

REPORT
on the Free Movement of Workers
in Slovakia in 2004

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Introduction

On 1 May 2004 Slovakia became a Member State of the European Union. Before it could happen, it was necessary to implement all the EU legislation adopted in many years before 2004. Therefore, the legislation of Slovakia has changed immensely, and many acts have been amended and new acts adopted also in the field of free movement of persons. Comparing with other countries, which joined the European Union at the same time as Slovakia, Slovakia did have less time for the preparations, as until 1998, because of the political situation in Slovakia, it was not sure, if there will be interest from the part of the European Union to have Slovakia as its member.

It was for the first time in the short history of Slovakia that the law as such had to be changed in a way, as to be in conformity with European law. No doubt, everything could not be done perfectly. Not all directives have been implemented yet, and of those, which have been already implemented, some of them were not fully implemented, or were not implemented in the way as it was interpreted by the case law of the European Court of Justice.

The judgements of the ECJ are utilized very rarely, or hardly ever. This counts for all parties involved, the courts, the administration and the legislation.

It can be understood that there is no case-law and hardly any jurisprudence regarding EU and EEC legislation. As Slovakia became a member state of the European Union on 1 May 2004 only, it would be impossible to have in such a short period of time – eight months – a case-law related to EU and EEC legislation. There is also quite short history of the research on the European legal system in the academic community. Also the legislative process must have been speeded up in many occasions, which could lead to omission of outcomes of certain ECJ judgements. Having in mind this short time, during which Slovakia is a member state of the European Union, it has to be understood that it is extremely difficult to assess any practical approaches in the area.

The main legal instrument regulating the issue of freedom of movement in Slovakia is the Act No. 48/2002 on the Residence of Aliens and on Amendments of some Acts as amended. Significant with regard to accession of Slovakia to the European Union was the act No. 606/2003 amending the Aliens Act. Its provisions, which came into force at the day of accession of Slovakia to European Union, formed, to be in line with European law, a different approach to citizens of European Economic Area countries comparing with other foreigners. Family members of those citizens should have been another privileged group, but this attempt was not finished with entire success. Provisions relating to family members of EEA citizens are, according to the law in force, inconsistent with European law in many aspects. As regards the EEA citizens, reasons for denial of entry are not fully in line with the EC Treaty.

Although most of the “old” Member States have decided to suspend application of articles 1 and 6 of the Regulation on free movement of workers and to apply a transitional period for access to their labour markets, the government of the Slovak Republic agreed that no reciprocal measures would be applied.

As regards the Commission’s comments on the Slovak report:
Internet sites, where Slovak national legislation can be found:

- www.zbierka.sk
- www.zakon.sk
- http://jaspi.justice.gov.sk/jaspiw1/jaspiw_maxi_fr0.htm

Chapter I Entry, Residence and Departure

Texts in force

Zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov¹ – the Act No. 48/2002 on the Residence of Aliens and on Amendments of some Acts (Aliens Act)

Amendments of Aliens Act

- zákon č. 408/2002 Z. z. ktorým sa mení a dopĺňa zákon č. 313/2002 Z. z. o verejnej službe v znení neskorších predpisov a zmene a doplnení niektorých zákonov² – the Act No. 408/2002 Amending the Act No. 313/2002 on Public Service as amended, and on Amendments of some Acts
- zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov³ – the Act No. 480/2002 on Asylum, and on Amendments of some Acts
- zákon č. 606/2003 Z. z. ktorým sa mení a dopĺňa zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a dopĺňa zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov⁴ – the Act No. 606/2003 Amending the Act No. 48/2002 on the Residence of Aliens and on Amendments of some Acts as amended and Amending the Act No. 480/2002 on Asylum, and on Amendments of some Acts
- zákon č. 69/2005 Z. z. ktorým sa mení a dopĺňa zákon č. 171/1993 Z. z. o Policajnom zbore v znení neskorších predpisov a o zmene a doplnení niektorých zákonov⁵ – the Act No. 69/2005 Amending Act No. 171/1993 on the Police Corps as amended, and on Amendments of some Acts
- zákon č. 71/1967 Zb. o správnom konaní (správny poriadok)⁶ v znení neskorších predpisov – Act No. 71/1967 on Administrative Procedure (Administrative Order) as amended
- zákon č. 145/1995 Z. z. o správnych poplatkoch⁷ v znení neskorších predpisov - the Act No. 145/1995 on Administrative Fees as amended
- zákon č. 171/1993 Z. z. o Policajnom zbore⁸ v znení neskorších predpisov - the Act No. 171/1993 on the Police Corps as amended

The issues of entry, residence and departure of foreigners are regulated in the Aliens Act. Significant with regard to accession of Slovakia to the European Union was the act No. 606/2003 amending the Aliens Act, which came into force on 1 January 2004, with the exception of provisions related to the accession. These provisions came into force on 1 May 2004, the day of the accession of Slovakia to the European Union. These provisions regulate different approach to EEA citizens and their family members with regard to entry, residence

1 Collection of Laws (Zbierka zákonov), Vol. 23 (2002).

2 Collection of Laws (Zbierka zákonov), Vol. 160 (2002).

3 Collection of Laws (Zbierka zákonov), Vol. 184 (2002).

4 Collection of Laws (Zbierka zákonov), Vol. 247 (2003).

5 Collection of Laws (Zbierka zákonov), Vol. 32 (2005).

6 Collection of Laws (Zbierka zákonov), Vol. 27 (1967).

7 Collection of Laws (Zbierka zákonov), Vol. 49 (1995).

8 Collection of Laws (Zbierka zákonov), Vol. 46 (1993).

and departure. One of the purposes of the act No. 606/2003 was the implementation of EU legislation regulating free movement of workers into the legal order of the Slovak Republic, in particular, the implementation of Directives 64/221, 68/360, 72/194, 73/148, 75/34, 75/35, 90/364, 90/365 and 93/96. A part of the act formed provisions on free entry and movement of EEA citizens and their family members, which came into force at the same time as the treaty on accession of the Slovak Republic to European Communities. The amendments of following provisions came into force on 1 May 2004: Articles 5(7), 14a, Articles 30-33 (discharged), Head V, Articles 46, 49(4), 57(8), and 81a.

Discharged Articles 30 to 33 regulated residence and departure of EU citizens and their family members prior to 1 May 2004. These provisions are dealt with below.

Entry

Texts in force

Article 5 of the Aliens Act was supplemented by the Act No. 606/2003 with paragraph 7, which is concerned with different treatment of EEA nationals in comparison to other foreigners with regard to their entry into Slovakia. Swiss Confederation is (as in the whole Aliens Act) not included, notwithstanding the Treaty between European Communities and its Member States and Swiss Confederation on Free Movement of Persons. Article 5 § 7 says:

“Provisions of § 1 subparagraph (d) and Article 4 § 2 subparagraph (b) and (c) do not apply to citizens of EU Member States or of another Contracting Party to the Treaty on European Economic Area (hereinafter only ‘citizen of the European Economic Area’).”

Article 5 § 1 subparagraph (d) provides:

“A policeman is entitled to execute border control consisting of: ... (d) inspection of documents demonstrating the purpose of the stay, the financial coverage of the stay and of health insurance documents”; Article 4 § 2 subparagraph (b) and (c) provide: “At the execution of border control the alien is obliged, upon request: ... (b) to submit a document on health insurance for coverage of costs related to the provision of health care to an alien on the territory of the Slovak Republic; (c) prove financial coverage for the stay, in convertible currency, at least in the amount of half the minimal wage determined by a special regulation for each day of the stay; an alien younger than 16 years is obliged to prove the financial coverage for the stay of half the amount.”

According to this provision, citizens of the EEA are exempt from the obligation of demonstrating financial coverage of their stay, showing health insurance documents and documents about the purpose of the stay. Possession of a travel document is required from an EEA citizen when entering the Slovak Republic. A travel document is considered either a passport or other public document, if acknowledged as a travel document by the Slovak Republic (e.g. identity card of an EU citizen).

Before 1 May 2004, citizens of the EEA were obliged to fulfil all requirements mentioned in previous paragraph.

Family members of an EEA citizen are obliged to fulfil the same requirements as all aliens who are not EEA citizens. The conditions for an entry into Slovak Republic are outlined

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in Article 3 § 1 and Article 4 § 2 (b) and (c). An alien is obliged to possess a travel document and visa, unless an alien is from a country whose nationals, according to international treaty, are not required to hold visa. Furthermore, family members of an EEA citizen are required to submit a health insurance document, and to prove financial coverage for duration of their stay. Article 4 § 2 (b) and (c) was cited above. Article 3 § 1 says:

“The entry is possible only with a travel document and a visa of the Slovak Republic (hereinafter only “visa”) or with a travel document and a residence permit. A visa is not required if it is stipulated by an international treaty, by which the Slovak Republic is bound (hereinafter “international treaty”) or by the government of the Slovak Republic. ...”

There is no exclusion for family members of EEA citizens with regards to the visa requirement when entering the country. This requirement is not in accordance with the EC legislation as interpreted by the European Court of Justice judgement in MRAX case (C-459/99).

Moreover, according to the Annex to the act 145/1995 on administrative fees, family members of EEA citizens are not exempt from the obligation to pay fees for visa, which is in contradiction with the Article 9 § 2 of Directive 68/360 and Article 7 § 2 of Directive 148/1973.

As regards entry of family members of EEA citizens into Slovakia, same provisions as after 1 May 2004 were in force before that date.

Article 6 of the Aliens Act dealing with the denial of entry into the Slovak Republic was not amended with regard to the accession of Slovakia to the EU. Thus, this article applies to citizens of the EEA, and their family members too. It says:

- “(1) The policeman denies entry, if
- a) The alien is an undesirable person,
 - b) It is necessary for the security of the country, public order, protection of life or rights and liberties of others and, in specified territories in the interest of protection of nature,
 - c) The alien does not meet the terms of entry pursuant to § 3,
 - d) The alien refuses submission to border control or does not submit documents required by the border control,
 - e) There is well-grounded suspicion that the alien could misuse the stay for a different purpose than stipulated by an international treaty, the government of the Slovak Republic or for a purpose different from the one for which visa was granted or
 - f) The alien failed to pay his/her financial obligations against the Slovak Republic.
- (2) The policeman may deny entry, if
- a) The travel document of the alien is full with official entries or
 - b) A different border checkpoint has been determined for the entry.
- (3) When making the decision upon the denial of entry pursuant to section 2 the policeman shall focus on maintaining adequacy between the reasons for denial of entry and consequences of this denial.
- (4) If an alien was denied entry pursuant to section 1 or 2, can not, for legal or other material obstacles, leave the venue of border control immediately, the policeman may order him/her to stay for a certain time at the place determined for it.
- (5) The policeman is entitled to record the denial of entry into the travel document of the alien.
- (6) To the procedure on denial of entry the general regulation on administrative procedure^[6] does not apply.”

9 [6] Act No 71/1967 Col. on administrative procedure (Administrative Order).

Reasons for denial of entry stipulated in paragraph 1 of Article 6 are exceeding the possibilities given by Articles 39.3 and 46.1 of the EC Treaty. According to these provisions of the EC Treaty, the Member State may deny an entry of a person on grounds of public policy, public security or public health. These grounds are embodied in the subparagraph (b) of the Article 6. The other subparagraphs are either superfluous with regard to EEA citizens and their family members, if they are not used, or may be applied in broader sense than is permitted by the EC Treaty.

