

## From ILPA to European Policy Directorate IND 15 09 05 Immigration, Asylum and Nationality Bill

We discussed the removal of the right to a variation appeal under Section 82(2) where Community law issues are raised. Notwithstanding ILPA's general objection to the removal of variation appeals, we have a specific concern that the exception to the removal of those appeals does not include appeals based on breaches of Community law.

Although generally appeals relating to those benefiting from Community law fall within the scope of the Immigration (EEA) Regulations 2000 (as amended), there are significant categories of persons whose situation is provided for in Community law and where the refusal to vary or extend leave to remain would be a breach of Community law.

Firstly there are the directly effective rights of Bulgarian and Romanian nationals to establish themselves in self-employment. It would be in direct contradiction with the European Court of Justice's decision in the case of **Panyatova** if Bulgarian and Romanian nationals seeking to extend their leave to remain in business for instance were not able to appeal against a refusal in-country (paragraph 27 of the judgment). In ILPA's view it would be a removal of procedural safeguards and an unnecessary interference with their directly effective Community law rights if such nationals were prevented from bringing an appeal before a fact finding Tribunal.

Second there are the directly effective rights of Turkish nationals provided for in the Association Agreement with Turkey and the decisions of the Association Council particularly Decision 1/80. Again it would be in direct contradictions with the European Court of Justice's decision in the case of **Dorr and Unal** if Turkish nationals seeking to extend or vary their leave to remain in accordance with their right of residence under Article 6(1) of Decision 1/80 were unable to bring an appeal against refusal.

Finally there is the category of parents of self-sufficient children who are currently provided for in the Immigration Rules. You are aware of ILPA's fundamental objection that they should be subject to immigration control. In our submission the situation would be entirely inconsistent with Community law if this particular category of family members of EEA nationals was not able to appeal against the refusal to extend or vary their leave.

There are undoubtedly other categories of person who at present or in the future would rely on Community law rights to reside in the UK. It would be an extremely serious oversight and diminishing of procedural rights that would not accord with principles of Community law for those categories to be denied a right of appeal.