



European Economic Area Rights of Residence and Removal of Citizens Between Member States

There has been much publicity and a certain amount of unfavourable comment about measures recently taken by President Sarkozy's government in France to deport to deport large numbers of Romas living in France back to their native countries, Romania and Bulgaria. French government spokesmen have claimed that these measures are legal within the EU and that the Roma concerned have agreed voluntarily to return to their own countries and have accepted cash handouts as inducements to return.

The Citizens' Directive –Given Effect in UK Law

2 The claim that these are voluntary repatriations is inevitably to be treated with scepticism. It is clear that any attempt to remove large numbers of people en masse without consideration of individual cases is unlawful. The basic United Kingdom law on removal between Member States and other aspects of the rights of citizens to move freely between Member States is contained within a statutory instrument, The Immigration (European Economic Area) Regulations 2006 (SI 2006 No. 1003) –referred to in this paper as the EEA Regulations - which gives effect in the UK to E U Directive 2004/38/EC, usually referred to as the Citizens' Directive. Immigration Rules made under section 3(2) of the Immigration Act 1971 regulate the entry into and stay in the United Kingdom **of persons required by that Act to have leave to enter**. Since citizens of EEA states do not require leave to enter the Immigration Rules do not apply to them and all matters relating to their entry into or stay in the United Kingdom are governed by the EEA Regulations. The European Economic Area includes all Member States of the European Union as well as Iceland, Norway and Liechtenstein.

Rights of Residence

3 Regulation 11 sets out conditions for the right of admission and provides that any EEA national must be admitted to the United Kingdom if he produces on arrival a valid national identity card or passport issued by an EEA state. That Regulation provides also that people who are not EEA nationals but are family members of EEA nationals must be admitted provided that they produce on arrival a valid passport and an EEA family permit or residence card.

4 Regulation 13 provides that an EEA national is entitled to reside in the United Kingdom for three months provided that he holds a valid national identity card or passport issued by an EEA State. A family member of such a national who is residing in the UK in accordance with Regulation 13 is entitled to reside in the UK. This provision of the Regulation does not refer to a three month limitation, as the family member's right to reside lasts only for so long as the EEA national resides and the period may be less than three months. The right of residence conferred by Regulation 13

ceases if the EEA national or family member becomes an unreasonable burden on the social assistance system of the UK or becomes liable to removal under Regulation 19(3)(b), explained in paragraph 7 below.

5 Regulation 14 gives an extended right of residence to any “qualified person”, defined by Regulation 6 as a jobseeker, worker, self-employed person, self-sufficient person or student. This Regulation is subject to Regulation 19(3)(b) explained in paragraph 7 below.

6 Regulation 15 sets out the categories of persons who acquire a permanent right of residence:

- an EEA national who has resided in the UK for a continuous period of five years;
- a family member of an EEA national who is not himself an EEA national but who has resided in the UK with the EEA national for a continuous period of five years;
- a worker or self-employed person who has ceased activity or family member of such a person;
- a family member of a worker or self-employed person who has died, provided that the family member was residing with him before he died and had been living in the UK for at least two years immediately before the death;
- a person who has resided in the UK for a continuous period of five years and was at the end of that period a family member who retained the right of residence.

Once acquired, the right of residence may be lost only by absence from the UK for a period exceeding two consecutive years. This Regulation is also subject to Regulation 19(3)(b), explained in paragraph 7 below.

Removal of EEA Nationals

7 Regulation 19(1) provides that a person who would otherwise be eligible to be admitted to the UK as an EEA national under Regulation 11 may be refused admission if his exclusion is justified on grounds of public policy, public security or public health. Regulation 19(3)(b) states that a person may be removed if he would otherwise be entitled to reside in the UK but the Home Secretary has decided that his removal is justified on grounds of public policy, public security or public health. As already noted, this provision qualifies the rights of residence conferred by Regulations 13, 14 and 15.

