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## THE DEVELOPMENT OF SOCIAL EUROPE IN THE 20<sup>TH</sup> – 21<sup>ST</sup> CENTURY: PROBLEMS AND PROSPECTS

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The most revolutionary changes in the legal and socio-economic development of European countries took place in the second half of the 20th century. They are associated primarily with the creation of the European Communities which economically transformed into a powerful supranational European Union. Although the 21st century has just begun, it already introduces significant amendments and qualitative changes in global processes that are inevitably absorbed by the European countries. Despite the fact that these processes are typically caused by political and economic factors, and primarily affect business environment and political spheres in a particular country, region or the world in general, their social consequences currently play an important role. This means that it is not accidental that according to scientific predictions social problems will determine the specificity of a new century. If the following con-

clusion regarding certain regions or the whole world still looks debatable, at the national level this statement seems quite reasonable as evidenced by the supplementation of traditional principles of constitutional order with the principle of social statehood<sup>1</sup>.

After the Second World War in many Western European countries the legal regulation of social policy was carried out, but the disadvantage was that it provided only a minimal social assistance

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<sup>1</sup> Яковюк І. В. Реалізація соціальної функції держави в умовах європейської інтеграції / І. В. Яковюк // Державне будівництво та місцеве самоврядування: зб. наук. пр. – 2004. – № 7. – С. 40–48; Яковюк І. В. Проблеми становлення й розвитку соціального права в Європі: історико-правовий аналіз / І. В. Яковюк // Юридичний науковий електронний журнал. – 2014. – № 5. – С. 164–167; Головащенко О. С., Окладна М. Г. Європейський соціальний простір: проблеми формування / О. С. Головащенко, М. Г. Окладна // Юридичний науковий електронний журнал. – 2015. – № 3. – С. 12–14.

and required adjustments in accordance to socio-economic needs of society which was a subject to constant changes. It should be noted that from the very beginning every country was forming the system of social protection, based on the specific national circumstances and in accordance with the ruling ideology, disposal of political forces and in accordance with the requirements of time. The existence of several quite different models of social state in Europe which variously interact with civil society and market economy – made the task regarding the harmonization of social policy of EU Member States extremely difficult to achieve.

However, the fact is being gradually realized at the level of national governments and institutions of the European Communities that the formation of social space within which equal opportunities are provided for everyone who live within its limits – will prevent uneven socio-economic and legal development of the Member States, the appearance of Europe of «different speeds», which would lead to recreation of existing in the social sphere differences on communitarian level.

The social policy of united Europe has gone through several stages during its development. The improvement of the mechanisms of its functioning, the expansion of competence of supranational institutions, the creation of a new organs that can cooperate with national governments with regards to the issue on implementation of social functions – have always been caused by the requirements of economic and only in the late 20th century political integration. Therefore, V. I. Salo states that disputes re-

garding the correlation of national and supranational levels of government has never stopped and depending on the specific historical conditions and needs touched certain areas of regulation of social sphere. Thus the expansion of the powers of the EU institutions in the social sector was extremely slow<sup>1</sup>.

The renewal of the paradigm of social development and social policy in the EU was very consistent and gradual, taking into account the previous achievements of Member States and the community as a whole, existing national traditions based on an in-depth analysis of current status and perspectives of its development on the basis of politically productive, and responsible principles of the social balance (social justice, social solidarity, social cohesion and social integration) and the dialog<sup>2</sup>. As a result, the level of centralization of social policy on the supranational level was largely determined by the nature of the problems which were set for an integration union – peculiarities of the corresponding stage of development.

Despite the fact that EU Members had differences in their vision of the purpose of social policy<sup>3</sup>, as well as its content, the majority of them (except for UK

<sup>1</sup> Сало В. І. Внутрішні функції держави в умовах членства в Європейському Союзі: дис. ... канд. юрид. наук: 12.00.01 / Володимир Ігорович Сало. – Х., 2008. – С. 161.

