

**REPORT**  
**on the Free Movement of Workers**  
**in Estonia in 2004**

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## **Introduction**

The following report covers issues on free movement in Estonian legislation. This report covers the period of 2004. Where it has been reasonable the situation on free movement is dealt with before the accession to European Union and after the accession to the European Union.

During the year 2004 the two different periods should be born in mind. Before joining the European Union no free movement of persons was guaranteed. Although there were special conditions for the persons from the Member States of the European Union, the general free movement as it has been applied in the EU was not applicable.

Joining the European Union, changes in migration law were necessary. The Aliens Act mainly regulated the status of the aliens in Estonia. To guarantee the free movement between EU Member States, since 1 May 2004 a special Act on the European citizens and their family members came into force. This Act covers all the necessary EU directives and regulations in force at the time being.

Analysing the situation of migration in Estonia one should keep in mind that in Estonia there are a number of persons who are not citizens of any country (stateless persons). They possess only an alien's passport. These persons are allowed to stay and to work in the country concerned, i.e. in Estonia, but they do not have any right to be derived from the free movement of persons in the EU.

The accession to EU brought also changes in the civil service. Until 1 May 2004 all the positions in civil service were guaranteed only for the citizens of the Republic of Estonia. This is also the main principle that is stated in the Constitution of the Republic of Estonia (Art. 30.) As the principle of the free movement has also been applied, changes in the Civil Service Act were needed. Since 1 May 2004, also the citizens of the EU Member States have a right to be appointed on a position in Estonian civil service. In line with the restrictions of the free movement in the European Union the citizens of the Member States of the EU cannot fill all positions in the civil service. Some strategic positions are to be filled only by the citizens of the Republic of Estonia.

Generally speaking the accession to the European Union has not brought the massive migration from the other EU Member States. On the other side the expected massive movement to the other EU Member States was not registered. The main movement concerns free movement of workers to the Scandinavian states (Finland, Sweden). Mainly it concerns building construction and bus traffic.

As regards the Commission's comments on the Estonian report:

1. Chapter II. I agree with the comments. It was not just clear whether the issue of gender equality does have any relevance or not. In two examples reports that were sent the questions about gender equality also were dealt with. In 2005 the problems of gender equality will not be handled in chapter II.
2. The remark about the sportsmen concerns development for the year 2005. The critique will be taken into account by preparing report 2005.
3. The Internet sites are available. These are as follows: <http://www.legaltext.ee> for legal text in English and in Estonian. This internet site does not include all the Estonian legislation

The full database of the Estonian legislation can be found: <http://www.riigiteataja.ee>. This is available only in Estonian.

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The judgments of the Supreme Court of the Republic of Estonia are available at: <http://www.nc.ee>. These decisions are available only in Estonian. The judgments of the courts of the first and second instance are (not fully) available: <http://kola.just.ee>. The judgments are available in Estonian only.

4. There were difficulties to get necessary statistical data. I personally will make more efforts to get all the necessary statistical data for the report 2005. Here the general information till 30.8.2005

Decisions made by the migration and citizenship board concerning the issue of the residence permit for EU/EEA nationals:

### *2004*

legal income	612
employment	450
studies	289
business activity	149
joining the family member (EU / EEA)	42

### *2005 (till 31.08)*

legal income	694
employment	520
studies	149
business activity	171
joining the family member (EU/EEA)	74

### **Citizenship requirement for the captains of ships**

According to the Law of Ship Flag and Registers of Ships Act, there was a requirement for the captains, that they should be Estonian citizens.

#### *§ 3. Master of Estonian vessel*

The master of a sea-going vessel for which a paper of nationality has been issued must be an Estonian citizen.

This rule is not applicable since July 1, 2005. On that day an amendment came into force, according to which also the citizen of an EU or EEA Member State could act as a captain of a ship. There is no contradiction with EU law since July 1, 2005.

## Chapter I

### Entry, Residence, Departure

To discuss the problems about the entry, residence and departure of the aliens or citizens of the Member States of the EU, one should bear in mind the situation, which was applicable before and after the accession to the EU. Before the accession to the European Union there were not many special rules, which gave the citizens of the Member States of the European Union some advantages concerning the entry, residence and departure. Generally speaking, the general rules, which were applied to all aliens, were also applied in case of the citizens of the EU Member States. There was generally one exception – the citizens of the Member States of the EU were exempted from the quota, which was applied by determining the number of aliens who could get a residence permit.

During the period when the accession to the EU was prepared, a special law was adopted, which regulates the questions of entry, residence and departure of the Citizens of the EU. This law was meant to harmonise the Directives 68/360 EC and 64/221 EC. In case of the Citizen of the European Union Act (*Euroopa Liidu kodaniku seadus*, RT I 2004, 19, 134), the general rules of the Aliens Act are not applicable.

#### Entry

##### *Situation prior to the accession*

Before Estonia joined the European Union the Aliens Act was the only legal base, which regulated the legal status of aliens in Estonia. Although there were some exceptions, which were important also to the citizens of the EU Member States, nonetheless, they were treated as “normal” aliens.

To enter the Republic of Estonia a person must have a document, which determines his or her personal identification. According to § 11 of the State Borders Act (*Riigipiiri seadus*) an alien crossing the state border has to hold a valid travel document issued by a foreign state or an international organisation, or an alien’s travel document or a permit of return issued by the Republic of Estonia in which data concerning his or her visa or residence permit are entered, unless otherwise provided by law or an international agreement. Data concerning an alien’s residence permit need not be entered in a travel document issued by a foreign state or an international organisation, or an alien’s travel document issued by the Republic of Estonia if, in addition to the specified document, the alien also submits a valid identity card issued by the Republic of Estonia upon crossing the state border.

An alien under 15 years of age need not hold a travel document if he or she enters Estonia, stays in Estonia or departs from Estonia accompanied by a person in whose travel document the alien’s name, date of birth and photograph and data concerning his or her visa or residence permit, if a visa or residence permit requirement applies to the alien in Estonia, are entered. If the minor is under 7 years of age, his or her photograph need not be entered in the travel document held by the person accompanying the minor. Data concerning residence permit need not be entered in the travel document held by the person accompanying the minor if the minor has a valid identity card issued by the Republic of Estonia and it is submitted together with the travel document held by the person accompanying the minor upon crossing the state border.

In addition to this requirement, there is also need for a visa or residence permit. The persons who are applying for a residence permit must take into account, that there is a concrete number of persons, who can or could get a residence permit in a year. This number is called immigration quota. According to the Aliens Act § 6 the annual immigration quota is the quota for aliens immigrating to Estonia that must not exceed 0.05 per cent of the permanent population of Estonia annually. The Government of the Republic establishes the immigration quota. Within the limits of the immigration quota, the Minister of Internal Affairs may, by a ruling, establish a distribution of the immigration quota according to the grounds for application for the residence permit and the basis for issuing the residence permit, and the annual schedule. Persons who have the right to settle in Estonia outside of the immigration quota or to whom the immigration quota does not apply are not included in calculating fulfilment of the immigration quota (e.g. students).

There are also some categories of persons to whom the immigration quota is not applicable. These persons are citizens of the USA, Japan, EU Member States, Norway, Iceland and Switzerland.

According to § 7 of the Aliens Act all aliens entering and staying in Estonia must hold a valid passport or equivalent document. § 9 of the same Act determines that a legal basis must exist for an alien to enter Estonia or stay in Estonia.

Unless otherwise provided by law, the legal grounds for an alien to stay in Estonia are:

- 1) a residence permit;
- 2) a visa, within the term for stay in Estonia prescribed thereby;
- 3) the right to stay in Estonia arising from an international agreement;
- 4) the right to stay in Estonia arising from a resolution of the Government of the Republic to forego the visa requirement;
- 5) the right or obligation to stay in Estonia directly arising from law, a court decision or administrative act.

An alien who is a citizen of a foreign state with which Estonia has entered into an agreement for visa-free travel or the citizens of which are unilaterally relieved of the visa requirement in Estonia may stay in Estonia for up to a total of ninety calendar days during six months, unless otherwise provided by an international agreement.

Aliens have to apply for a visa or temporary residence permit at the representations of the Republic of Estonia unless otherwise provided by the Aliens Act

A visa is a permit granted to an alien to enter Estonia through a border checkpoint open for international travel and to stay in Estonia for the period of time indicated on the visa.

Residence permits are:

- 1) temporary, which are issued for a term of up to five years;
- 2) permanent.

A temporary residence permit may be issued to aliens:

- 1) for employment;
- 2) for enterprise;
- 3) for study in an educational institution according to the application of the educational institution;
- 4) in order to settle with a close relative permanently resident in Estonia;
- 5) whose permanent legal income ensures their subsistence in Estonia;
- 6) whose application for a residence permit is based on an international agreement.

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A permanent residence permit may be issued to an alien who has resided in Estonia on the basis of a temporary residence permit for at least three years within the last five years and who has a valid residence permit, a residence in Estonia and permanent legal income for subsistence in Estonia.

### *The situation after accession to the EU*

The situation after the accession to European Union has brought some changes in questions of entry to the Estonia.

According to § 11 of the State Borders Act a citizen of the European Union arriving in Estonia shall hold a valid identity document issued in a Member State of the European Union. Upon arrival in Estonia, a family member of a citizen of the European Union who is not a citizen of the European Union must hold a valid identity document recognised by the Republic of Estonia and in conformity with international requirements and a visa or residence permit of Estonia or a residence permit of a Member State of the European Union.