According to § 6 of Article 6, the Administrative Order does not apply to the procedure on denial of entry. As no procedure on remedies incorporated in the Aliens Act exists, there is no possibility to challenge the decision on denial of entry in an ordinary administrative procedure. Complaint to a court against final and effective decision on denial of entry is available only. This is inconsistent with Article 8 of Directive 64/221, which provides that the person concerned shall have the same legal remedies in respect to any decision concerning entry, that are available to nationals of the State concerned with respect to acts of the administration.

Draft legislation

Amendment of the Aliens Act is in the legislative process, it arrived into parliament at the end of August 2005¹⁰. Directives 2001/51, 2003/86, 2003/109, 2003/110, 2004/38, and 2004/82 should be transposed by the amendment. As regards the issue of entry, following amendments are proposed.

Another clause is proposed to be supplemented to Article 3 § 1, according to which a foreigner with permanent or temporary residence permit in Slovakia should be allowed to enter Slovakia even if the validity of his/her travel document expired, or if the travel document was lost or stolen.

According to proposed wording of Article 3 § 2, visa will not be required from a family member of an EU citizen, of a citizen of another contracting party of the EEA Treaty, and of a citizen of Switzerland (EEA), if the family member possesses a valid document of a residence in the EEA. Visa will not be required also from a foreigner, if he/she possesses a valid document of a residence in the EEA.

Article 4 § 2 subparagraph (b), which relates also to entry of family members of EEA citizens, is proposed to be excluded from the law. It provides:

“At the execution of border control the alien is obliged, upon request: ... (b) to submit a document on health insurance for coverage of costs related to the provision of health care to an alien on the territory of the Slovak Republic”.

As to the denial of entry, specific provisions related to EEA citizens and their family members are proposed to be included in the Aliens Act. A policeman can deny entry of an EEA citizen and his/her family member only if he/she is an undesirable person; if there is a reasonable suspicion that he/she will endanger the security of the country, public order, or it is necessary for the protection of public health; or if he/she does not submit travel document or does not possess visa (proposed Article 6 § 3).

10 The wording of the draft amendment of the Aliens Act in Slovak can be found on http://www.nrsr.sk/appbin/SSLP.ASP?WCI=SSLP_NZWorkitemHist&WCE=Master=1755.

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Before deciding on denial of entry, the policeman shall make it possible to EEA citizen and his/her family member, who cannot show his/her travel document, to get or obtain it in reasonable time, or to prove in other reliable way that he/she has the right of movement and residence.

The procedural issues regarding appeal against denial of entry should be changed with the proposal too. According to new wording of Article 6 § 8, the appeal will be possible against a decision on denial of entry, but without suspending effect.

Miscellaneous

As the decree No. 17/2002 of the President of the Police Corps on the implementation of the Aliens Act is not public, it is not possible to report on details and nuances of conduct of the Aliens Police in particular issues.

Residence

Texts in force

On 1 May 2004, a new Section 5 of the Aliens Act came into force. It was adopted by the act No. 606/2003 and regulates the residence of EEA citizens and their family members. It is the last section of Part III of the Aliens Act and it is named “Special provisions for the EEA citizen and his/her family member”. Article 45a, which concerns EEA citizens, provides:

“(1) The EEA citizen, who intends to reside permanently at the territory of Slovak Republic, is obliged to register for permanent residence at the police station in the place of his/her permanent residence. The EEA citizen is obliged to present his/her travel document and a document confirming the accommodation has been secured, when registering for permanent residence.

(2) Permanent residence of an EEA citizen expires, if

- a) He/she notifies the police department in written form about the termination of permanent stay,
- b) He/she was sentenced with the punishment on expulsion^{11[2]},
- c) He/she was expelled in the administrative procedure, or
- d) He/she acquired citizenship of Slovak Republic.

(3) The EEA citizen, who intends to leave the territory of Slovak Republic permanently, is obliged to notify the police department in written form on the termination of permanent stay.

(4) To the registration of permanent stay the general regulation on administrative procedure does not apply^{12[6]}.”

According to these provisions, an EEA citizen is obliged to register for the permanent residence. There is no time limit stipulated in the Aliens Act for the registration. The EEA citizen is obliged to present his/her travel document and document on secured accommodation upon registration. There are no other obligations for the EEA citizen with regard to the per-

11 [2] Article 57 of the Criminal Code (Act No. 140/1961 as amended – zákon č. 140/1961 Zb. v znení neskorších predpisov, Collection of Laws (Zbierka zákonov), Vol. 65 (1961).

12 [6] Act No 71/1967 on administrative procedure (Administrative Order).

manent residence. There is no differentiation concerning different categories of EEA citizens in this respect. There is no procedure on granting the permanent residence, nor is any other evidence required. As there is no procedure, no decision is issued and no remedies are available. Nothing is provided with regard to situation, when the EEA citizen does not present document on secured accommodation.

According to the Article 46 § 5 of the Aliens Act, identity card is issued to the EEA citizen with validity for five years. After this period identity card with validity for ten years is issued upon request. Article 46 § 5 provides:

“The police department shall issue document on permanent residence in form of identity card with photograph for an alien, who is an EEA citizen. Document on permanent stay is issued with validity for five years; after expiry of that term, the police department shall issue upon request a new document on permanent residence with validity for ten years.”

Before 1 May 2005, Articles 30 to 33 of the Aliens Act applied to EU citizens. Citizen of a country, which was a party of the European Association Treaty, was according to Article 30 § 1 entitled to temporary stay of maximum one year for one of the purposes enumerated in this provision. Article 30 § 1 provided:

“An alien, who is citizen of a member country of the parties to the European Association Treaty^{13[12]} (hereinafter only the “citizens of the Union” is, based on a registration, entitled to a temporary stay maximum one year for the purpose of

- a) executing economic activities,^{14[13]}
- b) employment,^{15[14]}
- c) employment pursuant to a special regulation¹⁰, or
- d) execution of activity of a pre-accession advisor in the framework of the integration procedure of the Slovak Republic to the European Union.“

Documents, which was the EU citizen obliged to submit in order to be registered were enumerated in Article 31 §§ 2 and 3:

“(2) To the application the applicant for registration shall submit the travel document as well as documents acknowledging the purpose of the stay, arranged accommodation, document that he/she will be no burden for the social security system and for the health care system of the Slovak Republic, and three photos pursuant to § 13 Par. 2.

...

(3) At the registration the police department is in well-grounded cases entitled to ask for the document of integrity (clear criminal record) and for further documents, which are necessary for the establishment of facts essential for the registration; the applicant for registration is obliged to enclose these documents upon request.”

13 [12] European Association Treaty concluded by European Communities and their member states on one side and the Slovak Republic on the other (Notification of the Ministry of Foreign Affairs of the Slovak Republic No 158/1997 Col.) - Európska dohoda o pridružení uzatvorená medzi Európskymi spoločenstvami a ich členskými štátmi na strane jednej a Slovenskou republikou na strane druhej, Collection of Laws (Zbierka zákonov), Vol. 72 (1997).

14 [13] Art. 45 Par. 4 Letter a) of the European Association Treaty concluded by European Communities and their member states on one side and the Slovak Republic on the other.

15 [14] At. 53 Par. 1 of the European Association Treaty concluded by European Communities and their member states on one side and the Slovak Republic on the other.

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Reasons for rejection of the application were stipulated in Article 31 § 5, which referred to Article 26 § 2 (a), (c) to (e). These provisions provided:

“The police department shall reject the application for granting permit for temporary stay, if
a) the alien is an undesirable person,

...

c) there is well-grounded suspicion that the alien could endanger the security of the country, public order, life, health or property or it is in the interest of environmental protection,

d) *it may be presumed* that the alien will be a burden for the social security system and health care system of the Slovak Republic,

d) there is well-grounded suspicion that the alien contracted a marriage with the aim of acquiring permit for temporary stay.”

Draft legislation

As mentioned in the part Entry of the report, amendment of the Aliens Act is in the legislative process, it arrived into parliament at the end of August 2005. Directives 2001/51, 2003/86, 2003/109, 2003/110, 2004/38, and 2004/82 should be transposed by the amendment. As regards the issue of residence, following amendments are proposed.

The obligation to register for residence is proposed to be excluded from the law for EEA citizens. The residence of EEA citizen intending to stay in Slovakia for more than three months, should be according to proposed Article 45a § 1 considered as a first residence permit, if the EEA citizen is employed; running a business; studies at public school or at a school recognized by the government, and has financial means to secure his/her stay and health insurance in Slovakia; or there is assumption that he/she will be employed.

The EEA citizen may, according to proposed Article 45a § 2, apply for registration of the first residence permit. The police department will not accept the application, if the applicant will not submit a travel document, or if he/she is an undesirable person.

Residence of an EEA citizen on behalf of the first residence permit expires, when he/she notifies the police department in written form about the termination of permanent stay; he/she was expelled in the administrative procedure; or he/she acquired citizenship of Slovak Republic (proposed Article 45a § 4).

Residence of an EEA citizen on behalf of the first residence permit will retain, if the reason for termination of the employment was occupational disease or work accident, or if he/she cannot temporarily run business because of injury or disease. Residence of an EEA citizen on behalf of the first residence permit will also retain, if the person concerned is involuntarily unemployed, and he/she was employed for more than one year and is in the list of job applicants; if the person concerned is involuntarily unemployed and finished his employment agreed for less than one year or his employment was finished during first two months and he/she is in the list of job applicants or; if the person concerned is involuntarily unemployed and is undergoing special education related to previous employment. Residence of an EEA citizen on behalf of the first residence permit will also retain, if the person concerned is voluntarily unemployed and is undergoing special education related to previous employment (proposed Article 45a § 5).

The residence of EEA citizen should be according to proposed Article 45c § 1 considered as a residence on behalf of next permit, if the EEA citizen:

a) resides continuously for five years;

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- b) resides continuously for three years and his/her residence is considered as a residence on behalf of the first residence permit and during this residence he/she was employed or ran business for at least 12 months and fulfilled conditions for pension or early pension;
- c) resides continuously for three years and his/her residence is considered as a residence on behalf of the first residence permit and the reason for termination of his/her employment or business was permanent inability to work or run business;
- d) is employed or runs business in another EEA country and at least once a week returns to Slovakia, whereas he/she stayed continuously and was employed in Slovakia at least for three years;
- e) is a family member of EEA citizen, with whom he/she was staying in Slovakia and who acquired the right of permanent residence; or
- f) is a mourner of EEA citizen, with whom he/she was staying in Slovakia and who was employed or ran business continuously for at least two years before dying; or if the EEA citizen was employed or ran business and died because of work accident or occupational disease; or if the EEA citizen was employed or ran business and lost Slovak citizenship because of getting married with the EEA citizen concerned.

The EEA citizen may, according to proposed Article 45c § 2, apply for registration of next residence permit. Documents proving facts provided in Article 45c § 1 shall be submitted with the application together with a travel document.

The residence of EEA citizen on behalf of next permit expires for the same reasons as the residence on behalf of first permit, or if a citizen of EEA is not staying in Slovakia for two subsequent years.

