

## UNIVERSAL SOCIAL RIGHTS, DIVERGENT DISCOURSES

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*Draft. Comments welcome.*

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### **Abstract:**

The nature of the public sphere has a considerable impact on actors’ preferences, activities, and governance outcomes as well. This contribution analyses diverging academic, administrative, political, civic and media discourses concerning universal social rights as criteria for public policy making at the national level (Czech Republic) as well as the impact of the European Union on them. The need and specific ways to nurture public spaces for effective cross-border public discourses are stressed.

Key words:

PUBLIC SPHERE, PUBLIC DISCOURSE, SOCIAL RIGHTS, COMMUNICATION, EUROPEAN UNION

### **1 Conceptual and policy considerations**

#### **Public sphere, public spaces, public discourses**

The notion of public sphere was introduced by Jürgen Habermas in the 1960s, and applied within the logic of nation states’ development. Since then it has inspired a rich scholarly debate. With the ongoing process of European integration, some researchers, and indeed, politicians too, have begun to operate with the assumption that “*a shared European space, a European public sphere, may contribute to the (public) legitimacy of the EU polity, in much the same ways as has been suggested for national public spheres.*” (de Vreese – Schmitt 2007:3) Their research has brought the empirical evidence that “*conventional wisdom, holding that a European public sphere is close to impossible due to communication barriers imposed by, for instance, the different languages, seems to belong to the past.*” (*ibid.*, p. 5)

But some scholars are more sceptical. Having analyzed three dimensions of the processes of Europeanization: content, public identities, and communication flows, they ask: “*Has public discourse in fact Europeanized in the last decades? (...) Our results show that national public spheres are, in fact quite resilient and that change is slow or halting.*” (Peters – Siffert – Wimmel – Brüggemann – Kleinen-von Königslöw 2005:139). The authors conclude that what is at stake is the legitimacy of European institutions, which depends on the Europeanization of public discourse.

Ms. Margot Wallström, currently serving as Vice President of the European Commission, and Commissioner for Directorate-General for Institutional relations and Communication, initiated Plan D (for Democracy, Dialogue and Debate, COM 2005 494), and the publication of the *White Paper on Communications Policy* of the European Commission (COM 2006 35).

There were no less than ten references to *'the public sphere'* there. (Golding (2007a:681) Yet, in her reflection of the current situation, Ms. Margot Wallström is modest and realistic: "... we lack a European public sphere in which citizens can communicate with one another and a European demos can evolve" (2007:8).

There are obvious confusions associated with the development of a cognitive apparatus on this issue. One of them seems to be an unclear distinction between the terms *'public sphere'* and *'public space'*. I see the main difference between the two in their level of abstraction: one could imagine and define a specific public space; it is hard to identify a specific European public sphere. *'Public discourse'* is an even more specific concept, being inherently related to specific issues/agendas. Public discourses unfold in concrete settings, they have a process character, identifiable actors are involved in them, and some decisions are eventually taken. There are two other terms which may be of some use here: *'discourse failure'* (Pincione – Tesón 2006), and *'epistemic communities'* (Haas 1992). I will therefore use the term *'public discourse'* as a core term for the empirical part of this paper.

## Social rights

I do not intend to deeply dwell on the concept of social rights in depth. I will rather limit myself to an overview of documents which provide the legal and political foundation for the application of social rights – as a criterion of policy making – in the life of European societies. I would like to characterize the recent developments, which change and sometimes endanger this process – as extensively enlisted in Evers – Guillemard (2008).

The precursors of the EU activities in the field of human rights were the United Nations (with its Declaration of Universal Human Rights, passed in 1948), and the Council of Europe (with its European Convention on Human Rights, adopted in 1950). The milestone European Union documents are listed in the table.

**Table 1:** Core EU agreements concerning social rights

| Year | Document  |
|------|---|
| 1989 | Community Charter of the Fundamental Social Rights of Workers               |
| 1992 | Maastricht Treaty with its Annex – Agreement on Social Policy               |
| 1997 | Amsterdam Treaty incorporated Agreement on Social Policy into its main body |
| 2000 | Lisbon Strategy   |
| 2005 | Recalibrated Lisbon Strategy  |
| 2007 | Treaty of Lisbon  |

Evers – Guillemard (2008) sum up the recent societal trends, which demonstrate that social rights, as envisaged by the international as well as the EU documents, are in trouble. In the centre of changes is a shift in the definition of predominantly a public and a private affair. One witnesses a process of re-commodification of previously universally delivered public social services in most EU Member States (bar exemptions in specific policy fields in particular countries). In most of the affluent Western democracies, this is a long-drawn incremental process. In all the post-communist Member States, this process has been either incremental, but faster, or even abrupt (in some instances, especially in the 1990s, it was nicknamed *'shock therapy'*, embodied in the large-scale privatization of national economy). (Potůček 2008 forthcoming)

## 2 Discourses about social rights in the Czech Republic

In this paragraph I intend to analyse different discourses about social citizenship rights, and the interference of these discourses in the Czech Republic.

