



Citizens Without Borders

Free movement
and residence
in the European Union
a challenge for
European citizenship

This study is based on the legal status of May the 31, 2013

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Citizens Without Borders, a partnership to support freedom of movement and residence rights for EU citizens and their family members

Citizens Without Borders is a project financed by the European Commission. It is implemented in five countries through a European partnership, composed of six partners: SOZE-Society of Citizens Assisting Emigrants (Czech Republic), FASTI-Federation des Associations de Solidarité avec les Travailleur/euse-s Immigre/e/s (France), GVC-Gruppo di Volontariato Civile and TRC-Teleradio City (Italy), ACC-Asociación Consorcio de Cooperación and Andaira (Spain), APEL (Romania).

The core aim of the project is to raise awareness and improve knowledge and expertise about EU rules on freedom of movement and residence rights for EU citizens, enhancing the implementation of EU rights in accordance with the 2004/38/EC Directive.

According to the Commission's official Reports and Guidelines, the transposition of Directive 2004/38/EC is still in process, since a gap still exists between the applicable legal rules and reality in the countries involved in the project.

By comparing the different access to EU citizens' rights in the countries involved, the project defines strategies for transferring existing good practices and favorable treatment, giving special attention to the rights of family members, nomadic communities, descendants and same sex spouses.

Project target groups are composed of a plurality of subjects: not only members of staff directly working with European citizens such as public desk officials, legal practitioners, members of associations, and trade unions, but also policy makers and public authorities, and, last but not least, European citizens themselves, as they often lack points of reference and clear information about their rights when moving to another European country.

The study and its methodology

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This study is the result of research conducted from December 2012 to May 2013 by the project “Citizens Without Borders” on the application of freedom of movement and residence rights contained in the 2004/38/EC Directive (hereinafter also referred to as the “Directive”) in five European Union countries. The premise of the research was the alarming awareness shared by the project partners that in many Member States, European citizens’ right to free movement and residence was not fully observed despite the formal transposition of the Directive. Research carried out in the Czech Republic, France, Italy, Spain and Romania relies upon diverse data sources such as official national documents and reports released by public entities as well as non-profit organizations; interviews with legal practitioners, experts in the field, local administration officials, officers of police departments, officers of the Ministry of the Interior and members of NGOs. All data collected in this manner has been compared with and integrated by an essential source of information, namely European citizen witnesses, drawn from the requests for help, claims and complaints addressed to partner organisations’ help-desks.¹

Interviews and questionnaires have followed a common grid and have dealt with all aspects of the Directive, their aim being to inquire into the gap existing between national legal provisions for the Directive’s transposition and their concrete enforcement. The findings brought out information which is useful in understanding a) what concrete factors are responsible for this gap; b) what the key subjects are responsible for it; c) what good practices allow for a real application of some of the rights regulated by the Directive.

After a general overview of the transposition process and an introduction on the most relevant aspects of the Directive which are considered as problematic, the central part of the publication offers a “photograph” of the present situation in the countries involved in the Citizens Without Borders project, highlighting those areas where practical obstacles prevent EU citizens and their family members from the full attainment of freedom of movement and residence rights, as well as the groups of EU citizens most affected by these impediments.

The final chapter aims to connect research findings with Citizens Without Borders’ future actions, in the attempt to draw up concrete paths for the enforcement of EU citizens’ rights. For this reason the chapter provides some specific recommendations arising from the exchange of positive procedures existing in a few countries.

This study is mainly addressed to policy makers and public authorities, since raising their concern and understanding about the situation on the ground is the basis for action resulting in positive change.

¹ All personal information and data collected by help desks, through interviews or testimonials of European citizens, are confidential according to privacy protection regulations.



General overview of the transposition and enforcement of Directive 2004/38/CE in Czech Republic, France, Italy, Spain and Romania

Bringing the 2004/38/CE Directive into force has been rather problematic since the first months after the deadline for its transposition. It should be remembered that the Directive was adopted with the main aim of codifying and reviewing previous EU legislation on the free movement of persons within the territory of the member states, dealing separately with workers, self-employed professionals, students and other economically inactive persons. The Directive, which replaces the Council Regulation 1612/68 (art. 10 and 11) as well as most of the previous Directives dealing with this issue, simplifies and strengthens the right of free movement and residence of all EU citizens and their family members, putting European citizenship at the centre of the system. The Directive also codifies the principles and definitions recognised by the case law of the EU Court of Justice that became consistent in this area.

As a first remark, the transposition process of the Directive greatly overpassed its deadline of 30 of April 2006. In fact, many Member States brought it into force only because of Romania and Bulgaria's inclusion in the European Union.

In countries such as Spain, Romanian citizens had already had their rights as European citizens (free residence and work) limited from January 2007, following the argument that the massive entry of Romanian citizens was provoking a negative impact on the labour market in times of economic crisis. This "pro tempore" was supported by a safeguard clause of the Protocol concerning Conditions and Arrangements For Admission (issued in Official Journal of EU, 21/06/2005).²

² Article 37 and Annex VI and VII of the act, issued in the Official Journal of EU, 21/06/2005.

- 16 It indicated that Member States which were supposed to lift restrictions to workers from Romania and Bulgaria could return to temporarily rejecting their right to work freely, as was the case previous to 2004. As a consequence, national provisions for the implementation of the Directive have responded to the need for controlling the circulation and residence of citizens from Romania rather than that of complying with a correct transposition of Community provisions. To this regard, the Commission initiated infringement proceedings under Article 226 of the EC Treaty against 19 Member States for their failure to communicate to the Commission the provisions of national law adopted to transpose the Directive. In December 2008, the Commission submitted its report to the Parliament and the Council³, presenting a comprehensive overview of how the Directive had been transposed, and concluding that its overall transposition was rather disappointing, particularly as regards **two main thematic axes**. The report not only noted a) the inadequate correspondence between national provisions and the Directive, but it also pointed out b) frequent problems relating to the right of entry and residence of third country family members of EU citizens, as well as to the requirement to submit additional documents not foreseen in the Directive together with applications for registration certificates. In July 2009, the Commission adopted guidelines⁴ or a better transposition of the Directive. Since then, some corrections and modifications on national provisions have certainly helped to reach some uniformity on those legislative aspects that were in contrast with the Directive. Nevertheless, our research found out that several critical aspects still exist, depending on both unsatisfactory transposition of the Directive and the failure of Member States to ensure the real application of freedom of movement and residency rights. More specifically, the Directive is still misapplied in every partner country in the project, as far as **non-EU family members' right to entry** into EU territory are concerned, especially due to the unjustified request of an entry visa

³ Report by the Commission to the European Parliament and Council on the application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of Member States, Brussels, 10.12.2008 [COM(2008) 840 final].

⁴ Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right to move and reside freely within the territory of the Member States. Brussels, 2.7.2009. COM(2009) 313 final.

- 17 for family-reunification and to long delays in processing applications. As for the **right to residence**, the research remarks that administrative formalities still constitute severe obstacles to the fulfilment of this right. In many countries the notion of sufficient resources is still controversial and represents a serious problem in applying for registration certificates, while in some others it is difficult to give administrative evidence of the status of dependent **family members**. As regards the topic of family members, in countries such as France, Italy and Spain, spouses find severe obstacles in getting residence cards. Problems arise not only with de facto couples and same sex spouses, whose rights are recognised only after a judge's sentence, but often with married couples, who are constantly confronted with the police suspicions of fraudulent marriage. **Expulsion procedures** are another troublesome crux, which some Member States seem not to handle with the required accuracy. It has been noted that in the presence of a criminal conviction, very often the offender is faced with automatic expulsion without any consideration of any "present and sufficiently serious threat affecting one of the fundamental interests of the society of the host Member State".⁵ It is possible to assume that in some countries such as Spain, France and Italy, difficulties arise from the way EU citizens are considered by internal political actors, more as a flow which needs to be controlled, rather than as citizens moving within a territory. Some policies incur in serious human rights violations, as is the case in the denial of access to health care, a procedure that revokes basic human rights; or discriminatory exceptions made in the case of Romanian citizens. In this context, it is only thanks to case law that discrepancies in practices and national provisions with regards to Directive instructions have been clarified so far. But more broadly, a **general lack of information** on the subject must be observed. The study registered a deeply insufficient level of information -both among legal practitioners and among EU citizens themselves- concerning the knowledge of legislation, rights and duties related to freedom of movement and right to residency in EU Member States.

