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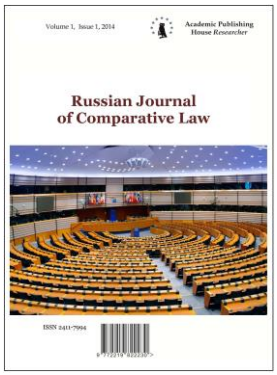

On Private International Law Regulation of Cross-Border Peripatetic Employment

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Abstract

The right to employment commonly considered as a privilege exclusive to individuals to dispose their capacity for work in the form they wish is the essential or fundamental unalienable individual right. In this quality this right is kept in all supreme laws of advanced states starting from the second half of the twentieth century making clear to all that the wage-earning labour is one of the most important phenomena produced by a social life to tie up members of different social groups. Thus it is enshrined in relevant legal forms (laws, codes, regulations etc.).

Being a product of legislation and forming logically complete bodies of rules to deal with labour as a particular social phenomenon, these forms evidence of a separate field of law (labour law) in national systems of law. With respect to this it can hardly be necessary to state that in line with other fields of law underlying modern systems of law much has been changed in labour law since the time when this right of employment was first introduced into national law forms in the nineteenth century as a fundamental individual right of those closely connected with a territory of a corresponding community. Now we may say that there is little or sometimes even no connection between domicile and place of employment, when individuals change locations for a better life by crossing borders of different sovereign states. This accordingly affects concepts underlying labour law in national systems of law with a corresponding effect to labour environment.

But what remains unchangeable is fundamental principles and rights at work to take appropriate measures in dealing with labour (nature, character and effect of this particular social phenomenon). These are universally accepted material law principles guiding and encouraging employees, employers and sovereign states around this increasingly interconnected world in accordance with a particular pattern. That is the balance of interests of capital and labour. The main idea is to prevent burdensome forms of work organisation in accordance with a general principle of our time advanced in most jurisdictions that the work should be adapted to the worker.

For this very reason, in this short article we would like to take an opportunity to address the issue as to whether in the age of sanctity of property and labour, nature and character of employment exert substantial influence on private international law regulation, on devices used by legislators in this particular sphere of regulation. These are directly applicable rules, conflict of law rules, uniform material law rules and international jurisdiction rules, which make up a separate field of law in national systems of law to deal with legal and jurisdictional conflicts of the time and place arising in a private law sphere. Here we would also like to uncover the employment status of an individual in private international law paying particular attention to expression, recognition and protection of labour rights exercised on a cross-border basis and make practicable proposals.

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This all in order to try to think of tomorrow as well as of today private international law and treat accordingly particular legal issues coming before it.

Keywords: cross-border peripatetic employment, mobile (transient) employees, public interest, legal and jurisdictional problems.

1. Introduction

It has always been held that the wage-earning labour makes a good deal for the most part of relevant communities encouraging national corporations, industries and economies to subsist, grow and prosper in the long run. In the private law sphere labour is viewed as origination of property, which right is reckoned to be of a particular value and importance for all nations around the world. For this very reason all states commonly maintain and protect such rights, which may be exercised by individuals in whichever socio-economic sphere they wish, ensuring maximum opportunities for employment.

Taking this into account the main end of this article is to throw some light on the nature, character and effect of peripatetic employment as a separate type of employment when considering it through the lenses of three-fold jurisprudence of private international law. That is the private law jurisprudence comprising the following substantial elements: public interest, governing law and procedural law. Being put in practice of regulation of private law relations closely connected with two or more sovereign states, this jurisprudence accordingly affects character and effect of this regulation. After the choice of appropriate court it rests on three main actions: finding (choosing); interpreting and applying proper law.

The reason is evident: cross-border peripatetic employment relying on foreign labour and capital with closely connected rights and duties is a very useful instrument in the hands of corporations doing business in different socio-economic spheres on a broad cross-jurisdictional basis. It unblocks operation of instrumentalities of commerce and promotes its flow in a safe and efficient way. And states should handle it very carefully if modern national industries so request. But when this instrument gets into the hands of lawyers when dealing with real, significant and good faith controversies arising between employees and employers on a cross-border basis it becomes exceedingly complicated and raises many doubts as to its legal effect for the parties concerned as well as home and host states.

