

Resolution on application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States

2007/2657(RSP) - 15/11/2007 - Text adopted by Parliament, topical subjects

The European Parliament adopted a resolution on the application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States. The resolution was adopted by 306 votes in favour to 186 against with 37 abstentions. It pointed out that the free movement of persons was an inalienable fundamental freedom accorded to Union citizens by the Treaties and by the Charter of Fundamental Rights, and constituted a linchpin of European citizenship. While the Directive allows a Member State to expel a Union citizen, it circumscribes that possibility within clearly defined limits intended to safeguard fundamental freedoms.

Parliament referred to the brutal attack on, and the murder of, a woman in Rome on 31 October 2007, the accused party being a Romanian national, and to the fact that Romanian citizens have been subject to racist attacks following this murder. It expressed its deep regret at the murder of Ms. Giovanna Reggiani, and sent its sincere condolences to her family. It reaffirmed the value of the free movement of persons as a fundamental principle of the Union, a constituent part of European citizenship, and a key element of the internal market, and also reaffirmed the objective of making the Union and its communities an area in which each inhabitant is guaranteed a high level of security, freedom and justice.

Parliament pointed minutely to the provisions of the Directive that circumscribe the possibility of expelling a Union citizen within very clearly defined limits. These include the following:

- Member States might not restrict freedom of movement and residence other than on grounds of public policy, public security or public health, and those grounds may not be invoked to serve economic ends. Any measures taken must accord with the principle of proportionality and be based solely on the personal conduct of the individual concerned and on no account on considerations of general prevention ;
- any expulsion decision must be preceded by an assessment designed to allow for the personal circumstances of the individual concerned, taking into account, for example, the duration of his/her residence, his/her age, his/her state of health, and family and economic situation, and the extent to which he/she has integrated in the host Member State;
- the persons concerned must have access to judicial and administrative redress procedures to appeal against the expulsion decision ;
- a citizen may be expelled if he/she imposes an unreasonable burden on the host Member State's social assistance system, subject to the proviso, however, that each individual case must be thoroughly examined and that the above condition cannot, under any circumstances, be considered sufficient in itself to justify automatic expulsion.

Parliament maintained that national legislation must, in every instance, conform exactly to these limits and safeguards, including the possibility of legal appeal against expulsion and the exercise of the right to a

defence, and that any exception laid down in Directive 2004/38/EC must be interpreted restrictively. Mass expulsions are prohibited by the Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

It supported the call by the President of the Italian Council and the Romanian Prime Minister for the Union to commit itself to the social integration of the most underprivileged populations and to cooperation among the Member States as regards management of their population movements, making use of the development and social aid programmes provided for under the Structural Funds. Parliament asked the Commission to submit a detailed assessment of the steps taken by Member States to implement Directive 2004/38/EC and of the correctness of its transposition by the Member States, together with any necessary proposals. Without encroaching on the remit of the Commission, it instructed its appropriate committee, in collaboration with the national parliaments, to complete an assessment by 1 June 2008 of the problems entailed in transposition of the Directive, highlighting best practice and those measures that might lead to forms of discrimination among European citizens.

Member States were called upon to cease all hesitation and move more rapidly to strengthen the means available for Europe-wide police and judicial cooperation in criminal matters so as to make for effective action to fight the trans-national phenomena of organised crime and trafficking in human beings, while providing a uniform framework of procedural safeguards. Parliament rejected the principle of collective responsibility and emphatically reaffirmed the need to combat every form of racism and xenophobia and all forms of discrimination and stigmatisation based on nationality and ethnic origin, as required by the Charter of Fundamental Rights. It reminded the Commission that it was imperative to submit a proposal for a horizontal directive to combat all the forms of discrimination referred to in Article 13 of the EC Treaty, as provided for in the Commission's 2008 legislative and work programme.

Parliament considered that protection of the rights of the Roma, and the integration of that minority, posed a challenge to the Union as a whole and called on the Commission to act by pursuing an overall strategy for social inclusion of the Roma and, not least, making use of the available budget lines and the Structural Funds to support national, regional, and local authorities in their efforts to bring about the social inclusion of the Roma. A network of organisations must be established, dealing with the social inclusion of the Roma as well as the promotion of awareness-raising instruments regarding the rights and duties of the Roma community, including exchange of best practices. Intensive and structured cooperation with the Council of Europe was extremely important for this purpose.

The resolution went on to state that public personalities were expected to refrain from statements that might be understood as encouraging the stigmatisation of groups of people. The recent statements to the Italian press by Franco Frattini, Commission Vice-President, in connection with the serious incidents in Rome were contrary to the spirit and the letter of Directive 2004/38/EC, a Directive with which he is called upon to comply in full.