<sup>2</sup> Люблинский, В. В. Социальная политика в условиях трансформации общества в странах Запада: вторая половина XX – начало XXI в.: дис. ... д-ра полит. наук: 23.00.02 / Виктор Викторович Люблинский. – М., 2005. – С. 299.

<sup>3</sup> Вітте Л. Європейська соціальна модель і соціальна згуртованість: яку роль відіграє ЄС? / Л. Вітте. – К.: Заповіт, 2006. – С. 7–8.

and Ireland) declared their desire to bring national social models in line with the model, which was called the European Social Model (hereinafter – ESM). Thus they once again confirmed their commitment to European humanitarian values, common interests and human rights, and also an intention to achieve a balance between economic growth and social justice. Hence, by introducing ESM, European governments aimed to achieve a substantial improvement of well-being and to increase the level of economic development of the Union in general and each Member State respectively, to ensure the effective functioning of the economy and a fair distribution of social wealth.

The construction of a single social space in Europe intensified in the second half of the 1980s and was associated with the need to obtain broad social support for the integration process which had reached the level of transformation of the European Communities to the European Union. The EU social policy recognized as one of the principal tools of integration after the adoption of a Single European Act (hereinafter – the SEA). During this period the positioning of the community started, which was formed within the European Communities as a socio-political civilization of a new type – based on the democracies of European type, socially oriented market economy, legal and social state. The SEA introduced to the agenda such a difficult task as the formation of a single social space within the Community. It slightly extended the competence of a supranational institutions in the social sphere (in

compliance with the principle of subsidiarity<sup>1</sup>, but it managed to break the unanimity principle when resolving issues related to the safety and health of workers. Another innovation introduced by the SEA was a recognition of the role of social partners as essential participants in the implementation of the communitarian social policy.

The implementation of an objective of the development of social community demanded the changes in the existing approaches and those changes took place. The EEC Treaty was supplemented with the Chapter «Economic and Social Connection», Article 118a, which determined the responsibility of Member States for resolution of social problems; Article 22, which put on the Commission a duty to promote a dialogue between the social partners. However, the most essential innovation was a breach of the principle of unanimous voting – it was envisaged that the issues related to safety and health of workers are passed by a qualified majority of votes.

A further substantial step on the way of formation of the European social model was the adoption of the Community Charter of Fundamental Social Rights of Workers in 1989 which secured 12 basic rights: the right to work in any Member State; the right to a fair remuneration for work; the right to improvement of living and working conditions; the right to social protection ac-

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<sup>1</sup> Яковюк І. В. Субсидіарність як принцип взаємовідносин національних держав і Європейського Союзу / І. В. Яковюк // Вісн. Акад. прав. наук України. – 2004. – № 4. – С. 22–30.

ording to the rules of the EU Member States; etc. The Charter, which had a political rather than a legal nature, did not extend the competence of the Community in the social sphere. However, it can be considered as an attempt to clarify the content of the European social model.

The expansion of the legal framework of social policy was made as a result of signing of the Maastricht Treaty establishing the European Union, that supplemented the Treaty establishing the EEC with the Chapters VIII «Social policy, education, vocational training and youth» and XIV «Economic and social connections.» In turn the Amsterdam Treaty envisaged the activation of social policy and harmonization of national social legislation. The social policy of the EU is currently understood as firstly, the development of the concept of the EU activities in the social sphere; secondly, the identification of determinants, which guarantee the quality of life, steady growth, competitiveness and other key indicators of the thorough growth of the EU potential; thirdly, the creation of a comprehensive system of measures and programs, social techniques which ensure the social stability, overcoming of internal contradictions and the struggle between different social forces; fourthly, the formation of the mechanism that will guarantee the interests of the EU and the resolution of corresponding tasks in the social sphere; fifthly, 'forecasting' of social future of the EU, ways of social development of a new society that integrates and possible consequences of this complex and

largely contradictory process<sup>1</sup>. This means that the present policy of the EU became more interesting than during previous stages of integration when its job was limited to resolution of the issues of payment and labor conditions, training, pensions and social assistance.

