

REPORT
on the Free Movement of Workers
in Lithuania in 2005

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Abbreviations

EC	European Commission
ECJ	European Court of Justice
EEA	European Economic Area
EU	European Union
FIFA	Federation of International Football Associations
MOI	Ministry of Interior
MS	Member State
MSs	Member States
MSSL	Ministry of Social Security and Labour
SODRA	Social Insurance Fund
UK	the United Kingdom

General remarks

The political and public debate during 2005 as concerns movement of workers focused largely on labour emigration from Lithuania. The numbers of persons leaving the country permanently or for a period longer than 6 months has increased. Emigration from Lithuania is currently seen as the biggest non-military threat to the country, which even poses risks to investment (some companies considering withdrawing from Lithuania due to the lack of labour force) and raises the issue of the need to “import” workers from the neighbouring states.

General labour migration tendencies of third country nationals to Lithuania are at the same time showing an increase: the number of requests to employ third country nationals almost doubled in 2005 in comparison with the previous year. The number of work permits issued to third country nationals has been largest ever in the period between 1995-2005.

During the year, intensive legislative developments related to the legal status of EU/EEA Member States nationals (hereafter – EU nationals) and other foreigners have taken place, in order to transpose the Directive 2004/38/EC to the existing legislation. This work has resulted in a package of Draft Amendments and Supplements to the Law on Legal Status of Aliens No. IX-2206 of 29 April 2004 (hereafter – Aliens’ Law of 2004)¹. This package was submitted to the Parliament for adoption by the end of the year.

The Aliens’ Law of 2004 remains the main legal act regulating the legal status of foreigners in the country, including EU nationals. The law sets forth a privileged treatment to the EU nationals as compared to all other foreigners in the country. The Aliens’ Law of 2004 introduces for the first time ever a Residence Permit for a Citizen of the European Community Member State, issued to EU nationals and their family members, who enjoy the free movement of persons. Though the provisions of the Aliens’ Law of 2004 mention only the EU nationals, its final provisions envisage the application of the principle of free movement of persons also to nationals of the EEA and Switzerland and their family members.

6789 foreigners declared their residence in Lithuania in 2005 (5418 of them were EU/EEA nationals). 1292 applications for EC residence permits (temporary stay) were submitted in 2005 by EU/EEA nationals and all were satisfied (in comparison with 950 received from May-December in 2004). 112 requests for issuance of permanent residence permit were submitted by EU/EEA nationals and 110 decisions were adopted (all positive) during the year. At the same time, 14084 EU/EEA nationals declared their departure from Lithuania for the period over 6 months in 2005. Among these, the number of Lithuanian citizens leaving for residence in the EU MSs was 9841 (4723 male and 5118 female). The official statistics still reflects very limited number of Lithuanians leaving for other Member States, because many Lithuanian citizens do not declare to the authorities the reason for departure from the country and many still continue to work illegally abroad. As concerns arrival of third country nationals for other purposes than labour, e.g. protection seekers, they constitute only some 5% of all foreigners arriving annually to Lithuania.

Lithuania did not change its position during the year as concerns the application of equivalent restrictions in response to transition arrangements by the old Member States. It does not apply restrictions on the access of EU nationals to its labour market. Generally, the labour migration to Lithuania for a number of years has been rather low and the annual quota established for labour permits has been hardly filled. The fact that a large number of Lithuanian workers have been seeking employment abroad and the labour force in Lithuania itself is lacking, it is unlikely that Lithuania would introduce any restrictions whatsoever as concerns access to the labour market. There have been even positions expressed locally that opening of the labour markets by the old Member States might even result in more people leaving from Lithuania.

Progressive developments in eliminating the obstacles to the free movement of workers have been taking place with the legislative developments particularly in the area of recognition of professional qualifications (new legal acts for barristers and guides, as well as preparation of the Draft Law on Professional Qualifications to transpose the Directive 2005/36/EC); in the area of establishment –

¹ Published in „State News“ No. 73-2539, 2004, available in English at: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=243642.

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allowing dentist doctors to provide services without Lithuanian licence; ensuring access to health care for EU nationals with temporary residence permits; abolishing fees for issuance of visas for third country nationals, who are family members of the EU nationals; adopting detailed legislation to regulate the issuance of residence permits and assessing the marriages of convenience, guarantees for workers on missions; preparing extensive draft legislation on foreigners for the transposition of the Directive 2004/38/EEC.

However, there are also remaining problems that pose or may create specific problems for EU nationals exercising their freedom of movement in the Republic of Lithuania. In particular, situation of EU nationals' family members, who are third country nationals, remains unclear, in particular as concerns the process of issuing the visas, thus problematic; some of requirements for issuance of residence permits are of concern (e.g. requirement of proof of accommodation in addition to sufficient resources, the later also to be proved and fixed at one average monthly salary, which may be considered contrary to the Directive 2004/38/EC); regulation of access to Lithuanian public service for persons performing technical and other functions falling out of strict definition of public service remains unclear; EU nationals are legally little protected from expulsion and detention as their situation is not made different from all other foreigners; some taxation related issues remain discriminatory; language proficiency requirement continues to be applied in certain spheres of private sector, including maritime sector; restrictions exist in the sports' sector. Noteworthy, that a number of the above mentioned problematic issues will be resolved, in particular as concerns the transposition of the Directive 2004/38/EC, once the Draft Law on Amendments and Supplements to the Aliens' Law is adopted (expected in the first half of 2006).

In administrative practice, the situation could generally be characterized by the fact that in many areas covered by the free movement of workers, there is still a lack of awareness, experience and knowledge within the responsible government bodies, administrative capacities still lacking and it will take time during the first years of the membership to start properly applying the EC rules. Furthermore, the awareness on the European Court of Justice (hereafter – ECJ) jurisprudence on these issues in the judicial system remains low and there have been no cases on this decided by the administrative courts. Legal or other literature on the subject matter continues to be lacking, but interests of academicians are slowly starting to emerge.

Chapter I

Entry, residence and departure

Entry

Texts in force

The main provisions on conditions of entry, residence and departure of EU nationals are contained in the Aliens Law of 2004. Chapter V of the Aliens Law of 2004 is devoted to the “Legal status of nationals of EU member states in the Republic of Lithuania”. Article 97 of the Aliens’ Law of 2004 provides that:

“An alien who is a national of one of the Member States of the EU may be admitted to the Republic of Lithuania and stay therein for a period not exceeding three months in any calendar half-year from the first day of entry into the Republic of Lithuania. Such an alien seeking employment or intending to engage in any other lawful activity in the Republic of Lithuania may stay in the Republic of Lithuania for another three months”.

There are two grounds for refusing entry of EU citizens to Lithuania in accordance with the Aliens’ Law of 2004:

First, if he is not in possession of a valid travel document, unless otherwise established by the international treaty of the Republic of Lithuania, legal act of the European Union or the Government of the Republic of Lithuania;

Second, his stay in the Republic of Lithuania would constitute a threat to public security, public policy or public health.

There are no other legislative restrictions on the free entry of the EU nationals to the territory of the Republic of Lithuania.

Given that EU nationals, entering or exiting Lithuania do not require any specific entry or exit authorisation and are not registered by the authorities while in the territory of Lithuania (unless they apply for a residence permit or declare their place of residence, or declare about their departure from the country), there is no data as to how many of them entered/exited Lithuania in 2005. They appear in the official statistics only if they stay for longer period than 3 months, once a residence permit is issued and the obligation to declare the place of residence emerges (refer to Residence section below).

During 2005 only one new by-law relevant to the entry of foreigners was adopted. The Government Resolution No. 436 of 20 April 2005 concerning the approval of rules for the establishment and management of a list of foreigners who are prohibited to enter the Republic of Lithuania (hereafter – Rules on Prohibition of Entry)² is a technical document, which regulates the management of information as concerns persons who are prohibited from entry to Lithuania. The aim is to ensure that no foreigner who is undesirable in the country is allowed to enter Lithuania. The list is managed by the Migration Department, while persons are included in this list on a basis of the Migration Department decision to prohibit foreigners’ entry to the Republic of Lithuania. These decisions are adopted on the basis of Article 133 of the Aliens’ Law (regulates situations when prohibition can be issued). One of the grounds under this article is the threat to national security or public order. For the purpose of including the person into the list of those prohibited entry due to national security or public order concern, the Resolution requires to submit the documents confirming the applicability of this ground together with motivated conclusions of competent institutions (Paragraph 8 of the Resolution).

As there is no specific reference to exclude EU nationals from the scope of application of this document, it is presumed that it applies to them on equal terms as to all other foreigners.

2 Published in “State News” No. 52-1747, 2005.

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Draft legislation

Draft Law on Amendments and Supplements to the Aliens' Law of 2004³ was prepared during 2005 and was pending adoption by the end of the year. As concerns the entry of EU nationals this draft law will be amending Article 7(2) of the Aliens' Law to include among the conditions for entry to the Republic of Lithuania the possession of European Community citizen residence card or EU residence card.

Judicial practice

There was no judicial practice on entry of EU nationals to Lithuania during 2005, as reported by the administrative courts.

Miscellaneous

Though the Aliens' Law of 2004 provides for grounds to refuse the entry of EU nationals to the Republic of Lithuania in certain cases, in practice the administrative bodies see it difficult to apply at the point of entry (except for the possession of entry document, which is checked upon by the border police). Thus these grounds could only be applied (if necessary) at the point when EU national applies to the authorities for the issuance of a residence permit (after 3 months or 6 months for workers/job seekers respectively). According to the statistics of the State Border Guard Service at the MOI, 257 Latvian nationals and 33 German nationals were refused entry to Lithuania in 2005.

Though not confirmed officially, but observed in practice, sometimes foreigners of Asian or African origin who look differently from Europeans are frequently stopped at the border control point of Vilnius airport and their entry documents are checked with more scrutiny than others. This practice may naturally affect also EU nationals of non-European origin and may amount to discrimination on account of ethnic origin.

Residence

Texts in force

EU citizens who intend to live in Lithuania for a period longer than 3 months must obtain fixed-term residence permits under Chapter V of the Aliens Law of 2004. However, persons employed under the labour contract or intending to engage in lawful activities or to receive services in Lithuania are exempted from this obligation for additional period of 3 months during any calendar half-year from the first day of entry into the Republic of Lithuania. This provision might be amended with the adoption of the Draft Law on Amendments and Supplements to the Aliens' Law of 2004 (refer below for the amendments proposed).

During these 6 months the EU national-worker is not required to register. There is an intention of the authorities to apply the registration requirement; however no specific legislation/rules have been adopted so far. For the time being, only those foreigners, including EU citizens, who have residence permits already issued, are obliged to declare their place of residence while in Lithuania in accordance with the Law on Declaration of the Place of Residence, No. VIII-840 of 2 July 1998. Pursuant to paragraph 2 of Article 4(1) of the Law the obligation to declare the place of residence extends to foreigners who have residence permits in Lithuania and arrive to live in Lithuania/depart from Lithuania for a period of more than 6 months, or change their place of residence in Lithuania. Declaration shall take place within 7 working days from emergence of a duty to declare or 7 days prior to departure from the country. Declaration is performed at a local migration service. The transposition of the Directive 2004/38/EC on this point is currently only partial, because the declaration order approved by the Order No. 563 on Declaration of the place of residence and maintenance of declaration data of 2 December 2002 of the Minister of Interior needs to be amended.

3 Draft Law (No. XP-1062) is available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.show_doc_l?p_id=269495&p_query=

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Article 99 of the Aliens' Law introduces a residence permit of a national of the European Community Member State (hereinafter - EC residence permit). Once the EU citizen and his family member submit an application for issuing or extension of the EC residence permit, such application must be processed within one month from the date of its receipt (in comparison with 6 months applied to all other foreigners). Worthwhile mentioning is that the EC residence permits are issued only if the intentions to stay in Lithuania by the EU citizen are based on any of the following grounds:

- 1) employment in the Republic of Lithuania;
- 2) engagement in lawful activities in the Republic of Lithuania;
- 3) provision of services in the Republic of Lithuania;
- 4) receiving services in the Republic of Lithuania;
- 5) residing in the Republic of Lithuania, having a legal source of subsistence;
- 6) obtaining education, studying at an educational establishment, taking part in an internship programme, undergoing in-service training, taking part in vocational training;
- 7) living with the family.

Job seekers are covered only in so far as they can stay without a residence permit in the country for a period of up to 6 months.

According to Draft Law on Amendments and Supplements to the Aliens' Law of 2004, the list of grounds of EU nationals residence in Lithuania will slightly be changed (refer to the details below).

Family members of EU citizens have the right to be issued the EC residence permit when they enter Lithuania accompanying EU citizen or for staying in the same household. EU nationals can submit applications for issuance or extension of the EC residence permit either to the diplomatic/consular authority abroad or directly to the migration service at territorial police authority in Lithuania (differently from other foreigners). EC residence permits are issued by the Migration Department to the Ministry of Interior of Lithuania (hereafter – Migration Department).

EC residence permit is valid for up to five years if the EU citizen is staying in Lithuania for employment, engagement in lawful activities, having a legal source of subsistence or living with the family. In case of provision of services, the validity of the EC residence permit would be fixed at a period of service provision, but for no longer than 5 years. Similar rule is applied also in case of receipt of services – only for a period of receipt of services, but for no longer than 5 years. For students, EC residence permits are issued only for a period of one schooling year. Family members of EU citizens obtain residence permits for the same period as EU citizens. According to Draft Law on Amendments and Supplements to the Aliens' Law of 2004, the period of validity of EC residence permits will be slightly changed (refer to the details below).

Article 104 of the Aliens' Law of 2004 provides for the issue of Permanent Residence Permit to the EU national. According to this Article, "an alien who is an EU Member State national and his family members, if he has been lawfully resident in the Republic of Lithuania for the last 4 years, shall be issued the EC permanent residence permit". This rule is more favourable than that stated in the Directive 2004/38/EEC (five years of residence before permanent residence permit is granted), thus no specific rules are provided for workers or self-employed persons who have reached the age for entitlement to an old age pension or early retired persons. According to Draft Law on Amendments and Supplements to the Aliens' Law of 2004, there will be a discretionary right introduced to allow granting permanent residence right to persons, who resided for a period of less than 4 years in exceptional cases (refer to the details below).

