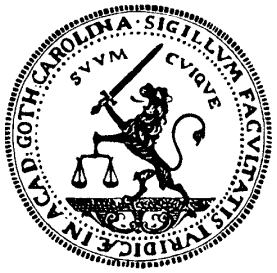

Faculty of Law

Lund University

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By

Diana Cuevas Soriano

Third Country Nationals in the European Union
Rights of spouses of immigrant workers, Denmark´s approach.

Peter Gjørtler

Free Movement of Persons

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1 Abbreviations

CFI	Court of First Instance
EC	European Community
ECT	Treaty establishing the European Community
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
EEC	European Economic Community
ESC	European Social Charter
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs Pillar
Dir.	Directive
FMP	Free Movement of Persons
TCN	Third Country Nationals
MS	Member State of the EC
OJ	Official Journal
Reg.	Regulation
SEA	Single European act
TEU	European Union Treaty

2 Central Problem

The fact that the European Union has not been capable of developing a common immigration policy for third country nationals like it has for Member State nationals, does not mean that Community law, as a whole, has not be to grant rights to third country nationals. Although legal status of long-term resident third country nationals is mainly determined by national Immigration law of the Member State of residence, provisions, establishing rights for third country nationals legally resident in a Member State of the European Union can be found in international legal instruments, the instruments that I will elaborate in this thesis are, the provisions in the European Community Treaty, the Danish Aliens Act, the Resolution on the Harmonization of national policies, the European Convention of Human Rights, followed by some small references of the European Social Charter, the European Convention on the legal status of migrant workers, as well as some Regulations, which have also ameliorated the legal status of third country nationals legally resident in a Member State of the European Union, The United States Immigration Policy will also be considered as an example of alternative instrument

Schengen co-operation initially fell outside the Union legal order, but since the entry into force of the Treaty of Amsterdam, the Schengen *acquis* has been incorporated into the Union legal order. The provisions governing Co-operation in Justice and Home Affairs were located in Title VI of the Union Treaty prior to the entry into force of the Treaty of Amsterdam and the European Convention on Human Rights has been brought within the scope of the Union legal order through the case law of the European Court of Justice.

The rights given to third country nationals by virtue of their relationship with a Member State national are referred to as 'derived rights'. As such, these rights are linked to the existence of a relationship between a Member State national and a third country national. As long as this relationship lasts, third country nationals benefit from the special protection given to them by Community law. However, once this relationship is broken, third country nationals lose their entitlements under Community law. Whether or not a third country national has an identical right after termination of the relationship, will have to be considered in the light of the Member State of residence's national immigration law.

A severe point of criticism voiced against the legislative activities is the lack of democratic control in the decision-making procedure. Decisions were adopted with little or no parliamentary control at either the international or national level. The effects of legal acts governed by the principles of public

international law. This has had significant consequences for the enforcement of rights by individuals in national courts. As a rule there is no international court that has been given competence to rule on disputes concerning the interpretation or validity of the legislative acts adopted by intergovernmental co-operation. Whether judicial review by a national court is possible, is determined by national law. The possibilities for judicial review therefore depend on the (national law of the) State where an individual wishes to rely on a provision in an act that has been adopted by a forum for intergovernmental co-operation. The most important within the framework of the Union legal order have been: Schengen co-operation and co-operation in Justice and Home Affairs. Schengen co-operation was established in 1985 by five Member States, desirous of further co-operation related to the abolition of internal border control. Decision-making was assigned to the Community institutions in this policy area. Their role in the decision-making procedure, however, did not match their role in the decision-making procedure assigned to them by the European Community Treaty

The Member States have to respect those rights generally recognized as Human Rights in their dealings with third country nationals. The most important Human Rights Convention for third country nationals resident in a Member State is the Council of Europe's Convention on the Protection of Human Rights and Fundamental Freedoms that was adopted on November 4, 1950. Some explanation is due as to why the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) merits discussion in a study analysing the legal status of third country nationals, resident in a Member State of the European Union, under European Union law.
The European Convention on Human Rights does not include provisions concerning admission, expulsion and extradition of non-nationals, or rules facilitating residence once admitted to the territory of a Contracting Party. Moreover, the European Union, as such, is not formally bound by the principles of the European Convention of Human Rights, as it is not a party to this Convention. Admittedly, the Member States of the European Union are all Contracting Parties to the European Convention on Human Rights, but this does not necessarily imply that the European Union has to observe the principles in this Convention. It has been the European Court of Justice, through its case law, that has given the fundamental rights and principles found in the European Convention on Human Rights, as well as the constitutions of the Member States, a place in the Community legal order.

The number of different issues concerning third country nationals in the past has not contributed towards a better understanding of the legal regime that applies to third country nationals. The development of legal instruments succeeding in the implementation of measures that actually integrate and promote human dignity of third country nationals in their arena are practically non existent, and that

is what I intent to establish, and maybe aware the reader of possible alternatives, to create a better life for third country nationals in Europe.

3 Hypothesis

Once established the knowledge of some of the existing legal instruments, as the European Community Treaty, in reflection with the United States policy, I will continue to point out the relation of having citizenship in the union or not, regarding free movement of persons and some civil rights. And the need for a more humanitarian immigration Policy in Europe, as a fundamental right of human dignity.

4 Limitations of the thesis

I will limit the study of this thesis to the study of the must relevant article of the EC treaty, as a general European provision, the Danish Immigration Policy as an example of National immigration law, following the US immigration law.

Finally, I will address only the status and conditions of third country national spouses, married to EU-citizens.

In the first part of this thesis I will make a general referance to EC law, as well as Damish law, followed by a more explicit explanation in Denmark and US law in regards as to the Legal Status of Third Country Nationals workers.

The position of Demnark towards these laws, will come in the second part where I will make referance to Fundamental Rights mentioned in the ECHR, its applicability in non-National spouses and the consequence in familiy reunification. Thirdly, I will approach the Compatibility with these Fundamental Rights within European Law. Again a compatibility of Danish Law with secondary laws of the European Union, and following of this I will explain the Status and repercussions of these elements, on non-EC nationals, of non-Danish nationals and finally non-US national spouses.

Finally I will make a final concusion to compare the Danish Immigration law and the USA immigration law for non-national spouses and make some recommendations taking the USA law as a model.

5 Introduction

A European immigration law and policy appears as a logical conclusion for the establishment of a European Integration, and the abolition of internal border control which has been achieved for the largest part of the European Union with the entry in to force of the Schengen Implementation Convention, with the exception of the UK and Ireland. The establishment of a European Union comprises an area with out internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the privations of the EC Treaty. It seems obvious that in achieving the aim of integration with in the European Union , one cannot distinguish between third country nationals and Union citizens, although their status are different, but until the third country nationals become citizens of Union, there will be actual equality in rights.

The idea of the European Union as an “area of freedom, security and justice” seems to require a European co-ordination and absolute harmonization of basic rules on immigration and asylum matters, but the idea of the progressive establishment of an area of justice implies that third country nationals are to be permitted entry and residence under basically the same conditions in the whole European Union and that they are to enjoy basic social rights under the same conditions in any part of the European Union.

It will be up to the European Community to draw a balance between the need for an effective European immigration regime and the legitimate interest of Member State to have their particular cultural, geographical and political preferences with regard to the admission and entry of third country nationals reflected in European regulations.

A common European immigration policy is not exempted from external obligations. EU Member State regulations, international law and rules of customary law create minimum standards on the treatment of third country nationals in the Member States. Such obligations will have to bee taken into account even if they are not obligations of the European Community.

Creating regulations at national level, with out breaching European Community standards is not a difficult task.

The point of this thesis is to determine a lack of binding law towards Member States, making more difficult the integration to society of third country nationals in the European Union. High lightning the need for less restrictive regulations, on free movement of persons around the European Union and more protection inside the hosting Member State. And in the case of Denmark refusiong to accept this.

The harmonization of laws is as important as the social harmonization of the population. Therefore I will point out de need of Harmonization of law in the family reunion area.

I will address the case of non-EU spouses of EU-nationals, sense I consider of relevant importance the protection and integration of women in a new environment, being them the nucleus of society. These women deserve the guarantee of a developed society as the European one, to assure them the protection of fundamental rights and dignity.

Immigration from outside the Community has always been considered to be primarily a matter for the individual member states. Therefore, there has been no development of a common policy on immigration and asylum, and for a long time, the need for it was not felt. The EC- Treaty does not give European institutions a clear mandate to enact legislation on matters related to immigration, asylum and the integration of non-EC nationals. Nevertheless, a limited mandate has been developed to promote equality of treatment of the approximately ten million third-country nationals, through implementation of the Association and Co-operation Agreements between the Community and third-countries.

5.1 Significant differences

Generally speaking, nationals from non-member states do not possess rights of residence or access to the labour market, except in cases where one is the spouse of an EC-national, or is a national of a European Economic Area member state. National laws dictate rules for admission and residence for these third-country nationals. Such persons do not have the right of free movement, nor even the right of visa-free travel within the Community[1]. Refugees legally residing in a member state are also excluded from free movement, but are to be granted special favour when they take up employment, establish themselves as self-employed persons or provide services.

The situation is rather different with regard to the promotion of equal treatment in Schengen countries However, by implementing Community social policies, it will in many situations be impossible to make a distinction.

5.2 Considerable differences

There remain considerable differences between the rights enjoyed by migrants from other member states and those from outside the Community in terms of free movement rights and social rights. With the further integration of the European Union and the creation of European citizenshap, additional measures need to be taken in order to prevent the gap between the two groups from becoming wider[2]. It would seem that only a Community approach could guarantee that such measures will be applied by every

[1] EC Citizenship De la Torre M. Kluwer Law.

