

# EUROPEAN PARLIAMENT

2004



2009

*Committee on Petitions*

10.11.2006

## NOTICE TO MEMBERS

**Petition 0016/2006 by Ms. Sinéad Quinn (Irish), on Spanish and Irish legislations on residence and citizenship related rights leading to restraints to the freedom of movement within EU Member States.**

### 1. Summary of petition

The petitioner, Irish citizen residing in Spain for over 9 years, married a Moroccan citizen in Morocco, in June 2004. She claims that the Spanish legislation on residence and the Irish legislation on granting citizenship impede her husband to clear his legal status in one or the other of the two countries, thus, generating obstacles for her to move and work freely within the EU Member States. She disputes the fact that she cannot register her marriage in Spain as she is not a Spanish citizen or in Ireland as she didn't get married there. The petitioner shows that, as the couple does not reside in Ireland, her husband cannot apply for Irish citizenship (where a 5 years residence is required for granting citizenship). Moreover, as she is only a resident in Spain, he cannot apply for Spanish citizenship either. She claims that, as a result of her husband not being able to obtain a European passport, her rights of freedom of movement are restrained (she would like to be able to move and work freely in another EU Member State).

### 2. Admissibility

Declared admissible on 4 April 2006. Information requested from the Commission under Rule 192(4).

### 3. Commission reply, received on 10 November 2006.

#### Facts

The petitioner, an Irish citizen, working and residing in Spain for over 9 years married a Moroccan citizen in Morocco in June 2004. Her husband obtained a visa and came to Spain in December 2004 but was issued with a residence card only in October 2005. According to the petitioner, during those ten months he was not able to leave the country or work. The petitioner also alleges that her husband was given a residence card for the same duration as

her own (two years) after which they will have to prove they are still married which could prove to be a problem since they cannot register their marriage in Ireland (as they were not married there) nor in Spain (since they are not Spanish). Moreover, she has been informed that it would take eight months to obtain a visa for her husband in order for them to return to Ireland and complains that the visa section of the Irish embassy was very uncooperative. The petitioner also claims that, as the couple does not reside there, her husband cannot apply for Irish citizenship since the new Irish legislation requires five years previous residence in Ireland in order to acquire citizenship. Moreover, her husband would require ten years of residence to obtain Spanish citizenship while if she were Spanish he would obtain it in a year. She questions why the Spanish rules on acquisition of citizenship differentiate between spouses of Spaniards and spouses of other EU nationals and why the Irish rules on acquisition of citizenship differentiate between residents and non residents. She claims that as a result of her husband not being able to obtain a European passport, her rights of freedom of movement are restrained.

### **In law**

The Community legislation applicable to the petitioner at the moment when the facts occurred was Directive 68/360/EC of 15 December 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families. This text has been replaced as from 30 April 2006 by 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 States.

Under Directive 68/360/EC and currently Directive 2004/38/EC, Member States are obliged to grant family members who are not citizens of the Union every facility for obtaining any necessary visas. Although family reunification rights of citizens of the Union in their own Member State falls within national competence, the Court of Justice has ruled in its judgment of 7 July 1992 in Case C-370/90, *Singh*, that Community law properly construed requires Member States to grant leave to enter and reside in its territory to the spouse, of whatever nationality, of a national of that State who has gone to another Member State in order to work there and returns to establish himself or herself in the State of which he or she is a national. The spouse must enjoy at least the same rights as would be granted to him or her under Community law if his or her spouse entered and resided in another Member State including that of being accorded every facility to obtain visas.

Community law also obliges Member States to grant family members a residence card as soon as possible and in any event no later than six months from the date of application for the permit. In this regard it is noted that Spain has been recently condemned by the Court of Justice in its judgment of 14 April 2005 in case C-2003/157, *inter alia*, for failing, in breach of Community law, to issue a residence permit as soon as possible and in any event not later than six months from the date on which the application was submitted.

Concerning the allegation that the petitioner's husband was not allowed to work or travel during those 10 months, it is recalled that, as confirmed by the Court of Justice in the judgment against Spain, the right of entry into the territory of a Member State granted to a third country national who is the spouse of a national of a Member State derives from the family relationship alone. Therefore, the issuance of a residence permit to such a family member is to be regarded, not as a measure giving rise to rights but as a measure by a

Member State serving to prove the individual position of a national of a third country with regard to the provisions of Community law. It was, therefore, not necessary for the petitioner's husband to wait for the issue of the residence card in order to work in Spain or to request a visa to travel to Ireland.

The new Directive 2004/38/EC expressly provides that the possession of a residence card or of a certificate attesting submission of an application for a family member residence card may under no circumstances be made a precondition for the exercise of a right, such as the right to work, since entitlement to such rights may be attested by any other means of proof.

With regard to the alleged difficulty for the petitioner and her husband to prove that they continue to be married because of the difficulties encountered to register the marriage in Spain or in Ireland, the Commission recalls that it should suffice to present the proof of marriage in Morocco when the time comes to renew the residence card. The Spanish authorities are nevertheless entitled to ensure that the marriage is authentic and that the petitioner and her husband are not legally separated, before renewing it.

Finally, as to the legal requirements applicable in Spain and Ireland to obtain citizenship, this is a matter which falls under the exclusive competence of the Member States and the Commission may not intervene. However, the fact that the petitioner's husband does not possess a passport issued by an EU Member State should not be an obstacle to his right of free movement. Directive 2004/38/EC provides that possession of a valid residence card issued in a Member State shall exempt family members who are third country nationals from the visa obligation. Therefore, as from 30 April 2006, the petitioner's husband may travel with his valid Spanish residence permit to any Member State without a visa and also to Morocco without having to request a visa to return to an EU Member State, provided he travels accompanied by the petitioner or that he intends to join her in the Member State in question. The Commission will take contact with the petitioner to inform her of her rights and to advise her to make use of means of redress available at national level which, as a rule, should enable her to assert her rights more directly and more personally.