2. Materials and methods

After years of fight now labour is both voluntary and remunerative depending to a large extent on skills and experience of those able, willing and seeking to work. It is limited by the general prohibition to work more than 8 hours per day without having rest and ensured against temporary or permanent loss of wage-earning powers in case of disablement and sickness.

This cannot be considered otherwise than the fundamental premise of healthy national economies. Besides, in advanced states with governments of laws rather than men, working class is mostly represented by intelligent operatives living and working in very comfortable conditions. In the very same way labour legislation anticipated by factory legislation in most advanced states, is generally not imposed from above. It is rather administered by all those to whom it is applied. These are individuals, otherwise known as those who work.

In these circumstances cross-border peripatetic employment cannot but be a matter of review with all the necessary care and anxiety so far as it is an increasingly large component of modern national economies to be dealt with by proper legal means being in the hands of states. For this very reason in the present paper it will be considered, explained and guided by the use of the method of the broad comparative analysis of national and foreign labour and private international law rules.

3. Discussion

3.1. On labour relations in private international law

It should always be noted that the world rests on a great number of legal systems guiding different types of a private law activity carried out by individuals in their sole quality or jointly with others (corporations, organizations, states as participants of commercial deals and transactions). This activity, its nature and effect are marked by the sign of territoriality. It is inherent to private law itself, which is strictly territorial.

When we speak of labour (Browne, 1890), it is sufficiently recognized that in legal theory and practice it may be viewed from the following three fundamental standpoints relevant to material effect of this particular legal and social phenomenon to immediate participants of this particular type of private law relations exercised inside a particular community (employees and employers) and a state, with which jurisdiction this labour is closely connected. That is a classical model of labour relations, in which wage-earning labour is the essence whereas place is a necessary premise of particular private law relations, which main function is to make national economy subsist, grow and prosper in the long run. For this reason, there is only one state, these relations are closely connected with, to guide them. That is the state where individuals permanently stay and work.

Hence, it means that among essential elements of a classical model of labour relations to be properly weighed by judges at the settlement of conflict of law problems we may distinguish common place for work and residence. But with territorial borders of states left open for individuals in their quality of employees or employers (when they act jointly) from around the world, this labour becomes detached from the place of residence (home state) and turns to be closely connected with other (host) states. For this very reason when this labour has effect on two or more sovereign states having regulatory interests in it, in labour disputes it is viewed through the prism of a separate field of law in national systems of law termed "private international law" dealing with two main problems. These are conflicts of laws and conflicts of jurisdictions.

To resolve them means to converge conflicting legitimate regulatory interests of distinct sovereign states by means of devices found to be acceptable for them: 1) directly applicable rules (or overriding mandatory provisions of material law); 2) conflict of law rules; 3) uniform material law rules; 4) rules on international jurisdiction. These are particular mandatory and default legal rules being in service of sovereign states when addressing under the heads of relevant legal institutes of private international law particularly important issues of the social life of relevant communities by way of directing or coordinating private law relations burdened with a foreign or international element.

We are speaking of allocation of essential elements of cross-border labour and other relations closely connected with them in the appropriate system of law and system of courts by operation of the following legal institutes: 1) private international law of persons; 2) private international law of things and 3) private international law of obligations, each giving preference to appropriate criteria (subjective, objective or those, which do not fall under these two categories but being of a particular value and importance in this particular sphere of regulation). To deal with it means to find exclusive connection of these relations with one particular state with its system of law and courts.

It is plain that in theory and practice much may be asked of any other private law relations and their role in steady and harmonious growth of relevant communities. But it is apparent that labour relations including those exercised on a cross-border basis are generally felt to be of great value and importance for efficient working of national economies around the world. The ground for this observation may be found in the very idea of communities, which subsistence, growth and prosperity to a large part rest on labour and property, which this labour produces.

