

REPORT
on the Free Movement of Workers
in Poland in 2005

Rapporteur: Prof. Barbara Mikolajczyk

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Introduction

In comparison with the year 2004, which was really exceptional, the year 2005 may be recognized as the year of stabilization in the area of creation of new legal norms and policy towards free movement of persons. It seems to be fully understandable because all the most important legal acts have been adopted before 1 May 2004 or just after the Poland's accession to the EU. It may be stated that Poland is generally prepared to the transposition of the directive 2004/38/EC in 2006. That is why in 2005 any significant legal steps were not taken in this field. However, it will turn out how the provisions of the directive will be realized in practice.

It must be also stressed that the process is still continuing but it has not been verified by the courts (either the European Court of Justice or Polish courts) yet. First, because the number of migrant workers from the EU countries is still relatively low in Poland (so there are not many controversial cases) and, secondly, because of the length of all the judicial procedures. It is worth mentioning that in 2005 the first and only preliminary question was submitted to the ECJ.

It is also still quite difficult to assess practice in this area because the rules on the free movement of workers have applied only for one and a half year. All the time these rules have applied with some limitations because of still existing transitional periods and the Schengen rules do not apply yet.

The other reason for the lack of any milestone changes in the migratory area was the political situation in Poland in 2005. The year 2005 was the year of parliamentary and presidential elections. In the election atmosphere it was rather difficult to adopt any fundamental legal acts. However, it must be stressed that in April 2005 an amendment to the aliens law was adopted. It introduced the concept of "long term residents" into the Polish legal system.

Chapter I Entry, Residence and Departure

Texts in force

- Ustawa z 13 – 06-2003 o cudzoziemcach¹ - the Act of 13 – 06-2003 on aliens (before the accession);
- Ustawa z 27-07-2002 o zasadach i warunkach wjazdu i pobytu obywateli państw członkowskich Unii Europejskiej oraz członków ich rodzin na terytorium Rzeczypospolitej Polskiej² - the Act of 27-07-2002 on the principles and conditions of entry and residence of nationals of the Member States of the European Union and members of their families within the territory of the Republic of Poland;
- ustawa z 22-04-2005 o zmianie ustawy o cudzoziemcach i ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw³ - Act on amendment of the Act on aliens and the Act on granting the protection to aliens within territory of Poland and other acts.
- Rozporządzenie z dnia 26-04-2004 w sprawie wzorów wniosków, dokumentów i rejestrów dotyczących wjazdu i pobytu obywateli państw członkowskich Unii Europejskiej oraz członków ich rodzin na terytorium Rzeczypospolitej Polskiej⁴ – the Regulation issued by the Minister of Internal Affairs and Administration of 26-04-2004 on specimens of applications, documents and registers referring to the entry and residence of the nationals of EU Member States and members of their families within the territory of the Republic of Poland;
- Kodeks postępowania administracyjnego⁵ - The Code of Administrative Procedures;
- Rozporządzenie ministra zdrowia z dnia 25-09-2003 w sprawie wykazu chorób uznanych za zagrażające zdrowiu publicznemu, z powodu których można odmówić zezwolenia na pobyt lub pobyt czasowy obywatelowi Unii Europejskiej i członkowi jego rodziny⁶ – the Regulation of the Minister of Health of 25-09-2003 on specifying diseases recognized as dangerous to public health, as reason for refusal of residence permits or temporary residence permits to EU nationals and their family members;

The Act on Aliens of 2003 regulates the rules of entry and residence of the third country nationals in Poland. The Act on granting the protection to aliens within the territory of Poland of 2003 refers to the third country nationals who need the international protection (the refugee status, the territorial asylum, the so called tolerated stay and the temporary protection).

From the date of accession of the Republic of Poland to the European Union the legal situation of nationals of the EU Member States (and the EEA) has been regulated in the Act of 27 July 2002 on the principles and conditions of entry and residence of nationals of the Member States of the European Union and members of their families within the territory of the Republic of Poland. It is the most important legal act in the discussed area; however, it refers not only to the free movement of workers but also to various aspects of entrance and residence of all EU nationals (not necessarily workers).

On 22 April 2005 the new act was adopted - the Act on amendment to the Act on aliens and the Act on granting the protection to aliens within the territory of Poland and other acts. It amends the above mentioned acts and its main aim is setting in order all the rules referring to all kinds of aliens. It has corrected the provision of the Act on aliens of 2003 referring to exclusion of some groups of aliens from the Act on aliens. Currently, art. 3 p. 2 of the Act on aliens states that this Act does not regulate the situation of citizens of the EU, EEA and citizens of other States (non-EU member states) who, according to the treaties concluded with the EU, enjoy the free movement of persons. Excluded from

1 Journal of Laws [Dziennik Ustaw]. 2003, no. 128, item 1175.

2 Journal of Laws [Dziennik Ustaw]. 2002, no.141, item 1180.

3 Journal of Laws [Dziennik Ustaw]. 2005, no.94, item 778.

4 Journal of Laws [Dziennik Ustaw] 2004, no. 115, item 1201.

5 Journal of Laws [Dziennik Ustaw] 2000, no. 98, item 1171.

6 Journal of Laws [Dziennik Ustaw] 2003, no. 177, item 1737.

the Act on aliens are also family members of all these groups. The situation of all these persons is regulated by the Act of 2002.

Entry

Since 1 May 2004 the matters of entry of the EU nationals and members of their families have been regulated by the Act of 27 July 2002 on the principles and conditions of entry and residence of nationals of Member States of the European Union and members of their families within the territory of the Republic of Poland. The Act itemizes which directives it implements in the Polish legal system, including directives: 68/360/EEC, 148/73 (the most important for entry and residence), 64/221, 75/34, 90/364, 90/365 and 93/96.

On the ground of the Act of 22 April 2005 the nationals (and their family members) of other countries have been added to these groups of aliens. The “other States” means the States which concluded treaties with the EU on free movement of persons.

The second chapter of the Act of 2002 refers to border crossings. Nothing has been changed in this field since 2004.

Article 3 states that EU nationals may enter the territory of the Republic of Poland if they are in possession of valid travel documents or other documents certifying their identity and citizenship⁷. In comparison with third-country nationals, nationals of the EU State are in a privileged situation because third-country nationals must be in possession of valid travel documents and visas (when required). Moreover, due to the principle of reciprocity in relations with other States, permission to cross the border into the territory of the Republic of Poland by a third-country national may be dependent on paying an entry fee.

In the case of EU nationals even passports are not necessary; they can enter the territory of the Republic of Poland if they possess any other documents certifying their identity and country of origin, hence the use of valid identity cards.

According to the information obtained from the Polish Border Guard, at the border there is no difference (not only in law but also in practice) in treatment of EU nationals and citizens of Switzerland, Island, Norway and Liechtenstein. Moreover, no specific changes in this treatment took place in 2005.

Residence

In the year 2005 there were not any amendments changing the situation of the EU nationals and their families in the field of residence. This matter is regulated by Chapter 3 of the Act of 2002 ‘On the principles and conditions of entry and residence of nationals of the Member States of the European Union and members of their families within the territory of the Republic of Poland’ and the Regulation issued by the Minister of Internal Affairs and Administration of 26 April 2004 on specimens of applications, documents and registers referring to the entry and residence of nationals of EU Member States and members of their families in the territory of the Republic of Poland.⁸

The Act of 2002 refers to the principles of residence of EU nationals (Chapter 3, Articles 4-18) and to the procedure and organs having authority in these matters (Chapter 4, Articles 19-18).

7 The Act and its Article 3 also takes into account the ECJ judgements with respect to the free movement of workers, inter alia, case C – 376/89 (*Panagiotis Giagounidis v. Stadt Reutlingen*). European Court Reports 1991 page I – 01069.

8 Moreover, there are other acts which do not refer exclusively to the legal situation of EU nationals, but are applied during the procedure for issuing permission for residence, should be also taken into account. As mentioned above, these are: Rozporządzenie Rady Ministrów z dnia 30-11-2000 w sprawie opłaty za wydanie dowodu osobistego [the Regulation of 30 November 2000 issued by the Council of Ministers on payments for the issue of identity cards] - Journal of Laws [Dziennik Ustaw] 2000, no. 105, item 1110, the appropriate provisions of the Code of the Administrative Procedure and the - Ustawa z dnia 9-09-2000 o opłacie skarbowej [Act on stamp duty] - Journal of Laws [Dziennik Ustaw] 2000, no. 86, item 960(as amended).

Periods of residence of EU nationals within the territory of Poland may be divided into at least three parts. From Article 4, if EU nationals (and members of their families) arrive in Poland for a period shorter than 3 months, they do not need any permits for their residence⁹. They are not even obliged to register their presence in the territory of Poland. EU nationals who live in their own country but work in Poland, on the other side of a border, also do not need any permits, providing that they return to their country every day or at least once a week.

If the period of residence exceeds three months, EU nationals must obtain permission for residence. The Act differentiates between “residence” and “temporary residence”. It may be stated that the difference depends on the strength of the ties between Poland and an alien.

Residence permits

Article 5 of the Act of 2002 specifies who is eligible for residence permits (*zezwole nie na pobyt*). The residence permits are granted to EU nationals who intend to settle down or stay in Poland for a rather long period of time. It means that the residence permit may be granted to these persons who intend to work in the territory of the Republic of Poland or to carry out any economic activity there for a period exceeding 12 months or to EU nationals who possess health insurance [ubezpieczenie zdrowotne] and sufficient financial means to cover the cost of their stay without requiring social security benefits (Article 5 sec.2 p. 2). The Act indicates how “sufficient financial means” should be understood. “Sufficient” should be understood to mean an income by a family member above the level at which any social assistance would be granted to the family. This income is described in the Act of 12 March 2004 on social security¹⁷ and in regulations and orders. It corresponds with Article 1 of Directive 364/90 which stipulates, *inter alia*, that a Member State should grant the right of residence to nationals of Member States who enjoy this right under other provisions of Community law and to members of their families, provided that they themselves and the members of their families are covered by health insurance in respect of all risks in the host Member State and have sufficient resources to avoid becoming a burden on the social assistance system of the host. These resources shall be deemed sufficient where they are higher than the level of resources below which the host Member State may grant social assistance to its nationals, taking into account the personal circumstances of the applicant.

Moreover, Article 5 sect. 3 refers to EU nationals who reach retirement age, have resided continuously in Poland for at least the previous 3 years and have worked in Poland for the previous 12 months or they have stopped working or carrying out an economic activity in the territory of Poland as a result of their permanent inability to work and they have been residing in Poland for at least two years. In the case of such persons, residence permits should be granted even if the previous requirements are not fulfilled, providing that they apply for renewed residence permits not later than two years after the expiry date of their previous residence permits.

According to the next section of Article 5, EU nationals will be granted residence permits based upon similar principles in situations when they are unable to work because of an occupational disease or an accident at work. However, in their situation the Act does not contain a requirement for continuous residence in Poland for any period.

Article 6 of the Act of 2002 regulates the principles of the issuance of residence permits. Permits are granted for a period of 5 years and they can be extended in increments of 5 years (in accordance with Article 6.1 of Directive 360/68). Permits are not extended automatically; extensions must be applied for. Applicants must fulfil the same requirements as previously (except retired persons or those unable to work as mentioned above). If they fulfil them, the authorities are obliged to extend their permits. Hence in practice the period of residence of EU nationals in Poland may be unlimited and the initial decision to grant a permit is the deciding factor.

Article 6 sect. 3 is a very important provision for EU nationals who lose their jobs for reasons not attributable to them. According to this provision, if the EU nationals are residing in the territory of

9 Which goes with the ECJ conclusions in Case C-118/75 Lynne Watson and Allesandro Belmann ECR 1976 – 1185.

17 Journal of Laws [Dziennik Ustaw] 2004, no. 64, item 593. The Act describes the criteria of granting the social assistance to a given person or a family (mainly Articles 7 and 8). The financial assistance is granted to a person (living alone) whose income does not exceed 461 PLN and a person living with family if the income for each member of this family does not exceed 316 PLN.

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Poland in order to perform some work, and on the day the application for the first extension of the permit is submitted they are unemployed for reasons not attributable to them (however not longer than 12 months), the residence permits should be extended for the next 12 months (in accordance with Article 7 p.2 of the Directive 360/68).

Temporary residence permits

According to Article 7 the temporary residence permit (*zezwolenie na pobyt czasowy*) may be granted to the UE citizens if he or she arrives to Poland for a shorter (than in the case of the residence permit) and determined (by any contract or studies) period. If they intend to obtain the temporary residence permit they should possess funds to cover the cost of their stay and insurance. Moreover, they should in the territory of the Republic of Poland:

- commence higher education studies. (In this case permits are granted for each year of studies, but only until the completion of their education at the university)
- intend to perform or they have been performing work, profession, or intend to carry out or have been carrying out economic activity for the period from 3 to 12 months. The temporary residence permit is issued for the period of performing work as indicated in the written declaration of the employer, or the entity authorized to entrust the performance of work to the EU citizen, on the intention to entrust the performance of work, or in the certificate confirming the performance of work indicating the employment period, or for the period of performing profession or carrying out economic activity,
- seek employment (in this case temporary permits are granted for 6 months).

Current practice

The practice on issuing the documents towards EU nationals has not been changed in 2005. They should obtain a “residence card/licence” [karta pobytu] issued by a competent authority for a period described in the card/licence or in a temporary residence card/licence.

Members of families of EU nationals who are citizens of third countries should obtain a different document – it is the “residence document” [dokument pobytu]. This document describes the type of residence (temporary or not).

Either of these documents contains names of individuals, their addresses and the expiry date of the residence permit or temporary residence permit. These documents should be returned to competent authorities if Polish citizenship is granted, if the permit is withdrawn or if its former holder is deceased. These documents should be replaced if the holder’s name or address changes.

The issue and replacement of these documents are subject to charges in accordance with the Regulation on payments for the issuing of identity cards.

EU nationals and members of their families, if they intend to obtain residence permits, are obliged¹⁰ to submit completed applications for residence¹¹ to the appropriate (for the intended location) Voivode [wojewoda – head of the province/region [województwo]; represents the State power/government in a given region].¹² The applications require: 2 photographs; statements of the planned places of residence in Poland and confirmation of the registration of their temporary residence.

In situations when EU nationals intend to work for others, have independent occupations or engage in any economic activity, they are required to provide statements to verify any of these activities;¹³ from employers regarding their intention to give employment or regarding actual employment (if they are already carrying out any work), indicating the period of their employment, or certified

10 Based on information obtained at the Silesian Voivodeship (Governorship) and the other voivodeships. It is worth mentioning that all these organs provide on their web sites appropriate information/instruction for aliens applying for residents permits.

11 The application forms are also available at the Voivodeship website.

12 In practice, the application should be submitted to the department at the Voivode’s Office responsible for migration matters (such departments may be named differently, it depends on the Voivodeship).

13 Persons performing any economic activity should produce the certificate about such activity from the National Court Register.

copies of documents verifying the carrying out of independent occupations or economic activities (if necessary).

If EU nationals possess health insurance or sufficient means to cover their costs of the residence, they should produce evidence of this insurance or verification of their financial means.

If EU nationals have stopped carrying out any work, independent occupations or any economic activities because they have reached retirement age or have permanent inability to work¹⁴, they should produce employment certificates or any documents certifying that they carried out independent occupations or economic activities for at least 12 months and also documents verifying their uninterrupted residence in the territory of Poland for at least 3 or 2 years respectively. For those persons who are unable to work as a result of occupational disease or workplace accidents, certificates of inability issued by the competent organ are required.

Also, all applicants should enclose with the applications, copies of valid travel documents or any other documents confirming their identity and citizenship (the original documents should be shown to the officer at the council).

Applications and all other documents should be submitted in Polish. Any documents issued in a different language must be translated into Polish by a sworn translator. The time limit for taking a decision in a given case is normally 30 days but in more complicated cases it is 60 days.

Decisions are made by the Voivode when the Commandant in Chief of the Border Guard expresses the opinion in particular cases.¹⁵

If a residence permit is refused, EU nationals or their family members have the right to appeal to the President of the Office for Repatriation and Aliens. According to the Administrative Code, such appeals should be submitted within 14 days from the day of receiving the refusal. If the decision issued by the President of the Office for Repatriation and Aliens is also negative, they can submit a complaint to the administrative court within 30 days.

The principles of procedures for persons applying for temporary residence permits are similar. However, students should produce certificates issued by the universities (either State or private) where they have just been admitted or are continuing their studies.

Departure

The Act of 27 July 2002 governs the principles and conditions of entry into and residence of nationals of the Member States of the European Union and members of their families within the territory of the Republic of Poland, Articles 17–18.

