

Impact of COVID-19 on the Realization of Freedom of Movement in the European Union and Its Member States

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ABSTRACT

This article is devoted to the impact of COVID-19 on the migration crisis and its consequences on freedom of movement within the European Union. The authors analyze the main and important documents adopted by both the European Union and its Member States on restriction of freedom of movement in view of the rapid spread and exacerbation of the coronavirus pandemic in the world. The research established that the legal basis for the implementation of freedom of movement of persons is regulated by a number of international legal documents and the system of EU acquis. The authors prove that the freedom of movement of persons in the European Union is one of the key provisions on which the whole system of European Union law is based. This article stipulates that freedom of movement is based on the provisions of the founding agreements on the citizenship of the Union and the free movement of workers, acts of secondary EU legislation, the content of international agreements concluded with third countries and international organizations, as well as the activities of EU institutions on the regulation of processes related to the movement of persons in the territory of the European Union. This article proves that the provisions on the free movement of persons apply to all categories of citizens of EU Member States engaged in economic activities.

Keywords: *freedom of movement, Covid-19, European Union, legal instruments, EU acquis, restrictions.*

1. INTRODUCTION

The coronavirus crisis, which began in early March 2020 in Europe, caused a situation when the majority of European countries were forced to restrict the freedom of movement of persons. It is one of four fundamental freedoms of the internal market of the European Union. Freedom of movement of persons is guaranteed by both primary and secondary legislation of the European Union. This freedom includes the right of a person to move, live and work in the Member States of this integration organization. In its turn, the restrictions imposed by the EU Member States in regard of the right of persons to enter and stay also led to a sharp decrease in the rate of migration to the most industrialized countries of the European Union. According to the Organization for Economic Cooperation and Development, the percentage of new visas and residence permits in the first half of 2020 decreased by 46 percent compared to the first half of 2019. In the second quarter of 2020, the reduction fell to 72 percent [1].

One of the recent steps of the Council of the EU concerning the establishment of restrictions on freedom

of movement was the adoption of the Recommendation on Amendments to Council Recommendation (EU) 2020/912 on the Temporary Restriction of Non-essential Travels to the EU and the Possible Lifting of such Restrictions from 01 February 2021 in Brussels [2]. Such an initiative of the European institution was caused by the fact that most of the EU's countries were already in the red zone. Therefore, the governing bodies of the European Union had a strong necessity to allocate in more detail high-risk territories. Therefore, the EU Council decided to add a new category of restrictions in regard of travels to EU countries taking into consideration the COVID-19 pandemic [3]. In particular, it is envisaged that a new color - dark red appears on the weekly map published by the European Center for Disease Prevention and Control. It was added to the existing categories of green, orange, red and gray colours.

Dark red color will be used in areas where COVID-19 circulates at a very high level, and where there are other infectious strains. It will also be applied to areas where the cumulative 14-day report rate about COVID-19 is 500 or more per 100,000 people.

Countries find themselves in one of the already 5 existing zones according to the number of cases per 100,000 population, the number of tests per 100,000 and the number of positive tests. The green zone includes those countries, if within two weeks there are fewer than 25 cases per 100 thousand in the country, and the percentage of positive tests is less than 4%. The orange zone covers countries, if there are fewer than 50 cases per 100,000 within two weeks, the percentage of positive tests is less than 4%. The red zone provides for the presence of 50 cases per 100,000 within two weeks, and the percentage of positive tests is more than 4%, or if the number of confirmed cases is more than 150 per 100,000. After all, the zone is considered grey if there is not enough information about the region or if the testing level is lower than 300 tests per 100,000.

The EU Council has written in the Recommendation that EU Member States should prevent all non-essential travels to red and dark red areas. The European countries should also require a COVID-19 test from those citizens who arrive into their territory from an area that is classified as dark red. Furthermore, such citizens have to be in self-isolation [4].

2. METHODOLOGY

The research methods are chosen taking into account the delivered purpose, object and subject of research. In order to establish objectivity and justification of scientific positions, conclusions and recommendations, a set of philosophical-worldview general scientific and special scientific methods were used in the article. Formally, the logical method is used to identify the basic concepts and legal categories relating to the analysis of the content and sources of the European Union acquis. The historical method is used in the process of analyzing the regulation of freedom of movement in the EU practice at different stages of the EU law development.

The system analysis [5] method provided an opportunity to identify the internal connections between legal decisions and measures of EU and its Member States and formulate key conclusions in this area. The comparative method is used for the comparison of the contents and volume of the EU acquis in legal regulation of freedom of movement within the EU. The dialectical method is used in the analysis of the legal relations prevailing within the EU acquis in human rights area.

