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The present paper starts by briefly recalling the general legal framework applicable to the right of free movement and residence of citizens of the Union and their family members.

It then refers to some recent important rulings of the Court of Justice in this field.

It finalizes by referring to the Directive recasting the free movement and residence instruments – adopted on 30 April 2004 by the European Parliament and the Council – transposed by the 25 Member States end of April 2006 and by States belonging to European Economic Space, i.e. Norway, Iceland and Liechtenstein.

The legal framework

The Maastricht treaty introduced a new Chapter into the EC Treaty on citizenship of the Union.

Article 17 provides that every person holding the citizenship of a Member State shall be a citizen of the Union, enjoying specific rights like the right to vote or to stand as a candidate at the European election and at the local elections in the Member State in which he or she resides.

Article 18 paragraph 1 provides that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and by the measures adopted to give effect to it.

As stated in Article 18.1, the right of free movement and residence is not unlimited as it is subject to the limitations and conditions laid down in the Treaty and by the measures adopted to give it effect.

The rights of economically inactive persons are subject to conditions: they must prove that they have sufficient resources in order not to become a burden on the social assistance system of the host Member State and comprehensive sickness insurance in respect of all risks in the host Member State. In the case of students it is enough that they present a simple declaration that he or she has sufficient resources to avoid becoming a burden on the social assistance system of the host Member State.

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The contribution of the case law of the Court of Justice

Important judgments have been given by the Court of Justice[1] in the last years.

One main lesson can be learnt from the Court judgement of 25 May 2000 in case Commission v. Italy, regarding the provisions on students' resources.

The Court of Justice upheld the Commission's view that the system of Directive on the right of residence for students differs from that of the other Directives concerning non-economically active people, with regard to the definition of the notion of 'sufficient resources'. Having noted that Directive 93/96 contains no requirement regarding a given amount and moreover the furnishing of evidence thereof in the form of specific documents, it concluded that a Member State could not require a student benefiting from this Directive to provide evidence or a guarantee of a given amount of resources, but must be satisfied with a declaration or equivalent, at the choice of the interested party, even if he was accompanied by family members.

In a later Case the Grzelczyk case, the Court held that '... a student's financial position may change with the passage of time for reasons beyond his control. The truthfulness of a student's declaration is therefore to be assessed only at the time when it is made'.

It follows from these cases that, by requiring a student to submit a specific document, such as an account statement, to prove that he meets the sufficient resources condition set out therein, a national authority is in breach of the Directive.

The right of residence of students after applying for social assistance

The Directive regulating the right of residence of students stipulates that this right of residence remains as long as beneficiaries of the right fulfil the sufficient resources and health-care insurance conditions. On the basis of this provision, Member States automatically end the right of residence for students when they apply for social assistance.

In the Grzelczyk[2] Case the Court of Justice limited the possibility for Member States to end the right of residence of beneficiaries if, in the absence of sufficient resources, they apply for social assistance in their host Member State.

Recognising that a Member State can consider that a student applying for social assistance no longer meets the conditions to which his right of residence was subject and can accordingly end his right of residence, the Court of Justice admits that 'in no case may such measures become the automatic consequence of a student who is a national of another Member State having recourse to the host Member State's social assistance system'. The Court of Justice thus categorically excludes in all cases, without exception, any automatic link between recourse to social assistance and end of the right of residence.

The Court of Justice bases its appraisal on the sixth recital to Directive 93/96, according to which beneficiaries of the right of residence must not become an 'unreasonable' burden on the public finances of the host Member State, from which it follows, according to the Court, that 'the Directive on students accepts a certain degree of financial solidarity between nationals of a host Member State and nationals of other Member States'.

In addition, the Court excludes the possibility for the Member States to end the right of residence of students when they encounter temporary financial difficulties.

