

Conference on the free movement of workers within the EU:
Right of residence and social rights for Union Citizens and their family members

Research Centre Immigration & Asylum Law at the University of Konstanz and the Federal Ministry of Labour and Social Affairs

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Conference report

The objective of the conference was to discuss the legal practice of free movement of Union citizens and their family members in the contemporary labour market of the Member States. In four topical sessions the participants debated different aspects of the rights of labour-seeking Union citizens or third-country nationals by means of case studies. Moreover the further development of the secondary legislation of the EU was an additional topic of the discussion.

The legal status of labor-seeking Union citizens under Regulation (EC) No 883/2004 and Regulation (EU) No 492/2011 was on the focus of the first session.

The deputy head of the unit “Free movement of workers & coordination of social security” within the European Commission, Mr. Tagger, emphasized that free movement is a key pillar of the European project. At the same time he pointed out, that free movement cannot be realized without social security coordination since the loss of social security rights would negatively affect the decision to move to another Member State.

The conclusions of the first session can be summarized as follows:

- first-time jobseekers benefit from financial resources under national law, if these resources are intended to facilitate access to the labour market of a Member State and if there is a real link between the jobseeker and the labour market of that Member State (ECJ Case C-22/08 and C 23/08 *Vatsouras/Koupatanze v ARGE Nürnberg*); for the future it is essential to identify what benefits are falling under this definition in practice;
- job seekers who retain the status of a worker have the right to equal treatment within the scope of the Treaty under Art. 24 (1) of the Directive 2004/38;
- first-time jobseekers and jobseekers who retain the status of a worker have the right to receive the same assistance by the labour administration as nationals of the host Member State (Art. 5 Regulation 492/2011);
- the participants agreed that there is a general need for clarification with respect to the relationship between the Directive 2004/38 and Regulation 883/2004;
- finally, a clarification is also required pertaining to the length and conditions of residence for first-time jobseekers and their family members who, for the first time, reside for more than three months.

In the second session the speakers focused on the issue of non-discrimination while accessing the labour market, on support measures and on conditions for employment. Mr. Koller, head of unit of the German Federal Ministry of Labour and Social Affairs, discussed the current issues dealing with the relationship between the Directive 2004/38 and the Regulation 883/2004 and its respective application.

The participants agreed that this intricate relationship is of considerable political significance and should be approached in the near future in order to enhance the European social security coordination.

Subsequently, the discussion turned to the subject of the unabridged right of free movement beginning May 2011 for those Member States which joined the Union in 2004 and its prospective impacts on the German labour market. The experts agreed that the migration flow will be limited to a number of about 100.000 -140.000 people per year. At the same time the German demand for employees is increasing. Several industry sectors have a high demand for skilled-workers, while there is only a marginal supply for the labour market. Therefore, the migration movement can also be seen as an economic opportunity for Germany.

The third part of the conference dealt with the right of free movement of workers and the non-discrimination principle with respect to legal relationships of private law nature. The goal was to discuss recent challenges for the legal status of Union citizens.

Finally, Prof. Dr. Verschueren (University of Antwerp) came to the conclusion that the residence right for labour-seeking Union citizens under Directive 2004/38 may be linked to the requirement to dispose of sufficient resources. At the same time, equal treatment of Union citizens and their family members under this Directive applies also to social benefits, including social assistance.

From the perspective of the Federal Association of German Employers, the opening of the labour market without restrictions to nationals of the new Member States is an essential precondition in order to meet the demand for workers persistently. According to the Federal Association of German employers, it is therefore important to establish a culture of welcoming for labour-seeking Union citizens.

The general topic of the last session was the concept of free movement of workers and the Union citizenship. The *Ruiz Zambrano* judgment and the question whether it establishes a new unconditional right of residence was at the focus of debate. According to Prof. Dr. Thym (Co-Director of the Research Centre Immigration & Asylum Law at the University of Konstanz) the jurisdiction is motivated by the need of special protection for minor Union citizens and does not affect cases of reunion with spouses.

Subsequently, Mr. Handoll (Fry Solicitors, Dublin) spoke about the “termination of residence with respect to Union citizens and their family members” and focused on the circumstances when third-country national family members can be legitimately denied rights of entry or residence. Based on the *Metock* judgment he pointed out that restrictions on “family reunion” will discourage the exercise of free movement rights. At the same time he emphasized that it is not clear from the Directive 2004/38 to which extent the Member States may refuse, terminate or withdraw rights in the case of abuse of rights or fraud, such as marriages of convenience. It was also emphasized that there is a need for clear rules regulating under which circumstances marriages of convenience can be legally assumed. Otherwise it tends to be difficult to prevent them and to deny free movement and residence rights after marriage.

The conference was attended by 80 participants (e.g. public officials at central and regional level involved in labour and immigration issues, equivalency authorities, authorities from the German Federal Employment Agency and from the Federal Association of German Employers and academics from Germany, Ireland and Belgium, PhD students, law practitioners). Motivated discussions completed this seminal conference.

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