

International Retirement Migration: Legal Framework in European Union.

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Abstract

This article develop an understanding of the process and experience of International Retirement Migration and explain the framework of legal rights of retirement migrants under the free movement of persons in to European Community Law.

This article focus on the status and experiences of retirement migrants within the European Union. From a legal point of view, it comprises a number of subgroups, which can be distinguished on the basis of their formal status. The movement of retired people thus provides an interesting and relevant case study for the examination of status differentiation.

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1 Introduction, the problem of old age

A number of significant changes in European society have combined to force the EU to consider the welfare of Europe's senior citizens more closely. A general fall in birth rates, accompanied by a simultaneous increase in life expectancy means that the age structure of Europe's population is undergoing change with significant increases in the number of people aged 65 plus and 80 plus forecast in the next 30 years. Although these demographic changes will affect each member state in different ways and to different degrees, Europe's ageing population has largely been viewed by the EU as problematic in that it represents a challenge to the viability of established national welfare systems.

All member states are or have been engaged in reforms designed to contain or reduce the future cost of public pension provision. Another allied development has been a shift in policy with regards to early retirement¹. Recent decades have seen an overall increase in the number of people aged 50 plus who are no longer active in the paid labour market. Indeed, numerous European nations actively encouraged early withdrawal from paid work, in spite of the fact that many members of Europe's retired population are generally healthier and live longer than their own grandparents. This approach has been reversed in recent years with member states now being urged by the Commission to raise official retirement ages and discourage early exit from paid employment. In Table 2 we give some figures for the old age dependency ratio that indicates the number of people aged 16-64 compared with people aged 65 and over.²

1.1 Senior citizens in the EU

It has been argued³ that a number of significant changes have occurred in western European society that modify the ways in which many of us experience old age and retirement. Improvements in incomes, increased educational opportunities, and changes in occupational structure (for example, increasing numbers of professional and technical, rather than manual jobs), have combined to impact upon the aspirations and choices available to people in later life. It is not suggested that such a positive experience is universal; old age for some is still characterised by

¹OECD, 2000

²Figures from OECD (2000)

³for example, Laslett, 1989; Warnes, 1993.

Country	Greece		Italy		Portugal		UK		Ireland	
Year	1960	2030	1960	2030	1960	2030	1960	2030	1960	2030
Life expect.										
Male	68	78	67	79	61	77	68	78	68	79
Female	71	84	72	84	67	83	74	83	72	84
Perc. of population										
aged 65+	8	25	10	30	8	23	12	23	11	18
aged 80+	1	7	1	8	1	6	2	6	2	5

Table 1: Projected demographic trends in six member states

Country	Greece		Italy		Portugal		UK		Ireland	
Year	2000	2030	2000	2030	2000	2030	2000	2030	2000	2030
Male	23	33	33	27	39	39	38	34	38	34
Female	21	32	19	27	39	33	32	38	24	38
Old age Dependency Ratio	2	1.5	2	1	3	2	3	2	3.5	2.5

Table 2: Lifetime years spent in work

poverty, lack of opportunities and debilitating illness. The argument is, however, that in contemporary Europe we are now able to differentiate between a ‘third age’ of “well resourced and healthy retirement”⁴ and a ‘fourth age’ of later life starting in the late seventies in which the onset of old age-related illness and need for care become important considerations (cf Laslett, 1989). Longer holidays, experience of overseas travel and the possibility of a period of early retirement have increasingly become a feature of many people’s lives in recent decades.

When discussing International Retirement Migrants (IRM) much of the established literature has focused on the migratory movements of UK pensioners who relocate towards the warmer regions of southern Europe in retirement⁵.

The lack of coherent and reliable statistical data on IRM has been widely commented on⁶. Estimates vary but it appears that IRM is becoming an increasingly important aspect of migratory movement within the EU. It is also suggested that official population figures do not evidence the true extent of EU nationals’ migratory movement in retirement.