For the evidence please refer to Art. 170 of Brazil's Constitution, 1998, in which it is given that "the economic order, founded on the appreciation of the value of human labor and free enterprise, is intended to assure everyone a dignified existence, according to the dictates of social justice, observing the following principles... II. private property, ... VIII. pursuit of full employment...". Labour and property - these are two closely connected and practically important social phenomena, currently relying on highly professional intellectual labour and modern technologies to be used for the benefit of national economies and markets.

Peripatetic labour is a separate type of wage-earning labour. To study cross-border peripatetic labour relations in a private international law sphere means to show a particular non-commercial and voluntary nature of these relations burdened with a strong element of internationality underlying them. That is an element, which presence in the structure of private law relations resting on foreign capital and labour (Howell, 1890), may be characterized as real, firm and stable. It tends to a national legal order distinct from that other elements of private law relations tend to and as a result causes legal and jurisdictional problems.

When we advert to these relations first we need to inquire into the nature of separate rights and duties of the parties (Kant, 1887). That is the issue that really matters in this particular field of national law. With reference to this, it can hardly be necessary to state that labour relations are

voluntary, mutually beneficial relations of the parties relying on personal services to be performed in employers' interests and in accordance with their instructions for a money consideration. As it comes from this definition three main attributes should be present in service relations of individuals to be called labour. These are 1) free will; 2) expectation of remuneration and 3) employees' involvement.

This means that where there is no will and no need to work as necessary elements of the employment personality of individuals, which is dynamic, as well as no freedom of terms and conditions of employment or where employers conceal the real purpose of services to be rendered, there is no place for voluntary mutually beneficial relations. It is coercion, which is currently prohibited by all sovereign states advancing the idea that the only ruler is law rather than men. As a result all and any agreements, bargains or arrangements (Williston, 1893), written and express, which have been made by individuals and corporations for a particular kind of work to be rendered in the interests of corporations for a money or any other consideration are considered null and void when there is no consent from employees to be bound by their terms and conditions. Therefore they do not have any effect for employees rather for employers.

This voluntary nature of private law relations exercises much influence on fundamental legal principles of their ruling (Fletcher, 1985: 1263), which may neither be overlooked nor underestimated. The reason is evident: they express the main idea of labour law, which becomes effective in relevant national law rules. Constituting a particularly important part of national labour law, these principles 1) exclude all and any type of forced labour and discrimination or unequal treatment mainly dealt with by discrimination law; 2) encourage considerable latitude in drafting terms and conditions of labour relations and 3) provide for termination of these relations whenever employees please.

With respect to this we would like to remind that slavery is one of the most abominable legal institutes of the Roman law that survived in national systems of law until very recent times. And there is always a risk to return to the use of forced labour, especially now when criminal business in whichever socio-economic sector to a large part relies on forced labour taking different forms. This in disregard of all efforts made by states and other communities to prevent and combat forced labour as the issue coming within purview of their particular interests, which in legal theory and practice are known as interests of public policy, public security and public health.

Apart from the subjective will, which right to be freely exercised is ensured and protected by sovereign states on a cross-border basis, there are two other attributes (expectation of remuneration and employees' involvement) characterizing labour relations. With respect to expectation of remuneration it should always be reminded that labour may never be considered apart from the capital as a separate very important social phenomenon. It has always been taken for granted that labour is the only means to survival for the most part of humanity and one of such means for the well-being of the rest. Whether or not there is any money consideration in each particular case that is the matter of fact. And that is obviously not the issue we would like to enter into further detail rather the one relevant to legal nature of this expectation.

We are speaking of the right to be paid for the work done in accordance with instructions of employers and in their interests. This right is clearly given, ensured and protected in all and any national law forms, making national and foreign individuals enter into a separate social group called consumers. That is the group making money, goods, services and technologies circulate.

As to the final attribute it should be said that taking into view a particular nature, essence and function of labour relations concentrated on the work and its effect, labour is inextricably linked with employees ability, willingness and seeking to work using their experience, skills and knowledge connected with employment personality in an inextricable manner.

Taking into view a particularly sensitive for states nature of these voluntary and mutually beneficial relations held on a cross-border nature it is time to have a look at ideas underlying reconciliation of their conflicting regulatory interests.

