

GLOBALIZATION AND THE MAIN COORDINATES OF THE FREE MOVEMENT OF PEOPLE (PRE AND AFTER COVID PANDEMIC)

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Abstract

Free movement of people and the abolition of internal border controls are part of a broader concept, the concept of the internal market in which the existence of internal borders or the restriction of the free movement of persons is not possible. The principle of the free movement of people is the expression of belonging to a common European space, a space without internal barriers. The belief that the free movement of persons is really both possible and desirable has received various critical approaches during research activities but not from the perspective considered in choosing this topic. Thus, I have considered in my work to address the principle of free movement of people in a general framework that does not lack, first of all, the historical perspective of the idea of European integration. Viewed from a historical perspective, the approach of the principle of free movement of persons in this paper begins with a brief description of the first ideas and forms of European unity, and continues with the emergence of the first proper forms of European unity, when they were created by otherwise, the first sources of Community law. However, no approach to this topic can be made without studying the implications that the phenomenon of globalization has on the free movement of people.

Keywords: *Globalization, Free Movement of People, European Integration.*

The free movement of people and the abolition of internal border controls are part of a broader concept, that of the internal market, in which the existence of internal borders or the restriction of the freedom of movement of persons is not possible.

The principle of free movement of people is the expression of belonging to a common European space, without internal barriers. The principle of free movement of persons has received various approaches during research activities but not from the perspective considered in choosing this topic.

Viewed from a historical perspective, the approach to the principle of free movement of persons in this paper begins with a brief

description of the first ideas and forms of European unity, and continues with the emergence of the first proper forms of European unity, when they were created by the first sources of Community law. However, no approach to this topic can be made without studying the implications that the phenomenon of globalization has on the free movement of people.

In a general sense, globalization is a dynamic process of intensification and interconnection of international relations that produce long-term structural changes in technical, economic, political and sociocultural terms.

An interesting comparison was made in the literature on the components of this system. Thus, if the nation-state is the „mechanic” of this extraordinary „locomotive of history” which is the nation, globalization affects both the „mechanic” and the „locomotive”, so we can say that perhaps the most important contradiction of the postmodern world and the era of globalization is that between the two great processes of history: the process of national construction and the process of ethno-national deconstruction, both having a permanent character of history, only in our age it reached planetary proportions and took the form of a holotropic war, attracting everything to the riverbed, religions, cultures, collective memory, rituals, institutions, groups and peoples all together.

The challenges induced by the process of globalization, as well as its overlap with the tendencies towards regionalization and fragmentation generate tensions and risk factors worldwide leading to the intensification of the migration phenomenon.

The right to free movement presents both at regional and local level, a series of values

consisting in the fact that it is a factor of progress in the development of human personality, so that by exercising this right man enriches his knowledge and develops his specific feelings.

The phenomenon of globalization has a series of positive but also negative effects for the member states of the European Union. Although the new Member States are delighted with this new status, which implies a wide range of opportunities for free movement and access to the labor market, they express some fears about the exodus of „brains” and the departure of specialists. Even amid measures to block immigration taken by states with a tradition in the EU, they are facing an unexpected wave of immigrants. For countries that have recently joined the EU, there are currently some restrictions on the free movement of workers, which are seen as measures to combat illegal migration.

European Union citizens have the right to work or look for a new job in another EU Member State. This right to free movement of workers is part of the rights of EU citizens. At the same time, they have the right to travel and settle anywhere in the Union. The single market is one of Europe’s core values. For citizens, it means the right to live and work in any other EU country and to access a wide range of quality products and services at low prices. The freedom of movement of persons is based on the elimination of all forms of discrimination (based on the conditions of entry, stay, movement, employment, employment or remuneration) between nationals of a Member State and nationals of other Member States residing or working in that territory.

The principle of free movement of persons is the expression of belonging to a common European space, without internal barriers. Over time, the free movement of people, as a concept, has undergone several changes. If at the beginning the recipients of this concept were individuals (either economic agents, workers or service providers), then the scope of this principle was extended to the idea of being a citizen of the Union, without being conditioned by the existence of any economic activity or any another condition, such as nationality.

The European Union has created a robust legislative framework for the well-being of European citizens by establishing and

strengthening their rights as citizens, consumers and workers in many areas, including mobility, health and safety, social security, working conditions, information and consultation, equality gender and non-discrimination. Immigration policy is an integral part of Europe’s desire to create an area of freedom, security and justice.

