

[6] Free movement of individuals

Residence rights

Free movement of persons is basic economic and political freedom of the EC/EU, *unique* for this project of integration (far reaching liberalization of trade in goods can be found in other countries too).

There is **no** free movement of individuals at universal level. International law (particular treaties can stipulate otherwise) creates no duty of any state to admit foreigners to their territory. Only citizens and (special convention) refugees cannot be barred to enter.

States can freely decide the amount of foreigners they admit to their territory, selecting according to expected time and purpose of their residence.

States usually open their borders to and even attract – especially rich – tourists a businessmen for temporary stay (money will be spent, new businesses launched).

All states restrict or forbid at all long-term or permanent immigration, especially immigration of workers and their families. There is a big „surplus of people“ in the World. All rich states would face immense immigration if relax their immigration policy.

(dictatorships control emigration of their citizens too – no such activity of democracies).

Illegal immigration (extreme social differences among countries of contemporary world) is a big problem for all rich countries. States have traditional instrument (since 19th century) of its control – visa requirement. Asylum procedures are often misused. States introduce visa-free regimes only if can rely on return of short-term immigrants. Access to labour market is restricted.

Liberalization of movement of individuals within EC/EU: far reaching freedom!

Citizens of member states are entitled to move freely within the EC/EU. Since 1993 all citizens of member states are *ipso facto* EU citizens! **EU citizenship** is secondary citizenship, states determine by their legislation who is their citizen.

1958 (establishment of ECs): ECT guarantees free movement of economically active persons (workers, self-employed persons) and their family members.

Short term movement remains almost unrestricted (exceptions are public order, security and health measures): tourists are generally welcomed, their stay is subject only to simple evidence in hotels, camping place etc.

Long term immigrants (workers/self-employed and their families) enjoy right for long-term residence. However, for maintaining public order the permission is issued for every immigrant for five-year term. Permanent residence right will be introduced in future (in the EU/EC law, many national laws already grant it).

EC 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, exception) Host states can admit other relatives.

Other categories of citizens of other member states have been gradually covered by EC law: (1) retired persons (firstly in states they had previously worked, later in all states), (2) students – no rights to social security, (3) persons with sufficient resources.

States may deny (and usually do it) long-term residence permit to a person which could be **burden for social assistance** of host state (because the EC law interpreted by the Court of Justice grants wide social coverage to residents).

Possible restrictions of all movement: public order / security and health measures.

Public order and security restrictions no group restrictions, only individual behaviour counts (all states punish foreigners with expulsion and prohibition of residence, they can do it freely). However, the residence ban for citizens of other member states of the EC/EU is allowed only if serious crime committed by the citizen and national authorities have reasonable fear (expectation) of recidivism (habitual criminality). No excessive use of residence ban against citizens of other member states!

Public health restrictions: only prohibition of entry, in normal conditions only theoretical.

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 to domestic citizens (citizens of host state).

Workers (labour law): no discrimination is allowed in all aspects of labour. Self/employed persons (administrative economic law): no discrimination allowed in every aspect of business.

Various aspects of labour touched by equal treatment principle: access to jobs, wages, work conditions, duration / vacation, security at workplace. If necessary for real use of the freedom, preferential treatment can be obligatory. Possibility of temporary exclusion (max. 7 years) of citizens of new member states (incl. Czechs).

Equal treatment requirement has not been imposed on state legislators only, but also on states as employers and even on private parties: both corporate and individual employers or trade-unions. No contract freedom for employers, even other criteria for selection of workers are prohibited (sex, age, race etc.). Even private employers and trade unions cannot discriminate!

Self-employed: Various aspects of individual business touched by equal treatment: same conditions for entry (equal distribution of licences), equally demanding conditions of business, similar controls etc.

Only professions (both employees and self-employed) being exercise of **public powers** can be reserved for citizens of host state (deputies, judges, officers of state administration, policemen, professional soldiers etc.). States cannot reserve to their citizens many jobs in public sphere (healthcare, education, social services, transportation).

Language requirements cannot be regarded as discrimination of foreign workers / self-employed persons – citizens of other member states if appropriate to proper exercise of the profession.

Qualification Extremely important problem for migrant workers/self-employed are qualification requirements. Nobody would move if obliged to pass all exams. Recognition of diplomas/certificates eased by EC law

Tax equality Equal treatment of both workers / self-employed businessmen: same taxes and parafiscal charges (contribution to social security etc.).

Social security and welfare of long-term workers and self-employed and their family members

Economically active migrant and his/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. Special EC regulation for coordination of pension schemes (all types: retirement, disabled and widows/orphans): periods acquired in other member states shall be taken into consideration if certain period of coverage necessary, partial pensions paid from all relevant member states.

Reality of migration in the EC/EU

Many member states have many foreigners. However, vast majority of them are citizens of third countries. Only limited intrastate migration: language, cultural, climatic barriers, wage/profit differences are significant, but not sufficient to force to move abroad.

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Homework: read judgement Calfa (C-348/96) and judgement Commission v. Belgium (149/79)