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## PROBLEMS OF LABOUR LAW HARMONIZATION IN EU COUNTRIES

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Creation of single labour market is one of the goals of European Union. Labour law harmonization became more important in the last few decades as a part of this process and because of growing labour force mobility. Legal bases on international level and main problems of labour law harmonization in EU member countries are considered in the paper. European system of labour law is the main subject of this paper. The main purpose is to analyze labour law harmonization process, define its main factors and perspectives in future.

**Keywords:** labour law, harmonization, European Union.

### INTRODUCTION

Labour law is one of the most important and significant fields of law for common citizens of any country because it defines rights and obligations of workers and employers. Therefore, the issues of improving the legal system in this area are actual for every country in the world and finding a solution of them is a key to sustainable economic and social progress.

The issue of development and improvement of labour legislation is particularly important in the conditions of more active integration, globalization and migration processes in the world, since it is necessary to create common standards across the world in order to ensure effective regulation of the labour market in conditions of high labour mobility, not only within national economies, but also at the international level. Nowadays issues of unification and harmonization of legislation in the sphere of labour regulation are largely solved mainly by separate states, while there is no single international system of labour law, except International Labour Organization labour standards which are advisory and don't not have a direct effect on the formation and development of labour legislation in the member countries.

However, there are examples of successful international cooperation in standardization and harmonization of labour law at the regional level, one of which is the European Union. One of the main goals of European integration since the beginning of this process in 1950s was declared as the creation of single market of goods, services, capital and labour force. Trying to achieve this goal European Union tries to develop and harmonize law systems of its member countries. In this case, the area of employment, social protection, relationships between the employee and the employer are governed by rules of labour law, according to the fact that countries and businesses have to compete by improving their products' quality and competitiveness, not by lowering working standards or reducing payments. In this paper, special attention will be paid to the problems of unification and harmonization of the laws of the member states of the European Union in this area, which become more important in recent decades due to the active expansion of the European Union and significant increase of internal migration within the EU borders and immigration from non-member countries as a result of this expansion. For example, in 2013 there were 15.3 million persons living and working in an EU Member State of which

they were not a citizen, accounting for 7.0 % of total EU employment. 6.9 million of them were citizens from another EU Member State and 8.4 million were non-EU citizens. Also, number of employed persons taking up residence in an EU Member State other than their country of citizenship of from outside the EU within the last two years has grown from 963.2 to 993.6 thousands. [1, 2]

## **1. EU COMPETENCE IN THE FIELD OF LABOUR LAW**

In relation to the European Union, harmonization of law is the process of creating common standards across the internal market. Although each EU member State has the primary responsibility for the regulation of most of issues within their jurisdiction and each has its own laws, harmonization aims to:

- create consistency of laws, regulations, standards and practices, so that the same rules will apply to businesses that operate in more than one member State, and so that the businesses of one State do not obtain an economic advantage over those in another as a result of different rules;
- reduced compliance and regulatory burdens for businesses operating nationally or trans-nationally. [3, p. 543]

While the conceptual base and purpose of labour law harmonization in the European Union is the creation of single market, legal base of this process consists of three most important international agreements:

- Treaty on European Union (TEU; Maastricht Treaty, effective since 1993).
- Treaty on the Functioning of the European Union (TFEU; Treaty of Rome, effective since 1958).
- Charter of Fundamental Rights of the European Union (2000).

The PACE Treaty on the Functioning of the European Union (deriving from the Treaty of Lisbon) lists in article 2(1) the European Union's competence in the field of labour law. What is conspicuously not included is unjust dismissal of workers, and according to article 153(5) "pay, the right of association, the right to strike or the right to impose lock-outs". As the document says, "the Union shall support and complement the activities of the Member States in the following fields:"

- a. improvement in particular of the working environment to protect workers' health and safety;
- b. working conditions;
- c. social security and social protection of workers;
- d. protection of workers where their employment contract is terminated;
- e. the information and consultation of workers;
- f. representation and collective defense of the interests of workers and employers, including co-determination, subject to paragraph 5;
- g. conditions of employment for third-country nationals legally residing in Union territory;
- h. the integration of persons excluded from the labour market;
- i. equality between men and women with regard to labour market opportunities and treatment at work;
- j. the combating of social exclusion;

k. the modernization of social protection systems.

