

Latvia

REPORT
on the Free Movement of Workers
in Latvia in 2005

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September 2006

Introduction

There were a number of issues related to free movement which dominated in Latvian public debate during 2005. The most topical issue was the large scale emigration to the UK and Ireland. The first year of Latvia in the EU brought anxieties about emigration which run deeper during 2005. Latvian media in autumn started massive competitive campaigns regarding emigration processes in correlation with socio-economic, historical, human rights and political issues. Thus, the problem entered into the political agenda. The main concerns related to emigration are depopulation and economic development of Latvia in the future. To define the political and economic vision Latvian authorities were forced to promote special research projects. Most prominently, study of Strategic Analysis Commission under auspices of State President shall be mentioned (see Annex). There are a number of other studies under way.

Another debate was related to Schengen Agreement and Latvian incapacity in this regard. Schengen was mentioned as an argument for signing border agreement with Russia. This was particularly acute during spring when Foreign Affairs Ministry came up with unilateral declaration to be attached to the border agreement in order to safeguard Latvian claims to State continuity and bring it in line with Latvian Constitution. Russia refused to sign the agreement with Latvian declaration. During summer, however, it was realised that inexistent border agreement is not the only problem. Latvia has not implemented many other requirements of Schengen and have not explored the possibilities to use EU funds for these purposes (1% of funds have been acquired and for 3% contracts concluded).¹ One of the major problems remaining is establishment of visa information system compatible with the EU requirements.

Lastly, issue of Blacklist and expulsion policies shall be mentioned. The Constitutional Court declared that inclusion on the Blacklist is administrative act subject to review by the court. In order to bring the laws in line with the judgment Parliament has discussed necessary amendments on a number of occasions. The issue is still in public debate due to the fact that two controversial individuals have contested the decision of the Minister of Interior to include them on the list.

It shall also be noted that responsible institutions are not well equipped in terms of administrative capacity. The focal point for the migration policy is Office of Citizenship and Migration Department (OCMA) under auspices of the Ministry of Interior. OCMA is not suitable to draw long term vision in relation to immigration because of its limited competence related to immigration procedures. Moreover, OCMA is suffering from lack of administrative resources. The number of obligations is growing at the same time budget of the institution is insufficient. Young employees after getting training are leaving the Office to work in private sector. Thus, only limited number of servants are still working at these institutions. Those, however, sometimes lack adequate knowledge and language skills to live up to current demands.

1 "Premjeri vienojas kopīgi risināt Šengenas problēmas", Daily newspaper *Diena*, 29.09.2005. "Apgūts 1% naudas", Business newspaper *Dienas Bizness* 14.12.2005.

Chapter I

Entry, residence, departure

Legislation in relation to free movement of persons remains to be messy. The process of bringing the immigration legislation in line with the EU requirements is still taking place and the problems are persisting.² Some of the provisions cannot be effectively applied. For instance, since there are no procedures for registration of the date of arrival and departure of the EU citizen at the border, the requirements for grant and annulment of residence permit have no practical effect.

Entry, residence and departure are generally regulated by the *Immigration Law* (Official Gazette (further OG) No. 169, 20.11.2002) 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). 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).

The plan to introduce law replacing 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) and incorporating all relevant norms during 2005 has not materialised. This has not been acute problem during 2005 when immigration from the EU Member states was considerably low.³ It seems that there are now plans to 'upgrade' regulations in law for 2006.

Entry

Text(s) in force

According to Section 2 of the Regulations No. 914 EU citizens and EEA citizens can enter Latvia if they possess 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 citizens mentioned can reside up to 90 days within 6 months period without applying for residence permit⁴. Although Regulations do not contain reference to Swiss citizens they are also covered. This can be implied from Article 69 of the *Immigration Law* (OG No. 169 20.11.2002, last amended in 2006 OG No. 5 9.02.2006) which states that EU citizens, EEA citizens and citizens of Swiss Confederation as well as their family members enter and reside in Latvia in accordance with EU law application of which is determined by the Cabinet of Ministers. Further Article 70 of the Law provides that during transition period Latvia can limit not only free movement of EU citizens, EEA citizens but also Swiss citizens.

EU citizens who enter as students, family members or persons with sufficient income shall possess valid health insurance card. However, the requirement for possession of the card on the border remains unclear. As reported last year Cabinet of Ministers Regulations No. 691 *on Health Insurance of Foreigners* (OG No. 176 12.12.2003) provide that foreigners when entering Latvia shall possess valid health insurance for the duration of stay in Latvia. Section 11 states that checks on possession of health insurance on the border will be taken only exceptionally in cases 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 insurance card on the border is not obligatory.

2 Number of new amendments, including amendments of the *Immigration Law*, are published on website of OCMA <http://www.pmlp.gov.lv>, accessed on 24.11.2005. All laws and regulations referred to in this report are taken from commercial data base NAIS available at <http://pro.nais.dati.lv>. Translations of some laws are available at <http://www.ttc.lv/?id=59>. However, not all of them include latest amendments and the list is incomplete.

3 Immigration increased for 22%, while emigration for 24%. In total numbers during 2004 1665 people took the residence in Latvia, 40% of which are from the EU (mostly Lithuania). Central Statistical Bureau's data of 31.03. 2005.

4 For further exemptions see under section on Residence.

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Family members holding 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 regular application process if they submit documents confirming their status as family members when applying for visa. Family members travelling together with EU citizen or EEA citizen can obtain visa on the border. According to Section 4 of Regulations No. 914 family members of the EU and EEA citizens are not required to possess work permit.

EU and EEA nationals will not be allowed to enter if their names will appear on the Blacklist. The procedure for placing a person on the list has been subject of amendments during 2005 and is discussed under subsection “*Departure*”.

Draft legislation, circulars, etc.

The amendments of the Regulations No. 914 are expected in April 2006. Those will include reference to Swiss citizens and also will transpose requirements of Directive 2004/38/EC *on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*. No drafts are publicly available.

Judicial practice

Nothing to report. The number of reasons can be mentioned. First, there is low number of EU citizens coming to Latvia. Second, according to OCMA, even if there are deficiencies in legislation the provisions are applied for the benefit of the EU citizens.

However, the court cases can be expected in the future because there are reported problems in the regional OCMA branches. Officials cannot communicate with those arriving in foreign languages which lead to misunderstandings.

Miscellaneous

On 24 August OCMA presented Entry and Residence Wizard which is created on the home page of the OCMA (available at www.pmlp.gov.lv). Wizard offers comprehensive information on entry into Latvia – documents required, where they can be acquired or submitted and alike.⁵

Residence

Text(s) in force

Since no amendments have been introduced during the reporting period the same problems as mentioned in 2004 report remain:

- 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. Since there is no system for registration of the date of the arrival it is impossible to control whether EU and EEA citizens observe the obligation to register.
- According to Section 51 of the Regulations No.914 the residence permit can be refused if a person *inter alia* has previously been Latvian citizen or non-citizen and this status has been withdrawn in accordance with the *Citizenship Law* (OG No.93 11.08.1994 as amended until 1998 OG No. 315-316 27.10.1998) or the *Law on the Status of Former USSR Citizens who are not Citizens of Latvia or any Other State* (Non-citizens law, OG No. 63 25.04.1995, as amended until 2004 OG No. 19 04.06.2004). Permanent refusal of residence permit to former Latvian citizens and non-citizens can be considered as disproportionate.
- Section 6.3 of Regulations No. 914 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 over 6 months even if the person concerned

5 Press release “Presentation of a new OCMA’s service – Entry and Residence Wizard”, 18.08.2005.

provides evidence that s/he is continuing to seek employment and that s/he has genuine chances of being engaged.

- In relation to students the situation is unclear. Article 23 of *Immigration law* states that temporary residence permits can be issued for 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 residence permit in such cases shall submit among other documents confirmation of payment on basis of which the residence permit is issued. This means that 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 provide that residence permit can be issued for maximum one year. Therefore, it seems that students from EU States are placed in less favourable situation than students coming from other States.
- According to Article 6 of the *Law on Declaration of Residence* (OG 104 10.07.2002 as amended until 2003 OG 60 17.04.2003) it is an obligation of Latvian citizens, non-citizens, stateless persons, foreigners who have acquired residence permits as well as refugees to declare their residence. Article 7 provides that responsible institutions are respective local governments. In case of failure to register administrative fines can be imposed.

Draft legislation, circulars, etc.

The amendments to the *Law on Declaration of Residence* have been passed in the second reading in Parliament on 26 October 2005 (adopted on 23 March 2006). They aim at simplifying the declaration procedure, i.e., focal point for declaration of residence in case of foreigners would be OCMA which would send information to relevant authorities.⁶ Declaration of residence will be possible by post.

Miscellaneous

Cumbersome procedures for declaration of residence have resulted in a number of cases when EU citizens were fined by the local government officials for not declaring their place of residence. Thus, in Riga alone 137 foreigners have been fined for non-declaration of their residence.⁷ There is no precise data how many of them have been EU nationals. An estimate is that about 30% of total number are citizens of Finland, Sweden and Denmark.

During 2005 State Border guard has imposed administrative penalties to 262 foreigners (most of them were Russian citizens 103) among those 35 were Lithuanian citizens, 12 Estonian citizens.⁸ Three main groups of reasons can be mentioned (1) illegal border-crossing; (2) forged ID documents; (3) unregistered residence.⁹

According to Deputy Head of Citizenship and Migration Office, Maira Roze, there are EU citizens who are working in Latvia without residence permits. She could not indicate the number because, for instance, many Lithuanians work in Latvia but they come to Latvia as EU citizens and have the right to reside for 90 days without any permit.¹⁰

Departure

Text(s) in force

On 23 September 2004 Article 98 of *Constitution* was amended and states:

6 New draft law is available on <http://www.pmlp.gov.lv/images/documents/61dziv.doc>, visited on 18 March 2006.

7 Information provided by Mrs. Velta Purina, Riga City Council Information department, 9.03.2005.

8 The rest: 28 Ukrainian citizens, 11 Belorussian citizens, 7 citizens of Moldova, 7 Somalians, 5 Armenians and Israelis, 4 from Azerbaijan, 3 Syria, Georgia, Turkmenistan, Shrilanka, 2 from the USA, India and Egypt. Source: Press and Communications department of State Border Guard. 17.11.2005

9 Interview with Press Service of State Border Guard, 15.03.2006.

10 Foreign nationals comprise 1.56 of Latvia's population, National News Agency "LETA", 22 Oct. 2005.

“Everyone has the right to freely leave Latvia. Everyone holding Latvian passport shall be protected by the State when abroad and has the right to freely return to Latvia. A citizen of Latvia may not be extradited to a foreign country, except in cases provided for in international agreements ratified by the Parliament if by extradition the basic human rights specified in the Constitution are not violated”.

The amendments to Constitution were made in order to implement European Arrest Warrant.

As noted in the report for 2004 there are three grounds for refusal of residence permit which raise concerns: (1) applicant’s reason for stay differs from those mentioned in the Regulations; (2) s/he does not have sufficient resources and has got residence permit as student, self-sustaining individual, or family member (3) has previously been Latvian citizen or non-citizen and this status has been withdrawn in accordance with *Citizenship Law* or the *Law on the Status of Former USSR Citizens who are not Citizens of Latvia or any Other State* (Section 51 of Regulations No. 914). These provisions are in contradiction with ECJ case law in *Baumbast, Grzelczyk, Trojani and Bidar cases* as well as do not seem to observe principle of proportionality. Regulations do not foresee gliding scale to be applicable in cases when the grounds of public security and public order are invoked.

Procedures for removal and expulsion are set further in the *Immigration Law*. According to Section 57 of Regulations No 914 EU and EEA citizens can be included on the Blacklist – list of foreigners for whom entry and stay in Latvia is prohibited – which will be effective for two years. After that term the decision will be reviewed. There are no provisions which would prohibit prolongation of the decision for another two years. Since Regulations are below the *Immigration Law* in hierarchy the same procedures as in case of foreigners will be applied for inclusion on the Blacklist. The procedure for inclusion on this list is provided in Article 61 of the *Immigration Law*. As a result of the Judgment of Constitutional Court on 6 December 2004 on compatibility of Article 61 of *Immigration Law* with Article 92 of the Constitution (*Satversme*)¹¹ the Law has been amended on 16 June 2005 to provide for possibilities to appeal decisions of the Minister of Interior in the Senate of Supreme Court (OG No.101 30.06.2005). The decision to include a person on the list is taken by the Minister of Interior on basis of grounds listed in Article 61, for instance, suggestion made by the competent state institutions that foreigner can constitute threat to state security, public order and policy, or that foreigner has committed serious crime and alike. Minister for Foreign Affairs, Director of Consular department or diplomat working at the embassy, Chief of State Border Guard make decision to include person on the ‘Blacklist’ within sphere of their respective competencies. Decisions of the Minister of Foreign Affairs are without appeal.

The Law was further amended on 26 January 2006. The need for amendments was realised when the Court dealt with *Berezovsky case* (see below), i.e., lawyers could request access to documents on basis of which Minister of Interior has included person on the Blacklist. In *Berezovsky case* this meant that access shall be granted to documents of secret services. Latest amendments of paragraph 7 of Article 61 state that decision which is taken on basis of the information provided by the state security institutions and which is acquired as a result of activities of intelligence or counterintelligence if confirmed by Public Prosecutor General is not subject to appeal proceedings.¹²

On 16 August 2005 Cabinet of Ministers adopted Regulations No.605 on *procedure for maintaining and updating list of foreigners, who are prohibited to enter Republic of Latvia* (OG No. 132 23.08.2005). Regulations establish the procedure for maintaining and review of the list of persons to whom entry in Latvia is prohibited. According to the procedure the OCMA will become a focal point for collection of information about foreigners who are not allowed to enter into Latvia. OCMA will maintain electronic Register on Prohibited Immigration (*Ieceļošanas aizlieguma reģistrs*) for these purposes.¹³ Therefore, in case if authorised institutions will take a decision on the prohibition to enter,

11 Lieta Nr. 2004-14-01 *Par Imigrācijas likuma 61.panta sestās daļas atbilstību Latvijas Republikas Satversmes 92.pantam*. Judgement of 6 Dec, 2004. Available at [http://www.satv.tiesa.gov.lv/LV/spriedumi/14-01\(04\).htm](http://www.satv.tiesa.gov.lv/LV/spriedumi/14-01(04).htm), accessed on 9 Dec, 2005. The Court concluded that procedure when Minister of Interior takes a decision on inclusion of third country national in the Blacklist has legitimate aim. However, the fact that the decisions made by Ministers of Interior are not subject to appeal is in contradiction with Article 92 of the Constitution. The Court decided that norm in Article 61 will become null and void on 1 May 2005.

