

The Theoretical Issue of Social Security—International and European Perspectives

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ABSTRACT

This chapter deals with the theoretical issue of social security. It has been presented by the main characteristics of social rights, the international social law and main features of the EU legislation in this regard. These provide a broad understanding of the issue at international and European level. It was highlighted that human rights are indivisible, interdependent and interrelated rights. The quality of human existence is determined by second generation rights. Social security is an integral part of a life worth living. There is a difference between the nature of each generation, one thing can be said with certainty: all human beings have an indivisible right to human rights, and the quality of human life is largely determined by the opportunities offered by these social rights, and the presence of the state is present in all generational rights, differing only in the extent and intensity of their presence.

KEYWORDS

international social law, social rights, sources of international social law, EU legislation

1. Introduction—Characteristics and problems of social fundamental rights

Social rights are among the most controversial areas of human rights and the most variably regulated in different states. According to some legal scholars, social rights are as important a factor in a person's becoming a citizen as are classical fundamental rights.¹ The declaration of social rights or some form of regulation of social rights always gives a picture of the values, the vision of man, and the role of a particular state. Moreover, it is generally linked to prevailing political views and, of course, to the more narrowly defined conceptions of constitutional law.

Economic, social, and cultural rights as second-generation rights are, in many ways, contrasted with civil and political rights as first-generation rights. One is the

1 Sári, 1997, p. 217.

Jakab, N., Solymosi-Szekeres, B. (2023) 'The Theoretical Issue of Social Security—International and European Perspectives' in Jakab, N. (ed.) *Sustainability of the Social Security System: Demographic Challenges and Answers in Central Europe*. Miskolc-Budapest: Central European Academic Publishing, pp. 19–50. https://doi.org/10.54171/2023.nj.sotsss_2

difference in the state obligation that they entail.² According to Gábor Kardos, there is a behavioural obligation to second-generation rights. For a significant group of rights, to effectively guarantee them, the state must engage in well-defined conduct per the rules of the relevant constitution or international treaty.³ The Committee on Economic, Social, and Cultural Rights sets out three types of state obligations: respect, fulfilment and satisfaction.⁴

We would like to point out here that, like Hajdú, we believe the generational division of human rights can be misleading. Human rights are indivisible, interdependent, and interrelated. The quality of human existence is determined by second-generation rights. Social security is an integral part of a life worth living. As we shall see, there is a difference between the nature of each generation. Indeed, one thing can be said with certainty: all human beings have an indivisible right to human rights, the quality of human life is largely determined by the opportunities offered by these social rights, and the presence of the state is present in all generational rights, differing only in the extent and intensity of their presence.⁵

The public service expected under economic, social, and cultural rights is relative. Their actual content is determined by lower-level legislation. For each social right, there may be a set of satellite rights that facilitate the realisation of the merits of the right, which helps achieve the highest possible level of realisation of the right. For example, the right to work is facilitated by the right to vocational training for all.⁶

State obligations can be absolute or relative. Some civil and political rights cannot be limited, even in exceptional cases, while others are relative, subject to appropriate guarantees. State obligations arising from social rights are always relative, measured in terms of the resources available.⁷

The difference between the two groups of human rights is the direct nature of the state obligation in the case of civil and political rights and its gradual nature in the case of social rights.⁸ Civil and political rights are real human rights, while social

2 The question of whether the conduct of the State is a positive or negative sign has been raised in two cases: the *Marckx* case, judgment of 13 June 1979, European Convention on Human Rights (ECHR), Series A, No. 31, and the *McCann and Others* case, judgment of 27 September 1995, ECHR, Series A, No. 324.

3 Kardos, 2003a, p. 27. For example, to ensure the right to health, a social security system must be in place.

4 See Committee on Economic, Social and Cultural Rights, General Comment No. 12. (1999), UN doc, E/2000/22.

5 See on this Hajdú, 2021, p. 31; Halmai and Tóth, 2011. See also the Ministerial Conference on Human Rights held in Rome on 5 November 1990, which stressed the need to preserve the indivisible nature of all human rights (whether civil, political, economic, social, or cultural) and give new impetus to the Charter. Therefore, at the Ministerial Conference held in Turin on 21 and 22 October 1991, the decision was to modernise the ECHR and amend it to account for the fundamental social changes in the 30 years since the text was adopted. See Hajdú, 2021, p. 33.

6 For disadvantaged groups, the interdependence and interrelated nature of rights is even more important.

7 Kardos, 2003a, pp. 28–29.

8 *Ibid.*, p. 29.

rights are more of a state objective.⁹ The problem with economic, social, and cultural rights is judicial enforceability. Consequently, the nature of social rights is two-fold: they are partly real rights and partly state objectives for the optimal implementation of the service.¹⁰ Civil and political rights do not impose a heavy financial burden on the community, while the provision of economic, social, and cultural rights is expensive and requires a heavy redistribution of state resources. However, the protection of civil and political rights is financially demanding, as the state must maintain a wide range of rule of law institutions.¹¹

The protection of economic, social, and cultural rights started in internal legal systems. The decisive difference was whether these rights were included in the Constitution or whether only lower-level legislation created such distributive rights. From the perspective of international law, the core of the protection afforded by the domestic law of states is a system of accessible and effective remedies. The constitution contains a general formula for the social commitment of the state, which has normative consequences (German Basic Law). The constitution or an equivalent fundamental law lists the social rights it protects. However, this solution is not uniform. Social rights are declared to be objectives of the State (Spanish Constitution). Social rights retain their individual character but can only be the subject of judicial proceedings under the lower-level legislation to which they are subject (Czech Constitution). Social rights included in the Constitution can be the subject of constitutional or ordinary judicial proceedings by reference to the fundamental law (Hungarian Constitution). Some social rights are also expressed as subjective rights (the right to social security in the Danish constitution).¹² In some states, the Constitution does not contain a general rule of social commitment or social rights (US Constitution).¹³ For certain rights, mainly in the context of employment, it is possible the parties' collective bargaining, rather than legislation, may regulate the protection of social rights (subsidiarity principle and reflexive legal concept).¹⁴

Economic, social, and cultural rights and human rights in general pressure the state to justify any regulation by its impact on those it regulates. Human rights also place the burden of proof on the state. Thus, human rights are reduced to the logical premise of the right to subsistence.¹⁵ The right to subsistence must be interpreted

9 Cranston, 1973, p. 68. Criteria for human rights: the subject is clearly identifiable, the obligor is indeed obligated and clearly identifiable, the content of the obligation derives from the source or interpretation of the law itself, the obligation is judicially enforceable, and there is a definable area of law behind the individual right.

10 Kardos, 2003a, p. 30.

11 Kardos, 2003a, p. 31.

12 Ibid., pp. 37–38.

13 The US Supreme Court has ruled in numerous cases that there are no constitutional social rights. In *Lindsey v. Normet* (405 US 56, 74, 1972), for example, it held that there is no constitutional right to housing. The same was said of the constitutional right to education in *San Antonio Independent School District v. Rodriguez* (411 US 1, 30–31, 1973).

14 Kardos, 2003a, p. 39. Reflexive character means that legal norms do not prescribe conduct or outcomes but provide procedures and leave it to private parties to decide disputes. This is the rule in the USA, for example.

15 Ibid., p. 32.

broadly, including the need to satisfy all human needs.¹⁶ The need for economic, social, and cultural rights can be justified by basic human needs and the avoidance of closely-related human suffering.

There is a great need for integrated protection of human rights. The exercise of civil and political rights is hardly conceivable without at least a minimum of social empowerment. The former presupposes the latter. Human dignity requires at least a minimum level of social entitlement. The guarantee of this entitlement can also be underpinned by solidarity within a community of citizens, national, ethnic, or religious communities. The idea of equality can also be raised as a basis for social entitlements. Raymond Aron states that economic equality does not follow from social or political equality but requires institutions to ensure that everyone has sufficient income such that they do not feel excluded from the community because of their poverty.¹⁷ It also means the right to an adequate standard of living.¹⁸

Social rights provide distributive entitlements and guarantee services to people on the weaker side of a struggle along organised interests. The protection of the weaker is also often raised in political debate, but these are not absolute arguments, and economic and social rights do not lose their legitimacy because of it.¹⁹

Following this presentation of the characteristics and problems of social fundamental rights, the next section presents the international and EU rules on the protection of social rights.

2. International social law

2.1. *International social law in the social rights dimension*

Throughout history, the role of social rights has been defined in many ways, influenced by many circumstances.²⁰ If we look at the teleology of social rights in a broad

16 These include survival needs, needs arising from social participation, self-actualisation needs. See Nayar, 1996, pp. 171–194.

17 Kardos, 2003a, pp. 33–34.

18 The right to an adequate standard of living under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights includes food, clothing, and housing. The right to an adequate standard of living can be no more than a mere objective of the State. However, if we look at the individual elements of this right, we are already establishing a specific State service. On this basis, social rights can be grouped into rights that give concrete form to specific types of state services and rights that give legal entitlements to meet basic needs and beyond. Such rights include rights to property and rights to work, providing a basis for participation in social distribution. If these titles do not ensure that human needs are met, then the right to social security can be invoked. Here as well, there is a hierarchy, as services derived from social security must take precedence over social and health assistance. This hierarchy is also clear from Article 13(1) of the European Social Charter. For more, see Kardos, 2003a, pp. 42–44.