Table 3⁷ illustrates some of the problems in trying to gain an accurate picture. A number of countries fail to differentiate by age at all, and, while the figures give an indication of the number of older EU nationals officially resident in another member state, there is no way of assessing how many of them moved following retirement. The figures do not record those who are resident in host countries who fail to inform the official authority. O’Reilly’s comment (made in relation to British retirees relocating to Spain) that, “existing statistics are both difficult to obtain and to trust because of the fluidity, undocumented and unofficial nature of this form of migration” (2000b, p 481) holds true when considering IRM across the whole of Europe. For example, King et al (2000) note that there are 82,156 recipients of British pensions living in the Irish Republic, yet Table 1 records a mere 5,900 UK nationals aged 65 plus as resident. While some of the recipients may well be Irish nationals who have returned home to retire, the huge discrepancy between the two figures serves to illustrate the current problem with trying to assemble accurate quantitative data on IRM.

After provides an overview of the motivational factors and issues that underpin

⁴See Warnes, 1993, p 451

⁵see for example, Williams et al, 1997; King et al, 2000; O’Reilly, 2000a, 2000b

⁶see Williams et al, 1997; O’Reilly, 2000a, 2000b; Warnes, 2002.

⁷Source: Figure adapted from Eurostat data provider by ESRC/R.cade service in 1999.

^aNumbers differentiated by age not available.

Age				
Country	50-54	55-59	60-64	65+
Austria	3,900	2,900	1,900	6,600
Belgium	11,441	33,373	29,563	71,807
Denmark	4,078	2,974	1,709	2,582
Finland	656	513	434	1,586
France	99,729	88,973	73,642	58,622
Germany	1,850,032 ^a			
Greece	3,344	2,301	1,391	2,573
Italy	133,512 ^a			
Ireland	Non		Avaiable	
Luxemburg	131,410 ^a			
Netherlands	14,066	10,971	6,542	11,077
Portugal	Non		Avaiable	
Spain	219,790 ^a			
Sweden	18,163	12,893	8,875	13,782
UK	65,000	66,100	56,400	137,900

Table 3: Number of EU national resident in another member state, by age

the migratory movements we will outline the legal framework, the mobility rights of IRM, through an examination of the relevant legislation.

2 Motivations to movements:an overview

Discussing internal retirement migration within Britain, Warnes (1993) notes that migration decisions in old age are often the culmination of a careful consideration of a number of factors.

Recent work outlines some reasons why an increasing number of nationals from northern European states relocate to southern Europe on retirement⁸. Williams et al (1997) offer three main explanations as to why southern Europe is attractive:

1. Cheaper house prices and lower costs of living and heating mean that it makes economic sense to relocate south. Furthermore, certain southern regions may be more beneficial in terms of fiscal and tax policies. In these ways northern migrants, who, it is argued are mostly “either retired or ‘active young elderly’ [sic] persons with above average wealth and incomes” (Williams et al, 1997, p 116), are able to simultaneously export and build on their already advantage economic position.
2. The chance to live in a warmer climate has an obvious appeal to many who wish to escape (permanently or temporarily) from the colder northern regions of Europe.
3. It is argued that certain retirement movements are characterised by a search for landscape, cultures and lifestyles that fit a kind of idealised middle class myth. Other factors such as prior holiday visits and certain previous occupations have also been noted as influential in decisions to migrate internationally post-retirement (King et al,1998).

Taking the above issues into account, Williams et al (1997) note discrete groups within a more general category of post-retirement migrants. Seasonal migrants (snowbirds) who spend variable periods in their host country are differentiated from those who permanently reside abroad following a total displacement from their country of origin. Others are classified as ‘second homeowners’ or ‘third

⁸see Williams et al, 1997; King et al, 1998; Rodriguez et al, 1998.

age long-stay international tourists'. A further significant group, labelled 'lifetime expats', consists of those who were previously employed by the military, international agencies/companies or as high ranking civil servants who have experienced prolonged and continued movement and relocation throughout most of their adult working life. An argument can be made here that among post-retirement retirees there is a significant number of 'multiple movers' who have developed what can crudely be termed a migration mentality and for whom post-retirement migration appears to be almost a mundane decision (Ackers, 1998). In addition, Williams et al (1997) argue that many such lifetime expats are essentially 'tax dodgers' who on retirement choose southern European locations in order to store their accumulated wealth in offshore havens, thus avoiding the higher tax regimes in their northern European countries of origin.

