with reforms in this field. More concretely, the objective of this paper is to emphasize the most important social aspects of the Treaty in question.

Social policy has been qualified as a common competence of the EU and member states (article 4b). The EU has to undertake measures to assure the coordination of employment policies of member states and to initiate the coordination of social policies of member states.

This paper analyzes the provisions that deal with employment, social dialog, consultations between employees and employers, child protection, as well as other segments of social policy.

Key Words: Lisbon Treaty, Social Policy, Employment, Professional Training, Social Dialog.

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1. INTRODUCTION

Even though the Lisbon Treaty foresees new authorizations in the field of social policy for the EU, it still remains within the scope of competences of member states.

More concretely, the social policy has been listed within the group of divided competences between the EU and member states (article 4b of the Treaty on the

Functioning of the EU, TFEU). On the other hand, article 5(2) authorizes the EU to undertake measures in order to assure the coordination of employment policies in the EU member states and it can also start an initiative to assure the coordination of social policies of the EU member states [article 5(3)].

The social provisions explain rather than extend previous competencies determined by article 3(1) and articles 136-145 of the TFEU.

2. THE DEVELOPMENT OF SOCIAL POLICY OF THE EU UP TO THE TREATY OF LISBON

As a result of general euro-integration processes, the EU's activities in creating and developing social policies are also very important, whereas special attention should be paid to those social issues which are treated differently by the EU member states (Azizi A).

The EU treats the situations of developing employment affairs and suggests measures for successful resolution of all problems that emerge in this field. Its social policy includes issues that deal with the harmonization of the policy of equality and non-discrimination on age, gender, ethnic background and religious bases; harmonization of collective and individual rights of employees; coordination of social protection and welfare; reduction of unemployment; separation of family and professional duties; protection of special groups of population (handicapped, children, women, etc.) and their rights, etc.

The EU's objective is to promote, through social policy, employment, improvement of living and working conditions, assurance of the necessary level of social protection, promotion of social dialog and fight against social marginalization. The EU's social policy and the regulation of relations in the social sphere among the EU member states has been discussed for more than 60 years now, whereas the foundations for action in this field have been summarized within the establishing treaties of the European Community and the EU Treaty (primary legislation), within acts adopted by the EU institutions (secondary legislation) within the framework of their competencies, in the signed conventions by member states and the EU's programs for development of social policy.

At the beginning of Communities' actions social issues were not paid that much attention to, since foundation agreements were more focused on economic issues at the beginning. Activities in the social sphere were conditioned in terms of the need to resolve issues related to the functioning of the common market, free movement of workers, as well as the prohibition of discrimination of workers and the rest of inactive population. Later on, as a consequence of technological,

structural and political changes, further expansion and socio-demographic trends in the EU, the need for coordination of the social policy in EU member states emerged.

Common standards in the social sphere at the beginning of the establishment of the EC had to deal with wages and movement of workers in mines, prohibition of discrimination in terms of salaries and immigrant workers. This was confirmed by the Treaty establishing the European Coal and Steel Community in 1951 and it also set the basic standards for workers' health protection in the industry of coal and steel.

However, the bases of social politics of the EC can be found in the Treaty establishing the EEC (1957), whose main aim was to establish a common market, the functioning of which preset the solution to some social issues. In this respect, activities planned for the workers' and their families' basic social protection, healthcare and security were very important at the level of the EU. This is because of the fact that an otherwise regulation of these issues would have had a negative impact on common market competition as well as on the living and working standards.

Along with overall integrative processes, the Communities' activities for developing the social policy have made their way through. In the '80s, member state governments were mostly focused on regulating the labor market and some directives dealing with workers' security and health were adopted. The Single European Act (1986) paid special attention to social policies, especially healthcare and security in the workplace, dialogue with social partners and the social and economic cohesion. The new thing was that it had to deal with the harmonization of conditions for healthcare and professional protection in areas with poorer social protection.

