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REPORT BETWEEN EUROPEAN UNION LAW AND NATIONAL MEMBER STATES LAW IN THE FIELD OF WORK FORCE FREE MOVEMENT

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ABSTRACT: *The issue of the report between European Union law and national law represents an extremely present discussion in the field of work force free movement. The European Commission has concluded in its last year's rapports that the rights of the workers are violated most often through the divergent and incorrect enforcement of European law. In these conditions, the European institutions have adopted a series of regulations and directives meant to determine member states to enforce efficient mechanisms for fighting against citizenship – based discrimination, concerning both employment as well as payment and also further work conditions.*

KEYWORDS*: free movement of workers, European Union Law, national law,*
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1. INTRODUCTION

The issue of the report between international legal order and national legal order is the same whether we consider the relation between European Union law and national law, on the one hand, and the relation between international law and European Union law, on the other hand (Jean François Akandji-Kombé, Alain Fenet et al., 2006). In both cases, it is necessary to relate to the specific nature of the European Union, specificity that stands at the basis of the *sui generis* report the European Union law has and that sets its features. European Union law contains elements pertaining to internal law of European Union member states, international law characteristics but also its own elements derived from the goals this state association has proposed to reach. The report is atypical compared to standard relations and we can find both elements that bring it closer and that further it apart from the former ones (Jean François Akandji-Kombé, Alain Fenet et al., 2006).

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The international law – Union law – national law and each of the two last elements cannot be taken out of the general context, that of international law. There is a direct relation between international law and national law of European Union member-states and we find ourselves in the presence of a three part equation – international, European , national, - where the "European" cannot exist outside the international - national relation (Jean François Akandji-Kombé, Alain Fenet et al., 2006).

European law has, in some sort, the outline of international law for it reproduces at a smaller scale, what international law represents, being in the same time impregnated with the national law, for its recipients are subjects to national law. The European legal order is distinct from the international legal order, even though it is constituted based on an international state treaty, in their capacity as subject of international order, and the European Union appears as an international organization, being itself subject of international legal order. Consequently, the European legal order is not an internal legal order as well as it is not an international legal order (Anghel, 2002), being, as the European Court of Justice named it, "*an autonomous legal order, distinct, in the same time, of the international legal order and the national legal orders*". ((Flaminio Costa vs ENEL, 6/64; Canivet, 1992)

The report between international legal order and the national one is based on the coexistence idea of the two distinct legal orders and the influence of the international legal system is founded upon cooperation and not subordination; integrations entails more than just a simple cooperation between the different legal orders of states and imposes a limitation of state sovereignty in favor of the European legal order that has priority. (Blachér, 2006)

The relation between Union law and state national law is not a repetition of the international-national law report, on a different scale; the reference points of European Union law – international law being substantially different and the influences brought by the implications of international law on national law are not comparable with those that Union law has on national law (Anghel, 2002).

Concerning the external legal order – internal legal order report in European law, the European legal system has a unique effectiveness, comparable with that of internal state law. This type of effectiveness is based on a principle developed through case-law, particularly the principle of priority of European Union law over member-states internal law (Anghel, 1999).

The issue of the report between international law – Union law and internal law is relevant also in the matter of work relations. The conventions and recommendations adopted at International Labor Organization (ILO) level represent international labor law, while the regulations and directives adopted at European Union level form the European labor law.

2. THE REPORT BETWEEN UNION LAW AND NATIONAL LAW IN THE MATTER OF FREE MOVEMENT OF WORK-FORCE.

The report between international labor law and European labor law consists in the perspective of their applicability. International labor law (represented by ILO conventions and recommendations) is addressed to different states, having different economic

standards, while EU law, through its regulations and directives insures a superior form of protection for workers. Since the moment the European Communities were formed there has been an excellent collaboration between ILO and the former. The first European regulations in the matter of work relations were elaborated based on the principles promoted by ILO. Certain regulations and directives take over and develop ILO norms. This aspect is reflected in the superposition between the regulation object of some directives and conventions. In case of conflict between an ILO convention and a European directive, the EU member-state will always apply the EU provisions. (Popescu, 2006)

Concerning the report between EU law and member-state law, we have to mention that EU law is integrated in a natural way in the internal legal order of states without having to make use of any special introductive formula; European norms occupy their place in the internal legal order, as European Union law; national judges have to apply EU law in all matters. (Anghel, 1999)

The report between EU law and national law is maintained also in the field of free movement right of work-force.

At EU level there has been set the goal of creating a common market for work force, market in which free movement of work force stands as the basis for the development of a work-market in the European Union. Through free movement, workers can move in areas characterized by work force deficit or to places where employment opportunities are created according to their competences and therefore eliminate any blockages that may appear on the labor market.

Free movement of workers grants EU citizens the right to move freely, independent of their residence, in order to work and/or live in professional interests. By benefiting from this freedom, citizens are protected against discrimination forms based on citizenship, regarding the access to a work place, work conditions, payment, social advantages, and taxing, having therefore equal treatment with the natives of that particular country. These benefits are based, in internal law, on collective work contracts at national level and national practices. Free movement of work force does not benefit only permanent workers, season workers and trans-border workers but also the members of their families.