The category of migrant that can be loosely labelled 'returning worker' also merits further consideration. The Swedish 'lifetime expat' returnees noted previously are returning EU workers who, to a large extent, previously made positive choices to move internationally with work in order to further their careers. However, when discussing IRM in the EU, consideration must also be given to a group which has tended to be overlooked; that is those migrant workers and their families who initially were to a large extent compelled to move for work (often at great personal sacrifice) in order to escape poverty and unemployment.

Discussions so far have indicated the extent to which IRM within the EU is a complex phenomenon in terms of migration patterns and the motives behind movements. It became clear that motivations and triggers for movement could be assembled into five loose clusters:

- **Economic issues:** for work, with work, lower living costs.
- **Family issues:** domestic care, proximity to family, marriage effect, that is remaining following an intended short visit to marry a local, loss of partner (divorce, separation, bereavement), for children.
- **Welfare state issues:** health/care services as a factor in initial and, especially, return movements.
- **Life course issues:** the wish to be buried 'at home', enforced unemployment, retirement plan.

- **Regional issues:** region appeal, holidays, climate, a desire to return to one's roots/homeland.

It is important to remember that these five clusters are not mutually exclusive of each other. The category 'retirement plan' fits well within the life course issues cluster, but how and when an individual retires is linked to a number of factors including economic and welfare state issues. As previously stated factors working in combination with one another are often influential in migration decision.

The motivations and triggers involved in IRM decisions within the EU are many and varied. A combination of different issues and events related to geographical location, age, and economic and familial relationships are significant in influencing the movements and preferred locations of retired EU migrants. Beyond these factors the importance of issues related to the provision of welfare benefits and services and the differences in availability and scope in various EU member states should not be overlooked. Many retired EU migrants are actively seeking to maximise the enjoyment of their later years by relocating in retirement. The next section illustrate the extent to which assembling a package of welfare services that meet what individuals consider to be their personal requirements and needs, is an important element in initial migratory decisions and subsequent movements after retirement. The ability to access certain types of health and care provision are issues of importance, particularly with regard to return migration decisions linked to serious illness or increased frailty in old age.

3 The legal status of retirement migrants

3.1 Citizenship of the Union and Mobility rights

Within social and political science, citizenship remains a much discussed and highly content concept, but typically citizenship is defined as a relationship between the individual "citizen" and some form of community. Central in defining the quality of citizenship is the extent of, and the relationship between, any rights and responsibilities that the status of 'citizenship' involves. In practical terms, this usually translates into a situation whereby a citizen can expect access to certain civil, political and social rights, provided that they in return accept certain communally specified responsibilities. In any book that is exploring the international migratory movement of citizens within the confines of the EU, a consideration of the rights

and responsibilities of the European Union citizenship as formally laid out in the Treaty of European Union (TEU) is an important initial task; particularly given that freedom of movement has long been central to the very idea of EU citizenship.

At the present, Citizenship of the Union, is on a national basis and applies to all those persons resident within the EU who are nationals of one of the EU member states. In the context of EU competence, the development of citizenship since the Treaty of Rome has taken place in close connection to the evolution of mobility rights. This relationship between mobility and citizenship was given formal constitutional recognition in the Treaty on European Union (TEU) with the insertion of a new Article declaring the existence of "Citizenship of the Union".

3.2 Citizenship of the Union

From the Treaty of European Union we have:

Article 17

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.
2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.

Article 18

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.

Article 19

- 1 Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State.

2.every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State.

