Solidarity as Key Determinant of Social Security Systems in the EU

ADRIJANA MARTINOVIĆ[*]
Pravni fakultet Sveučilišta u Rijeci
Rijeka, Hrvatska
Primljeno: svibanj 2015.

Izvorni znanstveni rad
UDK: 364.014(4-67)
doi: 10.3935/rsp.v22i3.1300

Solidarity is a complex social phenomenon, a multifaceted term used in a variety of meanings and situations. Social solidarity, transformed to a legal principle, lies at the foundations of all European social security systems. This article explores how the principle of solidarity is understood in EU law, especially in the case-law of the Court of Justice of the EU. Delineation between solidarity as a fundamental value and solidarity as a legal principle is not always clear-cut in the EU law. However, the content and impact of EU law increasingly dictates the perception of solidarity and evolution of the principle of solidarity in national social security systems. The aim of this paper is to show how the impact of EU law is liable to reshape and redefine social security systems throughout the EU.

Key words: solidarity, principle of solidarity, social security system, EU Law.

INTRODUCTION – THEORETICAL INSIGHTS

Solidarity is a unique social rule and value, a »complex social good« (Ferrera, 2005: 19) which can be associated with numerous meanings, and employed in almost every sphere of life and society.[1] In its strict sense, it is often defined as a specific type of social relationship, of a relatively recent historic origin, which is constantly evolving and facing new pressures and challenges (Hondrich and Koch-Arzberger, 1992: 9).

As a concept and social phenomenon, solidarity evolved with industrialisation in the beginning of the 19th century. Its origins are traced back to the Latin word »*solidus*«, which stands for »solid, stable, reliable, de-

[*] Adrijana Martinović, Pravni fakultet Sveučilišta u Rijeci / Faculty of Law, University of Rijeka, Hahlić 6, 51000 Rijeka, Hrvatska / Croatia, adrijana@pravri.hr

[1] This paper has been supported by Croatian Science Foundation under the project No. 5079 "Perspectives of maintaining the social state: towards the transformation of social security systems for individuals in personalized medicine". The paper was partially prepared during a research stay at the Max Planck Institute for Social Law and Social Policy in Munich with the support of the Max-Planck-Gesellschaft.

pendable«. Its earliest legal roots are found in Roman law as »*obligatio in solidum*«, denoting a joint and several liability of debtors (Kaufmann, 1984: 163; Kaufmann, 2004; Kingreen, 2003: 245). French revolution lies behind the generalisation and idealisation of this concept.[2] It stands for socio-moral responsibility of one individual towards the other; or »one for all, all for one«, which is associated with the feeling of togetherness and commonality of interests, as well as sharing of resources with people in need (Stjernø, 2011:5 6). It was supposed to provide answers to the new challenges of social integration and inequality within the workers' movement.[3] The communist doctrine believed solidarity was an answer to the problems of individualisation, egoism and disadvantage in the new market order. In contrast, solidarity simultaneously developed in France and Germany as an organisational concept, different from its communist, as well as market liberalist perception. As such, it encompasses »collectivisation« of economy, in which the society is built from bottom up (Hondrich and Koch-Arzberger, 1992: 10). In this sense, »solidarism« or »solidarity« is opposed to »socialism«. Towards the end of the 19th century and in early 20th century the concepts »solidarity« and »solidarism« were versatile enough to find their way into a range of completely divergent ideological and political ideas and movements: socialism, anarchism, Catholic social teaching, Protestant social ethics, but also National Socialism (Kaufmann, 1984: 163).

Sociological definitions mainly describe solidarity as a mutual affiliation of several or many people, so that they are reliant on each other and can achieve their goals only in cooperation (Rauscher, 1988: 1191; Habermas, 1998: 119; Denninger, 1998: 323; Engelhardt Jr., 1998: 434). Whereas the basis of solidarity are mutual commitments, solidarism on the other hand is a societal concept; a humanistic ideal, which is founded on joint responsibility of all members of society (Puljiz et al., 2005: 466). Solidarity is theoretically unlimited, but practically situational and restricted to certain persons or groups. It denotes, on one side, a high degree of group fusion or internal union, cohesion and commonality of purpose, and, on the other side, a set of ties among the members of this group (Ferrera, 2005: 19). Here lies the fundamental ethical problem of solidarity: it is exclusive and limited to a certain group (Puljiz et al., 2005: 467; Kingreen, 2003: 247).

Solidarity means affiliation in spite of differences and in spite of inequality, but it also means affiliation because of differences (Stjernø, 2004: 327). It is also attachment through latent reciprocity: actual reciprocity does not take effect in every case (Puljiz et al., 2005: 467). It differs from market and hierarchical relations, as well as from fraternity. It requires neither service in return or advance, nor it takes into consideration formal superiority or inferiority. Fraternity is a narrow and emotional, often involuntary type of affiliation, in which a person is born, whereas a certain type of self-determination is typical of solidarity. In line with this understanding, solidarity is based on the freedom of choice of an individual (between various types of solidarity; whether to act solidary or not at all, etc.). Nevertheless, institutionalised solidarity, as expressed for example through the welfare state, can never be voluntary.

[2] Solidarity comes close to the »fraternity« or »brotherhood« component of the »*liberté, égalité, fraternité*« trinity of the French revolution.

[3] Labour movement or class solidarity, according to Stjernø, is the prototype of solidarity (Stjernø, 2011).

Floating in the realm of public and private responsibility,[4] collectivisation and individualisation, solidarity precedes and completes every other fundamental value: from freedom and equality to justice.

Boundaries of solidarity

Solidarity has its natural, inherent limits. Social proximity is its obvious circumscription. People cannot show solidarity with all requirements. Territoriality is another limit: »national solidarity« as a basis of social security systems is contained inside territorial borders, to the exclusion of others. Furthermore, there are many expressions of solidarity. The feeling of solidarity tends to »wear off« with its inflation and over(ab)use. The heterogeneity and competition between solidarity forms, as well as competition between solidarity and other societal regulatory mechanisms set the boundaries of solidarity. These boundaries can be clearly discerned on the example of social/welfare state, which is supposed to protect its citizens from social risks. The »dilemma of solidarity« is the following: the wider the scope of solidarity, the weaker is the feeling of solidarity. The inner weakening of increased social systems is thus linked with the size, anonymity and individual exploitation within the system (Hondrich and Koch-Arzberger, 1992: 39).

