

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

Filip Křepelka  
([krepelka@law.muni.cz](mailto:krepelka@law.muni.cz))  
*Masarykova univerzita*

# Freedom in the EU unique in global comparison

- Free movement of individuals is basic economic and political freedom of the European Union.
- The freedom is *unique*. 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 migrate in contemporary World.
- Citizens only cannot be barred to enter their home country. Countries could not cancel their citizenship.
- Countries can freely decide on foreigners they admit.
- States exclude presence of foreigners which are troublesome.
- Countries usually welcome tourists (especially rich ones) a businessmen for temporary stay. Their money will be spent there and businesses can be launched.
- All countries, however, restrict or prohibit at all long-term or permanent immigration. There is no country which welcomes mass immigration.

# Pressures for imigration

- There is a big „surplus of people“ in the World. There are significant migration flows in contemporary world. These flows are induced by huge economic and social differences among countries.
- Such flows are big problem for all rich countries which regard it as illegal immigration due their above mentioned restrictions.
- All rich countries would face huge immigration if they relax their immigration policy.

# Limited restrictions of emigration

- Several countries with authoritarian government or dictatorship also curtail or exclude emigration of their nationals.
- Democratic 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.
- Visa are granted individually through diplomatic and consular missions 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.
- Asylum procedures, however, are often misused by contemporary immigrants. Protection of refugees is required by international law.

# 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 determine further with their own legislation and administrative practice who are their nationals (citizens). Legislations is 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 often 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 3 months) is unrestricted in general.

Tourists are generally 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 continuous legal residence. Many member states granted it already before.

# Accompanying family members

- Every migrant worker and entrepreneur can be accompanied with family members.
- European Community 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 coverage of their subsistence and healthcare („rich people“).

# Public order and security

- Member states are entitled to ban entry and residence of citizens of other member states due to order and security.
- The Court of Justice has restricted this right (judgement Calfa):
  - no collective restrictions are allowed
  - the ban is allowed only if serious crime is committed by that citizens.
  - national authorities need to have reasonable fears of recidivism.

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

# Public health restrictions

- Seriously ill immigrants (TBC, serious contagious diseases and serious mental disorders) can be banned to entry other member state in theory.
- 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.

# Economic and social rights of migrants within the EU

- Position of migrant workers / self-employed persons and their family members results from **equal treatment** (national treatment, non-discrimination) if compared with nationals residing citizens of host state.
- There are only few exceptions from this principle of principles of integration in the EU.

# Migrant workers and labour law

- All aspects of labour are affected with equal treatment: access to jobs, wage, work conditions, duration of work + vacation, or 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: sex, age, race, religion
- The freedom has been postponed first seven years for nationals of new member states. Nevertheless, all new member states and many elder member states ceased to use this title now.

# **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 - of both employees and self-employed individuals - which form an exercise of **public power** can be reserved for nationals of member state exercising this power.
- Deputies, judges, officers of state administration, policemen, professional soldiers are professions which can be reserved.
- The member states cannot reserve for their nationals many jobs in public sphere broadly defined, in healthcare, education, social services, transportation, environment service (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

- Qualifications create problem for migrant workers and self-employed persons. Nobody 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.
- European Union efforts face limits. Education remains competence of member states.
- For several professions, qualification requirements are harmonized or unified (healthcare professionals, drivers etc.) Therefore, automatic recognition is possible.
- For many other professions, EU law expects recognition procedures which do not create unnecessary obstacles.

# Taxation of migrants

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

# Social security of migrants

- Economically active migrant - worker, self-employed individual - and his or her family members enjoy equal access to social benefits (parental support, child benefits, sickness compensation etc.), healthcare services and education.
- Migrants have limited access to social aid due to danger of abuse.
- Special regulation (1408/71) for coordination of pension schemes (all types: retirement, disabled and widows/orphans) expects 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 EU

- There is high proportion of foreigners in several member states.
- However, majority are third country nationals. There is only limited intrastate migration.
- Linguistic, 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 other member states.
- There is increasing migration of students and significant migration of pensioners.
- On the other hand, tourists move in millions in Europe.