

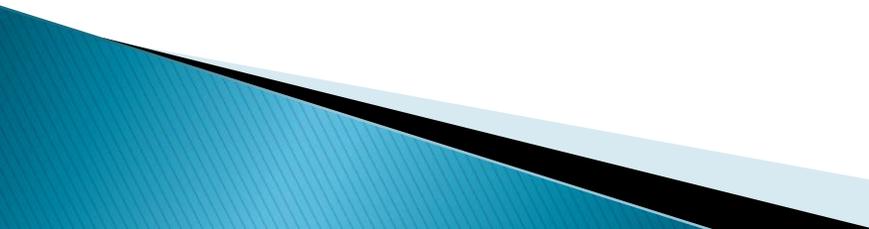
The Future of Welfare State Project

Common Protection of Social Welfare Rights in Europe

presentation by prof. dr hab. Andrzej Marian Świątkowski
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Area of research: Polish, European, international, foreign and comparative labour law (individual and collective), social security and legal aspects of social policy.

Notion of social welfare rights – category of rights which concern economic and social well-being of citizens and permanent residents of the European Member States: the European Union (27 states) and the Council of Europe (47 states).



The role of European Institutions in protecting and developing a European Welfare Model:

- ▶ 1) European Court of Justice in Luxembourg (EU)
 - ▶ 2) European Court of Human Rights in Strasbourg (CoE)
 - ▶ 3) European Committee of Social Rights of the Council of Europe in Strasbourg
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European Union Standard Setting in Social Welfare:

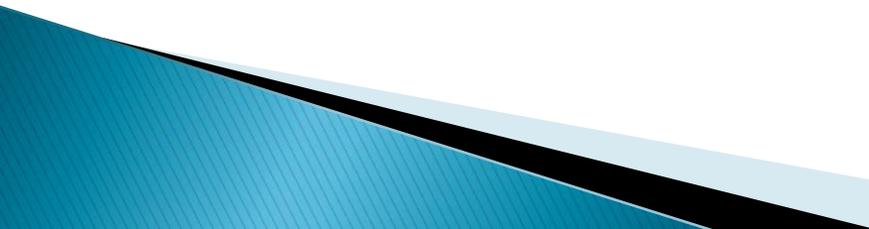
- 1) The right to protection in case of the restructuring of enterprises – acquired rights concerning:
- 2) Transfer of undertakings (2001 /23);
 - a) Collective redundancies (2008/94);
 - b) Insolvency (2008/94).
 - c) The right to strike (Viking, C 438/05, Laval C 3412/05 cases of the ECJ). “The Laval and Viking Cases, Bulletin of Comparative Labour Relations, Kluwer law International, No.69, 2009, eds. R. Blanpain, A. M. Świątkowski, p. 248).
- 3) Interactions between policies of flexible employment and stable social security measures (flex–security).
- 4) EU meaning of standards of social security: coordination regulation 883/2004.

Council of Europe Standards of social welfare rights – Revised European Social Charter of May 3rd, 1996

(A.M.Świątkowski, *Charter of Rights of the Council of Europe*, Kluwer Law International 2007, p. 414; *Carta de los Derechos Sociales Europeos*, EDUNTREF, Buenos Aires 2007, p. 468):

- 1) The right to work (art.1);
- 2) The right to just conditions of work (art.2–3);
- 3) The right to fair remuneration (art.4);
- 4) The right to vocational training and guidance (art.9–10);
- 5) The right to dignity at work (art.20, 26);
- 6) The right to protection in case of termination of employment (art. 24);
- 7) The right to social security and social assistance (art.12–13).

Research hypothesis:

- 1) European legal regimes for protection of social welfare rights not adequately address the reality of economic globalization and the contribution the various Member States to the notion of equal distribution of social justice (see, European Committee of Social Rights case law);
 - 2) European Union institutions are slow to address structural imbalances between commercial rules and social justice within Member States.
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Legal solutions:

I. Procedural:

- 1) The respond to economic globalization should be globalization of social rights;
- 2) Unified platform of common social rights ought to be created;
- 3) Revised European Social Charter of 1996 + Collective Complaints Protocol of 1985 must be ratified by the European Union;
- 4) The EU Charter of Fundamental Rights does not adequately protects basic economic and social rights². The EU Charter guarantees the protection of mentioned rights accordingly to the EU regulations or legal regulations of the member States.

² EU Charter prohibits: forced labour (art.5.2); freedom of assembly (art.12); equality (art.20–21); rights of senior citizens (art. 25), right to free employment services (art.29), right to protection in case of termination (art.30).

II. Substantive:

1) Establish the proper relationships between the right to work and the right to social security:

A) The right to work	→	the duty to work
The duty to work	→	the right to social security

B) Freedom to refrain from work	↔	duty of state to provide assistance
Right to work	↔	state's duty to provide alternative employment and individual's duty to accept such employment
If state cannot fulfill its duty to offer work	→	right to benefit
Duty to accept alternative employment	←	otherwise no right to benefit

C)	The right to work		Freedom to work
	The right to benefit employment		Duty to accept alternative employment

2. Fixed term contracts (contract of employment for specified period of time or a specified task ought to be promoted and utilized more frequently. The guarantee stability of employment relationship for certain period of time.
3. The employer enjoys much greater flexibility to terminate such contracts.
4. The labour law provisions should impose an obligation upon employer in case of lack of renewal of fixed term contract