

REPORT
on the Free Movement of Workers
in Finland in 2002-2003

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Introduction

In 2002 and 2003 there was going on a reform of the Aliens Act in Finland. The new Act entered into force on 1.5.2004. Because of this legislative reform issues related to migration – both voluntary and forced – and to legal status of foreigners were debated rather extensively in political and public debates. The treatment of EU citizens did, however, not receive a lot of attention except what comes to the citizens of the new Member States.

Finland decided to apply a two years transitional period for access to Finnish labour market to citizens of Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia. During this transitional period the citizens of these states can be employed in Finland only if the employment office considers that the vacancy in question can not be filled from the domestic labour market and issues a decision on this. The transitional measures do not apply to movement of labour within the framework of freedom of services. Therefore, it is expected that citizens of the new Member States, in particular Estonians, will enter the Finnish labour market through agencies that are established in new Member States and that hire workers to Finnish companies. This is regarded as rather problematic state of affairs as the supervision of conditions of work may be difficult in this kind of situations and therefore there may be room for malpractices.

In 2002 and 2003, regarding rules concerning entry, residence and departure of citizens of the old Member States and their family members, there appeared not to be any significant obstacles to the freedom of movement. For example the fact that only a few decisions concerning these issues were appealed to the domestic administrative courts indicates this. What was somewhat problematic in this area was the manner of implementation of the EC legislation; the provisions of the old Aliens Act, i.e. the Act that was still in force during 2002 and 2003, concerning free movement of EU citizens were rather scantily worded and therefore many questions, including some rather significant ones such as the question of renewal of residence permits and permanent residence permits, were left for implementation through administrative guidelines and orders some of which were no longer formally in force. In this respect the situation was not entirely satisfactory in the light of requirements concerning legal certainty and legal protection of individuals. The new Aliens Act, however, remedied this situation as its provisions on free movement of EU citizens are rather detailed.

What comes to the access to the public sector, it appears that it was not so much the requirements concerning Finnish citizenship but instead the requirements concerning linguistic competence that may have caused problems in this area. Perfect command of one of the national languages, Finnish or Swedish, and fluency in the other was a statutory recruitment criterion for rather great number of public offices. Furthermore, the level of language proficiency could be proved only by means specified in a decree. These acceptable means of proving language proficiency were national language tests and certificate showing that the person concerned has completed her education and passed a maturity test at university in a given language in Finland. These requirements concerning both linguistic competence and the means of proving this competence appear as prob-

lematic in the light of EC legislation. The national legislation was however reformed and the new provisions entered into force in the beginning of 2004. The new legislation is better in line with the requirements following from the EC law; perfect command of the national languages is no longer required from civil servants and other means of proving the required language proficiency than those specified in the decree may now be accepted.

All in all it appears that in 2002 and 2003 in Finland the most significant problems in the area of free movement of EU citizens related to implementation of EC law on the one hand and to national rules concerning linguistic competence as binding civil service recruitment criteria on the other.

Chapter I

Entry, Residence, Departure

The questions of entry, residence and departure of non-citizens are regulated in the Finnish Aliens Act. The Aliens Act (Ulkomaalaislaki 301/2004) (the new Aliens Act) entered into force on 1.5.2004. This Act replaced the Aliens Act number 378/1991 (the Aliens Act). According to the Government Bill to the Parliament for Aliens Act (Hallituksen esitys Eduskunnalle ulkomaalaislaiksi ja eräiksi siihen liittyviksi laeiksi, HE 28/2003 vp, hereafter the Government Bill 28/2003) the provisions of the new Aliens Act that concern free movement of EU citizens and their family members and other relatives are based on the EC legislation on free movement, the relevant decisions by the European Court of Justice (hereafter ECJ) and the Proposal for a European Parliament and Council Directive on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely in the Area of the Member States. The previous Aliens Act was somewhat problematic in this respect as some rather central aspects of freedom of movement – for example the question of renewal of a fixed term residence permit and issuing a permanent residence permit – were not covered by the Act but were instead left for administrative regulations and administrative practice. The new Act is in this respect more complete and detailed than the previous Act. As this report covers years 2002 and 2003, in other words a period before the new Aliens Act entered into force, the old Aliens Act and the Government Bills concerning it are discussed under title “Texts in force” and the new Aliens Act, i.e. the Act that entered into force on 1.5.2004, and the Government Bill concerning it under title “Draft legislation”.

The Government Bills to the Parliament explain the objectives and contents of legislation and have therefore significant influence in how legislation is interpreted and applied in practice. Therefore the relevant passages of the Government Bills are explained in this report if they further clarify the contents of the provision in question. The Government Bill 28/2003 deserves particular attention in this respect. According to section 9 sub-section 4 of the Finnish Constitution (Suomen perustuslaki 731/1999) that entered into force in 2000, the right of foreigners to enter Finland and remain in the country shall be regulated by an Act of Parliament. Because of this, administrative orders and guidelines may no longer be used in this area of regulation as extensively as before. Most questions formerly covered by administrative guidelines and orders or left for practice are now covered by the new Aliens Act. Therefore, the Government Bill 28/2003 is rather detailed and also gives a view of the previous administrative practice.

The Order issued by the Ministry of the Interior on the impact of the Treaty on European Economic Area on the right to reside and work in Finland (Sisäasiainministeriön määräys Euroopan talousaluetta koskevan sopimuksen vaikutuksista oikeuteen oleskella ja työskennellä Suomessa Dno 8/010/93, 30.12.1993, valid between 1.1.1994 and 31.12.1998, hereafter Order 8/010/93) and the Guidelines issued by the Ministry of the Interior on the system of cards based on the Treaty on European Economic Area and specifying the grounds for issuing residence permits (Sisäasiainministeriön ohje Euroopan talousaluetta koskevaan sopimukseen perustuvasta korttijär-

jestelmästä ja tarkennuksista oleskelulupien myöntämiseen Dno 10/010/94, 18.5.1994, valid between 1.6.1994 and 31.12.1998, hereafter Guidelines 10/010/94) were no longer formally in force in 2002 and 2003. Despite of not being in force they were, however, in administrative practice still followed. Therefore the relevant provisions of the Order and the Guidelines are explained below. The Order 5/011/99 issued by the Ministry of the Interior on decision making on refusal of entry and deportation (Sisäasiainministeriön määräys päätöksenteosta käännyttämistä ja maasta karkottamista koskevassa asiassa Dno 5/011/99, 4.5.1999, hereafter Order 5/011/1999) was in force between 4.5.1999 and 3.5.2004 and thus during the period covered by this report and is also discussed here. Text of the Finnish text of the Guidelines and Order are annexed to this report.

A. Entry

a) Texts in force

The basic provision on preconditions for entry of EU citizens to Finland is section 8 a sub-section 1 of the Aliens Act. This provision was revised by the Act on Amending the Aliens Act 763/2001 that was given on 31st of August 2001 to include also citizens of Switzerland.

Aliens Act 8 a § 1¹

“Preconditions for Entry of Citizens of a State Belonging to the European Economic Area and Switzerland

A citizen of a State Belonging to the European Economic Area and Switzerland shall be required to present a valid identity card or passport upon entering Finland and he may not be deemed to jeopardize public order and security or public health.”

Circulars

Guidelines 10/010/94 provides further clarification to the contents of section 8 a 1 of the Aliens Act. The Guidelines defines who are entitled to enjoy the provisions on free movement of persons (Section 1) and establishes a link between section 8 a § 1 of the Aliens Act and the requirements set forth in the Treaty Establishing the EEA (hereafter EEA Treaty) (Section 2). Furthermore, the Guidelines recognises the right of Finnish authorities to confirm that a person trying to enter Finland meets the preconditions for free movement laid down in the EEA Treaty (Section 2).

b) Draft legislation

Section 155 of the new Aliens Act is the basic provision on EU citizens' and their family members' entry and residence. This provision recognises the right to enter the country and to reside there and lays down the preconditions for that. According to the Government Bill 28/2003 section 155 of the new Aliens Act is based on Article 3.1 of the Directive 68/360/EC and Article 3 of the Directive 73/148/EC as well as Article on 18 of the EC Treaty. Furthermore, judgment C-68/89 Commission v. the Netherlands was taken into account when drafting this provision and should be taken into account when applying it in practice.

1 When discussing Finnish legislation, following terminology is used: section, sub-section, paragraph.

New Aliens Act 155 §

“Union Citizen’s Entry and Residence

A precondition for the entry and residence of a Union citizen is possession of a valid identity card or passport. A Union citizen’s family member or other relative who is not a Union citizen shall be required to hold a visa if she is a citizen of a country whose nationals are by the Council Regulation required to hold a visa.”

Section 156 of the new Aliens Act lays down further conditions for entry. According to this provision a person who jeopardizes public order and security and public health may be prevented from entering Finland, or if already entered, may be rejected from the country. According to the Government Bill 28/2003 this provision reflects articles 39.3 and 46.1 of the EC Treaty. In this connection the Government Bill also refers to judgments 41/74 *Van Duyn*, 115/81 and 116/81 *Adoui and Cornuaille* and 30/77 *Bouchereau* and according to the Bill they should be taken into account when applying this provision.

New Aliens Act 156 §

“Public Order and Security and Public Health

In addition to the precondition laid down in section 155, the entry and residence of a Union citizen is conditional upon that she or her family member or other relative shall not be deemed to jeopardize public order or security or public health.

Prevention of entry or rejection from country on the grounds of public order or security must be based on the behaviour of the person concerned and a previous crime conviction shall not in itself be regarded as a sufficient ground.”

c) Judicial practice

Nothing to report.

d) Miscellaneous

Nothing to report.

e) Literature

Nothing to report.

B. Residence

a) Texts in force

Section 8 a sub-section 2 of the Aliens Act contains the provision on EU citizens’ right to stay in Finland for three months and in exceptional situations even longer than that without a residence permit. This provision was amended on 31st of August 2001 by the Act Amending the Aliens Act 763/2001 to cover also citizens of Switzerland. According to the Government Bill to the Parliament for Act Amending the Aliens Act (Hallituksen esitys Eduskunnalle laiksi ulkomaalaislain muuttamisesta HE 275/1992 vp) this provision reflects the Council Directive 68/360 and relevant articles of the EC Treaty as well as the practice of the ECJ, in particular the judgment 292/89 *Antonissen*.

Aliens Act 8 a § 2

“Preconditions for Entry of a Citizen of a Country Belonging to the European Economic Area and Switzerland

A citizen of a State belonging to the European Economic Area and Swiss Confederation need not have a residence permit if her stay in the country does not exceed three months. A citizen of a State belonging to the European Economic Area and Switzerland who is seeking employment may, even thereafter, stay in Finland for a reasonable period of time without a residence permit if she is still looking for and has factual possibilities of getting employment.”

Section 16 sub-section 4 concerns issuing a fixed-term residence permit to EU citizens and their family members. This provision was amended on 31st of August 2001 by the Act Amending the Aliens Act 763/2001 to cover also citizens of Switzerland. According to the Government Bill to Parliament for an Act Amending the Aliens Act (Hallituksen esitys Eduskunnalle laiksi ulkomaalaislain muuttamisesta HE 275/1992 vp) this provision covers workers, providers of services, those enjoying their right of establishment, students and others who have a right, based on EC law, to freedom of movement.

