NOTICE TO MEMBERS

Subject: Petition No 0389/2018 by K. K. (Estonian) on rights of persons with “undetermined citizenship” in Estonia

1. Summary of petition

The petitioner expresses concern regarding the situation of persons with “undetermined citizenship” in Estonia who account for 7% of the Estonian population. The petitioner states that despite the fact that many of them have lived in Estonia for many years or were born there, they do not enjoy the same rights as Estonian citizens or European Union citizens. In view of the petitioner, EU citizens coming to Estonia enjoy more rights and freedoms than non-citizens living there.

The petitioner alleges that Article 49 TFEU introducing the freedom of establishment is limited to EU nationals and non-citizens who establish a company cannot freely move in the EU. Non-citizens are not included in the reciprocity principle under the visa framework agreement and can only travel to 15 countries outside the Schengen area. Non-citizens are also purportedly unable to exercise the rights stipulated by the Brussels IIa Regulation which resolves disputes on matrimonial matters. The petitioner objects to the changed legal situation through the abolishment of Declaration 2 on Nationality which is no longer attached to the current EU Treaties. The petitioner asks the Committee on Petitions to examine the situation of “persons with undetermined citizenship” or so-called “non-citizens”.

2. Admissibility

Declared admissible on 24 September 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 6 May 2019

The current petition concerns the same theme as inter alia petition 0747/2016, which was
voted to be closed on 24 April 2018 by the European Parliament’s Committee on Petitions, albeit from a different perspective.

According to settled case-law of the Court of Justice of the European Union, it is for each Member State having due regard to Union law, to lay down the conditions for the acquisition and loss of its nationality. In other words, the conditions, procedures and timeframe for obtaining citizenship of a Member State are regulated by the national law of the individual Member State, subject to respect for Union law.

While the Commission is aware that the situation of residents of undefined citizenship in Estonia may be regarded as a sensitive issue, it falls within Member States’ competence to intervene to reduce statelessness through acquisition of citizenship of a Member State. The Commission is committed to continue taking steps to address statelessness and the rights of stateless people, despite the limited EU competence in this matter.

At the workshop on “Political and electoral rights of non-citizen residents in Latvia and Estonia” held on 24 April 2018 by the Committee on Petitions, it was indicated that Estonia amended its Citizenship law from 1 January 2016, significantly simplifying requirements to obtain Estonian citizenship for Estonian long term residents. It was suggested that in comparison to other countries, naturalisation requirements in Estonia can be considered liberal, accessible, short and inexpensive. Naturalisation is open to almost all non-citizens.

On 3 May 2018 First Vice-President Frans Timmermans, during his Structured Dialogue with Members of the Committee on Petitions, highlighted liberalisation of naturalisation requirements in Latvia and Estonia and the apparent low interest of long-term residents to apply for citizenship.

As far as the Brussels IIa Regulation is concerned, this instrument, which is applicable in Estonia, contains rules to establish the court responsible for dealing with matrimonial matters and parental responsibility in disputes involving more than one country. Article 3 of this Regulation lists seven alternative grounds of jurisdiction in matrimonial matters, foreseeing the habitual residence of a spouse or both spouses in a Member State as the key factor to identify the competent court in different ways. Thus, nationality does not play an essential or indispensable role to determine jurisdiction under the Brussels IIa Regulation, since the nationality of both spouses is only a possible ground for allocating jurisdiction according to its Article 3.

In accordance with Article 6 of the Brussels IIa Regulation, a spouse who is habitually resident in a Member State or who is a national of a Member State (or who has his or her “domicile” in the United Kingdom or Ireland) may only be sued in another Member State on

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1 See, for example, the judgement of the Court of 2.3.10, Case C-135/08, Rottmann.
the basis of the rules in Articles 3 to 5 of the Regulation. Furthermore, Article 7(1) of the Brussels IIa Regulation sets out a rule on residual jurisdiction, by which, where the rules contained in Articles 3 to 5 do not allow to allocate jurisdiction to a court of any Member State, the national jurisdiction rules in each Member State may apply to determine whether a court of any Member State has jurisdiction. This rule in Article 7(1) only applies in relation to a respondent who is not habitually resident in nor a national of or (in the case of the United Kingdom and Ireland) domiciled in a Member State. As against such a respondent the rules of jurisdiction in a Member State may be pled by any national of that Member State as well as by any national of another Member State who is habitually resident in that State (as provided for by Article 7(2) of the Regulation). This is indeed a specific advantage linked to having, as a petitioner, the nationality of a Member State, but it does not exclude the possibility of applying national jurisdiction rules of Member States in most cases in which this condition is not foreseen by national law systems.

Regulation (EU) 2018/1806\(^3\) lays out the rules regarding the visa reciprocity principle. It notably states that full visa reciprocity is an objective which the Union should pursue in a proactive manner in its relations with third countries. The visa reciprocity mechanism contains provisions to address the situation when a third country, whose nationals can travel to the EU without a visa, apply a visa requirement for nationals of at least one Member State.

Therefore, a situation where a third country applies a visa requirement to non-nationals of a Member State cannot be considered to fall under the scope of the reciprocity mechanism.

Conclusion

In the light of the above, the Commission does not consider there being grounds for it to intervene in this case.