PROTECTION OF MIGRANT WORKERS' RIGHTS

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Abstract

The responsibility for the protection of the immigrant workers should be assumed (next to the employer and the destination country) by the workers' country of origin. Yet, in quite a number of cases the means of action of the origin authorities do not get modernised with the speed needed for the migrant workers. Despite they may be forgotten by the authorities, they often behave as development agents. Thus, Romania's integration in the European Union has produced a certain change of mentality in the Romanian workers working abroad.

Keywords: protection of the immigrant, European Union, Romanians.

Constituted by the EEC Treatise (sections 39 – 40) as one of the fundamental liberties pertaining to the community's territory, the workers' free movement is at present validated by Regulation 1612/68/EEC on the workers' movement within the community, as well as by Directive 2004/38/EEC on the right to free movement and stay on the territory of the member-states for the European Union citizens and the members of their families[1]. These regulations are a specific expression of the principle of equal treatment enacted by section 12 of the EEC Treatise („Any discrimination based on citizenship/nationality is forbidden").

But, generally speaking, compared to other fields, industrial relations are governed to a lesser extent by European regulations. The industrial relations are perceived as a sector of regulation, which is purposefully left for the member states to decide upon. Nevertheless, Romania's joining of the European Union on January 1st, 2007 led to a wide range of changes in the field of Romanian legislation and labour relations practices, as well as to diversified approaches to industrial relations at the Community level.

At present the whole range of Romanian regulations is completely harmonised with the European ones. However, it is still to be seen to what extent

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[1] For an analysis of the related European Regulations, see F. Kessler, J.P. Lhernould, A. Popescu, *Social security of Migrant Workers within European Union* [Securitatea socială a lucrătorilor migranţi în cadrul Uniunii Europene], Ed. Lumina Lex, 2005.

the simple fact of their enactment ensures the exercise of an effective and efficient protection for the Romanian workers working abroad. This happens in the context wherein the labour force migration abroad is one of the most important phenomena for the social changes in Romania and for its citizens' lives.

Thus, in a more remote perspective, Romania may turn itself into an immigration country, but having an important number of native citizens working abroad. As such, Romania will represent a source sustaining the east-to-west emigration and a beneficiary of the emigration from south to north and east. This will ask for a sustained effort to smooth down the unfavourable consequences at the level of the national labour market, in parallel with the absolutely necessary effort to protect the Romanian workers working abroad.

1. Consequences of Migration and the Interest in Intervention of the Origin State

If certain authors insist on the positive effects of migration due to the development of native areas, others manifest certain scepticism, showing that the intervention of the native country is justified in order to minimise the negative secondary effects of migration upon the native country. Migrants are perceived as agents of change, contributing to the socio-economic development by the transfer of financial and human resources towards the native communities. The migrant workers acquire new knowledge in the countries they are sent to, they have access to new technology, which they transfer back home during their periodic return. The social trans-national networks developed by the migrants and linking the native countries with the countries of destination facilitate international business for the benefit of the regions where migration is directed to. The workers leaving abroad contribute to the relaxation of the labour market, fact which diminishes the rate of unemployment up to the point of transforming it, as was the case last year in Romania, into negative unemployment. The trend will be, of course, changed as a result of the global crisis, but the level of unemployment is still expected to be lower than in the Old Members, at least in 2009.

Furthermore, we add that from a juridical perspective, migrants are exercising a fundamental right, one of the pillars of the European Union, namely the person's free movement, and any attempt to restrict this freedom may have dramatic consequences and some of the most unexpected ones at the level of the other liberties.

On the other hand, one cannot leave aside the negative consequences migration has for the native country. One can frequently find an unequal distribution of profit and loss between the native and the destination regions. In fact, according to some authors, the ones who benefit from these transfers of human capital are the destination countries and not the native regions.

The workers' migration gives rise, among other things, to a significant scarcity of workers on the labour force market, as well as to the corresponding

reduction, both quantitatively and qualitatively, of the national offer of labour force. Among the branches where such a decrease is already present in a significant way, one counts the construction and the textile industries.

