



CHAPTER 23 - JUDICIARY AND FUNDAMENTAL RIGHTS

EU citizens' rights



European citizenship

Article 20 TFEU

*1. Citizenship of the Union is hereby established. Every **person holding the nationality of a Member State** shall be a citizen of the Union. Citizenship of the Union shall be **additional** to and **not replace** national citizenship.*



Evolution

Maastricht Treaty: Every person holding the nationality of a MS

Amsterdam Treaty: «shall complement and not replace national citizenship »

Lisbon Treaty: «additional» to national citizenship



Case law

“Citizenship of the Union is destined to be the fundamental status of the nationals of the Member States” *(Grzelczyk, C-184/99, paragraph 31)*

- *Micheletti, 1992*
- *Garcia Avello, 2003*
- *Rottmann, 2 March 2010*
- *Zambrano, 8 March 2011*
- *McCarthy, 5 May 2011*



Article 20(2) TFEU

2. Citizens of the Union shall enjoy the rights provided for in the Treaties. They shall have, *inter alia*:

(a) the **right to move and reside** freely within the territory of the Member States;

(b) the **right to vote and to stand as candidates in elections to the European Parliament and in municipal elections** in their Member State of residence, under the same conditions as nationals of that State;

(c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the **protection of the diplomatic and consular authorities of any Member State** on the same conditions as the nationals of that State;

(d) the **right to petition** the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

Furthermore, according to Article 11(4) TEU:

Not less than one million citizens who are nationals of a significant number of Member States may take the **initiative** of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.



Elections to the European Parliament: the right to vote and stand as a candidate (I)

According to 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.



Elections to the European Parliament: the right to vote and stand as a candidate (II)

EU legislation: Council Decision 76/787/ECSC, EEC, Euratom (lastly amended in 2002).

This Council Decision entails basic rules on the elections to the European Parliament (for example: elections shall be direct, universal, free and secret; based on proportional representation; using the national list system or the single transferable vote).



Elections to the European Parliament: the right to vote and stand as a candidate (III)

- EU voters must be fully informed about their rights.
- Directive 93/109/EC gives full effect to this right and also establishes an information exchange system to prevent that EU citizens vote or stand as a candidate in more than one Member State. It was last amended by Council Directive 2013/1/EU of 20 December 2012 which will make it easier to stand as candidates in the next elections to the European Parliament in the Member State of residence.



Municipal elections: the right to vote and stand as a candidate (I)

Article 22(1) TFEU

1. 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.



Municipal elections: the right to vote and stand as a candidate (II)

- EU citizens enjoy equal electoral rights in the **municipal elections** in the Member State of residence.
- **EU legislation:** Council Directive 94/80/EC.



Municipal elections: the right to vote and stand as a candidate (III)

Directive 94/80/EC is applicable to direct and universal elections of bodies empowered to administer, at the basic level of political and administrative organization, certain local affairs on their own responsibility.

Rules are similar to those on the EP elections.

Member States have the possibility to restrict some functions (e.g. mayor, deputy-mayor) to nationals.



The right to free movement (I)

- 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.”
- EU legislation: 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, integrates important case-law and places itself in the legal and political framework of EU citizenship.



The right to free movement (II)

Personal scope:

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

EU citizen: Any person having the nationality of a Member State.

Family member: Spouse; certain direct descendants (below age of 21/ dependants); dependent direct relatives in the ascending line; registered partners (under certain conditions).



The right to free movement (III)

Extended family members have the right to have their entry and residence facilitated: Authorities must extensively examine their personal circumstances and justify any denial of entry or residence. If right is granted, they have all the rights granted by the Directive

Extended family members:

- dependants or members of the household of the citizen, or those where serious health grounds strictly require the personal care by the citizen
- partner with whom the citizen has a durable relationship



The right to free movement (IV)

Entry/ Leave:

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

Their third country 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.



The right to free movement (V)

Right of residence up to three months: without any conditions or formalities other than to hold a valid travel document (even longer for job-seekers).

Right of residence for more than three months: EU citizens must be either 1) workers or self-employed persons or 2) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State and have comprehensive sickness insurance cover there.

Registration certificates – no more residence permits.



The right to free movement (VI)

Equal treatment

An 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, prior to the acquisition of the right of permanent residence, 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.



The right to free movement (VII)

Jobseekers: Right to reside in Member State to seek a job. No formalities during the first six months (Recital 9 of the Directive and ruling in case C-292/90 Antonissen).

After six months right of residence if the jobseeker can provide evidence that he/she is continuing to seek employment and has a genuine chance of being employed.



The right to free movement (VIII)

Restrictions of the right to free movement:

on grounds of public policy, public order and public health.

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

Member States, before taking an expulsion decision on grounds of public policy or public security, must take into account the length of the stay in the territory, age, state of health, family and economic situation, the social and cultural integration into the host Member State and the extent of the links with the country of origin.



The right to free movement (IX)

Beneficiaries of the Directive must be duly informed on the decisions restricting their rights.

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 (unreasonable burden/ the conditions of the right of residence are no longer met).



Consular protection (I)

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

Article 23 TFEU: Right of the EU citizen, in the territory of a third 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.





Consular and diplomatic protection (II)

Current EU legislation:

- Decision 95/553/EC: regarding the most important aspects of protection of a citizen in distress (assistance in case of death/serious accident or illness/arrest or detention/to victims of violent crime and for relief and repatriation).
- Decision 96/409/CFSP: on the establishment of an emergency travel document.

Proposal for a Council Directive on consular protection for citizens of the Union abroad





Thank you