⁵ Directive 2004/38/EC, Art. 28 Comma 2.



Current stage of implementation of the Directive in the partner countries

Czech Republic⁶

Some progress has been made in the Czech Republic regarding transposition of the 2004/38/EC Directive since after the first EC Report on the transposition of this Directive, which assessed the level of implementation on average in all EU countries as only 71%.⁷ In some aspects, Czech regulations in the “Aliens Residency Act” (hereinafter “ARA”), stipulate more favourable conditions than the Directive does. With the amendment of the ARA, effective since 2011, several positive changes have come about: a) the possibility of an abolition of administrative expulsion when an alien becomes the family member of an EU citizen b) new provisions on the adequacy of the impact of decisions have to be taken into consideration by administrative bodies c) the establishment of a new appeals body: the Commission for decision-making in matters of foreigners, which contributes to the unification of first instance practice.

The weakness of the practice still lies in a failure to comply with procedural periods for decision-making and in the inconsistent practice of administrative authorities when different decisions are made by different offices of the Ministry of the Interior (hereinafter Mol) in cases that are actually very similar. The general problem is still bureaucracy and excessive burden on applicants during the procedure. Recently a new draft of the ARA has separated the regulation on third country nationals from the regulation on EU citizens and their family members. The regulation on EU citizens and their family members’ entry and residence are thus to be regulated in an independent act. (hereinafter “bill” or “new draft”). The bill’s proclaimed goal is to make the regulations more clear and transparent.⁸

⁶ As of 31 December 2012, in the Czech Republic approximately 160,000 EU citizens have been recorded. There are no statistics available for the number of family members of EU Citizens.

⁷ Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States, dated on 10 December 2008.

⁸ The draft is yet to be subjected to both academic/professional and parliamentary debate. Due to its size (195 paragraphs), the bill seems to be rather complicated and often too casuistic.

20 The Directive will be implemented in this new draft which is respectful of the Directive's wording and reflects the decisional practice of the EU Court of Justice (hereinafter "CJEU"). Contrary to the regulation in force⁹, the draft does not enable Czech citizens and their family members (who *stricto sensu* are not exercising their right to free movement since they are residing in the Czech Republic) to benefit from the Directive's regulation. The Mol explains that the removal of family members of Czech citizens from the scope of the bill is a way to combat fraudulent marriages and fraudulent affiliations, and to eliminate problems of the application process.¹⁰

This report on good and bad practices in the implementation the Directive thus deals with the ARA, as well as with its new draft.

⁹ Current the ARA explicitly states that Czech Republic citizens' family members are to be regarded as EU citizen family members.

¹⁰ The current legislation provides Czech citizens and their family members with rights that are not granted by EU law, which causes application problems, for example with the application of the Visa Code.

21 **Right of entry of non-EU family members**

Current legislation and its enforcement does not reflect the existing case law of the CJEU, however the new bill has incorporated the judiciary interpretation of the Directive and mostly reflects applicable EU regulations.

The proposed law will include the following:

- A citizen of the Czech Republic, which is the provider of services in other Member States.¹¹
- A parent of an EU citizen under the age of 21 years, who provides for and lives in a common household. According to another paragraph of the bill, the non-EU family member of a dependent Czech minor citizen is considered as family member of EU citizen only if he/she accompanies or joins the Czech minor going back to Czech Republic from a Member State where the minor is registered with temporary or permanent residence. This requirement is in conflict with the judgements of CJEU in the case Gerardo Ruiz Zambrano and in the case Zhu A Man Lavette Chen.¹²

Regarding entry and residence in the Czech Republic, the current practice facilitates:

- A registered partner.¹³
- The partner of an EU citizen who resides in the same household. Currently this is determined through interviews and on-site inspections to verify the relationship.¹⁴

¹¹ The draft respects the verdicts on the C-370/90 Singh (7th July 1992) case and the C-60/00 Carpenter (11th July 2002) case.

¹² According to the CJEU verdict in the C-34/09 - Gerardo Ruiz Zambrano case or verdict C-200/02 -Kunqian Catherine Zhu a Man Lavette Chen against Secretary of State for the Home Department, which confirmed parents' right to residence (from third countries) with a minor who is an EU citizen.

¹³ A registered partnership can be contracted pursuant the 115/2006 Act on Registered Partnership or pursuant other member-state legislation. According to the ARA, registered partners are entitled to the same rights as married spouses.

¹⁴ In the new draft, such a relationship is required to have lasted for at least one year (prior to the application for a residency permit) for a common household to be considered as genuine. (If a couple is covering their living costs and operating their finances together, this demonstrates their willingness to maintain a common household).

22 In practice, though, there are challenges in issuing long-term visas for family reunification from selected countries, where visa abuse is presumed a priori and without concrete evidence.¹⁵ Visas are often refused on the basis of “fake marriage suspicion”. The authorities base their decisions on personal interviews with engaged couples and even minor differences in answers are the basis for visa refusal. For family members of EU citizens from certain countries¹⁶ it is difficult to obtain a short-term visa unless they lived in the same household before. In the case of non-EU family members applying for a visa based on invitation of EU citizen, according to the Preamble of the Directive (25), the rejection of entry must always be properly justified. This is contrary with paragraph 180/7 of ARA, which explicitly states that there is no requirement for justification and the person in question is not to be told the reason for refusal of entry.

¹⁵ In the case of long-term visas, the so-called VISAPPOINT system, an electronic system through which foreigners have to book a date in order to be able to file an application, may constitute problems. In some cases, foreigners were unable to file the application for a period of weeks. There were even concerns that this practice was causing a black market with the possibility to obtain the possibility to book an appointment for a certain fee. Regarding this matter, the Czech ombudsman has requested Cecilia Malstrom from the European Commission to assess if the VISAPPOINT system is in accordance with European standards. The case has not been resolved yet.

¹⁶ Typically from South American countries.

23 **Right of residence**

If a visa expires it is not cause enough to stop exercising the right of residence in a territory. There has been a common presumption that family members without a visa are temporary residents, however, they must reside in the Czech Republic with a citizen of the EU and their stay in the CR can not exceed 3 months.

The ARA stipulates the additional obligation to report residency in the Czech Republic within one month from the date of entry of a family member, if their stay will exceed one month.¹⁷

RESIDENCE LASTING MORE THAN THREE MONTHS

An EU citizen is entitled to freely reside in another member state for the purpose of job seeking.¹⁸ After six months of such a residence, the Mol is entitled to request proof from the individual that he/she is still in a realistic position to secure employment, tacking into consideration his/her skills, language integration and employment history.

The EU Citizen’s registration with a certificate of temporary residence is currently optional, but according to the draft of the new law it will become compulsory.

Contrary to the Directive, Czech National Legislation requires confirmation of long-term accommodation. According to the administrative authorities, a legitimate requirement for a certificate of temporary residence is a public document that must contain only verified data.¹⁹ If a person clearly does not reside in the place of residence and does not report her/his new place of residence this is reason for the revocation of a residence card (not temporary residence itself).

In general an insufficient number of state officials deals with residence permit applications, which leads to unacceptable **delays in proceeding applications**. The situation has been repeatedly criticized by the Czech ombudsman.

¹⁷ According to the new draft this obligation concerns only EU family members. Failure to do so is an offence for which a fine may be imposed.

