

THE ACCESS TO WORK OF THIRD COUNTRY NATIONAL FAMILY MEMBERS

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- ❑ The free movement of persons, in general and for workers in particular, is one of the cornerstones of the EU.
- ❑ The EC Treaty does not make rights based reference to third country nationals. An important exception however exists.

- ❑ Free movement of family members constitutes a fundamental right of workers and their families.
- ❑ The improvement of living conditions and the promotion of social advancement may frequently be best achieved if not only the migrant worker, but also the co-habiting spouse, contributes to the maintenance of the family with his or her income.

- ❑ Pursuant to 2004/38 Directive as to the original Regulation No 1612/68, family members have the right to settle, the right to take up an activity and to be admitted to the general educational, apprenticeship and vocational training courses.
- ❑ The right to settle down with a worker who is a national of a one Member State belongs to his spouse, their descendants who are under the age of 21 years or are dependents and dependent relatives in the ascending line. It is irrespective of nationality.

- ❑ However, the provisions of Community law on the free movement of workers do not apply to purely internal situations of a Member State, such as the situation of a third country national, who solely in the capacity as a spouse of a national of a Member State, claims to reside or to remain and to work in the territory of that Member State.
- ❑ On the contrary, the above provisions are applied when the migrant worker returns to the labour market of his home Member State.

- ❑ The work place of the employed person who comes from within the Community and of that of his family member who is a third country national should be in the same Member State.
- ❑ Article 23 of the Directive does not constitute the legal basis for a right of residence in the EU as a whole.
- ❑ The family members who are not citizens of other Members States, do not have under Community law an autonomous right to move and to work.

- ▣ The family members are entitled to take up an activity throughout all the territory of that same State where they have the right of residence.
- ▣ However, community law does not confer on nationals of third countries a right to such opportunities to pursue employed activity across intra-Community borders.

- ▣ Access to employment of the member of family concerns any activity. Both dependent employment and self-employment are included.
- ▣ The access to employment does not depend on the possession of a residence document.
- ▣ EU citizens and family members do not need a work permit to take up employment in Member States.
- ▣ Third country nationals family members are not equated with non-EU foreigners, but with nationals or Union citizens. They should not be subject to the work quota fixed on an annual basis.
- ▣ The rules with regard to access to and the practice of a profession apply to family members in the same way as to nationals of the host State.

- ▣ The Directive 2004/38, as the original Regulation, obliges the national authorities of the host Member State to treat equally not only the concerned workers, but also the related persons. Equal treatment for workers entails the right to take up an activity, to exchange applications for and offers of employment and to conclude and perform contracts of employment.
- ▣ The source of discrimination is not important.