

REPORT
on the Free Movement of Workers
in Latvia in 2004

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General remarks

The transposition of *acquis* into the Latvian legal system has been problematic. First, there is no uniform practice how the harmonisation shall be organised. In certain cases, the decision on whether a new law or rather Cabinet of Ministers regulations shall be adopted is based on purely practical considerations, i.e., time left for implementation. Second, rushed amendments do not always take into account currently existing ECJ case-law and systemic consequences of amendments proposed. The best example in this regard is the amendments to election laws, which provide the right for EU citizens to stand for elections but there is no possibility for them to establish or join a party.

The information system on the ECJ case-law established under the Ministry of Justice has functioned since April 2004. However, it concerns only the cases of the ECJ which have been decided since then or preliminary rulings' procedure initiated after that date. The further distribution of information is left at the discretion of each Ministry. Not all ministries have organised the internal information system. For example, the Office on Migration and Citizenship Affairs (OCMA) has not received the information from the Ministry of Justice. The same applies to the courts. Most of them have heard about the information system for the first time when approached by the authors of this report.

Apart from these matters, which might bring negative effects on free movement, there are additional concerns. The first to be mentioned is non-implementation of "Non-discrimination" directives. Experts have argued that there is a lack of political will to ensure smooth implementation process especially in relation to amendments in the Law on Education. Secondly, improper adjustments made treating non-citizens as third country nationals in the EU. Non-citizens are persons who were former-USSR citizens and who after Latvia regained its independence became stateless, unless they registered for Russian citizenship or citizenship of any other former Soviet republic, or applied for naturalization in Latvia. As a compromise solution between Latvia and experts of different international organizations, they have been granted status of Latvian non-citizen. This status has no similarity in international law. In essence, non-citizens have all the same rights as citizens, including diplomatic protection, but no political rights (right to vote and to be elected). Thirdly, Latvia has exclusive language and integration policies. Latvia's strict language policy has valid reasons. The Russification during the Soviet-era required certain action to be undertaken in order to facilitate the use of Latvian as official language. However, there are no adequate steps being taken except legislative to promote integration on basis of Latvian as the State language. On one side, there is strict application of language legislation by the State Language Centre, on the other side – there are few initiatives by the government to ensure access to learning the language.

Free movement of persons and their residence are guaranteed by multiple normative acts in Latvia, yet application of those normative acts raises some concerns. For instance, situation is particularly complex in regulation of residence permits or work permits for family members who are not EU citizens. The same applies for recognition of diplomas and qualifications.

Generally, there are more problems related to immigrants coming from the CIS countries (mainly, Russia, Ukraine, Moldova). The migration of EU citizens is comparatively low in Latvia. Therefore, there could be more problems envisaged when the Status Directive 2003/109 on Third Country Nationals becomes effective.

Latvia

As to the Commission's comments on the Latvian report:

2. Some reports contain a broad description of the issues not directly linked to the free movement of workers such as:

- equality man/woman
- discrimination on grounds of sex, race, religion ect.

This was a case for example of: French, Spanish, Czech, Latvian and Estonian reports

I have noted this comment and acknowledge that I have misunderstood the requirements. I will take that into account for the next year report.

- Mention of internet sites where national legislations and national court s judgements would be useful already for 2004 report
- In Chapter II, part on sport will have to be developed for 2005 report (especially concerning rules applied by football, volley ball, basket ball and ice hockey federations). Some rules detailed in 2004 report seem to be already problematic. To be followed carefully.

I have noted the remark on sport. I have been following closely the developments in team-sports.

Added at the end of the report:

ANNEX I

Sources for certain legal acts mentioned in the Report

Chapter I

Entry, Residence, Departure and Remedies

Entry, residence and departure are generally regulated by the *Immigration Law (Imigrācijas likums)*.¹ The Immigration Law was adopted on 31 October 2002 (*Official Gazette* (further *OG*) No. 169, 20.11.2002, in force since 1 May 2003) and was subsequently amended three times (22.02.2003, 08.07.2003 and 22.04.2004).

Articles 69 and 70 of the Immigration Law entrust the Cabinet of Ministers to adopt relevant regulations for free movement of the European Union (EU) citizens and citizens of the European Economic Area (EEA).

Article 69 states that:

“Citizens of the European Union Member States and states belonging to the European Economic Area and their family members enter and reside in the Republic of Latvia in accordance with normative acts of the European Union, the application of which is determined by the Cabinet of Ministers.”²

Entry of the EU and EEA citizens is governed by the Cabinet of Ministers Regulations No. 914 Procedure for entry and residence of citizens of the EU Member States and EEA States and their family members in the Republic of Latvia (*OG* No. 180, 12.11.2004). These Regulations were adopted in accordance with Article 69 of the Immigration law and replaced Regulations No. 297 on Procedure in which EU citizens and their family members enter and reside in Latvia (*OG* No. 66, 28.04.2004).

The form of Cabinet regulations was chosen because authorities were not certain whether relevant Directives will be transposed and applied correctly. A procedure to amend regulations is easier and faster than a legislative procedure in the *Saeima* (Parliament). Another option, to amend *Immigration law*, was ruled out because the law is too rigid and it would be too complicated to integrate the norms related to free movement. However, there is a general plan to draft a special law during 2005.

Neither Immigration Law nor Regulations refer to relevant EC Treaty Articles, i.e., Article 18, and/or ECJ case law. There is no system of circulars established by OCMA. In practice OCMA relies on what they call ‘good practice’. It means that only in cases of expulsion or refusal to issue a residence permit officials will look at the standards set by the European Court of Human Rights before the decision is made. So far there has been no need for recourse to the ECJ case-law according to the OCMA.

1 For translation see <http://www.ttc.lv/?id=59> . There are also other laws available in English. However, not all of them include latest amendments and the list is incomplete.

2 Before the amendments of 22.04.2004 Article 69 provided that “citizens of the European Union Member States, aliens who have a permanent residence permit issued in European Union Member State and their family members shall enter and reside in the Republic of Latvia in accordance with the regulatory enactments of the European Union, the procedures for the application of which shall be determined by the Cabinet”.

Entry

Texts in force

According to Section 2 of the Regulations No. 914 EU citizens and EEA citizens can enter Latvia if they possess a valid travel document (passport or identity card) and they do not constitute threats to state security, public order and public health. Section 3 provides that the citizens mentioned can reside up to 90 days within a 6 months period without applying for a residence permit.³

Although EU citizens who enter as students, family members or persons with sufficient income shall possess a valid health insurance card, the requirement for possession of the card on the border is unclear. According to Cabinet of Ministers Regulations No. 691 on Health Insurance of Foreigners (*OG* 176, 12.12.2003) foreigners when entering Latvia shall possess valid health insurance for the duration of stay in Latvia. Section 9 states that possession of health insurance is controlled by diplomatic and consular representatives, State Border Guard and OCMA. Section 11 provides that checks on possession of health insurance on the border will be taken only exceptionally in case there are reasonable doubts on its possession. The consequences of non-possession of insurance at the border are unclear. According to interpretation given by OCMA, possession of an insurance card on the border is not obligatory.

EU citizens and EEA citizens will not be allowed to enter Latvia if their names will appear on the so-called 'Blacklist' – list of foreigners for whom entry into Latvia is prohibited. The procedure for this list is provided in Article 61 of the Law on Immigration. The decision to include a person on the list is taken by the Minister of Interior on the basis of grounds listed in Article 61, for instance, suggestion made by competent State institutions that a foreigner can constitute threats to national security, public order and policy, or has committed serious crime and alike. The Minister for Foreign Affairs, the Director of Consular department or a diplomat working at the embassy, the Chief of State Border Guard can take the decision to include person on the 'Blacklist' within the sphere of their respective competences. According to part 6 of Article 61 the decisions made by the Ministers of Interior and Foreign Affairs are without appeal.

There are no provisions in Regulations No. 914 which would provide for exemptions from this procedure in case of EU citizens. Regulations also do not include any gliding scale in relation to entry of EU citizens. Therefore, it remains unclear to what extent respective authorities will observe the principles developed by the ECJ in its case-law.

Draft legislation

Currently proposals for amendments in the Immigration law are under discussion. Among other things the proposal is to amend Article 69 to include reference also to citizens of the Swiss confederation.

3 For further exemptions see under section on Residence.

Judicial practice

On 6 December 2004 the *Satversmes tiesa* (Constitutional Court) has ruled on compatibility of Article 61 of Immigration law with Article 92 of the *Satversme* (Constitution). The applicant was a citizen of Moldova who was included on the blacklist in accordance with the decision of the Minister of Interior and was, therefore, denied a residence permit. After unsuccessful attempts to challenge the decision in the courts, she turned to the Constitutional Court. Article 92 of the Constitution provides that: “[e]veryone has the right to defend their rights and lawful interests in a fair court”. The Court followed the methodology of the European Court of Human Rights (ECHR) and referred to the ECHR case law. It concluded that the procedure has been prescribed by law and had a legitimate aim. After that the Court discussed whether the procedure set by Article 61 is proportionate to the aim pursued. The Court acknowledged that there are many possibilities open for an individual to challenge the decisions made against him within the context of Article 61 including the rights provided in Article 6 of the Law on State Security Institutions (right to approach the Public Prosecutor who gives his opinion or submits the case to the court). However, paragraph 6 of Article 61 which does not provide for the right to appeal decisions of Ministers of Interior and Foreign Affairs contradicts Article 92 of the Constitution. The Court decided that the norm in Article 61 will become null and void on 1 May 2005.

It remains to be seen whether amendments to the Immigration Law will take into account provisions of Directive 64/221 and respective ECJ case-law to bring the Law in line with not only human rights but also EU law.

Residence

Texts in force

Section 3 of Regulations No. 914 provides that if EU citizens or EEA citizens are willing to reside in Latvia for more than 90 days within 6 months they shall register in OCMA.

Section 6 of Regulations No. 914 indicates exceptions to the general requirement for residence permits. Namely, if a person is seasonal worker; works in Latvia but lives in another EU Member State, where he returns at least once a week; resides in Latvia up to six months a year, if the aim of residence is to establish a working relationship in Latvia by concluding work contract (job-seeker) – then he/she does not have to apply for a residence permit and a valid travel document is sufficient. The provision on job-seekers aims at regulating situations similar to those described in *C-292/89 Antonissen case*. However, the formulation is strict and does not provide for possibilities to extend the period of residence even if the person concerned provides evidence that he/she is continuing to seek employment and that he has genuine chances of being engaged.

EU and EEA citizens as well as their family members do not need a work permit (Article 4).⁴

4 But see Chapter IV on Family members.

Temporary resident permits

Temporary residence permits are issued for a time up to five years. Section 8 of Regulations no. 914 set out duration of permits to be issued for different categories of applicants – workers, service providers and recipients, students, persons with sufficient income and family members.

