

Working Notes

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The Social Dimension of Europe: Withered on the Vine?

Denis Clerc

Introduction

There is obvious disenchantment among Europeans with 'Project Europe'. This is largely due to a feeling that the social dimension of the project is being sacrificed in the interests of the economic dimension, while at the same time the supposed benefits of 'free and undistorted' competition are not forthcoming.

No doubt, this is a rather sweeping judgment. But we can see that it is not totally lacking substance and that, in the matter of social policy, the European Union has indeed shifted ground since the signing of the Treaty of Amsterdam in 1997. Clearly, it is not a case of total abandonment, as is sometimes said. But successive shifts, which can be seen over a period of fifteen years, show clearly that the social dimension is now viewed by the European authorities more as a burden than as the cement that binds a shared construction.

Economic and Social, Side by Side

In spite of some hastily-drawn conclusions, the 'Common Market', as it was called in the period 1960–1970 at the launch of the European project, was not just a 'Europe for Business'. It instituted the European Economic and Social Committee, bringing together representatives of the social partners (employers and employees), and the European Social Fund, intended to improve employment opportunities. These two institutions still exist, and their rights and privileges, like their operating budget, have not ceased to grow.

Furthermore, the Treaty of Rome laid down two fundamental provisions: on the one hand, giving to workers from Member States the right to work in other Member States, as well the conditions of work and social benefits of the host country; on the other hand, stating that the health, working conditions, and the social rights of workers belonged to the area of Community action.

It has thus been possible for the Commission to rely on numerous Directives, which Member States are obliged to incorporate as national rights – on safety in mines or on ships, on protection against

noise or toxic products, on the maximum length of the working week, on collective redundancies, for example. For sure, the economic wing of the Treaty of Rome (and of the treaties which succeeded it) was clearly developed more than the social wing, but in fact both existed side by side.

A Shift in the Balance

In the 1980s, the great liberal economic shift began in Project Europe. Starting from the Single European Act (1985),¹ it moved on through the Treaty of Maastricht (1992), leading in 1998 to economic and monetary union and the single currency. The paradox attaching to this period is that this shift occurred under the leadership of Jacques Delors, whose entire strategy was aimed at developing the social wing at least at the same pace as the economic wing, so as to combine together (as he wrote in his *Mémoires*) '... the competition that stimulates, the cooperation which strengthens, and the solidarity which unites'.² So much was this the case that this period turned out to be 'the golden age' of social Europe, if one is to believe Jean-Claude Barbier.³

Jacques Delors relied on the Economic and Social Committee – 'a very good travelling companion', he wrote – to re-launch the social dialogue. The collective agreements between social partners at the European level have been taken up in the Directives of the Commission, for instance on parental leave (1996), on part-time work (1997), on information and consultation of employees (1998), and on fixed-term contracts (1999).

At the same time, the 'Community Charter of the Fundamental Social Rights of Workers' was presented at the Strasbourg Summit (December 1989). Only the United Kingdom refused to sign the Charter.

Similarly, the UK opposed the socially progressive provisions which should have been integrated into the Treaty of Maastricht – provisions relating to equality of men and women, conditions of work, information to employees, work security and social inclusion. In all these areas, it was provided that henceforth only a qualified majority (rather than

unanimity) would be needed for their adoption by the Council of Ministers. These provisions were put on the back burner in an annexed Protocol signed by eleven Member States (out of twelve at that time), before being finally integrated into the Treaty of Amsterdam in 1997, the United Kingdom having had, in the meantime, a change of government and point of view.

Overall, as Robert Salais says in *Le viol d'Europe*,

*... one can conclude today that the Social Europe launched by Delors held out before us [a model aimed at] creating, by way of social rights, the first foundations of a European political community ... but ... in fact it [the community] is restricted to trying to put in place ... a social project focused on the creation of an area of fair competition and, consequently, is always threatened by dirty tricks aimed at undermining protections.*⁴

But one can also say – in the opinion of the writer of these lines – that Delors, knowing that the economic and political context was one of unbridled liberalism, succeeded in limiting the social impact of this and thus stemmed the liberal tide. This is not the case with Delors' successors, who have been less courageous and less determined.

Role of European Court of Justice

From 1997 on, in fact, social issues were to become 'an instrument of economic competitiveness', as Michel Dévoluy puts it,⁵ and it became a question of ensuring that they did not 'hamper the dynamism of the market economy'. Surprisingly, this priority given to economic issues at the expense of social issues was affirmed not by any economic institution but by a judicial one – namely, the European Court of Justice.

The Court of Justice has played a surprising and important 'unravelling' role: surprising, because, at least in France, the judge is frequently the one who strikes down economic decisions (or, at least, determines their limits) when they do not take the social dimension sufficiently into account; important, because in a series of landmark judgments, the Court has established a jurisprudence which subordinates social issues to economic freedoms.

