The Material Content of the Free Movement of the Workers in European Union

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Abstract: The free movement of persons aims at creating a unique market and forming a political point of view at achieving a greater cohesion between the nations that are part of the European Community by cutting down the barriers concerning the phenomenon of migration and promoting community citizenship.

Keywords: free movement; workers; restrictions

Along with the first great extension of the European Union on May 2004, but mostly with the broadening from 2007, the majority of the old member states chose to introduce "transitory arrangements" concerning the free movement of the workers along Union. The restrictions are to be applied for eight of ten new member states (Cyprus and Malta aren't included).

From European Union's States, Ireland and Sweden decided to forbear from imposing such kind of restrictions to the citizens of the European Union. Great Britain enacted an obligatory scheme of registering, while all twelve states decided to keep the work allowance. Instead, the new member states received the right to invoke the reciprocity of these measures. Between them, the states of the European Union are obliged by the stipulations of the **"**Adherence Treaty**"** to execute the local laws regarding the free movement of the workers, starting with The first of May, 2004**.**

According to the Adherence Treaty, signed in 2003, the free movement of the work force can be rejected for a maximum period of seven years. This transitory period was divided into three distinct phases (the so called formula 2+3+2)[1], as it follows:

- during the first phase (till April 30th, 2006), European Union's states can apply the national measures, basing themselves on the bilateral accords which are to be found in the formulation of the politics regarding the work force;
- on January 2006, The Commission presented to The Council a report on the functioning of the transitory arrangements. Basing themselves on the conclusions gathered in the frame of this report, European Union's states had to notify the commission about their intentions concerning the following period.

[1] For more details, the european commissary Spidla's point of view regarding "The restrictions imposed to the workers from East", expressed on September 20th, 2005, in front of The Commission, when all member states were requested to "seriously examine" the possibility of renouncing to the restrictions imposed to the work force, must be seen. The commissary for work force, Spidla, said: The free movement of the work force "should be enacted by all".

- during the second phase (between The first of May 2006 and April, 30th, 2009), the local law related to the free movement of the work force will be applied in those states which do not notify The Commission about their intentions in applying restrictions.
- during the third phase (The first of January 2009 – April 30th, 2011), the restrictions can be affirmed only in the case of serious issues or of the threats to the work force market of a Member State.

In the seventh article of the Treaty establishing the European Community by means of which the "internal market" is instituted, it is stipulated that the right to free movement is to be applied to everybody and has the obligation of suppressing all the checks that are to be made to the internal borders. At the same time, it is stipulated that any citizen of the European Union has the right to the free movement and settlement on the territory of member states, under the limits provided by the local legislation. (Tinca, 2005, p. 58)

The objectives which are to be achieved by means of this rule are those of assuring the free movement of the persons and of abolishing the controls made at the internal borders, as an integrant part of a greater concept, that of internal market, in which internal borders or impediments regarding the free movement of the persons shouldn't exist. Thus, according to the stipulations of this treaty, the content of the free movement of the workers, subject to the justified limits of public order, public security or public health[1], contains the right of the workers:

- 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, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.

1. The Right to Enter and to Stay

Directive 68/360/EEC suppressed the restrictions regarding the movement and the residence of the European Union's citizens and their families (art. 1). Therefore, the following rights were granted to the migratory worker:

a) to go out of the resident state in order to develop an activity as an employee in another Member State. (art.2)

b) to enter the territory of a Member State presenting an identity card or a passport (art.3). The entry visa weren't required with the exception of the family's members who aren't citizens of a Member State. To these states were being asked to provide facilities for the procurement of the visa. – art. 3(2).

[1] Art. 27 paragraph no. 2, Directive no. 2004/38 CEE.

c) to obtain a resident allowance on the base of:

- the document by means of which the person entered the territory;
- the confirmation of employment provided by the employer or of the employment certificate – art. 3 (3) lit. a, b.

Directive 2004/38/EEC was meant to codify and revise the existent local instruments which separates the salaried workers, the persons who don't exert an independent activity and the students and other inactive persons with the purpose of simplifying and strengthening the right to free movement and staying for all the Union's citizens. Per se, Directive 68/360/EEC was revoked on April 30th, 2004 and Directive 2004/38/EEC took its stipulations.

This later local document maintains the right to enter the territory of a Member State on the base of a valid identity card or of a valid passport, and also the necessity of not imposing to the Union's citizens an entry visa or any other equivalent formality – art. 5 (1).