The residence permit is issued for a maximum of one year in cases of workers having a contract for more than 90 days and students. Temporary residence permits are renewable after their expiration (Section 19). Person shall submit all relevant documents as in the case of initial application.

When applying for a temporary residence permit EU and EEA citizens shall submit a copy of the contract. Self-employed EU and EEA citizens shall submit a copy of patent or registration certificate. Service providers in accordance with Section 12 shall submit a copy of contract on the basis of which service is provided or received. No requirements for presentation of health insurance are mentioned in the case of workers.

The work contract submitted shall provide for remuneration exceeding 80 LVL (approx. 115 EUR) which is the minimum salary in Latvia. In case remuneration is lower, the residence permit can be refused.

Persons with sufficient income shall submit documentary evidence of sufficient income and health insurance. The examples mentioned in Section 15 are a letter from the bank or a letter about monthly pension. It is not entirely clear whether OCMA will apply to this category of persons the same principle in determining minimum income as in the case of workers and self-employed. The reason for this is that there are two standards which can be applied. The first one is to apply ‘minimum salary’ as in case of EU and EEA workers. The second is to apply ‘minimum sufficient means’ which are defined in Cabinet of Ministers Regulations No. 213 and are usually applied in case of third country nationals applying for residence permits. Section 30 expressly states that a definition is given in the context of these Regulations. It provides for three separate standards applicable:

- Generally income or savings shall be equivalent to the complete minimum consumer basket of goods and services for the previous year which is established by Central Statistical Bureau.⁵
- For self-employed, service providers or those who own or hold an elected position in different kinds of undertakings the income or salary shall amount to twice the average monthly salary for the previous year of those employed in Latvia.
- For workers the salary shall be at least equivalent to the average monthly salary for the previous year of those employed in Latvia.

Currently “minimum sufficient means” constitute 214 LVL (approx. 305 EUR).

In accordance with Section 14 students shall submit:

- copy of agreement for studies in Latvia;
- confirmation of sufficient resources;
- health insurance covering first aid in the amount guaranteed by State or valid private insurance policy.

5 Available on <http://www.csb.lv>.

In relation to students the situation is unclear. Immigration law in its Article 23 states that temporary residence permits can be issued for the duration of studies if the study fee is paid. In accordance with Sections 50 and 51 of Regulations No. 213 *on Residence Permits* (OG No. 65, 30.04.2003) students applying for a residence permit in such cases shall submit among other documents confirmation of payment on the basis of which the residence permit is issued. This means that a residence permit can be issued for a period up to 5 years at once. However, Regulations No. 914 in relation to EU citizens and EEA citizens in Section 8.5 strictly provides that a residence permit can be issued for a maximum of one year. Therefore, it seems that students from EU States are placed in a less favourable situation than students coming from other States.⁶

Permanent residence permits

Permanent residence permits are issued to EU and EEA citizens and their family members if they have resided uninterruptedly in Latvia for five years; if he/she is a minor (under 18) of a Latvian citizen, Latvian non-citizen or permanent residence holder; permanently resides in Latvia and was Latvian citizen or Latvian non-citizen before acquired citizenship of EU Member State or EEA State.

According to Section 29 of Regulations no. 914 uninterrupted period of residence means that the person has not left Latvia for more than 6 consecutive months except when there have been valid reasons of absence (for instance military service or medical treatment).

Section 30 of the same Regulations provides for exceptional cases when permanent residence permit can be issued before the necessary period of five years has passed. The individual can stay if he/she:

- reaches pension age set by Latvia and has been self employed last year and has resided in Latvia consequently for more than 3 years;
- reaches pension age set by Latvia and has been self-employed in Latvia and if his/her spouse is a Latvian citizen or has lost Latvian citizenship after marriage;
- is declared permanently disabled by the competent state authority and has resided in Latvia uninterruptedly for 2 years;
- is declared permanently disabled by the competent state authority and if his spouse is a Latvian citizen or has lost Latvian citizenship after marriage;
- after three years of uninterrupted residence in Latvia continues activities in another Member State as worker or self-employed person and returns to Latvia at least once a week.

According to Section 31 a family member has a right to obtain permanent residence permit if the EU or EEA citizen acquires permanent residence permit according to Section 30.

Section 32 provides 3 instances when family members can obtain permanent residence permits if a self-employed person with a temporary residence permit dies before he/she managed to obtain permanent residence permit:

- the EU or EEA citizen has continuously resided in Latvia for at least two years;
- the cause of death is an accident at work or an occupational disease;
- the spouse is a Latvian citizen or has lost Latvian citizenship after the marriage.

⁶ See also on p. 12 and Chapter VIII, p. 44.

The last provision on nationality of spouses appears to be discriminatory. However, it can be argued that this provision is only partially relevant because Latvian citizens do not have to possess a residence permit while staying in Latvia. Therefore, this provision will be applicable only in cases when a Latvian citizen has lost Latvian citizenship after marriage and resides in Latvia as spouse of an EU or EEA citizen. Its practical relevance would require a study in which cases other EU or EEA Member States provide for loss of citizenship after marriage.

Section 33 is drafted ambiguously. It refers to rights of persons who are spouses or dependants in descending line of a Latvian citizen, Latvian non-citizen or foreigner who holds a permanent residence permit. They can obtain permanent residence before 5 years term if he/she is an EU or EEA citizen or a family member. But then Section 33 adds further qualifications, i.e., such right is granted in cases of divorce or when the spouse – Latvian citizen or Latvian non-citizen – dies and the person remains to be the guardian of a child who is a Latvian citizen or Latvian non-citizen. Therefore, it remains unclear to what extent these rights belong to persons who are spouses of foreigners possessing permanent residence permit and dependants in descending line.

All documents for permanent residence permit shall be submitted personally in OCMA. Family members who need visa for entry, shall submit all documents for temporary residence during the time of the visa validity (Section 37). Documents for renewal of a temporary residence permit or applications for a permanent residence permit shall be submitted not later than 30 days before the final date of validity of the temporary residence permit (Section 38).

Obligation to declare residence

According to the *Law on Declaration of Residence* (OG No. 104, 10.07.2002) there is an obligation for citizens, non-citizens, stateless persons, foreigners holding a residence permit and refugees to declare their place of residence. The declaration shall be submitted to the authorities of local governments and a fee paid. The failure to do so is subject to administrative proceedings in the Administrative committee established by local government (Article 186 Code of Administrative Offences). The maximum penalty is 25 LVL (approx. 40 EUR).

This requirement has caused problems to foreigners because Immigration authorities upon issuing residence permit do not provide information about the obligation to declare residence. During 2004 the Administrative committee of Riga City Council alone has dealt with 68 cases when EU citizens had not declared their residence or had not prolonged declaration. Moreover, it seems that the communication between committees at local government and OCMA is not fully worked out. There have been cases when OCMA was not aware whether the penalty has been paid and requested to present evidence or pay the penalty once again.

Imposition of penalties in cases of EU citizens can be considered as problematic, especially because there is no obligation to inform individuals on a declaration of residence specified in legislation. OCMA shall be made responsible to inform individuals about their obligation or the declaration shall be made automatic once an individual approaches OCMA for residence permit.

Draft legislation

Currently there are draft amendments prepared in the Law on Declaration of Residence (submitted to Cabinet of Ministers on 22.02.2005) and the Law on Register of Residents (accepted by the Defence and Home Affairs Commission of *Saeima* for the first reading 02.02.2005). The draft amendments to the Law on Declaration of Residence provide that declaration of residence can be submitted not only personally but also by post or electronically. In addition to the place of residence other contact information can be indicated. The draft provides that residence of children who are not of full age shall be determined according to the place of residence of their parents.

Draft amendments also provide that fee for registration of residence at the local government shall be abolished and all expenses shall be covered from State budget.

Possibilities that declaration of residence is done by OCMA when individual applies for residence permit are also considered.

Amendments proposed to the Law on Register of Residents aim at simplifying the procedure for receiving residence permit.

Departure

Texts in force

Refusal to issue residence permit

According to Section 51 a residence permit is not issued if a person:

- has not submitted all necessary documents or refuses to submit necessary information;
- has a different purpose of stay which does not correspond to those mentioned in the Regulations;
- constitutes a threat to state security, public order and public health;
- submitted false information;
- does not have sufficient resources and has got a residence permit as student, self-sustaining individual, or family member;
- and his/her family members have received compensation for leaving Latvia for permanently settling in a foreign country independently of whether compensation was paid by the Latvian state or local institutions or international funds and institutions. These conditions are not applicable to persons, who were not of full legal age as well as persons who re-paid the compensation received if they apply for permanent residence;
- has previously been a Latvian citizen or non-citizen and this status has been withdrawn in accordance with the Citizenship Law or the Law on the Status of Former USSR Citizens who are not Citizens of Latvia or any Other State.

At least three of the grounds mentioned raise concerns. Firstly, the condition that residence should correspond to aims mentioned in the Regulation. This is a restrictive approach contradicting Article 18 of the EC Treaty and the ruling of the ECJ in the *Baumbast* case. Secondly, the condition that a person should have sufficient resources to reside as student raises concerns whether ECJ ruling in the *Grzelczyk* case will be taken into account.⁷ Thirdly, the

7 See Chapter VIII.

last condition is raising concerns and requires more detailed analysis here. Latvian non-citizens are considered to be third country nationals for the purposes of EU law.⁸ This approach has been criticised by EU independent experts⁹ and raises the question to what extent Latvia can live up to its international human rights obligations, i.e., especially those under the International Covenant on Civil and Political Rights. Non-citizens are not citizens of any other State as it is in most cases of third country nationals in the EU. Non-citizens enjoy certain rights in Latvia which traditionally have been granted only to citizens. Their current status does not correspond to the status of third country nationals, i.e., long-term immigrants in Europe which are the target group of the Directive.

In order to implement requirements of Directive 2003/109 *Saeima* adopted amendments not only to Immigration law but also to the so-called Non-citizens Law (*OG* No.63, 25.04.1995). It provides that the status can be withdrawn if a person has got permanent residence in another State after 1 June 2004 (Article 1, paragraph 3, point 5, in conjunction with Article 7, paragraph 1, point 2).¹⁰ He/she can renounce the status of non-citizen when he/she acquires citizenship of any State or has received a valid travel document. Therefore, it is not clear whether and under what circumstances there is a possibility for an individual to renounce the status of non-citizen if he/she acquires permanent residence permit in another State. Permanent refusal to issue a residence permit to EU citizens in cases when the status of non-citizen and even Latvian citizen has been withdrawn do not seem proportionate in accordance with Article 18 EC Treaty. Moreover, these amendments do not take into account special provisions of Article 9 of the Directive 2003/109. Namely, the legislator has disregarded the option in paragraph 4, which allows for cooperation between Member States in relation to withdrawal of the status, as well as paragraph 5, which provides for a simplified procedure for renewal of the status of permanent resident.

