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Responsibilities of the Origin State in the Protection of Migrant Workers. The Case of Romania

Raluca Dimitriu

1. Introduction

- 1 The domestic labour legislation may be extremely protective towards the employees who are working on its territory, sometimes even being unbalanced, to the employer's permanent disadvantage. However, as soon as the person no longer works at 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. This paper attempts 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 equally tries to point to some of the ways whereby the departure country could become involved, given the extent and the characteristics of today's migration phenomenon, which will probably continue in the future, and given the implications that this represents for the development of new Member States.
- 2 While certain authors insist on the positive effects of migration due to the development of areas in the departure country, others demonstrate scepticism, showing that the intervention of the departure country is justified in order to minimise the negative secondary effects of migration there (Stan, Mungiu-Pippidi, Naval, 2005: 7). Migrants are perceived as agents of change, contributing to the socio-economic development by the transfer of financial and human resources towards their native communities. The migrant workers acquire new knowledge in the countries they are sent to, and have access to new technologies, which they transfer back home during their periodic return. The social trans-national networks developed by the migrants and linking the departure countries with the countries of destination facilitate international business for the benefit of the host regions. The concept of "long distance nationalism" has even

been introduced, in the sense that the State's emigrants and their descendants remain an integral and intimate part of their ancestral homeland, even when they are legal citizens of another State (Glick Schiller, Fouron, 2001: 17).

- 3 The workers living abroad contribute to the relief of the labour market, which diminishes the rate of unemployment. Furthermore, from a juridical perspective, migrants exercise a fundamental right, one of the pillars of the European Union, namely the right to free movement, and any attempt to restrict this freedom may have dramatic consequences, including some unexpected ones concerning other liberties.
- 4 On the other hand, one cannot leave aside the negative consequences migration has for the departure country. One can frequently find an unequal distribution of profit and loss between the departure 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 departure regions.
- 5 Indeed, 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 public authorities and have shown significant difficulties at school and in behaviour.
- 6 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 Western countries. This leads to a general disturbance of the region on an economic level, in terms of employment, investments and the development potential, but more particularly on a psychological level, with regards to the personal resources for professional achievement for those who stay behind.
- 7 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. This contributes to increasing gaps of living standards in various states / regions and, ultimately, to increased international traffic of persons and labour force.
- 8 As for the extent of the phenomenon and its consequences for the workers' departure and destination countries, the main problem is the actual means of protecting the migrant workers in the new context of increased European Union members. The approach that we propose is a legal one, emphasizing one of the dimensions of such a construct, which aims at identifying the cause, the means of applying legal responsibilities and the limits of such a responsibility.

2. Particularities of the case of Romania

- 9 The phenomenon of labour migration not only characterises Romania, but it manifests itself on different scales in all the new European Union Member States. Nevertheless, the Romanian case is particular from several points of view. The large-scale emigration of the population leaving the country in order to work abroad, coupled with overwhelming changes in demographic trends, which predict 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 country's demographic

and occupational problems. The atypical situation of the population decrease in Romania is characterized by its magnitude, which is intensified by the migration phenomenon, the scale of which remains unclear due to the lack of valid statistical information (Dobrota, Aceleanu, 2006: 15). Officially, according to the facts centralised by the Ministry of Foreign Affairs, the official number of Romanians legally present on the territory of the other EU Member States is over 1.2 million, most of whom live in Italy (approximately 500,000) and Spain (approximately 450,000)¹. According to the statistics that include illegal workers as well, almost 2 million Romanian citizens are working abroad at present, which represents almost one fifth of the active labour force in Romania. A recent study carried out by the Foundation for an Open Society on a national representative sample shows that 10% of Romanian households have at least one family member temporarily working abroad.

