



The Secretary of State for Asylum and Migration, Social Integration and the Struggle against Poverty

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Revocation of the right of residence of Union citizens in Belgium: evolution from 2008 to 2013 included

The European Directive 2004/38 states that “All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State”

Union citizens have the right of free movement in the Union States, but that right also entails obligations vis-à-vis their host Member State.

A consequence of this is that the host Member State can revoke the right of residence of a Union citizen if he or she is an unreasonable burden for the social assistance system. Apart from this the residence status of a Union citizen can also be revoked if the individual concerned does not longer comply with the terms of his right of residence, such as effectively being a student or actively being self-employed.

History

- EU Directive 2004/38 has been effectively transposed into Belgian Law and is being implemented since.
Initially the implementation of Directive 2004/38 was only possible in specific individual cases reported by the assistance agencies or on the basis of investigations or inspections by the Immigration Service (Office des Etrangers).
- To make the implementation more effective, a regular information exchange between the Government Service for Social Integration and the Immigration Service was introduced.

Procedure

- Unreasonable burden

A Union citizen receiving living allowances or the equivalent thereof during at least 3 months can be considered as an unreasonable burden.

- Right of residence is NOT automatically revoked

The right of residence of a Union citizen in such a situation will not be automatically revoked.

The Immigration Service will analyze every case individually on the basis of several criteria, such as:

- Duration of residence in Belgium
- Age
- Health condition
- Family situation
- Economic situation
- Integration in Belgium
- Ties with the country of origin

- Only in initial stage of residence

Only the situations of Union citizens who did **not** yet acquire the right of permanent residence will be investigated or scrutinised. Permanent residence status is acquired after five years of uninterrupted stay in Belgium.

→ In 2013 Belgium attuned its own existing “permanent residence” to EU Directive 2004/38. This entails:

- That Union citizens who resided for more than **3** years in Belgium **before** 11 July 2013 acquired permanent residence status so they do not have to worry their residence status will be revoked.
- That Union citizens who reside for more than **5** years in Belgium **after** 11 July 2013 acquire permanent residence status and do not have to worry their residence will be revoked.
- Permanent residence status can only be revoked if fraud was used to acquire the right of residence or Public Safety has been endangered.

- Additional information or documentation

If the Immigration Service does not have sufficient information to take a decision, the individual concerned has the possibility to demonstrate that he or she can sustain him/herself. He/she can provide additional evidence.

Other reasons to revoke the right of residence are for instance that the individual concerned is not actively self-employed any more, or one is not entitled to unemployment allowances, or one ended his or her studies etc....

- Possibility of appeal or to file a new request for residence status

When the Immigration Service revokes someone's residence status, the individual Union citizen can

- File an appeal
- File a new request for residence status if there are new or additional elements

- No effective removal from the territory

When the residence status is revoke, the Union citizen involved receives a notice from the Immigration Service known as an "Order to leave the territory".

In the case of a Union citizen this does not entail the effective, physical removal of the individual concerned. It means the individual's residence status has ended, that that person is not any longer registered and he or she is not any longer entitled to any form of allowance.

Effective physical removals of Union citizens only occur if fraud or Public Safety are involved.