External factors, such as individualisation, consumerism and globalisation are seen as potentially eroding the core of solidarity. Increasing competition in global economy undermines the material basis of traditional, redistributive solidarity in European welfare states (Streeck, 2000: 259). Strictly speaking, markets are no place for solidary relationships: they hardly go hand in hand with laws of demand and supply and profit maximisation.

Whereas »inclusion« and »exclusion« from a solidary community clearly show the limits of solidarity, there is another, slow and gradual decomposing process which occurs within the group of the »included«: desolidarisation. It can be manifested through marginalisation of the worse-off and the exclusiveness of the better-off circles, which can buy their way out from the social costs of public solidarity, thus breaking the consensus as a base of the community of solidarity (Göbel and Pankoke, 1998: 475).[5] Nevertheless, desolidarisation is not irreversible. As such, it can also serve as a propelling force for the new type of solidarity: »reflexive solidarity«, which evolves through complex linking of social networks (Göbel and Pankoke, 1998: 476; Giddens, 1992; Arts and Verburg, 2001: 21).

Transformation and transnationalisation of solidarity

A construction of possible new forms of solidarity, which transcend national models and have a cross-border character, has always been at the basis of the very idea of European integration. The 1950 Schuman Declaration, a »birth certificate« of the European Economic Community, envisages the building of Europe through »concrete achievements which first create a *de facto* solidarity«. But this is not a national or social solidarity: it is solidarity between states and nations. This is precisely where that delineation between different understandings of solidarity: traditional, sociological, political, national etc. becomes clearly discernible. Socio-political and national

[4] *Verstaatlichung*« and »*Vermarktlichung*« in the German doctrinal dialectic. See, for example, Bayertz, 1998; Münkler, 2004; Kaufmann and Krüsselberg, 1984.

[5] Further analysis of this issue far surpasses the ambits of this paper. For an interesting empirical research on solidarity and desolidarisation of Croatian society from a theological point of view see Baloban et al., 2010.

understandings of solidarity display a number of similarities: they function on the presumption of pre-political or politically founded commonality, of relative social and cultural homogeneity and similarity, as well as of informal and/or institutionally stabilised membership in more or less closed and therefore symbolically or actually exclusive spaces (Poferl, 2006: 236). Europeanization, as an institutionalised process of change, necessitates transformation and transnationalisation of solidarity. It must be founded on a cross-border network of solidary relations. Instead of negation of nationally oriented solidarities, the »cosmopolitan Europe« (Beck and Grande, 2004) requires their transformation: cosmopolitan solidarity can be understood as solidarity of differences or acknowledgement of otherness of others. Whereas political and institutional basis of solidarity remains national, its material content transforms under the pressure of intensified competition: protective and redistributive solidarity is gradually replaced with competitive and productive solidarity (Streeck, 2000). Productive-competitive solidarity adapts to markets rather than excludes them, makes social orders more competitive, stimulates equality of citizens, takes competition as a practical instrument for additional efforts and strives to achieve equality of chances instead of equality of outcomes (Streeck, 2000: 259). European social model can be described as a model of competitive solidarity (Scharpf, 2002). However, this proposition rests on economically strong regional units, capable of maintaining their redistributive tasks.

Other, more sceptical approaches suggest that globalised and universal solidarity cannot exist, as it weakens with de-territorialisation and replacement of inclusion and exclusion mechanisms with universal imposition of solidarity (Münkler, 2004: 22). In this line of view, creation of competitive solidarity at sub-national levels shows how destructive the impact of European integration is: it can undermine the survival of a nation state, as a point of reference for solidarity (Ferrera, 2005: 36).

TRANSFORMATION OF SOLIDARITY TO LEGAL PRINCIPLE

Originally a legal term, solidarity became prominent from the 19th century onwards as a political and sociological concept, only to find its way back into the legal arena as an overarching legal principle. Whether solidarity is understood in the communitarian sense, as built upon community interests; or conversely, as primarily rooted in the relation between individuals (Denninger, 1967), as a legal principle it has to be enforced through binding norms. Unlike solidarity between friends, solidarity between strangers is artificial, because it can only be accomplished by means of law (Habermas, 1998: 119; Kingreen, 2003: 252).

The difference between solidarity and the principle of solidarity encompasses the differentiation inherent in the principle of social state, that between society and state in the field of social security (Kingreen, 2003: 252). Kingreen's succinct explanation perfectly illustrates the transition from solidarity to the principle of solidarity. The term solidarity, based on a specific personal bond, is reserved for micro-level and exists without any legal or normative pressure. The principle of solidarity exists on macro-level as activity mediated through state, as organised solidarity. As a legal principle, it implies coercion to solidarity (Kingreen, 2003).

Solidarity or principle of solidarity is explicitly mentioned in only several constitutions of the EU Member States (e.g.

Austria, France, Poland, Italy, Spain), in a variety of meanings which are not confined exclusively to the realm of social solidarity.[6] Implicitly however, social solidarity can be revealed from the guarantees of social state or social security in practically all constitutions of the Member States. In the Croatian constitution, the Republic of Croatia is proclaimed to be a social state, and social justice is one of the most important constitutional values and basis for the interpretation of the Constitution. The rights of employed persons and their family members to social security and social insurance are regulated in laws and collective agreements.[7]

Principle of solidarity and social security

Social solidarity is justice defined in terms of need: a citizen in need has a claim to the community's aid, regardless of birth, merit or worth (Baldwin, 1992: 31). But how does a need transfer to a right or claim?

Social security is a mechanism which enables society to take care of the needy. It transcends the structures, interests and calculation and includes ethical questions. It reflects self-interests of the wealthy, as well as ethical obligations of the young, wealthy, healthy and employed towards older, less healthy, poorer and unemployed (Tinga and Verbraak, 2000: 254).

Solidarity as a »pre-legal« term obviously has to find its expression in legal norms. It is especially transmitted through rules on financial redistribution and compulsory insurance in the social security systems. Better earning, healthier individuals (or those with better risk profile) bear and cover the risks for those less healthy and wealthy members of society. Paradoxically, solidarity was possible only when otherwise self-reliant and sufficiently powerful groups realized that they would gain redistributive advantage within inclusive risk community (Baldwin, 1992: 36). That mutual feeling of solidarity as a critical part of social security, which is made binding through laws, is only acceptable for the citizens when it is based on the fundamental belief in social cohesion (Becker, 2009; Thuy, 1999: 36). Only then can it provide common constitutional guidelines for the legislative activity.