The Regulation of the Minister of Health (on identification of diseases recognised as dangerous to public health) can be the basis for refusal of residence permits or temporary residence permits for EU nationals and their family members. EU nationals may leave the territory of the Republic of Poland for several reasons.

First it may be the result of the withdrawal of their residence permits (Article 17 of the Act of 2002). Permits are withdrawn if a EU national or a member of their family does not possess financial means sufficient to cover the cost of their residence without needing to claim any social assistance or they do not have any medical insurance (Article 17 sec.1 p.1). In these cases the relevant authority is obliged to withdraw the permits. It seems that this provision refers to persons who never worked or stopped its working activity and they may become a burden on a social system. However, the permits cannot be withdrawn for these reasons if the persons are unable to work because of their retirement age or their inability to work or if they are family members of those who have died from an occupational disease or a workplace accident. (Persons mentioned in Article 5 sect. 3, 4 & 5 and in Article 17 sec. 2 of the Act).

Article 17 sect. 5 states that temporary residence permits are withdrawn if a competent organ states that the persons have lost the right to be classed as students, they have ceased carrying out work, economic activity or looking for employment.

14 These provisions are in accordance with Article 2 p.1 of Directive 34/75, Article 1 p. 1 of Directive 364/90, and Articles 1-3 of Regulation 1251/70.

15 There are 30 days for obtaining such an opinion. If it is not expressed within 30 days, it should be recognised as tantamount to fulfilment of this requirement.

A decision to withdraw permits should indicate the time limit for leaving the territory of Poland. It cannot be fewer than 30 days from the date when the decision has become final.

Secondly, according to Article 18 of the Act of 2002, EU citizens may be expelled from the territory of the Republic of Poland only if necessary for the protection of public order and security caused by a threat to State security and defence¹⁶. The decision on expulsion means, simultaneously by virtue of the law, the withdrawal of permits for residence or temporary residence. There are not any specific legal act referring to EU nationals on public order or security grounds. They are not treated in any special (privileged) manner.

Finally, according to Article 11, relevant authorities may refuse residence permits or permits for temporary residence based solely on one of the foregoing reasons or for protection of public health (Article 11 sec.1). Except in this last case, the reasons for refusal of permits apply also to extensions of residence permits or permits for temporary residence (sec. 2). The decision on refusal of permits or the extension of them should contain the time limit for leaving the territory of Poland (sec. 3). It cannot be fewer than 15 days from the final decision in cases of refusal of permits, or 30 days in cases of refusal of extensions.

Unfortunately the Act of 2002 does not indicate when, after the refusal of a residence permit, an EU national may next apply for a permit. In comparison with the Act on Aliens of 2003 it is imprecise. Article 21 sect. 1 p.1 of the Act on Aliens stipulates that an alien shall be refused entry into the territory of the Republic of Poland if, *inter alia*, “prior to the expiry of one year from the day of issue of former decision on refusal of entry into the territory of the Republic of Poland, if the alien has not presented any new circumstances of the case”. It seems that the provisions of the Act of 2002 cannot be interpreted in a less favourable way, given that EU nationals have higher status for residence than nationals of third countries.

Article 12 of the Act of 2002 requires the Minister responsible for health matters to issue a regulation containing a list of diseases which are recognised as dangerous to public health and which can be a reason for the refusal of residence or temporary residence permits. The Minister should take into consideration the International Health Regulation no. 2 of the WHO in this regard¹⁷. The Minister of Health has issued such a Regulation applying to EU nationals and their family members. The annex to the Regulation contains the following diseases: cholera, severe acute respiratory syndrome (SARS), plague, suspected tuberculosis, poliomyelitis and other flaccid paralyses, variola major (smallpox), aphthous fever (foot-and-mouth disease), yellow fever and other haemorrhagic viral fevers and pediculosis corporis (lice infestation). This Regulation corresponds with Directive 221/64 (EEC) and its annex A. It refers directly to the WHO Regulation and it itemizes tuberculosis and syphilis but it allows the Member States to recognise other infectious and parasitic diseases as dangerous for the public health if they are the subject to provisions regarding protection of the host country nationals. The Regulation does not mention any serious mental disturbances which are itemized in the Directive.

Literature

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Chlebny, J. (ed.), *Prawo o cudzoziemcach. Komentarz* [Law on Aliens. Commentary]. Warsaw 2006.

16 The Act of 2002 does not explain the terms: “public order”, “public security” or “the threat to State security or defence”.

17 On 23 May 2005 the new revised version of the Regulation of 1951 has been adopted by the WHO Assembly.

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Staszewski, W.Sz.: Prawne aspekty międzynarodowego ruchu osobowego między Polską a jej wschodnimi sąsiadami. [Legal Aspects of Cross – Border Movement between Poland and Its Eastern Neighbours]. *Polityka Wschodnia* 2005, no. 1-2, p. 163176.

Chapter II

Access to employment

Texts in force

- Ustawa z 20-04-2004 o promocji zatrudnienia i instytucjach rynku pracy - Act of 20-04-2004 on promoting employment and institutions of the labour market¹⁸
- Rozporządzenie Ministra Pracy i Polityki Społecznej z 19-12-2001 w sprawie szczegółowych zasad i trybu wydawania przyrzeczeń i zezwoleń na pracę cudzoziemców¹⁹ - The Regulation issued by the Minister of Labour and Social Policy on 19-12-2001 relating to special principles and the procedure of issuing promises and work permits for foreigners who are employed in realization of export services provided by foreign employers in the territory of the Republic of Poland (so called “the Detailed Regulation”)
- Rozporządzenie Ministra Pracy i Polityki Społecznej z 19-12-2001 w sprawie określenia przypadków, w których przyrzeczenie i zezwolenie na pracę cudzoziemców jest wydawane przez wojewodę bez względu na sytuację na lokalnym rynku pracy i kryteria wydawania przyrzeczeń i zezwoleń na pracę cudzoziemców²⁰ - The Regulation issued by the Minister of Labour and Social Policy on 19-12-2001 relating to cases of the promise and permission for a foreigner to work being issued by Voivode regardless of either the situation in the local labour market or the criteria for issuing promises and work permits for foreigners (so called “the Simplified Regulation”)
- Rozporządzenie Ministra Pracy i Polityki Społecznej z 19-12- 2001 w sprawie wykonywania pracy przez cudzoziemców bez konieczności uzyskania zezwolenia na pracę²¹ The Regulation issued by the Minister of Labour and Social Policy on 19-12-2001 relating to the undertaking of work by foreigners without the need to obtain work permits (so called: “ Exempting Regulation”)
- Rozporządzenie Ministra Gospodarki i Pracy z 26-05-2004 w sprawie zakresu ograniczeń w sferze wykonywania pracy przez cudzoziemców na terytorium Rzeczypospolitej Polskiej²² - The Regulation of the Minister of Economy and Labour of 26-05-2004 on the scope of restrictions on the undertaking of work by foreigners within the territory of the Republic of Poland (so called “Transitional Regulation”)
- Ustawa z 26-04-2001 o zasadach uznawania nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów regulowanych²³ - the Act of 26 –04-2001 on the rules governing the recognition of the qualifications required in EU Member States for the pursuit of the regulated professions
- Ustawa z 10 – 05 – 2002 o zasadach uznawania nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do podejmowania lub wykonywania niektórych działalności²⁴ - the Act of 10 – 05 - 2002 on the rules governing the recognition of qualifications acquired in EU Member States for the taking up or pursuit of some of activities
- Ustawa z 12 – 09 – 2003 o zmianie ustawy o zasadach uznawania nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów regulowanych²⁵ - the Act of 12 – 09 - 2003 amending the Act on the rules governing the recognition of qualifications acquired in EU Member States for the pursuit of a regulated profession and amending certain other Acts

18 Journal of Laws [Dziennik Ustaw] 2004, no 99, item. 1001 amended in 2005 - Journal of Laws [Dziennik Ustaw] 2005, no 164, item. 1366.

19 Journal of Laws [Dziennik Ustaw] 2001, no 153, item.1766.

20 Journal of Laws [Dziennik Ustaw] 2001, no 153, item.1767.

21 Journal of Laws [Dziennik Ustaw] 2001, no 153, item.1765.

22 Journal of Laws [Dziennik Ustaw] 2004, no. 123, item 1293.

23 Journal of Laws [Dziennik Ustaw]. 2001, no 87, item. 954 with the subsequent amendments.

24 Journal of Laws [Dziennik Ustaw]. 2002, no 71, item. 655

25 Journal of Laws [Dziennik Ustaw]. 2003, no 191, item. 1864.

- Ustawa z 20-04-2004 o zmianie i uchyleniu niektórych ustaw w związku z uzyskaniem przez Polskę członkostwa w Unii Europejskiej²⁶ the Act of 20-04-2004 on the annulment of certain acts in connection with Poland obtaining EU membership
- Rozporządzenie Ministra Edukacji Narodowej i Sportu z 6-04-2004 w sprawie stażu adaptacyjnego i testu umiejętności w toku postępowania o uznaniu nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów nauczyciela²⁷ – the Regulation of the Minister of National Education and Sport of 6-04-2004 on probationary training and competence tests for recognition of the qualifications for employment in the teaching profession obtained in EU States
- Rozporządzenie Ministra Gospodarki, Pracy i Polityki Społecznej z 25-07-2004 w sprawie warunków, sposobu i trybu przeprowadzania testu umiejętności oraz stażu adaptacyjnego, sposobu i trybu wykonania nadzoru nad odbywanym stażem oraz oceny umiejętności wnioskodawcy, będącego obywatelem państwa członkowskiego Unii Europejskiej w zawodzie regulowanym pracownik socjalny²⁸- The Regulation of the Minister of Economy, Labour and Social Policy on the content and methods of competence tests and probationary training, the supervision of such training and the assessment of skills of applicants, who are nationals of EU States in regulated professions – social workers;
- Rozporządzenie Ministra Zdrowia z 26-04-2004 w sprawie stażu adaptacyjnego i testu umiejętności w toku postępowania o uznaniu nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania medycznych zawodów regulowanych²⁹ - the Regulation of the Minister of Health of 26-04-2004 on probationary training and competence tests for recognition of qualifications obtained in EU States for practicing of medical regulated professions;
- Rozporządzenie Ministra Infrastruktury z 24-04-2004 w sprawie odbywania stażu adaptacyjnego i przeprowadzania testu umiejętności oraz sposobu ustalania ich kosztów³⁰ - the Regulation of the Minister of Infrastructure of 24-04-2004 on the work carried out during probationary periods, the carrying out of aptitude tests and the method of determination of charges;
- Rozporządzenie Ministra Edukacji Narodowej i Sportu z 6-04-2004 w sprawie stażu adaptacyjnego i testu umiejętności w toku postępowania o uznanie nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów regulowanych w dziedzinie kultury fizycznej i sportu³¹- the Regulation of the Minister of National Education and Sport of 6-04-2004 on probation periods and aptitude tests for recognition of the obtained in EU Member States qualifications for practicing regulated professions in the area of physical education and sport;
- Ustawa 9-11-2000 z o bezpieczeństwie morskim³² the Act of 9-11-2000 on maritime safety;
- Rozporządzenie Ministra Infrastruktury z 4-02-2005 w sprawie wyszkolenia i kwalifikacji zawodowych marynarzy³³ - the Regulation of the Minister of Infrastructure of 4-02-2005 on training and qualifications of seafarers;
- Rozporządzenie Rady Ministrów z 15-03-2005 w sprawie szczegółowego sposobu realizacji przez organy zatrudnienia zadań wynikających z udziału publicznych służb zatrudnienia³⁴ - the Regulation of the Council of Ministers of 15-03-2005 on particular way of realization by the organs of employment tasks arising from the participation of public employment service in the EURES network
- Rozporządzenie Ministra Infrastruktury z 13-07-2005 w sprawie programów szkoleń i wymagań egzaminacyjnych w zakresie kwalifikacji zawodowych marynarzy³⁵ - the Regulation of 13-07-2005 on training programs and exam requirements towards seafarers qualifications.

26 Journal of Laws [Dziennik Ustaw]. 2004, no 96, item. 959.

27 Journal of Laws [Dziennik Ustaw] 2004, no. 76, item 711.

28 Journal of Laws [Dziennik Ustaw] 2003, no. 142, item 1382.

29 Journal of Laws [Dziennik Ustaw] 2004, no. 97, item 977.

30 Journal of Laws [Dziennik Ustaw] 2004, no. 89, item 856.

31 Journal of Laws [Dziennik Ustaw] 2004, no. 76, item 712.

32 Journal of Laws [Dziennik Ustaw] 2000, no. 109, item 1156 with subsequent amendments.

33 Journal of Laws [Dziennik Ustaw] 2005, no. 57, item 492.

34 Journal of Laws [Dziennik Ustaw] 2005, no. 47, item 445.

35 Journal of Laws [Dziennik Ustaw] 2005, no. 173, item 1445.

- Ustawa 29 –07- 2005 r. o sporcie kwalifikowanym³⁶ - the Act on championship sport

The transitional periods in the field of the “access to employment” remained in 2005. That is why there were not any fundamental changes in this area and in the area of access to employment in Poland migrant workers still consist of three groups. First, there are nationals of the “old” EU countries and EEA - in their case the principle of reciprocity will apply. It must be stressed that this group is not unified. In consequence of the principle of reciprocity the citizens of Sweden, Great Britain and Ireland have free access to the Polish labour market. Citizens of Austria, Belgium, Greece, Finland, France, Spain, Island, Liechtenstein, Luxembourg, Germany, Portugal and Switzerland need permission for performance of their employment. But these permits may differ.

The second group is created by nationals of the seven “new” EU countries: the Czech Republic, Lithuania, Estonia, Latvia Hungary, Slovenia, Slovakia - in their case restrictions may only be introduced in exceptional circumstances if the labour market is threatened by any disturbances.

The third group is the smallest. There are nationals of Cyprus and Malta – in their case there are no transitional periods, so there are no limitations with respect to them and no limitations will be introduced in the future.

Transitional periods cause differences between Polish citizens and certain EU nationals in reference to taking up employment in the territory of Poland. The general rules of treatment of foreigners in the labour market are covered by the presently binding Act of 20 April 2004 on promoting of employment and institutions of the labour market.

Its Article 1 sect. 3 p. 2 states that the Act would be applied, *inter alia*, to the nationals of EU Member States and the nationals of States which are not Member States of the European Union but subject to agreements on free movement of persons concluded with the European Union.

According to Article 87 of this Act, a foreigner may perform work in the territory of the Republic of Poland if they obtain a work permit issued by the Voivode authorised for the employer’s registered office location. This requirement is unnecessary for foreigners having a permanent residence card, refugee status in the Republic of Poland, a tolerated stay, temporary protection or (important in the light of this Report) EU nationals or members of their families³⁷. However, EU nationals and members of their families need not comply with this requirement only in accordance with Annex XII, p. 2 sect. XII of the Accession Treaty. Hence the situations of EU nationals may differ.

The Act is a document of general nature and the concrete solution are provided by the acts of lower legal power. The so called “Transitional Regulation” of 26 May 2004 – The Regulation of the Minister of Economy and Labour³⁸ on the scope of restrictions on the undertaking of work by foreigners within the territory of the Republic of Poland. It directly refers to Annex XII of the Accession Treaty and it contains a list of the States whose citizens the work restrictions apply to, and the scope of those restrictions. Also the Transitional Regulation states which provisions should apply for nationals of a particular EU Member State or State of the European Economic Area.

The above Regulation describes also the extent of restrictions on foreigners working within the territory of the Republic of Poland. Annex no. 1 to the Regulation contains a list of States of the EEA whose citizens have limited access to the Polish labour market (i.e. they need work permits). These are: Austria, Belgium, Denmark, Finland, France, Greece, Spain, Liechtenstein, Luxembourg, Holland, Germany, Norway, Portugal, Switzerland and Italy.

Annex no. 2 to this Regulation defines the extent of the limits. The nationals of Austria, Belgium, Denmark, Finland, France, Greece, Spain, Liechtenstein, Luxembourg, Holland, Germany, Norway, Portugal and Italy are obliged to obtain work permits issued by the Voivode if they intend to perform work in Poland. However, permits for the citizens of Denmark, Holland, Norway and Italy are issued without any assessment of the situation on the local labour market, of criteria for issuing

36 Journal of Laws [Dziennik Ustaw] 2005, no. 155, item 1298.

37 Stated precisely: Nationals of EU Member States, nationals of States which are not Member States of the EU but have concluded with the EU agreements of free movement of persons, members of families of such nationals if they perform any work or economic activity in the territory of Poland, members of families of foreigners who stay in Poland according to provisions binding the EU Member States on the rights of residence, persons who were migrant workers, persons carrying out economic activity or students.