The creation of the European Communities is based on the plan of Robert Schuman, who in 1950 launched the idea of a „unity of Western Europe”. But the European relaunch took place at the *Conference of Foreign Ministers* in Messina on 1-3 June 1955 when the Benelux countries proposed the establishment and development of a common market.

The Treaty establishing the *European Economic Community* aimed, through the establishment of a common market and the gradual approximation of the economic policies of the Member States, to promote throughout the Community a harmonious development of economic activities, sustainable and balanced growth, increasing stability, accelerated growth of the standard of living and closer relations between the states it brings together. The free movement of persons was one of the main objectives to be achieved in order to establish the common market.

The Treaty regulates the free movement of persons together with the free movement of services and capital. The concept of free movement of persons is seen from a new point of view, being considered to be in close connection with the concept of „workers”, not being seen in any way, as it is today, as a right of persons to move freely anywhere within the Community. Freedom of movement for persons has been a delicate issue for Member States due to issues of public policy or national security and the consequences they entail.

Thus, the first chapter of *Title III*, which is dedicated to the freedom of movement of workers, was introduced at the insistence of the Italian delegation and obtained without much difficulty the necessary support because, in addition to contributing to European unification, it would remedy the lack labor, a problem facing the Nordic states at the time. This is because, in an integrated economy, the movement of labor plays a key role, being the mechanism by which

a Member State adapts its standard of living to favorable or unfavorable changes that occur on the international stage and in the demographic structure.

In the run-up to the adoption of the *Single European Act* of major importance was the cooperation between the Member States of the European Communities to find the best solutions unanimously accepted to the various problems facing the Union over time. As regards the content of the principle of free movement of persons, it implies the elimination of any discrimination on grounds of nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. (EUR-LEX.EUROPA, 2018)

At the same time, the *Treaty* provides for certain rights of workers through which this freedom materializes, namely the right to accept real offers of employment, to move freely for this purpose in the territory of the Member States, to reside in a Member State in order to carry out a gainful employment in accordance with the laws, regulations and administrative provisions governing the employment of workers of the State concerned and to remain in the territory of a Member State after being employed in that State. However, these provisions do not apply to employment in the public administration.

The *Single European Act*, the first general revision of the Community Treaties, confirms that, regardless of the fact that Europe relies on the three Communities, it is not limited to them. But these solutions needed a solid legal basis, which necessitated the amendment of the 1957 Treaty of Rome. The *Single European Act* was the first major amending act of the *Treaties of Rome* in the direction of a European transformation over a period of three decades, namely between 1957 and 1987.

The global economic recession of the early 1980s brought with it a wave of „Europeanism“. However, hope was rekindled in 1985 when the European Commission, chaired by Jacques Delors, presented the *White Paper* on the timetable for the completion of the European single market by 1 January 1993. This ambitious goal was included in the *Single European Act*. It entered into force on 1 July 1987. The act provided for the establishment of the European Single Market

within a certain deadline, namely 31 December 1992, and also provided for the free movement of goods, services, capital and persons throughout the Communities.

The *Single European Act* defines for the first time the internal market in art. 13 as „an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty“.

The pace of history accelerated in the late 1980s, as Jacques Delors points out. 1989 was the „year of miracles“ in which the Soviet Union collapsed and the countries of Central and Eastern Europe began their journey to a new future. The immediate challenge for the Communities was the absorption of the Democratic Republic of Germany (following the unification with West Germany on July 3, 1990) both economically, due to its underdevelopment, and politically, due to the new weight on which the Democratic Republic of Germany was balancing on Germany's part. The time had come to formally question the deepening of European integration beyond the economic component (BĂDESCU et al., 2003).

About 3 years after the entry into force of the *Single European Act* on 1 July 1987, Community construction has made significant progress, culminating in the conclusion of a *Treaty on European Union*. It was signed on 7 February 1992 in Maastricht and entered into force on 1 November 1993 (EUROPA, 1992).

As is clear from the preamble to the *Maastricht Treaty*, the twelve Member States have decided to take a new step in the process of European integration initiated by the establishment of the European Communities, with the main objective of facilitating the free movement of persons while guaranteeing the safety and security of their peoples. by introducing provisions on justice and home affairs.

The objectives of the *Treaty* include promoting balanced and sustainable economic and social progress, in particular by creating an area without internal frontiers, strengthening economic and social cohesion, strengthening the protection of the rights and interests of nationals of the Member States by establishing citizenship of the Union (BOCANCEA, 2011).

