



Free Movement of Labor Force in the Schengen Area

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Abstract: Common political, economic, social and security interests of some countries on the European continent led to the creation of the European Union, which although is not state or supra-state, is an organization formed by a group of independent European states. Among the major ambitions pursued by citizens of States which joined the European Union, and that of the movement in the European space, for finding a job or tourism purposes, without limitations or restrictions, such as citizenship, nationality, except those related to the compliance with EU Directives under all aspects, including the security ones.

Keywords: European Union; the Schengen area; free movement; employment; public order

Creating the European Union was determined by the common interests of some European states in order to ensure appropriate and sustainable economic and social conditions of those countries. It was appreciated that the EU is not a state or supra-state formation, but it is an organization formed by a group of independent European states, which, having common interests of political, economic, social and security, have coordinated their efforts to achieve them, by creating also the necessary institutional mechanisms. Achieving the desiderata assumes, however, from each Member State, sacrificing to a greater or lesser extent, of individual interests, the interests which naturally must be subordinated to the common interest.

One of the most important rights of the people of the countries that joined the European Union or are in the European Economic Area, is that of free movement within the European Union territory, as foreseen in several international legal documents, documents that are sources for the European law in the area.

A real democracy cannot be conceived without respecting fundamental human rights, they are a guarantor of social development at all levels. As a result, an area

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that meets a broad consensus is the one referring to guaranteeing the fundamental human rights.

For example, we consider that it is necessary a brief overview of some of them. Thus, the Universal Declaration of Human Rights provides in article 13: "*every person has the right to move freely and choose their residence within the borders of each state. Every person has the right to leave any country, including his own, and return to his country.*"¹ Thus, the Universal Declaration of Human Rights provisions are complemented by the International Covenant on Civil and Political Rights² which states as follows (article 12): any person who is lawfully within a State has the right to move freely and to choose his residence; any person is free to leave any country, including his country; the rights mentioned above may not be restricted unless they are provided by law, they are necessary to protect the national security, public order, health or morals or the rights and freedoms of others and they are consistent with other recognized rights; no one shall be arbitrarily deprived of the right to enter in the country."³

International Convention on the Elimination of All Forms of Racial Discrimination⁴ stipulates in article 5, "*States Parties undertake to eliminate and prohibit racial discrimination under all forms and to guarantee everyone's right to equality before the law, regardless of the race, color, national or ethnic origin, able to use the right to move freely and to residence within a state, and the right to leave any country, including his own, and to return to his.*"

The right of freedom of movement required is also provided by the Convention on the Status of the Refugee⁵ which, by article 26, requires each Contracting State to grant to refugees that are legally in its territory, the right to choose their residence

¹ See European Convention on Human Rights, ratified by Romania by Law no. 30/1994, published in the Official Monitor, Part I, no. 135 of May 31, 1994, entered into force on 20 June 1994 by the deposit of instruments of ratification at the General Secretary of the Council of Europe. For the purposes of the Convention, there are also the provisions of article 14 of the International Covenant on Civil and Political Rights, ratified by Romania by the Decree no. 212/1974, published in Official Bulletin no. 146 of 20 November 1974.

² International Covenant on Civil and Political Rights of 12.16.1966 was published in the Official Monitor no. 146 of 20 November 1974.

³ For a detailed examination of guarantees required by the European Convention on Human Rights, due process, see: (Ricq, 1992).

⁴ International Convention for the Elimination of All Forms of Racial Discrimination was adopted by the United Nations General Assembly on 21 December 1965.

