



11.5.2010

## NOTICE TO MEMBERS

Subject: Petition 0635/2008 by Sergei Chubov (stateless), on his problems with the German aliens authorities in connection with the issue of a travel document

### 1. Summary of petition

The petitioner, who comes originally from the former USSR, is an asylum seeker and has been resident in Germany since 1990. In January 2008 the German authorities issued him with a travel document valid for six months, stating that the document entitled the holder to enter Germany within three months of leaving it. However, the travel document states that the petitioner holds a 'tolerated stay permit' (Duldung), in other words that his deportation from Germany has been postponed. This note implies that, under Article 2(15) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), in which asylum applications are listed as one of the exceptions, the petitioner does not have the right to visa-free entry into the Schengen area. Since the petitioner considers that the German authorities' statements are inconsistent, and since the information he has received from the consular representations of a number of EU countries are contradictory, he calls on the European Parliament to address the matter.

### 2. Admissibility

Declared admissible on 16 October 2008. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 11 May 2010.

Article 1(2), second subparagraph, third indent, of Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the

external borders and those whose nationals are exempt from that requirement, as amended by Council Regulation (EC) No 1932/2006, provides that stateless persons and other persons who do not hold the nationality of any country, who reside in a Member State and are holders of a travel document issued by that Member State, are exempt from the visa requirement.

Thus, generally, the petitioner's travel document issued for stateless persons would entitle him to benefit from the above visa-free travel to the other EU Member States.

However, it can be understood from the file that an expulsion order had been issued against the petitioner, the implementation of which has been postponed by a decision (Duldung – exceptional leave to remain limited to the territory of Bavaria) which is entered in the stateless travel document. Member States had to notify all the residence permits they issue to third-country nationals and thus which allow for free circulation in the Schengen area without internal borders. Germany notified under Article 34 of Regulation 562/2006 (Schengen Borders Code) that such a "Duldung" is not valid for entry without a visa. It means that the petitioner is not entitled to travel to another Schengen State without a visa if such a "Duldung" has been stamped in his travel document.

Furthermore, the German authorities included two entries into the petitioner's travel document, one stating that he is entitled to return to Germany, the other stating that this is not the case if he travels to another EU Member State.

The conditions of stay exceeding three months and other related measures are, for the time being, only partly harmonised at EU level. The issuance of residence permits and its conditions still fall within the national competences of the Member States. Thus, the Commission is not in a position to intervene on such questions or assess the measures of the Member State.

The petitioner should contact the competent German authorities for further explanations, or for a possible appeal against their decisions, if German law so provides.