

**AN ANALYSIS OF THE EUROPEAN SOCIAL POLICY.
THE PREMISES OF CONSTITUTION AND POSSIBLE
DEVELOPMENTS.
THE PECULIAR CASE OF THE EUROPEANIZATION OF THE
SOCIAL POLICY AND THE ATEMPT OF A JURIDICAL
CONCEPTUALIZATION**

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Abstract

Our paper aims to describe the social issue in juridical terms, by analyzing the involment of the national and the European level in understanding and solving the social issue. Our logic of action lies into three main work-hypotheses.

Our first work hypothesis resides in the idea that, at its emergence, the European Union showed little interest towards social issues, as the economic interest prevailed.

In these terms, it is noticeable the transformation of the European Union from being a structure for the few (it was the project of political elites) to being a structure of the many (where social problems are central points of discussion).

The second work hypothesis stems from the first : nation-state is, par excellence, the structure that proved to be responsive to the social issue, reporting it at a higher level.

Within the third work hypothesis, we stated that, the legal framework distinguishes, in its dynamics, a visible evolution. Hence, the social problem was, at its origin, a global desideratum however, recent regulations, depict it as a problem addressed to the nation-state.

We've built and screened our assupmtions, by reference to the legal framework (European and national). As we've analyzed the future of the social policy, as it is reflected into rules and regulations, we have posited a legal approach of the Europeanization process.

The result of correlating the three research hypotheses, was the validation of the idea that the national factor affects European actions by means of formal and informal rules.

Thus, our framework of analysis relates to the legal provisions comprised in the main European regulations. In order to obtain a juridical description of the social problem, we chose a mixed methodology, based upon document-analysis (European treaties and national legislation) and observation (European and national statistics and strategies). Also, we used the historical research method in order to exhibit the regulatory framework in its evolution at the European and at the national level.

We implemented the logical research method (of deductive inspiration) due to the fact that, the paper presents a constantly-specializing vision which starts from general issues and reaches peculiar aspects.

By means of our methodology, we pursue to conceptualize the Europeanization in juridical parameters while emphasizing the thorny aspect of the social issues.

Keywords : social dimension, social rights, European action, national action

THE SOCIAL ISSUES AND THE FIRST EUROPEAN TESTIMONIALS

However strong the idea of human communion might be, it is fragile in qualifying the social predispositions of the European Union.

We cannot confide in the creed of social charity work, when we pursue the disclosure of the social dimension of the European Union – if we were to do so, we would fail to produce a thorough analytical argument. Moreover, there are other issues to consider in relation to social solidarity, like economical, political, historical aspects. Without hesitance, these aspects are ought to be syncretically developed in the following dissertation.

Therefore, the thought of a community, that would reflect the good of individuals was, as a rule, outshined by political causes. The achievements of the Franks under Charles the Great led to the consolidation of the the Carolingian Empire – a progressive movement, that was to continue without interruption until modern times (Dawson, 2003).

Another historic moment celebrated, by the international community, was the launching of the project *Congregatio Concordiae* by Podiebrad - the King of Bohemia, whose aim was, again, mostly political than social. Certainly, the main objective was improving the quality of life in the city but, the primary means of achieving social functionality were of political nature – that is, controlling the Ottoman threat by forming inter-state associations of mutual assistance.

In 1308, Pierre Du Bois drafts the paper entitled *De recuperatione Terrae Sanctae*, in which he campaigns for the creation of a European confederation under the Papacy sign – a confederation that would obtain, by means of its inter-state action, peace in Christendom and thus, social peace. (Nistor, 2010)

Leaving behind rich synthesis of the attempts to achieve a European Federation, at 9 May 1950, Robert Schuman, initiates the idea of peace, and cohesion among the peoples of Europe, by proposing the plan of supervising the production of coal and steel.

Peace and cohesion among peoples of Europe was the first reason, that reflected the European Union and its social dimension. The emergence of the European social policy, has been a natural phenomenon since the beginning of The European Union.