⁵ Refugee Convention was concluded at Geneva on 28 July 1951. The text document was published in Romanian Official Monitor, no. 148/17 July. 1991.

and to move freely, subject to any regulations applicable to aliens, generally, in the same circumstances. The Convention also provides in article 28 that "*Contracting States shall issue to refugees residing in their territories travel documents, allowing them to travel outside this territory, unless there are compelling reasons of national security or public order that do not comply with them.*"

Given the provisions of the mentioned above documents, the European Union pursues its own legislation, which would ensure the free movement of persons and services throughout the Union. This movement is intended to be achieved without taking into account the nationality of the person, the basic condition being that of belonging to a Member State of the Union. It also wishes for workers to have the right to respond to actual offers of employment and to move freely for this purpose in the Member States.¹

In order to achieve these goals, as it is natural, it should be created an appropriate institutional framework that would govern the performance of border control. Thus, by the Single European Act² it is expected the complete suppression of borders functioning within the community space. It provides the disappearance of formalities and border controls, we could even say that it provides the disappearance of borders (if not formally, at least virtually). Therefore, the development of intergovernmental co-operation in police matters, in the fight against terrorism, drugs, and arms trafficking, provides the harmonization of national laws, especially the introduction of a common visa policy, a common system of extradition, anti-immigration clandestine, etc. Unfortunately, this implies a strengthening of external borders of the community. Based on the Schengen Agreement of 14 June 1985 on the gradual elimination of checks at common borders, the signatory parties of the Convention implementing the Schengen Agreement (the Kingdom of Belgium, German Federal Republic, French Republic, the Grand Duchy of Luxembourg and The Netherlands), have committed the

¹ See also (Popescu, 2008, p. 107 and the next).

² Single European Act was negotiated within the Intergovernmental Conference held on September 9, 1985 - 17 February 1986. It was signed on 17 February 1986, by nine states, from the 12 States and, on 28 February 1986, the other three signed as well: Italy, Denmark, and Greece. SEA came into force on 1 July 1987. The Single European Act reinitiates the European construction, both economic (internal market completion, implementation of research and tech policy, strengthening the European Monetary System) and institutional (the extension of voting of qualified majority, enlargement of the European Parliament's role, developing a social space).

elimination of the controls on the movement of persons to their common borders and to facilitate transport and movement of goods.¹

Considering that the European Communities Treaty supplemented by the Single European Act provides that the internal market comprises an area without internal frontiers, it is required to define the terms of internal and external borders. By internal borders, within the meaning of the mentioned agreements between the States, it is understood the common land borders and airports for internal flights and sea ports, for regular passenger lines that have as a starting point or destination other ports on the territories of the signatory states without stopover at ports outside those territories.

By external borders it is understood the land, sea borders and airports and sea ports of the signatory states, if they are not internal borders. One area of particular interest to the Union is the border issue. In its turn, solving the border problems requires the creation of a common institutional framework by which there would be materialized specific courses of action across the Union. A first step is achieving the consensus in establishing common policies for creating an area of freedom, security, and justice. In this respect, in order to establish strategic objectives and directions of action, the Union will:

- set up an area of freedom, security and justice, respecting the fundamental rights, which will take into account the diversity of traditions and legal systems of Member States; (Măgureanu & Măgureanu Popcean, 2008, p. 45 and the next; Magureanu, 2000, pp. 400-405)
- ensuring the non performance of checks on persons at internal borders and the development of a common policy on asylum, immigration and external border control, based on the solidarity between the Member States, which is fair towards third-country nationals (stateless persons are treated as third-country nationals);
- ensuring a high level of security through measures of preventing and fighting against crime, racism and xenophobia, coordination and cooperation measures between police and judicial authorities and other competent authorities, as well as

¹ Agreement on the gradual elimination of checks at the common borders signed at Schengen, on 4 June 1985, published in a brochure no. 0 of 6/14/1985; it was concluded between the Governments of the Kingdom of Belgium, German Federal Republic, French Republic, the Grand Duchy of Luxembourg, and The Netherlands. Later joined Italy, Spain, Portugal, Greece, Austria, Denmark, Sweden, Finland, Norway, and Iceland.

mutual recognition of judgments in criminal matters and if necessary, by the approximation of criminal laws;

- facilitating access to justice, in particular through the principle of mutual recognition of judge and extra-judge decisions in civil matters.¹

Strategic guidelines for legislative and operational schedules in the area of freedom, security, and justice will be defined by the European Council, at the proposals and initiatives of national parliaments of the Member States, having complied with the principle of subsidiarity.