A temporary residence permit is annulled, if:

- the conditions for issuing a permit have changed or no longer exist except when the worker or self-employed person has interrupted his activities because of temporary illness, accident or forced unemployment;
- the residence permit holder does not have sufficient income;
- residence is acquired by fraud;
- the residence permit holder lives abroad for more than 6 consecutive months, except when valid reasons are given;

8 Commission agrees with this qualification. In his letter to the Head of Latvian Mission of Latvia, the Director General of Justice and Home Affairs Mr. Jonathan Faull (JF D (2003) 4939) concerning Directive 2003/109 states that “The expression “third country national” covers “all persons who are not citizens of the Union in the sense of Article 17, paragraph 1, of the treaty”, that is to say those who do not have the nationality of and EU Member State. The commentary on Article 2 reinforces this interpretation. This indicates that persons with undetermined citizenship come within the scope of the Directive”.

9 See conclusions by EU Network of Independent Experts on Fundamental Rights, *Synthesis report for 2003*, p. 88. Experts regret that the situation of non-citizens has not been resolved during the entry negotiations between Latvia and the EU.

10 Although this does not come within ambit of the time period of this report, it shall be noted that these provisions will become null and void on 1 September 2005 in accordance with the decision of Constitutional Court on 7 March, 2005, in case Nr. 2004-15-0106, published in *OG* on 7 March, 2005, available also at [http://www.satv.tiesa.gov.lv/LV/Spriedumi/15-0106\(04\).htm](http://www.satv.tiesa.gov.lv/LV/Spriedumi/15-0106(04).htm) Constitutional Court has stated that this norm contradicts *inter alia* Convention on Reduction of Statelessness and Article 12 of the ICCPR.

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- state institutions have submitted a reasoned opinion that the residence permit holder or his/her family member create threats to state security, public order or public health.

Permanent residence permit is annulled, if:

- acquired by fraud;
- the holder of the residence permit constitutes a threat to state security and restrictions on personal rights are proportionate with interests of society and State;
- the person continuously resides outside Latvia for more than two years, except when valid reasons are given.

The same concerns as mentioned under 'Refusal to issue residence permit' are applicable and a few others shall be mentioned. Firstly, the provisions of the Regulations do not foresee a gliding scale to be applicable in cases when the grounds of public security and public order are invoked. Therefore, neither provisions of Directive 64/221 nor following case-law of the ECJ is implemented correctly. Secondly, the change of conditions cannot always lead to annulment of the residence permit according to EU law. It is also unclear to what extent authorities will be able to ensure effective control when a worker will terminate his contract. Currently there are only discussions about the possibilities to establish an information system about foreigners employed in Latvia. Thirdly, there is no effective system established to obtain data on migration to and from the other Member States. This makes it almost impossible to effectively apply the condition that a person shall not live abroad for more than 6 consecutive months.

Section 54 provides that if an EU or EEA citizen or their family members while residing in Latvia constitutes a threat to state security, public order or public health, the head of OCMA or a person he entrusted can issue an expulsion order asking to leave Latvia within 15 days (if a person is not in possession of a residence permit) or within one month in all other cases. If such threats are considerable (for instance, state security institutions have learned that a person is spying, preparing diversion, is involved in terrorist activities), the head of OCMA can issue an expulsion order and demand to leave Latvia within 48 hours. An EU citizen, EEA citizen and his/her family members can be included in the list of persons who are not allowed to enter Latvia. Such a prohibition is valid for 2 years.¹¹

According to Section 56 if a person has not completed administrative procedures in time and the validity of travel document has expired, it cannot by itself be sufficient for expulsion of an EU, EEA citizen or a family member. Although this provision aims at transposition of some requirements set in Directive 64/221, the overall transposition of the Directive is incomplete and Regulations do not reflect the rules and principles elaborated further by the ECJ when giving preliminary rulings based on interpretation of Directive of 64/221. The same conclusion can be drawn in relation to rules of Criminal law (see part on Jurisprudence) which do not contain any guidelines for the courts in cases when they consider expulsion of EU citizens.

11 On problems related to Blacklist see sub-chapter on Entry, p. 6.

Draft legislation

Latvia has not yet adopted measures to implement Decision 96/409/CFSP of 25 June 1996 on the establishment of an emergency travel document. The reason is that new Member States have not been allocated numbers for travel documents to be printed.

Jurisprudence

According to Article 43 of Criminal Law (*OG* No. 199/200, 08.07.1998) the court can order expulsion of a citizen of another State. Paragraph 2 of Article 43 provides that expulsion is ordered after imprisonment and without indicating its duration. This means that in cases when an EU citizen will face expulsion the 2 years limit for him/her to appear on the Black-list might not be observed. The question remains to what extent the courts will follow the EU standards in expulsion cases and give due consideration to conflicting provisions in national legislation.

No cases of expulsion of EU citizens are reported.

During 2004 there was one case when extradition of EU citizen was ordered by Regional Court (*Apgabaltiesa*).¹² The case concerned a Danish citizen who was extradited on the basis of criminal convictions under Articles 160, paragraph 3 (rape of minors) and 164, paragraph 3 (forcing a person to prostitution) of the Criminal law (Court decision 13.10.2004, cassation in the Senate of the Supreme Court denied on 10.01.2005).

Remedies

According to the *Code of Administrative Offences* (*OG* No. 51, 20.12.1984) violations of rules relating to immigration, registration in OCMA, declaration of residence, and rules relating to work permits are subject to administrative fines (Article 188-Article 190.6 and Articles 190.10-194). A person who considers that his/her rights are violated can approach the Public Prosecutor who has the competence of supervision in cases of administrative offences (Article 242).

Since February 2004 individuals can challenge the legality of acts issued against them by institutions, namely, to file a case in the Administrative court on basis of *Administrative Procedure law* (*OG* No.164, 14.11.2001). There have been no cases concerning EU citizens in Administrative Courts so far.

Apart from remedies in courts another option available for individuals is to approach the Centre "SOLVIT". It was established on 1 May 2004, in the framework of the Ministry of Economics. It deals with problems of enforcement of common internal market that have arisen as a result of the work of public administration when they improperly apply the EU law. Centre deals with cases itself or with the assistance of the Commission. These services are free of charge. An example can be mentioned under this chapter.

A UK citizen studying in Latvia was charged 100 Euro for the processing of his request for a temporary residence permit. The request was submitted on 7 April 2004 and the residence permit granted on 21 May 2004. SOLVIT intervened and there was exchange of letters be-

12 The Law on Criminal Procedure was amended to include Articles on extradition of EU citizens (*OG* No. 94, 16.06.2004).

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tween the Centre and OCMA. The UK citizen was informed about the possibility to receive refund. However, refund paid was not adequate and SOLVIT had to intervene again by contacting the Ministry of Foreign Affairs which assured that problem will be settled.

Chapter II Equality of Treatment

Texts in force

There are no special laws on non-discrimination and equal protection. Legislation on non-discrimination and equal protection is incomplete. Problems are known because Latvia is a state party to the International Convention against All Forms of Racial Discrimination which provides even higher standards than the EU Non-discrimination Directives. The Monitoring Committee has repeatedly urged Latvia to bring its legislation in line with international obligations¹³.

Article 91 of the *Satversme* states:

“All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.”

Other laws containing reference to equal treatment and non-discrimination are the Law on Administrative Process, the Law on Civil Procedure, the Labour Law, the Criminal Procedure Law. Although the deadline for implementation of the Directives 2000/43 and 2000/78 was 1 May 2004 they are still not implemented. The responsibility for implementation of Directive 2000/43 lies with the Secretariat of Special Assignments Minister for Social Integration (further Minister of Integration) but implementation of Directive 2000/78 with the Ministry of Welfare.

Amendments to Labour Law were adopted by the *Saeima* on 22 April 2004 (*OG*, No. 72, 07.05.2004). Amendments to the *Labour Law* provide for the application of the prohibition of unequal treatment in relation to persons based on race, colour, sex, age, disability, religious, political or other conviction, national or social origin, social or family affiliation or other status. This specifically relates to the job advertisements, employment, termination of the employment, determination of remuneration, and promotion and is applicable in both cases of direct and indirect discrimination. Amendments to paragraph 3 of Article 7 impose specific obligations on employers to create such working environment that enables persons with a disability to find employment, to work, to get promoted and to benefit from continuing education.

Article 29 prohibits harassment, including sexual harassment, and the orders to discriminate. Article 29 defines direct and indirect discrimination on the basis of gender which is applicable also in other cases when discrimination takes place on different grounds. In paragraphs 5 and 6 it states that:

“Direct discrimination exists if in comparable situations the attitude against a person based on gender is, was or might be less favourable as compared to another person”. “Indirect discrimination exists if in comparable situations a seemingly neutral provision, criterion or practice creates or may create unwelcome consequences on the basis of gender unless this provision, criterion or practice has an objective basis, legitimate aim and is proportional”.

13 The latest document on Latvia by the CERD is Concluding Observations CERD/C/63/CO/7. 10 December 2003, especially paragraph 8. Concerns on gender discrimination and monitoring institutions have been expressed also by CEDAW monitoring Committee. See in this respect Concluding Comments CEDAW/C/2004/II/CRP.3/Add.5/Rev.1, 26.07.2004.

The amendments provide for the right to compensation, including compensation for moral harm, for direct or indirect discrimination based on gender.

The amendments, however, do not follow the guidelines by the Commission and do not refer to prohibition of discrimination based on sexual orientation. The amendments also do not implement Directive 2000/78 adequately because at least three laws would still have to be amended: the Law on Civil Service, laws related to military service and the Law on Social Security.

Equality in maritime and sports sectors

Free movement of persons in *maritime sector* is regulated by the Maritime Code (*OG* No.91, 18.06.2003, *Juras kodekss*). Article 4 of the Code states that a ship is considered to be Latvian if the owner is a Latvian citizen or non-citizen or a legal person registered in Latvia. Article 272 of the Code states that:

“Latvian citizens or Latvian non-citizens as well as aliens in cases provided in other normative acts can be captains of the vessel”.

There are no regulations as to nationality of the crew members.

Article 3 provides that if international legal norms would provide different regulation as provided in the Maritime Code, international norms shall be applicable. And in the Paragraph 2 it says that other normative acts shall be applied if the regulation is not provided by the Code.

It is not clear which normative acts the Law is referring to in Article 272 and also Article 3 does not provide for clarification. However, according to interpretation provided by the Ship Register there are no limitations for citizens of other States to work as captains of the vessel if they possess valid work permit.

According to the Maritime Administration and Marine Safety Law the crew is recruited under responsibility of ship owner with approval from captain. All crew members shall have necessary qualifications (Article 24).

In relation to *sports* the general attitude towards citizens of other countries during 2004 was welcoming. The newly established leagues were willing to raise the level of competition and to do that they had to import players from other States. Mostly those were players coming from outside the Europe Union.