According to proposed Article 54 § 4, the police department may check the fulfilment of the conditions embodied in Article 45a §§ 1 and 5, if there is well-founded doubt that the EEA citizen is not fulfilling them.

Miscellaneous

As mentioned above, the decree No. 17/2002 of the President of the Police Corps on the implementation of the Aliens Act is not public; it is not possible to report on details and nuances of conduct of the Aliens Police in particular issues.

Literature

Barancová, H.: Pracovné právo po vstupe Slovenskej republiky do Európskej únie, *Justičná revue*, 56, 2004, č. 6 – 7, s. 678 – 697 (Labour Law after entry of the Slovak Republic into European Union)

Departure

Texts in force

According to the Article 57 § 8 of the Aliens Act as amended by the act No. 606/2003, EEA citizens and third-country family members of EEA citizens may be expelled only if they endanger security of the state or public order. Article 57 § 8 provides:

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“A citizen of the European Economic Area and a favoured alien¹⁶ may be expelled only if they endanger security of the state or public order.”

There are no detailed provisions on what is understood under security of the state and public order in the Aliens Act. There is also no provision on what should be taken under consideration, when deciding on the expulsion and ban on entry.

There is no specific provision on the duration of expulsion order with regard to EEA citizens and third-country family members of EEA citizens. Using analogy, the same duration, as when expelling other aliens for reasons of endangering security of stay or public order, shall be applied. According to the general provision (Article 57 § 1 (a) (1)) on duration prohibition of entry for above mentioned reasons, the duration of alien’s prohibited entry into Slovakia shall be ten years. Article 57 § 1 (a) (1) provides:

“The police department shall administratively expel an alien and determine the duration of prohibited entry for ten years, if he/she endangers security of the state, public order ...”

According to Article 57 § 4, an alien is obliged to leave the territory of Slovakia in the time limit stipulated in the decision on expulsion, which should be maximum 30 days. Article 57 § 4 provides:

“An alien who has been issued an administrative expulsion is obliged to leave the country within a term determined in the decision; this term must not exceed 30 days.”

The maximum limit of the term in cited provision equals to the minimum limit provided in Directive 64/221. As the provision of the Article 57 § 4 is applicable to all aliens, it might be possible that for EEA citizens and their family member the maximum limit should be used.

In the situation, when the EEA citizen does not produce his valid identity card or passport, as envisaged in the ECJ judgement in case Oulane, he/she has to prove his/her identity in reliable way. This way of proving identity is regulated in Article 18 of the act No. 171/1993 on the Police Corps, and is valid also for Slovak citizens. If an alien does not prove his/her identity in reliable way, there is a reason for his/her expulsion. However, according to Article 57 § 8, the EEA citizen can be expelled only if he/she threatens security of the state or public order. In a particular case, the decision of the police department on possible expulsion will depend on their consideration of reliability of the proof of identity. When considering it, reasons for tracing of identity have to be taken into consideration (Article 18 § 4 of the Act on Police Corps).

In general, a policeman is empowered to ask a person to prove his/her identity by showing an identification document.

Article 45a § (3) contains an obligation of an EEA citizen to notify the police department, when leaving Slovakia permanently. Article 45a § (3) provides:

“The EEA citizen, who intends to leave the territory of Slovak Republic permanently, is obliged to notify the police department in written form on the termination of permanent stay.”

¹⁶ A definition of a favoured alien is in the Article 45b (1) of the Aliens Act cited in Chapter IV.

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Prior to 1 May 2004, there was no Article 57 § 8 of the Aliens Act. General reasons for expulsion applied to all aliens including EEA citizens and their family members. These reasons are to be found in paragraph 1 of Article 57:

“(1) The police department shall administrative expel the alien and determine the duration of prohibited entry for

a) ten years, if

1. his/her further stay may endanger the security of the country, protection of, health or health of persons or the protection of rights and liberties of others, or if it is in interest of environmental protection,

2. he/she was validly sentenced for a wilful criminal act and he/she has not been sentenced with the sentence of expulsion²,

b) five years, if

1. he/she violates a regulation on drugs and psychotropic substances,^{17[19]}

2. at the control he/she submitted false or modified documents,

3. the alien executes an activity different to which he/she has been granted permit for temporary stay, or

4. he/she contracted a marriage with the aim of acquiring the permit for stay.

c) up to five years, but at least for one year, if

1. he/she enters with no title or stays with any title on the territory of the Slovak Republic,

2. refuses to verify own identity in a credible way,

3. he/she stays on the territory of the Slovak Republic, based upon an international treaty or the decision of the government of the Slovak Republic and acts in contradiction to this international treaty or to the decision of the government of the Slovak Republic,

4. in the procedure on granting permit for stay he/she wilfully indicated false or incomplete data,

5. they detect that the purpose for which the alien has been granted permit for temporary stay expired and the alien failed to report this fact to the police section, or

6. he/she hinders the enforcement of a decision made by a state authority,

7. he/she repeatedly or in a grave way violates generally binding legal regulations.

Draft legislation

As already mentioned above, amendment of the Aliens Act is in the legislative process, it arrived into parliament at the end of August 2005. Directives 2001/51, 2003/86, 2003/109, 2003/110, 2004/38, and 2004/82 should be transposed by the amendment. As regards the issue of departure, following amendments are proposed.

The reasons for expulsion of EEA citizens as provided in the law in force are proposed to be extended by one another reason, public health. This should not apply, if the disease which is endangering public health takes the person concerned three months after his/her entry. Moreover, the extended provision of Article 57 § 8 should, after the adoption of the draft amendment, include also family members of EEA citizens.

Another provisions related to expulsion of EEA citizens and their family members are in the proposal.

17 [19] Act No 139/1998 Col. on drugs, psychotropic substances, as amended by Act No 60/1999 Col. - zákon č. 139/1998 Zb. v znení zákona č. Z. z., Collection of Laws (Zbierka zákonov), Vol. 49 (1998).

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According to proposed Article 57 § 9, EEA citizens and their family members with next permit may be expelled only on behalf of serious reasons of threat to the security of the country, or public order.

An EEA citizen residing lawfully in Slovakia for more than ten years can be expelled only if he/she constitutes a threat to the security of the country (proposed Article 57 (11) (a)).

According to proposed Article 61 § 2, the EEA citizen and his/her family member can ask for cancellation of the decision on administrative expulsion, if they have proofs confirming that significant change of circumstances, for which he/she was expelled, occurred.

Miscellaneous

As mentioned above, the decree No. 17/2002 of the President of the Police Corps on the implementation of the Aliens Act is not public; it is not possible to report on details and nuances of conduct of the Aliens Police in particular issues.

Chapter II Equality of Treatment

Texts in force

- zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov¹⁸ - the Act No. 5/2004 on Services of Employment and on Amendments of some Acts
- zákon č. 460/1992 Zb. Ústava Slovenskej republiky¹⁹ – the Act No. 460/1992 Constitution of Slovak Republic
- zákon č. 365/2004 o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon)²⁰ - the Act No. 365/2004 on Equal Treatment in Several Areas and on Protection Against Discrimination and on Amendments of some Acts (Anti-discrimination Act)
- zákon č. 311/2001 Z. z. Zákonník práce²¹ – the Act No. 311/2001 Labour Code
- zákon č. 435/2000 Z. z. o námornej plavbe²² – the Act No. 435/2000 on Maritime Navigation

Article 2 § 2 of the act No. 5/2004 on services of employment (Act On Services of Employment) constitutes a general clause on the equality of treatment regarding EU citizens; this provision stipulates that the EU citizens have in general the same legal position as Slovak citizens. Article 2 § 2 provides:

“Citizen of the Member State of the European Union and his/her family member have identical status as citizens of the Slovak Republic in legal relations originating in accordance with this act, if this act does not provide otherwise.”

The Act on Services of Employment came into force on 1 February 2004, therefore, the provision cited above was already in force prior to 1 May 2004.

According to the Article 24 of the Act on Services of Employment, the Government of Slovakia is authorized to take equivalent measures to those applied by a Member State of EU with regard to Articles 1 and 6 of the Council Regulation on free movement of workers. Article 24 reads:

“(1) If a Member State of the European Union applies against citizens of the Slovak Republic and their family members under conditions provided in the Treaty on accession of the Slovak Republic to the European Union a national measure, or fully or partly suspends application of articles 1 and 6 of the Council Regulation (EEC) on free movement of workers in the Community, the Government of the Slovak Republic may issue a regulation establishing application of equal (equivalent) measures and their scope against that Member State.

(2) If the European Commission announces with regard to free movement of workers on the basis of an application of the Slovak Republic under conditions provided by the Treaty

18 Collection of Laws (Zbierka zákonov), Vol. 4 (2004).

19 Collection of Laws (Zbierka zákonov), Vol. 92 (1992).

20 Collection of Laws (Zbierka zákonov), Vol. 153 (2004).

21 Collection of Laws (Zbierka zákonov), Vol. 130 (2001).

22 Collection of Laws (Zbierka zákonov), Vol. 179 (2000).

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on accession of the Slovak Republic to the European Union complete or partial suspension of application of Articles 1 and 6 of the Council Regulation (EEC) on free movement of workers in the Community by the Slovak Republic by the reason of restoration of the common state on the labour market, the Government of the Slovak Republic may issue a regulation providing against which Member State and in what scope suspends the Slovak Republic application of Articles 1 and 6 of the Council Regulation (EEC) on free movement of workers in the Community.”

Most of the Member States have decided to apply national measures against Slovakia, and to suspend application of articles 1 and 6 of the Regulation on free movement of workers. However, the Government of the Slovak Republic agreed that no reciprocal measures will be applied.

As already mentioned, the Act On Services of Employment came into force on 1 February 2004 with the exception of provisions governing mediation of employment from Slovakia to EU and vice versa (Article 72(9)(10) of the Act On Services of Employment). One of the reasons for its adoption was the accession of Slovak Republic to the EU; Directives 76/207, 86/613, 91/383, 96/71, and 2000/78 were transposed with this act. This was not the only reason for adoption of this act. The main purpose of the act in issue is according to the explanatory report to the act is the necessity to modernize the execution of services of employment, necessity to create conditions for their flexible organisation and provision depending on different needs of job seekers.

The Constitution of the Slovak Republic contains several provisions on equality of treatment. There is a general provision on non discrimination and equality of treatment in Article 12 of the Constitution according to which:

“(1) All human beings are free and equal in dignity and rights. Their fundamental rights and freedoms are inalienable, irrevocable, and absolutely perpetual.

(2) Fundamental rights shall be guaranteed in the Slovak Republic to every person regardless of sex, race, colour, language, faith, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, birth or any other status, and no person shall be denied their legal rights, discriminated against or favoured on any of these grounds.

...”

Article 36 (b) of the Constitution constitutes a special non discrimination provision with regard to employment. It provides:

“All employees shall have the right to fair and satisfactory conditions at work. The law shall provide in particular for:

...

b) the security from arbitrary dismissal and discrimination at work,

...”

Several acts contain general provisions on prohibition of discrimination in the field of employment.

Article 14 § 2 of the Act On Services of Employment prohibits discrimination in access to employment. The Article provides:

“A citizen has a right to access to employment without any limitations in accordance with the principle of equal treatment in employment relations and similar legal relations provided by special act^{23[20a]}. In accordance with the principle of equal treatment, discrimination as well on the grounds of marital status and family status, colour of skin, language, political or other opinion, activities in trade union, national or social origin, disability, age, wealth, ancestry or other position is prohibited.”