Nevertheless, the political and economic interests, that were conjugated to the social sphere, slowed down this natural desideratum. Because of this, we can effectively discuss the European Social Model, after highlighting a well-rounded legal system.

As we've already recognized, the social element subsisted, in a perceptible manner, from the early years of the European construction. Caring for the individual, guaranteeing social rights, formulating a functional package of demarches and practices, have delineated, in a flexible way, the definition of the *social policy*. But, we cannot overlook that, the concern for the well-being of the individual, didn't abide for the birth of the European Union. The nation-state proved to be resourceful and responsive in ensuring a greater protection to the individual, as the involvement of national authorities in the social problem was constant even after the moment of the emergence of the European citizenship. The oscillation between national and European voices that, the social dimension is decomposed in, underlines the fact that more guidance is needed. The difficulty of assigning a rigorous form of evolution to the European social policy is owed to the complexity of the ordered measures and mainly, to the sense of solidarity in front of which all explanations fade.

THE WEALFARE STATE METHOD OF UNDERSTANDING SOCIAL POLICIES

Social policy, evokes above all, the return to the individual need of safety and protection and to the projection of coherent answers in this direction. Furthermore, the social policy channels the official speech in multiple directions, from employment and gender equity to measures to promote health and safety at work.

The nation-state is the main actor in charge with this process. It goes without saying that, the state is the entity that must synthesize and filter all social applications by designing, in an organized manner, all the plans and programs that will be put in the service of the citizens. Hence, organization and coordination are the terms that, (at least at the theoretical level!), have a major role in the debates upon this topic.

From this point of view, we agree that, *social policies are understood in terms of state actions, which have the object of changing, in a specific manner, the features of social existence.* (Zamfir, 1995) In other words, the social policy is a state instrument that is responsible with providing welfare to citizens. In spite of the ambiguity of the concept, *welfare* is the essence of social regulations because, *only activities carried out through the state (strategies, programs, projects, activities, legislation) which influence the well-being of the individual, of the family or of the common well being in a society, may be referred to as social policies.* (European Institute, 2009)

We would not err if we affirm that, welfare equates with the scope of social policies and with the firm obligation of the state of knowing and smart surpassing the social inconvenients, that shimmer in its own reality.

Adopting *The Poor Law* in England, during the Elizabethan Period and *introducing the model of social insurance in chancellor's Bismarck Germany*, outlined the time and the space in which the Welfare State was born. The main premise, that contributed to the emergence and development of the Welfare State,

was the orientation of nation-states towards social measures like : *workers protection against the risk of loss of income produced from employment* (insurance for accidents at work, pensions); *protection of the employees' families* (survivor's pension, health insurance for the whole family); *the protection of those who cannot work* (disabled individuals, children); *generalised protection measures of the entire population* (universal health insurance, social security plans, baby bonuses) (Deme, 2006).

We can be more pretentious in expressing our thoughts and therefore, we can affirm that the Welfare State's dogma bears the fulfilment of a stack of traits : *(1) promoting the well-being of individuals by competent state structures and by other structures that are in the attention of the State to which the State provides optimal conditions for development (the market – that delivers occupational welfare through primary incomes; voluntary organisations that support people with disabilities) (2) as means of ensuring welfare, we notice that the services and benefits that meet the needs of individuals are financed and produced by the State; (3) the Welfare State may refer (directly) to a specific State or, (indirectly) to a distinct form of government, or finally, it may refer to a peculiar type of society.* (Barr, 1993)

The social issue is, undoubtedly, the leit-motif of the Welfare State. Therewith, if we approach the social problem in universal parameters, we realize that, social protection is something which must be assigned to each citizen, leaving up to the state the duty of protecting its citizens by organizing social transfers. (Deme, 2006)

A similar opinion is promoted by Elena Zamfir, who claimed, in the paper *Social Policies. Romania in the European context*, that *not every State activity that influences the welfare of the individual, of the family or the welfare of the community in a certain society, can be included in the category of social policies, we allude only to those activities, that try to ensure a collective welfare through particular mechanisms of distribution and re-distribution.* (Zamfir, 1995)

Although the nation-state is the lead actor of social policies, due to the fact that it is very conscious about the problems of individuals and also very interested in solving these problems, we cannot deny the specific action of the European Union in this field. It is only fair to comprehend the product of social policies within a double parameter – national and European.

