

ASPECTS REGARDING THE FREE MOVEMENT OF PERSONS IN THE EUROPEAN UNION

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***Abstract:** Free movement of persons is one of the most important pillars and one of the most important achievements of the European Community law. There is no other way to express more clearly than that the progress made in Europe. EU citizens now have a unique right in the world, of traveling with their family to another EU country or for a short or long term stay or even for permanent residence. Currently, there is no other international cooperation among states to ensure a similar right.*

***Keywords:** European Community law, freedom of movement, free movement of persons, free movement of services, right of emigration and immigration, right of permanent residence.*

1. PROBLEM STATEMENT

Free movement, in the acceptance of the European Union law, is the right of persons to travel and stay in EU countries, without asking for permission. This right is not valid in their own state, but only after people cross the border to another EU country. Consequently, Romanian citizens have the right of free movement under EU laws, if they are in Hungary, Germany or in another EU country, but not in Romania. Similarly, Hungarian citizens, Germans or other nationalities, members of the EU, will benefit from this law in Romania or another EU country, except for their own. In each EU country, freedom of movement of its own citizens is stipulated in the Constitution of that country. In these conditions, it can lead to the so-called "discrimination against domestic residents" (not affecting the right of free movement within the EU), situation in which national regulations are less favorable than the European Union law (e.g. in terms of family reunification).

2. FREE MOVEMENT

For the European Union citizens there are **four rights to free movement**: free movement

of workers, free movement of services, freedom of establishment and the general right to free movement, without a specific purpose (Reg. 562, 2006).

Free movement of workers is regulated in primary law, Art. 39 and the ones that follow the EC Treaty (TEC) and also in secondary law, EC Regulation 1612/68 and EC Directive 68/360. This includes, according to Art. 39, paragraph 2 TEC, the removal of any differentiated regime applied (based on nationality) to laborers within Member States with regard to employment, payment and other working conditions (special nondiscrimination). This ensures free access to employment in any of the EU countries (Dir.38, 2004). EU citizen is entitled to appear in recruitment for vacancies, to move freely within the Member States, to reside in a Member State business purposes. The activity must be in accordance with legal administrative regulations applicable for the employees of that particular State. At the end of the working period, the EU citizen has the right to remain on the territory of that Member State, provided that he or she obeys the conditions specified in the rules for their application (TEC, 1992).

The term labor (worker) is set by the EU law and not nationally. It must be given a

broader interpretation, because it defines the scope of one of the fundamental freedoms guaranteed by the Treaty. National definitions or criteria are not taken into consideration when determining whether a person represents a worker and, therefore, benefits from the free movement of worker's right.

The conditions for free movement of workers – “laborers” can benefit from the freedom of movement right if they really wish to conduct businesses in a EU country, without having the nationality of that country. The activity should not have the character of employment in public administration and it should be insignificant in volume. It is allowed to work part time and for a lower salary than the minimal salary in the sector. To act as "worker", it is enough to be a part-time worker, whose activity does not exceed more than 10hrs/week (Reg. 562, 2006).

The “labor force” category includes a person who is practicing in professional training, provided that the practice is a real activity with reported wages. As a general rule, workforce or labor force quality is lost if the conditions for its acquisition are no longer met. At the time when the employment contract period ends, the person hereby mentioned ceases to be a worker. One that is in search of a workplace must be given enough time, so he could find a (new) job. Eventually, the time allowed will be even longer if the person can prove that his efforts to find a job are based on real opportunities.

After the cease of professional activity, the person may remain in the host country as invalid or retired, the same being true for surviving spouse. Their further stay must be analyzed in the context of free movement of workers, maintaining their status of persons benefiting from free movement rights. In addition to this, freedom of movement, once acquired, can also have other legal consequences. Thus, EU citizens would be reluctant to leaving their home country to go to another EU country with the purpose of having a trade and industry or independent activity, as long as, when returning home, the conveniences offered are not at least equal to the conveniences under the EU law.

If the worker returns to his home country, the child accompanying him continues to have the right to free movement within the European Union host State, if it is necessary for him or her to continue or to complete education (school / college). It is also possible for a European citizen who ceases work because of a disability to remain in the European Union host State, if necessary, to raise the child.

Free movement of workers is not applicable to workplaces in public administration, since such positions imply the exercise of State authority. Only classical administrative professions are excluded, such as police, border police, financial administration, military and government administration. Other professions benefit from the right to free movement of workers (professions in areas such as post and telecommunications, health and education) (Nat. Strategy, 2011).

Free movement of services – claims that restrictions of the freedom to provide services within the European Union are prohibited, in respect of nationals of Member States living in a State other than that of the person for whom the services are intended. The Parliament and the European Council, acting in accordance with the ordinary legislative procedure, may extend the TEC dispositions, to service providers who are nationals of a third country and are residents in the European Union.

Services shall be considered as such where they are normally provided for remuneration, as far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. Services may include industrial activities, commercial activities, craft activities, independent activities.