12 “Saeima steidzami groza Imigrācijas likumu”, National News Agency *LETA*, 26.01.2006.

13 “Nosaka kārtību, kādā uztur un aktualizē to personu sarakstu, kam liegta iebraukšana Latvijā”, National News Agency *LETA*, 16.08.2005.

they will be obliged to inform OCMA which in turn will update the electronic list. Data of the Register will be classified as information of limited access. However, foreigners will have the right to verify the information of the Register in relation to themselves and their children which are under age of 16, as well as in relation to persons who are dependant on them.

Draft legislation, circulars, etc.

There are ongoing discussions on the Blacklist procedures in relation to Schengen information system. It is unclear which will be the focal point for cooperation with security services – OCMA or Foreign Ministry. Currently both institutions share the competence.

In the beginning of January 2006 Ministry of Interior has submitted amendments to *Immigration Law* providing for mandate to the Cabinet of Ministers to set requirements for long-term detention places of foreigners, rights and obligations of foreigners in detention as well as expenditure for detention. Currently there are no standards established for places of detention.¹⁴

Judicial practice

Cases of expulsion and inclusion of individuals on the Blacklist attracted public discussions on a number occasions during the reporting period. All of them, however, concerned third country nationals but are indicative of the problems which can arise also in cases of EU citizens.

The first case concerned Mr. *Aleksandr Kazakov*. He was a member of Headquarters of Russian School Protection – a semi-violent group protesting against educational reform providing for proportion of subjects to be taught in Latvian at State-funded secondary schools. He organised and took part in a number of events against educational reform. The protests were organised under auspices of non-registered organization which threatened with ethnic conflicts involving children. He also publicly acknowledged his affiliation with politicians of Russian Parliament. Mr. Kazakov had acquired residence permit until 1 October 2004 on account of the fact that he was married to Latvian citizen. After death of his wife in the beginning of September 2004 OCMA noted that he could not provide any other basis for the residence in Latvia and annulled his residence permit. On the basis of opinions of State security institutions Mr. Kazakov was expelled from Latvia. Moreover, already in May 2004 Minister of Interior included Mr. Kazakov in the Blacklist. Mr. Kazakov appealed the decisions of expulsion, annulment of residence permit and inclusion on the Blacklist to the court. The Administrative court in the first instance requested Minister of Interior to issue written order on inclusion of Mr. Kazakov in the Blacklist, confirmed legality of annulment of residence permit and requested State Border Guard to review Kazakov's case to issue a reasoned decision.¹⁵ The case was appealed by Mr. Kazakov.¹⁶ Supreme Court satisfied his claim and stated that authorities have not assessed proportionality of inclusion of Mr. Kazakov on the Blacklist in the light of his private and family life, i.e., his links with mother residing in Latvia.¹⁷ After judgement Minister for Foreign Affairs, however, included him on the Blacklist as *persona non grata*.

Another case concerned Mr. *Boris Berezovsky* who visited Latvia on business purposes. Russian Prosecutor's office has requested Latvia twice (25.02.2005 and 21.09.2005) to extradite him. He holds refugee passport of the UK but is on the list of wanted persons of Russian Federation. Mr. Berezovsky was not arrested at the border and his status was not clarified in order to provide answer to Russian authorities. However, on both 26 February and 23 September 2005 Latvian Prosecutor General refused the request of Russia and based its decision on Article 3 of the European Convention on Extradition in relation to political offences.¹⁸

Case of Berezovsky was highly political and National Security Council headed by the President was convened after his visits. However, Latvian institutions demonstrated certain confusion in relation

14 "Par grozījumiem Imigrācijas likumā", National News Agency *LETA*, 12.01.2006.

15 Rulings of the Administrative court in cases A42274405(A2744-05/2), A42190205 (A1902-05/2) and A42176705(A1767-05/2) on 3.10.2005.

16 "Kazakovs gatavojas pārsūdzēt tiesas lēmumu lietā par izraidīšanu no Latvijas", National News Agency *LETA*, 3.10. 2005.

17 Case Nr. SA-4 24.02.2006. Available at <http://www.at.gov.lv/index.php?a=20&v=lv>.

18 "Berezovsky left Latvia yesterday afternoon", National News Agency *LETA*, 26.02.2005 and "Prosecutor's office repeatedly refuses to extradite Berezovsky to Russia", National News Agency *LETA*, 23.09.2005.

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to procedures to be followed in cases of extradition. This raises concerns as to the readiness of institutions involved to deal with complicated extradition cases in general.

Latvian Prime Minister acting in capacity of Minister of Interior has included Mr. Berezovsky on the Blacklist. He based his decision on opinions of the State security institutions. Mr. Berezovsky has appealed the decision of the Minister to the court.¹⁹

The first case when the Court applied new amendments of *Immigration Law* was case of *Roman Molčadski*. He requested to be deleted from the Blacklist where he was included on basis of decision of Minister of Interior. Senate of the Supreme Court quashed the appeal because Prosecutor General confirmed that Molčadski was included on the list on basis of information acquired as a result of contra-intelligence data.²⁰

Recent legal literature

Jaurīte Briede, Judge of Supreme Court Administrative Cases Department, “Atbilde Kazakova mammai” [Reply to Mum of Kazakov], Daily newspaper *Diena*, 28 Feb. 2006.

19 “Berezovski iekļauj Latvijā nevēlamo personu sarakstā”, National News Agency *LETA*, 26.10.2005 and 15.11.2005.

20 10 Feb 2006, Information provided by Constitution Protection Bureau, <http://www.sab.gov.lv/index.php?lang=lv&nid=140>.

Chapter II

Access to employment

Text(s) in force

The Law on Regulated Professions and Recognition of Professional Qualifications (OG No. 105 06.07.2001) provides for general guidelines for *recognition of diplomas and qualifications*. The concerns persist in relation to confusing and sometimes even unclear provisions in the Law on Regulated professions. During 2005 the Government adopted a number of new regulations in the field of recognition of qualifications: Regulations No. 124 on pharmacists (OG No.28 18.02.2005), Regulations No. 125 on dentists (OG 28 18.02. 2005), Regulations No. 149 on maternity nurses (OG 38 04.03.2005), Regulations No. 207 on doctors (OG 52 01.04.2005), Regulations No. 351 on nurses (OG No. 84 27.05.2005), Regulations No. 320 and 489 on veterinaries (OG No.76 13.05.2005, No. 107 09.07.2005).

Government also adopted Regulations No. 397 on additional requirements for recognition of professional qualifications acquired abroad in regulated professions and order for compatibility test or adaptation period (OG 92 10.06.2005) which aim at setting up procedures for recognition of diplomas and qualifications in EEA Member States. Generally, Regulations provide for equal treatment of persons who have acquired education within EEA and outside EEA if their qualifications have been recognised by any EEA Member State. According to Section 18 compatibility test and adaptation period shall be set by taking into account professional experience of the applicant, participation in continued education and professional education. Section 19 provides that maximum duration of adaptation is three years in case of posts for which higher education is required and two years in case of secondary education as requirement. Section 20 states that test is applicable in cases if professional experience complies with requirements but adaptation period is applied if applicant does not have any or insufficient professional experience.

In order to identify responsible institutions in Latvia the Government has recently adopted Regulations No. 128 on institutions authorised to issue residents of Latvia necessary documents for recognition of their professional qualifications abroad and procedure for issuing these documents (OG No. 29 17.02.2006). Regulations describe the competence of Information Centre of Ministry of Interior, Register of Enterprises as well as Academic Information Centre.

Apart from Regulations relevant in the EU context Government has adopted Regulations No. 525 on recognition of professional qualifications for professional practice in Latvia (OG No. 115 22.07.2005) providing for procedures to be followed in relation to situations not covered by international agreements, i.e., in case of recognition of qualifications of third country nationals.

During 2005 altogether 186 diplomas of non-regulated professions obtained in the EU Member States were recognised (30% of total number of recognised diplomas) and 20 diplomas in the sphere of regulated professions obtained in the EU were recognised (54% of total number).

New Cabinet of Ministers Regulations No. 202 on *State Language Centre* were adopted on 22 March 2005 (minutes No. 15 13).²¹ Section 11.3. of the Regulations allows officials of the Centre to request persons who in the performance of their duties should have command and practice Latvian to present language certificate or certified copy of the certificate. Section 11.4 considerably widens the competence of the Centre. It states that Centre should

“in accordance with procedures set in other legal acts to examine whether the use of official language by officials, employees and self-employed persons corresponds to requirements set in legislation”.

This is worrisome because it might lead to the situations similar to those which took place before Human Rights Committee delivered its observations in *Ignatane case*.²² It was a common practice that

21 <http://www.likumi.lv/doc.php?id=104521>, accessed on 27.02.2006.

22 Communication No. 884/1999, 31.07.2001. Mrs.Ignatane was strike off the list of candidates for local government elections after language inspectors conducted unexpected language examination at her place of

language proficiency could be verified even after person has passed exam in case if s/he wanted to hold public position. Human Rights Committee found that practice to be against human rights of individuals.

On 22 December 2005 Parliament adopted amendments to *Latvian Administrative Offences Code*, which provides for administrative penalties in case if a person is not using Latvian language in performance of his/her duties. If command of Latvian is not on the level required a fine will be imposed up to 50LVL (70EUR). In case if these offences will take place more than once annually the fine will rise up to 100-200 LVL (140-285EUR).²³

Free movement of persons in *maritime sector* is regulated by the *Maritime Code* (OG No. 91 18.06.2003 as amended until 2006 OG No.2 03.01.2006). Article 4 of the Code states that a ship is considered to be Latvian if the owner is Latvian citizen or non-citizen or a legal person registered in Latvia. Article 272 of the Code as amended on 22 December 2005 states that:

“Any person can serve as captain of ship or crew-member if certified in accordance with 1978 International Maritime Organization Convention on Standards of Training, certification and Watchkeeping for Seafarers (with following amendments)”.

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).

Draft legislation, circulars, etc.

During 2005 there were discussions on the necessary amendments in Regulations No. 77 *on mandatory requirements for medical institutions and their branches* (19.02.2002). They provided that directors of such institutions can be persons who possess certificate of director of health care institution which is issued by Latvian Society of Physicians. According to amendments adopted on 28 February 2006 the only requirements for directors will be higher education and experience in management of enterprises.²⁴ It shall be noted, however, that directors will have to have command of Latvian language in accordance with *Language Law*.

Judicial practice

Ziemeļu District Court in Riga was dealing with case when applicant, Mr. Sants, was refused a job at school. He is former priest which was excluded from the Lutheran church because of his homosexuality which he publicly acknowledged.²⁵ The candidate chosen for the job was with much lower professional qualifications. Mr.Sants challenged the decision of the director in court arguing that he was refused job because of his sexual orientation. Latvian Labour Law does not explicitly outlaw discrimination on basis of sexual orientation. The Court when dealing with this case did not refer to either ECJ case-law nor relevant non-discrimination Directive 2002/78. However, it adopted wide interpretation of relevant open-ended non-discrimination clause in Labour Law - Article 29(9). The court concluded that prohibition of discrimination on basis of sexual orientation is included among the grounds on which the discrimination is prohibited.

Although Article invoked did not provide for the right of ‘candidate’ to claim that s/he was discriminated the Court adopted wide interpretation and concluded that not only worker but also candidate can invoke Article 29.

Confusion arises with the Court’s judgement because the Court has referred to “shared burden of proof” instead of “employer’s burden of proof”. Therefore, Court’s reasoning is not in compliance with the ECJ rulings in C-326/96 *Levez*, 109/88 *Handels*. Another problem with judgement was the decision on losses. While the Court ordered compensation for moral harm it applied Article 1775 Lat-

work and concluded that her level of language proficiency does not correspond to the highest degree necessary to be elected in local government.

23 “Par valsts valodas nelietošanu piemēros naudassodu”, National News Agency *LETA*, 22.12.2005.

24 Information for Press. 28.02.2006 No. 05-01/537. Communication Department of the Ministry of Health.

25 Rīgas pilsētas Ziemeļu rajona tiesas 2005.gada 29.aprīļa spriedums lietā Nr.C32242904047505, C-457/3.

vian Civil law in relation to losses which provides that four criteria shall be fulfilled: illegal action, fault of perpetrator, losses and causal link. This is not in compliance with ECJ ruling in C-177/88 *Dekker case* where the Court has stated that civil law requirement on fault of perpetrator cannot be applied in discrimination cases.²⁶

Miscellaneous

Only starting with 1 January 2005 dismissal benefits shall be paid in all cases. During period of transition 1 June 2002-1 January 2005 when the new Labour Law was entering into force dismissal benefits had to be paid only in three cases – upon liquidation of the enterprise, upon decreasing number of workers, and in case if contract did not correspond to the law. Thus, for instance, dismissal benefits did not apply in case of fixed term contracts which could be terminated without paying dismissal benefit.