Domestically, the state will be the actor, which possess the central role – an actor that will oversee the activity of other actors in the network, intervening, within the limits of the law, in order to correct mistakes. At the European level, the network of actors with self-conditioned action is increasingly extending, but the binding element that remains is the higher goal of accomplishing the minimum needs of the citizens.

THE JURIDICAL UNDERSTANDING OF SOCIAL POLICIES. THE EUROPEAN AND THE NATIONAL EXPOSURE ENVIRONMENT

Early on, the main anxiety of the European space was due to obtaining a formula that is able to enrich the existence of individuals... In this respect, all discussions, utopian assumptions or vague analyses have become useless; a specific fact is needed to describe an auspicious situation.

The specific factuality was born with the adoption of the *The Single European Act*, when the European Union provided a detailed look upon the social issue.

We must mention that, the social theme was already approached in the *Treaty Establishing the European Economic Community*, but its outlines were unclear. If some policies could be entitled *common policies* (agricultural policy, transport policy, trade policy), the social policy wasn't well founded.

It is without doubt that, article 235 of the Treaty offered a worthy option for social practices upon which European decision-makers were not yet convinced : *If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.* (The Treaty Establishing the European Economic Community, 1958)

Following the model released at the Paris High Level Meeting, from 1972, the Union often invoked article 235 in order to intercede in domains, that will be acknowledged by means of subsequent regulations as the Regional Policy, the Environmental Policy or the Social Policy.

The Solemn Declaration of Stuttgart of 19 June 1983- the precursor to the Single European Act – was the document that delimited the European social policy from other areas. *Subsection III, articles 21 and 22* of the Single European Act aims to modify the provisions of the Treaty Establishing the European Economic Community.

Article 21 textually mentions : *The EEC Treaty shall be supplemented by the following provisions: ARTICLE 118A : (1) Member States shall pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and shall set as their objective the harmonization of conditions in this area, while maintaining the improvements made.* According to article 22 : *The EEC Treaty shall be supplemented by the following provision: ARTICLE 118 B The Commission shall endeavour to develop the dialogue between management and labour at European level which could, if the two sides consider it desirable, lead to relations based on agreement.* (The Single European Act, 1987)

Accordingly, The European Single Act brings novelty in the area of health and safety at work and also in the field of social dialogue. There was no doubt that, once taken the path of social reform, it was bound to be preserved.

Thereby, The European Single Act was succeeded, in 1989, by *The Community Charter of Fundamental Social Rights of Workers* – creation of the *European Council* in Strasbourg. Endowed with a particularly democratic symbolism, the Charter updates social values like : *free movement of labour, gender equity, protection of persons with disabilities, co-opting the workers in labour issues, health and safety at work and others*. (The Community Charter of Fundamental Social Rights of Workers, 1989)

The *Treaty of Maastricht* dared much more than the juridical provisions that preceded it, establishing, within the social dimension of the European Union, the notion of *European Citizenship*.

In the splendid European construction envisioned by the Treaty of Maastricht, structured upon three pylons, the Social Policy is an essential aspect of the first pylon entitled the Community Pylon. European citizenship is regulated in article 8, paragraph 1 of the Treaty : *Citizenship of the Union is hereby established, explaining that Every person holding the nationality of a Member State shall be a citizen of the Union. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby*.