As a novelty, the *Treaty on European Union* has created a new entity, namely the European Union. If the Single European Act states in the preamble that it aims to transform relations between Member States into a European Union, this entity has become a certainty with the advent of the *Maastricht Treaty*.

In order to ensure the free movement of persons, the *Treaty* considers the following areas to be of common interest: asylum policy, rules on the crossing and control of Member States' external borders, immigration policy and policy towards third-country nationals. With regard to the latter, the *Treaty* expressly provides for the conditions of entry and movement of third-country nationals within the territory of the Member States, the conditions of residence of third-country nationals for the territory of the Member States, including family reunification and access to the labor market. , the fight against immigration, residence and illegal employment of third - country nationals in the territory of the Member State (CRĂCANĂ & CĂPĂȚĂNĂ, 2007).

Areas of common interest are also considered the fight against drug addiction, the fight against international fraud, judicial cooperation in civil matters, judicial cooperation in criminal matters, customs cooperation and police cooperation to prevent and combat terrorism, illicit drug trafficking and of other serious forms of international crime. However, the *Treaty* allows Member States to take the necessary measures to maintain law and order and internal security.

The institutional reforms carried out by the *Maastricht Treaty*, with a view to the potential enlargement of the Union, have been seen as inappropriate in many circles. In general, the *Maastricht Treaty* has been sharply criticized for „the obscurity and secrecy of the negotiation process, the complexity of the new union structure, the lending of Community institutions to the decision-making process of intergovernmental pillars, the many exceptions and opportunities to opt out.” activity ”, likely to undermine the unity and coherence of community construction.

The *Treaty of Amsterdam* was signed on 2 October 1997 and entered into force on 1 May 1999. The full name of this *Treaty* is: *The Treaty of Amsterdam amending the Treaty on European Union,*

the Treaties constituting the European Communities and certain related documents. The stated aim of the *Amsterdam Treaty* was to ensure the European Union's capacity for action even after enlargement to the east (EUROPA, 1997).

With regard to the principle of free movement of persons, *The Amsterdam Treaty* amends one of the considerations of the *Maastricht Treaty* in the chapter „Substantive changes” in the sense that it clearly provides for the facilitation of free movement of persons and the safety and security of people, space of freedom, security and justice.

One of the objectives pursued by the conclusion of this *Treaty* and clearly expressed in art. B is that the Union aims to maintain and develop an area of freedom, security and justice within which the free movement of persons is ensured, in conjunction with appropriate measures on the control of external borders, the right to asylum, immigration and the prevention of crime; combating this phenomenon (ȘTEFAN & ANDREȘAN -GRIGORIU, 2009).

At the same time, *The Treaty of Amsterdam* imposes on the Council the obligation to take measures in the field of judicial cooperation in civil matters with cross-border implications as well as measures in the field of police and judicial cooperation in criminal matters in order to ensure a high level of security. However, Member States have a responsibility to make the necessary decisions regarding the maintenance of law and order and the defense of internal security.

By the *Treaty of Amsterdam* were repealed disp. art. 100c introduced by the *Maastricht Treaty*. Important for the subject of this paper is the *Protocol* annexed to the *Treaty* concerning the integration of the Schengen *acquis* into the framework of the European Union.

According to this *Protocol*, from the entry into force of the *Treaty of Amsterdam*, enhanced cooperation in the field - namely the *Schengen acquis* - will take place not outside the European Union but within the legal and institutional framework of the European Union and in compliance with the relevant provisions of the *Treaty*. European Union and the *Treaty* establishing the European Community (EUR-LEX.EUROPA, 1985).

In the early 1980s, a discussion was launched in the European Union on the importance of the

principle of freedom of movement for persons. The question was whether an area of freedom at European level presupposes, in addition to free access to the labor market, the lack of internal borders, namely border controls between Member States.

The concept was initiated at European level through a discussion on the importance of the term freedom of movement. In 1984, former German Chancellor Helmut Kohl met with then-French President Francois Mitterrand at the „Goldene Brenn“ border near Saarbrücken. Here they decided to eliminate border controls between Germany and France (DRAGOMIR & NIŢĂ, 2010).

Following the negotiations, France, Germany, Belgium, Luxembourg and the Netherlands decided to create an area without internal borders, known as the „Schengen area“. Thus, an agreement was concluded between these states on 14 June 1985 in Schengen, followed by the Convention implementing the *Schengen Agreement* in 1990.