38 In 2003 The Ministry of Labour and Social Policy was abolished. The labour matters were taken over by the Minister of Economy and Labour. The Ministry of Social Policy deals with social matters; so the labour and social policies have been separated.

promises and permits or of circumstances for refusal of promises or permits³⁹, so it is a simplified procedure. Such a situation arises from the reciprocity principle.

Simultaneously, on the basis of reciprocity, citizens of Austria and Germany, even those who are transferred to Poland by employers (according with Directive 96/71/EC of the European Parliament and Council of 16 December 1996 concerning the transfer of workers for the provision of services), should hold work permits issued by the Voivode.

The Voivode issues permits on the basis of abnormal circumstances and the procedure for issuing promises and work permits for foreigners, or on abnormal circumstances and the procedure for issuing promises and permits for foreigners who are employed in export services rendered by foreign employers in the territory of the Republic of Poland, providing that Austrian and German nationals carry out services in strictly described sectors.⁴⁰

Citizens of Switzerland also should obtain work permits if they intend to perform any work. The Voivode issues the permits on the basis of any of the foregoing provisions, depending on the case.

Considering the above requirements, until the end of the transitional periods it is rather difficult to discuss the equality of treatment of all EU nationals in the area of access to work. Only Irish, British and Swedish nationals as well as nationals of the “new” EU Member States have the same access to work as Polish citizens (providing that they have residence permits). There are also differences among nationals of the “old” Member States. Simplified provisions apply for citizens of Italy, Denmark and Holland (also to Norwegian citizens). The most restrictive provisions apply (due to the principle of reciprocity) to nationals of Austria and Germany.

The technical side of permit issuance is regulated in the three above itemized regulations of 2001 (*see current practice*). They were adopted on the basis of the old Act of 1994 on counteracting unemployment which has been replaced by the Act on promoting employment and institutions of labour market. It is an exceptional situation when the regulations are still valid despite the fact that the Act (a statute) has expired. These three regulations will function until the new one is adopted on the basis of the Act of 2004. It should be noticed that there is quite a significant delay in adopting these new solutions. As it was stated in the Report of 2004 the ministry responsible for labour matters⁴¹ the works on the draft of the amendment to the Regulation of 19 December 2001 relating to foreigners undertaking jobs without the need to obtain work permits (“Exempting Regulation”) have been started. The main aim of such an amendment was to adjust this Regulation to the EU provisions referring to Turkish citizens in connection with the Association Treaty with Turkey and the Decision 1/80. Despite the announcement any new regulation has not been adopted through all the year 2005.

The mentioned above “Simplified Regulation” of 2001 contains also exceptions to the obligation to search for Polish employees before applying for a work permit for a foreigner. There are few *categories of employees* whose employment does not require informing the local labour office and publishing of an advertisement in search for an employee.

Under regulations included in the ordinance by the Minister of Labour and Social Policy as of 19 December 2001 on defining cases, in which work promise and permit for a foreigner is granted by the Voivode regardless of the local labour market situation and the criteria of granting work promises and permits to foreigners; a work permit, regardless of the situation at the local labour market, shall be granted for instance to *family members of personnel* of diplomatic agencies and international organisations, including their private household service, graduates from medical and pharmaceutical studies on compulsory *internships*, *sports coaches* and chiefs of Polish branches and agencies of foreign enterprises.

39 In this case the “Simplified Regulation” applies - The Regulation issued by the Minister of Labour and Social Policy on 19 December 2001 relating to cases of the promise and permission for a foreigner to work being issued by Voivode regardless of either the situation in the local labour market or the criteria for issuing promises and work permits for foreigners.

40 In case of Austrian citizens there are following sectors: horticultural activities, stone masonry, metal fabrication, construction works (including works itemized in the Annex to Directive 96/71), security activities, industrial cleaning, home nursing, social work and activity performed without accomodation; in case of German nationals: construction works, (including works itemized in the Annex to Directive 96/71), industrial cleaning, interior decorating.

41 The name of the ministry responsible for the labour matters and social policy has been changed again. After the parliamentary elections the name of this organ is the Ministry of Labour and Social Policy (once again).

The other aspect of the access to employment is the issue of recognition of diplomas and the language requirement which may become a quite significant obstacle in taking up and performing particular professions.

The main Act in this field was adopted in 2001⁴². The Act of 26- 04 - 2001 on the rules governing the recognition of the qualifications required in EU Member States for the pursuit of the regulated professions gives the general rules for recognition of degrees, certificates and other documents procedure. It contains also the lists of organs and institutions which are responsible for recognition of diplomas in other EU countries. Also it confirms that EU nationals, whose qualifications have been recognized, have the right to practice any regulated profession in the Republic of Poland in the same way as persons who have obtained their qualifications in Poland (Article 1 sect. 3). General idea of the Act is that where a given profession in Poland is regulated, holders of foreign qualifications obtained in another member state need official recognition. In non-regulated professions the decision of employment depends exclusively on the employer. This applies only to the citizens of European Union countries and those of the countries belonging to the European Economic Area, as well as Switzerland.

The first principle of employment of EU nationals is that they should meet the same requirements as Polish citizens, so they should have equivalent professional qualifications and usually they also need to prove that they know the Polish language. The second principle is that if EU nationals are admitted to any profession, their standing is the same as Polish citizens.

The admission to, and practicing in, certain professions may depend on participation in a probationary period (no longer than 3 years) or on passing an aptitude test (the choice of one of these forms of assessment depends on the candidate), in accordance with Directive 89/48.

The general principles of probationary training and testing are given in the Regulation issued by the Minister of Infrastructure of 24 April 2004 on the work carried out during probationary periods, the carrying out of aptitude tests and the method of determination of charges.

Also the regulations of ministers responsible for respective fields determine the scope of the aptitude tests or probationary periods⁴³. The tests and periods are adjusted to the individual situations of

42 According to experts there is no doubt that in establishing the system of recognition of qualifications, the Polish legislators took into consideration the jurisprudence of the ECJ through implementation of the Directives reflecting this jurisprudence. They quote for example the judgments in such cases as: *Thieffry v. Conseil de l'Ordre des Avocats a la Cour de Paris* (C- 71/76); *Irene Vassopoulou v. Ministerium fur Justiz, Bunde- und Europaangelegenheiten Baden – Wurttemberg* (Case 340/89); *Union Nationale des entraîneurs et Cadres techniques professionnels du football (UNECTEF) v. Georges Heylens and Others*, (Case – 222/86) but the judgment in the *Burbaud case* could not be taken into consideration during the preparation of this Act. But it must be stressed that there are no provisions to restrict the access of EU nationals to management positions of health-care institutions. These regulations apply to all persons (regardless of their citizenship) who intend to apply for a post in health – care institutions. It is worth mentioning that, according to persons belonging to management staff should have (generally) degrees from medical schools at universities. Hence in practice all requirements regarding practising in the medical profession and the requirements on recognition of degrees would apply.

Mitrus: *Swoboda przemieszczania się pracowników po przystąpieniu Polski do Unii Europejskiej*. [Free Movement of Workers after the Poland's Accession to the EU]. Warszawa 2003. pp. 152–153; R.Janas: *Systemy wzajemnego uznawania kwalifikacji w świetle orzecznictwa Europejskiego Trybunału Sprawiedliwości (wybrane aspekty)* [Systems for the mutual recognition of qualifications in the light of the European Court of Justice (selected aspects) in: S. Biernat (ed.) *Studia z prawa Unii Europejskiej*, Kraków 2000, p.330.

43 For instance, details of the employment of management staff of hospitals or similar institutions are regulated by the Regulation of the Minister of Health of 17 May 2000 on requirements for persons applying for executive posts in health-care institutions [rozporządzenie w sprawie wymagań, jakim powinny odpowiadać osoby na stanowiskach kierowniczych w zakładach opieki zdrowotnej określonego rodzaju] - Journal of Laws [Dziennik Ustaw] 2000, no. 44, item 520 and Journal of Laws 2003, no. 99, item 918. The qualifications for personnel other than management are described in the Regulation issued by the Minister of Health on 29 March 1999 on qualifications of employees required in particular types of positions at public health-care institutions [rozporządzenie w sprawie kwalifikacji wymaganych od pracowników na poszczególnych rodzajach stanowisk pracy w publicznych zakładach opieki zdrowotnej] Journal of Laws [Dziennik Ustaw] 1999, no. 30, item 300; The rules of competition for certain executive posts in public institutions of health care are described in the Regulation of the Minister of Health of 19 August 1998, amended in 2000 [w sprawie szczegółowych zasad przeprowadzania konkursu na niektóre stanowiska kierownicze w publicznych zakładach opieki zdrowotnej, składu komisji konkursowej oraz ramowego

the candidates, their degrees, experience and future positions. The assessment of candidates' skills usually occurs when there are differences in the teaching programs or the level of competence for the intended position varies between the two EU Member States.

The requirement for probationary periods or tests does not breach EC Directives 98/49/E or 92/51/EEC which allow for the checking of skills of candidates in certain cases.

The Act of 20 April 2004 on amendment and annulment of certain acts, after Poland obtained EU membership, introduced into the Act of 26 April 2001 provisions confirming implementation of Directives 89/48/EEC, 92/51/EEC, 94/51/EC, 95/43/EC, 97/38/EC, 2000/5/EC and 2001/19/EC. Also these amendments extend the rules for recognition of qualifications of nationals of other EFTA and EEA States. It was the most significant amendment, so since that time there were not any other similar amendments in this area.

The Act of 2001 on the rules governing the recognition of the qualifications required in EU Member States for the pursuit of the regulated professions had to be complemented by enactment legislation. There are more than 40 regulations issued by ministers which describe in detail the conditions for taking up work in regulated professions by persons who obtained qualifications in other EU States. Such regulations apply to teachers, social workers, persons intending to work in medical professions, as custom agents, detectives, firemen, tax advisers, tourist guides as well as those in the areas of sport, mining, geology, archeology, museology, architecture, hydrology, nuclear and radiological protection, energy industry, accountancy and others. The relevant minister may empower any institution to verify the professional qualifications of foreigners in a specified professions⁴⁴.

It should be also stressed that there are almost 300 professions which have been recognized as "regulated"⁴⁵. There are not only professions which require the higher education but many other professions as well. That is why it is impossible to describe each of them. However, it is worth taking into consideration a few of them.

The first Act which should be noted is the Act of 20 April 2004 on the amendment of the Act on the profession of nursing and midwifery and certain other Acts [ustawa o zmianie ustawy o zawodach pielęgniarstwa i położnictwa oraz innych ustaw]⁴⁶. The Act contains the requirements for practising the stated professions by EU nationals and sets out the rights of the Nurses and Midwife's Association [Naczelna Rada Pielęgniarek i Położnych, Okręgowa rada pielęgniarstwa i położnictwa, okręgowa izba pielęgniarstwa i położnictwa] with regard to the issue of certificates allowing recognition of qualifications and documents. Following these amendments, the Act of 19 April 1991 on self-administration of nurses and midwives [ustawa o samorządzie pielęgniarstwa i położnictwa]⁴⁷ was adjusted to the EU law.

The Act of 20 April 2004 affected the laws relating to doctors, necessitating amendments to the Act of 5 December 1996 on the medical profession and the Act of 17 May 1989 on the self-administration of medical practitioners⁴⁸.

Conforming to the Act of 20 April 2004, the Act of 19 April 1991 on the self-administration of pharmacists has been also amended. Now it is adjusted to Directives 85/432/EEC, 85/433/EEC and 2001/19/EC (and all the Directives amended by the last one).

Continuing the medical theme, it should also be noted that the Ministry of Health, in its regulations of 30 April 2004, indicated the depth of knowledge of the Polish language indispensable for per-

regulaminu przeprowadzania konkursu] - Journal of Laws [Dziennik Ustaw] 1998, no. 115, item 749 and Journal of Laws 2000, no. 45, item 530.

44 For example on 7 April 2005 the Minister of Culture adopted the Resolution on empowering to recognition of the qualifications for pursuance of regulated professions obtained in the EFTA States and EEA States and he has empowered the Centre of Library, Information and Documental Education in Warsaw to recognize qualification of librarians and other personnel of libraries.

45 The full list of them is published on the website of the Bureau for Academic Recognition and International Exchange - www.buwiwm.edu.pl.

46 Journal of Laws [Dziennik Ustaw] 2004, no. 92, item 855. Regarding the nurses and midwives, the Act implements Directives 77/452/EEC, 77/453/EEC, 80/154/EEC, 80/155/EEC, 2001/19/WE and others amended by the last Directive.

47 Journal of Laws [Dziennik Ustaw] 1991, no. 41, item 178 with subsequent amendments. The title of the Act has been changed to "Act on doctor and dentist professions".

48 Now these Acts implement Directives 78/686/EEC, 78/687/EEC, 93/16/EEC and 2001/19/EC, and all the Directives amended by the last one. The scope of the amendments of 20 April 2004 corresponds to the amendments relating to nurses and midwives.

formance of the professions of nursing or midwifery⁴⁹ by nationals of EU Member States should be equivalent to that required previously for doctors, dentists⁵⁰, pharmacists⁵¹ and hospital attendants⁵². Similarly, the Minister of Agriculture has issued a Regulation applying to veterinary surgeons⁵³.

EU nationals who intend to take up an employment in any regulated profession should submit a declaration on their language capability. This obligation arises from the regulations issued by the relevant ministers. Usually citizens of third countries must sit for examinations in the Polish language. That is why the position of the EU nationals is more comfortable than the third country citizens.

The Act of 20 April 2004, on amendment and annulment of certain Acts resulting from Poland obtaining EU membership, introduced into the principal Act relating to teachers – The Teachers' Charter of 1982 a provision allowing EU nationals and citizens of EEA States access to the profession as "nauczyciel mianowany" and "nauczyciel dyplomowany" – the highest categories of teachers (Article 10 sect. 5, p. 1).

Sportsmen constitute a very peculiar group of employees. Their situation is regulated by the rules adopted by the particular sport associations, clubs and on the other hand the labour law and the law on aliens. First, a foreigner must receive a sport license from the sport union which allows him/her to take part in the competition. He must be also confirmed and allowed to play in a given club. Second, he/she must obtain the work promise and work permit from the voivode. Third, having obtained these documents he/she may apply for a visa or residence permit.

It is worth mentioning that the issuance of transfer of football players is still regulated by the Uchwała Zarządu Polskiego Związku Piłki Nożnej nr II/11 z dnia 19 maja 2002 – Resolution no. II/11 of 19 May 2002 of the Polish Football Union Board on the status of the Polish football players and the change of the club membership⁵⁴. It means that despite previous announcement⁵⁵ the situation in these field has not been changed since 2004.

Parts VII and VIII of the Resolution regulate the rules of transfer of football players. These provisions refer directly to provisions of Chapter XIII of FIFA Regulations for status of players of 2001. Part VIII of the Resolution refers to access of foreign players to the Polish clubs. It may be stated that the situation of the football players from the EU countries are in a better situation than players from third countries because the Regulation restricts the number of the players from non-EU countries, not the EU nationals.

Worth mentioning also is the Regulation of the Minister of National Education and Sport of 6 April 2004 on probation periods and aptitude tests for recognition of the obtained in EU Member

49 Rozporządzenie Ministra Zdrowia z 30-04-2004 w sprawie szczegółowego zakresu znajomości języka polskiego, koniecznego do wykonywania zawodu pielęgniarki i położnej przez obywateli państw członkowskich Unii Europejskiej. [Regulation of the Ministry of Health on depth of knowledge of the Polish language indispensable for performance of the professions of nursing or midwifery by the EU nationals]. Journal of Laws [Dziennik Ustaw] 2004, no. 104, item 1102.

50 Rozporządzenie Ministra Zdrowia z 10-10-2002 w sprawie zakresu znajomości języka polskiego w mowie i piśmie, koniecznego do wykonywania zawodu lekarza lub lekarza stomatologa na terenie Rzeczypospolitej Polskiej. [Regulation of the Ministry of Health on depth of knowledge of the Polish language (oral and in writing) indispensable for performance of the professions of a doctor or a dentist by the EU nationals]. Journal of Laws [Dziennik Ustaw] 2002, no. 74, item 688.