An overview of rules for different leagues in football, basketball and ice-hockey leads to the conclusion that there are no restrictions as to the number of foreigners in teams. For instance, the rules for the Supreme football league provide that any number of foreigners can be registered for the team. However, only five of them can actually play on the field at the same time (for lower leagues the number is 3). As soon as such players have got Latvian citizenship or permanent residence they are not considered as foreigners. According to officials of the Football Federation there are very few foreign players in Latvian clubs. The reason is that they cannot afford to pay foreigners.

The Latvian Basketball Union adopts an annual decision on quota for foreigners to play in Latvian championships. The decision adopted on 7 October 2004 stated that during 2004/2005 any number of foreigners can be registered for the game. However, only 3 of

them can play at the same time and no more than 2 of them can be from FIBA-Europe zone countries. The quota set are in force during preliminary games and play-offs.

The Latvian Ice-Hockey Federation has adopted rules for the 2005 Latvian Ice-Hockey Supreme league competition. It provides that for each competition a club can register five foreign hockey players who are non-EU citizens. This rule does not apply to two Latvian clubs playing in the Open Ice Hockey Championship of Belarus.

The federations are formed as NGOs and *Law on Sports (OG No. 165, 13.11.2002)* does not provide any specific guidance in relation to how federations shall treat EU citizens. There are no further instructions adopted by the National Sports Council.

The practice established by the Leagues so far does not appear to be fully in line with the EU law due to the limited number of foreign players allowed on the field at the same time. Moreover, the gradual progress of the level of competition within different leagues and inadequate safeguards for non-discrimination can lead to problems in the future.¹⁴

Miscellaneous

Latvia has signed Protocol 12 of the ECHR on 4 November 2000. The ratification process has been stopped in *Saeima*. The initiative to ratify the protocol was declined by *Saeima* on 16 October 2003. It is expected that discussions will start again when the Protocol will enter into force on 1 April 2005.

One of the main tasks of the Special Assignments Minister for Integration is to develop programmes and measures to fight racism and intolerance. Series of events and conferences on tolerance and inter-ethnic relations organised or sponsored by the Secretariat of the Ministry for Integration have been helpful to alert public about the problems. The National Programme for the Development of Tolerance has been adopted in 2004.¹⁵

The 2004 *Plan of Action for the Promotion of Employment*, which has been prepared as part of Latvia's EU obligations, focuses on gender issues and on several additional vulnerable groups such as former convicts, persons with disabilities, youth, persons close to the retirement age.¹⁶ The Plan does not mention the professional integration of ethnic or national minorities or linguistic groups. The Plan also does not list special measures to increase employment among women, although it is one of the goals of the national plan.

In 2003, the Ministry of Welfare began a pilot project to subsidise work places for persons with disabilities. The responsible institution is the State Employment Agency. However, there is certain reluctance on the part of people with disabilities.

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14 Rules adopted for season of 2005 and 2005/2006 provide much more stringent conditions for foreign players in all leagues described. Those rules, if adopted, will clearly contradict EU Law.

15 Available at www.integracija.gov.lv, visited 5 May 2005.

16 *Latvijas Nacionālais 2004.gada rīcības plāns nodarbinātības veicināšanai*, available at <http://www.lm.gov.lv>, visited 5 May 2005.

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Ilvija Pūce, Diskriminācijas novēršanas likums Latvijā [Law on Elimination of Discrimination in Latvia], to be published in *Human Rights Journal*. Currently available at <http://www.stop-discrimination.info/index.php?id=5257>, visited 10 February, 2005

Kristīne Dupate, Vai Darba Likums atbilst Eiropas Savienības tiesībām? [Is the Labour Law compatible with European Union Law?], *Jurista Vārds*, No. 341, 21.09.2004.

Chapter III Employment in the Public Service

Texts in force

Elections

According to *Satversme* only citizens can vote and be elected in the *Saeima* (Articles 8 and 9). Article 37 of the Constitution provides that for a person to be elected as President he/she shall have full rights of citizenship and shall be minimum forty years old. A person with dual citizenship may not be elected as President.

Article 101 of *Satversme* sets a general approach to access to employment in the public service. It states:

“Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service.”

Article was amended on 23 September 2004 adding a paragraph on rights of EU citizens:

“Local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia. Every citizen of the European Union who permanently resides in Latvia has the right, as provided by law, to participate in the work of local governments. The working language of local governments is the Latvian language.”

The Law on City Council, District Council and *Pagasts*¹⁷ Council Elections has been amended accordingly (*OG* No. 187, 25.11.2004). Article 5 provides that the right to vote in local elections belongs to a European Union citizen, who is not a Latvian citizen but is registered in the Register of Residents. The right is guaranteed on the same terms as for Latvian citizens, i.e., they have to be 18 years old, be registered in the Voters Register and at least 90 days before the day of elections have registration in the territory of the respective local council or a property registered there. According to Article 6 only those EU citizens have the right to vote which can vote in their respective States of nationality.

Article 8 of the Election law provides that EU citizens can stand as candidates in local elections. According to Article 9 a citizen of the European Union who has been deprived of the right to be nominated as a candidate and to be elected by a court verdict in the EU Member State of his citizenship may not be nominated as a candidate for council elections or be elected in the council. Article 10 sets further limitations for EU citizens on equal grounds as Latvian citizens. It provides that in case if President, MP, ministers, prosecutors, judges, State auditors, members of collective councils of Revision Departments of the State Audit, and members of military service are elected they lose the position mentioned.

There is no right to vote and to stand as a candidate at municipal elections for third country nationals in Latvia. The proposal to allow all Latvian non-citizens to vote and stand as candidates in municipal elections was put forward during the discussions in *Saeima*. The other proposal concerned the abolition of a norm which does not allow persons who belong to or were members of the staff of the USSR, Latvian SSR or foreign state security, intelligence or counterintelligence services or who after January 13, 1991, have been active in

17 The smallest rural administrative unit in Latvia.

CPSU (CP of Latvia), Working People's International Front of the Latvian SSR, the United Council of Employees Bodies, Organization of War and Labour Veterans, All-Latvia Salvation Committee or its regional committees to stand as a candidate in municipal elections. The proposals were not accepted. It is, therefore, that non-citizens are still not allowed to vote in local elections although they have special links with Latvia and they do not have citizenship of any other State.

Apart from elections there is no general limitation for citizens of other States to be employed at local governments with temporary or permanent residence permits if they satisfy other requirements set by law, for instance, they have to be fluent in Latvian.

On 29 January 2004, the *Saeima* adopted the Law on Elections to the European Parliament(*OG*, No. 22, 11.02.2004). The law transposes the norms of Directive 93/109/EC. Latvian citizens and citizens of the European Union who reside in Latvia (Article 2 (1) 1 and 2), having reached the age of 18 "on the election day", who are registered in the electoral register in Latvia, and provided that none of the restrictions referred to in the Law applies to such persons (Article 2 (2)), have the right to vote in these elections. The Law provides three categories of persons who are not allowed to vote in the elections of the European Parliament:

- "1) persons who according to the procedures prescribed by law are recognized as lacking the legal capacity to act,
- 2) persons who are serving sentences in places of deprivation of liberty, and
- 3) persons who do not have the right to vote in the Member State of the European Union of which they are citizens."

EU citizens have to reside in Latvia if they want to benefit from this right. It remains unclear what 'residence' means since there are different types of residence such as permanent and temporary. Residence of EU citizens is regulated in the secondary legislation adopted by the Government.

The right to be a candidate is extended to persons having reached the age of 21. Moreover, since the *Law on Elections to the European Parliament* was drafted on the basis of the *Saeima Election Law (OG No. 86, 06.06.1995.)* the Ministry of Justice, a responsible institution for the drafting of the Law, had to take into account the judgment of the Latvian Constitutional Court in case No. 2002-18-01. In this case the Court declared unconstitutional the prohibition for detainees to vote and to stand for parliamentary elections.

According to Article 5, paragraph 1 the following persons are not allowed to stand as candidates in the European Parliament elections if: (1) a person is devoid of legal capacity, (2) a person spends a term in prison, (3) a person has served a sentence for a serious or a very serious crime and has not been rehabilitated, and (4) a person has committed a crime in the condition of mental instability and has been subjected to the restraining measure of a medical character or the case has been closed.

In addition EU citizens cannot stand as candidates in the elections to the European Parliament, if they cannot be nominated as candidates in a Member State of the European Union of which they are citizens (Article 5, paragraph 2).

Article 11 of the Law requires that candidates announce whether they have had affiliations with the USSR, Latvian SSR or foreign state security, intelligence or counterintelligence services, following January 13, 1991, have been active in CPSU (CP of Latvia), Working People's International Front of the Latvian SSR, the United Council of Employees Bodies; Organization of War and Labour Veterans; All-Latvia Salvation Committee or its

regional committees. No other measures follow. This provision is less stringent than the one in *Saeima* Election Law which does not allow to stand as candidate because of above mentioned affiliations. The Ministry of Justice did not include these restrictions in the *Law on Elections to the European Parliament*. This choice was greatly influenced by the proceedings in the European Court of Human Rights in the *Tatjana Ždanoka v. Latvia* case.¹⁸

A list of candidates according to Section 9 may be submitted by:

- a political organisation (party) registered in Latvia or
- a political organisation (party) association registered in Latvia.

However, according to Article 43 of the *Law on Civil Society Organizations and Their Associations* (OG No. 1, 14.01.1993, last amendments OG No. 56, 08.04.2004) a party can be established in Latvia only by 200 Latvian citizens. In accordance with paragraph 1 of Article 45 only Latvian citizens and non-citizens over 18 can become members of a party. Moreover, Article 45, paragraph 3 provides that in the political party having over 400 members at least half of them shall be Latvian citizens. Therefore, the question of the membership of EU citizens in political parties is unsettled since the European Parliament Election Law provides for their right to vote and stand as candidates from political parties. This means that candidates have to be admitted to a political party otherwise the right to be a candidate is a nullity. It can be achieved, if part 3 of Article 45 is read separately from part 1 of this Article. However, it does not seem that this is the reading by competent authorities.¹⁹ The new law or amendments to the existing one are necessary to remedy the situation.

A number of other concerns can be mentioned. Firstly, the minimum number of Latvian citizens required for founding of the party is fairly high. This is to be considered as a barrier on the right to stand as candidates in EU elections for both Latvian citizens and EU citizens if and when they are admitted to the political party. Secondly, further restrictions that derive from the criminal behaviour of a person and apply to both Latvian and EU citizens raise doubts as to their necessity and proportionality in a democratic society. Article 5 (1) restrictions may need to be narrowed down. Thirdly, it is unacceptable that EU citizens alone cannot form a political party in Latvia for the purposes of the EU or municipal elections. However, Latvian non-citizens permanent residents for decades cannot do that either.

At the end several problems which arose during the elections to the European Parliaments shall be mentioned. One of the problems relates to the Electoral register. According to Article 2 (1) 2 of the Law only those who are entered in the register can vote. Information for the Electoral register was taken from the Population register which was not updated and, therefore, in certain cases incorrect. For instance, in the electoral lists persons who have passed away could be found.