¹⁸ In accordance with a CJEU ruling(verdict on C-292/89 Antonissen case from 26 Feb. 1991.

¹⁹ Under Art. 8 Par. 2 of the Directive, the registration certificate has to contain an address.

Right of permanent residence

According to the Directive and following judgements of CJEU, EU citizens who have resided legally for a continuous period of five years have the right of permanent residence.²⁰ In this regard, the Czech Republic provides more favourable treatment and goes beyond the possibilities set in the Article 16/2 of the Directive. The relatives of EU/Czech nationals who have permanent residence in the Czech Republic have the right to apply for permanent residence after 2 years of continuous residence in the Czech Republic, providing that they have been a member of the family for at least 1 year. The current possibilities granted by the ARA to apply for permanent residence without the previous continuous residence for humanitarian reasons or in the interest of the Czech Republic will remain intact in the new draft.

According to the draft of the bill the MOI seeks the approval of the police and intelligence services of the Czech Republic in granting temporary or permanent residence of EU citizens and their family members. Approval is kept separately from this file which is not available to the applicant.

Should authorities conclude that the applicant threatens the safety of the Czech Republic or the Schengen states, the applicant is not allowed to express his/her opinion on the findings of the intelligence service.

Alleged regulation has to be deemed as disproportionate and impossible to review. It should not be forgotten that the general practice of such control and examination (without concrete reasons given by individual conduct of the migrating EU citizen) is contrary to the Directive as is mentioned in the Committee's guidelines.²¹

²⁰ To obtain the right of permanent residence it is therefore necessary that the EU citizen first qualifies for temporary residence. e.g. continuous temporary residence. CJEU verdicts on C-424/10 a C-425/10 (Ziolkowski a Szeja).

²¹ With the MOI's long-term history of restrictive interpretation and its constant failure to distinguish public security from public policy in the decision-making practise, it is reasonable to assume that the MOI's interpretation of this proposed provision will have the actual restriction of the freedom concerned without possibility of a proper review as a consequence (the EU citizen will not have access to Police/intelligence service information assessing whether applicant constitutes a threat to the public security).

Related rights

The new draft removes the existing failure in transposition regarding the possibility to retain residence rights if a non-EU family member has been a victim of domestic violence and the partnership/marriage has ceased to exist as a consequence.

With regards to **working rights**, several problems in practice may appear.

According to the experience of NGOs, EU citizens from Romania and Bulgaria are the most vulnerable categories concerning illegal employment. They often work long hours, including weekends, without a contract and consequently, in many cases, are not paid the full salary they are entitled to. This may lead to debt and can result in these workers not having the financial means to return to their country of origin.²²

The bill provides voluntary returns paid by the MOI, provided, however, the imposition of administrative expulsion.

In order to gain access to employment, family members of EU citizens need to wait until their temporary residence permit is issued (according to Guidelines from the Ministry of Employment and Social affairs) rather than being based on the time the marriage/partnership certificate has been issued. Due to delays in proceeding applications, this might take several months.

EU citizens are not the target group of any integration programmes and therefore are not provided with Czech language courses (as are offered for third country nationals) and in this sense, they are discriminated.

Family members of EU citizens do have access to **healthcare insurance** according to the 883/2004 Directive, assuming that they are accompanying or joining an EU citizen who is moving to or residing in other member state. Problems may occur when EU citizens are registered as job seekers and do not qualify for unemployment benefits. Participation in public health insurance is conditioned then by temporary residence in the Czech Republic and by meeting other requirements according to the Regulation 883/2004 and 987/2009.

²² Recently, due to a right to free movement and free residence after tightening the rules for employment of foreigners from third countries in the course of the economic crises.

26 The requirement for accessing the Czech public healthcare system is either based on permanent residency or employment. In case a family member does not fulfil these requirements, he/she may use a less favourable commercial health insurance in the private market, which is more expensive and covers a considerably smaller range of health issues. This raises the question of possible unequal treatment of Czech citizens' EU family members in the matter of access to the public healthcare system.²³

²³ One such situation was considered by the Supreme Administrative Court of the Czech Republic, where referring to the CJEU judgement *Dzodzi proti Belgii* dated 18. 10. 1990 (C-297/88 a C-197/89, Recueil, s. I-3763, the court held that a member state can use EU legislation in situations where it would not be directly applicable, if there is a reference in national law. This can be seen in the current ARA where rights granted to EU citizens are to be granted to Czech citizens as well in residence matters, but unfortunately this is not always the case in other aspects of life.

27 **Expulsion**

There is a lot of **ambiguity** between the Directive and expulsion rendered by the national court as a penal sanction. If such a criminal sanction is rendered, temporary residence is abolished *ex lege* without the possibility of an appeal. Under criminal law there are no effective means to avoid the sentence of expulsion, except for holders of permanent residence²⁴. There were previous cases where a third-country national or EU citizen had been sentenced to a lifetime expulsion but at a later date became a family member of a Czech citizen, however no lawful option existed for judicial review of the prior expulsion.²⁵ Temporary residence was denied due to old records in the Foreign Information System, even when the criminal register had been cleared.²⁶

The new draft contains fairer conditions in lifting an expulsion than is stipulated by the Directive. The EU citizen or a relative can apply to lift the expulsion if he/she can claim a substantial change in the circumstances that led to the previous decision.

Individual cases might be in conflict with the interpretation of “serious grounds of public policy or public security” in the Czech Republic, particularly in relation to a current threat to public policy or its intensity.²⁷ The Czech MoI follows an extremely restrictive interpretation of the terms mentioned above, resulting in restriction of the right to free movement and residence. The Supreme Administrative Court holds that the interpretation of a breach of public order should be based on a current and genuine threat to one of the fundamental interests of society, as stated in Article 27 Paragraph 2 of the 2004/38/EC Directive. The court further states that it is necessary for each individual to consider if the conditions stated in Clause 23 Preamble and Article 28 Paragraph 1 of the 2004/38/EC Directive are met.²⁸

²⁴ Punishment must be proportionate to a current and serious threat to the interests of society. In previous decisions, family members (from a third country) of a dependent Czech citizen have often been excluded from the definition of family members of EU citizens and face penal expulsion, which does not respect the C-34/09 – Gerardo Ruiz Zambrano case ruling.

²⁵ Before 1st Jan 1998, lifetime expulsion only was an option in sentencing.

²⁶ The MoI often judges the permanent residence application of foreigners who had committed minor crimes couple of years before (who, from the point of view of penal law, are considered to be persons without a criminal record) as inadmissible on the grounds of public policy. According to the MoI, then, a foreigner can be found a threat to the public policy even without being currently charged with any crime.

²⁷ For example, if the administrative expulsion or punishment had been imposed many years before.

²⁸ In the case before the Supreme Court from November 2011, no. 3 As 4/2010-161.



France

Right of entry of non-EU family members

The Directive requires family members who are not nationals of a Member State to have an entry visa in accordance with Regulation (EC NO 539/2011, 15 March 2001) or with national law. Family members with a valid residence permit are exempted from the visa requirement.

French law has transposed this obligation, which is now in Art. R121-1 of the Code on the Entry and Residence of Foreigners and the Right of Asylum (Ceseda). Each family member from a third country may enter the territory if certain conditions are satisfied: they are not a threat to public order/security, have a passport (or permit of stay) and have obtained a visa (some countries are exempted). The visa must be delivered within a time period which does not surpass «timely procedures»²⁹ and is free of charge. Refusals must be motivated.

Even though the European Directive and French law grant such people every facility to obtain the necessary visas, administrative practices have added some obstacles:

- **A lot of documents have to be supplied** (certificate of accommodation, documents attesting to financial resources, aeroplane tickets). These practices are clearly contrary to European and French laws since these documents are required for all foreigners, but should not be asked of EU family members.
- Visas are very often delivered after 4 weeks, **which is beyond a reasonable delay**.³⁰

One way to help overcome obstacles would be to make the existing rules more efficient, and give general information to consulates about the situation of family members of EU citizens. For example, a public awareness campaign towards consulates could be launched, so as to stop their request for unnecessary documents before entry into France.