As we have shown above, the *Schengen Agreement* and the Implementing Convention were not initially part of the Community legislative framework. This changed with the signing of the *Treaty of Amsterdam*, which entered into force on 1 May 1999. A Protocol attached to the *Treaty of Amsterdam* incorporates the *Schengen acquis* into the legislative and institutional framework of the European Union.

The implementation of the *Schengen Convention* aims to eliminate internal border controls for all persons, including measures to strengthen external border controls. These measures involve a common visa policy, the possibility of processing asylum applications, judicial and police cooperation, as well as an efficient exchange of information.

Structurally, the Convention implementing the *Schengen Agreement* covers the following areas:

- visas;
- the movement of foreigners in the Schengen area;
- asylum;
- police cooperation;
- judicial cooperation;
- drugs;

- weapons and ammunition;
- *Schengen Information System*;
- protection of personal data.

Although in its original form the Convention contained certain provisions regarding the crossing of internal and external borders, these provisions were repealed in accordance with the provisions of Art. 39, Paragraph 1 of the *Regulation of the European Parliament and of the Council* (EC) no. 562/06 of 15 March 2006 on the establishment of a *Community code of rules* governing the movement of persons crossing borders (called the *Schengen Borders Code*) which will apply in their place (EUR-LEX.EUROPA, 2006).

The *Convention Implementing the Schengen Agreement* contains provisions on the common policy on the movement of persons, and in particular the visa regime, with the aim of harmonizing visa policies by mutual agreement. In this sense, at art. 10 of the *Convention*, the uniform visa is regulated. This is common to all contracting parties and requires that the visit not exceed three months.

The *Nice European Council* (December 2000) meant the adoption of the *Charter of Fundamental Rights*, a document that brings together in a single framework the civil, political, economic, social rights stipulated in a series of international, European and national documents. The *Charter* makes no distinction between citizens, bringing together (for the first time) in a single document the rights of all persons legally located in the EU (EUROPARL.EUROPA, 2000).

This treaty has been known since the draft stage as the „*Reform Treaty*“ and is intended to replace the *European Constitutional Treaty* which has not been ratified by all Member States.

The *Treaty of Lisbon* was signed on 13 December 2007 and entered into force on 1 December 2009. It amends but does not replace the *Treaty on European Union* and the *EC Treaties* (EUR-LEX.EUROPA, 2007).

The *Treaty of Lisbon* contains a consolidated version of the *Treaty on the Functioning of the European Union* and a consolidated version of the *Treaty on European Union*.

The preamble to the *Treaty on European Union* states that one of the aims of the signatories of this *Treaty* is to ensure the safety and security of their peoples, by establishing an area of freedom,

security and justice in accordance with the provisions of this *Treaty* and the *Treaty on functioning of the European Union*.

Relevant in this sense is art. *Article 3* of the *Treaty on European Union*, which provides that the Union shall provide its citizens with an area of freedom, security and justice, without internal frontiers within which the free movement of persons is ensured, in conjunction with appropriate measures on external border asylum, immigration, as well as crime prevention and combating this phenomenon.

The provisions on the free movement of persons covered by *Title IV of Part III* of the *Treaty on the Functioning of the European Union* are divided into two chapters: *Chapter I* entitled „Workers” and *Chapter II* entitled „Right of Establishment”.

Article 20 of this *Treaty* provides for the establishment of European citizenship. In this respect, any person who holds the citizenship of a Member State but is a citizen of the Union does not replace national citizenship but is added to it.

Among the rights recognized to the citizens of the Union and listed in this Article is the right to move and reside freely within the territory of the Member States. This idea is developed in art. 21 of the *Treaty* which provides that every citizen of the Union has these rights subject to the limitations and conditions laid down in the *Treaties* and in the provisions adopted for their application.

The same article stated above provides for procedural and institutional issues regarding the protection of this right. Thus, an important role is played by the European Parliament and the Council, which can take decisions in accordance with the ordinary legislative procedure with a view to adopting provisions designed to facilitate the exercise of the right of free movement and the right of residence in the Member States.

Likewise, in order to ensure the protection of these rights, where the *Treaties* have not provided for powers to do so, the Council, acting this time in accordance with a special legislative procedure, may, acting unanimously after consulting the European Parliament, adopt measures in the field of social security or protection such as *Regulation (EU) no. Regulation (EC) No 492/2011 of the European Parliament* and

of the Council of 5 April 2011 on freedom of movement for workers within the European Union (EUR-LEX.EUROPA, 2011).

