

Preface

Welfare states are changing. At present, the European dimension of welfare services—which was traditionally confined within each national territory—is being developed by several actors: patients travelling abroad to receive medical treatment, healthcare providers wishing to establish their seat or to provide services abroad, and students travelling abroad for education. In this context, some Member States have chosen to introduce competitive elements in the provision of their welfare services for efficiency reasons. This approach has triggered the application of European internal market and competition rules. Member States which organize their welfare differently have therefore been confronted by a common European dimension which they had to address.

Social system reform is complicated enough without the European aspect. Political agreement on how to organize the system is difficult to reach. Moreover, the changing of the State's role from providing services to providing only the legal framework and supervising the provision of services represents an apparent loss of powers for the Member States. With this as a background, the fact that European law applies gives the Member States the impression that they have lost control over these services.

The double function, social and economic, of the welfare services raises interesting questions, such as whether economic law applies to these services. Politically sensitive but also economically important, welfare services have opened a heated debate. The focus of this book is on health, health insurance and education because these fields have undergone important developments.

The evolution of the welfare services indicates that they are atypical domains of integration. The close interrelations between social and economic elements underline the fact that the social aspect cannot be ignored and that action needs to be taken to deal with the new problems that have emerged.

The failure of the political process to deal with the complicated problems raised by welfare services and the continuous development of the internal market integration leading to a spill-over into other fields has left the European Court of Justice with the difficult task of answering questions on the relationship between welfare and economic integration. The most significant development in the field of

welfare have come from the Court. Litigation provides the occasion for Member States to be forced to stop ignoring the existence of anything beyond the national dimension. This is the moment when Member States start to change to address their problems, or even to be active through soft law mechanisms. The outcome of this process is uncertain. It is even possible that European convergence towards common regulatory patterns may emerge, since the identical pressures on Member States can result in parallel behaviour, leading to conforming and compatible policies.

Difficult questions related to governance are posed by the developments in these fields. National reforms of the welfare systems need to take the new European dimension into consideration. This book has looked at the negative integration process and answered the questions related to the extent to which European law applies to welfare services and what kind of safeguards the Court offers for these services. The proportionality principle distinguishes itself as the central element, important in balancing the national and European interests. Being part of the broader integration process, negative harmonization leaves legislative lacunae and the book also looks at alternative solutions to the negative harmonization process: positive and soft law.

Welfare harmonisation is part of a broader integration process: it can be seen as a step in the progress from economic to social integration, but also as a part of economic integration. The Court established landmark cases that answered the problems raised in practice, thus ensuring further integration in a field where politics had failed. However, the negative integration practiced by the Court is not sufficient and needs to be corroborated by positive action. The positive action could come either from the part of the Member States or from the Community.

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Laura Nistor