²⁹ What constitutes a «timely procedure» is not specified, but more than two months of administrative silence is to be considered as a negative decision.

³⁰ According to the Communication from the Commission to the European Parliament and Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM (2009) 313 final, Brussels, 2.7.2009.

Right of residence

European citizens and their families have the right of residence for more than three months, as has been transposed in the French law.³¹ Nevertheless, there are a few restrictions for some categories, namely Bulgarian and Romanian citizens (until 31 December 2013), and the unemployed. French authorities pay particular attention to the economic resources of these categories. There is also a restrictive definition/concept of what a family member is.

UNEMPLOYED CITIZENS

To keep one's right to stay, two conditions are required: possession of healthcare insurance and sufficient economic resources. French law has transposed the European conditions in Art. L 121-1 2° of Ceseda. Each Member State has to specify the level of economic resources required of individuals. The French State asks for the equivalent of 6 months of French jobseeker's allowance.³²

Many citizens and members of their families are confronted with restrictions in the assessment of their economic resources. Some prefectures analyse this condition very strictly, and often consider the economic resources as not sufficient. People have managed to enforce their rights by going to court.³³ The European Commission states that France has not transposed Article 7 Paragraph 3 of the Directive well: the simple right of stay is given to citizens who lose their jobs, while a 'worker status' should be maintained (this constitutes better protection against deportation).

REGISTERED PARTNERS AND SAME SEX SPOUSES

The European definition of «family member» is broader than the French definition. While the Directive considers «the spouse, registered partner, children, and parents» as family members, French law does not recognize registered partners as family members. According to French law, people who have signed a PACS contract do not have the right of residence. Some courts have recognized this right despite the fact that French law has not (Administrative Court of Paris, 12th November 2008, Boris Ciorra n° 0811281/3-2).

³¹ Art. L 121-2 et R 121-10 of Code on the Entry and Residence of Foreigners and the Right of Asylum (Ceseda).

³² Circular n° DSS/2B/2009/146, 3 June 2009.

³³ i.e. Court of Appeal of Douai, 3 June 2008.

NON-EU FAMILY MEMBERS

If a non-EU family member wants to stay for a period which exceeds three months, a residence permit is required, with the mention «EC family member».

His/her right to stay is directly connected to the right to stay of the European citizen. In France, many taxes have to be paid to obtain this permit.³⁴ There is an exception for European citizens and their family members, but only upon request. The residence permit will be delivered free of charge. They do not need to undergo the medical check-up required for non-EU citizens.³⁵

Despite these rights, non-EU family members are still confronted by problems such as:

- Getting an appointment in prefectures without a long delay.
- Many papers and extensive evidence is required and there is constant suspicion about the legitimacy of marriages.
- Many problems arise regarding authentication and recognition of foreign acts (administrative acts).

GOOD PRACTICES

A few categories of family members are given considerable attention: parents of French children, victims of violence and victims of human trafficking. These individuals have a specific right of stay and they are protected against deportation.

The right of residence after a spouse's death, divorce, or departure (article 12, 13) has been transposed in the French law. The right of residence after 5 years is not questioned in the case of death or departure.³⁶

The right of stay is possible for non-EU citizens if they have lived for one year in the country before the death or departure. Nevertheless, in the case of marriage, children under care, or violence, one condition is required: having lived together for 3 years.

Despite these good practices, there are still problems with women who are victims of domestic violence on the part of their spouses (and married for less than three years). They are protected by a legal procedure decided by a judge (similar to a protection order). But this procedure ends after 8 months, and some prefectures refuse the right of residence to these women. These women are sometimes even threatened with deportation.

³⁴ Circular n° NOR/IOCL1201043C, 12th January 2012.

³⁵ R. 313-1 of Ceseda.

³⁶ Art. R 121-8 1° of Ceseda.

Right of permanent residence

After 5 years in France, permanent residence is granted to European citizens and members of their families. However, to this end, there are still problems for Romanian and Bulgarian citizens. For example, prefectures write a special note on the residence permit which creates an exclusion in terms of rights to work.³⁷ This note is clearly against the Directive, where, even for transitional periods, the only condition which is required for permanent residence is a 5-year legal stay.

Related rights

French law has transposed the Directive³⁸ but not for all social benefits. Except for the unemployment insurance benefit, allowances for disabled persons and for social housing, there is no mention of the European citizen's situation for the other related rights.

EU citizens and their families have access to **medical healthcare**, but there are still problems for Romanian citizens. In general, there are also problems for EU citizens in gaining access to welfare services (refusals are based on the lack of evidence of the residence criteria, which EU citizens should not have to provide).³⁹

EU citizens and their families have access to unemployment allowances. Recently it has become difficult for many citizens to access these allowances (especially for people with a Spanish residence permit). The administration says the conditions of resources are not met, and refuses to grant them this right.

³⁷ Mention «CE séjour permanent toutes activités professionnelles sauf salariées».

³⁸ Art. L 121-1 of Ceseda, Art. L 244-1 of Social action and Family Code (CASF), Art. L 262-6 et L 264-2 of CASF.

³⁹ For more on this issue, see the study about 10 situations of EU citizens' right of stay « Ressortissants communautaires : droit au séjour et égalité des droits sociaux » A. Math et B. Demagny, avril 2012.

BULGARIANS AND ROMANIANS

Until the end of 2013, Romanians and Bulgarians are under transitional measures. Most of the measures consist in limiting their access to work. Because they are under transitional measures, they face many difficulties in obtaining health insurance. While EU citizens should have access to the CMU⁴⁰, Bulgarians and Romanians have many problems obtaining the CMU if they are jobless. Social security offices instead push them to get the AME⁴¹. The right to stay is not recognized for Romanian and Bulgarian families, and they are treated as if they were undocumented. Moreover, they cannot benefit from the right to housing.

French authorities' attitudes toward Romanians and Bulgarians have been criticized many times by associations (i.e. Complaint n° 67/2011 to the European Committee of Social Rights by Doctors of the World, 2 of May 2011) and European institutions.⁴² Very recently, new regulations have been laid down⁴³, which were supposed to facilitate their access by limiting taxes in employment of a Romanian or Bulgarian citizen and by increasing the number of jobs available to them. In reality, according to witnesses' accounts, there has been no relevant difference.

⁴⁰ In France there are two systems : one for undocumented foreigners (called «Aide Medicale d'Etat» AME) and one for asylum seekers and people with residence permits (called «Couverture Medicale Universelle» CMU).

⁴¹ Circular N°DSS/DACI/2011/225,9th June 2011.

⁴² «The European Commission, the executive body of the European Union, will have no choice but to start a legal action against France for its expulsion of Roma», Justice Commissioner Viviane Reding, 14th September 2010.

⁴³ Circular NOR : INT/K/12/33053/C, 26th August 2012.

Expulsion

In the French law many rules are related to the deportation procedure.⁴⁴ Recent French law has added two new possibilities to facilitate the expulsion of European citizens⁴⁵ by:

- Introducing the notion of “abuse of rights” («abus de droit») for people who return to France every three months (related to the charge on the welfare services, France has used the notion of being a burden on the social assistance system).
- Widening the notion of “threat to public order” in order to add the threat to a fundamental interest of society. This rule has been adapted into French law, despite much criticism on the part of the European Commission in 2010 while France was expelling many Romanians and Bulgarians. The Directive is not well transposed on this point, especially concerning the protection of European citizens.

⁴⁴ Art. L 121-4 of Ceseda about the loss of the right to stay, art. L 511-1 of ceseda about the conditions of right to stay, art. L 121-4-1 of ceseda about the charge on social services when staying under 3 months.

