

TOWARDS INDIVIDUALIZATION OF SOCIAL RIGHTS IN A EUROPEAN PERSPECTIVE

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INTRODUCTION

"Individualization of rights in the field of social protection" has been a topic on the European level since the middle of the nineties. Individualization of rights means abolition of derived rights, linked to family relationship, granted to the spouse, who is not involved in employment, and to the children of a beneficiary of direct social rights gained as a worker. Derived rights exist in Bismarckian systems based on the traditional "male breadwinner model", in which husband and wife share different roles: the husband has an occupation enabling him to provide for his family and the wife stays at home caring for children and for the elderly.

Individualization of social rights *means discriminating the individual from the generic group*¹, here *the family, and recognizing him/her individual rights*.

How does Europe deal with this question?

We will first analyze individualization of social rights on European level – the position of the European Commission in 1997 and the common objectives defined by the Member States through the "Open Method of Coordination" since 2000 – and then present some national models of individualization – the universal Danish model founded on equality between women and men and the German renewed model on social insurance based on the sharing of different roles between women and men. We will also tackle an alternative to individualization of social rights, that is to say the extension of derived rights in the French model and in the Luxembourg model. Finally, in the conclusion, we will question this subject with regard to "the European social model" under construction.

INDIVIDUALIZATION OF SOCIAL RIGHTS ON EUROPEAN LEVEL

The European Commission has always been in favour of an individualization of social rights, while the Member States are more cautious due to the fact that there are different cultural and historical approaches of the relationship between women and men inside the European Union.

The position of the European Commission (1997)

The European Commission presented, in March 1997, a Communication on «Modernising and improving social protection in the European Union»². This Communication was published several months before the launching of the European Employment Strategy (see below). It had a dual perspective: to indicate the routes along which modernisation could be pursued and to present some specific proposals for European level support.

First it reminded of the responsibilities on European level and on national level. Each Member State remains responsible for organising and financing its own social protection system. The European Union is responsible for the coordination of national social security schemes in cases where citizens exercise their rights of free movement within the Union. The European Union also serves as a *forum* for promoting better mutual understanding of long term perspectives and for identifying common challenges facing Member States.

According to the Commission, four dominant factors underpin the changes of social protection systems: the changing nature

of work, the ageing of the European population, *the new gender balance* and the need to reform the coordination of national social security schemes for people moving within the European Union. The third factor, *the changing gender balance*, requires new initiatives to strengthen individual rights, which implies implementing progressively an individualization of rights.

What is meant here by "*individualization of social rights*"?

It means *the repeal of derived rights, which connect social protection of an individual to his/her specific family situation, and their replacement by direct individual rights.*

How did the Commission explain its position?

First, the Commission noted increase of female participation in the labour market and it declared that this phenomenon had to be considered as being irreversible and that it will continue to increase during the years to come. Secondly, it recognised that, in the past, derived rights had been successful in protecting many people, especially women, from poverty.

FOR THE COMMISSION, DERIVED RIGHTS POSE NOWADAYS A NUMBER OF PROBLEMS:

- **a problem of insecurity for the entitled beneficiaries of derived rights**

Derived rights create dependency on the person, who is insured under social security schemes. When the relationship breaks down, beneficiaries of derived rights also lose their entitlement to social rights. Furthermore, derived rights are, in most countries, given only to spouses and children. Often, they do not take in account other forms of household units, other types of families and other forms of cohabitation.

- **a problem of disincentives for women to enter the labour market**

Derived rights can create disincentives for women to enter the labour market and lead to incentives to take jobs in the black market without access to direct individual rights. In this case, their work is not regarded as an independent way of making a living, but rather as a supplement to the family budget.

- **a problem of social justice as regards pensions**

Derived rights are given for nothing, without contribution as a counterpart. Thus, survivors' pensions enable people to benefit from a pension on the strength of the contributions of his/her deceased spouse without the former having had to make any additional contribution. This can lead to the situation whereby a spouse who has never worked outside the home can receive a higher pension, calculated on a complete career and high income of the deceased spouse, than a single person having worked all his/her life with a lower income. Old age pensions reflect inequalities of the labour market. Women's wages are lower than men's wages for 25% to 30%. As a result, derived rights tend to redistribute social security benefits from the average income earner to the dependants and survivors of the high income earners.