This leads to accepting workers from other states, especially from outside the European Union. According to the data offered by trade unions, there are at present a number of approximatively 12,000 foreign workers in Romania, most of who come from the Republic of Moldavia, Turkey and China[2]. Professional emigration may equally have significant implications regarding the quantity, quality and structure of the labour force available on the internal market. Equally affected is labour productivity and the active population appears to have grown old, due to the emigration, especially that of young workers. Indeed, one of the negative effects migration has for the native country, noticed by analysts, is the more and more pronounced process of demographic aging, with the whole range of social problems that this phenomenon brings forth.

Obviously, a partial counter-balancing of emigration's negative conquences may be achieved, at least for certain labour force categories, by elaborating and implementing policies and practices that stimulate selective immigration, in accordance with the needs of the national economy, concomitant with facilitating the immigrants' integration on the internal labour market[3].

Migration often gives rise to negative consequences for the families staying behind. In large regions in Romania, children left without the supervision and care of their parents working abroad have exhausted the possibilities of assistance offered by the local authorities and have manifested remarkable difficulties at school and in behaviour.

A special case with even more significant negative effects than all the others is the movement of compact communities (whole villages) towards the same destination. For instance, about 39% of the active population of the Vrancea County is working abroad in the Western countries. This leads to a general disturbance of the region at economic level, in terms of employment, investments and the development potential, but more particularly at the psychological level, with regards to the personal resources of professional achievement for those who stay behind.

2. The Lack of Information – One of the Causes of Black Labour. The State's Responsibility in Offering Information to the Migrant Workers

In most cases the workers' protection is considered to be the responsibility of the state on whose territory they are working, being often the same as the

[2] There already exists an agreement between the National Trade Block and the Trade-Union Federation of China (ACFTU) for the reciprocal representation of the interests of Romanian employees in China and of the 3,000 Chinese working in Romania.

[3] See M. Pătraşcu, *The Management of International Career* [Managementul carierei internaţionale], p. 87, http://www.biblioteca.ase.ro, 2007, p. 94.

employer's state. However, one should not overlook the existence of a certain amount of responsibility on the part of the workers' native country which, through the legislation it enacts, has the task to protect not only the employees working on its territory, but also those working abroad.

The Romanian example is illustrative in this sense. The civil society and the various public institutions are aware of the problem of the state's legal responsibility towards the Romanian workers abroad and the regulations pertaining to the field of the labour law try to offer a solution to this. The question has however remained at the level of statements, and the actual possibilities of a Romanian worker abroad, who has been prejudiced, to demand compensation from the Romanian state for failure to ensure his/her protection, are very few.

The problem of the workers' free movement has acquired new dimensions in the light of recent regulations, with a view to harmonise the Romanian legislation with the European one in the field and to ensure protection against the discrimination of workers working in another country. The internationalisation of the labour market, as a complex and fast phenomenon, is inextricably related to the legislative evolution of the states inside and outside the European Union, in the attempt to establish the balance between the liberalising tendency of the workers' movement and the need to protect the internal labour market.

Indeed, the freedom to work in a different country must be sustained by protective regulations of the citizens that benefit from it. Within the Romanian legal system there is a law with such a purpose, namely Law 156/July 26th, 2000[4] on the protection of the Romanian citizens working abroad. It regulates the terms of accreditation and operation of the employment agencies, as well as the general means of protection for the Romanian citizens who have concluded individual employment contracts abroad, other than through these agencies[5]. In fact, the present law has been enacted in the context of the existence of certain difficulties, facing the Romanian citizens that have concluded employment contracts abroad, without knowing their implications, their rights and obligations or the possibilities of appealing to court.

The first way to protect the Romanian workers carrying out activities in other countries is identified by the authorities as the obligation to offer them information about the specific conditions of working abroad. As such, the Labour Code stipulates

[4] Published in the *Romanian Official Gazette*, part I, no. 364/August 4th, 2000. The law was subsequently amended by the Government Ordinance 43/2002, published in the *Romanian Official Gazette*, part I, no. 578/August 5th, 2002, approved in its turn by Law 592/2002, published in the *Romanian Official Gazette*, part I, no. 808/November 7th, 2002. For the application of Law 156/2000, the Methodological Norms were adopted, approved by the Decision 384/2001, published in the *Romanian Official Gazette*, part I, no. 208/April 24th, 2001, subsequently modified by Decision 850/2002, published in the *Romanian Official Gazette*, part I, no. 628/August 23rd, 2002 and by Decision 683/ 2006, published in the *Romanian Official Gazette*, part I, no. 475/June 1st, 2006.