⁴⁵ Immigration Law n° 2011-672 16 June 2011.



Italy

Right of entry of non-EU family members

Art. 5 of the Directive has been quite satisfactorily transposed by art. 5 of Law Decree n. 30 of 6 of February 2007⁴⁶ as far as the right of entry of **non-EU family members** of European citizens. Nevertheless, several obstacles are still on the ground to the real attainment of the rights contained in art. 5, namely concerning the attitude of **Italian Embassies** in the countries of origin of these citizens. These obstacles are put in front of family members indicated in art. 3 of the Directive ("other family members") as well as those in art.2.

The most frequent critical situations are the following:

- Visas are often delivered with long delays, very often after the 4-week time period prefigured by the Communication from the Commission to the EU Parliament and the Council on 2/7/2009.
- Non-EU family members are asked to submit the request for a long-term entry visa or family reunification entry visa. The consequence is that EU citizens must submit a request of family reunification and need to wait for authorizations. This violates art. 5 of the Directive and applies the Immigration Act⁴⁷ to EU citizens which is actually relevant to non-EU citizens.

Art. 27 of the Directive concerning **restrictions on the right of entry** has been correctly transposed in art. 20 of of Law Decree n. 30 of 6 of February 2007.

⁴⁶ The Italian Act transposing Directive 30/2004.

⁴⁷ Law Decree n. 286/1998.

- 38 Nonetheless, its provisions are wrongly applied in everyday reality when referring to **non-EU family members**:
- SIS⁴⁸ notifications are considered by many Italian Embassies (ie. In Paraguay and Nigeria) as a reason to deny an entry visa. This ignores the fact that the Ministry of Interior has stipulated the cancellation of an SIS notification in the case of family reunification according to art. 29 of the Immigration Act. In this way, EU citizens are suffering from less favourable treatment compared to non-EU citizens, violating EU citizenship rights.

Right of residence

As stated in the Report by the Commission to the European Parliament and Council (10.12.2008), articles 7 and 8 of the Directive were a matter of controversy until 2011. Law Decree n. 89 of 2011 intervened to modify those provisions in contrast with Directive's provisions, as reported by the Commission in 2008.

Like other Member States, Italy has dealt with the notion of 'sufficient resources' by setting a minimum amount of money possessed or salary regarded as sufficient and failed to take decisions on the basis of personal circumstances.

Changes introduced by Law Decree n. 89 of 2011 and the Ministry of the Interior's Directives clarified that:

- EU citizens have to be given registration certificates when they do not become an unreasonable burden on the social assistance system.
- It is prohibited to fix an amount to be regarded as "sufficient resources", either directly or indirectly, below which the right of residence can be automatically refused. As stated by Commission head handbook/guidelines in 2009, "the authorities of the Member States must take into account the personal situation of the individual concerned. Resources from a third person must be accepted,"⁴⁹ as well as money in bank accounts and other property, considered as "stocked wealth".⁵⁰

⁴⁸ Schengen Information System. A governmental database of individuals accessing the territory of the European Union. SIS notifications signal that an individual has illegally entered the territory of a Member State.

⁴⁹ Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of Member States. Brussels, 2.7.2009 [COM(2009) 313 final].

⁵⁰ Ministry of Interior's note to the Public Administration, n. 18, 21/7/2009.

39 Family members

Despite changes introduced, there are still problems for:

- **Obtaining registration certificates for dependent family members.**
After introduction of Law Decree n. 89/2011, the condition of dependent family members, as well as the condition of family members with serious health problems, must be declared in documents issued by authorities of the country of origin. This documentation is not available in many countries, as far as Italy is not clear on which kind of documentation can give evidence of this condition. As a result, administrations do not recognise the quality of a dependent family member.
- **Other family members, such as unmarried couples, as defined in letter b point 2 art. 3 of the Directive: "the partner with whom the EU citizen has a lasting relationship, duly attested".**
The transposition into Italian law is not accurate or loyal to the text of the Directive, since art. 3 para. 2 letter b refers to "the partner with whom the EU citizen has a lasting relationship, duly attested by the State of the EU citizen" thus saying that only relationships attested by a Member State can be considered. Moreover, art. 10 of Law Decree 30/2007 has not been transposed as far as the partner's right to get a residence card. According to Italian Law, family members specified in letter b point 2 art. 3 of the Directive are not entitled to a residence card. Only family members specified by article 2 of the Directive can apply for a residence card. In addition to this, relevant problems arise in attempting to demonstrate that the relationship is "duly attested". Recommendations contained in the document "Communication from the Commission to the European Parliament and the Council" on 2.7.2009 are not observed.
- **Same sex spouses: Marriage of same sex couples is not recognised in Italy.**
The Ministry of the Interior considers art. 10 of the Directive (transposed by art. 10 of Decree 30/2007) not applicable to people of the same sex who have contracted and registered marriage in another Member State, but quotes the sentence of Court of Reggio Emilia (13/2/2012) which affirms that Law Decree 30/2007 is applicable in these cases. As a consequence, immigration offices do not provide the residence card prescribed by art. 10 of the Directive but offer a permit of stay for 2 years. Beyond this, associations representing staff of Registry Offices report serious problems concerning the right of the citizen to attest requested conditions through self-declarations, as prescribed in art. 46 D.p.r. 445/2000.

40 Other problems with registration certificates arise when residence cards for non-EU family members are issued by the Ministry of the Interior at the local offices of Immigration Police. This is called “EU residence card for family member of an EU citizen” and lasts 5 years. It has been observed that Immigration Police seldom provide residence cards in the first instance, but instead tend to provide the Permit of stay for family members provided by art. 30 of the Immigration Act⁵¹, with a maximum validity of 2 years. Only upon specific request do Immigration Police consider issuing the registration certificate, but even when the requester is assisted by a lawyer or another official, Immigration Police offices can resist to issuing the certificate.

Reasons given for denials by Immigration Police are:

- The non-EU family member does not possess an entry visa; the non-EU family members possesses an expired passport (but possesses a registration certificate).
- The EU citizen is not able to demonstrate the economic resources necessary to support his/her non-EU family member.

⁵¹ Law Decree n. 286/1998 for non-EU citizens.

41 **Right of permanent residence**

Even in cases of continuous and registered residence for 5 years, the right of permanent residence is often not recognised in Italy. When asked for a certificate of permanent residence, **Registry Offices** make this right incorrectly conditional upon factors related to the right of residence. What is most alarming is that Registry Offices also verify that conditions for the right of residence during the previous 5 years have been fulfilled, if conditions are not deemed as properly met, the offices take away residence certificates too.

It must be remarked that European citizens are not informed about the right of permanent residence.

Related rights

HEALTHCARE AND ACCESS TO MEDICAL TREATMENT

The EU citizen and his non-EU family member (exact Directive wording) have the right to access the National Healthcare System with the same conditions of the Italian citizen when in possession of a permanent job contract or when in possession of a one-year-long job contract (or for the duration of the job contract if it is inferior to one year).

In other cases, namely in the case of an EU citizen without the status of worker, not holding a EHIC card⁵², access to medical treatment is uncertain and not fully granted: national law provides emergency and urgent medical treatment (including child care, maternity care, preventive care, etc.) which are granted under the condition of possession of an ENI code.⁵³

⁵² European Health Insurance Card (EHIC). In Italy it is translated into the TEAM card (“Tessera Europea di Assicurazione Malattie”).

⁵³ An administrative registration for “unregistered European citizens”, translating into “Europeo Non Iscritto”.

- 42 Very frequently, and specifically for **Romanian citizens**, access to medical treatment is uncertain and not granted. Obstacles arise since:
- The ENI code is not delivered directly by hospitals and emergency services, but must be requested by a doctor, namely by doctors operating in non-profit associations for the medical care of undocumented migrants. The patient must then go to enroll for the ENI code in National Health System offices.
 - The ENI code does not allow to access to a single doctor, so EU citizens must always refer to non profit associations.
 - As the Healthcare System is managed by region, some regions such as Lombardia do not offer an ENI code.