These objectives draw, according to TFEU article 151, inspiration from a number of other treaties and sources, which in turn draw inspiration from the International Labour Organization and the Versailles Treaty. It is declared in these agreements that European Union will not intervene into areas which are not directly listed as the field of its competency. [4]

Main areas in which EU harmonizes national labour law systems are the rights and obligations of employer and employee, health care and social protection for the workers. In accordance with the TFEU – particularly Article 153 – it adopts laws (directives) that set minimum requirements for working and employment conditions, informing and consulting workers. Thus, the European Union's labour law still in the first place is the law of its different Member States which are bound to comply with the agreements of the International Labour Organization which they have ratified. These agreements do not have direct effect on the domestic laws of the Member States. They only oblige the single states to pay regard to these agreements and to incorporate them into their national law. [5, p. 11-12; 6, p. 114-115]

Individual EU countries are free to provide higher levels of social protection. For example, while the European Working Time Directive entitles workers to 20 days' annual paid leave, many countries have opted for a more generous right to the benefit of workers. But at the same time, according to the concept of harmonization, EU only adopts directives which its member countries incorporate in national law and implement. This means that it is national authorities that enforce the rules ratified by their parliament and implemented into national law. In case of some misunderstanding about using norms of European Union national authorities and courts may use the assistance of European Court of Justice in interpretation of European norms of labour law and ECJ gives such assistance or interpretation if one is needed. [7; 8]

Although there is no single unified system of labour law in European Union, its member countries and supranational bodies try to set at least single minimum standards and harmonize this field of law in the areas which are most essential for achieving higher labour force mobility and formation of single labour market and in most tangible and significant areas for common citizen regarding to the Charter of Fundamental Rights of the European Union which states that all citizens of the EU have equal rights.

## **2. PROBLEMS OF LABOUR LAW HARMONIZATION**

Process of labour law harmonization in European Union started with the beginning of European integration. In the recent decades with the active enlargement of the Union problems of this process become more obvious and actual for Member Countries. Main reasons for this are the great diversity in levels on economic development of EU member countries, differences in labour law, workers' rights and systems of social protection.

At the current moment we can distinguish such main groups of problems of labour law harmonization:

- questionable necessity of harmonization in the field of labour law for economic integration and creation of single market;

- potential conflict between transnational economic liberalization and national autonomy over social policy (excessive intervention into national labour law, overregulation by EU's supranational bodies); [9]
- problems of recently joined countries and other issues.

There is a debate in the EU about the necessity and the effectiveness of harmonization of labour law because not all member countries (or not all political powers) consider this obligatory for further economic integration and increasing labour force mobility. Some experts believe that harmonization of labour law is not necessary for integration or even for creation single labour market, and the high costs of implementation of single standards of social protection across European Union are not justified by potential positive effects. Others say that labour law has to be taken to the next level and become "social" law to be more effective. Also in some cases harmonization is considered just as a step to unification of labour law but most of the European Union members are not ready for this. [5, p. 114-115; 10, p. 451-473]

Next issue of the harmonization is excessive desire of supranational bodies of the European Union to control labour and social protection fields through setting standards which are not widely discussed within the national political systems and not directly accepted by most of society, so some politicians (especially "eurosceptics") use this argument as example of external intervention into national law, undermining national sovereignty and independence. On the other hand, getting to compromise on the issues and relations regulated by labour law in EU countries is often a difficult task and requires a lot of time, negotiations and bureaucratic procedures with no real result in short- or mid-term periods, therefore criticism of EU's policies in the area of harmonization of labour law is justified and activity must be more inclusive (set up dialog with all parties and organizations whose members can be affected by changes of the labour law), more negotiable and effective.

Another problem, deriving from enlargement of the European Union in recent decades, is the need to harmonize labour laws of the countries diverged not only by the level of the economic development but by the initial level of regulation of labour relationships, social sphere and other areas, and further development of the process of harmonization requires solution of these problems.