The legal framework for these discourses at the national level was created by the Constitution of the Czech Republic, comprising the List of Basic Rights and Liberties, and passed at the end of 1992, a couple of days before the final split of Czechoslovakia.

There are four main arenas in which these nation-level discourses take place, namely academic, administrative, political, and civic. They overlap in public space; some of them are closely related to the European Union level of decision making. The media are brought to bear, too; they generate stimuli for discourse, and sometimes they raise specific agendas.<sup>1</sup>

### **The academic discourse**

*The Social Doctrine of the Czech Republic* (Sociální 2002) was an interesting example of the original ‘national initiative’. Its aim was to build a broad national consensus on the orientation, goals, priorities and corresponding instruments of Czech social policy. Five preparatory conferences in 1998-2000 constituted a ‘joint venture’ of the academic, epistemic community gathered around the non-profit advisory association, Socioklub. A group of experts from various social policy fields, disciplines, and political affiliations had decided to try and develop a common long-term programmatic vision, based on a discourse about the future orientation of Czech social policy in order to make it more programmatic and sensitive to long-term consequences of present decisions. After difficult and protracted discussions the scholars were able to agree on a single document. The functions envisaged in it comprised orientation function, function of building up and maintaining a national consensus, stabilization function, function of social mobilization, and function of a guarantee to maintain a permanent orientation at alleviating social injustice. Also, it also developed a series of eight social rights, understood as the backbone of the Czech Social Doctrine, including the principles and ways of their fulfilment: the right to work, to satisfactory working conditions, to reasonable subsistence level, to health, to family, to social security, to free association, and to education.

### **The administrative discourse**

This discourse has been heavily influenced by the European Union, especially by its Lisbon Strategy, and the ensuing documents.

The National Action Plan on Social Inclusion 2004-2006 (National 2005a) ensued from the Joint Memorandum on Social Inclusion of the Czech Republic (2004), a joint document of the Czech Government and the European Commission adopted in December 2003. In accordance with this Memorandum, the National Action Plan on Social Inclusion should project the common goals in fighting poverty and social exclusion into the national policies and programs. The document sums up other valid and prepared policies, action plans, strategies, programmes and governmental decrees that have some relevance to the issue of social inclusion. The soft spot of the document is the lack of explicit goals, a poorly defined responsibility for implementation, and missing links to the budgetary process. Significantly, the Ministry of Finance did not participate in the preparation of this document.

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<sup>1</sup> Analysis of the role of the media in public discourses exceeds the extent of this paper.

The document posed as a national strategy “the aim of which it is to canvass due publicity to the problems of social exclusion and to help solve them” (National 2005a:8). The only explicit, and very significant, reference to the other development goals was: “*The important condition of the success of the strategy of social inclusion is its close relationship with the economic policy of the state. The economic situation is characterized, on one hand, by economic growth and virtually zero inflation but, on the other, by a growing public finance deficit. Improvement is therefore perceived as the main political priority.*” (ibid.)

### **The political discourse**

After many months of difficult political negotiations after the June 2006 general elections, a new Czech government was formed and came to power in January 2007.

Its two orientating political documents, the coalition agreement between the Civic Democrats, Christian Democrats and the Green Party, and the Programme Declaration of the Government, presented to Parliament:

- fail to include any mention of social rights, social justice, social cohesion, the Welfare State, or even the EU Lisbon Strategy;
- fail to include formulations as: unbelievable increase (even “an explosion”) of social expenditures in the past, excessive tax burden, abundant bureaucratic burden, inappropriately high level of regulation, the firm determination to lower or even cancel some social benefits, and reduce social and health insurance contributions (explicitly for entrepreneurs);
- fail to mention respect for human rights, including those of minorities and vulnerable groups. They plan to establish “...an agency that will secure complex services to prevent social exclusion and its eradication and made the use of social support more effective and free from misuse.”

There is the apparent paradigmatic proximity with neoliberal ideology there, coupled with explicit negligence of social rights’ perspective.