As opposed to the anterior local act, Directive 2004/38/EEC maintains not only the right to enter but also the right to exit for all the Union's members, to leave the territory of a member states in order to travel to another one – art.4 (1) (Popescu, 2006, p. 388).

To those family members who aren't nationals of a Member State are being asked to present an entry visa according with the rule that enumerates the countries of whose nationals must have visas when they are about to cross the external borders of the member states, inclusively those state of whose nationals are absolved of this requirement, or, when it's the case, by the national legislation. With the purpose of facilitating the free movement of the member families who aren't nationals of a member state, those who already obtained a resident allowance should be absolved of the necessity of obtaining an entry visa as the rule EC. no. 539/2001 stipulates. (Tinca, Drept social comunitar-drept comparat. Legislaţie română, 2005, p. 47)

European Union's citizens are the beneficiaries of the right to stay in the host Member State for no more than three months without respecting any other condition except that of having a valid identity card or passport and without affecting any other favorable treatment which is to be applied to the persons who are looking for work, according to the Justice Court – art.6.

As a substitute, according to Directive 2004/38/EEC, all Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

(a) Are workers or self-employed persons in the host Member State;

(b) Have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State;

(c) Are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training

(d) Have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence;

(e) Are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).

Directive 2004/38/EEC does not maintain the necessity of the resident allowance. Instead, art.8 provides the possibility to the host Member States to ask the Union's citizens to register themselves to the competent authorities when the period of staying overruns three months. The deadline of registration is at least three months from the incoming date. A certificate of registering[1] which contains the name and address of the registered persons and also the date of registering is immediately made out. The non-compliance with the registration asking may behave proportional and discriminatory sanctions to the person. (Popescu, 2006, p. 389)

In order for a registration certificate to be made out, a series of documents, mentioned to art.3 and art.8, can be required in a restrictive way. The sustaining documents asked by the competent authorities so as the registration certificate or the staying allowance to be made out, are being specified in order to avoid the administrative practice to become an unequal obstacle to the exerting of the staying right by the Union's citizens and their family members. That is why:

- union's citizens to whom art.7, al.1, lit. a is being applied, must present a valid identity card or a valid passport, an employment confirmation from the employer or an employment certificate or a prove that they are persons who exert an independent activity.
- union's citizens to whom art.7, al.1, lit. b is being applied, must present a valid identity card or a valid passport and to offer proves that they satisfy the conditions of the directive.
- union's citizens to whom art.7, al.1, lit. c is being applied, must present a valid identity card or a valid passport and to offer proves regarding their enlistment in an approved institution and that they posses an ample medical assurance and the declaration or the equivalent procedure mentioned in the frame of art. 7, al. 1, lit. c. To the Member States are not being allowed to ask the declaration to contain the value of the resources.

Because the notion "sufficient resources" (Voiculescu, Dreptul muncii - Reglementări interne şi comunitare, 2007, p. 89) might produce a series of ambiguities and fuzziness, it is stipulated that the member states can't establish their value and must take into consideration the personal situation of the person in question. Anyway, this value can't be greater than the threshold under which the nationals of the host member state may benefit of social assistance, or, when this criterion isn't applicable the value can't be greater than the minimal pension of social assurances provided by the host member state. Moreover, art.8, al. 5 enumerates the documents that can be asked to the nationals in order for the registration certificate to be made out.

The right to staying given to the family members, of the European citizen, who aren't nationals is attested with the observance of the conditions provided by art.10 of the Directive 2004/38/EEC and by making out a document allowance to stay for a family member of a Union citizen**.** This allowance to stay which has the same judicial nature of the resident allowances which were given by means of Directive 68/360/EEC, is valid for a period of five years from the registration date or on the period of staying of the Union's citizen, when this period is lesser than five years. The currency of the staying allowance isn't affected by the temporary absences which do not exceed six months per year or absences which are due to the obligatory military service or an absence for twelve consecutive months determined by important motives such as gestation or giving birth, disease, professional forming or

[1] Art. 7, Directive 2004/38.

translocation to another member States or tertiary country due to work interest. The death or departure of the Union's citizen from the host Member State doesn't affect the right to stay of his family members who are nationals of a Member State. As for the family members who aren't nationals of a Member State, they do not lose their right to stay when the bread winner died if they had had the residence in a host member states for at least one year before the death of the Union's citizen.