How important is solidarity in the definition of social security? None of the conventional definitions explicitly mentions solidarity. The principle of solidarity is nevertheless the fundamental feature of both tax-financed, as well as contribution-financed (social insurance) systems of social security. Modern social security is built on the premise that work generates income, and that this income is sufficient to satisfy the needs of the earner and his family (von Maydell and Eichenhofer, 1993: 455). Traditional solidarity would require familiarity

[6] For example, in the Spanish constitution its regional component is highlighted, i.e. solidarity among self-governing communities. In the French and Polish constitution, on the other hand, a more general reference to solidarity is included in the preamble. In the Austrian *Bundesverfassungsgesetz*, solidarity is explicitly mentioned only in Article 14(5), which regulates the competences of the federation for legislation and execution in the field of education. In the Italian constitution, solidarity is among fundamental principles guaranteeing the inviolable rights of individuals and social groups: under Article 2, the Republic "expects that the fundamental duties of political, economic and social solidarity are fulfilled".

[7] Intergenerational solidarity, for example, is one of the defining features of the pension insurance system. Although the right to pension insurance is not expressly guaranteed in the Constitution, the Croatian Constitutional court recognizes its constitutional nature, as one of the inherent rights of economically active persons and members of their families, and it stands under the court's protection. See the Constitutional court ruling of 17.4.2010, U-I-988/1998; U-I-59/1999; U-I-176/1999; U-I-245/1999; U-I-943/1999; U-I-1624/2000.

or social vicinity to resolve the typical social problem arising from this premise (i.e. no work – no income (Zacher, 1985)). Social security, however, needs to externalise solutions to this problem (i.e. assign compensatory tasks to other subjects, such as public authorities, social insurers, etc.). As a result, the implementation of the principle of solidarity as an organised, institutionalised form of solidarity is indispensable for the functioning of these systems.

The principle of solidarity, as one of the fundamental principles of social security, entails a redistribution of income. It implies not only help for an individual, who is a member of the solidary community, but also equity or social justice between members of the community and all population groups. Non-voluntary (compulsory) affiliation enables financial redistribution, which is a prerequisite for the exclusion of risk assessment and covering of otherwise hardly insurable risks. In social insurance systems, equity within the community is accomplished in particular through reciprocity at horizontal level: between the young and old, healthy and sick, etc. Contributions are set not according to the risk insured, but according to income. Each member of insurance community contributes according to his economic power; and in return, each member gets as much as he needs.[8] The amount of contribution has no impact on the scope of benefits. Equity between different groups of population is achieved through state subsidies, financed by taxes. In this manner, better earners carry the burdens of those earning less or no income. In the systems operating on the basis of universal cover (e.g. national health service), the principle of solidarity is expressed through tax-financing and flat-rate or uniform benefits.

Solidarity-based benefits should be provided only subsidiary, when the performance ability of individuals is threatened or exhausted (Henke and Rachold, 1999: 11). The principles of subsidiarity and solidarity are therefore necessary companions: the former legitimizes the latter (Heinze, 1998: 70).

In the social insurance systems, the principle of solidarity reshapes insurance principles. Unlike in private insurance, the bottom line of risk management in social insurance is achieving social justice. Social insurance is therefore unviable without insurance obligation and horizontal as well as vertical manifestations of solidarity. Horizontal principle of solidarity refers to the absence of equivalence between contribution and risks; vertical principle of solidarity exists when contributions are not linked with entitlement to benefits (Kingreen, 2003: 326).

Solidarity may be understood as a special form of social governance principle (Kaufmann, 1984: 158), separate from the market and hierarchical organisation. Welfare states are thus nothing more than a special form of institutionalised solidarity, arising in the wider context of state and nation-building (Ferrera, 2005: 20).

SOLIDARITY IN EU LAW

The European Union has long outgrown its initial primarily economic objectives. Indivisibility of economic and social progress was recognized already in the Preamble to the Treaty Establishing the European Economic Community (1957). Alongside peace, justice and freedom, solidarity is

[8] The resulting problems are in theory described as the restaurant bill problem (a bill paid by the group will almost always be higher than in the case where each member pays his own costs) and moral hazard (insured individuals tend to change their behaviour, paying less attention or being willing to take more risks) (Thuy, 1999: 36).

today »the fourth pillar« of the EU, and it is inherent in the European social model. However, there is no 'EU social solidarity'. The success of the European social model depends on national solidarities, i.e. how Member States institutionalise social solidarity. Solidarity is part of the social policy, for which each state retains its competence. Different national levels and contents of social solidarity may eventually collide, given that various socio-economic perceptions and pressures of global competitiveness may entail trade-offs between social cohesion and a more liberal approach to markets (Ellison, 2012). The dichotomy between nationally created social solidarities and globalised neo-liberal economic considerations is the starting point of any debate on this issue.

How is solidarity understood in EU law, or how does EU law shape the understanding of solidarity? »European« solidarity may mean something entirely different from »national« or »social« solidarity. Yet, the content and impact of EU law increasingly dictates the perception of solidarity and evolution of the principle of solidarity in national social security systems. In the case-law of the Court of Justice of the EU, the principle of solidarity is vital when deciding on the application of EU internal market, competition, state aid law etc. It may bring a world of difference: the Court may see it either as an exception or as justification for the restriction of market principles. Sometimes the principle of solidarity is not strong enough to shield a national social security system from the impact of EU law, which is predominantly market oriented. In many cases, the Court of Justice of the EU is the last instance for determining how solidarity should be interpreted at the national level. Hence, we are not far from allegation that the concept of solidarity is already 'Europeanised'.

Solidarity in primary EU law

Founding Treaties

The concept of solidarity has found its expression in various provisions of the Founding treaties. Solidarity is at the same time promoted as a value and objective of EU law.

Solidarity is one of the classic, structural principles of EU law. The Maastricht Treaty (1992) has expressly introduced solidarity in the text of the Founding treaties.[9] With the Lisbon Treaty (2007), the principle of solidarity is regulated in detail in specific provisions. Solidarity between nations and Member States has thus become the material basis for different obligations.