In general the practice is not consistent, and information given to EU citizens and medical staff is insufficient.

Expulsion

Provisions contained in article 28 of the Directive have been transposed in Italy by art. 20 of Law decree 30/2007. Nevertheless, they are frequently violated by the daily procedures of **Local Government Offices**, responsible for expulsion decisions, which take expulsion decisions on the grounds of any guilty legal verdict. As a consequence, the case law is rich, and has above all intervened to clarify the notion of “danger for public policy or public security”: Sentence of the Court of Reggio Emilia n. 2280 11 October 2012, Decree of the Court of Reggio Emilia of 6 December 2012, both in accordance with sentences of the European Court of Justice against Italy.



Spain

Right of entry of non-EU family members

The Ombudsman report of 2012⁵⁴ illustrates difficulties in obtaining an entry visa for the non-EU family members of EU citizens.

The special procedure designed for the non-EU family member is highly complex and expensive, mainly concerning ascendants for whom economic dependence is usually a barrier. In most cases the visa is denied without a clear procedure, it is evaluated and resolved through the subjective criteria of the individual civil servant.

Right of residence and the registration certificate

Law Decree 16/2012⁵⁵ states that an EU citizen and his/her family members must have enough resources not to become a burden on the Spanish social system. This implies two basic conditions: the requirement of having a health insurance and that of possessing enough economic resources.

The requirement of economic resources has been highly arbitrary in the Spanish reality. The Ombudsman report of 2012 stated several complaints on the part of EU citizens against the requirement of fixed and regular economic resources. This situation produces a limbo in which an individual can get into the Spanish territory but he/she cannot get the needed registration card, which means he/she cannot find work or obtain medical assistance. Administrative modifications also created a period of uncertainty between the approbation of the law in April and the release of concrete instructions in July.

⁵⁴ http://www.defensordelpueblo.es/es/Documentacion/Publicaciones/anual/Documentos/Informe_2012.pdf

⁵⁵ Royal Decree-Law 16/2012, of April 20 urgent measures to ensure the sustainability of the National Health System and improve the quality and safety performance.

OTHER OBSTACLES FOUND

- **Impediments to establishing the family bond, marriage or de facto couple recognition**

One of most frequent obstacles found are delays in marriage recognition. The Ombudsman report of 2012 divulged many complaints against the Central Civil Register for delays of more than 18 months in the recognition of family ties. Meanwhile, the family member of the EU citizen remains in a legal limbo, with partial residence rights. In other words, he/she cannot be expelled, but as an “irregular” resident, he/she can be detained by police officers.

The recognition of de facto couples has also been motive of infringements. In 2010 the Supreme Court sentenced the nullity of some of the articles of the Law Decree 240/2007⁵⁶ due to an appeal. The winning sentence recognized the validity of the regional registers for de facto couples as well as of the conservation of rights after separation or widowhood for de facto couples.

Besides legal cases, in most registrations between an EU and a foreign citizen, administrative procedures based on police control and court vigilance are applied under the “Permanent suspicion principle”. The “reasonable doubts” argument was introduced after the winning sentence of 2010 to allow police, in any case of reasonable doubt, to carry out necessary verification in order to validate the relationship.

- **Duration of the procedure and infringement of positive silence**

According to the law, if there is no institutional resolution after three months, positive administrative silence should be applied, which means that the application should be approved. In Spain, however, there are cases that have lasted for years for which positive silence has not been applied.

- **Refusals due to criminal and police records**

The interpretation of this criteria is extremely lax in Spain and there are several cases which have been denied due to police records, not even a court sentence but only because of police investigation. The Ombudsman Report of 2012 collected complaints about the denial of the residence card due to considerations about unfavourable police reports.

⁵⁶ Real Decreto 240/2007 of 16th February regarding the entrance and free circulation and residence in Spain of citizens from EU member states and from other states which are part of the European Economic Space agreement.

Right of permanent residence

In order to obtain permanent residency, the applicant should have lived in the Spanish territory for the last five years, which is usually accomplished without any particular problem. No obstacles are reported in obtaining permanent residence after five years of residence.

Related rights

HEALTH RIGHTS

Since April 2012⁵⁷ EU citizens with a residence permit issued prior to the implementation of this new law have access to the public health system if they are in any of the following circumstances: employed, registered as pensioner, recipient of any periodic benefits from Social Security (including unemployment benefits), having exhausted the unemployment benefits, lacking an annual income of above 100,000 Euros per year and not covered by other means, recognized as beneficiaries of other insured persons (spouses, de facto couples, children younger than 26 years old or disabled, brethren or children in charge if they live and depend economically on another insured person). Those EU citizens not meeting these conditions only have access to emergency health care.

Since April 2012, EU citizens who want to apply for a residence permit in Spain are requested to contract private health insurance in order to demonstrate they have enough economic resources not to become a burden on the Spanish social system. Thus, EU citizens and their families are de facto excluded from accessing the public healthcare system (with the exception of children under 18, pregnant women or cases of urgent care). Meanwhile, if an EU citizen or a family member receives non-emergency medical care they must pay the full cost of this care. Therefore, despite the fact that the 2004/38/EC Directive 2004/38/EC has been correctly transposed into the new health care law by equating EU citizens to Spanish nationals, in reality, the prerequisite of private health insurance excludes some from accessing healthcare in the public health system.

⁵⁷ Real Decreto-Ley 16/2012, of 20 April, regarding the sustainability of the National Health System and improvement of the quality of services.

48 EU citizens staying less than 3 months who request medical attention and do not hold a European Health Insurance Card are not entitled to free public assistance and are required to requested for pay out of pocket. They are not entitled to emergency care either, unlike third country nationals who are entitled to free emergency care.

RIGHT TO WORK

There is a special moratorium (instruction 5/2011⁵⁸) for Romanian citizens which regulates their access to work. Romanian citizens are allowed to work under special conditions, very similar to the general regime, according to which they should justify a labour contract and a list of documents from the hiring company. There are no special instructions nor official information on the renewal of the work permit within this special moratorium for Romanian citizens.

POLITICAL RIGHTS

EU citizens have the right to run for office and vote in municipal and European elections, nevertheless they cannot vote in regional or national elections. A lack of information and bureaucratic barriers are the main obstacles in exercising this right.

Expulsion

The law decree 240/2007⁵⁹ states that expulsion or denial of the application to obtain the residence card can only be adopted in the case of EU citizens in serious instances of threat to public order or public safety. Nevertheless, most of the social organisations working with the CIE (Centre for Immigrant Detention) report the presence of EU citizens of Romanian origin that are subject to detention and also expelled from the Spanish territory.

⁵⁸ DGI/SGRJ/5/2011 Instruction on the Regulation of Entry, Stay and Work in Spain for EU nationals, employed persons, and their family members from Romania.

⁵⁹ Real Decreto 240/2007 of 16 February concerning the entrance and free circulation and residence in Spain of citizens from EU member states and from other states which are part of the European Economic Space agreement.



Romania

Right of entry of non-EU family members

In Romania EU citizens have the right to enter the country without a visa and only some third country citizens are required to enter into the country with a visa.

In addition, according to the Romanian Government Emergency Ordinance No. 102/2005, article 5, non-EU citizens can enter without a visa in some specific cases, even if the citizen comes from a country that normally requires visa for entrance:

- A non-EU citizens that is accompanying the EU citizen or is joining one, if that EU citizen that has the right of residence in Romanian territory.
- The non-EU citizen who has a document that proves his/her residence in another member state as a family member of an EU citizen and who is accompanying or joining him/her in the state of Romania.