[2] EC Citizenship De la Torre M. Kluwer law

member state in an identical way, because the Commission supervises the implementation of Community law and the Court ensures its uniform interpretation.

5.3 The Decision-making.

The legislative powers of the Community institutions are laid down in Articxle 249 EC. The Council and the Commission issue Regulations, take decisions, make recommendations or deliver opinions. A Regulation will be of general application binding in it entirety and directly applicable in all Member States. Meanwhile Directives are binding as to the result to be achieved, upon each Member State to which is addressed, but shall leave to the national authorities the choice of form and methods. Regarding the decisions are binding in its enterity upon those tho whom its addressed. And Finally, the Recommendations and opinions shall have no binding force. Regulations, directives and decisions adopted in accordance with the procedure referred to in Article 251 shall be signed by the president of the European Parliament and by the President of the Council.

The majority of the EC lagislation now requires publication in the Official Journal. Entering in force the date specified on them, or the twentieth day after the publication.[3]In breach of any of the fulfilling requirements, the Commission can not relay on asumtions. The ECJ has ruled before[4]that once the Commission has produced sufficient evidance to show that the MS appears to be violating Community Law, that MS shall contest substantively the information produced, according to Article now 10, facilitating the Commission´s tasks, by providing information.

5.4 Immigration Title

The fact that visa, immigration and asylum have been brought within the framework of the European Community Treaty has not meant that the Community enjoys, exclusive powers in these areas. The transferral of competence, from the Member States to the Community, will be a gradual process. This follows from the inclusion of two decision-making procedures in this Title. The first procedure has to be used during the transitional period. This period ends five years after the entry into force of the Amsterdam Treaty. During this period, legislative measures will have to be adopted by the Council by an unanimous vote, after consultation of the European Parliament, on a proposal tabled by either the

[3] EU Law Cgaig, P. Oxford Publications pg 1005-161

[4] Commission v Netherdalds 182 case 1792

Commission, or a Member State.[5] Initiatives presented by a Member State will have to be published in the Official Journal. A Member State which puts forward a proposal for legislation will be given assistance by the Council's Legal Service.[6] On the expiry of this five-year period, the Member States will lose their right to initiate legislation. Member States will, however, still be able to request the Commission to submit a proposal for legislation to the Council. The Commission is obliged to examine these requests. There is no obligation for the Commission to draw up a proposal at all, or along the lines

5.5 Judicial Review

All binding acts which produce legal effect, are capable of being reviewed by the ECJ or the CFI. The specifict tasks to be performed by the ECJ are describes in the Treaty. Its jurisridicction is sett out there in Articles 226-243 of the EC Treaty. The TEU empowered the Court´s jurisdiction under Article 228, by giving it power to impose a pecuniary penalty on a Member State. In Acordance with Article 238, the Court will be given jurisdiction under arbitration clause in a contract concluded by the Community , and under Article 239 ToA it will have jurisdiction in any dispute between Member States whether the subject –matter is coverd by the Treaty and the dispute id submitted ti it by agreement of the parties. Article 220 has the most important shapping in the Court´s sphere. The Court has used this provision as a main formula, providing that the Court of Justice shall ensure that the interpretation and the application of The Treaty is observed in law. In order to preserve the rule of law in the Community, the Court has extended its functions beyond those expressly outlined in the Treaty under which it was established. Since the competence of the Community, and hence of its institutions, is an attributed competence, limited to what is given by the Treaty[7].

5.6 Declaration of Human Rights in Europe

In 1948, 800 well-known representatives around the world, got together in The Hague to conclude a radical revolution to strengthen the fundamental concept of Europe.
In the Hague Congress was the creation one year later, of the Council of Europe by 10 States, the Council of Europe met the main needs of the post war years: consolidation of democracy, assertion of the rule of law, emphasis on human dignity and respect for human rights. The most striking achievement is the Convention for the Protection of Human Rights and Fundamental freedoms signed in Rome on the

[5] Article 67 EC Treaty

[6] Statements annexed to the Council Decision of May 19, 1999 amending its Rules of Procedure.

[7] Van Gend en Loos case 26/62

4th of November of 1950. More generally known as the European Convention on Human Rights, which entered in to force in 1953, is the first international treaty under which respect for fundamental rights is collectively guaranteed by all States belonging to the family of European democracies.[8]

The Community took a historic step towards democratisation with the first direct elections to the European Parliament. However, New momentum was to come with the entry into force, on 29 June 1987, of the Single European Act. Meanwhile, the existence and growth of racist and xenophobic attitudes, movements and acts of violence in the Community prompted Parliament, the Council, the representatives of the Member States meeting within the Council and the Commission vigorously to condemn 'all forms of intolerance, hostility and use of force against persons or groups of persons on the grounds of racial, religious, cultural, social or national differences'. As the institutions would subsequently reiterate on many occasions, the European Council expressed the shared resolve to safeguard the personality and dignity of each member of society and combat all forms of segregation against foreigners.

The European Council therefore considered the growth of sentiments and manifestations of racism and xenophobia, and recalls the declaration of 1986, and reaffirms the Declaration on racism and Xenophobia in December of 1991.[9]

5.6.1 Human Rights, The Community and Third Countries

In their dealings, whether official or unofficial, with countries in which serious violations of human rights occur, the Community and the Member States systematically emphasize the need to guarantee fundamental freedoms and respect for human rights. Active involvement in international organizations cannot but promote the recognition of the duties and responsibilities of the international community and public awareness. The Community and its Member States have thus become increasingly concerned to project the 'European identity' in those United Nations bodies which have particular responsibility for monitoring human rights such as the General Assembly, the Economic and Social Council and the Commission on Human Rights. In these forums, the Community and the Member States coordinate their positions on the issues under discussion, jointly put forward draft resolutions, coordinate votes and (in the General Assembly) develop a direct dialogue with the various regional groups[10].

The increasingly strong emphasis placed on human rights and the democratic process in the context of European political cooperation is also to be found in the Community's more and more numerous

[8]European Convention of protection of Human Rights and Fundamental Freedoms 1950

[9] Declaration on Racism and Xenophobia 1991

[10] Legal Status of Third Country Nationals. Staples, H. Kluwer law

agreements with non-member countries. Gradually, but especially since 1990, the reference to the principles of the United Nations Charter contained in the preambles to such agreements have been reinforced by the inclusion of clauses on human rights in the actual body
of the agreements. The Declaration of the European Council of 29 June 1991 mentioned above made this a general principle for all future agreements concluded by the Community or its Member States. The same principle was confirmed by the Council resolution of 28 November 1991 already referred to: 'The Community and its Member States will explicitly introduce the consideration of human rights as an element of their relations with developing countries; human rights clauses will be inserted in future cooperation agreements'. Belllow we will see how Danmark has approached the conditiond and status of the nationals of third countries.[11]

5.7 Position of Denmark

Examples of closer co-operation established by the Amsterdam Treaty are the exemptions granted to the United Kingdom, Ireland and Denmark in the area of free movement of persons. The adoption of the Protocol on the Application of Certain Aspects of Article 14 [ex Article 7A] of the Treaty Establishing the European Community to the United Kingdom and to Ireland and the Protocol on the Position of the United Kingdom and Ireland can be explained by the geographical particularities of these island States and the existence of a Common Travel Area between the two countries. Moreover, neither of the two are Contracting Parties to the Schengen Agreements. Constitutional reasons explain the special arrangements made for Denmark found in the Protocol on the Position of Denmark. I will mention further on an outline of the Schengen Protocol, that determines how the Schengen acquis had to be incorporated into the Union legal order on the entry into force of the Treaty of Amsterdam. Without knowledge of these arrangements, it is difficult to comprehend the special arrangements for either the United Kingdom and Ireland or Denmark.[12]

5.8 Relationship of Third country nationals in EU

[11] Third Country Nationals Staples, H. Kluwer law.

[12] Natinality, Migration, Rights and Citizenship of the Union. Hall, S. Hijhoff publications

In the last few years, the legal situation of immigrants in the European Union has been the object of much activity within the European cooperation procedure. *" This cooperation has been pursued both, by the European Union and under Title VI of the EC Treaty"*[13]. The aggregate of articles developed and measures adopted could be called a developing European immigration Policy. But this Policy is in the stage of Formality; it has been developed rather slowly and is still in a preparatory stage. Following developments in to the national level, have made considerable efforts to prevent the immigration of third country nationals and the settlement of these; such is the case of Denmark. These restrictions on third country nationals can be questioned in the humanitarian and civil sense. These efforts are often developed in a highly politicised manner, which is less than appropriate or coherent.

There are a number of resolutions of the European Council in regards to third country nationals which aims at establishing the right of residence of these persons by granting them residence permits for long periods of time, rights to work, trade union membership, public housing, emergency health care, compulsotory schooling, social security and social benefits, the two latter in accordance with national legislation.

The problem with the so called resolution, is that in practice, they are no more than simple recommendations, with no legally binding force, giving the Member States a more free path to follow their own impulse; while the resolutions state that the Council marely calls upon the Member States to take in acount the principles maintained in the resolution and their policies on integration of third country nationals[14]. Further more, these very principles mentioned in the resolution are often defined in a rather weak manner, are restricted in their practical application through national law, again the case in Denmark, contrary to the intentions of those who have called for a more integrated Europe.

5.9 summary

This cursory account of the European Community's historical development bears witness to the increasing importance which human rights and democratic values have come to acquire in all areas of Community activity. Arlthough ignored in the earlier acts of the Community, the principles of representative democracy and respect of human rights have rapidly become one of the central strands of both European integration and the affirmation of Europe's identity throughout the world. Every national of a Member State is a citizen of a Union which undertakes to uphold fundamental rights as guaranteed by the European Convention on Human Rights and as they emerge from the shared constitusional traditions of the Member States as general principles of Community law.