Aliens Act 16 § 4

“Residence Permit Categories

An alien who is a citizen of a state belonging to the European Economic Area or Swiss Confederation is issued a fixed-term residence permit for five years. The same applies to her spouse, her own and her spouse’s parents who are dependent on her care, as well as her own or her spouse’s children who are under 21 years of age or dependent on parents’ care. If the stay of the aforementioned alien is supposed to last a period shorter than one year the residence permit may be issued for the estimated period of residence.”

Section 19 sub-section 1 of the Aliens specifies that the local police is the authority that issue residence permits to EU citizens and their family members.

Aliens Act 19 § 1

“Issuing a Residence Permit in Finland

[...]An alien specified in section 16 sub-section 4 of this Act who enters Finland without a residence permit will, however, be issued a fixed-term residence permit by the local police.”

Section 20 sub-section 2 of the Aliens Act recognises that neither EU-citizens nor their family members have to apply residence permit before entering Finland. According to the Government Bill to the Parliament for Act Amending the Aliens Act (Hallituksen esitys Eduskunnalle laiksi ulkomaalaislain muuttamisesta HE 275/1992 vp), this provision implements the requirement to remove all obstacles that restrict the freedom of movement.

Aliens Act 20 § 2

“Preconditions for Issuing a Residence Permit to a Person Residing in Finland

An alien referred to in section 16 sub-section 4 of this Act who enters Finland without a residence permit for a purpose other than travel shall be issued a fixed-term residence permit.”

Circular

Order 8/010/93 and Guidelines 10/010/94 lay down more detailed directions to the authorities in applying the provisions of the Aliens Act on EU citizens right to reside in Finland that are rather scantily worded.

Order 8/010/93 lays down the requirement that an EU citizen's family member who is not an EU citizen and who is required to possess a visa has to possess the required visa already when entering Finland (Section 2). This provision is not fully in line with the recent practice of the ECJ and in particular with judgment C-459/99 MRAX.

According the Order 8/010/93, EEA citizens and their family members get residence permit automatically provided that they possess documents specified in this Order. Furthermore, the Order lays down a requirement that the EU citizen concerned and her family member have to register themselves immediately after being issued a residence permit (Section 3.2.).

The Order 8/010/93 repeats the provision already laid down in section 16.4 of the Aliens Act according to which the fixed-term residence permit issued to EU-citizens and their family members shall normally be valid for five years. Furthermore, the Order provides directions concerning the validity of the fixed-term residence permit in cases where the holder of the permit lives in another country (Section 3.3.). The Order also provides further directions on the validity of a residence permit in cases of incapability for work and unemployment (Section 3.5.). The Aliens Act does not contain provisions on validity of the residence permits in this kind of situations.

In the Aliens Act there are no specific provisions on revoking EU citizen's and her family member's residence permit. The general provision on revoking a residence permit is laid down in section 21 of the Aliens Act. According to it, a residence permit may be revoked for a weighty reason. According to the Order 8/010/93, jeopardy to public order or security or public health caused by an EU citizen or her family member may be regarded as such (Section 3.5.). For the sake of legal protection of individuals the provisions on revoking EU citizen's and her family member's residence permit should be implemented to national legislation through law and not only through an administrative regulation that has ceased to be formally in force.

The Order 8/010/93 recognizes the right of workers and their family members to remain under certain conditions in Finland after having finished working there (Section 3.6.). In the Aliens Act there are no provisions on this. The right to remain in Finland is thus implemented only through an administrative regulation that is no longer formally in force.

Furthermore, the Aliens Act does not contain provisions on EU citizens' and their family members' permanent residence permits. The administrative circulars seem somewhat contradictory in this respect. According to section 9 of the Order 8/010/93, an EEA citizen and her family member who has been issued a residence permit for at least five years may, after this period of five years has passed, apply for a new fixed-term permit or a permanent residence permit. A student may, however, not be issued a permanent residence permit because the ground for her stay in Finland – studying – is not regarded as permanent. However, according to section 7 of the Guidelines 10/010/94 those enjoying freedom of movement under the EEA Treaty are not issued a permanent

residence permit but instead a fixed-term residence permit card that is valid for a long period of time and renewable without discretion. Furthermore, according to the Guidelines, if the person concerned would still like to get a permanent residence permit, she shall be issued it under the general rules of the Aliens Act. In these cases the question is not of a residence permit based on the EEA Treaty and the residence permit is not an EEA-card but instead it is a regular residence permit that is marked in passport.

According to section 10 of the Guidelines 10/010/94 the information concerning citizens of other EEA countries and their family members who have been issued residence permit shall be registered in the Aliens Register according to the Act on Aliens Register (Laki ulkomaalaisrekisteristä 1270/1997).

b) Draft legislation

The provisions of the new Aliens Act concerning freedom of movement of EU citizens are more detailed than the provisions of the old Act. Many questions that were previously regulated at the level of administrative orders and guidelines are covered by the new Act.

Section 158 of the new Aliens Act concerns short term residence of EU citizens and their family members. According to the Government Bill 28/2003 this provision is based on Article 8.1 of the Directive 68/360/EC and Article 4.2 of the Directive on provision of services. It is reminded in the Government Bill that the ECJ has interpreted free movement of workers broadly. According to the Government Bill decision C-292/89 Atonissen was taken into account when drafting this provision and should be taken into account when applying it in practice.

New Aliens Act 158 §

“Union Citizen’s Short Term Residence

A Union citizen may stay in Finland up to three months without registering her right of residence. A Union citizen who is seeking employment may, even thereafter, stay in Finland for a reasonable period of time without registering her right of residence if she is still looking for and has factual possibilities of getting employment.”

Section 159 of the new Aliens Act concerns long term residence. The major difference between the old and the new Aliens Act in this respect is that according to the new Act EU citizens and family members who also are Union citizens are no longer required a residence permit but instead registration of right of residence. According to the Government Bill 28/2003 this provision reflects the proposal for directive on the right of EU Citizens and their family members to freely move and reside in the area of the Member States (COM(2001) 257 final) and the practice of the ECJ.

What comes to the preconditions for the residence, according to the Government Bill, it shall not be defined in abstract what constitutes sufficient financial resources. Normally it will be enough that the person concerned declares that her income is secured; any proof of that shall not be required. The reliability of this declaration is assessed if the person concerned turns to the Finnish system of subsistence support to cover the expenses of her daily living. Sickness insurance is required if the person concerned does not, according to Regulation 1408/71, fall within the ambit of the Finnish social security system.

New Aliens Act 159 § 1

“Registering the Right of Residence of a Union Citizen

A Union citizen must register her right of residence at the latest when her right to reside in Finland under section 158 expires. The precondition for registering one’s right of residence is that the requirements set forth in section 155 and 156 are met and that:

- 1) she is engaged in economic activities either as an employee or self-employed person;
- 2) she has sufficient financial resources and when required a sickness insurance so that during her stay in Finland she does not have to turn to the subsistence support under the Act on subsistence support or other social benefits; or
- 3) she has been accepted as a student in a Finnish educational institution and she has sufficient financial resources for her residence and a sickness insurance when such is required.”

Section 160 of the new Aliens Act concerns the influence of incapacity for work and unemployment that is not caused by a reason dependent on the worker herself, to the EU citizens registered right of residence. According to the Government Bill 28/2003 this provision is based on Article 7 of the directive on free movement of workers and practice of the ECJ.

New Aliens Act 160 §

“Influence of Incapacity for Work and Unemployment in Union Citizen’s Registered Right of Residence

In the situation referred to in section 159, sub-section 1, paragraph 1, the registered right of residence continues in effect even if the person concerned finishes working as an employee or self-employed person if she has become temporarily incapable for work due to sickness or accident or unemployed caused by a reason not dependent on herself.

The registered right of residence continues in effect for two years if the unemployment continues and this is caused by a reason not dependent on the person herself.”

Section 162 of the new Aliens Act concerns a permanent residence permit card and section 163 exceptions to the preconditions on issuing a permanent residence permit card. According to the Government Bill 28/2003 section 162 reflects the relevant EC legislation and the proposal for the Commission Directive on this issue. For the purposes of section 162 of the Act, living in Finland is deemed to begin at the moment when the person concerned registers her right of residence or at the moment when she makes the notice of removal, depending on which of them happens earlier. The right of residence of a family member or other relative who is not a Union citizen is dependent upon the residence of the Union citizen. A precondition for issuing a permanent residence permit card to a family member or other relative who is not a Union citizen is that the person concerned lives together with the Union citizen whose family member or relative she is. According to the Government Bill, students are not issued permanent residence permit cards. In case the purpose of residence of a student however changes she may be issued a permanent residence permit card on this new ground of residence. According to the Government Bill 28/2003 section 163 of the Aliens Act reflects Articles 2 and 3 of the Commission Regulation 1251/70/EC and Articles 2 and 3 of the Council Directive 75/34/EC.

New Aliens Act 162 §

“Permanent Residence Permit Card

A Union citizen or her family member or other relative shall be issued upon application a permanent residence permit card after having lived in Finland continuously for four years. Living shall be deemed continuous if the applicant has resided in Finland at least half of the relevant four year period.

A person who resides in Finland with the purpose of studying here shall not be issued a permanent residence permit.”

New Aliens Act 163 §

“Exceptions to the Preconditions on Issuing a Permanent Residence Permit Card

In cases meant in section 162 sub-section 1, a Union citizen shall be issued upon application a permanent right or residence and as a prove of that a permanent residence permit card even before the four year period of continuous living in Finland has lapsed if an employee or a self employed person:

- 1) has finished working when reaching the age that entitles to retirement pension and has been working in Finland as an employee or a self-employed person for at least the last 12 months and has been living in Finland continuously for at least three years;
- 2) has finished working due to permanent incapability for work after having lived in Finland continuously for at least two years; or
- 3) after having worked and lived in Finland continuously for three years has started to work in another EU State while still living in Finland and returning to Finland daily or at least once a week.

If the incapability for work within the meaning of sub-section 1 paragraph 2 of this section is caused by such accident at work or occupational disease that entitles the Union citizen to regulatory pension in Finland, the duration of the residence does not have any significance when issuing the residence permit card.

When issuing a permanent residence permit card according to sub-section 1 paragraph 1 or 2 of this section, periods of employment in another Member State are also taken into account. Periods of unemployment caused by factors independent of the person herself that are registered by the employment authorities, and periods that have interrupted functioning as a self-employed person that are not caused by the person concerned, as well as periods of absence from work caused by sickness or accident, are also counted as period of employment for the purposes of application of this provision.

The right to remain permanently in Finland based on sub-section 1 paragraph 1 and 2 and sub-section 2 is valid for two years after gaining this right. During this two year period the person concerned may leave the country without losing her right of permanent residence in Finland.

If the spouse of the person concerned is a Finnish citizen or a person who has lost her Finnish citizenship due to marriage to the person concerned, the preconditions concerning the duration of residence and work set forth in sub-section 1 paragraph 1, and the preconditions concerning the duration of residence set forth in sub-section 1 paragraph 2, are not applied.

