



24.6.2010

NOTICE TO MEMBERS

Subject: Petition 1720/2009 by Mr. Vince Llewelyn (British), on the non-recognition of the British civil partnership in France and the visa requirement for his partner

1. Summary of petition

The petitioner, who has concluded a British civil partnership with a New Zealand citizen, would like to work in France, but cannot have his partner join him without a visa. According to the petitioner, unlike spouses of EU citizens, partners are not entitled to the long-term visa for family members, the only options available being working holiday, tourist or student visas. He believes that the situation is discriminatory.

2. Admissibility

Declared admissible on 1 March 2010. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 24 June 2010.

Under applicable EU law¹, France is entitled to require third country nationals to have an entry visa. However, under Regulation 539/2001, the nationals of New Zealand can travel visa-free to the EU Member States for short stays.

Article 2(2)(b) of Directive 2004/38/EC² provides for the right of registered partners to

¹ Council Regulation 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 (OJ L 81, 21.3.2001, p. 1).

² 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

accompany or join an Union citizen in the host Member State which treats registered partnerships as equivalent to marriage.

Although French legislation provides for registered partnership (*Pacte Civil de Solidarité - PACS*), it does not treat registered partnership as equivalent to marriage. Nevertheless, when someone seeks entry and residence in France in his or her capacity of a registered partner of a Union citizen, the French authorities are by virtue of Article 3(2) of the Directive obliged to facilitate his or her entry and residence in accordance with its national legislation. This implies that the authorities must undertake an extensive examination of the personal circumstances of the partner. Refusal of entry and residence must be justified, notified in writing and is subject to an appeal. This applies to all registered partnerships, regardless of whether they are same-sex or opposite sex couples.

Regarding the non-recognition by the French authorities of the civil partnership contracted by the petitioner and his partner, the Commission has already written to the French authorities concerning the difficulties to which British citizens who concluded a civil partnership in the United Kingdom are confronted with in France and who can neither benefit from its recognition in France nor conclude a *Pacte Civil de Solidarité* as they are not single. The Commission stressed that the impact of such a situation at the personal, administrative, patrimonial or economic levels, would be likely to prevent the Union citizens concerned from fully enjoying their right of residence in France. It also indicated that these difficulties would raise questions in relation to EU law, in particular as regards the principle of non-discrimination on the basis of nationality and the right of residence of Union citizens.

In order to solve these difficulties, the Assemblée Nationale adopted on 28 April 2009 an amendment to Article 515-1-7 of the French Civil Code whereby "*les conditions de formation et les effets d'un partenariat enregistré ainsi que les causes et les effets de sa dissolution sont soumis aux dispositions matérielles de l'Etat de l'autorité qui procède à son enregistrement*"¹. It is not for the Commission to interpret this national provision. However, it is the Commission's understanding that such an amendment would end the difficulties the petitioner faced when trying to travel to France.

the territory of the Member States (OJ L 158, 30.4.2004, p. 77).

¹ Amendment published in the Official Journal on 13 May 2009. *The conditions for concluding a registered partnership as well as the effects thereof and the causes and effects of its dissolution are subject to the substantive law of the State of the authority competent for registering this partnership* (unofficial translation).