- 10 Similar situations can be found in other States, members or non-members of the European Union (for the case of Poland, see Bojarki, 2007:367-378). An illustrative example is that of the Republic of Moldavia, in which no less than 27% of the GDP is represented by the money sent home by those working abroad².
- 11 Few years ago, a study published by the Romanian Academic Society (Stan, Mungiu-Pippidi, Naval, 2005: 5-14) showed that the insufficient qualification and training of the Romanian migrant workers constitutes a problem directly related to the socio-economic development. Although the migrants earn a lot more in comparison with their fellow national citizens, they receive the lowest wages abroad, where they occupy the jobs that are usually rejected by the natives. This also contributes to their stigmatisation. In the long run, the low level of their qualification might place the Romanian migrants in a socio-economic class that is inferior, at least in the countries abroad.
- 12 However, things seem to have somewhat changed over time. A recent study (ANBCC, 2007) shows that in Romania 40% of the persons who express their intention to go abroad are young, more educated, with wages above the average.
- 13 Other studies (Constantin, 2004: 9) divide those involved in the migrating movement into three large categories of labour force:
- 14 a highly qualified labour force active in the fields of advanced science and technology, as well as in some services, such as education and health. This category includes people in the age group of 25 - 40, considered to be the most creative age;
- 15 a labour force with an average level of qualification, specialised in a wide range of activities and professions, such as: construction personnel – a labour force category with a long tradition of working abroad (Germany, Israel); para-medical personnel (nurses), for which the job offers from employers in different countries are increasing (Italy, France and so on); personnel working in the hotel and food industry, also in demand in several markets;
- 16 a non-qualified or semi-qualified labour force for agricultural activities (during the harvest season), cleaning, construction, etc. (Spain, Portugal, Greece).
- 17 Analysts identify one more category of workers abroad, distinct from the ones mentioned above: those who get jobs that are below their professional training.
- 18 As for destination, the study by ANBCC underlies the fact that going abroad for work in a certain direction is strongly influenced by regional-historical factors. According to the various regions of Romania, one may notice that people living in Walachia

(southern Romania) leave mostly for Spain (38%), whereas those living in Moldavia (northern Romania) go mostly to Italy (28%). Those intending to go to Great Britain more often come from the north-eastern part of Romania. The people leaving for the above mentioned destinations are generally aged between 23 and 40. The particular fact about Great Britain is that it attracts the younger population (44% of the Romanians reaching there are between 23 and 30 years old), while Italy is strongly preferred by persons over 50 years of age.

- 19 The tendency to emigrate is especially more pronounced in the case of young people/families having previously acquired some "migrating experience", such as during studies abroad, training, temporary work abroad, etc.
- 20 The reason to emigrate is most often identified with the practical needs of the family the workers come from. Another frequent explanation is more generalised and is related to the economic problems that Romania faces nowadays. Thus, 53.5% of the persons interviewed consider that the countries they want to go to offer better wages than Romania. Finally, a third type of explanation for working abroad refers to the need to have a new experience, to know a different world or to live in a different system of values, such as the ones promoted by Western societies (ANBCC, 2007).
- 21 Constituted by the EEC Treaty (sections 39 – 40) as one of the fundamental liberties pertaining to the Community's territory, the free movement of workers is at present validated by Regulation 1612/68/EEC on the movement of workers within the Community, as well as by Directive 2004/38/EEC on the right of European Union citizens and their family members to move freely and to stay on the territory of the Member States. These regulations are a specific expression of the principle of equal treatment enacted by section 12 of the EEC Treaty: "Any discrimination based on citizenship/nationality is forbidden".
- 22 These regulations apply in the context wherein the emigration of the labour force is one of the most important phenomena associated with social change in Romania and in its citizens' lives (Kessler, Lhernould, Popescu, 2005: 9-21).
- 23 There are several Romanian institutions that deal with the situation of Romanian citizens abroad, some of which have overlapping functions and unclear responsibilities. These include the National Employment Agency (which replaces 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 attachés on labour issues, belonging to the Body of Attachés, who perform their activity within the Romanian diplomatic missions in Madrid, Berlin, Rome and Budapest.
- 24 In a more remote perspective, Romania may itself become an immigration country, but one which has a large number of its citizens working abroad, as is shown by one of the studies assessing the impact of Romania joining the European Union (Constantin, 2004: 10). As such, Romania will represent a source sustaining the east-to-west emigration, and benefiting from the emigration from south to north and east. This will call for a sustained effort to taper down the unfavourable consequences on the level of the national labour market, in parallel with the absolutely necessary effort to protect Romanians working abroad.

