

## Member State Obligations and Reverse Discrimination

10 October 2009

Presentation by Valeria Ilareva,  
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## TCN Family Members of EU Citizens

*“The right of all Union citizens to move and reside freely within the territory of the Member States should, if it is to be exercised under objective conditions of freedom and dignity, be also granted to their family members, irrespective of nationality.” –*

Recital 5 of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (the EU Citizens Directive )

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### Entry and residence rights of TCN family members who are about to enter Community territory

#### Right to obtain an entry visa

Article 5 (2) of the EU Citizens Directive:

*“Member States shall grant such persons every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible and on the basis of an accelerated procedure.”*

ECJ, Case C-459/99, *MRAX*, judgment of 25 July 2002:

*“In view of the importance which the Community legislature has attached to the protection of family life (...), it is in any event disproportionate and, therefore, prohibited to send back a third country national married to a national of a Member State where he is able to prove his identity and the conjugal ties and there is no evidence to establish that he represents a risk to the requirements of public policy, public security or public health....”*

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### Entry and residence rights of TCN family members who already find themselves on Community territory

#### Previous lawful residence NOT required

ECJ, Case C-127/08, *Metock*, judgment of 25 July 2008:

The EU Citizens Directive *“precludes legislation of a Member State which requires a national of a non-member country who is the spouse of a Union citizen residing in that Member State but not possessing its nationality to have previously been lawfully resident in another Member State before arriving in the host Member State, in order to benefit from the provisions of that directive.”*

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### Family members of EU Citizens who reside in their country of nationality NOT COVERED

The EU Citizens Directive 2004/38/EC, Article 3 (1):

*“This Directive shall apply to all 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 as defined in point 2 of Article 2 who accompany or join them”*

Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC, 02 July 2009:

*“EU citizens residing in the Member State of their nationality do not normally benefit from the rights granted by Community law on free movement of persons and their third country family members remain to be covered by national immigration rules.”*

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## Bulgaria

Family members of  
Bulgarian EU  
Citizens:

Law on the  
Foreigners in the  
Republic of Bulgaria  
(LFRB), Article 1 (2)

Family members of  
other EU Citizens:

Law on the Entry,  
Residence and  
Departure of the  
Republic of Bulgaria  
of EU Citizens and  
the Members of their  
Family (LERD)

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## Reverse Discrimination

(less favourable treatment of a country's own nationals in comparison with nationals of other Member States)

ECHR, *Nassar and Others v. Bulgaria*, Application No. 33655/08

### Family members of EU Citizens who have exercised their right to free movement:

- Right to obtain an entry visa;
- Short term entry visa sufficient for residence purposes;
- Visas are issued in an accelerated procedure and free of charge;
- For the issuance of an entry visa Member States may require only the presentation of a valid passport and evidence of the family link;
- Irregular immigrants can receive residence cards

### Family members of EU Citizens who reside in their country of nationality:

- Visa granting lies within the sovereign discretion of the Bulgarian state, without a right to appeal;
- A permit for continuous residence can be received only after entering Bulgaria with a long-term visa;
- General visa procedure applies;
- Additional documents, such as proof of accommodation, sufficient resources, an invitation letter or return ticket, can be required;
- Irregular immigrants have no access to a residence card in Bulgaria

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## Member State Obligations under International Law: *The European Convention on Human Rights*

ECHR applications against Bulgaria claiming violation of Article 14 in relation to Article 8, ECHR:

- Application No. 20116/08, *Rahmani et Dineva c. Bulgarie*
- Application No. 33655/08, *Nassar and Others v. Bulgaria*

### \*Article 14 . Prohibition of discrimination

*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

### \*Article 8 . Right to respect for private and family life

*1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

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¿Solutions to Reverse  
Discrimination?

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Thank you!



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