Such a residence permit is valid for 10 years and is extended upon the expiry of the period. Notwithstanding, if the EU citizen is away from Lithuania for a period exceeding 6 consecutive months, this may be a ground for refusing the EC permanent residence permit (except when absence from Lithuania is related to performance of military or alternative service). However, there is no exception allowing one absence of a maximum of 12 consecutive months for important reasons, such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country, as required by the Directive 2004/58/EEC. This may create problems for EU nationals in these situations resulting in refusal to issue a permanent residence permit. Pursuant to the Draft Law on Amendments and Supplements to the Aliens' Law of 2004 this provision is proposed for amendment and if adopted, will solve the potential implementation problem. It will provide that

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“six month period of absence in the country per year may be a ground to refuse permanent residence right, except when such absence from Lithuania is related to serious reasons”.

There is a possibility for EU citizens and their family members to stay in Lithuania following the termination of employment relations or other lawful activities in Lithuania. EU citizens may exercise the right to stay for residence in Lithuania within 2 years from the emergence of the right. EC permanent residence permit would be issued to such a citizen if he has reached pensionable age (60 years for females and 62 years and 6 months for males) and if he has lawfully resided in Lithuania for the last 2 years and has been employed for the last 12 months. The Aliens' Law of 2004 in its Article 105 further specifies other rules related to the right of stay following the termination of employment relations or other lawful activities:

- a) if such termination is due to incapacity to work, EU citizen shall be issued the EC permanent residence permit if he has resided in Lithuania for the last 2 years;
- b) EU citizens, who terminated employment relations or other lawful activities in Lithuania due to incapacity to work by reason of an accident at work or a recognised occupational disease shall be issued the EC permanent residence permit without requiring to meet the conditions of residence for the last 2 years and previous employment for the last 12 months. This Article will be repealed, if the Draft Law on Amendments and Supplements to the Aliens' Law of 2004 is adopted. This is not reasonable, given that there is a need to provide for a possibility to remain following active employment in circumstances regulated by Article 17 of the Directive 2004/38/EC.

Once EU citizen acquires the right to stay, his family members acquire this right together with him. In situations of family members of EU citizen, who died without having acquired the right to stay in Lithuania, they shall be issued the EC permanent residence permit if the deceased EU citizen had lived in Lithuania for the last 2 years or if he died in an accident at work or from a recognised occupational disease. According to Draft Law on Amendments and Supplements to the Aliens' Law of 2004, Article 101 of the Aliens' Law of 2004 will be supplemented with a more extensive list of situations when residence right in Lithuania can be retained by a family member of the EU national (refer to the details below).

The Aliens' Law of 2004 mentions several grounds for refusing to issue/extend and for revoking the EC residence permit to EU citizen or his family member. These include the situations when:

1. his stay (also of his family member) in Lithuania constitutes a threat to public security, public policy or public health (the grounds relating to public health shall not apply if after the issue of the first EC residence permit to EU citizen and his family member the person fell ill or became incapable of work);
2. EU citizen has been refused issue of the EC residence permit, his family members who intend to join him in Lithuania shall also be refused the issue of the EC residence permit, except in cases when they are entitled to enter Lithuania on other grounds;
3. EC residence permit issued to EU citizen is revoked; the EC residence permit issued to his family members residing together shall also be revoked, except in cases when they are entitled to stay in Lithuania on any other ground.

It is not sufficiently clear from the law, if a general rule concerning withdrawal of a permanent residence permit would apply to EU nationals also. If indeed so, then constraints for EU nationals may arise if they stay outside Lithuania for a period exceeding 6 months, as this could be a ground to terminate a permanent residence permit (Paragraph 1(4) of Art. 54). If indeed applied in practice, it would be in contradiction with the Directive 2004/58/EEC rules, providing for a period exceeding two consecutive years. However, through the pending amendments this issue is likely to be addressed. In accordance with the Draft Law on Amendments and Supplements to the Aliens' Law of 2004 permanent residence right might be lost if EU citizen departs from Lithuania for a period longer than two years in a row.

More detailed regulation of the issuance of residence permits to foreigners, including EU nationals, is provided by the orders of the Minister of Interior, implementing the Aliens' Law of 2004. Two orders were adopted in 2005:

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- 1) The Order No.IV-329 on Approval of Rules for the Issuance of Temporary Residence Permits to Foreigners in the Republic of Lithuania and Assessment of Marriages of Convenience was adopted on 12 October 2005 (hereafter – Order on Temporary Residence Permits);
- 2) The Order No.IV-445 on Approval of Rules for the Issuance of Permanent Residence Permits to Foreigners in the Republic of Lithuania and Assessment of Marriages of Convenience was adopted on 21 December 2005 (hereafter – Order on Permanent Residence Permits).

The Order on Temporary Residence Permits regulates the submission and examination of the application for the residence permit, as well as supporting documents to competent institutions; decision making on the issuance of permit; issuance of the permit; annulment of the permit; competence of institutions involved in acts described in the Order; assessment of marriages of convenience (the later aspect is analysed under the Chapter V. of this Report). There are two main stages in the process of issuing a temporary residence permit: first – the submission of the application for residence permit and decision making on it; second – in case of positive decision – submission of documents for issuance of a residence permit. The foreigner, who was granted residence on the basis of the Migration Department decision needs to request the issuance of the permit within 3 months, after which the decision terminates unless serious reasons for not requesting are established. If it is the extension of the residence permit, extension should be requested at least two months before the expiry date of the valid permit. The Order requires personal submission of application to the local migration service unless the person is represented by duly authorised representative. Application can be submitted in any of the three languages: Lithuanian, English or Russian. In addition to the application, the following documents are also required (paragraph 13 of the Order):

- a) valid travel document (its validity should be by three months longer than the residence permit requested);
- b) documents confirming foreigner's right to obtain/extend a residence permit;
- c) document confirming that the foreigner has sufficient resources to sustain his stay in Lithuania;
- d) document confirming that the foreigner has a place to live under ownership or rent or use agreement, if the later is concluded for the period of not less than the period of validity of the residence permit and is registered in accordance with the laws; or the confirmed commitment of the natural or legal person to provide him with a place to stay for the period of permit validity (the later requirement may be problematic because of the duration of the rent agreement requested and it contains unnecessary restriction given that the sufficient financial resources are already required)
- e) health insurance (it is not in line with the Directive 2004/38/EC, which allows the requirement of health insurance in this case only from students).

EU national who might apply for temporary residence permit on the basis of engagement in lawful activity would be eligible for the permit if he (paragraphs 17.9-17.11):

- a) registers a company or organisation in Lithuania as owner or co-owner, who owns at least 10 percent of establishment capital or voting rights and his stay in Lithuania is necessary to ensure the fulfilment of the aims of the company or organisation;
- b) is the head of company/organisation registered in Lithuania, when the primary aim of his stay in Lithuania is employment in the company/organisation;
- c) wishes to engage in lawful activity, which does not require a work permit or other permit.

There is no distinction in the application of the rules stated for EU nationals as compared with other foreigners.

The Order on Permanent Residence Permits similarly regulates the submission and examination of the application for the residence permit, as well as supporting documents to competent institutions; decision making on the issuance of permit; issuance of the permit; annulment of the permit; competence of institutions involved in acts described in the Order; assessment of marriages of convenience (the later aspect is analysed under the Chapter V. of this Report). The Order requires that the foreigner indicates in the application for a residence permit if he is not ill with a disease posing a threat to the health of population (Section II, paragraph 6). The legal consequences of applying this provision in

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practice are not clear, but if applied in practice as a ground for discrimination, it would be in contradiction with the Directive 2004/38/EC.

There are two main stages in the process of issuing a permanent residence permit: first – the submission of the application for residence permit and decision making on it; second – in case of positive decision – submission of documents for issuance of a residence permit. The same requirement as for the temporary residence permit – to submit a document confirming the possession of sufficient resources to sustain living in Lithuania (Section II, paragraph 11.3; Section VII, paragraph 70.5) – may create problems of implementation of the Directive 2004/38/EC, which requires not to subject the right of permanent residence to the conditions applied to temporary residence permits. Also, according to the Order the application for permanent residence permit shall be examined within 6 months (Section II, paragraph 23), while the Aliens' Law of 2004 provides for one month as a privilege to EU nationals in comparison with other foreigners; this inconsistency needs to be addressed.

Draft legislation

Draft Law on Amendments and Supplements to the Aliens' Law of 2004 was pending adoption by the end of 2005. It contains several important proposals amending the provisions concerning the stay of EU nationals in the territory of Lithuania. The following could be mentioned:

- 1) Article 97(1) of the Aliens' Law will provide only for a general provision that the EU nationals may stay in Lithuania for a period of three months. The earlier provision concerning the extension of stay without any formal procedures for workers or job seekers (additional 3 months) will be deleted from the law.
Firstly, the grounds for residence (Article 101 of the Aliens' Law) will no longer relate residence grounds to intention, but to a factual situation and will include only four grounds in comparison with currently recognised seven ones. The grounds for residence of EU national will be the following:
 - a) worker or self-employed person;
 - b) has sufficient resources for himself and for his family members to reside in Lithuania and has a valid health insurance (the condition of health insurance in this case is questionable in the context of Directive 2004/38/EC);
 - c) student, school pupil, probationer, participant of qualification or vocational training courses and has sufficient resources for himself and for his family members to reside in Lithuania and has a valid health insurance.
 - d) family member of the EU national.
- 2) Secondly, the provision on residence grounds will also include the situation of family members of Lithuanian citizens, who are not EU nationals, but are also entitled to EC residence permit.
- 3) A new residence permit will be introduced – EC residence card for a family member of EU national, who is not an EU national. This card will entitle such family member to reside in Lithuania. The Order on issuance, extension and termination of such a residence permit will be approved by the Minister of Interior. No such order was pending adoption by the end of 2005.
- 4) The period of EC residence card validity for the family members of the EU national will be fixed at 5 years or the period of EU national residence permit validity, if it is shorter than 5 years.
- 5) A certificate confirming the right of permanent residence of the EU national in Lithuania will be introduced, while the right of permanent residence of the EU national family member will be confirmed by the newly introduced EC permanent residence permit, which is being issued for a period of 10 years and afterwards extended. The Order on issuance of the certificate will be approved by the Minister of Interior. No such order was pending adoption by the end of 2005.
- 6) The list of situations when a residence right in Lithuania can be retained by a family member of the EU national will appear in the Aliens' Law to include situations in case of:
 - a) death of EU national or his departure from Lithuania when family member holds citizenship of EU member state and complies with requirements for residence right;
 - b) death of EU national when family member does not hold citizenship of EU member state, but resided in Lithuania for a period of at least 1 year as family members before the death of EU national;

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- c) annulment or termination of marriage or partnership agreement when family member holds citizenship of EU member state and complies with requirements for residence right;
 - d) annulment or termination of marriage or partnership agreement when family member does not hold citizenship of EU member state, but the marriage/partnership lasted for no less than 3 years, out of which at least 1 year in Lithuania, or if a family member takes care of the children of the EU national, or the marriage was terminated due to fault of the EU national;
 - e) death of EU national or his departure from Lithuania – residence right will be retained to his children irrespective of their citizenship and the other parent, who takes care of them, until the completion of formal education;
- 7) Discretionary right will be introduced to allow granting permanent residence right to EU nationals or their family members, who resided in Lithuania legally for a period of less than 4 years in exceptional cases.
 - 8) Revocation of EC residence permit will no longer be possible on the basis of threat to the health of the population, as well as the competence for revoking the residence right will be with the administrative court.
 - 9) Declaration of the place of residence will be performed after three months of stay (currently – six months) and while performing declaration, the document proving the right to reside in Lithuania will need to be submitted. Additionally, the Law on Declaration of the Place of Residence is also proposed to be amended to specifically mention that “EU/EEA national residing in the Republic of Lithuania for a longer period than 3 months within a half a year is obliged to declare his place of residence, as well as when he leaves the country for a period of more than 6 months” (Article 4(1) of the Law). Also, the amendments to the Aliens’ Law of 2004 indicate that EU nationals and their family members are exempted from the obligation to declare their place of residence in Lithuania for the first 3 months of their stay within a period of half a year.
 - 10) The Aliens’ Law will be supplemented by a general provision applicable to all foreigners, including EU nationals in Lithuania, which states that “freedom of movement and residence of foreigners in the Republic of Lithuania may be restricted on the basis of threat to national security, public order or health of the population, in accordance with the order determined by the laws” (Article 3(5) of the Draft Law).

Judicial practice

No cases concerning free movement of EU nationals as concerns residence in Lithuania have been submitted or decided in the administrative courts during 2005.

Miscellaneous

Out of a total of 27 495 foreigners residing in Lithuania as of end of 2005, 723 EU/EEA nationals were residing in Lithuania with permanent residence permits, while 1651 - with EC residence permits (staying temporary). Annex II to this Report provides breakdown of data according to country.

6789 foreigners declared their residence in Lithuania in 2005 (5418 of them were EU/EEA nationals). Annex I to the Report provides a breakdown of data of foreign nationals who declared their residence in Lithuania in 2005 (according to citizenship and age). According to the data of the Migration Department (21 March 2006), during the period of 1 January – 31 December 2005, 1292 applications for EC residence permits were received from EU/EEA nationals in Lithuania. None of them was refused the issuance of residence permit. 112 requests for EC permanent residence permit were received in 2005 from the EU/EEA nationals. 110 decisions were adopted to issue such permit, none was refused. Detailed statistics on the residence permits is provided in Chapter IX. Statistics of this Report.

Concerning the fees for issuance of residence permits, EU nationals enjoy better conditions than all other foreigners in the country. For instance, for issuance of temporary residence permit the fee to EU nationals is 10 litas (approx. 3 Euro), in comparison – issuance of ID card to Lithuanian national costs the same. However, all other foreigners have to pay 250-450 Litass (approx. 73-130 Euro, depending on the ground on which the permit is issued) for issuance of temporary residence permit. For permanent residence permits, EU national needs to pay a fee of 50 Litass (approx. 15 Euro), while all

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other foreigners – 250 Litas (approx. 73 Euro). In comparison, national passports to the citizens of Lithuania are issued for a fee of 60 Litas (approx. 17.5 Euro). Thus fees applied to EU nationals for issuance of residence documents may be considered proportional to those applied to the nationals. There are plans to amend the Government Resolutions: No. 1135 of 16 November 1994 on the Consular Tariffs and No. 1458 of 15 December 2000 on State Fees, to fully align its provisions with Article 25 (2) of the Directive 2004/38/EC.