Recent legal literature

Oskars Garkājis “Par atlaišanas pabalstu Darba likumā” [On dismissal benefit in Labour Law], weekly legal journal *Jurista Vārds*, 2 (357) 18.01.2005.

Edgars Atlācis “Darbinieka tiesības, kad darbu uzsaka darba devējs” [Rights of worker when employer orders dismissal], weekly legal journal *Jurista vārds*, 17 (372) 10.05.2005.

Kristīne Dupate, Par tiesas spriedumu Santa lietā [On judgement of the court in Sants case], weekly legal journal *Jursta vārds*, 26 (381) 19.07.2005.

Felikss Polis, “Ievads Eiropas Savienības darba tiesībās” [Introduction to European Union Labour Law], Biznesa izglītības bibliotēka, 2005.

26 Kristīne Dupate, “Par tiesas spriedumu Santa lietā”, weekly legal journal *Jurista vārds*, 26(381), 19.07.2005.

Chapter III

Equality of treatment on the basis of nationality

Text(s) in force

In accordance with the *Law on Social Services and Social Assistance* (OG No. 168 19.12.2002 as amended until 2004 OG No. 199, 15.12.2004) 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). Article covers EU, EEA, Swiss citizens if they have acquired personal number in Latvia as well as TCNs with long term resident status granted in Latvia. Social services and assistance are financed from resources of local governments.

The procedure for receipt is further determined by the Cabinet of Ministers. Cabinet has adopted Regulations No.373 *on Procedure for Receiving Social services and Social assistance* (31.05.2005). There are no provisions which would allow either person with temporary residence permit or EU workers who are not permanent residents to apply for social services.

Currently the Ministry of Welfare is preparing amendments in order to include refugees and persons holding alternative status under provisions of Article 3. This will allow them to receive assistance to the level of minimal income. Amendments will also cover those who were subject to trafficking of human beings. They will qualify for social rehabilitation.

In relation to other groups of residents the law would not be applicable because they will not possess personal number which is granted only to citizens, non-citizens and persons with permanent resident status (persons with temporary residence and having number being excluded). Thus, the law itself does not provide for residence requirements but only possession of personal number. This means that Latvian citizens will qualify for assistance even if they have not resided in Latvia for five years because they have the number.

According to the Ministry they view the law falling in the scope of Regulation 1612/68.

There have been no cases so far when EU, EEA or Swiss citizen would have made recourse to Article 3.

Miscellaneous

According to information provided by State Border Guard during 2005 they caught one Spanish citizen who was employed illegally.²⁷ The details of the case could not be provided by Border Guard authorities to the reporter.

Recent legal literature

Andrejs Judins, "Rasisms Latvijā: vai gaidām nāvi?" [Rasism in Latvia: do we expect death?], Public policy portal *www.politika.lv.*, accessed on 17.6.2005.

27 "No robežsardzes Preses un sabiedrisko attiecību dienesta apkopotās informācijas", National News Agency *LETA*, 17.12.2005.

Chapter IV Employment in the public sector

Text(s) in force

Access to public sector

Article 101 of *Constitution* 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.”

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 except public agency 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. Altogether there are 79 institutions of general civil service and 10 institutions of special civil service employing 28 491 civil servants.²⁸

The control of *inter alia* recruitment process is under the responsibility of State Civil Service Board. Article 7 of the Law on Civil Service enumerates mandatory requirements for candidates the first being that a person shall be citizen of Latvia. The other requirements include: higher education,²⁹ command of Latvian language (highest degree), age below retirement age, no criminal record or it has been discharged, no criminal convictions related to civil service, no mental incapacity, no record of service in USSR, Latvian USSR or foreign security services, no membership in prohibited organizations, no kinship with head of institution. However, this list is not exhaustive. Paragraph 2 of Article 8 provides that announcing vacancy other requirements can be mentioned in accordance with job description for particular post. Special commission shall be set up to evaluate suitability of the candidate in accordance with Article 9. Taking into account control system established under responsibility of Civil Service Board there are adequate safeguards against any discretionary power of the institutions announcing vacancies.

Posts reserved exceptionally to Latvian citizens according to special laws are judge,³⁰ court bailiff,³¹ notary,³² prosecutor,³³ policeman,³⁴ state security officer,³⁵ land surveyors,³⁶ fireman,³⁷ national

28 Information available on http://www.vcp.gov.lv/data/file/CVD_iestazu_saraksts-010106.pdf, and http://www.vcp.gov.lv/data/file/Ierednu_amatu_sal_1996-2005.pdf, accessed 24.03.2006.

29 There are no apparent differences between recognition of diplomas between private and public sector.

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

31 Article 12, Law on Court Bailiffs, OG No.165, 13.11.2002.

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

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

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

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

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

guard (*zemessargs*)³⁸ and employee in diplomatic and consular service.³⁹ There are other posts which are limited to Latvian citizens and EU and EEA citizens, namely, captain crew⁴⁰ and attorney (lawyer).⁴¹ These restrictions for citizens of other States are too broad and in certain cases raise doubts whether they would comply with criteria established by the ECJ in 473/93 *Commission v. Luxembourg case*.

Recent amendments in relation to private detectives⁴² raise doubts as to their compatibility with the ECJ case law. Article 6 provides that EU citizens, EEA citizens and Latvian non-citizens can acquire certificate. However, the requirements for acquisition include *inter alia* that applicant shall have at least 5 years of work experience in judicial institutions, Public Prosecutor, police, state security institutions and alike. This means that most of non-citizens have no possibility to acquire certificate because they have no access to the service in those institutions.

Remuneration

In relation to remuneration Government has undertaken a reform and adopted a number of new Regulations. The posts in public service are divided into a number of categories according to Cabinet Regulations No. 310 *on classification system of posts and order of classification of posts in institutions of state direct administration* (OG 75 3.05.2005 as amended until 28.02.2006, OG No.39 08.03.2006). Government has further adopted new Regulations No. 1031 *on budgetary expenditure classification according to economic categories* (OG No. 210 30.12.2005) which will become effective only on 1 January 2007. Those provide for classification to be applied for state budget, local government budget institutions in order to plan their budget, records and preparations of reports, i.e., special codes for salaries, premiums, social security payments and alike. The rules and criteria on basis of which the salaries are calculated depend on previously mentioned system which are brought into comprehensive system on basis of Regulations No. 995 *on remuneration and qualification grades for workers, servants and officials in direct administration institutions and Central election commission as well as benefits and compensations for servants* which come into force on 1 January 2006 with transition provisions up until 1 January 2007 (OG No.210 30.12.2005).

The system is complicated and there are many criteria which shall be taken into account to calculate the salary of officials and servants. There are six qualification grades which are identified on basis of individual evaluation. This evaluation shall take into account performance of the servant, worker and official as well as length of service (Section 8). These criteria are then put into formula. In addition there are also a number of exceptions which can be applied. For instance, Section 11 provides that in case if servant, worker or official has at least three years of professional work experience and this experience is essential for functioning of institution but s/he has no work experience in civil service, head of institution can equal professional experience with experience in civil service. However, according to State Civil Service Board public service performed in another Member State will not be taken into account when calculating remuneration for the public service in Latvia.

Qualification grade is reviewed at least one a year (Section 13). Additional payment is allowed in cases of the work in intensified work conditions up to 20%. Servants of special civil service can get extra payment up to 25%. There are also possibilities to get extra payment for replacing other servants. However, it can never exceed 40%. Section 25 provides for exception in case of servants who work during night and special conditions (50-75%). Special premium can be granted up to 120% of monthly salary once a year according to results of the work.

Regulations provide also for benefit and compensation system as well as transfer payments for servants in cases, for instance, of accident, injury, as well as transport benefits, maternity benefits and alike.

To conclude, the positive side of the reform is that regulations are somewhat streamlined and will apply generally to all public posts. However, the relaxed and complex system of extra payments

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

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

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

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

41 OG No.161, 14.11.2003 and OG No.90, 04.06.2004.

42 Article 6 Law on Detective Activities OG No.110, 29.07.2001, amendments until 07.04.2004.

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and categories within sub-categories leaves the way for arbitrary application. The same holds true for subjective evaluation of performance which is part of basic formula. Most importantly, the new system does not provide for solution to the current problem when salaries of the civil servants depend on success of respective Minister to acquire more funds in the budget for the ministries and institutions under his/her supervision. Thus, the current system when servants of the same qualification working in different governmental institutions have income which in certain cases differs for several hundreds of Lats will persist.

Draft legislation, circulars, etc.

Legislative trends following procedures of infringement set in motion by the Commission.

Miscellaneous

Discussion in relation to requirements which can be put for candidates in civil service arose when Ministry of Education and Science announced vacancy for the post of State Secretary. Initially the announcement provided that candidates shall have doctoral degree and substantial experience in civil service. State Civil Service Board considered these requirements as disproportionate and exclusionary. They requested the Ministry to amend the announcement and warned that otherwise results of competition will be illegal. Ministry followed the advice of State Civil Service Board.⁴³

Recent legal literature

Māris Strads, *Civildienests Latvijā un Eiropas Kopienā* [Civil service in Latvia and European Community], *Jurista Vārds* 9 (364), 8 Mar 2005, 10 (365) 15 March 2005

43 Announcement was published on 20 Oct 2005. National News Agency *LETA*, 1.11.2005, "IZM izsludinās jaunu konkursu valsts sekretāra amatam", National News Agency *LETA*, 3.11.2005.

Chapter V

Members of the family

Text(s) in force

Taking into account that there have been no amendments in respective Laws and Regulations it is still easier for EU citizens to acquire residence permit if they move as workers than in cases if they move for reasons of family reunification with Latvian citizens.⁴⁴

It shall be mentioned that not only discrimination is taking place in relation to spouses of Latvian who are third country nationals (including EU citizens) but also spouses and family members of third country nationals who are permanent residence holders in comparison to family members of temporary residence holders. Latvia has transposed requirements of Directive 2003/86. Thus, according to Article 23 paragraph 4 of *Immigration Law* spouses, children of not full age and dependants have the right to request temporary residence permits for the same duration as third country national who is self-employed, businessman, worker, investor, representative of foreign businessman, scientist, student, asylum seeker, provider of implementation of international contract or project, assistance provider for State or local government, provider of religious service, participant of student exchange, and a person who is undergoing divorce and determination of the place of residence for child. Therefore, these categories of relatives can apply for temporary residence permit from one to five years depending on the sponsor's status.

At the same time Article 25 provides that foreigner who is spouse of Latvian citizen or non-citizen can apply for temporary residence permit for one year when applying for the first time and for four years the second time. Only applying for residence on the third time s/he can require permanent residence permit. Article 26 provides the same procedure for spouses of permanent residence holder.

Thus, for instance, if spouse of third country national who is businessman and has established his own company arrives to Latvia s/he can apply for residence permit up to five years while spouse of Latvian citizen can be granted residence permit for only one year.

Judicial practice

There has been a case where the court had to evaluate whether marriage is genuine.⁴⁵ The case concerned married couple – Latvian citizen Ms. Rupeika and Russian citizen Mr. Isahanov – who lived together for five years. He was issued temporary residence permit twice. However, permanent residence permit was refused on basis of opinion of the OCMA that marriage is not genuine. The case was dealt by the Supreme Court Senate which had to review decision of lower instance. In view of lower instance court there has been interference with applicants' private life and residence permit shall be issued. Senate referred to the ECHR practice which confirmed that in certain cases decisions in immigration sector might affect private and family life of individuals. The Court also noted that right to private and family life can be restricted if based on economic welfare, public order, security considerations if they are proportionate to legitimate aim to be pursued. The Court has mentioned a number of other sources available apart from the ECHR. For instance, EU Resolution of 4 December 1997 on measures in relation to fictitious marriages (resolutions nr. 97/C 382/01) was referred to. The Court agreed with the OCMA that marriage was not genuine because the applicant gave birth to a child a father of whom was brother of Mr. Isahanov while he was staying with his ex-wife. The court declined the argument that there was un-proportional interference with applicants private life. The Court concluded that the case shall be considered anew and the following facts shall be established: (1) does family life exists (not only marriage in formal sense); (2) if family life does not exist, does another kind of personal, economic or social link exists which would allow to qualify refusal of permanent residence as not proportional.

44 “ES pilsonim sarežģīti būt precētam Latvijā”, Daily Newspaper *Diena*, 28 Jun, 2005.

45 Case No. SKA-177, C27184302, Decision of 26 October 2004. Published also in weekly legal journal *Jurista Vārds*, 23 (378) 21.06.2005. Available on <http://www.at.gov.lv/index.php?a=208&v=lv>, accessed 15.02.2006.

Recent legal literature

Michael Bogdan, "Eiropas Kopienas tiesību skatījums uz pilsonības kā piesaistes faktora izmantošanu starptautiskajās ģimenes tiesībās" [The European Community Law's point of view on the Use of Citizenship as a connecting Factor in International Family Law], monthly legal journal *Likums un Tiesības*, No. 65, January 2005.

Chapter VI

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

Trojani, Collins, Ioannidis

There have been no discussions or specific amendments introduced as a result of the ECJ case law.

According to the *Law on Social services and Social assistance* only those EU citizens who have permanent residence permit and personal identity number can have access to social assistance. *Law on Social benefits* (31.10.2002, as amended until 27.10.2005) enumerates social benefits in Article 3. Article provides for two kinds of benefits: regular benefits (family benefit, child care benefit, benefits provided for guardians and foster-parents, benefit for compensation of transport expenses for disabled, state social maintenance benefit, care benefit for disabled children) and benefits who are paid once (benefit upon child-birth, funeral benefit, compensation for adoption of child).

Generally a person can have recourse to the assistance in case if his/her income falls below the minimum monthly salary as set by the Cabinet of Ministers. Cabinet of Ministers Regulations No. 790 on *Minimum monthly salary and minimum hourly tariff* (adopted on 25.10.2005, effective from 01.01.2006) state that minimum monthly salary will be 90 LVL (approx.130 EUR) starting from 1 January 2006.