The logic and legal methods are applied in order to clarify the implementation of legal decisions and measures of the EU acquis into the third countries' legislation. Forecasting [6] and simulation methods are used to identify modern problems and threats in the area of human rights' protection and restrictions applied by the EU and its Member States.

3. RESTRICTIONS OF FREEDOM OF MOVEMENT APPLIED BY THE EUROPEAN UNION AND ITS MEMBER STATES

In addition to the institutions of the European Union, almost all the EU Member States introduce their own national measures in order to restrict the freedom of movement of persons through their territory due to the spread of COVID-19. For example, France, Germany and the Czech Republic from February 1, 2021 announced the introduction of restrictions on crossing their borders. Thus, the French government prohibits entry from outside the European Union's countries, as well as leaving their country. The ban comes into force on January 31, 2021. This prohibition will not apply only to workers living in border areas. At the same time, it will be possible to enter France from the EU's territory, but only with a negative test for COVID-19. For instance, France will increase and intensify the anti-epidemic measures.

From January 30 to February 17, 2021 Germany also as well as France prohibits entry from five countries — the United Kingdom, Portugal, Ireland, Brazil and South Africa where the spread of new strains of coronavirus is in negative tendency. The ban will not apply to Germans who return from these countries and foreigners with a residence permit in Germany. From January 31, 2021 the entry ban will apply to two African countries — Lesotho and Eswatini. In general, the strict restrictions on entry to Germany are already in force in about 40 countries, especially those where new, more contagious strains of coronavirus are common. In order to enter from abovementioned territories at the border of Germany, the persons have to provide a negative test for COVID-19.

For example, in the Czech Republic, from January 30 to February 15, 2021 borders are closed altogether for all foreigners. An exception is made only for those persons who are studying, working or have a residence permit in the country. Also it is possible to enter the Czech Republic to visit closed relatives, receive medical care, participate in weddings or funerals.

According to Johns Hopkins University, in France, coronavirus was found in more than 3.2 million people, of which more than 75 thousand died from complications. In Germany, more than 2.2 million people are sick or sick with COVID-19, including almost 57,000 who have died. And in the Czech Republic, the total number of cases of coronavirus exceeded 980 thousand, while more than 16,200 people died from COVID-19.

Other words, taking into consideration the spread and exacerbation of the COVID-19 pandemic in the world, both the European Union, on the one hand, and its Member States, on the other hand, take a number of measures at the institutional and national levels in particular.

4. RESULTS OF RESEARCH

It should be noted that the legal basis for the implementation of freedom of movement of persons is regulated by a number of international legal documents and the system of EU *acquis*. In particular, within the framework of the United Nations there are some international documents in this area. They are: the Universal Declaration of Human Rights of 1948 [7], International Covenant on Civil and Political Rights 1966 [8], International Convention for the Protection of the Rights of all Migrant Workers and their Families in 1990 [9] and others.

If we analyze the legal aspects of the European Union, we will notice that from the very beginning of the creation of the European Communities their main goals were economic and political integration on the European continent. And the sphere of human rights in the EU activities was “in the shadow” of other, more significant integration priorities of the European Union [10]. The sphere of human rights was an area beyond the EU’s activities and national states with their different traditions of fundamental rights have been engaged for a long time. Moreover, the bodies of the European Union considered the reference to national constitutional traditions and mechanisms to be sufficient. Eventually, the sphere of human rights at the regional level completely belonged to the activities of the Council of Europe.

While human rights with the rule of law and the development of pluralistic democracy have always been a priority for the Council of Europe, the European Union has solved political problems. In particular, it concerns the economic integration of states. Nowadays, such a clear division between the activities of these organizations has changed [11]. The protection of human rights and fundamental freedoms has become a unifying factor in the cooperation of these organizations, which not only brings together their legal norms and principles in various fields, but also have become European coordination centers where the effective mechanisms for the protection and protection of human rights are functioning.

Talking about the European Union, we would like to emphasize that the legal principles of freedom of movement of persons are determined by the provisions of the Treaty on the Functioning of the European Union (hereinafter - TFEU) and the Treaty on the European Union (hereinafter - TEU), as amended and supplemented by the Lisbon Treaties [12], acts of the institutions of the Union (secondary legislation of the European Union – regulations, directives, recommendations and conclusions in accordance with Article 289 of the TFEU) and the practice of the EU Court of Justice.