It follows from the foregoing that the Court excluded for students and other inactive persons, in all cases and without exception, any automatic link between recourse to social assistance and end of the right of residence, thus making incompatible with Community law all national provisions which envisage such

1 Case C-424/98 *Commission v. Italian Republic* [2000] ECR I-4001 (judgment given on 25 May 2000), Case C-184/99 *Grzelczyk* [2001] ECR I-6193 (judgment given on 20 September 2001), Case C-459/99 *MRAX* [2002] ECR I-6591 (judgment given on 25 July 2002) and Case C-413/99 *Baumbast and R*, not yet reported (judgment given on 17 September 2002).

2 [2001] ECR I-6193 (judgment given on 20 September 2001).

an automatic link,[3] and the possibility for Member States to end the right of residence when beneficiaries of the Directive encounter temporary difficulties.

Regarding the principle of the prohibition of discrimination on the ground of nationality and the recognition of Union citizen status, confirming its previous cases law, the Court of Justice repeats in Grzelczyk case that a Union citizen, in particular a student, can avail himself of the non-discrimination principle of Article 12 of the EC Treaty in all situations within the scope *ratione materiae* of Community law, which include those involving the exercise of freedom to move and remain on the territory of the Member States, conferred by Article 18 of the EC Treaty.

On the basis of Article 12, read with the Treaty provisions on Union citizenship, the Court of Justice held in Grzelczyk that 'Union citizenship is to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality.'

It could be concluded that students who reside legally in another Member State are eligible, by reason of their Union citizenship, for equal treatment with nationals. But the Court of Justice admits limitations to this rule when there are 'such exceptions as are expressly provided for' by Community law. In Grzelczyk it implicitly admits the right of the host Member State not to pay maintenance grants to students enjoying the right of residence on the basis of Article 3 of Students Directive.[4] Students are entitled to equal treatment in relation to all assistance in respect of access to education (registration and tuition fees).[5]

But the Court of Justice notes that 'on the other hand, there are no provisions in the Directive that preclude those to whom it applies from receiving social security benefits' (paragraph 39) and concludes on the basis of Articles 12 and 17 of the EC Treaty that a Member State cannot exclude from a non-contributory social benefit, such as the minimum income, nationals of Member States other than the host Member State in whose territory such nationals legally reside.

It is clear, therefore, that students which reside in a Member State other than their Member State of origin are entitled under Articles 12 and 17 of the EC Treaty to equal treatment with nationals and to non-contributory social benefits. They are even entitled to social assistance, and the host Member State cannot automatically end their right of residence, in particular when their financial difficulties are temporary. But the right of residence enjoyed by the beneficiaries of Directive remains subject to the limitation that they must not become an unreasonable burden on the public finances of the host Member State, and in such a case the host Member State can end their right of residence and, consequently, their right to social assistance, in compliance with Community law, and in particular the principle of proportionality.

Protection of family life

In Baumbast case of 17 September 2002, the Court of Justice confirmed the principle whereby the provisions of Community law concerning free movement of persons must be interpreted in the light of the requirement for respect for family life, provided for by Article 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms, this respect being one of the basic rights recognised by Community law.

Applying this principle, the Court held that where children enjoy a right of residence in a Member State to follow courses of general education, this right, if it is not to be deprived of its useful effect, must be interpreted as allowing the parent who has actual care of the children, irrespective of nationality, to remain with them so as to facilitate the exercise of that right, even if the parents are divorced or the parent who has Union citizenship is no longer a migrant worker in the host Member State.

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3 Following the judgment of the Court of Justice of 20 September 2001, the Commission has already sent a supplementary letter of formal notice to a Member State whose legislation provides for such an automatic link mentioned specifically on the residence card itself. The relevant Member State has undertaken to amend its legislation in line with the judgment.

4 This Article provides: 'This Directive shall not establish any entitlement to the payment of maintenance grants by the host Member State on the part of students benefiting from the right of residence'.

