

Free Movement of persons in the EU. Implications in case of poverty and homelessness

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Brussels, 4 June 2010

Overview of legal provisions (1)

□ Treaty provisions

- Free movement of economically active persons:
Articles 45, 49, 56 TFEU: workers and self-employed persons
- Free movement of non-economically active persons:
Article 20, 21 TFEU: European citizenship

Overview of legal provisions (2)

□ Treaty provisions

- Mainstreaming combat against social exclusion
 - Article 3(3) TEU: "*The Union shall combat social exclusion*"
 - Article 9 TFEU: "*... the Union shall take into account ... the fight against social exclusion....*"
 - AG CRUZ VILLALON on 5 May 2010 in case C-515/06:
 - These new mainstreaming provisions in force since 1 December 2009 must be taken into account when implementing and interpreting EU law

Overview of legal provisions (3)

□ EU Charter of fundamental rights

■ Article 34(3):

- *" In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices."*

Overview of legal provisions (4)

□ Secondary legislation

- Directive 2004/38: the citizenship directive
 - Residence rights
 - Equal treatment
- Regulation 1612/68: free movement of workers
 - Access to the labour market
 - Prohibition of discrimination on grounds of nationality: working conditions and social advantages, including housing
- Regulation 883/2004: social security co-ordination

Case law

- Case law of the European Court of Justice (ECJ)
 - Infringement procedures initiated by the European Commission against Member States
 - Preliminary rulings initiated by individuals via national courts

Directive 2004/38

- On the right of citizens of the Union and their family members to move and reside freely within the Union

Scope: cross-border element

- Need for a cross-border element: Article 3:
 - Move to and reside in a Member State OTHER than that of which they are a national
- Treaty provisions on the free movement of persons also applicable in case of return to “own” Member State (*Singh; Eind*); or in case a person regularly travels within the EU (*Carpenter*)
- Problem of reverse discrimination

Family members: article 2

- Not dependent on nationality of these members: particularly important for non-EU citizens
- spouse
- partners in registered partnership
- Descendants
 - Under the age of 21 OR dependant
- Ascendants: must be dependant
 - What about parents of young children?
 - *Zhu and Chen*
 - *Ibrahim and Teixeira* (judgements of 23.2.2010)

Right of residence for up to three months (Article 6)

□ Unconditional right

- Follows directly from the EC Treaty
- "*without conditions or any formalities*"
- Valid identity card or passport
- Report presence (art. 5(5))
- "*as long as they do not become an unreasonable burden on the social assistance system of the host Member State*" (art. 14(1))
 - Except for economically active persons
- See citizenship case law of ECJ *Grzelczyk* and *Trojani*

Right of residence for more than three months (art. 7)

- No unified status for all EU-citizens
- Exercise of economic activity remains relevant
- Workers and self-employed persons in the host MS
 - Community definition of workers
 - “activities for remuneration which are real and genuine” (*Vatsouras and Koupatanze*)
 - No condition other than the exercise of economic activity; level of income not relevant
 - Transitional measures for nationals of new MS

Economically active persons

- Retain status: see art. 7(3)
 - Illness or accident
 - Involuntarily unemployed
 - Vocational training
- Becoming a burden to social assistance: no reason to expel (art. 14 (4))
- Jobseekers: residence rights as long as "*they have a genuine chance of being engaged*" (art. 14(4)) (*Antonissen*)

Right of residence for more than three months (art. 7)

- Economically inactive persons
 - Having sufficient resources...
 - Compare national criteria to be granted basic social assistance
 - ... and comprehensive sickness insurance
 - See the implementation of Regulation 884/2004
 - Students: “assure” they have sufficient resources
 - ECJ: origin of resources not relevant
 - See *Zhu and Chen*

Retention of the right of residence (Article 14)

- First 3 months
 - As long as the person does not become an unreasonable burden on the social assistance system of the host MS
- After 3 months:
 - As long as the person meets the conditions
 - In case of reasonable doubt: verification by MS possible
 - In case of recourse to social assistance system
 - No automatic expulsion; taking into account duration, personal situation, amount
 - No expulsion of economically active persons (and their family members) and jobseekers

Right of permanent residence (art. 16)

- Union citizens and members of their family
 - After 5 year of continuous legal residence in a MS
 - Unconditional right of permanent residence
 - No conditions anymore on sufficient resources or on health insurance coverage
 - For family members also if family ties are broken: independent right
 - May be lost after 2 consecutive years of absence

Right of permanent residence

- Article 17: in some cases right of permanent residence shall be enjoyed before completion of 5 years
 - Pensioners
 - Persons with permanent incapacity to work
 - Frontier workers
 - For members of the family in case of death of the workers or self-employed person

Equal treatment (art. 24)

- Essential characteristic of “European Citizenship”
- Limited to citizens “residing on the basis of this Directive”
- For all matters within the scope of the Treaty
 - ECJ: very broad interpretation: study grants; social assistance; recognition of family names
 - Also housing benefits: see *Texeira* and *Ibrahim*

Equal treatment (art. 24)

- Exceptions:
 - social assistance during the first 3 months or during the period of job seeking
 - What is social assistance?: *Vatsouras* and *Koupatanze* : narrow definition
 - Maintenance grants for students: only if they have permanent right of residence (after 5 years)
 - ECJ in *Bidar*: requires only a “certain degree of integration”
 - See *Förster* : 5 years acceptable

Co-ordination of social security schemes: Regulation 883/2004

- Also applicable to 3rd country nationals moving within the EU
- Determination of legislation applicable in cross-border situations
 - Workplace for economically active persons
 - Residence for economically inactive persons
- May guarantee sufficient income and health care coverage
- Equal treatment

Co-ordination of social security schemes: Regulation 883/2004

- Export of benefits
 - For classic social security benefits based on the payment of contributions: old age, invalidity
 - Exception
 - Unemployment benefits (only for 3 months)
 - Social assistance and other minimum benefits
 - Non-contributory benefits: entitlement in MS of residence

To conclude

- ❑ Free movement is a fundamental right for EU citizens
- ❑ Equal treatment in host Member State as well
- ❑ Including for social assistance and housing support
- ❑ But: reliance on it may affect residence right negatively

Thank you very much for your
attention

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