19 *Ibid.*, p. 36.

20 One such circumstance is the economic crises that followed the economic growth after the Second World War. At the time, countries realised that economic growth was limited, for example, by environmental considerations, which changed how countries perceived the

sense, we must consider the first and most important aim of social rights to be the satisfaction of basic human needs.²¹ The generic concept of social rights regards the set of ‘umbrella rights’ within human rights that protect against state interference. From this perspective, therefore, any entitlement that can protect the well-being of the individual against the state can be included in the scope of social rights.²² This broad approach is undermined, however, by the general lack of protection of social rights, as the protection of these rights from constitutions and international treaties and the low level of protection limits the full enjoyment of social rights.²³

Considering the conceptual and historical background, it is not necessarily possible to make a sharp distinction between labour law, social security,²⁴ and social law, as their origins and roots are common and are all linked to the industrial revolution and the plight of workers at the time and the struggle against it.²⁵ The idea of social justice appeared as early as the 19th century,²⁶ gradually becoming an increasingly important part of the legal systems of the individual states; it is now a fundamental

guarantee of social rights. Danilo Türk noted that, in fact, all states can justify their failure to guarantee a higher level of social rights. Rab, 2008.

Drinóczi considers the scope of social rights as controversial. In his view, we can speak of social rights in a narrower and broader sense. In a broader sense, social rights include second-generation rights and, at international levels, several newer-generation rights (e.g. right to clothing, protection against malnutrition and hunger). If social rights are understood in a narrower sense, considering their function, their relationship with the right to human dignity and the fact that they are sought to be enforced in the European area of fundamental rights, a fundamental rights character can be established. Social rights, thus understood, can typically be invoked when an individual finds himself, for reasons beyond his control, in a predetermined situation (e.g. orphanhood, sickness, unemployment), which ultimately somewhat threatens his humanity such that no other existing fundamental right can offer protect. The Hungarian perception in the literature and among constitutional judges tends to be that social rights cannot be considered fundamental rights and cannot be enforced. The approach of the Constitutional Court has gone through three phases in the 20 years of the Constitution’s existence and seemed to accord with the European trend by linking social rights to the right to human dignity. However, this ambition and perception was broken with the entry into force of the Constitution. The new practice that has emerged does not fit international developments nor the evolving trend in constitutional or wider public law and professional considerations on social rights. See Drinóczi, 2019, p. 1; Halmai and Tóth, 2008; Lyon-Caen, 2002, p. 189; Macpherson, 1985, p. 23.

21 Kardos, 2000, p. 6.

22 A 2014 comparative Canadian constitutional law study on economic and social rights found that more than 90% of the 195 constitutions surveyed contain at least one economic and social right. Drinóczi, 2019, p. 2.

23 Rab, 2017, p. 1.

24 The Universal Declaration of Human Rights provides for the right to social security for all members of society. The concept of social security can also be linked to statistical data showing its low level of protection. According to available estimates, approximately 50% of the world’s population has access to some form of social security, while only 20% enjoy adequate social security. International Social Security Association, no date.

25 Servais, 2020, p. 15.

26 In the first half of the twentieth century, the Prussian model spread throughout Europe. Closely linked to work, ‘workers’ insurance schemes were set up to provide benefits in the event of a breakdown in work, typically for industrial workers. The First World War and the world economic crisis of the 1930s reinforced the idea that market imbalances should be addressed

democratic value to be defended at the constitutional level.²⁷ Meanwhile, however, while the basic principles are common, social rights have not developed in the same way in different countries. Thus, during historical development, the measures that have created social rights have tended to include the first factory laws, which were provisions creating guarantees of labour rights²⁸ and provisions that created the roots of the state's social security—health insurance—obligations on the other.²⁹

There are divergent views on the exact content and meaning of international social law.³⁰ One of the regionally defining documents, the list of social rights embraced by the European Social Charter, is related to several areas and, in Hoffman's view, has a broader content than the right to social security alone. This Charter includes the core rights of workers,³¹ such as the right to work, the right to collective bargaining, and special protection for children, young people, and women. It also includes the right to health protection and the protection of the family, among others.³² In comparison, the level of social security, as defined by the ILO, also includes coverage of the risks of old age, childhood, unemployment, and health.³³ The concept of social security also covers a wide range of issues, as it includes the provision of support in the event of risks, such as old age, sickness, and maternity, and, thus, has a strong human rights basis.³⁴ Accordingly, Kaltenborn uses the term social human rights in his research.³⁵

Based on such a broad conceptual dimension, it is no exaggeration to say that international social law has a protective³⁶ and solidarity character.³⁷ These characters are defined by the rights guaranteed therein and the documents that capture the rights and the obligations deriving from them—that is, the sources of (international) social law.

through state intervention. Meanwhile, there was a growing demand in many countries for social protection for workers and all members of society. Dezső, 2020.

27 Téglási, 2021, p. 167.

28 Rab, 2016.

29 Rab, 2017, p. 1. Economic and social rights are increasingly protected in national constitutions, but in very different ways. Drinóczi, 2019, p. 3.

30 See e.g. Eichenhofer, 1994; Schuler, 1988.

31 Rab summarises that one of the fundamental aims of guaranteeing social rights is to create a framework for employment. Rab, 2017, p. 2.

32 Hoffman, 2015, p. 46.

33 Rab, 2017, p. 5.

34 The realisation of social security is not only perceived through social rights. Beyond fundamental social rights, the principle of legal certainty and the right to property are constitutional principles that serve to achieve social security. Rab, 2008.

35 Kaltenborn, 2015, p. 2.

36 Servais, 2020, p. 16. This is also a consequence of the fact that social rights are essentially a guarantee instrument for remedying social problems, thus carrying with them features that are fundamentally different from fundamental freedoms. Social rights are also rights for all, but they cannot be considered universal rights, as not everyone needs social-legal protection in all circumstances, given the protective nature of social law. Rab, 2008.

37 The constitutional provisions on social matters define the minimum level of social solidarity (i.e. state responsibility) to be achieved through the state (Rab, 2008). However, there are other dichotomies in the nature of social rights, which are also two-fold: they are partly genuine rights and partly state objectives for the optimal delivery of services. Gyulavári, 2004, p. 221.

2.2. Sources of international social law

To consider the international dimension of social law and social security, we must also consider the international legal sources and documents that influence national legislation.³⁸ The international legal environment also defines social rights as fundamental rights;³⁹ however, the documents drafted by different international organisations seek to identify the content of social rights in different ways,⁴⁰ but the definition of the level of social rights protection is protected by international law.⁴¹ Social rights as second-generation fundamental rights are also reflected in certain international conventions on fundamental rights. Even so, because of the economic implications of social rights, international conventions with a broadly more general scope also contain several provisions that have implications for social administration and the exercise of these rights. If the sources are classified per their territorial scope, three levels can be distinguished. The first level comprises universal conventions, which are essentially adopted within the framework of the United Nations (UN) and its specialised agencies. The second level comprises regional conventions, which apply to specific groups of countries, and the third level comprises bilateral social policy conventions.⁴² These sources should, thus, not be considered exclusively as documents dealing specifically with social rights, since other fundamental rights also affect social rights indirectly. Hence, human rights documents with a broader focus should also be considered when examining the sources of international social law.

Among the universal conventions, the 1948 Universal Declaration of Human Rights (UDHR), a soft law instrument, should be highlighted.⁴³ The wording of some articles of the document is typical, as the most frequently used formula is ‘everyone has the right...’ or ‘no one shall be...’, which also emphasises the universality of the rights contained in the Declaration.⁴⁴ The next major document is the International Covenant on Economic, Social, and Cultural Rights (ICESCR) of 1966,⁴⁵ which has

38 The development of international law in the post-World War II period and, consequently, the unprecedented globalisation of certain institutions, contributed decisively to the strengthening of the universality of fundamental rights. Kiss, 2010, p. 84.

39 Rab, 2008.

40 Rab, 2008.

41 Téglási, 2021, p. 170.

42 Hoffman, 2015, p. 44.

43 According to Gábor Kardos, the fact that the Declaration includes social rights shows the socialist influence; although, in his opinion, it is perhaps more correct to say communitarian, as social rights are not only linked to the socialist conception, and the Declaration also states that the individual has duties towards the community. Kardos, 2003b, p. 139.

44 The drafting of the Declaration was marked by a sharp dispute between the Western powers and the Soviet Union, *inter alia*, in the field of economic and social rights. Kardos, 2003b, p. 139.