### **The civic discourse**

With the help of the media, many civic sector organizations pursue their advocacy function. They call public attention to specific cases of human and social rights neglect: domestic violence, discrimination of ethnic minorities, etc. The civic initiative ‘*Jsme občané*’ (‘*We are the Citizens*’) (2007), unveiled in January 2007 (exactly thirty years after the release of Charter 77) differs from these more common issue-specific advocacy initiatives by its general conceptual background. It calls attention to discrepancies between democratic ideals included in the Czech Constitution and real practices that are ever more frequently shaped by neoliberal doctrines. It calls attention to some of the most striking gaps in the social conditions of the citizen versus the criterion of social rights and entitlements:

- The human rights of ethnic minorities and migrants are neglected;
- The Czech Republic is the only EU Member State that has not yet incorporated the EU anti-discriminatory regulation No. 78/2000 into its labour law;
- Women, young and handicapped people, and people above 50 are discriminated against;
- Many people (e.g. the homeless) live in material deprivation that is beyond the conditions of human dignity secured by the Czech Constitution, and are deprived of appropriate support.

- There is ever less space for public discourse concerning key societal problems.

Six hundred and sixty-one citizens signed the document from January 1, 2007 and February 7, 2008. Some information appeared in the print media, but none of it appeared on the '*media highway*'.

## **Trials to bridge the gap between various discourses**

### **Public discourses initiated by the Civic Sector**

*The Social Doctrine of the Czech Republic* (see above) was presented at a couple of public discussions co-organized by the Ministry of Labour and Social Affairs and the Upper House of the Czech Parliament, the Senate, in 2001-2002. After the 2002 general election, the document was explicitly mentioned - as the starting point for the further development of government social policy and its priorities and approaches until 2006 - in the coalition agreement statement between the Social Democrats, Christian Democrats and a small liberal party – Union of Freedom as one of its programmatic guidelines, and envisaged further discussion among coalition parties about it. Nevertheless, until its resignation in 2004, this government failed (despite urgency calls from academic circles) to find sufficient capacity and motivation for consequent steps forward: real social policy decisions stemmed mostly from either urgent problems or strong demands from various pressure groups. Until present, none of the three consecutive governments has taken it as a serious offer of the academic community for a more intensive collaboration in the field of strategic social policy making.

No government official took the "*We are the citizens*" civic initiative (see above) as a serious partner for further discussion.

Pincione – Tesón (2006) would call both cases a cross-border discourse failure.

### **Public discourse initiated by the Government**

The Government of the Czech Republic adopted the decision to establish a Committee for the Preparation of a *Joint Memorandum on Social Inclusion* and a *National Action Program on Social Inclusion* (NAPSI 2004-2006 - see above). The appropriate Committee was established by the Ministry of Labour and Social Affairs in September 2003. Its 40 members represented:

- selected government ministries (labour and social affairs; education, youth and physical education; health, regional development; the interior; transport; industry and trade; information; the environment; and agriculture);
- other public administration institutions (Government Committee for the Handicapped; Government Council for Roma Affairs; Czech Statistical Office; Ombudsman's Office; Association of Regions of the Czech Republic; and the Association of Cities and Municipalities of the Czech Republic);
- civic sector including social partners (Czech-Moravian Confederation of Trade Unions; Industry and Transport Union; Czech and Moravian Production Cooperative Union; Czech Catholic Charity Association; People in Need; National Council of Handicapped Persons);
- academic community (Charles University Faculty of Social Sciences; Sociological Institute of the Academy of Sciences of the Czech Republic).

This committee was tasked to look after the coordination between the various ministries and ensure that all the relevant institutions share in inter-ministerial coordination in processing the Joint Inclusion Memorandum (2004) and NAPSI 2004-2006 (National 2005a). This committee was also tasked to implement a comprehensive policy to fight poverty and social exclusion.

As indicated by the list of actors directly involved in the preparation of the NAPSI 2004-2006, due respect was paid to the traditional position of social partners in the social dialogue, the representatives of employees and employers as partners to the government, in the regular meetings of the tripartite body – the Council of Economic and Social Agreement. The National Council of Disabled Persons had retained its traditionally strong status vis-à-vis the Ministry of Labour and Social Affairs even on this agenda.

As indicated by that document's authors, its preparation involved also the participation of other partners, notably representatives of the nongovernmental not-for-profit organizations centring on homeless people and seniors (National 2005a:62).