From the identification of these three problems on, the Commission will defend a progressive individualization of rights with the aim to halt the practice of taking in account personal links when ensuring social protection of an individual. Individualization would contribute to bring social protection in line with legislation governing employment contracts considering "workers as individuals". The Commission noted also that individualization would be in line with the general trend towards a greater autonomy of each person. In that sense, it would go beyond gender issues and also concern the relations between parents and children in the light of new family patterns and structures.

How did the Commission consider concrete implementation of individualization of rights?

The European Commission asked the Member States to avoid individualization of social rights leading to hardship. Therefore, "a strategy must be devised to encourage all potential workers to participate in the labour market in their own right without putting

undue strain on family finances". The European Employment Strategy³, implemented since "the Luxembourg Jobs Summit" in November 1997, contained several guidelines on equality of women and men with the aim to increase women employment rate in all the Member States. It must be considered as an instrument in favour of individualization of social rights.

Furthermore, the European Commission said that individualization of rights could have different effects depending on the branch of social protection considered. Individualizing entitlements to health care and unemployment benefits seemed to be relatively straightforward. The most important and the most difficult branch to individualize would be pensions, especially survivors' pensions. Individualization would mean abolishing supplements for dependants and replacing of the survivors' pensions by another type of income. For widow(er)s under the retirement age, a special transitional pension could be granted until the retirement age or until a job could be found.

According to old age pensions, the European Commission proposed the following scheme: a basic old-age pension for everybody, as a universal citizens' right, not connected to work, supplemented by an occupational pension. But it was said that "this way must be considered as a straight and narrow", because the current trend in the Member States' pension reforms was going in the opposite direction, i.e. establishing "a closer link between contributions paid through employment and the amount of pensions". An in-depth reflection on the impact of career breaks on pension rights would be necessary in order to find ways of overcoming this apparent conflict of objectives. Moreover, diversity of approaches existing within the Union had to be taken into account.

"Individualisation of rights" under the OMC

From 1999 on, modernising social protection in the European Union took place in a more integrated process. First called "the concerted strategy for modernising social protection"⁴, it became, after the Lisbon European Council in March 2000, "the open method of coordination" (OMC) applied on social protection, first on pensions⁵ and afterwards on health care and long term care for the elderly⁶.

This new European method was designed to help Member States to progressively develop their own policies while achieving greater convergence towards the main European goals.

According to point 37 of the Presidency's Conclusions of the Lisbon European Council⁷, it involved:

- fixing guidelines for the Union combined with specific timetables for achieving the goals which Member States set in the short, medium and long terms;
- establishing, where appropriate, quantitative and qualitative indicators and benchmarks against the best in the world and tailored to the needs of different Member States and sectors as a means of comparing best practice;
- translating these European guidelines into national and regional policies by setting specific targets and adopting measures, taking into account national and regional differences;
- periodic monitoring, evaluation and peer review organised as mutual learning processes.

Since 2001, OMC on social protection has been managed, on the European level, by both the Commission and the Member States through the Council, but also through their representatives in the European Social Protection Committee and in the European Economic Policy Committee.

In the area of pensions, a joint report on objectives and working methods has been drawn up by the two Committees and published in November 2001. The Member States agreed on common objectives and decided to develop national strategies on adequate and sustainable pension systems. In 2003, the Commission and the Council published a joint report based on the assessment of the strategies of the Member States. The next round of national strategy reports took place in 2005.

INDIVIDUALIZATION OF PENSION RIGHTS (OMC ON PENSIONS)

There has been no common objective asking the Member States to promote individualization of pension rights. But three common objectives are linked to our subject:

Common Objective N° 1 – *Ensure that older people are not placed at risk of poverty and can enjoy decent standard of living; that they share in the economic wellbeing of their country and can accordingly participate actively in public, social and cultural life.*

Common Objective N° 2 – *Provide access for all individuals to appropriate pension arrangements, public and/or private, which allow them to earn pension entitlements enabling them to maintain, to a reasonable degree, their living standard after retirement.*

Common Objective N° 10 – *Review pension provisions with a view to ensuring the principle of equal treatment between women and men taking into account obligations under EU law⁸.*

In the area of health care and long term care for the elderly, the Barcelona European Council of March 2002 recognized three guiding principles for the reform of national systems: *accessibility for all, high quality care and financial sustainability*. Member States started cooperation on this basis by an analysis of their systems by means of a questionnaire issued by the European Social Protection Committee. In 2003, the Commission and the Council published a joint report based on the replies submitted by the Member States to the questionnaire. This joint report suggested intensifying the cooperative exchange in this field. In April 2004, the Commission made a proposal to extend the "open method of coordination" (OMC) to the area of health care and long term care for the elderly, which was accepted by the Council in autumn 2004.

