



30.1.2013

## **NOTICE TO MEMBERS**

Subject: **Petition 1547/2008 by Rubens Riotorto Bellomo (Uruguayan), on discrimination on the grounds of nationality**

**Petition 1757/2009 by Alejandro Guillen Valls (Spanish), on discrimination against his spouse, a Thai citizen resident in the Balearic islands, regarding air and sea fares**

### **1. Summary of petition 1547/2008**

The petitioner, who is legally resident in Melilla, feels he is being discriminated against because of his Uruguayan nationality and wants to benefit from the same reductions when purchasing airline and ferry tickets as other Community citizens resident in Melilla.

### **Summary of petition 1757/2009**

The petitioner objects to discrimination on grounds of nationality against his spouse, a Thai national resident in the Balearic islands, who is being refused the air and sea fare discounts to which residents of the Balearic islands are entitled. He argues that this also infringes the principle of the free movement of workers within the Union

### **2. Admissibility**

1547/2008: Declared admissible on 17 March 2009. Information requested from Commission under Rule 192(4).

1757/2009: Declared admissible on 16 March 2010 Information requested from Commission under Rule 202(6).

**3. Commission reply for 1547/2008**, received on 13 January 2011.

Based on the fact that the petitioner is not an EU citizen, but a legal resident with Uruguayan nationality, Article 12 of the Treaty that states that "Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited" is not applicable to his nationality.

However, under Directive 2003/109/EC, holders of a long-term resident permit enjoy equal treatment with nationals in a number of socio-economic areas, including access to goods and services made available to the public, as well as social assistance and protection.

The Commission has made contact with the Spanish authorities in order to get relevant information on the different tariffs applicable, including whether long-term resident holders benefit from the same reductions as EU nationals. The Spanish authorities have confirmed that the scheme on reductions from Melilla for airline and ferry tickets does not apply to non-European residents. They consider that this decision has received the support of the Abogacía del Estado. Following this information, the European Commission will consider taking further steps in order to ensure that the decision at issue does not infringe the Directive 2003/109/EC.

**Commission reply for 1757/2009**, received on 3 March 2011.

The petitioner, a Spanish citizen who resides in Spain with his wife who is a third country national, claims that his wife cannot benefit from the travel reductions for air tickets provided for residents in the Balearic Islands.

EU citizens residing in the Member State of their nationality do not normally benefit from the rights granted by Union law on free movement of persons, and their third country family members remain to be covered by national immigration rules. Consequently, the petitioner's wife does not fall within the scope of application of Directive 2004/38/EC.

However, under Directive 2003/109/EC, holders of a long-term resident permit enjoy equal treatment with nationals in a number of socio-economic areas, including access to goods and services made available to the public and social assistance and social protection. Provided that the petitioner's wife acquired such status, she would be entitled to benefit from the rights granted to the long-term residents.

The European Commission has contacted the Spanish authorities in order to get further information on the Spanish law in this area and is now considering whether further steps should be taken in order to ensure that the national law at issue does not infringe the Directive 2003/109/EC.

**4. Commission reply REV for 1547/2008 & 1757/2009**, received on 17 February 2012.

The Commission considered that the complaint could amount to a breach of Directive 2003/109/EC, under which holders of a long-term resident permit for non-EU nationals enjoy equal treatment with nationals in a number of socio-economic areas, including access to

goods and services made available to the public and social assistance and social protection. The Commission therefore contacted the Spanish authorities in March 2011.

In June 2011 the Commission received new information from the Spanish authorities to the effect that they accept the need to ensure equal treatment for third country nationals in respect of the transport subsidies in question. They explained that the national legislation in question would be amended and that the funds necessary to subsidise the travel reductions would be reallocated.

The Commission has asked the Spanish authorities for more information about the entry into force of the new legislation and is waiting for a reply. If need be, the Commission will consider taking further steps in order to ensure the full respect of Directive 2003/109/EC.

#### **5. Commission reply (REV II) received on 30 August 2012**

As previously explained, the Commission contacted the Spanish authorities a number of times, and most recently in February 2012.

Spain accepted the need to ensure equal treatment for third country nationals in relation to the transport subsidies in question. In their latest reply to the Commission dated March 2012, the Spanish authorities explained that further legislative changes are needed to bring the legislation in line with the EU *acquis*, but that the dissolution of the Spanish Parliament annulled all steps already taken. As a result, no draft legislation or calendar for adoption were submitted.

The Commission is currently in the process of sending a renewed request for more information to the Spanish authorities about the timetable for the coming into force of the new legislation and the financing of the scheme. If no satisfactory answer is received, the Commission will take the necessary steps to ensure compliance with EU law.

#### **6. Commission reply for 1757/2009 (REV III) received on 30 January 2013**

As was previously stated, the Commission has contacted the Spanish authorities on the subject raised by the petitioner a number of times, most recently in August 2012.

The Spanish authorities replied on 17 September 2012, attaching to their letter the draft of the legislation aiming to adapt Spanish law regarding discounts on sea and air transport for residents of the Canary Islands, Balearic Islands, Ceuta and Melilla in order to guarantee equal treatment for Spanish nationals, EU nationals and EU long-term residents. This legislative proposal is included in the draft preliminary general state budget law for 2013, which should enter into force on 1 February 2013.

The Commission will monitor the entry into force of this new legislation to verify that the equal treatment clause is preserved.