Family members of an employee or a self-employed person who has a permanent right of residence according to sub-section 1 or 2 of this provision, are entitled to reside in Finland permanently. If the employee or self-employed person who is still involved in working life dies before she has got permanent right of residence according to sub-section 1 or 2, her family members who reside in Finland have a right to remain permanently in Finland if:

- 1) the employee or self-employed person had lived in Finland continuously for two years before her death;

- 2) the death of the employee or self-employed person was caused by an accident at work or an occupational disease; or
- 3) the spouse of the dead employee or self-employed person has lost Finnish citizenship because of her marriage to the employee or the self-employed person.”

c) Judicial practice

Decision 03/0453/3 of 28.5.2003, Administrative Court of Helsinki

The appellant was an EU citizen. The Police had issued him a fixed-term residence permit for five years. After the fixed-term residence permit expired, the appellant applied the local police for a permanent residence permit. The appellant had lodged the application for a permanent residence permit eight days after the fixed-term residence permit had expired. The local police did not issue the appellant a permanent residence permit as he had not lived in Finland continuously for two years by virtue of a residence permit – which was the precondition set forth in section 16 sub-section 5 of the Aliens Act for permanent residence permit. The appellant appealed this decision to the Administrative Court of Helsinki. The Court dismissed the appeal. According to the Court the preconditions set forth in the Aliens Act was not met as the appellant’s residence permit was not in force when he applied for the permanent residence permit.

d) Miscellaneous

In the Aliens Act there are no rules on renewing temporary residence permit of a Union citizen. In practice, in this kind of situations the local police issue upon application a new temporary permit. The rule followed by analogy in these situations is section 19 sub-section 3 of the Aliens Act, which is the general provision on renewing a residence permit and according to which “Permanent residence permits and new fixed-term residence permits for aliens who reside in Finland are issued by the local police. Should the local police deem that there is a certain reason not to issue a permanent residence permit, the matter is to be referred to the Directorate of Immigration for a final decision.”

Furthermore, in the Aliens Act there are no rules on issuing permanent residence permit to Union citizens. Section 9 of the Order 8/010/93 and Section 7 of the Guidelines 10/010/94, which are somewhat contradictory, concern this issue. In practice the authorities apply in this situation by analogy rules concerning third country nationals. Therefore, after two years continuous residence in Finland a Union citizen may apply and be issued a permanent residence permit if her residence in Finland is of permanent nature or in other words, if the purpose of stay is permanent. Therefore, for example students shall not be issued a permanent residence permit as the nature of their stay in Finland is regarded temporary. On the other hand, those working in Finland permanently can normally get a permanent residence permit after two years stay. The local police make the decision on permanent residence permit. This includes evaluating whether the nature of residence shall be regarded as permanent or temporary. The provisions that are applied by analogy in these cases are section 16.5 of the Aliens Act and section 19.3 of the Aliens Act. According section 16 sub-section 5: “Permanent residence permits are issued to aliens who by virtue of a permit have continuously resided in Finland for two years unless the purpose of their residence makes other arrangements necessary or there are special grounds for not issuing permanent residence permits. The

two-year period is considered to begin on the day the residence permit became valid.” According to section 19 sub-section 3: “Permanent residence permits and new fixed-term residence permits for aliens who reside in Finland are issued by the local police. Should the local police deem that there is a certain reason not to issue a permanent residence permit, the matter is to be referred to the Directorate of Immigration for a final decision.”

After the person concerned has been issued residence permit, she has to register herself at the magistrate in the municipality where she lives. EU citizens and their family members and other relatives are also registered at the Aliens Register according to the Act on Aliens Register (Laki ulkomaalaisrekisteristä 1270/1997).

e) Literature

Schön, Esa, *Työntekijöiden vapaan liikkuvuuden periaate ja joukkueurheilu. Opetusministeriö* (“Free movement of workers and team sports”) Ministry of Education Publications 2002.

C. Departure

a) Texts in force

Section 37 sub-section 3 of the Aliens Act contains provision on refusing the entry of EU citizens and EU citizens’ family members. This provision was revised by the Act Amending the Aliens Act 763/2001 that was given on 31st of August 2001 to cover also citizens of Switzerland.

Aliens Act 37 § 3

“Grounds for Refusing Entry

The entry of an alien whose right to reside in Finland is based on the Treaty on the European Economic Area or the Treaty between European Community and its Member States and Swiss Confederation on Free Movement of Persons, may be refused only on grounds of public order and security and public health.”

Section 38 of the Aliens Act concerns matters that have to be taken into account in the deliberation when taking the decision on refusing entry. This provision is applied also in cases concerning EU citizens and their family members.

Aliens Act 38 §

“Procedure for Refusing Entry

An alien shall be refused entry as soon as it has been possible to ascertain that his entry to or residence in Finland cannot be permitted. All the relevant matters and circumstances shall have to be taken into account in their entirety when considering the refusal of entry. These include at least the duration of his stay in Finland, the relationship between a child and a parent, family ties and other ties to Finland.

No one may be returned to an area where he may be subjected to the treatment referred to in section 30 [grounds for granting asylum] and 31 [grounds for granting subsidiary protection] or to an area from which he could be further sent to such an area.”

According to section 39 sub-section 1 and 2 police or passport control authority take the decision on refusing EU citizen's and EU citizen's family member's entry unless the police decide to refer the matter to the Directorate of Immigration or the latter takes up the case at its own initiative.

Aliens Act 39 § 1, 2

“Decisions on Refusing Entry

Decision on refusing entry shall be made by a passport control authority or the police in compliance with the guidelines issued by the competent ministry. If the decision is made under section 37, sub-section 2, or if an alien has applied for asylum in Finland, the decision to refuse entry shall, however, be made by the Directorate of Immigration. The passport control authority or the police may refer the matter to the Directorate of Immigration for a ruling if the refusal of entry under consideration has relevance for the application of section 37 in other similar cases. The Directorate of Immigration may also at its own initiative take up a case of refusal of entry for ruling.”

Section 40 sub-section 3 lays down the grounds for deporting EU citizens and EU citizens' family members. This provision was revised by the Act Amending the Aliens Act 763/2001 that was given on 31st of August 2001 to cover also citizens of Switzerland. According to the Government Bill to Parliament for Act Amending the Aliens Act (Hallituksen esitys Eduskunnalle laiksi ulkomaalaislain muuttamisesta HE 275/1992) this provision reflects the Council Directives 64/221, 72/194 and 75/35. Furthermore, it is stated in the Government Bill that, as the ECJ held in decision 115 and 116/81 *Adoui* and *Cornuaille*, the notions of public order and security have to be interpreted narrowly and they may not be applied if the State has not taken real and effective measures to prevent its own citizens from behaving in a similar manner. It is also stated in the Government Bill that, as the ECJ held in 30/77 *Regina v. Boucherau*, the restrictions on freedom of movement may be based solely on the behaviour of the person concerned and earlier conviction of crime shall not be regarded as sufficient ground in this respect.

Aliens Act 40 § 3

“Grounds of Deportation from Finland

An alien who has the right of residence based on the Treaty on the European Economic Area or the Treaty between European Community and its Member States and Swiss Confederation on Free Movement of Persons, may be deported only on grounds of public order and security and public health.”

Section 41 of the Aliens Act concerns matters that have to be taken into account in the deliberation when taking the decision on deportation. This provision is applied also in cases concerning EU citizens and their family members.

Aliens Act 41 §

“Deportation

Whenever an alien's deportation from Finland is under consideration, all relevant matters and circumstances must be assessed in their entirety. At the very least, the following issues must be borne in mind: the duration of the alien's stay in the country, any child-parent relationship, family ties, other bonds to Finland, and in the cases referred to in section 40, sub-section 1, paragraph 3 above, also the nature of the offence or offences involved.

No one may be deported to an area where he may be subjected to treatment referred to in section 30 [grounds for granting asylum] or 31 [grounds for granting subsidiary protection] or to an area from which he could be further sent to such area.”

According to section 42 of the Aliens Act the decision on deportation is taken by the Directorate of Immigration upon proposal by the police.

Aliens Ac 42 §

“Decisions on Deportation

Decisions on deportation from Finland are made by the Directorate of Immigration upon proposals by the police. The Directorate of Immigration may also make a decision on deportation without receiving a police proposal in cases of endangerment of national security or Finland’s relationship with a foreign state.

When deportation is being considered, the alien concerned and the Ombudsman for Aliens must always be given an opportunity to be heard.”

Section 43 of the Aliens Act concerns prohibition of entry to Finland. According to this provision aliens, including EU citizens and their family members, may be prohibited from entry to Finland for a maximum of five years or until further notice. This provision, according to which it is possible to make the decision on prohibiting entry for indefinite period of time, appears as problematic in the light of requirements following from EC law.

Aliens Act 43 §

“Prohibiting Entry to Finland

An alien may be prohibited from entry to Finland for a maximum of five years or until further notice in a decision concerning deportation or refusal of entry made by the Directorate of Immigration.

An entry prohibition order may be revoked entirely or for a limited period owing to changed circumstances or an important personal reason. Revocation is decided by the Directorate of Immigration.”

Circulars

The Order 5/011/99 lays down detailed directions to authorities concerning refusal of entry and deportation. This Order contains specific chapter on EEA citizens and their family members.

It is confirmed in the Order 5/011/99 that persons whose right of residence is based on the EEA Treaty may be deported or their entry may only be refused only on grounds of public order and security and public health (Section 4.1).

The Order 5/011/99 refers to judgment C-68/89 *Commission v. the Netherlands* in which the ECJ stated that the authorities of the Member States may not require a citizen of another Member State to show any proof indicating the purpose of her residence or her financial situation. The provision further continues that in practice the entry to Finland of an EEA citizen and her family member may be prevented only if the person concerned does not have a valid passport or identity card. It is furthermore confirmed that even if the person concerned had a right of residence based on the EC Treaty, it is possible to prevent her entry to Finland on the grounds of public order and security and public health (Section 4.2.2.).

The Order 5/011/99 defines the notions of public order and security and public health. A reference is made to the Government Bill to the Parliament Amending the Aliens Act (HE 50/1998 vp) according to which all measures the purpose of which is to guarantee safe and comfortable environment to the members of society and to prevent and solve crimes and injustices as well as to prevent and remove disturbances, belong to public order and security. The practice of ECJ and in particular judgments 41/74 *Van Duyn* and judgment 115 and 116/81 *Adoui* and *Cornuaille* as well as judgments 67/74 *Bonsignore* and 30/77 *Boucherau* are explained in the Order in this connection (Sections 4.4.1 and 4.4.2). This interpretation of the notion of public order and security appears as rather wide in the light of the EC law and it may have directed the Finnish practice to somewhat wrong direction in this respect.

According to the Order 5/011/99, in cases concerning refusal of entry of an EEA citizen or her family member whose right of residence is based on the EC treaty, the appeal has suspensive effect unless the ground for refusing entry is that the person concerned has committed criminal acts and there is a danger that she continues her criminal activities. Article 9.1 of the Council Directive 64/221/EC is cited in this provision (Section 4.4.5).

b) Draft legislation

What comes to refusal of entry and deportation, the provisions of the new Aliens Act are more exhaustive than the provisions of the old Act.

Section 165 of the new Aliens Act concerns revocation of registration of the right of residence and the residence permit card. According to the Government Bill 28/2003, before being issued a permanent residence permit card the person concerned has to meet continuously the conditions on which her right of residence is registered or her fixed-term residence permit card is issued. If she no longer meets these conditions the registration of the right of residence or the fixed-term residence permit card shall be revoked. Once a Union citizen and her family member and other relative has been issued a permanent residence permit card the grounds for the residence are, however not anymore controlled and therefore a permanent residence permit card may not be revoked on this ground.

