



## JANUARY 20-21: CCME- EURODICONIA JOINT TRAINING FOR MEMBERS: "FREE MOVEMENT AND SOCIAL RIGHTS FOR MOBILE EU CITIZENS" MEETING REPORT

January 2014

### Why did CCME and Eurodiaconia host this training?

**Eurodiaconia and CCME (Churches' Commission for Migrants in Europe) co-organised a training seminar on "Free movement and social rights for mobile EU citizens" on 20-21 January 2015 in Brussels. This meeting focused on deepening members' understanding of the legal framework of free movement in the EU and the social rights of EU mobile citizens.**

The event was aimed at those members working with EU mobile citizens in diaconal, social and health services or in the field of advocacy. While free movement is a key achievement of the European Union, and we see many citizens successfully working and living abroad, there are many for whom mobility has become a poverty trap. Although a relatively small number of people fall into this group of vulnerable EU mobile citizens, the number is growing: in a number of Member States, an increasing and significant number of users of homeless services, medical care services for people without a residence permit or irregular migrants, and community work projects, are now citizens of other EU countries.

EU mobile citizens nevertheless have access to numerous social rights. Are they always respected by local and national authorities? Do we have the necessary legal knowledge that can enable us to protect them and promote their rights?

These were some of the main questions presented and discussed by the experts working in EU migration policy that presented at Eurodiaconia's and CCME's joint free movement training last month. A brief summary of the information they each presented is outlined in the sections below.

### Introduction to Freedom of movement in the EU: an overview of the legal framework (Michal Meduna, DG Justice, Union and Citizenship and Free Movement)

Firstly, Michal Meduna from DG Justice gave a general introduction to the legislative framework underlying freedom of movement within the EU. The fundamental right of EU citizens to move and reside freely anywhere within the territory of the EU was first laid down in the Treaty on the functioning of the European Union (TFEU). Various ensuing directives and regulations have been codified into the Free Movement of Citizens Directive, which was adopted just 2 days before the 2004 EU enlargement.

The 2004 Directive applies to citizens who have exercised their right to move to another member state, and to those who return home after having resided abroad. It extends the freedom of movement concept to core family members of EU citizens, regardless of whether these family members are citizens of an EU member state and breaks down the right to reside in another country into three distinct phases:

- During the first three months, any EU citizen has the right to stay in another EU country with a valid ID-card, even without a job in the host country
- After three months, EU citizens must either a) **be working** (which includes self-employment), or b) **have enough financial resources to sustain themselves and any family members, and have comprehensive health insurance, so as not to become an 'unreasonable burden' on the social assistance system of the host country.**
- After five years of continuous legal residence, EU citizens are entitled to **permanent and unconditional residence in their host country.** However, this right can be lost after two years of absence.



EU citizens and core family members who legally reside in another Member State also have a right to equal treatment with nationals and therefore enjoy equal access to social assistance.

## What rights: for whom, where and how? Social benefits and assistance for non-active EU mobile citizens and job seekers? (Professor Verschuere, University of Antwerp)

In the second presentation of the day, Professor Verschuere from the University of Antwerp explored the situation of economically non-active EU mobile citizens regarding social assistance and social benefits. He highlighted various areas of ambiguity currently existing within EU policy on free movement.

- Firstly, whilst the European Court of Justice (ECJ) sees free movement as a fundamental right with constitutional status, it does not apply to everyone equally in practice; a significant distinction remains between economically active ('workers') and inactive mobile citizens.
- Secondly, whilst one of the EU's central aims is to lift at least 20 million people out of poverty by 2020, its Member States are simultaneously taking protective measures to prevent economically inactive mobile citizens from accessing social assistance within their borders.
- Thirdly, despite the fact that the ECJ defines the concept of 'worker' broadly, and persons are able to maintain this status in various cases of illness, invalidity or involuntary unemployment, a number of gaps continues to exist: long-term illness, temporary care for others, and even pregnancy can cause a person to lose the status of 'worker' and restrict access to social assistance.
- Finally, the right to legally reside in another country and the right to equal treatment with national citizens continues to rest on unclear criteria: EU law does not clarify what is meant by **'social assistance'**, **'sufficient resources'** and the risk of becoming an **'unreasonable burden'**. Certain Member States seem to have adopted a **'residence approach'**, where equal treatment is seen as a foundation for societal integration, whereas other Member States are championing an **'integration approach'**, granting the right to equal treatment only to those who have already demonstrated a certain degree of societal integration.

