

COMMUNITY MIGRANT WORKERS

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LEGAL BASIS: Articles 48 to 51 of the EEC Treaty.

BACKGROUND: generally speaking, the legal status of migrant workers is governed by the national laws of the host state or by bilateral agreements which were concluded between the latter and the workers' countries of origin in order to solve recruitment or social problems. However, these workers remained, to all intents and purposes, 'foreign' workers and consequently enjoyed less social protection and had an inferior legal status.

One of the first and most important social achievements of the Common Market after 1958 was to have provided the Community migrant worker, if not with full citizenship, at least with a legal status substantially more favourable than that enjoyed by nationals of third countries and with the same social benefits as nationals.

ACHIEVEMENTS

Legal status: any worker who is a national of a Member State has the right to take a job on the same terms as a national, to reside in his place of work and to remain there after termination of his employment. This right, which was initially granted to skilled workers only (according to the ECSC Treaty), was extended with the establishment of the EEC to all workers from member countries, whether skilled or not.

Since the enactment of an appropriate regulation in 1964, the migrant wage or salary-earner has the right to send for and settle with his family, provided that he has suitable accommodation. This provision is one of the most significant contributions of Community legislation to the situation of migrant workers, since previously most states refused to allow workers to be joined by their families; indeed, they often still do today in the case of migrant workers from third countries.

Freedom of movement has also entailed an improvement in the political status of the migrant worker since Member States have thereby been obliged to make adjustments to their traditional police control over 'aliens'. While Member States continue to enjoy absolute rights of expulsion in respect of non-Community migrant workers, a directive of 25 February 1964 (OJ 56, 1964) has restricted their police powers in respect of Community migrant workers, in particular by granting them rights of legal redress.

As a consequence the European Court of Justice has been called upon to give rulings in numerous cases of expulsion or forced residence and in most cases it has interpreted the 1964 directive in a manner favourable to workers falling victim of such police measures (see in particular its judgment in Case 36/75 (Rutili) of 28.10.1975 and Case 30/77 (Bouchereau) of 27 October 1977) by requiring states to produce further justification for such measures and by laying down a restrictive definition of the concept of 'threat to public order' usually invoked by states.

Social protection, an essential corollary of free movement, was introduced for Community migrant workers from 1960. The objective of the Community regulations is to guarantee migrant workers equality of treatment with nationals in respect of social security.

This implies the maintenance of rights acquired in the country of origin and the right to aggregate social insurance periods or pension contributions for entitlement to and calculation of the amount of social benefits. As for freedom of movement, the now voluminous case law of the Court has tended to increase the number of beneficiaries of 'European social security' and to

extend its material scope (for instance, by assimilating social aid to social security).

RESULTS AND OUTLOOK: the exercise of freedom of movement, a fundamental Community right, being determined by the demand for labour from undertakings, has been characterized by far more flexibility than the conventional systems practised by the national states. During the crisis a far greater number of Community workers have been returning to their countries of origin than non-Community workers who 'hang on' to their jobs knowing that if they were to leave the Community they would not get back in again.

At the present time Community legislation benefits approximately 1,600,000 people and entails redistributive payments among the social security schemes of the Nine of about 360 million u.a. per year. Recent Commission studies show that migrant workers contribute far more to the financing of the social security systems than they derive from them in the form of benefits; this is due to their age and physical condition.

Three-quarters of the migrant workers who have settled in the Community come from third countries cannot avail themselves of the advantages of the Community laws.

Thus, in the two Community countries with the largest immigrant populations, France and the Federal Republic of Germany, the data are as follows:

	<u>FRANCE</u>	<u>FEDERAL REPUBLIC</u>
Total civilian working population (rounded off)	21,700,000	26,000,000
of which foreigners (of which men)	1,600,000 (1,300,000)	1,950,000 (1,350,000)
from EEC countries	242,000	400,000

On enlargement the Community will be faced with the problem of integrating in the 'European social security' system the Greek, Spanish and Portuguese workers who have settled in the Member States. The search for solutions to this problem has in fact already begun under the Community's Mediterranean policy *.