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Freedom of Agreement in Labour Relations: Challenges of EU Law Transposition

Traditionally labour law and it's position in the legal system differs from country to country. Respectively in the Soviet time labour law was considered as a part of public law. Similar approach we can find nowadays in some post-Soviet countries. Some scholars has the opinion that labour law does not belong to the public either to the private law. And also the opinion assigning the labour law as part of private law is known.

Understanding of a place of labour law in the legal system of the country make a significant influence to the application of regulatory methods of labour law. According to the dependence of labour law to the public of private law, the influence of a government as a third player in labour relations also different. The government has more power and desire to regulate labour relations in the countries where labour law belongs to the public law and respectively less power and possibilities of regulation where methods of regulation are much «softer» – in such a case the employment relationship is based mainly on the agreement of parties of that relationship.

The role of employment contract differs as well. In the system of «hard» regulation, the employment contract serves as «memorandum of rights», sometimes reflecting only the requisites of the parties, functions of the employee and, the most important, salary. In other words with the significant influence of the regulation, the possibility of finding the most appropriate way of implementation of employment rights is also limited – the state and the law knows better what should be applied for the parties of employment contract. And *vice versa*, we can presume that in case of «soft» regulation, the scope and possibility of agreement between parties of employment relationship restricted with only few minimum standards, sometimes the possibilities are significantly wider.

EU labour law having the aim of non-discrimination and protection of employees' rights as a rule establishes the minimum thresholds and standards for. The EU law has no aim of regulation of employment relationship. It is the instrument of harmonisation of legal systems of Member States.

The principle of freedom of contract in employment relations could be understandable in different approaches, first of all – it is the general freedom to conclude a contract. From this perspective freedom of contract is universal principle, usually stated in the mail laws or even Constitutions.

The second approach towards the understanding of freedom of contract in employment relations is the freedom to formulate the content of agreement. In this field the law (and the government) can make an influence to the will of parties of employment relationship. Here we could talk about the flexibility of employment regulation: to what extent parties are free to agree on conditions of implementation of their employment rights. Council Directive 91/533/EEC ensures that employers provide the information for the employees with the essential information (identity, nature of the job, duration of contract, amount of payment, normal working hours, and information on collective agreements). Although the Directive is not directly linked to the freedom of agreement, it gives a message which contractual clauses are mainly important in the employment relationship. The other conditions seems not so important, but in the same time it reflects the freedom of agreement and sometimes are restricted by the national legislation. No wish or will to bargain, because of illusion of being unlawful.

The freedom of termination of employment relations also can be considered as under coverage of this topic. On the other hand that freedom of agreement can be linked to the possibility of conclusion of an employment contract. EU Directive 1999/70/EEC establishes the principle of non-discrimination and prevents the inappropriate usage of fixed-term contracts. Moreover, the flexibility of employment relations usually is directly correlated with the flexibility of recruitment and dismissal of employees. Some scholars say, that the legal regulation of termination of labour relations reflects the level of flexibility of labour relations. So the *flexibilisation* of employment relations is directly linked to the scope of parties' of employment relationship to bargain the conditions of employment. In other words, the flexibility directly dependant on the participation of the state in the contractual relationship between employer and employee.

Therefore, EU and international rules on employee's protection on one side and respective economical pressure on the other side makes complicated the ensuring of flexibility and security of labour relations.