3. Aspects of the Origin State's Responsibility

3.1. The State's responsibility in offering information to migrant workers

- 25 In most cases the workers' protection is considered to be the responsibility of the State where the work is carried out, this often being the same as the 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 of protecting not only the employees working on its territory, but also those working abroad.
- 26 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 regulations pertaining to labour law try to offer a solution to this. The question has however remained on a superficial level; there are limited actual possibilities for a Romanian worker abroad who has been treated with prejudice to request compensation from the Romanian State for failure to ensure his/her protection.
- 27 The problem of the free movement of workers has taken on new dimensions in light of recent regulations which aim to harmonise Romanian legislation in this field with the European legislation and to ensure protection against discrimination for its citizens working in another Member State. The internationalisation of the labour market, as a complex and quickly advancing phenomenon, is inextricably related to the legislative evolution of the States inside and outside the European Union, which attempt to establish a balance between the liberalising tendency of the workers' movement and the need to protect the internal labour market.
- 28 Indeed, the freedom to work in a different country must be sustained by protective regulations for 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 on the protection of 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. In fact, this law was enacted in the context of certain difficulties (some of which have been dramatic) 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 (Dimitriu, 2001: 29-32).
- 29 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 that if the employee or the person selected to be employed is about to leave to 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) the duration of the work to be carried out abroad;
 - b) the currency in which the wages are to be paid, as well as the manner of payment;
 - c) the compensations related to the activity carried out abroad;

- d) the climate;
 - e) the main regulations of the labour legislation in the respective country;
 - f) the local customs with which failure to comply might endanger his/her life, freedom or personal safety.
- 30 Such information must also be included within the future individual employment contract. In the event that the employment contract is concluded through employment agents, the latter have the obligation to ensure the conclusion of the individual employment contracts in the Romanian language as well.
- 31 Nevertheless, such regulations can only be carried out in the case of legal workers. Moreover, court trials pertaining to the failure to comply with the obligation of offering workers information prior to their departure to work abroad presuppose a very difficult test: that of establishing a link of causality between the absence of information and the prejudice. Therefore such trials occur very rarely in Romanian courts.
- 32 How do the workers obtain the information regarding jobs abroad and the employment terms?
- 33 A study elaborated through fieldwork (ANBCC, 2007) confirms that Romanians go abroad to a large extent on the basis of informal networks, taking advantage of their relatives, friends or acquaintances already present in the destination country. It is from them as well that they receive information regarding the procedure of departure and the working conditions. Of all the interviewed persons, 69.1% answered that they have relatives abroad, and 78.2% have friends and acquaintances.
- 34 Going abroad with the help of informal networks may indicate that some of the workers are likely to carry out activities without legal forms, only later attempting to acquire the status of legal immigrants. In fact, deficiencies of juridical regulations, and in particular the manner of their application, may represent one of the causes of illegal immigration. The strongly centralised and bureaucratic channels of access to work abroad are often avoided, leading to dramatic consequences in many cases.
- 35 The official channels are not transparent enough and the State institutions responsible for providing information are permanently subject to change and reorganisation. Romanian migrants often feel neglected by the Romanian authorities. As the workers face major bureaucratic obstacles when using the official channels, they prefer the informal sources from which they receive employment and only subsequently seek to obtain a legal status. A recent study³ 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.
- 36 Work without any legal documents (*black labour*) is that which is carried out without an employment contract that is registered according to the legal provisions of the State where the activity is carried out. In contrast, *grey labour* presupposes the existence of an employment contract, but one which contains elements that do not correspond to the reality: a salary stated differently than the one being paid, a position declared that differs from the one held, working time longer than the one specified in the contract⁴, non-payment of the social insurance specified in the contract, labour regulations different than the ones provided in the contract, etc. Sometimes the inconsistency does not concern the relation with the law, but that with the collective employment contract. Juridically, this form of employment is called **simulation**: there is a public

legal act, but a false one, accompanied by a hidden legal act, but a true one. Another type of grey labour is that whereby the employee is declared self-employed.

