

Rights of Union citizens



SCREENING OF CHAPTER 23 JUDICIARY AND FUNDAMENTAL RIGHTS



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Michał Meduna
Citizenship and Fundamental Rights Unit
DG Justice, Freedom and Security

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Rights of Union citizens



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

EU competence in the field of electoral rights is rather limited to elections to the European Parliament and covering consequences of free movement of persons in certain types of elections.

The elections to the Union's only directly elected body are provided for by *Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976, relating to the Act concerning the election of the representatives of the European Parliament by direct universal suffrage*, lastly amended in 2002.

The 1976 Act lays down basic rules on the EP elections, such as that the elections shall be direct, universal, free and secret, based on proportional representation, using the national list system or the single transferable vote. Another fundamental principle is equality between men and women.

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

The 1976 Act provides for certain detailed rules of the electoral procedure but the electoral procedure is mostly governed by national provisions.

As the EP elections are unique as the ballot to one single body is carried out simultaneously in all the Member State, the 1976 Act stipulates that the elections must be held within a certain period and that the Member States may not officially make public the results of their count until after the close of polling in the Member State whose electors are the last to vote.

The 1976 Act does not give clear answer to the question of personal scope – *who is entitled to participate in the elections?* – and more guidance will be soon given by the European Court of Justice in two pending cases.

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

Community legislation also provides for the right of Union citizens to exercise their democratic rights in the Member State to which they came while exercising their fundamental right to move and reside freely within the European Union.

Article 19(2) EC - *“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 candidate at European Parliament elections there under the same conditions as nationals of that State.”*

The detailed legislation is to be found in *Council Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals*, lastly amended in 2004.

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

The Directive provides for equal treatment of those Union citizens who have exercised their right to move and reside freely and now reside in another Member State.

Equal treatment with nationals with regard to electoral rights:

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

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

Community voters must be fully informed about their rights.

As the electoral system is based on principle of single vote and single candidacy, the Directive established a complex information exchange system which the Member States use to prevent Union citizens to vote or to stand as a candidate in more Member States.

The right to vote and stand as a candidate in the European Parliament elections is also protected by Article 39 of the Charter of Fundamental Rights of the European Union.

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

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

Article 19(1) EC - *“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 candidate at municipal elections there under the same conditions as nationals of that State.”*

The detailed legislation is to be found in *Council Directive 94/80/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in municipal elections for citizens of the Union residing in a Member State of which they are not nationals*, lastly amended in 2004.

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

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

Detailed rules are similar as those laid down for access of Union citizens to the EP elections in the Member State of residence.

There are few differences with regard to disqualification to vote and there is no prohibition of double voting/candidacy.

The right to vote and stand as a candidate in municipal elections is also protected by Article 40 of the Charter of Fundamental Rights of the European Union.

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Right to move and reside freely within the European Union

By virtue of Article 18 EC, every Union 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 this Treaty to give it effect.

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

The Directive replaced a complex legal regime and integrates important case law and placed itself in the legal and political framework of Union citizenship and internal market.

The right to move and reside freely is also protected by Article 45 of the Charter of Fundamental Rights of the European Union.

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Right to move and reside freely within the European Union

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

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

Who is family member?

- spouse;
- direct descendants who are under the age of 21 or are dependants;
- dependent direct relatives in the ascending line;
- partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage.

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Right to move and reside freely within the European Union

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

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

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

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Right to move and reside freely within the European Union

Union 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.

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

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Right to move and reside freely within the European Union

Right of residence up to three months – without any conditions or formalities other than to hold a valid travel document (*job-seekers enjoy this right for even longer period*)

Right of residence for more than three months - the right is subject to conditions that are laid down in Article 7.

Union citizens must be either workers or self-employed persons or else have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and comprehensive sickness insurance cover there.

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

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Right to move and reside freely within the European Union

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

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

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

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Right to move and reside freely within the European Union

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

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

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

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Right to move and reside freely within the European Union

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

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

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

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Right to move and reside freely within the European Union

Article 24 recalls the fundamental principle that the Union 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: firstly, inactive Union 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.

Secondly, the host Member State is not obliged to grant maintenance aid for studies including vocational training consisting in student grants or student loans to persons other than workers, self employed persons, persons who retain such status and members of their families.

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Right to move and reside freely within the European Union

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

It takes on board most of the rich jurisprudence, stressing that the measures taken must comply with the principle of proportionality and must 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.

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

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Right to move and reside freely within the European Union

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

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

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

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Consular and diplomatic protection

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

To answer this problem, Article 20 EC provides for the right of the Union 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.

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

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Consular and diplomatic protection

At the moment, there are two legislative instruments in this area.

Decision 95/553/EC of the Representatives of the Governments of the Member States meeting within the Council of 18 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations provides for the most important aspects of protection of a citizen in distress: detention and arrest, being victim of violence, repatriation (*of corpses and of survivors*), serious sickness, and "other cases".

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

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