The system is rigid and does not allow for exceptions. For instance, there is no possibility to grant social assistance to the EU citizens who are students in Latvia and run into short-term financial problems. This in turn raises the question on compatibility of Latvian legislation with recent case-law of the ECJ in relation to minimum financial solidarity between Member States (C-184/99 *Grzelczyk*).

Van Lent, Commission v. Denmark

According to Article 47 of *Road Traffic Law* (OG 274/276 21.10.1997 as amended until 15.12.2005) a driver can drive a car if he has drivers licence issued by EU Member State, EFTA Member State or licence indicating categories of drivers in accordance with 1968 Convention on Road Traffic. A foreigner entering Latvia and resides for more than 6 months shall change drivers licence. This requirement does not apply to EU and EFTA Member States citizens.

Pararaph 3 of Article 47 provides that foreigners and stateless persons shall register vehicles in case they reside in Latvia for more than three months. The application of this requirement to EU citizens is unclear. As explained by officials of Directorate of Road Traffic Safety this requirement does not apply to EU citizens. However, the text of the Law does not support this view because no exceptions are mentioned in relation to this group.

SOLVIT has dealt with a case when Latvian car importer could not register second hand cars bought in Germany. A Latvian enterprise purchased 28 second-hand cars from the US Armed Forces in Germany at an auction organized by a German company. The registration papers (purchase licence and ownership certificate) handed out by the German company were refused by the Latvian Vehicle Registration Department as invalid since 1 May 2004. The Latvian enterprise was referred back to the German authorities to obtain different papers but did not succeed in this. After interference of SOLVIT, Department was convinced that the papers were valid under EU law.⁴⁶

*Sports*⁴⁷

Basic principles of regulation in the sports sector are set in the *Law on Sports* (OG 165 13.11.2002, as amended until 09.06.2005). In relation to professional sportsmen, subject to special provisions of the contract, the principle of non-discrimination applies as provided in *Labour Law*.

Responsible governmental institution for implementation of policies and coordination of sports sector is Ministry of Education and Science and Sports Administration established under auspices of

46 "Latvijas "Solvit" centrs atrisinājis sūdzību par autotransporta reģistrēšanas problēmām". National News Agency *LETA* 21.02.2005.

47 This section relies on the data and information provided by Sports Department of the Ministry of Education and Science.

the Ministry. In addition, Article 6 of the Sports Law assigns partial jurisdiction to five other ministries (*Ministry of Welfare, Ministry of Interior, Ministry of Defence, Ministry of Justice and Ministry of Health*) for specific aspects of sports that fall in their sphere of competence.

The overall responsibility for State's sport's policies in accordance with Article 9 of Sports Law is the National Sport's Council. The Council holds a pivotal position between the governmental and non-governmental organisations. This umbrella institution consists of ministers, leaders of the main sports organisations in Latvia such as President of Olympic Committee, President of the Council of Sport Federations as well as Chairman of the Sport Council of Local Governments and Rector of Sport Academy.

National Sports Council also sets criteria for sport federations to be entrusted with leadership and co-ordination of the relevant sport sector and the right to represent Latvia internationally. Thus, there is relationship of delegation of functions from the government to non-governmental sector.

Establishment of sport organizations is provided in the *Law on Associations and Foundations, Law on Sports* and *Commercial Law*. Currently there are 82 recognised sport federations and over 600 sport and recreation organisations in Latvia. The process of recognition is responsibility of Sport Administration. According to Article 10 of the *Law on Sports* only one federation can be recognised per sport-kind. Sport federations consist of sport clubs which have legal personality.

Activities of sport federations are coordinated by the Council of Sport Federations of Latvia (CSF). The Council consists of both Olympic and non-Olympic sport organisations. The Latvian Olympic Committee (NOC) is separated from the CSF and is an independent organisation. According to the *Law on Sports*, the NOC has been entrusted with the task to co-ordinate and manage the work of the federations that are part of the Olympic movement. Latvian Paralympic Committee has been given the task of coordinating and managing the work of the federations that are part of Paralympic movement.

Article 10 of the *Law on Sport* and the corresponding governmental *Regulations on Recognition of Sports Federations* set a number of limitations on the governance of sport NGOs.

According to the Sports Law, only those Sports Federations that comply with the criteria of the Cabinet of Ministers can be recognised in the country and can represent the country internationally. For a federation to be recognised in Latvia, it has to comply with all the acts of the legislation of Latvia and to be conformable not only with the rules of international sports federations but also with international law.

Currently free movement of sportsmen in Latvia is minor. A number of reasons can be mentioned. First, Latvia is not attractive for sportsmen due to relatively low level of competitiveness. Sports industry is not yet well-developed. Second, Latvian clubs cannot afford to contract successful professional sportsmen. At present Latvia is poorest of the EU Member States. Third, due to Latvia's geopolitical situation it is more attractive for sportsmen outside the EU coming, *inter alia*, from Belarus, Russia and alike.

Free movement of sportsmen is encouraged by open Latvia championships in individual sports. They promote interest in participation among foreign athletes. The number of professional EU athletes is small in Latvia and they are mostly engaged in team sports.

The practice of sports federations varies. There is general willingness to limit the number of foreign sportsmen in order to stimulate national athletes. This is considered to be an issue of national interest because after restoration of independence Latvia had to re-build sport sector.

Overview of the regulatory documents of different federations reveals that most of the problems arise in cases of team sports, such as football, basketball and volleyball which are not fully consistent with the rulings of the ECJ in cases Bosman, Lehtonen and Simutenkov.

Thus, for instance Falck Latvian Open Competition in Supreme Ice-Hockey League in Regulations⁴⁸ for both 2005 and 2006 provide:

“4.1. Players with Latvian Hockey Federation 2006 licences are allowed to play in Latvian championship in hockey.

....

4.6. Each club can register for Latvian Championship 2 foreign and unlimited number of EU hockey-players, who must not be goal-keepers. All hockey-players of other jurisdictions shall

48 Available at <http://www.lhf.lv/public/?id=142&ln=lv>, accessed on 14.12.2005.

have transfer cards in accordance with transition rules set by Latvian Hockey Federation. For each game clubs can register all above mentioned hockey-players.

4.7. Number of foreign players (including goal-keepers) for newly registered teams (which have not participated in 2005 Latvian supreme league championships) are set by the Board of Latvian Hockey Federation”.

The limitations set for goal-keepers are unclear and were not present for 2004 championships. It shall be noted, however, that the interpretation given by the Hockey League is that Section 4.6. places limitation only for players coming from outside the EU (according to discussions in Federation). This has been confirmed in practice, when one of the leading hockey clubs placed Slovakian goal keeper for national championships and no objections were raised.

The situation is more complicated in basketball. Thus in Regulations of Latvian Basketball championships for men (organized by Latvian Basketball Union) for 2005/2006 it is provided⁴⁹ that for Latvian Basketball League Regular Championship and Latvian Championship Play-offs

“teams can register unlimited number of foreign players (foreign player – player who has no Latvian citizen or non-citizen passport). During the game a team can register at the same time unlimited number of foreign players who hold Lithuanian or Estonian citizenship and no more than 4 foreign players with citizenship of another State.”

Therefore, in basketball discrimination exists between Latvian, Estonian and Lithuanian citizens on the one side and other foreign players on the other. Moreover, the same Regulations state that in other leagues organized by Latvian Basketball League “Team can register no more than 4 foreign players for a game”.

Similar is the situation in Latvian Women Basketball League and Amateur League. According to decision of the Union for season 2005/2006⁵⁰ teams can register unlimited number of foreign players (who are not Latvian citizens and non-citizens). Teams can register for a game unlimited number of Latvian and Estonian citizens and no more than 3 players with other nationality. In all other games within this group teams can register no more than 3 foreign players.

In accordance with 2005 Latvian Football Championship Regulations⁵¹ each club can register unlimited number of foreign players. Section 4.4. states that there can be only 5 foreign players on the field at the same time. Section 4.5. clarifies that foreign players are those who are requested international transfer registration certificate. They shall possess valid residence permit. If football player acquires Latvian citizenship or permanent residence permit he is not considered to be foreign football-player.

In relation to Latvian Volleyball Championship for men during 2005/2006⁵² there are strict dates fixed for transfers (15 August for National League, 15 August for Amateur League and 17 October for regional championships) but no limitations for foreign players. Foreign players are allowed to play in Latvian championship after showing internationally recognised transfer Certificate. In Latvian championships it is prohibited to participate for players who have received transfers and who have concluded agreements for playing in foreign clubs except when player can show documents that his obligations in a foreign club have ceased.

Section 19 of the *Law on Sports* provides the definition of a professional athlete:

“A professional athlete is a physical person who is preparing himself for and is about to participate in sport competitions on the basis of a labour contract for an agreed payment.”

Accordingly, all other athletes are considered as amateur athletes. ‘*Amateur athlete*’ is not defined by the Law. In practice the question as to who should be regarded as ‘amateur athlete’ in Latvian sports

49 Available at http://www.lbl.lv/?action=view_a_quotas, accessed on 14.12.2005.

50 Available at http://www.lbs.lv/ligas/lbal/dokumenti/arzemnieku_kvotas.doc, accessed on 14.12.2005.

51 Available at <http://www.lff.lv/public/?id=57&ln=lv>, accessed on 14.12.2005.

52 Available at http://www.volejbols.lv/new/nolikumi/Nolikums_Lat_Ch_vir_2005.doc, accessed on 14.12.2005.

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system is complicated. This disarray in terms arises due to non-determinative laws and non-effective sport club system.

Consequently, all Latvian top level athletes who participate in competitions and achieve high results are considered as amateur athletes. In fact, they can be as well considered professionals for the reason that they do not have another source of income, except funding by State. However, in certain cases they can be considered professionals or 'service providers' according to ECJ ruling in C-51/96 un C-191/97 Deliege case. For instance, J.Prokopčuka – runner of long-distances competed unsuccessfully on a number of occasions as member of Latvian team. At the same time she was winner of New-York marathon in 2005 and received considerable award given by the organisers.

There are also specific sports where the problem arises more frequently, for instance, figure skating and boxing which provide for possibilities to participate in a number of professional competitions at the same time qualifying them as amateurs.

Sports Department of the Ministry of Education has organized training seminar on EU Law requirements for sports federations in cooperation with Riga graduate school of law on 15 November 2005. Representatives of all sports federations were invited and the problem issues in Latvian context discussed. The follow-up to these discussions shall be awaited.

Chapter VII

Related policies

Third country nationals' immigration for employment

According to information by the State Border Guard most of workers arriving from third countries are employed in construction, many illegally. *Illegal employment* is existent among baby-sitters, entertainment and sports. Lately, however, sportsmen play after contracts have been concluded. During 2005 State Border Guard has caught only 21 workers who were employed illegally (mainly from Russia -10).⁵³ In comparison during the first two months in 2006 already 209 workers were caught for working without contract in 108 enterprises.⁵⁴

According to Citizenship and Migration Department during the period January-March, 2005 there were only 906 foreigners from third countries employed, 269 of those were Russian citizens, 108 Ukrainian and 87 Belorussian. Most of foreigners employed in Latvia (303) were in the age group 25-34, 293 in group 35-44, but 134 in age group 45-54.⁵⁵

During the first half of 2005 only 9 workers were punished for working without permit and 8 employers for employing them. During 2004 altogether 49 employees were punished for working without work permit. Administrative liability was applied in case of 27 employers. The usual fine for working without work-permit is 100-500 LVL (150-700 EUR) but for illegal employment responsibility of employers is 500-10 000 LVL (700-15000 EUR). The main reasons for low numbers are connected with insufficient resources for State Labour inspection. Inspection has difficulties to prove illegal employment. It is also rare that maximum fines are imposed. The average fines do not have preventive effect since they are not proportionate to financial advantages employers can get by employing people illegally.

The estimated numbers of illegal workers are higher. During 2005 State Border Guard and State Labour Inspectorate intensified controls. Latvia is hosting mainly workers from CIS – Russia, Belarus, Georgia, Azerbaijan and Moldova. Some of them are willing to move forward to Western Europe. Latvia is most often used as a transit state on a way to Western European States, thus stronger control is necessary for migration.⁵⁶

Taking into account that the number of third country nationals residing in Latvia is relatively high issues related to the immigration will become even more acute after transposition of Directive 2003/109/EC.⁵⁷ A few observations shall be made in this context. First, Latvia, with agreement from the Commission, considers non-citizens as third country nationals for the purposes of the Directive. Amendments of the Non-citizens law to bring it in line with Directive were challenged in Constitutional Court which delivered its judgement on 7 March 2005.⁵⁸ The Court regarded amendments as unconstitutional.

Firstly, the Court clarified the status of non-citizen in Latvia by stating:

53 “No robežsardzes Preses un sabiedrisko attiecību dienesta apkopotās informācijas”, National News Agency *LETA*, 17.12.2005.

54 “Šogad jau pieķerti 209 nelegāli nodarbinātie”, news portal *www.DELFI.lv*, 21.03.2006, according to information provided by the State Labour Protection. Most of cases were identified in Riga (81). No information on nationality of workers was provided.

55 “LM: ES valstu darbaspēks neapdraud Latvijas darba tirgu”, National News Agency *LETA*, 5.08.2005.

56 “Par strādāšanu bez darba atļaujas šogad sodīti deviņi ārzemnieki”, Latvian National News Agency *LETA*, 30 Aug 2005.

57 According to the statistics of OCMA 78% of all resident aliens are citizens of the Russian Federation. Only 16% of all resident aliens are EU citizens, most of them being Lithuanian citizens.

