



EU Citizens' rights

CHAPTER 23 - JUDICIARY AND FUNDAMENTAL RIGHTS

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

EU citizens' rights

- Right to vote and stand as a candidate in elections to the European Parliament
- Right to vote and stand as a candidate in elections to the European Parliament in another Member State
- Right to vote and stand as a candidate in municipal elections in another Member State
- Right to move and reside freely within the European Union
- Right to consular protection

Right to vote and stand as a candidate in elections to the European Parliament

- EU competence in the field of electoral rights is rather limited to elections to the European Parliament and covering consequences of free movement of persons in certain types of elections.
- *Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976, relating to the Act concerning the election of the representatives of the European Parliament by direct universal suffrage*: provides for the elections to the Union's only directly elected body.
- The 1976 Act was last amended in 2018. The amended Act will enter into force after all Member States approve it in accordance with their constitutional requirements.

The 1976 Act:

- Lays down basic rules and fundamental principles on the EP elections
- The EP elections shall be direct, universal, free and secret, based on proportional representation, using the national list system or the single transferable vote
- Equality between men and women
- Certain detailed rules of the electoral procedure but the electoral procedure is mostly governed by national provisions.

- The EP elections are unique as the ballot to one single body is carried out simultaneously in all the Member State →
 - the EP elections must be held within a certain period
 - the Member States may not officially make public the results of their count until after the close of polling in the Member State whose electors are the last to vote

Who is entitled to participate in the elections?

ECJ cases:

- C-145/04 *Spain v UK* and C-300/04 *Eman and Sevinger*: it is for Member States to regulate aspects of European Parliament electoral procedure not harmonised at EU level. However, they must respect EU law and its general principles → notably equality of treatment and non-discrimination, but also democracy and fundamental rights.

- C-650/13 *Delvigne*: Member States' rules regulating the conduct of European elections must comply with Article 39(2) of the EU Fundamental Rights Charter, which guarantees EU citizens' right to vote in European elections.
- The loss of civic rights in this case was nevertheless permissible on the basis that it was proportionate, taking into account the seriousness of the crime and given the possibility to apply for reinstatement of his voting right

Right to vote and stand as a candidate in elections to the European Parliament in another Member State

EU law also provides for the right of EU citizens to exercise their democratic rights in the Member State to which they came while exercising their right to move and reside freely within the EU.

- Article 22(2) TFEU - *“Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State.”*
- This right is also protected by Article 39 of the Charter of Fundamental Rights of the European Union.

Council Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals (*amended by Directive 2013/1/EU*) – detailed legislation.

Directive 93/109/EC:

- Provides for equal treatment of those EU citizens who have exercised their right to move and reside freely and now reside in another Member State.

- Equal treatment with nationals with regard to electoral rights:
conditions of entry on the electoral roll as voters:
 - legal remedies for persons having refused entry on the electoral roll or having rejected application to stand as a candidate;
 - supporting documents – same documents as national voters, plus a formal declaration on nationality, address in the Member State of residence, last constituency in the home Member State and expression of will to vote in the Member State of residence only;
 - similar rules apply to those who would like to stand as a candidate.

- EU voters must be fully informed about their rights.
- The electoral system is based on principle of single vote and single candidacy → established a complex information exchange system which the Member States use to prevent EU citizens to vote or to stand as a candidate in more Member States.

Right to vote and stand as a candidate in municipal elections in another Member State

Migrant EU citizens enjoy also equal electoral rights in the municipal elections in the Member State of residence as an expression of the importance the EU attaches to full integration to the host society.

- Article 22(1) TFEU - *“Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State.”*
- This right is also protected by Article 40 of the Charter of Fundamental Rights of the European Union.



Council Directive 94/80/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in municipal elections for citizens of the Union residing in a Member State of which they are not nationals – detailed legislation.

Council Directive 94/80/EC:

- Applicable to direct and universal elections to bodies that empowered to administer, at the basic level of political and administrative organization, certain local affairs on their own responsibility.
- Detailed rules are similar as those laid down for access of EU citizens to the EP elections in the Member State of residence.
- There are few differences with regard to disqualification to vote and there is no prohibition of double voting/candidacy.