The main Act, which determines the legal status of the citizen of EU is the Citizen of European Union Act (*Euroopa kodaniku seadus*). According to § 2 of this Act, a citizen of the European Union is a person who is a citizen of another Member State of the European Union than Estonia. § 4 of the Citizen of the European Union Act determines the legal basis for stay in Estonia, but at the same time these circumstances can also viewed as legal base to enter Estonia.

A citizen of the European Union may stay in Estonia without a residence permit:

- 1) for up to three months as of the date of his or her arrival in Estonia, also if he or she is employed in Estonia or engaged in business in Estonia;
- 2) if he or she is employed in another Member State of the European Union but resides in Estonia and returns to Estonia at least once a week;
- 3) if he or she is a seasonal worker in Estonia;
- 4) for up to six months for the purpose of seeking employment if he or she has registered the employment seeking pursuant to the procedure provided for in the Employment Service Act (*Tööturuteenuste seadus*) (RT I 2000, 57, 370).

A family member has the right to enter and to stay in Estonia together with a citizen of the European Union who has a legal basis for stay in Estonia. A family member who is not a citizen of the European Union shall hold a residence permit or a visa to stay in Estonia. A visa is not required from a family member if:

- 1) a residence permit of a Member State of the European Union has been issued to the family member;
- 2) the family member is a citizen of the state with which Estonia has entered into an agreement to forego the visa requirement or in the case of which Estonia has unilaterally foregone the visa requirement.

### *Miscellaneous*

The main differences between the period prior to the accession and after accession concern the following aspects: 1) the immigration quota, that was applied for all aliens entering Estonia, is not applicable for the citizens of the Member States of the EU; 2) there is no require-

ment for visa to enter the Republic of Estonia; 3) crossing the border it is not necessary to have a passport. It is enough, if a person has an identification document (e.g. ID card etc.)

## **Residence**

### *Situation prior to the accession*

Prior to the accession to EU, the possibilities and conditions for residence were laid down in the Aliens Act.

The legal basis for staying in Estonia is a visa or residence permit. Residence permits are divided into two categories: permanent and temporary.

The legal basis for an alien to stay in Estonia are:

- 1) a residence permit;
- 2) a visa, within the term for stay in Estonia prescribed thereby;
- 3) the right to stay in Estonia arising from an international agreement;
- 4) the right to stay in Estonia arising from a resolution of the Government of the Republic to forego the visa requirement;
- 5) the right or obligation to stay in Estonia directly arising from law, a court decision or administrative act.

An alien who is a citizen of a foreign state with which Estonia has entered into an agreement for visa-free travel or the citizens of which are unilaterally relieved of the visa requirement in Estonia may stay in Estonia for up to a total of ninety calendar days during six months, unless otherwise provided by an international agreement.

Aliens have to apply for a visa or temporary residence permit at the representations of the Republic of Estonia unless otherwise provided by the Aliens Act.

A visa that is issued as an exception at a border checkpoint gives the right for a single entry in Estonia and the validity of such visa must not exceed fifteen days.

A visa is a permit granted to an alien to enter Estonia through a border checkpoint open for international travel and to stay in Estonia for the period of time indicated on the visa.

In order to apply for extension of the period of stay and for the formalisation of the period of stay, the applicant or his or her representative should turn to the Citizenship and Migration Board in person.

Another opportunity to stay in Estonia is on a resident permit.

Residence permits are:

- 1) temporary, which are issued for a term of up to five years;
- 2) permanent.

A temporary residence permit will be extended on the basis of an application of an alien if the basis for the issue of the residence permit has not ceased to exist, and there is no basis to refuse to extend the residence permit and if the extension of the residence permits is justified.

The validity of a temporary residence permit issued to an alien who has stayed in Estonia permanently for a period of at least ten years on the basis of temporary residence permit is five years, and such permit is extended on application of the alien for further periods of



five years, except where the alien applies for a temporary residence permit or extension thereof for a shorter period.

In order to submit an application for a temporary residence permit and for entry of information concerning a permanent residence permit in a travel document, an alien has to turn to a competent agency in person.

A temporary residence permit may be issued to aliens:

- 1) for employment;
- 2) for enterprise;
- 3) for study in an educational institution according to the application of the educational institution;
- 4) in order to settle with a close relative permanently resident in Estonia;
- 5) whose permanent legal income ensures their subsistence in Estonia;
- 6) whose application for a residence permit is based on an international agreement.

A permanent residence permit may be issued to an alien who has resided in Estonia on the basis of a temporary residence permit for at least three years within the last five years and who has a valid residence permit, a residence in Estonia and permanent legal income for subsistence in Estonia, unless otherwise provided by the Aliens Act.

A permanent residence permit may also be issued to a minor child of an Estonian citizen residing in Estonia or an alien residing in Estonia on the basis of a permanent residence permit unless the child resides in a foreign state and wishes to settle in Estonia.

As an additional condition for extension of residence permits and issue of permanent residence permits, the aliens are required to enter their residence in Estonia in the population register.

If an alien wants to have a job in Estonia, he or she is required to have a residence permit for employment or a work permit for activity in Estonia on the basis of an employment contract or other contract, and for other activities for the benefit of other persons where obtaining gain or any other proprietary benefit can be presumed, regardless of the type or form of the contract on which such activity is based, and the location of the seat or residence of the other party, unless otherwise provided by law or an international contract.

An alien who has no legal basis to stay in Estonia is prohibited from taking employment in Estonia.

An alien who does not have a residence permit for employment or a work permit or who has not registered his or her employment pursuant to the prescribed procedure is prohibited from taking employment in Estonia, except in the cases directly referred to in law or an international agreement.

A work permit is a permit by which an alien is granted the right to take employment in Estonia during the period determined by the permit.

The Citizenship and Migration Board may issue a work permit to an alien who has a residence permit. The validity of a work permit issued to an alien must not exceed the validity of his or her residence permit. The validity of a work permit may be extended until the end of the validity of the residence permit.

The Citizenship and Migration Board refuses to issue a work permit if the alien lacks a permit for residence in Estonia or if other circumstances exist which are the bases for refusal to issue a work permit.

Employment in Estonia without a work permit is permitted only to an alien who:

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- 1) has a permanent residence permit;
- 2) is imprisoned, during his or her stay in prison;
- 3) has a residence permit for employment, on the conditions determined by the permit;
- 4) is a member of a locomotive crew, belongs to the service personnel of a locomotive or train, or is a driver of a motor vehicle engaged in the carriage of passengers or goods involving the crossing of the national border, provided that the alien does not have a residence in Estonia, his or her employer does not have a location of activities of the undertaking and a legal basis exists for the alien's stay in Estonia.

There are also some specific rules, which concern short-time employment in Estonia. An alien who has a legal basis to stay in Estonia, except for a residence permit, whose employment has been registered with the Citizenship and Migration Board pursuant to the procedure provided by a regulation of the Minister of Internal Affairs before employment commences, and whose time of employment does not exceed the period of six months per year, may be permitted to take employment in Estonia without being issued a work permit in the following cases:

- 1) for employment as a teacher or lecturer in an educational institution which has an education licence for operation in Estonia, by invitation of the educational institution;
- 2) for artistic activities or scientific research, if the alien has appropriate professional training or experience for such activities;
- 3) for employment in the position of a member of the management body of a legal person registered in Estonia with the duty to perform directing or supervisory functions;
- 4) for making a direct investment, foundation of a branch of a foreign company in Estonia, or performance, by way of rotation, of the right of representation or directing functions in a company registered in Estonia and belonging to an international group of undertakings;
- 5) in the capacity of a sportsman, coach, referee or sports official in order to engage in professional activities, by invitation of a corresponding sports federation;
- 6) for employment as an expert, adviser, consultant or installer of equipment, provided that the alien has appropriate professional training for such activities;
- 7) for activities in the framework of an international program of co-operation involving agencies with state or local government participation;
- 8) for participation in seasonal work involving the processing of primary agricultural products;
- 9) for employment as au pair or domestic help;
- 10) for employment for vocational training purposes by way of field training;
- 11) for employment as service personnel of a diplomatic representation of a foreign state, by permission of the Ministry of Foreign Affairs.

For taking employment on the basis of a residence permit, an alien is granted the right to stay in Estonia for the purpose of employment on the conditions determined by the residence permit. A residence permit for employment may be issued to an alien for employment with an employer registered in Estonia if the vacant position has not been filled, within the period of two months, by way of public competition and making use of the services of a state employment agency, by employing an Estonian citizen or an alien residing in Estonia on the basis of a residence permit who meets the requirements for qualifications and professional skills for such position as stated by the employer.

At the request of an employer, the Labour Market Board may grant the employer permission for filling the position by employing an alien if the employer has failed, on the conditions and pursuant to the procedure provided in subsection (2) of this section, to find a suitable candidate and, considering the situation in the labour market, filling the position with an alien is justified.