## Focus on housing: what rights for mobile EU citizens (Mauro Striano, FEANTSA)

Mauro Striano from FEANTSA, the European Federation of National Organisations working with the Homeless), gave participants a comprehensive explanation of what kind of housing rights mobile EU citizens have. Though housing policy essentially is a matter for the Member State, the EU has competence in combating social exclusion. Furthermore, the right to housing assistance is recognized by the Charter of Fundamental Rights of the EU, which is as legally binding as treaties, giving the EU competence to protect the housing rights of mobile EU citizens.

Economically active EU mobile citizens and all those that reside legally on the basis of the 2004/38 Directive enjoy rights of equal treatment with host nationals in a broad field, including housing assistance. Yet, when a mobile EU citizen is not economically active nor looking for a job, the ECJ (e.g. Dano case law) has ruled that this does not fall within the scope of Article 24 of the 2004 Directive, which relates to equal treatment of EU mobile citizens to nationals of the host state. One of the reasons for this is that an economically inactive citizen can become an "unreasonable burden".

Mauro also explained that all EU Member States have reported the same issue among homelessness trends: there is growing destitution and homelessness among EU mobile citizens. Although the main trend concerns people moving from Eastern European countries to Western Europe, recent reports in the press also refer to homeless people in Western EU countries who have left Southern EU countries.

Why are EU mobile citizens vulnerable to homelessness? Mauro explained that there are many issues for EU mobile citizens related to employment that can end up leading to homelessness. Some of these employment/job related issues include: lack of regular and secure employment opportunities, false promises of jobs and denied access to public employment recruiting systems.

Some Member States deny access to social services for EU citizens experiencing homelessness, some of which are basic/emergency services, leaving the mobile citizen no other choice but to rely on private organizations. However, some Member States offer integration services for mobile citizens, often led by homeless service providers and funded by local authorities.



Recently, “reconnection” programs have also been implemented in several Member States that are supposed to help those homeless mobile citizens who want to return home migrate back to their country of origin. However, it is often the case that many of these mobile EU citizens do not want to return home but are forced to when they come in contact with the reconnection agency.

Members States have also started to expel homeless mobile citizens. For example, in December 2010 in Copenhagen, police entered into a privately funded homeless shelter: 41 EU mobile citizens were held for two weeks and then deported. After being asked by a Swedish member of the European Parliament whether this kind of expulsion was lawful, the European Commission replied: “where EU citizens do not meet the conditions or if they become an unreasonable burden to the social assistance system in the host Member State, they can be removed. Expulsions generally occur because people are considered as an “unreasonable burden” under the 2004 legislation to the social assistance system of the host state. ”. However, FEANTSA believes that this is a very strict way of interpreting the 2004 Directive.

In a collective complaint FEANTSA launched against the Netherlands in the European Committee of Social Rights, FEANTSA pointed out specific instances where Dutch policies and actions were not compatible with the European Social Charter. FEANTSA emphasized that access to emergency shelter should not be made conditional, and that the availability and quality of emergency housing shelters has to be appropriate so that homeless EU mobile citizens are not left out on the streets and unprotected by the European Social Charter.

The ruling of the committee specified that emergency shelter has to be offered to homeless mobile citizens and that these shelters must meet health, safety, and hygiene standards. In regards those that are irregularly residing in a host state, the committee deemed that there is no obligation on EU states to provide them with alternative accommodation, but they have to give them a place where they can be immediately sheltered. Eviction from an emergency shelter should accordingly be banned, as it would place the persons concerned in a situation of extreme helplessness that is contrary to the respect of human dignity that is demanded in the European Social Charter.

To conclude, entitlement to equal treatment includes social and housing benefits as long as residence derives from 2004 Directive. However, there is still a need for clarification with regard to the term “unreasonable burden” as it applies to housing benefits for mobile EU citizens.

