



12.7.2010

## NOTICE TO MEMBERS

**Subject: Petition 1909/2009 by Y.N. (Russian - Swedish resident), on breach of the EC Directive 2003/109 concerning the status of third-country nationals who are long-term residents by Swedish authorities**

### 1. Summary of petition

The petitioner, who is a Russian national married to a Swedish citizen, maintains that the Swedish authorities would have breached the EC Directive 2003/109 concerning the status of third-country nationals who are long-term residents as they have refused to grant him a residence card. The petitioner also argues that the Swedish authorities would have disregarded the fact that his wife holds dual citizenship (Swedish and Finnish). According to the petitioner, the applicant seeking to obtain a residence card in Sweden would only need to register with the Swedish Migration Board. The petitioner maintains that his application was rejected, decision communicated to him on December 3rd, 2009. On the same date he was informed that a plane ticket would be bought for him to leave Sweden by mid-December. He asks for the intervention of the European institutions with the Swedish authorities to suspend these procedures until he receives solutions to his petition, which was also submitted to Solvit.

### 2. Admissibility

Declared admissible on 30 March 2010. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 12 July 2010.

The petitioner is a Russian national and married to a Swedish national living in Sweden. He alleges that by refusing to issue him a residence card, the Swedish authorities have breached

Directive 2004/38/EC<sup>1</sup> and Directive 2003/109/EC<sup>2</sup>.

On the basis of the information provided, the problem at issue would seem to be purely internal and, in this situation, the Commission has no power to intervene.

EU rules on free movement<sup>3</sup> only apply to Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members who accompany or join them. A non-EU spouse of a Union citizen, who resides in his/her country of nationality and never exercised the right of free movement, cannot benefit from the right to family reunification under Directive 2004/38/EC.

The Commission has also received an individual complaint from the petitioner. It seems that the Union citizen with whom the petitioner is married holds both Finnish and Swedish nationality.

Directive 2004/38/EC is silent when it comes to the rights of Union citizens holding the nationality of two Member States and residing in one of the Member States of nationality.

A question concerning the double nationality issue was referred to the Court of Justice for a preliminary ruling in case C-434/09 *Shirley McCarthy v Secretary of State for the Home Department* and is pending.

On the basis of the information provided to the Commission, the petitioner's application for a residence card was rejected by the Swedish authorities on the ground that it was not possible to establish a right of residence of the Union citizen. This does not, however, necessarily imply that the petitioner's residence in Sweden is unlawful. The Commission is not aware that an expulsion decision was taken against the petitioner. The Commission replied to the petitioner on 26 April 2010 providing him with an analysis of his situation in the light of applicable EU law.

The petitioner replied to the Commission saying that he had re-submitted the application for a residence card and that the decision of the Swedish authorities to refuse his initial application was not subject to review. The Commission is aware that certain decisions are not subject to review and envisages raising this issue in the framework of its general discussions with Sweden on the conformity with Directive 2004/38/EC.

As regards the alleged violation of Directive 2003/109/EC, which regulates the right of third country nationals to be granted the status of long-term residents after five years of legal and continuous residence in a Member State, provided that certain conditions are met, the Commission has no information as to whether the petitioner can be considered a long term resident under that Directive or if an application for such status was submitted with the Swedish authorities. Consequently, the Commission is not in a position to assess whether the

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<sup>1</sup> 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 (OJ L 158 of 30 April 2004, p. 77).

<sup>2</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).

<sup>3</sup> Article 21 TFEU and Directive 2004/38/EC.

Swedish authorities have acted contrary to Directive 2003/109/EC.