



9.7.2019

NOTICE TO MEMBERS

Subject: Petition No 0026/2019 by Ivan Hontoria Traveria (Spanish) on his right to reside in Germany

1. Summary of petition

The petitioner denounces the German authorities for requiring him to provide personal documents with which to examine his right to reside in Germany. The petitioner says that he lives and works in Germany without receiving any type of social benefit. The petitioner considers that the German authorities are in breach of European laws on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

2. Admissibility

Declared admissible on 5 April 2019. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 9 July 2019

The Commission's observations

Article 21 of the Treaty on the Functioning of the European Union stipulates that 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 the Treaties and by the measures adopted to give them effect. The respective limitations and conditions are to be found in Directive 2004/38/EC on the right of citizens of the Union and their family members

to move and reside freely within the territory of the Member States¹.

The right to move and reside freely is not unconditional. EU citizens have a right to stay in another Member State that is not their own for up to 3 months with a valid passport or identity card. To stay for longer than three months, they need to be working as a self-employed or employed person; or to be seeking employment under certain conditions; or, if they are non-active, they must be able to show that they have sufficient resources not to be a burden on public funds, and sickness insurance.

The right of residence is conferred directly by EU law and exists by virtue of the status of the person as a mobile EU citizen who meets these conditions. Therefore the EU citizen has a right of residence for more than 3 months in another Member State when, and as long as, he actually meets the conditions. The right of residence does not depend on holding a residence permit, different from regular immigration law where it is the residence permit that positively establishes the right of residence.

Under EU free movement law, Member States nonetheless have the choice to ask EU citizens to register their residence after 3 months and be issued with a registration certificate that is declaratory only. Germany decided that from January 2013 EU citizens no longer have to register their residence.

Importantly, however, Article 14(2)(2) of the Directive allows a Member State to verify, in specific cases where there is a reasonable doubt as to whether an EU citizen satisfies the conditions for a right of residence, if these conditions are fulfilled.

Article 14(2)(2) of the Directive has been correctly transposed into German law by § 5(3) FreizügigG/EU². As the written invitation to the petitioner refers to § 5 FreizügigG/EU it therefore seems that the German authorities are verifying whether the petitioner meets the conditions for a right of residence, as is explicitly allowed under the conditions set out in the Directive. Contrary to the petitioner's view it does not mean that they are requiring him to obtain a residence permit.

Conclusion

The Commission does not have a basis to intervene since the petition does not indicate a breach of EU law on free movement.

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), *OJ L 158, 30.4.2004, p. 77–123*.

² 'The competent authorities may, for specific reasons, establish whether the requirements for the entitlement pursuant to Section 2(1) are being or are continuing to be met.'