The Preamble of the Treaty on European Union (hereinafter: TEU) highlights the desire to deepen solidarity between peoples of Europe, while respecting their history, culture and traditions.

Article 2 TEU enumerates values on which the Union is founded: human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of minorities. These values are common to all Member States in a society which is characterised by pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women. In addition, solidarity between generations and solidarity among Member States are promoted as the objectives of the EU (Article 3(3) TEU). One of the leading principles for actions of the EU at internati-

[9] The original Article 2 of the Treaty Establishing the European Economic Community referred only to closer relations between the Member States (»*les relations plus étroites entres les États qu'elle reunite*«). Von Bogdandy argues that the substitution of the term relations with the term solidarity denotes a conceptual transition from a Union based on international relations to the Union as a federal polity (Von Bogdandy, 2009: 32).

onal level is the principle of solidarity (Article 21 TEU). In the field of foreign and security policy, mutual political solidarity between Member States is accentuated. A special expression of solidarity is found in security and defence policy. Article 42(7) TEU obliges Member States in the case of armed aggression on the territory of one Member State to provide aid and assistance by all means in their power.

Different forms of solidarity, mostly among Member States, are found in the provisions of the Treaty on the Functioning of the European Union (hereinafter: TFEU). Solidarity between Member States in the development of common policy in the field of asylum, immigration and external border control is required (Article 67 TFEU). The principle of solidarity, alongside fair sharing of responsibility, is expressly mentioned as a governing principle for the implementation of these policies in Article 80 TFEU, especially regarding their financing. In the field of economic policy, the Council may decide 'in a spirit of solidarity' between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy (Article 122 TFEU). The Union policy on energy is also developed in the same spirit (Article 194(1) TFEU). Solidarity finds its particular expression in case of extraordinary circumstances. Under the title »Solidarity clause«, Article 222 TFEU requires the mobilisation of all instruments at disposal, including the military resources, when a Member State is the object of a terrorist attack or the victim of a natural men-made disaster. This provision was inserted under the Lisbon Treaty.

It is not surprising that »institutionalised« solidarity in the EU Founding treaties relates primarily to solidarity between nations and Member States. It relies heavily on another structural principle, that of loyal or sincere cooperation between Member States and the EU, among Member States themselves and among the EU institutions. Conversely, solidarity at the national level is solidarity between citizens. This does not mean that this type of solidarity, in the form of transnational solidarity, has no normative junction in the Founding treaties: it is built upon and inferred from the rights of the citizens of the Union. Social solidarity is a key determinant of social security systems of all Member States. As such, it is reaffirmed in another primary source of EU law: the Charter of Fundamental Rights of the EU.

The Charter of Fundamental Rights of the EU

Next to human dignity, freedom and equality, solidarity is enumerated in recital 2 of the Charter Preamble as one of indivisible and universal values on which the Union is founded. Although numerous provisions associated with solidarity are found throughout the Charter, it also contains a separate section (Title IV) under the headline »Solidarity«. It consists of 12 articles (Articles 27 – 38) and is considered to be one of the most controversial sections of the Charter, which is mostly due to the historical development of fundamental social rights (Riedel, 2011: 396). The United Kingdom and Poland have even secured a form of an opt-out from the Charter and in particular, a clarification that its Title IV does not create justiciable rights applicable to them (Protocol no. 30 attached to the Lisbon Treaty). Although no dogmatic quality should be accorded to its headline, Title IV does include the core of fundamental social rights. The drafters of the Charter found it difficult to achieve a common accord on this issue, since there

is no uniform and comprehensive network of fundamental social rights established at national levels and the existing fundamental rights are often not justiciable. In the first place, Title IV of the Charter includes work-related rights (workers' right to information and consultation, right of collective bargaining and action, right of access to placement services, protection in the event of unjustified dismissal, fair and just working conditions, prohibition of child labour and protection of young people at work, guarantee of family and professional life). They are followed by guarantees of social security and social assistance, as well as the right of access to health care. This chapter ends with the provisions on the respect of access to services of general economic interest, environmental protection and consumer protection. Social understanding of solidarity is expressed in the provisions on social security, access to services of general economic interest, health care, and consumer and environmental protection. They articulate the socio-legal principle of solidarity, as the basis for the formulation of social objectives (Krebber, 2011).

Solidarity in other sources of EU law and soft law

References to solidarity are found in numerous sources of secondary EU law. In the Directive 2011/24/EU on patients' rights in cross-border health care, for example, solidarity is recognized both as an »overarching value« in the work of various Union institutions (Preamble, recital 21) and as a fundamental principle of health care (Article 4).

Solidarity lies at the heart of European welfare states. It is therefore not surprising that it is often highlighted as a constitutive part of the European social model in many resolutions, programmes, declarations and other documents adopted by the EU institutions. All of these various instruments have one thing in common, though: they interchangeably describe solidarity as a value, an objective and a principle. The Laeken Declaration of 2001 is a perfect example regarding the versatility of solidarity references. A Communication from the Commission from 2007 on a new social vision for Europe of the 21st Century points to new forms of solidarity, which evolve with the increasing individualisation of values. The task of solidarity in this new social vision is to promote social cohesion and sustainability of social systems, as well as to provide guarantee that no one will be left outside.

Solidarity as one of the fundamental values common to the health care systems of all Member States (together with universality, access to health care of good quality and equality) is identified in the Council conclusions from 2006. According to this understanding, solidarity is closely connected with the financial organisation of national health care systems and the requirement to guarantee equal access to health care services for all citizens.

Principle of solidarity is an operating principle and a shared organisational trait of social services in the EU, a »booming sector« in terms of economic growth and job creation (Social services of general interest in the European Union, 2006). Due to their specificity, social services require distinctive approach and regulation concerning EU competition, state aid and public procurement rules.[10]

[10] See, e.g. Commission's Guide to the application of the EU rules on state, aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest (2013).

Solidarity in case-law of the Court of Justice of the EU

The principle of solidarity has gained importance in the case-law of the Court of Justice of the EU relatively recently. In comparison to other fields and legal terms, the case law on solidarity and its aspects is very limited. Three directions of case-law on solidarity can be observed: case-law on solidarity between Member States, case-law on financial solidarity between EU citizens, and case-law on national or social solidarity.

