

MASARYK UNIVERSITY FACULTY OF LAW

**Free movement of workers.
Prohibition of discrimination
based on nationality**



Basic freedoms

■ Art. 3.2 Treaty on European Union:

The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.



Basic freedoms

The internal market is based on four freedoms:

- Freedom of movement of goods
- Freedom of movement of persons
- Freedom of movement of services
- Freedom of movement of capital



Historical Background

- After establishment of the European Economic Community only persons performing an economic activity were entitled to the freedom of movement of persons. Economic activity can be performed by:
 - employee
 - self-employed
- At the beginning of 1990s free movement was enlarged to other groups of persons (Students, persons after finishing the gainful activity...)
- 1992 the Treaty of Maastricht - the citizenship of the EU – enlargement to all citizens of the Union and their family members.



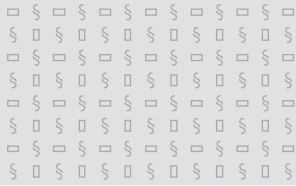
Personal Scope of Application of Freedom of Movement for Persons

- Citizens of the Union
- Their family members
 1. Spouse
 2. The partner with whom the Union citizen has contracted a registered partnership on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnership as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State
 3. The direct descendants who are under the age of 21 or are dependants and those of the spouse or partner
 4. The dependant direct relatives in the ascending line and those of the spouse and partner



Free movement of persons includes:

- Right to leave the territory of the Member State
- Right to entry on the territory of another Member State
- Right to move within the territory of another Member State
- Right to stay within the territory of another Member State

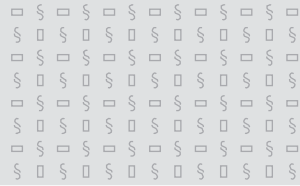


Limitations to free movement of persons:

- Public Policy
- Public Security
- Public Health

Limitations to free movement of workers:

- Public Policy
- Public Security
- Public Health
- Employment in public sector



Freedom of Movement for Workers

- Legal Regulation:
 - Treaty on the Functioning of the European Union (TFEU), art. 18, 20, 26.2, 45 – 48
 - Regulation 2011/492
 - Directive 2004/38



Freedom of Movement for Workers

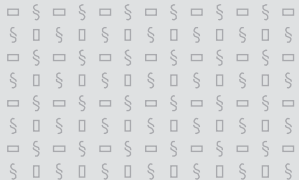
■ Regulation 2011/492:

Freedom of movement constitutes a fundamental right of workers and their families. Mobility of labour within the Union must be one of the means by which workers are guaranteed the possibility of improving their living and working conditions and promoting their social advancement, while helping to satisfy the requirements of the economies of the Member States. The right of all workers in the Member States to pursue the activity of their choice within the Union should be affirmed.



Freedom of Movement for Workers

- Big debates about the freedom of movement for workers in connections with the enlargement of the EU in 2004.
- Old member states (EU-15) were afraid of a massive arrival of workers from the new member states.
- the Accession Treaty laid down transitional agreements for the issue of the freedom of workers in the enlarged Union.





Freedom of Movement for Workers

- The basic content of the freedom of movement of workers:
 - Right to work in another member state without a work permit,
 - Under the same conditions as national workers.



Freedom of Movement for Workers

■ Art. 45 TFEU:

1. Freedom of movement for workers shall be secured within the Union.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
 - (a) to accept offers of employment actually made;
 - (b) to move freely within the territory of Member States for this purpose;
 - (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
 - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.
4. The provisions of this Article shall not apply to employment in the public service.



Equal Treatment

- Art. 18 TFEU:
 - Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.
 - The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination.



Equal Treatment

■ Art. 7, Regulation:

- *A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.*

■ Case-281/98 Roman Angonese v. Cassa di Risparmio di Bolzano.



Right to Work

■ Art. 2, Regulation:

- *Any national of a Member State and any employer pursuing an activity in the territory of a Member State may exchange their applications for and offers of employment, and may conclude and perform contracts of employment in accordance with the provisions in force laid down by law, regulation or administrative action, without any discrimination resulting therefrom.*



Right to Work

■ Art. 3, Regulation:

- Under this Regulation, provisions laid down by law, regulation or administrative action or administrative practices of a Member State shall not apply:
 - (a) where they limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of their own nationals; or
 - (b) where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other Member States away from the employment offered.



Who is a worker?

- Regulation use a term „worker“.
- There is no definition.
- Every member state has its own definition of worker
- Definition in the Czech Republic:
 - *Dependent work means work that is carried out within the relationship of the employer's superiority and his employee's subordination in the employer's name and according to the employer's instructions (orders) and that is performed in person by the employee for his employer.*



Who is a worker?

- Definition of the „worker“ for the purpose of the EU law is set by the case law.
- Three basic criteria:
 - performance of services,
 - in subordination,
 - for remuneration.
- C-344/87 Bettray
- C-507/12 Saint Prix
- C-109/04 Kranemann
- C-415/93 Bosman



Exceptions

- The provisions of free movement for workers do not apply to employment in the public sector.
- Free movement can be limited on grounds of:
 - public policy,
 - public security,
 - public health.