3.2. Particulars of private international law regulation of labour relations

In the private international law sphere public interest is a specific sovereign idea through keeping away from what is not amenable to a nature of a particular community with its labour, commodity, capital and other markets, makes it grow and prosper under particular circumstances. To further the aim to ensure public law interests underlying private law rights and interests of a people constituting a relevant community and thus make this community composed of different

social groups grow and prosper in the long run it employs specific legal rules. These are directly applicable material law rules, which for the substantial or material regulatory interests in private law relations preclude the very problem of conflicting sovereign interests of distinct states and thus relieve judges from the necessity to choose law applicable to cross-border disputes of the parties. They are directed and resolved in conformity with material law rules of the state closely and substantially connected with private law relations in dispute.

In line with this there is another very strong private international law idea. That is the idea of legal paternalism in the sphere of conflicting regulatory interests in private law issues of two or more sovereign states facing with the problem of conflicts of capital and labour. It rests on interests of equity and equality and holds an individual (his rights and interests) in the center of all valuations in all the matters of the form, substance and effect of private law relations.

When clothed in the form of distinct private international law rules combining state and contractual regulation of labor and other relations closely connected with them, this idea insists on that a home state of the individual should not remain silent when an international labour contract is drafted in a way to discriminate (misconstruction of the contract in favour of employers) and benefit from this. That is the case when an employee is considered as a means to attain a specific end of business dealing unfairly, rather than a party on which this business relies. That is the party with a distinct number of rights, interests, benefits and privileges in the private law sphere, which should be properly maintained and encouraged on a cross-border basis by means of relevant legal rules, instructing, guiding and directing private law subjects in a particular way – to restore equilibrium of interests in employer-employee relations as a particular type of private international law relations.

Hence, it means that only states decide in which form to envelope employment as a particular social phenomenon and with which content to endow peculiar private law relations to further a specific goal allotted to them. That is form, submitted to the general theory of form memory, to encourage individuals, business, industries and the national economy as a whole as well as to ensure and secure a social order inside a separate community, in particular, by preventing individuals with unequal bargaining power from becoming slaves. Because unsupervised labour is both inefficient and dangerous for individuals acting solely or in different types of groups (smaller or larger). For this very reason, labour contracts may never be oral, rely on statements or be created by implications, without explicitly given terms and conditions of work acceptable for individuals.

In other words, the main idea of this theory is that labour relations should take a common written form to guard rights and interests of individuals (employees) as a weaker party of private law relations in whichever place, time and circumstances they are held. And in order to have predictable for the parties effect these relations should rely on particular terms and conditions. For instance, they should rest on the formal arrangement, which form and content should be governed by the law of the place where it is made (in Latin – *lex loci contractus*) if it is made where the usual work is placed.

This law provides for the consensual basis of this arrangement and mandatory provisions to be found in it to make certain a particular nature of private law rights and obligations. These are relevant to: 1) personal information on employee, 2) name of employer, 3) job description, date of employment commencement; 4) form and duration of a contract; 5) place and hours of work; 6) all issues relevant to remuneration; 7) employee's and employer's rights and obligations, responsibility. Whereas all these issues complement each other and for the purpose of peculiar private law relations with cross-border impact have no separate value, they should always be considered in unity.

It is presumed that under this employment contract employee is a party effecting characteristic or pecuniary performance marking the nature and essence of particular private law obligations. That is an individual performing a particular work function in compliance with applicable material law rules, regulations and standards, which require certain knowledge, skills and experience from this individual. Whereas employer is a natural or legal person, in whose interests individuals work. This person takes measures for proper organisation of working time to eliminate all risks inherent in the particular nature of work done by individuals (Hutchins, 1907) and makes payments for this work.

This reference to a party effecting characteristic or pecuniary performance under employment contract was not occasional. In the face of private international law the place of habitual residence of this party makes particular sense when elements of this contract are closely connected with two or more sovereign states. These are states claiming their regulatory rights is disputes arising between immediate parties of this contract with respect to its implementation closely connected with two or more states, when judges face legal and jurisdictional problems. To resolve them means to allocate elements of this contract in the system of law and submit them to a system of courts closely and substantially connected with this contract.