Still, before achieving the right to a permanent staying, the right to stay of the interested persons continues to be a part of their obligation to prove that they are employees or persons who exert an independent activity or that they have enough resources for themselves and their family members so as not to become a burden for the for the system of social security of the host member state in the period of staying and that they posses a corresponsive medical assurance. These family members maintain their right to stay exclusively on personal base. Also, the departure of the Union's citizen from the host Member State or his death do not cause the lose of the staying right for his children or for the parent who has the custody of the children, regardless of their nationality, when the children are residents of the host member state and are registered in the frame of a school, till their graduation. The divorce, the cancellation of the citizen's marriage or the cease of the registered partnership do not affect the right to stay of the family members who aren't nationals of a Member State.

The family members who aren't nationals of a member state don't lose their right to stay because of the divorce, the cancellation of the citizen's marriage or the cease of the partnership registered with the observance of the stipulations provided by art.13, al.2: the duration of the marriage or of the registered partnership must be for almost three tears, or the husband or the partner who isn't a national of a member state must have the custody of the European citizen's children. (Popescu, 2006, p. 388) The rights to stay of the European Union's citizens and of their family members subsist as long as they do not become a burden for the system of social security of the host member state. Still, Directive 2004/38/EEC by means of art.14, al.4 establishes that the measure of expulsion doesn't have to be an automatic consequence of the fact that the Union's citizen or his family members appealed to the system of social security of the host member state.

However, a measure such as expulsion can't be applied to European Union's citizens or to their family members, excepting the situations in which the restraining of the right to stay is meant to assure the public policy, public security and public health if due to art.14, al.4:

(a) The Union's citizens are workers or self-employed persons;

(b) The Union's citizens entered the territory of the host Member State in order to look for work. In this case, the Union's citizens and their family members can't be banished as long as they can provide proofs that they are looking for work and have a chance to be employed.

Additionally, a motif for expulsion from the host member state can't be that of the expiration of the identity card or of the passport by means of which the person entered the host member state and a registration certificate or an allowance to stay was made out to him – art.16, al.2.

2. The *Right to Equal Treatment* Regarding the *Access* to *Employment*

The right to effectively respond to the work offers is established by Regulation no. 1612/68/EEC. By means of this legislative act, in all the European Union's countries, the conditions concerning employment have two characteristics:

- Firstly, recruitment made by the public service is now facultative. Every citizen of a Member State and every employer who is involved in an activity on the territory of a Member State can change between them the work applications and offers, can agree on a work contract and enforce it according to the actual laws and without discrimination.
- Secondly, in order to obtain a residence allowance, the employee has to provide the proof that he is the beneficiary of a work contract by means of an employment declaration or of a work certificate provided by the employer.

This is the regime of the free access to employment. Thus, we can say that Regulation 1612/68/EEC establishes the existence of an authentic European market in which to the local workers as opposed to those from tertiary countries, priority is being provided. For a greater efficiency to be achieved, the mechanism granted by Regulation no.1612/68/EEC was improved by means of the Regulation no.2434/92/EEC from July 27th, 1992. Thus, article 15 of the Regulation 1612/68/EEC, as it was restated by the Regulation no. 2434/92/CEE, enforces the specialized services of each Member State to provide to the specialized services of the other Member States and to the European Coordination Office[1] information regarding:

(a) the susceptible work offers for the nationals from other Member States;

(b) work offers addressed to the Member States;

(c) the applications of those who formally declared their will to work in another Member State;

(d) Information, structured on regions and activity branches, regarding the applicants and the persons who effectively declared their will to work in another country.

Also, article 16 from the Regulation no. 2434/92/EEC requires for each work offer addressed to the services of a Member State to be communicated and canalized by the competent services of Member States.

Any kind of discriminations must be eliminated no matter their source: legal stipulations or clauses of the collective or individual work contracts. The Court of Justice emphasized this idea when formulated its point of view regarding the stipulations related to the composition of the sport teams from the Regulation of the International Cyclist Union. (Voiculescu, Dreptul muncii - Reglementări interne şi comunitare, 2007, p. 91) With this occasion it reiterated the fact that the interdiction regarding the discriminations based on citizenship must be imposed not only to the public authorities but, at the same time, to the any other regulations regarding the salaried work.