45 At that time, civil and political rights were also the focus of regulation, and the original intention was to incorporate them into one document, but the challenge was that developing states would not commit to civil and political rights because of the burden of economic and social rights. Thus, in 1966, two separate Covenants on civil and political rights and on economic, social, and cultural rights were finally adopted. Téglási, 2021, p. 170.

strengthened the international recognition of social and economic rights⁴⁶ such that it has become legally binding as hard law. These two conventions are general in their scope. However, among the universal conventions, some formulate social rights for a specific group of persons with specific characteristics. These include the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. A common feature of these conventions, according to Hoffmann, is that they provide for the enforcement of social rights beyond the human rights they define as a public obligation, adapted to the Member States' capacity to bear the burden.⁴⁷

The ILO is a specialised agency of the UN and is significant in shaping the international approach to employment and social security. The ILO has developed 24 Conventions and 11 Recommendations in the field of social security⁴⁸ and has established appropriate procedures to monitor their implementation, the most important of which is the ILO Social Security (Minimum Standards) Convention from 1952 (No. 102).⁴⁹

Among the regional social-legal documents, the European Social Charter, adopted in 1961 and amended in 1966,⁵⁰ provides for social rights and the public commitments necessary for their realisation in a concise legal formulation (see later). This document is characterised by the flexibility of its evolving standards.⁵¹ The document protects the right to social security through a series of articles forming a system.⁵² The first part of the Charter sets out social rights as an objective to be achieved by all means, and the second part sets out the obligations of States Parties relative to each right. These obligations are selective, but there is much criticism of the monitoring of their implementation.⁵³

A brief mention should be made of the bipartite conventions on matters of social law, mainly covering social security benefits, health services, and child support. However, for the EU Member States, they are unnecessary, as the relevant issues are covered by Regulation (EC) No. 883/2004.⁵⁴

Of course, the listed sources are not exhaustive, as there are many other related codes and conventions related to social law, such as the European Social Security Code adopted by the Council of Europe or the European Convention on Social Security.

46 Kaltenborn, 2015, p. 2.

47 Hoffmann, 2015, p. 45.

48 For example, Convention No. 128 (Invalidity, Old-Age and Survivors' Benefits Convention) and Recommendation No. 202 on Social Protection Floors.

49 Kardos, 2000, p. 8.

50 The background to the adoption of this document is that after the Second World War, the incorporation of classical freedoms into international conventions began; since the 1960s, second-generation rights have also been included in international documents. Téglási, 2021, p. 169.

51 Kardos, 2003c.

52 Kardos, 2000, p. 8.

53 Kardos, 2003c.

54 Hoffman, 2015, p. 47.

However, the brief overview of the sources shows that, in the case of social rights, we can partly speak of independent sources, though we should not only look at documents specifically related to social law.⁵⁵

At this point, however, it is important to take a closer look at the European Social Charter; the country chapters of this book have paid particular attention to the subject.

In a global context, the Charter corresponds to the UN International Covenant on Economic, Social and Cultural Rights.⁵⁶ In the European context, the Charter is the equivalent of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the overarching Council of Europe human rights convention.⁵⁷ The Charter was drafted roughly between 1953 and 1961. Two bodies worked on it: the Committee of Ministers of the Council of Europe and the Parliamentary Assembly. The Charter entered into force in 1965, with the ratification of the fifth Member State.⁵⁸ The Charter is also known as the ‘conscience of Europe’.⁵⁹ Part I of the Charter contains social rights as a political objective in a brief subject-matter legal formulation⁶⁰ in 19 sentences. Part II sets out the public commitments necessary to achieve the objectives set out in Part I, failure to fulfil which constitutes a breach of the Member State’s obligations. The main features of the regulatory concept of the Charter include a choice of obligations, limited

55 Gyulavári, 2004, p. 221. Notably, social rights are often considered to be secondary human rights, and it is not uncommon to find that social rights are not human rights at all in the literature. This simplistic statement is reached by contrasting economic, social, and cultural rights, labelled as second generation, with so-called first-generation human rights, such as civil and political rights. One of the undeniable differences is the different state obligation that arises from them and its limitability (i.e. its relative nature in the case of social rights).

56 ‘In Europe, according to the majority of experts, one of the most important depositories for the multilateral and regional protection of economic, social and cultural rights, which are among the second generation of human rights, is the European Social Charter of the Council of Europe (1961) and its Amended Charter (1996). The first Charter was inspired by the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948, Articles 22-26 of which also declared social rights in a broader sense. Moreover, its earliest antecedents are the ILO Declaration of Philadelphia of 1944 and, in the case of the article on social security (Article 12), ILO Convention No. 102 (1952). The revised Charter was also significantly influenced by the UN International Covenant on Economic, Social and Cultural Rights, adopted by the UN General Assembly in 1966. The 1961 Charter was essentially wedged between the two UN universal human rights standards and, well ahead of its time, brought together in one document a relatively broad catalogue of social rights’. Hajdú, 2021, pp. 31–32.

57 The fundamental social and economic rights enshrined in the Covenant are linked to Articles 22–25 of the UN Universal Declaration of Human Rights and the corresponding Articles 6, 7, 9, 10, 11, and 15 of the UN Covenant on Economic, Social, and Cultural Rights.

58 For the dates of signature and ratification of the Charter, see Samuel, 1997, pp. 109–121. For an illustration of the provisions adopted, see *ibid.*, pp. 124–132.

59 György Könczei’s formulation. Könczei, 1999, pp. 40–73.

60 Kardos, 1996, pp. 74–89.

by a hard core;⁶¹ the breakdown of certain rights into specific public obligations; and monitoring implementations by independent bodies via reporting and collective complaints.⁶² Since 1961, the Charter has expanded to include four additional protocols. Together, the five documents are known as the Charter package: Additional Protocol (1988) to modernise the Charter by incorporating four new rights; Amending Protocol (1991) to make the Charter's monitoring mechanism more effective; Additional Protocol on the provision of a collective complaints system (1995) to make the Charter's monitoring mechanism more effective; and Amended European Social Charter (1996), a major international document of the 21st century.

Since 1961, the two basic types of monitoring mechanisms for universal human rights conventions have been the reporting and petition systems. The reporting system was first applied to the Covenant, based on national reports sent every two years. The reports are written in English or French on the articles ratified by the Member State, using a questionnaire prepared for this purpose. Hungary has produced four country reports since ratifying the Charter.⁶³ The European Committee of Social Rights⁶⁴ can also act based on comments from international organisations of workers and employers and certain non-governmental international organisations (petition system). The European Committee of Social Rights examines the extent to which national law and practice accord with the provisions of the ratified articles of the Charter from a legal perspective. Its conclusions are published and sent to the Government Committee. The conclusions of the European Committee of Social Rights are also periodically discussed by the Parliamentary Assembly, though this is not relevant. The Governmental Committee compares the conclusions with the specific situation of the Member State concerned based on social, economic, and political considerations and decides whether to issue a warning⁶⁵ or a recommendation.⁶⁶ At the end of the review

61 An essential feature of the Charter is that, when signing or ratifying it, States Parties have the option of accepting only some of the 31 economic and social rights it contains as binding on themselves, rather than all of them. This is known as partial ratification. The full 'à la carte' freedom is somewhat limited by the fact that the ECHR sets a minimum number of articles to be accepted as binding. These articles are of paramount importance because they constitute the so-called 'hard core': of the seven articles included, at least five are mandatory. See Hajdú, 2021, p. 33.

62 Kardos, 1996, p. 82.

63 The first was sent on 7 August 2001.

64 Formerly the Committee of Independent Experts.

65 If a country fails to fend off criticism at a meeting of the Steering Committee, it is reprimanded. In a minor, first-time case, a warning is given by the Government Committee on a specific issue. In a more significant and recurrent case, the Government Committee makes a recommendation, which is then adopted by a larger body, the Committee of Ministers. The recommendation is published in the Official Gazette, and everyone tries to avoid it, because it tends to make a big fuss. For more details see Gyulavári and Könçzei, 2000, pp. 201–204; Weller, 1996, pp. 19–62.

66 There has been a long-standing debate in the Government Committee on the use of these words. The attention-grabbing power of the two terms is reversed in English. The debate over the meanings of the words is not alien to international documents (English and French translations of the UN Charter), as we have learned in undergraduate and postgraduate courses.

cycle, the Committee of Ministers issues recommendations to those states that do not comply. The time needed for this mechanism is approximately four to five years.⁶⁷ Based on the reports, all available facts about the country are examined. The facts in the report must correspond to reality. The most important aspect based on which any comment is made by the European Committee of Social Rights is whether the state has taken tangible steps to improve the commitments it has made. Based on the examination, the following comments can be made: ‘satisfactory’; the Committee on Social Rights makes no comment; if there is progress, it reaches ‘positive conclusions’; but if there is no progress, it sends a summary report to the Government Committee, which discusses it at its next meeting, calling the shortcomings criticised in the area concerned ‘negative conclusions’. Thus, the Charter’s case law is created following the logic of the common law.⁶⁸

Some chapters of this book specifically address compliance with the relevant articles of the European Social Charter.

Beyond the monitoring procedure based on national reporting, the petition-based collective complaints procedure introduced in 1998 should also be mentioned. The fundamental difference between the two is that the reporting system is mandatory for all States Parties, whereas the collective complaints procedure is limited to States that have ratified the relevant Additional Protocol. In practice, both mechanisms work, but the primary means of compliance with the Covenant is necessarily the Commission’s examination based on national reports, as the reporting obligation to the Commission applies to all States. Meanwhile, the Protocol on the collective complaints procedure has been ratified by only 17 States to date. These two monitoring mechanisms are complemented by a specific procedure, whereby the Commission, following a joint assessment with representatives of the Commission and the State Party concerned, seeks to encourage the State concerned to ratify the articles of the Charter not yet adopted and the Additional Protocol on the collective complaints procedure in a preliminary procedure called the ‘procedure on non-accepted provisions of the Charter’.⁶⁹ Following this establishment of the most relevant sources of international social law, the next section presents the obligations under international social law shall be presented.

