

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

Course: *Law of the European Union*

[06] Free Movement of Individuals

Residence rights

Free movement of individuals is basic economic and political freedom of the European Community. It is *unique* for this European project of integration. 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.

There is **no** free movement of individuals at universal level. International law - particular treaties can provide for other solution - creates no duty of any state to admit foreigners on their territory. citizens and refugees (according to special convention) only cannot be barred to enter. States could not deprive their nationals of their citizenship for political reasons.

States can freely decide the amount of foreigners they admit to their territory. They can select them according to expected time and purpose of stay.

States usually open their borders to - and even attract - especially rich - tourists and businessmen for temporary stay. Their money will be spent there. New businesses can be launched by it too.

All states of the World, however, restrict or prohibit at all long-term or permanent immigration. Especially immigration of workers and their families is controlled. There is a big „surplus of people“ in the World. All rich states would face immense immigration if they relax their immigration policy. There is no state open for everybody in contemporary world.

Several countries with authoritarian government or dictatorship also allow or exclude emigration of their own citizens. Democratic countries impose only individual limitation on emigration (obligatory military service, imprisonment and other criminal charges, duty to care for other).

There are significant migration flows in contemporary world. These flows are induced by extreme economic and social differences among countries. It gradually becomes big problem for all rich countries which regard it as illegal immigration due their above mentioned restrictions.

States have traditional instrument (since 19th century) of control of immigration - visa requirement. Visas are to be granted individually through diplomatic and consular mission of future host country. Only 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. Labour, establishment and studies based on long-term stay is to be allowed in complicated procedures. Especially, access to labour market is usually severely restricted. Asylum procedures, however, are often misused by contemporary immigrants.

Therefore, far-reaching liberalization of movement of individuals within the European Community is an extraordinary freedom.

Citizens of member states are entitled to move freely within the European Community. Since 1993 all citizens of member states are *ipso facto* citizens of the European Union! European Union **citizenship** is secondary citizenship. The Member States continue to determine in their own legislation and administrative practice who

are their nationals (citizens). The legislation is similar, but not identical. *Ius sanguini* and *Ius soli* are combined, different practices of naturalization are applied.

Since the beginning of the European Community, Treaty guarantees free movement of economically active persons, i.e. workers and self-employed persons and their family members.

Short-term movement remains almost unrestricted. Tourists are generally welcomed, their stay is subject only to simple evidence in hotels, camping places etc.

Public order and security restrictions of immigration and residence No group restrictions are allowed. All countries punish foreigners with expulsion and prohibition of residence, they can do it freely in general. However, the residence or entry ban on nationals of other Member States of the European Community is allowed only if serious crime is committed by that national. National authorities need to have reasonable fears (expectations) of recidivism. Otherwise, expulsion and prohibition of residence is contrary to free movement of individuals.

Public health restrictions Only seriously ill immigrants (TBC, serious contagious diseases and mental disorders) can be banned to entry. The Member States, in reality, do not control immigrants. Nevertheless, they can introduce restrictions of movement or quarantine regardless of nationality in cases of emergency.

Long-term immigrants - workers and self-employed citizens of the European Union and their families - enjoy right for long-term residence. However, the permission is issued for every immigrant for five-year term. Renewal of permit can be refused if the immigrant is dependent on social aid. Permanent residence right is introduced now in by the European Community law after five year of continuous legal residence. All social benefits will be available for individuals with this title. Many national laws, nevertheless, already grant it for decades.

European Community law defines **family members** (spouse, children, parents etc) which enjoy right to residence (and economic activity) in other Member States. Even citizens of non-member states can be covered by these rules. Host states can admit other relatives.

Other categories 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, (3) persons with sufficient resources for coverage of their subsistence and healthcare („rich people“).

Economic and social rights of migrants

Position of migrant workers / self-employed persons and their family members: **equal treatment** (national treatment, non-discrimination) if compared with nationals (i.e. citizens of host state).

Workers

Various aspects of labour touched by equal treatment principle: access to jobs, wages, work conditions, duration of work + vacations or security at workplace. If necessary for real use of the freedom, preferential treatment can be required.

Possibility of temporary exclusion of the freedom for seven years after the Accession for nationals of new member states including Czechs. Nevertheless, all other new

Member States and several other Member States declined to introduce these exclusion and many other member states allow employment in many professions.

Equal treatment requirement has not been imposed on state legislators only, but also on the member states acting as employers and even on private parties: both corporate and individual employers and trade-unions.

By the way, there is no far reaching freedom of contract for employers in general. Even other criteria for selection of workers are prohibited by EC law. No discrimination based on sex, age, race and religion are permitted.

Self-employed

Various aspects of individual business 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 sanctions are permitted to host member state authorities.

Only professions - both professions of employees and self-employed individuals - which form an exercise of **public powers** can be reserved for nationals of host state. For example, deputies, judges, officers of state administration, policemen, professional soldiers. The member states cannot reserve for their nationals many jobs in public sphere broadly defined, in healthcare, education, social services, transportation, environment services etc.

Language requirements cannot be regarded as discrimination of foreign workers and self-employed persons – citizens of other member states if the knowledge of local language is necessary for proper exercise of profession.

Qualifications form an important problem for migrant workers and self-employed individuals are qualification requirements. Nobody would move if obliged to pass all exams. Recognition of diplomas and certificates is eased by European Community law. For several professions, qualification requirements are harmonized or unified (healthcare professionals, drivers etc.) Therefore, automatic recognition is possible. For many other professions, European Community law expects recognition procedures which do not create unnecessary obstacles.

Tax equality Equal treatment of both workers and self-employed individuals is required. Same taxes, fees and parafiscal charges – i.e. contributions to social security, healthcare etc. – shall be imposed on guest workers and entrepreneurs. Double taxation treaties concluded among most member states contribute to elimination of obstacles. The Court of Justice sometimes intervenes in taxation issue relating to migrant workers, self-employed persons or their family members.

Social security and welfare of migrants Economically active migrant - worker, self-employed individual - and his or her family members enjoy equal access to social security (parent support, child benefits, sickness compensation etc.), healthcare services (both in kind and reimbursement according to organisation of host state) and education. Migrants have partial access to social aid due to danger of abuse. Special European Community regulation for coordination of pension schemes (all types: retirement, disabled and widows/orphans) expect taking into consideration of periods acquired in other Member states if certain period of coverage necessary and partial pensions are to be paid from all relevant member states.

Reality of migration in the European Community

There is high proportion of foreigners in several member states. However, vast majority of them are third country nationals. There is only limited intrastate migration. There are many grounds of it. Language, cultural, climatic barriers are important. Wage and profit differences are significant, but not sufficient to force individuals - with exception of nationals of new member states - to move to another member state. Temporary restrictions on them are applied.

There is increasing migration of students and significant migration of pensioners.

Free movement of tourists is reality in all member states. Hundreds of millions of Europeans travel abroad every year.

„Schengen“ – withdrawal of passport controls

Among most member states, passport controls on borders between member states were abolished.