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Committee on Women's Rights and Equal Opportunities

2001/0111(COD)

5 December 2002

OPINION

of the Committee on Women's Rights and Equal Opportunities

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

on the proposal for a Council decision on the right of EU citizens and their families to move and reside freely within the territory of the Member States (COM(2001) 257 – C5-0336/2001 – 2001/0111(COD))

Draftsperson: Anna Karamanou

PROCEDURE

The Committee on Women's Rights and Equal Opportunities appointed Christa Klaß draftsperson at its meeting of 11 September 2001. On 3 December 2002 Anna Karamanou was appointed draftsperson instead of Christa Klaß.

It considered the draft opinion at its meetings of 25 February 2002, 18 March 2002, 27 March 2002, 22 May 2002, 4 June 2002 and 3 December 2002.

At the last meeting it adopted the following amendments by 12 votes to 8, with 2 abstentions.

The following were present for the vote: Anna Karamanou, chairperson and draftsperson; Marianne Eriksson and Olga Zrihen Zaari, vice-chairpersons; María Antonia Avilés Perea, Regina Bastos, Lone Dybkjær, Ilda Figueiredo, Marie-Hélène Gillig, Lissy Gröner, Karin Jöns, Christa Klaß, Rodi Kratsa-Tsagaropoulou, Astrid Lulling, Maria Martens, Ria G.H.C. Oomen-Ruijten, Christa Prets, Amalia Sartori, Karin Scheele, Miet Smet, Patsy Sørensen, Felekna Uca and Sabine Zissener.

SHORT JUSTIFICATION

The proposal for a Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, adopted by the Commission on 23 May 2001, is a product of the legal and political environment created by the introduction of citizenship of the Union. The legal basis for the text is Articles 12, 18(2), 40, 44 and 52 of the Treaty. Its principal aim is to replace the various pieces of legislation existing in this area by a single legislative instrument, to relax and simplify the conditions and formalities associated with the exercise of this right and to clarify the restrictions that may be placed on these rights for reasons of public policy, public security and public health.

It thus provides a solution to the main problems and obstacles to the exercise of the right of free movement identified on several occasions by the Commission.

The most important change introduced by this proposal is that after four years of uninterrupted residence individuals will acquire a permanent right of residence in the host Member State. Once acquired, this right is no longer subject to any conditions.

The proposal reduces to a strict minimum the conditions and administrative formalities associated with exercising the right of residence. For residence of less than six months the only requirement is a valid identity document. For residence of over six months citizens of the Union must convince the host Member State, by means of a simple declaration, that they are able to perform an economic activity or have sufficient resources and a health insurance. For initial periods of residence up to four years, the residence card for citizens of the Union is abolished and replaced by registration with the relevant registry office in the place of residence.

The proposal also makes it easier for family members to exercise the right of free movement and residence. Family members who are nationals of third countries also enjoy greater legal protection, for example in the event of the death of the Union citizen on whom they depend, or the dissolution of the marriage, under certain circumstances.

In relation to rights of residence in the European Union specific problems women tend to have, should be taken into consideration. One of the aims of the Commission proposal on this issue is to make it easier for family members to exercise the right of free movement and residence. Nevertheless, for residence of over six months citizens still need a declaration proving economic independence. This can in particular have negative effects on women who often they still have a (economically) dependent and therefore unstable status due to lack of individual rights. A woman depending on her husband having a gainful activity, as most often still is the case, in the event of death or separation, does not possess any individual rights on the basis of this proposal (see in particular art. 7).

Therefore the outcome of this proposal - make it easier for family members to exercise the right of free movement and residence - will most definitely not be gender neutral.

Having examined the Commission's third report on citizenship in the Union, the Committee on Women's rights calls on the Committee responsible to incorporate the following amendments in its report:

Recalls that the introduction of Union citizenship is an important step towards democratising the Union and provides a framework for involving both women and men in political and institutional

decisions in the event of future reform of the Union;

Regrets that the Commission in its Third report on Citizenship of the Union fails to integrate the gender dimension and fails in particular to develop gender-sensitive and gender-specific guidelines and indicators and use sex-desegregated data at all levels;

Welcomes the Commission's proposal in its report for a directive recasting the different legislative instruments on movement and residence of European citizens, which is in particular important for women and the problems they face in the framework of European unification;

Having examined the opinion as adopted, the draftsman, Mrs Klaß, felt obliged to relinquish responsibility for the opinion on the grounds that it had moved too far away from her own position. In that respect the draftsman referred to the adopted amendments on same sex marriages and on putting at equal footing marriage and partnership and therefore the Chairperson has taken it over.