New Aliens Act 165 §

“Revocation of Registration of the Right of Residence and the Residence Permit Card
Registration of the right of residence and the fixed-term residence permit card shall be revoked, if:

- 1) the person whose right of residence has been registered or who has been issued a fixed-term residence permit card has moved away from Finland permanently;
- 2) the person whose right of residence has been registered or who has been issued a fixed-term residence permit card has lived with a permanent purpose outside Finland continuously for two years;
- 3) the preconditions on which the right of residence was registered or the fixed-term residence permit card was issued are no longer met; or
- 4) the person whose right of residence has been registered or who has been issued a fixed-term residence permit card is deemed to jeopardize public order or security or public health.

Permanent residence permit card shall be revoked in situations meant in sub-section 1 paragraph 1, 2 or 4, or if the applicant has, when applying the permanent residence permit card, knowingly given false information or concealed a fact that would have had influence on the decision.

A person who has moved away from Finland may within two years from the day of moving away lodge an application for non-revocation of the registration of the right of residence or residence permit card. If this application is accepted, the period during which a revocation process shall not be started again shall be notified in the decision.”

Section 166 of the new Aliens Act concerns expiration of registration of the right of residence and residence permit card.

New Aliens Act 166 §

“Expiration of Registration of the Right of Residence and Residence Permit Card

Registration of the right of residence or residence permit card expires if the person, whose right of residence has been registered or who has been issued a fixed-term residence permit card is deported from Finland or if she becomes Finnish citizen.”

Section 167 of the new Aliens Act lays down the grounds for refusing an EU citizen’s and her family member’s and other relative’s entry. According to the Government Bill 28/2003 the entry of a Union citizen and her family member and other relative shall be refused if she does not meet the preconditions for entry, registration of the right of residence, or issuing a residence permit card or if it is found out soon after the person concerned has entered Finland that she does not possess sufficient financial resources for her stay.

The Government Bill states that a Union citizen and her family member should possess the required travel document and visa. However, when considering refusal of entry in situations where the person concerned does not possess the required documents the unreasonableness caused by the possible refusal of entry may exceptionally and for a special reason be taken into account in the consideration. It is possible to give up refusing the entry if the identity of the person concerned may be ascertained by some other means provided that the person concerned does not jeopardize public order or security. The Government Bill confirms that the preconditions for entry are not absolute. In this connection the Bill refers to judgment C-459/99 *MRAX*, and states that the Member States may not turn back at the border a person who does not possess a travel document or a visa if she is married to a citizen of another Member State and if she can prove her identity and marital status and furthermore if it is not established that this person would jeopardize public order or security or public health. Furthermore, the Government Bill refers to judgment 68/89 *Commission v. the Netherlands* of the ECJ, according to which the Member States may not require a citizen of another Member State to establish evidence of her financial resources upon entering the country. It would, however, be possible to refuse entry of a Union citizen if she after entering the country and before registering her right of residence has to turn to social security system to secure her income due to lack of financial resources.

New Aliens Act 167 §

“The grounds for Refusing Entry of a Union Citizen and her Family Member and Other Relative

The entry of a Union citizen or her family member or other relative may be refused, if her right of residence has not been registered or she has not been issued a residence permit card and if;

- 1) she does not meet the preconditions for entry set forth in section 155 and 156;
- 2) she has soon after entering Finland had to turn to subsistence support or other social benefits comparable to that, due to lack of sufficient financial resources; or
- 3) continuing her stay in Finland would require registering her right of residence or a residence permit card, but she does not meet the preconditions for registering the right of residence or issuing a residence permit card.”

Section 168 of the new Aliens Act lays down grounds for deporting an EU citizen and her family member and other relative. The Government Bill 28/2003 refers to the Directive on public order and security and states that the measures taken on grounds of public order and security have to be based on the behaviour of the person concerned and that an earlier crime conviction may not automatically be regarded as a ground for returning a person. Furthermore, these grounds may not be appealed to for financial reasons. According to the Government Bill, the ECJ has stated in *Adoui* and *Cornuaille* and *Bouchereau* that the threat caused by the behaviour of the person concerned has to be real and sufficiently serious to jeopardize the fundamental interests of the society. When assessing the threat caused by the individual, it should be evaluated whether the Member State takes sufficient measures against its own citizens in similar situations.

New Aliens Act 168 §

“Grounds for Deporting a Union Citizen and her Family Member and Other Relative

A union citizen whose right of residence has been registered or who has been issued a permanent residence permit card, may be deported, if the registration of her right of residence or her permanent residence permit card has been revoked or if she is deemed to jeopardize public order or security or public health.

The family member or other relative of a Union citizen, who has been issued a residence permit card of a family member or a residence permit card of other relative or a permanent residence permit card, may be deported if her residence permit card has not been renewed, her residence permit card has been revoked or she is deemed to jeopardize public order or security or public health.”

Section 170 of the new Aliens Act concerns denial of entry. According to the old Aliens Act it was possible to deny entry for maximum of five years or until further notice. According to the new Aliens Act, entry may be denied for no longer than fifteen years. According to Government Bill 28/2003 section 170 of the new Aliens Act reflects the practice of the ECJ in particular in judgments 115/81 and 116/81, *Adoui* and *Cornuaille* and C-348/96 *Donatella Calfa*. According to the ECJ, a decision on denial of entry of a citizen of another Member State may not be made for indefinite period or for life; the denial of entry shall always be for fixed term and the maximum duration of this term is fifteen years. According to the Government Bill, entry may be denied only in cases where the person concerned is deemed to jeopardize public order or security or public health. The denial of entry starts from the day when the decision on returning the person concerned is made.

New Aliens Act 170 §

“Taking and Revoking the Decision on Denial of Entry

If a Union citizen, her family member or other relative is returned on the ground that she is deemed to jeopardize public order or security or public health, in the decision concerning returning her, her entry to Finland may be denied for no longer than fifteen years.

The decision on denial of entry may be revoked upon application in whole or in part because of a change in circumstances or an important personal reason.”

Section 171 of the new Aliens Act concerns the competent authorities.

New Aliens Act 171 §

“Competent Authorities

Police registers the right of residence in the Aliens Register and issues the fixed term and permanent residence permit card.

Police revokes the registered right of residence and fixed term and permanent residence permit card.

The Directorate of Immigration decides upon denial of entry according to section 170.

Section 151 and 152 are applicable regarding the competence of authorities concerning decisions on returning a person.”

According to section 151 and 152 the police have to refer the case to the Directorate of Immigration if the police are not competent to make the decision. This is the case if, for example the person whose entry shall be refused has stayed in Finland for longer than three months.

Section 172 of the Aliens Act concerns execution of decision on returning an EU citizen and her family member or other relative. According to Government Bill 28/2003, a decision on refusing entry or deporting a person becomes final after 30 days have passed from the day when the decision was notified to the person concerned unless she, during this period, appeals to administrative court. In case the person concerned appeals, the decision may not be executed before the administrative court has made its decision on the matter. An appeal to the Supreme Administrative Court does not prevent the execution of a decision on refusing entry or deportation. When a decision on refusing entry or deportation is connected to a matter under consideration by administrative court, the court may always decide to prevent the execution of the decision. The court may make this decision upon application or ex officio. In cases in which a leave to appeal is required, the applicant may, when applying the Supreme Administrative Court for a leave to appeal, also apply for non-execution of the decision on refusing entry or deportation. The Supreme Administrative Court may, when considering the leave to appeal, ex officio make a decision on preventing the execution of the decision on refusing entry or deportation.

New Aliens Act 172 §

“Execution of the Decision on Returning a Union Citizen and Her Family Member and Other Relative

The decision on refusing entry may be executed immediately despite of an appeal unless the administrative court decides otherwise, if the decision on refusing entry is based on section 167 paragraph 1 or section 169 sub-section 1, and if the matter is with good reason urgent.

If the decision on refusing entry is based on section 167 paragraph 2 or 3, it may be executed after 30 days have passed from the day when the decision was notified to the person concerned. If the decision based on section 167 paragraph 3 is made on the

ground that the person concerned is deemed to jeopardize public order or security and if the matter is with good reason urgent, the decision may be executed immediately despite of an appeal unless the administrative court decides otherwise.

If the decision on deporting is based on section 168 or section 169 sub-section 2, the decision on deportation may be executed after it has become final.

Section 202 is applied if the decision on refusing entry or deporting is executed with the consent of the person concerned before it has become final.

When the decision on refusing entry or deporting is notified to the person concerned she is also informed of a time limit within which she has to leave Finland. During this period, the decision on returning the person concerned is not executed by the authorities.”

Section 202 of the new Aliens Act concerns what meaning should be attached to the consent of the person concerned in situations of execution of a decision on refusal of entry or deportation.

New Aliens Act 202 §

“Consent to Execution of a Decision

A decision on refusing entry or deporting a person may be executed before it has become final if the person concerned declares in the presence of two trustworthy witnesses that she agrees to the execution of the decision and signs a statement on this in the decision.”

c) Judicial practice

Following decisions concern interpretation of the notion of jeopardy to public order and security.

Decisions concerning residence permits, deportation and refusal of entry are classified. Therefore in following all information that might disclose the identity of the appellant and others concerned is omitted.

Decision 03/1033/3 of 17.12.2003, Administrative Court of Helsinki

Directorate of Immigration had taken a decision on deporting the appellant, who was an EU citizen, and denying appellant’s entry to Finland for five years. The ground for this decision was that the appellant had been convicted for several and repeated crimes, among them aggravated drug offence and assault and battery. The appellant appealed the decision to the Administrative Court of Helsinki. The Court dismissed the appeal. Among other things, the Court referred in its decision to judgments 30/77 *Bouchereau* and C-348/96 *Donatella Calfa* and argued that, as these decisions of the ECJ show, restrictions to freedom of movement are justified if the jeopardy to public order and security caused by the behaviour of the person concerned is real and sufficiently serious and threatens fundamental interests of society. The Court held that the appellant’s behaviour had seriously jeopardized public order and security and thereby threatened fundamental interests of society.

Decision 03/1086/3 of 23.12.2003, Administrative Court of Helsinki

The appellant had dual nationality; he was a citizen of both another EU State and a non-EU State. The Finnish border authority had stopped the appellant at the Finnish-Russian border when he was attempting to cross the border by a car that had been an-

nounced as stolen by the police of the EU State a citizen which the appellant was. Because of this the appellant was convicted in Finland by a district court to one year's prison sentence for an aggravated offence of receiving stolen goods. The Directorate of Immigration refused the appellant's entry to Finland and denied her entry until further notice on the ground that his behaviour jeopardized public order and security. The appellant appealed this decision to the Administrative Court of Helsinki. The Court dismissed the appellants appeal. According to the Court the appellant's behaviour – driving a car that had been announced as stolen – had seriously jeopardized public order and security and thereby threatened fundamental interests of society. Therefore, the Court found that the decision by the Directorate of Immigration on refusing entry and denying re-entry was justified. The Court referred in its decision to judgments 30/77 *Bouchereau* and C-348/96 *Donatella Calfa*. This decision was not appealed to the Supreme Administrative Court.

The decision by the Administrative Court of Helsinki in this case deserves criticism in the light of EC law on free movement of persons. First, the Court did not repeal the decision taken by the Directorate of Immigration on denial of entry even though this decision was made for indefinite period despite that the EC law prohibits such decisions. Second, the Court's view that the appellant's behaviour – driving a car that had been announced as stolen – seriously jeopardized public order and security and thereby posed a threat to fundamental interests of Finnish society is worth questioning.