[13] Immigration and Asylum Law and Policy of EU. Hailbronner, K. Kluwer law.

[14] The Legal Status of Third Country Nationals. Staples, H. Kluwer law

6 Denmark in the EU

Together with Great Britain, Norway and Ireland, Denmark applied for membership of the EC in 1961 and 1967, but on each occasion de Gaulle vetoed British membership, and Denmark did not wish to enter the Community without Great Britain. Negotiations for admission were resumed after the summit meeting in the Hague in 1969, and from 1st January 1973 Denmark became a member together with Ireland and Great Britain. ” *This was preceded by a binding referendum in which 63.3% voted in favour and 36.7% against membership. In 199249.3% voted for and 50.7% against the Maastricht Treaty.*
In 1993 56.8% voted in favour and 43.2% against the Maastricht Treaty with the opt-outs agreed in Edinburgh”[15].
The opt~outs encompassed defence policy, the third phase of EMU and a common currency, union citizenship, the judicial field and finally stipulated that the objectives of the Union should not apply to these four areas.
Denmark's attitude to membership changed character in the mid-1980s. In the first period EU policy was strongly influenced by the fact that the Social Democrats were divided on the issue, and for this reason special emphasis was placed on furthering economic and monetary cooperation. Since ~he 1986 referendum, which marked the culmination of domestic political agreements, Denmark has been more active, for instance seeking to improve environmental policy in order to create greater openness in the EU and to encourage a broad intake of East European countries. There is, however, still widespread scepticism in the population as regards integration and the further renunciation of sovereignty.[16]

6.1 Constitutional Changes

It is difficult to change the Constitution. The procedure is spelt out in sect. 88 of the Constitution. A change or addition to the Constitution must first be passed by the Folketing; this approval must then be repeated after a general election; there is the further demand that a referendum shall be held on the constitutional proposal in which a majority of the votes cast must be in favour of the proposal, and this majority shall be of at least 40% of all those entitled to vote. It is especially this last condition which might be difficult to fulfil.
Denmark's membership of the EU since 1973 has radically changed the conditions for parliamentary supervision of the production of regulations. A significant proportion of the regulations obtaining in

[15] www.info.europa.ca

[16] www.ainfo.int.ca

Denmark have come from EU institutions or have been approved at national level for implementing EU directives. To strengthen parliamentary control a special Folketing committee has been established, the European Committee, chosen by and from the members of the Folketing. The Government consults the committee, which authorises the Government to assert its various standpoints. The European Committee has therefore a basis to exert a very tight control of the Government. The enormous volume of matters to be dealt with, however, makes it difficult to exercise the controls effectively, and preparation 1n the European Committee does not ensure a public discussion of the matters under review. By the Danish Supreme Court's judgement of 6th of April 1998 it has been confirmed that Denmark's membership of EU as regulated by the Maastricht treaty is not a contravention of the Danish Constitution[17].

6.2 The European Convention on Human Rights in Denmark

In 1953 Denmark ratified the European Convention on Human Rights. Before ratification certain minor changes were carried out in Danish law, so that Danish law was assumed to be in agreement with the Convention. The Convention's provisions could not be directly applicable to Danish law, because it would be necessary to start from the dualistic concept of the relationship between Danish law and international law as two separate judicial areas. With the expansive interpretation which the Commission on Human Rights and the Court of Human Rights practises, it was a problem that the Convention does not constitute part of Danish law, and in an Act from 1992 it was determined that the Convention is to be considered part of Danish law.
This also applies to the interpretations which the Commission and Court (Strasbourg) take as the basis of their decisions. The Convention's protection of human rights applies, however, only as a parliamentary act and is not at a level with the protection of human rights contained in the Constitution. Nevertheless, the courts have used the Convention more than the Constitution as the basis for criticising legislation.[18]

6.3 Denmark`s Resident status

The rules governing the residence status of long-term resident third country nationals are to be found in the Danish Aliens Act. Most of the relevant statutory rules in the Act were revised in 1998. Previously the residence right of major groups of third country nationals became *de facto* permanent after a period of three years. The 1998 amendments replaced this mechanism of an automatic secure residence right by

[17] www.folketing.dk

[18] www.folketing.dk

files on the issue of permanent residence permits. Moreover, since 1998 three additional requirements have 10 be fulfilled in order to obtain the permanent status. According to the new legislation newly arrived immigrants are entitled to a special introduction programme. As part of a governmental law-and-order initiative in 1996 it has become easier to expel third country nationals who have committed drug-related crimes, extended to other types of crimes in 1998.[19]

6.3.1 Acquisition of long resident status

A permanent residence permit is issued upon application to a third country national, who holds a residence permit and has lawfully lived in Denmark for more than the last three years for the purpose of permanent residence.

Unless particular reasons make it inappropriate, it is a condition for the issuing of a permanent residence permit 1hat the third country national in question:

(i) has completed an introduction programme offered to him pursuant to the 1998

Act on Integration of Aliens in Denmark[20] or, if this is not the case, has completed another comparable course offered to him;

(ii) during his stay in Denmark has not, been sentenced *to* suspended or non-suspended prison sentence; and

(iii) has no debt due to the public authority exceeding 50.000 kroner;

6.3.2 Procedures for obtaining the status

Under the new Aliens Act the residence rights of a third country national will not *de facto* become permanent after three years of residence. Now a permanent residence permit is issued upon application. The application is submitted directly to the Danish Immigration Service. Third country nationals residing outside the Copenhagen area may submit their applications via the local police offices, but they may also send their applications directly to the Danish Immigration Service. The decision whether a permanent residence permit shall be granted is made by the Danish Immigration Service. Decisions made by the Danish Immigration Service can be appealed to the Minister of Interior. [21]

The permanent residence permit has no limitation of validity and will be issued in the form of a residence card. A time-limited residence permit is issued by a stamp in the passport .

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[19] Danish Ministry of Interior. Act no. 140 of march 17, 1999

[20] Danish Aliens Act.

[21] Art. 46 Aliens Act

A third country national who fulfils the conditions mentioned in Article 11 of the Aliens Act is entitled to a permanent residence permit. The discretion of the authorities is restricted to granting the permit in cases where not all statutory conditions are fulfilled. [22]

There are no data available on the number of third country nationals holding a permanent residence permit.

3.3 The rights attached to the status

The person who holds a permanent residence permit has a conditional right to family reunion. Persons holding a temporary residence permit have no right to family reunion, except for refugees.

Foreign spouses or cohabitant over 18 years of age of a third country national above the age of 18, who is holding a permanent residence permit for more than 3 years, are, on application, entitled to a residence permit. This implies that the third country national residing in Denmark must have completed six years of lawful residence in Denmark before becoming eligible for family reunion with his closest family members. Formerly, five years of lawful residence were sufficient. The justification for the new rule is that in this way a third country national residing in Denmark, who is entitled to family reunion with his or her spouse or cohabitant, has such ties with Danish society that (s)he can contribute to the spouse's or cohabitant's integration into Danish society.

Minor children of a permanent resident will be granted a residence permit, provided the child lives with the person exercising a legal obligation of parental responsability. While spouses and children of a permanent resident are *entitled* to a residence permit, other family members with close ties to the permanent resident *may* be granted a residence permit.[23]

6.3.4 The right to work

Long-term residents holding a permanent residence permit no longer need a work permit in order to take lip employment.[24]

6.3.5 Social Security and Social assistance

Third country nationals with permanent residence in Denmark are entitled to equal treatment with respect to social security and benefits related to employment. Pensions, disability and survivors benefits usually are granted to non-nationals only when they meet minimum residence requirements or on the basis of international agreements.

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[22] Art 11 Aliens Act

[23] Art. 9 (1) (2) Aliens Act

[24] art. 14 Aliens Act

With respect to social assistance Danish law does not distinguish between Danes and third country nationals who hold a permanent residence permit. They have the same rights as Danish citizens, with regard to social assistance.

6.3.6 The possibility for family members to benefit from the status

Admitted family members of third country nationals obtain a residence permit. This permit remains dependent on the continuing relationship with their principal as long as it is still temporary. After three years they are entitled to an independent permanent residence permit under the general rules, provided they meet the conditions of Article 11 Aliens Act.

6.4 Loss of the status

A permanent residence permit may always be revoked if the third country national has obtained this residence permit by fraud.[25]

A residence permit lapses if the third country national either gives up his residence in Denmark, or stays abroad for more than six consecutive montl1S. Once a third country national has lawfully lived for over two years in Denmark, the permanent residence permit only lapses when the period of absence is more than twelve consecutive months. Absence due to compulsory military service or alternative service does not count as absence for this purpose. However, upon application, it may be decided that a residence permit must be deemed not to have lapsed on the ground of a long stay abroad. [26]

A temporary residence permit may be withdrawn if the reasons for granting it no longer exist for example divorce or unemployment. A permanent residence permit cannot be withdrawn on those grounds.[27]

[25] Art. 19 (2) Aliens Act

[26] Art. 17 Aliens Act

[27] Art. 19 Aliens act

6.5 Obtaining nationality

The normal residence requirement for naturalisation is seven years. This period is reduced for various categories of third country nationals: Nordic citizens (two years), third country nationals married to a Danish citizen (four years, if the marriage has lasted for three years, including one year of non-marital cohabitation if relevant) and stateless persons and refugee-" (six. years). Further, the third country national must prove that (s)he is able to suppol1 him or herself, (s)he must not have been sentenced to a prison sentence. Only those persons who have, in a written and oral test, proven their command of the Danish l be granted Danish citizenship.