Latest developments:

- The Commission adopted on 12 September 2018 a package of measures intended to support the Member State authorities and other relevant stakeholders in their joint efforts to ensure free and fair elections, as part of the preparations for the 2019 elections to the European Parliament.

Right to move and reside freely within the European Union

Article 21 TFEU: every EU citizen has the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.

- The respective limitations and conditions are to be found in Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

- The Directive replaced a complex legal regime and integrates important case law and placed itself in the legal and political framework of EU citizenship and internal market.
- The right to move and reside freely is also protected by Article 45 of the Charter of Fundamental Rights of the European Union.

The Directive applies to all EU citizens who move to or reside in a Member State other than that of which they are a national, and to their family members, *irrespective of nationality*, who accompany or join them.

Who is EU citizen? Any person having the nationality of a Member State ... but there are certain exemptions to that rule!

Who is family member?

- Spouse (judgement of 5 June 2018 in case C-673/16 *Coman*);
- direct descendants who are under the age of 21 or are dependants;
- dependent direct relatives in the ascending line;
- partner with whom the EU citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage.

Family members of the EU citizen have the right to accompany or join him/her in the Member State of residence.

Other beneficiaries (*those family members who do not fall under the definition of family member and who are dependants or members of the household of the citizen, or those where serious health grounds strictly require the personal care by the citizen; and partner with whom the citizen has a durable relationship*) have the right to have their entry and residence facilitated.

The host Member State must undertake an extensive examination of the personal circumstances and justify any denial of entry or residence.

EU citizens can leave or enter a Member State on presentation of a valid passport or identity card.

- Their non-EU family members must hold a valid passport and might be required to have an entry visa in accordance with *Regulation 539/2001*.
- Member States must grant such persons every facility to obtain the necessary visas which are issued free of charge as soon as possible and on the basis of an accelerated procedure.

- However, where a beneficiary of the right to move freely does not have the necessary travel document or visa, the Member State concerned shall, before turning them back, give such persons every reasonable opportunity to obtain the necessary documents or have them brought to them within a reasonable period of time or to prove by other means that they are covered by the right of free movement and residence.

- Right of residence up to three months – without any conditions or formalities other than to hold a valid travel document (*job-seekers enjoy this right for even longer period*).
- Right of residence for more than three months - the right is subject to conditions that are laid down in Article 7.
- EU citizens must be either workers or self-employed persons or else have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and comprehensive sickness insurance cover there (Case C-333/13 *Dano*: Member States are not obliged to grant social assistance benefits to people who do not meet the conditions for legal residence set out in the directive).

Registration certificates – the right of residence is evidenced by issue of a registration certificate (*this scheme is optional*) which must be issued immediately. There are no longer any residence permits, as the right to reside is conferred directly on EU citizens by the Treaty.

Jobseekers – EU citizens looking for a job in another Member State

Right to reside in Member State for seek a job – there are no formalities during first six months (*Recital 9 of the Directive and ruling in case C-292/90 Antonissen*).

After six months, the jobseeker still has the right of residence if he/she can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged (*Article 14(4) of the Directive and ruling in case C-292/90 Antonissen*).

Non-EU family members are issued a residence card within six months from the day on which they submit the application (*certificate of application issued immediately*). The card shall be valid for five years or for the envisaged period of residence of the EU citizen, if it is shorter.

Possession of such residence card exempts its holder from the visa obligation within the European Union.

Administrative formalities are laid down in exhaustive list, minimizing the bureaucracy and administrative burden. The choice of means of establishing that the person concerned is beneficiary of the right to reside freely is fully up to the person concerned.

Articles 12 and 13 provide for retention of the right of residence by family members in the event of death or departure of the EU citizen and also in case of divorce, annulment of marriage or termination of registered partnership.

Family members maintain their right of residence if they continue to meet the conditions of residence on their own. Those family members who are not EU citizens themselves must comply with certain additional conditions aimed mostly at prevention of bypassing the national immigration rules.

Generally speaking, all beneficiaries have the right of residence as long as they meet the conditions set out in the Directive. In opposite case they can be expelled, but there are major material and procedural safeguards limiting the Member States in doing so.