67 For an illustrative diagram of the control mechanism, see Gyulavári and Köncei, 2000, p. 202.

68 Lenia Samuel, whose work will serve as a basis for the presentation of the provisions of the Charter on persons with disabilities in the next chapter, provides a good summary of the case law.

69 Hajdú, 2021, p. 34.

2.3. *Obligations under (international) social law*

Social rights and state obligations are interdependent,⁷⁰ as social law requires positive, active action by the state.⁷¹ Regarding classical freedoms, the guarantee of the right is explicitly the subordination of the state's role.⁷² International social law imposes several obligations on states, as it requires governments to do their utmost to ensure that all actors in society can achieve respect for fundamental social human rights.⁷³ Therefore, regarding social states, the guarantee of fundamental social rights is considered a constraint on the state.⁷⁴ These obligations require States to formulate policies that accord with social rights and promote their realisation⁷⁵ to which Article 2 of the ICESCR adds that international assistance is necessary to ensure the guarantee of these rights.⁷⁶

The State obligations stem primarily from the noted sources, of which the ICESCR, already examined, is a key element. In capturing the State obligations, the ICESCR, by its general nature,⁷⁷ provides a rich catalogue based on a broad conception of social rights, with an accompanying programme attached to the right in question,⁷⁸ and its specific codification and ratification technique has enabled almost all States worldwide to become parties to this Convention.⁷⁹ It has also meant that the overall level of protection and the system of legal protection under the Convention is lower than that of other conventions, particularly regional conventions.⁸⁰ Moreover, conventions generally formulate social rights as rights, but the commitments of States Parties typically use the terms 'recognise' or 'progressively

70 Historically, social rights—as second-generation constitutional rights—are derived from the social functions of the state, even though the state's social functions are older than the declaration of freedoms. Already, from the last decades of the 19th century, the organisational system of state governance developed social-legal institutions to prevent social tensions, with the help of legal theory. Rab, 2017, pp. 1–2.

71 States are obliged to provide for social protection rules in their constitutions, but the legal solutions on this subject differ considerably, of course, and the reasons are discussed several times in this chapter. Téglási, 2021, p. 167.

72 Rab, 2008.

73 Kaltenborn, 2015, p. 2.

74 Rab, 2017, p. 2.

75 Kaltenborn, 2015, p. 2.

76 Kardos, 2003.

77 The general feature is a double-edged weapon. Rab notes that the ICESCR's use of the word 'general' raises several problems of legal interpretation, as it does not allow for an objective assessment of the level of social rights protection. Rab, 2008.

78 These programmes are for implementation, for example, in the case of the right to work, the designation of technical and vocational counselling and training programmes, procedures, and methods. Kardos, 2003c.

79 The ICESCR expressly states that States Parties recognise that in the exercise of rights granted by the State in accordance with the Covenants, the State may subject such rights only to such limitations as are prescribed by law to the extent compatible with the nature of those rights and solely for the purpose of promoting the general welfare of a democratic society.

80 Hoffmann, 2015, p. 45.

ensure'.^{81,82} This discrepancy may arise because international conventions do not require that social rights should be constitutionally guaranteed by the legislatures of the State Parties.⁸³ It is also significant because if a social right is a constitutionally declared fundamental right (i.e. it is not only declared as an aspiration), it is entitled to constitutional protection, whereas if it is only a state objective, legal protection is guaranteed by the judiciary.⁸⁴ Of course, while recognising that the guarantee of social rights is relative to the obligations of the State,⁸⁵ there are ancillary elements of these obligations for which the absolute nature of the obligations can be established. These include, according to Kardos, the obligations of the state in the area of defence and procedural and other matters of legal certainty.⁸⁶

It is, therefore, beyond doubt that States have obligations under international social law.⁸⁷ The guarantee of social rights and the obligation to guarantee them is primarily a matter of state resources and requires a considerable degree of state redistribution.⁸⁸ Failure by the State to fulfil these obligations also has consequences regarding social perception, as citizens will not fulfil their obligations to the State to provide social services if the State fails to fulfil its duties as perceived by its citizens. It will strengthen the grey and black economy.⁸⁹ It is recognised in jurisprudence that the provision of social rights is determined by the level of development of the state concerned. However, there remain certain minimum standards, not necessarily regarding material benefits or services, that a state must provide to meet its international obligations. Compliance with international obligations can be achieved by the State through appropriate rule-making and enforcement.⁹⁰ Achieving an adequate level⁹¹ of social rights in the national guarantee of social rights is also the foundation

81 The progressive granting of social rights is one of the major differences with civil and political rights. While the latter are an immediate task for the state, social rights must be implemented gradually. Gyulavári, 2004, p. 221.

82 Drinóczi, 2019, p. 3.

83 Rab, 2008.

84 Ibid.

85 Relativity is also supported by the fact that the ICESCR document provides that the progressive guarantee of the exercise of the right is based on the resources available and is, therefore, not measured against an objective standard (Article 2(1)). The European Court of Human Rights (EctHR) also considers in its judgments the economic and social context in the country concerned at the time the case in question occurred. (Téglási, 2019, p. 256) The question as to what limitation of legal enforcement is required by the relative nature of the state obligation is a question for the state constitutional courts to answer. (Kardos, 2003c) Meanwhile, even if only state objectives are discussed, they can be violated, in particular, by an unjustified diversion of resources. Gyulavári, 2004, p. 221.

86 Kardos, 2003c.

87 The positive role of the state is also a limit to the enforceability of social rights by leaving the courts to consider unenforceable rights. Rab, 2008.

88 Gyulavári, 2004, p. 221.

89 Rab, 2008.

90 Drinóczi, 2019, p. 3.

91 As has been repeatedly stressed, the consequence of relativity is the legal problem that the level of social rights cannot be objectively assessed. Budgetary resources are used as a yardstick. Téglási, 2021, p. 170.

of social justice.⁹² However, the enforcement of these obligations raises a new set of questions, which also resonate in jurisprudence, as the most frequent criticism of social rights is the problem of their enforceability through legal means.⁹³

The first point to note is that social rights are often enforced indirectly at the international level, rather than directly—that is, solely by reference to the (violated) social right concerned⁹⁴—as it is indeed challenging to hold legally accountable the failure to create an ideal state of affairs arising from service rights.⁹⁵ Indirect enforcement is also exemplified by the ECHR (Convention) cited as a source. The Convention does not explicitly contain social rights,⁹⁶ but the ECtHR, established to implement the Convention, defends them if their interpretation is dynamic and constructive.⁹⁷ Moreover, the ECtHR has developed procedural and substantive guarantees⁹⁸ from the right to a fair trial, the right to property, and the prohibition of discrimination.⁹⁹ This indirect enforcement is also followed by national courts: the Austrian Constitutional Court, for example, has held that social benefits based on significant individual contributions constitute ‘possessions’ within the meaning of the First Additional Protocol to the European Convention on Human Rights and are, therefore, covered by the protection of the right to property. Another international example is the application by Romanian courts of the principle of vested rights and the principle of legitimate expectations, taken from ECtHR practice, in pension cases.¹⁰⁰

At this point, the practice of the ECtHR should be briefly mentioned, given that, as can be seen from the above considerations, its case law is an integral part of the internationalisation of social rights. The ECtHR was established by the Convention for the Protection of Human Rights and Fundamental Freedoms to protect the rights it guarantees. It was originally envisaged that social rights would not be covered by the Convention, but, contrary to plans, the Charter did not acquire the same effective enforcement mechanism as the Convention, as the former requires States Parties to report on the fulfilment of their obligations, and the latter has a system based on

92 Téglási, 2021, p. 167.

93 Gyulavári, 2004, p. 221.

94 Kardos sees the enforcement of social rights as freedoms as fundamentally no different from the enforcement of civil and political rights. Kardos, 2003c.

95 Gyulavári, 2004, p. 221.

96 The Convention and its additional protocols are, thus, essentially civil and political rights, and do not provide for typical social rights such as the right to adequate housing, an adequate income for subsistence (or indeed any income at all), social security services in general, or health or social security. However, many of the rights guaranteed by the Convention are economic and social. Téglási, 2019, pp. 255–256.

97 Forms of social security, such as the payment of benefits and pensions, are protected under Article 8 of the First Additional Protocol.