Departure

Texts in force

There are no special provisions in the aliens' legislation regulating departure of EU nationals. Under the Aliens' Law of 2004 (Art. 125), departure of the foreigner (including EU national) may be ordered in case when:

- 1) his visa was cancelled (comment: as EU nationals are not required to obtain visas, this ground seems not to be applicable in their case, but might affect the family members, who are third country nationals);
- 2) his temporary residence permit or permanent residence permit was revoked;
- 3) he is staying in the Republic of Lithuania after the expiry of validity of the visa (same comment applies as for point 1);
- 4) he is staying in the Republic of Lithuania after the expiry of the temporary residence permit;
- 5) he entered into the Republic of Lithuania lawfully, but is staying without possessing a temporary or a permanent residence permit where he is obliged to possess one;
- 6) he has been staying in the Republic of Lithuania for a period exceeding the period of visa-free stay in a state set by an international treaty of the Republic of Lithuania, an EU legal act or the Government of the Republic of Lithuania (same comment applies as for point 1).

Aliens' Law of 2004 separately states grounds for expulsion (Art. 126), i.e. a foreigner can be expelled when:

- 1) he failed to comply with the requirement obliging him to depart from the Republic of Lithuania within a set time period;
- 2) he entered into or is staying in the Republic of Lithuania unlawfully;
- 3) his stay in the Republic of Lithuania constitutes a threat to public security or public policy.

The Law further provides that while taking a decision on expulsion of the foreigner, certain circumstances should be taken into account, including (Art. 128):

- 1) the period of his lawful stay in the Republic of Lithuania;
- 2) his family relationship with persons resident in the Republic of Lithuania;
- 3) his social, economic and other connections in the Republic of Lithuania;
- 4) type and extent of dangerousness of the committed violation of law.

Pursuant to the Draft Law on Amendments and Supplements to the Aliens' Law of 2004 there will be some guarantees introduced against expulsion of the EU nationals (refer below for details).

The Order of the Minister of Interior No. IV-429 on Adoption of Decisions concerning Ordering Departure, Expulsion, Return or Transit through the Territory of Lithuania of a Foreigner and the Rules of Implementation of Such Decisions (hereafter – Order on Expulsion of Foreigners) of 24 December 2004, regulates expulsion of foreigners in detail and is also applied to EU nationals on the same conditions as to all other foreigners to be expelled from the country. The Order provides that a specific mark is stamped on the foreigners' document about the order to leave the country, while the foreigner should leave the country within 15 days from the handover of the decision to him (paragraphs 26 and 27.2). In case of expulsion, a mark is inserted on a travel document with or without a ban to enter (paragraph 52.2). If this would be applied in practice to the EU nationals, it would be in variance with the Directive 2004/38/EEC, which prohibits imposing bans on entry in the context of expulsion decisions. The Rules on Prohibition of Entry of 20 April 2005 further state that the “data

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about the foreigner may be eliminated from the list on the basis of the decision of the Migration Department, if the later receives a motivated written request from the foreigner to eliminate his data from the list”.

Decision on expulsion shall be executed immediately, unless the reasons for suspending expulsion exist. Lack of specific rules regulating departure and expulsion of EU nationals makes them vulnerable to expulsion under broader grounds than provided in the Directive 2004/38/EEC, which allows expulsion of EU nationals and their family members who have a right to permanent residence only on account of serious grounds of public policy or public security. Furthermore, the period given to the alien for departure under the Aliens’ Law of 2004 (15 days from receipt of decision) does not comply with the rules of the Directive, which requires not less than 1 month to be given to leave the territory. As there was no practice of expelling EU nationals in accordance with these new rules during 2005, no final conclusion can be made as to assessment of practical compliance with the Directive. However, the Draft Law on Amendments and Supplements to the Aliens’ Law of 2004 seems to address this issue (refer below for details).

Also problematic could be the issue of detention of EU nationals, as no specific rules are provided and they would be detained under the same grounds/conditions as all other foreigners in the country. Article 113 of the Aliens’ Law of 2004 mentions the following grounds for detention of foreigners (without any exceptions to EU nationals):

- 1) in order to prevent the alien from entering into the Republic of Lithuania without a permit;
- 2) if the alien has illegally entered into or stays in the Republic of Lithuania;
- 3) when it is attempted to return the alien to the country from where he has come if the alien has been refused entry into the Republic of Lithuania;
- 4) when the alien is suspected of using forged documents;
- 5) if a decision on expulsion of the alien from the Republic of Lithuania has been taken;
- 6) in order to stop the spread of dangerous and especially dangerous communicable diseases;
- 7) when the alien’s stay in the Republic of Lithuania constitutes a threat to public security, public policy or public health.

Draft legislation

No special draft legislation on departure or expulsion was pending by the end of 2005. However, some of the proposed amendments through the Draft Law on Amendments and Supplements to the Aliens’ Law of 2004 relate to expulsion. If adopted, it will be ensured that EU national is not expelled from Lithuania unless there is a risk to national security or public order, if he resided in Lithuania for no less than 10 recent years or is a minor (supplement to Article 106 of the Law). Secondly, it contains the supplement to the Aliens’ Law, stating that “the decision obliging the EU national and/or his family members to leave the Republic of Lithuania shall be executed within the period of 1 month from the date of receipt of decision”. Currently, this important provision is only contained in the implementing legislation. While current provision that “the decision obliging the foreigner to leave the Republic of Lithuania shall be executed within 15 days from the receipt of decision by the foreigner” is in conflict with the provisions of the Directive 2004/38/EC. The amendment, if adopted, would address the current incompliance with the Directive as concerns expulsion of the EU nationals.

Miscellaneous

According to the data of the Migration Department (21 March 2006), no decisions on expulsions were issued in respect of the EU nationals during 2005. The number of EU/EEA nationals who departed from Lithuania in order to take up residence in another country was 471 during 2005 (in comparison with 149 during 2004). Annex II to the Report provides a breakdown of data of persons who declared their departure from Lithuania in 2005 for the period over 6 months (according to the citizenship and age).

Chapter II

Access to employment

Equal treatment

New version of the Labour Code of the Republic of Lithuania (hereafter – Labour Code),⁴ approved on 22 June 2004, regulates all labour relations in the country. It states a general principle of non-discrimination in paragraph 1(4) of Article 2, among the principles applying to the regulation of relations under the Code: “equality of subjects of labour law irrespective of their gender, sexual orientation, race, national origin, language, origin, citizenship and social status, religion, marital and family status, age, opinions or views, political party or public organisation membership, factors unrelated to the employee's professional qualities“. Furthermore, paragraph 1(1) of Article 96 contains a prohibition of refusing employment to a person on the grounds specified in Article 2, mentioned above.

However, Article 13 of the Labour Code provides for legal capacity to engage in employment only to the citizens and permanent residents of Lithuania:

“All citizens of the Republic of Lithuania shall have equal legal ability to exercise labour rights and undertake labour obligations (legal capacity in labour relations). Foreign nationals and stateless persons, who are permanently residing in the Republic of Lithuania, shall have the same legal capacity in labour relations in the Republic of Lithuania as its’ citizen. Laws may establish cases of exception from the above provision.”

This Article has not been specifically amended since Lithuania’s entry to the EU, however, the EC Regulations (e.g. Regulation 1408/71/EEC) are directly applicable in Lithuanian legal system and the labour laws of the Republic of Lithuania are thus applied only in as much as they do not conflict with the Regulations. This allows ensuring the equal treatment of EU nationals with regard to concluding labour contracts and conditions of work.

The definition of the employee is set forth in Article 15 of the Labour Code: “a natural person possessing legal capacity in labour relations and employed under labour contract for remuneration”. The concept of a labour contract is further contained in Article 93 of the Labour Code: “employee undertakes to perform work of a certain profession, speciality, qualification or to perform specific duties in accordance with the work regulations established at the workplace, whereas the employer undertakes to provide the employee with the work specified in the contract, to pay him the agreed wage and to ensure working conditions as set in labour laws, other regulatory acts, the collective agreement and by agreement between the parties”. Though the Code does not link the definition of those employed with the citizenship or permanent residence in Lithuania, it is likely that this definition covered only those mentioned.

No significant legislative developments occurred in this field during 2005.

Language proficiency requirement

The Law on State Language of the Republic of Lithuania No. I-779 of 31 January 1995⁵ establishes that heads, civil servants and officials of the state and municipal institutions, police, law enforcement services, communications, transport, health care, social security and other institutions providing services to the residents must be proficient in state language in accordance with the categories of state language proficiency, established by the Government (Art. 6). Furthermore, these heads, civil servants and officials, as well as heads of commercial services must ensure that services to the residents are provided in state language (Art. 7).

4 Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=169334.

5 Available in Lithuanian at: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=170492&p_query=&p_tr2=.

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Language proficiency requirement is further regulated by the Government Resolution No. 1688 on Approval and Implementation of State Language Proficiency Categories (further – Language Proficiency Resolution), adopted on 24 December 2003 (entered into force on 1 March 2004). Language Proficiency Resolution establishes three categories of language proficiency and the list of positions to which each category applies:

- 1) First category (e.g. proficiency to fill in standard document forms, communication in short sentences, preparation of short non-official texts, etc.) is applied to persons employed in service provision, production, commercial and transport services, if they have to communicate with persons while executing their functions and/or fill in simple document forms (e.g. drivers, cloak-room attendants, sellers, waiters and other commercial employees or employees performing economy or technical functions);
- 2) Second category (characterised by for instance, ability to communicate and prepare documents on topics of daily life and work, describe events, experience and reasons, etc.) is applied to persons employed in education, culture, health care, social security and other sectors, public servants in categories B and C, if they constantly communicate with persons and/or fill in the forms of documents while performing their functions (e.g. employees of educational and cultural establishments, teachers and others);
- 3) Third category (e.g. ability to formulate long and complex sentences and understand concrete and abstract texts, prepare official documents, explain positions, fluently communicate on various topics, etc.) is applied to the heads of state and municipal institutions, companies and organisations, public servants of category A, lecturers, aviation specialists and specialists controlling flight security, specialists of maritime and internal waters' transport responsible for transportation of cargo and passengers (captain of the ship, port captain), etc.

The lists provided above and other provisions of the Language Proficiency Resolution indicate that state language proficiency requirement is applied not only to persons employed at public service, but also in certain spheres of the private sector. Also, Lithuanian language proficiency requirement is applied in the maritime sector (see below for details). This may pose additional obstacles for employment of other EU nationals, who may not be proficient enough in Lithuanian language. However, application of exceptions to this requirement in some examples of concrete professions is worthwhile mentioning in this context. For instance, as concerns advocates, a new version of the Law of the Bar No IX-2066 of 18 March 2004⁶ provides that advocates who are EU nationals are exempted from language proficiency requirement (Art. 64(8)). Second example concerns language proficiency requirement in practicing doctor's profession. The Law on Medical Practice of Doctor, No. I-1555 of 25 September 1996, as amended on 18 December 2003 (entered into force on 1 May 2004) and following this amendment called the Law on Medical Practice, includes a special article concerning doctors – EU, EEA and Swiss nationals. Article 5 of the Law establishes that doctors who are EU, EEA and Swiss nationals may provide temporary services in Lithuania even if they do not have a licence. Thus language requirement is no longer, at least explicitly, provided. It would be worthwhile though to include a special exemption concerning language proficiency requirement for doctors who are EU, EEA and Swiss nationals in the Order of the Minister of Health Care No. 396 on Approval of Rules on Licensing of Medical Practice of 27 May 2004, as amended on 15 March 2005. This Order in its' paragraph 13.1 states that the State Service for Accreditation of Health Care Supervision at the Ministry of Health Care (responsible institution for issuing the licences) may request the applicant for a licence to provide documents, attesting Lithuanian language proficiency in accordance with the order established by the legal acts. If doctors, who are EU nationals will indeed apply for a licence, they may also fall under this requirement.

6 Available in Lithuanian at: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=260055&p_query=&p_tr2=

Recognition of Professional Qualifications and Diplomas

Texts in force

The texts in force are largely in line with the EU general and sectoral directives for recognition of professional qualifications and diplomas. As concerns EU/EEA nationals, the following legal acts harmonize Lithuanian legislation with the EC Directives of the General Recognition System:

1. *Government Resolution No. 535 of 3 May 2004 concerning the Approval of rules on mutual recognition of University diplomas, other diplomas, certificates and similar documents confirming the acquired qualification and issued in the EU, EEA or Switzerland, pursuing to work under the regulated profession or practice a regulated profession in the Republic of Lithuania and the approval of a list of courses of a certain structure.* The order generally complies with the General System Directives 89/48/EEC, 92/51/EEC, 1999/42/EC and 2001/19/EC. The Ministry of Social Security and Labour is assigned as a coordinating body for recognition of regulated professions, while a list of designated competent institutions responsible for recognition of qualifications and diplomas is also provided, in line with the requirements of Article 9(1) of the Directive 89/48/EEC. The functions of an information centre, referred to in Article 9(3) of Directive 89/48/EEC, are assigned to the Lithuanian Centre for Quality Assessment in Higher Education. The order approved by the Resolution sets forth the requirements for submission of applications for recognition of qualifications and supporting documents. Several recognition systems are established by the Order: (a) recognition system for university diplomas; (b) recognition system for other diplomas; (c) recognition system for diplomas when the applicant is already a holder of a certificate or has received corresponding education and training; (d) recognition system for certificates; (e) special recognition system for other qualification documents. Decisions on recognition shall be adopted within 4 months from the date of receipt of all documents, as required by the EC legislation. The Order sets the adaptation period for no longer than 3 years and an aptitude test. The Order provides for derogation from the applicant's right to choose between an adaptation period and an aptitude test with regard to professions whose practice requires precise knowledge of national legal system, where the provision of advice and/or assistance concerning the law of the Republic of Lithuania is an essential and constant aspect of the professional activity. In this case an aptitude test shall be applied (Paragraph 6.3. of the Order). All decisions concerning recognition of professional qualifications are motivated. With regard to a remedy against a negative decision or the absence of decision, the Order sets a two-tier system of appeals: (a) submission of appeal to a specially assigned Commission of Appeals and further, (b) to the administrative courts.

