

REPORT
on the Free Movement of Workers
in Estonia in 2005

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Introduction

The following report covers issues on free movement in Estonian legislation and in practice. This report covers the period of year 2005.

Joining the European Union, the 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 May the 1-st 2004 a special act about the European citizens and their family members came into force. This act covers all the necessary EU directives and regulations force at the time being. Since the beginning of the year 2006 the new draft of the Citizen of the European Union Act has been prepared to improve the rules about the free movement of the persons. From the 1st August 2006 the new Citizen of the European Union Act will come into force. Through this act the directive 2004/38 /EU will be harmonised.

Analysing the situation of migration in Estonia one should keep in mind that in Estonia there is a number of persons who are not citizens of any country (stateless persons). They possess only an alien's passport. These persons are to allow to stay and to work in the country concern i.e. in Estonia. The accession to EU brought also changes in the civil service. Until May the 1st 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 of persons and workers has been applied, the changes in Civil Service Act were needed. Since May the 1st 2004, also the citizens of the EU Member States have a right to be appointed on a position in Estonian civil service. In accordance with the restrictions of the free movement in the European Union the citizens of the Member States of the EU cannot take 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), also England and Ireland. Mainly it concerns building construction, bus drivers and different service branches (hotels, restaurants etc). Since the Finland took the decision to open its employment market, there is intensive interest for temporary agency work from the side of the Finnish employers and companies.

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 keep 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 to the citizens of the Member States of the European Union advantages concerning the entry, residence and departure. Generally speaking, the rules, which were applied to all aliens, were also to the citizens of the EU Member States applied. 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 the residence permit.

In period of time, where the accession to EU was prepared, a special act was adopted, which regulates the questions of entry, residence and departure of the Citizens of the EU Member States. This act 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 (*Aliens Act*) are not applicable. During the year 2005 there were no radical changes in the relevant legal acts.

Entry

Text(s) in force

Before Estonia joined to 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 the State Borders Act (*Riigipiiri seadus*) § 11 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.

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 visa or residence permit. The persons who are applying for 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. 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 the § 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 basis for an alien to stay in Estonia are:

Estonia

- 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.

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.

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 the accession to European Union has brought some changes in questions of entry to the Estonia, especially for Citizens of the European Union.

According to the § 11 of the State Borders Act a citizen of the European Union arriving in Estonia has to have 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 conforming 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 Liidu 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 be viewed as legal basis 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 Benefits and Services Act (*Tööturutoetuste ja -teenuste seadus- RT I 2005,54, 430*).

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

Draft legislation

The ministry of internal affairs has prepared a new draft of the Citizen European Union Act. Also the amendments in the Aliens Act are prepared and discussed in the Parliament. The reason for the drafting the new Citizen of the European Union Act is the obligation to harmonise the directive 2004/38/EU. The main change is that there is no requirement for permit to be obtained by the authorities to proof the right to stay in Estonia. Instead of this permit there will be an obligation to be registered in the register of the population.

The aim of the amendments in the Aliens Act is to harmonise the directives 2003/109/EU and 2003/86/EU. These amendments foreseen procedure for obtaining the long-term permit in order to stay in Estonia. The amendments in Aliens Act came into force from the 1st July 2006.

Miscellaneous

To enter the Republic of Estonia There is no requirement for visa. 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

Text(s) in force

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

The legal basis for staying in Estonia are visa or residence permit. Residence permits divides 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.

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 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 bases 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 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.

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:

- 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 a 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;

Estonia

- 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.

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, to find a suitable candidate and, considering the situation in the labour market, filling the position with an alien is justified.

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.

Since May the 1st 2004, the provisions about 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;
- 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 Services and Benefits Act (RT I 2005, 54, 430)*.

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.

Estonia

A residence permit will 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 time being this is equal to the 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 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 (*Asendustäitmise 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 from February the 5th 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”.¹

1 Since the 1st August 2006 this decree is not valid anymore.

To apply for a residence permit a citizen of a Member State 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 has also possibility to extend this period of time another three months. In the case of extending 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 to the access to the employment market in Estonia there is 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.

Draft legislation

See "Entry" above

Miscellaneous

The residence permit to EU citizens was issued according to the Citizen of the European Union Act. The residence permit that was given under the previous version Citizen of the European Union Act had for the citizens of the EU a declarative importance. Since the August 1st, 2006, there is no requirement for residence permit for EU citizens.