The preference for the social aspect emerges, in the most obvious manner, from the Social Protocol annexed to the Treaty of Maastricht that avowed as objectives : *the promotion of employment; improved living and working conditions; proper social protection; dialogue between management and labour; the development of human resources with a view to lasting high employment and the combatting of exclusion*. (The Treaty of Maastricht, 1993)

The Treaty of Amsterdam integrates, into the concept of European Citizenship - already instituted by the Treaty of Maastricht, the following remark : *the citizenship of the Union completes the national citizenship, it doesn't replace it*. (The Treaty of Amsterdam, 1999)

At this point, in the evolution of European legal regulations, the focus is on promoting a set of measures, in order to actually ensure equal treatment, remuneration, training and education. The Treaty of Amsterdam performs the expansion of social rights, *the establishment of new forms of work organisation, the improvement of access to decision-making levels, the reconciliation of private and professional life, the respect for human image and human dignity*. (Leibfreid and Obinger, 2001)

The tone of the European Union Treaties guaranteeing social rights is received and proliferated by other legal documents. For instance, the social policy will be marked out through the Union's juridical instruments like *the Charter of Fundamental Rights of the European Union*, which dedicates *Chapter IV – Solidarity* to the endorsement of the social issue¹ and through legal instruments

¹ For example, the following articles are representative for the social field : Article 27 -Workers' right to information and consultation within the undertaking - Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

appertaining to the Council of Europe like the *European Social Charter*, in whose ordinance were dictated 19 rights in the social domain² or the *Revised European Social Charter*, that adds to the catalogue of social rights another 12 prerogatives³.

At the *national level*, the social policy complies with the European regulations. Such an adhesion is normal, if we take into consideration the status of the Romanian state (member state of the European Union); concomitantly, this adhesion explains the transposition of the European spirit within the national legal framework and the process of taking over the European values into national legislation. Likewise, our predilection towards the detailed (non exhaustive!) description of the legal European framework can be simply postulated : by reporting to the national level, we will elude any redundancy in reflecting some items, thus, we will not introduce the reader in the succession of intricate regulations.

Article 41 of the Romanian Constitution recalls the social policy in the following manner : *All employees have the right to measures of social protection. These concern employees' safety and health, working conditions for women and young people, the setting up of a minimum gross salary per economy, weekends,*

Article 28 Right of collective bargaining and action - Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29 Right of access to placement services -Everyone has the right of access to a free placement service.

Article 30 Protection in the event of unjustified dismissal -Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

Article 31 Fair and just working conditions – (1) Every worker has the right to working conditions which respect his or her health, safety and dignity. (2) Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave, and others

² The right to work, The right to fair working conditions, The right to safety and hygiene at work, The right to equitable remuneration, The right to be a member of a union, The right to collectively bargain, The right to the protection of children and adolescents, The right to the protection of the female workers, The right to vocational guidance, The right to professional training, The right to health protection, The right to social security, The right to social and medical assistance, The right to benefit from social services, The right of persons with physical or mental diminished capacity to benefit from professional training and from professional and social requalification, The right to the social, economical and juridical protection of the family, The right to social and economical protection of mother and child, The right to carry on lucrative activities on the territory of Contracting States, The right of migrant workers and their families to social protection and assistance

³ The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, The right to information and consultation, The right to take part in the determination and improvement of the working conditions and working environment, The right of elderly persons to social protection, The right to protection in cases of termination of employment, The right of workers to the protection of their claims in the event of the insolvency of their employer, The right to dignity at work, The right of workers with family responsibilities to equal opportunities and equal treatment, The right of workers' representatives to protection in the undertaking and facilities to be accorded to them, The right to information and consultation in collective redundancy procedures, The right to protection against poverty and social exclusion, The right to housing

paid rest leave, work performed under difficult and special conditions, as well as other specific conditions, as stipulated by the law. (The Romanian Constitution, 1991, revised in 2003) Besides, *The Romanian Labour Code*, adopted by the *Law no. 53/24.01.2003* – at present abrogated, provided, in *Chapter V* information about specialized knowledge regarding the unique, non-dissociated, non-transferable responsibility of the employer towards the assurance of measures regarding the safety and health at work. (The Romanian Labour Code, 2003)

