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REPORT

on the Commission report on the implementation of Directives 90/364, 90/365 and 93/96 (right of residence) and on the communication from the Commission on the special measures concerning the movement and residence of citizens of the Union which are justified on grounds of public policy, public security or public health

(COM (1999) 127, COM(1999) 372 – C5-0177/1999, C5-0178/99 – 1999/2157(COS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Alima Boumediene-Thiery

CONTENTS

	Page
PROCEDURAL PAGE	4
MOTION FOR A RESOLUTION.....	5
EXPLANATORY STATEMENT	11
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET	19
OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS	24
OPINION OF THE COMMITTEE ON CULTURE, YOUTH, EDUCATION, THE MEDIA AND SPORT.....	29
OPINION OF THE COMMITTEE ON PETITIONS	33

PROCEDURAL PAGE

By letter of 19 July 1999, the Commission forwarded to Parliament its communication on the special measures concerning the movement and residence of citizens of the Union which are justified on grounds of public policy, public security or public health and, by letter of 18 March 1999, its report on the implementation of Directives 90/364, 90/365 and 93/96 (right of residence) (COM (1999) 127, COM(1999) 372 – 1999/2157(COS)).

At the sitting of 7 October 1999 the President of Parliament announced that she had referred these documents to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market, the Committee on Employment and Social Affairs, the Committee on Culture, Youth, Education, the Media and Sport and the Committee on Petitions for their opinions (C5-0177/99, C5-0178/99).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Alima Boumediene-Thiery rapporteur at its meeting of 29 July 2000.

It considered the Commission communication and report and the draft report at its meetings of 11-12 October 1999, 22-24 May, 21-22 June and 12-13 July 2000.

At the last meeting it adopted the motion for a resolution by 25 votes to 15, with 1 abstention.

The following were present for the vote: Graham R. Watson (chairman), Alima Boumediene-Thiery (rapporteur), Mary Elizabeth Banotti, Niall Andrews, Generoso Andria (for Bernd Posselt pursuant to Rule 153(2)), Mary Elizabeth Banotti, Maria Berger (for Michael Cashman), Rocco Buttiglione, Marco Cappato, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Olivier Duhamel), Ozan Ceyhun, Carlos Coelho, Marcello Dell'Utri, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Anne Ferreira (for Sérgio Sousa Pinto pursuant to Rule 153(2)), Adeline Hazan (for Robert J.E. Evans), Jorge Salvador Hernández Mollar, Karin Jöns (for Joke Swiebel pursuant to Rule 153(2)), Anna Karamanou, Margot Keßler, Timothy Kirkhope, Ewa Klamt, Alain Krivine (for Pernille Frahm), Baroness Sarah Ludford, Torben Lund (for Elena Ornella Paciotti), Thomas Mann (for Hartmut Nassauer pursuant to Rule 153(2)), William Francis Newton Dunn (for Daniel J. Hannan), Arie M. Oostlander (for Thierry Cornillet), Hubert Pirker, Ingo Schmitt (for Enrico Ferri), Martin Schulz, Fodé Sylla, Anna Terrón i Cusí, Maurizio Turco (for Frank Vanhecke), Anne E.M. Van Lancker (for Gerhard Schmid), Gianni Vattimo, Christian von Boetticher and Jan-Kees Wiebenga.

The opinions of the Committee on Legal Affairs and the Internal Market, the Committee on Employment and Social Affairs, the Committee on Culture, Youth, Education, the Media and Sport and the Committee on Petitions are attached.

The report was tabled on 18 July 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the Commission report on the implementation of Directives 90/364, 90/365 and 93/96 (right of residence) and on the communication from the Commission on the special measures concerning the movement and residence of citizens of the Union which are justified on grounds of public policy, public security or public health (COM(1999)127, COM(99)372 – C5-0177/1999, C5-0178/1999 – 1999/2157(COS))

The European Parliament,

- having regard to the communication from the Commission (COM(1999)127, COM(1999) 372 – C5-0177/1999, C5-0178/1999¹),
 - having regard, in particular, to Articles 14, 17, 18 and 39 of the EC Treaty,
 - having regard to the report of the High Level Group on free movement of persons submitted to the Commission on 18 March 1997 (the Simone Veil report),
 - having regard to the second report from the Commission on citizenship of the Union of 17 June 1997,
 - having regard to the Green Paper on supplementary pensions in the single market (COM(1997)283),
 - having regard to the 1997-1998 report of ECAS (European Citizens Action Service),
 - having regard to the action plan for free movement of workers (COM(1997)586) and its resolution of 16 July 1998²,
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Legal Affairs and the Internal Market, the Committee on Culture, Youth, Education, the Media and Sport, the Committee on Petitions and the Committee on Employment and Social Affairs (A5-0207/2000),
- A. having regard to Article 14, concerning free movement of persons, and Articles 17 and 18 of the EC Treaty concerning European citizenship, which entails the right to move and to reside freely throughout the territory of the European Union,
- B. whereas however the Commission report and the case law of the CJEC indicate that European citizens of all categories still face numerous obstacles to the exercise of their right of movement and residence,

¹ Not yet published in the OJ

² OJ C 292, 21.09.1998, p. 145.

- C. whereas non-EU citizens legally resident in the Union are excluded from the right to free movement and residence,
- D. whereas the implementation of Directives 90/364, 90/365 and 93/96 on the right of residence of students and retired people is still highly unsatisfactory, as the people concerned suffer on account of the slowness and administrative cost of the procedures for obtaining residence permits and are required to renew these documents, often without justification,
- E. whereas in order to obtain residence permits, retired people are required to demonstrate that they have adequate means, which it is often difficult for them to do, while this criterion is furthermore assessed differently in different Member States and without reference to their real situation, and whereas therefore the existing legislation needs to be revised without delay,
- F. whereas certain categories of workers, particularly those in ‘atypical’ employment or employment of very brief duration, part-time workers, temporary workers, seasonal workers and unemployed migrant workers, often encounter major difficulties of residence in the host country because of the formalities for renewal of their permits associated with the production of evidence of adequate means of subsistence,
- G. whereas in general the right of movement and residence, which is a major aspect of the fundamental right of European citizenship and which cannot be reserved solely for citizens of the Member States, should wherever possible be viewed without reference to the economic considerations which currently impede its full exercise,
- H. whereas millions of third country nationals are residing legally within the EU,
- I. whereas moreover migrant workers are penalised in that they suffer the pecuniary consequences of the inadequate harmonisation of pension systems,
- J. having regard to the unacceptable violations of the right of residence which are still too often committed by the Member States, which misinterpret the concept of ‘public policy’ and undermine the objectives laid down by Directive 64/221/EEC and the case law of the CJEC in this field,
- K. whereas the full exercise of the right of free movement and residence not only corresponds to the very implementation of the principle of European citizenship but also, by facilitating the mobility of students and workers, promotes dynamism and economic competitiveness,
- L. whereas fifty years after the Treaty of Rome for the first time laid down the principle of free movement of persons, this right is still impeded or even ignored, which makes it necessary to promote genuine European citizenship,
- M. whereas therefore the Commission and Council ought to do everything in their power to impart real meaning to European citizenship and to the ‘European area of freedom’,