- 37 It should be noted that all the European States have an effective system of labour inspection, able to intervene upon the workers' request. The workers have the right to notify the labour inspection if they are not in possession of legal employment documents or if false claims are provided within the legal clauses. This raises the question as to why immigrant workers do not notify such facts and why 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.
- 38 One option would be the collaboration between the authorities in the foreign State and the immigrant workers doing illicit work. Such a solution was sought in Italy in 2006⁵, when the Minister of social solidarity offered all foreigners who were carrying out illicit work the chance to denounce their exploiters, without being banished. This was because the main reason for illegal immigration, according to the Italian authorities, was precisely black labour. According to the estimations of the Italian authorities, one fifth of the gross domestic product comes from the black labour market, where most of the 700,000 estimated illegal workers carry out their activity. There is a sort of town moving in and out according to the harvest seasons. A similar situation is met in the construction field, which records the greatest number of industrial accidents.
- 39 In our view, 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 departure country have very little possibility to intervene in order to limit the phenomenon. There are no practical legislative means to do so, due to the considerable dimensions of the problem. For instance, black labour is severely punished in Romania⁶, but the labour inspection departments have the ability to identify and sanction it only if it is carried out within the territory of the country. Thus, the protection of the Romanian law is not extended to the persons performing illicit work abroad.
- 40 Furthermore, it sometimes occurs that women who accept to do black labour abroad are constrained to practice prostitution.
- 41 The national anachronistic legislation concerning migration (Country Report, 2003-2004) and the inability of the official channels to satisfy the great demand of jobs abroad has led to an increasing rate of illegal migration and has exposed persons to the risk of economic exploitation and other violations of human rights. The data supplied by the International Labour Organisation show that approximately 47% of Romanians who worked abroad had no legal employment documents. Many of those legally employed are doing grey labour, often poorly paid, and are partially or totally excluded from the structures of social protection. The authors of this study would also like to underline that the increasing illegal migration is equally due to the legislative deficiencies of the destination countries and to the weak implementation of bilateral conventions and agreements that involve Romania.

3.2. State intervention in mediating employment contracts abroad

- 42 At the beginning of the 1990's, work abroad was carried out on the basis of contracts freely concluded between workers and informally identified foreign employers. Not being under 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 were often part of the networks of human trafficking.

- 43 This fact led to the need for a severe regime to control the activities of mediating employment contracts abroad. Such control evolved over time, but also grew bureaucratic. The workers' recruitment is no longer managed directly by the workers themselves (except for few cases), but through a governmental agency or, more recently, through private employment agencies subject to strict control. The following shows the evolution in figures of the Romanian workers who concluded a mediated employment contract through the Office for the Labour Force Migration:

2002	22,305
2003	21,342
2004	55,901
2005	42,758
2006	53,029 and other 14,742 through private employment agents
2007	37,639.

- 44 The activity of mediation agents was very little controlled by the State in the beginning, a fact which led to numerous abuses towards those who were employed to work abroad, in terms of the lack of clear information about the work they were about to carry out or the actual working conditions.
- 45 For this reason, legislators have subsequently been very cautious when granting the right to perform mediating activities. The law has instituted a long range of restrictions and incompatibilities. Moreover, the present law provides that the employment agents, or providers, must make sure that the legal elements are included in the individual employment contract concluded between the foreign employer and the Romanian employee. Any inaccuracy between the provisions stated in the offer and those present in the employment contract is deemed the provider's responsibility, both contractually (towards the beneficiary) and legally.
- 46 This brings us to point out a rather unusual fact: according to the Romanian law, the employment provider is obligated "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. A first issue would be the actual manner whereby the provider could "ensure the employer's compliance" with the employment contract. In practical terms, the employment provider has no possibility to bring charges against the foreign employer when the latter does not fulfil his/her obligations according to the employment contract, because the provider is not qualified to bring such an action to 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 employment 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 be obliged to fulfil all the duties in future individual employment contracts. It is only in this complicated way that the provider would be able to fulfil his/her obligation to ensure the employer's compliance with the employment contract (Dimitriu, 2001: 39-50).