Danish nationality may also be acquired by a declaration of the intent to become a Danish citizen, if the person has resided in Denmark for at least 10 years, including a total of five years within the preceding period of six. Years.[28] Such a written declaration has to be submitted to the regional state authorities by the third country national having reached the age of 18 years, and before reaching the age of 23 years[29].

In a reaction to the public debate on the above mentioned criminal case before the High Court, the Danish government has announced its intention to amend the nationality legislation on acquisition of nationality by second generation immigrants via simple declaration.

[28] Art. 3 of the Act on Danish Citizenship. 1999

[29] www.folketing.dk

7 United States Immigration Policy

7.1 Department of Justice

The Attorney General has the power of administering and enforcing the INA, and "all other laws relating to the immigration and naturalization of aliens." INA § 103(a). This power does not include those duties expressly delegated to other officials or agencies, such as the Department of State. The Attorney General is authorized to delegate his responsibilities to agents within the Department, such as the INS and the Executive Office of Immigration Review. INA § 103.

The Immigration and Naturalization Service, although the INA does not state specifically which duties are to be delegated to a particular agency, the Attorney General delegates most duties to the Immigration and Naturalization Service (INS). The INS, which has general jurisdiction over aliens in the U.S., handling visa petitions, adjustments from non-immigrant to immigrant status, citizenship adjudications, and deportations for aliens present in this country. As previously mentioned, the INS also inspects aliens at the border before entry into the U.S. and excludes persons who are not admissible.[30]

7.2 Permanent Resident Procedures for Aliens

Aliens who want to immigrate are ordinarily expected to remain outside the United States until their immigrant visas are available. Nonetheless, many aliens enter this country as non-immigrants and then apply to .adjust to immigrant visa status. See INA § 245. In recent years, adjustments of status have accounted for over twenty percent of all numerically limited immigrant visas. The procedures for the visa petitions are precisely the same for aliens in or out the U.S. If the alien is immediately eligible for non immigrant visa, the alien may apply to the INS office There s/he resides for the preference status and then, adjustment of status from non-immigrant to immigrant. For several years it was the practice, of the INS if the alien was entitled to be classified under a reference category and to adjustment of status, both applications could be presented in person to the INS. The alien was entitled to an expedited "one-step processing," in which the preference petition was recessed immediately, and the adjustment application was processed later. The concurrent processing is not recently available, but may eventually be restarted. To under the present

[30] Immigration Policy in USA. Nutshel publication

procedure, the INS may need several months to adjudicate the visa petition[31], after which the adjustment of status application may be processed.

7.3 Citizenship and Alienage

Citizenship connotes membership in a political society to which a duty of permanent allegiance is implied. Citizens are the members of the political community to which they belong. They are the people who compose the community, and who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as collective rights.

Alienage has the opposite meaning and signifies a condition of not belonging to the nation. The allegiance required of aliens is temporary and consists of willingness to comply with the nation's laws while residing in its territory.

The status of citizens in the United States carries with it all the rights and privileges embodied in the Constitution. Although aliens also enjoy certain constitutional protections, some provisions protect only "citizens," such as the Privileges and Immunities Clause of Article IV and the Fourteenth Amendment. Moreover, only citizens have the right to vote and to hold office; a citizen cannot be barred or expelled from the United States.

Aliens who are admitted, however, can claim certain general protections under the Constitution. Almost all constitutional guarantees of individual freedom have no personal designation and are extended by terms to "persons." Only the rights to hold federal elective office is reserved for citizens, as is the entitlement to the "privileges and immunities of citizens."[32] Therefore, all aliens in the U.S. appear to be guaranteed the rights secured by the Bill of Rights including the freedoms of speech, association, religion, and the press; the rights to be free from unreasonable searches and seizures as well as self-incrimination; and other criminal procedure protections.This is abreak point for this thesis, we should keep this in mind for the final conclusion. In expulsion proceedings, resident aliens are entitled to the safeguards of Due Process as guaranteed by the Fifth Amendment. The limitations imposed on those rights, and their theoretical rationale. The first section briefly reminds the student of immigration law about the often hostile social reality faced by immigrants to

[31] www.yahoo.com Immigration Service

[32] Constitution for United States of America.

this country. The second section concentrates on official discrimination against aliens. Third, specific rights and liabilities are discussed with regard to use of the courts, welfare, education, military service, payment of taxes, property ownership, and other areas of concern to the alien living in the United States.[33]

[33] Immigration and Naturalization Service, USA

8 Assuring free movement in the EC

Free movement of persons on the grounds of work is a fundamental principle in the EC, I have mentioned in the pervious chapter, the importance that Community law gives to this issue. Therefore has made quite clear its position and its willingness to protect such rights.[34] But movement of workers or persons for that matter, is not the conclusion of it, protecting persons who decide to move freely within the European Community who want to exercise

Their right to work is not enough. As individuals they have all the right to move with their closest family members, such as spouses and children . So although the rights contained in the Treaty were originally expressed to be limited to those who are economically active, that is, workers or persons, exercising their rights of establishment or providing services, in the host State, well stated in article 43 of the EC treaty. Secondary legislation have been in charge of doing so, by extending its arms of protection to their families as well, as it reads in the already mentioned regulation 1216/68. Different From the worker, family members are not required to hold nationality of a Member State.

Similar rights have been enacted in Directive now 93/96, as long as they are not exercising rights of citizens under article 18, introduced by the TEU[35]. At the same time most of the Member States will be obligated to comply with the provisions of the Schengen Agreement, incorporated to the EC Treaty under protocol of the ToA.[36] So far is clear the intention of the Community to enhance the rights of workers of the Community, ensuring a more uniform standard o protection of workers rights (articles 136-145 EC) and principles of equality (article 141 EC), but not yet beyond the economic and social scope.

8.1 On the way to fundamental rights

On the one hand the ECJ has already established the autonomy of the Community's general principles, from the specific principles that integrate each Member State constitution, and on the

[34] Article 39 EC Treaty

[35] TEU, article 18, Citizenship rights.

[36] EU Law, Craig, P. Oxford Publications pg 665

other hand has emphasized that the principles of human rights protected by Community law, are not independent form the legal culture of the Member States stating:

"In safeguarding these rights the Court is bound to draw inspiration from constitutional traditions common to the Member States, and it cannot therefore uphold measures which are incompatible with fundamental rights recognized and protected by the Constitutions of those Member States.

Similarly, international treaties for the protection of human rights in which the Member States have collaborated or which they are signatories, can supply guidelines which should be followed within the framework of community law"[37]

With this statement, the ECJ make it vary clear that Community legislation's intention is to limit the power of the Member States, in restricting the right of FMP and establishment, claiming general principles contained in the ECHR. To ensure its manifestations the ECJ in Rutili[38], inserted comments that made believe the effective, and direct capacity as a source of law of the ECHR, in the Community law.

This is misconceiving, at the moment of these declarations, the ECJ give this principles of human rights a direct effectiveness in Community law, but it was only to express the values of these principles shared by the signatory Member States, indicating the Community's support as general legal principle.

As we saw in the previous chapter, a declaration is not empowered as a binding source of law, but of great importance as an indicator of the Community's intention.

Implementing Fundamental Rights in the Member States.

In the absence of a written Bill of Rights or Charter of rights, the ECJ is asked to examine the compatibility of Community law with requirements for the protection of fundamental human rights, but has not been able to develop a uniform compatibility with all Member States although signatories of the ECHR, the interpretation results in a different approach from each M.S., hard to understand since they have all accepted to participate in the implementation of such. The

[37] EU Law, Craig, P. Oxford publications pg 303

[38] Case 36/75 Rutili v Minister of the Interior. ECR 1219

interpretation is not quite the same in all MS´s therefore, is sent to the ECJ for its Community interpretation. [39]

After the Rutili case, the ECJ expressed the need for MS to comply with Community measures and Directives reflecting principles of human rights, as recognition of general principles of law. To re-enforce this idea other non-binding initiatives were take, like, the Declaration on Racism and Xenophobia by the European Council, the Declaration on Human Rights and Fundamental Freedoms, specially article 8 that invokes the principle of respect for the rights to family life, in the ECHR as well as a the European Social Charter (see chapter I), which are symbolic, but add weight in the ECJ´s unwritten "Bill of Rights". [40]

8.2 Applicability to Non-MS nationals

One of the major changes made by the Amsterdam Treaty is the introduction of a new EC Treaty title, on visas, asylum, immigration and the FMP, which has the effect of shifting much of the policy field of the pre-Amsterdam Third Pillar in to the Community pillar. Its principles is a built up of co-operation of almost all MS of the prior Schengen Agreement under the terms of a protocol attached by the ToA to the EC Treaty. (See above). It seems that this new title emphasizes on the freedom and security of non- MS nationals, therefore I'm not surprised that the State of Denmark is pending in its decision to join, as I will explain further on. The applicability of article 39 (2) provides that "such freedom of movement shall entail abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment, (2) "it shall entail the right, subject to limitations justified on grounds of public policy, public security, or public health"[41]. A secondary legislation like Directive 64/221, weigh governs derogations and obligations on the rules of FMP, Directive 68/ 360, which regulates formalities on conditions of entry, Regulation 1251/70 regulating the rights of workers and family members listed in Regulation 1612/68 ensures one way or an other the rights of workers and family members.

[39] EC law Steiner. J. Blackstone press pg.293.