[5] See R. Dimitriu, *The Protection of the Romanian Citizens Working Abroad* [Protecția cetățenilor români care lucrează în străinătate], in „Labour Relations" [Raporturi de muncă] 6/2001, pp. 29 – 32.

that if the person selected to be employed or the employee is about to go and work abroad, the employer has the obligation to offer him/her in due time the general information contained in any employment contract, as well as information about:

a) duration of the work to be carried out abroad;

b) currency in which the wage is to be paid, as well as the manner of payment;

c) the compensations related to the activity carried out abroad;

d) climate;

e) the main regulations of the labour legislation in the respective country;

f) the local customs, whose failure to comply with might endanger his/her life, freedom or personal safety.

Such information must be present as well within the future individual employment contract. In case the employment contract is concluded through employment agents, these have the obligation to ensure the conclusion of the individual employment contracts in Romanian language as well.

Nevertheless, such regulations can only be carried out in the case of legal workers. Moreover, court trials due to the failure to comply with the obligation to offer workers information prior to leaving for work abroad presuppose a very difficult test: that of the prejudice caused and of the causality link between the absence of information and the prejudice. That is why such trials occur very rarely in the Romanian courts.

How do the Workers Obtain the Information regarding the Jobs Abroad and the Employment Terms?

The most recent studies in the field confirm the fact that Romanians go abroad to a large extent on the basis of informal networks that is taking advantage of their relatives, friends or acquaintances already present in the destination country. It is from them as well that they get the information regarding the procedure of departure and work conditions.

Going abroad with the help of informal networks may indicate that some of the workers are likely to carry out activities without legal forms, trying only later to acquire the status of legal immigrants. In fact, it is the deficiencies of juridical regulations and especially the manner of their application that may represent one of the causes of illegal immigration. The strongly centralised and bureaucratic channels of access to a job abroad are often avoided, leading to dramatic consequences in many cases.

The official channels are not transparent enough and the state institutions having the task of providing information are permanently subject to change and reorganisation. The Romanian migrants often feel neglected by the Romanian authorities. The workers face important bureaucratic obstacles when using the official channels, so that they prefer the informal sources from which they receive employment and only subsequently seek to obtain a legal status. A recent study[6]

[6] Study made by Daedalus Consulting on a sample of 1,120 persons living in towns. See www.adevarulonline.ro.

shows that at the beginning of this year one of five Romanians who would go abroad to work would accept to work without legal forms.

Work without any legal documents (*black labour*) is the one carried out without an employment contract registered according to the legal provisions of the state where the activity is carried out. Unlike this, *grey labour* presupposes the existence of a employment contract, but one which contains elements not corresponding to reality: a salary stated differently than the one being paid, an office declared other than the one held, working time longer than the one specified in the contract, non-payment of social insurance, according to the contract, labour norms different than the ones provided in the contract, etc. Sometimes inconsistency does not concern the relation with the law, but that with the collective employment contract. This form of employment is a kind of **simulation**: there is a public legal act, but a false one and next to it there is a hidden juridical act, but a true one. Another type of grey labour is that whereby the employee is declared self-employed.

It has to be noted that in all the European states there is a good system of labour inspection, able to intervene at the workers' notification. They have the right to notify the labour inspection about the fact that they are not in possession of legal employment documents or concerning the fact that clauses other than the real ones are provided within them. The question in this case is why the immigrant workers do not notify such facts and why the black or grey labour continues to be practiced on a large scale. The reason is simple: the fear of being banished. **There is a close connection between illegal emigration and black labour.**

One option would be the collaboration between the authorities in the foreign state and the immigrant workers doing illicit work.

In our view, a better cooperation, especially in the legal field, between the European Union member-states may be of help in diminishing the phenomenon. Indeed, the authorities of the native country have the possibility to intervene way too little in order to limit the phenomenon. Practically, there are no legislative means to do it, with all the considerable dimensions of the problem. For instance, black labour is severely punished in Romania[7], but the labour inspection departments have the ability to identify and sanction it only in case it is carried out within the territory of the country. Thus, the protection of the Romanian law is not extended to the persons carrying out illicit work abroad.