INDIVIDUALIZATION OF RIGHTS IN THE AREA OF HEALTH CARE AND LONG TERM CARE FOR THE ELDERLY (OMC)

Individualization was first expressed by the Commission⁹ through the following idea: *"access to health care is a fundamental right and an essential element of human dignity: it must therefore be guaranteed for all"*. Reference was done to articles 32 and 33 of the European Union's Charter of Fundamental Rights.

Since 2005, individualization is part of the following common objective: *Ensuring access to high-quality care based on the principles of universal access, fairness and solidarity¹⁰.*

Up until now, the Member States did not integrate the position of the European Commission as such in OMC on social protection. There has been no consensus among them to define individualization of social right as a common objective.

At the very most, individualization of social right might be considered as a way to achieve equal treatment between women and men in the area of pensions and universal access to health care and long-term care for the elderly. OMC is a special process that lets Member States free to choose the ways they consider appropriate to their context to achieve the common objectives. So let's have a look on some national reforms linked to individualization of social rights.

INDIVIDUALIZATION OF SOCIAL RIGHTS ON NATIONAL LEVEL

Reforms differ greatly according to cultural spheres and to historical social protection systems.

Individualisation of rights with acknowledgement of equality between men and women: the Danish universal model

Denmark does no more consider marriage as the basis of social protection regulation. Marriage has become an arrangement of a private order.

Each person "under employment age", that means between 15 and 64, is meant to be financially independent. Independence is reached through participation in the labour market. Employment rate in Denmark is the highest in Europe: 75.7% (2004)¹¹. Women entered employment market in huge numbers in the 60ties and subsequently asserted the *right to work*, a right which was guaranteed by the State in the form of a permanent link to the labour market. Employment rate for women is 71.6% (2004)¹². It is also the highest in the European Union. This "social compromise" is founded on "full employment" and on a high level of contributions and tax deduction.

As a counterpart, the Danish Welfare State offers a combination of universal rights (for example, free access to the National Health Service and to a basic pension), social insurance rights based on work and the availability of free or very cheap welfare services, notably facilities for young children and long term care for the elderly. Moreover, mother and father are entitled to parental leave with the aim that both parents will be able to combine their professional live and their family live.

But the Danish Welfare State has not always been totally individualized. Two reforms of a different kind show the evolution of the Danish model: on the one hand, *introduction of an individual social security card for children granting them own rights in health care*, on the other hand, *abolishment of the widow pension insurance*.

Although Denmark guaranteed each resident free access, as a *fundamental right*, to the National Health Care, children were entitled to derived rights and registered together with their mother or their father. They had no individual social security card. Recent reform replaced derived rights by direct rights and led to the introduction of an individual social security card for children. This reform was caused by two main factors: the will to introduce greater transparency in health expenditure¹³ and the need to overcome practical difficulties due to divorce and alternate custody of the children.

In the 80ties, Denmark *abolished widow pension insurance*, which covered widows of deceased insured workers under 65, before they were entitled to an old age basic pension. Widow pensions were considered as derived rights, because they took in account the financial dependency of the wife and guaranteed an income to the surviving spouse. Denmark justified its decision on the principle of *equal rights between men and women*. This justification seems interesting, because this principle would have been respected even if equal rights had been granted to widows and to widowers. By simply abolishing widow pensions insurance, Denmark pursued perhaps a different goal: to make social protection more in favour of employment by giving incentives to widows, and even by forcing them, to participate in the labour market and to provide for themselves and for their children.