A clear definition of the concept of “freedom of movement of persons” in the European Union, enshrined

at the institutional level, has not been formulated [13]. The legislation of the European Union mostly applies the term “freedom of movement of persons” without its interpretation [14]. Thus, Article 26 of TFEU “Internal Policy and Activities of the Union” provides for the adoption by the Union of measures to create or ensure the functioning of the domestic market, where the domestic market covers an area without internal borders, which ensures the free movement of goods, persons, services and capital. Para. 2 of TFEU “Non-discrimination and Citizenship of the Union” (Articles 18 - 25 of the TFEU) establish the citizenship of the Union and the right of citizens to free movement and residence in the territory of EU Member States. Section IV “Free Movement of Persons, Services and Capital” (Articles 45-66 of the TFEU) defines the principles of free movement of persons within the Union.

Based on the provisions of the EU legislation, the scope of freedom of movement of persons can be extended to other states only if they join the European Union [15]. Such situations took place in 2004, 2007 and 2013 accordingly when Member States joined the European Union. The basis for the freedom of movement of persons in the European Union is the European citizenship (Articles 18-25 of the TFEU). It directly provides for the citizenship of one of the EU Member States [16]. Other words, it means that without the citizenship of the EU Member States, a person cannot realize the freedom of movement of persons fully. However, even in this case, it is likely that citizens of the new Member States will be somewhat restricted in the application of freedom of movement completely.

In the European Union the freedom of movement applies primarily to citizens of the Union’ Member States, as well as to citizens of the three Members States of Single Economic Area (hereinafter - SEA) - i.e. Iceland, Norway and Liechtenstein, as well as Switzerland [17]. In regard of the citizens of third countries who can legally stay or reside in the territory of the European Union, their legal status is regulated by the secondary legislation of the European Union. Their status is also characterized by another certain freedom (third-country nationals who are family members of EU citizens), and certain restrictions (the need for a residence and movement permit, etc.). The Court of Justice of the European Union has spread the principle of freedom of movement of persons within the European Union to freedom of foundation and economic activity and freedom of service. In its decision in Case 48/75 Royer 1976 [18], the EU Court of Justice, based on a comparison of these freedoms, stated that they are based on the same principles, since they relate to the arrival and residence in the territories of EU countries of persons protected by the Community’s legislation and the prohibition of any discrimination on national soil.

The concept of “persons enjoying the right to free movement” in accordance with the provisions of Regulation (EC) No. 562/2006 of the European Parliament and of the Council establishing the Schengen Border Code refers to: 1) citizens of the Union within the meaning of para. 1 of Article 20 of the TFEU, as well as citizens of third countries who are family members of the Union’s citizen who exercises the right to free movement. The Directive 2004/38/EU of the European Parliament and of the Council of April 29, 2004 on the Right of Citizens of the Union and their Families to move freely and reside in the territory of member states is applied to them; 2) citizens of third countries (any persons who are not citizens of the Union within the meaning of para. 1 of Art. 20 of the TFEU and do not fall under the interpretation of the concept of “persons enjoying the right to free movement”) and their family members, regardless of their citizenship, who, on the basis of agreements [19] concluded between the Union and its Member States, on the one hand, and these third countries on the other hand, enjoy the rights in the field of free movement, which are equivalent to the rights of free movement.

In the broad meaning the persons’ freedom of movement in the European Union has several blocks of legal norms.

They are: 1) norms that regulate the freedom of movement of EU citizens (Articles 18-25 of TFEU, Directive 2004/38/EC of the European Parliament and of the Council of April 29, 2004 on the right of Citizens of the Union and their families to move and reside freely in the territory of the EU Member States); 2) norms that regulate the freedom of movement of workers, as well as their family members (Articles 45 – 48 TFEU, Articles 28 – 30 of the TEU, EU Regulation 492/2011 on the Freedom of Movement of Workers; Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of Union’s citizens and their families to move and reside freely in the territory of the EU Member States, Regulation 1251/70 on the right to remain in the country after the completion of work, Council Directive 2003/86/EC on the right to family reunification, etc.); 3) norms that regulate the movement of persons from third countries in the territory of the European Union (Articles 67-76, 77-80, 81-89 of the TFEU, Council Directive 2003/86/EC on the right to family reunification, Council Directive 2003/109/EC on the status of third-country nationals who are long-term residents, Council Directive 2005/71/EC on facilitating the entry of scientists into the territory of the European Union, Council Regulation (EC) No. 859/2003, which extends the boundaries of EU Regulation No. 1408/71 and EU Regulation No. 574/72 on third-country nationals who are not yet covered by the provisions of the relevant acts on the basis of their nationality, Council Regulation No. 1030/2002 on the format of access to residence of third-country nationals in the European Union, the

Directive on the conditions of entry and residence of third-country nationals for the purpose of employment for positions requiring high qualification, etc.); 4) Schengen Agreements incorporated by the Lisbon Treaty into the TFEU (Articles 67-76 of the TFEU) [20].

