

# EUROPEAN PARLIAMENT

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*Committee on Petitions*

3.02.2006

## NOTICE TO MEMBERS

Petition 0007/2005, by Frank Semmig (German) on the complicated procedures for travel to Ireland by non-EU citizens with residence permits in Great Britain and Germany

### 1. Summary of petition

The petitioner, who is German, lives with his Russian wife in Great Britain, where both have domicile status. His wife also has a German residence permit. He complains at the difficulties his wife faces in travelling to Ireland when she wants to accompany him on long business trips, since each time she has to apply for an individual visa in London and collect it from there. The petitioner also feels that his freedom of movement is restricted, as for each of his wife's visa applications he has to declare his personal and financial circumstances and give details of his travel plans and these are carefully checked

### 2. Admissibility

Declared admissible on 12 May 2005. Information requested from the Commission under Rule 192(4).

### 3. Commission reply, received on 3 February 2006.

#### **Background**

The petitioner is a German citizen married to a Russian citizen. They live in Great Britain. The petitioner frequently travels to Ireland on business and complains that each time, he has to obtain a visa for his wife so that she can accompany him. This procedure takes a week. After six or seven individual visas, the Irish Embassy sends the next visa application to Dublin, which takes six to eight weeks to process. He says he cannot apply to the Irish Embassy for a multiple-entry visa for his wife, as this takes at least eight weeks.

The petitioner is amazed that Switzerland, which is not a Member State, allows non-EU citizens who have a residence permit in an EU Member State to enter the country without a visa, while Ireland does not.

- He takes the view that Ireland is in breach of its obligations in terms of free movement, as it requires him to make public his personal and financial data, travel plans and hotel reservations when he applies for a visa for his wife.

- He complains that the Irish Embassy in London checks by telephone whether he and his wife really are in the hotel they reserved and believes he does not have to give this information to the embassy.

- He takes the view that forcing his wife to obtain an entry visa involving such lengthy procedures constitutes discrimination against her, because she is Russian.

## **Legal assessment**

### The visa requirement

Under the applicable Community law on free movement and residence, the Member States must allow citizens of the Union to enter their territory simply by producing a valid residence permit or passport. Members of their family who are not EU citizens themselves may be subject to the entry visa requirement, depending on their nationality.

Russia is included in Annex I to Regulation (EC) No 539/2001<sup>1</sup>, which consists of a list of third countries whose nationals are subject to the visa requirement in order to cross the external borders of the Member States. Ireland, which has opted out of this regulation, subjects Russians to the visa requirement on the basis of its own national legislation.

It is worth noting, however, that 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<sup>2</sup>, which is due to replace existing Community legislation on free movement and residence as from 30 April 2006, stipulates that the possession of a valid residence permit exempts family members from the visa requirement. As from that date, therefore, the petitioner's wife will be able to go to Ireland simply by producing a valid passport and a residence permit issued in Great Britain.

The holding of a residence permit issued by a Schengen country is already now considered to be equivalent to a visa. The family members of an EU citizen who hold such a residence permit may, on the basis of this document, move around within the Schengen area without a visa, for maximum stays of three months. This equivalence between residence permit and visa is only valid for countries which fully apply the Schengen *acquis*. Since Ireland does not participate in this part of the *acquis*, this equivalence does not apply there.

Accordingly, as the law stands at present, the entry visa requirement for Ireland, in respect of the petitioner's Russian wife who holds a British residence permit, does not conflict with Community law.

In 2000, Switzerland unilaterally decided to amend its legislation on foreigners in order to allow holders of residence permits issued by Member States to enter Switzerland without a

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<sup>1</sup> OJ L 81, 21.3.2001

<sup>2</sup> OJ L 158, 30.4.2004

visa for short stays.<sup>1</sup>

### Conditions and time frames for issuing visas

In order to issue a visa to the wife of the petitioner, who wishes to accompany her husband on a trip to Ireland in the context of their right to free movement, the Irish authorities may only ask her for her valid passport or identity card and proof of her relationship to him. The directives applicable to the free movement of persons, and in particular Directive 73/148/EEC<sup>2</sup> applicable to those providing and those receiving services, stipulate that the Member States must 'afford every facility' to family members of EU citizens for obtaining any necessary visas. The Member States are not allowed to subject people to other requirements or to demand other documents or information from beneficiaries of Community law who apply for a visa to enter their territory. It is not in keeping with Community law to demand that EU citizens give detailed information on personal data, or on their travel plans or hotel reservations.

The period of one week for the granting of an entry visa does not appear to be disproportionate. However, the time frame of six to eight weeks for a visa application after six or seven individual visas is not consistent with the obligation on the Member States to afford 'every facility' to family members for obtaining any necessary visas.

This obligation to afford 'every facility' to family members of EU citizens also, in the Commission's view, relates to the nature of the visa issued. When it is clear that the person in question has to travel frequently in a given Member State in the context of exercising his right to free movement, he should be issued with a multiple-entry visa with a long period of validity. The time frame for issuing such a visa should also be sufficiently rapid to comply with the obligation to afford 'every facility'.

### Checks by the Irish Embassy in London

As regards the checks by the Irish Embassy in London that the couple actually are staying at the indicated hotel in Ireland, Community law merely provides that the Member States may require EU citizens to report their presence in the country.

### **Conclusion**

The Commission intends to contact the Irish authorities to discuss the above-mentioned practices, which may be in breach of Community law.<sup>?</sup>

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<sup>1</sup> On 26 October 2004, the European Union, the European Community and Switzerland signed an agreement on Switzerland's association with the implementation, application and development of the Schengen acquis. When the Council reaches a decision on the full application of the Schengen rules to Switzerland, the equivalence of residence permits and visas will come into play, and holders of Swiss residence permits will be able to move around the Schengen area for maximum stays of three months, on the basis of their residence permit. Equally, holders of residence permits issued by Schengen countries will be able to go to Switzerland on the basis of their residence permit.

<sup>2</sup> OJ L 172, 28.6.1973.