98 Téglási, 2017, p. 602.

99 The relationship between the prohibition of discrimination and social law is discussed below.

100 Drinóczi, 2019, p. 3; Téglási, 2017. Austrian Constitutional Court, ECLI:AT:VFGH:1998:G363.1997.

adjudication.¹⁰¹ The prohibition of discrimination has been noted as an example of indirect enforcement; hence, it is worth elaborating on the ECtHR's practice, which illustrates the strength of its case law in influencing the international realisation of social rights. The ECtHR has accepted from its inception that, while the Convention does not oblige states to provide any particular social provision, if a state chooses to make such a provision, it cannot restrict access to it in a discriminatory manner. The ECtHR stated this principle in the *Belgian Linguistics* case in 1968, which examined the ineligibility of some French-speaking children to attend French-language schools in the Flemish districts of Brussels. According to the ECtHR, Article 14 of the Convention is not a self-standing provision, as it protects against discrimination in respect of the rights guaranteed by the Convention. However, the ECtHR has also explained that Article 14 may be invoked without the right itself, which is alleged to be granted in a discriminatory manner, being infringed. Hence, the ECtHR has created for itself the possibility of examining any right guaranteed by the Convention and its additional protocols for its compatibility with Article 14. Although the Convention does not grant a right to be educated in one's mother tongue (i.e. the fact that not all children in Belgium received education in their language of origin did not violate Article 2 of the First Additional Protocol), the ECtHR held that the Belgian State's access to French-language schools, which it had established of its own volition, was not based on objective and proportionate criteria and, therefore, resulted in a violation of Article 14 in conjunction with Article 2. This early case (*Belgian Linguistics*) opened the door for the ECtHR to hear cases traditionally conceptualised as socio-economic rights. Indeed, the ECtHR has not limited itself to intervening in discrimination cases that many would consider to be economic and social rights. In *Airey v. Ireland*, for example, the ECtHR explicitly rejected the open dividing line between civil-political and economic-social rights.¹⁰²

Beyond immediacy, the enforceability and enforcement of social rights must also be assessed from other perspectives, namely according to the differences at national and international levels. As Drinóczi sees it, whether a given social right is directly enforceable within national law depends on domestic legislation,¹⁰³ and its international enforceability depends on regional international mechanisms and national legislators.¹⁰⁴ Regarding national legislation, how it is enacted can raise several additional problems, as the state must be careful when legislating because if social rights are extended, citizens become dependent on the state [for benefits], which leads to a violation of freedoms.¹⁰⁵ In this context, Kardos sees the state as enjoying a high

101 The ECtHR always acts on individual complaints. The ECtHR itself has made it clear in several cases that the Convention aims to guarantee rights that are practical and effective, rather than rights that are theoretical or illusory. Téglási, 2019, pp. 254, 256.

102 Téglási, 2019, pp. 254–255.

103 Social rights must be guaranteed by the legal system as a whole, with, of course, a wide degree of regulatory autonomy. Gyulavári echoes this view and stresses that the enforceability of social rights depends on the scope of lower-order legislation (i.e. the supporting norms). Gyulavári, 2004, p. 221.

104 Drinóczi, 2019, p. 3.

105 Rab, 2008.

degree of freedom to fulfil the needs arising from social rights.)¹⁰⁶ However, beyond Drinóczy's position, Kardos emphasises the international monitoring of the respect of the right to social security in the context of enforcement. International control, in his view, is direct and indirect. Direct control is provided by the enforcement mechanisms attached to international treaties containing economic and social rights. Among these, the ILO's activities are quite noteworthy. The implementation of the ICESCR and the Charter is monitored through the examination of periodic reports by States.¹⁰⁷ The right to collective complaints has entered into force for the Charter. Moreover, the right of individual complaint in international treaties containing civil and political rights also provides indirect enforcement of economic, social, and cultural rights, given the noted context. In this case, the complaint alleges a violation of a civil or political right contained in the convention, such as non-discrimination, the right to a fair trial or the right to property, but the case in which the violation occurred is based on facts affecting the content of an economic or social right. Hence, if not the whole economic or social right, some elements of it may be enforceable before an international judicial (ECtHR) or quasi-judicial (UN Human Rights Council) forum.¹⁰⁸

3. Main features of EU legislation

The social model in European social policy usage means nothing more than a common European social model implemented in European states. However, it can also be understood as a project for an integration policy combining economic development and social balance.¹⁰⁹ The social model is, therefore, intrinsically linked to

106 Kardos, 2000, p. 5.

107 The Charter and the Amended Charter also institutionalise a specific monitoring mechanism in Part III to ensure the rights enshrined therein and to follow up on public commitments.

108 Kardos, 2000, p. 10.

109 According to József Hajdú and Henriett Rab, a single concept of the social dimension of the Union cannot be established in principle but can instead be described by an emerging single list of themes. (Rab, 2010, p. 15; See also Hajdú, 2001, p. 3) The social dimension of the Union therefore includes social law and social policy, including labour law and employment protection. This has its roots in legal history, as Community social law originally dealt with freedom of work and the two were linked from the outset. Kiss also takes a similar view, arguing that social protection is (also) provided by labour law. (See Kiss, 2010, p. 241) The European social model reflects a common set of values based on the preservation of peace, social justice, equality, solidarity, freedom and democracy, and respect for human rights, with the social economy or third pillar being one of the cornerstones of the European social model, although Member States' social systems are different and have different ways of implementing these values. Member States share a common objective of striking a balance between economic growth and social solidarity based on active interaction, and this intention is reflected in the European social model as a single set of values across different systems. There is a need to modernise and develop the European social model to respond to demographic change, meet the challenge of globalisation, and increase the adaptability of human resources to rapid technological change to achieve social inclusion, social justice, and poverty eradication more effectively. See on this Report on the future European social model, 13.7.2006 – (2005/2248(INI)), Committee on Employment and Social Affairs.

the combination of economic development and social balance. In the literature, the stages in the development of the social model are usually outlined before and after the Millennium. However, considerable time has elapsed since the start of the Millennium, and the European Pillar of Social Rights (Pillar) should be considered the reference point for the description of the social model.

The Pillar relates to the social dimension of the EU, Article 153 of the Treaty on the Functioning of the European Union,¹¹⁰ which is linked to the European social model.

110 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C 326/01:

(‘(1. In order to achieve the objectives set out in Article 151, the Union shall support and complement the activities of the Member States in the following areas:

- (a) in particular, improving the working environment to protect the health and safety of workers;
- (b) working conditions;
- (c) social security and social protection of workers;
- (d) protection of workers in the event of termination of their employment;
- (e) informing employees and listening to their views;
- (f) the representation and collective defence of the interests of workers and employers, including, subject to paragraph 5, participation in management;
- (g) the conditions of employment of third-country nationals legally residing in the Union;
- (h) enabling the integration of persons excluded from the labour market, without prejudice to Article 166;
- (i) equal opportunities and equal treatment of men and women in the labour market;
- (j) the fight against social exclusion;
- (k) modernisation of social protection systems, without prejudice to point (c).

(2) To this end, the European Parliament and the Council

(a) may, however, without prejudice to any harmonisation of the laws and regulations of the Member States, adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences;

(b) may, by means of directives, adopt minimum requirements in the fields referred to in paragraph 1(a) to (i) which shall apply progressively, taking into account the conditions and technical rules existing in each Member State. Such directives shall not impose administrative, financial or legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

The European Parliament and the Council, after consulting the Economic and Social Committee and the Committee of the Regions, shall act in accordance with the ordinary legislative procedure.

In the areas referred to in paragraph 1(c), (d), (f) and (g), the Council, acting unanimously after consulting the European Parliament and the committees referred to in those points, shall act in accordance with a special legislative procedure.

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may decide that the ordinary legislative procedure shall apply to paragraph 1(d), (f) and (g).

(3) The social partners may, at their joint request, be entrusted by any Member State with the implementation of directives adopted pursuant to paragraph 2 or, where appropriate, of Council decisions adopted in accordance with the provisions of Article 155.

In that case, that Member State must ensure that, by the date of transposition or implementation of the directive or decision at the latest, the social partners have introduced the necessary measures by agreement, while taking all necessary steps to enable it to guarantee at all times that the results imposed by the directive or decision will be achieved.

The term European social model was popularised by Jacques Delors in the 1980s and has also served as a counterpart to the American economic model, indicating the aim that Europe should pursue economic goals and keep in mind the state of social equilibrium in the way it shapes the economy. The development of the internal market has, thus, been given a social dimension.¹¹¹ According to Hendrickx, the Delors declaration redefines Europe as a place where Europe wants to develop in equal economic and social terms.¹¹²

On 26 April 2017, the Commission published its proposal¹¹³ on the European Pillar of Social Rights. The Pillar was finally launched at the Social Summit on Fair Jobs and Growth in Gothenburg on 17 November 2017, further strengthening the social dimension of the Union in cooperation with the European Parliament and the Council. Juncker aims to create a fair and fully pan-European labour market that is responsive to changes in European societies and the world and can serve as a compass for eurozone members. He stressed that the Pillar should incorporate what the EU has

(4) The provisions adopted under this Article shall
 – must not affect the right of Member States to determine the principles underlying their social security systems and must not significantly affect the financial balance of those systems;
 – not prevent Member States from maintaining or introducing more stringent safeguard measures compatible with the Treaties.

(5) The provisions of this Article shall not apply to remuneration, the right of association, the right to strike or the right to exclude’.

111 Hendrickx, 2018, p. 50.

112 Ibid.

113 The Pillar was born out of the combination of several documents:

Brussels, 26.4.2017 COM(2017) 250 final Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions Establishing a European Pillar of Social Rights; Brussels, 26.4.2017 C(2017) 2600 final Commission Recommendation of 26.4.2017 on the European Pillar of Social Rights; Brussels, 26.4.2017, COM(2017) 251 final Proposal for an Interinstitutional Proclamation on the European Pillar of Social Rights; Brussels, 26.4.2017 SWD(2017) 201 final Commission Staff Working Document Accompanying the Document Communication From the Commission to the European Parliament, the Council, the European and Social Committee, and the Committee of the Regions Establishing a European Pillar of Social Rights; Brussels, 26.4.2017, SWD(2017) 206 final, Commission Staff Working Document, Report of the public consultation, Accompanying the document, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Establishing a European Pillar of Social Rights.