The fourth chapter of the NAPSI 2004-2006, entitled Institutional Support, states that structures of participation in the field of social inclusion have been established at all levels – national, regional and local – independently of the strategy of social inclusion. As indicated by the content of his chapter, they are the Council of Economic and Social Agreement, the Government Council for Non-State Non-Profit Organizations, the Government Council for Roma Affairs, the Government Committee for Disabled Citizens, the Government Council for Ethnic Minorities, and cooperation with the Association of Cities and Municipalities and the Association of Czech Regions. Regional and municipal bodies can establish committees of relevance to social inclusion policy, namely social committees and committees for disabled citizens.

In an effort to involve the broad public in the preparation of the National Action Plan of Social Inclusion, its various chapters have been posted on the Ministry of Labour and Social Affairs' website and other associated websites. (National 2005a:62) Several conferences for the involved actors were also organized.

One can expect a positive effect of the public dissemination of the EU social inclusion's core ideas, principles and policies. The negligible impact of all these endeavours on governmental policies has been the darker side of the picture.

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One can identify both the synergies and idiosyncrasies among different discourses. Over time they interfere, overlap, and ultimately make the general public more aware of their social rights and specific conditions of their fulfilment or neglect. The European Union has had a noticeable, although sometimes controversial impact on the content and outcome of this stream of discourses on the social citizenship rights in the Czech Republic.

### **3 The EU context of Czech discourses**

There are two political positions prevailing in the EU policy making process: one that understands the European project as essentially de-regulatory, and another that sees the market as the first step in the process of institution-building at the European level (Taylor-Gooby 2004:184). *“Pressures for both liberalism and for a stronger interventionist role exist,*

*and whether the balance between the two will shift in the future is at present unclear.”* (Taylor-Gooby undated:12) Thus, the European Union does not speak in one voice with its members. As mentioned above, one of its two Janus faces speaks about the need to make the European economy the most competitive in the world, and to pursue trade liberalization further (including the broadly defined services of general interest), about fiscal discipline, flexible labour market... whereas the EU's other Janus face declares its adherence to the principles of social justice, social rights, fight against poverty and social exclusion, and nurtures its own child – the European Social Model. This conceptual confusion is a serious puzzle for the less experienced national political classes and the public of the then prospective and now new EU MSs, including the Czech Republic. The confusion is underlined by the daily experience of many people with precarious working conditions, tightening social provisions, insufficient public services, etc.

The European Union has not developed strong, clear-cut requirements in the field of social policy making toward its candidate countries (Potůček 2004, Horibayashi 2006), even though Orenstein and Haas (2003) could identify its positive effect on the post-communist New Member States compared to the post-communist countries without an immediate perspective of joining the EU. The obvious discrepancy between the Copenhagen Criteria of accession, covering a very limited part of the social welfare agenda and installed in 1993, and the Lisbon Strategy, stretched as an explicit and balanced public policy program for the candidate countries as late as in 2002 and politically and administratively executed only since 2004, opened a considerable space for other, more active and influential international actors, namely the World Bank and International Monetary Fund governed by the Washington Consensus' neo-liberal ideology of the 1990s. (Potůček 2004)

The EU's Lisbon Strategy was redefined in 2005. This was due to an unsatisfactory state of its implementation in most Member States and due also to the new composition of the European Commission, reflecting the outcomes of the 2005 European Parliament elections that enhanced the representation of rightwing parties. Economic priorities came to the fore. This shift coincided, in the Czech Republic, with the appointment of a new Deputy Prime Minister for Economic Affairs in 2004,<sup>2</sup> who was charged with formulating comprehensive strategic documents – Strategy of Economic Growth (Strategy 2005), and National Lisbon Program 2008 (National 2005b). The government adopted both documents and forwarded them to the European Commission in 2005. Not surprisingly, the latter document, a basic guide of the country's strategic orientation in the next few years, came in three parts: macroeconomic (with emphasis on continued public finance reform equal to squeezing social expenditures associated with further relative decrease of tax revenues), microeconomic (with measures to boost and further increase the economy's ability to compete), and employment (flexibility and openness of labour market and education). Although The Czech Republic Strategy for Sustainable Development (2004) was approved as the umbrella strategic document which should become the binding basis for all consequent strategies, the Strategy of Economic Growth, passed a couple of months later, only paid lip service to this document and posed itself as a core strategic document to be respected in other strategic endeavours. It did not associate itself with national Action Plan on Social Inclusion 2004-2006. Under otherwise unchanged conditions, this further weakened the actual status of the Czech government's endeavours in the field of sustainable development in general, and one of its three core elements, the goal to strengthen social inclusion, in particular.