51 Rozporządzenie Ministra Zdrowia z 5-06-2002 w sprawie zakresu znajomości języka polskiego, koniecznego do wykonywania zawodu farmaceuty na terenie Rzeczypospolitej Polskiej oraz egzaminu z polskiego. [Regulation of the Ministry of Health on depth of knowledge of the Polish language indispensable for performance of the profession of a pharmacist in Poland and on the exam of the Polish language]. Journal of Laws [Dziennik Ustaw] 2002, no. 218, item 1846

52 Rozporządzenie Ministra Zdrowia z 28-06-2002 w sprawie zakresu znajomości języka polskiego, koniecznego do wykonywania zawodu felczera na terenie Rzeczypospolitej Polskiej oraz egzaminu z polskiego. [Regulation of the Ministry of Health on depth of knowledge of the Polish language indispensable for performance of the profession of a hospital attendant in Poland and on the exam of the Polish language.] Journal of Laws [Dziennik Ustaw] 2002, no. 160, item 1675.

53 Rozporządzenie Ministra Rolnictwa i Rozwoju wsi z 25-08-2004 w sprawie zakresu znajomości języka polskiego przez lekarzy weterynarii będących obywatelami państw członkowskich Unii Europejskiej koniecznego do wykonywania zawodu lekarza weterynarii. [Regulation of the Ministry Agriculture on depth of knowledge of the Polish language indispensable for performance of the professions of a veterinary surgeon by the EU nationals]. Journal of Laws [Dziennik Ustaw] 2004, no. 205, item 2100.

54 Text of the resolution on the Polish Football Union web site: www.pzpn.pl

55 See Report of 2004.

States qualifications for practising regulated professions in the area of physical education and sport. This fulfils the requirement of the Minister to comply with the Act of 2001. If necessary (not obligatory) the probation periods or the aptitude tests may be applied to such regulated professions as: coaches/trainers⁵⁶, coaches of particular sports, trainers/coaches of disabled persons for recreation, sports therapists, sports managers, managers of particular sports and managers of sporting events.

In the maritime sector the Act of 9 November 2000 on maritime safety is still the principal act. It applies to qualifications in the maritime sector. The third chapter of the Act refers to the qualifications of officers and crew of vessels. It stipulates in Article 18 that the qualifications of officers of vessels and procedures for the issue of certificates must be compatible with international conventions (STCW, SOLAS, ILO Conventions 69 & 74) as well as with further provisions of the Act in Articles 19–22. The provisions of the Act have required the minister responsible for the maritime sector to provide details of training programs and exam requirements.

The foregoing Act was amended by the Act of 20 April 2004 [o zmianie ustawy o bezpieczeństwie morskim oraz o zmianie niektórych innych ustaw]⁵⁷ to adjust Polish law in this area to the EU accession requirements. This Act requires, *inter alia*, that Directive 2001/25/EC on the minimum level of training of seafarers be implemented.

In 2005 the Regulation of the Minister of Infrastructure of 6 February 2003 was replaced by the new one – the Regulation on training and qualifications of seafarers. As the previous Regulation of 2003, its paragraph 7 [4] stipulates that qualifications obtained in EU Member States in the regulated profession “seafarer” will be recognized according to the Act of 26 April 2001 on the rules governing the recognition of qualifications required in EU Member States for practising in regulated professions. It must be also added that in 2005 the Minister of Infrastructure issued another regulation – the Regulation of 13 July 2005 containing training programs and exam requirements towards seafarers.

It must be stressed that there are not any provisions containing the nationality provisions for the access to posts of captains of vessels.

*Current practice*⁵⁸

The practice in the field of issuing permission for work has not been changed since 2004. It still consists of two levels. First, there are steps taken by the employer (or the future employer) and second, the steps taken by a worker. It must be stressed that the procedure on work permits refers to these EU nationals who are obliged to obtain such a permit due to reciprocal measures. It means, that the procedure does not refer to nationals of Great Britain, Ireland, Sweden and nationals of the new Member States.

It should be remembered that employers, not employees, apply for work permits. Employers must submit applications accompanied by documents declaring their intention to carry out the particular economic activities and make tax payments⁵⁹. Also residence permits must be submitted with the applications.

If EU nationals do not have residence permits or temporary residence permits, the procedure consists of two stages – firstly the Voivode issues the promises of work which are a basis for either of the permits. The second stage is the issuance of the work permits. The promise of work is not necessary if EU nationals already have residence permits when applying for work permits.

A Voivode makes decisions about issuing promises or permits (when the prior granting of promises are not necessary) taking into consideration the employment situation (this does not apply to na-

56 Titles and required qualifications in the area of physical education are described in the Regulation of the Minister of National Education of 27 June 2001 on qualifications, degrees and professional titles in the area of physical education and on the principles of their attainment [rozporządzenie w sprawie kwalifikacji, stopni i tytułów zawodowych w dziedzinie kultury fizycznej oraz szczegółowych zasad i trybu ich uzyskiwania] Journal of Laws [Dziennik Ustaw] 2001, no. 71, item 738 and Journal of Laws 2003, no. 8, item 93.

57 Journal of Laws [Dziennik Ustaw] 2004, no. 93, item 895.

58 Information obtained from the Silesian Voivode's office and other voivodeships and from the Ministry.

59 Voivode refuses promises for work if employers are unable to prove that the employees are to be gainfully employed or will carry out any activity useful for the economy, growth of investment, transfer of technologies or creation of extra employment and if they do not show any means of fulfilling one of these conditions in the future.

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nationals of Italy, Denmark, Holland or Norway⁶⁰ and to nationals of the EU States who are allowed to perform their work without any restrictions) and the criteria for issuing promises and work permits. These criteria are formulated individually by each Voivode. They cannot contain requirements which discriminate against candidates with regard to their sex, age, disability, race, nationality, beliefs (especially political or religious) or trade union membership.

Translated documents⁶¹ certifying the qualifications required for particular positions, the scope of the foreigners' skills and that the foreigners had not been convicted⁶² should also accompany the application. For transferred employees, translated statements on such transfer are also necessary.

If necessary, information produced by the head of district administration (starosta) about the situation on the local labour market should also accompany the application. For doctors, nurses, chemists and teachers, documents certifying their qualifications and allowing them to practice their professions⁶³ are required.

Finally, proof of payment of charges to the account of the Ministry responsible for labour market also be enclosed.⁶⁴

All the documents should be submitted 30 days prior to the intended date of employment or extension of employment.

Decisions are issued in compliance with the Administrative Code. They may be sent by post. If (theoretically) the decision on work permit is not taken in 30 or 60 days it does not mean that a foreigner has the right to take up an employment legally. He or she has the right to lodge the complaint regarding the inactivity of an organ. Such a complaint is submitted to the organ of the higher instance. If they are negative, employers have the right to submit (via the Voivode) an appeal within 14 days to the Minister of Labour and Social Policy. Administrative decisions may be subjects of claims in administrative courts.

Decisions of the Voivode would be negative if the employer:

1. Refuses to employ those unemployed who were eligible to be hired in the positions to be taken by foreigners without well-founded reasons.
2. Applies for a promise to be granted to foreigners whose qualifications, skills or proposed remuneration are inadequate for the work to be carried out by the foreigners.
3. Applies for a promise to be granted to foreigners who had previously offended regulations applying in Poland, especially those concerning public safety.

Draft

In January 2006 the draft of the regulation of Minister of Labour and Social Policy on recognition of qualifications of personnel of employment agencies obtained in the EU or the EFTA States [Rozporządzenie w sprawie stażu adaptacyjnego i testu umiejętności w toku postępowania o uznanie nabytych w państwach członkowskich Unii Europejskiej lub państwach członkowskich Europejskiego Porozumienia o Wolnym Handlu (EFTA) kwalifikacji do wykonywania zawodu pośrednika pracy i doradcy zawodowego]

Literatur

Barcz, J., Kolowca, I. (eds): *Swoboda przepływu osób. Swoboda przedsiębiorczości. Wybór dokumentów* [Free movement of persons. Freedom of establishment. Compilation of documents]. Warszawa 2006.

Mitrus, L: *Swoboda przemieszczania się pracowników po przystąpieniu Polski do Unii Europejskiej*. [Free Movement of Workers after the Poland's Accession to the EU]. Warszawa 2003.

60 It means that despite of requirement of work permit for nationals of Italy, Denmark, Holland or Norway the procedure is simpler than in case of the third country nationals.

61 All translations must be done by a registered translator.

62 From National Criminal Record.

63 Documents issued by the Ministry of Health, the Board of Medical Practitioners, Nurses Association or Pharmacists Guild (or appropriate professional body); for teachers in public schools, authorization by the school's supervisory body.

64 The current charge is 824 PLN.

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Chapter III

Equality of Treatment on the basis of nationality

Texts in force

- *Konstytucja Rzeczypospolitej Polskiej* z 2-04-1997 - Constitution of the Republic of Poland 2-04-1997– Articles 32 sect. 2, 33 and 37.
- *Kodeks pracy* z 24-06-1974- the Labour Code of 24-06-1974– Articles 11 and 18 [3a-3e], 94, 94 [1]
- *Ustawa z dnia 26- 07-1991 r.*⁶⁵ - the Act of 26 – 07 –1991 on personal income tax
- *Ordynacja podatkowa* z 26.08.1997r⁶⁶ – the Act on the tax law system

The anti-discrimination clause in the Constitution of Poland⁶⁷ is of a very general nature and appears to be compatible with international and European standards (not only those issued by the Council of Europe but also by the EC and EU forum). The anti-discrimination clause has been clarified in certain legal acts, for example in the Labour Code.

Articles 11 [2] and 11 [3] of the Labour Code contain two of the basic principles of labour law. Article 11 [2] contains the principle of equality of employees. “Employees shall enjoy equal rights for the same performance of the same duties. This applies in particular to equal treatment of men and women in employment”. The main criterion is “performance of the same duties”, not the criterion of citizenship. This principle corresponds with Article 94 which outlines the duties of employers; its paragraph 9 stipulates that employers apply objective and fair criteria for the assessment of employees and the results of their work.

Article 11 [3] states that: “Any discrimination in employment, direct or indirect⁶⁸, in particular on grounds of sex, age, disability, race, religion, nationality, political convictions, union membership, ethnic origin, creed, sexual orientation, as well as on grounds of the terms of employment for a fixed or unfixed term or full time or part time, shall be inadmissible”. It is easy to notice that “citizenship” is not itemized in this Article. There is an opinion in legal literature that “citizenship of an EU Member State” should be added to Article 11 [3] as another criterion which cannot be grounds for discrimination, but in 2005 any legislative steps were not taken in this field. On the other hand, this Article contains the phrase “in particular”, which means that other grounds may be considered.

However, the ban on discrimination on the grounds of citizenship is expressed in the ILO Convention no. 111 and in the European Social Charter, both of which Poland is a party to.

The general principles of equality and non-discrimination have been summarized in the new Chapter IIa of the Labour Code.

Article 18 [3a] paragraph 1 states that “employees shall be accorded equal treatment as far as the entering into and terminating of an employment relation, terms of employment, promotion and access to training for the improvement of professional qualifications are concerned”, noting the requirements of Article 11 [3].

Also subsequent paragraphs of this Article give definitions of “equal treatment” and various types of discrimination.

65 Journal of Laws [Dziennik Ustaw] 1991, no. 80, item 350 with subsequent amendments.

66 The unified text is published in: Journal of Laws [Dziennik Ustaw] 2005, no. 8, item 60. Another amendment has been adopted on 30-06-2005. (Journal of Laws [Dziennik Ustaw] 2005, no. 143, item 1999. It implements provisions of the following directives 2004/56/EC of 21-04 - 2004 and 2004/106/EC of 16-11-2004.

67 Article 32 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. 2. No one shall be discriminated against in political, social or economic life for any reason whatsoever. Article 33 1. Men and women shall have equal rights in family, political, social and economic life in the Republic of Poland. 2. Men and women shall have equal rights, in particular regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold offices, and to receive public honours and decorations. Article 37 1. Anyone under the authority of the Polish State shall enjoy the freedoms and rights ensured by the Constitution. 2. Exemptions from this principle with respect to foreigners shall be specified by statute.”

68 The terms “direct” or “indirect” were introduced in 2001 and 2003, following negotiations with the EU.

According to paragraph 2, equal treatment in employment shall mean that “one should not be discriminated against in any way, directly or indirectly, on grounds set out in paragraph 1”. Next, “direct” and “indirect discrimination” are also explained. The first one occurs where, on one more of the grounds set out in paragraph 1 of Article 18 [3a] and in Article 11 [3], “an employee has been, is, or might be treated in a comparable situation in a manner less favourable than other employees.”

According to paragraph 4, the indirect discrimination “occurs where, as a result of a seemingly neutral decision, a criterion applied, or action taken, there are differences in terms of employment to the detriment of all, a substantial number of employees, or one of the groups singled out, on one or more of the grounds set out in paragraph 1, if such differences cannot be justified on objective grounds”

It should be stressed that introducing to the Code the types of discriminations and their interpretation were inspired by the judgments of the ECJ⁶⁹ and Directive 97/80 (Article 2 sect. 2b).

Article 18 [3b] explains the meaning of “breach of the principle of equal treatment”. The principle is violated if differentiation of the position of employees has in particular⁷⁰ referred not only to the entering into or the termination of an employment relation but also in respect to terms of remuneration for work, other terms of employment, missing out an employee in promotion, upgrading professional qualifications or granting of other work-related benefits (usually various social benefits)⁷¹.

The issuance of equal pay has been regulated in the Labour Code separately. Article 18 [3c] stipulates: “employees shall have the right to equal remuneration for the same work or for work of the same value”. Remuneration means all components of remuneration as well as other work-related benefits; also those granted to employees in other forms than money. This is in accordance with Article 141 TEC and Article 1 of Directive 75/117.

Paragraph 3 defines “work of the same value”. It is work which requires comparable professional qualifications, certified by appropriate documents or practice and professional experience, and also comparable responsibility and effort.

Situations where the principle of equal treatment has been breached can result in the following consequences:

- a. Recognition that certain provisions of employment contracts (or other instruments creating employment relations) are invalid; the appropriate provisions of the labour law should apply instead (Article 18 paragraph 3 of the Labour Code);
- b. Recognition of agreements as not binding following Article 9 paragraph 4 of the Labour Code; it refers to collective bargaining agreements and other collective agreements, regulations and statutes;
- c. Determination of compensation. According to Article 18 [3d] of the Labour Code “A person who is the victim of a breach by an employer of the principle of equal treatment in employment shall be entitled to damages in an amount not less than the minimum remuneration for work established under separate provisions”.

It is obvious that if migrant workers earn money in Poland, they should pay taxes. The EU nationals are not treated in this area in any exceptional way (also in sphere of company car taxation). The Polish tax system is quite complicated. Since the social and political transformations of 1989/ 1990, the Polish tax system has been gradually reformed. The tax rules are changed very often. But the types of taxes are the same. The Polish tax system distinguishes 12 types of taxes, including nine direct taxes and three indirect taxes. There are corporate income tax (CIT), personal income tax (PIT), tax on civil law transactions, real estate tax, tax on means of transport, inheritance and donations tax, agricultural tax, forestry tax, tax on dogs in the first group. Tax on goods and services (VAT), excise duty and game tax belong to the second group.

69 For example: *Mary Brown v. Rentokil Ltd* (C – 394/96); *Joan Gillespie and others v. Northern Health and Social Service Board, Department of Health and Social Services, etc.* (C – 342/93), *Jon O’Flynn v. Adjudication Officer* (C-237/94).

70 Therefore not all consequences of breach of the principle of equal treatment are itemised in this provision.

71 It is stated in Paragraph 1. of Article 18 3b. Paragraphs 2-4 outlines the situations which are not breaches of the principle of the equal treatment.

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The personal income tax seems to be the most important. It is regulated in the Act on personal income tax of 1991⁷². The most important norm is article 3 of the Act. It states that all individuals, whose place of residence is in Poland, are subject to unlimited tax liability in Poland, which means that they are liable to pay Polish taxes on the total of their income, irrespective of where it was generated. Individuals who do not have their place of residence in Poland are subject to limited tax liability, which means that they are liable to pay taxes only on income resulting from work carried out on the territory of Poland according to a service relationship or employment relationship, irrespective of where they receive their payment, and on other income received on the territory of Poland. So there are not any exceptions to the EU nationals. However it must be remembered that these rules are modified by the international agreements on elimination of double taxation. Poland is bound by 77 agreements including all EU Member States, Island, Norway and Switzerland⁷³.

Literature⁷⁴

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72 The Act of 1991 was amended many times just in 2005 there were 13 amendments.