Solidarity between Member States

Solidarity between Member States, as anchored in the Treaties, is closely connected with the principle of sincere cooperation and the duty to observe Treaty rules. Even the earliest case-law highlights solidarity as the foundation of the »whole of the Community system« (Commission v France, joined cases 6/69 and 11/69) and the fact that »failure in the duty of solidarity accepted by Member States by the fact of their adherence to the Community strikes at the fundamental basis of the Community legal order« (Commission v Italy, 39/72). In the Tachographs case (Commission v UK, 128/78), the Court ruled unilateral action contrary to the Treaty as a breach of the equilibrium between the advantages and obligations flowing from membership in the Community, and as a failure in the duty of solidarity between Member States.

Solidarity between citizens

Case-law on financial solidarity rises in parallel with the strengthening of the concept and rights which stem from EU citizenship. In a series of judgments regarding citizenship, e.g. case Grzelzcyk, C-184/99, Baumbast, C-413/99, Martinez Sala, C-85/96, the Court advocates a thesis on the existence of financial solidarity between nationals of Member States. The case Grzelzcyk was about fulfilment of conditions for the right of residence of the national of another Member State. The Court has based its decision on the existence of »a certain degree of financial solidarity between nationals of a host Member State and nationals of other Member States, particularly if the difficulties which a beneficiary of the right of residence encounters are temporary« (par. 44 of the Judgment). This understanding corresponds to the sociological concept and definition of solidarity as a form of attachment among people, which makes them reliant on each other and allows them to accomplish their goals in cooperation.

In case Bidar (C-209/03), the Court highlights that Member States must show a certain degree of financial solidarity with the nationals of other Member States in the organisation and application of their social assistance systems. However, Member States may not be required to grant assistance if it could become an unreasonable burden which could have consequences for the overall level of assistance which may be granted by that State (par. 56 of the Judgment).

These deliberations show that the Court builds a kind of cross-border solidarity between EU-citizens, i.e. nationals of different Member States. It can do so, because the EU-citizenship is destined to be a fundamental status of Member States nationals, as expressly recognised in case law (Baumbast, C-413/99).

Social or national solidarity as a fundamental principle of social security systems

Another, and for the purpose of our analysis, the most important prong of case-law is about national solidarity, as the crucial feature of national social security systems. Here the Court develops a more

or less sophisticated approach, under which national measures and systems based on the principle of national solidarity remain outside of the reach of EU law. Nevertheless, the Court remains the last instance to shape and define the understanding of this concept.

The case-law refers interchangeably to »national» as well as »social« solidarity and at times only »solidarity«, implying that these terms are used as synonyms.[11] How is »social solidarity« understood in EU law? Advocate General Fennelly explains in the case Sodemare, C-70/95, that »social solidarity envisages the inherently uncommercial act of involuntary subsidization of one social group by another. [...] [P]ursuit of social objectives on the basis of solidarity may lead Member States to withdraw all or part of the operations of social security schemes from access by private economic operators.« (Opinion, par. 28). It is arguable whether this understanding of social solidarity is strong enough to protect national social security systems from, for example, the EU internal market or competition rules. It relies primarily on the differentiation between social and economic activities, which is another concept interpreted in the case-law of the Court of Justice. National social policies may follow different goals, some of which are not that »inherently uncommercial«. However, whereas Member States' economic and social considerations and policies are developed and compete at the same constitutional level, in the EU, social law and policy have always played the role of background characters (Becker, 2004:203).[12] Through the lenses of the principle of primacy and direct application of EU law, all national policies, even those where no EU competence exists, can be seen as potential barriers to free movement or as distortion of competition (Klosse, 2012). Individual enforcement and justiciability of free movement rights and competition rights are the most important causes, which make the EU internal market and competition law an 'unfriendly environment' for national social entitlements and claims (Hervey, 2000). This can either lead to incompatibility of national laws and practices or to impossibility of their implementation in practice. However, not all views on EU case-law regarding social solidarity suggest a negative subtext. Ferrera, for example, points out that the Court has played a »solidarity-making« role, creating a »pan-European solidarity space« (Ferrera, 2005: 32). Let us examine some of the most prominent cases in the field of social security to verify these theses.

In its landmark case Poucet and Pistre (C-159/91 and 160/91), the Court finds the activity of compulsory health funds is based on the »principle of national solidarity«, or alternately, the »principle of solidarity«. This principle, in Court's view, is characterised by income redistribution, i.e. benefits not linked to contributions and insurance obligation. Solidarity between various social security schemes was also taken into account. It is expressed through the obligation of those in surplus to contribute to the financing of those with structural financial difficulties. In AOK Bundesverband (C-264/01 etc.), the Court considered that sickness funds in the German statutory health insurance scheme are involved in the management of social security scheme and

[11] For example, in judgments FENIN (C-205/03 and T-319/99) and Pavlov (C-180/98 to C-184/98) only the »principle of solidarity« is mentioned; in Sodemare (C-70/95) it is referred plainly to »social solidarity« and in Poucet und Pistre (C-159/91 and C-160/91) interchangeably to »national solidarity« and »solidarity«.

[12] See, for example, Scharpf, 2002 on the issue of »constitutional asymmetry« or Joerges and Rödl, 2004 on »social deficit« of the EU.

as such, fulfil an exclusively social function, founded on the principle of national solidarity and entirely non-profit-making. On the other hand, manifestations of solidarity, such as compulsory affiliation, absence of equivalence between contributions paid and pension rights, continuous accrual of pension rights during incapacity for work, indexing of pensions to maintain their value etc. were insufficient to exempt a pension fund responsible for managing supplementary pension scheme set up by a collective agreement from competition rules in case Albany (C-67/96). Even a "high degree of solidarity" (compulsory affiliation, fixed-rate contribution financing, benefits not proportional to contributions and risk) may not prevent a supplementary health insurance fund from being regarded as undertaking (AG2R, C-437/09). In another case, practically identical manifestations of solidarity (absence of direct link between contributions and benefits, as well as contributions and risks) were found to rule out a status of undertaking for a statutory insurance association in respect of accidents at work and occupational diseases which pursues a social objective and is supervised by the state (Kattner, C-350/07).

