

Course: *Law of the European Union*
[07] Free Movement of Individuals

Filip Křepelka
(krepelka@law.muni.cz)
Masarykova univerzita

Freedom in the EU unique in contemporary world

- Free movement of individuals is basic economic and political freedom of the European Union.
- There are far reaching liberalizations of trade in goods in other parts of the World.
- Nevertheless, there is no comparable liberalization of movement of individuals anywhere else.

Global situation – law and practice

- There is no freedom to move in the World.
- Countries could not prohibit entry of their nationals and cannot deliberately cancel their citizenship.
- Countries decide on admission of foreigners.
- Most countries welcome tourists and businessmen.
- All countries restrict long-term or permanent immigration. There is no country that supports mass immigration.
- States expel troublesome foreigners.

Pressures for immigration

- There is a big „surplus of people“ in contemporary World.
There are significant migration flows.
These flows are induced by immense economic and social differences among countries.
- Immigration is problem for most rich countries.

Limited restrictions of emigration

- Few countries only (dictatorship) also curtail or exclude emigration of their nationals.
- Democratic and authoritarian countries impose only individual limitation on emigration (obligatory military service, imprisonment and other criminal charges, duty to care for other).
- Otherwise, emigration is free.

Visa requirements

- Countries have instrument of control.
- Visa are granted individually by diplomatic and consular missions of potential host country.
- Comparable countries which do not fear immigration agree on or grant unilaterally visa-free regime. Visa-free regimes are limited to short term immigration of tourists.
- Labor, establishment and studies based on long-term stay is to be allowed in complicated procedures.

European Union citizenship

- Since 1993 all citizens of member states are *ipso facto* citizens of the EU!
- **EU citizenship** is secondary citizenship. The member states continue to determine with their own legislation and administrative practice who are their nationals (citizens).
- National legislations on citizenship are similar, but not identical. *Ius sanguini* and *ius soli* are combined, different practices of naturalization are applied in member states.
- EU citizenship provides for several rights, including free movement in the EU.

Entry and short term residence

Entry is usually not controlled.

Most member states removed passport controls on borders with other member states (Schengen system – will be explained in other lecture).

Movement and short term residence in other member state (less than three months) is unrestricted in general.

Tourists are welcomed, their stay is subject only to simple evidence in hotels, campings etc.

Long-term residence

- Workers and self-employed citizens of other member states enjoy right for long-term residence.
- The permission is issued for migrant for five-year term. Renewal of permit could be refused if the immigrant is dependent on social aid.
- Permanent residence right is introduced now in the EU law (directive 2004/883/EC) after five year of legal residence. Many member states, however, granted it already before.

Accompanying family members

- Every migrant worker and entrepreneur can be accompanied with family members.
- EU law defines **family members** (spouse, children, parents etc) which enjoy subsidiary right of residence (and economic activity and integration in social life) in other member states.
- Even citizens of non-member states (usually spouse) can be covered by this right.
- Host states can admit other relatives.

Other groups of citizens of other member states entitled to reside

- **Other groups** of citizens of other member states have been gradually covered by European Community law:
- (1) retired persons, at the beginning in member states they had previously worked, later in all Member States,
- (2) students – without any rights to social benefits with exception of education.
- (3) persons with sufficient resources for their subsistence and health care („rich people“).

Public order and security

- Member states are entitled to ban entry and residence citizens of other member states if necessary for public order and security.
- The Court of Justice (judgement Calfa):
 - no collective restrictions are allowed
 - the ban is allowed only if serious crime is committed by that citizens.
 - reasonable fear of recidivism is

Otherwise, expulsion and prohibition of residence is contrary to free movement of individuals.

Public health restrictions

- Seriously ill immigrants (TBC, highly contagious diseases and serious mental disorders) can be banned to entry other member state.
- Member states, in reality, do not control immigrants. The provision is almost obsolete.
- Nevertheless, they can introduce restrictions of movement or quarantine on individuals regardless of nationality in cases of emergency.

The principle of equality and temporary restrictions

- Position of migrant workers / self-employed persons and their family members results from **equality** (national treatment, non-discrimination) if compared with residing citizens of host state.
- Free movement of workers has been postponed for seven years (2004-2011) for nationals of new member states. Nevertheless, all new member states and many elder member states ceased to use this title now.

Migrant workers and labour law

- All aspects of labour are affected with equal treatment: access to jobs, wage, work conditions, duration of work + vacation, workplace security and cancellation of job.
- Equal treatment is imposed not only on state legislator, but also on employers of all kinds and on trade unions.
- By the way, freedom of contract for employers is limited in general. Other criteria for selection of workers are also prohibited or diluted: sex, age, race, religion, health etc.

Self-employed individuals (entrepreneurs)

- Various aspects of individual business are touched by equal treatment: same conditions for launch of the business.
- Distribution of licences must be based on lack of discrimination.
- Legal framework for business must be equally demanding. Only same controls and same sanctions are permitted to host member state authorities.

Exercise of public power

- Only professions - both employees and self-employed individuals – consisting of exercise of **public power** can be reserved for nationals of the member state.
- Deputies, judges, officers of state administration, policemen, professional soldiers are professions which can be reserved.
- On the other hand, many jobs in public sphere broadly defined, in healthcare, education, social services, transportation, environment service cannot be reserved to nationals (judgement Commission v. Belgium – public service).

Language requirements on workers and entrepreneurs

- Language requirements cannot be regarded as discrimination of foreign workers and self-employed persons – citizens of other member states.
- Requirement, however, must be proportional to nature of particular profession and its good exercise.

Qualifications and their recognition

- Few would move if obliged to pass all exams!
- Recognition of diplomas and certificates is thus necessary. It can be unilateral. There are numerous international treaties on it.
- For several professions, qualification requirements are harmonized or unified (healthcare professionals, drivers etc.)
Therefore, automatic recognition is possible.
- For other professions, EU law expects recognition procedures which do not create unnecessary obstacles. (directive 2005/36/EC).

Taxation of migrants

- Equal treatment of both workers and self-employed persons is required.
- Same taxes, fees and parafiscal charges (contributions to social security, healthcare) – shall be imposed on workers and entrepreneurs.

Taxation treaties concluded among most member states eliminate double taxation.

- The Court of Justice sometimes intervenes in taxation of migrant workers, self-employed persons or their family members.

Social security of migrants

- Economic migrants - workers, entrepreneurs - and their family members enjoy equal access to social benefits (parental support, child benefits, sickness compensation etc.), healthcare services and education.
- They have limited access to aid: abuse threat.
- Regulation 883/2004 for coordination of pension schemes (all types: retirement, disabled and widows/orphans) expects consideration of periods acquired in other member states if necessary and partial pensions are to be paid from all relevant member states.

Reality of migration in the EU

- There is high proportion of foreigners in EU. However, majority are third country nationals.
- Wage and profit differences are significant, but not sufficient to convince individuals - with exception of nationals of new member states - to move to other member states.
- In addition to it, linguistic, cultural, climatic barriers are important barriers.
- There is increasing migration of students and significant migration of pensioners.
- Tourism in millions in Europe.