[7] Thus, according to the provisions of Law 403/2005, it is deemed offence, punishable with imprisonment from 1 to 2 years or with fine the act of a person repeatedly using other persons who carry out paid work without complying with the legal dispositions regulating the conclusion of the individual employment contract. As case may be, the one held legally responsible is the manager, the executive manager, the administrator, the legal representative of the employer, respectively any other person authorised by the employer. Similarly, according to the Labour Code, employment without concluding a written employment contract is fined (1,500 – 2,000 lei) for each identified illegal employee, without exceeding the cumulated sum of 100,000 lei (section 276, letter e).

3. The State Intervention in Mediating Employment contracts Abroad

At the beginning of the 1990's, work abroad was carried out on the basis of contracts freely concluded between workers and their foreign employers informally identified. Without being under the state control, the mediators of such agreements could in fact hide criminal intentions, did not take care of obtaining work permits or the necessary documents for the conclusion of legal employment contracts and they were often part of the networks of human trafficking.

This fact led to the need for a severe regime of controlling the activities of mediating employment contracts abroad, which evolved in time, but also grew bureaucratic. The workers' employment is not done any longer directly by the workers themselves (except for few cases), but through a governmental agency or, more recently, through private agencies subject to strict control.

According to section 5 of Law 156/2000 on the protection of Romanian citizens working abroad, „activities of mediating employment abroad for the Romanian citizens may be carried out on the Romanian territory by those commercial companies founded on the basis of Law 31/1990 on commercial companies, including the branches of foreign commercial companies".

Activities of mediating employment abroad for the Romanian citizens carried out by such agencies mainly consist in:

a) making a database of persons demanding jobs and job offers abroad;

b) identifying jobs offered by employers (legal or natural persons abroad or foreign mediation partners);

c) publishing jobs and their requirements;

d) preselection or, if case may be, the candidates' selection, according to the requirements of the offered jobs and the formers' training, abilities and interests;

e) carrying out the necessary steps for the employment of persons selected for the offered jobs.

The activity of mediation agents has been very little controlled by the state in the beginning, a fact which led to numerous abuses towards those who were employed to work abroad, without having clear information about the work they were about to carry out or the actual conditions of performing it. That is the reason why the legislator has subsequently been very cautious when granting the right to perform mediating activities. The law has instituted a long range of restrictions and incompatibilities. Thus, it provided that employment agents may carry out mediating activities for the employment of Romanian citizens abroad if they comply with the following requirements:

a) they possess the space and the necessary outfits to carry out their activity in good conditions;

b) they have employed experienced personnel in the field of labour force;

c) they have organised a database containing the job offers and demands abroad, information regarding the requirements for getting such jobs, as well as regarding the qualifications and abilities of the applicants in their database;

d) they have concluded contracts containing firm job offers with legal and natural persons, as well as with employers' organisations from abroad;

e) they are registered at the territorial labour inspection department in the area where they carry out their activity.

As for contracts concluded with potential foreign employers, the law stipulates that they must comprise at least the following elements:

a) length of the contract;

b) the number of jobs abroad for which the contract is concluded;

c) position, job or profession;

d) the nature and length of employment, conditions of employment, cessation of employment or re-employment;

e) length of the working-time and rest;

f) hourly rates, monthly wages and the dates of wages payment;

g) pay rise, additional working time and other salary rights;

h) the cases when salary rights may be claimed;

i) the length, way of granting and the financial rights pertaining to vacation time;

j) work conditions and measures of labour protection and safety;

k) the possibility of transferring wages to Romania;

l) the Romanian employees' medical insurance, similar to that of the citizens in the destination country;

m) granting compensations to the Romanian employees in case of accidents, professional diseases or death;

n) conditions of accommodation, living or, according to case, of renting an apartment and of providing meals;

o) ensuring all the formalities, settling the conditions of transport from Romania to the state mentioned in the job offer and back for the Romanian employees and the family members accompanying or visiting them, as well as bearing all the further expenses;

p) taxes, duties and contributions incumbent on the Romanian employees' incomes, trying to avoid double taxation or imposition of contributions to the social insurance system;

r) obligations of the Romanian employees working abroad.