Decision 03/0743/3 of 22.9.2003, Administrative Court of Helsinki

The Directorate of Immigration had decided to deport the appellant, who was a citizen of another EU State, and deny her entry to Finland for five years after a district court had convicted the appellant for aggravated drug offence and firearm offence. The appellant appealed the decision by the Directorate of Immigration to the Administrative Court of Helsinki. The Court dismissed the appeal. According to the Court the appellant's behaviour had seriously jeopardized public order and security and thereby threatened fundamental interests of the society.

d) Miscellaneous

Janne Aer (2001) criticizes the way the notion of jeopardy to public order and security is understood and applied in Finland. According to Aer this notion is applied so that it covers, for example, behaviour that threatens comfortable and orderly living environment and causes public disturbances. Aer's argument is illustrated by the Order 5/011/99 according to which all measures the purpose of which is to guarantee safe and comfortable environment to the members of society and to prevent and solve crimes and injustices as well as to prevent and remove disturbances, belong to public order and security. This way of interpreting and applying the concepts is problematic in light of the requirements following from the EC law as according to them the notion of jeopardy to public order and security should be applied so that it would only cover behaviour that poses concrete and serious threat to the fundamental interest of society. In the light of this, the Finnish interpretation appears as too broad. The decision 03/1086/3 explained above illustrates vividly Aer's criticism. It remains to be seen whether this practice will change

after the adoption of the new Aliens Act. At least the Government Bill concerning it seems to better reflect the EC law in this.

e) Literature

Aer, Janne, Maassa oleskelu ja maasta poistaminen EY-oikeuden valossa, *Defensor legis* 5/2001, p. 879-888. ("Some questions concerning the residence in a Member State and deportation from a Member State in the light of EC law".)

Chapter II

Equality of treatment

a) Texts in force

There are no specific provisions concerning equality of treatment and prohibition of discrimination of Union citizens. Equality of treatment of Union citizens is guaranteed by general legislation on equality and non-discrimination. The following provisions are particularly relevant in this respect.

Section 6 of the Finnish constitution recognises the general right to equality and lays down prohibition of discrimination.

Finnish Constitution 6 §

“Equality

Everyone is equal before the law.

No one shall, without an acceptable reason be treated differently from other persons on the grounds of sex, age, origin, language, religion, conviction, opinion, state of health, disability or other reason that concerns his or her person.

Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.

Equality of the sexes is promoted in societal activity and working life, especially in the determination of pay and the other terms of employment as provided in more detail by an Act.”

Section 2 of Chapter 2 of the Act on Employment Contract prohibits discrimination in working life.

Act on Employment Contract (Työsopimuslaki 55/2001), Chapter 2, 2 §

“Non-discrimination and Equality of Treatment

The employer may not without an acceptable reason treat employees differently on the grounds of age, state of health, disability, national or ethnic origin, nationality, sexual orientation, language, religion, opinion, conviction, family relationship, activities in trade union, political opinion and acts, or other comparable reason.

Prohibition of discrimination based on gender is laid down in the Act on Equality between Women and Men. The Act on Equality contains the definition of discrimination, the prohibition of counter acts and the rules concerning the burden of proof in cases concerning discrimination.

Those working under fixed-term contract or part-time may not, without an acceptable reason, be treated differently from other employees solely on the ground of the fixed duration of the employment contract or short working hours.

The employer has to treat the employees equally unless there are good reasons related to the tasks or the position in the organisation to make an exception to this.

The employer has to obey the prohibition of discrimination laid down in section 1 when hiring workers.”

Section 29 sub-section 2 of the Aliens Act concerns the obligations of employer in situations of foreign employees.

Aliens Act 29 § 2

“The Obligations of the Employer

The employer has to give an assurance to the employment authorities that with respect to foreign employees the wage and other conditions of the employment are

compatible with the collective bargaining agreement in force, or if there is no such agreement in the branch concerned, the wage and other conditions are equal to those of the Finnish employees.”

Section 3 of Chapter 47 of Criminal Code criminalises discrimination at work.

Criminal Code (Rikoslaki 39/1889), Chapter 47, 3 §

“Discrimination at Work

Employer or her representative, who when announcing a vacant job, hiring new workers, or during the employment without a weighty acceptable reason treats an applicant or an employee differently from others on the ground of her 1)race, national or ethnic origin, colour, language, sex, age, family relationship, sexual orientation or state of health or 2)religion, opinion, political activities or activities in trade union or other comparable ground, shall be convicted for discrimination at work to fine or prison sentence for maximum duration of six months.”

Act on Equality

The Act on Equality (Yhdenvertaisuuslaki 21/2004 entered into force 1.2.2004) the purpose of which is to promote equality and prevent discrimination based on age, ethnic or national origin, nationality, language, religion, conviction, opinion, state of health, handicap, sexual orientation or other ground, may have influence in the treatment of Union citizens even though its scope is broader than prevention of discrimination solely on the grounds of nationality. The Act on Equality implements the Council Directive 2000/43/EC and Council Directive 2000/78/EC.

b) Draft legislation, circulars etc.

Nothing to report.

c) Judicial practice

Nothing to report.

d) Miscellaneous

Nothing to report.

e) Literature

Nothing to report.

Chapter III

Employment in the public sector

a) Texts in Force

Requirements concerning Finnish citizenship

In 1989 the legislation concerning employment in the public sector was reformed so that most public offices were formally opened also to persons who are not Finnish citizens. Exceptions to this rule are laid down in the Finnish Constitution and in the Act on Public Offices.

Finnish Constitution

According to section 25 and 26 of the Finnish Constitution only a Finnish citizen may be elected as a Member of Parliament. Furthermore, according to section 54 of the Constitution the President of the Republic shall be a native-born Finnish citizen. According to section 60 of the Constitution the Ministers shall be Finnish citizens.

Furthermore, according to section 125 sub-section 1 of the Constitution “it may be stated in an Act that only Finnish citizens are eligible for appointment to certain public offices or duties”. According to the Committee Report 1997:13 concerning the Finnish Constitution the requirement of Finnish citizenship shall be exceptional. According to the main rule the public sector is thus open for persons who are not Finnish citizens.

The Act on Public Offices

Section 7, sub-section 1 of the Act on Public Offices contains an exhaustive list of public offices to which may be appointed only a Finnish citizen. According to the Government Bill to the Parliament for the Act on Public Offices (Hallituksen esitys Eduskunnalle valtion virkamieslaiksi ja laiksi valtion virkaehtosopimukslain muuttamisesta HE 291/1993 vp), this provision is compatible with the requirements laid down in the EEA Treaty.

The Act on Public Offices (Virkamieslaki 750/1994), 7 § 1

“Only a Finnish citizen may be appointed to following offices:

- 1) Chancellor of Justice, Deputy Chancellor of Justice, and Chief Secretary, Assistant Chief Secretary and department head at the Office of the Chancellor of Justice;
- 2) office of the Secretary of State, Chief Secretary of the Secretary of State, Head of Government Office, department head of Government Office, office manager, and other comparable or higher office;
- 3) office at the foreign service;
- 4) office of judge;
- 5) office of head of civil service department excluding rectors of universities;
- 6) office of county governor, department head of county administrative board, and head of preparedness;
- 7) office that includes tasks of public prosecutor or distrainer;
- 8) office of police within the meaning of the Act on Police (493/1995);
- 9) office, whose holder is a member of a prison board;
- 10) office at the Ministry of Defence and Armed Forces as well as Border Guard Detachment;
- 11) office other than policeman at Security Police;

- 12) office at the Customs to which appertains right to arrest as well as office at the Customs to which appertains duties concerning supervising and securing the territorial integrity of Finland or duties concerning investigation and supervision of crimes;
- 13) office of the Head of the Public Unit of the Civil Aviation Administration; as well as
- 14) office of the Head of Maritime Safety of the Finnish Maritime Administration.”

Section 11 of the Act on Public Offices lays down obligation of equal treatment and prohibition of discrimination based among other grounds on nationality.

The Act on Public Offices 11 §

“Public authorities have to treat civil servants equally so that no one is without an acceptable reason treated differently from other persons on the grounds of ethnic and other origin, nationality, sex, religion, conviction, disability, age, political activities or activities in trade union or other comparable reason. The Act on Equality contains provisions on the definition of discrimination, the prohibition of counter acts, and the rules concerning the burden of proof in cases concerning discrimination.”

Recognition of diplomas for access to the public sector

The Act on Implementing the EC System of Recognition of Diplomas (Laki Euroopan yhteisön yleisen tutkintojen tunnustamisjärjestelmän voimaannpanosta 1597/1994) and the Decree on Implementing the EC System of Recognition of Diplomas (Asetus Euroopan yhteisön yleisen tutkintojen tunnustamisjärjestelmän voimaannpanosta 520/1997) concern the recognition of diplomas.²

Recognition of diplomas shall be applied from the National Board of Education. The decisions on recognition of diplomas are made on a case by case basis; general decisions concerning correspondences between Finnish diplomas and diplomas of other Member States are not taken. The decisions on recognition of diplomas are general so that they are not bound to any particular post the applicant has applied or is going to apply for. The National Board of Education does not even ask the applicant whether she has applied or is going to apply for any post. Therefore, the recognition may be applied and the decision on that taken at any stage. When taking the decision on recognition of diplomas the point of departure in the consideration is the situation in the country where the diploma was taken. If the diploma qualifies for public offices of certain level in the country where the diploma is taken, then that diploma shall qualify also in Finland for public posts of equivalent level. However, if there are significant differences between the diploma in question and the Finnish diploma required, work experience or a particular exam shall be required as additional requirements in order to get the diploma recognised.

According to the Act on Implementing the EC System of Recognition of Diplomas the decisions on recognition must be made in four months. The average time of taking decisions is currently two months. The price of the decision on recognition is 168e.

Between years 1997 and 2003 757 applications were lodged to the National Board of Education for recognising diplomas taken in other EU Member States. 233 of these diplomas were taken in United Kingdom, 207 in Sweden, 118 in Germany, 64 in France

2 The text of the Act and the Decree may be found at <http://www.oph.fi>

and 23 in the Netherlands. 198 of the applicants were citizens of other EU States than Finland (<http://www.oph.fi>). Reliable figures on the recognition rates can not be given. The reason for this is that when the National Board of Education would give a negative decision it always offers the applicant an opportunity to withdraw the application and thereby to be exempted from the payment. Most applicants end up withdrawing their application in this kind of cases. In most cases in which the decision would be negative, the reason for the negative decision is that the diploma is taken in an educational institution that has no official status and is therefore not entitled to issue official diplomas in the Member State in which it is established.

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

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

Requirements concerning language proficiency

Even in situations where the Finnish citizenship is not formally required for a particular post, requirements concerning language proficiency may constitute a hurdle for employment of citizens of other EU States to Finnish public sector.

The official languages in Finland are Finnish and Swedish. The rules on the use of Finnish and Swedish languages at the public sector are laid down in the Act on Languages (Kielilaki 148/1922) and in the Act on Language Proficiency Required from State Officials (Laki valtion virkamiehiltä vaadittavasta kielitaidosta 149/1922).³ These Acts are based on the principle that Finland is a bilingual state and that individuals have a constitutional right to use their mother tongue, *i.e.* Finnish or Swedish, at public authorities and that therefore civil servants should be able to use both Finnish and Swedish as working language. The requirements concerning linguistic competence together with the requirements concerning education belong to the binding civil service recruitment criteria. The required level of proficiency of Finnish and Swedish languages of civil servants is partly determined by the level of education that is a recruitment criteria for the post in question; if a university diploma is required then normally also perfect command of the language that is spoken by the majority of the population in the given region is required. The level of knowledge of the language that is minority language in the region in question

3 The text of these Acts may be found at <http://www.finlex.fi>

is conditional upon the size of the minority linguistic group in that region; the required level of proficiency varies from fluency in spoken and written language in municipalities where the minority language group is relatively big to ability to understand the other language in unilingual municipalities. The President of the Republic may, for a particular reason, exempt from these requirements. In cases where recruitment criteria for a particular post are intermediate or lower level of education, then also the requirements concerning language proficiency are less strict.