73 The full list of agreements is on the web site of the Ministry of Finance: www.mf.gov.pl

74 It is difficult to recommend really current literature in the field of the taxation due to many amendments.

Chapter IV Employment in the public sector

Texts in force

- Constitution of the Republic of Poland of 2 –04 –1997
Ustawa z 16-09-1982 o pracownikach urzędów państwowych⁷⁵ the Act of 16-09-1982 on employees of government offices;
- Ustawa z 13-02-1984 o funkcjach konsułów Rzeczypospolitej Polskiej⁷⁶ - The Act of 13-02-1984 on the functions of consuls of the Republic of Poland;
- Ustawa z 18-12-1998 o służbie cywilnej⁷⁷ - the Act of 18-12-1998 on civil service
- Ustawa z 20-03-1990 o pracownikach samorządowych⁷⁸ - the Act of 20-03-1990 on employees of self-government;
- Ustawa z 8-03-1990 o samorządzie gminnym⁷⁹ - the Act of 8-03-1990 on communal self-government;
- Ustawa z 5-06-1998 o samorządzie powiatowym⁸⁰ - the Act of 5-06-1998 on district self-government;
- Ustawa z 15-09-1998 o samorządzie wojewódzkim⁸¹ - the Act of 15-09-1998 on regional self-government;
- Ustawa z 20-04-2004 o zmianie ustawy – Ordynacja wyborcza do rad gmin, rad powiatów i sejmików województw oraz niektórych innych ustaw⁸² - the Act of 20-04-2004 amending the principles of elections to communal, district and regional councils and regional parliaments and on amendment of certain other Acts.
- Ustawa z 21-11-1967 o powszechnym obowiązku obrony Rzeczypospolitej Polskiej⁸³ - Act of 21-11-1967 on common duty of the defence of the Republic of Poland
- Ustawa z 6-10-1990 o Policji⁸⁴ - Act of 6-10-1990 on the Police;
- Ustawa z 12-10-1990 o Straży Granicznej⁸⁵ - the Act of 12-10-1990 on Border Guards;
- Ustawa z 26-04-1996 o Służbie Więziennej⁸⁶ - the Act of 26-04-1996 on the Penitentiary Service;
- Ustawa z 31-08-1999 o Służbie Celnej⁸⁷ - The Act of 31-08-1999 on the Customs Service
- Ustawa z 24-05-2002 o Agencji Bezpieczeństwa Wewnętrznego i Agencji Wywiadu⁸⁸ - the Act of 24-05-2002 on the Agency of Internal Security and Agency of Secret Service;

75 Consolidated text: Journal of Laws [Dziennik Ustaw] 2001, no. 86, item 953.

76 Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 215, item 1823 with subsequent amendments. The requirement of citizenship does not apply to honorary consuls.

77 Journal of Laws [Dziennik Ustaw] 1999, no. 49, item 483 with subsequent amendments. The last amendments were adopted in June 2005 but they were not connected with the discussed area.

78 Consolidated text: Journal of Laws [Dziennik Ustaw] 2001, no. 142, item 1593 with subsequent amendments. The last amendment was adopted on 6 –05- 2005 but it does not refer to the EU nationals.

79 Consolidated text: Journal of Laws [Dziennik Ustaw] 2001, no. 79, item 855 with subsequent amendments

80 Consolidated text: Journal of Laws [Dziennik Ustaw] 2001, no. 142, item 1592 with subsequent amendments.

81 Consolidated text: Journal of Laws [Dziennik Ustaw] 2001, no. 142, item 1590 with subsequent amendments.

82 Journal of Laws [Dziennik Ustaw] 2004, no. 102, item 1055.

83 Article 4 sect. 1. of the Act. Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 21, item 205 with subsequent amendments.

84 Article 25 of the Act . Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 7, item 58 with subsequent amendments.

85 Article 31 of the Act. Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 171, item 1399 with subsequent amendments.

86 Article 24 of the Act. Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 207, item 1761 with subsequent amendments.

87 Article 24 of the Act. Journal of Laws [Dziennik Ustaw] 1999, no. 72, item 802 with subsequent amendments.

88 Article 15 of the Act. Journal of Laws [Dziennik Ustaw] 2002, no. 74, item 676.

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- Ustawa z 27-07-2001 - prawo o ustroju sądów powszechnych⁸⁹ - the Act of 27-07-2001 – Law on the structure of common law courts;
- Ustawa z 25-07-2001 - prawo o ustroju sądów administracyjnych - The Act of 25-07-2001 – Law on the structure of administrative courts⁹⁰;
- Ustawa z 23-11-2002 o Sądzie Najwyższym⁹¹ – the Act of 23-11-2002 on the Supreme Court;
- Ustawa z 20-06-1985 o prokuraturze⁹² - the Act of 20-06-1985 on the public prosecutor’s office;
- Ustawa z 14-02-1991 - prawo o notariacie⁹³ the Act of 14-02-1991
- Ustawa z 29 – 08-1997 o komornikach sądowych i egzekucji⁹⁴ - the Act of 29 – 08-1997 on court executive officers and execution.
- Ustawa z 27-07-2001 o kuratorach sądowych⁹⁵ the Act of 27-07-2001 on court-appointed curators;
- Ustawa z 5-07-2002 o świadczeniu pomocy prawnej przez prawników zagranicznych w Rzeczypospolitej Polskiej⁹⁶ – the Act of 5-07-2002 on rendering legal assistance by foreign lawyers in the Republic of Poland;
- Ustawa z 6-07-1982 o radcach prawnych⁹⁷ - the Act of 6-07-1982 on legal advisers;
- Ustawa z 26-05-1982 – prawo o adwokaturze⁹⁸ the Act of 26-05-1982 – Law on the Bar;
- Ustawa z 19-04-1991 o samorządzie pielęgniarek i położnych⁹⁹ - the Act of 19-04-1991 on self-administration of nurses and midwives;
- Ustawa z 1-12-1996 o zawodzie lekarza¹⁰⁰ the Act of 5-12-1996 on the medical profession;
- Ustawa z 17-05-1989 o izbach lekarskich¹⁰¹ - the Act of 17-05-1989 on the self-administration of medical practitioners;
- Ustawa z 19-04-1991 o izbach aptekarskich¹⁰² - the Act of 19-04-1991 on the self-administration of pharmacists;
- Ustawa z 20-04-2004 o zmianie ustawy o zawodach pielęgniarki i położnej oraz innych ustaw¹⁰³ – the Act of 20-04-2004 on the amendment of the Act on the profession of nursing and midwifery and certain other Acts;
- Karta Nauczyciela 1982¹⁰⁴ - The Teachers’ Charter of 1982;
- Ustawa z 27-07-2005– Prawo o szkolnictwie wyższym¹⁰⁵ — Act of 27-07-2005 - Law on higher education ;
- Ustawa z -8-07-2005 o Prokuraturii Generalnej Skarbu Państwa¹⁰⁶ — Act of 08-07-2005 on General Office of Attorney of the State Treasury.

In the field of access to public sector (like in the other fields) no fundamental changes have taken place since 2005. The requirement of Polish citizenship still exists where there is direct or indirect

89 Journal of Laws [Dziennik Ustaw] 2001,no. 98,item 1070 with subsequent amendments;

90 Journal of Laws [Dziennik Ustaw] 2002,no. 153,item 1269.

91 Journal of Laws [Dziennik Ustaw] 2002, no. 240, item 2052 with subsequent amendments.

92 Act of 20-06-1985 on the public prosecutor’s office. [ustawa o prokuraturze]. Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 21,item 206 with subsequent amendments.

93 Act of 14-02-1991 on notaries [prawo o notariacie]. Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 42, item 369 with subsequent amendments.

94 Act of 29.1997 on court executive officers and execution [ustawa o komornikach sądowych i egzekucji]. Journal of Laws [Dziennik Ustaw] 1997, no. 133, item 882 with subsequent amendments.

95 Act of 27-07-2001 on court-appointed curators [ustawa o kuratorach sądowych] Journal of Laws [Dziennik Ustaw] 2001, no. 98, item 1071 with subsequent amendments.

96 Journal of Laws [Dziennik Ustaw] 2002, no. 126, item 1069.

97 Journal of Laws [Dziennik Ustaw] 1982, no. 19, item 145 with subsequent amendments. Amendment referring to EU nationals in: Journal of Laws [Dziennik Ustaw] 2002, no. 123, item 1069.

98 Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 123, item 1058.

99 Journal of Laws [Dziennik Ustaw] 1991, no. 41, item 178 with subsequent amendments. The title of the Act has been changed to ”Act on doctor and dentist professions”.

100 Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 21, item 204 with subsequent amendments.

101 Journal of Laws [Dziennik Ustaw] 1989, no. 30, item 158 with subsequent amendments.

102 Consolidated text: Journal of Laws [Dziennik Ustaw] 2003, no. 9, item 108 with subsequent amendments.

103 Journal of Laws [Dziennik Ustaw] 2004, no. 92, item 855.

104 Consolidated text: Journal of Laws [Dziennik Ustaw] 2003, no. 118, item 1112.

105 Journal of Laws [Dziennik Ustaw] 2005, no. 164, item 1365.

106 Journal of Laws [Dziennik Ustaw] 2005, no. 169, item 1417.

exercise of the State's powers – in positions at offices requiring loyalty towards the State. So there are some positions unavailable for nationals from other EU Member States, like the leading representatives of the Republic of Poland (from the Constitution). Also it is obvious that access to the uniformed services requires citizenship of the Republic of Poland – these are, *inter alia*, the Army, the Police, Border Guards, Prison Officers, Municipal Security Guards and Customs Officers; other services would include the Agency of Internal Security (Agencja Bezpieczeństwa Wewnętrznego) or Secret Service and other such services.

According to other Acts, the personnel of other State institutions should be citizens of the Republic of Poland. From the Act of 16 September 1982, this applies to employees of government offices, Parliamentary offices (chancellery), the President's Office (chancellery), office of the Constitutional Tribunal, offices of the Commissioner for Citizens' Rights and the Commissioner for Children's Rights, the Public Interest Commissioner, National Remembrance Institute, Supreme Chamber of Control, the National Electoral Bureau, the State Labour Inspection, the National Council of Radio Broadcasting and Television, the Government Centre for Strategic Studies, the Government Centre of Legislation, Regional Accounting Chambers and other State inspectorates.

The provisions of the Act of 16 September 1982 on government offices employees are usually interpreted so that not only persons taking decisions or planning national strategy should possess Polish citizenship but also other persons employed in the above mentioned institutions should be Polish citizens. However, the requirement refers to civil servants, not to all employees working at those offices.¹⁰⁷ On the other hand, the list of civil servants is very wide.

The other act containing the requirement of Polish citizenship is the Act of 18 December 1998 on civil service. This Act defines the status of officials of the State administrative agencies, voivode-ships and other offices which are the responsibility of ministers and other central administrative agencies.

It is obvious that Polish citizenship should be held by diplomatic representatives and consuls.

Also judges, public prosecutors, court executive officers, court appointed curators, notaries should have Polish citizenship. In 2005 the Act on General Office of Attorney of the State Treasure was adopted. The state attorneys must be citizens of the Republic of Poland (Article 29).

Regarding the position of various types of lawyers, it must be stressed that because of Poland's accession to the EU, the Acts referring to legal advisers (solicitors) and advocates (barristers) have been amended. Their position has been defined by the Act of 5 July 2002 on rendering legal assistance by foreign lawyers in the Republic of Poland. The Act allows foreign legal advisers or advocates to render legal assistance in Poland, but lawyers from third countries are allowed to render such assistance only on the principle of reciprocity (from agreements between Poland and their home countries) and only in connection with international law or law of their home country. Since the day of accession to the EU the position of legal advisers or advocates from the EU States is almost the same as for Polish lawyers. "Almost" - because they have the same rights and duties as Polish advocates or legal advisers except being ineligible to be elected to the autonomy of the Bar or the autonomy of Legal Advisers. In 2005 the amendment of this Act was adopted¹⁰⁸. It obliges the foreign advocates – third country nationals (so not EU citizens) to produce the certificate confirming that he/she is on the list of advocates in his own country.

This Act amended the Act of 6 July 1982 on legal advisers and the Act of 26 May 1982 – Law on the Bar. Each regional Bar decides about admission to the list of advocates.

The regional council of legal advisors decides if EU nationals can be exempted from legal post-graduate practical training (*aplikacja radcowska*) and about admitting EU nationals to the list of the legal advisors. They must produce appropriate documents regarding their qualifications as well as demonstrating appropriate knowledge of the Polish language.

The Act of 20 April 2004 on amendment and annulment of certain Acts connected with the obtaining by Poland of EU membership has introduced two main amendments to the above Acts. Firstly, there is provision for implementation of Directive 98/5/EC of 16 February 1998 to facilitate practice of the profession of law on a permanent basis in Member States other than those in which qualifica-

107 It would be strange to introduce the nationality criterion, for example for persons working in cleaning service or at canteens, etc.

108 Journal of Laws [Dziennik Ustaw] 2005, no. 150, item 1240.

tions were obtained. Secondly, there is the unification of standing of lawyers from the Member States in EFTA or EAA with the lawyers from the EU.

In 2005 the above mentioned acts were amended again¹⁰⁹. The amendments refer, *inter alia*, to the admission to these professions (examination procedure) but they do not make the position of the candidates from other EU States for advocates or legal advisors worse.

As it was stated before as a result of the EU accession, the laws on access to the various professions in the public sector *sensu largo* have been amended and there were not any significant amendments since that time, also in the “medical” sector. EU nationals have access to all medical professions (e.g. doctors, nurses, midwives, pharmacists, veterinary surgeons, hospital attendants, etc.) as well as other professions like social workers or teachers.

The first principle of employment of EU nationals is that they should meet the same requirements as Polish citizens, so they should have equivalent professional qualifications and usually they also need to prove that they know the Polish language. The second principle is that if EU nationals are admitted to any profession, their standing is the same as Polish citizens¹¹⁰.

Some large amendments were introduced into the Polish legal system just before the accession. The first Act which should be noted is the Act of 20 April 2004 on the amendment of the Act on the profession of nursing and midwifery and certain other Acts [ustawa o zmianie ustawy o zawodach pielęgniarstwa i położnictwa oraz innych ustaw]¹¹¹. Regarding the nurses and midwives, the Act implements Directives 77/452/EEC, 77/453/EEC, 80/154/EEC, 80/155/EEC, 2001/19/WE and others amended by the last Directive. The Act contains the requirements for practising the stated professions by EU nationals and sets out the rights of the Nurses and Midwife’s Association [Naczelna Rada Pielęgniarek i Położnych, Okręgowa Rada Pielęgniarek i Położnych] with regard to the issuance of certificates allowing recognition of qualifications and documents.

Following these amendments, the Act of 19 April 1991 on self-administration of nurses and midwives [ustawa o samorządzie pielęgniarek i położnych]¹¹² was adjusted to the above Directives.

The Act of 20 April 2004 affected the laws relating to doctors, necessitating amendments to the Act of 5 December 1996 on the medical profession and the Act of 17 May 1989 on the self-administration of medical practitioners. Now these Acts implement Directives 78/686/EEC, 78/687/EEC, 93/16/EEC and 2001/19/EC, and all the Directives amended by the last one. The scope of the amendments of 20 April 2004 corresponds to the amendments relating to nurses and midwives.

Conforming to the Act of 20 April 2004, the Act of 19 April 1991 on the self-administration of pharmacists has been also amended. Now it is adjusted to Directives 85/432/EEC, 85/433/EEC and 2001/19/EC (and all the Directives amended by the last one).

Considering access to public sector, attention should also be paid to the regulation allowing persons to carry out the profession of teaching. The Act of 20 April 2004, on amendment and annulment of certain Acts resulting from Poland obtaining EU membership, introduced into the principal Act relating to teachers – The Teachers’ Charter of 1982 a provision allowing EU nationals and citizens of EAA States access to the profession as “nauczyciel mianowany (appointed teacher)” and “nauczyciel dyplomowany (diploma teacher)” – the highest categories of teachers (Article 10 sect. 5, p. 1).

It must be remembered that the profession “belonging” to the public sector are usually “regulated professions”. That is why EU nationals should submit a declaration on their language capability or fulfil the requirement for probationary periods or tests, which was discussed in Chapter III.

It is also worth mentioning that the new Act referring to the higher education was adopted in 2005 – Law on higher education. According to Article 109 of this Act universities are free to employ foreigners and citizenship is not a criterion of employment.

There is another aspect of the access to the public sector. The situation of EU nationals regarding access to self-government at the local level should be also taken into consideration. The main amendment in this area results from the Act which became law on the day of accession to the EU – the Act of 20 April 2004 on amendment of the Act regulating the principles of elections to communal, district and regional councils and regional parliaments and on amendment of certain other Acts. The

109 Journal of Laws [Dziennik Ustaw] 2005, no. 163, item 1361.

110 See chapter V.

111 Journal of Laws [Dziennik Ustaw] 2004, no. 92, item 855.

112 Journal of Laws [Dziennik Ustaw] 1991, no. 41, item 178 with subsequent amendments. The title of the Act has been changed to “Act on doctor and dentist professions”.