This reform has only been possible, because women were *well integrated in the Danish labour market*. In a different economic and social context, it would have worsened the widows' financial situation. It must also be interpreted as an irreversible evolution: nowadays, Danish young women have no more free choice between participation in the labour market and being a housewife. The second choice makes them an easy victim of "social insecurity". The only thing, a couple can do, is to contract a private life insurance. Thus, abolishment of the widow pensions means privatisation of a risk previously covered by social security.

Individualisation of rights with acknowledgement of the sharing of roles between women and men: the German renewed social insurance model

Germany still considers "family founded on marriage" as the basis of society. But this model is undergoing rapid change. During the 50ties, there has been consensus, even among women, in favour of the "male breadwinner model". Nowadays, there is a

coexistence of different models: the traditional model coexists with a more open model that proposes incentives for participation of women in the labour market, in general, and especially for participation of mothers in part time jobs.

In Germany, employment rate of women is not very high and part time work represents a significant part of female employment. Thus, female employment rate is 59.2% (2004), that is to say more than 12 points lower than female employment rate in Denmark (71.6%)¹⁴.

In this economic and social context, the German approach of individualization of social rights seems quite coherent. Two reforms show this evolution: firstly, *recognition of "care" as work for entitlement of direct old age pension rights*, secondly *splitting of pension rights* in the event of divorce or even as an option freely chosen by both spouses.

Since many years, Germany worried about old age pensions for women. It must be noticed that the German system is totally based on contributions and that there is a lack of a minimum pension or a universal basic pension. Rights granted, in case of retirement, reflect therefore faithfully the worker's status on the labour market. This system appears quite unfavourable to housewives, who are entitled only to derived rights, and to women with part time work or without a continuous career. Women organizations, which are numerous in Germany, have claimed, as far back as the 70ties, for a financial compensation of the activities done by women in the private sphere.

Education of children and care for people in need of long term care have been recognised as a "useful activity for society" and have been assimilated with work for entitlement of direct pension rights. From 1986 on, periods devoted to education for children gave entitlement to old age pension rights. Contributions are paid by the State and calculated on a wage of "a conventional value" that represents 100% of the average wage of the compulsory insured.

In the beginning, these rights have been granted only to parents, who decided, at the birth of their child, to interrupt their participation in the labour market with the aim to take care of their child and to perform his/her education. Afterwards, this measure has been extended to all mothers, whether they were employed or housewives, with the possibility for them to transfer this right to the father. Nowadays, three years are granted for each child. During the 90ties, long term care insurance has granted similar pension rights to the "informal carer", who takes care at home of a person in need for long term care (disabled persons or elderly persons).

Splitting of pension rights is the other original feature of the German system. It has been introduced, in the event of divorce, by the reform of the law on family and marriage in 1977. When divorce is pronounced, the future pension rights granted during marriage to both spouses as a counterpart of their participation in the labour market and/or of their "care activities" are first brought together and then divided, by half, between the two spouses. The spouse, who did not acquire direct individual rights or who had got lower rights, is entitled to part of the future pension rights of the other spouse. These "split rights" pursue the aim to reward the wife, who, due to the fact that she performed unpaid domestic work and gave education to her children, could not enter the labour market and consequently had no entitlement to direct individual pension rights.

Since the 70ties, different proposals have been made in order to extend the splitting of the pension rights to the spouses beyond the limits of divorce. In 2001, an important reform of pensions, called "*Riester Reform*", gave an option to two categories of couples: couples, who will marry after the reform will be in force, and yet married couples, provided that they are both under 40. These couples have an option on either the traditional scheme – a survivor pension for the surviving wife/husband after the death of the spouse – or splitting of pensions. In the second case, wife and husband are granted direct individual rights through division of the rights acquired by each member of the couple during marriage. This option is seen as a "private affaire".

Splitting of pensions may be considered as individualization of rights, that means a *transition from derived rights to direct individual rights*. Both spouses are entitled to individual rights, even if one spouse has never worked and paid contributions. Pension rights are definitively gained, that means that later changes in the situation of the couple do no more matter. Individualisation of rights is synonym of financial independency – which may seem strange for women, who have been during their whole life financially dependent on their husband – and it makes a more autonomous life possible. Thus, if the wife or the husband dies, the surviving spouse can get married again without loosing his/her pension rights. This situation differs from that of a survivor pension, which is considered as a derived right and which is in that case suspended.