Article 17 with the rights attached to mobility in Articles 18 and 19 reaffirms the close relationship between citizenship and mobility in Community law. Mobility is thus not only a right in itself but also constitutes the trigger to other forms of social entitlement.

To the extent that the relationship between citizenship and migration has been subject to analysis, it is usually in the context of drawing a distinction between those migrants who hold community nationality and those who do not (in other words third country nationals outside EU).

Article 18 (1) infers a broad equality of status among Community nationals. The precise wording, however, suggests some caveats, rendering entitlement "subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect". The full implications of this provision and the extent to which the inclusion of Article 18 effectively replaces pre-existing law has not yet been resolved. At present residency rights are provided for under a cluster of Directives specific to different groups of migrants.

3.3 Freedom of movements in community law: the provisions

'Citizenship of the Union', as Article 17 suggests, does not replace national citizenship but rather 'complements it'. In that context, formal citizenship status reflects not only Community law but also the specific benefits deriving from national citizenship (which vary considerably between member states, not only in a substantive sense but also, importantly, in terms of their transportability). The contribution of national citizenship as a fundamental source of social entitlement is of particular importance given the diversity of domestic welfare systems and the fact that non-discrimination remains the basis of welfare claims in the host state⁹.

⁹Community law, in this context, is not concerned to promote harmonization in the social policy field but rather recognizes diversity.

Title III of the Treaty establishing the European Community provides for the ‘free movement of persons, services and capital’ throughout the Community. Individuals who wish to enter, work and reside in another member state can do so on the basis of Article 39 EC, which provides that

Article 39 Freedom of movement of workers shall be secured within the Community. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment...

Article 43 details the freedom of establishment of nationals to include, the right to “take up and pursue activities as self employed persons” and Article 49 contains a prohibition on restrictions on the freedom to provide services within the Community¹⁰. The constitutional right to free movement has been substantiated by secondary legislation that enables the migrant worker to overcome certain financial and social obstacles, which arise as a result of exercising free movement¹¹. This has been achieved through the development of two principal mechanisms:

1. **Regulation 1612/68**, implements Articles 39-43 of the Treaty and is the main source of secondary legislation governing the free movement rights of workers. Most significantly, Article 7 (2) of Regulation 1612/68 entitles Community migrant workers to the “same social and tax advantages” as nationals in the host state.
2. **Regulation 1408/71**, on the other hand, seeks to coordinate rather than harmonise domestic social security systems.

3.4 Mobility rights

In relation to retired EU migrants we initially state a single fundamental status differentiation between two groups; those who moved as workers and then retired,

¹⁰Although the focus here is on the concept of worker, it is important to bear in mind these other provisions, particularly as many retired persons may become involved in small business enterprises and the provision of services in the host state, at least in the early stages of their residency. The rights attached to service providers extend to service recipients.

¹¹See Craig and de Burca, 1998, p 697; Steiner, 1994, p 201; O’Leary, S., 1999, p 68

and those who retired and then moved. Unlike the former group, who had full access to host welfare systems, the latter group (referred to 'post-retirement migrants') are effectively caught by the "**resources requirement**" stated in the Council Directive 90/365 in what became known as the 'playboy directive'. This requires demonstration of financial autonomy specifically under the mobility rights and welfare status of those retired persons who wish to move following cessation of economic activity. The concepts of "retirement", "end of economic activity" and "migrant" all proved complex and presupposed the ability to identify fixed categories of retirees.

To the extent that it is possible to define subgroups with distinctive legal status we have defined the following categories of retired:

1. Persons who move to another member state for work and then exercise their right to remain (**retired community workers**).
2. Those who move to another member state for work and then return home on retirement (**returning community workers**).
3. Persons who retire in the home state and then move (**post-retirement migrants**).
 - 3 a) A subgroup of category 3, who move in order to accompany or join their children, claiming rights as ascendant, or relatives (**joiners**).
 - 3 b) A subgroup of category 3 who subsequently return home (**returning post-retirement migrants**).