A few incompliances with the general system directives and the areas for improvement could be mentioned:

- (a) as concerns conditions for recognition, the Order sets a higher burden of proof on the applicant if compared with the Directive 92/51/EEC (Art. 3) (the person is required both to hold the diploma and also to have practiced the profession full time for two years during the previous 10 years - two requirements are applied cumulatively and not interchangeably); the same applies to special recognition system for other qualification documents: attestation of competence and proof of qualifications are applied cumulatively and not interchangeably.
- (b) as concerns recognition system for certificates it is in variance with procedural requirements for applying the derogations from the right to choose between the adaptation period and the aptitude test pursuant to the Directive 92/51/EEC (Art. 14) (according to the Order competent authority reserves the right to assign one or another, if the applicant fails to present appropriate document);
- (c) the issue of recognition in a Member State of professional qualifications or diplomas obtained in a third country is not sufficiently regulated in Lithuanian legislation, as well as the procedures for examination of diplomas, certificates and other evidence of formal qualifications obtained outside the EU, as required by the Directive 2001/19/EC. Nor it regulates the situations where diplomas, certificates and other evidences of formal qualification do not correspond to the names listed in this Directive.

2. *Order of the Minister of Social Security and Labour No. A1-128 of 14 May 2004 concerning Coordination of recognition of documents confirming professional qualifications transposes the Directive 89/48/EEC.* It assigned a coordinator within the Ministry of Social Security and Labour (hereafter –

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MSSL) for recognition of mentioned documents and certain functions to the Lithuanian Labour Market Education Council in the area of recognition of professional qualification documents.

3. *Order of the Minister of Social Security and Labour No. A1-186 of 16 July 2004 concerning the Approval of order for issuance of certificates about the professional experience and duration, as defined by the European Parliament and Council Directive No. 1999/42/EEB of 7 June 1999* assigned the function for issuing such certificates to MSSL. It also sets the requirements for submission of application and supporting documents for issuance of the certificate and the deadlines for its' issuance.

4. *Order of the Minister of Social Security and Labour No. A1-229 of 6 October 2004 concerning the Approval of order for examination of appeals, submitted by persons disagreeing with the decisions of competent institutions responsible for recognition of documents certifying professional qualifications, and formation of the appeals' commission* sets the composition of the Appeals' Commission, its functions and rights, organisation of work and the order for examination of appeals and decision making. Decisions on appeals are adopted by the State Secretary of the MSSL on the basis of Commission's conclusion. Decisions shall be adopted within 30 days from the date of receipt of appeal. It may be further appealed to the administrative courts within 1 month from the receipt of the decision.

A few new legal acts were adopted in this field in 2005. Firstly, the Government Resolution No. 60 concerning the Approval of the Order on Evaluation and Academic Recognition of Qualifications acquired abroad and providing access to higher education was approved on 21 January 2005. The qualification acquired abroad is recognized under this Order as corresponding to the qualification provided in Lithuania, if the assessment of qualification shows no substantial differences with the requirements for acquisition of the same qualification in accordance with the laws of Lithuania (Section I, paragraph 2). The assessment of qualifications is carried out by the Lithuanian Centre for Quality Assessment in Higher Education, while recognition is carried out by the Ministry of Education and Science of Lithuania. Assessment process shall take not longer than 3 months from the date of submission of documents (may be extended in some cases for additional period of up to 3 months). Decision on recognition of qualification shall be taken within one month from the receipt of documents. This Order was supplemented on 7 June 2005 by the Order of the Minister of Education and Science to include a list of additional documents to be submitted with the request to assess/recognise the qualification. It determines that in case it is not possible to translate documents to Lithuanian language, it can be submitted in English. Also, additional document was adopted on the same date to regulate in more detail the organisation of supplementary courses, as well as organisation of qualification exams. Secondly, the Order of the Minister of Social Security and Labour No. A1-71 of 10 March 2005 approved the form of application for recognition of professional qualification documents obtained in the EU/EEA Member States and Swiss Confederation.

As concerns Sectoral Recognition System Lithuanian legislation is also largely in compliance with the Sectoral directives of the EU. On 21 December 2005, a new Order of the Minister of Health Care No. V-1003 was adopted to regulate the Approval of Instructions for Recognition in the Republic of Lithuania of diplomas, certificates and other official documents proving the professional qualification acquired in the EU, EEA or Switzerland with the purpose of employment in Lithuania under regulated profession, falling within the competence of the Ministry of Health Care. The following legal acts are in force and transpose the provisions of sectoral directives:

- a) *Doctors* - Order of the Minister of Health Care No. V-43 of 2 February 2004 concerning the Approval of Instructions for Recognition in the Republic of Lithuania of diplomas, certificates and other official documents proving the professional qualification of a Doctor acquired in the EU, EEA or Switzerland;
- b) *Nurses and midwives* - Order of the Minister of Health Care No. V-41 of 2 February 2004 concerning the Approval of Instructions for Recognition in the Republic of Lithuania of Diplomas and other official documents proving the professional qualification of a general practice nurse acquired in the EU, EEA or Switzerland; as well as Order No. V-42 of 2 February 2004 concerning the Approval of Instructions for Recognition in the Republic of Lithuania of Diplomas and other official documents proving the professional qualification of a midwife acquired in the EU, EEA or Switzerland;

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- c) *Dentists* - Order of the Minister of Health Care No. V-40 of 2 February 2004 concerning the Approval of Instructions for Recognition in the Republic of Lithuania of Diplomas and other official documents proving the professional qualification of a doctor odontologist acquired in the EU, EEA or Switzerland;
- d) *Veterinary surgeons* - Order of the Director of the State Food and Veterinary Service No. B1-989 of 23 December 2003 concerning the Approval of Instructions for the Requirements in Training of Veterinary Doctors and the Recognition in the Republic of Lithuania of Diplomas and other official documents proving the professional qualification of a Veterinary doctor; as well as Order No. B1-417 of 30 April 2004 concerning the Approval of the Requirements on the Assessment and Recognition of professional qualifications of a Veterinary doctor acquired in third countries;
- e) *Pharmacists* - Order of the Minister of Health Care No. V-39 of 2 February 2004 concerning the Amendment of the Order No. V-655 of 5 November 2003 concerning the Approval of Instructions for Recognition in the Republic of Lithuania Diplomas, certificates and other documents certifying professional qualification in Pharmacy acquired in the EU, EEA or Switzerland;
- f) *Architects* - Order of the Minister of Environment No. D1-131 of 25 March 2004 concerning the Approval of Instructions for Recognition in the Republic of Lithuania Diplomas, certificates and other official documents proving the professional qualification of an architect acquired in the EU, EEA or Switzerland;
- g) *Barristers* – EU nationals are able to practice advocate profession in Lithuania pursuant to the Law on the Bar of 18 March 2004. It includes two separate sections on EU nationals: one - regulating the provision of services in accordance with Article 50 of the EC Treaty and the other one - the right of establishment for advocates (Section XII and XIII respectively). According to the Law, a lawyer, intending to provide services in Lithuania, must submit to the Lithuanian Bar the document certifying his qualification as a lawyer issued by a competent body of the EU Member State. Lithuanian Bar may request additional documents, if the documents supplied by the lawyer are not sufficient to take a decision on his qualification (Art. 63(7)). It is not clear though, which other documents may be required. Lawyers who intend to provide the services on a permanent basis (exercising their right of establishment), are registered at the Lithuanian Bar. On 12 April 2005, the Order of the Minister of Justice No. 1R-111 concerning the Approval of Instructions for Recognition in the Republic of Lithuania of documents proving the professional qualification of a lawyer acquired in the EU, EEA or Switzerland was adopted with a view of transposing the Directives: 89/48/EEC, 98/5/EC and 77/249/EEC. The Order establishes a requirement to pass the qualification exam in order to assess the qualifications as a lawyer in order to practice in Lithuania.
- h) *Guides* - Order of the Director of the State Tourism Department to the Ministry of Economy No. V-95 of 23 December 2005 concerning the Approval of Instructions for Recognition in the Republic of Lithuania Diplomas, certificates and other official documents proving the professional qualification of a guide acquired in the EU, EEA or Switzerland.

A number of other legal acts were adopted to complement the above ones during 2005, including the order on evaluation and recognition of qualifications obtained abroad and giving access to higher education; formation of Appeals' Commission and regulation of its' operation; rules on admission of foreigners to state higher education establishments; statute of the Lithuanian Centre for Quality Assessment in Higher Education and others.

Draft legislation

Law on Recognition of Professional Qualifications, which will transpose the provisions of the new Directive 2005/36/EC, was in the process of drafting by the end of the year.

Also, draft legislation was pending by the end of the year on recognition of professional qualifications to implement the Directive 89/48/EEC as concerns conservators, social workers, ergo therapists, dieticians, physiotherapists, dental hygienists, dental assistants, pharmatechnicians, biomedical technicians, teachers, pre-school teachers and masseurs.

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Judicial/administrative practice

During the year, only one appeal concerning recognition of professional qualifications was submitted by EU national to the Appeals' Commission at the MSSL (concerning recognition of doctor's psychiatrist qualification). The appeal was rejected (professional qualification acquired was not sufficient for recognition due to the short preparation period, which did not correspond to the period applied for preparation of doctors in Lithuania). No appeals were submitted to the administrative courts in 2005, thus there is no judicial practice in this area.

Miscellaneous

As concerns Lithuanian citizens who seek employment in other Member States of the EU, they can freely enter labour markets of Ireland, the United Kingdom and Sweden, because these countries do not apply transitional arrangements restricting access to employment for citizens of new Member States of the EU. Lithuania does not apply transitional arrangements to nationals of any of EU Member State in the field of employment.

To facilitate the implementation of free movement of persons in Lithuania and outside it, EURES bureaus operate in labour exchanges of Vilnius, Kaunas, Klaipeda, Siauliai, Panevezys, Alytus, Utena and Taurage cities.

During the year, problems were experienced with recognition of diplomas of doctor's assistant, as qualifications acquired by them were not recognised for a nurse. Also, problems existed concerning certificates confirming professional qualification. For instance, an architect of British nationality who is working in Lithuania already for 8 years has not been able to present a certificate confirming his experience for the past 5 years. Also, Lithuanian nationals, who reside in another EU Member State and seek the document confirming their professional qualifications, are not able to obtain such certificate, because it is issued only by the competent institutions of the country of origin.

Statistics below represents the volume of recognitions of professional qualifications during 2005. As could be seen from the data, from 16 applications submitted for recognition in 2005, only one was from non-Lithuanian EU national, all others were submitted by Lithuanian nationals (one with dual nationality).

One of the main practical problems in this field indicated by the Coordinator of the System for Recognition of Professional Qualifications seems to be still lacking competence and experience of responsible Lithuanian government officials. The smooth operation of the system requires complex coordination among various institutions/bodies involved, there is high rotation of staff, and no information systems exist that would enable to see a full picture of the situation throughout the country. The lists of regulated professions are available at: www.profesijos.lt

No.	Professional qualification	Number of applicants	Citizenship of the applicant	Country of acquisition of professional qualification	Decision
1	Dental technician	1	Lithuanian	Belarus	Recognised
2	Community nurse	2	Lithuanian	Belarus	Recognised
3	Nurse	2	Lithuanian	Belarus	Recognised
3	Masseur	1	Lithuanian	Poland	Recognised
4	Dentist doctor	1	Belarusian	Belarus	Recognised
5	Doctor anaesthesiologist reanimatologist	1	Lithuanian	Belarus	Recognised
6	Doctor of inner disease	1	Lithuanian	Russia	Recognised
7	Medical doctor	2	Lithuanian	Russia, Belarus	Recognised
8	Doctor surgeon	1	Lithuanian	Belarus	Delayed
9	Midwife	1	Lithuanian	Ukraine	Delayed
10	Doctor psychiatrist	1	Lithuanian	Belarus	Rejected, appealed to the

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					Appeals' Commission
11	Veterinary surgeon	2	Lithuanian, Lithuanian/ German (double nationality)	Belarus	Recognised
	Total	16			

Free movement in the maritime sector

Maritime issues are mainly regulated by the Law on Trade Navigation No. I-1513, adopted on 12 September 1996⁷. By virtue of an amendment to the Law of 3 July 2003, a new provision concerning the composition of the crew was introduced. It states that “not less than 2/3 of the crew of the ship (including the master of the ship and chief assistant to the master) should be composed of nationals of the EU Member States or permanent residents of the Republic of Lithuania”. However, according to Article 11(2) of the Law the post of the master of the ship and his chief assistant remain reserved to the citizens of Lithuania. No changes were introduced in this field during 2005. As concerns the language requirement in the maritime field, the Law on Safety of Navigation No. X-116 of 15 February 2005 (new version of the law)⁸ requires that pilots of ships sailing by regular passage to ports of Lithuania shall know the Lithuanian language, if the captains have permission to sail without a locman. But this requirement would not be applied if the ship is lead by a locman (Art. 12(2)).

Free movement in the sports sector

Prior to the accession to the EU, no specific provisions concerning possibilities of EU nationals to become members of national football clubs and participate in national championships existed. The Rules on Organisation of Football Matches, adopted by the Football Federation in April 2004 set a quota of three foreigners. The issue of making more favourable conditions to EU nationals in comparison with other foreigners was discussed following the entry to the EU in 2004. Amendments to the above mentioned Rules of 2004, allowing three EU nationals and three other foreigners to take part in national championships were pending in 2005. While there were no restrictions for registration for national championship. As concerns basketball, national federation is entitled to restrict the number of foreigners playing in national clubs. For instance, only four foreigners are allowed to play in the clubs participating in the Lithuanian basketball championship (Latvians and Estonians do not fall under the definition of foreigner in this context); up to three foreigners – in Lithuanian women basketball championship; up to two foreigners – in the national championship. As reported by the Lithuanian Basketball Federation (information of 20 March 2006), these restrictions are based on the mutual agreements between the clubs, but not on legislation.

Concerning the rule on locally-trained players, there should be no significant problems in Lithuania, given that mainly due to financial reasons, Lithuanian football clubs are still largely composed of locally trained players and foreigners are rather an exception, unlike in the basketball teams.