But, splitting of pensions may be interpreted *in a negative way*. It reinforces the idea of financial dependency between spouses by perpetuating "past measures under another guise"¹⁵. It legitimates the division of roles according to the sex of each spouse. Housewives are only entitled to direct individual rights during retirement, but these rights have been acquired by the husband through his participation in the labour market.

It may also be interpreted as "*the third way*". In theory, German young women are free to choose between participation in labour market and being a housewife. Periods of work can alternate with periods of education and/or care, provided that two conditions will be fulfilled. First, women must succeed to decide their husband for the splitting of pensions; secondly, professional care facilities for young children and for persons in need of long term care must be sufficiently developed, in order to make it possible for women to combine professional life and family life.

An alternative to individualisation: Extension of derived rights in the French and in the Luxembourg social insurance model

In France and in Luxembourg, like in Germany, family is still considered as the basis of society. But other types of families than "family based on marriage" are recognised.

Since the 70ties, *France has extended derived rights in health care* in three steps.

First, derived rights were granted to common-law spouses (*concubins*). Secondly, at the end of the 80ties, demand on an extension of derived rights to homosexual partners arose on the background of HIV. At that moment, French Government did not want to formalize explicitly homosexual partnership and decided to extend, in 1993, derived rights to each adult without direct individual rights provided he/she could prove that he/she fulfilled two conditions:

- he/she was living together with an insured person in a stable way, that meant a minimum of twelve consecutive months;
- he/she was "effectively, completely and in a permanent way financially dependent" on the insured person.

Finally, in 1999, registered partnership, called "*PACS*", has been recognised. It has given entitlement to derived rights in health care either to heterosexual partners or to homosexual partners, under a financial dependency condition.

In France, extension of derived rights from the married spouse, that is to say "housewives", to the homosexual registered partners, has been limited to health care. Even nowadays, only married spouses are entitled to old age survivor pensions. Homosexual organizations are still claiming for derived rights in event of death of the partner under registered partnership.

Luxembourg has taken a slightly different way. Until recently, derived rights were only given to the traditional family under marriage, to the spouse and the children. They were covered by health care insurance. In event of death of the "insured breadwinner", the housewife and the children were also entitled to survivor pensions. Luxembourg did not extend derived rights to common-law spouses (*concubins*). In May 2004, registered

partnership of heterosexual and homosexual couples has been recognised by law¹⁶. For social security, the registered partner has been assimilated to a married spouse, which means that he/she is entitled to the same derived rights, especially in health care and survivor pensions.

This trend to *extend derived rights beyond marriage must be considered as ambivalent*. It is true that derived rights give social security to persons, who otherwise would not be covered by social rights. But derived rights can also be considered as giving only "false security" to individuals. Their strength depends on the value of the institution on which they are based. Well, for what reason, will registered partnership be more stable than marriage?

It must also be stated that a debate on individualization of social rights is slowly emerging in France, but it seems to be a source of conflicts¹⁷, while Luxembourg has begun a political reform by putting in place working groups on this theme¹⁸.

The analysis of three different perspectives implemented in Europe shows us the diversity of the solutions. But at least one question has to be raised: do these different approaches be in line with the European social model?

CONCLUSION

As a conclusion, we want to come back to the position of the European Commission presented at the beginning of the first part of our paper. What kind of model is on the European Commission's wavelength and seems to fit in the European social model?

The Danish social system, and moreover the Nordic Welfare Model, seems to be the "ideal model", because it stresses the balance between individualising social rights and maintaining solidarity, on the one hand, and it submits the entitlement to social rights to a counterpart in terms of participation in the labour market, on the other hand. Total individualization of social rights has been considered as an instrument to promote equality between women and men.

Germany proposes to adapt the traditional model of social insurance in order to be "in tune of the times" by offering a "new security" to married women, whether they participated or not in the labour market. This transformation of the German system deals, in a certain way, with the problems raised by the European Commission. Credit has to be given to Germany for tackling the theme of individualisation of social rights, even if the reforms seem limited and ambivalent.

On the contrary, extension of derived rights in the French model and in the Luxembourg model does not at all take in account some problems raised by the European Commission: derived rights as disincentives for women to enter the labour market and the problem of social justice as regards pensions. Moreover, this trend seems to be dissociated from the labour market perspective¹⁹.