Moreover, the law provides that the employment agents have the obligation to make sure that all these elements are equally included in the employment contract concluded between the foreign employer and the Romanian employee. The existence of any inaccuracy between the provisions stated in the offer and those present in the employment contract triggers the provider's responsibility, both contractual (towards the beneficiary) and legal[8].

[8] The same question is raised in the case (quite often met in reality) when the services about to be carried out abroad are different than those stated in the mediation contract. In other words, the foreign employer refuses to conclude the individual employment contract previously agreed upon with the beneficiary of the mediation contract, demanding the conclusion of a different type of labour relations. In such a case:

We have to point out a rather unusual fact: according to the Romanian law, the employment agent has, among others, the obligation „to ensure the employer's compliance with the clauses provided in the individual employment contract".

This obligation may give rise to a whole range of theoretical and practical difficulties[9]. A first issue would be the actual manner whereby the provider may „ensure the employer's compliance" with the employment contract. Practically, the employment agent has no possibility to bring charges against the foreign employer when he does not fulfil his obligations according to the employment contract, because he is not qualified to bring such an action in front of the court. It ensues that the only possibility to fulfil this obligation is to include a special provision in the initial contract (concluded between the Romanian agent and the foreign employer); such a provision would have the juridical nature of a stipulation to the benefit of a third party. In this frame-contract the foreign employer would expressly oblige himself to fulfil all the duties triggered by the future conclusion of individual employment contracts. It is only in this complicate way that the provider would be able to fulfil his obligation to ensure the employer's compliance with the employment contract.

If the foreign employer's obligations are still not fulfilled (for instance, the wages is not paid) the employee – the Romanian citizen – can resort to two measures:

- he either brings charges against the foreign employer, according to the law applicable to the respective individual employment contract[10];
- or he brings charges against the employment agent, based on the Romanian law and the dispositions of the mediation contract.

It has to be noted that the provider is not a guarantor of the beneficiary, nor a

- either the employment contract is voidable because of vitiating the worker's consent;
- or, if case may be, the employment contract is absolutely void due to an immoral cause;
- the foreign employer is fined or, according to the legislation applicable in the respective country, he is legally sanctioned;
- the provider is fined or legally sanctioned, according to the Romanian law.

[9] See R. Dimitriu, *The Mediation Contract Concluded in View of Employment by the Romanian Citizens as Employees Working Abroad* [Contractul de mediere încheiat în vederea încadrării în muncă, în calitate de salariați, a cetățenilor români în străinătate], in „Dreptul" [The Law] 11/2001, pp. 39 – 50.

[10] Law 105/1992, published in the *Romanian Official Gazette,* part I, no. 245/October 1st, 1992 stipulates in section 101 that the parties to the employment contract may agree upon the applicable law, as long as this does not infringe on the protection that the imperative dispositions of the applicable law offers to the employee, in the absence of such a choice. Except for the case when the parties have agreed otherwise, the employment contract is subject to the law of the state wherein:

a) the employee carries out his work on the basis of the contract, even if he is temporarily sent to another state;

b) the headquarters of the enterprise that employed the worker is, if the latter does his work in several states, due to the office he holds; in case the employment contract has closer ties with a different state, then the latter's law becomes applicable.

mandatory of the employee.

When the activity of mediation is not performed in compliance with these provisions or by persons or organisations not having the competence of doing it, it is sanctioned by significant fines.

Practically, the law and the norms concerning its application regulate the legal regime of two categories of Romanian citizens working abroad:

1) persons who conclude individual employment contracts with employers, foreign natural or legal persons, through the Romanian employment agents. In their case, there are three consecutive contracts:

- a contract concluded between the accredited employment agent and the employer – a foreign natural or legal person, containing the firm job offer;
- a mediation contract concluded between the employment agent and the Romanian employee who is to work abroad;
- an individual employment contract concluded between the Romanian citizen and the foreign employer;

2) persons employed by the employment agent, having an individual employment contract and sent abroad to perform a certain type of work. In this case, there are the following types of contracts:

- an individual employment contract concluded between the employment agent and the Romanian citizen;
- an addendum to the employment contract, stipulating the mutual rights and obligations during the time of working abroad.