On the other hand, a body operating according to the principle of solidarity, in that it is funded from social security contributions and other state funding and provides services free of charge to its members on the basis of universal coverage does not act as an undertaking, even when it purchases goods and equipment from economic operators in the market, if those goods and equipment will be subsequently used in providing health services (FENIN, C-205/03 and T-319/99).

Consequently, in numerous cases concerning the collision between competition and social security law, the principle of solidarity determines the outcome: whether the activity is considered economic or non-economic, which is essential for the definition of undertaking and consequently, the application of EU competition rules. This is not just a theoretical issue: it is an issue of vital importance for the organisation of national social security systems. However, the Court of Justice seems to have a final word when it comes to **interpreting** the elements of solidarity implemented in a given national social security system. Thus, it becomes a difficult task for an entity involved in the provision of social security to recognize in advance whether it could be subject to competition rules or not. Even though, in most cases, these are public entities, or entities entrusted with a provision of certain tasks of general interest, this does not necessarily affect the potential economic nature of activities and services they provide (see case Höfner, C-41/90; Marhold, 1993: 649). From economic perspective, activities associated with core solidarity features could be seen as distortions of free competition.

Implementation of the principle of solidarity is examined on a case-by-case basis. A number of criteria have been developed in case-law so far, such as compulsory or voluntary membership in the scheme, the relation between risk and contributions, as well as contribution and benefit, financing of the scheme (pay-as-you-go or capitalisation), cross-subsidisation of non-profit schemes and social objectives of the scheme. However, there is no cumulative application of these criteria; and there is no single criterion which prevails. The presence of some elements of solidarity does not automatically exclude the activity from the ambit of EU law. It seems that, when the principle of solidarity is indispensable for the functioning of the scheme, the Court is more inclined to accept it as a justification or exception from the application of EU law.

Even though EU jurisprudence regarding free movement and national social security systems very rarely touches upon the issue of solidarity, it can also have a significant influence on transformation and transnationalisation of this concept. By requiring non-discriminatory and equal access of all EU citizens to medical services, for example, EU law may bring about tectonic disturbances in the organisation and financing of national health care systems. Even though EU law does not detract from the power of the Member States to organise their social security systems and to adopt, in particular, provisions intended to govern the organisation and delivery of health services and medical care, there is a clear obligation of Member States, when exercising that power, to comply with EU law, especially the provisions on free movement of workers and of every citizen to move and reside in the territory of that Member State (Van Delft, C-345/09; see also Giubboni, 2007).

The most important judgments, which influence the development and functioning of national social security systems, are to be found in the deliberations of the Court on social or national solidarity. It is here that the objectives of internal market, based predominantly on economic considerations and principles, and competences of the Member State to organise their social security systems which are based on the principle of solidarity, collide. Social outcomes and redistribution are not isolated from the regulation of competition and individual freedoms for all economic agents.[13] The dichotomy is obvious: the principle of individual freedoms is essential for economic regulation, whereas the leading idea behind the solidarity principle is the creation of the community of solidarity, which abrogates individual freedoms in favour of social justice and redistribution. Nevertheless, in applying a case-by-case approach, the Court keeps a considerable flexibility, which allows it not to overstep the division of competences between the EU and Member States. Unfortunately, flexibility may take its toll on legal certainty.

CONCLUSION

Social solidarity, an intrinsic value and principle of the social security system, is first and foremost a national matter. It is based on a mutual feeling of interdependence and reliance on fellow citizens. It is, by its nature, limited to a certain group and reserved for members of that group. In contrast, European integration requires opening of boundaries and elimination of all obstacles. It terminates the national monopoly on solidarity (Dougan and Spaventa, 2005: 181; Kochenov, 2012: 31). This process is mostly visible in the field of EU citizenship, which is built on the idea of social solidarity. It is therefore illusionary and pointless, if not impossible, to set firm boundaries and insulate national social security systems from European influences. National closure versus opening, or social distribution versus European integration (Ferrera, 2006: 258) today represents an artificial, and as such, untenable division.

Globalisation and Europeanization of national social security systems result in a logical contradiction: supranational requirements have to be not only implemented at the national level and through national structures, but they also have to be financed from (limited) national resources. This is the reason why national social security systems become the most important crash testing grounds, through

[13] See more on this issue in Drexl, 2009; Katrougalos, 2007; Dougan and Spaventa, 2005; Kochenov, 2012.

which the European integration is either reinforced or shattered to pieces.

Solidarity or the principle of solidarity is a fundamental and distinguishing determinant of all social security systems. It is also a starting point for the analysis, whether transformation of solidarity at the national and supranational levels has reshaped and redefined social security systems. Throughout primary and secondary EU law, various expressions of different solidarity forms may be found, mostly those between Member States. In the case-law of the Court of Justice, understanding of social solidarity is influenced by national perceptions. Nevertheless, it seems that a fundamental principle of social security is reduced to exception or justification of potential barriers to free market rules. Health care system, for example, represents a sensible area in which the principle of solidarity is especially important. The majority of theoretical models of organisation of health care are based on solidarity in financing of the system, regardless whether it is income or risk solidarity. This type of solidarity is territorially limited to the citizens of a particular state. Even though solidarity is one of the most prominent points of convergence between various European health care systems, its evolution and transformation under the influence of EU law and practice may be seen as decomposing national solidarity. Enforcement of individual rights in internal market is evolving at the expense of national solidarity.

BIBLIOGRAPHY

Arts, W., & Verburg, R. (2001). Modernisation, solidarity and care in Europe. The sociologist's tale. In R. Ter Meulen, W. Arts & R. Muffels (Eds.), *Solidarity in health and social care in Europe* (pp. 15-39). Dordrecht: Kluwer Academic Publishers.

Baldwin, P. (1992). *The politics of social solidarity. Class bases of the European welfare state, 1875-1975*. Cambridge: Cambridge University Press.

Beck, U., & Grande, E. (2004). *Das kosmopolitische Europa. Gesellschaft und Politik in der Zweiten Moderne.* Frankfurt am Mein: Suhrkamp.

Becker, U. (2004). Die soziale Dimension des Binnenmarktes. In J. Schwarze (Ed.), *Der Verfassungsentwurf des Europäischen Konvents - Verfassungsrechtliche Grundstrukturen und wirtschaftsverfassungsrechtliches Konzept* (pp. 201-219). Baden-Baden: Nomos.