The concept of migration or mobility is itself problematic as it typically implies identification of one significant move perhaps followed by a return move. Migration and retirement often involve a series of moves into and out of work and between different locations. The migration process may commence with extended vacations followed by seasonal moves, a period of "settled" residence abroad and eventual "evolving" return. People may retire from their main occupation and then take up part-time, voluntary or self-employed work. Indeed, such movements into and out of work may become increasingly common in the context of the labour market and increasing policy emphasis on the importance of delaying retirement and explicitly encouraging retired people to resume paid work. Each of these factors impacts on the formal legal status of the person concerned and any accompanying family,

irrespective of social need. The retirement migration project has endeavoured to understand the implications of these shifts in status both at the formal level in terms of social and welfare status and in terms of citizenship experience.

3.5 Social entitlement in the host state and the geography of retirement migration

Access to social citizenship entitlements under the free movement provisions is based on the principle of non-discrimination (Article 12 EC). A key of Regulation 1612/68 outlines the rationale for this extension of Community competence into the social sphere:

Whereas the right of freedom of movement, in order that it may be exercised by objective standards, in freedom and dignity, requires that equality of treatment shall be ensured in fact and in law in respect of all matters relating to the actual pursuit of activities as employed persons and to eligibility for housing, and also that obstacles to the mobility of workers shall be eliminated, in particular as regards the workers right to be joined by his family and the conditions for the integration of that family into the host country.

In Ministere Public v Even & ONPTS the Court interpreted the scope of Article 7 (2) of Regulation 1612/68 to include:

... all those [advantages] which, whether or not linked to the contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of their residence on national territory and the extension of which to workers who are nationals of other Member States therefore seems suitable to facilitate their mobility within the Community.

Following the impact of this, and many other cases¹², Meehan describes the Court's approach as having, "blurred customary distinctions between security and

¹²See O'Keeffe, Hervey, 1995; Ackers, 1998.

assistance so much that discrimination in almost any welfare benefit might contravene Community law”¹³.

Although the provisions may create pressure for harmonization (perhaps to reduce the opportunities for benefit tourism), in practice material entitlement depends on the welfare system of the receiving state. The specific geography of retirement migration is thus important in determining access to resource frameworks. While movements into Nordic social systems, based on social democratic principles and social redistribution may thus enhance citizenship status, movements into southern European ‘mother-daughter’ economies, based firmly on principles of family care and support, may imply a reduction in social status, particularly for migrants who lack access to such informal resource networks. Retirement migration thus raises some interesting questions in terms of material entitlement:

1. The population is generally moving at a time in their lives associated with progressively increasing dependency or in other words when access to care becomes increasingly important.
2. Retirement migration flows are characterized by a move away from relatively generous welfare to locations in southern European countries and coastal and rural regions. The geography of these moves is highly specific and clustered and the locations are typically lacking a comprehensive infrastructure of community care and support services.
3. With the exception of some returnees, the majority of retired migrants are also moving away from potential sources of informal care (their families).

Notwithstanding the diversity of national welfare systems, Community law clearly provides an important basis for welfare claims in the host state. For the citizen-worker ‘Citizenship of the Union’ conveys some valuable and tangible material benefit. However, the exercise of the right to move and reside in another member state following retirement does not confer universal status on Europe’s ‘senior citizens’. Analysis of the legal consequences of post-retirement mobility reveals in practice that the law privileges paid work and marriage as the basis of Community entitlement. The following section documents the legal consequences of different forms of post-retirement mobility.

¹³Meehan (1993, p 93).

3.6 Post-retirement migrants(PRM)

Directive 90/365 further extends residency rights to those Community nationals who have ceased their occupational activity in the ‘home state’ and who wish to move to another member state on retirement. An important distinction exists, however, in terms of the social entitlement that this form of residency gives rise to, for in order to exercise this right the persons concerned must demonstrate that:

... they themselves and the members of their families are covered by sickness insurance in respect of all risks in the host Member States and have sufficient financial resources to ensure that they will **not become a burden on the public purse and social security system** of the host Member State during their period of residence.