Nonetheless, the effective exercise of free movement still represents a major challenge and most EU workers do not know their rights. Workers represent a category with a relatively high vulnerability potential. Most of the times, they can find themselves confronted with unjustified restrictions and obstacles that prevent them from exercising their free movement right. Therefore, workers face problems concerning qualification recognition as well as citizenship - based discrimination and exploitation. (Directive no. 54/2014 regarding facilitation measures for exercising rights granted to workers in the context of workers free movement.)

In order to accomplish the common labor market, free movement of work force has been regulated through the provisions of the Lisbon treaty as well as other documents adopted by European institutions.

According to provisions of articles 45-55 TFUE free movement of workers is ensured, under the reserve of the restrictions justified by reasons of order, security and public health. In the light of TFUE provisions, workers have the rights: "to accept offers of employment actually made; to move freely within the territory of Member States for this purpose; to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law,

regulation or administrative action; to remain in the territory of a Member State after having been employed in that State." (TFUE, art. 45)

In order to enforce these rights, European institutions have the obligation to adopt regulations and directives that would ensure the existence of a close cooperation between national services dealing with the employment of work force; eliminate practices, administrative procedures and access periods to work places that derive from national law or agreements previously signed between member states that represent an obstacle in the effective accomplishment of workers free movement. In the same time, regulations and directives can be adopted for the purpose of eliminating periods and restrictions provided in the national law or agreements previously signed between member states that impose workers from other states different conditions regarding the free choice of a work place compared to the workers of that state; establish measures aimed at correlating demand and offer work-place wise and facilitate the achievement of balance between the demand and offer of work places in such conditions that any serious threat of living standards and work force occupation in different regions and industrial branches is avoided.

In order to facilitate access to independent activities and their exercise, directives can be adopted regarding mutual recognition of diplomas, certificates and other qualification official titles as well as concerning the coordination of legislative acts and administrative acts of member states that regulate access to independent activities and their exercise. Similarly, it is necessary to eliminate any restrictions set for medical, paramedical and pharmaceutical professions, as actions subordinated to the coordination of exercise conditions of these in member states. (art. 46 şi 55 TFUE)

The application of regulations and directives in internal law is done differently. As such, regulations have general and mandatory character and are applied directly in the legal order of state. Directives are mandatory for each member state concerning the result that must be attained, leaving to national authorities the competence of choosing the form and means in order to reach that result (art. 288 TFUE). More so, the ECJ case-law plays an important role. Although ECJ rulings only have *inter partes* effects, they can create judiciary precedents. Interpretation decisions of EU law are mandatory.

The European Commission, in analyzing the application of EU law in the national legal system of member-states, has drawn up rapports and studies that outline a series of problems that can prevent the accomplishment of the "common labor market".

According to a study from 2012 (European Commission, 2012), there are several problems in the application process of EU law in the national law of member states representing thus true barriers and obstacles in the path of accomplishing with optimal results free movement of workers. The problems signaled are:

Lack of compliance of national legislation with EU legislation in the matter. Legislative provisions are formal and are not in compliance with the principles of free movement and nondiscrimination asserted at European level. There are numerous reasons that can explain why the rights conferred through European regulations lack applicability or their application is incorrect. One of the top reasons is represented by the insufficient knowledge or total lack of knowledge either of workers or of state authorities of the lengths of these rights. Despite the fact that European legislation is clear, the subjects of these legal provisions do not seem to understand the complexity of these correlations

between the provisions of the TFUE, Regulation 492/2011 and the national provisions through which directives have been transposed. (European Commission, 2012)

Non-compliance with EU legislation has been outlined in the matter of certain social advantages, granting of study scholarships, condition of detaining a certain citizenship in order to occupy a position in public services and excessive language requirements. All these can be caused, on one hand, by the lack of correspondence in the interpretation of jurisprudence by member state and by the Commission equally (in the context where a great part of regulations are based on ECJ jurisprudence). On the other hand, there exists the possibility that states, when elaborating their national legislation, have a different visions on the objectives set through EU law. (European Commission, 2012)

*Incorrect application of EU law***.** Although national regulations are in accordance with EU ones, their application, the procedures and practices of national authorities do not respect European regulations and rights granted to workers. The study shows that the incorrect application of legislation has been identified in almost all member states. All national regulations have problems concerning the free movement right of work force, starting from the incorrect definition of the term "worker" and continuing with problems regarding the setting of eligibility criteria for occupying work places and effectively occupying work places. In certain situations, problems rise from the inconformity of national legislation with EU legislation or incorrect interpretations of legislation or ECJ case-law. Another cause of incorrect application of EU law is represented by the wrong application or even lack of application of EU law by public servants of judges including incorrect enforcement of judicial procedures. (European Commission, 2012)