An employer who wishes to fill a position by employing an alien shall obtain permission therefore from the Labour Market Board and confirm his intention to employ the alien to the Citizenship and Migration Board, after which the Citizenship and Migration Board may, in co-ordination with the Labour Market Board, issue a residence permit for employment to the alien for the purpose of assuming the said position, provided that the alien has the requisite qualifications, training, state of health, work experience, necessary professional skills and knowledge to assume such position, that the issue of a residence permit to the alien is justified and that no other circumstances exist in respect of the alien which are the basis for refusal of issue of the residence permit to the alien.

A residence permit for employment will be issued for the period during which the employer guarantees employment in Estonia to an alien but not for longer than two years. The conditions on which an alien is permitted to take employment in Estonia will be determined by the residence permit for employment which shall set out, as a minimum requirement, the name of the employer, the place of work and the position. A residence permit for employment is not valid for taking employment in Estonia unless the conditions on which the alien is permitted to take employment in Estonia are set out therein.

In order to be issued a residence permit for employment, the salary or wage earned by an alien must be sufficient for his or her subsistence in Estonia and the alien must have an insurance contract guaranteeing that any costs related to his or her medical treatment as a result of illness or injury during the period of validity of the residence permit applied for will be met.

An alien is required to register his or her residence in Estonia in the population register within one month after entry in Estonia or commencement of stay in Estonia on the basis of a residence permit.

A residence permit for employment may be extended if the alien continues to meet the conditions on which he or she was issued the residence permit, the alien has actual residence in Estonia and the alien's previous activities have been in compliance with the requisite conditions set for issue of the residence permit. Extension of a residence permit for employment is refused or a residence permit is revoked if circumstances exist which are the basis for refusal of issue or extension of the residence permit, the alien has failed to perform an obligation arising from this Act or other legislation, or a condition for employment determined by the residence permit has changed.

#### *Situation after accession to the EU*

Since 1 May 2004, the provisions on the stay of citizens of the European Union, which are laid down in the Citizen of the European Union Act, are applicable.

A citizen of the European Union may stay in Estonia without a residence permit:

- 1) for up to three months as of the date of his or her arrival in Estonia, also if he or she is employed in Estonia or engaged in business in Estonia;
- 2) if he or she is employed in another Member State of the European Union but resides in Estonia and returns to Estonia at least once a week;

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- 3) if he or she is a seasonal worker in Estonia;
- 4) for up to six months for the purpose of seeking employment if he or she has registered the employment seeking pursuant to the procedure provided for in the Employment Service Act (RT I 2000, 57, 370; 2001, 59, 359; 2002, 61, 375).

In the cases not mentioned above, citizens of the European Union and their family members have to have a residence permit to stay in Estonia.

A residence permit shall be issued to a citizen of the European Union:

- 1) for employment;
- 2) for engagement in business;
- 3) for study;
- 4) if the citizen of the European Union has sufficient legal income which ensures his or her own subsistence and that of his or her family members in Estonia. According to the conditions to apply for the residence permit, the sufficient legal income is equal to a one month average salary during the six months prior applying for residence permit (at the time being this is equal to 8300 EEK, approx 530.50 EUR)
- 5) for long-term stay in Estonia.

Residence permits will be issued to family members of a citizen of the European Union for the purpose of settling with the citizen of the European Union.

A residence permit will be issued to a citizen of the European Union and his or her family member under the following conditions:

- 1) he or she has sufficient legal income which ensures his or her own subsistence and that of his or her family member in Estonia. Lawfully earned remuneration for work, income received from lawful business activities or property, pensions, scholarships, support and the maintenance ensured by family members earning legal income are deemed to be legal income;
- 2) he or she has an insurance contract guaranteeing that any costs related to his or her medical treatment as a result of illness or injury during the period of validity of the residence permit will be met;
- 3) his or her actual residence is in Estonia;
- 4) he or she complies with the conditions provided for in law and no circumstances exist in respect of him or her which could be the basis for refusal to issue the residence permit.

A citizen of the European Union and his or her family member have to register their residence pursuant to the procedure provided for in the Population Register Act (*Rahvastikuregistri seadus*) (RT I 2000, 50, 317; 2001, 31, 173; 2002, 41, 254; 53, 336; 57, 355; 61, 375) within one month as of the date of issue of the residence permit.

If a citizen of the European Union or his or her family member endangers public order, national security or public health, a residence permit will not be issued thereto, nor will the residence permit thereof be extended.

Citizens of the European Union and their family members are required to prove the legal basis for their stay in Estonia at the request of a police officer, border guard official or an official of the Citizenship and Migration Board.

In order to ensure compliance with the requirements of the Citizen of the European Union Act, the Citizenship and Migration Board may, pursuant to the procedure provided for in

the Substitutive Enforcement and Penalty Payment Act (*Asendutäitmise ja sunniraha seadus*) (RT I 2001, 50, 283; 94, 580), issue the following precepts to citizens of the European Union and their family members:

- 1) to legalise the stay in Estonia pursuant to the procedure provided for in the Obligation to Leave and Prohibition on Entry Act (RT I 1998, 98/99, 1575; 2001, 68, 407; 2002, 53, 336; 61, 375);
- 2) to register employment in Estonia;
- 3) to register residence in Estonia.

The administrative procedure for applying, renewing and revoking the residence permit for the citizens of the European Union and their family members is regulated by the governmental decree of 5 February 2004 (RT I 2004, 7, 45): “Procedure for Application for, Issue, Extension and Revocation of Residence Permit of the Citizen of the European Union and his Family Members, the List of Certificates and Information to be submitted upon Application for Residence Permits, the Format of Permits and the Amount of Legal Income”.

To apply for a residence permit a citizen of the Member States should turn to the Estonian embassy in his or her home country or to the Citizenship and Migration board in Estonia. To extend the validity of the residence permit, a person concerned should forward his or her application to the Citizenship and Migration Board at least two months before expire date of the residence permit.

According to the governmental decree mentioned above the Migration and Citizenship Board decides to give the residence permit or refuses to give it during the three months after application and all the documents required were presented. The Board may also extend this period of time by another three months. In case of extension of the validity of the residence permit, the Board should make the decision at least one month before the date of the residence permit expires.

Concerning access to the employment market in Estonia there are in general no requirements that a person should be a citizen of Republic of Estonia. The only citizenship requirements concern the civil servants. Also the activity of the professional sportsmen does not have any special rules concerning the working permits. The general requirements discussed above are also applied to the professional sportsmen.

### *Miscellaneous*

The main differences between the period prior to the accession and after accession concerns the following aspects: 1) the general Aliens Act is no longer applicable to the Citizens of the EU Member States; 2) the residence permit is issued according to the Citizen of the European Union Act; 3) the residence permit has declarative importance for the citizens of the EU.

### **Departure**

Concerning the questions and the legal regulation on departure of an alien and a citizen of the Member States of the European Union there are no specific changes for the situation before the accession to European Union or after that. The main rule concerning departure, which is applicable for all aliens, is that according to § 3 of the Obligation to Leave and Pro-

hibition on Entry Act (väljasõidukohustuse ja sissesõidukeelu seadus) (RT I 1998, 98/99, 1575; 2001, 68, 407; 2002, 53, 336; 61, 375) the alien has to leave Estonia if the legal basis to stay in Estonia expires, will not be prolonged and the alien does not have any other legal base to stay in Estonia. If a person concerned will not leave Estonia, administrative measures will be applied.

The circumstances why the residence permit expires or has been revoked can be different. According to the §§ 13 and 14 of the Citizen of the European Union Act a residence permit expires:

- 1) upon arrival of the date indicated in the residence permit;
- 2) upon the grant of Estonian citizenship to the holder of the residence permit or upon his or her resumption of Estonian citizenship;
- 3) upon the death or declaration of death of the holder of the residence permit.

A residence permit will be revoked:

- 1) on the basis of a request of the holder of the residence permit;
- 2) if the basis for issue of the residence permit has ceased to exist or the conditions for issue of the residence permit are not complied with;
- 3) if the holder of the residence permit stays outside Estonia for more than a total of 183 days in a year and does not register his or her absence from Estonia with the Citizenship and Migration Board;
- 4) if circumstances which could be the basis for refusal to issue the residence permit become evident.

In addition to the cases mentioned above, a residence permit of a family member shall also be revoked if:

- 1) the residence permit of the citizen of the European Union is revoked;
- 2) the residence permit of the citizen of the European Union expires and this Act does not provide otherwise.

According to § 12 of the Citizen of the European Union Act, if a citizen of the European Union or his or her family member endangers public order, national security or public health, a residence permit will not be issued, nor shall the residence permit be extended. § 12 does not specify what kind of diseases could be viewed as a danger to the public health. The public order and the national security have always been a matter for the Member States to determine what are such threats. So far there is no such clarification.

Almost the same grounds are also applicable in case, if the third country nationals are concerned under the Aliens Act.

### *Miscellaneous*

The main differences between the period prior to the accession and after accession concerns the following aspects: 1) the general Aliens Act is no longer applicable to the citizens of the EU Member States; 2) the questions when the citizens of the EU Member States could be expelled are regulated in separate act, with slight differences set forth in the Citizen of the European Act.

## Chapter II Equality of Treatment

### *a) Text in force*

The question of equal treatment has been a crucial and controversial question in Estonia. On the one side there are different legal rules, which set forth the general principles of equal treatment, but on the other side in practice these regulations do not function very well. Although there are no court cases, sociological research shows that there is different treatment between men and women, also the behaviour concerning the aliens, especially Russian speaking population, shows more tendencies toward unequal treatment. It will take some time, when the “emotional level” about the questions of equal treatment will reach the principles set forth in a law. There are different legal acts, which state the principle of equal treatment. In the Constitution of the Estonian Republic Article 12 stipulates that everyone is equal before the law.