Departure

Text(s) in force

Concerning the questions and the legal regulation on departure of a 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 rules which were applied during the 2004, were also the same in the year 2005. The main rule concerning departure, which is applicable for all aliens is, that according to the § 3 of the Obligation to Leave and Prohibition on Entry Act (*väljasõidukohustuse ja sisesõidukeelu seadus*) (RT I 1998, 98/99, 1575; 2001, 68, 407; 2002, 53, 336; 61, 375) an 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 basis to stay in Estonia. If a person concerned will not leave Estonia, the administrative measures will be applied.

The circumstances, why the residence permit expires or it 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;

Estonia

- 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 thereto, nor shall the residence permit thereof be extended. The § 12 mentioned above does not specify what kind of illnesses could be viewed as a danger to the public health. The public order and the national security has always been the question to the Member States to determine what such threats are. 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.

Chapter II Access to employment

Text(s) in force

The main legal source for the employment conditions Employment Contract of Republic of Estonia. According to employment contracts act (ECA) a migrant worker has generally to hold a working permit in order to have an opportunity to work in Estonia. As the EU migrant workers do not have any obligation to hold a working permit, is this requirement applicable only for the third country workers. The Employment Contracts Act does not concretise in what circumstances there is a need for employment permit. These rules are to find in aliens act (applicable for third country nationals) or in Citizens of European Union Act for citizens of Member States of the European Union. There are no restrictions for migrant workers from the EU Member States to start their employment in Estonia. There are some differences concerning the employment in public service especially for officials (*s. Chapter IV public service*).

According to the Act about the Law of a Ships Flag and Ships Register (*Laeva lipuõiguse ja laevaregistrite seadus – RT I 1998, 23, 321, I 2005, 57, 450*), the captain of a ship can be an Estonian citizen or a citizen of the EU Member States. As to the nationality conditions for captains of ship there is no contradiction to the EU legislation.

The principle of equal treatment in employment relations can be found in Wages Act and in Employment Contracts Act:

Wage Act

§ 5. Unlawful reduction or increase in wages

It is prohibited to increase or reduce wages on the grounds of an employee's sex, nationality, colour, race, native language, social origin, social status, previous activities, religion, political or other opinion, or attitude towards the duty to serve in the Defence Forces. It is prohibited to reduce wages on the grounds of the marital status, family obligations, membership in citizens' associations or representation of the interests of employees or employers.

Employment Contracts Act

§ 10. Prohibition on discrimination against employees

(1) Employers shall not, upon employment and entry into employment contracts, discriminate against persons applying for employment on any of the grounds specified in subsection (3) of this section.

(2) Employers shall not discriminate against employees on any of the ground specified in subsection (3) of this section upon remuneration, promotion in employment or office, giving instructions, termination of employment contracts, access to retraining or in-service training or otherwise in employment relations.

(3) Discrimination prohibited on the basis of subsections (1) and (2) of this section shall be taken to occur where a person applying for employment or an employee is discriminated against on grounds 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 the interests of employees or membership in workers' associations, political opinions or membership in a political party or religious or other beliefs.

Diplomas

The procedure of recognition of foreign professional qualifications is determined in the Recognition of Foreign Professional Qualifications in Estonia Act (*Välisriigis omandatud kutsekvalifikatsiooni tunnustamise seadus – RT I 2000, 29, 168...I 2004, 45, 316*). A competent body has to, 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 will 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 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 should 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.

According to the Language Act (*keeleseadus –RT I 1995, 23, 334...I 2005, 1, 1*) 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 has 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 can 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

Estonia

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.

The requirements concerning linguistic competence of professors and other teachers at universities are not as strict as the requirements concerning other civil servants and there is more place for discretion that makes it possible to take into account the particularities of each situation.

Miscellaneous (administrative practices, etc.)

There are no concrete data available, how many persons from different EU Member States work in Estonia. Although there is also a special law about the posted workers, there is no official number of the posted workers available. The number of posted workers can be approx. 1000. It is expected that the number of the migrant workers from the other Member States will be increased.

Chapter III Equality of treatment on the basis of nationality

Texts in force

In Estonia there are different legal rules, which set forth the general principles of equal treatment, but on the other side in practice do these regulations function not very well. Although there are no court cases the sociological research shows that the behaviour concerning the aliens especially Russian speaking population shows more tendencies to 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. All the legal rules about the equal treatment are also be applied in case there is a discrimination based on the nationality of the person concerned. In Constitution of the Estonian Republic in art 12 is stipulated, 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.