- 47 If the foreign employer's obligations are still not fulfilled (for instance, the wages not paid), the employee – the Romanian citizen – can resort to two measures:
 - he/she can either bring charges against the foreign employer, according to the law applicable to the respective individual employment contract⁷;
 - or he/she can bring charges against the employment provider, based on the Romanian law and the dispositions of the mediation contract.
- 48 The role of the Labour Inspection is, from this perspective, significant. The Labour Inspection has the role of checking whether or not the employment providers have fulfilled the requirements provided by Law 156/2000, as well as checking the contracts containing job offers, the individual employment contracts concluded between the foreign employers and the Romanian citizens, and the mediation contracts.
- 49 There is even a legally approved model of the mediation contract which, of minimal nature, can be filled in by the parties with other clauses, according to their interests. For instance, the parties may include penalties, settling beforehand the compensations to be granted in the event of failure to comply with the contractual provisions.
- 50 However, the parties cannot change the basic elements of the contract or adapt it to their own legal will. This is because of the imperative nature of these basic elements, the standard-contract having been drafted according to the legislators' (legitimate and salutary) intention to protect Romanian citizens working abroad. The consequences of such an imperative character can nevertheless be disadvantageous. For instance, since Law 156/2000 only concerns 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.
- 51 The protective intention partly explains the deficiencies in the mediation contract model. Law 156/2000 and the regulations concerning its application were initiated in order to counter practices that are detrimental to Romanian citizens working abroad, with the manifest purpose of limiting such practices and ensuring the protection of Romanian citizens beyond the borders of the country.
- 52 Such means of involvement of the departure country in the protection of its citizens working abroad have their place. 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 integration into the European Union, many Romanian workers continue to remain outside the official system, from the moment they get 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 compile accurate statistics concerning them, never mind being able to ensure them efficient protection.
- 53 In the case of illegal workers, not only are their pensions, work seniority, rights to social insurance or vacation endangered, but also their very lives and health. There are frequent cases of labour accidents among the illegal workers.

3.3. Responsibility in terms of labour safety. Labour accidents among migrant workers

- 54 Statistics show that the migrant workers are more exposed to labour accidents than the citizens of the destination countries. The question has been studied especially in Italy, where the increasing number of labour accidents has been directly correlated with the number of immigrant workers. One example is the case of the Anselmi di Camposampiero Foundry (Padua)⁸. In 2005 no less than 105,662 accidents occurred in the Veneto province. In 2006 the number was the same. However, the 87 deadly accidents in 2005 rose to 108 in 2006. The most exposed seem to be the workers in the fields of construction and mechanics.
- 55 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 accurate statistics of labour accidents involving immigrants.
- 56 Actually, the number of labour accidents reported to occur on the migrant's first day of work is an indicator of the proportions of black labour. In fact, they are reported as such in order to justify the absence of prior employment documents.
- 57 The labour inspection in the destination country has of course the legal responsibility to notify the cases of law violation by the employer. Moreover, the involvement of the departure country is also needed, since in such cases the lives of its citizens are in danger. The first way to do this is by informing the workers before leaving the country about the risks of black labour, as well as by efficient media coverage of cases of labour accidents among illegal workers. The institutions of labour inspection in both the departure and the destination countries should cooperate in order to prevent such accidents from occurring, and to facilitate their subsequent investigation.

3.4. The State's responsibility toward repatriated workers

- 58 Very often, the departure country views its emigrants and their descendants as continuing to be part of the political body of their homeland (Glick Schiller, Fouron, 2001:19). Such a view nonetheless comes with a correlated responsibility, in that the native country of the migrant workers is supposed to assume its responsibility not only for their protection during their work abroad, but also for assisting them upon their return home. If it fails to do so, it actually discourages repatriation.
- 59 Studies on migrants who returned home often indicate the fact that although the migrants have a higher level of capital (after having worked abroad) unlike other members of their native community, they have the tendency to use this capital for consumption and in order to pay off credits (Stan, Mungiu-Pippidi, Naval, 2005: 5)⁹.
- 60 In the absence of an assistance programme for workers after repatriation, the native country faces significant difficulties. The lack of information concerning financial investments, coupled with the banks' lack of credibility sometimes leads to an absurd level of consumption¹⁰. Related to this phenomenon there is an excessive increase in housing prices in the depopulated areas.

