

EUROPEAN PARLIAMENT

2004



2009

Committee on Petitions

3.07.2006

NOTICE TO MEMBERS

Petition 545/2004 by Klaus Neidhardt (German), on freedom of movement and sojourn for European Union citizens and their dependents within the Member States

1. Summary of petition

The petitioner indicates that, on 4 June 2004, border police at the Zinnwald/Cinovec crossing refused to allow his spouse entry into the Czech Republic to accompany him on a one-day visit, despite the fact that she produced a marriage certificate and a valid passport, on the grounds that she was a Thai national and accordingly required a visa.

2. Admissibility

Declared admissible on 30 November 2004. Information requested from the Commission under Rule 192(4).

3. Commission reply, received on 3 July 2006.

‘Community law:

Council Regulation (EC) 539/2001 of 15 March 2001 lists the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States and those whose nationals are exempt from that requirement¹. Since Thailand is listed under Annex I of the Regulation its nationals are required by countries implementing it (all the Member States including the new Member States from 1 May 2004, except for Ireland and the United Kingdom, together with Iceland and Norway) to be in possession of a visa.

The mutual recognition of visas applies among Member States implementing all of the Schengen rules in this respect: a Schengen visa entitles its holder to enter the territory of other Schengen countries for a brief visit. In addition, possession of a residence permit issued by one of these countries is equivalent to a visa for entry into the Member States applying all the Schengen rules regarding visas, enabling third country residence permit holders to cross

¹ OJ L 81, 1.3.2001.

external borders and move freely for brief periods of up to three months per half-year within the Schengen area, provided that they hold a valid passport in addition to the residence permit¹. The Schengen provisions referred to here are not yet being implemented in the new Member States. Under Article 3(2) of the Act of Accession, the Council will, when appropriate, decide on the necessary action.

On requiring the petitioner's Thai spouse to produce a visa on 4 June 2004, the Czech authorities were acting in accordance with Regulation No 539/2001 and were justified in so doing even if she held a German visa or residence permit (the petition does not specify whether this was in fact the case), since the Czech Republic is not yet implementing all the Schengen rules and residence permit-visa equivalence arrangements do not yet apply.

The fact that a third country national is married to a European Union citizen does not in itself have any significance regarding the visa requirement itself but only the procedures for the issuing thereof. Under Community law regarding freedom of movement of persons, on the one hand Member States (including the new Member States) may require production of a visa while, on the other hand, they are required to afford to members of the families of European Union citizens exercising their right to freedom of movement every facility for obtaining the visa (Article 3(2) of Directive 68/360² and Article 3(2) of Directive 73/148³) and to issue the visa free of charge (Article 9(2) of Directive 68/360 and Article 7(2) of Directive 73/148).

Case law has also been established by the Court of Justice in this connection. In its judgement of 25 July 2002 in Case C459-99 (MRAX) the Court ruled that, if Article 3(2) of Directive 68/360 and Article 3(2) of Directive 73/48 are not to be denied their full effect, 'a visa must be issued without delay and as far as possible at the place of issue into national territory' adding that, in view of the importance attached by the Community legislature to the protection of family life, 'it is at any event disproportionate and therefore prohibited to send back a third country national married to a national of Member State where he is able to prove his identity and the conjugal ties and there is no evidence to establish that he represents a risk to public policy, public security or public health within the meaning of Article 10 of Directive 68/360 and Article 8 of Directive 73/148'.

German legislation:

In his letter the petitioner refers to German legislation. While it is not applicable in this case, which concerns refusal of entry into the territory of the Czech Republic, by way of information, the following provisions apply.

Concerning the law applicable at the time, the *Gesetz über Einreise und Aufenthalt von Staatsangehörigen der Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft* (Law concerning the entry and residence of nationals of Member States of the European Economic Community), to which the petition refers, it should be noted that the visa exemption contained

¹ Article 21 of the Convention implementing the Schengen Agreement.

² Council Directive of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for the workers of Member States and their families, OJ L 257, 19.10.1968.

³ Council Directive of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, OJ L 172, 28.6.1973.

in Article 2(3) applies only to Member State nationals.

Article 2(4) of the *Gesetz über die allgemeine Freizügigkeit von Unionsbürgern* (Law concerning the free movement of citizens of the Union), which replaced the previous law, entering into force on 1 January 2005, indicates that 'Unionsbürger bedürfen für die Einreise keines Visums und für den Aufenthalt keines Aufenthaltstitels. Familienangehörige, die nicht Unionsbürger sind, bedürfen für die Einreise eines Visums, sofern eine Rechtsvorschrift dies vorsieht' ('European Union Member States do not require a visa for entry or a residence permit in order to stay. Family members who are not European Union citizens require a visa for entry if specified by law'). The final words of this German legal provision refer to the provisions of Community law regarding visa obligations as set out above.'