1. Welcomes the report, but calls on the Commission to explain the delay in submitting a report on the implementation of Directive 93/96 to the Council and Parliament;
2. Notes that the report does not deal with the obstacles faced by workers to the exercise of their right of movement and residence, and covers the situation of third-country nationals only to the extent that they are members of the family of a European citizen;
3. Stresses the need, on the basis of a complete overhaul of the existing rules, to adopt a framework directive to organise and guarantee the unimpeded exercise of freedom of movement and residence;
4. Calls on the Member States and the Commission, when implementing this framework directive, to adopt the necessary measures to render the exercise of European citizenship far more effective for the various categories of persons concerned, by putting an end to the existing inequalities of treatment;
5. Considers, in this context, that the introduction for all applicants of a residence permit valid for one year would be a first step in this direction;
6. Deplores, in a 'European area of freedom', the abusive use by Member States of public policy as grounds for expulsions; considers it essential, therefore, for Member States to endeavour to ensure that they improve their coordination of the interpretation of the concept of public policy, particularly in the context of the Schengen agreements;
7. Urges the Commission to ensure that the legal remedies provided by Directive 64/221/EEC are not undermined in any way, and that any person covered by this Directive is not deprived of his or her rights of defence and assistance or representation;
8. Takes the view that systematic or automatic linkage between criminal conviction and deportation is a breach of Community law and the principle of non-discrimination; points out that each and every deportation must be accounted for in terms of the present danger to public order and safety, and carefully assessed in the light of the personal circumstances of the person concerned and the need to protect family life;
9. Believes that citizenship of the Union must be interpreted in a broad sense; is therefore of the opinion that third-country subjects who are born in the country of residence or have lived there since childhood, are long-term residents with cultural, social and family links in the country of residence or who are minors should not be deported;
10. Takes the view that the Schengen Information System must comply with Community law, more specifically,
 - in applying the provisions of Directive 64/221, which expressly states that personal data concerning a measure that comes under the scope of the directive, and is no longer valid or has been repealed, may not be preserved and that such data may not be included in Community lists or automatically passed on, and that refusing to grant access to the Schengen area to persons who are Community citizens or have become so on the basis of registration in the SIS is in conflict with Community law;
 - in applying Directive 95/46/EEC, which expressly states that personal data obtained

for specified, explicitly defined and justified purposes may not be used in a way that is incompatible with such purposes;
calls on the Commission to exercise its responsibility as guardian of the Treaties and take steps to put an end to these infringements of Community law;

11. Regrets that the Council takes no notice of the communications from the Committee on Petitions concerning serious breaches of Community law on the part of the authorities of the Member States, which reveals a negative attitude on the part of the Council towards the right of petition of European citizens, and calls on the Council to pay the necessary attention to the rights of Union citizens;
 - concerning the movement and residence of students
12. Calls on Member States:
 - to ensure, with regard to the right of residence of students, that their national administrations strictly apply the current provisions of Directive 93/96 (enrolment at a recognised institution, a simple statement of adequate means, health insurance cover) to the exclusion of all other conditions;
 - to limit in so far as possible the formalities relating to the renewal of residence permits and to consider issuing these documents free of charge;
 - to ensure that all students are able to apply for a work permit in the country in which they are studying in order to finance their studies;
 - not to make financial assistance to students subject to nationality conditions;
13. Calls upon the Commission to study:
 - ways of widening the scope of the Directive to embrace trainees and volunteer workers;
 - problems in connection with the recognition of diplomas in certain professions;
14. Takes note of the Commission's intention to extend the scope of Directive 93/96/EEC on students' right of residence to all educational establishments, and to examine how to create more clarity on the scope of students' right of residence, giving special attention to the administrative problems which trainees and participants in voluntary projects encounter, and whether it is possible to make the first issuing and renewal of residence permits for students free of charge; calls on the Commission to submit appropriate amendments to the directive to Parliament and the Council;
 - concerning the movement and residence of retired people
15. Welcomes the Commission proposals to the effect that the existing directives should be so revised as to:
 - simplify and render as flexible as possible the procedures for providing evidence of adequate means for retired people;
 - take account of the impact on the validity of residence permits of the increasingly common practice of living alternately in the host country and the country of origin in the course of a single year;

- concerning the movement and residence of migrant workers

16. Calls on Member States to facilitate to the maximum the granting and renewal of residence permits for migrant workers, particularly temporary, part-time or seasonal workers, by granting them a five-year residence permit if they have held jobs for more than twelve months during a period of a residence in the host country exceeding eighteen months;
17. Calls on host Member States moreover to allow unemployed workers:
 - to extend their right of residence for the period during which they are entitled to draw unemployment benefit in the country concerned
 - to renew their residence permit automatically for periods of at least six months while they are genuinely seeking employment;
18. Calls on the Council, in this respect, to resume without further delay its consideration of the three proposals by the Commission on this subject designed to improve the free movement of workers and their families within the Community (COM(1998) 394 final);

- concerning the status of migrant workers under employment legislation

19. Calls on Member States to improve and modernise social protection in the EU in essential ways so as to halt the penalisation of migrant workers and posted workers arising from:
 - non-recognition of certain pension schemes between Member States and difficulties of transferring acquired rights;
 - the restrictive character of the conditions imposed for the acquisition of supplementary pension rights (long periods during which no pension is payable);
 - fiscal problems associated with the acquisition of pension rights in numerous Member States;
 - difficulties relating to the transfer of early retirement benefits paid from a certain age to workers who are not employed in any form;

- concerning family status in the host country

20. Considers that family reunion must be simplified and facilitated, as it is a vital factor making for integration in the host country; calls on the Commission and Member States, when revising legislation on this subject, to decide:
 - that the spouse of a resident student or retired person or, if the law of the Member State concerned treats the situation of unmarried couples as married couples, the unmarried partner with whom the person reuniting the family has a lasting relationship should have a genuine autonomous right of residence conferred upon them without means-testing and on the same terms, as regards means, as upon the resident student or retired person;
 - that residence rights should be extended without special conditions to non-dependent relatives in the descending or ascending line;
 - that in the event of divorce or decease of the person who obtained the residence permit, members of his or her family should have the right to take up or continue to undertake employment or self-employment;

- that the previous provisions should also apply, on the same terms, to members of the family of a Community national originating in a third country and, in general, that visa formalities should be eased or abolished;
 - concerning the economic, social and cultural context of the right of residence of migrants
21. Considers that the effective exercise of the right of movement and residence presupposes a thorough improvement of the social context (equality of treatment with regard to social and fiscal advantages, greater transparency of the employment market, a greater role for the EURES network), the educational context (access to education and training) and the cultural context (language learning) of migrants and their families; draws attention once more to its request for the introduction of a border impact assessment (the Europe test), to measure the impact of new or amending legislation concerning tax and social security policy on the situation of workers and their families who work in a Member State other than the one in which they live;
 22. Considers that steps should be taken to allow the free movement of legally resident third country nationals who have lived within the EU for a period of five years or more;
 23. Observes likewise that the European citizens concerned are inadequately informed as to their rights and the means of redress open to them, and that this situation should be remedied, particularly by means of better training of the national administrative staff concerned and information campaigns; calls explicitly for a continuation of the support for the initiatives of NGOs concerning complaint procedures in respect of free movement, legal support for complaint procedures and cataloguing the most frequent complaints, with guarantees of the financial resources required;
 24. Urges the Commission to speed up its internal procedures so as to stop more quickly the breaches of Community law;
 25. Instructs its President to forward this resolution to the Council, the governments of the Member States and the Commission.

EXPLANATORY STATEMENT

I. OBSTACLES TO THE EXERCISE OF EUROPEAN CITIZENSHIP

1. Difficulties in the exercise by students and retired people of the right of residence

(a) the existing rules

The three directives with which the Commission's report of March 1999 is concerned (Directives 90/364, 90/365 and 93/96) relate to the residence rights of students and retired people. In brief, the Community rules are as follows:

- retired people

The residence rights of retired people are subject to two conditions: they must have adequate means (in order not to become a burden on the host Member State during their stay) and they must have medical insurance cover. Their spouse and dependent relatives in the ascending or descending line may accompany them.

- students

Students are permitted to reside only on condition that they are enrolled at a recognised institution and have medical insurance cover; a simple statement of adequate means is sufficient. The period of validity of their residence permit may be limited to the period of study.