In this context, the involvement of the native country could be noticed to a certain extent in the performance of controlling actions, especially over the contracts concluded through employment agents. According to the law, these have the obligation to possess and submit the original contract containing firm job offers, concluded with legal or natural persons, as well as with employers' organisations abroad, as long as a long list of documents regarding the company situation or the citizens sent to work abroad.

The employment agents have the obligation to store these documents for three years after the cessation of the Romanian citizens' labour relations abroad. Furthermore, the employment agents are bound to submit every term to the Labour Inspection the situation of the mediated persons employed abroad, till the end of the month following the previous term.

The role of the Labour Inspection is, from this perspective, a significant one. The Labour Inspection has the competence to check whether the employment agents have fulfilled or not the requirements provided by Law 156/2000, as well as the contracts containing job offers, the individual employment contracts concluded between the foreign employers and the Romanian citizens, and the mediation contracts.

There is even an approved model of the mediation contract, legally sanctioned, which has a minimal character and which can be filled in by the parties with other clauses, according to their interests. For instance, the parties may

include penalties whereby they can settle beforehand the compensations to be granted in case of failure to comply with the contractual provisions.

However, the parties cannot change the basic elements of the contract, adapting it to their own legal will. This is so because of the imperative character of these norms, the standard-contract made out according to the legislator' (legitimate and salutary) intention to protect the Romanian citizens working abroad. The consequences of such an imperative character can nevertheless be disadvantageous. Thus, for instance, since Law 156/2000 is only concerned with the protection of the Romanian citizens working abroad as employees, it is not possible to conclude a mediation contract in order to enter into a civil contract for the provision of services.

The protective intention partly justifies the deficiencies in the manner of drawing out the model of the mediation contract, while Law 156/2000 and the Norms concerning its application intervene in the context of the existence of practices detrimental to the Romanian citizens working abroad, with the manifest purpose of limiting such practices and ensuring the protection of the Romanian citizens beyond the borders of the country.

Such ways of involvement of the native country in the protection of its citizens working abroad have their own role. But one must not overlook the fact that they only offer partial protection to the legal employees and no protection to those employed without legal documents. Even after the European Union integration, many workers continue to remain outside the system, from the moment of getting information about work abroad and all throughout the period of fulfilling their contract. They act „on their own"; their contracts, when they exist, are not mediated by accredited agents and the official channels are not even able to make accurate statistics concerning them, not to speak about ensuring an efficient protection for them.

In the case of illegal workers, not only pensions, work seniority, rights to social insurance or vacation are endangered, but life and health themselves. There are frequent cases of labour accidents among the illegal workers.

4. Responsibility in the Field of Labour Safety. Labour Accidents among the Migrant Workers

Statistics show that the migrant workers are more exposed to labour accidents than the citizens of the destination countries.

Very often, the immigrant workers do not take labour protection courses. Many of them work without a written contract; therefore they are not in the database of the labour inspection departments. The absence of legal contracts is responsible for the fact that in many cases the workers involved in labour accidents do not report it as such, which excludes the possibility of having a very accurate statistics of labour accidents involving immigrants.

Actually, the number of labour accidents occurring on the first working day is already an indicator of the proportions of black labour. In fact, they are thus reported in order to justify the absence of employment documents.

The labour inspection of the destination country carries, of course, the legal responsibility to notify the cases of law violation by the employer. Moreover, the involvement of the origin country is needed, since in such cases the lives of its citizens are in danger. The first way to do it is by informing the workers before leaving the country about the risks of black labour, as well as by an efficient mediatisation of cases of labour accidents among illegal workers. The institutions of labour inspection in the two countries (the native and the destination one) should cooperate both in order to prevent such accidents from occurring, and during their subsequent investigation.

5. The Responsibility of the Social Partners. The Effects of Migration over Unionisation

As surprising as it may be, one can notice a process of solidarity of the national workers with the immigrant ones. The labour accident in Veneto in which the migrant workers died was followed by the strike of all workers, both national and immigrant. Furthermore, many national union organisations offer their services for the protection of the immigrant workers.