To that extent, what has become known as the ‘**resources requirement**’ severely restricts the formal welfare claims that this group of retired people can make against the host state. In theory, at least, they have no formal social citizenship status.

3.7 The legal status of returnees

The social status of returnees (those people who either return home after finishing work in another member state or return after spending a period of retirement abroad) is to a large extent a function of national law and policy. In recent years, however, the European Court has had to consider the legality of certain national laws potentially restricting the social status of returnees (on the grounds that their economic contribution has taken place in another state). A case in point is the UK’s habitual residence test. This test, first introduced in 1994, requires that an EU citizen moving to the UK should satisfy certain criteria in determining their access to a range of social security benefits¹⁴. These criteria relate to the number of years the individual has lived outside the UK. As such, the habitual residence test operates to withhold benefits to EU citizens and returning nationals until residence is considered to have been (re) established.

¹⁴Including Housing Benefit, Income Support, and Council Tax Benefit.

3.7.1 Temporary residence, legal status of ‘tourists’ and ‘seasonal’ migrants.

For many retired people the decision to move to another country is taken incrementally over a period of time, often with the person deciding to initially spend extended vacations in an area they enjoyed visiting as tourists during their working lives. The concept of ‘snowbirds’ is thus popularly associated with Nordic countries and evident in the literature on international retirement migration. A common pattern would be a period of tourism shading into seasonal and finally more permanent settlement.

Although the Treaty itself does not refer to service recipients, Article 1 of Directive 64/221 (implementing the right to provide services under Articles 49-55) protects the position of service recipients who travel to another member state for that purpose. Article 1(b) of Directive 73/148 also requires the abolition of restrictions on the movement and residence of “nationals wishing to go to another member state as recipients of services”. In *Luisi and Carbone v Ministero del Tesoro*, the Court confirmed that the Treaty articles extended to cover the situation of recipients. This furnishes tourists with important rights under Community law to move in order to receive services and to equality of treatment in that respect. In practice, many retired migrants, keen to preserve their welfare entitlement back home through the retention of residency in that country (and to avoid local taxation, and so on) live for the majority of the year as ‘tourists’ in the host state.

3.7.2 The impact of Article 18 on social entitlement

The second report from the European Commission on Citizenship of the Union (CEC, 1997a) described the right to free movement as a fundamental and personal right conferred on every citizen of the Union, which may be exercised outside the context of an economic activity. The impact of Article 18 EC on the citizenship status of retirement migrants remains a matter of contention. Eurolink Age¹⁵ submitted its views to the Commission that “those (older persons) who have ceased their occupational activity should not be excluded from the right to move freely and reside anywhere within the European Union, as set out in Article 18”¹⁶. The

¹⁵A European non-governmental organisation representing the rights of older people (now known as ‘AGE’).

¹⁶See Eurolink Age, 1996a, p 1

Commission recognised, however, that Article 18 EC does not constitute a comprehensive legal base from which all free movement rights derive. Article 18 cannot take the place of existing legal bases dealing with the distinctions and limitations of the various categories of persons granted free movement rights under Community law (cf Chalmers and Szyszczak, 1998, p 66). The Commission proposed the upgrading of Article 18, "to a specific legal basis apt to revise the complex body of secondary legislation. This would certainly increase the transparency of Community law, ease implementation measures and increase the citizen's understanding of the rights effectively conferred"¹⁷.

4 International retirement migration and the importance of location

The EU itself is not a welfare provider, but rather regulates access to domestic welfare systems. In order to understand the consequences of a move in retirement, we need to specify that the right to freedom of movement is based on a principle of non-discrimination rather than social harmonization.