The first preliminary draft of the Pillar covered three main areas:

‘Equal opportunities and access to the labour market, including skills development, lifelong learning and active support for employment to increase employment opportunities, facilitate employment transitions and improve the employability of individuals;

Fair working conditions that ensure an appropriate and reliable balance between the rights and obligations of employers and workers, and between flexibility and security of employment, in order to promote job creation, employment and subsequent career changes, and to encourage social dialogue;

Adequate and sustainable social protection and access to high-quality basic services, including childcare, health and long-term care, to ensure decent living conditions and protection against risks, and to enable individuals to participate fully in employment and society in general’.

already achieved in the field of worker protection. He attached particular importance to the social partners.¹¹⁴ *However, how did we get here?*

In 1971, the European Commission set out principles for a Social Action Programme. It was prompted by the enlargement of the European Community and confirmed by the Paris Declaration, where the Heads of State and Government explicitly stated the importance of social space. The Declaration is significant because it was the first time in European politics that integration was considered more than economic cooperation. Although the Declaration did not set out any rights, the change in approach that came with enlargement was set out in the Social Action Programme,¹¹⁵ which subsequently launched several labour rights initiatives. However, these initiatives did not rise to the level of legislation, as there was no legal basis for labour legislation. However, the Declaration is a great example of how it can have a huge impact on European policy. The realisation that integration policy is not just an economic but also a social issue takes us back to the 1980s when the economic crisis was tackled by deregulation in the name of flexibility. Economic conditions have, thus, not helped to strengthen social Europe.¹¹⁶

The European Commission, led by Jacques Delors, continued to focus on the creation of a social space based on the principles set out in 1971. Its strategy included a fundamental rights approach, which soon led to the creation of the Community Charter of the Fundamental Social Rights of Workers. The Commission published a second draft of the Charter on 2 October 1989, after consultation with the interest organisations, and, except for Great Britain, the document was adopted at the Strasbourg meeting in December 1989. The Community Charter was the social dimension of the single market. This document and the strategy behind it have many similarities with the Pillar. The Community Charter remained a declaration, but with a different concept: it set out fundamental rights. The Commission also announced an Action Programme to promote compliance with the Charter.¹¹⁷

114 'We need to step up work to create a fair and truly pan-European labour market (...) As part of this effort, I would like to see the creation of a European Pillar of Social Rights, which takes into account the changing characteristics of European societies and the world of work and which can serve as a guide for renewed convergence within the euro area. The European Pillar of Social Rights should complement what we have already achieved together in the protection of EU workers. I believe we are right to launch this initiative within the euro area, while allowing other Member States to join if they wish'. State of the Union 2015: Time for Honesty, Unity and Solidarity, Strasbourg, 9 September 2015, Jean-Claude Juncker President of the European Commission.
115 Council Resolution of 21 January 1974 concerning a social action programme.

116 Hendrickx, 2018, pp. 52–53.

117 COM (1989) 568: Communication from the Commission Concerning its Action Programme Relating to the Implementation of the Community Charter of Basic Social Rights For Workers. The Action Programme set three principles as the flagship of the European Community's (EC's) social policy: improving employment and living and working conditions and mainstreaming social dialogue in decision-making. These objectives are not derived from primary sources of law but stem from the will of the parties. This expression of will has been fulfilled in the jurisprudence of the European Court of Justice, particularly in the areas of non-discrimination between men and women, better working conditions, coordination of social security systems, and health and safety at work.

However, alongside soft law, binding legislation in the form of directives has also emerged in the field of equal treatment as a priority area for social policy, including social protection for migrant workers and the development of the labour market.¹¹⁸

An improved version of the Community Charter is the Social Protocol, also referred to as the Social Protocol, annexed to the Maastricht Treaty in 1993. The UK only joined the Protocol at a later stage; meanwhile, it essentially refused to join the Charter. Moreover, part of the Maastricht Treaty was the Agreement on Social Policy between the Member States and the European Communities. Accordingly, regarding Maastricht, when we talk about social policy, we mean three documents: the Treaty on European Union, Protocol No. 14, and the Agreement on Social Policy. The last two are the most important documents for the development of social policy. The Protocol and the Agreement on Social Policy are part of the Treaty of Rome. Thus, the majority view is that both documents are part of the Community's primary law. However, the two documents cover only 11 Member States. The situation describes the dual legal framework of Community social law,¹¹⁹ which comprises the social policy provisions of the Treaty of Rome and the legislation based on them and the Social Policy Protocol, the Social Policy Agreement, and the provisions adopted based on them. The incorporation of these documents into Community law has made them easier to implement and enforce.¹²⁰

The actual social law provisions are contained in the text of the Social Policy Agreement. The objectives differ significantly from the Community's previous objectives: promotion of employment, improvement of living and working conditions, social protection, social dialogue, high and sustainable employment, and equal opportunities for men and women.¹²¹

The dichotomy in Community social law persisted until 1997, until the Amsterdam Treaty, when Tony Blair announced that Britain would sign the Social Policy Protocol. The Commission produced a Green Paper on the further reform of social policy at the Community level¹²² in 1993 and a White Paper in 1994. The Green Paper brought European social policy to a critical juncture. Thus, to address high unemployment, the Green Paper clarified that the problem needed to be addressed at the national and European levels, and a new direction for social policy needed to be defined. This

118 Council Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women; Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions; Council Directive 86/613/EEC on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood. Gyulavári and Kardos, 1999, pp. 63–145.

119 Sipos, 1996, p. 116. See also Prugberger and Jakab, 2016.

120 Gyulavári and Könczei, 2000, pp. 50–52.

121 Ibid., p. 53.

122 Green Paper – European Social Policy, Communication of 17 November 1993 COM(93) 551.

process fully accords with the need to reconcile economic and social objectives to tackle unemployment and remain competitive.¹²³

The focus of the White Paper on Growth, Competitiveness, and Employment was clearly on employment and tackling unemployment. This White Paper also made direct reference to labour law, its modernisation, the flexibility of enterprises and the reform of social protection systems. Indeed, it identified the inflexibility of the labour market as the main cause of the crisis and unemployment.¹²⁴ Importantly for the development of the social dimension, the existing guidance on access to social protection provided in the context of the European Semester and the Open Method of Coordination in the social field¹²⁵ has developed a consensus among Member States and EU institutions on the need to modernise social protection systems.

The White Paper on European Social Policy set out a social policy agenda.¹²⁶ Linked to this agenda are the Essen priorities¹²⁷ for improving vocational training to increase employment intensity via flexible work organisation methods that contribute to increasing competitiveness while considering the interests of workers. In this, the social partners have an essential role to play. Flexibility has already been introduced on the employer's side while maintaining security on the worker's side. These priorities have led the Commission to produce an annual report on labour-market developments.¹²⁸

The Treaty of Amsterdam (June 1997) amended the Treaty of Rome and made employment policy a top priority. Its guiding principle was absolute respect for human rights.¹²⁹ Thus, Title VIa (Title VIII in the current text), which dealt exclusively with employment policy and the coordination of Member States' employment policies, was included in the Amsterdam Treaty.

123 Hendrickx, 2018, p. 56.

124 Ibid., pp. 56–57. Growth, Competitiveness, Employment: the Challenges and Ways Forward into the 21st Century—White Paper. Parts A and B. COM (93) 700 final/A and B, 5 December 1993.

125 Council Recommendation (27 July 1992) on the convergence of social protection objectives and policies (92/442/EEC), OJ L 245, 26.8.1992, p. 49.

126 White Paper on European Social Policy, 1994.

127 Adopted by the European Council on 9-10 December 1994.

128 Gyulavári and Könczei, 2000, pp. 62–63; Hendrickx, 2018, pp. 58–59.

129 Gyulavári and Könczei, 2000, pp. 64–69; Hendrickx, 2018, p. 59. The most important changes are as follows: provision for a high level of employment, achievement of a high degree of competitiveness, coordination of national employment policies for a coordinated employment strategy, establishment and role of the Employment and Labour Market Committee, annual analysis of the employment situation in the Community by the Council, and adoption of a decision based on a joint annual report by the Council and the Commission. (Gyulavári and Könczei, 2000, p. 67) The former chapter on social policy has been renumbered: Articles 117–120 have been renumbered as Articles 136–143. Article 136 refers directly to the European Social Charter and the Community Charter, without conferring binding force on these documents. Article 137 provides for the Council to decide by co-decision on a matter requiring a qualified majority and for the Council to take measures to this end. Article 141 states that existing barriers to employment for both women and men must be removed. The concept of equal work for equal value has been introduced in this Article, endorsing previous case law.

It has become clear that unemployment in the Community requires an employment strategy from the Member States. In 1997, the Luxembourg summit adopted the European Council's employment strategy, which had two main aspects: economic growth alone would not solve social and labour-market inequalities and tensions, and employment policies needed to be much more targeted than in the past.