On border control, asylum and immigration, the Union is developing a policy focused on: ensuring the non-performance of control over the people, regardless of their nationality, when crossing the internal borders; ensuring effective control and supervision of persons crossing the external borders; the introduction of an integrated management system of external borders.

Implementing strategic objectives on ensuring effective checks on persons and efficient surveillance at border crossings will be achieved according to the law (European laws or framework laws) establishing appropriate measures on:

- common policy on visa and other short-term residence permits;
- the controls to which the persons are submitted at the crossing of the external borders;
- the conditions under which the nationals of the third countries can move freely within the Union for a short period of time;
- any measure necessary for the gradual introduction of an integrated management system of external borders;
- non-performance of the control of persons, regardless of their nationality, when crossing the internal borders.

In the asylum and temporary protection domain, the EU develops a common policy in order to give appropriate status to any national of a third country that needs

¹ See Regulation (EC) no. 805/2004 of the European Parliament and the Council of 21 April 2004 on creating a European Enforcement Order for uncontested claims and Council Regulation (EC) no. 44/2001 of 22 December 2000 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters. See also the amendments to Regulation by Regulation (EC) no. 1496/2002 (O.J. L 225, 22.8.2002, p. 13). For notifying and communication of documents under the procedure laid down by the Regulation, see also Regulation (EC) no. 1348/2000 of the Council from 29 May 2000 notifying and communication in the Member States of judicial and extrajudicial documents in civil and commercial matters. See also (Măgureanu & Măgureanu Poptean, 2007, p. 12 and the next)

international protection and to ensure non-refoulement principle. This policy will be conducted in full compliance with the Geneva Convention of 06.28.1951 and the Protocol of 01.31.1967 on the Status of Refugees and other relevant treaties in the field.

To achieve these objectives the European laws shall establish the necessary measures for creating a common European asylum system which will involve:

- a uniform system of asylum for nationals of third countries, valid in all Member States;
- a uniform status of subsidiary protection for nationals of third countries that, without obtaining European asylum, are in need of international protection;
- a common system of temporary protection for discharged persons, in the situation of mass influx;
- common procedures for guaranteeing and withdrawal of the uniform state of asylum or subsidiary protection;
- the criteria and mechanisms for determining the membership status which is responsible for examining the application for asylum or subsidiary protection;
- rules on reception conditions for asylum seekers or subsidiary protection;
- partnership and cooperation with third countries to manage the influx of people seeking asylum or subsidiary or temporary protection.

If one or more Member States are in an emergency situation, characterized by a spontaneous influx of nationals from third countries, the Union may adopt decisions with provisional measures for the benefit of the state or concerned Member States. In the domain of Immigration, the Union will develop a common policy aimed at ensuring all the stages, the efficient management of migration flows, the fair treatment of third country nationals legally residing in Member States and the prevention and fight against illegal immigration and human trafficking. To this purpose, through the European laws there will be established specific measures which will focus on:

- conditions of entry and residing, and the rules for issuing visas and long-term residence permits by the Member States, including for family reunification;

- defining the rights of third country nationals residing legally in a Member State territory, including the conditions governing freedom of movement and freedom of residence in other Member States;
- illegal immigration and illegal residence, including removal and repatriation of people that have unauthorized residence;
- the fight against human trafficking, especially women and children.

For better management of the asylum and immigration issues, the Union may conclude with the third countries, readmission agreements in the countries of origin or residence of illegally staying nationals. EU legislation will not restrict the right of member countries to determine the volume of entry on their territory by the nationals from third countries, seeking employment as an employed or self-employed. A course of action derived to border, asylum, and immigration control is the inter-institutional cooperation of the authorities of the Member States with responsibilities in the reference domain. Thus the Union is considering creating a legal framework aimed at judicial cooperation in criminal and civil matters and police cooperation. The main goal is the creation of a viable and high level system of interoperability in the joint action plan. To achieve the above mentioned objectives, the EU has developed, "Common Manual", a manual that governs the European borders, which was adopted and established by the Executive Committee by the Convention implementing the Schengen Agreement of 06.14.1985.