Among all the documents that were adopted, a particularly interesting one is the Protocol, which consolidated the EU right of implementation of social policy and defined the limits of its interference. Nowadays these agreements with annexes and «Program of social actions» determine the legal basis of social policy of the Union and provide legal conditions for the implementation of the rights proclaimed in the Charter. Adopted documents showed the awareness of the Europeans of a need to pay attention to the problems that define the concept of «social dimension».

The term «social dimension» focuses the social consequences of each direction of the EU policy and activities of the Union is seen through the prism of its existing framework of social problems. The introduction of the concept of «social dimension» should be interpreted as the intention of the European Union «to face the man» and build all its activities in accordance with social norms, preventing the development of such a problem as «social dumping». In the geographical borders of the EU social dimension is expressed through the

<sup>1</sup> Каргалова, М. В. Социальная политика Европейского Союза. Концептуальные аспекты и тенденции развития в 80–90-е годы: дис.... д-ра истор. наук: 07.00.03 / Марина Викторовна Каргалова. – М., 1999. – С. 12.

creation of a single social space – a category that means a space within which under the EU law social policies of the Union are implemented<sup>1</sup>.

In the early 1990s united Europe faced a number of problems in the social sphere, the most important of them are the following two: firstly, the expansion of the powers of the EU organs and institutions that would allow them to implement measures in the framework of national governments' social functions of the state quickly and effectively; and, secondly, the implementation of the principles of convergence (economic and social cohesion of the Member States of the EU) and the harmonization of national social security systems. These problems have become especially important given the growing negative attitude of Europeans to the problem of social inequality.

It is not the first time when the united Europe faced the need to implement policies of economic and social cohesion. When Great Britain, Ireland and Denmark entered the integration Union in 1973, the European Community for the first time faced the objectives regarding joint actions which were different from those that the social and economic development partners had. The answer to the following challenge was the establishment in 1975 of the European Regional Development Fund, whose activities were concentrated on

supporting regional development programs. The acquisition of the EU membership by Greece, Spain and Portugal further exacerbated the problem of existing imbalances within the Community. However, the EEC had to deal with much more important problems as a result of integration of CEE countries which were significantly behind the social standards of the EU. In this regard, there was an increase in the threat of social dumping in the EU. The conflict of «old» and «new» Europe lies in the fact that workers of «old» Member States faced with a competition in the labor market from «new» Union members' workers who gave their consent to work for smaller salary. This situation created clear advantages for businesses of «old» Member States who got cheap labor, but it led to a devastating impact on trade union movement of the same countries. The social dumping of legal migrants from CEE countries has caused a disquietude not only of trade unions, but also of local population which felt a threat to their high standard of living.

To solve the problem by introducing restrictions on migration of labor within the European Union is unacceptable as it violates one of four freedoms on which a single domestic market is formed – the freedom of free movement of persons. One of the ways of problem resolution is the implementation of the EU phased measures of the integration of labor markets of a new EU Member States to the all-European labor market. Such measures that are imperative in nature are traditionally listed in the protocols to the

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<sup>1</sup> Каргалова, М. В. Социальная политика Европейского Союза. Концептуальные аспекты и тенденции развития в 80–90-е годы: дис... д-ра истор. наук: 07.00.03 / Марина Викторовна Каргалова. – М., 1999. – С. 7–9.

agreements on accession. However, this way has certain drawbacks, since the protocols contain a limited list of requirements in the field of social and labor relations which must be complied with by a new Member States. As a result, in respect of a considerable number of relations within the scope of social and labor law of the EU, the requirements for their adaptation to the relevant all-European standards are not established.

The contraposition of economic and social rights, and the erosion of social standards between «old» and «new» EU Member States threatens the EU with the process of disintegration that induces the institutions of the Union to respond to the problem. The European Parliament passed a special Resolution in 2008 (European Parliament resolution of 22 October 2008 on challenges to collective agreements in the EU (2008/2085) INI), in which it emphasized that it is inadmissible to give preference to economic rights over social. The Parliament also invoked national governments to develop measures jointly which would limit a social dumping between the EU Member States.