Another problem concerns voting in the place of domicile. For the elections to the European Parliament, the Ministry of Interior prepared a proposal, adopted by the Cabinet of Ministers on 21 October 2003, establishing a new system. A person has the right to vote only in the place which he/she has declared as his/her domicile. It has been argued that changes of the system have contributed to the unusually low turnout (common turnout has been around 70% while in the elections of European Parliament only 49% of voters participated).

18 58278/00, 17 June 2004.

19 Ministry of Justice working on new draft law stated that the new law shall remedy the current situation when EU nationals cannot join political parties.

Civil Servants

There is no general law on public offices but norms limiting access to the posts are scattered through different laws.

The *Law on State Civil Service* (OG 03.05.1994) is a general framework law for public service. According to Article 2 there is civil service and specialised civil service which is regulated partially by this Law and a number of special laws.

Article 3 contains the definitions of both civil servant and servant in specialised civil service:

“(1) A civil servant is a person who in the institution of direct administration forms the policy or development strategy of a sector, co-ordinates the activity of a sector, distributes or controls financial resources, formulates regulatory enactments or controls observance thereof, prepares or issues administrative documents or prepares or takes other decisions related to the rights of individuals.

(2) A civil servant in the specialised State civil service is a person who performs the functions referred to in Paragraph one of this Article in the diplomatic and consular service, the State Revenue Service, the State police, Security police, Communication Centre of Ministry of Interior, Information Centre of Ministry of Interior, the Border Guard, the State Fire-Fighting and Rescue Service, the Prison Administration, State Bureau of Coroner’s inquest.”

The Prime Minister, ministers, their office employees and parliamentary secretaries are not civil servants.

Article 7 of the Law on Civil Service enumerates mandatory requirements for candidates the first being that a person shall be citizen of Latvia.

Other laws

Other posts reserved exceptionally to Latvian citizens are judge,²⁰ court bailiff,²¹ notary,²² prosecutor,²³ policeman,²⁴ state security officer,²⁵ land surveyors,²⁶ fireman,²⁷ national guard (*zemessargs*)²⁸ and employee in diplomatic and consular service.²⁹ There are other posts which are limited to Latvian citizens and EU and EEA citizens, namely, captain crew,³⁰ private detective³¹ and attorney (lawyer).³² These restrictions for citizens of other states are too

20 Article 51, Law on Judicial Power, OG No.1, 14.01.1993.

21 Article 56, Law on Judicial Power, OG No.1, 14.01.1993.

22 Article 9, On Notariate, OG No.26/27, 05.07.1993.

23 Article 33, Law on Public Prosecutor, OG No. 65, 02.06.1994.

24 Article 2, Law on Police, OG No. 31, 15.08.1991.

25 Article 18, on State Security Institutions, OG No. 59, 19.05.1994.

26 Section 7, Ministry of Justice Order on Licensing for land surveyor practice, 21.07.1993, unpublished.

27 Article 28 Law on Fire Safety And Fire-fighting Law, OG No. 165, 13.11.2002.

28 Article 5, Law on the National Guard of the Republic of Latvia, OG No. 16, 29.04.1993.

29 Article 1 On Diplomatic and Consular service, OG No. 155, 10.10.1995.

30 Article 35 provides for rights to citizens, non-citizens EU and EEA citizens, OG No. 123, 20.10.1994.

31 Article 6 on EU, EEA citizens and Latvian non-citizens, Law on Detective Activities, OG No. 110, 29.07.2001.

32 See part on Chapter VIII.

broad and in certain cases raise doubts whether they would comply with criteria established by the ECJ in case 473/93 *Commission v. Luxembourg*.

Language

The official state language in Latvia is Latvian. According to Article 6 of the State Language law (*OG* No.428/433, 21.12.1999) employees of state and local government institutions, courts and institutions constituting the judicial system, state and local government undertakings, as well as employees of companies in which the greatest share of capital is owned by the state or a local government, shall be fluent in and use the official language.

Less stringent requirements are set for employees of private institutions, organisations and companies, self-employed persons. It is required that where there is a public demand for services in the state language, this should be provided, and where there is a legitimate interest that a particular professional would know Latvian, this should be ensured. However, it remains unclear what is 'legitimate interest'.

The language of official correspondence is Latvian. When approaching state or local government institutions the documents shall be submitted in Latvian or with duly certified translation into Latvian.³³

The necessary level of knowledge of Latvian is set by Regulations of the Cabinet of Ministers No. 296 on the level of knowledge of the state language necessary for performance of professional duties and duties of position and procedure for verification of state language proficiency (*OG* No. 302, 29.08.2000) and their amendments No. 404 (*OG* No. 435/437, 01.12.2000). Regulations aim at specifying the required knowledge of Latvian for different professions in both public and private sector. There are three general levels of proficiency in Latvian identified with each having two grades whereas 1A is the lowest and 3B the highest grade. The only ones exempted from these requirements of proficiency are specified in Section 2 and includes those who:

- obtained their elementary, secondary or higher education in Latvian;
- obtained certificate from the Ministry of Education and Science on passing centralised exams;
- hold invalid status for sight and hearing disabilities;
- hold I and II category handicapped status due to general illness.

For the rest two different standards are applicable depending on whether they work in public or private sector. In relation to the *public sector* Section 4 of the Regulations provides that those employed in the state and local government institutions, courts and court system institutions, state and local government enterprises as well as enterprises where the state or local government holds most of the capital shares the level of command of Latvian is set in the annex to Regulations. Each profession as defined in Classifier of Occupations is assigned to particular grade. The list drawn is deliberate and sometimes includes professions which can hardly ever be considered belonging to public sector. For instance, it is understandable that diplomats are assigned to the highest level of language proficiency. However, the relevance of mentioning different artists in circus under second level (1B) and those performing in

33 Compliance of this requirement with the ECJ ruling in Case C-336/94 *Dafeki* remains to be seen. Certification is required only for translation and does not undermine the contents of documents.

dancing troops under the fifth level (3A) is disputable. Teachers, even if they are not civil servants in Latvia, have to know the Latvian language since they are state employees. The required level of proficiency is the highest level.

For those working in the *private sector* the necessary level of knowledge of Latvian is set by the employer. Each employer shall have a list with all positions and relevant levels of knowledge of Latvian required. The employer can consult with the State language centre when working on the list. The employer bears all responsibility for fulfillment of requirements of the State Language Law, i.e., that persons employed have sufficient knowledge of Latvian for performance of their duties (Section 10). The application of these requirements in practice is causing problems because employers are setting different standards for their employees and often do not have any lists at all. Amendments to Regulations limit employers and contain the list of 34 professions in private sector with corresponding grades of knowledge of Latvian. Those are professions in the performance of which there is a direct relationship with the public. The highest level is required among others for attorneys, psychologists, as well as doctors. The proficiency is required also, for instance, for taxi drivers. Amendments state that for employees of those professions not mentioned on the list but involving contact with consumers the information about a product or service shall be provided in Latvian.

A person willing to take up employment shall present to his/her employer a certificate issued by the State language proficiency verification commission (Section 8). The exam consists of an interview (6-7 minutes) and a test checking ability to read and write in Latvian (Sections 23 and 24). Persons employed without certificates on language proficiency might be subject to administrative penalties imposed by the State Language inspectors according to the Code of Administrative Offences (Articles 201.26.-201.36). Although provisions are broad, only a couple of cases on decisions of language inspectors have been reviewed by courts. In most cases employers were reminded about legal requirements or they did not appeal the decision of inspectors and paid the fine.

Draft legislation

On 25 October the Ministry of Justice completed drafting of the new *Law on Political Parties*. The Cabinet of Ministers approved the draft on 2 November 2004. The draft now is discussed in the Commissions of *Saeima*.

According to the draft Article 12 a party can be established by at least 200 Latvian citizens. Article 26 provides that Latvian citizens, Latvian non-citizens and EU citizens residing in Latvia and 18 years old can join a party. Paragraph 3 of Article 26 repeats the provisions of existing law by stating that the parties acting in Latvia should have at least 200 Latvian citizens as members. Moreover, in the parties having more than 400 members at least half of the total number of members shall be Latvian citizens.

These raise twofold concerns. The first concern relates to the required number of citizens for party formation. Its legitimacy is questionable according to principle of proportionality and 'necessity in a democratic society'. The second concerns the integration and loyalty building attempts in Latvia in relation to the large non-citizen population. Limiting or excluding them from any kind of political activity does not help these attempts.

Miscellaneous

There have been suggestions made by some political parties to the effect that teachers should be included in the category of civil servants thus making non-citizens automatically ineligible for the job. This is a serious concern in relation to minority schools because significant numbers of teachers in these schools are non-citizens. This also would make the category of professions reserved for citizens even larger and raise the question of compatibility with EU law and the ECJ case-law. However, at the moment there seem to be no developments in this regard.

At the same time, teachers belong to the category of professions in relation to which Cabinet of Ministers Regulations requires certain Latvian language proficiency and it may constitute a barrier to become a teacher in a minority school. In accordance with the information of the State Language Centre the number of such cases is relatively low. A recent case reported in the media concerned a teacher of a Russian school who was fined for not using both languages in the classroom since after 1 September the bilingual education mode requires the use of a minority language and Latvian language in the class.

Chapter IV Family Members

Texts in force

Family members are defined in Section 21 of Regulations No. 914:

“Family member within the meaning of these Regulations is a spouse of a citizen of an EU Member State or EEA State, relative in descending line under the age of 21 or who is dependent upon a citizen of an EU Member State and EEA State as well as relative of the spouse in direct line who is under the age of 21 or is dependent of the spouse of a citizen of an EU Member State or EEA State citizen. If the EU Member State or EEA State citizen is residing in Latvia for study purposes, family member within the meaning of these Regulations is spouse, relative in descending line who is dependent on the citizen of the EU Member State or EEA State as well as relative of a spouse in descending line who is dependent on the spouse of the citizen of the EU Member State or EEA State”.

Regulations Nr. 914 in the section “Final questions” in Section 58 extends the scope of family members referred to throughout the text of Regulations by stating:

“The provisions of these Regulations, which relate to family member, should be applied also in cases of an alien who is dependent on the citizen of an EU Member State or European Economic Area and who had common household with the citizen of the European Union and European Economic Area in the state of preceding residence”.

Although the formulation of the Section is ambiguous and might lead to the conclusion that those living in non-registered partnerships are included, it is not the case. OCMA is recognising only those spouses living in registered marriage as defined in Latvian civil law.³⁴

According to Section 22 descendants have the right to remain in Latvia after the EU or EEA citizen has left the country in order to finish their studies at school or institutions of higher education. Section 23 provides that a spouse not being an EU or EEA citizen can remain in Latvia together with the descendant until he/she completes the studies.