Given the fact that *employment* is a central aspect of the social policy, it is proper to emphasize upon the idea that, in the field of un-employment, the juridical framework has experienced significant legal changes, evolving from the rules and regulations comprised in the *Law no.1 /1991* to the mandatory precepts contained in the *Law no. 76/2002*. Law no. 1/1991 draws the general legal setting for the protection of the unemployed by tracing an assembly of general rules : (1) *the inclusion in the category of the unemployed other persons besides former-employees;* (2) *the grant of the unemployment aid, based on the conduct of the beneficiary at the time of dismissal;* (3) *granting the unemployment aid under the condition that the beneficiary meets the obligations of professional qualification and re-qualification;* (4) *extending the period of insuring social protection for the unemployed by offering a support allowance;* (5) *practicing a multivariate social protection and recognising in favour of the unemployed additional social rights;* (6) *enforcing limp criteria of assessment for the income of potential beneficiaries of unemployment aid and support allowance* (Dima, 2012) .

From these rules, it is primordial to keep in mind the idea that Law no.1/1991 lays stress on the compensation of unemployment by granting social aid as an income that replaces the professional revenue. Law no. 76/2002 abolishes the first rules and regulation in the employment domain, acknowledging in *article 3*, the following major objectives : *to prevent unemployment and to fight against its social effects;* *to employ and to re-employ job-seekers;* *to support the employment of persons belonging to certain disadvantaged categories of population;* *to ensure equal opportunities on the labour market;* *to stimulate the un-employed to take on a job;* *to support and stimulate the employers to hire job-seekers;* *to improve the structure of employment on economic branches and geographical areas;* *to increase the mobility of the labour force under the conditions of the structure changes, which the national economy is undergoing;* *to protect the people within the unemployment insurance system.* (Law no. 76/2002, 2002)

In the field of *gender equality*, the domestic legal frame is guided by juridical instruments like : *Law no. 202/2002* –that aims to eliminate from the formal areas all forms of discrimination based on sex; *The Romanian Civil Code* – which presents the institution of marriage, in terms of an engagement that creates rights and duties for both men and women; *The Romanian Criminal Code* – that implements positive discrimination by offering women an increased legal protection in case of criminal activity (severe homicide or sexual harassment).

Health and security at work stands for an integrating aspect of conceiving the organisation deployment in the labour process. The role of health and security

at work is to prevent failure of the labour process ergo, to provide its maximum efficiency. Respecting the Unional model of rules and regulations, *The National Strategy concerning health and security at work 2008-2013* pursues, as main objective, the constant and significant reduction of the number of accidents at work and occupational diseases and the continuous improvement of health and safety at work.

The cumulation of examples of domestic rules, in the field of social policies may continue, the common feature that distinguishes these norms lies in their common affiliation to European standards. In all case, the affiliation to European standards does not consist in a taking-over demarche, replacing this kind of reaction, the adoption of European norms will take place in a well-shaped domestic context, considering the national peculiarities.

THE LISBON CASE AND TRENDS IN THE EVOLUTION OF THE IDENTITY OF SOCIAL POLICIES

The Treaty of Lisbon redefines the role of the European Union in a globalized world,- eager to embrace the social matter. The Treaty of Lisbon was drafted at the *Intergovernmental Conference* – that took place on 23 July 2007; this conference was ought to animate the measures that European decision-maker had already taken. (Louis, 2007) Signed at 13 December 2007, the Treaty aims to modify *The Treaty on the European Union* and *The Treaty Instituting the European Community* (hereinafter referred to as *The Treaty on the Functioning of the European Union*). *Article 1* of the Treaty on the European Union enunciates that, the Union substitutes and succeeds the European Community, meanwhile, the subsequent article enunciates the quintessential values of member states : *pluralism, non-discrimination, tolerance, justice, solidarity, gender equality*. (The Treaty on the European Union, consolidated version, 2013)

