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Free Movement of Those Having  
Sufficient Resources  
not to become a Burden  
on the “Social Assistance System of the  
Host State”



# The economic implications of the free movement

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- I- The Original Market Approach
- II From Market to Citizenship
- III Are Citizens' Rights Fundamental Rights?
- IV Non-EU citizens: What Resources are "adequate"?



# I- The Original Treaty

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## Market Approach

- FREE MOVEMENT OF WORKERS
- FREEE MOVEMET OF SERVICES (PROVIDERS AND RECIPIENTS)
- FREEDOM OF ESTABLISHMENT
- NON DISCRIMINATION ON GROUND OF NATIONALITY



# Levin (1982)

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- FREEDOM OF MOVEMENT FOR WORKERS ALSO COVER A NATIONAL OF A MS WHO PURSUES , WITHIN THE TERRITORY OF ANOTHER MS, AN ACTIVITY AS AN EMPLOYED PERSON WHICH YIELDS AN INCOME LOWER THAN THAT WHICH , IN THE LATTER STATE , IS CONSIDERED AS THE MINIMUM REQUIRED FOR SUBSISTENCE PROVIDED THAT HE PURSUES AN ACTIVITY AS AN EMPLOYED PERSON WHICH IS EFFECTIVE AND GENUINE .



# Kempf 1986

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- WHERE A NATIONAL OF A MS PURSUES AS AN EMPLOYED PERSON ACTIVITIES WHICH MAY IN THEMSELVES BE REGARDED AS EFFECTIVE AND GENUINE WORK , THE FACT THAT HE CLAIMS FINANCIAL ASSISTANCE PAYABLE OUT OF THE PUBLIC FUNDS OF THE LATTER MEMBER STATE IN ORDER TO SUPPLEMENT THE INCOME HE RECEIVES FROM THOSE ACTIVITIES DOES NOT EXCLUDE HIM FROM THE PROVISIONS OF COMMUNITY LAW RELATING TO FREEDOM OF MOVEMENT FOR WORKERS .



# Job-seekers

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- Antonissen 1991
- The period of time for which the person seeking employment may stay may be limited, but, in order for the effectiveness of Article 48 to be secured, persons concerned must be given a reasonable time in which to apprise themselves, in the territory of the Member State concerned, of offers of employment (OK 6 months)



# NON-ACTIVE CITIZENS

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- The 3 Directives of 1990:
- 90/364 (RESIDENCE)
- 90/365 (RETIRED employees or self-employed workers)
- 90/366 (STUDENTS)
- Right of residence for EU inactive citizens and their dependent familiars



# Dir 90/364 and 90/365

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- Member States shall grant the right of residence to nationals of Member States who do not enjoy this right under other provisions of Community law and to members of their families, provided that they are covered by sickness insurance and have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State





- The resources shall be deemed sufficient where they are higher than the level of resources below which the host MS may grant social assistance to its nationals, taking into account the personal circumstances of the applicant and familiars.
- Where this cannot be applied in a MS, the resources shall be deemed sufficient if they are higher than the level of the minimum social security pension paid by the host MS.



# Dir 90/366(students)

- the student assures the relevant national authority, by means of a declaration or by such alternative means that are at least equivalent, that he has sufficient resources to avoid becoming a burden on the social assistance system of the host Member State, provided that is enrolled in a recognized educational establishment for a vocational training course and that they are covered by sickness insurance in respect of all risks



# II THE TREATY OF MAASTRICHT

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- FROM MARKET TO CITIZENSHIP
- free movement as a Citizens' Right



# The ECJ on EU Citizenship

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- **Grzelczyk 2001**
- Union citizenship is destined to be the fundamental status of nationals of the MS, enabling those who find themselves in the same situation to enjoy the same treatment... subject to such exceptions as are expressly provided for.
- According to the ECJ this also implies “**a certain degree of financial solidarity**”



# Directive 2004/38

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EU non economically active EUCs can freely move

- Until 3 months: no requirements
- **After 3 months up to 5 years:  
SUFFICIENT RESOURCES**
- After 5 years: no requirements (permanent residents)



# Directive 2004 38

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- Article 7 All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:
  - (a) are workers or self-employed persons in the host Member State;



# Sufficient resources (art 7)

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- (b) 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 have comprehensive sickness insurance cover in the host Member State; or



# Directive 2004/38 (art 7)

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- (c) – are enrolled at a course of study, including vocational training; and
- – have comprehensive sickness insurance cover and assure the relevant national authority, by means of a declaration or by such equivalent means, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State or





# Directive 2004/38 (art 7)TCNs

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- d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).



# III- POST-LISBON CITIZENSHIP

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Charter into force:

Free Movement as a Fundamental Right for  
EUCs

Constitutionalisation of the Citizens' rights?