(b) transposition of the directives

In its report, the Commission observes that the directives were transposed very slowly throughout the Union. The Commission also notes that in many cases they were not transposed correctly. This explains why infringement proceedings were brought against Member States in numerous cases, some of which are still pending before the CJEC. The Commission concludes that 'for too long, EU citizens have been denied some of their rights or been faced with unjustified administrative difficulties due to the incorrect transposition of the Directives'.

(c) administrative obstacles

The Commission observes above all that numerous difficulties have arisen in the implementation of the directives in question. To quote just a few examples, these have included the minimum amount of money required by way of means of subsistence for retired people, the evidence of such means to be provided, the issuing of residence permits, their period of validity and their cost and recognition of medical insurance cover for such people. In evaluating these difficulties, the Commission draws on the experience of citizens and the often divergent practices of national administrations.

- difficulties encountered by students

Students are not required to produce evidence of adequate means; a mere statement that they have such means is enough (made either by the student's parents or by the host in the host country). However, students are sometimes compelled to deposit a certain sum in a bank in the host country, and if they are unable to produce evidence of having done so they may be refused permission to enrol at an educational establishment or be refused social security benefits or allowances (e.g. to cover housing costs).

- difficulties encountered by retired people

Retired people also encounter various obstacles with regard to the adequate means of subsistence (corresponding to the minimum income in the host country) of which they must produce evidence. Retired people are also affected by administrative sluggishness and because they are compelled to renew their residence permits regularly, at some considerable cost to themselves – as indeed students are. Very often the people concerned find themselves in a vicious circle of demands from different authorities.

The 1997-1998 report by ECAS (European Citizens Action Service) gives numerous examples of these administrative difficulties which unduly affect European citizens, both workers and non-workers, and which could well lead them to doubt the reality of the concept of European citizenship. To cite just a few of them:

- in Spain, residence permits are granted only on condition not only that applicants have adequate means of subsistence but also that they deposit the equivalent of the Spanish minimum income and pay at least 65 000 pesetas per month into an account at a Spanish bank, which violates the principle of the free movement of capital;
- in the United Kingdom, in order to obtain a residence permit applicants must surrender their passports for two months, a period which is far too long for some people who need to show their passports in order to work (e.g. seafarers);
- in Luxembourg, a Belgian national who is the wife of a Luxembourg national cannot register as resident in Luxembourg because she cannot obtain a certificate that her name has been deleted from the register in her previous commune of residence, as the Belgian authorities regard the change of address as a manoeuvre designed to defraud the tax authorities;
- in some cases a certificate of good behaviour is required, although such a document may be unknown in the country of origin;
- it takes months – sometimes more than six months – to obtain a residence permit; such a period is far too long and does not correspond to the needs of new categories of migrant who are far more mobile and whose position may well be precarious;
- moreover, numerous complaints concern the requirement to reapply for a temporary residence permit at regular intervals, which is expensive and also involves translation costs.

Moreover, as indeed the Commission expressly states, the directives in question have ‘perverse’ effects, as Member States unduly extend the requirement to produce evidence of adequate means of subsistence to Community nationals who are married to their own nationals. In other cases, when assessing the means of a retired person who has applied for a residence permit, a national administration does not take account of the means of the person’s spouse or of one or more children working in the host country.

People with a secondary residence in another Member State are also confronted with difficulties in obtaining a residence permit for longer than three months (a retired person is even required to apply for and renew two residence permits if he or she is not a national of either of the two countries concerned – either of the country of primary or of that of secondary residence).

Yet further difficulties arise if partners are unmarried or homosexual and for third-country nationals.

2. Difficulties of residence and movement encountered by migrant workers

Apart from the situation of students and retired people, with which the Commission report deals, another question is the position of migrant workers as a whole, which obviously cannot be disregarded in a general presentation of the current situation regarding the exercise of citizenship of the European Union.

Despite Article 39 of the ECT, migrant workers meet with numerous difficulties.

Workers on short-term employment contracts (for one year or less) are required to renew their residence permits whenever they sign a new contract (their means being assessed on each occasion, even if they are to be employed uninterruptedly). Temporary workers are unable to obtain residence permits unless they can prove that they will be employed for at least three months, which they can by no means always do. The three-month minimum employment requirement seems particularly inappropriate in view of the very nature of temporary work, which is often perfectly genuine.

As for part-time workers, the CJEC³ has ruled that since their work constitutes genuine and actual employment, they should be issued with residence permits in the host country. However, part-time workers are often refused them on the grounds that they cannot produce evidence of adequate means of subsistence. This practice violates European legislation. In principle, under Community law only non-economically-active persons may be required to demonstrate that they have adequate means of subsistence. Even if part-time workers’ means are inadequate, they are entitled to a residence permit and even to social assistance to supplement their income. It is excessive to take the line adopted by some national administrations and automatically equate part-time work with marginal or bogus employment.

Another category of atypical employment, seasonal employment, is not covered by Community law, so that between successive seasonal employment contracts the worker is required to produce evidence of adequate means of subsistence. In many cases, self-employed workers also encounter the same difficulties and, despite being registered with a chamber of

³ Case of KEMPF v. the Netherlands, 139/85 of 3 June 1986

commerce or trade organisation, can – like the previous categories of ‘atypical’ workers – only obtain residence permits which have to be renewed periodically, subject to production of proof of adequate means on each occasion. Yet the early stages of self-employment are often precarious, so that self-employed workers who are not nationals of their country of residence suffer discrimination in comparison with nationals.

The difficult situation of unemployed migrant workers and of migrant workers undergoing training or retraining should also be mentioned. The principle of equal treatment requires migrant workers to be given the same access to employment formulae as nationals. This is by no means fully respected (for example in the case of employment/solidarity contracts in France); often those seeking such employment are refused residence permits. Yet those who have become unemployed after having had an employment contract should be able to obtain a six-month temporary residence permit in the host country⁴, a right which is not always recognised. Similarly, those who have been unemployed for less than 12 consecutive months have the right to have their residence permit renewed for 5 years, another provision which is by no means always respected.

Conclusion

Consideration of these various situations shows that in all too many cases European citizenship is an empty phrase, both for ‘atypical’ workers and for the ‘non-economically-active’. Time and again, access to the employment market, to education and to residence without an economic activity is subject to excessive economic conditions. Moreover, the unjustified requirement that a worker produce a residence permit when first hired, and the practice of recruiting new workers for a period limited to the period of validity of their residence permit, are ‘subtle’ ways of protecting the national employment market contrary to both the letter and the spirit of European integration.

3. Insecurity arising from special expulsion measures justified on grounds of public policy, public security or public health

The Commission’s communication of 19 March 1999 (COM(1999) 372 final) reviews the implementation of Directive 64/221/EEC of 25 February 1964 on coordination of the special measures relating to the movement and residence of foreign nationals justified on grounds of public policy, public security or public health. The communication shows that the EU is still far from having attained optimum coordination in this field.

To cite just a few of the examples mentioned by the Commission:

- Member States still adopt measures which are really unjustified on grounds of public policy, public security or public health in order to expel European citizens (those convicted of criminal offences, for instance, ought not to be systematically and automatically expelled from a Member State or barred from entering it);
- persons who are expelled from a Member State or barred from entering it are not always duly informed of the exact grounds for these decisions to enable them to defend

⁴ CJEC: judgment of 26 February 1991 (Antonissen case, 292/89)

themselves properly;

- personal data are used to control entry into or departure from a Member State; this particularly applies to data in the SIS concerning people who have, for example, become nationals of a Member State as a result of accession or naturalisation;
- long-term residents or family members of the person concerned are not always afforded the protection which they have a right to expect;
- the remedies and safeguards provided for by the Directive are not always properly observed.

