

## Handout № 12

### Free movement of workers

1. Fundamental Community rights: *Article 39 EC* and Secondary legislation (*Dir 68/360*, *Reg 1612/68*, *Reg 1251/70*, *Dir 64/221*)
2. Personal scope
  - workers
    - ‘worker’ Community concept (*Lawrie-Blum (case 66/85)*):
      - \* performing services
      - \* during a certain period of time
      - \* for and under the direction of another
      - \* in return for remuneration
    - not only the present worker, also one who, having lost his job, is capable of taking another (*Hoekstra (case 75/63)*) search for new employment must be genuine for keeping status as worker<sup>1</sup>
    - part-time if the work is ‘real’ and not minimal/nominal (economic nature/purpose): *Levin (case 53/81)*, *Kempf (case 139/85)*, see also (on students’ rights to social advantages which workers are normally entitled to) *Brown (case 197/86)*
      - merely ancillary employment – and *Lair (case 39/86)* – distinction between involuntarily unemployed (same treatment as regards reinstatement/re-employment) and one who gives up work in order to undertake further training (same treatment only if there is a link between previous work and study)
  - families (derived by the relationship to the (migrant) worker)
    - Reg 1612/68: worker’s spouse and their descendants under the age of 21/dependants and dependent relatives in the ascending line
    - spouse: not cohabitee (*Reed (case 59/95)*) yet no discrimination (aliens with stable relationships with *Dutch* were entitled to residence)), must not live under the same roof (*Diatta (case 267/83)*), situation of divorced spouse unclear (*Baumbast (C-413/99)* covers the position of a divorced spouse as an adjunct of the children’s right)
    - dependants/descendants: broad view, not only common children
  - right on return: *Akrich (C-109/01)*
  - employers of migrant workers
  - employment economic nexus
3. Material scope
  - rights of entry and residence (*Dir 68/360*):
    - leave home, enter territory (on valid identity card), obtain (5 yrs automatically renewable) residence permit (on confirmation of employment) also for mere search of work (*Procureur du Roi v Royer (case 48/75)*)

---

<sup>1</sup>Individuals may have rights under other provisions of the Treaty, such as those on citizenship or under specific secondary legislation.

- valid residence may not be withdrawn on the grounds of *involuntary* unemployment
- temporary workers may receive temporary residence permits (no residence permit for less than three months)
- ECJ: the worker's right of residence (and that of its family) derives from the ECT itself (Art. 39 EC) and is not dependent on national legislation (*Royer*); even illegal entry can be "remedied" by marriage to EC worker (*MRAX (C-459/99)*)
- Access to employment; equality of treatment (Reg 1612/68):
  - abolition of discrimination based on nationality in respect of
    - \* employment (limiting applications/advertising/numbers, special recruitment procedures, exception: linguistic knowledge),
    - \* remuneration,
    - \* other conditions
  - equality of treatment in all matters relating to the actual pursuit of activities (social advantages such as housing)
    - \* conditions of work, art. 7(1) (excluding periods of employment in another MS for the calculation of seniority (*Ugliola (case 15/69)*; *Schöning-Kougetebetopoulou (C-15/96)*) or different separation allowances (*Sotgiu v Deutsche Bundespost (case 152/73)*))
    - \* same social and tax advantages, art. 7(2), whether or not attached to employment contracts for those with 'settled' (five yrs) residence (*Lebon (case 316/85)*) granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on national territory (*Even (case 207/78)*), also for family after worker's death (special fare reductions, discretionary childbirth loan (*Reina v Landeskreditbank Bad.-Württemberg (case 65/81)*), old age benefits)
    - \* Access to training in vocational schools and retraining centres, art. 7(3)
    - \* trade union rights, representation and management, art. 8
    - \* housing, art. 9
  - elimination of obstacles to mobility (right to be joined by family, integration of family)
    - \* residence of family, art. 10 (irrespective of nationality, beyond age 21 dependency required)
    - \* employment, art. 11 (spouse's qualifications must be recognised by host state)
    - \* access to educational apprenticeship/vocational training, art. 12 (facilitating measures such as grants come under art. 7(3)), even if worker is not resident anymore (*Echternach/Moritz (case 389/87)* and *Gaal (C-7/94)*), child's right to stay may give responsible parent right to stay (*Baumbast (C-413/99)*)