

# Prospects for a European Social Policy

*Comments by Wolfgang Däubler\**

## 1. INTRODUCTION

In the following short statement, I would like to deal with three points. 1) What are the social problems workers will be confronted with during the next years? 2) Is there sufficient protection in Community law to face all possible difficulties? 3) Can a Community Charter of Fundamental Social Rights be helpful?

## 2. SOCIAL PROBLEMS OF THE INTERNAL MARKET

Discussions on the prospects of the internal market are mainly based on the optimistic view of the Cecchini-Report: The growth of economy will create at least 1 1/2 million new jobs. If the governments use their power, this number will go up to 5 million. It is, however, not my task to give a summary of the 16 volumes of the report and to raise objections to its methodological assumptions and to its results - will lower costs and higher profits really create new jobs? Even if its optimistic views are completely correct and realistic, a lot of social problems will arise.

- There will be a restructuring of some branches of industry which so far are protected by different technical norms and by public authority supply policy. A working group composed of leading Commission officials has drawn up a list of these branches which include for instance locomotives and some parts of power plants. The comparison with the US-market shows that some of the present producers will probably disappear.
- Restructuring with loss of working places is expected in the banking and the insurance sectors where the freedom of delivering services will be implemented.
- In some few branches there may even be social dumping. A German study mentions the transport and the construction sectors. If wages in Germany are nearly three times higher than in



Portugal, why should German transport firms not go to Portugal, found a subsidiary there, recruit Portuguese personnel and put them on trucks going from Hamburg to Munich?

- If the statute of the European Company is really implemented, all enterprises which adopt this legal form will have the right to move from one EC-country to another. Collective agreements binding in the national framework will thus lose their protective value. Dutch trade unions will, for instance, be obliged to negotiate separately with 'run-away' firms whose place of business will be Edinburgh or Rome. The statute of the European Company brings in a new element because companies will be able to move out without any changes in the production sphere. The employer is 'exported', the workers remain without any counterpart on the national territory. It may be added that such a company may choose a co-determination model which is far below the Dutch or the German level.

### 3. FUNDAMENTAL RIGHTS PROTECTION IN COMMUNITY LAW

Referring to Community law is not very helpful in this context. The European Court of Justice has established some general principles on the protection of fundamental rights. Its decisions deal with two quite atypical sectors of EC activities. One is the regulation of markets e.g. in agriculture and steel production where limits to Community intervention had to be established. The other is connected with the Council's and the Commission's staff. Officials can invoke fundamental rights if their personal situation is unduly restricted. This background explains why the Court is dealing mainly with traditional human rights like property or even religious freedom and why it refers so often to the European Convention of Human Rights.

The real source of future problems cannot be dealt with this way. The opening of the markets, the destruction of obstacles to the free flow of goods, capital and information is not an act which will affect human rights directly. I cannot see any lawyer claiming that the liberalization of the transport sector contravenes the general principles of Community law because it creates an opportunity for social dumping. The incorporation of the European Social Charter would bring no sensible relief. Its provisions are too vague to correct market developments. And there is a national tradition of considering the European Social Charter most difficult of all legal areas to implement on a Community level.

### 4. THE NECESSITY FOR COMMUNITY ACTION IN THE SOCIAL AREA

Any obvious lack of workers' protection in the years to come must lead to some activity by the European Institutions. This is not a moral but a political statement. If the Community gives up the idea of a social policy and reneges its implementation, it will create a serious danger to the whole process of European unity. Without a real social dimension, the Community will lose all its attractiveness for the great majority of the population. The political system of the Community, however, like every other political system, needs the support of the population. If there is reluctance or even hostility to its activities it will become impossible to achieve further progress. The internal market will fall back to the stagnation so characteristic of the 10 years before 1985. In this context, it is important to stress that the Community is not built on very solid ground.

- The EC is -what we may call- a fragmentary state. Its competence is restricted to the economy. Unlike the nation state, it cannot offer certain public goods like security or an educational system. If, on the national level there are economic difficulties, compensation in a broad sense will be possible. Even an unemployed person may say: 'Whether the government is good or bad - it is still my country'. But if the internal market creates losses of concrete jobs - will there really be the slogan: 'right or wrong, it's my European Community?'
- The EC has -as everybody knows- no developed democratic structure. We are going to elect a Parliament which has no right to make law - its strongest force is to block initiatives coming from the Community or other organs. Even this veto can legally be overruled by a unanimous decision of the Council. This lack of democracy may be of no real importance in sunshine-times - but will it be the same in a troubled sea?
- The European Institutions do not act in a very transparent way. The discussions take place behind closed doors. The best way of getting relevant information is to know some Brussels officials and to phone to them from time to time. The Official Journal is the best example of how to prevent real information by having so many printed pages that no normal human being will ever read it thoroughly. Seriously speaking, in reading newspapers and a certain quantity of EC publications you cannot be sure that you know the real reasons why a certain decision was made or even the real arguments behind it.



All these deficiencies will become important if the Internal Market leads to social problems. The European Community may suffer from peasants' demonstrations - but can it really afford to get into deep conflicts with the working classes of the Member States? Will this not end integration or at least postpone it for a long time? Social policy is, under these circumstances, not a matter of charity but a political need.

Two months ago, the Economic and Social Committee passed a resolution demanding a guarantee of fundamental social rights. This guarantee was to take the form of an ordinance or a directive binding on the Member States. In order not to continue the tradition of minimizing the importance of the European Social Charter, the authors will avoid using the word 'charter'. They don't propose any new word but their intentions go in the direction of a European Act of Fundamental Social Rights.

The resolution of the Economic and Social Committee deserves support. Fundamental social rights make it easier for workers to identify themselves with the EC. The main condition is that these rights are really implemented and will not remain an unfulfilled promise. We all know that international organizations without decision-making powers are often inclined to take very progressive views. The General Assembly of the United Nations offers a lot of examples. We would be living in a state of complete disarmament since 1961 if governments had followed its decisions. If all the resolutions of the European Parliament had been implemented we would be living in paradise or at least not far from it. We must now try to avoid having the Economic and Social Committee's Resolution go the same way and adding to the list of good-will declarations. There is some hope because of the employers' attitude. With the exception of the British and the Spanish representatives, their group voted in favour of the resolution. It would be a rather difficult task to explain to the people why such a clear position should be revoked after a few months.

It is now up to the lawyers to formulate concrete provisions. To facilitate this, let me add one suggestion. The resolution refers constantly to international conventions like the European Social Charter, the ILO-Conventions, the UN Covenant on economic, social and cultural rights. This seems to reduce the fear of going too far, a lot of these conventions being already ratified by most of the Member States. On the other hand, the majority of these treaties exists in two forms. First there is the text which is normally worded in rather general terms and second there are the interpretations given by the supervisory bodies like the committees of experts etc. which

deduce very detailed and concrete rights and obligations from them. Which of the two forms will be incorporated into Community law? What will be the interpretation of the European Court of Justice? In order not to create too much uncertainty it would perhaps be better to refer more to national constitutions. Most of them guarantee social rights whose contents and limits are described and fixed by constitutional courts. There is no contradiction between the functioning of the economic system and these rights. Why should we not build the European Act of Fundamental Social Rights on the achievements of the Member States?

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