58 Case No. 2004-15-0106, Par likuma “Par to bijušās PSRS pilsoņu statusu, kuriem nav Latvijas vai citas valsts pilsonības” 1. panta trešās daļas 5. punkta, 2. panta otrās daļas 2. punkta, 7. panta pirmās daļas 2. punkta atbilstību Latvijas Republikas Satversmes 98. pantam, Eiropas Cilvēka tiesību un pamatbrīvību aizsardzības konvencijas Ceturtā protokola 2. un 3. pantam, Starptautiskā pakta par pilsoniskajām un politiskajām tiesībām 12. pantam un 1961. gada 30. augusta Konvencijas par apatridu skaita samazināšanu 8. panta 1. punktam, Judgement delivered on 7 Mar, 2005.

“13. [T]he opinion that Latvia was under a duty to grant citizenship automatically to those individuals and their descendants who have never been Latvian citizens and arrived during occupation is unfounded.

17. Status of non-citizens is not and cannot be considered as a mode of Latvian citizenship. However, the rights given to non-citizens and international obligations which Latvia has undertaken in relation to these persons, signify that legal link of non-citizens with Latvia is recognized to a certain extent and on basis of it mutual obligations and rights have emerged. This is derived from Article 98 of Constitution which *inter alia* states that anyone who possesses Latvian passport has a right to protection of State and right to freely return to Latvia.”

The Court acknowledged that introduction of the status of non-citizen was complicated political compromise as a result of which a category unknown in international law has been created. The Court has noted that Latvia has consistently defended its position that non-citizens cannot be qualified as stateless persons and this view has been accepted by the international monitoring bodies of human rights.⁵⁹ This line of argumentation has been adopted also by Administrative courts in Latvia.⁶⁰

The Court referred to Article 12 of the ICCPR and Article 98 of Constitution providing for the right to return and diplomatic protection for anyone holding Latvian passport (including passport of non-citizen), Article 3 of Protocol 4 of the ECHR and principle of reduction of statelessness. It concluded that non-citizens cannot be deprived of their status due to permanent residence acquired in other States. It evaluated the applicable procedures for expulsion and extradition of non-citizens which cannot be arbitrary and collective. The Court declared disputed provisions null and void starting from 1 September 2005.

Second, on 14 October 2005 OCMA submitted to the Government amendments to the *Immigration Law* and a new draft law aiming at transposition of *Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents*.⁶¹ It was expected that the Law will be discussed in the Parliament in January.⁶² However, it did not happen. The new draft law equals foreigners and non-citizens. In case if non-citizens will not apply for the status in Latvia they will be treated according to the national legislation. According to the draft law anyone applying for long-term resident status will have to pass Latvian language exam. The procedures will have to be set by the Cabinet of Ministers.

One of the major shortcomings of the Law is that it does not provide for comprehensive approach for transposition of Directive but included only provisions in relation to free movement. There are no provisions which would reflect transposition of Article 11 (equal treatment), Article 12 (protection against expulsion) and Article 14 (right to reside of status holders from other Member States) of the Directive. There have been no discussions on notions such as ‘core benefits’ included in the Directive.

59 Concluding Observations of the Human Rights Committee: Latvia. 3 Oct. 1995. CCPR/C/79/Add.53; A/50/40, paras. 334–361. <http://www.unhchr.ch/tbs/doc.nsf/0/21ac2e3a885a28b6c12563f000518518>. Concluding observations of the Committee of the Elimination of Racial Discrimination: Latvia. 12 April 2001. CERD/C/304/Add.79. [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.304.Add.79.En](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.304.Add.79.En).

60 Others are of administrative courts. Thus, for instance, Department of Administrative cases of the Supreme Court Senate gave the following definition “*The link of non-citizen with Republic of Latvia is closer than it is in case of stateless person or alien. Therefore, revocation of status of non-citizen is significant limitation of the rights of person*”. Case of Oganess Saakjan, Decision of 2004, no. SKA-89, C27261801. In another case Regional court has faced the situation when a child was born to parents one of whom was non-citizen and another Russian citizen but parents were willing to register child as non-citizen. The court concluded that “*Republic of Latvia has acknowledged its jurisdiction also over non-citizens and Latvian non-citizen in his rights is closer to status of citizenship. It shall be also acknowledged that a link of non-citizen with Republic of Latvia is stronger than that of stateless person or alien. Taking into account that parents of a child have chosen Latvia as place of residence, it can be concluded, that human rights of a child are not limited in Latvia if she has been granted status of non-citizen*”. Case of Sergej Zaharov, Decision of 2004, no. AA 1218-04/4, A42173104.

61 “OCMA submitted to the Government amendments to the Immigration Law”, National News agency *LETA*, 14.10.2005. Draft law is available http://www.pmlp.gov.lv/images/documents/eiropas_kopienas.doc, accessed on 09.12.2005.

62 Agris Blūmfelds, “Nepilsoņiem būs lielākas tiesības”, daily newspaper “*Neatkarīgā Rīta avīze*”, 18.01.2006.

Latvian officials have expressed concerns that implementation of the Directive 2003/109 will affect motivation for naturalization. Minister of Special assignment for Integration Ainars Latkovskis has noted that possibility to acquire EU citizenship which gives rights to free movement, residence and access to the employment in other EU Member States has been important to stimulate people to study Latvian language and history and to acquire citizenship. Minister, however, hopes that the number of applicants for naturalization will not decrease considerably.⁶³

Ministry of Welfare considers that existing *labour resources* shall be used more efficiently and does not plan to take measures to ease access to labour market for third country nationals. However, in case if necessary, Ministry will consider simplification of work permit procedure for specialists which will not be available in Latvia and Europe. During 2004 quota of 100 was set for IT specialists but only 4 individuals used this possibility, while during January-October 2005 - 7. Migration, according to the Ministry, is topical because of general tendencies of depopulation and low birth-rates. Number of requests for work permits has decreased: 871 requests during 2002; 505 requests during 2005.⁶⁴

On 12 July 2005 Cabinet of Ministers adopted Regulations No. 515 *on order for establishing that foreigners have necessary financial resources* (OG No.112 19.07.2005). According to Section 5 minimum subsistence is 10 LVL (15 EUR) per day if accommodation expenses are covered and 30 LVL (45 EUR) if accommodation should be paid by foreigner. The minimum subsistence amount can be reduced for humanitarian considerations (Section 6). In case if person is requesting residence permit s/he should prove that salary or income is equal to:

- double average monthly salary before taxes as calculated annually by Statistical Bureau (average salary per month being LVL 193 or 276 EUR, during 2004 it was 172 LVL or 246 EUR) if person applies for residence permit no exceeding five years and is registered businessman or member of company in different capacities or self-employed for duration not exceeding one year;
- average monthly salary if foreigner is requesting residence permit for any other reason not mentioned above;
- average subsistence minimum, as established by Statistical Bureau annually in all other cases.

On 13 September Cabinet of Ministers adopted amendments in Regulations No.44 *on work permits for foreigners* (OG No.147 15.09.2005). They provide in Section 5 that foreigners who are students in educational institution in Latvia will be allowed to work for maximum 20 hours a week. Asylum seekers will be able to get work permit until the final decision on their status is made. As a result of amendments a provision which provided that family members of EU citizens shall apply for work permit has been deleted.⁶⁵

On 27 September Cabinet of Ministers adopted new Regulations No.732 *on Residence permits* (OG No.157 4.10.2005). Regulations are unclear in relation to the right of family members to apply for residence permit. In most cases foreigner applying for residence permit shall do that on basis of invitation which is registered at OCMA. This is the case, for instance, of workers. Section 7 provides for exceptions when invitation is not required. For instance, in case of self-employed persons, posted workers, children, persons who have acquired education in Latvia and alike. Their family members are also exempted from invitation requirement. In case of family members of persons who have to have invitation situation is unclear. Section 39 of Regulations provide that in case if spouse and children want to enter Latvia together with foreigner they shall submit documents attesting their relationship. It is not mentioned whether family members can apply for residence permit for the same duration as their family member.

Minorities

On 6 June 2005 Latvia ratified Framework Convention on the protection of Minorities (OG No. 85 31.05.2005) and attached declarations which read as follows:

63 "ES direktīva mazinās motivāciju naturalizēties", National News Agency *LETA*, 23.11.2005.

64 "Neplāno vienkāršot darba atļauju saņemšanu trešo valstu pilsoņiem", news portal [www. DELFI.lv](http://www.DELFI.lv), 25.01.2006.

65 Ārvalstu studenti Latvijā nevarēs strādāt vairāk par 20 stundām nedēļā, National News Agency *LETA*, 13.09.2005.

“... declares that the notion "national minorities" which has not been defined in the Framework Convention for the Protection of National Minorities, shall, in the meaning of the Framework Convention, *apply to citizens of Latvia* who differ from Latvians in terms of their culture, religion or language, who have traditionally lived in Latvia for generations and consider themselves to belong to the State and society of Latvia, who wish to preserve and develop their culture, religion or language. *Persons who are not citizens of Latvia or another State but who permanently and legally reside in the Republic of Latvia, who do not belong to a national minority within the meaning of the Framework Convention for the Protection of National Minorities as defined in this declaration, but who identify themselves with a national minority that meets the definition contained in this declaration, shall enjoy the rights prescribed in the Framework Convention, unless specific exceptions are prescribed by law.*”[emphasis added]

Latvia has also exempted itself from application of provisions related to language used in relations between minorities and the administrative authorities (Article 10 para 2) and use of minority languages in signs, inscriptions and other information of a private nature visible to the public (Article 11 para 2).

On 3 June 2005 OSCE High Commissioner on National Minorities Rolf Ekeus visited Latvia and stressed that rights that have been granted to minorities residing in the State for many years should be extended to so called ‘new ethnic minorities’ or immigrants. He also invited to grant equal rights to citizens and non-citizens. However, Commissioner noted that the right to vote can be exceptional and granted only to citizens.⁶⁶

On 23 November 2005 Council of Europe Parliamentary Assembly closed post-monitoring dialogue with Latvia. It was done despite criticism by Russia and its request to resume monitoring as well as critical views of Monitoring Committee’s Chairman Gyorgy Frunda. He visited Latvia in mid-October and argued that Latvia should grant right to vote in local elections to non-citizens and to ease the naturalization process for the elderly.

Naturalization Board has informed that during 10 years the number of non-citizens decreased by half – 1995 there were 735 000 non-citizens, but currently only 452 000. It is interesting to note, though, that only 85 352 of non-citizens have acquired Latvian citizenship and 10 770 of those were children of not full age. 3088 children who were born after 21 August 1991 to Latvian non-citizens and stateless persons acquired Latvian citizenship. The estimates are that about 130 000 will remain non-citizens for the rest of their life.⁶⁷

Citizenship

Mass emigration to Ireland and conditional *jus soli* principle applied there to determine citizenship of child raised questions in relation to *double nationality* provided under Latvian legislation. *De facto* situation indicates that once a child is born in Ireland and eligible to Irish nationality, parents register new-borns also as Latvian citizens. Approximately 110 new-born children were registered as Latvian citizens.⁶⁸ *De jure* Citizenship Law in Article 2 provides that children of Latvian citizens irrespective of their place of birth are Latvian citizens. In case if one of parents is Latvian citizen and parents reside outside Latvia, citizenship of a child is determined by mutual agreement of parents (Article 3). Therefore, there is possibility that child acquires both – citizenship of Ireland and Latvia. Latvian Law in Article 9 provides that a person acquiring Latvian citizenship cannot be double national. Paragraph 2 of the same Article provides that in case if Latvian citizen can be considered foreign citizen, then in relations with Latvia s/he is considered to be Latvian citizen. It can be presumed that paragraph 1 of Article 9 is applicable only in cases when person acquires citizenship by naturalization while paragraph 2 applies in cases of children. Such interpretation is possible also in the context of Article 24 of

66 “Equal rights must be guaranteed for citizens and non-citizens. The right to vote would be the sole exception, they are granted only to citizens”. Quoted by “Ekeus proposes one category for minorities and immigrants”, National News Agency *LETA*, 3.06.2005.

67 National News Agency *LETA*, 1.02.2005.

68 Data by Latvian embassy in Ireland. Quoted by Strategic Analysis Commission in research paper “Latvija un brīva darba spēka kustība: Īrijas piemērs” [Latvia and free movement of workers: case study Ireland]. Available on <http://www.president.lv/index.php?pid=03165>, visited 1.02.2006.

Citizenship Law which provides that person can be deprived of citizenship in case if person has acquired Latvian citizenship without renunciation of another citizenship.

In addition transition rules of the *Citizenship Law* state that Latvian citizens and their descendants who left Latvia as refugees or where deported during occupation period could register as Latvian citizens until 1 July 1995 without renunciation of the citizenship they acquired during that period. Therefore, *Citizenship Law* provides that Latvian citizenship cannot be acquired if person is a citizen of another State, except as provided in transition rules. However, this does not exclude possibility to acquire double nationality at birth. In practice this means that Latvia does not create double citizenship but accepts if other States do.

On 13 February administrative court of the second instance discontinued proceedings in *Petro-pavlovskis case* related to refusal to grant citizenship on basis of decision of Cabinet of Ministers.⁶⁹ The case is now submitted to Supreme Court which is scheduled for 11 April 2006.⁷⁰ Mr. Petropavlovskis was an activist of the Headquarters of Russian School Protection, the same as Mr. Kazakov mentioned above (page 9). He joined one of radical left parties and was willing to be candidate for local government elections after naturalization. Mr. Petropavloskis applied for Latvian citizenship and for the first time since adoption of *Citizenship Law* Cabinet of Ministers refused naturalisation on 16 November 2004. This was done despite the fact that he has passed naturalization tests and security institutions did not object his naturalization. The basis for decision was an argument that Mr. Petropavlovskis is not loyal to the State.⁷¹ The question arose whether according to *Citizenship Law* Government decision on granting citizenship is political or administrative. The courts sided with governments arguments that even if individual has complied with requirements prescribed by *Citizenship Law* s/he was subject to political decision of Cabinet of Ministers to grant or withhold citizenship on basis of political preferences.⁷²

During 2005 amendments to *Citizenship Law* were drafted under auspices of Ministry of Justice. The aim of the amendments was to re-formulate with a greater precision the cases when nationality cannot be granted to persons who act against the State as well as to ease the process of granting nationality to several groups of children.