The Act No. 365/2004 on equal treatment in several areas and on protection against discrimination (Anti-discrimination Act), which implements Directives 2000/43, 2000/78 and 96/97, also contains a provision on prohibition on discrimination in field of employment. Article 6 of the Anti-discrimination Act provides:

“(1) In accordance with the principle of equal treatment in employment relations, similar legal relations and related legal relations, discrimination of persons on the grounds of their sex, religion or belief, racial origin, national or ethnic origin, disability, age or sexual orientation is prohibited.

(2) The principle of equal treatment according to paragraph 1 applies only in conjunction with rights of individuals provided by special acts in areas:

(a) access to employment, profession, other income producing activity or function (employment) including requirements by accepting into employment, and conditions and way of conducting selection process,

(b) execution of employment and conditions for execution of work, including remuneration, promotion, and discharge,

(c) access to professional education, further professional education, and participation on programs of active measures at the labour market including access to job choice and job change counselling,

(d) membership and activities in association of employees, association of employers, and associations clustering individuals of certain professions including provision of advantages, which these associations provide to their members.

(3) As discrimination on the ground of

a) sex, is also discrimination on the ground of pregnancy or maternity considered, as well as discrimination on the ground of sex or gender identification,

b) racial origin, national or ethnic origin, is also discrimination on the ground of relationship with an individual of certain racial origin, national or ethnic origin considered,

c) religion or belief, is also discrimination on the ground of relationship with an individual of certain religion or belief, and also discrimination of an individual without religion considered,

d) disability, is also discrimination on the ground of previous disability, or discrimination of an individual, by whom could be on behalf of external characters assumed that he/she is disabled considered.”

Among the Basic Principles of the Labour Code is a provision on prohibition of discrimination too. It is Article 1 of the Basic Principles, and it says:

“Individuals have right to work and to choose freely the employment, to fair and satisfactory working conditions and to protection against unemployment. These rights belong them without any limitations and direct or indirect discrimination based on sex, marital status and family status, race, colour of skin, language, age, state of health, belief and religion, politi-

23 [20a] Act No. 365/2004 on equal treatment in several areas and on protection against discrimination and on amendment of several acts (Anti-discrimination Act).

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cal or other opinion, activities in trade union, national or social origin, belonging to national or ethnic group, wealth, ancestry or other position, save a case, if it is provided by law, or if there is a material reason for execution of work, which consists of preconditions or requirements and in the character of work, which should be executed.”

Article 13 of the Labour Code provides for more specific provisions established with the Basic Principles and the Anti-discrimination Act. Article 13 provides:

“(1) The employer is obliged to treat employees in employment relations in accordance with the principle of equal treatment provided for the area of relations in employment by a special act on equal treatment in several areas and on protection against discrimination and on amendments of some acts (Anti-discrimination Act).

(2) In accordance with the principle of equal treatment, discrimination on the ground of marital and family status, colour of skin, language, political or other opinion, activities in trade union, national or social origin, wealth, or other position is prohibited.

(3) Performance of rights and obligations emanating from employment relations must be in accordance with good manners. No one shall misuse these rights and obligations to cause damages to other participant of employment relationship or co-employees. No one shall be persecuted or in other way affected in relation to performance employment relations at his/her workplace because of the fact that he/she lodges a complaint, civil or criminal action regarding another employee or employer.

(4) An employee is entitled to lodge a complaint to the employer regarding a breach of the principle of equal treatment according to paragraphs 1 and 2; the employer is obliged to reply to the complaint of the employee without unnecessary delay, to take a remedy, abandon such behaviour, and eliminate consequences.

(5) An employee, who is of the opinion that his/her rights or interests protected by law were affected by not following the principle of equal treatment, or by not following the terms according to paragraph 3, he/she may appeal to a court, and ask for legal protection provided by a special act on equal treatment in several areas and on protection against discrimination and on amendments of some acts (Anti-discrimination Act).”

It was not easy to approve the Anti-discrimination Act in the Slovak parliament, as can be seen also from the fact that it came into force on 1 July 2004 only. Several years of discussion preceded the adoption. Officially, the reason for such a long discussion was a question, whether Slovakia needs a special act on non discrimination, or it is sufficient to amend a number of relevant acts. But behind this dispute, there was reluctance of certain ideological groups to include into anti-discrimination clause also ban on discrimination on the ground of sexual orientation. Finally, special Anti-discrimination Act was adopted, and the ban on discrimination on the ground of sexual orientation is included in the act. Interesting from this point of view is also the fact that in cited Article 13 of the Labour Code (which was adopted together with the Anti-discrimination Act and replaced previous wording of Article 13 – the anti-discrimination clause of the Labour Code) the ban on discrimination on the ground of sexual orientation is omitted. Nevertheless, the Anti-discrimination Act, and in particular its Article 6 applies to employment relations.

Before the adoption of the Anti-discrimination Act, different wording of Article 13 was applicable with regard to non discrimination in the field of employment. The ban on discrimination on the ground of sexual orientation was omitted in the anti-discrimination clause. There was a special provision (Article 13 § 2) according to which it was forbidden to the employer to take the steps for determination of the sexual orientation of an employee. There-

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fore, before adoption of the Anti-discrimination Act, employees could not have been asked for their sexual orientation, but in fact, they could have been discriminated on this ground, if the employer did not take steps to find out about employees sexual orientation, but somehow realised it. Nevertheless, after adoption of the Anti-discrimination Act, the Slovak anti-discrimination law should be in line with the EC legislation.

Act No. 435/2000 on maritime navigation does not contain a requirement that the captain of Slovak ship has to be a Slovak citizen. There is just one provision on citizenship of the ship's crew, Article 10 § 2, which provides:

“Crew of a maritime ship registered in the national maritime register is usually composed of citizens of the Slovak Republic.”

This provision is not saying that someone, who is not a Slovak citizen, cannot be a member of the ship's crew, but implies that Slovak citizens are preferred before other EEA citizens.

Chapter III Employment in the Public Sector

Texts in force

- zákon č. 460/1992 Zb. Ústava Slovenskej republiky²⁴ – the Act No. 460/1992 Constitution of Slovak Republic
- zákon č. 312/2001 o štátnej službe a o zmene a doplnení niektorých zákonov²⁵ – the Act No. 312/2001 on civil service and on Amendments of some Acts
- zákon č. 73/1998 Z. z. o štátnej službe príslušníkov Policajného zboru, Slovenskej informačnej služby, Zboru väzenskej a justičnej stráže Slovenskej republiky a Železničnej polície v znení neskorších predpisov²⁶ – the Act No. 73/1998 on civil service of members of Police Corps, Slovak Information Service, Corps of Prison and Court Guard, and Railways Corps as amended
- zákon č. 200/1998 Z. z. o štátnej službe colníkov a o zmene a doplnení niektorých ďalších zákonov²⁷ – the Act No. 200/1998 on civil service of custom officers and on Amendments of some Acts
- zákon č. 370/1997 Z. z. o vojenskej službe v znení neskorších predpisov²⁸ – the Act No. 370/1997 on army service as amended
- zákon č. 477/2002 o uznávaní odborných kvalifikácií a o doplnení zákona Národnej rady Slovenskej republiky č. 145/1995 Z. z. o správnych poplatkoch v znení neskorších predpisov²⁹ - the Act No. 477/2002 on Recognition of Professional Qualifications and on Amendment of the Act of the National Council of Slovak Republic No. 145/1995 on Administrative Fees
- zákon č. 578/2004 Z. z. o poskytovateľoch zdravotnej starostlivosti, zdravotníckych pracovníkoch, stavovských organizáciách v zdravotníctve a o zmene a doplnení niektorých zákonov³⁰ v znení neskorších predpisov - the act No. 578/2004 on Providers of Health Care, Health Service Workers, Professional Associations in Health Care, and on Amendments of some Acts as amended

Nationality condition for access to the public sector

According to Article 61 § 2 of the Constitution of the Slovak Republic, only Slovak citizens may be elected for posts of president and vice-president of the Supreme Audit Office. Also as a Member of Parliament, may be according to Article 74 § 2 of the Constitution only Slovak citizen elected. Furthermore, according to Article 103 § 1, as a president of Slovakia, only its citizen may be elected. As a prime minister, deputy prime minister and minister only Slovak citizen can be appointed too (Articles 110 § 2 and 111). According to Articles 134 § 3 and 145 § 2, as constitutional court judges and judges are Slovak citizens appointed. Finally, the Public Defender of Rights (ombudsperson) can be Slovak citizen only too.

24 Collection of Laws (Zbierka zákonov), Vol. 92 (1992).

25 Collection of Laws (Zbierka zákonov), Vol. 131 (2001).

26 Collection of Laws (Zbierka zákonov), Vol. 28 (1998).

27 Collection of Laws (Zbierka zákonov), Vol. 76 (1998).

28 Collection of Laws (Zbierka zákonov), Vol. 143(1997).

29 Collection of Laws (Zbierka zákonov), Vol. 182 (2002).

30 Collection of Laws (Zbierka zákonov), Vol. 245 (2004).

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The act No. 312/2001 on civil service (Act on Civil Service) regulates legal relations when executing civil service. Article 14 § 12, as amended by the act No. 551/2003, provides that the list of civil servants employment posts, which are open only for citizens of Slovakia will be set by generally binding ordinance adopted by the Civil Service Office. The ordinance was issued under No. 596/2004 and came into force on 1. December 2004. The list consists of two parts, which are embodied in annexes to the ordinance. In Annex 1, general part of the list is included. The Annex 1 reads as follows:

- “1. Civil servant employment posts in the department of civil service
 - a) 1.03 International cooperation, financial means of the European Communities,
 - b) 1.04 Legislation,
 - c) 1.07 Control, complaints and petitions, internal audit,
 - d) 2.06 Judiciary,
 - e) 2.09 Defence,
 - f) 2.12 Industrial(priemyselne) property,
 - g) 2.17 Home affairs,
 - h) 2.24 Protection of secret issues;

2. Civil servant employment posts in service office
 - a) Supreme Audit Office of the Slovak Republic,
 - b) Ministry of Foreign Affairs of the Slovak Republic,
 - c) Prosecutor General Office, regional prosecutor offices, high military prosecution, district military prosecution.”

Annex 2 contains special part of the list. Annex 2 provides:

- “The special part of the list includes civil servant employment posts
- a) of superior officers,
 - b) of exceptional significance,
 - c) where mandate to acquaint with secret issues is required.”

Article 9 of the Act on Civil Service provides, who is the superior officer. According to that article, superior officer is a superior civil servant, who is empowered to give directions for execution of the civil service to a civil servant, and who is obliged to fulfil the tasks of the service office towards a civil servant, when executing the civil service.

Article 55 § 1 contains a definition, what are the civil servant employment posts of exceptional significance. It provides:

“Head of the office shall determine, with the consent of the Civil Service Office, which civil servant employment posts of the service office are posts of exceptional significance, save civil servant employment posts of exceptional significance, to which personal salary applies; civil servant employment posts of exceptional significance are those civil servant employment posts, which are decisive in particular for fulfilment of the programme declaration of the government, or fulfilment of tasks connected with drawing of financial means of the European Union. The government when adopting systemization determines civil servants employment posts of exceptional significance, to which personal salary applies.”

