The Long-Term Residents Directive: A Fulfilment of the Tampere Objective of Near-Equality?

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1. Introduction: Third-country Nationals and the European Union

Prior to the entry into force of the Amsterdam Treaty, Community law had for a long period of time served to legitimate unequal treatment of EU nationals and third-country nationals (TCNs). The EC Treaty was entirely silent on the issue of rights of TCNs – the only exception being if TCNs were able to derive rights either from EU citizens exercising their freedom of movement (i.e. as a family member of a free-mover or as a worker of an EC company providing services in another Member State) or from an Association or Cooperation agreement concluded between the Community and a third country. EU nationals engaging in a gainful activity in another Member State, in contrast, have effectively since the 1987 European Single Act been able to benefit from the comprehensive EC acquis on the freedom of movement of persons, underpinned by the principle of non-discrimination based on nationality, which secures them a right to equality of treatment with nationals of the host Member State in respect of a wide range of social, economical and political rights.

The 1997/1999 Amsterdam amendments to the EC Treaty, which empowered the Community to adopt measures in the policy areas of immigration and asylum, gave rise to hope for a more communitarian and inclusive Community approach towards TCNs.¹ This hope was reinforced by the 1999 Tampere European Council, which – when setting out the political guidelines for the EC immigration policy – called for the creation of a uniform set of rules through which ‘fair treatment’ of all TCNs residing legally in the EU Member States should be ensured.² Particularly in respect of long-term resident TCNs, the Tampere Council envisaged that a vigorous integration policy

¹ Title IV EC (now as amended Title V TFEU). Cf. Protocols (4) and (5) annexed to the EU and EC Treaties (now attached to the Treaties by the Lisbon Treaty) for the reservations of Denmark, the United Kingdom and Ireland.
² Tampere European Council conclusions, para. 18.
should aim at granting this group of TCNs ‘a set of uniform rights which are as near as possible to those enjoyed by EU citizens’.3

This article focuses on Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents4 from the perspective of long-term resident migrants working in an employed capacity in one of the Member States. The main question this article seeks to answer is whether the legal status accorded to this particular group of TCNs by the Directive in respect of equality rights fulfils the Tampere vision of ‘near-equality’. For the purpose of this examination, EC law governing the freedom of movement of EC workers will be used as the yardstick.

No independent definition of ‘near-equality’ exists in European law and it is therefore not possible to determine exactly what this concept amounts to as regards long-term resident migrant workers. Nevertheless, a comparison of the legal status granted to TCN migrant workers by the Directive with that of EC workers seems to be the most appropriate method for determining whether the Tampere goal has been realised.

The general standard set by the Directive will be critically assessed as part of the analysis, and various international and regional human rights instruments as well as several of the international agreements concluded between the Community and third countries will be used as standards of reference. It needs to be stressed that the focal point of this article is the Long-term Residents Directive. Thus, the intention is not to provide a detailed analysis of either EC free movement law or all the relevant human rights instruments and international agreements.

The article falls in two parts. The first part deals with the Directive in general and some key issues relevant for the analysis conducted in the other part of the article. The second part of the article focuses on one of the main rights of long-term residents as it examines to which extent equality of treatment between long-term resident migrant workers and nationals of the host Member State is realized by Article 11 of the Directive. This examination will not only determine whether the goal established by the Tampere Council has been achieved by the Directive, but also reveal whether Community law from now on will reflect social cohesion – which is one of the Union’s fundamental objectives5 – or continue to promote a legal system based on social injustice with large groups of TCNs treated as ‘second class citizens’.

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3 Tampere European Council conclusions, para. 21.
5 Article 2 EU (now as amended Art. 3 TEU).