Possible constrains to the freedom of movement in the sports' sector as concerns particularly basketball, can occur due to the requirement that the player must obtain a so called Letter of Clearance in order to move from one club to another. This rule is embodied in the Rules Regulating the Transfer of Players of 3 April 2003 (approved by the Conference of Lithuanian Basketball Federation). According to the rules, if the player wants to move from one club to another he should obtain a Letter of Clearance from his club. Before this Letter is obtained the player is not entitled to play in the other team by the end of the current season. The only reason for refusing the issuance of such a Letter is a valid contract between the club and the player. The Letter provides the confirmation that the player

7 Available in Lithuanian at: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=252188&p_query=&p_tr2=.

8 Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=251901&p_query=&p_tr2=.

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has fully repaid the organisation and has no valid contract. The scope of these payments is not clear because the author of this Report does not have access to the contracts concluded between the clubs and the players. However it may constitute a hindrance to the free movement of players. Furthermore, when the player moves from sports' school/club to the basketball club, the club has an obligation to compensate the school for the preparation of the player. This rule remains valid for up to four years from the graduation from sports' school.

The same rule concerning the transfer of players applies in football sport. Even though this may be considered to represent an obstacle to the free movement of sportsman in the EU, the mentioned rules derive from the provisions of FIFA rules, thus unlikely to be changed in Lithuania.

Chapter III

Equality of treatment on the basis of nationality

Texts in force

Concerning the payment for work, the legislative guarantee is Article 186(3) of the Labour Code stating that “the wage of an employee shall depend upon the amount and quality of work, the results of the activities by the enterprise, agency or organisation as well as the labour demand and supply on the labour market. Men and women shall get an equal pay for equal or equivalent work”.

The Labour Code provides for a right to information and consultation for the employees of EU enterprises or groups of enterprises. According to Article 47 (6) they could receive information and consultations through the European Labour Councils.

In compliance with the Regulation 1612/68/EEC, EU nationals have equal access to professional unions with Lithuanian nationals according to the Law on Professional Unions No. I-2018 of 21 November 1991, as amended on 3 November 2003,⁹ to enable “all persons, legally working in the territory of the Republic of Lithuania under labour contract and on other grounds established by the laws to freely join professional unions and participate in their activities. Notwithstanding, the Civil Code of the Republic of Lithuania of 18 July 2000 (approved by the Law No. VIII-1864),¹⁰ as amended in 2004, retains a provision that founders of a professional union may be Lithuanian citizens or permanent residents of Lithuania only (Art. 2.38(3) of the Code). EU nationals can also join the labour councils (bodies, representing employees and defending their professional, labour, economic and social rights, as well as representing their interest), as the Law on Labour Councils No. IX-2500 of 26 October 2004¹¹, does not place any restrictions on that. However, there is no statistics on how many EU nationals or other foreigners, if any, are members of professional unions or labour councils.

EU nationals may enter into labour relations on the same conditions as Lithuanian nationals and would be entitled to the same unemployment benefits, provided they comply with requirements for receiving such benefits. As concerns taxation, EU nationals working under labour contract are paying the same social insurance taxes, as Lithuanian citizens. In addition to that, there is an exemption under the Aliens' Law of 2004 from obtaining a work permit for EU nationals and their family members who intend to work under a labour contract in Lithuania.

No significant legislative developments occurred in this field during 2005.

Recent legal literature

Davulis T., *Darbo teisė: Europos Sąjunga ir Lietuva*. – Vilnius: Teisinės informacijos centras, 2004, p. 76-92, 176-237.

9 Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=221466&p_query=&p_tr2=.

10 Available in Lithuanian at: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=107687.

11 Available in Lithuanian at: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=266819&p_query=&p_tr2=.

Chapter IV

Employment in the public sector

Texts in force

The employment in the public service in Lithuania remains restricted to Lithuanian citizens except a few jobs that are available to foreigners under labour contracts without performing the function of public administration. The Constitution of the Republic of Lithuania of 25 October 1992 (as last amended on 13 July 2004 No. IX-2343, No. IX-2344)¹² provides that:

“All citizens shall have the right to take part in the conduct of public affairs, both directly and through democratically elected representatives, and the right to seek employment, on general terms of equality, in the public service of the Republic of Lithuania” (Art. 33). It further states that the requirement of Lithuanian citizenship is applied for becoming a member of the Parliament (Art. 56), the President of the Republic of Lithuania (Art. 78), judge of the Constitutional Court (Art. 103) or any other court (Art. 112). As concerns the members of municipal councils, not only Lithuanian citizen, but also permanent residents of Lithuania are eligible (Art. 119).

Employment in the public sector is regulated by the Law on the Public Service No. VIII-1316 of 8 July 1999 (new version adopted on 1 July 2002) (hereafter – Law on Public Service).¹³ It determines in its Article 9(1) that a person, entering the public service, must have a citizenship of Lithuania. The public servant is defined as a person performing the function of public administration, while the “Public service means a sum total of legal relations arising after the acquisition of the status of a public servant, the change or loss thereof, as well as those resulting from the public administrative activities of a public servant in a state or municipal institution or agency when implementing the policy of a particular sphere of state governance or ensuring the co-ordination of the implementation thereof, co-ordinating the activities of institutions of a particular sphere of state governance, managing and allocating financial resources and controlling their use, carrying out audits, adopting and implementing legal acts, decisions of state and municipal institutions or agencies in the sphere of public administration, preparing or co-ordinating draft legal acts, agreements or programmes and giving opinions on them, managing personnel, or having public administrative powers with respect to persons, who are not subordinate” (Art. 2(1)).

This definition in itself should not raise any issues of incompliance with Article 39 of the EC Treaty. However, it should be read in conjunction with uniform lists of positions of public servants, approved by the Parliament and the Government of Lithuania. These lists were approved with the intention to avoid institutional subjectivity and to determine appropriate number of state institutions and public servants. Resolution of the Parliament of the Republic of Lithuania No. IX-992 of 27 June 2002 establishes a list of positions of public servants in the Parliament, Chancery of the Parliament, institutions accountable to the Parliament, the President’s Office and institutions accountable to the President, National Court Administration, courts, Prosecutor’s Office and municipal institutions. Among others, the list includes as public servants: head of Parliament Chairman’s Secretariat and chief advisor, advisor, consultant and secretary to the President of the Republic, representative of the President for special assignments, public relations officers of the Parliament and of the President, secretary of the municipal council, advisor and assistant to the mayor, director and deputy director of department or section, director of commission or council administration, deputy inspector of municipality, chancellor of the Parliament Ombudsmen institution, chief state auditor, chief internal auditor and chief specialist, assistant to the prosecutor of Prosecutor’s General Office or regional or county prosecutor, advisor and assistant to the chairman of the courts, assistant to the judge, court consultant, secretary of court sessions, secretary of the administration, chief and junior investigator or specialist. Full list of positions available at: <http://www.vtd.lt/index.php?731429193>.

12 Available in English at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

13 Available in Lithuanian at: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=269146&p_query=&p_tr2=.

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Another legal act – Resolution of the Government No. 684 of 20 May 2002 – establishes a similar list of positions of public servants in the Prime Minister’s Office, Chancery of the Government, ministries, government institutions and institutions at the ministries. Among others, the list includes as public servants: chief advisor, advisor and assistant of the Prime Minister, head of the Prime Minister’s Secretariat, spokesperson for the Prime Minister and ministers, vice-minister, advisor and assistant to the minister, chief and deputy chief of the county, head and deputy head of government institution, state secretary, undersecretary, Government agent in the European Court of Human Rights, director and deputy director of department, commission, council administration or section, head of section, chief auditor of government institution, advisor in the Chancery of the Government, special attaché and his deputy, chief specialist and specialist in the government institution, diplomats: ambassadors, consul general and consul, vice-consul, advisor of the department/section, first/second/ third secretary, attaché; chief of headquarters, chief commissar-Deputy Commissar General of the Police, head and deputy head of battalion/squadron/company/platoon, investigator of particularly important cases and chief investigator, master of the ship, pilot, chief bodyguard, deputy chief of cordon, chief instructor, head of fire-prevention post, chief border guard, police officer, fireman. Full list of positions available at: <http://www.vtd.lt/index.php?731429193>. It may be questionable though if positions of secretaries, pilots, body guards fall within the narrow understanding of the public service by the ECJ.

Each government/municipal institution approves its own list of public service posts on the basis of the mentioned uniform lists. However these lists, approved by the head of institution/body are internal and thus not open to the public. The criteria for approving the lists are indeed functional, taking into account the nature of the tasks and responsibilities inherent in the post, thus in this respect such practice should be in line with the ECJ jurisprudence on the matter.

In conclusion, public servants can only be Lithuanian nationals, which means that public service remains reserved for nationals only. The provisions of the Law on Public Service do not apply to persons providing public services and performing technical functions. Thus, as concerns engagement of foreigners, including EU nationals, in jobs in the government/municipal bodies under labour contracts (without performing public administration function), there are no restrictions provided in the laws.

No significant legislative developments took place in this field in 2005 and there have been no public debate or political discussion concerning possible opening of the public service to EU nationals.

Miscellaneous

In practice, as concerns employment of nationals under labour contracts, e.g. in the ministries, usually these contracts are concluded for persons performing technical functions. In this context, Lithuania applies the concept of restricted public service when public servants are only those persons who have been granted powers by public authorities or directly participate in the process of policy enforcement, drafting of legislation or implementation of other legal acts. In fact, it seems that Lithuanian legislation does not debar the nationals of other EU Member States from the totality of posts in the public service, but only from those posts that are mentioned in the uniform lists. Such practice seems to be in line with the ECJ jurisprudence.

However, a possibility for EU national to work under labour contract in functions other than the exercise of public administration is not separately and explicitly regulated, which makes it difficult to monitor the practical implementation.

Persons in the public service are divided into two groups: civil (public) servants and public employees. The Law on Public Service applies to some 60 000 public servants (of which to some 30 000 statutory public servants) in about 800 government and municipal institutions and bodies. The positions (posts) of the civil servants are grouped into categories (A, B, C) and divided into 20 grades. Usually, the advertisements for the posts in government/municipal bodies explicitly mention whether the post advertised is for the public servant or for so-called “public employee”.

Some 26 900 public servants (not including statutory ones) were registered in the Register of Public Servants by 31 December 2005.

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Concerning the work conditions and social guarantees, there are some differences between public servants and persons employed under labour contracts in the public service. First of all, the salaries of public servants are higher by virtue of qualification grade (the latter is not granted to persons working under labour contracts) and length of service. Public servants are entitled to additions to their salaries, additional holiday days. Also, they may receive supplements for performing additional functions (not enlisted in the description of the post) for a period of one year.

Since the access to public service is restricted to Lithuanian nationals only, the *Burbaud* judgement of the ECJ had no impact in Lithuania so far.

Recent legal literature

O. Šarmavičius, Valstybės tarnybos įstatymas – teorija ir praktika. Problemos. “*Personalo vadyba*”, No. 2, 2005.

Chapter V

Members of the family

Texts in force

The Aliens' Law of 2004 provides that the family members could be admitted together with EU national or join him and stay in the Republic of Lithuania for the same period. The definition of EU national family member covers (Art. 2(4) of the Aliens' Law):

- a) spouse or his unmarried partner in stable relationship;
- b) children and adopted children under 21 years of age, including the children and adopted children under 21 years of age of the spouse or of the unmarried partner in stable relationship;
- c) dependent relatives according to direct ascending line of the national of the EU Member State, his spouse or unmarried partner.

Similarly, as the worker, his family members who intend to engage in employment are exempted from the work permit. All other conditions concerning the duration of the residence permits apply to the family members of the worker on the same conditions as for the worker himself. Article 105(5) of the Aliens' Law of 2004 states that family members of EU national who died without having acquired the right to stay in the Republic of Lithuania shall be issued the EC permanent residence permit if the EU national had lived in the Republic of Lithuania for the last 2 years or if he died in an accident at work or from a recognised occupational disease.

The Aliens' Law of 2004 seems to provide for no specific distinction to the situation of family members of EU national who are EU nationals and those, who are nationals of third countries. However, from the legislation and in practice it is difficult to see how third country nationals (even though family members of EU national) could be exempted from the general requirements applied to other foreigners under aliens legislation (e.g. as concerns entry visas and in particular the situations when the third country national is a national of the country, included on the so called "black list"). It would be advisable to include a special reference to third country nationals who are family members of EU nationals in the aliens' legislation, to ensure that they face no problems while accompanying or joining the EU national in the Republic of Lithuania.

Moreover, there are no specific rules in the Aliens' Law of 2004 regulating the right of residence in the host Member State for children or the parent who has actual custody of the children, irrespective of nationality, if the children reside in the host Member State and are enrolled at an educational establishment, for the purpose of studying there, until the completion of their studies. Furthermore, there are no specific rules in the Aliens' Law of 2004 concerning the situation of family members following departure of the EU national from the host Member State or in the event of divorce, annulment of marriage or termination of a registered partnership. Introduction of these rules would be recommendable, as it would make the situation of family members in these cases more predictable. This is going to be to a large extent addressed by the Draft Law on Amendments and Supplements to the Aliens' Law of 2004.

The Law on Consular Fees of 23 June 1994 (No. I-509), as amended on 24 March 2005 (No. X-146)¹⁴ provides in its Article 6 for an exception from the fee to the EU nationals as concerns the issue of visas to the family members of the EU/EEA nationals.

A new document, adopted in 2005, the Order on Temporary Residence Permits (mentioned under Chapter I(B)) regulates for the first time in Lithuania the assessments of the marriages of convenience. It may also apply to the EU nationals. The Order establishes the rule that the marriages concluded within the last five years before applying for the residence permit might be verified if there are serious grounds to believe that the marriage was concluded out of convenience. The Order establishes the situations that may raise serious grounds as concerns the marriage. If the foreigner is refused issuance/extension of the residence permit, repeated application can be submitted not earlier than after one year (paragraph 41 of the Order). The provisions of the Order stating among the factors to determine the convenience of the marriage the fact that the spouses have never met before the marriage (Section

14 Available in Lithuanian at: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=253834&p_query=&p_tr2=

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IV, paragraph 28.4), might be problematic in view of cultural traditions in some nations and contemporary ways of communication (via internet). If there are serious grounds to believe that the marriage is of convenience, the residence permit would be refused or annulled.