In the past the welfare systems of the member states under consideration in this part of the thesis have been variously classified in relation to a number of criteria by theorists engaged in comparative analysis¹⁸. Esping-Andersen's (1990) influential study was an attempt to construct a typology of welfare states based on the different ways in which they are organised in relation to market forces, social structures and political interests. He classified a number of states according to three basic "ideal types" of welfare regime. "Liberal/Anglo-Saxon" countries typically developed their welfare systems against an historic backdrop of strong class antagonism, which often resulted in residual social welfare schemes reserved for poor people, with private and occupational welfare available to the middle classes. In contrast, the "conservative/corporatist" welfare states of continental Europe are typified by strong occupational, contribution based, social insurance welfare schemes for paid workers and lower rate social assistance benefits for those outside the paid labour market. The third group of "social democratic/Scandinavian" states are distinguished from the others by welfare systems based very much on

¹⁷CEC, 1997a, p 4

¹⁸For example, Esping-Andersen, 1990; Lewis, 1992; Giarchi, 1996).

universalistic services, full employment and equal opportunity, in which access to welfare is less dependent upon activity in the paid labour market.

A fourth category, variously described as a "southern" (Ferrera, 1996), has since been added to Esping-Andersen's original classification. The key elements that distinguish southern European welfare states have been laid out by Ferrera (1996), although debate continues as to the extent that southern welfare states are different to their conservative/corporatist continental cousins (see Katrougamos, 1966; Guillen and Matsaganis, 2000). Typically, southern welfare states have a "fragmented income maintenance system: generous retirement benefits for 'protected categories', but modest benefits for the rest, plus a low social pension for those with insufficient contributions" (Guillen and Matsaganis, 2000, p 123). Than in southern welfare states, the role of informal, familial care, especially that given by women, is seen as crucial for plugging gaps in formal provision for senior citizens (Symeonidou, 1996).

The importance of a basic awareness of the diversity of welfare provision across the EU becomes clearer when one understands the legal basis of citizenship entitlement under the free movement provisions and the implications of the non-discrimination principle. In other words, *location has a major influence on access to social welfare*. Welfare status thus reflects the wider geography of mobility and the welfare mix of both sending and receiving countries. It is also life course sensitive because social welfare, in the narrow sense of access to services and so on, may figure little in the priorities shaping the initial migration decision of both economic migrants and retirement migrants. The decision of whether or when to return, on the other hand, suggests a much higher concern with access to welfare.

5 Conclusion

The retirement migration research together with a series of 'linked' studies of subgroups of intra-Community migrants represents a commitment to the evaluation of the development of Citizenship of the Union.

The focus of this article has been on the status and experiences of retirement migrants within the European Union. As we have seen, this population does not represent a homogeneous group. From a legal point of view, it comprises a number of subgroups, which can be distinguished on the basis of their formal status. The movement of retired people thus provides an interesting and relevant case study

for the examination of status differentiation. On the one hand it reveals important distinctions based on the quality and geography of legally significant forms of contribution. So contributing in the home state during ones working life and then migrating on retirement has different implications to moving during working life and then retiring in situ. Subsequent return also has legal implications.

We set out these distinctions in formal status in some detail to illustrate the level of status differentiation and the discriminatory effect of Community Law even within this population of retired Community nationals. European citizenship, at least in terms of formal legal rights, is by no means universal.

Formal equality in the context of Community law rests on the principle of **non-discrimination**. The scope of this principle demands some consideration if we are to make sense of the complex tiering of entitlement outlined previously. Article 39 EC echoes the provisions of Article 12 EC (the original non-discrimination clause) and refers simply to the abolition of discrimination on grounds of nationality. The EU's citizenship provisions suggest a broader approach and more inclusive status, however. While it restates the importance of nationality as a condition of membership, it goes on to state that, "Citizens of the Union shall enjoy the rights conferred by this Treaty". There is no suggestion here that the group of qualifying Community nationals might be further divided into distinct subcategories.

The introduction of a much wider non-discrimination clause in the Treaty of Amsterdam (Article 13) marked the development of a new legal base for action to "combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation".

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