### *Estonian Constitution*

§ 12. Everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds.

This principle of equal treatment is mainly concretised in Estonian labour law. Here the period prior to and after accession to the EU should be distinguished. Before the accession the principle of equal treatment was stated in the Constitution, in the Employment Contracts Act § 10, and in the Wages Act § 5.

According to the previous version of § 10 of the Employment Contracts Act, it was illegal to allow advantages and to restrict employees' and employers' rights if such circumstances were based on the ground of sex, racial origin, age, ethnic origin, level of language proficiency, disability, sexual orientation, duty to serve in defence forces, marital or family status, family-related duties, social status, representation of the interests of employees or membership in workers' associations, political opinions or membership of a political party or religious or other beliefs. According to section 2 of § 10 ECA, it was possible to justify the discriminatory behaviour on grounds like:

- a) granting of preferences on grounds of pregnancy, confinement, giving care to minors or adult children;
- b) taking account of the sex, if this is an essential and determinative professional requirement arising from the nature of the professional activity or related conditions;
- c) allowing a suitable working and rest time regime which satisfies the religious requirements of an employee;
- d) taking account of level of language proficiency, if this is an essential and determinative professional requirement arising from the nature of the professional activity or related conditions.

After the ratification of the ILO convention 100 about the principle of equal payment for men and women, also the Wages Act was amended. So far the Wage Act stipulated only the general rule concerning the equal treatment in matter of payment of the wages, now the special clause of the equal treatment between men and women was also added

## Chapter III Employment in the Public Sector

### *Texts in force*

#### *Requirements concerning Estonian citizenship*

According to the general regulation of employment in the public sector, should be distinguished between two categories of persons who are working in the public sector. At first there are persons who are working under the employment contract (*abiteenistujad*). Those persons are mostly fulfilling tasks, which are more of a supporting nature (secretary, drivers, etc). For those persons there are no requirements, they only have to be Estonian citizens. This means, persons working under the employment contract may also be aliens or citizens of the EU Member States. The second type of persons who are working in the public sector are officials (*ametnikud*). This person should in general circumstances have Estonian citizenship. Comparing the situation before the Estonian accession to the EU and after that, there are some changes in the legal status of civil servants.

#### *Estonian Constitution*

According to the Estonian Constitution, the persons who are Estonian citizens may have positions in different state and local governmental agencies and institutions. At the same time, the Constitution also gives an opportunity, that if in an Act will be determined, the persons who do not have Estonian citizenship may also be appointed as an official. This was so far only the case if there was a transition period for applying the new system of the employment in public sector (especially by policemen).

#### *§ 30.*

Positions in state agencies and local governments shall be filled by Estonian citizens, on the basis of and pursuant to procedures established by law. These positions may, as an exception, be filled by citizens of foreign states or stateless persons, in accordance with the law.

#### *The Public Service Act*

In 1995 a reform in the employment in the public sector was introduced. Till 1995 employment in the public service was performed under the employment contract and the whole labour law was also applicable to the civil servants. From beginning 1995 there is a distinction between the public service and employment on the basis of the employment contract. According to this reform, there is distinction between those people who are appointed as officials and those persons, who are also employed in the public sector, but under the employment contract. According to § 1 of the Public Service Act (RT I (*avaliku teenistuse seadus*)) the public service is employment in a state or local government administrative agency.

Employment in a state office is deemed to be an employment relationship in an elected or appointed office prescribed, on the staff of an institution exercising legislative, executive or judicial power, state supervision, control or national defence. An administrative agency is an agency that is financed from the state budget or a local government budget and the function of which is to exercise public authority.

The public service is divided into state public service and local government public service.



A public servant is a person who performs remunerative work in a state or local government administrative agency.

A person who is in a service relationship with the state is a state public servant. A person who is in a service relationship with a local government is a local government servant.

Public servants are divided into:

- 1) officials;
- 2) support staff;
- 3) non-staff public servants.

An official is a person elected or appointed to an office on the staff of an administrative agency. Officials are divided into state officials and local government officials.

Support staff are clerical staff employed under employment contracts in support staff positions on the staff of an administrative agency.

A non-staff public servant is a person who is employed in the service for a specified period of time on the basis of an appointment or an employment contract to perform those functions of an official or member of support staff, which are not permanent by their nature.

What kind of requirements an official should fulfil, is stipulated in § 14 of the Public Service Act. According to this paragraph an Estonian citizen, who has attained eighteen years of age, has at least a secondary education, has active legal capacity and is proficient in Estonian to the extent provided by or pursuant to the law, may be employed in the service as a state or local government official.

A person who has attained 21 years of age and complies at least with the requirements mentioned above may be appointed to a position of higher or senior official in the state public service.

A citizen of a Member State of the European Union who conforms to the requirements established by law and on the basis of the law may also be appointed to a position. Only Estonian citizens will be appointed to positions, which involve exercise of public authority and protection of public interest. Such positions which are reserved only for Estonian citizens are, for example, exercise of state supervision, national defence and judicial power, processing of state secrets, representing of public prosecution and diplomatic representation of the state, and the positions in which an official has the right, in order to guarantee public order and security, to restrict the basic rights and freedoms of persons.

Also the positions related to the directing of the administrative agencies specified in Public Service Act are to be fulfilled by the Estonian Citizen.

An administrative agency is an agency which is financed from the state budget or a local government budget and the function of which is to exercise public authority.

State administrative agencies in which employment is considered to be public service are:

- 1) Chancellery of the Riigikogu (Parliament);
- 2) Office of the President of the Republic;
- 3) Office of the Chancellor of Justice;
- 4) courts (including land registries and their departments);
- 5) government agencies within the meaning of § 39 of the Government of the Republic Act;
- 6) Headquarters of the Defence Forces;
- 7) departments of national defence;
- 8) military units of the Defence Forces;

- 9) Headquarters of the National Defence League;
- 10) State Audit Office.

Local government administrative agencies in which employment is considered to be public service are:

- 1) office of a rural municipality or city council;
- 2) rural municipality and city governments (as agencies) together with their structural units;
- 3) governments of a district of a rural municipality and of a district of a city (as agencies);
- 4) city government executive agencies;
- 5) bureaus of local government associations.

Prior to the accession to the European Union only Estonian citizens had an opportunity to be appointed as civil servants. In certain circumstances it was also possible that aliens could be appointed as civil servants. This concerns mainly the Russian speaking population, who were employed in police forces and as officials in prisons. These were only temporary rules, which are not applied anymore.

After the accession also the citizens of the EU Member States can be appointed as officials to the different positions in state and local government agencies. Only the “key-positions” are to be filled by the citizens of the Republic of Estonia.

## **Diplomas**

The procedure of recognition of foreign professional qualification is laid down in the Recognition of Foreign Professional Qualifications in Estonia Act (Välisriigis omandatud kutsekvalifikatsiooni tunnustamise seadus). A competent body shall, pursuant to the procedure provided by law, compare the professional qualifications of an applicant to the professional qualifications required for working in a regulated profession in Estonia and shall decide, pursuant to the procedure prescribed in the Act mentioned above, whether the applicant meets the requirements set for the given profession in Estonia.

A relevant government agency, a state agency administered by a government agency, another agency performing functions in public law, an association of employees or employers, a professional association, or the Estonian National Academic Recognition Information Centre may act as a competent body.

If a diploma is required for working in a regulated profession in Estonia, a competent body shall not, on grounds of non-conformity of professional qualifications, prohibit an applicant from working in Estonia under the same conditions as applicable to persons who have acquired their professional qualifications in Estonia, if:

- 1) in the foreign state (in meaning of the Member State of the European Union) where the professional qualifications were acquired the same profession is regulated and the applicant has the professional qualifications required in such profession;
- 2) in the foreign state where the professional qualifications were acquired the same profession is not regulated but the applicant has worked in the profession full-time for two years during the last ten years. In such case, the applicant is required to submit a document issued by a foreign official, which certifies that the applicant has completed at least three years of post-secondary training in the corresponding field in a foreign edu-

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educational institution providing higher education and, if necessary, has undergone professional training, and has the professional qualifications required in that profession.

If more than four years of post-secondary training is required for working in a regulated profession in Estonia, an applicant has the right to work in the regulated profession if he or she holds a diploma.

If an applicant's period of study has been one or more years shorter than the period of study required for working in the same profession from a person who has acquired his or her professional qualifications in Estonia, a competent body may require the applicant to submit evidence of professional experience. The required period of professional experience shall not exceed the period of time by which the applicant's period of study is shorter than that required in Estonia.

Further, this Act contains also the rules about the recognition of professional qualifications in regulated professions requiring higher education and not requiring the higher education.

### *Obligation to participate in competition, which gives access to a training and afterwards to a post in the public sector*

In Estonia this kind of competitions are not arranged. Anyone meeting the formal recruitment criterion concerning education and language proficiency may apply and be nominated for open posts at the public sector.