The Head of the European Commission J. M. Barroso demonstrated a commitment to the idea of the provision of social rights in his message to the European Parliament (2009), in which he noted that social rights, including the right to strike and to unite are fundamental to the European model of society. During his speech at the plenary session of the European Parliament (15 September 2009), he empha-

sized on several fundamental positions for the Commission: a) the financial crisis requires constant attention to the social dimension of all levels of government where decisions are made; b) the priority of the European Commission will still remain the provision of a high level of employment and a social unity; c) it is inadmissible to oppose the freedom of movement and social rights; d) the Commission will vigorously fight social dumping regardless of the forms of its manifestation; e) the European Parliament together with the Council should develop legislation that will regulate issues which have arisen in connection with the dumping of labor<sup>1</sup>.

The expansion of functions of communitarian institutions of the EC indicates that their role in the sphere of implementation of social policy is intensified. Nowadays they are involved in the following: development of a strategy of social evolution of the EU, framework programs of social actions and general guidelines; conduction of numerous researches on promotion of social dialogue; analysis of the situation and monitoring of the agreed course and implementation of the decisions within the Member States, and where necessary – development of recommendations for national governments; coordination of Member States'

<sup>1</sup> Position Paper from the European Federation of Building and Woodworkers on fundamental social rights in the European Union [Электронный ресурс]. – Режим доступа: <http://www.efbww.org/pdfs/FSR%20GB%20new.pdf>.

actions; development of supranational legislation on social issues and control of its implementation into national law; development and execution of their own initiative programs which are financed by the EU budget through loans of the European Investment Bank and other sources<sup>1</sup>.

The history of European integration proves that the processes of economic and political integration are largely determined by the degree of compatibility of social space of the countries that take part in it, so far as the formation of an integral social organism implies a certain compulsory outgoing level of qualitative compatibility of its components on the basic parameters including social. However, not all countries adhere to a unified view of social policy in the EU and, therefore, there are a lot of significant differences between Member States in the degree of socio-economic development, and each stage of the expansion of the Union only emphasizes the existing differentiation.

The analysis of the implementation of social protection policies attests that in the EU there is a significant number of differences between Member States in terms of spending on social protection<sup>2</sup>. However, they are only partly connected with the difference in well-being and prices. They reflect more the

existing differences in national systems of social protection, regarding the unification of which there is a clear ban in the Union – in demographic trends, unemployment rates, as well as other social institutional and economic factors. Thus the indicators of social spending in Spain, Portugal and Ireland prove that the EU membership does not automatically lead to a rapid levelling of existing differences in standards of social security between new and old Members of the Union. Besides there are countries outside the EU that with regards to social expenditure are practically at the same level with the EU states that are leaders in conduction of social policy. Therefore, the level of social protection depends not so much on the EU membership, as the effective social policy of national governments, as well as the activities of the institutions of the European Union which can have an influence on social policies of Member States with the help of EU Structural funds.

In March 2010 the European Union has developed and adopted a new strategy of economic evolution for the next ten years «Europe 2020: A strategy for smart, sustainable and inclusive growth»<sup>3</sup>. One of the objectives of the Strategy is to ensure a comprehensive growth, which should provide people with new opportunities through the high

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<sup>1</sup> Савич М. Особенности функционирования механизма социальной политики Европейского Союза на современном этапе / М. Савич // Белорус. журнал междунар. права и междунар. отношений. – 2003. – № 2.

<sup>2</sup> Яковюк І. В. Правові основи європейської інтеграції: загальнотеоретичний аналіз / І. В. Яковюк. – Х.: Право, 2013. – С. 601–602.

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<sup>3</sup> Europe 2020: A European strategy for smart, sustainable and inclusive growth [Електронний ресурс]. Режим доступу: <http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf>.

level of employment, investments in the knowledge and skills, by fighting poverty and improving labor market, education and social security – which all together contribute to construction of the united and more socially homogeneous society. To sum up, the European Union determines the success of the economic integration of actual achievements in social policy, emphasizing the role of the

latter in the priorities of the EU for now and for next ten years.

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