Family Reunification of Third-Country Nationals: Access of Family Members to Social Protection Benefits

GISBERT BRINKMANN*

1. Introduction

The Treaty of Nice of December 2000 which has not yet entered into force did not entail substantive amendments to the new powers as regards immigration and asylum the Community enjoys according to Title IV EC since the entry into force of the Treaty of Amsterdam in May 1999. After the European Council of Vienna of December 1998 which identified family reunification as one field in which action should be taken the Special Meeting of the European Council of Tampere of October 1999 stressed “a more vigorous integration policy which should aim at granting third-country nationals rights and obligations comparable to those of EU citizens”, in particular those third-country nationals lawfully residents in the Member States on a long-term basis should be awarded “a set of uniform rights which are as near as possible to those enjoyed by EU citizens, e.g. . . . the principle of non-discrimination vis-à-vis the citizens of the State of residence”.

Third-country family members are entitled to a variety of benefits which could include entitlement to family reunification, access to the labour market, social security benefits, social assistance, access to citizenship. This paper cannot cover all those categories, but only social protection benefits of third-country family members who either join an EU citizen or another third-county national and only those which are based on the law of the European Community. Such law includes primary and secondary EC law as well as agreements between the European Community and its Member States, on the one hand, and with third countries, on the other hand. Thus, public international law, such as the International Covenants of the United Nations of 1966, and European Interim Agreements on Social Security of 1953 and the European Convention on Social and Medical Assistance of 1953, will be left outside the scope of this paper.

* Official at the German Ministry of Labour and Social Affairs. The views expressed in this paper represent exclusively the personal opinions of the author.
‘Social protection benefits’ as a concept has no clear boundaries. It is understood in this paper as including benefits of social security and social assistance. The priority task of ‘social assistance’ could be seen as “to enable the assistance recipient to lead a life of human dignity”.\(^1\) Social assistance provides a minimum income for persons without adequate resources to meet their essential living costs. National social protection provisions vary considerably from one country to another, in particular the characteristics and amounts of family benefits. What constitutes ‘social security benefits’ in European terms is defined by an exhaustive list of Article 4(1) Regulation 1408/71: sickness and maternity benefits, invalidity benefits, old-age benefits, survivors’ benefits, benefits in respect of accidents at work and occupational diseases, death grants, unemployment benefits and family benefits. In some cases, it can be difficult to determine whether or not a particular benefit is a social security or social assistance benefit; both are distinct from each other.\(^2\)

Most of the third-country national residents in the EU have come as migrant workers either bringing their families with them or exercising a family reunification at a later stage. In their working life the migrant workers either paid contributions to the national security system of their host state and/or paid taxes out of which social protection benefits are granted. They might become unemployed or they or their family members fall ill. After their working life they and/or their family members depend on the pension system of their host state or home state to which they might have returned. Peace of mind and personal freedom are inconceivable without a social protection system to cover all those contingencies which might happen during their life time. Social protection can only be achieved if everyone is covered by the system and has access to at least a minimum level of subsistence.

EC law does not recognise a single concept as to the meaning of family member for these purposes. As a matter of principle, it is for the Member States to define who are the relatives of a third-country national or a Union citizen exercising his/her market freedoms provided that such definition cannot be regarded as an obstacle to said freedom.\(^3\) Although the meaning of family members has been specified in secondary Community legislation, such as Article 10 of Directive 1612/68, it, however, refers to the circle of

---

1 Article 1(2) of the German Federal Social Assistance Act (= Bundessozialhilfegesetz)
2 Cf. Article 4(4) Regulation 1408/71. Although there appears to be a clear distinction between social security benefits and social assistance benefits according to Regulation 1408/71 and, respectively, Regulation 1612/68 according to the ECJ, however, the distinction is somewhat obscure; cf. ECJ as to the application of Regulation 1408/71 and Regulation 1612/68 case 249/83 Hoeckx [1985] ECR 973; case C-78/81 Hugues [1992] ECR I-4839; case C-310/91 Schmid [1993] ECR I-3011. The distinction is, however, of importance since the personal scope of the two Regulations is different, case C-2/89 Kits van Heijningen [1990] ECR I-1755.