Act has implemented Directive 94/80/EC, detailing arrangements for exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the EU residing in a Member State of which they are not nationals.

EU nationals will have the right to participate in the next local elections if they have the same rights in their own country, either for voting or for standing as candidates. However, from Article 26 sect. 2a of the Act of 8 March 1990 on communal self-government, Article 26 sect. 2a of the Act of 5-06-1998 on district self-government and Article 31 sect. 2a of the Act of 15 September 1998 on regional self-government, persons who are not Polish citizens cannot be elected to the positions of heads of communes [wójt] or heads of towns [prezydent or burmistrz]. Persons who are not Polish citizens also cannot be elected members of district and regional boards of management.

According to article 3 of the Act of 20 March 1990 on employees of self-government¹¹³, employees who are elected, nominated or appointed should be Polish citizens. Such requirements do not apply to employees who work under employment contracts. Unfortunately, it is difficult to determine clearly who contract workers at the lowest level are because each commune regulates this group of employees in their statutes. It means that the situation regarding access of EU nationals to employment in offices of self-government may vary, depending on the commune.

Referring to the recognition of professional experience it should be stated that in many cases of employment in the public sector the requirement of the seniority (length of employment) */staż pracy/* may be applied. Usually this requirement does not refer to the experience in a specific profession but generally to the period of employment. Sometimes the experience of being an executive/manager is required.

Such requirements are contained in the regulations issued by the relevant ministers or the Council of Ministers. In practice there are many regulations containing tables of requirements for persons employed in the public sector. If an EU national is allowed to perform a profession (without the requirement of being a Polish national) requirement) the conditions of employment are always the same. The seniority has the influence on the remuneration of an employee (seniority bonus).

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113 Self-government means: Urząd Malszałkowski [the office of the Speaker of the local seym (diet)], starostwo powiatowe [office of head of a district], communal offices and other administrative local institutions.

Chapter V Family members

Texts in force

- Ustawa z 13-06-2003 o cudzoziemcach - the Act of 13-06-2003 on aliens
- Ustawa z 27-07-2002 o zasadach i warunkach wjazdu i pobytu obywateli państw członkowskich Unii Europejskiej oraz członków ich rodzin na terytorium Rzeczypospolitej Polskiej - the Act of 27-07-2002 on the principles and conditions of entry and residence of nationals of the Member States of the European Union and members of their families within the territory of the Republic of Poland
- Ustawa z 7-09-1991 o systemie oświaty¹¹⁴ - the Act of 7-09-1991 on the system of education
- Kodeks postępowania administracyjnego - The Code of Administrative Procedures
- Ustawa z dnia 9-09-2000 o opłacie skarbowej - the Act of 9-09-2000 on stamp duty
- Rozporządzenie ministra zdrowia z dnia 25-09-2003 w sprawie wykazu chorób uznanych za zagrażające zdrowiu publicznemu, z powodu których można odmówić zezwolenia na pobyt lub pobyt czasowy obywatelowi Unii Europejskiej i członkowi jego rodziny – the Regulation of the Minister of Health of 25-09-2003 on specifying diseases recognised as dangerous to public health, as reason for refusal of residence permits or temporary residence permits to EU nationals and their family members.
- Rozporządzenie z dnia 26-04-2004 w sprawie wzorów wniosków, dokumentów i rejestrów dotyczących wjazdu i pobytu obywateli państw członkowskich Unii Europejskiej oraz członków ich rodzin na terytorium Rzeczypospolitej Polskiej] – the Regulation issued by the Minister of Internal Affairs and Administration of 26-04-2004 on specimens of applications, documents and registers referring to the entry and residence of the nationals of EU Member States and members of their families within the territory of the Republic of Poland
- Rozporządzenie Rady Ministrów z dnia 30-11-2000 w sprawie opłaty za wydanie dowodu osobistego - the Regulation of 30-11-2000 issued by the Council of Ministers on payment for the issuing of identity cards
- Rozporządzenie Ministra Edukacji Narodowej z 4-10-2001 w sprawie przyjmowania osób nie będących obywatelami polskimi do publicznych przedszkoli, szkół, zakładów kształcenia nauczycieli placówek¹¹⁵ - the Regulation of 4-10-2001 issued by the Minister of Education on admission of persons who are not Polish citizens to public nursery schools, schools and educational institutions for teachers

As in the previously presented areas, the position of the of family members, their right of entry and residence has not been changed in 2005. As previously their situation is strictly connected with the position of EU nationals who arrive in Poland with the intention of taking up any occupation. This issue has been discussed in the first chapter. The entry, residence and departure of family members are regulated by the Act of 27 July 2002 on the principles and conditions of entry and residence of nationals of Member States of the European Union and members of their families within the territory of the Republic of Poland.

Article 3 sect.2 of the Act refers to family members of EU nationals. If family members are not citizens of an EU Member State, they may enter the territory of the Republic of Poland if they possess valid travel documents (identity and citizenship documents are not required) and visas (only if it is required¹¹⁶). The list contains, except all the EU Members, 27 States and Macao and Hong – Kong. Other nationals should possess visas. It corresponds with the EU visa requirements.¹¹⁷

114 Consolidated text: Journal of Laws [Dziennik Ustaw] 2004, no. 256, item 2572. Two new amendments were adopted in May and June 2005 but they do not refer to EU nationals.

115 Journal of Laws [Dziennik Ustaw] 2001, no 131, item 1458.

116 The Announcement of 15 September 2003 of the Minister of Foreign Affairs on the list of States whose citizens are not obliged to possess visa on the basis of bilateral agreements or on the basis of unilateral abolishing of visas requirements - *Obwieszczenia Ministra Spraw Zagranicznych z 15-09-2003 w sprawie ogłoszenia listy państw, z którymi Polska zawarła umowy o całkowitym lub częściowym zniesieniu*

However, the visa for family members of EU nationals who need such a document may be issued at the border by the commanding officer of the Border Guard checkpoint (Article 3 sect. 4). The amendment of 22 – 04 – 2005 has changed the name of the organ who may issue the visa at the border. Nowadays it is the commanding officer of the Border Guard station. So it is relatively simple procedure¹¹⁸.

Article 2 of the Act describes a “family member” as:

- a. A person not having Polish citizenship and being a spouse of an EU national. Their marriage must be recognised by Polish law¹¹⁹. It means that unmarried partners are not protected¹²⁰.
- b. A person not having Polish citizenship and being a descendant of an EU national and being under the age of 21 years or being dependant on an EU national
- c. A direct relative who is dependant on an EU national or on the spouse of this EU national.¹²¹

Article 21 of the Act states that in situations when family members are nominated in the application for residence or extension of residence, documents confirming marriage or other family ties or documents confirming that a particular family member is dependant on an EU national should accompany the application. In the event that the application includes the spouse, or another family member who is 16 years of age or over that age, the consent of that person expressed in writing is necessary.

According to Article 17 sect. 5, together with Article 5 sect. 5, for family members of EU nationals who die as a result of accidents at work or occupational diseases during the time of employment, independent occupations or economic activities, residence permits cannot be withdrawn,¹²² even if they do not possess sufficient financial means to cover living costs. If they want to remain in Poland they should present the death certificates of the EU nationals and their marriage certificates, proof of direct relationship or documents showing that family members were dependent on the EU national or they had lived together in the country of origin before they came to Poland.

In the case of death of EU nationals from other causes, if family members intend to remain, they are obliged to perform some work or economic activity. This requirement does not apply to adolescent members of families.

According to Article 87 of the Act of 2004 on promotion of employment and the institutions of the labour market, foreigners may perform work in the territory of Poland if they possess work permits. It is a general rule. However, as it was stated above, some foreigners are not obliged to apply for work permits. Exemption from the requirement to obtain work permits applies, inter alia, to EU nationals and their family members (so also to citizens of third countries). The situation of family members is relevant to the situation of a migrant worker. If he or she is not obliged to obtain a work permit, members of his or her family are not either. The provisions of Annex XII to the Accession Treaty and the principle of reciprocity also apply to family members of those EU nationals who have the right to residence, to migrant workers, students and those who carry out their own economic activity.

There is no doubt that provisions on the access to education are particularly important for migrant workers and their families. According to Article 94a, sect. 2, paragraph 1 of the Act of 7 Sep-

obowiązku wizowego dla obywateli których jednostronnie został zniesiony obowiązek wizowy. Published in the “Monitor Polski” 2003 no. 45, item 691

117 The EC Regulation 539/2001 and the new Regulation 851/2005 are directly implemented

118 The Border Guard did not provide any information about any changes in its practice towards family members.

119 Article 18 of the Constitution of the Republic of Poland of 1997, and the Family and Guardianship Code of 1964.

120 It seems that in future this definition may turn out controversial, but nowadays Polish unmarried couples are also not recognised by Polish law (they are not treated as a family even in relation for example to taxes and inheritance). As Polish unmarried couples are not treated as a family, unmarried alien couples cannot be recognised as a family either. That is why it is impossible to treat this provision as discriminative in the context of nationality.

121 In case of this group of family members, the text of the Act may seem to be unclear because it is not certain if “direct line” refers only to akins or also to relatives, if it refers to both kinds of the family member, the scope of the provision would be narrower than the scope of Article 10 of the Regulation 1612/68. However, in both cases the fact of dependence and the living under the roof of the EU national is the most important.

122 In accordance with Article 3 of 1251/70 of the EC on 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State.

tember 1991 on the system of education EU nationals and members of their families¹²³ are allowed to attend all kinds of public schools (nursery schools, primary, secondary schools – lower as well as upper, artistic schools and special schools for teachers) on the same basis as for Polish citizens. It should be stressed that third country nationals (except recognized refugees) may attend public schools on the same basis as Polish nationals only at nursery school, primary school and the lower–secondary school (gimnazjum) levels. This restriction means that EU nationals are privileged.

Also Article 94a, sect. 4 requires local administration to organize Polish language lessons for persons who are not Polish citizens but are required to be educated if their language capability is not sufficient to participate in lessons at schools. The details of arrangements of this kind of additional education are determined by the Regulation of 4 October 2001 issued by the Minister of Education on admission of persons who are not Polish citizens to public nursery schools, schools and educational institutions for teachers. Paragraph 6 of the Regulation relating to courses¹²⁴ teaching the Polish language and coaching¹²⁵ became law on the day of Poland's accession to the EU, so it was adopted mainly in favour of EU nationals.

There are not any special public schools in Poland for children of migrant workers because as for now the number of legal migrant workers is not significant. Illegal workers arrive usually without children or they try to avoid any contact with all kinds of State institutions. The children of EU nationals usually attend private schools or schools set up by their embassies¹²⁶.

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123 There is no requirement that family members must be nationals of the EU Member States.

124 When there are at least 15 participants.

125 When there are fewer than 15 participants.

126 Nationals of Slovakia, Germany, Lithuania, and Czech Republic are in a better situation. They have the possibility to attend minority schools where they are taught in their mother tongue or at least the special courses of their languages are organized. The minority schools are State/public schools. However, in practice there are not many minority schools in Poland. They depend on a number of national minorities living in Poland and therefore they are usually situated near borders.

Chapter VI

Relevance, influence, follow-up of recent ECJ decisions

In 2005 the judgement issued by the Constitutional Tribunal had the fundamental significance for the discussed issue. The judgement is extremely important because it explains, *inter alia*, the place of EC law in the Polish legal system and the role of the European Court of Justice.

The Constitutional Tribunal in its judgment of 11 May 2005 stated that the Accession Treaty as a whole as well as its particular provisions do not break the provisions of the Constitution of Poland. The Tribunal did not agree with the argument that the competences of ECJ are in contradiction with the principle of the sovereignty of Poland, the supremacy of the Polish Constitution in the Polish legal system and the position of the Constitutional Tribunal. The Constitutional Tribunal concluded that the interpretation of the EC law provided by the ECJ is one of its competences and functions which have been transferred to it by the Member States. The interpretation of the EC law given by the ECJ should respect the principle of mutual loyalty of the EU institutions and the institution of the Member States. It means that the ECJ should foster the internal legal systems and, on the other hand, the Member States should preserve the highest standard of respecting the EC norms¹²⁷.

It is worth mentioning that in 2005 there was the first and only preliminary question-submitted to the ECJ by the Polish court. On 22-06-2005 the Administrative Court in Warsaw (Wojewódzki Sąd Administracyjny) suspended the procedure and sent the preliminary question to the ECJ¹²⁸. The case referred to the rejection of the return of excise tax which was paid for a car bought in another EU country.

It seems to be still too early to assess this above mentioned “respect for EC norms” and the influence of the ECJ judgements on the Polish law and practice. First, as it was stated before, the most important acts adjusting the Polish law to the EC requirements were adopted in 2004 or earlier (usually in the years 2001-2002). Secondly, the time which has gone from the moment of accession is still short. That is why it is rather difficult to suppose that the legislator took into consideration the newest judgements issued by the ECJ. It means that it is only possible to compare a given situation with the Polish legal system or practice of organs and try to predict the result.

Taking into consideration the judgement of the ECJ in the *Collins case*, it seems that it is difficult to adjust Mr. Collins’ situation to the Polish legal system. A person in the circumstances of Mr. Collins could not be recognized as a worker in the meaning of the Act 2002 on the principles and conditions of entry and residence of nationals of the Member States of the European Union and members of their families within the territory of the Republic of Poland. It would be very difficult to grant him any jobseeker’s allowance due to the Act of 2004 on promotion of employment and institutions of the labour market because such allowance may be paid only for person who has “worked out” the right to such financial assistance. There would be not any discrimination towards him, because each job seeker should work in Poland or in other EU country for specified period if he/she wants to obtain the right to unemployment allowance. However it is not excluded that he could apply for the other kind of assistance (not financial) in seeking any job.

It is very possible that in a case similar to *Trojani*, the Polish court would submit the preliminary question to the ECJ because it is difficult to assess the “nature” of the job/service performed by Mr. Trojani. In the light of the Act of 2002 it would be difficult to provide to him a residence permit and in consequence the right to social assistance.

It would also be difficult to assess a situation similar to the *Ioannidis* case, because there are not any relevant provisions in the Polish law which subject the allowance for a person seeking her/his first job to the condition of graduating from a grammar school in Poland.

127 The judgement published Journal of Laws [Dziennik Ustaw] 2005, no 86, item 744. The text in English is also accessible at the Tribunal’s web page: http://www.trybunal.gov.pl/eng/summaries/wstep_gb.htm

128 Case III SA/Wa 679/05 The text of the preliminary question is accessible (in Polish) on the Court’s web site www.warszawa.wsa.gov.pl

Chapter VII

General Policies with possible effects on the free movement of EU citizens

- Konstytucja Rzeczypospolitej Polskiej z 2-04-1997 - Constitution of the Republic of Poland 2-04-1997
- Kodeks pracy z 24-06-1974- the Labour Code of 24-06-1974-
- Ustawa z 15 – 02-1962 o obywatelstwie polskim¹²⁹ - the Act of 15-02-1962 on Polish citizenship;
- Ustawa z 24 –03 –1920 o nabywaniu nieruchomości przez cudzoziemców¹³⁰ - the Act of 24-03-1920 on the Acquisition of Real Estate by Foreigners;
- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z 26 –04- 2004 w sprawie szczegółowych informacji oraz rodzajów dokumentów, jakie jest obowiązany przedstawić cudzoziemiec ubiegający się o wydanie zezwolenia na nabycie nieruchomości¹³¹ - the Regulation of Minister of Internal Affairs and Administration of 26-04-2004 on detailed information and types of documents, which a foreigner, applying for a permission to purchase real estate, is obliged to present;

Some issues of the general nature have the influence the free movement of persons. Apart from general economic, political and social factors some particular legal solutions may decide about the attractiveness of a given country.

First, the issue of non-discrimination should be taken into consideration.

Paragraph 5 of Article 18 [3a] of the Labour Code indicates the symptoms of discrimination. Firstly, it is “encouraging another person to breach the principle of equal treatment in employment”. Secondly, it is “behavior aimed at, or resulting in, violation of the dignity or in humiliation or abasement of an employee (harassment)”. The next paragraph of Article 18 [3a] states that: “Discrimination of sex shall also include any unacceptable behavior of a sexual nature or referring to the employee’s sex aimed at, or resulting in, violation of the dignity or in humiliation or abasement of an employee; such behaviour may include physical, verbal or non-verbal action (sexual harassment)”.

In order to counteract such a behavior employers are obliged to “make available to employees the text of provisions on equal treatment in employment by disseminating at their workplace written information on the subject or shall ensure access by employees to such provisions in a manner customary with the employer”. (Article 94 [1] of the Code). Moreover the employer is also obliged to oppose widespread mobbing (Article 94 [3]).

