



### **FREE MOVEMENT AND ACCESS TO WORK OF CITIZENS OF NEW EU MEMBER STATES AND THEIR FAMILIES: ONE OF THE LAST BASTIONS OF DISCRIMINATION ON GROUNDS OF NATIONALITY BETWEEN UNION CITIZENS**

Article 20 and 21 of the Treaty on the Functioning of the European Union (TFEU) provide that every person holding the nationality of a Member State is a citizen of the Union and has the right to move and reside freely within the territory of the Member States. Those rights formally provided to EU citizens are not guaranteed in the same way to all of them in the different EU Member States. In fact, the EU legal order tolerates different forms of discrimination on grounds of nationality, among which the present paper will be dealing with one of them in particular, consisting of a foreclosure or denial of access to citizens of the new EU Member States to the job market of old EU Member States. Such foreclosure may be included, or imposed, by the latter as part of the transitory measures attached to a given EU Accession Treaty and may be kept into force by the old EU Member States up to seven years, without any particular requirement, at least for the first five years. Those transitory measures are in direct contrast with the principle of non-discrimination on grounds of nationality between migrant workers citizens of the Union. This discrimination also extends to their families, which are worse off even as compared to families of citizens of non EU Member States. The present paper aims at suggesting a two-fold solution to that form of discrimination. The first one, within the EU legal system, may consist in imposing more stringent requirements to those old EU Member States intending to take advantage of those transitory measures when stipulating Accession Treaties. The second one may find its legal basis outside the EU and in particular within the ECHR system. In that latter case, however, the solution would be judicial rather than political, in fact, it would consist in an application by a potential victim before the ECtHR based on the alleged violation of the general prohibition of discrimination on grounds of nationality, enshrined in Article 1, Protocol n. 12 to the ECHR, perpetrated by an old EU Member State imposing transitory measures.