Due to the importance of the Regulation no. 1612/68 for the community law of work, the main provisions will be reviewed:

- Title I, art. 1-6 pleads for "Eligibility for employment". Thus, any citizen of a Member State has the right to take up an activity as an employed person in the same conditions as the citizens of that state do (art.1). A Member State cannot openly or hazily discriminate the citizens of another Member State by limiting the applications or the offers for employment (art.3 (1)) or by establishing special procedures of recruitment or, by means of other measures, to forbid the recruitment of the non-residents (art. 3 (2)). Also, provisions laid down by law which restrict by number or percentage the employment of foreign nationals in any undertaking, branch of

[1] According to the Commission's Decision 2003/8/EEC, The European Coordination Office (entitled Coordination Office for E.U.R.E.S.) supervises the observance of the stipulations from the second part of the Regulation no. 1612/68/EEC and helps the European network for work services E.U.R.E.S. to achieve its duties.

activity or region, or at a national level shall not apply to nationals of the other Member States (art.4). The Member States must provide to the nationals of a Member State who seeks employment the same assistance that is being provided to their own citizens (art.5). Some states can impose conditions related to linguistic knowledge required by reason of the nature of the post to be filled (art.3 (1)).

- Title II of Regulation no. 1612/68/EEC, art. 7-9 consists of provisions regarding "Employment and equality of treatment". They refer to:

  (a) Work conditions. According to art.7 (1), a worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment.

  (b) The social advantages regarding the taxes. According to art.7 (2), the migrant worker shall enjoy the same social and tax advantages as national workers do. The expression "social advantages" (Jinga & Popescu, 2000) was broadly explained by Community's Court of Justice, gathering even rights that weren't directly related to the work contract.

  (c) Access to training in vocational schools and retiring centers. By means of provisions of art.7 (3) to the migrant workers is granted the access, under the same conditions as national workers, have access to training in vocational schools and retiring centers. The Court of Justice[1] decided that the university courses prepares a professional qualification, an occupation or a specific job or confers a special skill for the exercise of a such a vocation, occupation or job which fall into vocational training. (Tinca, Drept social comunitar-drept comparat. Legislaţie română, 2005, p. 74) The expression "vocational training"[2] gathers all the curricula, without taking into consideration the age of the employee or his level of education.[3]

  (d) Union rights. Representative rights and management. According to art.8, a migrant worker shall enjoy equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto. He may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law, but he shall have the right of eligibility for existent workers representative bodies in the undertakings.[4]

  (e) The matter of housing. A migrant worker shall enjoy all the rights and benefits accorded to national workers in matters of housing[5], including ownership of the housing he needs (art.9). By means of the provisions of the Title II of the Regulation no. 1612/68/EEC to which those from the Treaty of E.E.C. are added to (art.7, 48, 52 and 59) any discrimination regarding the citizenship of the workers from the Member States is abolished. The fundamental principle of non-discrimination is, thus, added to that of free movement. Actually, this is how the vast area of the rule regarding the free access to employment is explained. Non-discrimination, the full equality of the Union's citizens, made the object of a vast activity of interpretation of

[1] Decision from 30th May 1989, in the case no. 305/87-Commission/Greece, Rec.p. 4461.
[2] Art. 150 of E.E.C Treaty
[3] Decision from 21st June, 1988, in the case no. 197/86; Decision from 27th September 1998, in the case no. 263/86, Humbel, Rec. p. 5365.
[4] C.J.C.E., Decision from 4th July, 1991, in the case 213/90, ASTI, REC. p. 3507
[5] Art. 39, E.E.C. Treaty.

the Court of Justice. Therefore, it refers to a certain occupation. It is being applied to those who wish to exert, in the frame of the Union, a salaried activity, servicing or to settle down by occupational reasons. Also, non-discrimination refers to the citizens of a Member State and to the foreigners too. If a citizen of a country obtains a diploma in another state of the Union and comes back in the country of origins, no national regulation which may not be applied to a citizen of another state of the Union, it can't be opposable to him. Evidently, a harmonization of the value and level of the diplomas is required.

Finally, the case law called for attention to the indirect causes of discrimination, which can be dissimulated by means of other conditions as residency, for example.[1]

This is why, the necessity to eliminate each provision, even of those which do not refer to the citizenship, which have an effect (principal or exclusive) on the departure of the citizens from other Member States. Title III of the regulation no. 1612/68/EEC (art. 10-12) consists of provisions related to the family members of the migrant worker.