In its turn, the freedom of movement of persons is closely related to the provisions of the EU legislation on European citizenship. The Lisbon Treaty came into force on December 1, 2009, and provides for the creation of a more effective system for the protection of the rights and interests of citizens of Member States (Art. 3(5) of the TEU). The issue of EU’s citizenship is also highlighted in another EU document – the EU Charter of Fundamental Rights (hereinafter - Charter).

According to para.1 of Art. 6 of the TEU, the Charter is one of the founding acts of the European Union. Its legal force equals to the EU’s founding documents. At the same time, the Charter remains a formally independent source of law and is not part of the structure of the Treaty on the European Union and the Treaty on the Functioning of the European Union.

Despite the fact that the Charter enshrines the fundamental rights and principles of the legal status of a person and a citizen in all spheres, only the institutions, bodies and institutions of the EU are recognized as formal “recipients”, on the one hand, and Member States, on the other. In addition, the EU Court of Justice in its Decision of 13 April 2000 in Case C-292/97 noted that the requirements arising from the protection of fundamental rights in the law and order of the Community are also mandatory for Member States when they implement the latter's right. This principle, enshrined in the Charter, is usually applied to both central, regional and local authorities, as well as to NGOs when they implement Union’s law.

One of the important achievements of the Charter is the unification of various categories of rights in a single document. Apparently, the EU Charter of Fundamental Rights reaffirmed the need not to divide rights. In order to make the content of fundamental rights in the Charter more understandable, first of all – for ordinary people, these rights were classified according to a new, unconventional criterion – the values to which they are directed.

Accordingly, for the first time in international legal practice, all categories of human rights were placed in a single codified source of the European Union without a clear criterion for the distribution by chapter, and the name of each of them corresponds to one of the values of the Union. The Charter contains 54 articles, which are combined into 7 chapters. Chapter I - Dignity (Art. 1-5) - includes the right to human dignity, rights and guarantees that ensure the decent existence of the individual in society, that is, the right to life, the prohibition of torture, slavery, etc. Chapter II – Svoboda (Art. 6-19) – contains

mainly “negative” rights, that is, the right to non-interference in private life by other persons, mainly by public authorities.

These rights act as a legal measure of a person’s freedom: the right to liberty and security, respect for private and family life, the protection of personal data, marriage and family creation, freedom of thought, conscience and religion, freedom of art and science, freedom of entrepreneurship, etc. Chapter III “Equality” (Art. 20-26) contains the principle of equality in all its manifestations, as well as enshrined the rights of children, disabled people, the elderly [21]. Chapter IV “Solidarity” (Art. 27-38) is aimed at achieving social justice in society, mitigating contradictions between different classes and layers of the population [22].

Chapter V “Citizenship” (Art. 39-46) contains rights that correspond to the European Union’s citizenship. Chapter VI “Justice” (Art. 47-50) enshrines not so many rights as guarantees of individual rights, mainly within the framework of the criminal process. Chapter VII – “General Provisions” (Art. 51-54) includes general provisions on the scope of rights and the Charter’s interaction with other sources of fundamental rights of international, national and supranational levels. It should be noted that the main idea of the whole Charter is the proclamation in the Preamble that the European Union “puts the human being at the center of its activities through the introduction of Union’s citizenship and the creation of an area of freedom, security and justice” [23]. To our mind, the Charter is a set of principles and values that constitute the legal status of the individual - the principle of respect for human dignity, the principle of ensuring the rights and freedoms of a person and a citizen, the principle of equality, the principle of solidarity, the principle of democracy and the principle of a legal state. In particular, para. 3 “EU Citizenship” of Art. 45 of the EU Charter stipulates that every citizen or citizen of the European Union has the right to free movement and residence in the territory of EU’s Member States [24]. This provision is regulated by the TFEU. In accordance with Art. 20 of the TFEU the Union’s citizens are granted, in particular, the right to free movement and residence in the territory of Member States in compliance with the restrictions and conditions stipulated by the constituent agreements and provisions adopted on the basis of the latter.

5. CONCLUSIONS

Therefore, we can conclude that, first of all, the freedom of movement of persons in the European Union is one of the key provisions on which the entire system of law of the European Union is based. Secondly, such freedom is based on the provisions of the constituent agreements on the citizenship of the Union and the free movement of workers, acts of secondary EU legislation, the content of international agreements concluded with third countries and international organizations, as well as

the activities of EU institutions on the regulation of processes related to the movement of persons in the territory of the European Union. Thirdly, the provisions on the free movement of persons apply to all categories of citizens of EU Member States engaged in economic activities, and with the introduction of EU citizenship and all citizens of the Union.

AUTHOR CONTRIBUTIONS

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