

Law of European Union Coursework

2. "What is the importance of the concept of citizenship in the development of EC law after Maastricht? Has it given a new impulse to creating, extending or safeguarding citizens' rights? Or has it merely given new rhetoric to old concepts of free movement"

Critically comment on the above statement with particular reference to the free movement of persons.

Freedom of movement for persons and the abolition of controls at internal frontiers form part of a wider concept, that of the internal market in which it is not possible for internal frontiers to exist or for individuals to be hampered in their movements.

The concept of the free movement of persons has changed in meaning since its inception. The first provisions on the subject referred merely to the free movement individuals considered as economic agents, either as employees or providers of services. The original economic concept has gradually widened to take on a more general meaning connected with the idea of Union citizenship, independent of any economic activity or distinctions of nationality. This also applies to nationals of third countries, because after controls were abolished at internal borders people could obviously no longer be checked for nationality.

The importance of citizenship in EC law is that members are able to move anywhere within EC countries to obtain employment, by being a member you gain automatic rights. the idea is that there should be a level playing field and that if you move to a country with EC membership there is no need to have work visas, it is intended that once all members are fully integrated and adopt the euro dollar that there will no longer be a division of the countries and that citizens will be able to have the same rights of the people whose country they are living in at that moment in time. That would mean the same rights to benefit payment as well as employment opportunities and housing. This would mean that citizens would be able to travel anywhere within the EC communities in order to obtain suitable employment. The rights also extend to the immediate family of the citizen regardless of whether they have citizenship or not,

the transfer of citizen rights to other members of the household is automatic except for in the sphere of employment, though there are plans to make it so that partners of people with citizenship should have full entitlement. At present the only right they have is to move to the location of their spouse.

The Maastricht treaty amended the treaty of Rome and the single European Act and introduced new powers and policy areas. Major aspects of EC policies were not changed at all by the new treaty e.g. the common agricultural policy.

The treaty went into effect on 1 November 1993. The European Economic Community- renamed the 'European Community' under the Treaty of Maastricht- takes a broader approach than the other two Communities. Its goal is to promote comprehensive economic integration and these provisions apply to all workers of the members states regardless of occupation. It includes the following titles:

- Free movement of goods and workers
- The free movement of capital and payments
- Freedom of establishment and the freedom to provide services
- Competition policy,
- Economic and monetary policy,
- Agricultural policy,
- Transport policy, environmental policy,
- Research and technology and
- Industrial policy

The Maastricht treaty brought the areas of justice and police co-operation- including the problems of asylum and immigration within the European Unions.

The treaty of Amsterdam went further: (17th June 1997)

It had four main objectives:

- To place employment and citizens rights at the heart of the union;
- To strengthen security and remove any remaining obstacles to freedom of movement;
- To give Europe a stronger voice in world matters;
- To make the Unions institutions more efficient with a view to enlargement.

However this policy does not only have economic implications. There are also social consequences. The Preamble of regulation 1612/68 states:

“the freedom of movement constitutes a fundamental right of workers and their families; mobility of labour within the community must be one of the means by which the worker is guaranteed the possibility of improving his living and working conditions and promoting his social advancement, while helping to satisfy the requirements of the economy of the member states”.

The freedom of movement of workers is mainly based on the principle of non-discrimination on the ground of nationality, while the freedom of non-wage earners to move within the Community is, generally speaking, expressed by the rights of establishment and the right to provide service. For the non-economically active three Directives were adopted in 1990. Directive 90/364 gives rights to persons of independent means and Directive 90/365 covers retired persons who do not satisfy Directive 1251/70. In addition there is Directive 90/366 which provides rights to students undertaking a vocational course at a university in another Member State whereby they can reside in the host Member State for the duration of their course. This Directive was later annulled by the Court (case 295/90 European Parliament v Council) on the grounds that the legal base claimed by the Council was wrong so that the Parliament was merely consulted and the co-operation procedure was not utilised. However, the Directive remained in force until it was replaced by Directive 93/96. For all these directives there is one common factor, which is that the individual who is seeking to enforce a right under them is not economically dependant upon the benefits system of the host Member State.

A new Part to the EC Treaty on ‘Citizenship of the Union’ was created by the TEU and confirmed by the Treaty of Amsterdam. Article 17 established Citizenship of the Union and Art 18 EC has been included whereby all citizens of the union will be entitled to move and reside freely within the territory of all the Member States. This right can be restricted by Community law limitations already in existence and future implementing measures. That this right did not translate into enforceable rights for the citizens is demonstrated by the case of Florius Wijsenbeek (case C-378/97). On re-entry to Holland, a Dutch national refused to show his passport, referring instead to the EC Treaty provisions, Arts 7a and 8a (now 14 and 18), on the free movement of EU citizens as removing the necessity to do so. He was prosecuted and ordered either

to pay a small fine or go to prison for one day. He appealed and a reference was made to the Court of Justice. The Court held that because Art 7a (now 14) provides only that the Council may adopt provisions to facilitate the objectives of internal market, the provisions are not directly effective. The Court observed that at the time of the events in question, there were no common rules on immigration or border controls, therefore even if an unconditional right to move was established, the Member States still retain the right to carry out identity checks and to determine whether the person entering the State is a person entitled to do so. Furthermore, Member States have the right to impose penalties for breach of the obligation to be identified, provided that such penalties are proportionate and comparable to penalties for similar national infringements. The Court considered that imprisonment would create an obstacle to free movement of persons but that the fine of NLG 65 appeared to be acceptable. It remains to be seen how this will affect the rights of entry and residence of those seeking work or establishment. Furthermore a new Title on Visas, Asylum, Immigration and other policies relating to Free Movement of Persons has been incorporated into the Treaty (Arts 61-69). Effectively it incorporates the Schengen Agreement into the EC Treaty. The Agreement was originally signed by Five Member States in 1990 and now extends to all except UK, Ireland and Denmark. This will seek progressively to remove all internal border controls and barriers to free movement for Union Citizens regardless of their economic status.