The CGIL (Confederatione Generale Italiana del Lavoro) proposes the constitution of a fund with a specific destination, by means of a new bill: a part of the money should be directed to support local steps against the shadow economy, while the remaining money should be used in order to help workers to reconstruct their economic rights.

Both social partners have an interest in this. Not only are the unions interested in supporting the protection of the immigrant workers, but the employers' organisations as well, because if there is a black labour market, the legal companies are in the risk of being marginalised by the market.

Then the authorities also have their interest, because they want to avoid the segregation of the immigrant workers. As for solutions, we may list: building up homes spread around in the territory and not concentrated ones, inclusion policies; language courses and gathering places (to counter self-segregation and isolation) for the younger immigrants.

In conclusion, another solution for a better protection of the migrant workers is improving the means of social dialogue.

Indeed, the new EU member states, including Romania, are supposed to have a stimulating effect on collective bargaining at the European level. Most specialists are sceptical about this, considering that it is perhaps inappropriate to insist on bargaining at a level higher than the national one, as long as there is a European

tendency to decentralise collective bargaining. After all, in many member states, the most important collective contracts are those at branch and enterprise level.

Nonetheless, the integration of the new states may open up new possibilities for bargaining at the European level, despite the lack of regulations in the field. One reason could be that the social partners participating in the bargaining process have only recently started operating in the new member states. Employers' associations have only been set up recently, and today's unions are not the same as those of the Communist era. The absence of a "traditional" character can make the social partners open up to a new approach towards collective bargaining, beyond the borders of each country, since they have not been subject to certain models of collective bargaining for the same length of time as the important social actors of the old member states[11].

As such, we identify one of the possible means of participating in the migrant worker's protection as the cooperation between the unions and the professional organisations of the native country, and the same in the destination country

6. The State's Responsibility in Relation to the Repatriated Workers

The native country of the migrant workers has to assume its responsibility not only for their protection during their work abroad, but also to assist them when returning home. If it fails to do so, it actually discourages repatriation.

In the absence of an assistance programme for workers after repatriation, the naThe problem of reintegrating the migrant workers after the termination of their employment contract abroad is associated in the literature in the field either with the management of migration or with the retention of the expatriates of trans-national societies. Thus, the lack of assistance for the socio-professional reintegration discourages the return of the migrant workers to their native country. This may lead to a significant loss of human capital for the „exporting" states, which affects their capacity of socio-economic development[12]. The return home may face the migrant with a „cultural shock" as strong as the one felt at the time of leaving abroad, the more so if this time the person is no longer prepared to face it. This shock is mainly due to the discrepancy between the new realities and the personal expectations.

Moreover, the human aspects of (re-)adjustment in the native country must not be ignored either. It is a fact that most of the time people tend to underestimate the international experience, they are not aware of the difficulties of reintegration, they do not know or do not want to manifest understanding and the necessary support to a person who recently returned from abroad[13].

[11] See R. Dimitriu, *Romanian Industrial Relations Law*, Antwerp, Ed. Intersentia, 2007, p. 2.
[12] See M. Pătraşcu, *op. cit*., p. 87.
[13] *Idem.*

This is why it is estimated that the support for the reintegration of the migrant worker must begin even before he leaves his native country. One proposal is the elaboration of a re-orientation programme for the migrant workers when coming back home. This implies first of all the identification of the most vulnerable categories of workers and the carrying out of professional reintegration programmes. The labour force market in the native country may differ significantly from that in the foreign country, which makes access to a job position rather difficult. When returning home, the persons who have worked abroad do not have the same type of needs as the unemployed persons who finished their employment contract in their native country. Their needs and also their expectations are different and giving them the same type of treatment from the perspective of the reintegration programmes may be an error.

7. Conclusions

Labour legislation has territorial applicability. As such, the native country cannot unilaterally extend its norms of labour legislation to the employment contracts of the people working abroad.[14]

Yet, beyond the responsibility ensuing from the fulfilment of any labour relation both for the employer and for the employee, one cannot leave aside the involvement of a third party, when taking into account the work of the migrant citizens: the employee's origin country.