In the case of Schmidberger (2003), the Court of Justice held in favour of a German company whose trucks had been blocked by a demonstration

in Austria, preventing access to a bridge. The demonstration was authorised locally, without the state showing any particular concern. The Court considered that the state had implicitly tolerated a form of restriction on freedom of movement, giving rise to economic damage in the same manner as protectionism.⁶

In the case of Viking (2005) the Court held in favour of a Finnish company which, in order to reduce its costs, had laid off its Finnish sailors, registered its ships under the Estonian flag, and hired an Estonian crew: the freedom of establishment was judged more important than the collective action of the Finnish trade union.⁷

Similarly, in the judgment in the case of Laval (2007), the Court held in favour of the Latvian subsidiary of a Swedish company which had seconded Latvian workers to build a school in Sweden – at Latvian rates of pay and working conditions. Indeed, though a European Directive lays down that workers on secondment be paid in accordance with the laws of the host country, it limits this obligation to regulations imposed by law, whereas in Sweden, in the area of social rights, collective agreements predominate.⁸

In France, the Laval case is of little importance, because the essentials of the social rights of workers are fixed by law (in respect of social contributions, security, leave, conditions of employment) or by extended collective agreements having the force of law. Nevertheless, around 200,000 workers from other EU Member States are today in seconded employment by means of Hungarian, Polish or Czech agencies specialising in temporary agency work (and, in the future, Bulgarian or Romanian agencies also, since from 1 January 2014 the freedom to travel and work covers workers from these two countries). But their social security contributions are paid to their home countries, in line with the contribution scales of the latter. Now, these scales are characteristically very weak in the countries of former Eastern and Central Europe, while the net salary which is given to these workers is almost always fixed in line with the minimum point on the scale of the collective agreement of the user branch.

In Germany, in the absence of a minimum legal wage,⁹ the Laval judgment allowed the employment of workers on secondment at two or three euro an hour in sectors where difficult working conditions reduce the number of national applicants for

employment. Thus the freedom of movement of workers in the EU is having the effect of undermining the foundations of social protection in the more developed countries.

The 'Open Method of Coordination'

Other European institutions, apart from the Court of Justice, have also played a role in this relative weakening of the social dimension. Over the past decade and a half, the Open Method of Coordination (OMC) has become an increasingly important feature of the governance of the European Union.

With the OMC, the Commission is given responsibility for preparing a 'social agenda', which proposes wide strategic objectives, sometimes quantified, to be attained at a distant date (since 2010, this is the ten-year growth strategy, *Europe 2020*). Once these objectives are ratified or amended by the European Council, each Member State is invited to prepare annually a report of the means deployed to attain them, and the results which have been obtained. The mechanism is thus entirely voluntary: so it is neither a Directive, nor a Regulation nor a Decision, nor does it relate to financing. The OMC is based solely on 'benchmarking', and is a sort of 'honour roll' of inter-country comparisons of national results, with the hope that the examples of 'good practice' will have spill-over effects.

In the social domain, the result has often been a kind of competition between 'national models'. Hence the drastic reforms of pensions and of unemployment compensation which have reduced salary costs so as to improve competitiveness – one thinks of the 'Hartz' labour market reforms implemented by Chancellor Schroeder in Germany.¹⁰ The reforms in question then seem desirable also in other countries, which are recommended by the Commission to use them as their model. From now on, it is no longer 'in the final analysis' that economic considerations are decisive, but rather 'in the first analysis'. They overshadow social considerations. To quote Isabelle Terraz:

*Pretending to be unaware that the systems of social protection and labour market institutions are the result of the uniqueness of each country, of historic compromises and of different cultural models, the OMC promotes a particular social model, convinced that it is the right approach in facing the challenges of tomorrow.*¹¹

It must be stressed, however, that even if the OMC has possible negative effects, it can also revitalise certain social policies. In particular, from now on, every European objective is based on target outcomes, developed Member State by Member State. Thus, one of the principal strategic objectives of *Europe 2020* is the reduction by 20 million in the number of people in a situation of poverty or social exclusion.

Three indicators are used to measure the number of people in this situation: a monetary indicator (persons whose standard of living is below the national poverty threshold); an indicator of 'severe material deprivation' (accommodation, food, payment delays); and an indicator of 'low work intensity' (households in which adults below 60 years have worked for less than one-fifth of their time in the course of the year gone by).

In 2010, it was calculated that 117 million people in the EU lived in households where at least one of these situations obtained. In 2012, this figure exceeded 125 million, because of the financial crisis. The Social Protection Committee (one of the fora of the European Commission) follows these indicators attentively (along with those relating to retirement, health and unemployment). It draws the attention of each Member State to delays in relation to European objectives and also plays, to some extent, the role of whistle-blower.