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

Wage Act

§ 5. Unlawful reduction or increase in wages

It is prohibited to increase or reduce wages on the grounds of an employee’s sex, nationality, colour, race, native language, social origin, social status, previous activities, religion, political or other opinion, or attitude towards the duty to serve in the Defence Forces. It is prohibited to reduce wages on the grounds of the marital status, family obligations, membership in citizens’ associations or representation of the interests of employees or employers.

Employment Contracts Act

§ 10. Prohibition on discrimination against employees

(1) Employers shall not, upon employment and entry into employments contracts, discriminate against persons applying for employment on any of the grounds specified in subsection (3) of this section.

(2) Employers shall not discriminate against employees on any of the ground specified in subsection (3) of this section upon remuneration, promotion in employment or office, giving instructions, termination of employment contracts, access to retraining or in-service training or otherwise in employment relations.

(3) Discrimination prohibited on the basis of subsections (1) and (2) of this section shall be taken to occur where a person applying for employment or an employee is discriminated against on grounds 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 the interests of employees or membership in workers' associations, political opinions or membership in a political party or religious or other beliefs.

§ 10¹. Exceptions to prohibition on discrimination pursuant to law

For the purposes of this Act, the following shall not be deemed to be discrimination:

1) grant of preferences on grounds of pregnancy, confinement, giving care to minors or adult children incapacitated for work and parents who are incapacitated for work;

- 2) grant of preferences on grounds of membership in association representing the interests of employees or representing the interests of employees;
- 3) grant of preferences to disabled workers, including creation of working environment taking account of the special needs of disabled workers;
- 4) taking account of the sex, level of language proficiency, age or disability upon employment of a person, or upon giving instructions or enabling access to retraining or in-service training, if this is an essential and determinative professional requirement arising from the nature of the professional activity or related conditions;
- 5) allowing a suitable working and rest time regime which satisfies the religious requirements of an employee.

§ 10². Prohibition on direct and indirect discrimination

- (1) It is prohibited to discriminate against employees or persons applying for employment either directly or indirectly.
- (2) Direct discrimination shall be taken to occur where one person applying for employment or an employee is treated less favourably than another person applying for employment or another employee is, has been or would be treated in a comparable situation, on any of the grounds specified in subsection 10 (3).
- (3) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put employees or persons applying for employment at a particular disadvantage compared with other employees or persons applying for employment on any of the grounds specified in subsection 10 (3), unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
- (4) For the purposes of this Act, harassment shall be deemed to be a form of direct discrimination on any of the grounds specified in subsection 10 (3). Harassment shall be taken to occur where unwanted conduct or act, either verbal, non-verbal or physical, takes place against a person in a relationship of subordination or dependency with the purpose or effect of violating the dignity of the person and of creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment, and the person rejects such conduct or tolerates it for a reason that it affects his or her access to office or employment or in order to maintain the employment relationship, have access to training, receive remuneration or have access to other advantages or benefits.
- (5) An instruction given to a person to discriminate against another person shall be deemed to be discrimination.

§ 10³. Rights of employees and persons applying for employment who have been subject to discrimination

- (1) An employee or a person applying for employment against whom the employer discriminated on any of the grounds specified in subsection 10 (3) has the right to demand from the employer compensation for the proprietary and non-proprietary damage caused by the discrimination.
- (2) A person with whom the employer refused to enter into an employment contract on any of the grounds specified in subsection 10 (3) shall not have the right to demand entry into an employment contract.

The legal rules mentioned above came into force on May 1st 2004. The main important changes are as follows: 1) it is defined what is direct and indirect discrimination 2) it is defined what is harassment, which are the characteristic features of a harassment 3) what the rights of a discriminated persons are.

In the previous version of the § 10 of Employment Contracts Act these aspects were not clarified. Especially important is clarification about what a discriminated person can demand from his or her employer. Although there is no upper or lower limit for the damages a discriminated person can claim, it will be up to judge to decide which the level of damages is. Deciding the amount of compensation, the circumstances of the concrete case will be taken into account.

According to the § 144¹ of the Employment Contracts Act also the principle of shared burden of proof in discrimination disputes will be applied.

§ 144¹. Shared burden of proof in discrimination disputes

(1) Where an employee or a person applying for employment finds that the employer has discriminated against him or her on the basis of an attribute specified in subsection 10 (3), the employee or person applying for employment shall submit to a labour dispute resolution body or to the Legal Chancellor an application containing the facts in proof of the discrimination. If on the basis of the application submitted by an employee or a person applying for employment it may be presumed that direct or indirect discrimination has occurred, the employer shall be required, at the request of the labour dispute resolution body or the Legal Chancellor, to explain the reasons for his or her conduct or decision. The refusal by an employer to give explanations shall be deemed to be equal to acknowledgement of discrimination.

