



Session 5

Applying European Citizenship rights

So, you are a European Citizen!
So, what?

Outline

From Workers to Citizens

- What is EU Citizenship? And Who is a EU citizen?
- Scope of citizenship rights
- Non-discrimination on grounds of nationality & EU citizenship
- Case-law : citizens, students, job-seekers...
- Dir.2004/38 general right of entry and residence
- 3rd country nationals.
- Conclusion

What is EU Citizenship? And who is a EU citizen?

Citizenship of the EU is hereby established.

Every person holding the nationality of a Member State shall be a citizen of the Union.

EU citizenship shall complement and not replace national citizenship.

Article 20 TFEU See full article in notespage.

The essence of the rules on EU Citizenship.

European citizenship (established 1992) is a specific expression of the principle of non-discrimination on grounds of nationality (in the Treaty since 1957).

Free movement & EU Citizenship

Every citizen of the Union shall enjoy the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down by the Treaty and by the measures adopted to give it effect.

(Art. 21 TFEU; full text in notespage).

Freedom of movement

- Presumption of a right to move freely & to reside in another member-states than one's own.
- The citizen has a right to do so. No permission needed from host state.
- Host state may restrict free movement (deny entry or deport) on grounds of
 - public policy,
 - public security
 - public health.(Art. 45 para.3 TFEU & Dir. 2004/38).

Directive 2004/38/EC provides details on

- (a) the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members;
- (b) the right of permanent residence in the territory of the Member States for Union citizens and their family members (who may not be EU citizens themselves).
- (c) the limits placed on the rights set out in (a) and (b) on grounds of public policy, public security or public health.

Right of Union citizens to permanent residence depends on

- being at work or being self-employed or
- have sufficient means to support themselves and their families or

- are students

AND

- have comprehensive sickness insurance cover in the host Member State.
- See further details in notes page

What happens when there are disputes about the exercise of citizenship rights?

- Citizens can bring a case in the national courts against the authorities.
- National courts may refer to the European Court of Justice for an interpretation.
- National courts ultimately responsible to adjudicate.

Let us look at some examples

- Students
- Job-seekers
- 3rd country nationals

Students

Case of Grzelyck v Centre Public d'Aide sociale

Can a French student studying in Belgium claim a social security benefit available to Belgian students?

Court stated that EU citizenship is destined to become the fundamental status of nationals of the member states.

EU citizenship means equal treatment of EU citizen with nationals in the same circumstances, subject to exceptions **expressly** provided for.

Job-seeker's right to social security benefits

Ioannidis, a Greek national, graduated from university in Belgium, worked in France and returned to look for work in Belgium. Could he claim an allowance in Belgium available to Belgians seeking work?

Belgian law required that claimants have completed their secondary education in Belgium.

Court ruled:

A Member State cannot refuse to grant a allowance to a national of another Member State seeking his first employment on the sole ground that he completed his secondary education in another Member State.

Can a difference in treatment be justified?

- **objective considerations**
- **independent of the nationality** of the persons concerned
- **proportionate to the aim legitimately pursued by the national law.**
- **a single condition** concerning the place where the diploma of completion of secondary education was obtained **is too general and exclusive in nature and goes beyond what is necessary to attain the objective pursued.**
- (extract from judgment in notespage)

European citizenship & 3rd country-nationals

Blaise Baheten Metock and Others v Minister for Justice (Ireland)

- Mr. Metoc, a Cameroon national, arrives in Ireland to be with his long-term partner and their children.
- His partner is a British citizen, Cameroonian by birth, working in Ireland.
- Mr Metoc applied for asylum is refused.
- His stay in Ireland becomes illegal.
- Mr. Metoc married his long-term partner.
- He then applied for residence permit, as spouse of an EU citizen.

See more details of the facts of the case in notepage

Can Mr Metoc rely on EU law?

The Directive on the free movement applies to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members who accompany or join them.

European Court of Justice ruled

a national of a non-member country
who is the spouse of a Union citizen
residing in a Member State
other than their own
benefits from the provisions of that directive,
irrespective of
when and where their marriage took place
and of how the national of a non-member country
entered the host state.

See longer extract in notespage.

Dir. 2004/38: a directive too far?

Does its application

- Offer the ECJ scope for interpreting it widely?
- Open the door to welfare migration? & benefit shopping?
- Break down the distinction between workers and non-workers? between EU and non-EU citizens?
- Limit member-states sovereignty regarding immigration?

But consider that:

- The Directive was adopted by the member-states and the European Parliament.
- Member-states have a decisive role in adopting legislation.
- The Directive takes into serious consideration the family rights of the EU citizen.

A Directive too far?

Critique by think tank Open Europe

Free movement of workers has been a major success particularly in the UK.

But undermining member states' rights to control the movements of criminals, their borders, and the access of economically inactive people to benefits is a mistake – not just because these changes are problematic in themselves, but because in the long run this will undermine public support for free movement of workers.

Applying EU law on free movement of citizens: Consider the following situation

Elisabeth, a Sierra Leone national, arrived in Portugal illegally. To support herself she found work in a restaurant as a waitress.

Helmut is a German national, who resides in Portugal where he owns a holiday house. He lives on royalties from his novels which are best-sellers across Europe, although he no longer writes. He eats regularly at the restaurant where Elisabeth works.

Elisabeth and Helmut started seeing each other and after a while Elisabeth moved in with Helmut. When Elisabeth became pregnant, they married in September.

Following the birth of their child Elisabeth and Helmut applied to the Portuguese authorities for a residence permit for Elisabeth. However, the Portuguese authorities started proceedings under Portuguese law to deport her as an illegal immigrant.

Consider the following questions:

- What rights do you think Helmut and Elisabeth have under EU law?
- How can they pursue these rights?