These provisions warn that, the amendments which will occur, will have a great impact upon the social policies. Before proceeding to analyse the social transformations, brought by The Treaty of Lisbon, an observation upon the strategy of new regulations is welcomed. The first rules of the *The Treaty on the Functioning of the European Union*, which are addressed to the field of the social policy, are laid down in *article 151*. This article reconsiders the social engagement of the Union and brings into attention the European economical dimension. This is a unique occurrence among the Treaty's provisions– hence, the curiosity and the need to interpret. (Quesada, 2009)

In order to create a general frame of article 151, we reproduce the legal text as it is contained in the European document : *The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Torino 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, 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. (The Treaty on the Functioning of the European Union, consolidated version, 2013)

The Treaty of Lisbon advances a partnership between two juxtapositions: *economic* and *social*, and this partnership reveals an indissoluble, causational liaison between economic and social. If we accept that, the social evolution was always supported by economical means then, the idea of social policies was never detached from the economic idea. (Quesada 2009)

Turning to the social dimension, we observe that, it is not drastically reconsidered, in the Treaty of Lisbon, but it is neither identical with the form that, the social dimension was acknowledged in other treaties. The amendments brought by the Treaty of Lisbon are mostly ideational and consist in completing social objectives and in consolidating principles and practices that already exist : there are considered goals of the European Union - *the integral employment of labor force, social progress, combating social exclusion, social protection, promoting social dialogue in solving specific problems.* (The Treaty of Lisbon, 2009)

On the other hand, consolidating the social dimension in the Treaty of Lisbon, is sustained by assessing the *Charter of Fundamental Rights of the European Union* as a document which is equal in legal strength with other European treaties, a document, that recognizes social rights, freedoms and principles. Reflecting upon the European social dimension, the European Union adhered to the *European Convention of Human Rights and Fundamental Freedoms*.

This demarche was marked by two ultimate circumstances : establishing the non-modification of the Union's competences and permutating fundamental rights embraced by the European Convention, with the starkest connectivity to the European Union law. (Popescu and Diaconu, 2009)

The Lisbon moment proved to be reformer by nuance, at least at the social level. We can tell there is a noticeable evolution from the thesis exposed in the Treaty of Maastricht – where social policies were presented as a part of the common pylon, to the Treaty of Lisbon that qualifies social policies as shared-problems between the European Union and member state.

In equal measure, the principle of subsidiarity was implemented in a much more eloquent manner in the Treaty of Lisbon. In view of this, social needs substantiate social, traditional and cultural traits, that emerge from the specific circumstances of the member states, so it is an obvious demand that social policies be controlled by both member states and the European Union.

In the decision-making process, social measures are, generally adopted in the ordinary legislative procedure; only exceptionally, in fields like : establishing the status of third-country nationals, who are engaged in labour relations with the

European Union or ensuring social protection for migrant workers, decision-making is made by unanimity or qualified majority.

In the formal evolution of social policies (from the community level to the intergovernmental level), the role of national state is revitalized. The social problem is, mainly a national affair, illustrative for the preferences or unhappiness of the people. The European Union intercedes in approaching the problems that exceed the capacity of member states.

Hence, the greatest support comes from the native community of the individual- the sole actor responsible to identify social dysfunctions and to deliver effective responses. Certainly, the European endorsement is limited by the principles of subsidiarity and proportionality; the intervention of the European Union is proper only if : (1) the national state is unable to act, (2) the national state gives inefficient responses or (3) the national state is powerless towards the full accomplishment of social problems.