### *Recognition of professional experience and seniority acquired in another Member State*

In Estonia there are no specific rules on taking into account of professional experience and seniority for the purposes of access to the public sector or for the purposes of the determination of professional advantages. The discretion concerning professional competence is open so that all relevant matters contributing to the professional competence may be taken into account. In this discretion professional experience and seniority acquired in another Member State are taken into account in a similar manner as experience and seniority acquired in Estonia.

### *Requirements concerning language proficiency*

In situations where there is a requirement for persons to be hired in the civil service, there is also the requirement to have certain abilities to communicate in Estonian. According to the Estonian Constitution the languages used in Estonia and especially in different state institutions and local government institutions is Estonian. The Constitution itself guarantees that only in cases where the majority of the population speak only other languages than Estonian, the other language can also be used (this is the mainly the case in regions, where the majority of population is Russian speaking).

Main requirements for the ability to communicate in Estonian are determined in the Language Act and in the Government decree, which concretises which level of ability in Estonian can be demanded. The requirements to communicate in Estonian have been established for public servants, who are the officials working in the state and local government institutions. The Estonian language requirements are established for persons who have Esto-

nian citizenship, but whose mother tongue is not Estonian. To prove ability to communicate in Estonian, there is a special examination for that.

According to the Language Act (*keeleseadus*) public servants and employees of state agencies administered by government agencies and of local government agencies, and employees of legal persons in public law and agencies thereof, notaries, bailiffs and certified interpreters and translators and the employees of their bureaus must be able to understand and have to use Estonian at the level which is necessary to perform their service or employment duties.

The Government of the Republic will establish the mandatory levels of language proficiency for public servants, employees and sole proprietors mentioned above.

Proficiency in Estonian shall be required at one of the three levels of language proficiency:

- 1) basic level – limited oral and elementary written proficiency in Estonian. The person can manage in familiar language situations, understands clear speech on everyday topics, understands the general meaning of uncomplicated texts and can complete simple standard documents and write short texts for general use;
- 2) intermediate level – oral and limited written proficiency in Estonian. The person can manage in various language situations, understands speech at normal speed, understands the contents of texts on everyday topics without difficulty and can write texts relating to his or her area of activity;
- 3) advanced level – oral and written proficiency in Estonian. The person can express himself or herself freely irrespective of the language situation, understands speech at high speed, understands the contents of more complicated texts without difficulty and can write texts which are different in style and function.

Persons who have passed an Estonian language proficiency examination will be issued a certificate of proficiency in the Estonian language.

Language proficiency at least at the basic level is required from public servants, employees of state agencies administered by government agencies and of local government agencies, and from employees of legal persons in public law and agencies thereof whose duties of service or employment are of specific nature involving routine instances of language use and whose written assignments involve only standard documents.

Language proficiency at least at the intermediate level is required from public servants, employees of state agencies administered by government agencies and of local government agencies, and from employees of legal persons in public law and agencies thereof whose duties of service or employment are varied and may be related to records management, management of a subordinate unit and co-operation and the nature of whose written work can be defined.

Language proficiency at the advanced level is required from public servants and employees of state agencies administered by government agencies and of local government agencies, and from employees of legal persons in public law and agencies thereof whose duties of service or employment are related to the management of a unit, planning and co-ordination of activities thereof, advising and preparing public reports, speeches and official written texts.

With regard to the requirements concerning linguistic competence, universities are in a different position compared than other public offices; the requirements concerning linguistic competence of professors and other teachers at universities are not as strict as the require-

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ments concerning other civil servants and there is more place for discretion that makes it possible to take into account the particularities of each situation.

### *Judicial practice*

The case law on employment in the public sector at the moment concerns disputes of language abilities. It mainly concerns the disputes about such public servants, who are working as public servant, but whose mother tongue is other than Estonian. The low ability to communicate in Estonian can lead to dismissal of such persons.

## **Chapter IV Family Members**

Here again a difference should be made between the situation before the accession and after the accession to the European Union. Before the accession to the European Union the general system for aliens and their family members was applicable. After accession the special Act – Citizen of the European Union Act – was adopted, which regulates the legal status of citizens from other EU Member States and also their family members.

### **Situation prior to the accession**

Before the accession, the Aliens Act regulated the legal status of aliens. The main principles, which were applicable, were as follows.

According to the Aliens Act an alien is a person who is not an Estonian citizen. The Aliens Act itself does not determine what is a family in the meaning of this Act and who are family members.

Aliens staying in Estonia are guaranteed rights and freedoms equal to those of Estonian citizens unless the Constitution, this act, other acts or international agreements of Estonia provide otherwise. Aliens are guaranteed the rights and freedoms arising from the generally recognized rules of international law and international custom. Aliens staying in Estonia are required to observe the constitutional order and legislation of Estonia.

According to the Aliens Act an important number of aliens is subject to immigration quota, which determines how many aliens could get a permit. The annual immigration quota is the quota for aliens immigrating to Estonia, which shall not exceed 0.05 per cent of the permanent population of Estonia annually. Within the limits of the immigration quota, the Minister of Internal Affairs may, by a ruling, establish a distribution of the immigration quota according to the grounds for application for the residence permit and the basis for issuing the residence permit, and the annual schedule. Persons who have the right to settle in Estonia outside of the immigration quota or to whom the immigration quota does not apply are not included in calculating fulfilment of the immigration quota. The immigration quota does not apply to the following persons:

- 1) the spouse of an Estonian citizen or of an alien who resides in Estonia on the basis of a residence permit;
- 2) a minor child, adult child, parent, grandparent or ward of an Estonian citizen or of an alien who resides in Estonia on the basis of a residence permit;

The immigration quota was not applied to citizens of the United States of America, Japan, EU-Member States and Switzerland.

A legal basis must exist for an alien to enter Estonia or stay in Estonia. An alien should hold a work permit to work in Estonia.

Unless otherwise provided by the Aliens Act, the legal bases for an alien to stay in Estonia are:

- 1) a residence permit;
- 2) a visa, within the term for stay in Estonia prescribed thereby;
- 3) the right to stay in Estonia arising from an international agreement;

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- 4) the right to stay in Estonia arising from a resolution of the Government of the Republic to forego the visa requirement;
- 5) the right or obligation to stay in Estonia directly arising from law, a court decision or administrative act.

Residence permits are:

- 1) temporary, which are issued for a term of up to five years;
- 2) permanent.

Temporary residence permits may be issued to aliens:

- 1) for employment;
- 2) for enterprise;
- 3) for study in an educational institution according to the application of the educational institution;
- 4) in order to settle with a close relative permanently resident in Estonia;
- 5) whose permanent legal income ensures their subsistence in Estonia;
- 6) whose application for a residence permit is based on an international agreement.

A temporary residence permit may also be issued to an alien who is married to a person permanently resident in Estonia.

A permanent residence permit may be issued to an alien who has resided in Estonia on the basis of a temporary residence permit for at least three years within the last five years and who has a valid residence permit, a residence in Estonia and permanent legal income for subsistence in Estonia, unless otherwise provided by Aliens Act.

A residence permit will not be issued to or extended for an alien if:

- 1) he or she has submitted false information (including information concerning his or her earlier activities) upon application for a visa, residence permit or work permit or upon application for extension thereof;
- 2) he or she does not observe the constitutional order and laws of Estonia;
- 3) his or her activities have been or are or there is good reason to believe that such activities have been or are directed against the Estonian state and its security;
- 4) he or she has incited or incites, or there is good reason to believe that he or she has incited or incites racial, religious or political hatred or violence;
- 5) he or she has committed a criminal offence for which he or she has been sentenced to imprisonment for a term of more than one year and his or her criminal record has neither expired nor been expunged, or the information concerning the punishment has not been expunged from the punishment register;
- 6) he or she is in the active service of the armed forces of a foreign state;
- 7) he or she has served as a professional member of the armed forces of a foreign state or has been assigned to the reserve forces thereof or has retired therefrom;
- 8) he or she has been repeatedly punished pursuant to a criminal procedure for an intentionally committed criminal offence;
- 9) there is information or good reason to believe that he or she belongs to a criminal organisation, that he or she is connected with the illegal conveyance of narcotics, psychotropic substances or persons across the border, that he or she is a member of a terrorist organisation or has committed an act of terrorism, or that he or she is involved in money laundering;

- 10) he or she is or there is good reason to believe that he or she is employed by an intelligence or security service of a foreign state, or he or she has or there is good reason to believe that he or she has been employed by an intelligence or security service of a foreign state, and his or her age, rank or other circumstances do not preclude his or her conscription into service in the security forces or armed forces or other armed units of his or her country of nationality;
- 11) he or she has received or there is good reason to believe that he or she has received special training in landing operations, or in diversion or sabotage activities, or other special training, and if the knowledge and skills acquired in the process of such training can be directly applied in the formation or training of illegal armed units;

Clauses 6), 7) and 10) mentioned above do not extend to citizens of the Member States of the European Union or NATO.

A temporary residence permit may be issued to an alien to settle with his or her spouse who resides in Estonia permanently and who is an Estonian citizen or to settle with his or her spouse who is an alien who has resided in Estonia for at least five years on the basis of a permanent residence permit, if the spouses share close economic ties and a psychological relationship, if the family is stable and the marriage is not fictitious, and if the application for a residence permit is justified.