Similarly, the Act on promotion of employment and institutions of the labour market of 2004 forbids discriminative practices. Its Article 36 sect. 5 states that employers are not allowed to have in their job advertisements any discriminating requirements relating to sex, age, disability, race, ethnic origin, nationality, sexual orientation, opinion (particularly political or religious), or membership of trade unions. Also Article 123 of this Act states that if an employer refuses to employ a person because of any of the above reasons (despite there being a vacant position) he is currently liable to a fine amounting to 3000 PLN. This also applies to employment agencies.

It should also be noted that because of the amendments introduced by the Act of 20 April 2004 on the annulment of certain acts in connection with Poland obtaining EU membership, the Act of 27 August 1997 on vocational and social rehabilitation and employment of disabled persons [ustawa o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych]¹ has been adjusted to Directive 2000/78/EC, establishing a general framework for equal treatment in employment and occupation.

129 Journal of Laws [Dziennik Ustaw] 2000, no 28, item 353.

130 Consolidated text in: Journal of Laws [Dziennik Ustaw] 2004, no 167, item 1758.

131 Journal of Laws [Dziennik Ustaw] 2004, no. 94, item 925.

Unfortunately after the parliamentary election the post of the Plenipotentiary of the Government on the Equal Status of Women and Men¹³² was liquidated as a separate organ. Its competences were transferred to the Ministry of Labour and Social Policy. Nowadays, it is quite difficult to predict the fate of the adopted in 2004 National Program for Counteracting Racial Discrimination, Xenophobia and the Intolerance Connected with these¹ for the years 2004–2009. The aim of the Program is the practical implementation of the principle of non-discrimination contained in Acts of international law, European law (*sensu largo*), *inter alia* Council Directive 2000/43/EC of 29-6-2000 implementing the principle of equal treatment of persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment of persons in employment and occupation.

Another change in the practice of the Polish organs may be noticed. Due to information obtained last year at the Ministry of Interior and Administration, citizens of EU countries who obtained residence permits or temporary residence permits after 1 May 2004 (in accordance with the Act of 2002 – see Chapter I.), could apply for Polish citizenship on the basis of Article 8, sect. 2 of the Act on Polish citizenship of 15 February 1962. In contrast to other foreigners, EU nationals may obtain Polish citizenship following a special procedure. Citizenship is granted to EU nationals by the President (as is the case for other foreigners) but the requirement for five years' residence (in accordance with the "permit for settlement") has been abolished. Recently the Ministry has issued the information that EU nationals may apply for Polish citizenship as all other foreigners¹³³.

As it was noticed in the Report of 2004, the other act which may be important for foreigners intending to come and settle down in Poland is the Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners. Following Poland's accession to the EU it has been amended, but there are some important restrictions.

It was not amended in 2005 and the general rules of acquisition of real estate have remained the same.

Article 1 of the Act stipulates that:

"The acquisition of real estate by a foreigner requires a permit. A permit is issued through an administrative decision by a minister competent in internal affairs, with the consent of the Minister of National Defense, and in the case of agricultural real estate, also with the consent of a minister competent in the country development".

However, the situation of EU (and EAA) nationals is different. According to Article 8 sect. 2, it is not obligatory for foreigners who are citizens or entrepreneurs of Member States of the European Economic Area to obtain a permit.

However, because of the transitional periods, there are some exceptions for the acquisition of:

"1) agricultural and forest real estate, during the period of 12 years of the Republic of Poland Accession to the European Union, 2) second house, during the period of 5 years of the Republic of Poland Accession to the European Union."

Moreover, it is necessary to note that the procedure of acquisition of agricultural real estate depends on the region of Poland. According to section 2a of Article 8

"It is not obligatory to obtain a permit by foreigners being citizens of Member States of the European Economic Area in the periods provided for in paragraph 2, in the case of: acquisition of agricultural real estate located in: a) the dolnośląskie, kujawsko-pomorskie, lubuskie, opolskie, pomorskie, warmińsko-mazurskie, wielkopolskie, zachodnio-pomorskie voivodeships, after 7 years of concluding an agreement of lease with stated date, if during this period they conducted agricultural activities in person and legally dwelled in the territory of the Republic of Poland, b) the lubelskie, łódzkie, małopolskie, mazowieckie, podkarpackie, podlaskie, śląskie,

132 Rozporządzenie Rady Ministrów z dnia 3 listopada 2005 r. w sprawie zniesienia Pełnomocnika Rządu do Spraw Równego Statusu Kobiet i Mężczyzn [Regulation of the Council of Ministers on liquidation of the Office of Plenipotentiary of the Government on the Equal Status of Women and Men. Journal of Laws [Dziennik Ustaw] 2005, no. 222, item 1913.

133 See: www.mswia.gov.pl.

świętokrzyskie voivodeships, after 3 years of concluding an agreement of lease with stated date, if during this period they conducted agricultural activities in person and legally dwelled in the territory of the Republic of Poland”.

It should also be added that it is not obligatory for citizens of EEA Member States to obtain a permit in the case of the acquisition of a second house if the buyer has legally been continuously residing for at least 4 years in the territory of the Republic of Poland or buys the second house in order to conduct economic activities involving the provision of tourist services.

The Act also regulates the situation of shareholders and stockholders. According to Art. 8, sect. 2b “Citizens of Member States of the European Economic Area, being on the day of the Republic of Poland obtaining membership in the European Union the shareholders or stockholders of commercial partnership seated in the territory of the Republic of Poland, may include in the lease periods provided for in paragraph 2a item 1 the lease period of farmland by the partnership, if during this period, being the shareholders or stockholders of the company, they conducted agricultural activities in person and legally dwelled on the territory of the Republic of Poland”.

Practical details for the acquisition of real estate are contained in the Regulation of Minister of Internal Affairs and Administration of 26 April 2004 on detailed information and types of documents, which a foreigner, applying for a permission to purchase real estate, is obliged to present.

The executive regulation¹³⁴ to the Act of 1920 has not been amended either. However, there is a draft of its amendment.

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134 Regulation of the Minister of Internal Affairs and Administration of 23 November 2004 on procedure and detailed principles of conducting registers of real estate, shares and stocks relinquished or taken over by foreigners [Rozporządzenie Rady Ministrów z dnia 23 listopada 2004 r. w sprawie trybu postępowania i szczegółowych zasad prowadzenia rejestrów nieruchomości, udziałów i akcji nabytych lub objętych przez cudzoziemców]. *Journal of Laws* [Dziennik Ustaw] 2004, no 255, item 2556.

Chapter VIII

EU enlargement

The year 2005 did not bring any fundamental changes in the field of the “EU enlargement”. The main legislative steps were taken just before the accession to the EU, that is why in 2005 no significant steps in the field of free movement and aliens law (except introducing the concept of the “long term EU residents” into Polish law) were taken. Moreover, as it was stated in the Introduction the transitional rules are still in force. Poland is waiting for the abolishing of the transitional periods by 12 “old” Member States. It is obvious that after abolishing the transitional periods in the area of free movement of persons the principle of reciprocity will be applied and citizens of States which abolish restriction would be allowed to take up work without any permits. Poland’s authorities does not take any special steps leading to preparation of the Polish labour market for migrant workers from the old EU States. The migration from the old EU States is not significant. (See: next chapter).

Since the year 2005 was a year of double elections the debate on the future enlargement was not the topic of the main interest in Poland. As for now there are not any changes in treatment of nationals of the prospective new Member States like Romania, Bulgaria, Croatia or Turkey. As it was stated before, despite previous announcements the regulation implementing the rules of employing Turkish workers was not adopted in 2005. However, it must be stressed that as for now the future Turkish membership in the EU is not a subject of any deeper public debate.

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Chapter IX Statistics

Table 1. Applications submitted between 1-01-2005 and 31-12-2005 by EU nationals for residence permits or temporary residence permits, according to the Act of 2002.

Information obtained from the Office for Repatriation and Aliens.

Country of citizenship	Residence			Temporary residence		
	Women	Men	Total	Women	Men	Total
Austria	102	209	311	11	25	36
Belgium	36	114	150	14	24	38
Cyprus	3	6	9	-	3	3
Czech	100	83	183	7	16	23
Denmark	56	143	199	15	35	50
Estonia	11	9	20	4	-	4
Finland	14	33	47	14	13	27
France	304	599	903	66	108	174
Germany	677	4539	5216	199	865	1064
Greece	12	55	77	5	7	12
Hungary	30	39	69	6	19	25
Ireland	28	71	99	8	6	13
Italy	68	489	557	23	86	109
Latvia	49	16	65	22	7	29
Lithuania	126	67	193	71	35	106
Luxemburg	2	9	11	1	1	2
Malta	-	1	1	-	-	-
Holland	79	343	422	12	35	47
Portugal	20	72	92	7	13	20
Slovakia	84	89	173	13	18	31
Slovenia	5	12	17	3	1	4
Spain	56	113	169	35	58	93
Sweden	143	214	357	33	39	72
United Kingdom	199	591	790	46	95	141
Total:	2204	7916	10120	615	1509	2124
Country of citizenship	Residence			Temporary residence		
	Women	Men	Total	Women	Men	Total
Iceland	-	1	1	-	-	-
Lichtenstein	-	-	-	-	-	-
Norway	13	61	74	39	44	83
Switzerland	9	21	30	2	9	11
Total	22	82	104	41	53	94

Country of citizenship	Work permits issued in 2005								
	total	manufacturing	constructing	trade	Hotels and restaurants	Real estate, financial agencies	Education	Health care and social welfare	Others
Austria	95	20	10	17	5	35	4	2	2
Belgium	44	23	4	1	1	10	2	0	3
Denmark	94	54	3	11	2	8	3	0	13
Finland	33	20	0	3	0	8	0	0	2
France	358	187	10	81	13	46	11	0	10
Germany	518	283	54	61	9	65	15	2	29
Greece	9	6	0	0	0	3	0	0	0
Italy	221	99	13	29	48	19	4	0	9
Luxemburg	2	1	0	1	0	0	0	0	0
Netherlands	112	43	8	19	2	29	4	1	6
Portugal	25	7	7	2	0	6	0	0	3
Spain	68	22	19	6	0	9	10	0	2
Total:	1579	765	128	231	80	238	53	5	79

Tables 2 and 3: Work permits issued in 2005 (Information provided by the Ministry of Labour and Social Policy).

Country of citizenship (EEA/EFTA)	Work permits issued in 2005								
	Total	manufacturing	construction	trade	Hotels and restaurants	Real estate, financial services	Education	Health care and social welfare	others
Norway	12	3	2	3	0	2	1	0	1
Switzerland	21	12	4	4	0	1	0	0	0
Total:	33	15	6	7	0	3	1	0	1

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Tables 5 and 6: Work permits issued in 2005 in major work categories.

Country of citizenship	managers		Skilled workers	Unskilled workers
	total	Members of boards of legal persons		
Austria	80	76	6	1
Belgium	39	10	1	1
Denmark	76	34	11	1
Finland	27	13	5	0
France	303	171	23	1
Germany	470	304	96	47
Greece	8	6	0	1
Italy	183	84	19	1
Luxemburg	2	2	0	0
Holland	101	63	5	2
Portugal	22	12		0
Spain	56	32	11	0
Norway	9	6	2	0
Switzerland	18	12	2	0

From these statistics, it is easy to see that in comparison with the year 2004 much more EU nationals applies for the residence permits and temporary residence permits in Poland

Country of citizenship	Selected groups of professions								Delegated Workers
	Computer programmers	lawyers	Artistic professions	Medical professions			Teachers	Teachers of foreign languages	
					doctors	Nurses and mid-wives			
Austria	1	0	0	1	1	0	3	2	8
Belgium	1	0	0	0	0	0	1	1	1
Denmark	1	0	0	0	0	0	3	3	5
Finland	1	0	0	0	0	0	0	0	3
France	8	0	0	0	0	0	17	8	15
Germany	4	2	1	1	2	0	16	11	42
Greece	0	0	0	0	0	0	0	0	0
Italy	3	0	0	1	1	0	5	5	4
Luxemburg	0	0	0	0	0	0	0	0	0
Netherlands	0	0	0	0	0	0	4	4	0
Portugal	0	0	0	0	0	0	0	0	0
Spain	2	0	2	0	0	0	4	4	2
Norway	0	0	0	0	0	0	1	1	0
Switzerland	2	0	0	0	0	0	0	0	4

(about 40%). However the numbers are not huge if we take into consideration all the population of

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Poland. It may be stated that any fundamental steps have not been taken in 2005 in the migratory field. Like in 2004 Poland is not a particularly attractive country for migrant workers from other EU countries because the salaries are still much lower than in other countries. That is why EU nationals who arrive to Poland are usually persons conducting their own economic activities, still. They are usually managers in foreign or Polish–foreign companies.

Like in 2004 The largest groups of legal migrant workers in Poland who obtained work permits in 2005 were Ukrainians, Byelorussians, Russians, Turks, Vietnamese, USA citizens, citizens of India, Japan and China

The problem of illegal migrant workers has not been solved as for now. Any steps (except for the adoption the EU rules on the long term residents) leading to legalization of the stay and work of illegal migrants have not been taken.

Chapter X Social security

Texts in force

- Labour Code
- Ustawa z 20-12-1990 o ubezpieczeniu społecznym rolników¹³⁵ - the Act of 20-12-1990 on social insurance of farmers;
- Ustawa z 7-12-1998 o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych¹³⁶ - the Act of 7-12-1998 on pensions from the Social Insurance Fund ;
- Ustawa z 27-08-1997 o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych¹³⁷ - the Act of 27-08-1997 on vocational and social rehabilitation and employment of disabled persons;
- Ustawa z 25-06-1999 o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa¹³⁸ - the Act of 25-06-1999 on cash social insurance benefits in respect of sickness and maternity
- Ustawa z 20-10-2002 o ubezpieczeniu społecznym z tytułu wypadków przy pracy i chorób zawodowych¹³⁹ - the Act of 20-10 -2002 on social insurance in respect of accidents at work and occupational diseases;
- Ustawa z 27 -08 - 2004 o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych¹⁴⁰ - the Act of 27-08-2004 on the health care service financed from the public sources;
- Ustawa z 27-06 -2003 o rencie socjalnej¹⁴¹ - Act of 27-06-2003 on social pension;
- Ustawa z 28-11-2003 o świadczeniach rodzinnych¹⁴² - the Act of 28-11-2003 on family benefits;
- Ustawa z 12-03-2004 z o pomocy społecznej¹⁴³ - the Act of 12-03-2004 on social assistance;
- Ustawa z 20-04-2004 o promocji zatrudnienia i instytucjach rynku pracy - the Act of 20-04-2004 on promotion of employment and the institutions of labour;

Comparing the situation in the field of social security in 2004 and 2005 it may be stated that it has not changed much. Several amendments to the above-mentioned acts have been adopted but they do not any influence on the whole system and the situation of EU nationals.

Since the EU coordination system (Regulations 1408/71, 574/72 and the new Regulation 883/2004) does not introduce common “social security law” but is a set of standards which provide for avoiding conflicts between the national systems in this area. Like in the previous Report, it must be stated that the coordination systems in Poland are still “under construction” and they are untested in practice.¹⁴⁴ The most important role in this field plays the Act of 2004 on promotion of employment and the institutions of labour. It indicates the bodies and institutions as well as their tasks in the area of coordination systems for social security and free movement of workers. The tasks are divided between the Minister of Labour and Social Policy (formerly Minister of Economy and Labour) and the local self-government of districts (powiat) and voivodeships (województwa).

135 Uniform text in: Journal of Laws [Dziennik Ustaw] 1998, no. 7, item 25 with subsequent amendments.

136 Journal of Laws [Dziennik Ustaw] 2004, no. 39, item 353 with subsequent amendments.

137 Journal of Laws [Dziennik Ustaw] 2003, no. 45, item 391 with subsequent amendments.

138 Journal of Laws [Dziennik Ustaw] 1999, no. 60, item 636 with subsequent amendments.

139 Journal of Laws [Dziennik Ustaw] 2002, no. 199, item 1673 with subsequent amendments.

140 Journal of Laws [Dziennik Ustaw] 2004, no. 210, item 2135.

141 Journal of Laws [Dziennik Ustaw] 2003, no. 135, item 1268 and Journal of Laws [Dziennik Ustaw] 2004 no. 96, item 959 and no. 120, item 1252.

142 Journal of Laws [Dziennik Ustaw] 2003, no. 228, item 2255.

143 Journal of Laws [Dziennik Ustaw] 2004, no. 64, item 593.

144 The relevant literature on this issue indicates that Polish law on social security is unclear and not adjusted to EC law. See “*Literature*”.