[40] EU law Craig, P. Oxford publishing pg. 305

[41] Article 39 EC Treaty

For family members who are non-EC nationals a residence document coextensive with that of the worker must by issued to be considered lawful.[42]

The intention of Regulation 1612768 is more than creating rights, is protecting the already existing by the Treaty. But despite the wide protection offered to EU citizens and their families there are limits to the protection offered by Community law, in order to invoke the non-discrimination principle[43], there must exist a cross border element. A person who has never exercised his right of FMP will not be able to relay on the application of EC law[44], nor its contrary to EC law to discriminate TCN workers in the absence of elements connecting with Community law.[45]

Once established a connecting factor, then one can relay in EC law invoking the principle of non-discrimination according to the State nationals or migrant workers and their families, although the extent to which they could not be completely clear.[46] Again to re-enforce the non-discrimination principle, migrant workers and their families once legally resident in the host Member State, shall receive equal treatment with their nationals of employment and social rights, article 12 EC Treaty. The same reasoning should apply to professional rules and codes of practices or even professional qualification. Such rules may be indirectly discriminatory, since by imposing conditions additional to those required in the worker's home State, and which may be more difficult to comply, they create obstacles to the free movement of persons, such measures must be justified, if they are not disproportionate and pursue limited ends.

The original provisions of the EC Treaty and most of the secondary legislation concerning FMP, as well as article 12 EC are held to be directly effective, as I point out in the first chapter, although many of the obligations contained in the secondary legislation will fall on the authority of the MS.I display the legal implications towards employer as relevant to a comment on this issue further in the thesis.

So far it does not seem to difficult to understand what is the final purpose of the Community as integration of a one single body, but then the question arises in the case of Denmark and the direction that the governments acts are taking, regarding the some fundamental principles, having

[42] Immigration, and Asylum Law and Policy of EU. Hailbronner, K. Kluwer law Int.

[43] Article 49 EC Treaty

[44] Morson v Nethyerlands case 35/82

[45] Sloman case 72/91

[46] Maria Martinez Sala v Bayern case C-85/96

this in mind I will amplify as to the social dimension of the EC Treaty as to seeking for social protection and harmonization of goals.

8.2.1 Social Dimension

Harmonized standards are intended to create a unified area for all, avoiding social dumping.[47] Discrepancy between laws of the MS as regards of employment protection

I will give a competitive advantage to States with lower standards, the final aim is to promote the well being of EU citizens, but according to the principle of subsidiarity. [48]

With the changes introduced by the TEU, the Union began to develop, under Justice and Home Affairs pillar (JHA) of the TEU, the beginnings of policy as regards to Third Country Nationals. Before Amsterdam, the majority of MS had signed or ratified the Schengen Agreement, and agreed at the IGC 1996, in effect to incorporate the terms of the Schengen Agreement to the EC Treaty, although the Danish part keep its distance with out making any decisions. From there arises the Title VI in Part Three of the EC Treaty, once in force; no lawful resident will be stopped at internal frontiers.

It remains to be seen how far Third Country Nationals (who are not family members of EU nationals, legitimately resident in the Community will be able to claim rights and equal treatment, once a harmonization is settled. Rights now, TCN´s cannot claim the same rights of EU citizenship as EU nationals[49], nor they entitle to rights granted under EC secondary legislation. The ToA, although it does make emphasise in the importance of human rights in Article 6 and 7 TEU and introduce an area of freedom, security and justice in article 61 EC, does not change this.

Going back to Regulation 1612/68 article 10, we can find a definition as to what covers worker's rights and their family members, saying, spouse and their descendants who are under the age of 21 years or are dependants, and dependant relatives in the ascending line of the worker and his spouse.

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[47] EC Law Steiner, J. pg 295.

[48] The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved the objectives of this Treaty. EC Treaty

[49] EC Law Steiner, J. Blackstone press pg 296

We understand now that the rights of a worker are protected as well as his family members. Now I will explain my distress with the Danish approach to these issues.

8.3 Compatibility with EC principles

I have mentioned before about the EC law and the secondary legislation directed to employers, to give a perspective on the rights that EC citizens have around the Union, in the form of FMP, and as subsequent, the protection of rights that the law confers to the family members and in particular, for this thesis, the spouses.

According to the Aliens Act no. 771 of 2001, article, TCN spouses of Danish nationals or for that matter, EC citizens, are granted temporary residence on the grounds of marital union, as family reunification, with renewal of this permit every year. One of the conditions for granting this permit and the renewal of it, is the cohabitation of the same domicile[50]. This can be debated taking as an example Diatta v Land Berlin, a Senegalese national married to a German worker, did not share the same domicile, so applying article now 234, the Court interpreted in Mrs. Diatta´s case that the marital relationship was not dissolved, therefore she did not loose her rights of residency.[51] Needless to state for this investigation, the case of Reed, sense Mrs, was enjoying her rights of residence as a cohabitant, and as an EC citizen not a TCN national. Another case that comes to my mind is the one of Sandhu,[52] where an Indian man married to a German woman, li8ving in England with a son, product of the marital union, separated in where the woman returned to Germany with the son of both. In the meantime Comyn J was working in England and providing for the son. It took a visit to the son in Germany, for the English authorities deny his entrance again, arguing that his rights to reside in England where over, since the grounds on the on the one that got admitted in the first place where over. Comyn J pointed out that if a EC worker could remove the protection of the EC, as a non-EC ex-spouse, then the world must be going crazy! He then invoked Regulation 1251/70, family right to remain after the death of the worker, which for this issue is basically the same thing, if the spouse decides to abandon him. The Court took the correct approach stating that, taking in account his steady job, and the obligation towards the son, he was entitle to stay. Regulation 1216/68 reads, (article 6 (1): the residence permit must be valid throughout the territory

[50] Danish Aliens Act

[51] Diatta v Land Berlin Case 267/83

[52] Sandhu case CMLR 553

of the Member State which issued it, it must be valid for at least five years from the date of issue. This may be described as the right to reside and stay. Interruptions in residence to exciding six months consecutive shall not affect the validity of a residence permit. This rights can be denied or removed on grounds of public policy, public security and public health. [53] Adding to this the right for equal treatment should be of relevance from the workers rights and family members point of view. (Articles 7-9). Taking again the principle of Human rights, a member family who is threatened to loose his/her EC rights contradicts article 8 ECHR, with the principle of respect for the right to family life, principle that must be respected by MS.

Taking all the above in consideration, the idea is to protect the worker, if crossing internal borders, or the national intra MS, and their family members as an extention to their rights. Therefore, the Danish Act of Integration of Aliens makes notice of this, and in repeated fragments of its Articles[54], points out the willingness to contribute to the integration of immigrants to the Danish society, the respect to the usage of their ethnic language in private and public, the equal treatment and opportunities, the protection of Human Rights and the intention to facilitate their integration in society etc. but the direct effectiveness of this articles is not indistinctly applicable to all individuals falling in the scope of immigrants.

All this is incompatible this the practicality of its implementation, I will now provide the reader with some information given directly from the Folketing´s Legal Affairs Committee, consisting of its representatives Dorte Bennedsen and Erling Christiansen among others. An interview giving to Anette Mollel[55], I would like to draw attention to the EU rules intended to ensure FMP, the effect of these rules is that if a national from another EU MS, for example an Italian, arrives to settle in Denmark, having a job, after five years he is entitle to a permanent residence permit. Suppose that our Italian marries someone from Timbuktu, according to the EU rules the nationality of his spouse makes no difference. The couple apply together for a residence permit, complying with the requisits of holding a passport and a marriage certificate, one week after that non.EC national spouse will be granted a permanent residence- yes, permanent- rights to reside in Denmark.

It stands to reason that I would think that also should apply to Danish citizens, after all they are EC citizens, with a permanent residence in Denmark, then why would a Danish be treated with less

[53] EC law Steiner, J. Blackstone publications pg 307.

[54] Act of Integretion of Aliens in Denmark artivles, 4,5,6,9,10,19

[55] Without Borders Assosiation

advantage than an Italian. This is one of the arguable considerations of the compatibility with EC and National law. Another consideration is the application of legislation in the State of Denamrk, As we have already seen in the case of Diatta, the ECJ considered not to be a cause of loosing rights, the fact that the have not maintained their mutual residence[56], but in the Danish law, if that requirement is no longer present neither are your rights, what ever that implies, making reference to another real case, a couple between a Danish national with a TCN, have lived in Jutland. Where he worked, after a period of time the TCN got offered a job in the Copenhagen area, so following the Danish Immigration and Integration authorities, (see below) she accepted the work offer to get integrated to the Danish working force. If the Danish national was to keep his job, there was no question as him moving to the Capital area, and in any case they spent every weekend together as many do in Denmark. But the Danish law decided that they where no longer living together, and God bless my soul, if she was no longer able to reside in Denmark.[57]

8.4 Denmark and the Protection of Rights

The State of Denmark have seem to have lost the desire to stay faithful to the principles mentioned above, I have reason to think that Denmark have not followed the intention of the EC legislation and the ECHR with its new right-wing conservative government.

Only after 50 days of taking office, Denmark's new government (a minority coalition of liberals and the Conservative People's Party, supported by the extreme xenophobic Danish People's Party (DPP), have confirmed my worst fears about the new government's course.

Following a crassly xenophobic campaign in the run-up of the elections, Bartel Haader, the Minister responsible for refugees and immigrants, and integration of foreigners, announced the tabling for a bill on January 17[58], which will result in the deterioration of conditions for immigrants in this country.