According to Article 2 § 7, civil service of members of Police Corps, Slovak Information Service, National Security Authority, Corps of Prison and Court Guard, Railways Corps,

custom officers and professional soldiers, and of members of Fire-fighting and Rescuing Corps is governed by special acts.

According to Article 14 (1) (g) of the Act on Civil Service, knowledge of Slovak language is one of the conditions for admission to the civil service. There are no specific provisions on how is the knowledge of Slovak language examined.

Members of Police Corps, Slovak Information Service, National Security Authority, Corps of Prison and Court Guard, and Railways Corps can be according to Article 14 § 1 of the act No. 73/1998 Slovak citizens only.

Article 14 § 1 of the act No. 200/1988 comprises the same condition of citizenship for custom officers, Article 2 § 2 of the act No. 370/1997 for soldiers, and Article 17 § 1 of the act No. 315/2001 for firemen.

Recognition of diplomas for access to the public sector

Act No. 477/2002 on recognition of professional qualifications, which substantial part came into force on 1 May 2004, regulates the process of recognition of diplomas and professional qualifications.

It regulates conditions for recognition of diplomas, school reports, certificates and other documents on education issued by schools, or other competent authorities in accordance with law of the Member States of the European Union for purposes of execution of professions in Slovakia, which execution is subject to fulfilment of qualification prerequisites.

Procedure on recognition of professional qualifications is regulated in Articles 14 and 15 of the Act. Person concerned is obliged to submit identification document, verified copy of the documents on education; extract on subjects attended and exams executed, or appendix to the diploma; certificate on undergone praxis; other documents, if it requires special regulation. If necessary for judging the issue, other information and documents can be sought from the person concerned. Verified translation of documents on education into Slovak is needed.

Possible decisions are:

- recognition;
- partial recognition;
- refusal.

Decisions on partial recognition and on refusal have to be reasoned. In the decision on partial recognition, data on possible compensation mechanisms are included, in particular requested length of professional praxis; requested length of adaptation period including length of additional education, which forms part of it; professional areas, which will be included into examination on qualification.

Before deciding on requirement of examination of professional qualification or on attending of adaptation period, the relevant authority shall consider, if the knowledge of applicant acquired during his/her professional praxis, do not eliminate, fully or partly, fundamental differences in the content of education.

In general, provisions of the Administrative Order are applicable to the procedure on recognition of professional qualifications.

As regards medical professions, Annex 5 to the act No. 477/2002 provides for recognition of diplomas of medical doctors, pharmacists, nurses, and midwives. There is a list of diplomas issued in EEA countries and in Switzerland and criteria for recognition of midwife education in the Annex.

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According to Article 1 § 3 of the act No. 477/2002, recognition of documents on specialisation in medical professions necessary for execution of medical professions is governed by a special act. The special act is act No. 578/2004 on Providers of Health Care, Health Service Workers, Professional Associations in Health Care, and on Amendments of some Acts as amended. This act is discussed in chapter X.

No procedure similar to French *concours* is to be found in Slovakia.

Chapter IV Family Members

Texts in force

zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov³¹ v znení neskorších predpisov – the Act No. 48/2002 on the Residence of Aliens and on Amendments of some Acts (Aliens Act) as amended.³²

As mentioned in Chapter I, on 1 May 2004 a new Section 5 of the Aliens Act came into force. It was adopted by the act No. 606/2003 and regulates the residence of EEA citizens and their family members. It is the last section of Part III of the Aliens Act and it is named “Special provisions for the EEA citizen and his/her family member”. It does not include family members of Swiss nationals. Article 45b, which concerns family members of EEA citizens, provides:

“(1) The police department grants permanent residence permit to an alien, who is not an EEA citizen and is family member of an EEA citizen with permanent residence permit (hereinafter “favoured alien”), if his/her residence does not endanger security of the state or public order.

(2) A family member of the EEA citizen is

- a) a spouse,
- b) relative in straight row dependent on him/her,
- c) relative of a spouse in straight row dependent on him/her.

(3) The application for the permanent residence permit shall be submitted by the favoured alien in person at a foreign mission pursuant to Article 24 § 1 or in person at the police department. When applying for the permanent residence permit, the favoured alien is obliged to submit the travel document. If the favoured alien does not submit the travel document, the foreign mission or the police department does not accept the application for the permanent residence permit.

(4) To the application pursuant to paragraph 3, the favoured alien shall enclose

- a) three photos pursuant to Article 25 § 2,
- b) a document confirming that he/she is a family member of the EEA citizen,
- c) a document or a reasoned statutory declaration confirming, that he/she is a dependent relative; this does not apply, if the person concerned is a spouse or a child under 21,
- d) a document confirming accommodation to be secured,
- e) a document on health insurance at the territory of Slovak Republic,
- f) a statutory declaration that he/she will be no burden to the social security system of Slovak Republic.

(5) The foreign mission or the police department may require the alien to submit a document no older than 30 days confirming the fact that he/she does not suffer from an infectious disease the spreading of which is punishable^{33[12]}, and a proof of a clear criminal record no older than 90 days.

(6) Does the application for granting permit for temporary stay not include all necessary details pursuant to paragraphs 4 and 5, the body which accepted the application shall call on

31 Collection of Laws (Zbierka zákonov), Vol. 23 (2002).

32 For amendments of the Aliens Act see Chapter I.

33 [1²] Decree of the Ministry of Justice of the Slovak Republic No 105/1987 Col. stipulating which diseases are deemed infectious diseases pursuant to Criminal Law.

him/her to remove the defects within a certain period of time; at the same time it shall inform him/her on the consequences of failure to remove the defects. If the applier fails to remove the defects within the determined term, the police department shall discontinue the procedure.

(7) The police department shall decide on the application of a favoured alien for granting permanent residence within 30 days following the submission of the application.

(8) The police department shall reject the application for granting permanent residence permit of the favoured alien, if

- a) the alien is an undesirable person,
- b) a well-grounded suspicion exists that the alien could during his/her stay endanger the security of the country, public order, or public health,
- c) it may be presumed that the alien will be a burden to the social security system of the Slovak Republic,
- d) a well-grounded suspicion exists that the alien entered a marriage with the aim of acquiring permit for temporary stay.

(9) Permanent residence permit of a favoured alien expires, if

- f) he/she notifies the police department in written form about the termination of permanent stay,
- g) he/she was sentenced with the punishment of expulsion³⁴[2],
- h) he/she was expelled in the administrative procedure,
- i) he/she acquired citizenship of Slovak Republic, or
- j) the police department cancelled his/her permanent residence permit.

(10) The police department shall cancel the permanent residence permit of a favoured alien, if

- a) permanent residence of an EEA citizen, of whom is a favoured citizen a family member expires; this does not apply, if expiration pursuant to Article 45a § 2 (d) took place,
- b) they detect facts giving grounds for the rejection of the application for granting permanent residence permit,
- c) they detect that the alien entered a marriage with the aim of acquiring a permanent residence permit, or
- d) family relationship expired within five years from granting permanent residence permit.

(11) The police department shall not cancel the permanent residence permit of a favoured alien, if the consequences of the cancellation of the permit were inadequate to the reasons of cancellation of the permanent residence permit, in particular with regard to private and family life of a favoured alien.”

The definition of a family member is outlined in § 3 of cited Article. The Slovak translation of the term “spouse” in this Article involves only married partner, unmarried partners or officially registered partners do not fall under the scope of this provision. Accordingly, a third-country national parent, who wants to remain in the country in order to look after his or her child that is entitled to continued residence during its schooling, does not fall under the definition of a family member in Article 45b § 2 of the Aliens Act, which is in contradiction to Regulation 1612/68, as interpreted by the ECJ in the *Baumbast* case.

Third-country family members of EEA citizens are according to Article 45b § 3 not required to apply for permanent residence permit outside of Slovakia. It also possible for them to apply during their stay in Slovakia at any foreign police department. There is no provision on whether their stay has to be legal at the time of applying. They get residence permit, if they do not endanger security of the state or public order.

34 [2] Article 57 of the Criminal Code.

The obligation of a third-country family member of EEA citizen to enclose documents pursuant to § 4 (d), (e) and (f) of Article 45b goes beyond the provisions of Article 4 § 3 of Directive 360/1968 and Article 6 of Directive 148/1973. To ask a third-country family member of EEA citizen for a document confirming an accommodation to be secured, a document on health insurance, and a statutory declaration that he/she will be no burden to the social security system of Slovak Republic are requirements exceeding those set forth in above mentioned directives.

The same applies for the reasons for rejection of the application for permanent residence permit (or cancellation of the permanent residence permit) other than security of the state, or public order.

According to Article 45b § 10 (a) of the Aliens Act, a third-country family member of EEA citizen is not entitled for permanent residence permit anymore, when the permanent residence of an EEA citizen, of whom is he/she a family member expires. The only exception is the expiration of the permanent residence of an EEA citizen because of acquirement of Slovak citizenship. The requirements of Article 3 § 2 of Directive 34/75 are not incorporated in the national legislation. The only possibility to remain in the country on permanent residence is § 11 of Article 45b, when the consequences of the cancellation of the permit were inadequate to the reasons of cancellation of the permanent residence permit, in particular with regard to private and family life of a family member of EEA citizen. However, there is no certainty for a third-country family member of EEA citizen that the police department will decide in the line with Directive 34/75.

According to the Article 46 § 6 of the Aliens Act, the same identity card as for an EEA citizen is issued for a third-country family member of EEA citizen. Article 46 § 6 provides:

“The police department shall issue document on permanent residence pursuant to paragraph 5 for a favoured alien, who was granted permanent residence permit.”

Before 1 May 2004, a spouse and a minor child of an EU citizen with right to temporary stay in Slovakia were according to Article 30 § 2 entitled to temporary stay in Slovakia too. Article 30 § 2 says:

“The spouse and minor child of a citizen of the Union, who *is entitled to* temporary stay based upon registration, are entitled to a permit for temporary stay based on registration for the purpose of family reunification for the same *time* as a citizen of the Union whom with they apply for family reunification”

Documents, which was a family member obliged to submit in order to be registered are enumerated in Article 31 §§ 2 and 3:

“(2) To the application the applicant for registration shall submit the travel document as well as documents acknowledging the purpose of the stay, arranged accommodation, document that he/she will be no burden for the social security system and for the health care system of the Slovak Republic, and three photos pursuant to § 13 Par. 2.

(3) At the registration the police department is in well-grounded cases entitled to ask for the document of integrity (clear criminal record) and for further documents, which are necessary for the establishment of facts essential for the registration; the applicant for registration is obliged to enclose these documents upon request.”

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Reasons for rejection of the application are stipulated in Article 31 § 5, which refers to Article 26 § 2 (a), (c) to (e). These provisions provide:

“The police department shall reject the application for granting permit for temporary stay, if
a) the alien is an undesirable person,

...

k) there is well-grounded suspicion that the alien could endanger the security of the country, public order, life, health or property or it is in the interest of environmental protection,

l) *it may be presumed* that the alien will be a burden for the social security system and health care system of the Slovak Republic,

m) there is well-grounded suspicion that the alien contracted a marriage with the aim of acquiring permit for temporary stay.”