AMENDMENTS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1

Article 2, paragraph 2, point (b)

(b) the unmarried partner, if the legislation of the host Member State treats unmarried couples as equivalent to married couples and in accordance with the conditions laid down in any such legislation;

(b) the unmarried partner, ***irrespective of gender***, if the legislation of the host Member State ***treats unmarried and married couples in the same way*** and in accordance with the conditions laid down in any such legislation;

Justification

This legislation should apply a broad definition of the term 'family member' since there are several different family configurations in present-day society which should all be treated equally and have the same rights. The main purpose of this article is that unmarried couples, regardless of gender, should be treated as married couples. The law should be the same for everyone and should therefore include unmarried couples of the same sex.

¹ OJ C 270 E, 25.9.2001, p. 150.

Amendment 2
Article 2, paragraph 2, point (-c) (new)

(-c) the registered partner in a stable relationship;

Justification

More and more Member States have created some form of legal recognition for non-marital partnerships. One of the core, shared elements in these national laws is the registration of this partner. Therefore it is necessary to include this category in the definitions of family members.

Amendment 3
Article 2, paragraph 2, point (d)

(d) the direct relatives in the ascending line and those of the spouse or unmarried partner as defined in point (b);

(d) the direct relatives in the ascending line and those of the spouse or unmarried partner as defined in point (b) ***or the registered partner as defined in point (-c);***

Amendment 4
Article 4

Member States shall give effect to the provisions of this Directive without discrimination on grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinion, membership of an ethnic minority, property, birth, disability, age or sexual orientation.

Member States shall give effect to the provisions of this Directive without discrimination on grounds of sex, ***gender identity***, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinion, membership of an ethnic minority, property, birth, disability, age or sexual orientation.

Justification

Transgender individuals in particular can experience practical difficulties when exercising their right of free movement. Protection against discrimination related to gender identity should be explicitly forbidden in the implementation of the Directive.

Amendment 5
Article 6, paragraph 2, 1

Member States shall accord such persons every facility to obtain the necessary visas; such visas shall be free of charge.

Member States shall accord such persons every facility to obtain the necessary visas; such visas shall be free of charge **and will be issued on the territory of the Member State concerned.**

Justification

If people were granted certain rights in the Member State of origin they should continue to be entitled to them.

Amendment 6
Article 7, paragraph 1, point (d)

(d) are a family member of a Union citizen who satisfies conditions (a), (b) or (c).

(d) are a family member of a Union citizen who satisfies conditions (a), (b) or (c).

Spouses are entitled to an independent legal status and workpermit.

Justification

The position of women with dependent status as spouse can be very unstable and vulnerable due to the lack of individual rights. They are only eligible for derived rights as their legal position and residence permit totally depend on their husband's status. Death or separation automatically leads to losing their status when the dependent spouse does not fulfil conditions a, b or c of art. 7. As it is still most often the case that women depend on men this provision on free movement for Union citizens and their family will not work out gender neutral).

Amendment 7
Article 8, paragraph 7

(7) The certificate of registration may not be refused to a worker who is no longer engaged in an employed or self-employed activity, in the following circumstances:

(7) The certificate of registration may not be refused to a worker **and his or her spouse or partner** who is no longer engaged in an employed or self-employed activity, in the following circumstances:

Amendment 8
Article 8, paragraph 7, point (a)

(a) he/she is temporarily unable to work as the result of an illness or accident;

(a) he/she is temporarily unable to work as the result of an illness, ***pregnancy***, or accident;

Amendment 9
Article 12, paragraph 1

(1) ***Without prejudice to the second subparagraph***, the Union citizen's death or departure from the host Member State shall not affect the right of residence of the family members of a Union citizen who are nationals of a Member State.

(1) The Union citizen's death or departure from the host Member State shall not affect the right of residence of the family members of a Union citizen who are nationals of a Member State.