The government making no secret of its intentions to limit the number of immigrants entering Denmark and sharpen demands that they support themselves without state financial help once in this country. Haarder made the economically motivated reasons for the government's course patently obvious when he said *"These days foreigners are a burden to this country. That will have*

[56] Danish Aliens Act article 9

[57] Without Borders Association

[58] www.ICFI.org 2002-05-10

to change"[59] Adding a plan to introduce a Green Card system (which I don't even dare to compare with the American Green Card), to hand pick immigrants busting prosperity by bringing only qualified workers in to the country, making it not easy to comprehend the term *qualified* for the Danish mentality or standards, anyway this leads to the thought that if one is not a white skin, blue eye Scandinavian looking, Christian computer expert with fluent royal style Danish should not bother to show its face.[60]

According to Haareder, In future, the right to permanent residency will only be granted after seven years, also plans to make the process for acquiring Danish citizenship more difficult for foreigners. Obtaining citizenship will only be possible after eight years of uninterrupted residency, and only after this time be able to claim full social benefits. Another important measure, is the proposal to allow married couples to be reunited in Denmark only when they are both older than 24 years of age, (before was 18), parents older than 60 will no longer be allowed to join their families living in the country.

Labour Minister Claus Hjort once said: *"Foreigners coming in to this country are expected to find a work. This is not a land of milk and honey where you can simply lie under a palm tree and enjoy life. This new proposals should be an initiative to encourage people to accept even low-paid jobs"*[61]

These remarks are cynical, with this hostile attitude is difficult to believe that TCN´s enjoy life in the MS of Denmark, it is obvious to the simple mind that discrimination is not in his dictionary. In the next chapter I will examine some of the proposals as regards to the rights that a spouse has in the Community, when the grounds on which the residency was granted no longer exist.

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I will make reference once more about the implementation of Human Rights, although we have seen in the previous chapter the idea of its application, I have great concern of the effectiveness in Denmark, therefore I will try to apply the above paragraph to a human rights point of view again.

Moreover, article 8 of ECHR is very clear about the approach to take when we refer family rights and respect to private life. Question that arises is whether this statements are protection of family and private life, it seems to interfere with social rights and dignity, temporary residents or permanent residents, they are all human beings that should claim respect to their dignity in a so called Member State signatory of the ECHR. But in repeated occasions the Danish government has

[59] News and Analisis, Europa. org

[60] Adding my coments to German newspaper Taz.

[61] www.wsws.org

made public statements[62] which obviously put the status of immigrant as an unwanted element, a label that will follow in a daily life of TCN´s. Dignity is a factor that will determine the integration of a individual in to society it seem unnecessary to highlight the personal feeling towards immigrants of some few racists with authority. Socially the consequence will be the opening of a sequel of manifestations in this matter, hostile approach of nationals against non-nationals, influenced by the arguments of the Danish authorities. The Danish government is to some extent tolerating, if not provoking, a regret feeling for admitting immigrants in the first place, this will contribute even more to the isolation of TCN´s and to the unequal treatment, in society, work, school, and in their lives.

Coming back to the implications that this may have on the Convention on Human Rights, where it reads, (point 69), *"Discrimination on racial grounds will frequently amount in persecution in the sense of the 1951 Convention. This will be the case if, as a result of racial discrimination, a person's human dignity is affected to such an extent as to be incompatible with the most elementary and inalienable human rights, or where the disregard of racial barriers is subject to serious consequences"*[63]

The position of the Danish government does not fall far from the scope of this point of the Convention; it is beyond common reasonability, and against the interest of the Community as to form a united and harmonized Union, based on integration.[64] Its Indirect effect, affects directly in its applicability to each one of the involved immigrants.

8.5 Family reunion in Denmark

The person who holds a permanent residence permit has a conditional right to family reunion. Persons holding a temporary residence permit have no right to family reunion, except for refugees.

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[62] Copenhagen post, newspaper. Denmark

[63] ECHR 1951

[64] The European Council acknowledes the need for aproximation of nationals legislations on the conditions and residence of third country nationals.

The Conclusions of the Extraordinary Council of Tampere stress also the need for the European Union to ensure fair treatment of third country nationals who are legally resident in the Member State. Special meeting held at Tempere, Finland, in October 1999.

Foreign spouses or cohabitant over 18 years of age of a third country national above the age of 18, who is holding a permanent residence permit for more than 3 years, are, on application, entitled to a residence permit. This implies that the third country national residing in Denmark must have completed six years of lawful residence in Denmark before becoming eligible for family reunion with his closest family members. Formerly, five years of lawful residence were sufficient. The justification for the new rule is that in this way a third country national residing in Denmark, who is entitled to family reunion with his or her spouse or cohabitant, has such ties with Danish society that (s)he can contribute to the spouse's or cohabitant's integration into Danish society. This goes beyond any “reasonable” sence, and “reasonable” waiting period.

Minor children of a permanent resident will be granted a residence permit, provided the child lives with the person exercising a legal obligation of parental responsibility. While spouses and children of a permanent resident are *entitled* to a residence permit, other family members with close ties to the permanent resident *may* be granted a residence permit.[65]

8.5.1 Conditions

Autorization to stay may be conditional upon continuing to fulfil the admission criteria. After an unspecified but “reasonable” period of time family members may be terminated if there are grounds for presuming it was obtaind by fraud or forgery.

[65] Art. 9 (1) (2) Aliens Act

9 Denmark in compliance with International law

9.1 Obligation of Member States

In this chapter I will make specific reference to some of the legal instruments I mentioned in the introduction, compering their effectiveness in application and compliance with Denmark´s national law.

The European Convention of Human Rights, Article 8, requires states to respect the family and private life of all persons within their jurisdiction, in the case of Denmark, does not seem to comply totally with the intention of the ECHR, in respect to family and private life.[66] The lack of responsibility to perssue this respect, is reflected in the negligence of the Governmant, permiting th adoption of measures in their national law, that overlook the protection and security of the stability of the family members residing in its territory. The Danish Aliens Act has reasently adopted drastic measures, that will contribute to the xenophobic feeling among the Danish population. This will expand, to the extend of permiting irrespectful treatment to the immigrant family members.

-The European Convention on the Legal Status of Migrant Workers, Article 12 requiring admission of spouses and unmarried, minor, dependent children subject to available housing. Signatory states may introduce a waiting period but it may not exceed 12 months.[67] Housing will be provided to an EC citizen as the Treaty of the Union has establish equal treatment in Article 8, but in regards as housing for the spouse in any event, is restricted by the national law id Denmark, and its social benefits rules. Again discrepancies, discrimination and irrespactful treatment to the family members is outstanding in the position of Denmark. As well as the other Member States in this situation, this goes byond acceptance, in which application creates direct effects upon workers rights.

-The European Social Charter, Article 19(6) the obligation to facilitate the reunion of the family of a foreign worker defined as at least the spouse and dependent children under 21 years.[68] Denmark has made and effort, to contradict this article, as to third country national spouses. Danish or EC

[66] European Convention on Human Rights

[67] European Convention on the Legal Status of Migrant Workers

[68] European Social Charter

citizen, the worker is entitle to reunify with *"At least"* the spouses and children, but in Denmark is not a concearn to have funadamental family values, their concern is the flow of immigrant in to the country without distinction. Now a greater problem arises at the moment the worker is under 24, as the Danish Aliens Act invokes the minimum age to bring a spouse is 24. The obligation of harmonization is not clear, nor the intention to do so of Kindom of Denmark.

Universal Declaration of Human Rights Articles 12 and 16 enshrining the right protection of family life and to marry and found a family[69]. In this case is reasonable to think that a minimun age to contract marriege is the same as to all nationals, whether the marry a EC citizen or a third country national, as long at it is lawful in the home country of the foreign spouse. Section 9 of the Danish Aliens Act, has desided to ignore the direct effect of the breach of fundamental rights of foreigners and their own nationals in regards this articles protecting Human Rights.

- International Convention on Civil and Political Rights, Article 17 protecting the individual from interference with privacy or family.[70] Needles to say the violation on civil rights that the Ministry of Integration of Denmark has allawed on its immigrant population. Official statements on xenophobic feelings, and cut-down of social benefits is a direct offence to civil rights.
The right is most frequently expressed in the form:

9.2 The right to marry and found a family.

The right to family life is among the most fundamental aspects of human rights protection, the protection of which appears in similar wording in almost all international human rights instruments. It has been the subject of numerous judgments by international tribunals in consideration of its extent.

-The protection of privacy and family life from interference subject to national security and public policy provisos.

[69] Universal Declaration on Human Rights

[70] International Convention on Civil and Political Rights

The Member States are parties to most if not all of these international instruments therefore the compatibility of the Resolution of Harmonization of laws 1993 with these obligations merits consideration. In those states where international treaty obligations take direct effect in the national legal order by reason of adherence to the treaty.[71] Therefore, the position of Denmark represents an overall violation at international level been of direct applicability to the guarantee of acquired rights.

As has been made clear by the European Court of Justice, because of the supra national nature of the Union, in the interpretation of Community law, fundamental rights are an integral part of the general principles of law the observance of which the Court ensures, in accordance with the constitutional traditions common to the Member States and the international treaties on which the Member States have collaborated or of which they are signatories.

9.3 Consistency with Community law

As I mentioned before, the Community rules apply irrespective of the nationality of the family member and irrespective of where the family member is residing. Therefore, for migrant citizens of the Union there is no obligation to go through the "eye of the needle" of national law to be united with third country national family members. As soon as the citizen exercises his or her free movement right he or she is entitled to be joined immediately by his or her qualifying third country national family members irrespective of where they are or whether they have been refused family reunion rights under the national law of the citizen's home state.

9.3.1 Spouses

The right to family reunion with spouses is unqualified. There is no provision for Member States to examine the purpose of the marriage or to refuse admission to a spouse where the marriage is valid in the national law of the state from whence the citizen of the Union and his or her spouse have come. Community law will not permit abuse of its provisions but whether or to what extent this

[71] EU Citizenship De la torre, M. Kluwer law

permits Member States to refuse admission to a spouse on the grounds that the marriage is a sham remains deeply contested[72].