The Decree on Proving the Proficiency of Finnish and Swedish Languages (Asetus Suomen ja Ruotsin kielen taidon osoittamisesta 442/1987) lays down the provisions on the ways in which the linguistic competence shall be proved. According to this decree, the proficiency of a given language shall be proven either by a specific national language test or the required level of proficiency shall be regarded to be achieved as part of education completed in Finland. For example, a certificate of perfect command of a given language is not required from a person who has completed her education and passed a maturity test at university in Finland in that language.

Both the requirements concerning the level of linguistic competence and the rules on proving the required level of competence are binding upon the appointing officials. There is no room for discretion in this; other ways of showing the language proficiency than those specified in the decree are not accepted and it is not possible to nominate to a public office a person who does not meet the prescribed requirements concerning languages.

According to Outi Suviranta (2002) the requirements concerning linguistic competence are by and large compatible with the EC law. Suviranta argues that the purpose of securing the position of the national languages in the administration and protecting citizens' right to receive public services in their mother tongue, are acceptable grounds for requiring that civil servant in high positions – *i.e.* in those positions in which a university diploma is a requirement – command both national languages. Suviranta however continues that there may be some posts with respect to which the language requirements may be too strict. By this she refers for example to public research institutes in which the working language is other than Finnish or Swedish. Furthermore, Suviranta argues that the requirements concerning proving language proficiency may be discriminatory and therefore problematic in light of EC law as only Finnish exams and education acquired in Finland are taken into account. To solve this problem, Suviranta suggests adoption of centralised system of recognition of language certificates acquired in other EU States. By and large Suviranta's argumentation is easy to accept. However, the requirement of perfect command of one of the national languages is probably more problematic in the light of the requirements following from the EC law than Suviranta seems to think.

What comes to the requirements concerning linguistic competence universities are in different position compared with other public offices; 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 room for discretion that makes it possible to take into account the particularities of each situation. The conditions for this are laid down in the Decree on Duties and Recruitment Criteria of the

Staff of Universities (Asetus korkeakoulujen henkilöstön kelpoisuusvaatimuksista ja tehtävistä 309/1993).

b) Draft legislation

The Act on Languages (Kielilaki 148/1922) was replaced by The Act on Languages (Kielilaki 423/2003, English translation at: <http://www.finlex.fi/pdf/saadkaan/E0030423.pdf>) and the Act on Language Proficiency required from State Officials (Laki valtion virkamiehiltä vaadittavasta kielitaidosta 149/1922) by the Act on Language Proficiency Required from Personnel of Public Authorities (Laki julkisyhteisöjen henkilöstöltä vaadittavasta kielitaidosta 424/2003, Finnish text at <http://www.finlex.fi>) that both entered into force on 1.1.2004. The main object of the new legislation is to strengthen the position of national languages and the right to use one's own language at the public sector including private actors committing public functions.

Compared with the old legislation there are some changes that are significant in the light of EC law. First, *perfect command* of Finnish or Swedish is no longer required even for public offices for which a university diploma is a recruitment criterion; according to section 6 of the Act on Language Proficiency Required from Personnel of Public Authorities, in this kind of cases the required level of language proficiency in the majority language is *excellent oral and written skills* and in minority language *satisfactory oral and written skills*. Second, according to section 14 of this same act the Board on Language Exams may upon application issue a certificate on excellent command of Finnish or Swedish language to a person who can show that she has reached excellent language proficiency by other means than those specified in the Decree. Furthermore, according to this same provision the Board on Language Exams may, upon application, decide that language studies completed abroad may be equated with official national exams. Thus the new legislation appears to be better in line with the requirements following from EC law.

Legislative Trends Following Procedures of Infringement Set in Motion by the Commission

Nothing to report.

c) Judicial practice

Nothing to report.

d) Miscellaneous

Nothing to report.

e) Literature

Salminen, Janne, Kielitaitoa koskevasta edellytyksestä professorin virkaa täytettäessä, *Oikeus* 2/2002, p. 202-208. ("On requirements concerning language proficiency of university professors")

Suviranta, Outi, Virkamiesten kielitaitovaatimukset ja Euroopan yhteisön oikeus, *Lakimies* 3/2002, p. 335-351. ("Requirements on linguistic competence as a civil service recruitment criterion in the light of EC law")

Chapter IV

Family Members

a) Texts in force

The definition of family for the purposes of application of EC legislation on free movement of persons is recognised in section 16 sub-section 4 of the Aliens Act. This provision was revised by the Act Amending the Aliens Act 763/2001 that was given on 31st of August 2001 to cover also citizens of Switzerland. This notion of family is different from the notion of family that is applied otherwise in the Aliens legislation.

Aliens Act 16 § 4

“Residence Permit Categories

An alien who is a citizen of a state belonging to the European Economic Area or Swiss Confederation, is issued a fixed-term residence permit for five years. The same applies to her spouse, her own and her spouse’s parents who are dependent on her care as well as her own or her spouse’s children who are under 21 years of age or dependent on parents’ care. If the stay of the aforementioned alien is supposed to last a period shorter than one year the residence permit may be issued for the estimated period of residence.”

The general provisions concerning EU citizens (Aliens Act 19 § 3 and 20 § 2 concerning residence and Aliens Act 37 § 3, 38 §, 39 § 1 and 2, 40 § 3, 41 §, 42 § as well as 43 § concerning departure) apply also to family members and other relatives.

Circulars

According to section 6.1 of the Guidelines 10/010/94, a cohabiting partner is treated equally to married spouse.

b) Draft legislation

Sub-section 2, 3 and 4 of section 159 of the new Aliens Act lays down the rules on registering the right of residence of EU citizen’s family member and other relative, who are EU citizens. According to the Government Bill 28/2003, the person concerned shall be regarded to be fully dependent on her relative residing in Finland if they lived in same household before the other of them moved to Finland, if their separation from each other was due to compelling reasons and furthermore, if their dependency has continued even after the other of them has moved to Finland. If the persons concerned did not live together before one of them moved to Finland, it is required that there has occurred a compelling change in the circumstances and that because of this the relative is no longer able to live without the person living in Finland. According to the Government Bill, this dependency should not be merely financial but instead caused by the state of health or age. It is further required that there is no one in the country of origin to take care of the person concerned and that she does not manage her daily life without the relative living in Finland. In cases in which the persons concerned would continue their established family life they shall not be required to be fully dependent on each other. In this kind of cases attention shall be laid among other things to reasons that caused the end of the

family life and to how the persons concerned have maintained their connections during their separation.

The treatment of the citizens of the other Nordic countries differs from the treatment of the other EU citizens. The income of a family member of a citizen of another Nordic country does not have to be secured. This is based on the Nordic Treaty on Social Services (Pohjoismaiden sosiaalipalvelusopimus, SopS 69/1996) according to which a citizen of another Nordic country shall not be returned to her country of origin even if she is in need of social services or subsistence support in her country of residence, if her family situation is such that it requires staying in that country. This provision is applied also to family members of citizens of Nordic countries. The favourable treatment of the citizens of the other Nordic countries is based on the historical arrangements and agreements between the Nordic countries concerning free movement of citizens.

New Aliens Act 159 §

“Registering the Right of Residence of a Union Citizen

A Union citizen must register her right of residence at the latest when her right to reside in Finland under section 158 expires. The precondition for registering one’s right of residence is that the requirements set forth in section 155 and 156 are met and that:

- 1) she is engaged in economic activities either as an employee or self-employed person;
- 2) she has sufficient financial resources and when required a sickness insurance so that during her stay in Finland she does not have to turn to the subsistence support under the Act on subsistence support or other social benefits; or
- 3) she has been accepted as a student in a Finnish educational institution and she has sufficient financial resources for her residence and a sickness insurance when such is required.

The right of residence of a Union citizen’s family member is registered if also the family member concerned is a Union citizen.

The right of residence of other relative of a Union citizen is registered, if the relative concerned is a citizen of the Union and if denying to register her right of residence would be unreasonable because the purpose of the persons concerned would be to continue their established family life or because the relative concerned is fully dependent on her relative already residing in Finland.

The precondition of registering the right of residence of a family member or other relative of a Union citizen meant in paragraph 2 or 3 of sub-section 1 of this section is that the family member or the other relative has sufficient financial resources and health insurance when such is required. The right of residence of a family member of a citizen of another Nordic country will be registered even if her income would not be secure. A precondition for the registration of a right of residence of other relative of a citizen of another Nordic country is that she has sufficient financial resources for her stay and she has health insurance when such is needed.”

Section 161 of the new Aliens Act concerns issuing a residence permit card to a EU citizen’s family member or other relative, who is not a Union citizen. According to the Government Bill 28/2003, the right of residence of family member and other relative is dependent upon the right of residence of the person already residing in Finland. This person, who is a Union citizen or comparable, should meet the preconditions for registering her right of residence and furthermore, if she is not working, should possess sufficient financial resources for her stay and to have a sickness insurance. According to the

Government Bill, a family member or other relative of a Union citizen is issued a residence permit card that is valid for five years. The validity of the permit is however dependent on the residence of the family member who is a Union citizen. If the residence of the applicant or the family member who is a Union citizen is estimated to last for a shorter period than one year the residence permit may be issued for the estimated duration of the residence.

New Aliens Act 161 §

“Residence Permit Card of a Family Member and Other Relative

Family member of a Union citizen, who is not a citizen of the Union is issued upon application a residence permit card if the Union citizen whose family member she is meets the preconditions set forth in section 155 and 156 as well as in section 157 sub-section 3 or section 159 sub-section 1.

Other relative of a Union citizen, who herself is not a Union citizen, is issued upon application a residence permit card of other relative if the Union citizen whose relative she is meets the preconditions set forth in section 155 and 156 as well as in section 157 sub-section 3 or section 159 sub-section 1 and if it would be unreasonable to refuse the right of residence because the purpose of the persons concerned would be to continue in Finland their established family life or because the relative concerned is fully dependent on her relative living in Finland.

The family member of a Union citizen meant in section 159 sub-section 1 paragraph 2 or 3 and other relative is required to possess sufficient financial resources for her stay and sickness insurance when such is needed. A family member of a citizen of another Nordic Country is issued a residence permit card even if her income would not be secure. A precondition for issuing a residence permit card to other relative of a citizen of another Nordic Country is that that she has sufficient financial resources for her stay and sickness insurance when such is needed.

A family member and other relative of a Union citizen is issued a residence permit card for five years unless it is applied for a shorter period of time. If the residence is estimated to last for a shorter period of time than one year the residence permit card is issued for the estimated duration of the stay.”

In addition to these provisions following provisions already stated above apply to family members of Union citizens: new Aliens Act 155 § and 156 § concerning entry, new Aliens Act 162 § and 163 § concerning residence and new Aliens Act 165 §, 166 §, 167 §, 168 § 170 §, 171 § and 172 § concerning departure.

c) Judicial practice

No reported decisions were found.

d) Miscellaneous (administrative practices etc.)