- 61 The problem of reintegrating migrant workers after the termination of their employment contract abroad is associated, according to writing on the topic, either with the management of migration or with the retention of the expatriates of multinational companies. Thus, the lack of assistance for the socio-professional reintegration discourages the return of 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. The return home may face the migrant with "culture 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 for it. This shock is mainly due to the discrepancy between the new realities and the personal expectations.
- 62 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 or do not want to show understanding and the necessary support to a person who recently returned from abroad.
- 63 Therefore, 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 creation of a re-orientation programme for migrant workers returning home. This implies first of all the identification of the most vulnerable categories of workers, followed by the implementation of professional reintegration programmes. The labour 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. As their needs and also their expectations are different, giving them the same type of treatment in terms of the reintegration programmes may be an error.

4. Conclusions

- 64 Labour legislation has territorial applicability. As such, the departure country cannot unilaterally extend its regulations of labour legislation to the employment contracts of the people working abroad (ștefănescu, 2007: 752).
- 65 However, beyond the responsibility ensuing from 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 country of origin.
- 66 The responsibility for the protection of the immigrant workers should be assumed by the workers' country of origin (along with the employer and the destination country)¹¹. Yet in quite a number of cases the means of action of public authorities in the departure countries do not get modernised with the speed needed for the migrant workers. Although the latter may have been forgotten by public authorities, they often act as agents of development. As such, Romania's integration in the European Union has produced a certain change of mentality in the Romanians working abroad. As an example, in March 2007, 14 Romanian workers who had until then carried out work without legal documents on a construction site in Torpignattara submitted a public

demand in Rome concerning the payment of due salary and legal employment. The Italian Labour Inspection intervened and sanctioned the employing company¹².

- 67 One can notice a process of solidarity between national and immigrant workers. In fact, both social partners have an interest in this. Not only are unions interested in supporting the protection of immigrant workers, but so are the employers' associations, because if there is a black labour market, the legal companies risk being marginalised by the market. Public authorities also have an interest, because they normally want to avoid the segregation of immigrant workers. In conclusion, solutions for better protection of the migrant workers are improving the means of social dialogue.
- 68 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 could make the social partners open up to a new approach towards collective bargaining, beyond the borders of each country, since the important social actors in new Member States have not been subject to defined models of collective bargaining for the same extent of time as those in the older Member States (Dimitriu, 2007:2).
- 69 As such, we identify one of the possible means of participating in the protection of migrant workers as the cooperation between the unions and the professional organisations of the departure country, and the same in the destination country
- 70 According to section 9 of the Labour Code, 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 regulations of the international labour law and the bilateral treaties in which Romania participates. Regardless of the measures of constraint and control that public authorities may take, urged by the often negative consequences triggered by the substantial labour force emigration, this right must be observed both by the departure 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 stipulate the right of any citizen of a Member State to have access to paid work on the territory of another Member State, in accordance with the dispositions in effect regulating the employment of co-nationals.
- 71 Nonetheless, 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. On the contrary, the migrants' native State should always assume its own responsibility for migrating workers, both on a moral and on a legal level, in informing, assisting and monitoring migrant workers, and in supporting the reintegration of repatriated migrant workers.

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NOTES

1. The evolution of the Romanian workers' favourite work destinations is as follows: between 1990-1995 the Romanians targeted countries such as Israel, Turkey, Italy, Hungary, Germany;

between 1996-2001 Spain and Canada were added to these, while after 2002 one could notice an increased direction of work emigration abroad towards Spain and Italy.