Draft legislation

Draft Law on Amendments and Supplements to the Aliens' Law of 2004 was pending adoption by the end of 2005. It contains several proposals to amend provisions concerning family members of EU nationals. Firstly, the definition of family members is adjusted to include:

- a) spouse or person with whom a partnership agreement is concluded;
- b) direct descendants under 21 years of age or dependent, including those of the spouse or of the person with whom a partnership agreement is concluded;
- c) the dependent relatives according to direct ascending line of the national of the EU Member State, his spouse or unmarried partner.

In addition, other persons can be recognised as family members if:

- a) at the time of departure they are dependent on the EU national or live in the same household or due to serious health reasons require personal care of the EU national;
- b) they are partners who have not concluded the partnership agreement, but are in a stable relationship.

Thirdly, in case of EU nationals-students, the only family members that would be entitled to EC residence permit are spouse or partner, dependent children and relatives under the direct ascending line.

Miscellaneous

According to the data of the Migration Department, from 1 January - 31 December 2005, 184 applications from EU and EEA nationals and 62 applications from their family members were received for family reunification reason. All of these applications were decided positively. In comparison, 177 applications were received in 2004 (May-December). Applications for EC residence permit of 14 family members of the EU/EEA nationals, who are third country nationals, were received in 2005. 10 decisions were adopted in 2005, all positive. Breakdown of data for these applications according to nationality provided in Chapter IX. Statistics to this Report.

Chapter VI

Relevance, influence, follow-up of recent European Court of Justice judgements

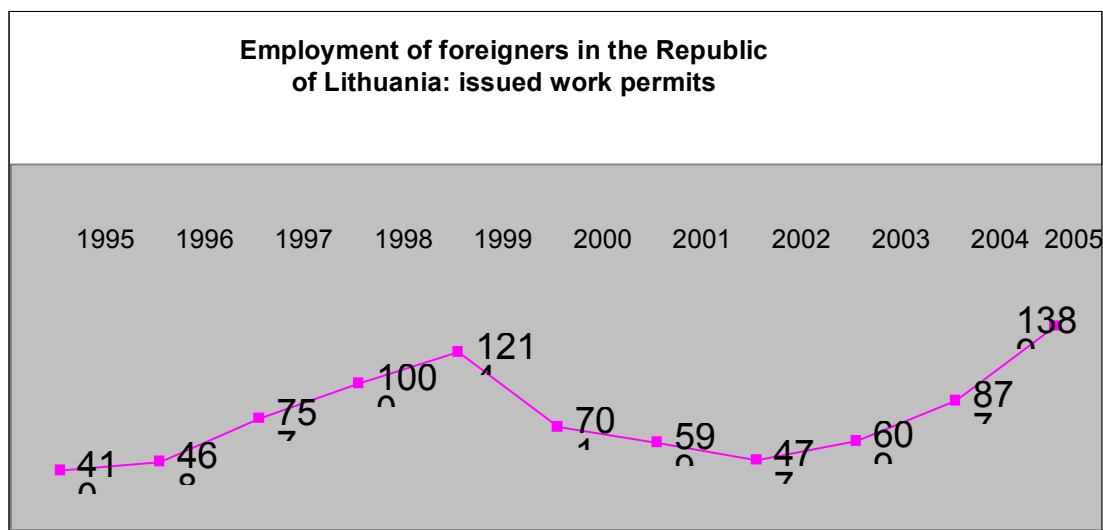
The practice of applying the European Court of Justice judgements in the courts of the Republic of Lithuania is still very underdeveloped. There have been no cases submitted by EU nationals or decided concerning the freedom of movement of workers during 2005, as reported by the administrative courts. None of the administrative courts in Vilnius, Kaunas, Klaipeda, Siauliai and Panevezys cities or the Supreme Administrative Court has applied to the ECJ for a preliminary ruling during 2005. Resolution of the Council of Courts No. 12 of 17 June 2002 concerning a long-term training programme for judges envisages that training for judges of the first instance who are working for less than five years, also for judges of appeals' instance and the Supreme Court, as well as judges of administrative courts will cover among other EU related issues, the free movement of persons and the right of establishment.

Chapter VII

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

Third country nationals' immigration for employment

This statistics, including the table below indicates the general tendencies of official labour migration in the country, however it does not cover labour migration of EU citizens, because as of 2002 they are no longer required to obtain work permits. By 24 November 2005, the Lithuanian Labour Exchange received 1697 requests to employ foreigners (in comparison with 975 requests by 24 November 2004). 1389 work permits were issued in 2005 (by 24 November). The vast majority of employed foreigners constitute male (95%) and only 5%- female workers.



Exchange at the Ministry of Social Security and Labour (<http://www.migracija.lt/MD/Infoc/udl2005.doc>).

As Lithuanian Labour Exchange reports (available online at (in Lithuanian only): <http://www.migracija.lt/MD/Infoc/udl2005.doc>), in comparison with the years 2003-2004, the tendency of increased cooperation between the Lithuanian companies and the companies of third states on employment issues can be noted. Foreigners arrived to work in Lithuania from 26 countries, mostly from Ukraine (31%), Belarus (29%), Russia (12%), Romania (11%) and China (7%). Notable decrease in workers from China (by 4%) if compared with 2004, but increase from Belarus (by 8%) and Ukraine (by 2%). The biggest numbers of foreigners are in production sector (55%), transport sector (14%), services (14%) and construction services (14%). In comparison with 2004, increase in employment of foreigners is noted in production sector (by 5%), transport sector (by 9%), construction sector (by 2%), while decrease in services (by 12%) and education sector (by 3%).

Foreigners were employed in 240 Lithuanian companies. 217 companies employed 55% of all foreigners (768) working under labour contracts, while 23 companies - workers on mission (621 or 45% of foreigners).

Emigration from Lithuania

Lithuania experiences a huge decrease in population. According to the preliminary data of the Department of Statistics the number of residents by the end of 2005 was by 22 100 persons less than by the end of 2004. The decrease occurred partially due to negative natural change (by 13 000) and due to migration (by 9 100). The number of persons who left for foreign countries to live there permanently or for a period longer than 6 months increased from 15 200 in 2004 to 15 571 in 2005. During 2005, 13 306 Lithuanian residents departed from Lithuania, mostly to the European countries. It

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should be mentioned indeed that while these numbers represent only official statistics of persons who declared their intention to leave from the country, the emigration scope is believed to be much larger. Approximately one fifth of all emigrants is between the age of 25-29, about 16% - 20-24 and 13%-30-34 years of age. The number of persons who arrived to Lithuania from other countries during the year was 6 700, which is by 1 100 more than in 2004. The majority arrived from the UK (1 200), Russian Federation (900), Germany (700), the USA (600). The general situation, according to the Department of Statistics is that in the period between 2001-2005, some 31 000 citizens emigrated more than immigrated. This emigration situation also result in the lack of workers (in particular in constructions, hospitals, retail chains and educational establishments). It may even impact on investment in Lithuania and some foreign companies are considering withdrawal from Lithuania or reconsidered their entry to Lithuania due to the lack of appropriate working force.

Citizenship related issues

The Constitution of the Republic of Lithuania provides that the citizenship of the Republic of Lithuania shall be acquired by birth or on any other grounds established by law (Art. 12). Lithuania does not as a rule recognise the dual citizenship, with the exception of individual cases established by law. The Law on Citizenship of the Republic of Lithuania No. IX-1078 of 17 September 2002 (further – Citizenship Law)¹⁵ regulates exceptional situations when dual citizenship is allowed – the President of Lithuania may grant Lithuanian citizenship to persons for special merits to Lithuania (Art. 16 of the Citizenship Law). In this case the person would not need to renounce his former citizenship. Foreign nationals who have lived in Lithuania for the past ten years may apply for naturalisation, provided they fulfil also other requirements stated in the Citizenship Law (e.g. language proficiency, a legal source of income, etc.). Among the naturalisation requirements there is a requirement to renounce in written form the former citizenship when obtaining Lithuanian citizenship (Art. 12). Residence requirement for foreigners, who are married to a Lithuanian citizen, is reduced to 7 years of permanent residence in Lithuania. If Lithuanian citizen acquires citizenship of another state, he loses Lithuanian citizenship automatically. Among other grounds for losing Lithuanian citizenship is a situation when a person is serving in the military forces or public service of a foreign state without having acquired a special permit for such service from competent Lithuanian institutions (Art. 18(3)).

In 2005, 435 foreigners were granted the citizenship of Lithuania by the Presidential decree (in comparison with 610 persons in 2004). As concerns EU Member States' nationals, 2 EU nationals only obtained Lithuanian citizenship during 2005. The table below provides a breakdown of numbers according to citizenship at the time of requesting Lithuanian citizenship, covering the period of 2001-2005.

Other

In order to provide for more favourable conditions to the free movement of workers in the EU Member States, a Law on Guarantees for Workers on Missions No. X-199 was adopted on 12 May 2005. The Law sets the conditions for temporary workers in other states and provides that the laws of the Republic of Lithuania would apply to persons sent to work in the territory of the Republic of Lithuania. The law would also apply when Lithuanian employer is sending his employees to temporarily work in the EU or EEA Member State or when employers of other countries send their workers to temporarily work in Lithuania. In case of alleged violations of guarantees for workers on mission there is a possibility of inspections by the State Labour Inspection on its own initiative or on request of the worker (Art. 5(4)).

15 Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=247477&p_query=&p_tr2=

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Citizenship of applicants at the time of requesting Lithuanian citizenship	Number of persons					
	2001	2002	2003	2004	2005	Total
Armenia	8	5	10	18	5	46
Azerbaijan	-	-	-	2	1	3
Belarus	25	20	8	39	24	116
Stateless	385	363	252	314	214	1,528
Bosnia and Herzegovina	-	-	1	-	-	1
Bulgaria	-	1	-	-	-	1
Egypt	-	-	-	-	1	1
Georgia	2	1	1	1	3	8
Iran	-	1	-	-	-	1
Israel	2	1	2	3	3	11
Kazakhstan	2	3	-	9	1	15
Kyrgyzstan	-	1	-	-	2	3
Latvia	-	3	1	1	1	6
Poland	1	-	1	1	1	4
Lebanon	3	2	-	1	3	9
Moldova	2	1	4	-	4	11
Pakistan	-	-	-	1	-	1
South African Republic	-	-	1	-	-	1
Romania	-	1	-	-	-	1
Russian Federation	66	75	87	179	151	558
Syria	-	1	-	-	-	1
Tajikistan	-	-	1	-	-	1
Turkey	-	1	-	2	-	3
Turkmenistan	1	-	-	-	-	1
Ukraine	9	24	19	37	21	110
Uzbekistan	1	-	1	2	-	4
Total:	507	504	389	610	435	2 445

Source: Data of the President Office.

Chapter VIII

EU enlargement

On 16 April 2003 Lithuania, together with other acceding states signed the Accession Treaty with the EU. Article 2 of Annex IX to the Accession Agreement provides that transitional arrangements apply only to the right to enter into employment. Lithuania can apply equivalent restrictions for those EU Member States that apply restrictions to Lithuanian citizens. However, it is unlikely that Lithuania would face an influx of workers from other Member States, which would necessitate the application of restrictive measures. Thus in practice, restrictions, if applied, would likely be a political reciprocal measure. There might be some legal issues though. As Lithuania granted the right to employment and opened its labour market to EU nationals already before signature of the Accession Treaty, it might be problematic to apply Article 2(10) of Annex IX to the Accession Treaty, providing for a right to apply equivalent restrictions to nationals of old Member States, who restrict the right of employment of Lithuanian citizens. It might be questionable therefore if Lithuania could reintroduce the labour quota and work permits to EU nationals, because it did not already exist at the moment of signing the Accession Treaty. The provision of Article 2(10) of Annex IX to the Accession Treaty mentions the phrase “may maintain in force equivalent measures”, but not to “reintroduce or apply national measures”.

In practice, Lithuania applies no equivalent restrictions for entry into its labour market either for old or new Member States of the European Union in response to transitional arrangements applied by them. This to a certain extent may be explained by the fact that labour migration to Lithuania has been rather low throughout the years, labour quota was frequently unfilled, while the situation in the labour market during 2005 due to massive emigration of workers has even raised the discussions about the need to bring over the workers from the neighbouring countries. Discussions also focus on introduction of positive measures encouraging the return of Lithuanian workers from abroad (more detailed description on general labour migration situation in/from Lithuania under Chapter III. and VII(A) of this Report). In this situation, it is unlikely that Lithuania changes its position as concerns equivalent restrictions because it itself lacks labour force. Lithuanian citizens have access to the labour markets without restrictions in Sweden, the United Kingdom and Ireland. According to the data of Lithuanian Labour Exchange, the number of Lithuanian nationals working in these countries increased after Lithuania’s entry to the EU. The tables below provide information about Lithuanian nationals who obtained employment abroad through the Intermediary Employment organizations in 2005.¹⁶

Table 1. 2320 Lithuanian residents obtained employment in the following countries in 2005:

United Kingdom	1975	(85%)
Ireland	129	(6%)
Cyprus	90	(4%)
Greece	41	(2%)
Estonia	38	(2%)
Netherlands	14	
USA	8	
Norway	8	
Sweden	7	
France	3	
Denmark	3	
Italy	2	
Japan	1	
South Korea	1	

¹⁶ Information of Lithuanian Labour Exchange Office (available online at: http://www.ldb.lt/ldb_site/index.aspx?cmp=jobslst&id=22).

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Table 2. 2368 Lithuanian residents were employed in foreign ships registered in the following countries:

Norway	472	(20%)
Bahamas	450	(19%)
Panama	305	(13%)
Liberia	159	(7%)
United Kingdom	125	(5%)
Germany	100	(4%)
Denmark	99	
Latvia	74	
Malta	71	
Belize	58	
Italy	48	
Portugal	40	
Antigua&Barbuda	38	
Finland	25	
USA	21	
Ireland	18	
Lithuania	14	
Netherlands	13	
Marshall island	13	
Spain	12	
Others	213	

Detailed statistics for 2005 on Lithuanian nationals working in the EU Member States (employed through mediation of Lithuanian labour exchange offices) has not been made available this year to the author of this Report by the labour authorities. However, this statistics would reflect only those Lithuanian nationals who departed for employment in other EU countries through mediation of Lithuanian labour exchange offices. Significantly much higher numbers are working in other EU countries, but there is no official statistics on that.