(f) Residency. Worker's family members have the right to install themselves with a worker (who has to be national of one Member State), no matter their citizenship (art.10, al.1). Member States shall facilitate the admission of any member of the family "if dependent on the worker referred to above or living under his roof in the country whence he comes" (Voiculescu, Dreptul muncii - Reglementări interne şi comunitare, 2007, p. 93). Union's citizens can be in certain periods unemployed. The question whether can be deprived of their right to move or reside in the countries of the Union arises.

Article 48 (3) (d) of E.C. Treaty legitimates the right to stay on the territory of a state after the worker became an employee of the country. Regulation no. 1251/70/EEC has detailed the content of this right. It provides us the stipulation according to the right of the worker and of his family has a permanent character (Tinca, 2005, p. 55) in the state in which he worked when being retired, declared invalid or, for the family, when the worker died. Special provisions related to the person who lives in a state and works in another one"[2], are also included. The family members will have the right to permanent residence when a series of conditions are fulfilled. Directive 2004/38/EEC[3] contains provisions related to the right of permanent staying. The general rule that is being introduced is that according to Union's citizens who had the legal residency on a host Member State for a continuous period of five years, have the right to a permanent residency on that state. This provision is to be applied to the family members who aren't nationals of a Member State and who possessed legal residency with the Union's citizen in the host Member State for a continuous period of five years.

The continuity of the staying isn't affected by:

(a) Temporary absences for no more than six month per year;

(b) Absence for a greater period due to the obligatory military duty;

(c) Absence for a maximum period of 12 consecutive months determined by important reasons such as pregnancy or birth, disease, study or professional training, or posting in another Member State or tertiary country. Once regained, the right to permanent staying can be lost only absenting from the host Member State for a period that covers two consecutive years.

[1] The Court of Justice on the European Community, case no. 13/83, R. Italian c. Commission.
[2] A person who lives in a state and works in an adjacent one.
[3] Art. 17, Directive no. 2004/38/EEC.

By exception, the right to permanent staying in the host Member State is being granted before the period of five consecutive years if:

1. At their stopping from working, the employees or the self-employed persons have the age for pension established by the provisions of the Member State;
2. The salaried workers stop from working in order to retire in anticipation with the observance of the condition according to they worked on the territory of the Member State for at least antecedent 12 months and had their residence for a continuous greater period of three months;
3. The salaried or the self-employed persons who had their residence in the host Member State for a minimum period of 2 years and stopped their activity due to the permanent work invalidity. If this invalidity is due to an accident or to an occupational disease which enables the person to benefit of an integrally or partially paid compensation, the condition regarding the period of staying isn't to be applied. The stipulations established by points 1 and 3 won't be applied if the worker or the self-employed persons is married or has a partner who is a national of the host state or lost the nationality of the Member State by marring with the worker or the self-employed person;
4. The salaried or the self-employed persons who, after a period of three continuous years of working and staying in the host state, are employed or are self-employed persons in another Member State but keeps their residence in the host Member State in which they comes back each day or at least once a week. By extension, the periods of involuntary unemployment, adequately registered to the competent intelligence office of work force, the period sin which the person didn't work by independent motifs of his will, the work absences and the stopping of the work due to a disease or accident are being considered periods of work. No matter the nationality, the family members of a salaried person or of a self-employed one, who live together with him on the territory of a host Member State, have the right the permanent staying in that State if the salaried worker or the self-employed person has the right to permanent staying in that state.

Also, Directive no. 2004/38/EEC[1] establishes the right to permanent staying to family members of the salaried workers or self-employed persons who dies in the work period and before achieving the permanent status of resident on the host Member State. Thus, the family members gain their right the permanent staying in that state if:

- at the time of the death, the salaried or the self-employed persons had their residence on the territory of the Member State for a continuous period of two years;
- the death was the consequence of a work accident or of an occupational disease;
- the husband/wife who survived had lost the nationality of that state by marring the salaried or the self-employed person.