According to the Head of the Naturalization Board Ms. Eizenija Aldermane the *Citizenship Law* which was last amended in 1998 should not to be amended substantially but only technically. She mentioned as an example the case when it is unclear what nationality shall be given to a child if one of the parents is a non-citizen but another is a foreigner. The same applies in relation to the so called 'forgotten' children, i.e., parents of which naturalize but forget to apply for nationality for their children.

The most important amendments are expected in relation to Article 11 which provides for restrictions concerning the granting of nationality. According to E. Aldermane, the situation has changed; the world faces international terrorism and other security concerns. This has to be reflected in the Law. Moreover, current reading of the Law provides that nationality is not granted to a person which was employee by the KGB or other foreign security service. This formulation does not cover persons who are still employed by these institutions.

The Minister for Integration, Mr. Ainars Latkovskis, in 2005 considered that more general formulation should be included allowing to withhold nationality from persons who are acting against the State and its security. He mentioned as examples nationality laws of Estonia, Russia and other States. As noted above, the Law has so far applied these restrictions to persons belonging to groups and organizations, as listed in the Law, which were seen to present security concerns for Latvia.⁷³

On 24 October 2005 Minister of Justice withdrew the amendments to *Citizenship Law* providing additional criterion of loyalty for applicants for Latvian citizenship. The amendments are postponed

69 "Izbeidz Tiesvedību "štābista" Petropavlovskis pilsonības lietā", news portal *www.DELFI.lv*, 13.02.2006.

70 Petropavlovskis Senātā pārsūdz lēmumu lietā par atteikumu piešķirt pilsonību, National News Agency *LETA*, 7.03.2006. Final Judgment by Senate of the Supreme Court was adopted on 11 April 2006. The Court confirmed government's position. „Neatjaunos tiesvedību Petropavlovskis pilsonības lietā”, news portal *www.DELFI.lv*, 11.04.2006.

71 National News Agency *LETA*, 8.12.2005.

72 Case Nr.A42248104 Nr. A1486-05/3, Judgement 16.12.2005.

73 Another reason why these amendments are considered is the case of Mr. Petropavlovskis. National News Agency *LETA*, 8.12. 2005.

for a year with an argument that this is not ‘appropriate’ time for amending the law taking into account upcoming Parliamentary elections.⁷⁴

At the same time Ministry has prepared amendments in the Cabinet of Ministers regulations on acquisition of citizenship by naturalization which will provide that applicants have no unlimited number of possibilities to take naturalization exams.⁷⁵ In case if applicant will not pass language test the next possibility will be given after three months, but in case of exam of Constitution and history – after one month. In case if applicant will not succeed for the second time repeated language exam will be allowed after six months, but exam on Constitution and history after three months. After the third unsuccessful exam, language exam can be taken after one year, but history exam after six months. The fourth time will be the final possibility. In case if applicant does not show up for exams after two months without giving any reason the naturalization procedure will be stopped.

Integration declaration

On 28 April Parliament adopted amendments in Immigration Law providing that those who apply for temporary residence permit shall submit signed integration declaration. By signing declaration they would take an obligation to pass language exam and respect Latvian language, traditions and culture. The example of Austria was mentioned during debates. Further procedures should have to be set by the Cabinet of Ministers.⁷⁶

President of Latvia used her constitutional right and refused to sign the amendments to *Immigration law*. In the letter to the Parliament she stated that supports strengthening of Latvian language and other conditions included in the integration declaration. However, the amendments provide for too wide discretion and interpretation.

On 16 June 2005 amendments to the *Immigration Law* were adopted without provisions on integration declaration. However, Parliament continues discussions. On 22 September special group had been established by the Cabinet of Ministers to consider the contents, aim and addresses of the integration declaration.⁷⁷ It is difficult to predict when those amendments will be adopted because of the pre-election campaign which has already started.

At the same time it shall be noted that by adopting amendments to *Immigration law* the Parliament provided in *Transition provisions* that new regulations on verification of language proficiency shall be adopted. They stated that Cabinet of Ministers Regulations No. 319 *on the level of knowledge of State language and procedure for verification of command of State language for foreigners* will lose their force on 1 July 2005. Up to date no new regulations have been adopted. In practice it is solved on *ad hoc* basis accepting certificate testifying even lower level of language proficiency.

Elections

The new Law on Political Parties has not been adopted yet. This means that although respective election laws provide for the right of EU citizens to vote and be elected they cannot use this right because they cannot join or establish political party. In accordance with paragraph 1 of Article 45 of the *Law on Civil Society Organizations and Their Associations* (OG No.1 14.01.1993 as amended OG No.56 08.04.2004) only Latvian citizens and non-citizens over 18 can become members of a party. Moreover, according to Article 43 a party can be established in Latvia if at least 200 Latvian citizens participate. Paragraph 3 of Article 45 provides that in the political party having over 400 members at least half of them shall be Latvian citizens. It could be possible to arrive at different conclusion if paragraph 3 of Article 45 is read separately from paragraph 1 of this Article. However, it does not seem that this is the reading by competent authorities.

74 “Ministrija atsauc grozījumus Pilsonības likumā”, weekly legal journal *Jurista vārds*, 41(396), 01.11.2005.

75 “Ierobežos naturalizācijas eksāmenu kārtošanu”, news portal www.DELFI.lv, 20.02.2006.

76 “Saeimas komisija integrācijas deklarācijas ieviešanas kārtību lūgs izstrādāt izpildvarai”, National News Agency *LETA*, 8.06.2005.

77 Ilze Kuzmina, „Bez aizspriedumiem”, newspaper *Latvijas Avīze*, 28.06.2005, “Veidos darba grupu integrācijas deklarācijas izstrādei”, National News Agency *LETA*, 2.08.2005.

There are ongoing discussions on the new draft law on political parties. The Law was adopted on its second reading on 1 December 2005.⁷⁸ The Law on Entry into Force of Law on Political Parties which was adopted in its second reading on the same date provides that all parties will have to re-register until 31 December 2007.⁷⁹ Generally, the new law on political parties will provide for stricter conditions for activities of parties. For instance, the party will have to cease its activities when number of members will drop below 150 or if party will not submit candidate lists for two consequent Parliamentary elections and two local government elections. The courts will have the possibility to ban the party if it will not comply with court decisions and/or remedy the violation of law.

The new draft Law on political parties aims at stabilising political party system avoiding the situation when many small parties are established just before the elections. This situation is particularly acute in cases of local elections. Moreover, there is any number of political parties which have not been active over previous years. The obligation to comply with court decisions will allow the courts to take measures against political parties which have been penalized for using non-declared funds during pre-election campaign which is still common phenomenon in Latvia.

A number of concerns can be mentioned. Firstly, 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 the EU citizens if and when they are admitted to the political party. Secondly, 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 cannot do that either. Moreover, they do not have the right to vote in elections.

Elections of City District and Pagasts Councils were held on 12 March 2005. Not only EU citizens were allowed to participate but also persons who were held in pre-trial detention.⁸⁰ However, persons in relation to whom it has been established that they cooperated with the KGB were not allowed to stand as candidates. This restriction has been constitutionally challenged by twenty MPs in Constitutional Court. The basis for the application was the adoption of amendments in umbrella law on the fact of co-operation with KGB which provided for prolongation of time period when this fact can be verified until 2014 (before amendments 2004).⁸¹ The Court dealt with the case on 22 February 2005 and adopted its judgement on 22 March 2005.⁸² The Court declined jurisdiction because applicants did not challenge constitutionality of special laws providing for restrictions on the rights of persons due to the fact of cooperation. This, according to the Court, insufficiency does not allow evaluate constitutionality of the contested amendments.

Turnout in local elections was 52,85% of citizens eligible to vote. This has been the lowest turnout in comparison with previous local and national elections. Election results in Rezekne city were annulled by the court on the ground that bribery of votes was taking place to considerable extent which could have influenced the results of the elections.⁸³ Election results in Jurmala city were challenged on the same grounds, however, the court declined the necessity for repeated voting.

The exact number of the EU citizens who took part in the elections cannot be identified. There are 3981 EU citizens from 22 EU Member States registered in the Voters Register and thus eligible to vote. According to the Central Election Commission only 19 EU citizens took part in the elections to the European Parliament.⁸⁴ An estimate is that the numbers of EU citizens taking part in local elec-

78 "Saeimas komisija neatbalsta partiju dibinātāju minimālā skaita palielināšanu", National News Agency *LETA*, 22.11.2005, "8.Saeimas 1. decembra sēdes darba apskats. Saeimas preses dienests", National News Agency *LETA*, 01.12.2005.

79 "Politiskās organizācijas partiju reģistrā būs jāieraksta līdz 2007.gada 31.decembrim", National News Agency *LETA*, 01.12.2005.

80 Amendments to the Law were passed in 2004. Amendments to the Law on the Elections of the City Council, District Council and Pagasts, adopted on 11.11.2004, in force since 26.11.2004.

81 Amendments to the Law on storing, use of documents of former KGB and attesting of the fact of cooperation between a person and the KGB, adopted on 27.05.2004.

82 Case No. 2004-13-0106, Par 2004. gada 27. maija likuma „Grozījumi likumā „Par bijušās Valsts drošības komitejas dokumentu saglabāšanu, izmantošanu un personu sadarbības fakta ar VDK konstatēšanu” atbilstību Latvijas Republikas Satversmes 101. pantam, Eiropas Cilvēktiesību un pamatbrīvību aizsardzības konvencijas 14. pantam un Pirmā protokola 3. pantam. Judgement delivered on 22.03.2005.

83 Information available on the official website of the Central Election Commission at <http://www.cvk.lv>, accessed 23.11.2005.

84 "Eiroparlamenta vēlēšanu pēdējā dienā uz vēlēšanu iecirkņiem dodas 19 ES valstu pilsoņi", National News Agency *LETA*, 13.06.2004.

tions could be similar.⁸⁵ There were no citizens of other EU Member States who stood as candidates for the elections.

Several protests by radical left-wing politicians were organized before local government elections on 12 March 2005.⁸⁶ After the elections, on 2 April 2005, several organizations representing Russian community have approached European Parliament and EU Member States complaining that local government elections in Latvia were undemocratic because non-citizens were denied possibility to vote.⁸⁷

On 23 September 2005 left wing party PCTVL has finished draft law providing for granting of Latvian citizenship for non-citizens (there are currently about 250,000 non-citizens in Latvia). This right would apply to non-citizens who are born in Latvia, those who are over 60 years old and disabled. The aim of the party is to get the law through the Parliament by 1 November 2006 after the next Parliamentary elections which will take place in October.⁸⁸

Consular assistance

As a result of Tsunami and a number of attacks on Latvian citizens in the UK and Ireland at the end of 2004 Ministry of Foreign Affairs organized special seminar to inform about necessary documents, insurance, and formalities when Latvian citizens travel abroad. They also informed about services offered by the Consular department and possibilities to turn for consular assistance in embassies and representations of the other EU Member states.⁸⁹

All Latvian citizens and non-citizens travelling abroad are invited to register at the Consular Register and buy insurance. Both of these measures are voluntary, but compliance allows to avoid financial and moral harm. Consular Department noted that when travelling to the EU Member States E-111 form shall be obtained which will allow to access emergency medical assistance on the same basis as for citizens of the respective EU Member State.

During the period July 2004-July 2005 altogether 1960 persons approached Latvian embassies to receive temporary document allowing to return to Latvia. Almost 200 Latvian citizens and non-citizens were arrested by police abroad. There were 80 cases when Consular department assisted in return to Latvia of those who have died abroad.

Latvian citizens and non-citizens have used assistance of embassies of the other EU states when their passport was stolen in Cuba, Panama and Peru.⁹⁰

Judicial practice

On 8 March 2005 Supreme Court Senate, Administrative Department gave a judgement in case No. SKA-46. The case concerned Ms. Damiao who lived in Latvia since 1971. She was married to citizen of Angola since 1989 and they had son Matiass who was born in 1993. In 1997 Ms. Damiao acquired Russian citizenship and was granted permanent residence permit in Latvia. She left Latvia on 1998 and returned in 2002. Her husband died in 2000. Ms. Damaio and her son were granted temporary residence permit in Portugal valid until Autumn 2002. The case is relevant because the Court has made reference to Directive 2003/109. In paragraph 23 of the judgement the Court states:

“At the same time Department of Administrative cases notes, that European Council has adopted Directive 2003/109/EC on third country nationals who are long term residents in EU Member States. Directive shall be implemented until 23 January 2006. *Until the date of transposition, the*

85 Information provided by Senior Legal Advisor of Central Election Commission Ms. Daiga Plūme, 23.11.2005.

86 “Protesters at polling station claim voting rights for non-citizens”, National News Agency *LETA*, 12.03.2005.

87 “Russian community’s organizations complain to European Parliament that municipal elections in Latvia were undemocratic”, National News Agency *LETA*, 3.04.2005.

88 “PCTVL draws up bill proposing citizenship for 250,000 non-citizens”, National News Agency *LETA*, 23.09.2005.

89 “Par Ārlietu ministrijas organizēto semināru masu medijiem”, National News Agency *LETA*, 14.07.2005.

90 “Ceļotājiem palīdzēs Konsulārais departaments”, *Latvijas Vēstnesis*, 15.07.2005.