This legislation aims to achieve the free movement of workers within the EU by eliminating any discrimination between workers of the Member States on the grounds of nationality as regards employment, remuneration and other conditions of work and the right of such workers to move freely within the EU in order to carry out an employed activity, subject to the restrictions justified by reasons of public order, public safety and public health: *Directive 2004/38 / EC of the European Parliament and of the Council of 29 April 2004* on the right of citizens of the Union and their family members to move and reside freely within the territory of the European Union (EUR-LEX.EUROPA, 2004).

Due to the fact that it applies to all citizens, not only those who engage in economic activities, it is also called the „citizenship directive” in the literature. This *Directive* is intended, inter alia, to encourage citizens of the European Union to exercise their right to free movement and residence in the territory of the Member States, to reduce administrative formalities to essential minimum requirements, to provide a better definition of family membership and to limit for the purposes of refusing entry into the territory of a Member State or terminating their right of residence (VOICU, 2009).

The adoption of this *Directive* was based on the recognition by the signatories of some principles governing the free movement of persons. Thus, the following were taken into account, as set out in its preamble:

- citizenship of the Union confers on every citizen of the Union a fundamental and individual right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the *Treaty establishing the European Community* and of the measures taken to implement it;
- the free movement of people is one of the fundamental freedoms of the internal market, which is an area without internal frontiers in which freedom is ensured in accordance with the provisions of the *Treaty*;

- the need to amend *EEC Regulation no. Council Regulation (EC) No 1612/68* of 15 October 1968 (EUR-LEX.EUROPA, 1968);
 - the need to grant the right to free movement and residence recognized to citizens of the Union and their family members, regardless of their nationality;
 - citizens of the Union should enjoy the right of residence in the host Member State for a period not exceeding three months, subject to no conditions or formalities other than the requirement to hold a valid identity card or passport;
 - the fact that Union citizens who have agreed to settle in the host Member State for a long time enjoy the right of permanent residence would strengthen the feeling of Union citizenship and is a key element in promoting social cohesion, which is one of the fundamental elements of the Union;
 - all citizens of the Union and their family members residing in a Member State should enjoy equal treatment with nationals in that Member State, subject to the special provisions expressly provided for in the Treaty and by secondary law, etc.
- Then, there is *Council Directive 77/486 / EC of 25 July 1977 on the education of the children of migrant workers*. Through this *Directive*, the European Union has already sought to promote the approach by Member States to the problem of the education of the children of migrant workers, given that the Council, by a resolution adopted on 21 January 1974 on the social action program, those designed to improve the conditions of free movement of employees, in particular as regards the reception and education of their children.
- This applies to children for whom schooling is compulsory under the legislation of the host Member State and who are descendants of a worker who is a national of another Member State (VOICULESCU, 2005).
- Commission Regulation 1251/70 of 29 June 1970 on the right of workers to remain in the territory of a Member State after being employed in that State* The preamble to that regulation sets out the reasons why it was adopted (EUR-LEX.EUROPA, 1970). Thus, in its elaboration several premises were taken into account, among which:
- labor mobility within the community which means that workers can take up several jobs in succession in several Member States, without being disadvantaged by it;
 - the possibility for a worker who resides in the territory of a Member State to benefit from the guarantee of the right to remain in that territory, after ceasing to be employed in that State as a result of reaching retirement age or due to permanent incapacity for work or who, after a period of gainful employment and residence in the territory of a Member State, is employed in the territory of another Member State, while retaining his residence in the territory of the first Member State.
- Regulation no. Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 on the creation of a Community code on the rules on the free movement of persons across borders (Schengen Borders Code):*
- Among the considerations taken into account in drawing up this Regulation are the following:
- the adoption of measures to ensure any checks on persons crossing internal borders is part of the Union's objective of establishing an area without internal frontiers in which the free movement of persons is ensured;
 - the creation of an area in which persons can move freely will be doubled by the measures contained in the common policy on the crossing of external borders;
 - the creation of a common body of legislation, in particular through the consolidation and development of the *acquis*, is one of the fundamental components of the common policy on the management of the external borders;
 - border control is not only in the interest of the Member States at whose external borders it is carried out, but also in the interest of all Member States that have abolished internal border control, border control being likely to contribute to combating illegal migration and trafficking in human beings and to prevent any threat to the internal security of the Member States, to public policy, to public health or to international relations;
 - the reintroduction of internal border controls should be an exception in a space where people can move freely.

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