From the administrative point of view, the member state will issue, on request, to the Union's citizens with the right of permanent staying, a document to attest the right. For those family members who aren't nationals of a Member State but who have the right to permanent staying, a permit of permanent staying will be provided to them and it will automatically be renewed every ten years.[2] All those who, by means of Directive no. 2004/38/EEC, have their residency on the territory of a host Member State

[1] Art. 17 paragraph 1 alin. 4, Directive no. 2004/38/EEC.
[2] Art. 24 paragraph 1, Directive no. 2004/38/EC.

benefit from the same treatment as the nationals of the member state. Still, there is no obligation of the host state to grant the right to social assistance in the first three months of staying and to give study help, inclusively for occupational training, consisting in studentships or student credits given to some persons, other than workers, to the self-employed persons or to the persons who maintain their status and to their family members. Thus, the right to permanent staying is aimed to strengthen the citizenship feeling in the frame of the European Union, being perceived as a key element in promoting the social cohesion which represents one of the fundamental objectives of the Union. Directive no. 2004/38/EEC doesn't expressly stipulate Regulation 1251/70/EEC's abolition. Per se, the two local documents will be correlatively considered.

3. Employment in Public Administration

According to E.C. treaty, the Member States may refuse or restrict the access to public work on the ground of worker's citizenship. Due to the generality of this provision, The Court of Justice was bound to pronounce itself to it. Thus, in the case Sotgiu (no. 152/73) (Voiculescu, 2007, p. 97) it was revealed the fact that the exception provided by art.48 (4) isn't to be applied to all the jobs from public administration. It can be applied only to a certain number of activities related to the exercise of the state authority**.** According to the Court, those activities must inevitably imply the participation to the exercise of the rights granted by the public law and the reference to activities related to the maintenance of the general interests of the state. Moreover, the exception is to be applied only to the conditions related to the access in that field. It doesn't allow the existence of discriminatory conditions in employment once the access to that occupation was granted to the worker. Explanations related to the interpretation of the mentioned text were brought into discussion with the occasion of the debates related to the Commission's case C. Belgium (no.149/79). According to the Court, the concept of public administration is a local one. It is to be applied only in the exercise of the official authority and deals only with the workers and those jobs related to the maintenance of the general interests of the state. Due to this criterion, the waiver provided the art 48 (4) of the E.C. Treaty will be applied and limited to those jobs that imply a special loyalty of the persons such as judicial functions, superior authority of the state administration, army forces and police. This article must be analyzed together with art.55 from E.E.C. Treaty which stipulates that the freedom of establishment allowed by the local law won't be applied to those activities which are related, even occasionally, to the exercise of the state authority**.** Taking into consideration the practice of excluding the persons who aren't citizens from a great number of occupations of state administration, promoted by the Member States, in 1998 European Commission published a note by means of which had suggested some fields of employment to be considered as "faraway from the specific activities of the public sphere, as the European Court named them, and which can be covered only by rare cases of exception provided by art. 48 (4)". These contain:

- services related to public health;
- tuition in the frame of educational system;
- research work in non-military fields;
- public organisms responsible for the activity of the private limited companies.

Still it must be accentuated the fact that by means of the provisions related to local citizenship introduced by the Maastricht Treaty (1992) and developed by Amsterdam Treaty (1997), many theoreticians and practitioners assert to the idea that the exception provided by art.48 (4), as an expression of a traditional conception of loyalty to state, will diminish its importance (Voiculescu, Dreptul muncii - Reglementări interne şi comunitare, 2007, p. 97). And this is due to the fact that it is considered that a contradiction between art.48 (4) and the development of a complex process of European integration exists.

4. Social Security

With the purpose of encouraging the exertion of the right to free movement, the nationals of the Community who are migrant workers must suffer no disadvantages and discriminations related to the benefit of social security rights. Regulation 1408/71/E.E.C. establishes common rules meant to observe the application of different national systems of social security so as not to produce discriminations against the persons with the right of free movement. The local laws never plan the harmonization in the field of social security, the Member States having the full competence in organizing the national systems of social security. As a general rule, the performance related to social security is paid to the beneficiaries by the resident Member State. Some special performances without contribution are exceptions to the rule. The kind of performances is paid only in the Member States that can assure them.