5 The seventh recital to Directive 93/96 states that 'in the present state of Community law, as established by the case law of the Court of Justice, **maintenance** assistance granted to students does not fall within the scope of the Treaty within the meaning of Article 7 thereof'. The English version omits by error the word 'maintenance' before 'assistance granted to students'.

It follows from this judgment that the parent, irrespective of nationality, who has actual care of the child, even if he or she is not gainfully employed in the host Member State, has the right of residence and cannot be obliged to prove that he or she has sufficient resources or healthcare insurance.

The linguistic knowledge obligation

The Commission was recently consulted by a Member in order to have a first assessment of the draft integration legislation with regard to Community rules in the field of free movement of people. This draft laid down preliminary integration abroad of foreigners and integration measures on national territority, by way of introducing an obligation of attending and passing language test.

The Commission acknowledges the challenges represented by the integration of third country national into European societies and therefore considers that it is of course possible for Member States to foresee national integration measures for third country nationals by introducing an obligation to learn the national language, even as a condition to enter the territory.

On the contrary, although it was not explicitly envisaged in the draft national legislation, the Commission underlines in its opinion that such a requirement – to learn the national language both before the residence in that Member State and during the residence period – would be in contradiction with EC legislation and case law on the right to free movement of EU citizens. The Commission therefore suggested clarifying this issue by explicitly excluding these persons from the scope of the new legislation. In this context, the Commission recalled that the freedom of movement of EU citizens is a fundamental right enshrined in the Treaty as well as in the Charter of Fundamental rights, implying that all derogations aimed at limiting its exercise have to be interpreted respectively. On the same basis, the Commission considered that the requirement imposed by the draft national legislation on family members who are not nationals of a Member State to obtain a visa residence is contrary to EC legislation: the obligation for such family members to pass a test of language and integration in order to enter the national territory would constitute a condition to their right to free movement contrary to Community provision on free movement.

The recast of the right of residence instruments

On 29 June 2001 the Commission presented a proposal for a Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.[6] The directive was adopted in April 2004 by the EP and the Council and the Member States had two years to transpose it into national law.

The major innovations of this directive are the following:

- Firstly, it codifies in a single legal instrument the existing complex plethora of legislative instruments (9 Directives and 2 Regulations), as well as the rich case law in the area of free movement and residence of persons, students in particular. It therefore renders these rights more readable and transparent for EU citizens and for national administrations.

- Secondly, the text inscribes itself fully in the legal and political context of citizenship of the Union and creates a unique regime of free movement and residence for all EU nationals while preserving certain specific rules for workers and students in order to preserve the 'acquis communautaire'.

- Thirdly, the text simplifies the conditions and formalities linked to the exercise of the right of residence in particular through:

  - The suppression for Union citizens of the obligation to obtain a residence card and its replacement by a simple registration with the commune of residence ; and

  - a better definition of the status of members of the family and the reinforcement of their rights in particular as concerns the members of the family who do not have the nationality of a Member State.

[6] *OJ* C 270 E, 25.9.2001, p. 150.

- Fourthly, the Directive introduces a permanent right of residence which is no longer submitted to any conditions after five years of continued residence in the host Member State, for example in the quality of student;
- Lastly, it clarifies the limitations that can be imposed on the right of free movement and residence for reasons of public policy, public security and public health and reinforces the protection of EU and their family members who have acquired a permanent right of residence.

The Commission considers that this text represents a crucial landmark in the elaboration of a strong concept of citizenship of the Union. The new provisions of the directive will have a substantial positive impact in the life of millions of citizens of the Union who live in a Member State other than their own and of the many others who will make use of the right to free movement in the years to come by facilitating their mobility and integration.

The two main ideas I would like to leave you with concerning residency rights is that the provisions concerning free movement of persons must be interpreted in the light of the principle of proportionality, the right to equal treatment and the respect for fundamental rights and in particular the requirement of respect for family life provided for by Article 8 of the European Convention on Human Rights (ECHR).