

[DOI: 10.20472/IAC.2015.016.029](https://doi.org/10.20472/IAC.2015.016.029)

**IRIS DHAMO**

EUROPEAN UNIVERSITY OF TIRANA, ALBANIA

**ANA DHAMO**

EUROPEAN UNIVERSITY OF TIRANA, ALBANIA

## **THE STATUS OF THE EU RELATIV IN THE FREE MOVEMENT IN EU**

### **Abstract:**

In the present conference I want to treat the theme related to the Status of the EU relatives in the free movement in EU.

As regards to the right of Community nationals and their family members to move and reside freely in the territory of a Member State acquires importance the directive 38/2004.

The notion of family varies from one state to another and takes different connotations.

When we talk about the right to family reunification, the thought goes immediately to the affirmation and to the international guarantees that protect this fundamental right, specifically to the European Convention of Human Rights of 1950, and respectively in the Article 8 of her.

To realize the right to family reunification is not necessary to fulfill specific criteria, located at the opposite for non-EU family member, as in this case not only active holder is a national community, but also the relative of the latter.

In this prospective, it turns out that the family composed by european citizens, is presented more complete and protected, precisely because the right to family reunification is exercised in the completion of another fundamental right, that of the free movement, a fundamental right guaranteed and highly respected in the EU.

### **Keywords:**

the status of the relative, the concept of free movement, the eu citizen , international law, family reunification, European Convention of Human Right.

Since its origins the European Community has dealt with the delicate topic of "family", an important institution in the full realization of the fundamental freedoms envisaged by the founding treaties.

Among these fundamental rights gains importance the free movement of persons, which together with the movement of productive factors, constitutes an essential condition for the existence of the European common market.

About late 60 is perceived that the right to work and to stay in another member state of the EU is closely linked to the involvement in the right of free movement and residence, even to family members, community citizen or not community, to the active subject.

The first normative act, with which are specified the conditions in relation of the right of free movement and residence, is the Regulation 1612/68, which with is specified the criteria of the exercise of the right of free movement and residence.

The regulation, has predicted that the active subject has the right to be accompanied by his family, the passive subjects of this right.

Regarding to the right of the Community nationals and their family members to move and reside freely in the territory of a Member State wins fundamental importance the directive 38/2004.

This Directive collects in a single text all legislative Corpus regarding the sector of the right of entry and residence of Community citizens in the territory of a Member State.

In this prospective, it turns out that the family composed of European citizen is presented more completed and protected, precisely because the right of family reunification is exercised in addition to another fundamental rights, that of free movement, a fundamental right guaranteed and highly respected in the EU.

This Directive specifically modifies the regulation 1612/68 and abrogates the directives 64/221 / EEC, 68/360 / EEC, 72/194 / EEC, 73/148 / EEC, 75/34 / EEC, 75/35 / EEC, 90 / 364 / EEC, 90/365 / EEC and 93/96 / EEC.

This means that while these directives have not any active force, the Regulation 1612/68 is not abrogated but modified, continuing to have an applicability.

In line with what is provided for citizens of the European Union, and with the aim realization of the right of free movement and family reunification, the EU citizen family members that exercise their right of entry and short stay in the territory of a Member State have the same rights as the latter.

It is clear that the results of the principle that the realization of the right of free movement of persons can't not depend on the conservation of family ties of the person who exercises this right, not only from a formal perspective, with the abstract recognition status given by

a domestic legislation, but also in substantially term, by guaranteeing a family coexistence substantially.

Even before the editing and the approval of the Directive 38/2004, the European legislator had recognized the importance of protecting the family lives of the citizens of the Member States, thereby eliminating restrictive provisions regarding fundamental freedoms provided today in Title V of TFBE.

To realize this objective was included in the Regulation 1612/68 and in the directives related to the topic of the free movement and residence in the territory of a Member State also the non-EU relatives, of a community citizen. This, with the condition that the non-EU family members have been residing in the territory of one of the Member States.

The Directive 38/2004 notes that, the need to ensure family unity is the one which imposes that families have the right to exercise the right of the free movement, as an EU citizen himself.

In this sense, the means to keep united the family life, is family reunification, which represents a prospective of the free movement of EU citizens.

The notion of family varies from one state to another state and takes different connotations also inside the legislation of a State, if it is analyzed in a social, legal or fiscal context.