Family members holding a passport of the state with which Latvia has no visa-free regime, should have visa upon arrival. However, according to Section 24 of the Regulations they are exempted from the regular application process if they submit documents confirming their status as family members when applying for visa. Moreover, if a family member travels together with an EU citizen or EEA citizen he/she can obtain visa on the border.

If family members of a Latvian citizen, who are citizens of another EU Member State, apply for a residence permit to join family, formalities are much more complicated than in cases of EU workers.³⁵ While workers from the EU Member States are required to submit only application and contract to reside in Latvia, family members have to follow stringent rules of Immigration law (Articles 25-30) and the average sum to be paid in different fees is about 70-80 LVL (100-115 EUR). A Latvian citizen shall invite a family member indicating the purpose of residence. Confirmation of the invitation is charged – 10 LVL (15 EUR). Husband or wife planning to arrive shall declare income. Moreover, a long questionnaire

34 Same-sex marriage is expressly forbidden by law. Civil Law Article 35.

35 Diena, 28 June 2005.

Latvia

shall be filled about himself/herself and relatives – information about parents, brothers and sisters, their family status, their proficiency in Latvian, previous employment, education, criminal record, etc. Spouses shall submit documents testifying that he/she is not ill with tuberculosis, certificate of marriage and place of residence.

Although Regulations No. 914 in Section 4 provide that EU and EEA citizens and their family members should not have a work permit, Regulations No. 44 on work permits for foreigners provide otherwise in cases when family members are non-EU citizens (*OG* 12 23.01.2004). Article 30.2.15 provides that in case a family member is not an EU citizen and has arrived to Latvia to join an EU citizen who is not a Latvian citizen, he has to obtain a work permit. The work permit will be issued free of charge for the duration of the visa or temporary residence permit (Article 24, Regulations No. 44). This requirement is considered as a formality and no labour market tests are applied. It is also expected that with upcoming amendments of Regulations No. 44 this requirement will be abolished.

Jurisprudence

A spouse of a Finnish citizen, who is Russian, was charged 35 euro for a transit visa through Latvia by the Latvian Embassy in Finland contrary to Directive 73/148. SOLVIT has approached the Ministry for Foreign Affairs with the request to seek for possibilities of refund. SOLVIT sent two letters and a number of times contacted the Ministry electronically and by telephone. However, the Ministry is of the opinion that transit visas are not covered by Article 3.2. of Directive 73/148 and this Article is not directly effective. SOLVIT advised the spouse of the Finnish citizen to file a case in Administrative Court.

Chapter V EU Enlargement

Annotation to the *Law on Ratification of Agreement on accession of new Member States to the European Union* includes the evaluation of social consequences (OG 159 12.11.2003). It states that free movement of workers is one of the main factors which will increase the welfare of individuals. Latvian authorities have acknowledged that there is a possibility to rely on the Accession agreement to introduce certain measures limiting free movement of persons. This possibility is set out in Article 70 of the Immigration Law which provides:

“If during the transition period for free movement of workers which is set in accordance with the Accession Treaty of Latvia to the European Union, the Latvian labour market is seriously endangered or in relation to Latvia limitations of free movement of workers are set, the Cabinet of Ministers, taking into account provisions of the Accession Treaty of Latvia to the European Union and the Treaty on participation of Latvia in the European Economic Area, can establish relevant countermeasures.”

The procedure established for evaluation of the situation in the labour market includes reports from the Ministries of Interior and Welfare to the Cabinet of Ministers. The first report of the Ministry of Welfare containing general evaluation and statistics after the first year in the European Union was prepared and submitted to the Cabinet on 22 July 2005.

The report stressed two major points. Firstly, there is a growing number of Latvian citizens who leave Latvia in order to find a job in other EU Member States (mainly Ireland and the UK). As the main concern IT specialists were mentioned. IT specialists from third countries already have quotas to receive a work permit in Latvia on easier conditions. The low level of income was the main reason mentioned for the growing numbers of people leaving Latvia.³⁶

Secondly, the report acknowledged that there are no statistics on work-permits (since they do not exist) or residence permits for the EU citizens. Even if some statistical data is available it is incomplete and thus cannot be used for analysis of the market situation. It is especially so, because EU citizens can reside in Latvia for a limited duration without residence permits. The Ministry of Welfare states that it repeatedly invites Government to establish a system for identifying foreigners, who are employed in Latvia by elaborating the database of the State Revenue Service. With the assistance of the European Social Fund the Ministry has announced a tender for implementation of the project “Geographic mobility of workers”. This will be the first study after regaining independence on problems related to migration.

On the basis of information submitted the Ministry concluded that there is no need to initiate implementation of Article 70 of the Immigration Law limiting entry of workers of other Member States.

36 Latvia is considered as the poorest country in the EU with the lowest minimum salary per month.

Chapter VI Statistics

Number of Latvian citizens living in other Member States

Country	Number of LV citizens	Comments
Belgium	367	Number of residence permit holders with work permits. Data of 12.04.2005.
Cyprus	More than 1,000	Estimated data by Latvian Consulate.
Czech Republic	74	Number of residence permits and long-term visas issued during 2004.
Denmark	1,055	Number of residence permit holders. Data from 1 January 2005.
Estonia	12	Number of residence permits issued during 2004. 4 work permits were issued during 2004.
Finland	390	Number of work permits issued during 2004.
France	15	Number of residence permit holders with work permits during 2002/2003.
Germany	1,296	Number of persons paying social insurance tax. Data of 30 June 2004.
Greece	500-1,000	Estimated data of residing Latvian citizens. 50 registered in Latvian embassy. Many have not legalized their residence.
Hungary	7	Number of valid work permits in accordance with re-registration procedure on 31.12.2004
Ireland	20,000	Estimated data. Official data – 15 000 residents with work permits. However, other sources mention that there are about 30 000 Latvian citizens in Ireland.
Italy	431	Residence permits issued during 2000. No other data available.
Lithuania	245	220 persons reside with permanent, 25 with temporary residence permits. Data of 2004.
Malta	28	Number of residents with work permits. Data of 2004.
Netherlands	100	Number of persons legally working in the Netherlands. Data of 2004.
Poland	116	3 of them are workers. 71 with residence permits. Data of 2002.
Portugal	231	Number of residence permits. Data from 2003.
Slovenia	2	Number of permits issued during 2004. 1 person residing with work permit, 1 as service provider. During 2003 7 work permits issued.
Sweden		No data available.
United Kingdom	9,070	Persons registered in Workers registration scheme from 01.05.2004-31.12.2004. Latvian citizens constitute 7% of all registered workers from the new EU Member States.

(Information of the Ministry of Foreign Affairs Nr.21/536-3457 27.04.2005.)

Approximately 6,500 people have approached national consultation agencies on possibilities to work.³⁷ Most of these people are interested in employment in the service sector for 1-2 years or to enrol in seasonal work. Major obstacle is the lack of knowledge of the language.

37 Riga, 2 May 2005, LETA. Data of State Employment Agency.

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The emigration number has not changed significantly: 1,455 persons left Latvia during 2003, while 1,455 during 2004. Most of them have settled in Russia (38.5%).

Number of registered residents in Latvia

Permanent residence holders

Country	Number 2004	%	Number 2005	%
Belarus	986	4	1,086	4
Estonia	439	2	455	2
Lithuania	1,526	6	1,674	6
Poland	258	1	-	-
Russia	19,869	77	20,815	76
Ukraine	1,391	5	1,547	6
USA	144	1	168	1
Others	947	4	912	5
Total	25,570		26,976	

Source: Ministry of Welfare; dates 01.05.2004 to 01.05.2005.

Temporary residence holders

Country	Number 2004	%	Number 2005	%
Armenia	133	2	129	2
Azerbaijan	81	1	73	1
Belarus	469	6	508	7
Denmark	163	2	132	2
Estonia	255	3	219	3
Finland	159	2	133	2
Germany	211	3	279	4
India	107	1	96	1
Israel	129	2	167	2
Lebanon	62	1	-	-
Lithuania	628	8	664	9
Norway	-	-	66	1
Poland	121	2	111	1
Russia	2,523	34	2,401	32
Sri Lanka	76	1	92	1
Sweden	144	2	120	2
UK	125	2	139	2
Ukraine	920	12	875	12
USA	329	4	317	4
Other	877	12	908	12
Total	7,512		7,429	

According to officials there are no major changes in immigration data after the EU enlargement.³⁸ The raise in numbers of temporary residence permits granted is only for 1000: from 1,896 (2003) to 2,748 (2004). Main reasons for stay in Latvia were connected with family reunification and employment. Applicants for permanent residence permits were mainly former non-citizens who have acquired citizenship of another State.

16% of temporary residence permits are issued for Estonian citizens, while only 4% for Lithuanians. In case of Lithuanians most of them work in Latvia without registration up to 90 days and then cross the border, thus avoiding immigration formalities.

³⁸ On migration tendencies after joining EU. 2 May 2005. Press release of OCMA.

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From 1 May 2002 until 30 April 2003 146,044 visas were issued while after joining the EU 131,106.

The number of offences on the border has not increased. During the first months there were a number of misunderstandings when people attempted to cross the border without documents. There is a decrease in the number of persons violating residence requirements – 759 (2003) and 341 (2004).

The number of persons not allowed to enter Latvia has decreased. Most of the illegal immigrants are coming from Ukraine, Belarus and Georgia.

In comparison with 2002 there is a steady decrease in the number of asylum seekers (30 in 2002; 5 in 2003, and 7 in 2004).

Latvian nationals having the nationality of other Member States

Latvian law on Citizenship is ambiguous in relation to double nationality. Article 9 provides that a person who acquires Latvian citizenship cannot be a double national. Paragraph 2 of the same Article states that in cases when a person is considered as its national by any other State, that person is considered only as Latvian citizen in his/her relations with Latvia. Article 24 provides for the possibility to revoke citizenship by court decision if a person has acquired citizenship of another State without renunciation of Latvian citizenship.

The possibility to hold double Latvian citizenship and that of another State is set in Transitional regulations of Citizenship law. They provide that those Latvian citizens and their descendants who during the period from 17 June 1940 until 4 May 1990 left Latvia as refugees or were deported could register as Latvian citizens until 1 July 1995. Although this regulation seems to be discriminatory it is connected with the process of regaining independence and state continuity thesis. Thus, those who were citizens at the time of occupation were given the possibility to acquire Latvian citizenship.

Number of double nationals

State	Number
Denmark	46
Estonia	129
Finland	56
France	118
Germany	1,615
Poland	55
Sweden	1,317
United Kingdom	2,759

Source: OCMA.

These are the States mentioned from among 20 with the largest numbers of Latvian double nationals. Altogether there are 30,793 double nationals.

Number of naturalisations of EU citizens 2004

7 (4 former Estonian citizens, 3 former Lithuanian citizens).

Source: OCMA.

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Number of residents in Latvia born in new Member States and number of labour permits granted to citizens of CEEC states: there is no software for collecting such data. Presently there is no institution which would have an obligation to collect such data and capacity of OCMA is generally very limited.