In general, the Commission itself says that it is concerned about the ever growing number of complaints by citizens.

II. TOWARDS TRUE EUROPEAN CITIZENSHIP

The present situation with regard to the right of residence is highly unsatisfactory and does not correspond to the principles of free movement of persons, non-discrimination on grounds of nationality and European citizenship which are clearly proclaimed in the Treaties. It is important therefore that the Commission and Member States should in the near future submit proposals and put forward the necessary measures to enable true European citizenship to take shape at long last.

1. Simplifying the procedure for issuing residence permits

The Commission intends to overhaul the directives concerning the residence rights of the 'non-economically-active' by 2001 (according to the Scoreboard). This needs to be done. It is to be hoped that the new directive will make it possible to eliminate numerous existing obstacles to the exercise of the right of residence of these categories of persons by introducing simpler, quicker and less costly procedures. The method of proving adequate means of subsistence must also be made more flexible.

As for workers, as a follow-up to its communication on an action plan for freedom of movement (COM(97) 586 final)⁵, the Commission has submitted several proposals for facilitating the free movement of workers within the Community (COM(98) 394 final⁶). The Council has not considered them. The Council should without delay adopt a position on these proposals, which will improve the conditions for the residence and movement of workers.

Community legislation ought to compel the administrations of the Member States to break the vicious circles in which citizens wishing to exercise their right of residence still all too often find themselves trapped, fifty years after the Treaty of Rome laid down the principle of free movement of persons. It is unacceptable that social security benefits, access to the employment market and to vocational training for those who have been unemployed for less than 12 months and access to public services (gas, electricity and telephone) should be dependent on production of a residence permit. Similarly, it is unacceptable that a risk of

⁵ See report by Mrs Barbara Weiler, A4-0269/98

⁶ See report by Mrs Marie-Thérèse Hermange, A4-0252/99

expulsion should continue to hang over any person who does not hold a residence permit. Freedom of movement and freedom of residence in the EU are rights which European citizens must be able to exercise on a footing of equality with nationals, which also makes it necessary to take better account than at present of professional experience gained in the country of origin. This is important, incidentally, because it is an element in the creation of a European area of mobility based on a more flexible and effective labour market.

Generally speaking, future Community legislation on the subject ought to go beyond the current approach of dealing with each category separately, which results in fragmentation of the concept of European citizenship. In addition, insofar as possible, European citizenship should no longer be conditional upon the economic status of an applicant for a residence permit.

In this respect, as the Veil report suggested, a residence permit valid for one year, appropriate to the increasingly common situation in which people apply for a residence permit for more than three months but less than one year, would be a first step in the right direction.

2. Improving the social-security and family status associated with European citizenship

People moving within the EU enjoy a high level of social-security protection thanks in particular to the effective operation of the arrangements for coordinating national social-security systems introduced with effect from 1958 and further developed by Regulation 1408/71 of 14 June 1971. However, this system does not cover every situation. The arrangements ought therefore to be extended to cover early retirement schemes⁷. It would also be desirable to render more flexible the conditions governing access to non-urgent medical care in other countries and to consider extending beyond three months the period during which unemployment benefits may be exported. It should also be noted that social-security benefits are excluded from the scope of Regulation 1408/71. Might it not be possible to consider coordination and clearing measures in this field?

In addition to retention of social protection rights, the free movement of persons presupposes the possibility of taking up residence together with one's family. Various regulations have been adopted to facilitate this, particularly Regulation 1612/68, which provides that a worker who is a national of one Member State but employed in the territory of another may take up residence in the latter with his or her spouse, any descendants who are aged under 21 or are dependent on them, and any ascendant dependants. This right ought to be extended to ascendants and descendants of the spouses who are not dependent on them. It is also important to ensure that unmarried couples, both heterosexual and homosexual, enjoy the same facilities throughout the territory of the EU.

3. Enhancing the rights of third-country nationals

Article 18 of the EC Treaty restricts European citizenship to nationals of Member States. However, third-country nationals who are lawfully resident, long-term, in a Member State enjoy certain rights.

Third-country nationals who are members of the family of a European citizen in the strict

⁷ See report by Mr Wilfried Kuckelkorn, A5-0053/2000

sense of the term enjoy the same rights as EU nationals, for example. In practice, this principle is open to improvement. For instance, children aged over 21 who are not dependent on their parents, and ascendants who are not dependent on their children, ought, if they are third-country nationals, to have the right to family reunion provided that the family group already exists in the Member State concerned. The visa requirements still in force with regard to such people ought also to be lifted.

These third-country nationals should also be permitted to work on a self-employed basis, which is not always the case. Lastly, the residence rights of third-country nationals should not be conditional on the survival of their marriage. A divorced spouse should have the right to remain in a Member State, particularly if there are children from the marriage or the person concerned is working in that State.

Mention may also be made of the difficulties faced by enterprises posting third-country nationals temporarily to a Member State where work needs to be carried out. Refugees and stateless persons residing in the territory of a Member State also encounter obstacles, although under Community law they are supposed to be equated with nationals.

Those Member States which have not already done so (Belgium, Germany, Austria, Luxembourg, Greece and France) should give non-Community nationals who have been resident for a long period the right to vote in local and European elections.

4. Combating abusive interpretations of the concept of ‘public policy’ by Member States

As indicated above, the Commission reports that there are too many cases in which Member States misinterpret the requirements of public policy, security or public health in order to expel third-country nationals. The fact is that Directive 64/221/EEC of 25 February 1964 has not succeeded in its objective of establishing a framework for the public-policy conditions invoked by Member States as grounds for expelling third-country nationals.

However, the CJEC has interpreted these conditions restrictively, confirming that:

- public-policy grounds cannot be invoked for economic purposes;
- these grounds must be based solely on the current personal conduct of the persons concerned, who must pose a genuine and sufficiently serious risk;
- the mere fact that a person has previously been convicted of criminal offences does not justify his expulsion;
- the expiry of the document which entitled a person to enter the host country cannot justify his expulsion;
- an expulsion cannot be based on grounds of general prevention and, in general, the principle of proportionality and the right of defence must be respected⁸.

⁸ Cf. the case law of the CJEC (quoted in the communication from the Commission), which defines as unlawful any expulsion not justified by a genuine threat to public policy and any failure to respect the principle of

Member States must of course have at their disposal the measures based on public-policy considerations which the Treaties guarantee them, but in an EU based on the rule of law and respect for human rights – particularly the ECHR and, soon, a Charter of Fundamental Rights – they cannot abuse these prerogatives. The information campaigns to increase awareness on the part of Member States and the public which the Commission suggests in its communication are vital, particularly to remind Member States of the need for an accurate interpretation of the concept of ‘public policy’.

proportionality and the right of defence.

11 July 2000

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the Commission report on the implementation of Directives 90/364, 90/365 and 93/96 (right of residence) and on the communication from the Commission on the special measures concerning the movement and residence of citizens of the Union which are justified on grounds of public policy, security or public health
(COM(1999) 127, COM(1999) 372 - C5-0177/1999, C5-0178/1999 - 1999/2157(COS))

Draftsperson: Diana Paulette Wallis

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Diana Paulette Wallis draftsman at its meeting of 13 October 1999.

It considered the draft opinion at its meetings of 26/27 June 2000 and 11 July 2000.

At the latter meeting it adopted the conclusions below unanimously.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Ward Beysen, vice-chairman; Willi Rothley, vice-chairman and Rainer Wieland, vice-chairman; Diana Paulette Wallis, draftsman; Luis Berenguer Fuster, Carlos Candal, Raina A. Mercedes Echerer, Francesco Fiori (for Hans-Peter Mayer pursuant to Rule 153(2)), Janelly Fourtou, Françoise D. Grossetête, Gerhard Hager, Heidi Anneli Hautala, Ioannis Koukiadis, Othmar Karas (for Bert Doorn pursuant to Rule 153(2)), Kurt Lechner, Klaus-Heiner Lehne, Donald Neil MacCormick, Toine Manders, Luis Marinho, Arlene McCarthy, Manuel Medina Ortega, Carlos Ripoll i Martínez Bedoya, Antonio Tajani, Guido Viceconte, Christos Zacharakis and Stefano Zappalà.