In the Aliens Act there are no specific rules concerning situations in which the family connection is established while the persons concerned already reside in Finland. In practice in this kind of situations the local police issue residence permit to the family member concerned.

e) Literature

Raitio, Juha, Euroopan yhteisöjen tuomioistuimen tuomio 17.9.2002 asiassa C-413/99 Baumbast ja R v Secretary of State for the Home Department, *Lakimies* 3/2003, p. 492-498 (Case commentary on C-413/99 Baumbast and R v Secretary of State for the Home Department.)

Chapter V

Relevance/Influence/Follow-up of recent Court of Justice Judgements

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

In general, the judgments of the ECJ are taken into account in legislative reforms. This is exemplified by the new Aliens Act and the Government Bill 28/2003 concerning the new Act. The Government Bill makes several references to judgments by the ECJ that had influence on drafting the new Act. For example, the Bill refers to judgment C-459/99 MRAX when discussing the preconditions for entry of EU citizens' family members who are not EU citizens.

Furthermore, the Finnish authorities including the Ministry of the Interior and the Directorate of Immigration follow the practice of the ECJ. The important judgments and their influence in the Finnish 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 Directorate 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. Because of the constitutional obligation to regulate the right of foreigners to enter Finland and to remain in the country by acts of parliament, administrative orders may no longer be deployed in this field as extensively as was the case before.

In the field of social security, the National Pensions Institute which is the decision-making body, follow the practice of the ECJ. The relevant judgments are informed to those handling the applications through training. This is, however, not regarded as entirely satisfactory state of affairs as for the sake of legal certainty and legal protection of the applicants, the relevant legal rules and principles should be recognized at the level of legislation (the final report of the working group considering residence-based social security. Ministry for Social Affairs and Health, 2003:22).

Chapter VI Treatment of Citizens of Nordic Countries

a) Texts in force

Due to various agreements and historical arrangements between Nordic countries there are special arrangements applicable to the entry, residence and departure of the citizens of the other Nordic countries. Citizens of the other Nordic countries are, for example, not required to have a residence permit while the EEA citizens are.

Aliens Act 10

“Entry into and Residence and Employment in Finland by Nordic Citizens

Citizens of Denmark, Iceland, Norway and Sweden are entitled to enter Finland without a passport if they travel directly from any one of those four countries. They also have the right to reside in Finland without a residence permit and work without a work permit under the terms of agreements between the Nordic countries.”

b) Draft legislation

According to the new Aliens Act the citizens of other Nordic Countries are not under obligation to register their right of residence and they are not required to have a residence permit card. Furthermore, according to the Government Bill 28/2003, a citizen of another Nordic country may prove her identity and citizenship also by a document that is not valid as a travel document, or by other reliable means. If the person concerned is not able to prove her identity by an identity document or by other means the Finnish authorities may, for instance, be in contact with the authorities of the country whose citizen the person concerned claims to be in order to confirm her identity and nationality. This provision is based on the treaties concluded by Denmark, Finland, Norway and Sweden and joined by Iceland (SopS 17/1954 and SopS 39 and 40/1983). According to the Government Bill 28/2003, regarding a citizen of another Nordic country, the deployment of the Certificate on Moving Within the Nordic Countries is equated with registering a Union citizen to the aliens register.

Draft Legislation

New Aliens Act 157 §

“Entry and Residence of Citizens of Nordic Countries

Citizens of Denmark, Iceland, Norway and Sweden are entitled to enter Finland without a passport if they travel directly from any one of those four countries, and to reside in Finland without registering the right of residence and without a permanent residence card.

Citizens of Denmark, Iceland, Norway and Sweden have to be able to reliably prove their identity and nationality.

Citizen of another Nordic country who enters Finland with a purpose other than staying in the country for a short period of time has to register her residence according to the Certificate on Moving within the Nordic Countries, in a way prescribed in section 3 of the Decree on Place of Domicile (351/1994).”

New Aliens Act 169 §

“The Grounds for Refusing Entry and Deporting a Citizen of a Nordic Country

A citizen of Denmark, Iceland, Norway and Sweden, whose moving to Finland is not registered according to the Certificate on Moving within the Nordic Countries, may be refused entry if she is deemed to jeopardize public order or security or public health.

A citizen of Denmark, Iceland, Norway and Sweden, whose moving to Finland is registered according to the Certificate on Moving within the Nordic Countries, may be deported if she is deemed to jeopardize public order or security or public health.”

The Integration of Immigrants

The Act on Integration of Immigrants (Laki maahanmuuttajien kotouttamisesta ja turvapaikanhakijoiden vastaanotosta 493/1999) covers also EU citizens. Therefore, if the preconditions set forth in the Act are met, the person concerned is entitled to an individual integration plan. Integration plan may be drawn for a person who has moved to Finland after 1st of May 1997, lives permanently in Finland and is registered as job-seeker or gets subsistence allowance. For example, EU citizens' family members and other relatives who live in Finland permanently and who are registered as job-seekers fall within the scope of application of the Act on Integration. The integration plan concerns measures such as studying Finnish or Swedish and complementing professional skills. When an individual is following the agreed plan her livelihood is guaranteed by means of integration allowance.

Chapter VII

EU enlargement

The Act on the Prerequisites for Gainful Employment of the Citizens of the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia (Laki Tsekin, Viron, Latvian, Liettuan, Unkarin, Puolan, Slovenian ja Slovakian kansalaisten ansiotyön edellytyksistä 309/2004, English version at <http://www.mol.fi/finnwork/en/trans.pdf>) lays down the prerequisites for gainful employment in Finland of the citizens of the new Member States except of citizens of Cyprus and Malta. There will be a two year transitional period for citizens of the Member States covered by the Act for the access to the Finnish labour market. During this transitional period the citizens of the states concerned can, with some exceptions, be engaged in gainful employment in Finland only if the employment office issues a decision approving the matter. The employment office may issue a permit if it considers that the vacancy in question can not be filled from the domestic labour market.

The decision on continuing or discontinuing the transitional measures after this two year period is made during the second year. This decision shall be based on a report that will be issued by the Council of State to the Parliament assessing the situation.

The transitional measures do not apply to movement of labour within the freedom of services. Therefore, it is expected that for example Estonian citizens enter Finnish labour market through agencies that are established in Estonia and that hire work force to Finnish companies. This is regarded as problematic state of affairs as in this kind of situations supervision of conditions for work may be problematic.

Literature analysing the impact of EU enlargement on immigration to Finland:

Sarvimäki, Matti (2003): Euroopan Unionin itälaajentuminen ja maahanmuutto Suomeen. Valtion taloudellinen tutkimuskeskus. ("The influences of the enlargement of the EU in immigration to Finland" published by the Government Institute for Economic Research.) <http://www.vatt.fi/julkaisut/t/t98.pdf>

Viialainen, Matti (2002): Itälaajentumisraportti. Suomen ammattiliittojen keskusjärjestö. ("Report Concerning Enlargement" published by the Central Organisation of Finnish Trade Unions.) <http://netti.sak.fi/sak/pdf/itaraport.pdf>

Chapter VIII Statistics

Number of citizens of the other EU States living in Finland

31.12.2003

<u>Country</u>	<u>total</u>
Austria	268
Belgium	161
Denmark	640
France	1029
Germany	2543
Great Britain	2643
Greece	355
Italy	949
Ireland	288
Luxemburg	11
The Netherlands	759
Portugal	171
Spain	703
Sweden	8150

Source: Directorate of Immigration <http://www.uvi.fi>

31.12.2002

<u>Country</u>	<u>total</u>	<u>men</u>	<u>women</u>
Austria	242	148	94
Belgium	141	93	48
Denmark	614	409	205
France	962	624	338
Germany	2461	1593	868
Great Britain	2535	1941	594
Greece	336	287	49
Italy	880	674	206
Ireland	264	210	54
Luxemburg	9	7	2
The Netherlands	712	559	153
Portugal	140	99	41
Spain	642	440	202
Sweden	8037	4509	3528

Source: Tilastokeskus / Statistics Finland and Taskutieto 2003. Väestökisterikeskus.
www.vaestokisterikeskus.fi

The share of EU citizens of all foreigners living in Finland was 17.3 %.

31.12.2001

<u>Country</u>	<u>total</u>	<u>men</u>	<u>women</u>
Austria	233	145	88
Belgium	126	78	48
Denmark	597	392	205
France	947	601	346
Germany	2327	1511	816
Great Britain	2352	1841	538
Greece	341	294	47
Ireland	242	188	54
Italy	832	639	193
Luxemburg	no information		
The Netherlands	677	530	147
Portugal	127	85	42
Spain	600	408	192
Sweden	7999	4488	3511

Source: Tilastokeskus / Statistics Finland

The share of EU citizens of all foreigners living in Finland was 17.8 %.

*Number of naturalizations of citizens of other European States (incl. non-Member States)
2002*

<u>Country</u>	
Bulgaria	16
Estonia	319
Former USSR	56
Former Yugoslavia	232
Germany	13
Great Britain	5
Hungary	2
Poland	7
Romania	16
Russia	418
Turkey	112
Sweden	61
Others	162

Source: Directorate of Immigration <http://www.uvi.vi>

2001

Country

Bulgaria	22
Estonia	295
Former USSR	51
Former Yugoslavia	72
Germany	16
Great Britain	20
Hungary	15
Poland	6
Romania	35
Russia	533
Turkey	82
Sweden	57
Others	72

Source: Directorate of Immigration <http://www.uvi.fi>

Immigration from the other EU States to Finland and emigration from Finland to the other Member States (other than Finnish citizens)

2001⁴

<u>Country of orig./destin.</u>	<u>immigration</u>	<u>emigration</u>
Sweden	685	3656
Denmark	78	391
The Netherlands	89	245
Belgium	18	255
United Kingdom	292	1125
Spain	90	803
Ireland	37	129
Italy	89	236
Austria	25	95
Greece	46	76
Luxemburg	2	77
Portugal	14	28
France	151	316
Germany	265	972

Source: Tilastokeskus/Statistics Finland

4 The most recent published statistics concerned the situation of 2001.

2000

<u>Country of orig./destin.</u>	<u>immigration</u>	<u>emigration</u>
Sweden	722	3813
Denmark	78	383
The Netherlands	81	272
Belgium	27	234
United Kingdom	257	971
Spain	88	800
Ireland	32	106
Italy	94	218
Austria	16	99
Greece	29	97
Luxemburg	4	66
Portugal	15	41
France	139	330
Germany	224	870

Source: Tilastokeskus/Statistics Finland

Chapter IX

Social Security

The Finnish social security system is by and large based on residence. The right to benefits such as social and health care organised by municipalities, unemployment benefit, national pension, sickness insurance, family allowance, and student's benefit, is based on residence in the Country so that only those meeting the condition of living in Finland are entitled to these benefits. In Finland the major problems regarding social security follow from the incompatibility of the national residence-based system with the EC legislation that is drafted with work-based systems in mind.

In the area of social security, special arrangements apply to the citizens of other EU States; regarding EU citizens the ground for social security is not residence in Finland – as it is in other cases – but instead working in the country. This is based on Appendix I, M of the Regulation 1408/71, according to which those who are regarded as workers or self-employed persons under the Finnish legislation on work pensions are regarded as workers and self-employed persons within the meaning of Article 1 A of the Regulation 1408/71 as well. These persons are covered by the Finnish social security system when it comes to entitlements covered by the Regulation 1408/71. This definition of the personal scope is regarded as very broad; in principle also those EU citizens who work in Finland only for a very short period of time – for example only one day – are, because of the broadness of the definition, entitled to the enjoyment of the Finnish social security system. In addition to this, the treatment of EU citizens differs significantly from the treatment of other foreigners in this respect as the other foreigners than EU citizens and the citizens of other Nordic countries are normally required to live in Finland from one to two years before being entitled to social security. This difference in treatment is regarded as problematic with respect of the principle of equality (The final report of the working group considering residence-based social security. Ministry for Social Affairs and Health, 2003:22).