The right of citizans of the Union to admission of their third country national spouses cannot be made subject to any limitation on gronds of inadequate funds or income except where the right to residence is only for the purpose of studies, retirement or where the citizen of the Union is not exercising any economic activity at all. In these cases the Member State may require the citizen of the Union to prove that he or she has adequate means, which may mean income to the minimum level of the social assistance available in the state.

The right of family reunion for migrant citizens of the Union is subject to a requirement that there is sufficient housing for workers' family, however, this requirement can only be assessed at the date of first admision not subsequently to admission. A Commission proposal for amendment of Regulation 1612/68 recommends the removal of this requirement, which has been accepted by the Council though the proposal for amendment in its entirety has yet to be adopted.

There can be no waiting period before the right of family reunion with the spouse is exercised. Third country national spouses may be required to obtain a visa but every facility must be given to expedite the issue of the visa and no charge may be made for it. The spouse is entitled to at least a five year residence permit or document and is also entitlede to work. The entitlement to work and reside derives from the Treaty itself therefore the residence permit is only declaratory of that right and does not create it.

If the spouses do not live together, so long as the marriage has not been dissolved, and even if the spouses intend to divorce at some time in the future[73], the spouse is entitled to remain and to work. In the determination of the rights of migrant citizens of the Union to family reunion they are entitled to an effective remedy analogous to that of own nationals.

According to the Resolution of 1993[74], the spouses of third country nationals resident within a Member State "on a basis which affords them an expectation of permanent or long-term residence,,174 are subject to a very different regime:

[72] EU Citizenship De la Torre, M. Kluwer law

[73] Case Diatta v land Berlin

[74] Resolusion for the Harmonization of Laws 1993

-The spouse may only be permitted admission for the purpose of living together with the resident and the marriage must be recognised by the host state.

-Waiting periods may be imposed before family reunion may be enjoyed.

The Member State may examine the marriage to determinen whether it was contracted solely or principally for the purpose of enabling the spouse to enter and take up residence in the Member State.

- Authorization may be for such period as the Member State determines and conditional on the continued fulfilment of the requirements.

-A visa obtained abroad is normally a prerequisite. There is no provision for spouses to work in the Member State.

- The Member State may require proof of both adequate housing and sufficient resources so that the family will not become a burden on social assistance programmes in the host Member State and health insurance[75].

The Member State of Denmark has complied with all these requisites and elements, but has impose extrem measures to the rule, has ignored the "reasonable" wording of the Resolution of 1993, and have sett their own standards which affect not only rights andd protection to members of a family, but has jeopardized the intention of the Community to harmonize law and co-operation among Member States of the Union.

The consequence of creating or emphasising different standards applicable to different foreigners on the territory in an area of fundamental rights protected by many international human rights instruments. For instance, a Greek national going to work in Denmark for the first time and possibly with the intention of remaining in Denmark only for a short period has the right to be accompanied by his or her spouse, children of any age if dependent, dependent parents, grandparents and grandchildren of the worker or his or her spouse irrespective of the nationality of those family members and subject to very carefully limited checks by the host Member State[76]. However, a Third country national national who has lived and worked most of his or her life in Denmark and helped to build up the country may only be joined by his or her spouse subject to detailed and subjective checks which may offend his or her dignity and cast as persons on the genuineness of his or her

[75] Quoting The Resolution for the Harmonization of laws 1993

[76] The Legal Statue of Third Country Nationals.

marriage, children up to the age of 16 or possibly 18 only if unmarried and dependent and the blood children of the marriage.

A further imbalance is created in comparison with Community provisions on family reunion. In those states where long-term or permanently resident foreigners are able under national law to naturalise as citizens of the state fairly easily they then become citizens of the Union entitled to Community free movement rights. Should they exercise those rights, they become entitled to Community family reunion rights. However, in those states where naturalisation is only available under arduous and restrictive conditions, third country nationals may not be able, ever, to avail themselves of Community family reunion rules for the simply reason that by virtue of the state to which they immigrated they cannot become citizens of the Union. Therefore a further discrimination is created in the long term expectations and aspirations of third country nationals in the Union.

9.4 Compatibility with the European Convention on Human Rights

As outlined above, the right to protection of private and family life from unwarranted interference by state authorities is contained in numerous international human rights instruments. However, only one has the benefit of an international court with jurisdiction to consider petitions from individuals who claim that their rights have been abused. This is, of course, the European Convention on Human Rights.

All the European Union Member States are parties to the Convention and all have accepted the jurisdiction of the European Court of Human Rights as regards individual petitions against the state. Accordingly, the terms of the Resolution will be measured against the right to respect for private and family life as expressed in the ECHR and interpreted by the European Court of Human Rights.

The right to respecto for private and family life is contained in article 8 ECHR[77]. It is subject to limitations on the basis of national security, public safety, the economic well being of the country, the prevention of disorder or crime, the protection of health or morals and the protection of the rights and freedoms of others.[78] Therefore the exceptions on the basis of which a state may seek to

[77] European Convention on Human Rights article 8

[78] Natinality, Migration,Rights of Citizens of the Union. Hall.S. Hijhoff publications

limit the right to respect for private and family life are sustantially greater than those which apply to Community law.

The ECHR is not an instrument designed or indeed drafted with immigration concerns in mind. In so far as it has implications for immigration policy this is coincidental and the result of the Convention's primary purpose of securing fundamental human rights for all persons within the jurisdiction of the High Contracting Parties. Nonetheless, in fulfilling its function as regards all persons within the jurisdiction of the states, the Convention as interprated by the Court of Human Rights provides a floor of rights for all persons in respect of family life below which no state party to the Convention should fall.

In considering the contents of the right to respect for family life the Court of Human Rights has not spelt out any particular list of family members whose admission to a state is incumbent on the state. Instead the Court of Human Rights has considered the quality and reality of family life as the decisive factor. However, this certainly may include spouses, children whether natural or adopted, parents, grandparents and grandchildren since such relatives "may playa considerable part in family life".[79]Where family life has not yet been exercised on the territory of the state party to the Convention the Court of Human Rights has considered it appropriate to ask whether there is an alternative possibility of family life being enjoyed in the state of origin of the foreign spouse. Only if this is not a serious option, possibly because of the hardship this would cause for family members in the state signatory, will the Court of Human Rights proceed to consider whether the refusal to admit a family member to the state signatory is breach of the right.

Because of the framework of the ECHR, the Court of Human Rights will examine the factual situation over the position in law. In order for the Convention to protect family life it must first be established that family life has been established and is effective.

The rights contained in the ECHR must be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, asociation with a national minority, property, birth or other status[80]. Clearly there is discrimination inherent in the Resolution between one category of foreigners and another (citizens of another Member State and third country nationals).

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[79] Nationality,Migration, Righhts and Citizenship of the Union, Hall, S. Hijhoff Publications

[80] European Convention on Human Rights

9.4.1 Compatibility with the European Social Charter

The European Social Charter was adopted within the framework of the Council of Europe and has been ratified by all the Member States. As regards migrant workers its provisions apply on the basis of reciprocitty. Accordingly, its consequences and obligations on the Member States are of particular importance as regards Turkish workers in the Member States as Turkey is a signatory state of the Social Charter[81] and therefore the obligations of the Charter extend to its nationals on the territory of other signatory states.

Secondly, the failure to place an upper limit on waiting periods which complies with the Social Charter as regards family reunion indicates that the Member States obligations under the Social Charter have not been properly transposed into the Resolution.

9.5 Conclusion

All signatory states of international obligations should apply both the letter and the spirit of those duties which they have voluntarily undertaken. It is deeply unsatisfactory that states establish new policies in a field regulated by international obligations which exclude existing obligations and indeed may result in their breach.

This is of particular concern in respect of the European Social Charter where reciprocal obligations are involved. In the context of the reciprocal duties of the European Community, Member States have extended their obligations to one another beyond those contained in the Charter. However, in the context of the Resolution to harmonize family reunion they have disregarded their reciprocal obligations to Non-EC with no specific expections. Denmark has adopted rules which are more restrictive than those which from the other Member States.

In the context of the European Convention on Human Rights, it is not a salutary example for the Member States to pare down to the barest minimum the rights which they grant to third country nationals in the apparent hope that they have given just enough but not an iota more than the least required by their human rights obligations. The undertakings which are given to the international community should be given openly and honestly without deception or subterfuge -for instance in

[81] European Social Charter

the expectation that by a careful wording of a national provision the state can avoid compliance with the espirit of the undertaking but still comply with the letter.
The rule of law is a fundamental principle of the European Union. When the European Union adopts measures which fail to give effect to relevant decisions of international tribunals such as the European Court of Human Rights it is also failing to respect the rule of law.

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10 Immigrant spouses

10.1 Non- EU spouses of European citizens

Again the issue of the citizenship arises with the situation of non-EU spouses married with an EU citizen.

If the right of for example, free movement of persons wants to be exercised by any of the spouses, it will confront a series of difficulties for both, ironically, even the EU citizen would be confront an obstacle to his own right of free movement, since (s)he would not be able to move with the spouse without this one breaching national law, for the acquisition of future citizenship[82]. Problem that the non-EU spouse will encounter regarding this grant, after moving to another Member State. The application of such rules is problematic where these rules, although reflecting nationals traditions, are employed as an instrument of immigration control, and have consequences incompatible with free movement rights.

Of course all Member Sates allow the application for naturalization after certain period of residence however varies among Member Sates. Therefore, it is not difficult to imagine that a non-EU spouse of a European Citizen would suffer disadvantages in fulfilling the residence requirements in a Member State, if the spouse decides to enjoy the right of free movement to an other Member State and expects that the non-EU spouse moves with she/him. This difficulty is particularly striking if the EU-spouse accepts work again in another Member State every four or five years, which is not uncommon for employees of certain multinationals. Although the spouses of some EU nationals may have lived for many years in the European Union, they will never be able to acquire European citizenship because their EU spouses Member State national require residence in that Member State in order to become naturalized.