The entry into force of the Convention implementing the Schengen Agreement (CAPAS) abolishes the internal border controls, moving them to the external ones. Thus, to the external borders of the Schengen Area, the control is not only in the interest of states that have external borders, but in the interest of all contracting parties, whose interests must take into account the workers that perform the control.

Clearly, a policy of open external borders, without making a strict control of migration flows across the Union would inevitably lead to the emergence of serious economic and social problems. These problems may manifest in the emergence of demographic imbalances arising from the rapid growth of population in the area of certain communities, imbalances which in turn will lead to:

- unprecedented increase in the number of unemployed;
- the emergence of ethnic tensions within the local communities, with negative effects on public order and safety assurance;

- the increase of crime due to the impossibility of ensuring a decent living material needs;
- creating a state of insecurity among the population as a result of expanding the possibilities of action of terrorist groups, etc.

The evolution in time of the European Union, has seen a progress and on the European social policy, directing the labor law of the Member States through legislative harmonization towards a coherent solution to common problems on employment and ensuring a better life for all members of the Union (examples: equal treatment and opportunities; protection of workers in case of employers insolvency; transfer of ownership of the company; collective layoffs, etc.). There was created a set of rules, governed mainly by the EU Directive, which set guidelines that need to be followed, leaving to the Member States the means for choosing these objectives. So for example, the EU has adopted directives that are established as rules that would ensure, as mentioned, the full freedom of movement of persons or services, non-discriminatory rules on employment, etc. that would lead to the coordination of national systems (such as the social security of workers).¹

More so, under the current economic crisis, the EU should have its own social policy, which is however difficult to implement at the level of each member country. It was considered that in case of different regulations from state to state, it can get the same results of social policy by different national regulations and means. It also takes into account the crucial role of social partners at national level in connecting with the government regulatory arrangements of the relevant situations such as those relating to: wages, collective working contract, strikes, pension systems, etc. We consider that the obstacles in the implementation of Community policies in all areas of labor relations and social protection would be: the traditions of each Member State; the appliance of the principle of subsidiarity as set by the Treaty of Amsterdam²; the great diversity from state to state on labor

¹ European Parliament, *Les relations du travail en Europe/The Work Relations in Europe*, Brussels, 2000.

² See article 5 par. (2) EC corroborated with the reason (12) of the preamble of the Treaty on European Union and with article 2 paragraph (2) EU. Outside the scope of the European Community has exclusive competences, the principle of subsidiarity aims at, on one hand, protecting the ability to make decisions and take action of Member States and, on the other hand, authorizing the Community intervention, when the objectives of an action cannot be sufficiently achieved by Member States because "of the scale or effects of the proposed action." Its introduction to the European treaties presupposes also the insurance of exercising the powers at level as closely as possible to the citizens.

regulations and social security; different level of development of Member States and therefore different levels of payment; willingness of Member States to retain full sovereignty of the decisions on areas that provide social policies in each state. After an overview of the efforts and achievements of the EU states on free access in the Member States, the so-called Schengen area, we intend to examine in future articles, in detail, the Community rules on employment with its economic and social issues, the force, which by its effort, ensures the advancement of the Union. Of course, guaranteeing the fundamental human rights and economic development in the European space will be in the future, important factors to attract workers who want a job for a better life.

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*** Agreement on the gradual elimination of checks at common borders signed at Schengen, on 4 June 1985.

*** Council Regulation no. 1612/68/EEC, on the free movement of workers within the Community;

*** Council Regulation no. 1251/70/EEC on the right of workers to move (establish) in the territory of a Member State after filling in a job.

*** Regulation (EC) no. 805/2004 of the European Parliament and the Council of 21 April 2004 on creating a European Enforcement Order for uncontested claims.

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*** Regulation (EC) no. 1348/2000 of the Council from 29 May 2000 on notifying and communicating in the Member States the judicial and extrajudicial documents in civil and commercial matters.