

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

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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.