10.2 Non-Danish spouses of Danish citizens

Equality is an important part of society, it is precisely in such a moment that we have to affirm it strongly. I have pointed out in the previous chapter, the rights of free movement of persons, regarding to non-EC spouses of Member State nationals, now I will establish the same focus from

[82] Immigration and Asylum Law and Policy, Hailbronner, Kluwer law.

the Danish perspective, but this time surfing deeper into the female spouses and their real status in the Danish society.

Free movement of persons as within this particular group of persons, is no different from what we have already viewed, non-National spouses married to Danish nationals are freely to move within the territory of this Member State, and freely to move within territory of the European Union, without exceeding three consecutive months[83]. The fact that they can not move with their spouse for working purpose has already been established in a previous section of this thesis.

But a more particular factor is of my interest. along this thesis we have see the consecuenses of acquiring citizenship or not, but so far we have not analysed where a situation may be more difficult to decide whether the criterion of acquired rights lead to a detrimental treatment for the non-nationals, in which we should examine whether non-nationals spouses are in effect placed a disadvantage.[84]

When a non-national spouse enter in to the Member State of Denmark on the grounds of marriage, a Temporary Residence Permit will be granted, valid for a restricted time, usually a year, and has to be renewed when it expires. This temporary status will be length up to five years, by the Danish Aliens Act. This five year rule, stipulates that a marriage couple between a non-Danish national and a Danish national has to be maintained for five years before divorce in order for the non-Danish national to acquire citizenship. This has put a large number of women from third countries at the risk of suffering months of torture and domestic abuse. For women such as these who have a dependent immigration status, they may be deported if the relationship breaks down. These women have to renew their visas to stay each year, always at the mercy of their husbands. These often gives the Danish national spouse an opportunity to use his position of power to exploit the vulnerability and insecurity of the dependent spouse. Couples who have been married for many years in their former countries of domicile are also subject to this rules stipulated by the Danish Aliens Act[85], in circumstances where a spouse has come in to this country to join her Danish spouse. The need to subject these marriages to this rule is not comprehensible.[86]

During this period, women do not have any recourse to public funds for housing, income support, or benefits as battered spouse, for this last case, there is a Women Crisis Center, but it is generally up

[83] www.um.dk

[84] Unlawful indirect discrimination. Sundberg-Weitmann.

[85] Danish Aliens Act.

[86] Human Rights and the Rights of Women. Domestic Violence, collection of reports and briefings, London 1995

to its full capacity and does not provide any financial help, and are reserved for refugees[87]. This has direct effect on women trying to flee from forms of abuse in order to protect themselves. Women fleeing from domestic violence are subject to questions regarding their immigration status, and this makes them more vulnerable. This status will not change until they acquire the citizenship. If to this we add the obstacles of free movement of persons in the European Union, then is a good example of a disadvantage as to whom they marry and an obvious detrimental treatment to non- Danish Nationals.[88]

The provisions in the Danish Aliens Act reflect the desire to prevent illegimite immigration by marriages of convinience. The relevant clause in the Aliens Act, has been subject to critisism on the grounds that it goes beyond preventing entirely false marriages and in fact permits the Member State to impose variants which prevents entirely legitimate spouses from moving into an other Member State with the purpose of work with a non-resident spouse. The ability to acquire independently separate resident status is practically non existant[89].

10.3 Non-US spouses of US citizens

A lawful permanent residency is given with the privilege of living and working in the United States permanently. The permanent resident status will be conditional if its on the rounds of marriage that is less than two years old on the day where the permanent residence is granted. The non-US spouse is given the status of conditional resident on the day the where lawfully admitted to the United States. This permanent resident status is conditional because the marriage must be proven not of one of conviniance. This conditional status must be removed by application of the non-US citizen after the second year.

Free movement of Persons regarding non-US spouses is not limited to the requirement to reside in the United State until the conditional status is removed, the US citizen spouse can move freely for reasons of work or studies for a period not longer than 12 consecutive months accompanied of the non-US spouse.[90] Generally, U.S. citizens and Lawful Permanent Residents file an immigrant visa petition with the Immigration and Naturalization Service on behalf of a non-US spouse so that this

[87] Gentofte Kommune, Denmark

[88] Immigration and Asylum Law. Hailbronner, K.

[89] Danish Aliens Act

[90] US immigration Policy.

family member can emigrate to the United States. A sponsorship is filed by the US-citizen spouse to secure support to the incoming non-US spouse which can be enforceable by any Federal, State, or local agency.[91]

If the non-US spouse is no longer under marital status or is temporary separate, or if the woman has been battered, she can apply to waive the joint filling requirement. [92] This waiver may apply if the non-US spouse entered in a good faith but ended in a divorce, and do not evade immigration laws, or if the non-US spouse was battered by the US citizen spouse. Under the Violence Against Women Act (VAWA) passed by Congress in 1994, the spouses of United States citizens or lawful permanent residents may self petition to obtain lawful permanent residency. The immigration provisions of VAWA allow battered non-US citizens to file immigration relief without the abusers assistance or knowledge, in order to seek safety and independence from the abuser. Victims of domestic violence should know that help is available to them. Battered non US citizens filling self-petitions can be eligible for public benefits.[93]

[91] Affidavit of Support Under section 213 A INS:

[92] Code of Federal Regulations 216.

[93] Immigration Reform Act. INS

11 Final conclusion

11.1.1 Immigrant workers

Finally, I want to make reference to the US Immigration Law regarding non-US-citizens working in United States, thier rights of family reunification, and last, the Non-US spouse´s rights.

The US immigration system would be from my perspective a good example of an alternative to grant non-national workrer´s with family reunion rights, social rights and human rights. The worker can enter the country on basis of temporary work, which will be granted before coming in to the US, but can also enter as a worker intending to acquire permanent residency, different fron Denmark, this would not be allowed, only after three years of establishment in Denmark[94]. Ever worker entering the country will be assigned a visa number, that can be adjusted once the applicant is in the US. Every worker indistinctly will enjoy the rights of family reunification immidiatly after his or her arrival. The Constitution of United States has been implemented with the aim of protecting all "Persons" that reside in its territory, It makes no reference as long as the residence is lawful, to persons with different status or conditions[95]. Therefore workers may enjoy the right to work, and travel throughout the country with no restrictions, and to establish themselves permanently with his immediate family members. Taking in account the size of the territory, it becomes comparable as if it was the whole European Community. Given this example, it is easy for the reader to see the inconviniance regarding the restriction that MS of the EC sets upon the FMP that intent to persue a lawful remunerated activity a few miles further. In addition to this, the worker is able to move with the family members out of the country for work or study purposes, not exceeding 12 months, at any time after their arrival, this is an advantage over the Danish Immigration Act[96], which restricts the emigration of the country without loosing the rights adquired before, as non-national under Danish law. Godness only knows how many nationals would had lost their status if that rule was applied equally to all residents.

Moreover, the Provision the stands the Legal Immigration Family Equity, provides relief for those seeking a lawful permanent residence. This will enable spouses and children of persons of those eligible to this Provision, relaying on the Code of Federal Regulations, de Department of Justice has

[94] Immigration and Naturalization Service. US governmant

[95] US Constitution.

[96] Danish Immigration Act.

implemented a new rule to grant a noinimmigrant visa, which is a grant to work and reside in the territory while an immigration visa is pending, this petition can last up to tree years, and so those the grant.[97]

Again challenging the effectiveness of EC law in regards as to immigration and their freedom to move within the Union´s territory, and the Danish Immigration law as to travel with out restrictions, the immigrant in under the US system, even with out a visa may leave the country and return, as long as the application to a petition for visa has been submitted.

Taking all these in special consideration, I recommend that the Danish government takes some of the examples above mentioned, to ensure a more balance situation among the TCN´s already residents in Denmark. It is of my awareness the great difference in perspectives, and consecuences of implementing such laws, but the link is that there are no differences in Human Beings as the US Constitution appoints. And it would be just fair to adopt some more friendly measures to comply with a Universal idea of Human Rights.

11.1.2 General observations

In respect of the public speeches of the Danish Authorities, and taking in account the freedom of speech, its would be appropriate to avoid racist and stereotype discloshures, to minor violation to the Convention of elimination of racial discrimination, European Convention of Human Rights, Convention and the Declaration on Racism and Xenophobia.

Equally appropriate is to safeguard the interest of foreigners and nationals by abolishing the amendment to the Danish Aliens Act, on the restriction on the right of reunification on spouses under the age of 25.

The MS of Denmark, should also, pay close attention to article 8 of the European Convention of Human Rights, and implement measures that secure the dignity of all persons residing in its territory.

[97] Code of Federal Regulation 214, 245, 248, 274b

Taking in view the US Immigration Law, Denmark should closer its law in regards as to Rights to Travel out side the country for a period more than three months with out loosing any rights already acquired.

I recommend the Ministry of Integration to publish all its Laws, Regulations, Acts and Amendments in the English language to make it possible to the non-Danish population to follow The dynamics of those.

In regards as to information to up coming immigrants, the *kommune* or local town hall, should inform acquratelly to the non-Danish national, about the rights and advantages in their disposal, that facilitate the immigrants integration.

The Danish authorities should comply with Community law, in the harmonization of the Union and its laws, whith out hand picking the fraction of Laws, Regulations as well as Declarations that not suit Danish authorities. For a better integration and co-operation of the Community.

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