Right of residence

Right of stay for more than 90 days is granted if the EU citizen can give evidence of sufficient economic resources for his stay or show a job contract. The Immigration Authority processes the application immediately and delivers a registration certificate with the validity of 5 years. Romanian law allows for six months 6 month of staying for EU citizens who are in search of a job. This rule also applies to their family members.

REGISTERED PARTNERS

Although through Emergency Ordinance No.102/2005 Romania transposed the European definition of family members, in reality marriage or other forms of cohabitation between people of the same gender, including partnership, have not been recognized. According to the Romanian Civil Code, article 277, the Romanian State does not recognize de-facto couples or partnership other than marriages, even if the relationship has been contracted in another Member State. This is in open violation of provisions contained in letter b paragraph 2, article 3 of the Directive.

Right of permanent residence

In the matter of the right of permanent residence, Romania has correctly transposed the 38/2004 Directive. In Romania EU citizens and their family members can obtain permanent residence after 5 years of registered presence in Romanian territory.

Related rights

HEALTHCARE RIGHTS

As for health rights, the 38/2004 Directive is transposed in a satisfactory way in Romania. Romanian law No. 95/2006 (regarding health care reform) stipulates that foreign citizens, including EU citizens that have solicited and obtained the extension of the right of temporary stay or are have their residence in Romania are medically insured if they provide the evidence of their contribution payment to the Joint National Fund of Social Health Assurance.

For temporary stay in Romania, law No.95/2006 indicates that EU citizens are not required to stipulate health insurance. For cases in which an EU citizen is in need of medical help, the European Health Insurance Card (EHIC) issued in the individual's country of origin covers emergency medical problems without charge for a period of no more than 6 months. When the period expires, the EU citizen can obtain another EHIC, with the same validity. If an EU citizen is not in possession of the EHIC, the provider of medical services is obliged to make a request to the Medical Insurance Office in the district in which the citizen is living in order to obtain the verification that the individual has medical insurance in his/her country of origin. This means that under no circumstances an EU citizen can be forced to pay for emergency medical services in Romania, except for cases in which the EU citizen does not have medical insurance. In this last case, the EU citizen is obliged to pay for all medical services. In cases in which the EU citizen finds a job in Romania, he/she can disclaim his/her EHIC by completing a special form and thus becoming medically insured within the Romanian Health Care System.

EDUCATION RIGHTS

According to the 38/2004 Directive, and reflected in the Law No. 1/2011 regarding the Romanian educational system, an EU citizen can access the Romanian educational system in the same way as a Romanian citizen. This includes payment of the same tuition fees and no specific list of admissions for them. There are general procedures that have to be completed by the EU citizen that wants to study in Romania, but for some EU countries there are specific demands, according to The West University from Timisoara. (Citizens from Portugal, Spain and Sweden need a special Certificate that gives them the right to enroll in the Romanian university system; citizens from Greece have to show a document that proves their participation in the national exams for high school).

Right to work

EU citizens that are working in Romania are subject to the same national system applied to Romanians, due to the application of the 38/2004 Directive and Regulation No. 1612/68/CEE regarding the circulation of workers inside the European Union.

The Emergency Government Ordinance No. 56/2007 on employment and employment-related relocation of aliens within Romanian territory gives a slight advantage to Romanian and EU citizens over non-EU citizens in terms of employment, so that the Romanians and EU citizens are the first option of the employers that post job vacancies.

According to S.D. and P.B., two Italian citizens, they had to register when they were looking for a job in Romania. The information that they received from their friends and authorities was that without a Personal Numeric Code, granted in the moment of registration, they would not have the right to work.

Regarding the right to remain in Romania for the EU workers that become unemployed during their stay, Romanian legislation gives a small upgrade to the 38/2004 European Directive by not forcing EU workers to prove that they are in search of a job after the end of their contracted employment. Apart from this, legislative aspects are basically the same for the EU workers and their families.

POLITICAL RIGHTS

Romania, in accordance with the 38/2004 Directive, allows EU citizens the right to vote in municipal and European Parliament elections under the same conditions as Romanian nationals.

Despite this fact, E.B., a French citizen, did not know that he could vote in Romania in municipal and European Parliament elections and the same was true for R.V., an Italian citizen.

RIGHT OF PROPERTY

According to Romanian law 312/2005, a citizen of the EU has the right to buy land under the same conditions as Romanian citizens, after 5 years from the country's integration into the European Union (in 2012), and will have the right to buy agricultural land from 2014.

Expulsion

According to Section 3 – art. 30 of Romanian Government Emergency Ordinance No. 102/2005, a measure of expulsion under the conditions mentioned by the Penal Code and Penal Procedure Code can be imposed on a citizen of the European Union or upon their families if the citizen has committed an infringement on Romanian territory. This measure of expulsion is imposed while respecting the provisions of Art. 25. In this article is specified that the expulsion will be made only for reasons of public order and national security and, in the case of residents with continuous and legal stay on Romanian territory for the last 10 years, as well as in the case of minors (except in the case where removal is necessary for the interest of the child), according to the provisions of the United Nations Convention on Children's Rights from 20 November 1989, sanctioned by Law No. 18/1990, republished, the expulsion will be made only for reasons of national security. Art. 25 also stipulates that any measure of restriction of the right to free movement of European Union citizens and their family members within the territory of Romania may only have a temporary character and may be enforced only for a period of time limited to the moment when the reasons for the decision have ceased to exist. The same article states that the decision to restrict the right to free movement shall be communicated to the EU citizen or his/her family member in writing, under legal provisions, by the Authority for Aliens or its territorial offices. The decision must contain the reasons for which the measure is being imposed and, if it is the case, the time limit within which the EU citizen or his/her family member shall leave the territory of Romania.

Considerations and recommendations

The research carried out by Citizens Without Borders about the fulfilment of the freedom of movement and residence rights for EU citizens and their family members in the Czech Republic, France, Spain, Italy and Romania has pointed out that, nine years after its ratification, the 38/2004/CE Directive has not been completely implemented. If it is true that these countries have promulgated national laws that transpose the Directive, **many obstacles remain on the ground which prevent European citizens from fully accessing these rights.**

Among the critical aspects highlighted by the study, we can see that problems arise in all areas of the Directive, namely the right of entry, the right of residence, related rights to residence and the right of protection from expulsion measures. Difficulties in accessing Directive rights are not the same in all countries, nonetheless we can find many similarities.

We can observe that older Member States, such as Italy, France and Spain show problems in all these areas, from the right of entry to protection measures against expulsion. Obstacles on practical procedures seem to differ from the Czech Republic and Romania, where procedures concerning **right of residence** and **access to the public healthcare system** are not reported as particularly critical.

As far as right of residence, in these countries the condition of “sufficient economic resources” contained in article 7 of the Directive is ambiguously or badly applied and it is often a reason for the denial of registration certificates.

This has a serious impact on the attainment of the right to stay, above all for Roma minorities, Romanian citizens, but also for dependent family members.

As far as access to the public health care system is concerned, it is strictly conditioned to registration certificates, therefore EU citizens without registration certificates are excluded from it. The research has highlighted difficulties in accessing to urgent healthcare in these countries as well.

On the contrary, obstacles to the full attainment of the right of entry and the misapplication of protection measures against expulsion are reported in all partner countries, including Romania and the Czech Republic.

It has to be stressed that the whole issue of right of residence and related rights has as its basis the condition of ‘worker’ and the economic situation of the European citizen and/or his/her family member, as these are necessary conditions for being able to benefit from the Directive’s rights.

As a result, jobseeking across European Member States is rather restricted, as most Member States deny registration certificates after three months of stay to people who do not have sufficient economic resources. Even if the free movement of workers is guaranteed for a longer period, the practice discourages from taking advantage of this right. In this way concrete boundaries are put on benefits deriving from freedom of movement in the EU labour market.

Moreover, if article 7 paragraph 3 of the Directive states that an EU citizen retains the status of worker when temporarily unable to work or has worked for one year, it is also true that the Directive leaves the choice of whether to grant social assistance to job seekers during and after this period to the host Member State.