JUSTIFICATION

Your draftsman agrees with the rapporteur, Mrs Boumediene-Thiery that, in all too many cases, European citizenship is an empty phrase and access to the employment market, to education and to residence without an economic activity is subject to excessive economic conditions. The present situation with regard to the right of residence is highly unsatisfactory and not corresponding to the principles of free movement of persons, non discrimination on grounds of nationality and European citizenship which are clearly proclaimed in the Treaties. She points out as important that the Commission and Member States should in the near future submit proposals and put forward the necessary measures to enable true European citizenship

to take shape at long last. Future Community legislation on this subject should go beyond the current approach of dealing with categories of persons separately, which results in fragmentation of the concept of European citizenship. As far as possible, European citizenship should no longer be conditional upon the economic status of an applicant for a resident's permit.

The essence of the existing secondary Community law is that there is a right to move and reside freely within the territories of the Member States for all European citizens subject only to two conditions: that they have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State and that they are covered by sickness insurance in respect of all risks in the host Member State. The family members entitled to accompany the holder of the right of residence are his or her spouse and their dependants in the descending or ascending line. **The validity of the resident's permit to be issued has to be of at least five years** with the possibility for the Member States to "revalidate" the permit at the end of the first two years of residence.

Point 1 of the draft motion for a resolution stresses the need, on the basis of a complete overhaul of the existing rules, to adopt a framework directive to organise and guarantee the unimpeded exercise of freedom of movement and residence.

The term "framework directive" does not yet exist in Community law. Used in this context it could even lead to the misunderstanding that Member States could be granted an even greater margin of manoeuvre which is contrary to the line taken by Mrs Boumediene-Thiery. What seems to be **absolutely necessary**, based on the experience with the existing directives, is **to reunite the various texts into one codification.**

In Point 3 of the draft motion for a resolution it is said that the introduction for all applicants of a resident's permit valid for **one** year would be a first step in the direction of putting an end to the existing inequalities of treatment.

In the light of Directives 90/365 and 90/364 which both grant a minimum validity of **five** years of the resident's permit, this position of the Rapporteur seems to be a step back from existing law.

The general rule should be that the permit of residence which, in any case, has only a declaratory value, ought to be given for at least five years unless the specific circumstances of the case (shorter studies and so forth) justify a different approach.

Furthermore, it could be argued that, having in mind the development of a European citizenship, it is no longer adequate, that questions of residence of such persons are to be dealt with by the administrative bodies in charge of "foreigners". It is unfortunately well-known that these services tend to view their "clientèle" as potential dangers and a source of problems.

It might therefore be a suggestion worth discussing, to put down in a future regulation the **principle that all questions relating to the mobility and residence of European citizens have to be of the domain of the administrative authorities responsible for residence matters of the nationals of each Member State.** This would mean, in practical terms, that a European citizen moving from one Member State to another would be subject to the same

requirements in terms of procedure as a national of the host Member State. He or she would have to turn to the same authorities to which a national of this Member State would have to turn to.

Finally, a clear definition of what is to be considered as "sufficient resources" seems to be at least necessary. However, the Commission should go a step further and work out and propose a system of financial compensation between Member States for the presumably rare cases in which a European citizen becomes a "burden on the social assistance system of the host Member State".

CONCLUSIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following points in its draft resolution:

1. Insert new paragraph before paragraph 1:

Welcomes the report, but calls on the Commission to explain the delay in submitting a report on the implementation of Directive 93/96 (right of residence) to the Council and Parliament;

2. Insert new paragraph before paragraph 1:

Notes that the report deals with the implementation of Directives 90/364, 90/365 and 93/96 on the right of residence of students, retired people and non-economically-active persons in the host Member State, and that it does not deal with the obstacles faced by workers to the exercise of their right of movement and residence, which are already covered by other instruments of Community law and by three proposals by the Commission (COM (1998) 394);

3. Insert new paragraph before paragraph 1:

Notes that the report deals with the difficulties encountered by European citizens arising from the application of the Directives mentioned above, and that it covers the situation of third-country nationals only to the extent that they are members of the family of a European citizen;

4. Paragraph 1 of the motion for a resolution should read as follows:

1. Stresses the need, on the basis of a complete overhaul of the existing rules, to **reunite the various texts into one codification taking the form of a Directive** to organise and guarantee the unimpeded exercise of freedom of movement and residence;

5. Paragraph 2 of the motion for a resolution should read as follows:

2. Calls on the Member States and the Commission, when implementing this **Directive**, to adopt the necessary measures to render the exercise of European citizenship far more effective for the various categories of persons concerned (*10 words deleted*);
6. New paragraph 2(a):

Calls on the Commission to adopt at least a clear definition of what it is to be considered as "sufficient resources";

New paragraph 2(b):

Calls on the Commission to consider whether it would not be possible to abolish the condition of "sufficient resources" and to suggest reasonable mechanisms of financial compensation between Member States;
7. Paragraph 3 of the motion for a resolution should read as follows:
 3. Considers, in this context, that the introduction for all applicants of a residence permit **valid for a minimum of five years, unless the specific circumstances of the case justify a different approach**, would be a first step in this direction,
8. New paragraph 3(a):

Notes that the communication deals with the special measures concerning the movements and residence of European citizens which are justified on grounds of public policy, public security or public health, and that it only covers the situation of third-country nationals to the extent that they are members of the family of a European citizen;
9. New paragraph 3(b):

Welcomes the Communication as a guidance as to how to resolve the difficulties arising from the implementation of Directive 64/221/EEC;
10. New paragraph 3(c):

Urges the Commission to ensure that the legal remedies provided by Directive 64/221/EEC are not undermined in any way, and that any person covered by this Directive is not deprived of his or her rights of defence and assistance or representation;
11. New paragraph 13(a):

Calls on the Commission to consider whether it would be possible for all questions relating to the movement and residence of European citizens to be dealt with by the national administrative authorities responsible for residence matters of the nationals of each Member State;

12. New paragraph 14(a):

Urges the Commission to speed up its internal procedures so as to stop more quickly the breaches of Community law;

13. New paragraph 14(b):

Urges the Commission to begin as soon as possible not only discussions but drafting work on substantive changes to the existing legislation on the four points it has pointed out in its report under 4.4.

21 March 2000

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the communication from the Commission to the Council and the European Parliament on the special measures concerning the movement and residence of citizens of the Union which are justified on grounds of public policy, public security or public health (COM (1999) 372 – C5-0178/1999 – 1999/2157(COS)) and

on the report from the Commission to the Council and the European Parliament on the implementation of directives 90/364, 90/365 and 93/96 (right of residence) (COM (1999) 127 – C5-0177/1999 – 1999/2157(COS))

Draftsman: Herman Schmid

PROCEDURE

At its meeting of 22 November 1999, the Committee on Employment and Social Affairs appointed Herman Schmid draftsman.

It considered the draft opinion at its meetings of 24 February and 21 March 2000.

At the latter meeting it adopted the amendments below by 22 votes to 7, with 10 abstentions.