Chapter VII Social Security

Texts in force

The social security system in Latvia is not based on residency but on the principle of payment of social security contributions. The Law on Social Insurance (*OG* No. 274/276, 21.10.1997) provides for five modes of insurance: state pension insurance, social insurance in cases of unemployment, social insurance in cases of accidents at work and occupational disease, disability, maternity and health insurance. According to Article 5 of all persons under 15 years of age employed in Latvia are subjects of the Law. Article 6 specifies which categories of persons shall be subject to specific kind of insurance.

In accordance with the Law on Social Services and Social Assistance (*OG* No.168, 19.11.2002) the right to receive social services and social assistance shall be enjoyed by citizens, non-citizens, aliens and stateless persons who have been granted a personal identity number, except for persons who have received a temporary residence permit (Article 3). Social services and assistance are financed from resources of local governments. The procedure for receipt is further determined by the Cabinet of Ministers. The Cabinet has adopted Regulations No. 278 on the Order for Receiving Social services and Social assistance (*OG* No. 81, 30.05.2003). There are no provisions which would allow either persons with temporary residence permit or EU workers to apply for social services.

The person can have recourse to the assistance in case his/her income falls below the minimum monthly salary as set by the Cabinet of Ministers. Currently Cabinet of Ministers Regulations No. 535 on Minimum monthly salary and minimum hourly tariff (*OG* No.132, 25.09.2003) state that the minimum monthly salary is 80 LVL (approx. 110 euro). It is intended to review this sum during 2005.

Latvia has concluded an agreement on cooperation in the sphere of social security with Ukraine.

Literature

Juta Limbach, *Social rights in the draft Treaty establishing a constitution for Europe Die sozialen Grundrechte im Entwurf der Verfassung der Europäischen Union Socialas pamattiesības Eiropas Savienības konstitūcijas projekta*, Riga Graduate School of Law, Working Paper No. 16, Riga, 2004.

Chapter VIII Establishment, Provision of Services, Students

Texts in force

The rules for entry and residence in cases of establishment, services and students have been outlined above. Apart from that there were a number of amendments and new regulations passed to implement directives on mutual recognition of diplomas and qualifications.

Diplomas

The Law on Regulated Professions and Recognition of Professional Qualifications (OG No.105, 06.07.2001, parts A and C in force since 20 July 2001, part B is in force since 1 January 2003) was amended to bring it in line with 26 Directives in this field on 4 November 2004 (OG No.187, 25.11.2004). The Law sets general guidelines for recognition of diplomas and professional qualifications. In addition to this Law the recognition of professional qualifications is regulated by sector laws and a number of Regulations of the Cabinet of Ministers. The approach differs in relation to different professions. For instance, in relation to attorneys both the Law on Regulated Professions and the Law on the Bar outline the procedure and consequences in cases of recognition of diplomas and qualifications. In relation to doctors only the Law on Regulated Professions is applicable.

Part B of the Law on Regulated professions entitled “Recognition of professional qualifications obtained abroad” provides for general regulation of recognition. Article 33 states that there are three general systems of recognition: a special system, a general system and recognition on the basis of professional experience. Unfortunately, the systems are not defined and further Articles of Part B are confusing. It can be concluded from paragraph 3 of Article 34 that for recognition of diplomas and qualifications of EU citizens and EEA citizens the special system is applied (except for seamen and workers in the aviation sector). Paragraph 4 of Article 34 further provides that a doctor, dentist, nurse, functional specialist, veterinarian or architect practising in an EU Member State provides short-term service and a special simplified procedure would apply. This Article and Article 50 laying down the procedure refer to the place of the practice not citizenship. According to Article 35 the recognition of professional qualifications on the basis of professional experience is applied only in the cases involving EU citizens.

The documents certifying necessary education are subject to conditional acceptance if they are issued by third states. Paragraph 3 of Article 37 provides that, firstly, they should be recognised by the EU Member State. Secondly, the applicant should have professional experience: 3 years in case of professions where higher education is requested, 2 years in cases where professional education shall suffice.

The concerns can be voiced as to the confusing and sometimes even unclear provisions in the Law on Regulated professions. For instance, Article 34 refers to cases where a special system of recognition is applied and states that it is applied to EU citizens and EEA citizens. Further references to EEA citizens are not used in the law. The only exception is Article 40. It provides that the applicant shall submit duly certified translated documents if they originate from an EU, EEA State or any other state which has the same standing in relation to recognition of professional qualification in accordance with treaties approved by *Saeima*.

Therefore, it is unclear from other Articles whether the standard reference as used throughout the law to EU citizens and those coming from states with which *Saeima* has approved treaties covers EEA citizens or not.

Cabinet Regulations No. 541 on the Institutions which issue for foreigners certificates of recognition of their professional qualifications in regulated professions (*OG* No.188, 24.12.2002) provide that there are 22 institutions which have the right to grant certificates, mainly professional organisations. Recognition of diplomas is carried out by the Centre of Academic Information which is part of the Ministry of Education and Science. On 12 October 2004 the Cabinet of Ministers adopted Regulations No. 846 on recognition of professional qualification on the basis of length and type of professional experience in certain spheres of economic activity (*OG* No.164, 15.10.2004; Regulations implement Directives 1999/42, 74/556, 74/557, 77/92).

The process of harmonisation is still ongoing. This is partially caused by late amendments to the Law on Regulated Professions. For instance, in the beginning of 2005 the Cabinet of Ministers was discussing the draft Regulations on documents testifying education and professional qualifications of dentists and pharmacists. In the annotation to this draft not only directives but also ECJ rulings in C-424/97 *Haim* case and C-154/93 *Tawil Albertini* case are mentioned. The relevance for such reference is questionable because Regulations do not transpose relevant principles established in these cases.

During 2004 in total 900 diplomas were recognised. 27 diplomas were recognised on basis of EU Directives on regulated professions.

The *Law on the Bar*³⁹ has been amended on 30 October 2003 and 27 May 2004 (*OG* No. 161, 14.11.2003 and *OG* No. 90, 04.06.2004). Its Article 4 now states that EU citizens who have acquired the qualification of an attorney in any of the Member States of the European Union can practice in Latvia.

The Law contains Chapter Seven which is devoted to the Activity of attorneys of the European Union Member States in Latvia and aims at implementing requirements of Directives 77/249/EEC and 98/5EC. Section 11 describes the procedure for registration and professional activity of the attorneys. According to Article 121 an attorney of the EU Member State shall submit to the Latvian Council of Sworn Attorneys (CSA) a certificate of his registration issued by the competent institution of the EU Member State in which the attorney has acquired an entitlement to use the attorney's profession name before the commencement of his activity in Latvia. Upon registration in Latvia the CSA will issue him/her a certificate effective for three months. Article 122 sets an obligation for the CSA to inform about registration the competent institutions of previous registration and publish the name in *Official Gazette*. This allows the attorney to carry out professional activities under the professional title of his country of residence. Registered attorneys with a professional title of another EU Member State are entitled to participate in proceedings of criminal cases only jointly with attorneys with a Latvian title (Article 124). They can also form a joint practice under the same conditions as sworn attorneys of Latvia (Article 125) or form branches of Bar associations of their respective EU Member State (Article 126).

Article 127 sets out the procedure for disciplinary proceedings. These can be initiated by the CSA for infringement of laws or other regulatory acts as well as norms of professional ethics of the sworn attorneys in Latvia. However, prior to the initiation of disciplinary proceedings the Council shall inform a competent institution of the attorney's home country and

39 English version available on <http://www.advokatura.lv/?open=eng&it=bar&lang=eng>.

co-operate with it during proceedings. A decision on punishment rests with the attorney's home country's institution.

Article 128 provides that in case an attorney is not allowed to practice in his country, he cannot practice in Latvia. The decision of the CSA to refuse or cancel registration of the attorney can be appealed against in the court (Article 129).

Section 12 of the Law on the Bar regulates the recognition of the professional qualification of the attorney of the EU Member State for regular activity. Article 130 states:

“If the attorney of the European Union Member State has certified his knowledge of the state language and Latvian laws and the Latvian Council of Sworn Attorneys recognises the professional qualification of the attorney of the European Union Member State as appropriate for regular activity, he shall have similar entitlement to professional activity and obligations as a sworn attorney of Latvia.”

Further Articles specify the procedure and requirements the attorney of the EU Member States shall satisfy to be granted the title. Article 131 deals with the situation when an attorney has carried out professional activity in Latvia under the professional title of his country of residence for three consecutive years. According to this Article he has to certify the knowledge and practice in the sphere of Latvian law to the CSA. If the Council is satisfied he/she is issued a certificate recognising his professional qualification.

The documents needed to certify the practice are an application and documents containing information on the number and content of cases in which he has been engaged. The CSA will verify the efficiency and regularity of practice and ask for the applicant's clarifications orally or in writing.

Article 133 in turn deals with the situation when an attorney of the EU Member State has not practised in Latvia for three years. In this case he has to submit an application and proof of his professional qualifications and rights duly recognised by his/her home country. He would also have to pass an exam to be organised by CSA in accordance with the Law on Regulated professions. In turn the Law on Regulated professions in Article 53, while repeating all the abovementioned, states that all procedures and conditions are regulated by the Law on Bar.

The CSA can deny recognition by motivated decision if an attorney has no adequate professional qualifications or there are disciplinary or other infringements in the attorney's professional activity (Article 134). The decision is subject to appeal in court.

There is only one German attorney registered in the CSA practising in Latvia.

Students⁴⁰

According to Article 45 of the Law on Higher Education, the right to study is granted for every Latvian citizen, non-citizen as well as those who have permanent residence permit. Those aliens who have no permanent residence permit are subject to requirements of Article 83. Since students of EU Member States can acquire only temporary residence permits in Latvia, this is then the main Article regulating their access to higher education. It states that foreigners who have not been issued a permanent residence permit can be admitted to Lat-

40 See also p. 9 and p. 12.

vian institutions of higher education as full time students in accordance with the Law on Education and this law. If international agreements do not provide otherwise, the following conditions will apply:

- documents on secondary education shall be equivalent to the Latvian standard;
- knowledge shall be equivalent to entrance requirements set by the institution of higher education;
- fee shall be paid to the institution of higher education in accordance with the agreement concluded between student and institution. The fee cannot be lower than the expenses for education.

Paragraph 2 of Article 83 provides for the possibility to enrol in short-term studies in Latvian institutions of higher education in accordance with exchange programs. In case an equivalent number of Latvian students is studying in a respective foreign country the financing of foreign students shall be from the funds allocated from the Latvian budget to the institutions.

Although Article 83 refers to exceptions provided in international agreements and the EC Treaty is definitely one, there are possibilities for misinterpretation (for instance, in relation to fees to be paid). It can be argued that the situation would be much clearer and would correspond to the requirements of EU law if students who are EU citizens would be referred to in Article 45.