One may hope that this role will encourage states to make additional efforts to correct certain tendencies. The same applies to another of the objectives of *Europe 2020*, namely the proportion of young people in the 18–24 age bracket who have discontinued their training prematurely. The objective is to reduce this rate from 14 per cent (the 2010 level) to 10 per cent. In their annual reports to the European Commission (that is, their National Reform Programme (NRP) reports),¹² Member States have to explain the reasons for coming closer to, or moving further away from, the targets. The Commission may then formulate recommendations, even when these objectives are not the responsibility of the Community authorities. Thus, social protection and education, which for the most part remain national prerogatives, may be 'communitised' to some extent in the process of 'multilateral surveillance'.

Conclusion

Overall, it can be seen that the social dimension is not ignored in the European project. But, as

Michel Dévoluy points out, not unreasonably, ‘the instrumentalisation of the social dimension in the interests of competitiveness weakens the European project’.

This brings with it the risk that a type of social dumping will be institutionalised at the very heart of the Union. The social dimension instead of being an integral part of economic integration – as was the case during the ‘Common Market’ period – could then actually contribute to its unravelling, with each country seeking to reduce costs and in doing so reduce the welfare state component which was the characteristic of the founding Member States. This risk has recently been heightened because of the priority given to competition and the role of the market.

‘Social Europe’ still exists, but it is tending to become weaker, for it is more and more seen as a cost, and not as an investment in people, quite the opposite of pronouncements of Jacques Delors and Michalel Dollé.¹³ The financial crisis has forced most countries – except, alas, the countries judged to have excessive public debt – to increase their expenditure on social protection in order to contain the depressive effects of the crisis. In this context, the crisis has, paradoxically, shown the importance of maintaining or of developing the welfare state. It remains to persuade the European authorities that this positive aspect also applies to people, by fostering their autonomy, their employability, and their social integration.

- 2007, *International Transport Workers’ Federation and Finnish Seamen’s Union v Viking Line* (Case C-438/05; [2007] ECR I-10779).
8. Judgment of the European Court of Justice of 18 December 2007, *Laval v Svenska Byggnadsarbetareförbundet* (Case C-341/05; [2008] IRLR 160).
 9. On 2 April 2014, the German Government agreed to introduce a statutory minimum wage, setting this at €8.50 per hour. The minimum wage will come into effect on 1 January 2015.
 10. The Hartz Reforms were implemented between 2002 and 2005 and were based on the proposals of a commission chaired by Peter Hartz. They aimed to reduce unemployment and enable the creation of new jobs through a series of measures focused on reforming the labour market and changing entitlements to unemployment payments.
 11. Isabelle Terraz, ‘L’ambiguïté de la notion de modèle social européen’, in Michel Dévoluy et Gilbert Koenig (eds.), *l’Europe économique et sociale: Singularités, doutes et perspectives*, Strasbourg: Presses Universitaires de Strasbourg, 2011, p. 195.
 12. ‘NRPs contain national targets relating to EU-wide headline targets and explain how governments intend to meet them and overcome obstacles to growth. They also set out what measures will be taken, when, by whom and with what budget implications.’ (http://ec.europa.eu/europe2020/documents/related-document-type/index_en.htm)
 13. Jacques Delors et Michel Dollé, *Investir dans le social*, Paris: Odile Jacob, 2009.

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Translation by Bill Toner SJ.

Notes

1. The term designates an overview of amendments to the Treaty of Rome aimed at implementing a ‘single market’, within which the rules would be the same for all participants, whether they be nationals or originally from other Member States, in order to increase competition.
2. Jacques Delors, *Mémoires*, Paris: Plon, 2004, p. 326.
3. Jean-Claude Barbier, *La longue marche vers l’Europe sociale*, Paris: Presses Universitaires de France, 2008, p. 83.
4. Robert Salais, *Le viol d’Europe: Enquête sur la disparition d’une idée*, Paris: Presses Universitaires de France, 2013. The citation that follows (p. 325) is the commentary, by Robert Salais, of the point of view of the attorney Piores Maduro.
5. Michel Dévoluy et Gilbert Koenig (eds.), *l’Europe économique et sociale: Singularités, doutes et perspectives*, Strasbourg: Presses Universitaires de Strasbourg, 2011, p. 175, from which this article has drawn heavily.
6. Judgment of the European Court of Justice of 12 June 2003, *Eugen Schmidberger, Internationale Transporte und Planzüge v Republic of Austria*, (Case C112/00 Schmidberger 2003] ECR I5659).
7. Judgment of the European Court of Justice of 11 December

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