The following were present for the vote: Michel Rocard, chairman; Winfried Menrad, vice-chairman; José Ribeiro e Castro, vice-chairman; Herman Schmid, draftsman; María Antonia Avilés Perea, Jean-Louis Bernié, Andre Brie (for Sylviane H. Ainardi), Philip Rodway Bushill-Matthews, Chantal Cauquil (for Arlette Laguiller), Alejandro Cercas Alonso, Luigi Cocilovo, Harlem Désir (for Marie-Hélène Gillig), Den Dover (for James L.C. Provan), Harald Ettl, Jillian Evans, Carlo Fatuzzo, Ilda Figueiredo, Monica Frassoni (for Hélène Flautre pursuant to Rule 166(3)), Fiorella Ghilardotti, Roger Helmer (for David Sumberg), Stephen Hughes, Anne Elisabet Jensen (for Massimo Cacciari), Ioannis Koukiadis, Jean Lambert, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Manuel Pérez Álvarez, Bartho Pronk, Fernando Reis, Gilles Savary (for Proinsias De Rossa pursuant to Rule 166(3)), Miet Smet, Gabriele Stauner (for Anne-Karin Glase), Ilkka Suominen, Helle Thorning-Schmidt, Bruno Trentin (for Elisa Maria Damião), Ieke van den Burg, Anne E.M. Van Lancker, Matti

Wuori (for Ian Stewart Hudghton pursuant to Rule 166(3)) and Barbara Weiler.

SHORT JUSTIFICATION

The right of residence is closely related to the fundamental right of freedom of movement for persons introduced by the Single European Act, which is a broader concept than freedom of movement for workers. Three different directives have introduced a right of residence for pensioners (Directive 90/365), people with sufficient resources (Directive 90/364) and students (Directive 93/96). There are however several restrictions on the right to freedom of movement and residence for workers and persons. During the late 90's, the Commission launched an ambitious programme to deal with those restrictions by setting up a High Level Panel headed by Simone Veil to investigate the problems⁹ and through the subsequent action plan for freedom of movement for workers¹⁰. The Commission has since followed up its action plan with a number of legislative proposals.

The right of residence is now also being addressed. The Commission has submitted two communications, (a) on the implementation of the above directives which apply to special categories of person: pensioners, students and persons with sufficient resources¹¹, and (b) on the special measures concerning the movement and residence of citizens of the Union which are justified on grounds of public policy, public security or public health¹².

In its communications, the Commission sets out its strategy to amend existing legislation within the near future together with a number of practical commitments to assist individuals who move to and take up residence in another Member State. There is actually nothing in this approach or the measures put forward to object to. It is not what is included in the communications that your draftsman would question but rather what is omitted.

Firstly, it may be useful to set out more clearly the difference between the general right of movement and the right of residence. The right of freedom of movement is one of the basic principles of the internal market and is significant for the labour market and the economy as a whole at the same time as it constitutes a freedom for the individual. Right of residence is linked in a completely different way to individuals' and families' needs and situation. It would be useful if the right of residence for pensioners, students, non-employed family members and other persons with sufficient resources could be set in a more general legal framework governing the right of residence.

Secondly, it is interesting and useful that the Commission tries to situate the right of residence in a civil rights framework but it should be pointed out that the intent is not followed up by practical proposals.

Right of residence should be linked to the individual and not be based on the family which has no practical sense in terms of the conventional concept of a right. Obviously workers who move to another Member State, for example, should be able to take their families with them without any discrimination against those members of the family but the rights of the members

⁹ Report of the High Level Panel on the free movement of persons 18.3.1997.

¹⁰ COM(1997) 586 and Parliament's resolution A4-0269/98.

¹¹ COM(1999) 127.

¹² Directive 64/221/EEC and COM(1999) 372.

of the family should not be defined on the basis of the relationship to the migrant worker, they should be individual.

It is also remarkable that the Commission unquestioningly adopts the accepted view that right of residence should be dependent on financial status. Persons are granted right of residence provided that they can support themselves and that they are not expected to be a burden on public resources. However, it is not possible to regard right of residence as a civil right and at the same time accept that it applies only to the financially independent.

Thirdly, the Commission has not dealt sufficiently with the situation for third country nationals who legally live and work in a Member State. It is unreasonable in the present day and age for those persons not to have the same residence rights as Union citizens and it would be appropriate for the Commission to have taken this opportunity to correct the present legal anomaly. Parliament has long called for such action in resolution upon resolution¹³, apparently in vain.

Fourthly, in line with Parliament's frequently repeated views¹⁴, the Commission should devote further attention to the special situation of frontier workers.

Fifthly, the relationship between the right of residence and the right and opportunity to take up gainful employment should be thought through. Although the report deals with various categories of persons not in gainful employment, such a crucial role is played in practice by the requirement that they should be able to support themselves, that taking up gainful employment may be one of the ways of satisfying that requirement. People move between periods of not working and of gainful employment and the notion of 'employability' should be a factor in assessing their ability to support themselves. Right of residence without the corresponding right to employment is in several ways an anomaly which should not be enshrined in the legislation.

CONCLUSIONS

The Committee on Employment and Social Affairs calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

The Committee

1. Refers to its own resolution of 16 July 1998 on the Commission's Action plan for free movement of workers which calls for a 'general code of movement and residence'; calls on the Commission to produce a consolidated version of legislation in force in the field of free movement and the right of residence and to incorporate it in the proposed general code;

¹³ See for example Hermange A4-0252/99, Weiler A4-0269/98.

¹⁴ See footnote 5.

2. Is of the opinion that an interpretative communication ('soft law') is not a sufficient means of bringing European law in force in line with decisions of the European Court of Justice or of responding to different situations or differences in interpretation and implementation between the various Member States; calls on the Commission to supplement the interpretative communication on the implementation of Directive 64/221/EEC, in accordance with its conclusions, by submitting a draft directive to amend Directive 64/221/EEC;
3. Fully supports the Commission in drawing attention to the current problems surrounding right of residence and supports the Commission's proposed measures;
4. Is, of course, of the opinion that a person in gainful employment who moves to another Member State must have the opportunity of taking his family with him; considers, however, that right of residence should be recognised as an individual entitlement and not be dependent on family status and that consequently persons who acquire the right of residence in the context of family reunion must be entitled to an individual right of residence if their family circumstances change through divorce, death of a partner or spouse or as a result of reaching the age of majority;
5. Also considers that right of residence should be divorced as far as possible from financial position; notes that the Commission has pertinent remarks to make about a variety of practices concerning the requisite documentary evidence of level of resources and complaints from students; calls on the Commission therefore to submit to Parliament and the Council a draft directive amending Directives 90/364, 90/365 and 93/96 and resolving the problems involved in assessing the adequacy of resources, violation of protection of the personal sphere when prior checks are carried out on level of resources and problems of the validity of residence permits which might arise in the event of an absence from the host country of six months or more;
6. Considers that neither document has paid sufficient attention to the situation of third country nationals who legally live and work in a Member State; recalls its request to the Commission and the Council to ensure that non-EU citizens who have legally acquired the right of residence in one of the Member States of the Union acquire the same rights to freedom of movement and residence as EU citizens; regrets that the Council has not followed up the Commission's proposals aimed at gradually improving the status of third-country citizens (right of travel of non-EU citizens, access to the territory of the EU, extension of the scope of Regulation 1408/71) and calls on the Commission to develop a strategy for overcoming this obstacle in the Council;
7. Believes that citizenship of the Union must be interpreted in a broad sense; is therefore of the opinion that third-country subjects who are born in the country of residence or have lived there since childhood, are long-term residents with cultural, social and family links in the country of residence or who are minors should not be deported;
8. Considers that the relationship between right of residence, means of support and the right to gainful employment should be examined with a view to facilitating residence

for persons not in gainful employment, including both those undergoing vocational training and those engaged in voluntary work;

9. Endorses the Commission's views that persons living in the Union are inadequately informed as to their rights and obligations in respect of free movement and the right of residence; calls explicitly for a continuation of the support for the initiatives of NGOs concerning complaint procedures in respect of free movement, legal support for complaint procedures and cataloguing the most frequent complaints, with guarantees of the financial resources required; calls on the Commission to follow up, on a systematic basis, the most frequent complaints and to propose a structural approach;
10. Urges the Commission to begin introducing the reforms set out in the two documents as soon as possible and to submit the requisite draft directives and action plans to Parliament and the Council.