## Case studies- access to social and health services for mobile EU citizens (Anthony Valcke, EU Rights Clinic, University of Kent & ECAS)

Professor Anthony Valcke from the from the EU Rights Clinic, a joint project of the University of Kent and ECAS, was able to give a comprehensive presentation to the free movement training participants on specific case studies dealing with mobile EU citizens. Through each case study, Professor Valcke presented the piece of EU legislation that was at hand, the specific details of that mobile citizen’s situation and what ended up happening with each particular circumstance. Professor Valcke’s case studies focused on instances where EU mobile citizens were seeking to access social and health care services and encountered legal difficulties. From his presentation, participants learned key concepts from some of the most important pieces of EU legislation on the freedom of movement:

- Regulation 492/2011, Article 7
  - An EU migrant worker shall enjoy the same social as national workers
- Directive 2004/38, Article 24
  - EU intra-EU mobile citizen should be treated the same as the national (as well as the core family member of the EU mobile citizen)
  - Exceptions- EU mobile citizens don’t have the right to social assistance in the first three months
- Directive 2004/38 Article 7
  - EU citizens have a right to reside if...
    - They work (the fact that you work part-time is irrelevant, the fact that you make minimum wage is irrelevant)
    - They do not work but they have
      - Sufficient resources not to become an unreasonable burden on social assistance and



Another one of the valuable pieces of information given from Professor Valcke was an explanatory chart detailing “**Who is entitled to claim what**” under EU rules. This chart explained that an EU mobile citizen has a right to social assistance only if they have a right to reside in that particular state in the following situations:

- According to the *Vatsouras & Koupatanze* case (ECJ), when benefits assist and facilitate access to the labour market for **job seekers**
- According to the *Grzelczyk* case (ECJ), **students** are entitled to social assistance subject to not becoming an unreasonable burden
- According to the *Brey* case (ECJ), **Pensioners** are entitled to social assistance subject to not becoming an unreasonable burden
- According to the *Dano* case (ECJ), those that are **self-sufficient**, subject to not becoming an unreasonable burden

Professor Valcke did stress that the concept of “unreasonable burden”, which is mentioned several times in these important cases, is quite unclear and can be interpreted differently depending on the situation and the particular host Member State of an EU mobile citizen.

## Understanding Free Movement of Workers and Coordination of Social Security Systems (Albrecht Otting, Directorate-General for Employment, Social Affairs, Skills and Labour Mobility, European Commission)

Albrecht Otting from the European Commission began the second day of the free movement training with an enlightening presentation on Social Security benefits and stipulations for mobile EU citizens. There is direct and indirect discrimination for mobile EU citizens in accessing their social security benefits. Mr Otting explained that if equal treatment in matters of social security is to truly be realized all throughout the EU, this would require abolishing all discrimination or distinction based on nationality.

Mr Otting also explained some of the complications that arise for migrant workers upon retirement and seeking to access the social security money that they had put into for years in various Member States. For example, when a mobile citizen has worked in three different Member States (MS), that person would receive three different “partial” pensions, all depending on the time worked in that particular Member State. For example, if one works for ten years in Member State A, ten years in Member State B and twenty years in Member State C, that person would be entitled to 25% of their total pension from Member State A, 25% of their total pension from Member State B, and 50% of their total pension from Member State C. However, retirement ages differ throughout the union, making collection of some social security benefits complicated.

Furthermore, Mr Otting also explained that social security benefits can be exported, meaning you are allowed to export your social security benefit from a Member State to the state of your choosing upon retirement. However, special non-contributory benefits (like a “top up” for your pension or a Job seekers allowance) cannot be exported and can only be collected if that person remains within that particular host state.

## Getting freedom of movement rights recognized? What Legal Recourse? (Matt Moriarty, AIRE Centre)

On the second morning of the training, participants also got to hear from a lawyer in the UK who works directly with EU citizens by providing free legal advice to them which helps them assert their EU legal rights. The lawyer who spoke, Matt Moriarty, is part of the AIRE Centre in the UK which promotes “awareness of European law rights” to assist those “in vulnerable circumstances to assert those rights”. In some situations, Matt and his team have even been able to take particular cases to the European Court of Human Rights (ECtHR) and also assist with particular cases going before the European Court of Justice (ECJ).