European institutions have decided to give a definition of "family member" quite complex.

From one hand, they provided to some categories of individuals of whom belongs "with right" this qualification; on the other hand they have provided a list of other individuals to whom the status of "family member" can be granted under the provisions in force in the host Member State, and the State of origin.

However, there is a certain number of persons who cannot be subject to objection regarding the definition of "family member".

Precisely in this perspective the directive 38/2004, at the Article 2 define that family is called:

- i. The husband;
- ii. The Partner that has a registered connection with the community resident under the legislation of a Member State, if the host country equates this with the institution of marriage and in respect to its domestic legislation;
- iii. The direct descendants of age to 21 years old, or those in charge, as well as descendants of husband / wife as in point ii);
- iv. The direct predecessor in charge and the predecessor of husband/wife as in point ii).

Starting from this fact can ignore that the Directive 38/2004, in absence of the exercise of the right of free movement and residence, is completely inapplicable, but anyway the Court of Justice seems to have definitively clarified that each Member State of the EU is free to deny the right of residence to a non-EU family member of an EU citizen, if the latter lives in the Member State of which the citizen possesses, and that has not ever exercise the right of the free movement.

The Directive, without direct imposing, calls upon Member States to approve an internal rate which should simplify the entry and the residence of any family member or partner in charge at the place of origin of the citizen community, or partner with whom the EU citizen has a certified sustainable connection that requires medical assistance.

The negative decision regarding the entry of the EU citizen family member cannot be based only on the grounds that the relation between them is not recognized in the host country, but is needed a further justification, based on the identity of the requestor.

Acceptable motives for denying the exercise of the right of free movement and residence of EU citizens and their families in the territory of a Member State, are based on three main pillars:

1. Purposes of public order, public security and public health;
2. Proportionality;
3. Based on the individual behavior of the applicant.

When we refer to the right of the family reunification, the thought goes immediately to the affirmation and to international guarantees that protect this fundamental right, specifically to the European Convention of Human Rights of 1950, and respectively in Article 8 of it.

As is known, the rates contained in the Convention sanctify the right to respect the family right, as a right recognized by the contracting states to everyone within their jurisdiction.

Family reunion in a foreign country significantly facilitates the free movement and, above all, the integration of migrant workers.

Therefore, not surprise the fact that, the protection of the right of family reunification in the Community legal system is developed and evolved in the context of provisions relating to free movement of workers in the European single market, and that this right takes economic and non political characteristics.

Regarding always to the Article 8 of the ECHR (European convention of the human right), can ignore that the relative of a EU citizen realizes de facto the family reunion with the latter in a period of three months, a period which coincides with the short stay in the

regime of the free movement.

So, in this case the status of an EU relative results much easier regarding not only of Article 8 of the Convention, but also to the fundamental right of free movement.

To realize the right to family reunification is not required to be met specific criteria, set in contrast to non-EU family member, as in the present case not only active holder is a national community but also relative of the latter.

## **BIBLIOGRAPHY**

Ilaria Queirolo, Lorenzo Schiano di Pepe, *Diritto dell' Unione Europea e relazioni familiari*, G. Giampichelli Editore – Torino, 2014.

Eduardo Roza Acuna, *La costituzione per l' Europa*, Aras Edizioni – Fano (PU), 2011.

Erjona Canaj, Sokol Bana, *Il diritto al ricongiungimento familiare e la sua tutela multilivello*, Edizioni Nuova Cultura – Roma, 2014.

Erjona Canaj, *Levizja e lire e personave ne Bashkimin Europian*, UET Press – Tirane, 2014.

Ennio Triggiani: “*Le nuove frontiere della cittadinanza europea*” ne Collana di studi sull' integrazione europea, nr. 3, 2011.

Tito Ballarino: “*Diritto internazionale privato italiano*”, Settima Edizione, CEDAM, 2011.

Tito Ballarino: “*Diritto dell' Unione Europea*”, Nona Edizione, CEDAM, 2010.

Paolo Morozzo della Rocca: “*Cittadinanza europea, libertà di circolazione e famiglie senza matrimonio*”, in *Famiglia e Diritto*, 2010.

Paolo Morozzo della Rocca: “*Diritto all' unità familiare in Europa tra allargamento dei confini e restringimento dei diritti*”, ne rivisten *Diritto, immigrazione e cittadinanza*, nr. 1, 2004.