2. See RIA Novosti, quoted by the electronic financial newspaper www.smartfinancial.ro.
3. Study by Daedalus Consulting on a sample of 1,120 persons living in towns.
4. One case signalled by the Italian press is that of a Romanian worker who, after three years of illicit work in a construction site was for the first time offered a legal employment contract. This however specified only 3 working-hours per day, although the normal working-hours on the construction site exceeded 12 hours a day. See "Il Manifesto", 14th of March, 2007.
5. See A. Mangiarotti, "Corriere della Sera"/October, 9th, 2006. "If black labour cannot be contained, all the other regulations are useless", said the Italian Labour Minister, also mentioning that 50 million Euros provided in the Financial Law would be used for immigration.
6. Thus, according to the provisions of Law 403/2005, it is deemed an offence, punishable by imprisonment from 1 to 2 years or by fine. This condemns 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 the case may be, the one held legally responsible is the manager, the executive manager, the administrator, the legal representative of the employer, or 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).
7. Law 105/1992 stipulates in section 101 that the parties in 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.
8. In this case, two workers were carrying out maintenance services for one of the company's furnaces, activity which, in normal conditions, should have been performed by adequately trained persons and with empty furnaces. When the two workers started to work, that furnace was still active. The impurities in the cast iron led to the formation of a plug which caused the immediate death of both workers. See Orsola Casagrande, in "Il Manifesto", March 14th, 2007.
9. Regarding migrants' behaviour, after the repatriation, see also Swanie Potot, *Mobilités en Europe. Étude de deux réseaux migratoires roumains*, in "Romanian Sociology" [Sociologie Romaneasca], no. 2/2000, pp. 97-115.
10. In Romania it has become common in rural areas to hear of persons who, after having worked abroad for some time, invest the money they gained to buy elevators for their modest one-storied cottages.
11. For a general approach regarding the responsibility of the native country, see Glick Schiller, N., & Fouron, G. E. (2001), "The Responsible State: Dialogues of a Transborder Citizenry", in *Georges Woke Up Laughing: Long-Distance Nationalism and the Search for Home*, op. cit., (pp. 178-207).
12. Nonetheless, there are voices that state the contrary, namely that nothing has changed in the way the migrant workers coming from the new Member States are being treated.

RÉSUMÉS

Au-delà de la responsabilité qui résulte, pour l'employeur ainsi que pour le travailleur, de toute relation de travail, à chaque fois que des travailleurs migrants sont concernés, une tierce partie

peut être directement ou indirectement impliquée : l'Etat d'origine de l'employé.

Cet article se concentre sur les modalités pratiques par lesquelles les États s'acquittent de cette responsabilité, avec une attention particulière au cas de la Roumanie. S'appuyant sur la prémisse selon laquelle la responsabilité de la protection du migrant durant son activité à l'étranger devrait être assurée par son pays d'origine, l'analyse précise les réglementations nationales relatives à la protection des citoyens roumains qui travaillent à l'étranger, et la façon dont ce dernier répond à la réalité à laquelle il est confronté.

L'une des causes de la migration illégale, résiderait notamment dans les lacunes de ces règlements, en particulier dans leur mode d'application. La forte centralisation bureaucratique et de l'accès limité au travail à l'étranger sont souvent contournées par les migrants, ce qui a souvent des conséquences dramatiques.

Beyond the responsibility that results from any labour relation, for the employer as well as for the worker, whenever migrant workers are concerned there is also a third party that may be directly or indirectly liable for the contract's effects: the employee's native State.

This paper concentrates on the practical modality by which States fulfil this responsibility, with special consideration for the case of Romania. Based on the premise that responsibility for the migrating workers' protection while employed in the destination country should be assumed by their country of origin, this paper analyses the domestic regulations regarding the protection of Romanian citizens' who work abroad, and the way in which these latter respond to the realities confronted.

One of the causes of illegal migration, among others, is identified as residing in the deficiencies of these regulations, particularly in their mode of application. The strong centralized and bureaucratic channels of access to work abroad are often circumvented, which frequently leads to dramatic consequences.

INDEX

Keywords : labour law, migrant workers, migration policies, Romania, State responsibility

Mots-clés : législation du travail, politiques migratoires, responsabilité de l'Etat, Roumanie, travailleurs migrants

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