Thus, these performances can't be exported, but a migrant citizen of the European Union is entitled to the benefits granted by the host Member State. In order to be able to achieve the condition of non-export**,** a performance must be special and without contribution. The European Court of Justice defines a performance as being special only when it is closely bound to the social environment of that Member State (e.g. the performances addressed to the prevention of poverty or to the attendance provided to the handicapped persons). Regulation no. 1408/71/E.E.C. also establishes the conditions in which the persons who move in the frame of community can have access to health care. Regulation no. 1408/71/E.E.C. also establishes the conditions in which the persons who move in the frame of the community may benefit of medical attendance. According to their personal status and/or by the type of their right to stay on the territory of a Member State (short/long period of time, permanent period and so on) European Union's citizens benefit of immediate health care, necessary attendance or any type of disease attendance on the territory of a Member State, other than the one in which the persons benefit of health care, as if he has insurance in the Member State in which he is to be found but on the expense of the insurance institution. In the case of the persons who wish to move in another State in order to benefit of specific medical treatment, in the conditions provided by Regulation no. 1408/71/E.E.C, the cost of the treatment will be covered by the Member State in which the persons are insured, if they had obtained a previously authorization. Still, the European Court of Justice established, due to other fundamental rights like the right to free movement of the products and services, the fact that when there is no justification for this previously authorization it can be taken as an encroachment upon the fundamental rights. As a consequence, in some specific situations, the patients can ask the defrayment of the medical services that were provided to them in another Member State, even in the absence of the previous authorization. (Popescu, 2006, p. 223)

To conclude, I can say that the identification of the Member State of whose legislation in the field of social security is applied in each case, is determined by taking into consideration two basic principles: a person can be subject to the legislation of a single Member State, at a certain time, and usually the legislation of the Member State in which he is busy or has the status of self-employee is applied to him. Due to the complexity of this regulation, its appliance is quite difficult. This is why, nowadays, it requires revision.

5. Restrictions Applied to the Workers Related to the Right to Enter and Stay

E.E.C. Treaty establishes the possibility of limiting the free movement of the workers. Thus, it is stipulated that the possibility "subject to the limitations justified by public order, public security and public health reasons implies the right to answer to the effective work offers". Art. 56 says that "the prescriptions related to the freedom of settlement don't prejudice the appliance of the normal and administrative legislative provisions establishing a special regime for the foreigners by means of justified public order, public security and public health reasons". Concerning this matter, Directive no. 2004/38/E.E.C. has a double purpose. On the one hand it establishes the principles by means of which a state can refuse the entering or residency of those who, due to other conditions, might be eligible, on the ground of public order, public security or public health. Secondly, it establishes a series of procedural assurances which must be kept to by the competent authorities when the problem of excluding some strangers on the ground of the mentioned motifs arises. This directive starts from the idea according to Union's citizens and family members' expulsion by means of public order or public security reasons is a measure which won't badly affect the persons who appealed to their right and freedoms conferred by the Treaty and effectively integrated themselves in the host member state. The field of appliance of such measures should be therefore limited, according to the principle of proportionality, evoked by the jurisprudence, in order to take into consideration the degree of integration of the persons, their period of staying in the host Member State, their age, health, familial and economic situation, and relations with the country of origins. By means of this directive are also established certain circumstances in which the measures taken on the grounds of public order and public security can't be justified:

(a) they can't be invoked of the purpose of serving economic aims.

(b) the measures taken on the grounds of public order or public security keep to the principle of proportionality and count on the attitude of the individual. But as the Court of Justice revealed with the occasion of a case, this attitude doesn't have to be illegal in order to justify the exclusion of the foreigners, as long as the state clearly demonstrated its view related to those activities as being "socially harmful" and established administrative measures in order to neutralize them.

(c) the anterior judicial convictions do not constitute per se motifs for this kind of measures.

(d) a decision for expulsion against a citizen of the Union, excepting the case in which the decision is taken on the grounds of imperative motifs of public security, defined by the Member States, can't be taken if he:

- has the residence in the host member State for those 10 antecedent years

- is a minor, excepting the case in which expulsion is made on the interest of the child, according to the United Nations Convention on the Rights of the Child.[1]

As for the restriction based on public health, the only diseases that might justify the restrictive measures took on the free movement are those diseases with epidemical potential, according to the definition provided by World Health Organization., and other infectious diseases or parasitical contagious ones if they are the subject of some protective provisions which are to be applied to the host Member State. Moreover, those diseases that are diagnosed after a period of three months from the arrival date can't be motifs for expulsion from the territory of that state. European Union's Directive related to the services of the internal market, the so-called Bolkestein Directive, aims at transforming the Europe into a special economic zone. According to the European syndicates, in January 2004, with the publishing of the proposals related to directive, European Commission launched the most radical and complete assault against the standard of living in the frame of the European Union. The proposal came from the part of the General Direction of Internal Market, Fiscally and Customs Union**,** led at that time by commissary Frits Bolkestein, and has concerned all the services. The only excluded services are those provided by the state so as to accomplish the social, cultural, educational and judicial obligations in the cases when there is no remuneration. With the enactment of the directive, the companies of services from European Union will have to obey only the regulations of the country of origins and won't be allowed to impose restrictions or any other rules.