AN OUTLOOK UPON THE EUROPEANIZATION OF THE SOCIAL POLICY. A JURIDICAL PARADIGM

When discussing about the spirit of national legislation, we ensue an intricate question that claims more than technical exegesis. The spirit of the law is embodied in religion, personal belief, culture, tradition, civilization, and external influences. External stimulus can be introduced, in the domestic state reality by other actors – from countries to independent political constructions. As an autonomous actor on the global scale, the European Union sends impulses to the member states and interacts with other actors. Its paramount influence is translated at the normative level. The symbiosis of domestic and European regulations foresees a both normative and informal compatibility. The informal compatibility stands for common values, objectives, visions, but most importantly, it stands for a compelling sense of solidarity. Pursuing this idea, two main concepts become self-evident : *the Europeanization of social policies* and *the perceptibility of national binding norms that regulate social policies*. Bringing up the Europeanization question, many affected scholar definitions are ought to unfold : (1) *Europeanization is an incremental process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making* (Ladrech, 1994); (2) *the emergence and development at the European level of distinct structures of governance, that is, of political, legal and social institutions associated with political problem solving that formalizes interactions among the actors, and of policy networks specializing in the creation of authoritative European rule* (Risse and Cowles and Caporaso, 2001); (3) *a process by which domestic policy areas become increasingly subject to European policy-making*. (Börzel, 1999)

We take a different approach. From our point of view, the nation-state is the place of departure, when considering the Europeanization process and the action of the European Union. Domestic norms entail a plurality of binding dispositions, that intend to establish a conformist behavior and to punish any devious behavior.

Normative action is effective only if citizens are willing to recognize and submit to lawful prescriptions. Legal sanctions, engendered by the legislator, are not a satisfactory evidence of the reason why individuals abide by law. To complete the demonstration of the law-compliance-thesis, we must center on informal elements of cultural nature. In fact, social problems of various typologies such as unemployment, discrimination, health, education are best portrayed in domestic regulations, because of their pre-determined peculiarities that are intercepted due to the interaction of influential factors belonging to the national system. The level of economic development, the collective mentality in assessing social roles, the national culture of participating to civic life, the general tendency in perceiving work and career – are just a small sample of the undivided national identity. We do not intend to articulate, more than it is necessary, the idea of national-specific elements' contribution to the process of norm-building. On the other hand, we desire to signal, as major thoughts of our dissertation, some personal findings : (1) *Europeanization is a process that starts from the nation-state*; (2) *the most visible instrument of the Europeanization process is the normative instrument*; (3) *this process entails the solicitation, from part of the Nation-State, of rules and regulations*; (4) *the European level must respond to these solicitations, considering the peculiarity of the social problems that state-members deal with at the national level*.

We argue that, the European regulation system of social matters answers the purpose of nation-states and achieves the gathering of all the aspects of the social issues at a higher level. Therefore, European regulations can be deemed as binding for nation-states but only because nation-states have already configured the European legal process, by means of informal influences. European regulations are merely the formal answers to informal impulses given by member states.

The juridical view upon social policies is not bound to abolish all forms of interpretation concerning the relationship between national and European strategies. We admit that, juridical (formal) values are important in observing the intermission between the two levels of analysis, but they are not to be considered quantification tools of the national response to European actions. Juridical informal values are more permissive and widen the research.

Creating norms by national authorities is usually taken for a mimetic process which is contingent to European dispositions. We indulge such an approach but we don't fully comply with it. There is a broader, more comprehensive, suitable guidance in finding the best way of conceptualizing social policies. *The conditionality report* may be the way to illustrate the accommodation of national and European regulations. In light of this assumption, we argue that, the conjugation European-national level shows two main ideas : (1) *the national social interest influences European rules and regulations*, (2) *The European social policy is the bearer of national ideas and preferences*. (Grabbe, 2006)

Those two suppositions are valid if we take into account that *social risk* – the premise of social action- can be easily scanned at the national level, -

subsequent to its decoding, it will be sent to European decision-makers for processing and resolving.

It is only fair to envision social risk as a social national aspect, due to the fact that it depicts problems that are shaped by national factors: events that prevent getting a regular income from exercising a professional activity; events that affect totally or partly the work capacity; events which affect the individual's income and produce the decline of living-standards. The peculiarities of their manifestation can be found in the national factors.

Although we emphasize the role of nation-state and its involvement in the formation of social policies, we cannot deny the European Union's role in the social issue.