Thus, we can see that most problems of labour law harmonization emerge as consequences of EU's goals, such as creation of single labour market, increasing of workers' mobility, higher standards of social protection across European Union, and can be assumed as a result of resistance of different groups of interest to intensification of integration processes in the region. So all the issues of harmonization in the field of labour law can be solved within existing legal framework, such as international agreements (TEU, TFEU, Charter on Fundamental Rights of the EU etc.), national legislation and further negotiations between all Member Countries and other interested parties about terms, definitions, areas of supranational regulation and other existing and emerging problems.

## CONCLUSION

Harmonization of the labour law is one of the many disputable but objective processes of the European integration. There are debates on its necessity, effectiveness, negative influence on national law and sovereignty (with other policies of the EU) since the beginning of this process. Not all problems were listed in this paper, only major ones, but all of them can be solved with positive result through international negotiations and cooperation.

Thus, we can conclude that process of labour law harmonization in the European Union will continue and the main objective of its participants at the current stage is to make it more effective and inclusive for participants interested in its results. Nowadays EU faces a lot of challenges, and labour law harmonization is not the most important one but it has to be taken seriously both by national and supranational authorities as it is one of the areas of EU's activity which affects most of citizens of EU (over 240 million workers in member countries).

However, despite all problems we can assume that European Union partly succeeded in the creation of single labour market in Europe, creating conditions for easier adaptation of workers, higher mobility of labour force and in protection of workers' rights on different levels. These achievements do not outweigh disadvantages but they can be the base for further harmonization of labour law and social protection systems with benefits for most of the citizens of the European Union.

## References

1. Labour market and Labour force survey (LFS) statistics [electronic source]. – Access: [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Labour\\_market\\_and\\_Labour\\_force\\_survey\\_\(LFS\)\\_statistics#Foreign\\_workers\\_in\\_the\\_EU](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Labour_market_and_Labour_force_survey_(LFS)_statistics#Foreign_workers_in_the_EU), last accessed on 29/11/2014.
2. Восточное партнёрство : геоэкономическая стратегия Украины : монография / Под. ред. проф. М. Г. Никитиной. – Симферополь : ИТ «АРИАЛ», 2014. – 368 с. – С. 258-259.
3. Nygh P., Butt P. (ed), Butterworth Australian LEGAL Dictionary. – 1997. –P. 543.
4. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. – 2012. – 2012/C 326/01.
5. Voogsgeerd H. Rethinking Scope and Purpose of National Labour Law because of Developments in EU Labour Law? / H. Voogsgeerd // LLRN conference on Labour Law at Barcelona; June 2013, PANEL: Goals/Foundations of Labour Law II, 2012, p. 11-12.
6. Lowisch M. Labor Law in Europe / M. Lowisch, 2003. – P. 114-115.
7. Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. – Official Journal L 299. – 18/11/2003. – P. 0009 – 0019.
8. Labour law [electronic source]. – Access: <http://ec.europa.eu/social/main.jsp?catId=157>, last accessed on 15/11/2014
9. Barnard C. “Negative” and “Positive” Harmonization of Labor Law in the European Union / C. Barnard, S. Deakin. – 8 Colum. J. Eur. L. 389. – 2002.
10. Syrpis P. Should the EU be attempting to harmonise national systems of labour law? – Mads Henry Andenæs, Mads Tønnesson Andenæs, Camilla Baasch Andersen. Theory and Practice of Harmonisation, Edward Elgar Publishing. – 2012. – P. 451-473.

**Байрамов Т.М. Проблемы гармонизации трудового законодательства в странах Европейского Союза / Байрамов Т.М., Мираньков Д.Б. // Учёные записки Таврического национального университета имени В. И. Вернадского. Серия: Экономика и управление. – 2014 – Т. 27 (66). № 4. - С. 22-27.**

Создание общего рынка труда является одной из целей Европейского союза. Гармонизация трудового законодательства стран-участниц становится более важной и необходимой вследствие роста мобильности рабочей силы. В статье рассмотрена международно-правовая база и основные проблемы гармонизации трудового законодательства стран ЕС. Предметом изучения является европейская система трудового права, цель работы – выявить главные факторы и проблемы процесса гармонизации трудового законодательства, пути их решения и перспективы развития процесса.

**Ключевые слова:** трудовое право, гармонизация, Европейский Союз.

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