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<sup>2</sup> Martin Jahn.

The absence of direct EU influence on welfare state transformation should not obfuscate the less visible streams of cultural changes associated with the processes of European integration, which influenced domestic discourses on social policy making, set up new notions, agendas, approaches, and policy instruments. Call it mutual learning, cognitive Europeanization or enculturation; it has been changing the cognitive framework of social policy making in a positive way. This process will have a long lasting (albeit difficult to identify) impact on welfare state transformation in the Czech Republic.

#### 4 Challenges ahead

The serious problem of European governance is how to build, stimulate and nurture conditions for effective, cross-border public discourses about social rights (and other relevant societal issues) at the national and EU levels – facing differentiated, often sharply conflicting economic, social, institutional, and national interests, along with different modes of communication within academic, administrative, political, and civic discourses.

The main tasks in the future could be specified as follows:

- How to cross the borders between particular discourses (e.g. between ‘economic competitiveness’ and the ‘social rights’ discourse)?
- How to encourage “twin” discourses: political-administrative; academic-political; political-civic, academic-civic, etc.?
- What are the appropriate languages and modes of communication fit for cross-border discourses?
- How to engage the media in the realization of the above-mentioned tasks – as their direct involvement is a necessary, yet not sufficient, condition for at least a limited success?

In order to meet these tasks, one must be aware of the nature of the obstacles lurking ahead. There are three serious barriers there which, in my view, significantly contribute to the difficulties associated with the strife for effective engagement of us, scholars, in an effort to expand the European public sphere:

1. The co-existence of a dialogic form with a non-dialogic form of communication, transmitted by the media, and independent of physical location;
2. The reduction of the complex task of effective communication to a mere technical problem of transmission of information (“e-Europe”);
3. The ignorance and low political culture of actors involved in the communication processes.

The first barrier is associated with the co-existence of a dialogic form with an (increasingly relevant) non-dialogic form of communication, transmitted by the media, and independent of physical location. (Thompson 1995). Thompson calls the non-dialogic form of communication ‘*mediated publicness*’. This indirect and mostly one-way form of communication is a crucial communication environment shaping the content and quality of communication in public sphere. It is enormously relevant – but the receivers are hard to identify, and an impact on them is very difficult to evaluate. In addition, it can be hardly defined as a discourse as such. It is also difficult to make this form of communication equal in terms of the power of the public vis-à-vis the media: what interests can influence “the rules of the communication game” most? This has important implications for the ability to find the correct balance between checks between media and other political actors – and, consequently, the democratic legitimacy of the media.

The second barrier stems from the application of the narrow concept of communication, understood as a technical problem of transmission of information (e.g. the concept of e-government as the remedy to problems of public administration). Nevertheless, effective communication is closely associated with the interests that are pursued and compete with other interests. In other words, it is impossible to nurture communication as an art for art's sake, as governance in general, political fights, and especially diverse social and economic interests are the battlefields in which communication is a means and a weapon at the same time. (Golding 2007b)

The third barrier to consider is the low political culture framing the communication processes. The Czech Republic may serve as *pars pro toto*. Scholars, civil servants, politicians and civic activists pursued different agendas, speak a different language, and are not prepared to mutually confront their approaches toward social rights, to understand each other, and follow them as criteria in the on-going discourses, processes of decision making, and policy implementation. Lack of trust among the actors and inadequate communication skills have an adverse effect on the overall efficiency of public discourses.

It is the common political and material experiences and arrangements encountered by citizens in their national and everyday life, which represent a precondition for the strengthening of a European public sphere. (Golding 2007b:732) Yet, with the EU budget representing only about 1% of the public resources, with 99% them remaining in the hands of national governments, such an idea could be safely allocated to the area of wishful thinking for the foreseeable future.

In general, the development of the European public discourses will be vitally dependent on sound and socially just public policies – no matter whether European, national, issue-specific, regional, or municipal ones, and *vice versa*. Only actors actively involved in these policies will have a strong interest in the development of corresponding public discourses.

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*The CINEFOGO Network of Excellence, in close collaboration with the EC Directorate General for Employment, Social Affairs and Equal Opportunities will organize a top-level conference in Brussels, in March 2009. It is designed to narrow the gaps between various discourses at the European level. Organizers believe that it will create an extraordinary opportunity to ease the access of the EU policy makers to the academic findings of the whole CINEFOGO community concerning social rights, citizenship and governance in the European Union.*

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