31 January 2000

OPINION OF THE COMMITTEE ON CULTURE, YOUTH, EDUCATION, THE MEDIA AND SPORT

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the Communication from the Commission to the Council and the European Parliament on the special measures concerning the movement and residence of citizens of the Union which are justified on grounds of public policy, public security or public health (Directive 64/221/EEC) (COM(1999) 372 – C5-0178/1999 –1999/2157(COS)); and

Report from the Commission to the Council and the European Parliament on the implementation of directives 90/364, 90/365 and 93/96 (right of residence) (COM(1999) 127 – C5-9177/1999 – 1999/2157(COS))

Draftsman: Maria Martens

PROCEDURE

At its meeting of 19 October 1999, the Committee on Culture, Youth, Education, the Media and Sport appointed Maria Martens draftsman.

It considered the draft opinion at its meetings of 24 November 1999, 11 January and 27 January 2000.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Giuseppe Gargani, chairman; Vasco Graça Moura and Ulpu Iivari vice-chairmen; Maria Martens, draftsman; Pedro Aparicio Sánchez, Raina A. Mercedes Echerer (for Wyn), Roy Perry, Christa Prets and Luckas Vander Taelen.

INTRODUCTION

1. Free movement of persons is one of the fundamental rights guaranteed by Community law, but this right remains subject to limitations laid down in the Treaty. In particular, Articles 39(3), 46(1) and 55 of the EC treaty allow Member States to restrict free movement where this is justified for reasons of public policy, public security or public health. Any such restriction must, however, be in accordance with Directive 64/221/EEC, which sought to create safeguards to ensure that Member States did not abuse their freedom under the Treaty so as to restrict free movement unjustifiably.
2. The Commission Communication addresses a number of specific problems, such as: undue delay in examining residence permit applications; the role played by previous criminal convictions in assessing the threat to public order or public security; the designation of whole groups as constituting a threat to public order or security, without any individual assessment; storage of personal information about the persons concerned;

expulsion of second-generation migrants or long-term residents; the position of third-country nationals and their family members.

3. Community law in this area was originally limited to people exercising an economic activity. Three Directives dating from 1990 and 1993 extended rights of residence of pensioners, other economically non-active persons and students. Directive 93/96/EEC on the right of residence for students obliged each Member State to recognise the right of residence – subject to a number of qualifications - of any student who is a national of any other Member State and who is enrolled at a recognised educational establishment for the principal purpose of following a course of study.
4. The Commission Report is a record of the implementation of the Directives. It identifies a number of problems:
 - a) The right of residence is subject to the condition that the student is enrolled at a recognised educational establishment for the principal purpose of following a vocational training course and that he is covered by sickness insurance. Students may not claim payment of maintenance grants by the host Member State and a student may choose to make a straightforward declaration that he has sufficient resources to avoid becoming a burden on the social assistance system of the host Member State. Yet, French legislation and administrative practice commonly – and, in the view of the Commission, unnecessarily - oblige students from other Member States to join the social security scheme for students in France. The Commission has referred the matter to the Court of Justice.
 - b) Residence permits may be limited to the length of the course of studies, or to one year where the course lasts longer. Students taking part in programmes such as SOCRATES and LEONARDO usually stay in the host Member State for one or two semesters. If the intended period of residence is more than three months, EU citizens are obliged under Community law to apply for a residence permit. Commonly, students either do not receive their residence permit at all or only at the end of their stay, shortly before returning home.
 - c) On the other hand, students whose course of study lasts longer than one year are obliged to seek renewal of their residence permits. Germany, France, Italy, Denmark and the United Kingdom do not charge for residence permits; the Netherlands charges for the initial residence permit, but not for subsequent renewals; Austria levies a lower charge for renewal than for the initial permit; while Belgium, Spain, Portugal and Finland charge the same fee for renewal as for the first permit application.

CONCLUSIONS

The Committee on Culture, Youth, Education, the Media and Sport calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to take account of the following conclusions:

The Committee:

The Communication

1. Notes that the Communication discusses restrictions on the rights of residence of nationals of EU Member States and third-country nationals and that it does not suggest that students or other young people are affected to any greater extent than other groups;
2. Considers, however, in view of the conditions and requirements imposed by the Member States, that discriminatory legislation and practices still exist which hinder the mobility of students;
3. Welcomes the Commission's commitment to making Community legislation on free movement of persons clearer and to restructuring it around the notion of European citizenship;

The Report

4. Notes that, under Directive 93/96 (which dates from December 1993), the Commission was called upon to submit a report to Council and Parliament within no more than three years and then every three years;
5. Calls upon the Commission to explain the delay in submitting a report on the implementation of Directive 93/96 to Council and Parliament;
6. Welcomes the fact that, in the great majority of Member States, Directive 93/96 has now been transposed into national law to the Commission's satisfaction;
7. Regrets, however, that the slowness of many of the Member States in transposing this Directive into national law and the slowness of the infringement proceedings launched against such Member States by the Commission have meant that, for too long, EU citizens have been denied some of their rights;
8. Notes the action being taken by the Commission against the French government before the Court of Justice;
9. Welcomes the Commission's commitment to stepping up its efforts to inform citizens about the exact extent of their rights in these areas;
10. Notes the existence of the Commission Guide "Studying, training and doing research in another country of the European Union" and of Factsheets on the individual Member States and calls on the Commission to collaborate with the national ministries responsible for institutions of higher education in the Member States to ensure that – in addition to their availability by post and through the Internet - ample paper copies of these are available in institutions of higher education throughout the EU;
11. Strongly supports amendment of Directive 93/96 so as to provide for the free issue and renewal of residence permits for students in all Member States;

12. Calls for the drafting of clear European rules to ensure that the imposition of conditions for access to study does not lead to discrimination on grounds of nationality;
13. Calls for the drafting of clear European rules to ensure that all students are able to apply for a work permit in the country in which they are studying in order to finance their studies;
14. Notes that the wording of Directive 93/96 has the effect of excluding from its scope persons who are in training in institutions other than recognised establishments and calls upon the Commission to explore widening the scope of the Directive to embrace trainees and volunteer workers;
15. Is aware of anomalies arising from some Member States' imposition of residence requirements for the receipt of financial assistance for students, which result in some students of dual or single nationality failing to qualify for financial assistance in any Member State simply by virtue of having chose to exercise their rights of free movement across the Union; and calls on the Commission to propose means of overcoming such anomalies.

26 June 2000

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the communication from the Commission to the Council and the European Parliament on the special measures concerning the movement and residence of citizens of the Union which are justified on grounds of public policy, public security or public health (Directive 64/221/EEC) (COM(1999) 372 – C5-0178/1999 – 199/2157(COS))

and on the report from the Commission to the Council and the European Parliament on the implementation of Directives 90/364, 90/365 and 93/96 (right of residence) (COM(1999) 127 – C5-9177/1999 – 1999/2157(COS))

Draftsman: Hans-Peter Mayer

PROCEDURE

The Committee on Petitions appointed Hans-Peter Mayer draftsman at its meeting of 24/25 November 1999.

It considered the draft opinion at its meeting of 23/24 February 2000.

At the meeting of 22 June 2000 it adopted the conclusions below unanimously.

The following were present for the vote: Vitalino Gemelli, chairman; Roy James Perry and Proinsias De Rossa, vice-chairmen; Hans-Peter Mayer, draftsman; Mary Elizabeth Banotti (for Raffaele Costa), Bob van den Bos (for Luciana Sbarbati), Herbert Bösch, Felipe Camisón Asensio, Jonathan Evans, Janelly Fourtou, Laura González Álvarez, Margot Keßler, Jean Lambert, Véronique Mathieu, Guido Sacconi (for Enrico Boselli), María Sornosa Martínez and Astrid Thors.