*EU law is not properly applied by employers***.** This problem is quite difficult to identify. Although European regulations and national ones are in correspondence, there exists the risk that the worker is discriminated when looking for employment or does not benefit of chance equality in relation to the citizens of the host-state. As far as the misapplication of law by employers, the study outlines that this is due, in most cases, to employers themselves. This happens because the employers do not understand or are not aware of the rights that workers have but also of the obligations they themselves have in relations to their employees. In the same time, problems can be caused, to some degree, also by the fact that employees have no knowledge of the rights they benefit from. This represents a serious problem, for European institutions cannot control the process of enforcing law at a private level as they do not have the competence to intervene in this sector (e.g. the situation when an employee is asked to fulfill excessive linguistic requirements). (European Commission, 2012)

The workers do not use the rights conferred through European regulations. Most times, the workers either do not know their rights or they choose not to exercise them. The study outlines that one of the reasons for which workers do not claim their owed rights consists of the lack of information sources or the fact that they do not understand the rights that they benefit from. (Milieu, 2011).

Identifying problems entails also solutions. Therefore, the Commission has drawn up a series of rapports preliminary to adopting a directive.

In 2010, the Commission adopted a report concerning the EU citizenship entitled "*Dismantling the obstacles to EU citizens' rights*". The rapport pointed out that the divergent and incorrect application of EU law in the matter of free movement of workers represents one of the main obstacles that EU citizens are faced with. Consequently, the

Commission expressed its intention of taking measures in order to facilitate free movement of citizens in the EU and of their families by strictly applying EU norms regarding non-discrimination and by promoting good practices and better knowledge and understanding of EU provisions and also through a better information process of EU citizens of their rights in the matter of free movement. (Commision, 2010)

The report "*Towards-job-rich-recovery*" from 2012 presents the Commissions' intention of elaborating a legislative proposal for sustaining mobile workers by offering information and consultancy regarding the exercise of their rights and has encouraged member states to improve the cognition of the rights conferred by EU law on the fight against discrimination, gender equality and free movement of workers as well as the opening and facilitation of the access to work places in the public sector. (Commision, 2012)

In 2013, by adopting the "*EU citizens: your rights, your future*" rapport, the Commission has outlined the need of eliminating administrative obstacles as well as the need to simplify the procedures for EU citizens that live and travel towards member states. The need to apply and ensure compliance with EU norms represents fundamental elements for the protection of human rights, while a malfunctioning in the applying process diminishes the effectiveness of EU norms in this area and puts in danger the protection and the rights of workers and their families. (Commision, 2013)

Taking into consideration the afore mentioned problems, the European Parliaments and the Council have adopted Directive 2014/54/UE on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers. The directive has been adopted as a solution for non-exercise of rights by workers and their families and has as goal the facilitation and insurance of compliance with the rights conferred in a uniform fashion. The directive establishes the obligation of member state to ensure administrative and judicial procedures that allow workers and their families that suffer or have suffered from certain restrictions or unjustified obstacles in the exercise of their rights to free movement or consider that they have been treated unfairly through the non-application of treatment equality and non-discrimination to ensure the respect of their rights. States also have to ensure that associations, organizations and social partners that have a legitimate interest in ensuring compliance with the provisions of the directive can take, in the name or in support of the workers and the members of their families, the judicial and/or administrative steps in order to ensure respect of workers rights, in terms of the provisions of the national law. (Directive no. 54/2014 regarding facilitation measures for exercising rights granted to workers in the context of workers free movement, art. 3)

Member states are obliged to designate "structures or organisms" that promote, analyze, monitor and sustain treatment equality for all workers and the member of their families, without discrimination. These "organisms" have the job of ensuring independent legal assistance for workers and their families; contact other similar organisms from other countries; carry out or order certain independent studies and analysis regarding unjustified restrictions and obstacles to free movement right or citizenship - based discrimination; ensure the publications of independent reports and elaborate recommendations on any type of restrictions or obstacles; publish relevant information concerning the application process at national level of EU norms that regulate free movement workers. More so,

states are compelled to supply information on workers' rights in more of the EU official languages. Information has to be clear, free of cost, accessible, exhaustive and up-to-date. (Directive no. 54/2014 regarding facilitation measures for exercising rights granted to workers in the context of workers free movement, art. 4)

In conclusion, we consider that the efforts undertaken by European institutions to oblige states to correlate their national legislations with EU legislation through the transposition in internal law of regulations meant to solve application issues of European law in internal law are notable. However, we consider that the choice made by European institutions to create obligations for member state through a directive is somewhat improper. Of course, after a first look, the solution is appropriate for it leaves at the will of member states the means to be used in order to reach the established obligations. We consider, however, that a large part of the problems mentioned in the paper are due to a deficient understanding or difference in vision between European institutions and national authorities on the issue of application of work force free movement right. In these conditions, we think that in order to improve the effectiveness of European regulations and to correctly and properly put them into force in member states' legal systems it is imperious to adopt a regulation. The arguments for this legislative choice pertain to the very nature of the regulation: general, mandatory and directly applicable character.

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