If an alien applies to settle with his or her spouse who resides in Estonia, his or her spouse: 1) must have permanent legal income to ensure that the family is maintained in Estonia, or 2) the joint permanent legal income of the spouses must ensure that the family is maintained in Estonia, 3) the family must have a registered residence and an actual dwelling in Estonia, and 4) the alien must have an insurance contract guaranteeing that any costs related to his or her medical treatment as a result of illness or injury during the period of validity of the residence permit applied for will be met.

The validity of a temporary residence permit issued to an alien who has been married for less than three years to a person who legally resides in Estonia will not exceed one year, and the residence permit may be extended in each of the following three years for not longer than one year at a time. The validity of a residence permit issued to an alien who has been married for at least three years to a person who legally resides in Estonia shall not exceed three years, and the residence permit shall be extended for not longer than three years at a time.

The issue of a residence permit to settle with a spouse who legally resides in Estonia will be refused if the spouse who resides in Estonia or the alien who applies for the residence permit does not meet the conditions provided by law, if any other condition for the issue of a residence permit is not complied with, or if the application for the residence permit is not justified.

An application for a residence permit to settle with a spouse who is an Estonian citizen may be considered to be unjustified if it is possible for the spouse who resides in Estonia to settle in the country of nationality or country of habitual residence of his or her spouse or if it is possible for the spouses to settle in another country.

A residence permit issued to settle with a spouse may be extended if the marriage and the income of the family comply with the requirements specified in the Aliens Act.

A residence permit to settle with a spouse will be revoked or the extension thereof shall be refused if:



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- 1) the basis or grounds for the issue of the residence permit have ceased to exist;
- 2) the marriage has been terminated;
- 3) one or both spouses do not reside in Estonia permanently.

An alien who has been issued a residence permit to settle with his or her spouse may be issued a permanent residence permit provided that the marriage has lasted for at least five years.

### **The Situation after Accession**

#### *Text in force*

After Estonia became a full member of the European Union the special regulation for EU citizens and their family members was adopted. According to the Citizen of European Union Act, the following principles for the family members are applicable.

According to § 3 of the Citizen of European Union Act a family member of a citizen of the European Union is a person who is not a citizen of Estonia and who is:

- 1) a spouse of the citizen of the European Union ;
- 2) a child under 21 years of age or a dependent adult child or grandchild of the citizen of the European Union;
- 3) a dependent parent or grandparent of the citizen of the European Union or of his or her spouse;
- 4) a person not mentioned in clauses 1-3 who is dependent on the citizen of the European Union or residing with him or her and has a shared household with him or her.

A citizen of the European Union may stay in Estonia without a residence permit:

- 1) for up to three months as of the date of his or her arrival in Estonia, also if he or she is employed in Estonia or engaged in business in Estonia;
- 2) if he or she is employed in another Member State of the European Union but resides in Estonia and returns to Estonia at least once a week;
- 3) if he or she is a seasonal worker in Estonia;
- 4) for up to six months for the purpose of seeking employment, if he or she has registered the employment seeking pursuant to the procedure provided for in the Employment Service Act (*Tööturu teenuste seadus*) (RT I 2000, 57, 370; 2001, 59, 359; 2002, 61, 375).

A family member has the right to stay in Estonia together with a citizen of the European Union who has a legal basis for stay in Estonia. A family member who is not a citizen of the European Union shall hold a residence permit or a visa to stay in Estonia.

A visa is not required from a family member if:

- 1) a residence permit of a Member State of the European Union has been issued to the family member;
- 2) the family member is a citizen of the state with which Estonia has entered into an agreement to forego the visa requirement or in the case of which Estonia has unilaterally foregone the visa requirement.

Residence permits will be issued to family members of a citizen of the European Union for the purpose of settling with the citizen of the European Union who has a legal basis for stay in Estonia. If a citizen of the European Union holds a residence permit for study, a residence permit for settling with the citizen of the European Union has to be issued only to the spouse and dependent children of the citizen of the European Union. During the period of validity of the residence permit, the spouse and dependent children of a citizen of the European Union have the right to study, work and engage in business. The spouse and dependent children of a citizen of the European Union have to register employment in Estonia with the Labour Market Board.

A family member will be issued a residence permit with the same period of validity as the residence permit of the citizen of the European Union, but not for longer than until the expiry of the residence permit of the citizen of the European Union. A residence permit of a family member will be extended if the residence permit of the citizen of the European Union is extended and if the basis for issue of the residence permit has not ceased to exist, the conditions for issue of the residence permit are complied with and the circumstances which could be the basis for refusal to extend the residence permit do not exist.

A residence permit of a family member will be extended for the same period of validity as that of the residence permit of the citizen of the European Union, but not for longer than for five consecutive years.

A residence permit for long-term stay in Estonia will be issued to a citizen of the European Union who:

- 1) by the date of termination of his or her employment or engagement in business, has attained the age of retirement and has been employed or has engaged in business in Estonia for at least the last twelve months and has permanently stayed in Estonia at least the last three consecutive years;
- 2) has permanently stayed in Estonia for at least the last two consecutive years and has terminated employment or engagement in business due to permanent incapacity for work;
- 3) has terminated employment due to permanent incapacity for work arising from a work injury or occupational disease;
- 4) has been employed or has engaged in business in Estonia for at least three consecutive years and has commenced employment in another Member State of the European Union but resides in Estonia and returns to Estonia at least once a week. A residence permit for long-term stay in Estonia shall be issued for five years.

A residence permit with the period of validity of up to five years shall be issued to a family member in the following cases:

- 1) a residence permit is issued to the citizen of the European Union in the cases specified in clause 1 mentioned above;
- 2) the citizen of the European Union dies before attaining the age of retirement and has, by the date of his or her death, permanently stayed in Estonia for at least the last two consecutive years;
- 3) the citizen of the European Union dies before attaining the age of retirement as a result of a work injury or occupational disease.

A residence permit specified in clauses 1) and 3) mentioned above may be extended on the basis of an application of a person for five consecutive years.

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If a citizen of the European Union or his or her family member endangers public order, national security or public health, a residence permit will not be issued thereto, nor shall the residence permit thereof be extended.

Citizens of the European Union and their family members are required to prove the legal basis for their stay in Estonia at the request of a police officer, border guard official or an official of the Citizenship and Migration Board.

In order to ensure compliance with the requirements of the Citizen of the European Union Act, the Citizenship and Migration Board may, pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act (RT I 2001, 50, 283), issue the following precepts to citizens of the European Union and their family members:

- 1) to legalise the stay in Estonia pursuant to the procedure provided for in the Obligation to Leave and Prohibition on Entry Act (RT I 1998, 98/99, 1575);
- 2) to register employment in Estonia;
- 3) to register residence in Estonia.

### *Judicial practice*

Judicial practice in this field generally has many case laws, which concern mainly permits issued to third country nationals. The main problems in judicial practice concern the question of reunion of the families and the migration quotas determined by the government of the Republic of Estonia. The Migration Board usually states the fact, that if the migration quota is already reached, there is no possibility to give the person concerned a residence permit. In such cases the Supreme Court of the Republic of Estonia has stated, that the quota fixed by the Government is not the only reason to determine if the person concerned gets the permit or not. As there was and are no quotas for the citizens of the EU Member States, the case law cited above is not applicable to the citizens of the EU Member States.

## **Chapter V**

### **Influence of Recent Judgments of the European Court of Justice**

The relevance and influence of individual decisions of the ECJ are not discussed here but instead in connection with the subject matters concerned.

In general, the judgments of the ECJ are taken into account in legislative reforms. Although there are no concrete references to the court decisions, by preparing the new legislation, the principles, which are elaborated by the practice of the ECJ, will be taken into account.

Furthermore, the Estonian authorities including the Ministry of the Interior and the Board of Immigration, follow the practice of the ECJ. The important judgments and their influence in the Estonian system are discussed in working groups and when there is need for that memoranda concerning the decisions are delivered to those making decisions, i.e. to the staff of the Board of Immigration on the one hand, local police and passport control authority on the other. Furthermore, the relevant judgments of the ECJ are included in the training of those handling the applications and making decisions on refusal of entry and deportation. Because of the constitutional obligation to regulate the right of foreigners to enter Estonia and to remain in the country by Acts of Parliament, administrative orders may no longer be deployed in this field as extensively as was the case before.

In the field of social security, the Estonia National Social Insurance Board that is the decision-making body, follows the case law of the ECJ. The relevant judgments are informed to those handling the applications through training. This is, however, not regarded as entirely satisfactory state of affairs as for the sake of legal certainty and legal protection of the applicants, the relevant legal rules and principles should be recognized at the level of legislation.

**Chapter VI**  
**Policies, Texts and Practises**

Nothing to report.

## **Chapter VII**

### **EU Enlargement**

According to the Act of Accession of Estonia to the European Union, Estonia does not apply any restrictions to the freedom of movement nor to the free movement of workers. If the “old” Member States of the European Union have established a transitional period of two plus three plus two to open their labour market, such transitional period is not applied by the Republic of Estonia.

This means that Estonia does not apply any transitional measures for the free movement of workers from the new and from the old Member States. There are any restrictions as to the access to the labour market and other activities.

To harmonise the Estonian legal system with the European law, the different amendments were made in legislation, also different legislative acts were adopted; e.g. important here are the Citizen of the European Union Act (*Euroopa Kodaniku seadus*), which concretises the legal status of the citizens of the European Union and their family members, and the Posted Workers Act (*Eestisse lähetatud töötajate töötingimuste seadus*), which determines the employment conditions for those employees who are temporarily sent to Estonia to do their work in Estonia.

