



31.1.2019

## NOTICE TO MEMBERS

**Subject: Petition No 0418/2018 by J.H. (German), bearing 128 signatures, on a problem with family reunification**

**Petition No 0552/2018 by N.V. (German), on a family reunification problem**

### 1. Summary of petition 0418/2018

The Petition describes the circumstances of a German citizen and her husband, a citizen of a third country. The husband was denied a residence permit to remain in Germany due to inadequate language skills.

### Summary of petition 0552/2018

The petitioner is appealing to Parliament because, she reports, her husband, a third-country national, was refused permission to reside in Germany, on the grounds that his knowledge of German was insufficient, and he has had to leave the country. The petitioner states that she is able to provide for herself and her husband.

### 2. Admissibility

Petition 0418/2018 declared admissible on 12 September 2018.

Petition 0552/2018 declared admissible on 5 November 2018.

Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 31 January 2019

#### Petition 0418/2018 and 0552/2018

Under European Union law, provisions concerning family reunification are laid down in

Council Directive 2003/86/EC<sup>1</sup> on the right to family reunification of third-country nationals and in Directive 2004/38/EC<sup>2</sup> on the right of Union citizens and their family members to move and reside freely within the territory of the Member States.

Council Directive 2003/86/EC only applies to third-country nationals and their family members, and not to European Union citizens. The German wife on whose behalf the petition is introduced is a European Union citizen and therefore Council Directive 2003/86/EC is not applicable to her.

For this reason, she can also not rely on the ruling of the Court of Justice of the European Union in case C-153/14 *Minister van Buitenlandse Zaken v K and A* to which the petition refers. In this ruling, the Court held that Council Directive 2003/86/EC allowed Member States to require a third-country national to pass an integration examination, including basic knowledge of the language, before allowing him to enter the Member State to live with his third-country national family member if the requirement does not make it impossible or excessively difficult to exercise the right to family reunification.

Council Directive 2004/38/EC only applies to European 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. Only such “mobile” European Union citizens can invoke the rights under this Directive, notably to be joined or accompanied by their family members, such as their spouses, regardless of the nationality of these family members.

However, the wife is a German citizen residing in Germany so Directive 2004/38/EC is not applicable to her. As a “non-mobile” European Union citizen, her right to family reunification is not covered by European Union law. Rather, it remains a matter of national legislation that determines the conditions that have to be met for third-country national family members to enter and reside with the European Union national in his/her country of nationality. Also, the requirement of passing a language test as a condition for family reunification falls within national German competence.

### Conclusion

To impose pre-entry language tests on third-country national spouses of German nationals not having exercised their right to free movement is not an issue which can be addressed under existing European Union law.

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<sup>1</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, *OJ L 251, 3.10.2003*.

<sup>2</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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), *OJ L 158, 30.4.2004*.