The participants enjoyed a thorough presentation from Mr Moriarty on the activities of the AIRE centre as well as a lively discussion on ways to litigate freedom of movement cases in Member States

Mr Moriarty encouraged participants to use the EU legal system to advocate for their clients rights under EU law, and he explained some of the advantages and disadvantages of using legal recourse in these situations. By going to the ECJ with a particular case where a Member States violates EU law:

- The court (ECJ) will implement a definitive decision, which will be binding on all Member States
  - However, this takes a lot of time because you must go through many steps before being referred to the ECJ, and a client may not have the resources or will to continue that long with this particular issue
- The court ruling will have to be followed by all Member State courts and local tribunals
  - However, not every case decided at the ECJ provides a clear answer that can be applicable in future cases
- The court ruling will help that particular client with their immigration situation in their particular host Member State
  - However, the solution found might not be easily applied to other people besides that particular client

Participants were able to learn the different EU human rights and freedom of movement instruments that the AIRE centre uses for advocating for clients and how these pieces of legislations have been successful or unsuccessful for particular clients of theirs. Mr Moriarty emphasized the need for a case to be solid with its facts before going through any type of legal recourse, and he suggested a number of questions participants can ask themselves about a situation before proceeding with any kind of litigation. Some of the questions include:

- Is there a broader societal issue raised?
- Does a court have the power to address it? Will it be sympathetic to strategic litigation?
- Does this litigation support your wider advocacy efforts and strategic aims?
- Is there a risk of negative implications (e.g. a political back-lash or **bad precedent**) if you are successful/unsuccessful?
- What impact will the case have?
- Precedent – if successful/unsuccessful
- How strong is your case?
- How important/wide-spread is the issue?
- Is there a method for implementing a successful decision?
- What are the cost implications – can you afford it?
- Are there any ethical barriers to litigating? (i.e. the client's **best interests**)
- Will you be able to run the case in the way that you need to in order to achieve your aims?

## Conclusions: main lessons learned and next steps

There were many important concepts discussed by participants and speakers throughout the 2-day free movement training. Overall, participants learned the key pieces of EU law that protect an EU citizen's right to freely move, reside, work and settle in other Member States. These important pieces of law were explained in detail by all of the speakers and helped form a basis for the specifics of each expert's topic at hand. No matter if the topic concerned social assistance, housing rights, or healthcare access, the same pieces of EU law were discussed and emphasized over and over by the presenters, helping participants grasp some of the key concepts in advocating for the freedom of movement.

The amount of information discussed at the meeting and the countless case studies presented were extremely useful to participants who can take these ideas home and apply them with EU-mobile citizens in their country that are experiencing difficulties integrating and residing in a new Member State. However, it was pointed out that because of the amount of information given during the presentations, it may have been helpful to have more "workshop" time, where participants could be presented a case and come up with their conclusions, after which, the speaker could explain whether they were right or wrong. In the future, we would like to make more time for interactive activities like this in order to break up the large quantities of important material being disseminated to participants.



At the end of this meeting, several “next steps” were suggested jointly by the participants and speakers. First of all, the idea of creating a “database” or “toolkit” was mentioned; this toolkit or database could present some common misconceptions dealing with the freedom of movement that were emphasized consistently by presenters over the course of the training. These misconceptions could be presented as questions (i.e. **Who is a worker under EU law, What does a mobile-citizen need to have to register as a job seeker in a host state under EU law, etc.**), and can also cite several key cases from the ECJ that back up the answers to the questions.

In order to create this type of database, Eurodiaconia is hosting a “roundtable” lunchtime debate in March of 2015 that will gather Eurodiaconia members, EU policy makers and NGO representatives to discuss the “**top three misconceptions**” among freedom of movement issues. Participants at this meeting will also brainstorm ways in which to promote the key pieces of EU law that debunk these common misconceptions. With the results of this discussion in March of 2015, an outline of what should be included in this type of database/toolkit can be then formed.