#### *Literature*

Epp Kallaste, Kaia Philips, Reelika Leetmaa & Lauri Leppik (2003), *EU Enlargement and its Impact on the Social Policy and Labour Markets of Accession and Non-Accession Countries*, PRAXIS Working Paper no. 4/2003.

## Chapter VIII Statistics

The Estonian migration policy has been stable and restrictive towards immigration since Estonia regained its independence. Most of immigrants have arrived from the CIS countries, mainly from the Russian Federation. In October 2003, 263 412 aliens were holding a residence permit in Estonia, including 211 834 permanent residence permit and 51 678 temporary residence permit. 6893 had valid work permit. Most of immigrants come to Estonia to settle with their spouses or close relatives. Another major group of aliens consist of those who try to find work here.

In October 2003 the distribution of aliens who hold residence permits in Estonia was as follows:

Aliens with undetermined citizenship	162,890
Citizens of other countries	100,522
Total	263,412
Citizens of the Russian Federation	88,202
Citizens of the European Union	3,120
Citizens of other countries	9,200
Total	100,522

After the accession to the European Union the movement between Estonia and other EU Member States has increased. The main EU Member States where the Estonian workers go to are Finland, Sweden, England and Ireland. From the free movement mainly the following branches are affected: buildings construction, bus traffic, forest industry, medical services (especially young doctors, nurses, dentists).

Concerning the migration from the old Member States to Estonia the main countries are: Finland, Sweden and Germany. The main reason why persons are coming to Estonia is to establish a company her due to the lower taxes.

### *Statistical data of free movement of persons EU and EEA citizen*

2004 positive decisions made by the Citizenship and Migration Board on issuing the residence permits:

legal income	612
employment	450
studies 2	89
business activity	149
joining family member	42

2005 (until 31.08) positive decisions:

legal income	694
employment	520
studies	149
business activity	171
joining family member	74

## Chapter IX Social Security

### *Legislation in force*

The Estonian social security system is by large based on the insurance principle. Only in case of family benefits and funeral benefits, these benefits are guaranteed on the basis of residence. The social security system itself is based on statutory provisions. There are no specific provisions, which are developed by the collective agreement or by employers. Only in pension schemes, it is provided that the pension system consists of three pillars, of which the first pillar is guaranteed by the state, the second one is mandatory pension insurance but not guaranteed by the state, and the third pillar is a voluntary pension scheme, guaranteed by the private pension funds.

Here the problem arises with the second pillar and opportunity to join this pillar. According to the Mandatory Pension Insurance Act (*Kohtustusliku kogumispensioni seadus*), the second pillar is mandatory for those employees, who were born after 1 January 1983. For elderly employees there is a transitional period, where they can choose if they would like to join this system or not. If they decide to join this system, they will be bound to this system for their life. If they would like not to join this system, there is no possibility to join this system later on. This pension system could give rise to problems for the persons who are using their right of free movement, as it is not clear enough if the citizens of the European Union Member States who are working in Estonia have the possibility to join the system. At the moment there seems to be no such concrete law or provision, which could give to the employees, who were born before 1 January 1983, opportunity to join the second pillar of the Estonian pension system.

Another requirement to qualify for the social benefits granted in Estonia, is the requirement to have a residence permit – temporary or permanent. As the Citizen of European Union Act stipulates, that the citizens of European Union Member States get the residence permit for five years with possibilities to prolong this permit, this means that requirements to get a social benefit are fulfilled.

Before joining the EU the requirements for granting social security benefits to migrant workers were by large the same, i.e. one has to have a certain period of insurance fulfilled by paying the social taxes and to possess a temporary or permanent residence permit. By the calculation of insurance periods, the periods of insurance or employment or residence in other states were only taken into account, if there was an agreement signed by the states concerned. Prior to the accession to the European Union, Estonia had five such agreements: 1) agreement between Estonia and Sweden concerning the medical assistance, 2) social security agreements with Finland, Latvia, Lithuania and Ukraine.

After the accession to the EU, Regulation 1408/71 is applicable and the rules of coordination and calculation of the benefits laid down in this regulation are also applicable.

Concerning social assistance the following aspects should be born in mind: according to the Social Welfare Act (*sotsiaalhoolekande seadus*) social assistance will be granted to persons who are legally residing in Estonia. This means that the persons concerned are permanently staying in Estonia or they are staying in Estonia under a temporary residence permit. In addition to the ordinary social assistance, the Social Welfare Act also guarantees extraordinary social assistance. Under the extraordinary social assistance are the benefits in cash or in kind to be guaranteed in unexpected situations meant. The extraordinary social assistance will be



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provided for all persons who are legally staying in Estonia. According to the wording of the Social Welfare Act and the meaning of extraordinary social assistance, it is not necessary that the person in need has a residence permit. As the extraordinary social assistance is not a normal case of social assistance in general, it means that residence permits will be needed to apply for different services and benefits, which are granted in the framework of social assistance. As the Citizen of the European Union Act states that European citizens may stay in Estonia for a period of time of six weeks without any residence permit, it means that during these six months the benefits of the social assistance will not be granted.

### *Judicial practice*

So far there is no case law or relevant administrative practice dealing with the question of social security for migrant workers. At the same time, there have recently been some articles in the newspapers, where the problems of receiving pensions from the countries, which have a social security agreement with Estonia, were discussed. Whether this is a communication error between the institutions involved or it constitutes violation of the coordination rules on social security matters, is not clarified yet.

### *Literature*

Gaabriel Tavits, European Social Security Law – Social Security System for Migrant Workers and Estonian Situation, *Juridica International*, 1998, no. 1, pp. 110-118.

Gaabriel Tavits, Euroopa Liidu sotsiaalkindlustuse koordineerimise reeglid ja Eesti pensionireform (Social Security Coordination Rules in EU and Estonian Pensionreform), *Juridica International*, 2002, no. 10, pp. 709-717.

## Chapter X Establishment, Provision of Services, Students

Here again one should distinguish between the period prior to and after the accession. As a general rule, the general principles of acquiring a visa or residence permit are also applicable to students, establishment and for the purpose to provide services. At the same time there are also special rules that are meant to cover the special issues mentioned above. Before the accession to the European Union the general provisions of the Aliens Act were applicable to foreigners who wanted to come to Estonia. After the accession to the European Union, the Citizen of the European Union Act lays down the requirements for the EU citizens concerning establishment, provision of services and studies.

### *Text in force*

#### *Prior to the accession*

The general rules about entering and staying in Estonia set forth in the Aliens Act are also applicable in the cases dealt with in this chapter (see above under “Entry, Residence and Departure”).

#### *After accession*

By dealing with questions about establishment, provision of services and studies one should also take into account the general rules, which are laid down in the Citizen of the European Union Act. According to this Act a citizen of the European Union may stay in Estonia without a residence permit:

- 1) for up to three months as of the date of his or her arrival in Estonia, also if he or she is employed in Estonia or engaged in business in Estonia;
- 2) if he or she is employed in another Member State of the European Union but resides in Estonia and returns to Estonia at least once a week;
- 3) if he or she is a seasonal worker in Estonia;
- 4) for up to six months for the purpose of seeking employment if he or she has registered the employment seeking pursuant to the procedure provided for in the Employment Service Act (RT I 2000, 57, 370; 2001, 59, 359; 2002, 61, 375).

In the cases not mentioned above, citizens of the European Union and their family members have to hold residence permits to stay in Estonia.

A residence permit shall be issued to a citizen of the European Union:

- 1) for employment;
- 2) for engagement in business;
- 3) for study;
- 4) if the citizen of the European Union has sufficient legal income which ensures his or her own subsistence and that of his or her family members in Estonia;
- 5) for long-term stay in Estonia.

A residence permit will be issued to a citizen of the European Union and his or her family member under the following conditions:

- 1) a person has sufficient legal income which ensures his or her own subsistence and that of his or her family member in Estonia. Lawfully earned remuneration for work, income

received from lawful business activities or property, pensions, scholarships, support and the maintenance ensured by family members earning legal income are deemed to be legal income;

- 2) a person has an insurance contract guaranteeing that any costs related to his or her medical treatment as a result of illness or injury during the period of validity of the residence permit will be met;
- 3) a person's actual residence is in Estonia;
- 4) a person complies with the conditions provided for in this Act and no circumstances exist in respect of him or her which could be the basis for refusal to issue the residence permit.

A citizen of the European Union and his or her family members shall register their residence pursuant to the procedure provided for in the Population Register Act (*Rahvastikuregistri seadus*) (RT I 2000, 50, 317; 2001, 31, 173; 2002, 41, 254; 53, 336; 57, 355; 61, 375) within one month as of the date of issue of the residence permit.

## **Establishment**

### *Prior to the accession*

Before the accession the general rules on entering and staying in Estonia laid down in the Aliens Act were applicable. Also some specific requirements for enterprise were established. According to § 13 of the Aliens Act an alien is required to have a residence permit for employment or a work permit for activity in Estonia on the basis of an employment contract or other contract, and for other activities for the benefit of other persons where obtaining gain or any other proprietary benefit can be presumed, regardless of the type or form of the contract on which such activity is based, and the location of the seat or residence of the other party, unless otherwise provided by law or an international agreement.