The issue of restrictions to access labour markets in other Member States has not dominated the public debate in Lithuania in 2005, however was discussed from a slightly different angle. On 20 December 2005, Lithuanian Confederation of Industrialists sent an appeal to the Parliament and Government of Lithuania expressing concern about the problems raised by emigration, which resulted in significant changes in Lithuania's labour market and which, according to the Confederation, "require serious attention of the legislator, state institutions and the employers". While the Letter of the Confederation was not accessible to the author of this Report, a response of the Minister of Interior to the Letter was analysed. Two issues figure in the debate:

- the concern that free movement of persons in the EU has resulted in large emigration of work age citizens and thus lack of labour force in Lithuania;
- the request to facilitate the procedure for employment for third country nationals arriving to Lithuania (in this respect it seems that the procedure indeed has been simplified to ensure that request for residence permit is examined at the same time with the request for work permit; previously, the foreigner had to wait for work permit and only then apply for residence permit).

It seems from the communication and follow-up public discussions in the media, that there are certain concerns about exercising free movement principle within the EU, which may explain why Lithuania may be uninterested that old Member States open up access to their labour market. There is a belief that opening of the markets will further boost labour emigration from Lithuania. However, one should look at the reality of this vision, as currently more than half of all departures is not declared, the majority of persons are staying and working illegally abroad without access to social services and other guarantees, thus socially vulnerable. They are also vulnerable to deportation, which would then result in prohibition of entry to that state. Approximately 5,000 Lithuanian citizens were deported in 2003. Opening up the access thus may result in maybe not eradication, but at least less encouragement for illegal employment. A Parliamentary conference on the problems of emigration is scheduled for the beginning of 2006 and it seems that the issue attracts more and more attention.

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The Emigration Law of the Republic of Lithuania is abolished as of 6 June 2000, thus there is no longer a requirement to ask for permission to emigrate. Due to this reason, the authorities do not have proper statistics on the number of persons who emigrate from Lithuania, unless they declare such intention to the authorities (according to the above-mentioned Law on Declaration of the Place of Residence, citizens are under obligation to declare to the authorities if they intend to depart from Lithuania for a longer period than 6 months). 13 249 Lithuanian citizens declared such intention in 2004, while a slightly larger number – 13 306 in 2005. Among these, the number of Lithuanian citizens leaving for residence in the EU MSs was 9841 (4723 male and 5118 female), in comparison with 9970 in 2004. Annex III to the Report provides a breakdown of data of Lithuanian nationals who left Lithuania with the purpose of residence in another EU MS in 2005 (according to the country of destination and gender).

Chapter IX

Statistics¹⁷

Temporary residence permits

Table 1. Requests of EU/EEA nationals to issue/extend EC residence permit, submitted in 2005 (according to citizenship)

Citizenship	Requests submitted
Ireland	9
Austria	23
Belgium	18
Czech Republic	21
Denmark	50
Great Britain	39
Estonia	33
Greece	10
Iceland	6
Spain	62
Italy	80
Latvia	159
Poland	199
Luxemburg	-
Malta	-
Netherlands	25
Norway	49
Portugal	22
France	101
Slovakia	6
Slovenia	15
Finland	56
Sweden	34
Switzerland	10
Hungary	8
Germany	257
Total	1 292

Comment: The table does not include family members of EU/EEA nationals who are third country nationals.

Table 2. Requests of family members of EU/EEA nationals, who are third country nationals, to issue/extend EC residence permit, submitted in 2005 (according to citizenship)

Citizenship	Requests submitted
Belarus	1
USA	1
New Zealand	1
Pakistan	3
Russia	5
Thailand	2
Turkey	1
Total	14

¹⁷ Source: 2005 m. Migracijos metraštis, available at: <http://www.migracija.lt/MD/metrastis2005.htm>.

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Table 3. Decisions to issue/extend EC residence permit adopted in 2005 (according to citizenship)

Citizenship	Decisions adopted concerning EC residence permit	
	To issue/extend	Refuse issue/extension
Ireland	9	-
Austria	24	-
Belgium	19	-
Czech Republic	20	-
Denmark	52	-
Great Britain	42	-
Estonia	32	-
Greece	5	-
Iceland	6	-
Spain	62	-
Italy	88	-
Latvia	168	-
Poland	205	-
Luxemburg	-	-
Malta	-	-
Netherlands	31	-
Norway	56	-
Portugal	20	-
France	103	-
Slovakia	7	-
Slovenia	15	-
Finland	55	-
Sweden	31	-
Switzerland	11	-
Hungary	8	-
Germany	263	-
Total	1 332	-

Comment: The table does not include family members of EU/EEA nationals who are third country nationals.

Table 4. Decisions to issue/extend EC residence permits to EU/EEA family members, who are third country nationals, adopted in 2005 (according to citizenship)

Citizenship	Decisions adopted concerning EC residence permit	
	To issue/extend	Refuse issue/extension
Belarus	1	-
USA	1	-
New Zealand	1	-
Russia	4	-
Thailand	2	-
Turkey	1	-
Total	10	-

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Table 5. Decisions to issue/extend EC residence permits adopted in 2005 (according to grounds)

Ground of arrival	Decisions adopted concerning EC residence permit	
	To issue/extend	Refuse issue/extension
Employment in Lithuania	320	-
Engagement in lawful activity in Lithuania	108	-
Provision of services in Lithuania		
Receiving services in Lithuania	83	-
Residing in Lithuania with a legal source of subsistence	3	-
	82	-
Obtaining education, studying at an educational establishment, taking in an internship programme, undergoing in-service training, taking part in vocational training	500	-
Living with a family		
Family member of the EU/EEA citizen	184	-
	62	-
Total	1 342	-

Permanent residence permits

Table 1. Requests of EU/EEA nationals to issue EC permanent residence in Lithuania, submitted in 2005 (according to citizenship)

Citizenship	Requests submitted
Austria	1
Belgium	1
Denmark	1
Great Britain	2
Estonia	4
Greece	2
Spain	1
Italy	3
Latvia	20
Poland	49
Netherlands	1
Norway	3
Portugal	1
France	3
Finland	1
Sweden	3
Switzerland	1
Germany	15
Total	112

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Table 2. Decisions to issue EC permanent residence permit to EU/EEA nationals, adopted in 2005 (according to citizenship)

Citizenship	Adopted decisions on EC permanent residence permit	
	To issue/extend	Refuse issuance/extension
Austria	1	-
Belgium	1	-
Denmark	1	-
Great Britain	1	-
Estonia	3	-
Greece	2	-
Spain	1	-
Italy	3	-
Latvia	20	-
Poland	48	-
Netherlands	2	-
Norway	3	-
Portugal	1	-
France	3	-
Finland	1	-
Sweden	3	-
Switzerland	1	-
Germany	15	-
Total	110	-

The following statistics is provided under other Chapters of this Report:

- 1) Recognitions of professional qualifications during 2005 (within Chapter II. Access to Employment; sub-chapter C. Recognition of Professional Qualifications and Diplomas);
- 2) Employment of foreigners in the Republic of Lithuania: issued work permits (within Chapter VII. Policies, Texts and/or Practices of General Nature with Repercussions on Free Movement of Workers; sub-chapter A. Third country nationals' immigration for employment);
- 3) Numbers of persons granted Lithuanian citizenship during the period of 2001-2005, according to citizenship at the time of requesting Lithuanian citizenship (within Chapter VII. Policies, Texts and/or Practices of General Nature with Repercussions on Free Movement of Workers; sub-chapter C. Citizenship related issues);
- 4) Information about Lithuanian nationals who obtained employment abroad through the Intermediary Employment organizations in 2005 (within Chapter VIII. EU Enlargement).

Chapter X Social security

Texts in force

Apart from a few exceptions, social security system in Lithuania remains largely based on permanent residence requirement and enables temporary staying foreigners to access certain benefits largely in accordance with bilateral agreements only. Therefore, in most of the cases, only persons, who live in Lithuania permanently are entitled to social security benefits in accordance with national legislation. For instance, the *Government Resolution No. 346 concerning the Approval of Order on Granting and Payment of State Allowances* of 29 March 2004 provides for entitlements only to the permanent residents of Lithuania, unless international agreements establish different rules. If such agreements provide, allowances may be paid to temporary residents on the basis of temporary residence permit (paragraph 28). Most of provisions of Lithuania's international agreements in this field are replaced by the Regulation 1408/71/EEC or were concluded with the provisions of the Regulation in mind.

Lithuanian legislation regulates all types of social security benefits, which are provided in the Regulations 1408/71/EEC, 574/72/EEC, 3096/95/EC and others. Regulations are applied directly in Lithuanian legal system, thus national legal acts providing for different rules are applied to EU nationals only in as much as they do not conflict with the EC Regulations.

The following legal acts regulate social security in Lithuania:

- *Law on State Social Insurance No. 17-447* of 11 November 2004 (entered into force on 1 January 2005).¹⁸ The law provides that compulsory social insurance applies among others, to persons employed under labour contracts by natural or legal persons (paragraph 1(1) of Art. 4). Self-employed persons (except those who engage in individual employment activity under business licences) are compulsorily insured only in respect of pension social insurance for the main and additional part of the pension (Art. 4(3)). Thus, EU nationals and their family members legally working under labour contracts or self-employed are insured on the same grounds as Lithuanian nationals. Also, EU nationals working under labour contracts are insured for pension, sickness and maternity, unemployment and accidents at work. Furthermore, Article 4(6) of the Law states that permanent residents of the Republic of Lithuania or EU Member States, not younger than 16 years of age, may insure themselves by a voluntary pension social insurance for the main and additional part of the pension, as well as by social insurance in case of sickness or maternity for sickness and maternity benefits during the time when they are not insured by compulsory social insurance in these cases or when they are compulsorily insured only for the main part of the pension social insurance.
- *The Law on Unemployment Social Insurance No. IX-1904* of 16 December 2003¹⁹ regulates unemployment benefits. The law provides that among others, persons employed under labour contracts by natural or legal persons are compulsorily insured from unemployment. There is a condition in the law that entitlement to unemployment benefit shall be acquired only by those, who are insured and registered in the labour exchange and if the length of their insurance before registering in the labour exchange was not less than 18 months within the last 36 months (paragraph 1(1) of Art. 5). This condition may theoretically pose obstacles for EU nationals to obtain the unemployment benefits, as they may not have stayed in Lithuania for such a period and thus may not have the required insurance period. However in practice, the insurance periods acquired in another Member State would be counted. In order to make such calculations, the Lithuanian Labour Exchange would use so called form E 301, which is specifically designed for calculation of work and insurance periods. There are however sometimes delays in filling in the form E 301 locally.

18 Available in Lithuanian at: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=268600&p_query=&p_tr2=.

19 Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=267428&p_query=&p_tr2=.

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- *Law on State Social Insurance Pensions No. I-549* - a new version was adopted on 19 May 2005 (entered into force on 1 July 2005).²⁰ It regulates pension benefits. The law provides that the right to social insurance pension benefits may be applied to all permanent residents of the Republic of Lithuania, who have been insured for a certain period under this law or have been voluntarily insuring themselves by the state social pension insurance (Art. 1(1)). Furthermore, the Law mentions that foreign citizens and stateless persons permanently residing in Lithuania, have equal rights to the benefit of state social insurance pension under this law, if the other laws of Lithuania or interstate agreements do not provide for other conditions concerning pension security. While entitlement to state social insurance pension for Lithuanian nationals permanently residing abroad, could be obtained when this is provided in the international treaties of the Republic of Lithuania or by the order of the Government of Lithuania (Art. 1(3)). Other persons under the law may voluntarily insure for the state social insurance pension in administrative bodies of the State Social Insurance Fund, in accordance with the order established by the Government of Lithuania.
- *Law on Health Insurance No. I-1343* of 21 May 1996 (new version of the law of 1 January 2003)²¹ provides that in addition to permanent residents, also persons who are temporary residing in Lithuania are insured by compulsory health insurance, if they are legally employed in Lithuania. Family members who are minors are also insured along with them (Art. 6(1)(2) of the Law). This provision was included in the Law through amendments adopted on 28 April 2005. Thus EU nationals and their family members legally working under labour contracts or self-employed are covered by health insurance on the same grounds as Lithuanian nationals.

On the ministerial level there are a few legal acts relevant for implementation of EU legislation in this field. E.g. the *Order of the Minister of Social Security and Labour No. AI-288 of 27 December 2004 concerning the Order on Implementation of Council Regulation No. 1408/71/EEC and Regulation No. 574/72/EEC provisions relating to family benefits and benefits in case of death* applies to Lithuanian citizens who work and live in other Member States of the EU/EEA, as well as to EU/EEA nationals (citizens and stateless persons) who live and work in the Republic of Lithuania or third country nationals, legally present in the EU (except Denmark and EEA Member States), who comply with migration criteria (work and live in different states, also to their family members (paragraph 2)). This Order also provides for a definition of a frontier worker: under paragraph 4 frontier workers are defined as persons employed under labour contracts or self-employed persons, who work in one state and live in another state, whereto they usually return every day or at least once per week. A frontier worker, who is sent to the same or another state by a company where he usually works or provides services in the territory of the same or another state, retains the status of a frontier worker, but no longer than for 4 months even if during that period he is unable to return home every day or at least once per week. Entitlement to mentioned benefits under the Order apply to persons who are employed and insured by compulsory state social insurance and those, whose activity is also considered to be equal to employment; unemployed persons and receiving unemployment benefits; persons receiving pensions; and students. The competent state in case of family benefits is the country of employment, irrespective that the members of the family may be living in another state (paragraph 6(1)). This Order was adopted in respect of two types of benefits (family benefits and benefits in case of death) because there are two independent institutions participating in implementation of the EC Regulations as regards these benefits: municipalities and Social Insurance Fund (SODRA). The Order aims to provide a legal basis for cooperation between these two institutions in order to facilitate the implementation of the EC Regulations.

On 22 February 2005 the Minister of Social Security and Labour approved the *Order No. AI-53 on the Rules on Registration of Unemployed Persons in Labour Exchanges and Creation of Individual Employment Plans*. Noteworthy that the Order applies also to foreigners legally staying in Lithuania (without referring any longer to permanent residence). Some practical difficulties may occur for EU citizens applying for registration as unemployed, as among the documents to be submitted for registra-

20 Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=267390&p_query=&p_tr2=.

