



6.5.2019

NOTICE TO MEMBERS

Subject: Petition No 0990/2018 by S.H. (Slovak) on the implementation of Council Directive 2003/86/EC on the right to family reunification in Slovenia

1. Summary of petition

The petitioner claims that Slovenian law does not properly transpose Council Directive 2003/86/EC on the right to family reunification. The petitioner refers in particular to processing times and delays in securing decisions from the authorities on family reunification applications, and that a seemingly blanket approach is taken without due regard to individual circumstances, especially as regards the best interests of affected minors. The petition raises questions as to whether Slovenia has properly transposed and implemented the Directive, and whether the current practice is compliant with relevant jurisprudence on the matter from the Court of Justice of the European Union.

2. Admissibility

Declared admissible on 8 February 2019. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 6 May 2019

The Commission's observations

Article 3(1) of Council Directive 2003/86/EC of 22 September on the right to family reunification¹ (hereafter 'Family Reunification Directive') provides that this Directive shall apply to the third-country national family members of a sponsor who holds a residence permit for a period of validity of one year or more and has reasonable prospects of obtaining the right of permanent residence in the Member State concerned.

¹ OJ L 251, 3.10.2003, page 12.

Under Article 8(1), ‘Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her’. This latter provision thus provides for a ‘waiting period’ during which the sponsor must have stayed lawfully in the Member State concerned so that family reunification can take place in favourable conditions resulting from a sufficient degree of integration of the sponsor.

However, in accordance with settled case law, the duration of residence in the Member State is only one of the factors to be considered in the context of the decision about family reunification. Consequently, ‘a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors’², such as the nature and the solidity of the person’s family relationships and the existence of family, cultural and social ties with his/her country of origin. This requirement results from Article 17 of the Family Reunification Directive. Furthermore, pursuant to its Article 5(5), the best interests of minors are to be taken into account in this framework too.

The Slovenian transposing legislation (Article 47 of the Aliens Act) grants the right to family reunification to a third-country national with a permanent residence permit or who has resided in the past year in the Republic of Slovenia on the basis of a temporary residence permit with a validity of at least one year.

The latter period of legal residence based on a temporary residence permit qualifies as ‘waiting period’ in the sense of Article 8(1) of the Family Reunification Directive.

Slovenian legislation provides that this restriction concerning the period of legal residence does not apply if the sponsor:

- is a holder of a Blue Card;
- has a temporary residence permit to perform work in the field of research and higher education;

or

- has a temporary residence permit on the basis of the assessment of the competent national authorities that the residency is ‘in the interest of the Republic of Slovenia’.

Finally, refugees can apply for a permanent residence permit for the purpose of family reunification as soon as they have been granted refugee status (Article 47a of the Aliens Act).

² Judgment of the European Court of Justice of 27 June 2006, *European Parliament v Council*, C-530/03, paragraph 99.

There appears indeed to be no possibility to derogate from the waiting period requirement for other holders of a temporary residence permit based on the factors set out in Articles 5(5) and 17 of the Family Reunification Directive.

Conclusion

The issues raised by the petitioner are to be further explored by the Commission. In this context, the Commission will seek information from the Slovenian authorities and subsequently take appropriate action if necessary.