The responsibility for the protection of the immigrant workers should be assumed (next to the employer and the destination country) by the workers' country of origin. Yet, in quite a number of cases the means of action of the origin authorities do not get modernised with the speed needed for the migrant workers. Despite they may be forgotten by the authorities, they often behave as development agents. Thus, Romania's integration in the European Union has produced a certain change of mentality in the Romanian workers working abroad.

There are several Romanian institutions dealing with the situation of the Romanian citizens abroad, having sometimes overlapped attributions and unclear responsibilities. There are thus, the National Employment Agency (which is replacing the National Office of Recruitment and Placement of the Labour Force Abroad), as well as the Department for the Management and Mobility of the Labour Force, within the Ministry of Labour, Social Solidarity and Equality of Chances. Within embassies there are attaches on labour issues, belonging to the Attaches' Body, who perform their activity within the Romanian diplomatic missions in Madrid, Berlin, Rome and Budapest.

For the time being, according to Law 156/2000, the involvement of the

[14] See I.T. Ştefănescu, *Treatise of Labour Law* [Tratat de dreptul muncii], Bucharest: Ed. Wolters Kluwer, 2007, p.752.

Romanian state in the task to protect its citizens working abroad is achieved in the following ways:

- concluding agreements, conventions or treatises with the states where the migrant workers are carrying out their activity, in order to ensure their protection, on the basis of the principle of equality of treatment and non-discrimination;
- supervising and controlling the agencies of recruitment and placement of labour force abroad;
- defining the responsibilities of the diplomatic missions and consular offices in protecting the Romanian citizens working abroad.

Due to globalisation, migration takes place in a context wherein states, societies, economies and cultures from different corners of the world have become more and more integrated and interdependent. Yet, the impact of globalisation remains uneven, a fact which contributes to increasing gaps of living standards in various states/regions and ultimately, to an increased international traffic of persons and labour force.

The phenomenon of labour force migration does not only characterise Romania, but it manifests itself on different scales in all the new European Union member states. Nevertheless, the Romanian case is special from several points of view. Thus, the emigration of the population and the numerous persons leaving the country in order to work abroad, coupled with the tendencies strongly manifested in the dynamics of the demographic process, with the perspective of a population decrease in Romania in the next decades from 21 to 16 million people, demand the urgent implementation of a new national strategy of dealing with the demographic and occupational problems of the country. The atypical situation of the population decrease in Romania is due to the proportions of this decrease, intensified by the migration phenomenon, especially in the context of a lack of valid statistic information concerning it[15].

According to section 9 of the Labour Code[16], the Romanian citizens are free to receive employment in the European Union member states, as well as in any other state, in compliance with the norms of the international labour law and the bilateral treatises in which Romania participates. Regardless of the measures of constraint and control that the authorities may take, urged by the often negative consequences that the strong labour force emigration triggers, this right must be observed both by the origin country and by the host one. It represents the enactment of the dispositions of section 1, letter 1 of the Rules 16112/68/EEC, which stipulated the right of any citizen of a member state to have access to paid

[15] See N. Dobrotă, M. I. Aceleanu, *A New Perspective of Analysis and Assessment of the Romanian Citizens' Work Abroad* [O nouă optică de analiză şi apreciere a muncii cetăţenilor români în străinătate], p. 15, http://www.ectap.ro/articole/150.pdf

[16] Published in the *Romanian Official Gazette*, Part I, no. 72/February 5th, 2003, later amended.

work on the territory of another member state, in accordance with the dispositions in effect regulating the employment of co-nationals.

Yet, the observance of such a right does not mean that the state is no longer involved in the protection of its citizens exercising such a right. The Romanian labour legislation, for instance, is extremely protective towards the employees who are working on its territory, being often criticised as unbalanced, to the employer's permanent disadvantage. As soon as the person no longer works home, but abroad, the attitude of the authorities seems to change, as they consider that the entire legal responsibility is transferred to the foreign employer and the state wherein work is being carried out. The present paper has thus attempted to identify some of the reasons why such an attitude is harmful not only for the workers, but also for their country of origin. It has equally tried to point to some of the ways whereby such an involvement may be achieved.