Free movement of services includes the right to provide services internationally, as an entrepreneur or through employees, or to be the beneficiary of such services, as a company or as an individual. Providing services under international regime covers, for example, situations where an operator performs construction, repair or maintenance, purchases or sales of goods (shipping) or passenger

transport (taxi), and these activities are international.

The category of service users includes people crossing the border into another EU country to go to the doctor, to a cultural activity, at a football match, shopping or at a petrol station, or tourists. Family members have the right to free movement (secondary law), when traveling with the service provider or when being in the European Union state in providing or receiving services.

The free movement of services must involve some form of foreign aspect. The person providing a service may, in order to do so, temporarily pursue his activity in the EU State where the service is provided. However, the European Court of Justice stated that there might be other forms of international service providing that can involve cross-border movement of services. This includes, for example, cross-border business relationships, achieved through modern media (e.g. business advice, translation, property management). Free movement of services includes (indirectly) rights for persons legally and permanently hired by companies. They can be temporarily deployed in another EU country to provide services. Third foreigner legally and permanently committed to a company based in a European Economic Area state may work temporarily in another state for his company, having the right to free movement of services and therefore, not needing a work permit. The service provider may temporarily pursue his activity in the Member State where he provides the services under the same conditions imposed by that State on its own citizens, without thereby affect the right of establishment. As long as restrictions on freedom to provide services are not removed, every Member State applies them, without distinction based on citizenship, nationality, residence or headquarters, in the case of all service providers who are nationals of Member States established in another EU country, excepting the State of residence of the recipient of services.

Freedom of establishment - restrictions on freedom of establishment of nationals of a Member State in another Member State are prohibited. This prohibition shall also apply to

restrictions on setting up agencies, branches or subsidiaries by nationals of a Member State established in another Member State. Nationals of Member States are entitled to begin and pursue an independent economic activity, to establish and manage companies in another EU country, in accordance with the host regulations on its own nationals. Nationals of Member States have also the right to establish a company (subsidiary), agencies, branches or subsidiaries in another EU country.

Companies established under the laws of a Member State and having its registered office, central administration or principal place of business within the European Union benefit from same treatment as individuals who are nationals of Member States. Companies are defined as companies established in accordance with civil or commercial law, including cooperative societies and other legal persons, excepting the non-profit. Companies participating in the exercise of official authority are excluded.

Freedom of movement, as a generally valid right – since the European Union was founded, in 1993, by the Maastricht Treaty, EU citizens have a right to free movement, generally valid. According to Art. 18, paragraph 1 TEC, each EU citizen is entitled to move freely and to reside in the Member States, under limitations and conditions stated in the Treaty and its implementing rules.

Art. 18, paragraph 1 TEC states a right to stay connected to a purpose that should not necessarily be business. Directive 2004/38/EC states the conditions for exercising the right to move and reside freely within the Member States by EU citizens and their family members, the permanent residence in the Member States, restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health - without containing primary law dispositions.

Generally, according to Art. 18, paragraph 1 TEC, the European Union citizen must have means of living during the stay and have adequate health insurance, both for his person and family members, so that during their stay they do not need to ask for social support from the host state. The same rule is valid for

retirees who want to live in another EU country than that where they have worked and for students. Along with the one having the right of residence, family members may live, whatever their nationality is. These persons also have the right to free movement, so they can work without needing a work permit.

Free movement of family members is not primary, but derivative. This right may apply or not, depending on the person's EU / EEA status. One will have to travel to another EU / EEA country and the conditions of that particular state referring to the freedom of movement. The generally valid freedom of movement may be limited, as all other rights to free movement, especially for security, order and public health reasons, in accordance with the jurisprudence of the European Court of Justice.

Categories of beneficiaries of the free movement right - according to art. 18, 39, 43 and 49/TEC the free movement right belongs to EU citizens. According to art. 17/TEC, a EU citizen is one who has the citizenship of a European Union Member. EU citizenship does not replace, but complements national citizenship. The Agreement on the European Economic Area (EEA) from 02.05.1992, states that all rights of free movement also apply to nationals of Iceland, Liechtenstein and Norway. The same is valid for Swiss citizens - under the Agreement on free movement EU / Switzerland. Freedom of movement is valid without restrictions for people with dual or multiple citizenship, which - in addition to the nationality of a EU / EEA or Switzerland - still have one or more citizenships.

The right to free movement is also applied for family members who are not citizens of EU or EEA State. Irrespective of their nationality, the following family members may enjoy the EU / EEA or Swiss citizen right: husband / wife, partner with whom the Union citizen has contracted a registered partnership under the laws of a Member State, if under the legislation of the host Member State, registered partnerships are equivalent to marriage and in accordance with relevant legal requirements of the host Member State; direct descendants aged more than 21 years or dependents and direct descendants of the

spouse or partner as defined, direct ascendants who are dependents and those of the spouse or partner as defined.

With no prejudice to any right to free movement and residence of persons concerned, the Member State assures, under its law, entry and residence for the following people:

- any family members, whatever their nationality, that in the country from which they come, are dependents or household members of the Union citizen having the primary right of residence, or if serious health reasons imperatively demand for personal care by the Union citizen family member;

- partner with whom the Union citizen has a durable relationship, duly attested.