Justification

The position of women with dependent status as spouse can be very unstable and vulnerable due to the lack of individual rights. They are only eligible for derived rights as their legal position and residence permit totally depend on their husband's status. Death or separation automatically leads to losing their status when the dependent spouse does not fulfil conditions a, b or c of art. 7. As it is still most often the case those women depend on men this provision on free movement for Union citizens and their family will not work out gender neutral). In case the amended article 7 will be approved art. 12 can be accepted as it is.

Amendment 10
Article 12, paragraph 1, 2

Before acquiring the right of permanent residence, the persons concerned must themselves meet the requirements laid down in Article 7(1)(a), (b), (c) or (d).

Delete

Amendment 11
Article 12, paragraph 3

(3) The Union citizen's departure from the host Member State shall not entail the loss of the right of residence of his/her children

(3) The Union citizen's departure from the host Member State shall not entail the loss of the right of residence of ***his/her spouse***

who are not nationals of a Member State if they reside in the host Member State and are enrolled at an educational establishment, at a secondary or post-secondary level, for the purpose of studying there, until the completion of their studies.

or his/her children who are not nationals of a Member State if they reside in the host Member State and are enrolled at an educational establishment, at a secondary or post-secondary level, for the purpose of studying there, until the completion of their studies.

Justification

In keeping with the definition set out in Article 2(b), it is proposed that unmarried partners should have the same rights as married couples.

Amendment 12 Article 13, paragraph 1, 1

(1) Without prejudice to the second subparagraph, divorce or annulment of marriage shall not affect the right of residence of an EU citizen's family members who are nationals of a Member State.

(1) Without prejudice to the second subparagraph, divorce or annulment of marriage ***or partnership in those Member States whose legislation treats partnership in the same way as marriage*** shall not affect the right of residence of an EU citizen's family members who are nationals of a Member State.

Justification

Partnerships should be covered by this article where there is the same relationship between two people of the same sex as marriage.

Amendment 13 Article 13, paragraph 1

(1) ***Without prejudice to the second subparagraph***, divorce or annulment of marriage shall not affect the right of residence of an EU citizen's family members who are nationals of a Member State.

(1) Divorce or annulment of marriage shall not affect the right of residence of an EU citizen's family members who are nationals of a Member State.

Justification

The position of women with dependent status as spouse can be very unstable and vulnerable due to the lack of individual rights. They are only eligible for derived rights as their legal position and residence permit totally depend on their husband's status. Death or separation automatically leads to losing their status when the dependent spouse does not fulfil conditions a, b or c of art. 7. As it is still most often the case those women depend on men this provision on free movement for Union citizens and their family will not work out gender neutral. In case the amended article 7 will be approved art. 13 can be accepted as it is.

Amendment 14 Article 13, paragraph 1, 2

Before acquiring the right of permanent residence, the persons concerned must meet the conditions provided for in Article 7(1)(a), (b), (c) or (d) ***Delete***

Amendment 15 Article 13, paragraph 2

(2) Without prejudice to the second subparagraph, divorce or annulment of marriage shall not entail the loss of the right of residence of an EU citizen's family members who are not nationals of a Member State where:

(2) Without prejudice to the second subparagraph, divorce or annulment of marriage ***or partnership*** shall not entail the loss of the right of residence of an EU citizen's family members who are not nationals of a Member State where:

Justification

Women in bad marriages or worse, victims of domestic violence, will continue to suffer for fear of being thrown out of the country.

Amendment 16 Article 13, paragraph 2, point (a)

(a) prior to the initiation of the divorce or annulment proceedings, the marriage has

(a) prior to the initiation of the divorce or annulment proceedings, the marriage ***or***

lasted at least **five** years, including one year in the host Member State; or

partnership has lasted at least **three** years, including one year in the host Member State; or

Justification

Women in bad marriages or worse, victims of domestic violence, will continue to suffer for fear of being thrown out of the country.

Amendment 17

Article 13, paragraph 2, point (b)

(b) by agreement between the spouses or by court order, the spouse, not being an EU national, has custody of the EU citizen's children; or

(b) by agreement between the spouses or by court order, the spouse **or partner**, not being an EU national, has custody of the EU citizen's children; or

Amendment 18

Article 13, paragraph 2, point (c)

(c) this is warranted by particularly difficult circumstances.