A number of places are set which are financed by the state and students can get stipends. Anyone who started his/her studies in the program of higher education or professional education in the place financed by the state or local government can get a stipend. According to Cabinet of Ministers Regulation No. 740 (*OG* No. 138, 01.09.2004) in order to qualify for a stipend, the student shall comply with study requirements of the institution and shall not be engaged in any kind of employment except scientific (Section 3). No conditions on citizenship are mentioned. However, the cases when an EU citizen can undertake studies in the place financed by the state are fairly limited.

Latvian citizens, non-citizens and permanent residence holders can apply for studies abroad (Article 82, Law on Higher Education). If admitted they can apply for credits and stipends in the procedure set by the Cabinet of Ministers. In accordance with Regulations No. 220 on Procedure of granting, repayment and cancellation of students' credit from sources of crediting institution with governmental guarantee (*OG* No.97, 22.06.2001), only Latvian citizens and non-citizens can apply for credit (Article 3). In accordance with Cabinet Regulations No. 445 on Procedure of granting and repayment of study credit from the resources of state budget (*OG* No.154, 26.10.2001), anyone who is enrolled in the studies (for bachelor, master, professional degree) within the duly accredited study program can apply for credit.

Establishment

Establishment is generally regulated by the *Commercial Law* (*OG* No. 158/160, 04.05.2000). During 2004 re-registration of companies and enterprises was undertaken in order to implement the requirements of *Law on the Procedures for the coming into force of the Commercial Law* (*OG* No. 118, 28.12.2001).

As of 1 January 2005 a long list of normative acts which ensured the transition to private property and privately owned and run enterprise since Latvia restored independence will lose legal force (altogether 18 normative acts). The transitional period for bringing regulation

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of business environment in line with the EU requirements will end in December 2005. By September 2005 the next group of normative acts will lose their legal force (these are 7 normative acts). From January 2005, enterprises will not have dual governance and will be regulated by one law – the Commercial law. It will offer full protection of creditors and guarantee safe and quick business environment for most businesses. The reform of Commercial law does not apply to farm companies, fishing farm companies and individual merchants that do not comply with the requirements of Article 75 of the Commercial Law.

The Law on European Company was adopted in the first reading in *Saeima* on 15 December 2004. However, it is possible to establish and register European Economic Interest Groupings (EEIGs) and European Public Limited Liability Companies (*Societas Europea*) since October 2004.

Jurisprudence

The Constitutional Court on 6 October 2003 in case no.2003-08-01 ruled that requirements of paragraph 2, Article 96 of the Criminal Procedure Law are incompatible with Articles 89 and 92 of the Constitution. The norm in Article 96 provided that only attorneys of the Republic of Latvia can act as defendants in criminal cases. The Constitutional Court said that this contradicts not only the principle of fair trial but also perspective obligations Latvia will have when it will join the EU. The judgment requested amendments until 1 March 2004.

The Law was amended (*OG* No. 33, 02.03.2004) and now provides that also EU citizens who have acquired the qualification of attorney in any EU Member State can act as defendants.

Literature

Ivonna Štrauhmane, Kā advokātam dibināt praksi citā Eiropas Savienības dalībvalstī [How the lawyers can establish their practice in another European Union Member State], *Jurista Vards*, 27.04.2004, 16 (321).

Oskars Rode, Jenss Kristians Pastille, Neatkarīgā advokatūra Eiropā: vēsture un nākotnes perspektīvas [Independent Bar in Europe: history and future perspectives], *Jurista Vards*, 06.07.2004, 25-26 (330-331)

Chapter IX

Other policies with repercussions on free movement

Citizenship

On 30 September 2004, the *Saeima* adopted in the first reading a *Draft Law on Restrictions on Persons with Double Nationality to Occupy Highest State Posts*.⁴¹ The Draft Law has been already widely criticised. Currently it is discussed by *Saeima* for the second reading and the list of posts is still under discussion. According to the draft law, double nationals should not be elected as MPs, Prime minister and ministers, Director of the Constitution Protection Bureau, Director of Corruption Prevention and Combating Bureau and his deputy, public prosecutor, judge, ambassador, member of National Council on Radio and Television, Regulatory Committee of Public Services, Commission of Financial and Capital markets. Altogether there are 23 posts on the list. It was proposed that those who have double nationality shall renounce non-Latvian nationality until the law becomes effective. For those newly elected – they would have to renounce the other citizenship within one month period.

To apply for Latvian citizenship a person shall be legally resident in Latvia for 5 years after 4 May 1990 (paragraph 1 of Article 12 Citizenship Law). He will have to pass a language test and a test on history and the Constitution (paragraph 1 of Article 12 of Citizenship Law). Double nationality is not allowed under Latvian Citizenship law.⁴²

Integration

On 28 April 2005 Parliament adopted amendments to Immigration law which provided that those who apply for temporary residence permit shall submit an “integration declaration”. By signing this declaration applicants would have to undertake the obligation to pass a language exam, respect the Latvian language, traditions and culture. According to amendments Government was entrusted with the task to determine the form and contents of the declaration for different groups of foreigners. The reasons for these amendments are purely political and initiated by some right-wing politicians aiming at assimilation of the resident Russian-speaking population. There are no direct links with implementation of the Third Country Nationals Directive. The Austrian example was mentioned during debates.

After initial amendments were rejected by the President, motivating refusal to sign by vagueness and broadness of amendments, the provisions on integration declaration were abolished. However, *Saeima* Commission of Defence and Interior requested Cabinet to draft amendments of Immigration law which would provide detailed regulation of the integration declaration. Government has formed a special working group to draft provisions on integration of immigrants. The discussions continue and views are divergent. While, for instance, the Naturalization Board supports the view on obligatory courses of Latvian only for third country nationals since EU citizens should learn Latvian in order to comply with requirements of State Language Law. In turn, the Socialist party and the First Party invite to apply

41 Available at <http://www.politika.lv>, visited on 5 May 2005.

42 For exceptional cases see p. 38.

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the same rules to the EU citizens. This is strongly objected by OCMA which refers to EU law.⁴³ The discussions are ongoing and results remain to be seen.

There is a commitment by the Government to ratify the Council of Europe Framework Convention on the Protection of National Minorities. Latvia signed the Convention in 1995, and discussions took place in autumn 2004. The main controversies voiced concerned the definition of minority and reservations needed upon ratification. For instance, in relation to the definition of minority the criterion of citizenship and the possibility to exclude Soviet-era settlers from the definition were at the centre of discussions. No significant progress has been made during 2004 and Latvia continued not to be party to the convention.⁴⁴

Literature

Kristine Kruma, Eiropas Savienība un trešo valstu pilsoņi: integrācija ar skatu ritdien, *Likums un Tiesības* 2004, Junijs (nr. 58).

Kristine Kruma, *EU citizenship : unresolved issues*, Riga Graduate School of Law, Working paper No. 22, Riga 2004.

Norberts Reihs, *Pilsonības institūta problemjautājumi jaunajās Eiropas Savienības dalībvalstīs*, 2004, Maijs (nr.57).

Norbert Reich, *The European Constitution and new member countries: The constitutional relevance of free movement and citizenship*, Riga Graduate School of Law, Working paper No. 18, Riga 2004.

43 Ilze Kuzmina, Latvijas Avīze, 04.06.2005, Sanda Svetkova, Veidos darba grupu integrācijas deklarācijas izstrādei, LETA, 02.08.2005.

44 In spring 2005 the President started an active campaign for ratification and requested Government to finalise a definition of minority and to formulate necessary reservations. Parliament passed ratification law in May 2005 (OG 85 31.05.2005). The details are subject to the 2005 Report.

ANNEX I

Sources for certain legal acts mentioned in the Report⁴⁵

Legal Act	Source
Constitution of the Republic of Latvia (with amendments until 23.09.2004)	http://www.ttc.lv/New/lv/tulkojumi/E0013.doc
Law on Citizenship (with amendments until 1998)	http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Foreigners_and_citizens/Nationality/Documents/National_legislation/Latvia-Law%20on%20citizenship.asp#TopOfPage or http://www.ttc.lv/New/lv/tulkojumi/E0031.doc
Law on the Status of former USRR Citizens Who are not Citizens of Latvia or Any Other State (with amendments until 2000)	http://www.humanrights.lv/doc/latlik/noncit.htm
Immigration Law (with amendments until 2003).	http://www.ttc.lv/?id=59 See code E0500
Commercial Law (with amendments until 2004)	Ibid. see code E0026
Law on Administrative Procedure (with amendments until 2004)	Ibid. see code E0069
Law on State Civil Service	Ibid. see code E0116
State Language Law	Ibid. see code E0120
Law on Education	Ibid. see code E0121
Labour Law (with amendments until 22.04.2004).	Ibid. see code E0223
Law on Declaration of Residence	Ibid. see code E0391
Maritime Code	Ibid. see code E0553
Law on Diplomatic and Consular Service (with amendments until 30.10.2003).	Ibid. see code E0586
Law on Elections to the European Parliament	Ibid. see code E0621

⁴⁵ It should be noted that not all translations include latest amendments in the laws and regulations. The list is also incomplete because not all acts are translated into English.

Law on Social Services and Social Assistance (with amendments until 25.11.2004).	Ibid. see code E0667
Law on Register of Residents (with amendments until 26.09.2002).	Ibid. see code E0713
Law on Civil Society Organizations and their Associations (with amendments until 23.09.2004).	Ibid. see code E0823
Law on the Bar (with amendments until 27.05.2004).	Ibid. see code E0831 or http://www.advokatura.lv/?open=eng&it=bar&lang=eng
Law on Social Benefits (with amendments until 11.11.2004).	Ibid. see code E0844
Law on European Company (2005).	Ibid. see code E0867
Case No. 2004-15-0106 "On the Compliance of Articles 1 (Item 5 of the Third Paragraph), 2 (Item 2 of the Second Paragraph) and 7 (Item 2 of the First Paragraph) of the Law " On the Status of Former USSR Citizens, Who are not Citizens of Latvia or Any Other State" with Article 98 of the Republic of Latvia Satversme, Articles 2 and 3 of the Fourth Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 12 of the International Covenant on Civil and Political Rights and Article 8 (Item 1) of August 30, 1961 Convention on the Reduction of Number of Stateless Persons".	http://www.satv.tiesa.gov.lv/ENG/Spriedumi/15-0106(04).htm
Case No. 2004-14-01 "On the Compliance of Section 61 (the sixth Paragraph) of the Immigration Law with Article 92 of the Republic of Latvia Satversme (Constitution)".	http://www.satv.tiesa.gov.lv/ENG/Spriedumi/14-01(04).htm
Case No. 2003-08-01 "On the Compliance of Article 96 (the first sentence of the second part) of the Criminal Procedure Law of Latvia with Articles 89 and 92 of the Republic of Latvia Satversme (Constitution)".	http://www.satv.tiesa.gov.lv/Eng/Spriedumi/08-01(03).htm