Unemployment

The Minister of Economy and Labour is a liaison institution in the area of unemployment benefits. Also the Minister has the authority to take decisions on appeals against decisions made by the marshals of voivodeships (marszałkowie województw) who are the bodies first contacted for granting unemployment benefits for EU nationals.

Apart from taking decisions on unemployment benefits, the tasks of local self-governments concerning labour market policy also comprise other functions connected with Poland's participation in the coordination systems of social security and participation in the EURES network as well as performing other tasks arising from the principle of free movement of workers within EU Member States and EEA States which are bound with EC by appropriate agreements (Article 8 sect. 1 p. 8-9 of the Act of 2004 on promotion of employment and the institutions of labour).

According to Article 9 sect. 1 p. 15 and 16 the Act on promotion of employment and the institutions of labour, district self-government is obliged to carry out such tasks as, *inter alia*, paying unemployment benefits to EU nationals, thus implementing the decisions taken by the marshals of voivodeships.

Article 71 sect. 7 and Article 75 sect. 4 refer to the rules of EC law on obtaining the right to unemployment benefits. These benefits are paid to EU nationals based on EC regulations.

For unemployed persons, the provisions on social assistance are of special significance. Article 5 of the Act on social assistance of 12 March 2004 stipulates that citizens of EU Member States as well as EEA Member States have the right to social assistance (*inter alia*, cash allowances or allowances *in re*) in Poland. Social assistance is also provided by local self-governments. It seems that in this case it is possible to find the relation between 1408/71 and 1612/68 because even if the EU nationals cannot in these areas enjoy the coordination system due to regulation 1408/71, they may receive any social assistance (as well as the social pension) if they are in need according to 1612/68.

Family benefits

The other Act which directly determines the tasks of institutions within the European coordination systems on social security is the Act of 28 November 2003 on family, in Article 21. But most importantly, Article 1 sect. 1 states that Polish citizens and aliens who are nationals of EU Member and EEA States are entitled to the benefits stipulated in the Act, meaning the family allowance (with other connected benefits) and the care benefit and other benefits. Article 1 sect. 2 p. 2 confirms *expressis verbis* the application of the principle of non-discrimination with respect to family benefits (family allowances with supplements and care benefits).

Incapacity for work

Regarding incapacity for work, the following institutions are authorised to consider applications for pensions and disability pensions according to the EC coordination system:

- Zakład Ubezpieczeń Społecznych (ZUS) Social Insurance Institution - for former employees or persons who conducted their own economic activity (except for farmers)
- Kasa Rolniczego Ubezpieczenia Społecznego (KRUS) – Agricultural Social Insurance Institution - for farmers. Farmers are granted their respective rights and benefits in accordance with the Act of 20 December 1990 on social insurance of farmers

Special rules apply to insurance of the so-called “uniform services”. There are also special institutions making decisions on their behalf.

- Wojskowe Biuro Emerytalne w Warszawie – Military Pension Office in Warsaw for soldiers in professional service
- Zakład Emerytalno-Rentowy Ministerstwa Spraw Wewnętrznych i Administracji Pension Institution of the Ministry of Internal Affairs and Administration for officers of agencies of State authority and administration (e.g. Police, Border Guard, security agencies, Fire Brigade, etc.)
- Biuro Emerytalne Służby Więziennej – Pension Office of the Penitentiary Service in Warsaw for officers of the Penitentiary Service.

The Ministry of Justice is responsible for the social security of judges and public prosecutors.

Requirements for eligibility for pensions in Poland (because of the universal system) by EU nationals are determined in the Act of 7 December 1998 r. on pensions from the Social Insurance Fund [ustawa o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych]¹⁴⁵. These requirements are modified by Regulations 1408/71 and 574/72.

These benefits include: old-age pension, disability pension (also training pension), dependants' pension, nursing supplement to pensions, supplement to survivors' pensions for complete orphans¹⁴⁶ and death grant.

However, the requirements for eligibility for Polish pensions from work accidents or occupational disease and the amount of such pensions are determined in the Act of 20-10 -2002 on social insurance in respect of accidents at work and occupational diseases.

EU nationals who have worked in Poland, or in Poland and in other EU States, should apply for pensions (arising from the coordination system) to one of the branches of the Social Insurance Institution¹⁴⁷.

It is worth mentioning that the vocational and social rehabilitation and employment of disabled persons takes place on the basis of the Act of 27 August 1997 on vocational and social rehabilitation and employment of disabled persons.

Pension scheme

The pension scheme (introduced in 1999) is based on the correlation between the amount of benefit and the amount of contribution actually paid. The currently actually binding old age pension scheme covers persons who on the day of its entry into force (1 January 1999) have not reached the age of 50 . For persons under 30 years of age, participation in the first (pay – as – you – go) pillar and the second (funded) one is compulsory. Persons between 30 and 50 years of age had an opportunity to decide whether they should stay within the previous modified first pillar (pay-as-you-go) and also join the second pillar (they should have taken such a decision by 31 December 1999).

The first pillar is managed by the Social Insurance Institution. The second pillar is managed by private institutions (open pension funds). There is also the third pillar. It has a voluntary character and aims at ensuring above–standard benefits for an additional contribution. It consists mainly of occupational pension programs.

According to the information provided by the Social Insurance Institution¹⁴⁸, the amount of the old-age pension is an equivalent of the number of contributions after indexation (collected after 31 December 1998) and the number of the so called initial capital after indexation divided by the average life expectancy, expressed in months, for persons in the age equal to the retirement age of a given person applying for the pension.

Worth mentioning is the fact that the old – age pensions are granted to women who reached at least 60 years of age and to men of at least 65 years of age.

Other benefits

Also, the coordination of social security systems comprise:

- maternity allowances
- sickness allowances

145 Journal of Laws [Dziennik Ustaw] 2004, no. 39, item 353 with subsequent amendments.

146 In the case of orphans applying for the Polish pension for orphans, they will obtain such a pension if their deceased parent was at some time subject to the law of another EU State but that law does not grant such pensions (there are for example special allowances for orphans or pensions for dependants).

147 It depends on the country of residence, or on the country of latest social insurance. EU nationals living in or having their latest insurance period in Cyprus, Greece, Spain, Italy, Malta and Portugal should apply to the Office in Łódź, in the Czech Republic and Slovakia to the Office in Nowy Sącz; in Austria, Slovenia, Liechtenstein and Hungary in Tarnów; in Denmark, Finland, Iceland, Lithuania, Latvia, Norway, and Sweden to the Office in Szczecin; in Belgium, Holland, Ireland, Luxembourg, Great Britain to the Office in Warsaw. Full list of coordinating institutions in: "Służba Pracownicza" 2005 no.9. (special issue).

148 *Social Insurance in Poland. Information*, facts. (Ed. A.Ledkiewicz, B.Radzik - Kazenas) Social Insurance Institution. Warsaw 2004.

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- rehabilitation benefits
- care benefits

The issue of remuneration for a time of inability to work, up to 33 days in a calendar year, is regulated by Article 92 of the Labour Code. Where an inability to work lasts a total of more than 33 days in a calendar year, an employee shall be entitled to sickness benefits.

These matters are regulated in the Act of 25-06-1999 on cash social insurance benefits in respect of sickness and maternity and in the mentioned Act of 20 October 2002 on social insurance in respect of accidents at work and occupational diseases.

From 1 May 2004 EU nationals (and EEA) as well as members of their families in accordance with the Act of 23 January 2003 on universal health insurance in the National Health Fund may be insured in this Fund if they perform legal work or carry out any economic activity, even if they, or members of their families, do not live within the territory of Poland. This is in accordance with the principle *lex loci laboris*. Persons seeking employment are also entitled to this type of insurance (with some restrictions though).

Social pensions

It is worth mentioning that according to Act of 27-06-2003 on social pension, nationals¹⁴⁹ of other EU States also have the right to such benefits. However, it should be stressed that in Annex X to Regulation 883/2004, Poland excluded these benefits from the principle of the transfer of benefits).

Recent literature

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149 The social pension is granted to adult persons who possess residence permits and who are unable to work because of their disability which emerged by the time a given person was 18 years old, or 25 if they were attending school or university or during doctoral studies (Article 4).

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- regulacjami unijnymi* [Coordination of the Polish security system with the EU regulations]. (Ed. G.Uścińska, B.Kazenas). Warszawa 2002.
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- Social Insurance in Poland. Information, facts.* (Ed. A.Ledkiewicz, B.Radzik, B. Kazenas) Social Insurance Institution. Warsaw 2004.

Chapter XI

Right of establishment, students

- Ustawa z 2-07-2004 o swobodzie działalności gospodarczej¹⁵⁰ - the Act of 2-7-2004 on freedom of economic activity;
- Rozporządzenie Ministra Gospodarki, Pracy i Polityki Społecznej z 9-04-2004w sprawie stażu adaptacyjnego i testu umiejętności przeprowadzanych w toku postępowania o uznanie nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do podejmowania lub wykonywania niektórych działalności należących do działu gospodarka¹⁵¹ - the Regulation of the Minister of Economy, Labour and Social Policy of 9-04-2004 on the probation periods and the aptitude tests carried out during the process of recognition of qualifications obtained in EU States entitling holders to take up and perform some activities in the economy sector;
- Ustawa z 27-07-2005- prawo o szkolnictwie wyższym¹⁵² the Act of 27-07-2005 law on higher education;
- Ustawa z 17-07-1998 o pożyczkach i kredytach studenckich¹⁵³ - the Act of 17-07-1998 on loans or credit for students.
- Rozporządzenie Ministra Edukacji Narodowej i Sportu z 24-04-2002 w sprawie podejmowania i odbywania studiów przez cudzoziemców oraz ich uczestniczenia w badaniach naukowych i szkoleniach¹⁵⁴ – The Regulation of the Minister of Education and Sport of 24-04-2002 on taking up and continuing studies by foreigners and their participation in scientific research and trainings

Right of Establishment

The principal legal act in the area of establishment is the newly adopted Act of 2 July 2004 on freedom of economic activity which regulates the issues of taking up economic activity in Poland and the performance and discontinuance of such activity¹⁵⁵. Also it indicates the responsibilities of the State administration in this area.

Since 2004 there have not been any principal changes in the Act and its Article 13 is still the most important norm for a EU citizen who decides to set up his or her economic activity in Poland. Article 13 contains the basic principle of the EC law – the principle of non-discrimination. It means that EU nationals (as well as citizens of Iceland, Liechtenstein, Norway and Switzerland) and legal persons from these countries may take up and carry out their economic activities under the same rules as Polish citizens. They are also allowed to set up branches of their companies according to the same rules as the Polish citizens (chapter VI of the Act). It is impossible in the case of third country nationals or companies.

Foreigners who have obtained refugee status, permission for the tolerated stay (pobyt tolerowany) or have been granted temporary protection are in the same situation. In 2005 the long term EU residents were added to this group of foreigners.

However, the scope of the right of establishment of other foreigners depends on bilateral agreements which are *lex specialis* for the general rule contained in Article 13 [3]. According to this provi-

150 Journal of Laws [Dziennik Ustaw] 2004, no. 173, item 184.

151 Journal of Laws [Dziennik Ustaw] 2004, no. 35, item 704.

152 Journal of Laws [Dziennik Ustaw] 2005, no. 165, item 1365

153 Journal of Laws [Dziennik Ustaw] 1998, no. 108, item 685 with subsequent amendments. Last two amendments were adopted in 2005. Journal of Laws [Dziennik Ustaw] 2005, no. 23, item 187 and no. 164 item, 1365.

154 Journal of Laws [Dziennik Ustaw] 2002, no. 69, item 634.

155 The chapter on the record keeping (electronic system) of the economic activity will enter into force on 1 January 2007. As for now this matter is regulated by the old law – Act on economic activity Journal of Laws [Dziennik Ustaw] 2001, no. 102, item 1115 with subsequent amended. This Act expired except norms on record keeping of economic activity.

sion they are only allowed to take up and perform economic activities in the form of limited liability companies, limited partnerships and mixed shareholding and limited companies.

The other important Act is the Act of 10 May 2002 on the rules governing the recognition of qualifications acquired in EU Member States for the taking up or pursuit of some activities, reflecting the principles mentioned in Chapter VI of this Report, the Act referring to migrant workers from EC countries.

Currently the Act has been complemented by regulations. Two of them appear to be important for EC nationals who want to take up some economic activities in the territory of Poland. Firstly, the Regulation issued by the Minister of Economy, Labour and Social Policy of 5 February 2004 on probation periods and the aptitude tests carried out during the process of recognition of qualifications obtained in EU States entitling holders to take up and perform the activities of guides. The other Regulation by the Minister of Economy, Labour and Social Policy of 9 April 2004 on the probation periods and the aptitude tests carried out during the process of recognition of qualifications obtained in EU States entitling holders to take up and perform some activities in the economy sector. The Regulation applies to a very limited scope of activities, like production of steel pipes, boilers for central heating, lifts for coalmines and foundries, metal fabrication as well as shaping of metal, etc.

Students

In 2005 the new Act of 27 July 2005 – law on higher education has been adopted. The above mentioned Regulation of the Minister of Education and Sport of 2002 on taking up and continuing studies by foreigners and their participation in scientific research and trainings despite the fact that it was issued on the ground of the old expired Act of 1990 is still in force due to Article 275 sec. 3 of the new law.

It is worth mentioning that in January 2005 the Parliament adopted an amendment of the Act of 2005 obliging universities and other schools to organize lessons of Polish language for foreign students. The new Act – law on higher education has maintained this obligation.

Similarly to the Act of 12 September 1990 the new law on higher education stated in Article 43 sec. 3 foreigners having the right to settle down in Poland, who are recognized as refugees or who have obtained temporary protection, migrant workers and nationals of EU (or EAA) Member States and long – term EU residents (this is new), if they live in, and are currently or have been previously employed in, the territory of Poland (and members of their families), may take up and continue their education at university under the same rules as Polish citizens. Such students obviously have the same rights and obligations and follow the same rules of admission to universities as Polish nationals.

However, there is an exception. If EU (or EAA and EFTA) nationals and members of their families possess the financial resources which are sufficient to cover their cost of living during their studies they are allowed to take up and continue their university education in Poland and has the same rights as Polish citizens except for the right to grants which depend on their social status. However, they may obtain the right to these grants through international agreements, a decision by the Minister of Education (it is not a complicated procedure and many ministerial grants are given) or a decision by a head of a particular school.

All the students are entitled to grants received for their learning achievements (as all the students).

If EU nationals take up studies for which fees are charged (for example part–time studies or evening studies) or attend non–governmental schools, they pay the same tuition fees as Polish students.

Worth mentioning is the Act of 17 July 1998 on loans or credit for students. Its Article 6 stipulates that loans or credit may be obtained by students who are Polish citizens, who are migrant workers, EU nationals (or members of their families) who live in Poland or who work in Poland. The main requirement is that they must start their studies before they are 25 years old. Seemingly, that accounts for the fact that student in the situation of Mr Bidar (Case C-209/03) would not get any loan or credit in Poland because neither he nor his mother are employed in Poland¹⁵⁶.

156 Information obtained from the Bank PKO.BP. SA. Loans and credits are granted to students by banks, not by universities.

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Literature

Garbacik, A: Swoboda działalności gospodarczej. [The freedom of economic activity]. *Służba pracownicza* 2004, no. 10.

Mitrus, L: *Swoboda przemieszczania się pracowników po przystąpieniu Polski do Unii Europejskiej* [Free Movement of Workers after the Poland's Accession to the EU]. Warszawa 2003.

Chapter XII Miscellaneous

Electronic sources of information and addresses of the institutions

www.europa.eu.int/eures - EURES
www.ukie.gov.pl - Office of the European Integration
www.mpips.gov.pl - Ministry of Labour and Social Policy
www.praca.gov.pl - web site of the Ministry of Labour and Social Policy dedicated employment
www.buwiwm.edu.pl - Bureau For Academic Recognition And International Exchange
<http://www.wsisw.natolin.edu.pl> European Centrum in Natolin
<http://www.ips.uw.edu.pl> - Institute of Social Policy, Warsaw University
<http://www.proxenia.org.pl> - Association for integration and protection of aliens on Poland
<http://www.trybunal.gov.pl/eng/index.htm> - Constitutional Tribunal
<http://www.nsa.gov.pl> – Supreme Administrative Court
<http://www.sn.pl> - Supreme Court (in Polish)
<http://www.sn.pl/english/orzecznictwo/index.html> - Supreme Court (in English)
<http://www.prawo.lex.pl> - legal server in Polish

Since June 2005 *Biuletyn Migracyjny* [Migration Bulletin] is issued by the Center for Migration Research, Center for International Relations of the Warsaw University. See: <http://www.migration-news.uw.edu.pl>.