The situation of Slovak citizens, who want to reside in Slovakia with third country family member, is more complicated than the one of other EEA citizens. The first difference lies in the fact that the family member of Slovak citizen has no legal entitlement for the permanent residence permit. According to Article 35 of the Aliens Act, the police department may grant the permanent residence permit. For the family members of EEA citizens, Article 45b provides that the police department shall grant the permanent residence permit. The conditions for possible granting of the permit are also harder for the family members of Slovak citizens. Apart from the conditions for the family members of EEA citizens mentioned above, the family member of Slovak citizen has to prove that he/she has no criminal record, and needs to have his/her stay financially secured, which has to be proved by the sum of at least approximately 4,100. - EUR.

Draft legislation

As mentioned in the Chapter I, amendment of the Aliens Act is in the legislative process, it arrived into parliament at the end of August 2005. Directives 2001/51, 2003/86, 2003/109, 2003/110, 2004/38, and 2004/82 should be transposed by the amendment. As regards the issue of family members of EEA citizens, following amendments are proposed.

Family members of EEA citizens will have to apply for the residence permit, but two more groups of foreigners should be included into the notion of a family member according to the proposal (proposed Article 45b § 2):

- children under 21 and unprovided children, children of the spouse under 21 and unprovided children;
- other family members dependent on EEA citizen, or members of his household.

Family members will be granted first residence permit, if they are family members of EEA citizen according to Article 45b § 2, and if they are not a burden to the health security system and social security system of Slovak Republic.

According to proposed Article 45b § 5, the police department shall reject the application for granting first permit if the alien is an undesirable person, or there is well-grounded suspicion that the alien contracted a marriage with the aim of acquiring residence permit; if there is well-grounded suspicion that the alien could endanger the security of the country, public order in a serious manner, or public health.

The right for the first permit preserves, according to proposed Article 45b § 6, if he/she is employed or running business or has enough financial means to secure his/her stay and not

to become a burden to the health security system and social security system of Slovak Republic and if:

- he/she resided in Slovakia at least one year before the EEA citizen died,
- his/her marriage ceased and (a) lasted at least three years and the residence one year; (b) an unprovided child from the marriage was entrusted to him/her; (c) there are reasons of special attention; (d) he/she has right to meet with unprovided child in Slovakia,
- he/she studies, and his Parent, who is an EEA citizen died or terminated the residence in Slovakia.

Right for the first permit preserves also for the parent of a student, if the parent has got the child in personal care, and this right preserves until the end of studies.

The police department shall, according to proposed Article 45b § 8, cancel the first permit of a family member of a EEA citizen, if the residence of a EEA citizen – his/her family member – expires, because the EEA citizen notifies the police department in written form about the termination of permanent stay, or the EEA citizen was expelled in the administrative procedure. The police department shall also cancel the first permit of a family member of a EEA citizen if it finds out facts, which constitute reasons for rejection of the application for first permit with the exception of endangering of public health. The last reason for cancellation of the first permit is, according to proposed Article 45b § 8, the fact that the police department finds out that the marriage was contracted with the aim of getting first permit.

The first permit expires, when a family member of EEA citizen notifies the police department in written form about the termination of permanent stay; or he/she was expelled in the administrative procedure; or he/she acquired citizenship of Slovak Republic; or when the police department cancelled the first permit (proposed Article 45b § 7).

The previous paragraph shall not apply, if the consequences of cancellation of the first permit would be inappropriate, especially with regard to private and family life of the foreigner.

The police department shall grant next permit to a family member of an EEA citizen, if his previous continuous residence lasts at least five years, or if he stays in Slovakia as a family member of an EEA citizen according to proposed Article 45c § 1 (b) to (f)³⁵.

Next permit of a family member of an EEA citizen expires for the same reasons as the residence on behalf of first permit, or if a family member of an EEA citizen is not staying in Slovakia for two subsequent years.

35 See Chapter I, Residence, Draft Legislation.

Chapter V

Influence of Recent Judgements of the European Court of Justice

In general, it is not common for any authority to utilize judgements of ECJ in their activities.

As regards the courts, there is no procedure established yet, which would make their judgements easily accessible to public. There are efforts of the Ministry of Justice with this regard, but in the time being, there is no official method of publication. However, one official journal of the Supreme Court of Slovakia is being published. It is called “Law reports of opinions of the Supreme Court and decisions of the courts of the Slovak Republic” (*Zbierka stanovísk Najvyššieho súdu a rozhodnutí súdov Slovenskej republiky*). On the publication of opinions and decisions are deciding boards of the Supreme Court. Decisions published do not represent opinion of an individual, but are outcome of team debate and decision on pertinence of their publication.

However, in the last issue, latest decision is from June 2004, therefore, it could not be expected that decision relying on ECJ judgement could be published, even if the ECJ judgements would be used.

There are several private companies, which issue decisions of Slovak courts on regular basis, but no decision was found, where ECJ judgement was applied.

Similar situation is in the legislation, where reports submitted with draft laws into parliament and explaining reasons for presenting the draft laws, contain references to EU law very often, but hardly any reference to ECJ judgements was found.

The abovementioned situation is most probably the outcome of the fact that Slovakia is a Member State of the EU only few months, and it was very hard task to implement the legislation itself adopted for many years before the accession of Slovakia, therefore, the relevant authorities might need some time to realize that there is the ECJ and the judgements should be of interest for them and their activities.

A similar situation is in the academic field and among researchers. There are only few articles and publications to be found on the topic of ECJ judgements. Generally, the situation with legal literature of any kind is not very good in Slovakia, when not many up to date professional legal books are issued and the quality of articles published in periodic journals is unsteady.

Chapter VI

Policies of a General Nature with Possible Repercussions on the Free Movement of EU Citizens

The Migration Office of the Ministry of Interior of the Slovak Republic has prepared in 2004 a document called “The Migration Policy Conception of the Slovak Republic”. According to the presentation report of the document, the conception is fully in line with the ongoing process focused on creation of single migration and asylum policy of the Member States of the EU. On the basis of to this date implemented recommendations, directives and regulations of the European Communities and European Union into legislation related to realisation of the migration policy in Slovakia, as well as in accordance with the Hague program on enhancement of freedom, security and justice in the EU, its task is to contribute to its more conceptual execution.

In its section 3.2, called “Policy in the field of legal migration and social integration of immigrants and recognized refugees into society” it says:

“Proceeding from existing principles applied in the migration policy, the government of Slovakia will not place barriers for aliens when executing their right to entry its territory, right of free movement on its territory, and right to leave the territory, under conditions of acceptance and conformity with its legal order, and under a presumption that the rights provided will not be used in contrary with the interests of the security of the country, with the intention to threaten public order, or to restrict rights and freedoms of Slovak citizens.

That requires creation of respective legal environment, which respects legal acts of the European Communities and the European Union, and participation of the stakeholders on realisation of the migration policy ...

As the legal migration is a broad-spectrum problem, the measures under which aliens can entry Slovakia, must emanate not only from legal conditions, but also from economic and social potential of the state.

In this regard, action plan on solutions of legal migration including procedures on acceptance of migrants has to be prepared. This plan has to take account of the outcome of discussions in the green book of the EU on migration of workers, and it should respect the requirement that determination of the volume of acceptance of migrants is under authority of particular Member States.

The facts observed, as well as the necessity to coordinate the authorities involved in carrying out the tasks related to realisation of the migration policy in new conditions confirm the inevitability to create in short time horizon an intrasectional working group composed of competent representatives of relevant departments of the government.

...”

The section 4.2 “Legislation” provides, as regards the EU issues, following:

“In order to reach the goals of the migration strategy of the Slovak Republic, further unification of the national legislation with the EU legislation is necessary, with a view to create a flexible legal framework, which allows to react on all changes in the field of migration at international, national, and regional level.”

In the field of approximation and creation of EC and EU law, ensuring of direct application of legally binding EC and EU acts in the conditions of Slovakia, ensuring of the transposi-

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tion of legally binding EC and EU acts into legal order of Slovakia, and active participation of Slovakia at the creation of these acts.

Only the cited part of the migration policy relates somehow to free movement of persons in the EU. The main part of the document discusses an illegal migration and asylum issues.

Chapter VII

EU Enlargement

The Slovak Republic entered the European Union on 1 May 2004. Before that, the Slovak Parliament adopted on 4 December 2003 Act on Services of Employment, which was then published under No. 5/2005. In Article 24 of the Act On Services of Employment, the Government of Slovakia is empowered to take equivalent measures to those applied by a Member State of EU with regard to Articles 1 and 6 of the Council Regulation on free movement of workers. Article 24 reads:

“(1) If a Member State of the European Union applies against citizens of the Slovak Republic and their family members under conditions provided in the Treaty on accession of the Slovak Republic to the European Union a national measure, or fully or partly suspends application of articles 1 and 6 of the Council Regulation (EEC) on free movement of workers in the Community, the Government of the Slovak Republic may issue a regulation establishing application of equal (equivalent) measures and their scope against that Member State.

(2) If the European Commission announce with regard to free movement of workers on the basis of an application of the Slovak Republic under conditions provided by the Treaty on accession of the Slovak Republic to the European Union complete or partial suspension of application of Articles 1 and 6 of the Council Regulation (EEC) on free movement of workers in the Community by the Slovak Republic by the reason of restoration of the common state on the labour market, the Government of the Slovak Republic may issue a regulation providing against which Member State and in what scope suspends the Slovak Republic application of Articles 1 and 6 of the Council Regulation (EEC) on free movement of workers in the Community.”

Most of the Member States have decided to apply national measures against Slovakia, and to suspend application of articles 1 and 6 of the Regulation on free movement of workers. However, the Government of the Slovak Republic agreed that no reciprocal measures will be applied.

The Act On Services of Employment regulates among other issues the access of aliens to employment. Citizens of member states of the European Union and their family members are for the purpose of this act regarded as Slovak citizens. According to Article 2 (2) of the act, citizen of a member state of the European Union and his family member have identical legal position with citizen of Slovak Republic in legal relationships emerging according to the act. Therefore, no work permit is necessary for citizens of member states of the European Union and their family members. The employer is only obliged to notify the Bureau of Labour, Social Affairs, and Family about the beginning and the end of employment of a member state of the European Union or his family member. Statistics on employment of EEA citizens in Slovakia are to be found in next chapter VIII – Statistics.