21 Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=267446&p_query=&p_tr2=.

tion the Order requires the submission of a State Social Insurance Certificate (paragraph 5.5.) and the Certificate from the last place of employment about the work in the organisation or company. If the person has not been employed in Lithuania before, there will be no possibilities to register as failure to submit these documents result in refusal of registration (paragraph 8). No exceptions to EU nationals are provided.

Otherwise, it is considered that the EU nationals should not experience significant obstacles in obtaining social security benefits. What may nevertheless pose problems in the first years of membership in the EU, is the lack of experience and awareness among the relevant government bodies in applying non-national legislation directly when at the same time national laws provide slightly different norms.

No other significant legislative developments have taken place in the field of social security during 2005.

Two specific issues as concerns social security system deserve particular attention:

1. Application of Regulations: 1408/71/EEC and 574/72/EEC between Lithuania and Estonia/Latvia as concerns the calculation of working time, which was accumulated on the territory of former SSSR.
2. Social security of sailors.

Working time accumulated in the territory of former SSSR

The Regulations 1408/71/EEC and 574/72/EEC do not regulate the issue of counting the work record when it was acquired in the territory of former SSSR. As Article 12(9)(11) of Regulation 1408/71/EEC prohibits granting several insurance benefits for the same period of insurance, the legal question arose how to avoid double or even triple work record, acquired in the territory of former SSSR (e.g. in Kazakhstan) when it is calculated in Lithuania, Latvia and Estonia. During 2005, efforts have been underway to address this situation using Article 121 of the Regulation 574/72/EEC (possibility for competent institutions of two or more states to enter, whenever necessary, into agreements to complement the administrative order of implementing the Regulation; these agreements are included in the Annex 5 of the Regulation). On 3 February 2005 a meeting of Lithuanian, Latvian and Estonian experts suggested conclusion of bilateral agreements to address the issue of calculating work record acquired in the territory of former SSSR meanwhile denouncing the Agreement between the Governments of Lithuania and Latvia concerning cooperation in the field of social security of 17 December 1993, as well as Agreement with Estonia concerning cooperation in the field of social security of 28 May 1996. These agreements have not been practically applied since the moment of entry to the EU by these states when Regulations started operating for Lithuania. None of their provisions are included in the annexes to the Regulation. First draft of the bilateral treaty with Estonia and Latvia concerning calculation of insurance record acquired in the territory of the former SSSR was prepared in May 2005 and was pending finalisation by the end of the year.

Social security of Lithuanian sailors working in ships of EU/EEA countries

Back in 2003, organisations representing Lithuanian sailors approached the MSSL with a request to initiate conclusion of bilateral treaties (with e.g. Norway, the Netherlands) concerning social insurance for Lithuanian sailors, which would provide the insurance of sailors in Lithuania instead of applying the insurance of country of vessel flag. In 2004, the MSSL approached the Administrative Commission (under Article 81 of the Regulation 1408/71/EEC) with a request to advise as to whether the competent institutions of two states can enter into agreement establishing exceptions to the provisions of the Regulation on social insurance of sailors. The Administrative Commission was also addressed by the Netherlands. When the issue was discussed in the Administrative Commission in October 2004, many MSs expressed the opinion that such bilateral treaties may encourage so called “social dumping” whereby it would serve as a means of reducing the labour price and thus reducing the social guarantees of workers (sailors). As a result, the initiative to conclude such treaties was abandoned. Currently, Lithuanian sailors working in EU MSs’ ships may be insured with social insurance in the following ways:

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- a) according to the provisions of Article 13(c) of Regulation 1408/71/EEC – laws of the vessel's flag state are applied to the persons working in the ship;
- b) according to the provisions of Article 14(b1) of Regulation 1408/71/EEC – laws of the state where the company for which the sailor works is established (in this case – Lithuania) or, if the company is sending a person to work in the ship carrying a flag of another MS – the laws of the sending state apply. Worthwhile mentioning that companies currently employing sailors are using second method of insuring sailors.

In addition to that, Lithuania completed a notification to the European Commission concerning state support to sailors and employment companies registered in Lithuania. In case of a positive response from the Commission, the amendments to the Law on Social Insurance will be drafted in 2006.

Draft legislation

Draft Law on Social Services was pending adoption by the end of 2005. The Draft Law envisages its' application also to foreigners, including stateless persons, with either permanent or temporary residence permit in Lithuania. Once adopted it will give access to social services for EU/EEA citizens who stay in Lithuania only temporary. It also provides for recognition of permits, licences and documents certifying qualifications, issued in the EU Member States for engagement in provision of social services. The same will apply to the academic diplomas, certificates and other documents issued in the EU/EEA Member States to enable persons holding these documents to work as social workers in Lithuania.

Miscellaneous

Main problems in administrative practice of Lithuania's coordinating institutions in this field relate to the fact that this area is rather new in Lithuania and experience/knowledge is lacking. The institutions had to establish new working regulations in order to ensure smooth coordination and implementation of EC Regulations firstly among the various Lithuanian bodies. Considering that the area is also new to other new EU Member States that Lithuania cooperates with, this problem of lacking experience is even more acute. In order to address all issues arising from the application of the EC Regulations in this field, an interagency working group was formed on the basis of Order of the Minister of Social Security and Labour No. A1-33 of 7 February 2005. This group is mandated to analyse the application of the EC Regulations and provide explanations (recommendations) as concerns its' application.

The data of Lithuanian Labour Exchange for 2005 were not made available this year to the author of this Report. In practice, if EU national was granted unemployment benefit by his country of nationality, such benefit would be paid for a period of up to three months in Lithuania and amounts would be later reimbursed by the country of nationality. Information between Lithuania and other Member States is exchanged on the basis of so called form E 303.

Lithuania does not apply any restrictions concerning the free movement of persons, in particular as concerns access to social security benefits.

Chapter XI

Establishment, provision of services, students

The right of establishment and provision of services

The process of harmonising the Lithuanian legislation with EU requirements in the area of company law (including, e.g. Council Directives 83/349/EEC, 78/660/EEC, 89/667/EEC, 89/666/EEC, 78/855/EEC, 82/891/EEC, 68/151/EEC, 77/91/EEC, 92/101/EEC) has started long time before accession to the EU and resulted in many amendments to the legislation, administrative practice and institutional setup in the country.

The free movement of EU nationals as concerns the right of establishment and the right to provide services is regulated by the Aliens' Law of 2004, which entitles to temporary residence permit those EU nationals who are intending to engage in lawful activity in Lithuania or are intending to provide/receive services in Lithuania (paragraph 1(2-4) of Art. 101). The following situations are considered a lawful activity (Art. 45):

- 1) when the foreigner registers an enterprise, agency or organisation in the Republic of Lithuania as the owner or co-owner who owns at least 10% of the statutory capital or voting rights and his stay in the Republic of Lithuania is necessary seeking to attain the aims of the enterprise, agency, organisation and carrying out other activities;
- 2) when the foreigner is the head or the authorised representative of the enterprise, agency or organisation registered in the Republic of Lithuania, if the principal goal of his entry is work at the enterprise, agency or organisation;
- 3) when the foreigner intends to engage in lawful activities in the Republic of Lithuania, for which no work permit or permit to engage in certain activities is required.

The Draft Law on Amendments and Supplements to the Aliens' Law of 2004, once adopted, will amend Article 101 (mentioned above) to simply include workers and self-employed persons as a ground to obtain a residence permit in Lithuania.

Differently from other foreigners, to whom residence permits in such situations are issued for one year, EU nationals may be issued residence permits for a period of up to 5 years. Family members are also entitled to the same residence permit.

Detailed conditions for establishing companies are regulated by the Civil Code of the Republic of Lithuania of 18 July 2000. The Civil Code does not provide for any evident obstacles for foreigners, including EU nationals, to establish companies in Lithuania. A number of national laws regulate various forms of companies. These legal acts do not contain clear obstacles to EU nationals in exercising their right to provide services or establish companies, however information is lacking as to whether certain indirect obstacles might exist or be faced in practice. There is a clear differentiation between the treatment of Lithuanian nationals and foreigners (including EU nationals, as no exceptions are provided to them) as concerns registration requirements for taxation purposes. The Law on Value Added Tax No. IX-751 (hereafter – VAT Law)²² of 5 March 2002 provides in its Article 71(2) that Lithuanian nationals do not need to register as VAT payers if the amount of income from economic activity did not exceed 100,000 Litas (approx. 29 000 euro) during the past 12 months. Foreigners, on the other hand need to register as tax payers in any event. This may pose certain additional bureaucracy on the right of establishment exercised by EU nationals.

In order to align the legislation with the Regulation 85/2137/EEC, the Law on European Economic interests groups No. IX-1939 was adopted on 22 December 2003 (entered into force on 1 May 2004). Also, a number of other positive developments could be observed, in particular with the adoption of a few legislative provisions concerning possibility to practice certain professions without requesting a licence to be issued in Lithuania. For instance, a Law on the Practice of Dentist Doctors of 28 March 1996 (new version of 1 May 2004) provides in its Article 4(2) that the dentist doctor, who is a national of the Member State, is entitled to provide services on a temporary basis in Lithuania with-

22 Available in Lithuanian at: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=269228&p_query=&p_tr2=

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out a licence issued by Lithuania. The only requirement is to inform the institution responsible for licences about provision of services. Such a dentist doctor would be registered in the register and would be exempted from the registration fee. In 2005, Lithuania has undertaken the impact assessment of the EU Services' Directive. The assessment concluded that the implementation of the Directive will require a huge administrative work to be undertaken in order to review approximately 150 licences.

There is SOLVIT centre operating within the Ministry of Economy of Lithuania, which is responsible for resolution of problems arising from the discrepancies between Lithuanian legal acts and the EU legislation or from the administrative practice in applying these acts. The centre examines complains concerning differential treatment of EU citizens willing to provide services or establish companies. Until now the Centre received no complains from EU nationals concerning barriers to freedom to provide services.

Students

The status of students – EU nationals in the Republic of Lithuania is regulated by the Aliens' Law of 2004. The provisions applicable to students are generally in compliance with the Directive 2004/38/EC, repealing the Directive 93/96/EEC on the right of residence for students. The Law provides that students who intend to stay for a period longer than 3 months in Lithuania, need to obtain the EC residence permit. Engagement in studies, internships, vocational or professional training is recognised as a ground to issue such a permit to EU national (paragraph 1(6) of Art. 101). For issuance of the residence permit, health insurance, sufficient living means and accommodation in Lithuania is required (paragraph 1(2, 3, 4) of Art. 26). The later requirement to prove the availability of accommodation might create certain obstacles for students who are not provided with accommodation at educational establishments where they are enrolled. In accordance with the Order of the Minister of Social Security and Labour No. A1-203 of 25 August 2004 the amount, considered to be sufficient for the purpose of living in Lithuania for foreigners who are applying for residence permits is set at one minimal monthly wage, which was 500 Litas (approx. 145 Euro) by the end of 2005. 50% of this amount applies to family members of the foreigner below the age of 18 years, according to the Order of the Minister. For issuance of the residence permit sufficient living means for students are counted on the basis of a rate of one minimal monthly wage. This is not fully in line with the Directive 2004/38/EEC that requires only declaration of income and the judgement on each individual case rather than fixing a commonly applicable amount of sufficient resources. Residence permits to students are issued for one year. Upon completion of studies or withdrawal from it, the student must leave from the country and the period of residence in the Republic of Lithuania does not entitle him to permanent residence permit. Also, students do not have a right to work in the Republic of Lithuania while they are engaged in studies. However, once their studies finish, they may apply for residence permit on other grounds (e.g. employment) or seek employment.

The Draft Law on Amendments and Supplements to the Aliens' Law of 2004, which was pending adoption by the end of 2005, once adopted would introduce the right of students to work during the period of studies. However, the duration of employment can not exceed 20 hours per week and engagement in employment would be permitted only from the second year of studies. The student would also need to obtain a work permit if he wants to get employed during the period of studies, which would make his situation different from other EU nationals who are not requested to obtain work permits. The definition of family members of a student, who would be entitled to EC residence permit, is more restrictive than of other EU nationals. It includes only spouse or partner, dependent children and relatives under the direct ascending line.

Chapter XII

Miscellaneous

- 1) Skirgailė Žaltauskaitė-Žalimienė, Naujausios paslaugų teikimo laisvės tendencijos Europos Sąjungoje, *Jurisprudencija*, No. 72(64), 2005, p. 20-29;
- 2) Barbara Mielink, Freedom of Movement of Workers between Old and New Member States, *Jurisprudencija*, No. 72(64), 2005, p. 61-65;
- 3) Inga Daukšienė, Laisvas darbuotojų judėjimas ir valstybės tarnybos išimtis, *Jurisprudencija*, No. 72(64), 2005, p. 90-99;
- 4) Edmundas Piesarskas, Direktyvos dėl paslaugų ES vidaus rinkoje projekto pasekmių tyrimas, 2005, available at: http://www.ekm.lt/lt/es_vidaus_rinka/paslaugos/doc/ataskaita_galutine_050525.doc;
- 5) Licencijuojamų veiklos rūšių sisteminės analizės studija: Išanalizuoti veiklos licencijavimą reglamentuojančius teisės aktus, parengti išvadas dėl jų atitikimo Civilinį kodeksą ir susisteminti informaciją apie licencijuojamas veiklos rūšis, licencijų rūšis, licencijas išduodančias institucijas ir jų įgaliojimus, licencijų išdavimo sąlygas. Studija, Advokatų profesinė bendrija “Jurevičius, Balčiūnas ir Bartkus”, November 2005, available at: <http://www.ukmin.lt/lt/strategija/doc/studija-lru00-final-05-12-01-lt.pdf>.

ANNEXES TO THE REPORT

- Annex I. Foreigners who declared residence in Lithuania in 2005 (according to citizenship and age) and foreigners residing in Lithuania as of beginning of 2006 (according to citizenship)
- Annex II. Persons who departed from Lithuania for residence abroad in 2005
- Annex III. Lithuanian citizens who declared departure from Lithuania for a period of over 6 months (according to gender and country of emigration) in 2005
- Annex IV. Persons who arrived to take up residence in Lithuania in 2005