The European Employment Strategy has put the soft law mechanism at the forefront through the 'open method of coordination'.^{130,131} It is also important to highlight the Luxembourg, Cardiff, Berlin and Cologne summits.¹³²

In 1996, the 'Comité de Sages' was set up to try to ensure that the rights enshrined in the Community Charter were effectively and institutionally guaranteed to workers. This Committee recognised the need for a binding catalogue of rights and the Charter

130 The open method of coordination (OMC) in the field of social protection and social inclusion, one of the most important instruments supporting the social development of the EU and its Member States, was proclaimed by the Lisbon European Council in March 2000. The OMC was subsequently incorporated into the Employment Strategy and has provided a completely new direction for policy formulation and implementation, based on a non-legislative mechanism. However, as it was introduced in so many areas, it was also necessary to coordinate its coordination in 2003. A broader involvement of actors was introduced at the Member State level and economic, employment, and social open coordination mechanisms were linked to increase their mutual effectiveness. The results of the fight against unemployment have also linked employment and economic policies. Reflections of the open coordination mechanism can also be observed within social policy and have led to the linking of social and economic processes. Thus, national action plans were developed in an integrated way, bringing together social exclusion, pension systems, and healthcare, and became known in 2007 as the Joint Social Protection Report. The OMC has certainly become a key player in EU policy making. See Hajdú, 2008, pp. 7–9; Gyulavári, 2001, pp. 92–109; Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions. Social policy agenda [COM(2000) 379 final – not published in the Official Journal]; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Renewed Social Agenda: Opportunities, access and solidarity in 21st century Europe COM(2008) 412 final. Bercusson, 2009, pp. 168–198; Deakin and Rogowski, 2011, pp. 230–238.

131 Luxembourg Presidency Summary 1998. Gyulavári and Kardos, 1999, pp. 153–166. The 1998 employment guidelines: improving employability, promoting entrepreneurship, developing adaptability, improving equal opportunities in the labour market.

132 The Cardiff Summit in June 1998 evaluated the national action plans drawn up under the Employment Directives. Although the national action plans were general, it became clear that without the Member States working together, unemployment rates could not be reduced. Accordingly, at the February 1999 meeting of the Council of Europe, the Heads of Government of the Member States adopted the proposed Employment Guidelines for 1999. The Berlin Summit adopted the principles for the reform of the Structural Funds for the 2000–2006 programming period. At the Cologne Summit, the European Council adopted in June 1999 the European Employment Pact, based on three pillars: economic policy coordination and wage developments through macroeconomic dialogue, further development and effective implementation of a coordinated employment strategy, and continuation and strengthening of structural reforms by increasing competitiveness. See Guidelines for Member States Employment Policies 1999, Communication from the Commission, COM(1998)574 final. For example, the employability pillar has been extended to include young people with learning challenges. Gyulavári and Kóncei, 2000, p. 79.

of Fundamental Rights of the European Union was born as a result. The nature of the Charter of Fundamental Rights needed to be clarified to have the same legal status as the founding treaties and be binding.¹³³

The directives adopted during the Millennium era have, indeed, sought to protect workers by promoting flexible working arrangements to tackle unemployment.

Employment policy issues are key to the post-millennium changes in the European social dimension. Thus, the impact on European labour law is significant.

Including flexibility, workers also need security. Security regards working for employment and keeping and progressing in work. It is where the transit labour market and social and labour-market programmes based on the individual development of skills come in. The Wim Kok report continues to formulate the key elements of employment policy in light of the objectives of the Lisbon Strategy. Increasing employment and productivity requires increasing the flexibility of workers and enterprises, integrating as many people as possible into the labour market, investing in human capital, and implementing reforms effectively through good governance.

As with the Wim Kok report, the focus of the Green Paper 2006 is on how to achieve the Lisbon Strategy's goal of sustainable development with more and better jobs.

Among the European legislation on social security, Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems are arguably the most important, the reasons for which can be summarised as follows. The rules on the coordination of national social security schemes are part of the free movement of persons and should contribute to improving living standards and conditions of employment. The purpose of the coordination is the autonomy of Member States regarding the design of their welfare state, but they must open it to EU citizens exercising their fundamental freedoms. Regulation (EEC) No. 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, self-employed persons, and members of their families moving within the Community has been amended and updated several times to account for developments at the Community level, including judgments of the European Court of Justice (hereinafter referred to as the Court of Justice), and changes in legislation at the national level. These factors have played a role in making the Community coordination rules complex and voluminous. It is, therefore, important to replace, modernise, and simplify these rules to achieve the objective of free movement of persons. It is important to respect the specific characteristics of national social

133 Charter of Fundamental Rights of the European Union (2000/C 364/01) Article 34 is about social security and social assistance. Further, a distinction is made between social security as a form of service subject to insurance and, therefore, to the payment of contributions (Paragraph 1) and benefits of the assistance type (Paragraph 3). The latter, unlike the Social Charter, combines in one article the right to social security and assistance and the right to combat poverty. The Court of Justice of the European Union supervise the provisions of the Charter. However, the Charter introduces little novelty, as it builds on the rights referred to in the ECHR, the European Social Charter and the Covenant on Economic, Social and Cultural Rights.

security legislation and develop only one coordination system while respecting the sovereignty and autonomy of the Member States.¹³⁴

In the post-Millennium perspective, the social dimension should be highlighted in the Commission Recommendation of 3 October 2008 on promoting the active inclusion of people excluded from the labour market,¹³⁵ the Commission Communication ‘Investing socially for growth and cohesion, including through the European Social Fund 2014-2020’,¹³⁶ the Commission Communication ‘A renewed commitment to social Europe: Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion’,¹³⁷ the Council Decision (EU) 2015/1848 of 5 October 2015 on the 2015 Guidelines for the employment policies of the Member States, and the Council Decision (EU) 2015/1848 on the 2015 Guidelines for the employment policies of the Member States.

Beyond the directives, the Lisbon Treaty can be seen as an important point in the development of the social dimension. This primary source of law entered into force on 1 December 2009. In the text of the Treaty, the Treaty establishing the European Community was renamed the Treaty on the Functioning of the European Union, while the term ‘Community’ was replaced by ‘Union’. The Community was, thus, replaced by the Union.¹³⁸

The Treaty states in its preamble that the fundamental aim of the Union’s efforts is the constant improvement of the living and working conditions of the peoples of the Member States. Title I sets out the Union’s competences in concrete terms, specifying in Article 4 the competences shared with the Member States. The aspects of social policy defined in the Treaty are also covered by shared competence such that if the Union has not yet adopted a legal act on a particular social policy issue, it remains an option for the Member States. However, the Union may take the initiative to coordinate the social policies of the Member States.¹³⁹

134 The first regulations of the European Council are European Council Regulation No. 3/1958 on social security for migrant workers and its implementation of Regulation No. 4/1958. The adoption of Regulation 3/58 remains considered by experts as a milestone in the development of coordination mechanisms. It was the first time that social law coordination mechanisms were governed by a multilateral, multilateral agreement. Regulations (EEC) No. 1408/71 and (EEC) No. 574/1972 were subsequently adopted and replaced by Regulation (EC) No. 883/2004 and its implementation of Regulation (EC) No. 987/2009. Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems was amended by Regulation (EC) No. 988/2009, Commission Regulation (EU) No 1244/2010, Regulation (EU) No. 465/2012 and Commission Regulation (EU) No. 1224/2012.

135 C (2008) 5737, OJ L 307, 18.11.2008, p. 11.

136 COM(2013) 83 final.

137 COM(2008) 418 final.

138 Moreover, the treaty has the added value of systematising and clarifying the competences of the EU. Three types of powers can be distinguished. Exclusive powers: only the EU has the power to adopt legal acts, the Member States only have the power or obligation to implement them. Shared competence: the Member States may adopt binding acts if the Union has not yet adopted an act on the matter in question. Supporting powers: the EU takes action to support or complement national policies.

139 Article 5.

The right of citizens of Member States to move and reside freely within the territory of the Member States was already established in the EU, but the Lisbon Treaty also declares in Article 21 that social security and social protection are, in fact, a part of the implementation of this fundamental freedom, as the article allows the Council, acting under a special legislative procedure, to adopt measures on social security and social protection for the right of free movement and residence. The social policy of the EU is, therefore, a policy directly derived from one of the four fundamental freedoms of the Union, and the Treaty provides the means for its regulation by the Union.

Social security is, therefore, an area of shared competence. Article 48 governs the decision-making mechanism of the Union. In the field of social security, the European Parliament and the Council, acting per the ordinary legislative procedure, shall adopt the measures necessary to ensure the free movement of workers. Thus, they shall establish a system of instruments to ensure that migrant workers and self-employed workers and those entitled under them can aggregate all periods considered under the legislation of the various countries for acquiring and maintaining entitlement to benefits and calculating the amount of benefits; that is, the payment of benefits to persons residing in the territory of the Member States.¹⁴⁰

Title X of the Lisbon Treaty regulates social policy. It includes 11 articles, from Article 151 to 161. Fundamental social rights are mentioned as a category, but only by way of example: the rights set out in the European Social Charter and the 1989 Community Charter of the Fundamental Social Rights of Workers are among the fundamental social rights. Article 151 states that the Union and the Member States shall have as their objectives the promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labour and the development of human resources for lasting high employment and combating exclusion.

As social policy is among the shared competences, the Union and the Member States will implement measures that consider the diversity of national practices, particularly in contractual relations, and the need to maintain the Union's economic competitiveness.