Becker, U. (2009). Der Stand des europäischen Sozialrechts. In P. Brandt (Ed.), *Soziales Europa? Erträge des Symposions des Instituts für Europäische Verfassungswissenschaften an der FernUniversität in Hagen am 20. Oktober 2006* (pp. 63-87). Berlin: Berliner Wiss.-Verl.

Bogdandy, A. von (2009). Constitutional principles. In A. von Bogdandy & J. Bast (Eds.), *Principles of European Constitutional Law* (pp. 3-52). Oxford: Hart Publishing.

Case 6/69 and 11/69 *Commission of the European Communities v French Republic*. EU:C:1969:68. Judgment of 10 December 1969.

Case 39/72 *Commission of the European Communities v Italian Republic*. EU:C:1973:13. Judgment of the Court of 7 February 1973.

Case 128/78 *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland. Tachographs*. EU:C:1979:32. Judgment of the Court of 7 February 1979.

Case C-41/90 *Klaus Höfner and Fritz Elser v Macrotron GmbH*. EU:C:1991:161. Judgment of 23 April 1991.

Case C-159/91 and 160/91 *Christian Poucet v Assurances Générales de France and Caisse*

Mutuelle Régionale du Languedoc-Roussillon. EU:C:1993:63. Judgment of 17 February 1993.

Case C-70/95 *Sodemare SA, Anni Azzurri Holding SpA and Anni Azzurri Rezzato Srl v Regione Lombardia*. EU:C:1997:301, Judgement of 17 June 1997. EU:C:1997:55, Opinion of AG Fennelly of 6 February 1997.

Case C-180/98 to 184/98 *Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten*. EU:C:2000:428. Judgment of the Court of 12 September 2000.

Case C-184/99 *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*. EU:C:2001:458. Judgment of 20 September 2001.

Case C-413/99 *Baumbast and R v Secretary of State for the Home Department*. EU:C:2002:493. Judgment of 17 September 2002.

Case C-205/03 *Federación Española de Empresas de Tecnología Sanitaria (FENIN) v Commission of the European Communities*. EU:C:2006:453. Judgment of 11 July 2006.

Case C-209/03 *The Queen, on the application of Dany Bidar v London Borough of Ealing and Secretary of State for Education and Skills*. EU:C:2005:169. Judgment of 15 March 2005.

Case C-345/09 *J. A. van Delft and Others v College voor zorgverzekeringen*. EU:C:2010:610. Judgment of 14 October 2010.

Case T-319/99 *Federación Nacional de Empresas de Instrumentación Científica, Médica, Técnica y Dental (FENIN) v Commission of the European Communities*. EU:T:2003:50 Judgment of 4 March 2003.

Commission of the European Communities. (2007). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Opportunities, access and solidarity: towards a new social vision for 21st century Europe*. COM/2007/0726 final, 20/11/2007.

Council of the European Union. (2006). *Council Conclusions on Common values and principles in EU Health Systems*. 10173/06, 05/06/2006.

Denninger, E. (1967). *Rechtsperson und Solidarität*. Frankfurt am Main: Metzner.

Denninger, E. (1998). Verfassungsrecht und Solidarität. In K. Bayertz (Ed.), *Solidarität: Begriff und Problem* (pp. 319-344). Frankfurt am Mein: Suhrkamp.

Directive 2011/24/EU of the European Parliament and of the council of 9 March 2011 on the application of patients' rights in cross-border healthcare. *Official Journal* L 88, 04/04/2011, pp. 45-65.

Dougan, M., & Spaventa, E. (2005). „Wish you weren't here..." New models of social solidarity in the European Union. In E. Spaventa & M. Dougan (Eds.), *Social welfare and EU law* (pp. 181-218). Oxford: Hart Publishing.

Drexl, J. (2009). Competition law as part of the European Constitution. In A. von Bogdandy & J. Bast (Eds.), *Principles of European constitutional law* (pp. 633-674). Oxford: Hart Publishing.

Ellison, M. (2012). Introduction: Social solidarity in Europe: The fourth pillar. In M. Ellison (Ed.), *Reinventing social solidarity across Europe* (pp. 1-16). Bristol: The Policy Press.

Engelhardt, Jr, H. T. (1998). Solidarität: Postmoderne Perspektiven. In K. Bayertz (Ed.), *Solidarität: Begriff und Problem* (pp. 430-452). Frankfurt am Mein: Suhrkamp.

European Commission. (2013). *Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest*. Commission staff working document. SWD(2013) 53 final/2, 29/4/2013.

European Council. (2001). *Presidency Conclusions. European Council Meeting in Laeken, 14 and 15 December 2001* (*Laeken Declaration of 2001*). SN 300/1/01 REV 1.

Ferrera, M. (2005). Towards an ‚open' social citizenship? The new boundaries of welfare in the European Union. In G. de Búrca (Ed.), *EU Law and the Welfare State. In Search of Solidarity* (pp. 11-38). Oxford: Oxford University Press.

Ferrera, M. (2006). Friends, not foes: European integration and national welfare states. In A. Giddens, P. Diamond & R. Liddle (Eds.), *Global Europe Social Europe* (pp. 257-278). Cambridge: Polity Press.

Giddens, A. (1992). *The consequences of modernity*. Cambridge: Polity Press.

Giubboni, S. (2007). Free movement of persons and European solidarity. *European Law Journal, 13*(3), 360-379. doi: 10.1111/j.1468-0386.2007.00370.x

Göbel, A., & Pankoke, E. (1998). Grenzen der Solidarität. Solidaritätsformeln und Solidaritätsformen in Wandel. In K. Bayertz (Ed.), *Solidarität: Begriff und Problem* (pp. 463-494). Frankfurt am Mein: Suhrkamp.

Habermas, J. (1998). Bemerkungen zu Erhard Denningers Trias von Vielfalt, Sicherheit und Solidarität. In J. Bizer & H.-J. Koch (Eds.), *Sicherheit, Vielfalt, Solidarität* (pp. 117-150). Baden-Baden: Nomos.

Heinze, M. (1998). Grund und Mißbrauch von Solidarität im System der sozialen Gerechtigkeit. In E. Dassmann, O. Depenheuer & M. Heinze (Eds.), *Solidarität in Knappheit* (pp. 70-96). Berlin: Duncker & Humblot.