Chapter VIII

Statistics

The Office of Alien and Border Police of the Presidium of the Police Corps issues an annual yearbook on legal and illegal migration in the Slovak Republic. In the Yearbook 2004 following statistics related to free movement of workers were included:

Statistics on residence permits granted – most frequent EU countries

Issued in 2004

| Country | Permanent | Temporary | Registered | Tolerated | Total |
|----------------|-----------|-----------|------------|-----------|-------|
| Czech Rep. | 1560 | 100 | 0 | 25 | 1685 |
| Poland | 936 | 8 | 0 | 4 | 948 |
| Germany | 561 | 0 | 40 | 3 | 604 |
| Austria | 343 | 0 | 25 | 2 | 370 |
| Hungary | 300 | 8 | 0 | 5 | 313 |
| France | 270 | 2 | 22 | 0 | 294 |
| United Kingdom | 249 | 1 | 31 | 0 | 281 |
| Italy | 199 | 0 | 12 | 3 | 214 |

Issued in 2003

| Country | Permanent | Temporary | Registered | Tolerated | Total |
|----------------|-----------|-----------|------------|-----------|-------|
| Czech Rep. | 162 | 470 | 3 | 0 | 635 |
| Germany | 12 | 25 | 213 | 0 | 250 |
| United Kingdom | 7 | 11 | 134 | 0 | 152 |
| France | 6 | 18 | 121 | 0 | 145 |
| Poland | 65 | 71 | 1 | 0 | 137 |

Numbers of Persons Residing in Slovakia on 31 December 2004

| Country | Permanent | Temporary | Registered | Tolerated | Total |
|------------|-----------|-----------|------------|-----------|-------|
| Czech Rep. | 3268 | 303 | 1 | 11 | 3583 |
| Poland | 2387 | 80 | 0 | 1 | 2468 |
| Hungary | 1481 | 35 | 0 | 3 | 1519 |
| Germany | 813 | 30 | 143 | 2 | 988 |
| Austria | 449 | 19 | 107 | 1 | 576 |

Residence Permits Granted in 2004 (Total and in Regions)

| Residence | Bratislava | Banská Bystrica | Nitra | Tnava |
|------------|------------|-----------------|-------|-------|
| Permanent | 1943 | 430 | 476 | 521 |
| Temporary | 611 | 78 | 161 | 120 |
| Registered | 85 | 8 | 11 | 14 |
| Tolerated | 13 | 10 | 22 | 62 |
| Total | 2652 | 526 | 670 | 717 |

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Residence Permits Granted in 2004 (Total and in Regions), cont.

| Residence | Trenčín | Košice | Prešov | Žilina | Total |
|------------|---------|--------|--------|--------|-------|
| Permanent | 491 | 795 | 551 | 1041 | 6248 |
| Temporary | 65 | 272 | 59 | 94 | 1460 |
| Registered | 5 | 8 | 7 | 16 | 154 |
| Tolerated | 18 | 70 | 7 | 17 | 219 |
| Total | 579 | 1145 | 624 | 1168 | 8081 |

Residence Permits Granted in 2003 (Total and in Regions)

| Residence | Bratislava | Banská Bystrica | Nitra | Trnava |
|------------|------------|-----------------|-------|--------|
| Permanent | 275 | 167 | 166 | 110 |
| Temporary | 970 | 168 | 135 | 185 |
| Registered | 383 | 63 | 70 | 65 |
| Tolerated | 6 | 3 | 1 | 15 |
| Total | 1634 | 401 | 372 | 375 |

Residence Permits Granted in 2003 (Total and in Regions), cont.

| Residence | Trenčín | Košice | Prešov | Žilina | Total |
|------------|---------|--------|--------|--------|-------|
| Permanent | 131 | 224 | 144 | 87 | 1304 |
| Temporary | 157 | 419 | 154 | 191 | 2379 |
| Registered | 42 | 91 | 46 | 92 | 852 |
| Tolerated | 0 | 8 | 6 | 0 | 39 |
| Total | 330 | 742 | 350 | 370 | 4574 |

Residence Permits Granted at 31 December 2004 – in Total and in Regions

| Residence | Bratislava | Banská Bystrica | Nitra | Trnava |
|------------|------------|-----------------|-------|--------|
| Permanent | 3549 | 1723 | 2050 | 1579 |
| Temporary | 1853 | 216 | 395 | 360 |
| Registered | 216 | 7 | 57 | 42 |
| Tolerated | 9 | 1 | 19 | 40 |
| Total | 5627 | 1947 | 2521 | 2021 |

Residence Permits Granted at 31 December 2004 – in Total and in Regions, cont.

| Residence | Trenčín | Košice | Prešov | Žilina | Total |
|------------|---------|--------|--------|--------|-------|
| Permanent | 1232 | 2926 | 2200 | 1744 | 17003 |
| Temporary | 212 | 925 | 314 | 242 | 4517 |
| Registered | 73 | 21 | 28 | 33 | 477 |
| Tolerated | 9 | 25 | 4 | 4 | 111 |
| Total | 1526 | 3897 | 2546 | 2023 | 22108 |

Residence Permits Total in Year

| | |
|------|--------|
| 1994 | 16,946 |
| 1995 | 21,909 |
| 1996 | 21,482 |
| 1997 | 26,424 |
| 1998 | 28,419 |
| 1999 | 29,488 |
| 2000 | 28,801 |
| 2001 | 29,418 |
| 2002 | 29,505 |
| 2003 | 29,219 |
| 2004 | 22,108 |

The Head Office of Labour, Social Affairs, and Family is obliged, according to Article 11 (s), to administrate a central record of data on commencement and termination of employment of a citizen of a member state of the European Union and his/her family members. Upon request, the Head Office provided following statistical information.³⁶

By the end of 2004, 1697 EU/EEA citizens and their family members worked in Slovakia. More than 53 % were in the age between 25 and 39, almost 30 % were in the age of 40-54. More than 79 % of the group concerned were male. Over 40 % were employed for a short period up to 3 months; over 33 % were employed for more than 12 months.

From the point of view of professions, more than 30 % worked as managers, mostly as managers of big companies with foreign investments. More than 27 % worked as researchers and intellectual experts. More than 19 % worked as technicians and in the field of health care and education; part of them were foreign experts sent to Slovakia by the EU.

As regards the areas of business and/or industry, they have worked mainly in the field of automobile industry, education, air transport and in the field of wholesale.

Almost 60 % were university graduates; more than 26 % have had secondary education completed.

The majority of workers are situated in western Slovakia, almost 51% in Bratislava Region, over 12 % in Trnava Region. These numbers corresponds to territorial location of big foreign investments.

Full statistics on the number of EU/EEA citizens working at the territory of Slovakia (preliminary data) are to be found in Annex I to this report.

36 E-mail from 5 September 2005.

Chapter IX Social Security

Texts in force

- zákon č. 599/2003 Z. z. o pomoci v hmotnej núdzi a o zmene a doplnení niektorých zákonov v znení neskorších predpisov³⁷ - the Act No. 599/2003 on Assistance in Material Indigence and on Amendments of some Acts as amended
- zákon č. 452/2004 Z. z. o náhradnom výživnom v znení neskorších predpisov³⁸ - the Act No. 452/2004 on Substitute Maintenance Payments as amended
- zákon č. 600/2003 Z. z. o prídavku na dieťa a o zmene a doplnení zákona č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov³⁹ - the Act No. 600/2003 on Child Allowances and on Amendment of the Act No. 461/2003 on Social Insurance as amended
- zákon č. 280/2002 Z. z. o rodičovskom príspevku v znení neskorších predpisov⁴⁰ - the Act No. 280/2002 on Parental Allowance as amended
- zákon č. 235/1998 Z. z. o príspevku pri narodení dieťaťa, o príspevku rodičom, ktorým sa súčasne narodili tri deti alebo viac detí alebo ktorým sa v priebehu dvoch rokov opakovane narodili dvojčatá a ktorým sa menia ďalšie zákony v znení neskorších predpisov⁴¹ - the Act No. 235/1998 on Childbirth Benefit, on Parental Allowance for those Parents, to Whom Three or More Children Were Born at the Same Time, or for those, to Whom Were Twins Born Repeatedly in Course of Two Years, and on amendments of other acts as amended
- zákon č. 650/2004 Z. z. o doplnkovom dôchodkovom sporení a o zmene a doplnení niektorých zákonov⁴² - the Act No. 650/2004 on Supplementary Pension Savings and on Amendments of some Acts

The issue of minimum subsistence allowances is regulated by Act No. 599/2003 on assistance in material indigence. According to Article 3 of the Act, persons legally residing in Slovakia have the same position as Slovak citizens for the purposes of assistance in material indigence, which means that they get the allowance when in material indigence, which is in line with the ECJ decision in Grzelczyk. Article 3 provides:

“For the purposes of securing basic living conditions and of assistance in material indigence, same status as to a citizen also applies to an alien, stateless person, recognized refugee residing at the territory of the Slovak Republic on the basis of permission of the competent authority ...”

On 30 June 2004, act No. 452/2004 on substitute maintenance payments was adopted. This act came into force on 1 January 2005 only. This is a new legal institute, which was not in Slovak legal system before. Substitute maintenance payment is a sum provided by the state in order to secure maintenance of a child in case when the maintenance duty is not fulfilled

37 Collection of Laws (Zbierka zákonov), Vol. 245 (2003).
38 Collection of Laws (Zbierka zákonov), Vol. 193 (2004).
39 Collection of Laws (Zbierka zákonov), Vol. 245 (2003).
40 Collection of Laws (Zbierka zákonov), Vol. 125 (2002).
41 Collection of Laws (Zbierka zákonov), Vol. 90 (1998).
42 Collection of Laws (Zbierka zákonov), Vol. 275 (2004).

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by the parent or another so obliged person. According to Article 3 § 1 of the Act, one of the conditions to be fulfilled is permanent residence of a child in Slovakia.

Seeing this provision in the light of ECJ judgements in *Humer* and *Offermans* cases, the condition of a permanent residence of a child in Slovakia is inconsistent with Articles 73 and 74 of the Regulation 1408/71.

A similar situation also applies to the child allowances.

Act No. 600/2003 on child allowances came into force on 1 January 2004. Child allowance is a state social benefit, which is a contribution of the state to the upbringing and maintenance of a child. Conditions for entitlement for child allowance are determined in its Article 7 § 1, including permanent or temporary residence in Slovakia for both parent and child. Article 7 § 1, with respect to the issue of residence, provides:

“Conditions for entitlement for allowance are:

...

- b) permanent or temporary residence of an entitled person in the territory of the Slovak Republic,
- c) permanent or temporary residence of an unprovided child in the territory of the Slovak Republic.”

An entitled person is either a parent or a person who’s care of a child substitutes the care of parent.

Another family benefit, parental allowance, is regulated by the act No. 280/2002. Parental allowance is a state social benefit, which is a contribution of the state to secure personal and proper care of the child up to the age of three years, or of a child with long-term unfavourable health condition up to the age of six years. The conditions for the entitlement for the parental allowance are provided in Article 3 § 1 of the Act, and contain same requirements as for the child allowance. Article 3 § 1, as it concerns the issue of residence, provides:

“Conditions for entitlement for the parental allowance are:

...

- b) permanent or temporary residence of an entitled person in the territory of the Slovak Republic,
- c) permanent or temporary residence of a child in the territory of the Slovak Republic.”

The requirement of permanent or temporary residence is in contradiction to the EU legislation, as it was declared in the ECJ judgment in the case *European Commission v Grand Duchy of Luxembourg* (C-111/91).

Requirement of permanent residence is also embodied in Article 3 § 1 and Article 6 § 1 of the act No. 235/1998 on childbirth benefit, on benefit to parents, whom three or more children were born, or whom twins were born in course of two years repeatedly. According to both provisions the entitled person needs to fulfil the requirement of permanent residence in order to receive the benefit. In case of the latter, which regulates the conditions for the benefit to parents, whom three or more children were born, or whom twins were born in course of two years repeatedly, the requirement of permanent residence counts for children too. Childbirth benefit is a state social benefit, which is a contribution of the state to cover the expenses related to secure the essential needs of a newborn child. Benefit to parents is a state social benefit, which is an annual contribution of the state for parents for increased

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expenses, which incur with regard to care for three or more children born simultaneously, or for in course of two years repeatedly born twins.