# ART.20, 2 TFEU

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Citizens of the Union shall enjoy the rights and be subject to the duties 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;



# ART. 21.1 TFEU

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- 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 Treaties and by the measures adopted to give them effect.**



# The EU Charter of FRs

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- Article 45 (Freedom of movement and of residence)
  1. Every citizen of the Union **has the right** to move and reside freely within the territory of the Member States.
  - 2. Freedom of movement and residence **may be granted**, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.
- EUCs: no conditions. See AMS (difference between principles and rights)



# The Charter – General Provisions

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## Article 51 (Field of application)

- 1. The provisions of this Charter are addressed to **the institutions**, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. **They shall therefore respect the rights, observe the principles and promote the application thereof** in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

## Article 52 (Scope and interpretation of rights and principles)

- 2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised **under the conditions and within the limits defined by those Treaties.**



# C-140/12 BREY

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- German couple with small pension moving to Austria and applying a pension supplement for legal residents
- According to the ECJ that could be an indication that the national does not have sufficient resources to avoid becoming an unreasonable burden



# Individual assessment

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- “However national national authorities cannot draw such conclusions without first carrying out an overall assessment of the specific burden which granting that benefit would place on the national social assistance system as a whole, by reference to the personal circumstances characterising the individual situation of the person concerned.”





# C-333/13 DANO

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- Romanian mother living 4 years in Germany with her child. Not having sufficient resources nor seeking a job  
Difficult to integrate because of her poor German
- But was she really a burden?
- Economically non-active EUCs without sufficient resources are unlawful residents and therefore cannot claim equal treatment

- “as regards the condition requiring possession of sufficient resources, Directive 2004/38 distinguishes between (i) persons who are working and (ii) those who are not. Under Article 7(1)(a) of Directive 2004/38, the first group of Union citizens in the host Member State have the right of residence without having to fulfil any other condition. On the other hand, persons who are economically inactive are required by Article 7(1)(b) of the directive to meet the condition that they have sufficient resources of their own. Therefore, Article 7(1) (b) of Directive 2004/38 seeks to prevent economically inactive Union citizens from using the host Member State’s welfare system to fund their means of subsistence.”



# Is Dir.2004/38 contrary to the Charter?

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- ECJ apply art.51:
- “when the Member States lay down the conditions for the grant of special non-contributory cash benefits and the extent of such benefits, they are not implementing EU law. It follows that the Court does not have jurisdiction to answer the fourth question.”



# How to assess the “burden”?

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- 2 different meanings
- formal/systemic: unreasonable burden for the Host State social system
- substantial/individual: case by case assessment
- residence vs integration in the Host State (See *Thym CMLRev 2015*)
- Free movement as a “gradual right”



# Fundamental Right or simple freedom?

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- Not a Constitutional Right. The Economic approach still persists
- Exceptions prevailing over general rule, Directive prevailing over the Charter:
- What about future legislation? If not respecting the Charter could be annulled



# TCNs:

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- Non EU familiars of EUC Dir 2004/38: sickness insurance, *adequate resources*
- Long-resident TCNs. Dir 2003/109: after 5 years of lawful residence can apply for permanent residence: sickness insurance *adequate, regular and sufficient resources*
- Non EU familiars of long resident TCNs Dir. 2003/86/EC on family reunification: *accomodation, sickness insurance, stable and adequate resources*



# Family reunification

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- O.S. (C-356-357/11)

“while Member States have the faculty of requiring proof that the sponsor has stable and regular resources which are sufficient to maintain himself and the members of his family, that faculty must be exercised in the light of Articles 7 and 24(2) and (3) of the Charter of Fundamental Rights of the European Union, which require the Member States to examine applications for family reunification in the interests of the children concerned and also with a view to promoting family life, and avoiding any undermining of the objective and the effectiveness of that directive. “



# Long resident TCNs

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- Kamberaj C-571/10

Article 11(1)(d) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents must be interpreted as precluding a national or regional law, which provides, with regard to the grant of housing benefit, for different treatment for third-country nationals enjoying the status of long-term resident conferred pursuant to the provisions of that directive compared to that accorded to nationals residing in the same province or region





# Can MS identify the amount of “sufficient resources”?

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- EUCs Dir.2004/38 Art.8.4 Member States may not lay down a fixed amount which they regard as "sufficient resources", but they must take into account the personal situation of the person concerned.
- TCNs Dir. 2003/109 MS are allowed to establish a fixed amount of minimum resources



# Sufficient resources for TCNs according to the different MS

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- Portugal demands no economic requirement
- Many MS repeat the text of the directives
- Others establish a minimum income
- Some examples:



# Finland

- According to the Finnish Immigration Service guidelines, the family members of students are considered to have secure means of support (as stipulated by Section 39 of the Finnish Aliens Act) if they have the following amounts at their disposal:
  - \* adult family member/spouse at least €700 (net) per month, €8,400 (net) per year
  - \* first child at least €500 (net) per month, €6,000 (net) per year
  - \* second child at least €400 (net) per month, €4,800 (net) per year
  - \* third child at least €300 (net) per month, €3,600 (net) per year
  - \* fourth child at least €200 (net) per month, €2,400 (net) per year
  - \* fifth child at least €100 (net) per month, €1,200 (net) per year
  - sixth child etc. €0EMN
  -

- **Latvia** sufficient financial means (minimum salary (300 EUR) per month for each adult, 60% from minimum salary – for each minor
- **Netherlands** The sponsor must have legal residence and must have sufficient means of support (€1587 net per month).



# Spain

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- .The amount that should be credited will be monthly 75% of the Multipurpose Public Income Indicator (IPREM), i.e. 532,51 euro per month. for the first family member, and 50% of the IPREM for each of the remaining people that are going to integrate the household in Spain



# Conclusions

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- There is no EU definition of “adequate resources”
- Wide Discretionary powers for the Member States (PA and judges)
- Forum shopping possible for TCNs
- Effects of the economic crisis
- Few certainties for individuals....

# Unless you are...

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