In July 2008, the Commission published a renewed social agenda 'Opportunities, access and solidarity in 21st century Europe' as a response to rising unemployment caused by the financial and economic crisis. Measures were introduced to increase the impact of existing financial instruments such as the European Social Fund.

140 If a member of the Council states that a draft legislative act would affect important aspects of its social security system, including its scope, cost, or financing system, or would affect the financial balance of that system, it may ask for the matter to be referred to the European Council. In this case, the ordinary legislative procedure shall be suspended. Within four months of the suspension, the European Council, after discussing the matter, shall refer the draft back to the Council, which shall lift the suspension of the ordinary legislative procedure, or take no action, or request the Commission to submit a new proposal, in which case the act originally proposed shall be deemed not to have been adopted.

The successor to the Lisbon Strategy is the Europe 2020 Strategy, inspired by the realisation that the crisis had destroyed the gains of economic growth and exposed the fundamental weaknesses of the European economy.

The social dimension of European integration has, therefore, evolved considerably over the years. This social dimension is a key aspect of the Europe 2020 strategy to ensure ‘inclusive growth’ with a high level of employment and reduce the number of people living in poverty or at risk of social exclusion. This strategy is still being implemented today.

We consider the Pillar to be significant because it encapsulates the principles and rights of a fair and well-functioning labour market and welfare systems in 21st-century Europe. It reinforces existing rights¹⁴¹ and highlights principles that respond to the challenges of economic, technological, and social development. Thus, Hendrickx posits that we should be cautious about its impact. One thing is certain: it has a new political impetus, different from the pre-millennium documents.¹⁴² The Pillar provides guidance to meet people’s basic needs. Where a principle applies to employees, it applies to all employees, regardless of their employment status, how they are employed, or the duration of their employment. In our view, a minimum standard of life worthy of the working person is set out in this document, where the value of work is unquestioned. A work-based society can remain truly competitive in the 21st century. In the Pillar, the European Commission provides a guideline on how and under what conditions this should be achieved. It has exercised considerable control over the Member States in terms of economic governance.

The Pillar’s influence is felt in the development of the European social model. The effective implementation of the European Pillar of Social Rights is more important than ever and largely depends on the determination and action of the Member States, which are primarily responsible for employment, skills, and social policy. Action at the EU level can complement national action, and the recently adopted Action Plan is the Commission’s contribution to the implementation of the principles of the Social Pillar, as called for by European leaders and the European Parliament. The Commission proposes three EU headline targets to be achieved by the end of the decade in the areas of employment, skills, and social protection, as per the UN Sustainable Development Goals. Together with the targets set out in the Pillar Principles and the financial support of the Multiannual Financial Framework (MFF) 2021–2027 and NextGenerationEU, these targets will guide the collective efforts towards a strong social Europe with sustainable impact. Complementing the EU’s bold policy goals for a green and digital switchover, the social targets will help focus policy efforts to deliver results and provide an important incentive for national reforms and investments. They can influence policy decisions among Member States and their regions,

141 Preamble, ‘The European Parliament called for the creation of a solid European pillar of social rights, which should strengthen social rights and have a positive impact on people’s lives in the short and medium term, and enable the promotion of European integration in the 21st century’.

142 Hendrickx, 2018, p. 61.

including national recovery and resilience-building plans under the Recovery and Resilience Instrument, as per the relevant country-specific recommendations and in the context of the programming of cohesion policy funds for 2021–2027. They will also allow for measuring and monitoring progress and political commitment towards the Pillar’s ambitions.¹⁴³

What is the future of the European Social Model? Several documents stress the importance of balancing economic and social development. Among these, we highlight those linked to the European Semester.¹⁴⁴ However, following the adoption of the Pillar, several changes in the European Semester cycle are visible. We would like to draw attention to an analysis of the 2022 Country-Specific Recommendations (CSRs) by the Council on a proposal by the Commission concerning social and labour policies. Consider the main new features of the Semester cycle of 2022, notably the integration of the European Semester in the Next Generation EU strategy and the ongoing energy crisis. The social CSRs are probed from thematic and country perspectives. The inclusion of data from previous years’ European Trade Union Institute analysis allows for a comparative outlook to grasp the overall evolution of the approach of the CSRs to national social and labour policies. Overall, similar to the CSRs adopted in 2020, the 2022 recommendations address the social dimension. However, the analysis

143 See The European Pillar of Social Rights Action Plan.

144 The European Semester was introduced in 2011 as the EU’s response to the weaknesses in the EU’s economic governance revealed during the financial and economic crisis. The EU took a wide range of measures to enhance policy coordination and strengthen its economic governance as the best way to return to sustainable economic growth, job creation, financial stability and sound public finances. It was done by adopting new legislation, which strengthened the Stability and Growth Pact by synchronising the timetables of the various existing policy coordination frameworks and aligning the objectives of national fiscal, economic, and employment policies. The areas of surveillance and coordination were extended beyond fiscal issues to broader macroeconomic imbalances and related policies under the Macroeconomic Imbalance Procedure. Compared to the previous set-up, the revamped legal framework allowed for more regular monitoring and a swifter response in case of problems. It also allowed for greater involvement of the European Parliament and national legislatures, social partners, and other relevant stakeholders at all levels. The European Semester ensures that Member States discuss their economic, social, and budgetary plans with their EU partners at specific times in the first half of the year—hence the term Semester—such that national action can be taken in the second part of the year, notably with the adoption of the budgets for the subsequent year. This early interaction allows them to comment on each other’s plans and monitor progress collectively. It also allows them to take better account of common challenges. See European Commission, no date.

Several documents stress the importance of balancing economic and social development, such as Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, and the 2019 European Semester: country-specific recommendations, Brussels, 5.6.2019 COM(2019) 500 final. The main recent changes in the European Semester cycle are as follows: 2017: Pillar was adopted; 2018: Integration of the Pillar and Social Scoreboard in European Semester; 2021: Recovery and Resilience Facility (RRF) was adopted; Alteration of usual Semester cycle: national recovery plans instead of reform programmes and no CSRs; and 2022: Integration of RRF into the European Semester. The Semester process resumes, except that the Country Reports are published after the National Reform Plans, together with the CSRs. Rainone, 2022, p. 13.

also indicated a renewed emphasis on the sustainability of public finance and the macroeconomic situation of the countries. This indication is reflected in recommendations to limit public spending and social investment, especially in pension systems and long-term care.¹⁴⁵

Strengthening the social safety net is among the recommendations that appear most often in the 2022 European Semester cycle. National governments are asked to target social assistance better to improve the adequacy and coverage of their social protection systems, as per what had been observed in 2020 (when the emphasis on those aspects was even more pronounced). Moreover, the recommendations in the social sense are not limited to the sphere of social welfare. In fact, four states have received recommendations to decrease the most flexible and precarious forms of employment. Moreover, a new category of social CSRs has appeared concerning inclusivity in education systems, addressed to five states (or seven, if recitals are also considered).¹⁴⁶

Obviously, the sense of vulnerability could be overcome by strengthening economic resilience. There will be no well-functioning social system without a well-functioning economy. The challenge is combining the economic and social aspects in a balanced manner. In this dilemma, how to finance social security is crucial.¹⁴⁷ The public expenditure on social protection is high; therefore, in times of challenges, be it migration, an ageing society, or an energy crisis, it is crucial to find ways of financing social rights sustainably.

4. Closing remarks

In this part of the book, the theoretical issue of social security has been presented by the main characteristics of social rights, the international social law, and the main features of the EU legislation in this regard. These provide a broad understanding of the issue at international and European levels. This chapter has mainly presented the works of Central-European authors, highlighting that human rights are indivisible, interdependent, and interrelated rights. The quality of human existence is determined by second-generation rights. Social security is an integral part of a life worth living. As we shall see, the nature of each generation differs; however, one thing can be said with certainty: all human beings have an indivisible right to human rights, the quality of human life is largely determined by the opportunities offered by these social rights, and the state is present in all generational rights, differing only in the extent and intensity of their presence. There is a great need for integrated protection of human rights. The exercise of civil and political rights is hardly conceivable without at least a minimum of social empowerment, the former presupposing the latter.

145 See more: Rainone, 2022, pp. 4–5.

146 Ibid., p. 29.

147 See more: European Economic and Social Committee, 2018.

Social rights as second-generation fundamental rights are also reflected in certain international conventions on fundamental rights. However, given the economic implications of social rights, international conventions with a broadly more general scope also contain several provisions with implications for social administration and the exercise of these rights. The first level comprises the universal conventions, which are essentially adopted within the framework of the UN and its specialised agencies. The second level comprises regional conventions, applied to specific groups of countries. The third level comprises bilateral social policy conventions. The guarantee of social rights and the obligation to guarantee them are primarily a matter of state resources and require a considerable degree of state redistribution. Failure by the State to fulfil such obligations also has social perception consequences, given that the citizens will not fulfil their obligations to the State to provide social services if the State fails to fulfil its duties as perceived by its citizens. This situation will strengthen the grey and black economy.

The social model in European social policy usage means nothing more than a common European social model implemented in European states. However, it can also be understood as a project for an integration policy combining economic development and social balance. The social model is, therefore, intrinsically linked to the combination of economic development and social balance. According to the literature, the stages in the development of the social model have been outlined before and after the start of the Millennium. Further, the European Pillar of Social Rights (Pillar) should be taken as the reference point for the description of the social model.

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