From the moment of the project's launch, the debates concerning it were extremely ardent. The directive was critiqued by many states which are afraid of the disruption of the workers' rights and cheap competition of the countries which became members of the Union a year ago or from those which will be next to adhere. According to Frits Bolkenstein, ex-European commissary for internal market, contributions and custom union, the aim of his directive was that of establishing a legal frame in order to facilitate the freedom of movement for the providers of services in the Member States if the European Union. Bolkenstein's proposal tries to eliminate all the barriers to services' freedom of movement. Those who are critiquing Bolkenstein's directive sustain the idea that if it is enacted, this directive will lead to the commercialization of all the services of the Union, inclusively of those which are to be found in the essential sectors such as social services, education and health. The destiny of Bolkensteins's directive related to the freedom of the services' movement in the frame of the European Union depended on European Commission and European Parliament' decisions, which for almost two years had analyzed this vehemently contested directive. The opponents of Bolkenstein's directive sustained the idea according to it will have negative effects firstly because that it equally deal with all the services, regardless of their general interest or not. Mainly, Bolkenstein's directive didn't contain special provisions related to health, the guarantee of the access to services for all social categories. According to the discussed directive, the health cares, culture and education were considered as being economic and competitive services, identical with car's industry. Bolkenstein's directive suggested a controversial "principle of the country of origins" which asserted to the idea: "Union's Member States must guarantee that the bidders of services are loyal only to the valid provisions of the country of origins." The sense of this article offered the assurance that the respective bidder of services will obey only the laws of the country of origins. Those who critiqued Bolkenstein's directive assert that the "principle of the country of origins" favors the bidder of services. Various companies may found branch offices in the states with liberal regulations so as then to be allowed to activate in the Member States with a more restrictive legislation and to avoid these restrictions. They

[1] Enacted in 20th November, 1989 and ratified by means of Law no.18/1990, published in the *Romania*'s *Official Monitor*, Part I, no. 314 of 13th June, 2001.

also sustained that in order to avoid the movement of companies, the Member States must establish various restrictions – in this manner taking down the systems of social protection of their own citizens. Moreover, Bolkesntein's directive will imply direct effects on the force work market. The states which host the bidders of services from other countries won't be able to make them to obey the legislation.

Still, the negotiations between the followers of the liberal doctrine, which stay at the base of this directive, and its objectors, who have social origins, led to a compromising project that was materialized with the enactment of this directive related to the providing of the services in European Union, in this manner by abandoning "the guardian knot of this directive" named "the principle of the country of origins." But, the right of the government of each Member State of the Union was granted by being allowed to impose legislative measures which to control the modalities related to the providing of the services on the territory or to obey the local provisions which are to be found in the E.E.C. Treaty and other local laws.

Bibliography

The Treaty establishing the European Economic Community.

United Nations Convention on the *Rights* of the *Child*, enacted at 20th November, 1989, and ratified by Romania by means of Law no.18/1990, published in the *Romania*'s *Official Monitor*, Part I, no. 314 of June 13th, 2001.

Directive no.2004/38 on the *right* of *citizens* of the *Union and their family members to free movement and staying on the territory of the European Union.*

Tinca, Ovidiu (2005). *Drept social comunitar-drept comparat. Legislaţie română/ Community social law, Comparative Law. Romanian Legislation*. Bucharest: Lumina Lex.

Popescu, Andrei (2006). *Dreptul internaţional al muncii*/*International Labour Law*. Bucharest: C.H. Beck.

Jinga, Ion & Popescu, Andrei (2000). *Integrarea Europeană – Dicţionar de termeni comunitari/European integration - Dictionary of Community terms*. Bucharest: Lumina Lex.

Voiculescu, Nicolae (2007). *Dreptul muncii - Reglementări interne şi comunitare/ Labour Law - Internal and community regulations.* Bucharest: Wolters Kluwer.

The Court of Justice on the European Communities, Decision from July 4th, 1991, in cause no. 213/90, ASTI, REC.

The Court of Justice on the European Community, case no. 13/83, R. Italian c. Commission.