SHORT JUSTIFICATION

I. Reason for the communication and report from the Commission

Free movement of persons is one of the fundamental rights achieved by European integration. From the beginning, **free movement for workers** was enshrined in the Treaties. Since the Maastricht Treaty laid down primary law provisions governing citizenship of the Union, a **general right of residence** has existed, provided that the person concerned has sufficient resources and sufficient sickness insurance.

Freedom of movement or of the right of residence can only be **restricted** for **reasons of public policy, public security or public health**, which must comply with the provisions of Council Directive 64/221/EEC of 25 February 1964.

The application of these provisions raises difficulties. The Commission communication points them out and explains the basic principles governing the application of the existing provisions.

II. Reason for the opinion of the Committee on Petitions

The Committee on Petitions is the body to which citizens who consider that their right of residence has been infringed chiefly send their complaints. **The purpose** of this opinion is to put forward in addition **the practical experience** gained from the cases dealt with by the Committee on Petitions.

III. Direct barriers to the right of residence

The Commission's observations are based above all on direct infringement of the right of residence by the Member States' authorities, which in most cases rely upon grounds of public policy and public security.

Example: justification on grounds of public policy and public security

As an issue of special importance, the Committee on Petitions is dealing with a group of petitions which concern the expulsion, or the threat of expulsion, of EU citizens from Länder of the Federal Republic of Germany. The German authorities claim that the persons concerned are not entitled to free movement because they are not engaged in an economic activity, for example a dependent of an Italian worker¹⁵, or a person serving a prison sentence¹⁶. In other cases EU citizens with criminal convictions were expelled from Germany 'as a general deterrent'¹⁷.

The scope of free movement has in the meantime been considerably extended; it applies not only to persons engaged in an economic activity but also to students, retired persons and

¹⁵ Petition No 571/95.

¹⁶ Petition No 581/95.

¹⁷ Petition No 531/95: An Italian citizen who has been living in Germany on and off since 1984 and who was ordered to be immediately expelled from Germany in 1995 following several convictions for criminal offences.

'nationals of Member States who do not enjoy this right under other provisions of Community law' provided that they are covered by sickness insurance and have sufficient resources. Arguments based on deterrence are completely inadmissible under Community law. Pursuant to Directive 64/221 a measure must be based exclusively on the personal conduct of the individual concerned.

The petitions procedure provides that the committee can obtain an opinion from the Commission¹⁸. On the basis of this, in practice close cooperation with the services of the Commission, the latter are informed, through the right of individuals to submit petitions, of situations in the Member States with regard to which action sometimes needs to be taken.

IV. Indirect barriers on freedom of movement

Apart from such cases of direct infringement of the applicable provisions, the right of residence is also restricted by secondary factors, for example by refusal to recognise diplomas or incomplete provisions governing entitlement to social security benefits. The number of petitions falling under this heading leads to the conclusion that the obstacles to freedom of movement arising in this area are at least as serious as the obstacles arising from direct restrictions on grounds of public policy, public security or public health. The following table makes this clear:

Breakdown by Subject	Number of petitions considered	
	1997/98 session	1998/99 session
Freedom of movement	74	20
Recognition of diplomas	44	20
Social affairs	306	167

Example: Recognition of diplomas

A Spanish petitioner¹⁹ obtained in the United Kingdom a Certificate of Prescribed Experience enabling him to obtain in Spain recognition of specialist qualifications as a family and community medical practitioner. The Danish authorities were not however prepared to recognise his qualifications as a 'speciallæge I almen medicin' (specialist) but only as an 'alment praktiserende læge' (general practitioner) which involves a series of restrictions on the practice of that profession. Of these two qualifications for practising medicine in Denmark, one is reserved for doctors trained in Denmark. This case gave the Commission grounds for bringing proceedings under Article 226 of the EC Treaty for failure to fulfil obligations under that Treaty.

Cases such as this show that there are many obstacles to persons arising from professional qualifications. Education and training come under the jurisdiction of the Member States and will remain so.

Example: Sickness insurance

¹⁸ Rule 175 of the Rules of Procedure.

¹⁹ Petition No 650/98.

A French sickness insurance fund is refusing to reimburse the costs of confinement of a French petitioner²⁰ permanently resident in Italy who was visiting her parents in France and was obliged for urgent medical reasons to remain there until the birth of her child. The sickness insurance fund claims that the petitioner must submit form E 112, not E 111.

Example: Unemployment benefit

A German petitioner²¹ worked for four years as a teacher in Hildesheim and paid unemployment insurance contributions. In 1998 she moved to Luxembourg and registered as unemployed with the Brunswick employment office and as a job-seeker with the Trier employment office. On the basis of form E 303, unemployment benefit is paid to a person seeking work in another Member State for only three months, following which the job-seeker must return to Germany in order to continue to receive unemployment benefit. The petitioner feels that the three-month time-limit restricts her right to freedom of movement.

Lacunae in Community law: Early retirement

A Belgian petitioner²², who has taken early retirement, wishes to settle in France. Anyone taking early retirement in Belgium must, however, be resident in Belgium and is entitled to reside abroad for only 30 days a year. Early retirement pensions are not yet included in the Community system enabling citizens of one Member State to draw social benefits in other Member States. There is therefore a lacuna in Community law on free movement of persons.

The last few cases reveal problems arising out of the fact that the social security legislation does not fit the new circumstances: it dates from the time when workers had freedom of movement but is not tailored to the requirements of the general right of residence. Issues concerning the correct form to use (doctor's fees) or obvious gaps in the Community legislation (persons taking early retirement) should no longer exist; it should be a matter of course for persons taking up their right of residence to be fully covered by the social security legislation. The Commission has in many cases already taken legislative initiatives in order to remedy shortcomings. It is for the Council to take these initiatives further.

CONCLUSIONS

The Committee on Petitions calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following paragraphs in its motion for a resolution pursuant to Rule 162(2) of the Rules of Procedure.

1. Stresses that the experience of the Committee on Petitions shows that in practice the right of free movement is subject to many problems on account of the following:
 - (a) delays in transposing, or misapplication of, provisions of Community law by

²⁰ Petition No 268/99.

²¹ Petition No 26/99.

²² Petition No 221/99.

bodies subordinate to the national Ministries in the Member States, for example with regard to the application of the general right of residence;

- (b) professional problems in connection with the recognition of diplomas;
 - (c) the fact that the provisions on free movement or social security rules are not tailored to a changing labour market (for example, forms for the reimbursement of doctors' fees²³; the fact that early retirement is not included in the general provisions on the export of social security benefits²⁴; and the period for which job-seekers receive unemployment benefit²⁵ in the European Union);
2. Points out that analysis of the proceedings brought against Member States from 1996 to 1999 for failure to fulfil obligations under the Treaty shows that in 97 cases there was a close connection between the petition and proceedings for failure to fulfil obligations under the Treaty brought before the European Court of Justice; because individuals do not have any direct right of action at European level in respect of breaches of Community law the citizen's right to submit petitions plays a real part in influencing policy-making;
 3. Calls on the Member States to do everything in their power to apply without delay the existing provisions of Community law;
 4. Regrets that the Council of Ministers takes no notice of the communications from the Committee on Petitions concerning serious breaches of Community law on the part of the authorities of the Member States, which reveals a negative attitude on the part of the Council towards the right of petition of European citizens, and calls on the Council to pay the necessary attention to the rights of Union citizens.

²³ Petition No 268/99.

²⁴ Petition No 221/99.

²⁵ Petition No 26/99.