Henke, K.-D., & Rachold, U. (1999). Solidarität und Wettbewerb im Gesundheitswesen. In G. Igl & G. Naegele (Eds.), *Perspektiven einer sozialstaatlichen Umverteilung im Gesundheitswesen* (pp. 11-26). München: Oldenbourg.

Hervey, T. K. (2000). ‚Social solidarity': A buttress against internal market law? In J. Shaw (Ed.), *Social law and policy in an evolving European Union* (pp. 31-47). Oxford: Hart Publishing.

Hondrich, K. O., & Koch-Arzberger, C. (1992). *Solidarität in der modernen Gesellschaft*. Frankfurt am Mein: Fischer Taschenbuch-Verl.

Joerges, C., & Rödl, F. (2004). „Social market economy" as Europe's social model?. *EUI Working paper Law* Nr. 2004/8.

Katrougalos, G. S. (2007). The (dim) perspectives of the European social citizenship. *Jean Monnet Working Paper* 05/07.

Kaufmann, F.-X. (1984). Solidarität als Steuerungsform – Erklärungsansätze bei Adam Smith. In F.-X. Kaufmann & H. G. Krüsselberg (Eds.), *Markt, Staat und Solidarität bei Adam Smith* (pp. 158-184). Frankfurt am Mein: Campus.

Kaufmann, F.-X. (2004). Sozialstaatliche Solidarität und Umverteilung in Wettbewerb. In J. Beckert, J. Eckert, M. Kohli & W. Streeck (Eds.), *Transnationale Solidarität* (pp. 51-72). Frankfurt am Main: Campus.

Kingreen, T. (2003). *Das Sozialstaatsprinzip im europäischen Verfassungsverbund*. Tübingen: Mohr Siebeck.

Klosse, S. (2012). Balancing Europe's economic and social goals: Fighting a losing battle?. *European Journal of Social Law,* (3), 176-193.

Kochenov, D. (2012). The present and the future of EU citizenship: A bird's eye view of the legal debate. *Jean Monnet Working Paper* 02/12.

Krebber, S. (2011). Art 27 GRCh. In C. Calliess & M. Ruffert (Eds.), *EUV/AEUV*. München Beck.

Marhold, F. (1993). Europäisches Wettbewerbsrecht für öffentliche Unternehmen. In M. Enzinger, H. F. Hügel & W. Dillenz (Eds.), *Aktuelle Probleme des Unternehmensrechts. FS Gerhard Frotz* (pp. 645-659). Wien: Manzsche Verlags- und Universitätsbuchhandlung.

Maydell, B. von, & Eichenhofer, E. (Eds.). (1993). *Abhandlungen zum Sozialrecht*. Heidelberg: Müller.

Münkler, H. (2004). Enzyklopedie der Ideen der Zukunft: Solidarität. In J. Beckert, J. Eckert, M. Kohli & W. Streeck (Eds.), *Transnationale Solidarität* (pp. 15-30). Frankfurt am Main: Campus.

Poferl, A. (2006). Solidarität ohne Grenzen? Probleme sozialer Ungleichheit und Teilhabe in europäischer Perspektive. In M. Heidenreich (Ed.), *Die Europäisierung sozialer Ungleichheit* (pp. 231-252). Frankfurt am Main: Campus.

Puljiz, V., Bežovan, G., Šućur, Z., & Zrinščak, S. (2005). *Socijalna politika*. Zagreb: Pravni fakultet.

Rauscher, A. (1988). Solidarität. In *Staatslexikon* (Bd. 4). Freiburg: Görres-Gesellschaft.

Riedel, E. (2011). Titel IV. In J. Meyer (Ed.), *Charta der Grundrechte der Europäischen Union*. Baden-Baden: Nomos.

Scharpf, F. (2002). The European social model: Coping with the challenges of diversity. *MPIfG Working Paper* 02/8.

Stjernø, S. (2004). *Solidarity in Europe. The history of an idea***.** Cambridge: Cambridge University Press.

Stjernø, S. (2011). The idea of solidarity in Europe. *European journal of social law,* (3), 156-176. Available at https://soc.kuleuven.be/ceso/life-sciences-society-lab/files/stjerno-the-idea-of-solidarity-in-ejsl-2011-3-b.pdf

Streeck, W. (2000). Competitive solidarity: Rethinking the „European social model". In K. Hinrichs, H. Kitschelt & H. Wiesenthal (Eds.), *Kontingenz und Krise* (pp. 245-261). Frankfurt am Main: Campus.

Thuy, P. (1999). *Sozialstaatsprinzip und Marktwirtschaft*. Bern: Haupt.

Tinga, K., & Verbraak, E. (2000). Solidarity: An indispensable concept in social security. In J. P. A. van Vugt & J. M. Peet (Eds.), *Social security and solidarity in the European Union* (pp. 254-269). Heidelberg: Physica Verlag.

Zacher, H. F. (1985). Verrechtlichung im Bereich des Sozialrechts. In F. Kübler (Ed.), *Verrechtlichung von Wirtschaft, Arbeit und sozialer Solidarität* (pp. 11-72). Frankfurt am Main: Suhrkamp.

Sažetak

SOLIDARNOST KAO KLJUČNA ODREDNICA SUSTAVA SOCIJALNE SIGURNOSTI U EUROPI

Adrijana Martinović

Pravni fakultet Sveučilišta u Rijeci
Rijeka, Hrvatska

Solidarnost je složeni društveni fenomen, pojam višestrukog značenja i uporabe. Socijalna solidarnost, preinačena u pravno načelo, predstavlja temelj svih europskih sustava socijalne sigurnosti. Ovaj rad istražuje kako se načelo solidarnosti razumijeva u europskom pravu, osobito u praksi Suda Europske unije. Razgraničenje između solidarnosti kao temeljne vrijednosti i solidarnosti kao pravnog načela u pravu EU nije uvijek precizno. Međutim, sadržaj i utjecaj prava EU u sve većoj mjeri diktira percepciju solidarnosti i razvoj načela solidarnosti u nacionalnim sustavima socijalne sigurnosti. Cilj je rada pokazati kakav učinak pravo EU potencijalno ima u preoblikovanju i redefiniranju sustava socijalne sigurnosti u cijeloj Europskoj uniji.

Ključne riječi: solidarnost, načelo solidarnosti, sustav socijalne sigurnosti, europsko pravo.