This criterion of the close or substantial connection of private international law relations with one particular state is found to be applicable in all civil and common law countries around the world for offering predictable results wherever these relations are held and disputes decided with respect to material effect of the contract for the parties concerned. For the evidence please refer to Polish Act on Private International Law, 2011; Turkish Act on Private International and Procedural Law, 2007, No. 5718; Spanish Civil Code, 2009 etc.

But it should always be noted that in disputes relevant to non-payment of remuneration as well as other forms of compensation for the work done, their duty to pay money may constitute and evidently constitutes a characteristic obligation for the purpose of private international law regulation. Hence, it means that the place of residence of the party effecting this characteristic performance (Lipstein, 1981) may be prevailing over any other place in the choice of governing law to any non-payment disputes affecting interests of two or more states.

3.3. Cross-border peripatetic employment. Particulars of private international law regulation

Peripatetic employment is a separate type of employment, which refuses to fit into established form of labour relations concentrated on the work as their essence and submitted to one particular place, which is close to home, for the following reasons. In the first place, that is a particular state of employment, having no fixed or habitual working place in response to modern technological and other challenges, which require transient works, services, technologies and capital as increasingly large components of modern national economies. In the second place, that is particular scope of employment rights. And in the third place, particular contents of working time, including also travelling time.

Here we would like to advert to the idea of working time underlying national legislation as well as international law acts with rules incorporated into a national law matrix. The main idea is to find out what falls under national and international concepts of working time when there is no clear-cut division between work and rest, with the former for the employers and the latter for employees for the ambiguous category of travelling time, which turns to be essential in this particular case.

Under original conception working is the time spent by employees, being under employers' disposal and acting in accordance with employers' instructions when pursuing their interests in one particular sphere of activity. In this definition we have three main criteria, being of a particular value and importance. When viewed through the prism of disputes resolution these are the following matters of fact to be decided by the court in each particular case: 1) place of rending services (employers' premises); 2) compliance with employers' instructions; 3) expression of willingness to pursue employers' interests.

With respect to this we would like to draw readers' attention to the following question we are concerned with - if these criteria undergo changes for a particular character of employment, which is mobile or transient, does this affect the definition of working time? In our opinion, yes, it affects and not without reason. As it may be seen, in this definition we have a reference to a classical form of employment. That is the one resting essentially on the category of the place of employment, which is fixed and permanent. In legal theory and practice this place is known as "usual place of employment".

But from the time when this form was incorporated into a national law matrix in the nineteenth century, much has been changed in private law regulation. We are speaking of several successive industrial and technological revolutions, largely affecting the structure of national economies and as a consequence the character of labour to make these economies subsist, grow and prosper in the long run. Thus, for example, all these "revolutions" placed men and women on the very same footing, which positive and negative sides we may observe now. Men and women no

longer have different tasks to fulfil to have their means to subsistence and prosperity. They "earn their bread" under common conditions.

With territorial borders of states left open for employees and employers from around the world, labour relations became burdened with a real, firm and stable element of internationality tending to conflicting regulatory interests of two or more sovereign states. As a result employment turned to be closely connected with different places where individuals are required or permitted to work. By thus arranging the facts (Schwartz, 1907) around modern employment we may see the cause of all and any legal and jurisdictional problems in the labour law sphere to be dealt with specific private international law rules (directly applicable material law rules, conflict of law rules, uniform material law rules and rules on international jurisdiction).

As a modern trend mobile or transient employment in whichever sector of activity affects the working time organisation traditionally submitted to the law of usual place of employment. For the evidence please refer to Art. 10 (6) of Spanish Civil Code, 2009, in which it is kept that "In the absence of express submission by the parties and without prejudice to the provisions of section 1 article 8, obligations resulting from a labour contract shall be governed by the law of the place where the services are provided".

This law decides on the issue of what falls under legal categories of "working time" and "rest time" to ensure rights of employees and employers (Salomon, 1907). Besides, this law determines conditions for entitlement to and granting of annual and other leaves, including arrangements for payments for temporary or permanent loss of wage-earning powers of peripatetic employees.

When dealing with these mutually exclusive legal categories of working and rest time, being of great practical consequence, first, it should be noted that the line of separation between them rests on the idea of the time of performance or non-performance of duties, which are said to be labour where they are rendered personally, in accordance with employers' instructions and in their interests for a money consideration.