Member States need not recognize polygamous marriages attested in accordance with the law in a third country, but which may violate their domestic legal system. This does not affect the obligation to properly take into account the interests of the children of such marriages. These dispositions are found in Directive 2004/38/EC of the European Parliament and Council of 29.04.2004 on freedom of movement and residence within Member States for Union citizens and their family members, but also in Regulation (EC) no. 1931/2006 of the European Parliament and Council of 20.12.2006 stating rules on local border traffic at external land borders of the Member States and amending the Schengen Convention and Regulation (EC) no. 562/2006 of the European Parliament and Council of 15.03.2006 establishing a Community Code governing the movement of persons across borders (Schengen Borders Code). Regarding the last two regulations, "persons enjoying the Community right of free movement" means:

- Union citizens, within the meaning of art. 17 n. 1 of the Treaty establishing the European Community, and third country nationals who are family members of Union citizens who exercise their right to free movement, subject to Directive 2004/38/EC;

- Third country nationals and their family members, regardless of nationality, who, under agreements between the Community and its Member States on the one hand, and these countries on the other hand, enjoy rights of

free movement equivalent to the right of EU citizens.

3. THE RIGHTS FOR EU CITIZENS

EU citizenship confers to every Union citizen a fundamental and individual right to free movement and residence within Member States, subject to limitations and conditions of the Treaty and measures adopted for its implementation. Directive 2004/38/EC on free movement and residence within Member States for Union citizens and their family members states:

* Conditions for exercising the right to move and reside freely within the Member States by Union citizens and their family members;

* The right of permanent residence in Member States for Union citizens and their family members;

* Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health.

This Directive shall apply to all Union citizens traveling or residing in a Member State other than one's own state, but also to his family members, who benefit from freedom of movement, which accompany or join that particular person. Other family members and their own citizens are subject to national law of the State responsible for control.

Right of exit - EU citizens have the right to exit another Member State by virtue of having an identity card or valid passport. Family members can exit only by having a valid passport. Under no circumstances can an exit visa or equivalent formality be required.

Right of entry - EU citizens can enter by virtue of having an identity card or valid passport. Family members may enter only by having a valid passport, if they have an entry visa. Family members having a valid residence permit are exempted from the visa requirement. If a Union citizen or family member who is not a national of a Member State does not have the necessary travel documents or, where appropriate, the necessary visa, the particular Member State shall grant such persons, before proceeding to the expulsion, all reasonable means to enable

them to achieve, within a reasonable period of time, the necessary documents or to prove by other means that they benefit from freedom of movement and residence.

Right of residence for up to three months - for stays of less than three months, the only requirement on Union citizens is that they possess a valid identity document or passport. Paragraph also applies to family members who possess a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.

Right of residence for more than three months - all EU citizens have the right to reside in another Member State for more than three months if they: are engaged in economic activity on an employed or self-employed basis, in the host Member State; have sufficient resources for themselves and their families so as not to become a burden on the social assistance system of the host Member State during stays and have complete health insurance in the host Member State; are family members accompanying or joining a Union citizen who himself meets the mentioned conditions. Right of residence shall extend to family members who are not nationals of a Member State, if accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions mentioned above. In these cases, the host Member State may require Union citizens to register at the competent authorities and to be issued immediately a "registration certificate". Ignoring the registration requirement may render the person liable to non-discriminatory and proportionate sanctions. Family members of Union citizens who are not nationals of a Member State shall be given a "residence permit", if the planned period of stay exceeds three months. Ignoring the requirement to apply for a residence permit may render the person concerned liable to proportionate and non-discriminatory sanctions.

Family members of Union citizens who are not nationals of a Member State shall be given a document called "Residence card of a family member of a Union citizen" no later than six months after the they submit the application. A certificate of application for a residence permit is issued immediately. This confirmation will be sufficient to justify the proof of residence.

Right of permanent residence - Union citizens acquire the right of permanent residence in the host Member State after a five-year period of uninterrupted legal residence. Family members who are not nationals of a Member State and have legally resided with the Union citizen in the host Member State for a continuous period of five years benefit from the same right.

Member States shall issue Union citizens and their family members, beneficiaries of the freedom of movement (and residence), who have permanent residence, after having verified duration of residence, a document certifying permanent residence application. Right of residence and permanent residence cover all the territory of the host Member State. Member States may impose territorial restrictions on the right of residence and permanent residence only if restrictions are imposed to their own nationals as well.

Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health - Member States may restrict freedom of movement and residence of Union citizens and their family members, regardless of nationality, on grounds of public health and public order or national security. These reasons cannot be invoked for economic purposes.

5. CONCLUSIONS

In conclusion, measures taken on grounds of public policy or national security must

respect the principle of proportionality and are based solely on personal behavior of the particular citizen. The behavior of the person must represent a real threat, sufficiently serious, affecting a fundamental interest of society. Reasons not directly related to the case or connected to general prevention shall not be accepted. The person with the right to free movement can be denied to enter the EU area only if there are genuine and sufficiently serious threats to harm the fundamental interests of society.

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