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court can apply it when interpreting provisions of national law (Weatheril, S., Cases & Materials on EU Law. Sixth Edition. Oxford: University Press, 2003, p. 159-165).

Directive 2003/109 does not provide that for persons who are residing outside Member State permanent residence permit shall be preserved. However, paragraph 5 of Article 9 the Directive put an obligation on the Member State to provide for exceptions for renewal of permanent resident status for persons who lost it when leaving for residence in another State. However even when person has resided outside Member State for more than six years and there are no special circumstances, the Member State is not under the duty to consider him/her as permanent resident.”

This case illustrates that Directive 2003/109 will be used by residents and non-citizens of Latvia in different contexts in comparison to the Western Europe. It also illustrates that the courts are well equipped to deal with complicated cases when, for instance, claimants refer to Directives for which the transposition period has not expired.

Chapter VIII

EU enlargement

Annotation to the Law on Ratification of Agreement on accession of new Member States to the European Union includes 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 possibility to rely on Accession agreement to introduce certain measures limiting free movement of persons.

Article 70 Immigration Law provides that for introduction of such measures the analysis of labour market shall take place. The procedure set for evaluation of situation in the labour market includes reports from Ministries of Interior and Welfare to the Cabinet of Ministers.

In September 2005 Ministry of Welfare invited EU Member States to reconsider transitional measures and lift the restrictions in May 2006. The reason for announcement was made because transition measures foster 'shadow economy' and illegal employment according to Communication's Department of the Ministry of Welfare. They also informed that it is not necessary for Latvia to introduce restrictions for free movement because workforce from the EU Member States does not threaten Latvian labour market. Moreover, mass influx from other Member States cannot take place due to low remuneration.⁹¹ For instance, in social care institutions and communications sector remuneration is lower than generally in the EU.⁹²

Until 1 October only 3028 persons with EU or another nationality have entered. 1614 of foreigners who have entered are family members of foreign nationals. 785 of those who entered were from Russia. Although the numbers are gradually increasing in total numbers they remain low.⁹³

During 2005 discussions continued on establishing data system on number of foreigners employed. Ministry of Welfare insists that focal point for the system shall be State Revenue Service. The information provided by employers would be precise and State Employment Agency could also rely on the data provided. However, this proposal is not accepted by the Revenue Service who argues that statistics is outside its field of competence.⁹⁴ The discussions continue.

Currently there are four local data basis maintained by State Employment Agency, State Revenue Service, OCMA and Ministry of Welfare. Exchange of information takes place in the form of official correspondence and there is no online collaboration. Therefore, in certain cases information overlaps while in other there might be discrepancies. OCMA is working on establishment of system with Land Register and Register of Enterprises which would make it easier for foreigners to apply for residence permits. The need for closer co-operation is very acute.

91 "LM aicina ES dalībvalstis atcelt ierobežojumus darba tirgum", National News Agency *LETA*, 23.09.2005.

92 "LM: ES valstu darbaspēks neapdraud Latvijas darba tirgu", National News Agency *LETA*, 5.08.2005.

93 "Viesstrādnieki", National News Agency *LETA*, 18.10.2005.

94 "Rosina veidot Latvijā nodarbināto ārzemnieku uzskaites sistēmu", National News Agency *LETA* 19.01.2005, "Iecerēts veidot Latvijā nodarbināto ārzemnieku uzskaites sistēmu", National News Agency *LETA*, 24.02.2005.

Chapter IX Statistics⁹⁵

General information

The number of foreigners who have entered Latvia has not arisen significantly – only by 1000 permits. The tendencies are the same in comparison with statistics of 2002 and 2004 when numbers within two years increased by 836 persons. Within a year the number of foreigners who received residence permits in Latvia in total numbers was 3000. Most often residence permits have been issued in cases of family reunification, studies and work but permanent residence permits – to former non-citizens who have acquired citizenship of another State.⁹⁶ For instance, the number of employed foreigners in Latvia in 2005 in comparison with 2004 has risen by 54%.

Most often residence permits have been requested by Estonian and German citizens. 16% of residence permits have been issued to Estonian citizens while 4% to Lithuanians who are still working in Latvia without work permits.

During period of 1 May 2003 until 30 April 2004 5286 have received permanent residence permit, 5469 temporary, while after joining EU 5874 permanent and 6328 temporary residence permits have been issued. Steadily decrease of visas issued has taken place. Thus in period 1 May 2002-30 April 2003 146044 visas were issued, after joining EU 131 106 visas.⁹⁷

The number of asylum seekers decreased from 30 in 2002 to 5 in 2003 and 7 in 2004. In 2005, however, 20 persons asked for asylum but nobody was granted the status because of insufficient reasons or the procedures are ongoing. Asylum seekers came from Somalia (7), Iraq (6), Russia (3), Belarus (2), Japan (1), Moldova (1).

Since Latvia has joined the EU 12 million people have crossed the border, i.e. increase by 2 million. Border regime violation cases have not increased. Most of violators come from Moldova and Ukraine. Usually those stopped are 859 but during 2005 only 341. Since EU citizenship the number of persons not allowed in Latvia has decreased. Illegal immigration is mainly from Ukraine, Belarus, Georgia.

Most of EU citizens residing in Latvia are: Lithuanians 2598, Estonians – 736, Germans – 447, Polish – 262, UK – 220.⁹⁸

Number of foreigners with residence permits⁹⁹

	1.01.2002	1.01.2003	1.01.2004	1.01.2005	1.07.2005	1.01.2006
Temporary r/p	6676	6886	7512	7429	7695	8003
Permanent r/p	23 527	24 522	25 570	26 976	28 206	29 487
Total	30 203	31 408	33 082	34 405	35 901	37 490

Total: 35 865 which is 1.56% of foreigners of Latvian population (2 296 062).

95 Information obtained from the presentation of Maira Roze, Deputy Head of Citizenship and Migration Department, at the opening conference for the book „Demographic Situation: Present and Future”, Strategic Analysis Commission under auspices of the President of Latvia, 19.10.2005. Generally data from OCMA is used.

96 Par migrācijas tendencēm gadu pēc iestāšanās ES. National News Agency *LETA*, 2.05.2005. 2748 permits issued in 2004 while in 2003 – 1896 permits were issued.

97 National News Agency *LETA*, 2.05.2005.

98 “Pieaug legāli nodarbināto ārvalstnieku skaits”, news portal www.DELFI.lv, 25.01.2006.

99 “Pēc iestāšanās ES iecielotāju skaits nav būtiski audzis”, news portal www.DELFI.lv, 27.04.2006.

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Basis for issuing temporary residence permits (01.07.2005 for 7659)

Basis	Number
Spouses of Latvian citizens	1884
Spouses of Latvian non-citizens	976
Parents of Latvian non-citizens	515
Students	563
Business	788
Work	1499
Other	1344

Citizenship of applicants for temporary residence permit

Country	Number
Russia	2433
Ukraine	937
Lithuania	699
Belarus	499
Germany	294
The USA	293
Estonia	236
Israel	179
The UK	153
Finland	149

Dynamics of temporary residence permits issued for the first time

Year	Number
2000	2437
2001	2212
2002	2154
2003	1896
2004	2748

EU, EEZ and Swiss nationals holding temporary residence permits

Year	Number
2003	1592
2004	2074
01.01.2005	2060
01.07.2005	2255

Employment sectors of EU citizens (on 01.05.2005)

Sector	%
Processing industry	14%
Construction	6%
Energy, gas and water supply	1%
Education	13%
Agriculture and forestry	5%
Immovable property, science, IT	13%
Services	4%
Transport, connections	2%
Trade	12%
Hotels	4%
Finances	2%
Other	24%

It shall be noted that generally in 468 cases foreigners have not indicated the branch in which they will be working. However, the most popular are processing industry, wholesale trade, trade, repair of home

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electronics, car and motorcycle repair. The same results were acquired by questionnaire of State Employment Agency addressed to employers. The results show that top ten most popular professions in the beginning of 2005 were: shop assistant, auxiliary worker, car mechanic, construction worker, truck driver, wood-processing operator, driver, security guard, fish handler (zivju apstrādātājs), cook.¹⁰⁰

Citizens of EU States in Latvia

Country	Number
Denmark	134
Estonia	236
Finland	149
France	59
Germany	294
Italy	57
Lithuania	699
Poland	111
Sweden	118
The UK	153

Basis for acquisition of permanent residence permit (01.07.2005, 28 206 persons)

Basis	Number
Repatriates	1369
Family members of repatriates	337
Spouses of Latvian citizens	3046
Spouses of Latvian non-citizens	1270
Spouses of foreigners	105
Children	1827
Foreigners who were Latvian non-citizens	19 944
Other	308

Citizenship of permanent residence holders

Country	Number
Russia	21 777 (78%)
Lithuania	1 773
Ukraine	1 602
Belarus	1 130
Estonia	466
The USA	171
Germany	120
Poland	118
Armenia	117
Israel	100

Numbers of *asylum seekers* remain low. During 1998-2005 only 158 persons were seeking asylum and 8 persons granted refugee status. Asylum seekers are coming mainly from CIS (Russia – 37, Azerbaijan – 13, Georgia – 10; Armenia – 9) and a few from Afganistan (10).

Naturalization

During 2005 5 Lithuanian and 1 Estonian citizen completed naturalization and acquired Latvian citizenship.¹⁰¹

100 “LM: ES valstu darbaspēks neapdraud Latvijas darba tirgu”, National News Agency *LETA*, 5.08.2005.

101 Information provided by Information Centre of the Naturalization Board, 27.01.2005.

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Estimated figures of Latvian inhabitants abroad

Country	2003	2004	2005
The UK	n/d	9070 (1)	9170
Denmark	62	n/d	1055 (2)
France	6 (3)	n/d	
Lithuania	n/d	n/d	25/250 (4)
Estonia	44	12	n/d
Ireland 1)	4160	1206 (5)	15 855 (6)
2)	1230	6266	13103 (7)
Portugal	231 (9)	n/d	n/d
The Netherlands	n/d	n/d	Approx. 100
Malta	n/d	n/d	28
Germany	1258	1296	n/d
Greece	n/d	n/d	500-1000 (10)
Hungary	4	0	n/d
Slovenia	7	2	n/d
Belgium	n/d	n/d	367
Czech	40	n/d	n/d

n/d – no data

- (1) data from 1 May 2004- 31 December 2004, citizens of Latvia comprise 7% from total number of registered EU citizens
- (2) from 1 January 2005 with residence permits
- (3) statistics are not kept on par time work permits for students
- (4) temporary residence permits issued in connection with work contracts/Latvian citizens living in Lithuania
- (5) data until 31 April 2004
- (6) altogether from 2000-2004
- (7) altogether from 2000-2004 1) work permits 2) social protection numbers allowing to qualify for social protection and/or is registered as tax-payer
- (8) number of residence permits
- (9) Latvian citizens residing/holders of residence permits
- (10) data from Latvian embassy in Greece

Number of Latvian citizens abroad – 37 018 (an estimate to be verified). Number of Latvian non-citizens abroad – 1 772 (an estimate to be verified)

Taking into account that there might be migrants who have not registered with competent authorities it is estimated that about 40 000-50000 Latvian inhabitants are working in the EU. Of these 15 000-20 000 went to Ireland. According to the data of the Ministry of Economy most Latvia's guest workers abroad work in Ireland, Great Britain and Germany. In all, about 5% of Latvia's active workforce have left the country. Most of Latvians left country 3 to 6 years before Latvia joined the EU.¹⁰²

Trends

It is estimated that a number of Latvian inhabitants will drop and after 30 years according to Eurostat only 1 800 00 people will be living in Latvia. According to public opinion polls:¹⁰³

- 26% of Latvian population consider working in Europe
- 58% in the age group 18-24 are considering working in Europe
- 77% would work in Europe due to financial considerations
- 78% of secondary school children consider to leave Latvia
- 30% support and 44% are not supportive to foreign workers in Latvia

102 "Latvians emigrate to Ireland due to low wages and poor quality of life in Latvia", National News Agency *LETA*, 19.01.2006

103 Opinion polls conducted by SKDS and "Latvijas reitingi" as quoted by Maira Roze, Deputy Head of Citizenship and Migration Department, at the opening conference of the book "Demographic Situation: Present and Future", 19.10.2005.

Chapter X Social security

Relationship between 1408/71 and 1612/68

Social security system in Latvia is not based on residency but on principle of payment of social security contributions. The *Law on Social Insurance* (OG No.274-276 21.10.1997 with amendments until OG No.51 31.03.2005) 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 all persons under 15 years of age employed in Latvia are subjects of the Law. Article 6 identifies categories of persons which shall be subject to specific kind of insurance. The Law has been amended on 17 March 2005 to include reference to Regulation 1408/71. According to amendments the new category of beneficiaries has been introduced in Article 1: person who is employed by employer of another EU or EEA Member State and who in accordance with Articles 13-17 of the Regulation 1408/71 is subject to Latvian laws. Article 6 has been supplemented and provides that employer of another Member State and a person to whom in accordance with Articles 13-17 of the Regulation 1408/71 Latvian laws apply can agree on the status of employee on basis of which s/he will pay obligatory contributions. It can be done in the status of either as employee or in status of internal employee for external employer. The information on choice shall be provided for State Revenue Service. The choice will result in differences for entitlement to benefits, for instance, accident at work benefit.

The *Law on Support for Unemployed and Job Seekers* (OG 80 29.05.2002 as amended until 3.03.2005) provides that persons who are not Latvian citizens or non-citizens, persons who have not acquired permanent residence permit and persons who have not acquired temporary residence and are not Latvian citizens, non-citizens or spouses of permanent residence holders have the right to benefit from measures for unemployed in accordance with Regulation 1408/71 (Article 2). However, job-seekers are not mentioned. Article 15 defined persons who can acquire status of job seeker, i.e., Latvian citizen, non-citizen, person with permanent residence permit or holder of temporary residence permit who is spouse of Latvian citizen, non-citizen or permanent residence holder or has acquired temporary residence permit because of acquisition of alternative status in Latvia. Therefore, status of job-seeker is exclusive and is not accessible for most of temporary residence holders resident in Latvia.