(2) Shared burden of proof does not apply in criminal procedure.

The penal code (*Karistusseedustik*) also foresees that in special circumstances the violation of the principle of equal treatment could be handled as a criminal offence. In Estonian penal code there is a special subtitle, where the criminal offences against the equal treatment are regulated.

Penal code (*Karistusseedustik*)

Offences Against Equality

§ 152. *Violation of equality*

Unlawful restriction of the rights of a person or granting of unlawful preferences to a person on the basis of his or her nationality, race, colour, sex, language, origin, religion, political opinion, financial or social status is punishable by a fine of up to 300 fine units or by detention.

(2) The same act, if committed:

1) at least twice, or

2) significant damage is thereby caused to the rights or interests of another person protected by law or to public interests, is punishable by a pecuniary punishment or up to one year of imprisonment.

All these rules mentioned above will be also applied in case there is a discrimination due to the nationality.

Judicial practice

Although the rules about the equal treatment have been in force already since 1992, so far there is no judicial practice and concrete case law on that subject matter. This means that the discrimination on ground of nationality, citizenship etc, also between the men and woman has not been legally defined by the courts. At same time at the political level there has been many discussions, that especially the basic human rights of the third country national are violated (in case of Estonia the rights of the Russian speaking population).

Chapter IV

Employment in the public sector

Text(s) in force

Requirements concerning Estonian citizenship

According to the general regulation concerning the employment in public sector, between two categories of persons who are working in public sector should be distinguished. At first there are persons who are working under the employment contract (*abiteenistujad*). Those persons are mostly fulfilling tasks, which are more technical and supportive nature (secretary, drivers etc). By those persons there are no requirements that they 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 types of persons who are working in public sector are officials (*ametnikud*). This person should in general have Estonian citizenship.

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, then also the persons who do not have Estonian citizenship also may 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 procedure established by law. These positions may, as an exception, be filled by citizens of foreign states or stateless persons, in accordance with law.

The Public Service Act

In 1995 a reform in the employment in public sector was introduced. Until the 1995 the employment in public service was performed under the employment contract and the regulations of labour law were also applicable to the civil servants. From beginning 1996 there is the distinction between the public service and between the 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 public sector, but under the employment contract. According to the § 1 of the Public Service Act (*avaliku teenistuse seadus – RT I 1995, 16, 228*). 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, this is determined 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 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 law may also be appointed to a position in public service. 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 where 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 European Union (May 1st, 2004) only the Estonian Citizens had an opportunity to be appointed as civil servants. In certain circumstances it was also possible that non-citizens could be appointed as civil servants. This concerned mainly 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 qualifications is determined in the Recognition of Foreign Professional Qualifications in Estonia Act (*Välisriigis omandatud kutsevalifikatsiooni tunnustamise seadus – RT I 2000, 29, 168...I 2004, 45, 316*). A competent body has to, 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 will 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 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 should 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, that guarantees access to 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 in order to take into account the 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 situation 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 language 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 population speaks other language as Estonian language, also the other language can be used (this is mainly the case in regions, where the majority of population is Russian speaking especially in eastern part of Estonia).

Main requirements for the ability to communicate in Estonian are determined in the Language Act (*Keeleseadus -RT I 1995, 23, 334...I 2005, 1, 1*). and in the Government decree, in which it is concretised what level the 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 Estonian 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 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 has 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 can 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.

Estonia

The requirements concerning linguistic competence of professors and other teachers at universities are not as strict as the requirements 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 concerning the employment in public sector is at the moment concerned about the 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. According to the Public Service Act the low ability to communicate in Estonian can lead to dismissal of such persons.

Chapter V

Members of the family

Text(s) in force

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. Aliens Act itself does not determine what a family in the meaning of this act is and who family members are.

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 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.

Residence permits are:

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

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 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 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 Aliens Act.

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

- 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.

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 the Citizen of European Union Act § 3 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 Services and Benefits Act.

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

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 permit 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 the 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 have 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.

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 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.

Estonia

Draft legislation

See Chapter I.

Judicial practice

Judicial practice in general has in this field many case laws, which concerns mainly permits issues third country nationals. The main problems in judicial practice concern the questions of reunions of the families and the migration quotas set up by the government of the Republic of Estonia. The Migration board usually states the fact, that if the migration quota has been already reached, there are no possibilities to give to a person concerned a residence permit. In such cases the supreme court of the Republic of Estonia has stated, that the quota set up 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, this case law cited above are not applicable to the citizens of the EU Member States.