An alien who has no legal basis to stay in Estonia is prohibited from taking employment in Estonia.

An alien who does not have a residence permit for employment or a work permit or who has not registered his or her employment pursuant to the prescribed procedure is prohibited from taking employment in Estonia, except in the cases directly referred to in law or an international agreement.

According to § 13<sup>4</sup> of the Aliens Act a residence permit for enterprise may be issued to an alien who has a holding in a company or who operates as a sole proprietor, provided that the company or the sole proprietorship is entered in the commercial register of Estonia, and that based on the interests of the state, the intended enterprise is necessary for the development of Estonian economy, and the alien's settling in Estonia is of essential importance to the enterprise. A residence permit for enterprise may be issued to an alien who has sufficient monetary resources for engaging in enterprise in Estonia, including capital in the amount of at least 1.000.000 EEK ( approx. 63.911,6 EUR) controlled by the alien invested in business activities in Estonia, and a business plan which describes the nature and extent of the intended business activities, and sets out the number, requisite qualifications and skills of the staff needed for such activities. The amount of capital which an alien must invest in Estonia

in order to be granted permission to operate as a sole proprietor is at least 250.000 EEK (approx 15.977 EUR).

The Citizenship and Migration Board may issue a residence permit for enterprise to an alien if the conditions specified above have been met, the alien's permanent legal income ensures his or her subsistence in Estonia and the alien has an insurance contract guaranteeing that any costs related to his or her medical treatment as a result of illness or injury during the period of validity of the residence permit applied for will be met.

An alien is required to register his or her residence in Estonia in the population register within one month after entry in Estonia or commencement of stay in Estonia on the basis of a residence permit. Another person in Estonia must not employ an alien who has been issued a residence permit for enterprise. An alien who has been issued a residence permit for enterprise for the purpose of participation in a company may be employed by the company indicated in the residence permit for performance of directing functions.

A residence permit for enterprise shall set out the areas of activity permitted to the alien and where necessary, also the licensed territory. An alien who has been issued a residence permit for enterprise is required to inform the Citizenship and Migration Board of any change to the circumstances on the basis of which the residence permit was issued, of difficulties in the performance of assumed duties or impossibility to perform assumed duties.

A residence permit for enterprise may be extended if the alien continues to meet the conditions on which he or she was issued the residence permit, the alien has actual residence in Estonia and the alien's previous activities have been in compliance with the requisite conditions set for issue of the residence permit. Issue or extension of a residence permit for enterprise is refused or a residence permit is revoked if the conditions for issue or extension of a residence permit are not met or the alien, the business plan submitted by him or her, the alien's business associates or the financial resources stated by him or her are not trustworthy.

Extension of a residence permit for enterprise is refused or a residence permit is revoked if the alien's previous business activities are not in compliance with the business plan or the alien has failed to perform an obligation arising from Aliens Act or other legislation.

#### *After accession*

According to § 7 of the Citizen of European Union Act a residence permit for engagement in business will be issued to a citizen of the European Union for participation in a company or activities as a sole proprietor if the company or sole proprietor is registered pursuant to the procedure provided for in the Commercial Code (*Äriseadustik*) (RT I 1995, 26–28, 355). A residence permit for engagement in business shall be issued for five years.

A residence permit for employment and engagement in business will be extended on the basis of an application of the citizen of the European Union for five consecutive years if the basis for the issue of the residence permit has not ceased to exist, the conditions for the issue of the residence permit are complied with and the circumstances which could be the basis for refusal to extend the residence permit do not exist.

## **Provision of services**

### *Prior to the accession*

The rules which are applicable in cases of employment or in cases of establishment, set forth in the Aliens Act are also applicable in cases of provision of services. There are no special rules about entering and staying in the Estonia for provision of services laid down in the Aliens Act.

### *After accession*

The abovementioned rules, which are applicable to establishment, are also applicable in case of provision of services. No special rules are established for that case.

## **Students**

### *Prior to the accession*

The general rules laid down in the Aliens Act on entry and staying in Estonia were also applicable to the students who wanted to begin with their studies in Estonia. In addition to the general rules, some specific conditions for students have also been foreseen.

According to § 12 of the Aliens Act a temporary residence permit may be issued to aliens:

- 1) for employment;
- 2) for enterprise;
- 3) for study in an educational institution according to the application of the educational institution;
- 4) in order to settle with a close relative permanently resident in Estonia;
- 5) whose permanent legal income ensures their subsistence in Estonia;
- 6) whose application for a residence permit is based on an international agreement.

According to § 12<sup>1</sup> of the Aliens Act, a residence permit for study may be issued to an alien for study in a primary school, basic school, upper secondary school, vocational educational institution, university or institution of applied higher education, for participation in pre-degree foundation courses offered by such institutions, for research or exploratory research at a university or institution of applied higher education or for participation in field training intermediated by an international students' organisation.

Upon application for a residence permit for study, the relevant educational institution or international students' organisation has to provide the Citizenship and Migration Board with documentary evidence in proof of the alien commencing his or her studies indicating the title and estimated period of the study, course, research, exploratory research or field training.

An alien may be issued a residence permit for study for up to one year but not for a longer time than the estimated period of his or her study. Aliens who are issued residence permits for study are exempt from the immigration quota.

An alien may be issued a residence permit for study if the alien has permanent legal income for subsistence in Estonia, dwelling in Estonia and an insurance contract guaranteeing

that any costs related to his or her medical treatment as a result of illness or injury during the period of validity of the residence permit applied for will be met.

Further, an alien is required to register his or her residence in Estonia in the population register within one month after entry in Estonia or commencement of stay in Estonia on the basis of a residence permit.

The Citizenship and Migration Board may refuse issue of a residence permit if the conditions provided in the Aliens Act are not fulfilled or other circumstances exist, which are the basis for refusal to issue a residence permit.

A residence permit for study may be extended for a period of up to one year if the alien continues his or her studies, he or she has actual residence in Estonia and no circumstances exist, which are the basis for refusal to issue a residence permit. The validity of a residence permit for study shall not exceed a total of six years.

Extension of a residence permit issued for study is refused or the residence permit is revoked if the basis for issue of the residence permit has ceased to exist, other grounds to refuse extension of a residence permit or revoke a residence permit exist in respect of him or her, or the alien has failed to perform an obligation arising from Aliens Act or other legislation.

An alien who has been issued a residence permit for study may take employment in Estonia without a work permit in order to participate in practical training pursuant to the curriculum or to participate in the field training. In certain circumstances an alien who has been issued a residence permit for study may take employment in Estonia only on the basis of a work permit and only outside of school hours on condition that such employment does not interfere with the alien's studies.

If an alien has stayed in Estonia on the basis of a residence permit for study and he or she is later issued a residence permit on different grounds, then the alien's period of residence in Estonia on the basis of the residence permit for study shall not be included in the requisite period of residence in Estonia necessary for application for a permanent residence permit.

#### *After accession*

Paragraph 8 of the Citizen of the European Union Act determines the special requirements for the residence permits for the students. The specific rules for the students are as follows.

- A residence permit for study will be issued to a citizen of the European Union for study at a basic school, upper secondary school, vocational school, institution of applied higher education or university, for participation in preparatory or foundation courses organised at the specified educational institutions, for research at a university or institution of applied higher education or for participation in training mediated by an international student organisation (hereinafter study). Upon application for a residence permit for study, an educational institution or a student organisation has to submit to the Citizenship and Migration Board a document which certifies that a citizen of the European Union has commenced studies and sets out the area of specialisation, the title of the course or research paper or the type of training, and the presumed duration of study.
- A residence permit for study will be issued to a citizen of the European Union for the period of study but not for longer than one year.
- A residence permit for study will be extended on the basis of an application of a citizen of the European Union for up to one year if the basis for issue of the residence permit

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has not ceased to exist, the conditions for issue of the residence permit are complied with and the circumstances which could be the basis for refusal to extend the residence permit do not exist.

## Chapter XI Miscellaneous

The question of nationality or dual nationality should be discussed here. The legal rules about obtaining the Estonia citizenship are regulated in Citizenship Act (*kodakondsuse seadus*) According to the Citizenship Act there are different possibilities to acquire the Estonian citizenship.

Estonian citizenship is:

- 1) acquired by birth;
- 2) acquired by naturalisation;
- 3) resumed by a person who lost Estonian citizenship as a minor;
- 4) lost through release from or deprivation of Estonian citizenship or upon acceptance of the citizenship of another state.

The general rule on citizenship in Estonia is, that there cannot be double citizenship. This means, if a person is acquiring the Estonian citizenship, he or she has to prove, that he or she has lost his or her former citizenship or there is a certificate, that he or she will lose the citizenship of the state concerned.

Persons who by birth acquire the citizenship of another state in addition to Estonian citizenship have to renounce either their Estonian citizenship or their citizenship of the other state within three years after attaining the age of 18 years.

A person will lose Estonian citizenship:

- 1) through release from Estonian citizenship;
- 2) through deprivation of Estonian citizenship;
- 3) upon acceptance of the citizenship of another state.

Release from Estonian citizenship may be refused to a person if:

- 1) the person would become stateless as a result;
- 2) he or she has unperformed obligations before the Estonian state;
- 3) he or she is in active service in the Estonian Defence Forces.