

ADMINISTRATIVE FORMALITIES CONCERNING THE MEMBERS OF A FAMILY WHO ARE NOT NATIONALS OF A MEMBER STATE

Florentina LUPSA, Florin FRANT

“Eftimie Murgu” University, Reșița, Romania

Abstract: *The member states issue a residence permit to the family members of a citizen of the European Union that are non-nationals of a member state, for the case that their planned residence exceeds three months. The deadline for presenting the request for granting a residence permit is at least three months from the arrival date. The disregard for requesting a residence permit may expose the person in question to indiscriminate and proportional sanctions. The residence right for family members of a Union citizen who are not nationals for a member state is confirmed by issuing a document entitled „Family member residence permit for a citizen of the Union”, in a timeframe of maximum six months from the date that his or her request is presented. A confirmation of filing the request for the residence permit is issued immediately.*

Keywords: residence, family members, right, formalities

1. Issuing the residence permits

The right of residence for family members of a Union citizen who are not nationals of a member state shall be witnessed by the issuing of a document called "Residence card of a family member of a Union citizen", no later than six months from the date on which they submit the application. A certificate of application for residence permit shall be issued immediately. For issuing a residence permit one shall require the following documents:[1]

- a) A valid passport;
- b) A document attesting to the existence of a family relationship or of a registered partnership;
- c) The registration certificate or, in the absence of a registration system, any other proof of the Union citizen whom they accompany or join and who resides in the host member state;
- d) In the cases referred to in Article 2 (2) (c) and (d),[2] documents demonstrating the conditions that laid down therein;

- e) In the cases referred to in Article 3 (2) (a), a document issued by the relevant authority in the country of origin or country from which they come, stating that such persons are dependents or members of the household of a Union citizen, or proof of the existence of serious health problems requiring the personal care of the family member by the Union citizen;
- f) In the cases referred to in Article 3 (2) (b), evidence of a durable relationship with the Union citizen.

The residence permit issued proof of alien under the law of identity, home address or residence in Romania and certify the existence of the right of residence in Romania, and the duration and purpose for which they were granted this right.[3]

The residence permit issued proof of alien under the law of identity, home address or residence in Romania and certify the existence of the right of residence in Romania, and the duration and purpose for which they were granted this right.

The holder of the residence permit has several obligations:

- Not to give it away
- To always have it on you
- -To present it when ever requested to competent authorities

The residence permit is of three kinds:

- Foreigner temporary residence permits that has been granted or extended the right to appropriate and temporary residence permit is issued this
- The permanent residence permits hall be issued to the alien who was granted permanent residence.[4]
- Residence permit for employment purposes shall be issued to the alien who was granted or extended as appropriate and to the right of temporary residence and work right.

2. The validity of the residence permit

The residence permit referred to in Article 10 (1) is valid for five years from the date of issue or for the envisaged period of residence of the Union citizen, if this period is less than five years.

The validity of the residence permit is not affected by temporary absences, exceeding six months but not a year, or longer absences necessary to fulfil compulsory military service, or an absence of consecutive twelve months due to important reasons such as pregnancy and serious illness, study or vocational training, or a posting in another member state or in third country.

3. Keeping the residence permit by the family members in the event of the decease or departure of the Union citizen

With out prejudice to the provisions of the second paragraph, the Union citizen's death or departure from the host member states hall not affect the right of residence of his family members who are nationals of a member state.

Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in Article 7 (1) (a), (b), (c) or(d).

Without prejudice to the provisions of the second paragraph, the Union citizen's death

shall not entail loss of the right of residence of his family members who are not nationals of a member state and who have resided in the host member state as family members', for at least one year before the death of the Union citizen.

Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they can prove that they are self-employed persons or that they have sufficient resources for themselves and their family members so as not to become a burden for the social assistance system of the host member state during their period of residence and that they have comprehensive sickness insurance valid in the host member state or that they are members of a family already established in the host member state by a person who meets these requirements.

Sufficient resources are defined in Article 8 (4).

Such family members shall retain their right of residence exclusively on a personal basis.

The departure or death of the Union host member state citizens shall not entail the loss of the right of residence of the children or the parent who has custody of the children, irrespective of nationality, as long as they reside in the host member state and are enrolled in an university in situation or study there until graduation.

4. Keeping the residence permit by the family members in the event of the marriage annulment or cessation of the registered partnership

Romanian law doctrine considers divorce a path of dissolution of marriage, when relations between the spouses are seriously injured and any reconciliation is impossible, the continuation of marriage not reaching the purposes for which it was concluded thanks to the legally regulated circumstances and considered grounds for divorce.[5]

In the case of a divorce from a foreign element one shall determine the law applicable to divorce.[6]

Without prejudice to the second subparagraph, divorce, annulment of marriage or termination of registered partnership with a Union citizen referred to in Article 2 (2) (b), does not affect the right of residence of family members who are nationals of a member state.

Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in Article 7 (1) (a), (b), (c) or (d).

Without prejudice to the second subparagraph, divorce, annulment of marriage or termination of registered partnership referred to in Article 2, paragraph 2 (b), does not entail the loss of the right of residence of family members of a Union citizen who are not nationals of a member state in which cases:

- a) Prior to the initiation of judicial proceedings for divorce, annulment of marriage or termination of registered partnership, the said marriage or registered partnership has lasted at least three years, of which at least one year in the host member state or
- b) By agreement between the spouses or partners referred to in Article 2, paragraph 2 (b) or by court order, children were entrusted to a Union citizen spouse or partner who is not a national of a member state or
- c) This case is warranted by particularly difficult situations, such as having been a victim of domestic violence during the time when the marriage or registered partnership was still in force or
- d) By agreement between the spouses or partners referred to in Article 2, paragraph 2 (b) or by court order, the spouse or partner who is not a national of a member state has the right of access to a minor child, provided that the court has determined that visits should take place in the host member state and as long as necessary.

Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to

the requirement that they can prove that they are self-employed persons or that they have sufficient resources for themselves and their family members so as not to become a burden for the social assistance system of the host member state during their stay, and that they have comprehensive sickness insurance valid in the host member state, or family members already established in the host member state by a person who meets these requirements. Sufficient resources are defined in Article 8 (4).

Such family members shall retain their right of residence exclusively on a personal basis.

5. Keeping the residence permit

Union citizens and their family members have the right of residence provided for in Article 6, as long as they do not become a burden on the social assistance system of the host member state.

Union citizens and their family members have the right of residence under Articles 7, 12 and 13, as long as they meet the conditions set out therein.

In special cases, if there is reasonable suspicion that a Union citizen or family members do not meet the requirements of Articles 7, 12 and 13, member states may verify them. This survey is not performed systematically.

Reliance by a Union citizen or a member of his or her family on the social assistance system of the host member state does not automatically lead to taking an expulsion measure.

Notwithstanding the provisions of paragraphs (1) and (2) without prejudice, an expulsion measure may in no case be adopted against Union citizens or members of their families in cases where:

- a) The concerned Union citizens are self-employed or self-reliant
- b) In case of Union citizens entering the territory of the host member state in search of a work place. In this case, the Union citizens and their family members can not be expelled as long as the Union citizens can provide evidence that he or she are continuing

to seek employment and have a genuine chance of being employed.

6. Conclusions

- Any person who holds citizenship of the EU Member States is automatically a citizen of the Union. Union citizenship does not replace national citizenship but complements it. EU citizenship gives all EU citizens more important rights, including:
- The right to free movement within the European Union and laying anywhere on its territory;
- The right to vote and stand in municipal elections and European Parliament in the Member State where you reside, even if you are not a national of that State;
- The right to protection by the diplomatic or consular authorities of any EU country in a third country (a country that is not part of the EU)

Member State to which you belong is not represented by a consulate;

- The right to petition the European Parliament, to appeal to the Ombudsman and to make complaints in writing to any of the institutions or bodies of the European Union.

Your family members, whatever their nationality, have the right to accompany you or to join you in a Member State other than the one whose nationality you are. This applies regardless of the fact that previously they lived in another Member State, regardless of the type of visa they enter the territory of the host Member State. Spouses, partners (registered), descendants and ascendants are your family members. Family members mentioned above enjoy the rights granted by the Directive When choosing them join you or accompany you and the Member States are obliged to recognize their rights.

References

- [1] Niță Dan, Dragomir Eduard, *Libertatea de circulație a persoanelor*, Editura Nomina Lex, București, 2010, pg. 42.
- [2] Art.2 From the Directive 2004/38/CE of April 29th 2004 regarding the free circulation and residence right on the territory of a member state for the Union citizens” and their family members
- [3] Art. 104 from O.U.G. No. 194/ 2002 regarding the status of the foreigners in Romania, modified in 2008
- [4] Tatar Adrian Constantin, *Străinul rezident în România*, Editura C. H. Beck, București, 2008, pg. 262.
- [5] Corhan Adriana, *Dreptul familiei, Teorie și practică*, Editura Lumina Lex, București. 2001, pg. 232.
- [6] Zilberstein S., *Procesul civil internațional*, Editura Lumina Lex, București, pg .17.