

**Session of Zagreb – 1971**

**Conflicts of Laws in the Field of Labour Law**

*(Sixteenth Commission, Rapporteur : Mr. Etienne Szászy)*

*(The French text is authoritative. The English text is a translation.)*

*The Institute of International Law,*

*Considering* that one of the characteristic features of our time is the large number of workers employed outside their country of origin and that, in particular, massive flows of workers' migration can be observed ;

*Considering* that labour mobility, while contributing towards the increased contact among the nations, gives rise to problems of an increasing seriousness, concerning private interests as well as the interests of the receiving State and of the State of origin ;

*Taking into consideration* the important contribution of the International Labour Organisation towards the solution of these problems ;

*Considering* that, although the problem which law governs a contract of employment has already been studied by the Institute of International Law and was dealt with by the Institute's Resolutions of Luxembourg in 1937, it is appropriate to deal again with the question ;

*Submits* the following rules of conflict to the approval of States :

**Article 1**

The capacity to conclude a contract of employment is governed by the personal law of the party concerned. The capacity to perform a specific type of work is governed by the law indicated in Articles 3, 4 and 5.

A contract of employment concluded by a person who under his personal law lacks capacity to do so is nevertheless considered as valid if that person has the necessary capacity under the law of the State in whose territory the contract was concluded.

## **Article 2**

A contract of employment is valid as to its form if it is in conformity either with the requirements of the law indicated in Articles 3, 4 and 5, or with those of the law of the State in whose territory the contract was concluded, or with those of the law of the common nationality or of the common domicile of the parties.

Nevertheless, any provision imposing special formal requirements must be observed in so far as they are in force in the country in which the work is to be performed.

## **Article 3**

Subject to Article 4 and 5, the essential validity, the effect, the breach and the termination of contracts of employment are governed by the law of the country in which the work is to be performed. This applies to individual labour relations in general.

## **Article 4**

Subject to Article 5, the systems of law referred to in this Article apply in the following circumstances :

- a) if and in so far as the work has to be performed in the territory of several States or is of a transitory nature, and if and in so far as the work has to be performed in a place which is not subject to the sovereignty of any State or which cannot be determined : the law of the country in which the employer has its corporate seat or his domicile ;
- b) if the employment relationship refers to carriage by sea : the law of the flag, and if it refers to carriage by inland waterway or by air : the law of the State in which the vessel or aircraft is registered.

## **Article 5**

The law explicitly or implicitly chosen by the parties applies to the exclusion of the laws indicated in Articles 3 and 4.

## **Article 6**

The law to be applied under the preceding provisions is deemed to comprise not only statutes and regulations, but also collective agreements and trade customs, provided that these are legally applicable.

## **Article 7**

Whenever a contract is not performed in the territory of the State whose law governs the contract, account may be taken of such laws and regulations of the law of the place of performance as are by their nature compulsorily applied to all work performed in the territory.

### **Article 8**

The provisions of a foreign law normally applicable according to these Articles are not in any circumstances to be applied where their application would be manifestly incompatible with public policy.

### **Article 9**

Nothing in the present Resolution affects the law to be applied to workers employed by an intergovernmental organisation.

### **Voeux**

The Institute of International Law has, furthermore, decided to recommend :

- I. That the existing network of treaties regulating the status of migrant workers should be further developed, both as regards treaties universally applicable (such as the Conventions of the International Labour Organisation) and as regards regional and bilateral treaties.
- II. That even in the absence of a treaty, the principle of non-discrimination between national and foreign workers should in this field be a guiding rule for the attitude of States and that it should inspire the work of legislators, administrators and national courts.
- III. That in regulating the status of foreign workers account should be taken of the social, domestic and financial difficulties caused to them by their expatriation.

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(3 September 1971)