(c) this is warranted by particularly difficult circumstances **such as physical or mental abuse within the family.**

Justification

The wording used is unclear and too general. There is therefore a need for greater clarity, in particular in the Commission's explanatory memorandum.

Amendment 19

Article 13, paragraph 2, subparagraph 2

Before acquiring the right of permanent residence, the right of residence of the non-EU national shall, nonetheless, be subject to the condition that they engage in gainful activity in an employed or self-employed capacity or that they have sufficient resources to support themselves

Before acquiring the right of permanent residence, the right of residence of the non-EU national shall, nonetheless, be subject to the condition that they engage in gainful activity in an employed or self-employed capacity **or as the assisting spouse or partner of a self-employed**

and their family members to avoid becoming a burden on the social assistance system of the host Member State for the duration of their stay and covering all risks in the host Member State, or be a member of the family, already constituted in the host Member State, of an applicant satisfying these conditions.

person, or that they have sufficient resources to support themselves and their family members to avoid becoming a burden on the social assistance system of the host Member State for the duration of their stay and covering all risks in the host Member State, or be a member of the family, already constituted in the host Member State, of an applicant satisfying these conditions.

Justification

Self-explanatory.

Amendment 20

Article 15, paragraph 1, point (a)

(a) employed or self-employed workers who, at the time of termination of their activity, have reached the age laid down by the law of that Member State for entitlement to an old-age pension or who cease paid employment to take early retirement, provided they have been working in that State for at least the preceding twelve months and have resided there continuously for at least three years.

(a) employed or self-employed workers ***and their assisting spouses or partners*** who, at the time of termination of their activity, have reached the age laid down by the law of that Member State for entitlement to an old-age pension or who cease paid employment to take early retirement, provided they have been working in that State for at least the preceding twelve months and have resided there continuously for at least three years.

Justification

Self-explanatory.

Amendment 21

Article 15, paragraph 1, point (b)

(b) employed or self-employed workers who have resided continuously within the territory of the Member State for more than two years and who cease to work there as a result of permanent incapacity to work.

(b) employed or self-employed workers **and their assisting spouses or partners** who have resided continuously within the territory of the Member State for more than two years and who cease to work there as a result of permanent incapacity to work.

Amendment 22

Article 15, paragraph 1, point (c)

(c) employed or self-employed workers who, after three years of continuous employment and residence in the Member State, work in an employed or self-employed capacity in another Member State, while retaining their place of residence in the first Member State, to which they return, as a rule, each day or at least once a week.

(c) employed or self-employed workers **and their assisting spouses or partners** who, after three years of continuous employment and residence in the Member State, work in an employed or self-employed capacity in another Member State, while retaining their place of residence in the first Member State, to which they return, as a rule, each day or at least once a week.

Amendment 23

Article 25, paragraph 4

(4) When issuing the registration certificate or initial residence card, the host country may, **in cases where this is considered essential**, request the Member State of origin of the applicant and, if need be, other Member States to provide information concerning any previous police record the EU citizen or family member may have. Such enquiries shall not be made as a matter of routine. The Member State consulted shall give its reply within two months.

(4) When issuing the registration certificate or initial residence card, the host country may, **for reasons which it must justify**, request the Member State of origin of the applicant and, if need be, other Member States to provide information concerning any previous police record the EU citizen or family member may have. Such enquiries shall not be made as a matter of routine. The Member State consulted shall give its reply within two months.

Justification

Providing information concerning the police record of a Union citizen must be subject to a stringent and justified procedure between the host country and the Member State of origin.

Amendment 24
Article 29, paragraph 1

1) The persons concerned shall have access to administrative and judicial redress procedures in the host Member State to appeal against any decision taken against them on the grounds of public order, public safety or public health, or refusing them leave to enter, ordering their expulsion or refusing to issue them with the registration certificate, residence card or permanent residence card.

1) The persons concerned shall have access to administrative and judicial redress procedures in the host Member State to appeal against any decision taken against them on the grounds of public order, public safety or public health, or refusing them leave to enter, ordering their expulsion or refusing to issue them with the registration certificate, residence card or permanent residence card.
Judicial protection should be the same as for national citizens of the Member States.

Justification

Women, who might be without an income, should be entitled to legal aid.