These barriers lead to a legal limbo where people may be exploited in illegal work situations because of their undocumented status, resulting in the absence of a work contract and, consequently, a lack of protection under the law.

The study’s findings have led to the following considerations and recommendations that could provide useful as guidelines for action to support application of the Directive, as Citizens Without Borders aims to do:

- Governments should plan timely amendments to the law and make innovations known to the civil servants dealing with immigration policies. They can use protocols and instructions, and mainly training at various levels of the administration.
- Governments should strengthen legal compliance with the case law of national courts and the EU Court of Justice in all proceedings. Governments should also consider favourable treatment resulting from the Directive when possible and/or remove categorized restrictions in order to ensure equal rights for all European citizens.
- Institutions must make an effort to clarify the procedures and make them more accessible to citizens. They should provide clear information about requirements and timetables. In order to do this, information offices, telephone helplines and websites can be a useful resource.
- Administration should respect deadlines on expected dates for documentation and decision-making in order to guarantee and ensure citizens’ rights. Compensation, public transparency and/or administrative monitoring can be tools useful in preventing delays.
- European citizens and civil society in general should be conscious and informed about their rights and obligations as citizens of European Union member states. In order to raise awareness, the engagement NGOs and associations in promoting citizen’s rights can play an important role.
- Administrative procedures that run beyond the borders of the European Union should be made uniform in order to guarantee equal access to the EU territory regardless of the country you are departing from or arriving in.

- 58 International and multilateral agreements can benefit visa and entrance management. Written communication with Directive guidelines can be given to Embassies.
- In general, an integral perspective of rights is needed. There are still gaps and legal limbos between law and practice on the ground that violate citizen's rights. A holistic view of the human being's needs can help prevent breaches in the national legal framework.

Needless to say, some wider open questions that shape the notion of European citizenship and appear the core of most critical situations pointed out so far in this study lay on the foreground of these recommendations.

As the Court of Justice of the European Union has stated on several occasions, EU citizenship is destined to be the fundamental status of Member States' nationals, enabling those who find themselves in the same situation within the scope of the Treaty to enjoy the same treatment by law despite their nationality. Accordingly, EU citizenship has enhanced individual rights significantly. The Court has, in particular, ruled that citizens are entitled to reside in another Member State purely as citizens of the Union, thus recognising EU citizenship as a source of free movement rights.⁶⁰ This links the rights of freedom of movement and residence to all subsequent rights, which altogether give substance to the idea of citizenship.

- How is it possible to empower European citizens in their opportunity to seek work in the enlarged territory of the Union?
- To which extent can all EU citizens benefit from equal access to opportunities and rights deriving from belonging to the European territory?
- How can a European social security system be built in order to grant every EU citizen the right to enjoy it regardless of their work condition ?
- How can freedom of movement be linked to complementary rights such as the right to education, the right to work, the right to social security, the right to housing, and the right to family reunification?

The way these issues are tackled will condition the full enjoyment of freedom of movement and residence for all European citizens and their family members.

⁶⁰ EU citizenship report 2010 "Dismantling the obstacles to EU citizens' rights" by European Commission 27.10.2010.

Citizens Without Borders' perspectives For the future

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It is clear that there is a need for specific actions on several grounds in order to support the application of law and to fill the gap which prevents making these laws effective for their beneficiaries.

We believe that **many cumbersome and arbitrary procedures reveal a widespread lack of information and knowledge, mainly on original Directive provisions and on general Directive spirit.** Full awareness about the fundamental right to free movement and to establish residency has not been completely reached by public institution officials and by European citizens themselves. As a consequence, when some rights are not respected European citizens are not in the condition to activate themselves and to play an active role toward institutions. This leads to “frozen bad practices”, which can be easily overcome if citizens and supporting associations could intervene to demand a different approach.

As a first strategy, **Citizens Without Borders organises a set of training activities in each partner country addressed mainly to public officials,** legal practitioners, members of associations and trade unions.

As research shows, many rights contained in the Directive are respected only after Court decisions. A better compliance with the case law is therefore needed. Training activities aim to spread correct knowledge and case law consequences among key actors, focussing on topics that need to be further developed according to this study. An online tutorship, available in each country for training participants, will follow training activities and provide participants with personal guidance in the work context. Targets of this action are public officials and authorities, as well as non-state actors such as associations and trade unions in order to produce useful information for EU citizens themselves.

Training and online tutorship are part of an awareness raising action targeted towards local authorities aimed at establishing good practices about registration certificates, namely on aspects such as the self-certification of documents, authentication of foreign documents, and delays in processing documents. Citizens Without Borders will suggest possible actions to authorities to smooth obstacles and make the procedure fluent, possibly with the drafting of a formal protocol signed by relevant authorities. Meetings, conferences and congresses will aim to involve policy makers and to advocate for a different approach on the right of freedom of movement and residence, urging for measures to contrast misapplication and administrative mistakes. One important aim of this action is to urge local authorities and their agencies to advocate for national authorities' commitment to positive change.



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Along with information and sensitization actions aimed at authorities and public administration officials, **it is crucial to raise awareness and European citizens' knowledge about their freedom of movement and residence rights.** The research carried out by Citizens Without Borders shows a scarcity of knowledge about the situation of third country family members as far as the status and the rights conferred to them are concerned. As an example, consciousness about the position of a non-European family member is often lacking, therefore their rights are easily violated or ignored.

To contrast this and contribute to increasing awareness among European citizens, **partners will create a communication kit with informative materials which will be presented to migrants and associations during events and public initiatives.** This multimedia communication kit will focus on the notion and status of family member, on the right to entry, on the right to reside, and on other related rights. Furthermore, it will inform EU citizens that there are free on-line problem solving services and local organizations which can support them in exercising their rights and dealing with practical problems.

Citizens Without Borders believes that it is also very important to build direct relationships between citizens and supporting organizations, in order to provide physical points of reference where European citizens can meet skilled staff who will be able to listen to their doubts and problems and handle their complaints. To do so, **Citizens Without Borders will promote a European and local network of help desks dedicated to European citizens for the defence of freedom of movement and residence rights.** After a training course for trainers who are members of permanent and voluntary staff of civil society organisations in the five countries involved in the project, a Citizens Without Borders help desk will be available in each partner organisation and in other associations. Partners' websites, with specific pages, will coordinate the network and provide an on-line archive of relevant materials and interactive sections.

One of Citizens Without Borders tasks is also to provide an “informal” observatory of how the 38/2004 Directive is applied and respected in these European countries and to stimulate positive solutions. Therefore, all outputs produced during training and help desk activities in terms of information, complaints, case studies etc., constitute a corpus of data which the project will elaborate in order to translate single cases into “collective” issues to be reported to competent institutions in order to think up general solutions. This is a possible follow-up of the project, and the European congress in Bruxelles can be an occasion to present to European policy makers the advocacy actions suggested regarding national and local authorities and the results they will have produced.

The network of Citizens Without Borders

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Citizens Without Borders is an open network, if you wish to join in and support European citizens' rights of movement and residence, contact the organisations listed here.

Czech Republic

SOZE – Society of Citizens Assisting Emigrants

soze@soze.cz

www.soze.cz

France

FASTI – Fédération des associations de solidarité avec les travailleurs immigrés

coordination@fasti.org

www.fasti.org

Italy

TRC – Melting Pot Europe

redazione@meltingpot.org

www.meltingpot.org

GVC – Gruppo di Volontariato Civile Onlus

gvc@gvc-italia..org

www.gvc-italia.org

Spain

ANDAIRA

cooperativa@andaira.net

www.andaira.net

ACC – Consorcio de Cooperación

consorcioandaluz@andaluciasolidaria.org

www.consorcioacc.org

Romania

Asociatia Serviciul APEL

office.b@apelngo.ro

www.apelngo.ro



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