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**DREPTUL SOCIAL EUROPEAN**

*Lucrarea a fost elaborată luându-se în considerare legislația internă și internațională adoptată până la data de 1 aprilie 2014.*

**Prof. univ. dr. Nicolae Voiculescu**

# **DREPTUL SOCIAL EUROPEAN**

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*Prof. univ. dr. Nicolae Voiculescu este cadru didactic la Universitatea Titu Maiorescu București și Universitatea Transilvania – Brașov. El are o semnificativă experiență în calitate de diplomat, reprezentant în România al Organizației Internaționale a Muncii și consilier parlamentar. El este, de asemenea, Redactor-Șef al Revistei Române de Dreptul Muncii și Președintele Asociației pentru Promovarea Educației Permanente.*

## **Cuvânt înainte**

*Această lucrare continuă cele trei ediții precedente ale „Dreptului comunitar al muncii” care spre satisfacția mea au fost bine primite de către cei interesați în domeniu.*

*Schimbarea de titlu este urmarea nu numai a evoluțiilor importante înregistrate în dreptul Uniunii Europene, dar și a dorinței mele de a prezenta dintr-o perspectivă mai largă problematica juridică și instituțională ce se raportează la modelul social european.*

*Lucrarea este și concretizarea convingerii proprii că abordarea socială este o condiție indispensabilă a succesului ideii europene și a fiecărui stat membru, cu atât mai mult cu cât contemporaneitatea confruntă lumea la nivel global cu provocări fundamentale a căror rezolvare solicită luarea în considerare tocmai a acestor aspecte.*

**Autorul**

# **ABSTRACT**

## **PART I. THE EUROPEAN SOCIAL LAW AND THE EUROPEAN SOCIAL MODEL**

The notion of European social model is defined by a high level of social protection services of general interest, the existence of social dialogue, involving coordination with collective agreements negotiated by the social partners, a special focus on social cohesion, a common set of core values, such as: political pluralism, non-discriminatory policy, tolerance, solidarity and equality between women and men, levels as high employment, sustainable and non-inflationary growth, economic competitiveness, quality of life and the environment. Some important documents clarify the content of the notion: The Treaty on the Functioning of the European Union and Europe 2020 Strategy.

The European social model is the most appropriate in the present conditions at the global scale. In order to overcome problems as unemployment, poverty, lack of food, water and energy resources, is necessary to put in practice policies based on social solidarity and responsibility towards society.

Romania, which faces with severe social problems, has a significant chance to alleviate these difficulties if the European Union policies and legislation will be applied and observed, taking into consideration the national particularities.

## **PART II. INTERNATIONAL ORGANIZATIONS WITH COMPETENCIES IN THE PROMOTION OF ECONOMIC AND SOCIAL RIGHTS**

### **The United Nations Organisation system**

Some very important documents adopted by United Nations contain provisions concerning economic and social rights, the Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights.

### **International Labour Organization**

International Labour Organization, the oldest and largest specialized institution of the United Nations was founded in 1919 by the Treaty of Versailles stressing the fundamental idea which was included in the Constitution that a universal and lasting peace not can be established only on social justice.

One of the main tasks of the International Labour Organization has been since its creation, improvement of working life by building a comprehensive code of laws and practices. It may be said therefore that the ILO has developed the international labour law through the 189 conventions and 202 recommendations adopted by 2014. Content analysis of these rules demonstrates that the ILO has a general competence, on them, in fact, all aspects of labour and social security.

Ratification of one or other of ILO Conventions by the state involves a commitment to take the necessary measures to effect the provisions thereof. According to the ILO Constitution, a control system based on regular reports and or based on complaints and claims.

Romania ratified all the ILO conventions dealing with fundamental human rights at the workplace.

In recent years, the International Labour Organization has been concerned with studying the effects of economic globalization processes have on employment in general and on quality of life in all states in particular. In this respect, in 2009 was adopted the Global Jobs Pact. The fundamental objective of the Global Jobs Pact is to provide an internationally agreed basis for policy-making designed to reduce the time lag between economic recovery and a recovery with decent work opportunities. Specialists organization noted that the discussions on this subject is difficult because of the political and geographical differences. Also, attention and analysis is focused more on markets and the gains or losses than on the potential economic effects of globalization on the life and work of individuals, their families and society.

### **Council of Europe**

Council of Europe has as statutory principles: pluralistic democracy, respect for human rights and rule of law. The legislative activity of the Council of Europe has resulted in the development of the 203 European conventions and agreements by 2008 and the Protocols thereto, most open to ratification or accession and the countries that are not part of the organization. Among them an importance they place the European Convention on Human Rights and the European Social Charter.

Most of the rights and freedoms protected by the European Convention on Human Rights are civil or political. Economic and social rights are guaranteed by the European Social Charter. However, some rights provided by the European Convention of human rights are social and, as such, in promoting them is to use the protection provided by the Convention, namely the European Court of Human Rights. These are: Prohibition of slavery and forced labor (Article 4), freedom of expression (Art. 10), freedom of assembly and association and right to form trade unions (art. 11) and Right to education (Art. 2 of Protocol no. 1).