Social rights were processed in more detail and were developed through the The Community Charter of the Fundamental Social Rights of Workers (1989), The Charter of Fundamental Rights of the EU (2000), EU Council directives (where details of their application are explained), as well as the Social European Charter (1961) and the European Codec of Social Protection (1964), adopted by the European Council and implemented by the EU member states.

The Maastricht Treaty foresaw a judicial basis for the harmonization of rights in the sphere of work and social policy, whereas it also brought a new chapter on education and professional development. Apart from the functioning of the common market and the semblance of policies of member states, the improvement

of living standards and the harmonization of social policies were set as main objectives. The Social Policy Agreement was also set up, but because of the opposition by Great Britain it hadn't been implemented in this Treaty, but some years later it was integrated into the Amsterdam Treaty and it dealt with:

- Measures against social marginalization
- Measures for expansion of equal opportunities
- Change of procedures for co-decision for many issues in the social sphere
- Promotion of employment as a primary objective
- Determination of instructions for accomplishment of activities by member states in developing a coordinated strategy for employment, especially in providing a qualified, trained and adaptable to economic changes workforce.

For a better coordination of the social protection policy, the Treaty of Nice set up a new body, known as the Social Protection Committee, whereas the Commission prepared the social policy agenda for the next 5 years which included priority actions of the EU that dealt with:

- Increase of the employment level
- Fight against poverty and marginalization
- Modernization of social protection
- Promotion of gender equality
- Reinforcement of social aspects of the enlargement.

Due to the maintenance of the continuity of EU actions, the Commission prepared a new agenda for social policy for the 2006 – 2010 period, in which activity priorities have been identified, especially in terms of creating a competitive economy based on knowledge and the development of the “European Social Model”. The need for designation of economic and social policies which would be harmonized with the needs of the EU citizens emerged.

3. INNOVATIONS AND CHANGES IN THE SOCIAL FIELD WITH THE LISBON TREATY

The Lisbon Treaty includes the Chart on Fundamental Rights and the European Charter on Human Rights.

The Lisbon Treaty alters the article 6 of the EU Treaty (the Maastricht Treaty) in order to enable the recognition of the Charter on Fundamental Rights, proclaimed at the intergovernmental conference in Nice (December, 2000).

The charter covers, among other things, the economic and social rights too, such as:

- the right to fair trial and equal labor rights;
- the right to family and professional life;
- the freedom to choose an occupation and right to engage in work;
- the right of workers to information and consultation within the enterprise;
- the right to collective agreements and actions;
- protection in cases of unreasonable faults.

The Lisbon Treaty guarantees that these rights pose an obligatory judicial power once they are guaranteed by judges at a national and community level. The fact they will have same judicial value as community treaties is important since it will enable them to be recognized or interpreted in another, new way so that it becomes beneficial to individuals.

Apart from this, the rights that come out of the Charter correspond to those determined in the European Charter on Human Rights. The acceptance of the European Charter on Human Rights implies that the EU and its institutions are responsible to the European Court of Human Rights. In other words, EU institutions can be a direct subject of the Charter on Human Rights and the European Court can directly apply the Charter as part of the EU right.

By adopting the European Charter on Human Rights, the EU right will be interpreted in the spirit of this charter, not only as a general principle of the EU right but also as a directly applicable charter upon which the EU relies (Holroyd A).

The Lisbon Treaty has determined new social objectives which have to deal with:

- the promotion of employment;
- development of real social dialogue;
- fight against social exclusion;
- higher level of education;

- inclusion of children's rights in the agenda of the EU activities.

3.1 Employment

The European Union continues to lead a coordinated politics of employment with clear duties and responsibilities in terms of their realization by member-states in certain periods. TFEU does not foresee expansion of competencies in the field of employment. According to the revised article 2(3) of the TFEU, it is emphasized that "the Union has to work in achieving full employment and social progress", whereas the employment issue remains a common interest; according to article 2D, the Union should undertake measures to provide the coordination of employment policies in member states. The need for promotion of high levels of employment, adequate social protection, fight against social exclusion, should all be taken into account during the definition of policies and activities of the Union (article 5), and the Union, especially has to fight gender, racial, religious, age discrimination when defining and accomplishing its policies (article 5b).