Chapter VI

Relevance/influence/follow-up of recent Court of Justice judgements

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 ECJ, will be taken into account.

Furthermore, the Estonian authorities including the Ministry of the Interior and the Board of Immigration and Citizenship 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 judgements of the ECJ are included in the training of those handling the applications and making decisions on refusal of entry and deportation.

In the field of social security, the Estonia National Social Insurance Board follows the case law of the ECJ. The persons, who are handling the applications, are informed about the aspects of the relevant judgments through the training. This is, however, not regarded as entirely satisfactory. The relevant legal rules and principles should be recognized at the level of legislation. Also more operative information is needed about the important ECJ decisions.

The principles of free movement of persons are also applied in sports sectors. In general there are no restrictions for different teams to hire team-members also from other EU Member State. The main rules about hiring the members outside the Estonia are concretised by the internal rules of a sport club. Although there was also adopted a special law about the sportsmen, this law does not concretise the rules of the free movement for sportsmen.

Chapter VII

Policies, texts and/or practices of a general nature with repercussions on free movement of workers

Accession to the European Union did not bring any big changes into the migration from the third countries. On the other side the Estonian employers want to hire qualified workforce from the third countries especially in building constructions and in IT-sectors. As the general rules for aliens to get an employment are in many aspects quite complicated, the Estonian employers are already losing the interest to hire persons from the third countries. At the same time they are also not very intensively looking for missing workforce from other new Member States.

Chapter VIII

EU enlargement

According to the Act of Accession Estonia to the European Union Estonia does not apply any restrictions to the freedom of movement and also to the free movement of the workers. If the “old” 15-Member States of the European Union have established transitional period two plus three plus two to open their labour market, such transitional period has 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 no restrictions for the EU citizens concerning the access to the labour market and other activities.

To harmonise the Estonian legal system with the European law, the different amendments were made and also different legislative acts were adopted e.g. important here are Citizen of the European Union Act (*Euroopa Kodaniku seadus*), which concretise the legal statues of the citizens of the European Union and their family members and Posted Workers Act (*Eestisse lähetatud töötajate töötingimuste seadus – RT I 2004, 19, 134*), which determines the employment conditions for those employees who are temporarily send to Estonia to do their work in Estonia.

Estonia does not apply any transitional measures, because there is no need for that. The situation on the Estonian labour market has at the moment other problems. Many qualified workers are looking for the better positions in old Member States and this leads to the lack of the qualified workers in Estonia. Such situation brings the Estonian employers to the idea to import more qualified workforce from third countries especially from Russia and Ukraine (e.g. building construction, buss drivers).

Literature

Epp Kallaste, Kaia Philips, Reelika Leetmaa and 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.

Andres Võrk, Marit Priinits, Epp Kallaste (2004), *Tervishoiutöötajate migratsioon Eestist: migratsiooni potentsiaalne suurus, mõju tervishoiutöötajate vajadusele ja võimalikud poliitikavalikud*, PRAXISE toimetised 18/2004

Välistöõjõu vajadus Eesti ettevõtetes (2005 august-septemebri) available: <http://www.tta.ee>, tellitud uuringud

Välisriikides töötamise huvi uuring . available: <http://www.tta.ee>, tellitud uuringud.

Chapter IX 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. Most of immigrants came to Estonia to settle with their spouses or close relatives. Another major group of aliens consist of those who try to find an employment in Estonia.

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 permit:

legal income	612
employment	450
studies	289
entrepreneurship	149
joining family member	42

2005 (until 31.08) positive decisions:

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

After to 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 are Finland, Sweden, Denmark, England and Ireland. From the free movement mainly the following branches are affected: buildings construction, bus traffic, forest industry, hotels, restaurants, medical services (especially young doctors, nurses, dentists).

Concerning the migration from the old Member States to Estonia the main countries are: Finland, Sweden, also Great Britain (according to the British ministry of Interior there 4680 in Estonia who are working in Britain, thus makes about 1.5% of all employees coming from the new Member States.) and Germany. The main reason, why persons are coming to Estonia is to establish a company her due to the lower taxes.