An essential innovation of the Directive was the introduction of permanent right of residence as an expression of the importance of successful integration of beneficiaries of the right to move and reside freely into the host society. It enhances the protection against expulsion and extends the right to equal treatment to all areas.

This right is given to EU citizen and the family members after five years continuous and legal residence in the host Member State. This right is no longer be subject to any conditions. The right of permanent residence is granted to all family members, regardless of their nationality.

The right of permanent residence is, just as the right to reside, not conditional upon any decision of a Member State but only upon conditions being met.

Article 24 recalls the fundamental principle that the EU citizen and the family members who reside legally in the host Member State benefit from equal treatment with nationals of that State within the scope of the Treaty.

Two derogations to this general rule are foreseen:

- Inactive EU citizens and their family members are not entitled to social assistance during the first three months of residence. This exclusion concerns equally the job-seekers during the eventually longer period in which they may seek employment.
- The host Member State is not obliged to grant maintenance aid for studies including vocational training consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.

Jobseekers are entitled to equal treatment with nationals as regards access to benefits *'of a financial nature intended to facilitate access to employment on the labour market of the host Member State'* if there is a genuine link between the jobseeker and geographic employment market (*reasonable period of job-seeking; proportionate residence criterion*).

Exception of Article 24(2) of the Directive as regards social assistance does not apply to financial benefits intended to facilitate access to the labour market (*rulings of the Court in cases C-138/02 Collins, C-258/04 Ioannidis and C-22/08 Vatsouras*).

The Directive provides for possibility of the Member States to restrict the right to move and reside freely on grounds of public policy, public order and public health.

It takes on board most of the rich jurisprudence, stressing that the measures taken:

- must comply with the principle of proportionality
- must be based exclusively on the personal conduct of the individual concerned
- that personal conduct must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society

It limits the discretionary powers of the Member States by providing that they, before taking an expulsion decision on grounds of public policy or public security, must take into account:

- the length of his stay in the territory, his age, his state of health, his family and economic situation and the social and cultural integration into the host Member State and the extent of his links with the country of origin.

Article 30 lays down requirements that should make sure that beneficiaries of the Directive are duly informed on the decisions restricting their rights, that these decisions are in written and in understandable form and that they specify the court or administrative authority responsible for appeals against such decisions.

Article 31 provides that the persons concerned shall have access to judicial and, where appropriate, administrative redress procedures to appeal or seek review of any decision taken against them on the grounds of public policy, public security or public health.

The safeguards also apply to cases when the expulsion takes place on other grounds (*an unreasonable burden or the conditions of the right of residence are no longer met*).

Latest developments:

On 17 April 2018 the Commission proposed a Regulation to improve the security features of EU citizens' identity cards, residence documents and non-EU family members' residence cards. The proposed Regulation upgrades the security features of existing ones, whilst leaving other aspects up to Member States.

Consular and diplomatic protection

Member States do not have a consular and diplomatic representative in each and every non-EU country. As a consequence, EU citizens in need of consular or diplomatic protection may not be protected.

To answer this problem, Article 23 TFEU provides for the right of the EU citizen, in the territory of a non-EU country in which the home Member State is not represented, to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State.

The right to consular and diplomatic protection is also protected by Article 46 of the Charter of Fundamental Rights of the European Union.

Council Directive (EU) 2015/637 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries:

- Repeals Decision 95/553/EC (as of 1 May 2018)
- Entered into application: 1 May 2018
- Clarifies when and how EU citizens in distress in a country outside the EU have the right to receive assistance from other EU countries' embassies or consulates.
- Facilitates cooperation between consular authorities and strengthens EU citizens' right to consular protection.

Decision of the Representatives of the Governments of the Member States (96/409/CSFP) meeting within the Council of 25 June 1996 on the establishment of an emergency travel document established an emergency travel document (replacing a lost or stolen national passport), a document enabling its holder to cross the EU external borders and to eventually move within the EU.

On 31 May 2018, the Commission published a legislative proposal for a more secure and user-friendly EU Emergency Travel Document, which is currently discussed in the Council.