8 The right of removal under Regulation 19 is subject to detailed qualifications set out in Regulation 21. Decisions to remove may not be taken to serve economic ends. Decisions to remove may not be taken in respect of persons who have acquired a permanent right of residence except on **serious** grounds of policy or public security. Such decisions may not be taken except on **imperative** grounds of public security in respect of any EEA national who has resided in the UK for a continuous period of at least ten years beforehand or is under 18. The words “serious” and “imperative” are not defined in the Regulations and are open to interpretation. Following are the more detailed matters which must be taken into account in relation to decisions to remove:

- When a decision is taken on grounds of public policy or public security it must observe the principle of proportionality.
- The decision must be based exclusively on the personal conduct of the person concerned. Such conduct must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

- The decision must take account of the person's age, state of health, family and economic situation, length of residence in the United Kingdom, integration into the society of the UK and extent of the person's links with his country of origin. These are similar to the matters required to be taken into account by Paragraph 395B of the Immigration Rules when considering administrative removal of persons subject to those Rules.
- Decisions taken on grounds of public health must be based on epidemics as defined by the World Health Organisation or on a UK statute which authorises detention in hospital of persons who have contracted notifiable diseases. No such decision may be taken if the disease was contracted more than three months after the person's arrival in the UK.

Public Policy and Public Security

9 “Public policy” is not defined in the EEA Regulations or in the Citizens' Directive and its scope is to be judged by reference to decided cases in the European Court or UK courts. Some months ago the Dutch right wing politician Geert Wilders was refused admission to the UK on the ground of public policy, as there were concerns that he might inflame anti-Muslim sentiment. The government of the day later relented and he was admitted. It has been held that the expression is to be strictly construed, as the possibility of exclusion on this ground is a derogation from the fundamental principle within the EU of freedom of movement for citizens of Member States. A serious criminal record or known involvement in drug smuggling are obviously relevant factors in deciding whether removal of particular EEA nationals is justified. Case law has shown that an established record of this kind may be a basis for removal on the ground of public policy, provided it can be shown that the record of the person in question is evidence of a propensity to affect adversely a fundamental aspect of the wellbeing of UK society. An adverse record on its own, without such evidence is not enough.

10 “Public security” is also undefined in the EEA Regulations. Previous convictions are relevant but are not normally of themselves enough to justify exclusion. According to Jackson and Warr on Immigration Law and Practice, paragraph 4.146, “[Public security] is likely to encompass a range of suspected criminal activity and support for prohibited terrorist organisations in the UK or overseas that would make residence undesirable.” Public disclosure of such activity will often of itself be contrary to the national interest. Article 30 of the Citizens' Directive, which deals with the notification of decisions to remove, provides:

The persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, ***unless this is contrary to the interests of State security.***
[Emphasis supplied.]

Appeals against removal decisions in cases in which evidence is withheld for reasons of national security are heard by the Special Immigration Appeals Commission (SIAC) established by the Special Immigration Appeals Commission Act 1997. SIAC has power to deal with cases on the basis of evidence which because of national security considerations has not been disclosed to the appellant or to his representative.

Human Rights

11 As with any other form of removal or deportation, it is open to any person threatened with removal under the EEA Regulations to rely on the provisions of the European Convention on Human Rights (ECHR), and especially on Article 8, requiring respect for private and family life.

Recent Statistics

12 On 13 September the Immigration Minister, Damian Green, in answer to a Parliamentary Question, supplied figures showing numbers of removals and voluntary departures for European Union nationals for the five years from 2005 to 2009. (See Hansard for 13 September column 877W) Total numbers for each of these years were:

2005 - 3465

2006 - 2885

2007 - 1145

2008 - 1140

2009 - 1235

The accession of Romania and to a lesser extent Bulgaria goes a long way towards explaining the drop in the totals. Figures for Romania in 2005 and 2006 were 2325 and 1920 respectively and for Bulgaria 285 and 280. The figure for Romania in 2007, after accession, dropped dramatically to 200 and for Bulgaria to 25.

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