Trends

Due to the economic grow also the wages in Estonia have increased. In order to keep the qualified workforce in Estonia the employers have been forced to raise the salaries and to offer other facilities. This leads to the situation that some Estonian workers who left Estonia, are turning back, because in some branches the salary conditions are already equal to the conditions that are applied in Estonia (also taking into account all the necessary living costs). According to the unofficial statistical data approx. 35000 Estonians are working in different EU Member States.

Chapter X Social security

Legislation in force

The Estonian social security system is by large based on the insurance principle. Only in case family benefits and funeral benefits, these benefits are guaranteed on the base of the 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, there are foreseen, that the pension system consist of three pillars, from 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 voluntary pension scheme, guaranteed by the private pension funds.

Here the problem arises with the second pillar of the pension system and with opportunity to join this pillar. According to the Funded Pension Insurance Act (*Kogumispensionide seadus – RT I 2004, 37, 252*), 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, whether 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 to this system later on. This pension system could arise problems for the persons who are using their right for free movement, as it is not clear enough if the citizens of the European Union Member States who are working in Estonia have possibility to join system. Also it is not clear, if the European co-ordinating system will cover such pension system. At the moment there seems to be no concrete law or provisions, which could give to the employees, who were born before January 1st, 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 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 requirement for granting the social security benefits for the 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 posses a residence permit temporary or permanent. By the calculation of insurance periods, the periods of insurance or employment or residence in other states were only taken in to 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 Estonian and Sweden concerning the medical assistance 2) social security agreements with Finland, Latvia and Lithuania and also with Ukraine.

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

Concerning the social assistance following aspects should be taken into account: according to Social Welfare Act (*sotsiaalhoolekande seadus – RT I 1995,21, 323*) the social assistance will be granted to the 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 the temporary residence permit. In addition to the ordinary social assistance, the Social Welfare Act also guarantees extraordinary social assistance. Under the extraordinary social assistance the benefits in cash or in kind to be guaranteed in unexpected situations are meant. The extraordinary social assistance will be provided for all persons who are legally staying in Estonia. According to the wording of the Social Welfare Act and also the meaning of extraordinary social assistance, it is not necessary that the person in need would have a residence permit. As the extraordinary social assistance is not a normal case of social assistance in general, it means that in order to apply for different services and benefits, which are granted in framework of social assistance, residences permit will be needed. As the Citizen of the European Union Act states, that European citizens may stay in Estonia for a period of time of six months without any residence permit, it means, that during these six months the benefits of the social assistance will not be granted.

Judicial practice

The main important question that arises in social security is the question about guaranteeing parental benefit. Parental benefit is a benefit paid to the parents until the child reaches the age one year. The amount of that benefit usually depends on the amount of the social tax that was paid in the last year. It is not clear at the moment, if this benefit should be defined as maternity benefit or as a family benefit. Such situation leads to legal uncertainty by guaranteeing this benefit to migrant workers.

Literature

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

Gaabriel Tavits, Euroopa Liidu sotsiaalkindlustuse koordineerimise reeglid ja Eesti pensionireform (Social Security Coordination Rules in EU and Estonian Pensionreform), *Juridica*, 2002, nr 10, lk 709-717.

Chapter XI

Establishment, provision of services, students

Text in force

By dealing with questions about the 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 a residence permit to stay in Estonia.

A residence permit will 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) person's actual residence is in Estonia;
- 4) 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 member 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

Before the accession the general rules about the entering and staying in Estonia, laid down in the Aliens Act were applicable. Also some specific requirements for enterprise were established. According to the § 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 loca-

tion 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 the § 13⁴ 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. 63911,6 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.

Citizens of the European Union

According to the § 7 of the Citizen of European Union Act 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 will 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

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

Students

Prior to the accession to EU general rules laid down in the Aliens Act about the 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 also the some specific conditions for students have been foreseen.

According to the § 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 the § 12¹ 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 Aliens Act are not fulfilled or other circumstances exist, which are the bases 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 bases 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 has not to be included in the requisite period of residence in Estonia necessary for application for a permanent residence permit.

Since the May 1st 2004 the special rules for EU citizens have been foreseen. 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 an 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 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 XII

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. 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 about the 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.

Important Internet-sites:

- www.riigiteataja.ee – legal text and laws in force, in Estonian only
- www.legaltext.ee – Estonian laws in English
- www.riigikohus.ee – Web-site of the Supreme Court, also court decisions are available (only in Estonian)
- <http://kola.just.ee> – Database for court decisions (only in Estonian, covers the decisions from the first and the second instances)
- www.kohus.ee/kohtulahendid - Database for court decisions (only in Estonian, covers the decisions from the first and the second instances), active since 01.01.2006.