



EUROPEAN PARLIAMENT

2009 - 2014

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*Committee on Petitions*

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16.12.2011

## NOTICE TO MEMBERS

**Subject: Petition 0401/2009 by Avram Simon (German), on alleged discrimination on the grounds of nationality in the United Kingdom and obstruction of freedom of movement**

### 1. Summary of petition

The petitioner who is a German pensioner living in the United Kingdom complains about the fact that Your Homes Newcastle has rejected his application for Council housing. Your homes holds that the petitioner is not a qualifying person for the housing they offer because it considers that he is "a person from abroad and subject to immigration control". The petitioner protests against this status and maintains that he is being discriminated against on the grounds of nationality and that his right to freedom of movement within the EU is breached.

### 2. Admissibility

Declared admissible on 22 June 2009. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 1 September 2009.

The petitioner, a German pensioner residing in the United Kingdom complains about the fact that the UK authorities have rejected his application for social housing on the grounds that he did not pass the Habitual Residence Test and was unable to prove his worker status. The petitioner complains that he is being discriminated against on grounds of nationality and that his right to freedom of movement within the EU is breached.

Article 18 of the EC Treaty stipulates that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect. The

respective limitations and conditions are to be found in 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.

As stipulated in Article 24(1) of the Directive, subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all EU citizens residing in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty.

Access to social housing falls within the scope of the Treaty and there should be no discrimination on the grounds of nationality. The requirement to pass the Habitual Residence Test is a condition which the UK nationals are more likely to pass, thus introducing an indirect discrimination on the grounds of nationality. Such condition could be justified only if it were based on objective considerations independent of the nationality of the persons concerned and proportionate to the legitimate aim of the national provisions.

To assess the compliance of the Housing Act 1996, the Commission has asked the UK authorities to provide their observations on the Habitual Residence Test and its justification.

#### **4. REV Commission reply**, received on 16 December 2011.

As indicated in its previous communications concerning this petition, the Commission asked the UK authorities to provide their observations on the Habitual Residence Test (HRT) and its justification.

The UK authorities replied on 16 June 2011 and described the applicable UK legal framework. According to the UK rules, certain categories of EU citizens<sup>1</sup> are eligible for an allocation of social housing without having to be habitually resident in the UK so they will be eligible for social housing as soon as they arrive to the UK.

On the other hand, EU citizens whose right of residence in the UK is conditional upon having sufficient resources<sup>2</sup> and their family members must be habitually resident in the UK to be eligible for assistance.

Concerning the HRT, the UK authorities stated that the term “habitual residence” is not defined in UK legislation but it is a matter of fact, taking into account all the circumstances in a particular case. The test focuses on the facts and the nature of the residence. UK case-law has established that decision-makers must consider factors including the general nature of the residence; reasons for coming and the length of actual residence.

In the context of social housing, the UK authorities confirmed that the HRT can usually be met after 3 months of residence which demonstrates a sufficient link and integration with the UK. The HRT also applies to UK nationals. A difference in treatment between UK nationals (who are generally better positioned to meet the HRT) and EU citizens can be justified in the

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<sup>1</sup> Workers, self-employed persons, person retaining status of worker, EU citizens with permanent residence in the UK and family members of all the above listed groups of EU citizens

<sup>2</sup> EU citizens falling under Articles 7(1)(b) or (c) of the Directive 2004/38/EC

view of the UK authorities as the system achieves the legitimate aim of proper and fair distribution of a scarce public resource which affords a settled home to those who are eligible and have sufficient priority.

### Conclusion

The petitioner's application for social housing was lodged only several weeks after his arrival to the UK. Having analysed his case, the Commission has not identified any violation of EU law.