Thus, for example, under Russian law "working time is a period of time during which an employee has to perform his labour duties according to internal rules of an organization and conditions of a labor agreement and other periods of time that are considered working time according to laws and other legislative standard acts" and "rest time is the time, when the employee is free from his or her labour duties and which can be used at the employee's discretion" (please refer to Art. 91 and 106 of Labour Code of the Russian Federation, 2001).

As it may be seen, this may be both actual performance of labour duties or preparation for such a performance, when employees cannot use their time in their interests rather interests of employers. In the above very capacious example we have the time of actual performance of labour duties and other time, which does not fall under the category of rest time. Hence, it means that under Russian legislation the time spent by peripatetic (mobile) employees travelling between home and customers when performing their labour duties, shall be considered as working time and shall be subject to effective guarantees (official state guarantees enshrined in national law acts to the benefit of employees).

Among these guarantees we may consider effective rest, which idea is expressed in the directly applicable labour law rule of Art. 108 of the Russian Labour Code, which provides that "during the working day (shift) the employee should be given a break for rest and meal, not more than two hours long, but not shorter than 30 minutes, which is not included into working hours". It is apparent from express words of this rule to be considered together with its purpose that employers are under an obligation not only to make sure that workers can take their rest but to make sure that they do take their rest, which is more important.

Nearly the same idea received its application in the definition of the secondary law act of the European Union. Thus based on 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 "working time means any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice" (see Art. 2).

Though we cannot find it successful for a poor legislative technique employed by lawmakers in the present act to define this term, it implies travelling and other time necessary to be ready to perform labour duties. Therefore we may say that this definition accomplishes the main aim of lawmaking in the labour law sphere. This aim is to ensure rights of workers with no fixed work

place rather multiple locations in different states, and with no fixed work base rather multiple legal bases uncommonly affecting the legal status of peripatetic employees.

When we speak of legal status of peripatetic employees, it should be pointed out that it differs from that of employees with fixed work place and base. Assuming the fact that it is the issue of labour law to be dealt with by corresponding material law rules, it nevertheless cannot be avoided by us in the present paper. Because private international law deals with legal status of its subjects complicated by particular circumstances in which they rest with respect to specific labour relations until legal and jurisdictional problems receive solution by means of appropriate rules.

As it has already been said, under particular circumstances affecting legal status of peripatetic (mobile) employees we mean specific working conditions (different places of work, which are distant from one another) requiring measures to be taken by employers to ensure adequate remuneration, compensatory rest and other guarantees to this category of employees. Certainly these are not measures introducing and maintaining inequalities of treatment between ordinary and peripatetic employees. These are rather measures to be taken to adapt work to the worker with respect to organisation of working time, preclude detrimental effect of these specific working conditions on safety and health of employees and thus reflect good practice of dealing with these complicated labour issues for all.

In particular cases they are ensured by means of directly applicable rules of law precluding the very problem of the choice of applicable law (Guzman, 2001: 883) to relations closely connected with two or more sovereign states (see in particular Art. 63 - 65, 76, 81, 96, 125, 126, 242 of Labour Code of the Russian Federation). No one may ever derogate from these rules and deprive individuals of their rights, privileges and benefits of the supervised labour. They give complete answers to legal problems in the private international law sphere and prevail over contractual rules in cross-border labour relations closely connected with Russia.

Here we would like to note that taking into view specific characteristics of the activity carried out by peripatetic (mobile) employees, the duration of working time cannot be either measured or predetermined by employees and employers. It is customary to handle this issue based on explicitly chosen law, when the parties jointly agree to deal with all and any labour disputes with cross-border effect in a prescribed manner.

But the point is – should in this case a specific conflict of law method be employed to deal with the issue of coordination of the court as to which law to use to resolve this issue? And do states need uniform or harmonized rules with respect to this issue? In answer to the first question, we are concerned with, it is worth mentioning that in such cases judges should be relieved from the necessity to choose law to guide private law subjects on a particular labour law issue or a group of issues for the voluntary choice of this law made by the parties. In many private international law codifications this right (freedom of law) is given as essential. As to uniform or harmonized rules, there is no need in them. Because lex voluntatis is commonly employed by sovereign states in whichever issue coming within purview of private international law, be it corporate, labour, investment or any other.

