

Summary: EU Treaty Rights refers to the rights EEA nationals derive from EU Treaty Law. The area is regulated by Directive 2004/38 (known as the Free Movement Directive) and the European Communities (Free Movement of Persons) (No.2) Regulations 2006 which transposes the Directive into Irish law.

The Directive provides that when an EEA national is exercising his EU Treaty Rights in some way, for example as a worker, he/she acquires various rights such as having family members reside with him/her. We have a particular specialisation in this area and have worked on a number of high profile High Court challenges that have clarified the interpretation of EU Law in Ireland. We frequently assist clients with EU Treaty Rights applications and appeals and are acting in several ongoing High Court cases in the area.

EU Treaty Rights is the term used to explain the rights Union Citizens derive from EU Treaty Law. The term is used in immigration law to refer to the particular rights of free movement and residency that Union Citizens and their family members acquire within the Member States. The area is regulated by Directive 2004/38/EC, as implemented in Ireland by the European Communities (Free Movement of Persons) (No.2) Regulations 2006. The Directive and the Regulations apply to citizens of the European Union, citizens of EEA member states and citizens of Switzerland who move to or reside in a Member State other than that of which they are a national, and to their family members who accompany or join them in the State.

The Directive provides that when a Union citizen is lawfully exercising his or her EU Treaty Rights as a worker, self employed person, a student, or self sufficient person, they acquire rights (both qualified and unqualified) to have their spouse, children or dependant family members reside with them in the State. Such family members who come within the ambit of this provision are provided with a residence card evidencing their entitlement to reside and work in the State for a five-year period. The Minister is obliged to complete the application process within six months. Successful applicants must then register their new status at the GNIB, while unsuccessful applicants are entitled to have the decision reviewed. EEA nationals and their family members who have resided in the State for over five years in accordance with the Directive/Regulations acquire an entitlement to permanent residency.

We have developed a particular specialization in the area of EU Treaty Rights Law at Brophy Solicitors. Over the years, we have acted for a great number of clients in respect of successful applications for residence cards, request for reviews and applications for permanent residency. We have taken a number of high profile cases to the High Court challenging the Minister's interpretation of the EU Law. Our case *Gogolova & Ors -v- MJELR*, [2008] IEHC 131 (2008) was referred to the European Court of Justice as part of the seminal case of *Metock v Ireland*, ECJ C-127/08, delivered on the 25th July 2008. The Court of Justice held in *Metock* that it is not a requirement of Directive 2004/38 that a family member of an EEA national has to have previously resided in another Member State, thus substantially expanding the number of family members who are entitled to rely on the Directive. In Ireland, the finding resulted in an amendment to the European Communities (Free Movement of Persons) Regulations 2006. The *Gogolova* case is noteworthy also because in the High Court judgement *Ms Justice Finlay Geoghegan* confirmed for the first time in this jurisdiction that Directive 2004/38/EC is a Directly Effective EU Law instrument.

We also took the case *Decsi v The Minister for Justice and Equality*, which resulted in the Minister's immediate cessation of the Ministerial policy to prohibit applicants for a residency card from working pending the determination of their application. Following our success in this case, all applicants for a residence card are now issued with a temporary permission to remain (Stamp 4) for the six month period while their applications are being considered and determined by the Minister.