European Social Charter has its origins in the Universal Declaration of Human Rights in 1948, art. 22-25 of which establishes a number of social rights. On 3 May 1996 was adopted the revised European Social Charter, and ratified by Romania by Law no. 74 of 3 May 1999, which replaces the Charter of 1961. His text includes the social rights guaranteed by the Charter of 1961, with a number of amendments, the rights guaranteed by the Additional Protocol of 1988 and a series of new rights until a number of 31. Romania ratified a number of art. 17 and 65 numbered paragraphs.

European Social Charter was assessed positively because, in its essence, is an overview of international labor law, as developed mainly in the International Labor Organization, gathering in a single document the general principles stated disparate in many conventions of this organization.

On the other hand, the 31 articles of the European Social Charter (revised) reflects in a way the Council of Europe on the concept fundamental social rights. The author specifies that many of the rights will be find developed by European Union rules, the testimony of European systems complementarity in this matter.



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## **PART III. EUROPEAN UNION SOCIAL LAW**

### **Chapter I.**

#### **Institutions, sources and characteristics of the European Union law**

This 3rd part begins with the presentation of the EU institutions with responsibilities in the adoption of the social standard, the sources of the EU law, as well as the characteristics of the European juridical order.

### **Chapter II.**

#### **Free movement of persons and labour force**

One of the fundamental freedoms of Community law is the free movement of persons and labour force. The author focuses on the analysis of free movement of workers provided by art. 45-48 of the Treaty on the Functioning of the European Union.

Thus, it emerged that European legislation refers to „workers” within the meaning of European law and not national law. In the Lawrie-Blum Case, the Court noted that the area in which benefits are provided and legal nature of the link which binds the worker the employer shall be without interest for the application of Article 48 of the Treaty.

Material content of the free movement of workers includes: right of entry and residence, freedom of access to employment and equal treatment, right to remain in a Member State after a person was employed in that State, employment in public administration, Restrictions on the right of entry and right of residence on grounds of public policy, public security and public health. The content of the book presents the legislative and the essential case-law of the European Court of Justice.

In line with the decisions of the European Union Court of Justice, it is shown that the right of residence is a right conferred directly by the Treaty and is not subject to the condition than exercising an economic activity. Also, are presented the principles of free access to employment and freedom of employment in that any citizen of a Member State is entitled to work as a person employed on the territory of another Member State, under the same conditions as nationals of that state.

*Directive 2004/38/EC* of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States has been transposed into domestic law through the Emergency Ordinance no. 102 of 14 July 2005 on free circulation in Romania of the citizens of EU member states and European Economic Area.

Also is presented a the Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union. This Regulation reaffirms the the freedom of movement for workers which should be secured within the Union. The attainment of this objective entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment, as well as the right of such workers to move freely within the Union in order to pursue activities as employed persons subject to any limitations justified on grounds of public policy, public security or public health.

### **Chapter III.**

#### **Freedom of establishment and the right to provide services**

The TFUE Treaty includes for the persons which are self-employed the *right of establishment* (art.49-55) and the *right to provide services* (art.56-62).

For years, the Court of Justice, whose essential case-law is presented in the book was often ruled lines on the extent of rights granted by the European Union. Thus, right of establishment and the services were appreciated by the Court as „fundamental rights of the Community”. The principle on which they are based is the principle of non-discrimination on basis of citizenship, whether it results from legislative and administrative practice.

It is also shown Directive 2006/123/EC of the European Parliament and Council of 12 December 2006 on services in the internal market, which are a special importance for its provisions that establish the legal framework designed to overcome barriers of Why the internal market prevent providers, particularly small and medium enterprises to expand their activities beyond national borders and to take advantages of the internal market.

Para. (6) and (7) of art. 1 states that the directive does not affect labour law, that any legal or contractual provisions relating to employment conditions, working conditions, including health and safety at work and relations between employers and workers, including the right to negotiate and conclude collective agreements, the right to strike and trade union actions which Member States apply in accordance with national legislation and practices which respect EU law. Also, the directive does not affect any law relating to social security of the Member States.

### **Chapter IV.**

#### **Equal treatment and non-discrimination at work**

In this chapter is presented the European Union fundamental labour and social security law on equal treatment and non-discrimination at work matter, the essential case-law of the Court of Justice of the European Union and the harmonization of Romanian legislation with the EU standards.

The principle of equal payment for equal work is established by art. 119 of the EEC Treaty. In TFUE Treaty the article 157 recognizes the principle of equal pay for male and female workers for equal work or work of equal value.

Based on to the principle on non-discrimination based on sex, a series of directives were adopted, presented inside the book, as Directive 79/7/CEE, Directive 92/85/CEE, Directive 2000/43/CE, Directive 2000/78/CE, Directive 2004/113/CE, Directive 2006/54/CE, Directive 2010/18/UE, Directive 2010/41/UE recognized as of utmost importance.

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), which repealed previous EU standards.

Regarding the Romanian harmonized legislation on non-discrimination on grounds of sex, in the book are presented the Ordinance no. 137/31 August 2000 on preventing and sanctioning all forms of discrimination and the Law nr.202/19 April 2002 on equality between women and men.