The Regulation 1612/68 is as a general regulation subsidiary in relation to the Regulation 1408/71. However, benefits covered by the Regulation 1408/71 are in practice covered also by the Regulation 1612/68. The Regulation 1612/68 is regarded to cover the whole Finnish residence-based social security system. There are certain problems related to its application in practice, though. For example following questions are regarded as problematic: does the fact that the Finnish social security system is residence-based justify restrictions on the preconditions for granting entitlements within the meaning of the Regulation 1612/68, and does the Regulation 1612/68 require extending social benefits to EU Citizen's family members who live in another country and who stay in Finland only temporarily or do not stay at all? (A report of the working group considering residence-based social security. Ministry for Social Affairs and Health, 2002:20).

Supplementary pension schemes are not commonly used in Finland; the pension system is based on regulatory schemes.

C-333/00 Päivikki Maaheimo

Finland interpreted Regulation 1408/71 so that it was not considered to cover home care support as this support was regarded as social service instead of social benefit within the meaning of Regulation 1408/71. Home care support was regarded as an element of day care system and not a family benefit. In Finland children have a subjective right to day care. In case of children under three years of age a parent who instead of taking the child to public day care takes care of her at home is paid home care support. The home care support thereby complements the public day care.

The ECJ considered that home care support is a family benefit within the meaning of Regulation 1408/71. Furthermore, the ECJ argued that if the precondition for granting home care support is that the child concerned lives in Finland, this precondition is met if the child lives in the area of any Member State.

The National Pensions Institute changed its practice after this decision and home care support is now paid also to persons who live in another Member State. The working group considering the payment of home care support and maintenance support to a person living abroad has suggested a legislative reform confirm this (A report of a working group considering the payment of home care support and maintenance support to a person living abroad. Ministry for Social Affairs and Health, 2004:6).

Commission notification 11.7.2003 (2001/4647)

In its notification of 11.7.2003 (2001/4647) concerning application of article 33 of Regulation 1408/71 to pensioners who live in Finland and who are paid pension according to the national legislation of both Finland and another Member State the Commission holds that according to Regulation 1408/71 the State that is responsible for the pensioner's sickness and maternity insurance may not use the pensions paid by other Member States as basis for counting the amount of the sickness insurance payment. The Commission holds that Finland acts in this contrary to the judgment of the ECJ in C-398/99 *Rudgren*.

In its reply (5.9.2003) Finland argues that when defining the amount of sickness insurance payment to a person living in Finland also pensions paid by other Member States may be taken into account. In *Rudgren* the person concerned was not paid pension by the country of residence. Therefore, the principles expressed in this judgment are not applicable in situations where the pensioner is paid pension by at least two Member States one of which is her country of residence.

b) Draft legislation

The Act Amending the Act on Applying the Residence Based Social Security Legislation (Laki asumiseen perustuvan sosiaaliturvalainsäädännön soveltamisesta annetun lain muuttamisesta 635/2004), that was given on 9th July 2004, sets forth stricter requirements for entering the Finnish social security system than those that were applied before. According to section 3 b of this Act an employee or a self-employed person whose right to Finnish social security is based on the Regulation 1408/71 shall be entitled to the benefits covered by this Act if she works or functions as a self-employed person in Fin-

land continuously for four months. This Act thereby solves some of the problems related to the old legislation.

Recent national reports, legal literature

Sakslin, Maija, Eurooppalaistuuko Suomen sosiaaliturva?, *Lakimies* 7-8/2003, p. 1198-1212. ("Is the Finnish social security system europeanizing?")

Kotihoidontuen ja elatustuen maksamista ulkomaille selvittäneen työryhmän muistio. *Sosiaali- ja terveysministeriön työryhmämuistioita* 2004:6. (A report of the working group considering the payment of home care support and maintenance support to a person living abroad). Ministry for Social Affairs and Health). <http://www.stm.fi/Resource.phx/stm/index.htx> (15.5.2004)

Asumisperusteista sosiaaliturvaa selvittäneen työryhmän (SOLMU) loppuraportti. *Sosiaali- ja terveysministerin työryhmämuistioita*, 2003:22. (The final report of the working group considering residence-based social security. Ministry for Social Affairs and Health). <http://www.stm.fi/Resource.phx/stm/index.htx> (15.5.2004)

Asumisperusteista sosiaaliturvaa selvittäneen työryhmän (SOLMU) väliraportti. *Sosiaali- ja terveysministeriön työryhmämuistioita*, 2002:20. (A report of the working group considering residence-based social security. Ministry for Social Affairs and Health). <http://www.stm.fi/Resource.phx/stm/index.htx> (15.5.2004)

Chapter X

Establishment, Provision of Services, Students

In the Aliens Act there are no specific provisions concerning issuing a residence permit to those enjoying their freedom of establishment or provision of services, or to students. General rules on free movement of EU-citizens are applicable in these cases (see above under title “Entry, Residence and Departure”). Administrative orders and guidelines do, however, contain specific provisions applicable in these situations.

Establishment

According to section 4.1 of the Order 8/010/93, the right to establishment means a right of individuals other than workers to move to another contracting state and to work there as self-employed person. In this connection the Order refers to articles 31-35 of the EEA Treaty and to Council Directive 73/148/EC that concern the right to establishment.

According to section 4.1.1 of the Order 8/010/93, citizens of other EEA states and their family members shall issued residence permit without discretion if the preconditions are met. The order enlists the documents that the applicant should possess in order to be issued a residence permit on the grounds provision of services.

According to section 4.1.2 of the Order 8/010/93, an EEA citizen who has a licence to particular economic activity issued by the authorities of another EEA State according to its national legislation, shall be issued a residence permit for at least as long time as the licence is in force.

According to section 4.1.3 of the Order 8/010/93 the residence permit issued to a self-employed person shall not be cancelled for the ground that the self-employed activity is interrupted due to temporary incapacity for work caused by sickness or accident. A residence permit may be cancelled only on the grounds set forth in section 21 of the Aliens Act. According to this provision a residence permit may be cancelled for a weighty reason. Jeopardy to public order or security or public health caused by an EEA citizen or her family member shall be regarded as such.

According to section 4.1.4 of the Order 8/010/93 a citizen of an EEA country, who has functioned in Finland as a self-employed person has after finishing her activities a right to remain in Finland under same conditions as a worker who is a citizen of another EEA country and as set forth in section 3.6. of this Order [see above under title “Residence”]. This applies to family members of self-employed persons, as well.

Provision of services

According to section 4.2 of the Order 8/010/93 the Articles 36-39 of the EEA Treaty contain provisions on freedom of services. Freedom of services is defined in the Order as a right of EEA citizens to temporarily offer and receive services in another Member State. Freedom of services includes the right of residence. As service is defined industrial operations, activities related to trade, craftsmen’s trade, and activities that require special expertise. If the activity is not temporary it may be regarded as something else than provision or receiving of services.

According to section 4.2.1 of the Order 8/010/93 citizens of other EEA states and their family members are issued residence permit automatically. The order enlists the documents that are required to be issued a residence permit.

According to section 4.2.2 of the Order 8/010/93, the duration of the right of residence of providers and recipients of services has to be as long as it takes to provide and receive services. If this period is shorter than three months a residence permit is not required. In these cases the person concerned has to report her entry to the local police. If the residence lasts for longer than three months, a residence permit shall be issued for the duration of the intended stay in Finland. A residence permit may be renewed. According to section 4.3 of the Order 8/010/93, as providing and receiving of services is regarded as temporary activity, the providers and recipients of services are not entitled to remain in Finland after finishing this activity.

According to section 4.2.3 of the Order 8/010/93, a residence permit may be cancelled on grounds of public order and security and public health. According section 21 of the Aliens Act a residence permit may be cancelled for a weighty reason. Jeopardy to public order or security or public health caused by an EEA citizen or her family member shall be regarded as such.

Decision by the Supreme Administrative Court 26.3.2002 Dno: 2827/3/00

A citizen of another EU State who had stayed in Finland as a tourist had been convicted for a crime and thereafter refused entry. The appeal to the Supreme Administrative Court concerned the execution of the decision on refusing entry; the decision had been executed one day after it was notified to the appellant. According to the Supreme Administrative Court the decision on refusing entry was contrary to article 8 of the Council Directive 64/221/EC as it was stated in the decision that it may be executed immediately and even if the person concerned appeals.

Students

According to section 5.1 of the Order 8/010/93 an EEA citizen who is participating vocational training shall be issued a student's residence permit. Residence permit is issued on this ground if there are no other grounds for issuing a permit. Family members of a student are, too, issued residence permit. Persons issued a student's residence permit should not burden excessively the national economy of the receiving state. Therefore a student has to be able to finance her and her family's stay in Finland. The Order refers to directive 93/96/EC according to which a student is not entitled to the subsistence support in the receiving state. An EEA citizen and her family member who stay in Finland by virtue of a student's residence permit are entitled to work in Finland.

According to section 5.2 of the Order 8/010/93, citizens of other EEA states and their family members are issued residence permit automatically. The Order enlists the documents that are required to be issued a residence permit.

According to section 5.3 of the Order 8/010/93, the right of residence lasts for the duration of the studies, and the residence permit is issued for that time. If the studies take longer than one year the residence permit is issued for one academic year at a time and is renewed each year. When the permit is renewed the educational institution shall be

asked to issue a certificate showing that the student is enrolled in the institution. The student has to declare that she has sufficient financial resources for her stay.

According to section 5.4 of the Order 8/010/93, a residence permit may be cancelled on grounds set forth in section 21 of the Aliens Act. According to this provision a residence permit may be cancelled for a weighty reason. Jeopardy to public order or security or public health caused by an EEA citizen or her family member shall be regarded as such.

According to section 5.5 of the Order 8/010/93, citizens of other EEA countries are not entitled to remain in Finland after studying there solely on that ground. A permanent right to reside there presupposes a residence permit on some other ground.

e) Literature

Hintsanen, Lari, Verovelvollisen kotivaltion oikeudesta puuttua sijoittautumisvapauden nojalla saavutettuihin etuihin: oikeustapauskommentaari KHO:n välipäätöksestä 2002:26, *Defensor legis* 6/2002, p. 1075-1085. (“On the right of the taxpayer’s state of origin to interfere in the advantages gained through freedom of services: case commentary concerning decision 2002:26 of the Supreme Administrative Court”)

Kaila, Heidi, Palvelujen vapaata liikkuvuutta rajoittavat yleistä etua koskevat tavoitteet Euroopan yhteisöjen tuomioistuimen oikeuskäytännön valossa, *Defensor legis* 3/2003, p. 497-510. (“Public interest based restrictions on freedom of services in the light of the practice of the ECJ”)

Kaila, Heidi, Palvelujen tarjoamisen vapaus ja yleistä etua koskevat tavoitteet, *Defensor legis* 2/2003, p. 302-311. (“Freedom of providing services and the requirements concerning public interest”)

Chapter XI
Miscellaneous

Nothing to report.