As researchers, we have to follow the future deliberations under the European Employment Strategy and under OMC on pensions and on health care and long term care for the elderly in order to understand if the European social model will be founded on diversity or if, in the long-term, there might be one single social model. Only time will tell us!

¹ <http://www.wordreference.com/definition/individualization>.

² Communication from the Commission 1997 March 12, COM (97) 102. See: http://www.europa.eu.int/comm/employment_social/social_protection/docs/com102_en.pdf.

³ See: http://www.europa.eu.int/comm/employment_social/employment_strategy/index_en.htm.

⁴ Communication from the Commission 14 July 1999 on concerted strategy for modernizing social protection, COM (99) 347. See: http://www.europa.eu.int/comm/employment_social/social_protection/docs/com99-347_en.pdf.

⁵ Communication from the Commission 3 July 2001 on supporting national strategies for safe and sustainable pensions through an integrated approach, COM (2001) 362. See: <http://www.europa.eu.int/>

[comm/employment_social/social_protection/docs/com362-2001_en.pdf](http://www.europa.eu.int/comm/employment_social/social_protection/docs/com362-2001_en.pdf).

⁶ Communication from the Commission 5 December 2001 on the future of health care and care for the elderly: guaranteeing accessibility, quality and financial viability, COM (2001) 723. See: http://www.europa.eu.int/comm/employment_social/news/2002/jan/com2001_723_en.pdf.

⁷ Presidency Conclusions Lisbon Extraordinary European Council 23–24 March 2000. See: http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00100-r1.en0.htm.

⁸ Preparation of the 2005 National Strategy Reports on adequate and sustainable pensions – Guidance Note prepared by the Commission and endorsed by the Social Protection and Economic Policy Committees – January 2005. See: http://www.europa.eu.int/comm/employment_social/social_protection/docs/outline_en.pdf.

⁹ Communication from the Commission 5 December 2001 on the future of health care and care for the elderly: guaranteeing accessibility, quality and financial viability, COM (2001) 723, p. 9. See: http://www.europa.eu.int/comm/employment_social/news/2002/jan/com2001_723_en.pdf.

¹⁰ Communication from the Commission 20 April 2004 on modernizing social protection for the development of high-quality, accessible and sustainable health care and long-term care. Support for the national strategies using the "open method of coordination", COM (2004) 304 p. 8. See: http://europa.eu.int/eur-lex/en/com/cnc/2004/com2004_0304_en01.pdf.

¹¹ EU25 is 63.3% and EU15 is 64.7% (2004).

¹² EU25 is 55.7% and EU15 is 56.8% (2004).

¹³ It was previously impossible to separate costs of child health care from that of the mother or the father.

¹⁴ It must be noted that employment rate is 65% (2004) that means 10 points lower than employment rate in Denmark (75.7%).

¹⁵ Luckhaus, L., *Individualisation of social security benefits*, in: Ch. McCrudden (ed.), *Equality of treatment between women and men in social security*, Butterworths 1994, p. 147.

¹⁶ Loi du 7 juillet 2004 relative aux effets légaux de certains partenariats (law on legal effects of registered partnership), Mémorial A N°143 du 6 août 2004 p. 2020. See: <http://www.legilux.public.lu/leg/a/archives/2004/1430608/1430608.pdf?SID=6fea16df574ffb15c250e1ba7f149309e#page=2>.

¹⁷ Sterdyniak, H., *Contre l'individualisation des droits sociaux*, "Revue de l'OFCE juillet" 2004, N° 90 p. 419. See: <http://www.ofce.sciences-po.fr/pdf/revue/12-90.pdf>.

¹⁸ See for example, the paper from the *Conseil national des femmes du Luxembourg* (CNFL), Note du 14 juillet 2003 concernant l'individualisation des droits à pension. <http://www.cnfl.lu/prisesposition/documents/Note%20individualisation.pdf>.

¹⁹ It must be noted that, in 2004, employment rate was 63.1% in France and 61.6% in Luxembourg that means 12 to 14 points lower than the highest employment rate in the EU 25, 75.7% in Denmark. Female employment rate was 57.4% in France and 50.6% in Luxembourg that means 14 to 21 points lower than the danish female employment rate (71.6%).

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