More plainly, European initiatives, like *the European Employment Strategy*, matter for the nation-state. Launched at the Luxembourg Jobs Summit of November 1997, *the European Employment Strategy* is the instrument by means of which, the European Union decided (as a result of the analysis of the national social problems) to add to its agenda four main objectives : (1) *entrepreneurship*; (2) *employability*; (3) *adaptability*; and (4) *gender equality*. (Cerami, 2007) Member-states avouch and assume those guidelines in the national plan of action. It is a natural reaction of member-states because the European objectives, that we described, are well-known problems of the social reality of member-states. Ergo, our paradigm advancing a bottom-up Europeanization process, is not affected.

All in all, we grasp social policies as a common point of interest of both national and European levels. We acknowledge that, the actions of national and European actors are interfered but, within this oscillation, the balance leans towards the action of member-states.

Social policies are a sore point for national debates and this fact makes the national legislative process even more sensitive to social issues. As we've already stated, regulating a social aspect means more than imposing social standards; it means analyzing the surrounding reality and considering informal features. This is the reason for which social policies have the tendency to reply to European modulations while retreating into the national sphere of action.

THE EX POST EVALUATION OF SOCIAL POLICIES. THE STAKE OF RETURNING TO NATIONAL STATE ACTION

Regarding the European social reality, Bernd Henningsen affirmed : *if the European identity exists or grows – this is not the achievement of the Common Market, it is the success of a well-thought social justice policy*. The social justice policy can be found in the national state - this statement is reflected in the legal norms transposed from the European juridical frame, and in the peculiar realities, that can be understood, only by calling a specific cultural mentality. The process of delivering European regulations on the domestic level must be perceived as providing best practices - from which only some will be selected by national authorities. Embracing the European law is not the same with enforcing rules that are validated solely at the European level.

A social policy, that is coherent and close to the individual needs, emerges from the ceaseless national-supranational oscillation, in which the focus point is the national frame of action. *The stake of returning to national state action* – that we stated in the above subheading is an improper formulation – we should discuss about *the re-discovery of the national sphere of action as the suitable sphere of identifying the social problem*, or we should underline the *intensification of the sphere of national state's social action*.

ULTIMATE NOTES

Our dissertation is not intended to be a blaze-path in the field of Europeanization, nor a mastermind in finding new guidelines in conceptualizing the Europeanization issue. Our goal is to mirror the Europeanization phenomenon in juridical regulations and to understand and analyze the effect of this mirroring. The target of these analytical activities is represented by the social policy. All these affirmations amassed, are bound to state that, the main objective of this paper is focused around demonstrating the fact that, by means of legal dispositions, we can assess the future orientation of the social policy.

We've begun our thesis with the idea that, at the European level, the social element was born under an insecure patronage. It is notorious the fact that, the bold project of the European unification relates to historical testimonials like : the consolidation of the Carolingian Empire, the release of the thesis *Congregatio Concordiae* or drafting the paper *De recuperatione Terrae Sanctae* – which laid stress upon the economic and political factor, losing sight of the social factor. It was not until Schuman's modern reformulation of the desire to establish a federal Europe, that the social dimension emerged.

Hereinafter, we've harnessed the metaphor of the Welfare State in the process of describing the social policy and its connotations, thereby pursuing to highlight that nation-state is the only actor that can be fully sensitized in disclosing and treating social deficiencies.

As we've predicted, the legal paradigm will dominate our discourse, unveiling both a national and a European dimension of the provisions regarding the social policy. In presenting the legal paradigm of the social policy, we paid a tribute to a narrative perspective whose aim was stated in two main directions : (1) to inform upon the legal social framework and (2) to underline the role of legal rules in influencing the orientation of the social policy.

We've dedicated a special section of our paper to the innovative regulations brought, by the Treaty of Lisbon, in the social sphere of action. This section has the role to clarify the polemic (supported by previous regulations) concerning the national or the European space of affirming the social issue.

It is unusual to perceive the process and the precepts of Europeanization in juridical parameters. Nevertheless, we've elected the legal tool in order to obtain a nonpareil portrayal of trends in the evolution of social policies. In the last two sections of the paper, we've highlighted the implications of the nation-state in

shaping and defining social policies, by arguing that, local social needs are the creative vectors of European actions.

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