SOLVIT coordination centre, which deals with disputes arising within common market, has dealt with one complaint of Latvian citizen. He was working in Belgium and paid taxes for his daughter born after 1 May 2004 who was living in Latvia. He was denied child care benefit by Belgian social security authority on the grounds that family is residing in Latvia. Belgian SOLVIT centre has intervened to settle the dispute.¹⁰⁴

Judicial practice

On 22 December 2005 the Constitutional Court adopted judgement in relation to the *Law on State Social Benefits*.¹⁰⁵ The case concerned payment of social benefit in case of death of one of parents (social maintenance benefit). The facts of the case were the following. Father of Latvian citizen in 1999 started business in Russia. In order to reside and conduct business in Moscow he annulled his registration of the place of residence in Riga in 2001. In 2004 he died in Moscow and his son lost his supporter. Mother of son asked for social benefit upon the fact of loss of supporter which was refused because permanent residence of father should have been in Latvia at least 12 months before the death.¹⁰⁶ Administrative Court which referred the case to the Constitutional Court asked whether this provision is compatible with Article 110 of Constitution providing that

104 "Latvijas SOLVIT centrs atrisinājis sūdzību par autotransporta reģistrēšanas problēmām", National News Agency *LETA*, 21.02.2005.

105 Case No. 2005-19-01, available at [http://www.satv.tiesa.gov.lv/LV/Spriedumi/19-01\(05\).htm](http://www.satv.tiesa.gov.lv/LV/Spriedumi/19-01(05).htm), accessed 1.02.2006.

106 Another requirement set by the provisions was satisfied, i.e., a person should have lived in Latvia for at least 60 months.

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“The State shall protect and support marriage – union between a man and a woman, the family, the rights of parents and rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence”.

During proceedings at the Constitutional Court representative of Parliament referred to EC case law (not specified in judgement) and emphasised that non-contributory payments are closely linked with social environment of each State. Thus, entitlement to such benefits might be dependant on the duration of residence in respective State.

The Court referred to the case-law of the European Court of Human Rights providing that States shall be guided by interests of society when implementing social and economic policies. The Court also referred to provisions of the Convention on the Rights of the Child and the Law of Protection of the Rights of the Child. The Court noted that provision is not in force since 3 November 2005 and concluded that provision is unconstitutional and shall be declared null and void, i.e., since 1 January 2003.

Chapter XI

Establishment, provision of services, students

Establishment and services

Establishment is generally regulated by the *Commercial Law* (OG No.158/160 04.05.2000). 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 lost legal force. On September 2005 the next group of normative acts lost their legal force.

The *Law on European Company* was adopted by Parliament on 10 March 2005 (OG No. 49 24.03.2005). It was possible to establish and register European Economic Interest Groupings (EEIGs) and European Public Limited Liability Companies (*Societas Europea*) since October 2004. On 28 April Register of Enterprises organized seminar on current issues in the EU competition law. Special attention was paid to topics as registration of *Societas Europea*.¹⁰⁷

During 2005 there were discussions on the need to make easier registration of self-employed persons and companies. The amendments in Commercial Law were adopted on 16 March 2006. The amendments provide that not only notary can certify the signature but also Register of Enterprises. Thus, Register will have access to the Register of Residents and to the data base of invalid identity documents. The amendments also rationalize information to be submitted for the registration.¹⁰⁸

Currently there are five EU practicing sworn advocates in Latvia – four from Germany, two from the UK.¹⁰⁹

Students

According to Article 45 of the *Law on Institutions of Higher Education*(OG No.179 17.11.1995 as amended until 23.08.2005)¹¹⁰ right to study in the institution of higher education and college is granted to each Latvian citizen, non-citizen as well as to persons who hold permanent residence permit. For the rest Article 83 is applicable. It provides that foreigners can enter institutions of higher education in accordance with the Law on Education and Law on Institutions of Higher education if they have certificate of secondary education, knowledge required for entry, sufficient command of language of education and s/he has paid tuition fee. Paragraph 1 of Article 83 in subsection 5 states, that in relation to tuition fees EU citizens and their children, who acquire education in Latvia, are subject to the same regulations as Latvian citizens and foreigners with temporary residence permits. Article 52 provides for general system of stipends and tuition fees. According to paragraph 1 State sets the number of students who will be financed by State budget. Further procedures shall be set by the Cabinet of Ministers. The rest of students shall pay tuition fee in accordance with contract with the respective institution.

Cabinet of Ministers has adopted Regulations No. 740 *on stipends* which were amended on 1 February 2005.¹¹¹ In order to qualify for stipend from State budget student shall pass all exams in time, acquire necessary number of credit points and shall not be employed or self-employed person according to the Law on Social insurance. The only exception is if a student is working as teacher or scientist in institution of higher education and scientific establishment as well as scientific, educational or medical institution which takes part in implementation of program of higher education. In addition general level of marks received, results of scientific performance (publications, participation in conferences) can be taken into account.

107 Legal weekly journal *Jurista Vārds*, 16 (371), 3.05 2005.

108 “Atvieglos komersantu un amatpersonu reģistrāciju UR”, news portal www.DELFI.lv, 16.03.2006.

109 Leonards Pāvils “Advokātu skaits tuvojas tūkstošim” [interview with Chairman of the Council of Sworn Advocates, Mr. Janis Grinbergs], legal weekly journal *Jurista Vārds*, 10 (413), 7.03.2006.

110 Available on http://www.llu.lv/llu_faili/dat_57_Augstskolu_likums_ar_iestradatiem_02-03-2006_grozijumiem.pdf (with amendments until 2 March 2006).

111 Adopted on 24 August 2004, amended by Regulations No. 94 available on <http://www.likumi.lv/doc.php?id=101248>, accessed 6.03.2006.

Minimum amount of stipends is 70 LVL (100 EUR) per month for first degree students, 80 LVL (114 EUR) for doctoral students. Additional stipends can be paid from the fund of stipends of higher education. Stipends are granted by the commission which shall be established in each institution of higher education. In case if two candidates are equally eligible according to Section 11 preference shall be given to disabled students, students who are poor, orphans, students who come from family with three or more children and students who have children themselves.

There are a number of conditions which make studies in Latvia unattractive for foreign students. First, they have to comply with admission requirements, including they have to prove command of Latvian language in accordance with requirements of centralised test on language upon graduation from secondary school. Although certain subjects can be taught in other languages, there are very few courses offered in foreign languages.¹¹² Most often students arrive in the framework of Socrates/Erasmus and HESP programs. University of Latvia this year hosted 170 students. 81 of those were exchange students (58 Socrates/Erasmus students). University has 49 bilateral cooperation agreements with universities in 22 countries. Mostly students come from Germany, Poland, Lithuania. Permanent students are from Sri Lanka, Syria and India who study medicine. In the framework of exchange programs students choose to study economics, management, philology and political science. 59 students are enrolled in studies in International economic and business administration academy. Most of them are from the USA (42), Belarus, Croatia, Russia, Lithuania, Uzbekistan, Poland, Ukraine, Israel. 5 students are from UK, India, Ukraine, Kazakhstan, Russia. The rest are from France, Germany, Finland and Poland who study for one semester. 53 foreign students are enrolled in studies at Riga Technical University – Kazakhstan, India, Pakistan, Syria, Sri Lanka, USA, Turkmenistan, Ukraine, Lithuania, Germany, Egypt, Russia, China, Moldova, Cameroon, and Lebanon, has been mentioned. Transport and Communications institute has hosted 30 foreign students from 12 countries. The rest of universities host approximately 10 or less foreign students.

Currently Parliament is discussing amendments to the Law of Higher Education Institutions (adopted in the second reading in the beginning of February).¹¹³

Recent legal literature

Anna Mihailova, “Societas Europae: Eiropas vai nacionālā komercsabiedrība?” [Societas Europae: European or National Company?] monthly legal journal *Likums un Tiesības*, No. 74, October 2005.

Ivonna Štrauhmane, “Mazākuma akcionāru un kreditoru aizsardzība sabiedrību reorganizācijā” [Protection of minority share holders and creditors in cases of reorganization of companies], weekly legal journal *Jurista vārds*, 20(375), 31.05.2005.

Charles Woolfson, Jeffrey Sommerss, “Brīva darbaspēka kustība būvniecībā: Eiropas Savienības ietekme Laval un partneri konfliktā ar Zviedrijas arodbiedrībām” [Labour Mobility in Construction: European Union Implications of the Latvian Construction Company “Laval un partneri” Dispute with Swedish Labour Unions], monthly legal journal *Likums un Tiesības*, No.74, October 2005.

112 However, there are few exceptions based initially on international agreements such as Stockholm School of Economics branch and Riga Graduate School of Law. Anita Kalmāne, “Ārvalstu studenti iecienījuši Latvijas augstskolas”, *Izglītība un Kultūra*, 26.09.2005

113 “Saeima otrajā lasījumā akceptē grozījumus Augstskolu likumā”, National News Agency *LETA*, 9.02.2005.

Chapter XII Miscellaneous

Studies, seminars, reports, legal literature (copies)

- Esmeralda Balode, Kristīne Bārdiņa, Ilze Kalniņa, Eiropas Kopienu tiesa: svarīgākais pēdējos divos gados [European Court of Justice: the most important cases during preceding two years], weekly legal journal *Jurista vārds*, 10 (365) 15.03. 2005, 11 (366) 22.03.2005.
- “Kā aizstāvēt cilvēktiesības, ja tās pārkāpj Eiropas Savienība?” [How to defend human rights if they are violated by the European Union?], interview with Richard Crowe, Head of European Public Law Department, European Law Academy, weekly legal journal *Jurista vārds*, 25 (380), 12.07.2005.
- Luzius Wildhaber, “Kā saskaņot pamattiesību aizsardzību Eiropā” [How to harmonize protection of fundamental rights in Europe], weekly legal journal *Jurista vārds*, 48 (403) 20.12.2005.
- Gaļina Žukova, “Case note: C-117/01 KB v. National Health Service Pensions Agency and Secretary of State for Health”, monthly legal journal *Likums un Tiesības*, No.65, January 2005.
- Gints Zadraks, “Direktīvas 93/13 EEK par netaisnīgiem noteikumiem patērētāju līgumos nepieciešama reforma” [Necessary Reforms to the Directive 93/13/EEC on Unfair Terms in Consumer Contracts], monthly legal journal *Likums un Tiesības*, No.68, April 2005.
- Kristīne Krūma, “Nepilsoņa statusa attīstīšana Latvijas tiesu judikatūrā” [Development of the Status of Non-citizen in the Case-law of Latvian Courts], monthly legal journal *Likums un Tiesības*, No.68, April 2005.
- Charles Woolfson, “Darba attiecības un darba vides drošība Baltijas valstīs: jauna starpdisciplīnu pieeja Eiropas Savienības kontekstā” [Labour Relations and Workplace Safety in the Baltic States: A New Interdisciplinary Approach in the Context of the European Union], monthly legal journal *Likums un Tiesības*, No.70 June 2005, nr.71 July 2005.
- Ivars Indāns, Maira Roze, “Latvijas migrācijas politika pēc Eiropas Savienības paplašināšanās” [Latvian migration policy after EU enlargement], in P.Zvidriņš (ed.), *Demogrāfiskā situācija šodien un rīt* [Demographic situation: present and Future], Strategic Analysis Commission under the Auspices of the President of the Republic of Latvia, Research papers No. 3(4)/2005, Zinātne Publishers, 2005 pp. 117-130
- Kristīne Krūma, “Trešo valstu pilsoņu brīvas pārvietošanās tiesības Latvijai saistošajos starptautiskajos līgumos” [Right to free movement of Third country nationals in international agreements binding on Latvia], in P.Zvidriņš (ed.), *Demogrāfiskā situācija šodien un rīt* [Demographic situation: present and Future], Strategic Analysis Commission under the Auspices of the President of the Republic of Latvia, Research papers No. 3(4)/2005, Zinātne Publishers, 2005 pp. 163-183

Particular issues raised by Commission

Possibilities to take into account service performed in another Member State

(see page 18 on Remuneration)

According to State Civil Service Board public service performed in another Member State will not be taken into account when calculating remuneration for the service in Latvia.¹¹⁴

The Law on Social Services and Social Assistance

(see page 16)

According to the Ministry of Welfare social services and social assistance is available to everybody who has permanent residence permit or similar status. Currently they are preparing amendments in order to include refugees and persons holding alternative status under provisions of Article 3. This will allow them to receive assistance to the level of minimal income. Amendments will also cover those who were subject to trafficking of human beings. They will qualify for social rehabilitation.

In relation to other groups of residents the law would not be applicable because they will not possess personal number which is granted only to citizens, non-citizens and persons with permanent resident status (persons with temporary residence having number being excluded). Thus, the law itself does not provide for residence requirements but only possession of personal number. This means that Latvian citizens will qualify for assistance even if they have not resided in Latvia for five years because they have the number.

Article 3 of Social services and assistance law covers also permanent residents of the EC which have been granted this status in Latvia, as well as EU, EEA, Swiss citizens who have permanent residence in Latvia.

According to the Ministry they view the law falling in the scope of Regulation 1612/68.

There have been no cases so far when EU, EEA or Swiss citizen would have made recourse to Article 3.¹¹⁵

114 Lawyer of State Civil Service Board, Inga Juhņēviča, 3 July, 2006.

115 Information provided by Anna Mihailova, lawyer at Ministry of Welfare. Unfortunately no confirmation of this interpretation was provided by neither by the Department of Social services and social assistance, not members of technical committee from Ministry of Welfare.