3.2 Social dialogue

The role of social partners in the development of social dialogue is confirmed. More concretely, the Union recognizes and promotes the role of social partner at European level, taking into account the diversity of national systems (article 136a). The Union has to facilitate the social dialogue by respecting their autonomy.

3.3 Education, professional trainings and the youth

According to Article 165(2) of the Treaty on the Functioning of the EU, it is pointed out that the Community's activities are necessary in order to encourage the participation of the youth in the democratic life in Europe. The inclusion in Treaties on specific provisions about the participation of the youth in the democratic life in Europe represents a significant expansion of competencies of the EU beyond activities which are currently happening.

3.4 Protection of children's rights

The EU does not generally foresee clear grounds for leading a unique harmonized policy for child protection, but this sphere has mainly been left to be dealt with to member states, i.e. at a national level, whereas children's interests have actually been covered by other political spheres of action of the EU (human rights, education, etc.).

The Lisbon Treaty makes a step forward for children, with the new article 3(3) of the Treaty on the EU which includes important changes in favor of children's

rights: “The Union has to fight social exclusion and discrimination and has to promote justice and social protection, equality between men and women, solidarity among generations and protection of children’s rights”. The provisions of article do not supply new strength to the EU in this respect, but in other fields they will enable the undertaking of specific measures to protect children’s rights. As part of this process, children’s rights will be taken into consideration through the existing policies in the EU. Articles 9 and 10 of the TFEU are of great importance because “children and young people are the most sensitive category against poverty effects and social exclusion; they are also sensitive to discrimination and public health, to education”, etc.

Freedom, security and justice represent a very important sphere in the protection of children’s rights, since children’s trafficking and their exploitation is becoming part of the activities of the EU in terms of inter-boarder crime. However, the Lisbon Treaty will help reinforce the children’s rights in a long-term perspective and will integrate them into its own activities. The inclusion of children’s rights themselves in the list of the objectives of the Treaty will have its impact in the preparation of future legislative instruments as subject of discussion with regard to human rights in general.

4. INNOVATIONS IN THE DECISION-MAKING PROCESS ON SOCIAL ISSUES IN THE LISBON TREATY

The secondary legislation of the EU in the social sphere is adopted by a qualified majority. With the help of the Lisbon Treaty, the EC can decide upon and transform a considerable number of aspects that deal with:

- cooperation among member states in terms of protection of workers in cases of expiry of work contracts;
- collective representation and protection of interests of employees and employers;
- working conditions for people from third countries who legally work in the EU.

This element will enable the elimination of any kind of potential blockade in this field, whereas the unanimity has still been maintained with regard to some aspects.

“The hand brakes” in social security represent one of the “red lines” of governments. Measures in the field of social security for immigrant workers and their dependants have been approved unanimously so far (article 42 of the Treaty

on the EU), but according to the Lisbon Treaty, they will be adopted by a qualified majority. In order to maintain the financial autonomy of member states, Great Britain had negotiated “the hand brakes” with which member states can request guarantees that proposed measures by the European Council will not damage important aspects of their own social systems (article 48 on the functioning of the EU). “Hand Brakes” negotiated by Great Britain as social security measures for immigrant workers and their dependants are important if they achieve the objectives because of which they were designed in the first place.

5. CONCLUSIONS

The Union will go on being a promoter of innovations in the social field in member states with the Lisbon Treaty.

However, having in mind that the differences between the rich and the poor in our modern world are getting deeper and deeper, it seems as if this treaty will promise the provision of social justice.

The Lisbon treaty represents just a basic document which tends to direct the solution of problems that the Union is facing with, but its practical realization depends on many factors including the member states’ behavior in terms of the implementation of the provisions of the Treaty.

This document yet again is not perfect in order to find solution to every single problem that might arise. It will have to be supplemented all the time as new problems and issues arise in the future.

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