In the absence of explicitly made choice of governing law, where it is obviously impossible to detect an implied choice of governing law and when private law relations are closely connected with two or more sovereign states, this particular issue is dealt with by material law of the state having an overwhelmingly closer connection with private international law relations than any other state. This connection should be defined based on a number of factors. They should evidence of more enduring connection of cross-border labour relations with one particular state (with its system of law and courts) than with others, without which these relations would never be arranged, treated and executed in a way as it was done.

Finally, we would like to invite a reader's attention to the issue as to whether governments of sovereign states should be proposed to introduce new private international law rules to deal with this phenomenon of labour law (peripatetic employment) in a manner acceptable for employees, employers and states. If we rest our answer on the above reasoning, the answer will be negative. There is nothing to be dealt with by means of new directly applicable material law rules, conflict of law rules, uniform material law rules and rules on international jurisdiction. The question at issue is wholly within the purview of private international law rules of sovereign states kept in modern national codifications.

4. Results

4. 1. In labour law peripatetic employment is a separate type of employment, which refuses to fit into established form of labour relations for: a) particular state of employment, having no fixed or habitual working place in response to modern technological and other challenges, which require transient works, services, technologies and capital; b) particular scope of employment rights; c) particular contents of working time, including also travelling time.

4.2. In private international law cross-border peripatetic employment is a type of employment burdened with a real, firm and stable element of internationality tending to conflicting regulatory interests of two or more sovereign states to be dealt with by private international law rules (directly applicable material law rules, conflict of law rules, uniform material law rules and rules on international jurisdiction).

4.3. As a separate private international law phenomenon cross-border peripatetic employment in whichever sector of activity affects working time organisation traditionally submitted to the law of usual place of employment. This law decides on the issue of what falls under legal categories of "working time" and "rest time" and determines conditions for entitlement to and granting of annual and other leaves, including arrangements for payments for temporary or permanent loss of wage-earning powers of peripatetic employees.

5. Conclusion

We think that we have handled the issue to present answers to a group of questions raised in the present paper with respect to particulars of private international law regulation of cross-border peripatetic employment. Without overtly rejecting a classical form of employment, it makes all those charged with its ruling think how better to handle it. Because this employment has no fixed or permanent place of work. This accordingly affects organisation of working time as well as remuneration, compensatory rest and other labour law guarantees.

When dealing with this phenomenon of the social life the category of working time turns to be essential. The content of this legal category goes to the very heart of a regulatory problem. If it is treated by law of forum or some other law (governing law) as including travelling time, employees are entitled to relevant remuneration and other guarantees. Otherwise, employees are limited in their rights to remuneration and compensation, which accordingly affects their legal status.

Taking into view a cross-border nature of this phenomenon, these are issues to be dealt with by law closely and substantially related with these relations. That is law of the usual place of work. With respect to a particular scope of issues being within purview of a free subjective will of the parties of cross-border labour disputes that is law chosen by them in the relevant labour contract or some other formal arrangement. Otherwise, that is material law of the state having an overwhelmingly closer connection with private international law relations than any other state.

With respect to material effect of cross-border peripatetic employment contracts as contracts with characteristic or peculiar performance being only on one side (employees), it is governed by the law of the place, where the party effecting this performance resides. That is the party (weaker party), which in particular circumstances (misconstruction of the contract in favour of employers) requires special protection. These are cases of restoration of equilibrium of interests in employer-employee relations.

Thus we may conclude that peripatetic (mobile) employment does not need any specific private international law framework. This category of employees is afforded with appropriate protection under governing law. Hence, it means that in the age of sanctity of property and labour, nature and character of employment do not affect private international law regulation, in particular, devices used by national legislators in this sphere of regulation. They rather extend dimensions of private international law as a field of law in national systems of law compelled to deal with extremely difficult and important legal and jurisdictional problems of the time, which are conflicts of laws and conflicts of jurisdictions.

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