The Council issued Directive 68/360 on the abolition of restrictions on movements and residence for workers of the Member State and their families. Both Art.39 EC (ex 48 EC) and the Directive have been held by the ECJ to be directly effective. Thus they give individuals rights which the courts in the Member States must protect and enforce.

Art.39(3) EC (ex 48(3)EC) envisaged the free movement of workers for pursuit of accepting employment but makes no mention of a right to move freely in search of employment. Directive 68/360 makes no reference to this point either, but it has been generously interpreted by the Court. In Case 48/75 Procureur du roi v Royer the Court held that Art.3 of the Directive included the right of workers to enter the territory of a Member State and reside there for the purpose intended by the Treaty, in particular to look for or pursue an activity as an employed person. In the Levin case this right was limited to three months on the proviso that the individual could support themselves without recourse to public assistance. Also in Case 292/89 R v Immigration Appeal

Tribunal¹ the Court held that immigrants seeking employment had the right to enter another Member State and stay there for a sufficient period of time to find out about the job market opportunities and to find a job. In the UK six months is allowed for a “worker” to find a job although generally at least three months are given by Member States.

A worker's right to a residence permit is implied once he has secured a job but if he finds no job or if he loses it voluntarily he cannot expect to be entitled to a residence permit. Thus a British subject continuously unemployed was not entitled to a renewal of his residence permit in the Netherlands-Williams v Dutch Secretary of state (1977)².

The right of residence means the right to stay indefinitely in the host country. A worker cannot be expelled except in cases justifiable under derogation from the freedom of movement. The residence permit is merely proof of the right granted by the Treaty which exists independently in the document.

As a corollary to the freedom of movement protected by Regulation 1612/68 and Directive 68/360, Regulation 1251/70 gives the worker the right to remain in the territory of a Member State after having been employed there. This right applies to the retired and incapacitated worker. A worker acquires a right of residence on retirement provided that he has reached the age laid down on the member state for entitlement to an old age pension, has resided continuously in that member state for more than three years the last year of which he has been employed. If the incapacity of a worker is due to an industrial accident or disease entitling him to the payment of a pension, he can remain in the Member State regardless of the length of his previous residence. If the incapacity did not arise from employment he is entitled to remain if he has resided in the Member State for at least two years.

The limitations are specified in Art.39(3) are on the grounds of Public Policy, public security or public health. National authorities applying these actions. They cannot impose restrictions upon a Community national unless "his presence or conduct constitutes a genuine and sufficiently serious threat to public policy" (Roland Rutili v Ministre de l'interieur). This cannot be applied to a group, but only to individual members of the group (Van Duyn v Home Office)³. Directive 64/221 states that it

¹ [\[1991\] E.C.R. I-745](#)

² [\[1977\] E.C.R. 1355](#)

³ [\[1975\] Ch. 358](#)

must be "personal conduct". On the basis of the UK Government's view of the Church of Scientology, the court held in Van Duyn that the UK's action was justified. The question was asked "was it discriminatory in that a UK national could have taken up the post Van Duyn had accepted?" The court response was:

'a Member State for reasons of public policy, can where it deems necessary, refuse a national of another Member State the benefit of the principle of freedom of movement of workers in a case where such a national proposes to take up a particular offer of employment even though the Member State does not place a similar restriction on its own nationals".

In this case a Dutch woman obtained a position as secretary with the Church of Scientology in the UK, but was refused entry by the Home Office on the ground that public policy declared the church to be socially harmful. Ms Van Duyn claimed that the refusal was not made on the ground of her personal conduct but on the conduct of the group. The Court of justice held that personal conduct must be an act or omission to act on the part of the person concerned and must be voluntary. It need not, however, be illegal or criminal in order to offend public policy. The court further held that present association, reflecting participation in the activities and identification with the aims of a group, may be considered a voluntary act and could therefore come within the definition of conduct.

it follows from the case law of the Court that Member States have not relinquished all control over Community nationals as regulations governing the registration of aliens and criminal sanctions in this respect are compatible with their Treaty obligations unless they are so rigorous as to be tantamount to a rejection of the freedom of movement over and above the cases covered by the derogation provisions.

Public Policy provides a Member State with discretion but only within the limits allowed for by the Treaty, which are narrowly interpreted by the ECJ. Criminal conviction does not automatically justify deportation (*Bonsignore v Stadt Koln*). In *R v Bouchereau*⁴ a conviction for drug offences was regarded as a sufficient ground for deportation.

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[\[1978\] Q.B. 732](#)