Supplementary pension schemes

In October 2004, act on supplementary pension saving was adopted under No. 650/2004 introducing supplementary pension savings for the first time in Slovakia. Among its provisions on ban on discrimination in Article 7 is aim § 4 stated that the participant on the supplementary pension saving living abroad has his/her rights from the saving preserved in the same extend as the participant living in Slovakia.

Chapter X The Right of Establishment and Provision of Services, Students

Texts in force

- zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov⁴³ v znení neskorších predpisov – the Act No. 48/2002 on the Residence of Aliens and on Amendments of some Acts (Aliens Act) as amended⁴⁴
- zákon č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon)⁴⁵ v znení neskorších predpisov - the Act No. 455/1991 on Trade Business (Trade Act) as amended
- zákon č. 586/2003 Z. z. o advokácii a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov⁴⁶ - act No. 586/2003 on Advocacy and on Amendment of the Act No. 455/1991 on Trade Business (Trade Act) as amended
- zákon č. 323/1992 o notároch a notárskej činnosti (Notársky poriadok)⁴⁷ - the Act No. 323/1992 on Notaries and Notarial Activities (Notarial Order)
- zákon č. 578/2004 Z. z. o poskytovateľoch zdravotnej starostlivosti, zdravotníckych pracovníkoch, stavovských organizáciách v zdravotníctve a o zmene a doplnení niektorých zákonov⁴⁸ v znení neskorších predpisov - the act No. 578/2004 on Providers of Health Care, Health Service Workers, Professional Associations in Health Care, and on Amendments of some Acts as amended
- zákon č. 277/1994 Z. z. o zdravotnej starostlivosti⁴⁹ v znení neskorších predpisov - the act No. 277/1994 on Health Care as amended
- zákon č. 138/1992 Zb. o autorizovaných architektoch a autorizovaných stavebných inžinieroch⁵⁰ v znení neskorších predpisov - the Act No. 138/1992 on Authorized Architects and Authorized Civil Engineers as amended

Irrespective of the purpose of the stay of EEA citizens in Slovakia, the procedure of registering for permanent residence, and the reasons for expiration of permanent residence, is always identical, whether the purpose of the stay is work, or provision of services, or studies. There is no other legal option for EEA citizens, but registering for permanent residence (Article 45a of the Aliens Act).

Establishment and provision of services

According to the act No. 455/1991, everyone with permanent residence in Slovakia is entitled to the establishment and provision of services in general.

43 Collection of Laws (Zbierka zákonov), Vol. 23 (2002).

44 For amendments of the Aliens Act see Chapter I.

45 Collection of Laws (Zbierka zákonov), Vol. 87 (1991).

46 Collection of Laws (Zbierka zákonov), Vol. 239 (2003).

47 Collection of Laws (Zbierka zákonov), Vol. 65 (1992).

48 Collection of Laws (Zbierka zákonov), Vol. 245 (2004).

49 Collection of Laws (Zbierka zákonov), Vol. 77 (1994).

50 Collection of Laws (Zbierka zákonov), Vol. 31 (1992).

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With respect to advocates, act No. 586/2003, which came into force on 1 January 2004, regulates provision of legal services in Slovakia, implementing Directives 77/249 and 98/5. Articles 31 to 45 are dealing with provision of legal services by advocates, who are EEA citizens - Euroadvocates. Switzerland is not included.

Two categories of Euroadvocates are distinguished in the act. Guest Euroadvocate is an advocate who provides legal services in Slovakia temporarily or occasionally. Guest Euroadvocate has no duty to register himself/herself, but he/she is excluded from composition of documents on transfer of real estate. Provisions on Guest Euroadvocate came into force on the date of entry of Slovakia in the EU.

The other category is Settled Euroadvocates. A Settled Euroadvocate is an advocate who provides legal services in Slovakia permanently, and who is listed in the list of Euroadvocates in the Slovak Bar Association. Every EEA citizen authorized to provide legal services in any of the EEA States shall be recorded in the list of Euroadvocates. Provisions on Settled Euroadvocates came into force on 1 January 2004.

On 1 May 2004, Article 85 of the Act on Advocates was discharged. This Article regulated conditional registration into the list of Euroadvocates. It provided:

“(1) Before the first inclusion of an Euroadvocate into the list of Euroadvocates, the Ministry (of Justice) shall ascertain, on the request of the Bar Association or of the applicant for registration into the list of Euroadvocates, whether are removed all obstacles in the country of registration preventing an advocate from Slovakia to provide legal services at the territory of the country of registration.

(2) If the Ministry recognizes, that there are obstacles in any of the countries of registration preventing an advocate from Slovakia to provide legal services at the territory of the country of registration, the Bar Association may refuse to include a Settled Euroadvocate into the list of Euroadvocates, while the obstacles persist.

(3) If the facts under paragraph 2 occur, the Ministry may order the Bar Association to suspend the Settled Euroadvocate from the provision of legal services at the territory of Slovakia.”

According to Article 11 § 1 of the act No. 323/1992 on notaries and notarial activities, only Slovak citizen can be appointed as a notary.

Execution of health professions by EU citizens and citizens of Iceland, Liechtenstein, Norway and Switzerland is regulated by the act No. 578/2004. This act came into force on 1 November 2004, however, the most of its provisions, together with Article 30, which provides conditions for execution of health professions by above mentioned citizens, only came into force on 1 January 2005.

According to Article 30, the above mentioned citizens who gained professional qualifications for execution of health professions can execute the health professions as Guest or Settled Person. The Guest Person, who executes the health profession sporadically or occasionally, shall notice the Ministry of Health on his/her activities in Slovakia no later than 30 days after the commencement of his/her activities. The Settled Person who executes the health profession permanently needs to have either one of the possible licenses, or to be employed.

In Annex 3 to the act No. 578/2004 is specified what kind of diplomas, certificates, and other documents on qualification are recognized in Slovakia for the purposes of execution of health professions.

From 1 May 2004 to 31 December 2004, the act No. 277/1994 regulated the execution of health professions in its Article 54a. According to that provision, permission of the Minis-

try of Health was necessary for permanent execution of health professions. Sporadic or occasional execution of health professions was regulated in a similar way as it is by the act No. 578/2004.

Article 54a came into force on 1 May 2004 only. Before that date, the execution of health professions was regulated by Article 54 §§ 9 – 18 of the act No. 277/1994. According to these provisions, permission of the Ministry of Health was necessary for any execution of health professions.

Act No. 138/1992 regulates status of architects, landscape architects and civil engineers. EEA citizen and EFTA citizen can be recorded in the list of architects, landscape architects, or civil engineers under same conditions as Slovak citizens. The condition of education is fulfilled if the diploma, certificate, or other document on education is listed in Annex 2 to the Act, or the diploma, certificate, or other document on education acquired outside EEA and EFTA states was recognized by one of these states. The condition of professional experience means execution of professional activities under supervision in Slovakia, or in one of the above mentioned states, or outside of those states. Architects can also provide their services in Slovakia when recorded in the registry of Guest Architects. Except for the condition of recognition as architect in one of the above mentioned states, the same condition of education and professional experience as of the record in the list of architects applies.

Before 1 May 2004, those with permanent residence in Slovakia were recorded in the list of architects, landscape architects, or civil engineers (Article 15 § 1 of the act No. 138/1992). Persons without permanent residence in Slovakia could have been recorded in the list if they were recorded in a similar list in a country of his/ her permanent residence, and if the reciprocity of the right of the record has been assured, or if there was an international treaty on the issue or an agreement between professional associations was signed.

Students

As mentioned previously, students from EEA countries obtain permanent residence in Slovakia upon registration; they only have to present their passport or identity card, and document on secured accommodation. An identity card valid for five years is issued to students, irrespectively of assumed duration of their studies. Students, EEA citizens, may be expelled only if they endanger security of the state or public order.

The situation prior to 1 May 2004 is described in Chapter I.

Draft legislation

Draft amendment of the Aliens Act mentioned in Chapters I and IV concerns also students, who are EEA citizens. The obligation to register for residence is proposed to be excluded from the law also for students, EEA citizens. The residence of EEA citizen intending to stay in Slovakia for more than three months, should be according to proposed Article 45a § 1 considered as a first residence permit, if the EEA citizen studies at public school or at a school recognized by the government, and has financial means to secure his/her stay and health insurance in Slovakia. Further information on residence of students are discussed in Chapter I.

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Chapter XI

Miscellaneous

Texts in force

Zákon č. 40/1993 Z. z. o štátnom občianstve Slovenskej republiky⁵¹ v znení neskorších predpisov - the Act No. 40/1993 on Citizenship of Slovak republic as amended

Sports

Each sport discipline is governed by its own association in Slovakia, and those associations are issuing their own rules to regulate, among other issues, the registration and operation of foreign sportspersons in the country.

It would be difficult to deal with all sports associations in this report; therefore I will concentrate on two most popular sports in Slovakia – football and ice-hockey.

In football, there is no provision about number of foreign players allowed to be registered in one club, or number of foreign players allowed to play in one game for one club in the football association regulations. However, the Slovak Football Association (SFA) issues for every football season a schedule of football competitions in Slovak Republic, and the Schedule of football competitions governed by the Slovak Football Association for the competition year 2005/2006⁵² issued on 26 June 2005 in its Part B – Technical Provisions comprises paragraph 10 called Start of the Players. Subparagraph (g) of paragraph 10 deals with start of players having foreign nationality. According to this provision: “According to the decision of the Executive Committee of SFA, maximum four players having foreign nationality can play in championship match or cup match organised under conditions of SFA. This number of four players does not include players having nationality of a state, which is a regular member of EU ...”

According to this provision, the number of players having nationality of any of the EU states is not restricted.

The second sentence of the cited provision is first time included in the Schedule. The schedule of football competitions for 2004/2005, did not contain the second sentence of the cited provision. Although Slovakia was a member of EU during the whole season 2004/2005, the limitation of four foreign players concerned also EU nationals.

As regards the rule on locally trained players adopted by UEFA, this should not cause problems for football teams in Slovakia. As the teams do not have enough financial resources for buying many experienced players, they have to rely primarily on players trained by the club and players trained by other clubs in the country.

The ice-hockey competes with football for the status of the most popular sport in Slovakia. The Slovak Association of Ice-hockey (SAIH) is the managing body of Slovak ice-hockey. The Association issued the Transfer Code, which is governing also transfers and registration of foreign nationals. According to Article 32 (a) of the Code, there is no limitation for registration of foreign nationals in a SAIH club. However, according to the same

51 Collection of Laws (Zbierka zákonov), Vol. 10 (1993).

52 Rozpis republikových súťaží riadených Slovenským futbalovým zväzom pre súťažný ročník 2005/2006 z 26. júna 2005, text of the Schedule can be found on the website of the SFA: http://www.futbalsfz.sk/rozpis_sfz.pdf.

provision, only two foreign players can play in a championship game, if the governing body of the relevant competition does not allow a higher number. According to Article 32 (b) of the Code, every player without Slovak citizenship is regarded a foreign player. Also a player who acquired Slovak citizenship and played abroad during last three seasons having another citizenship than Slovak is regarded a foreign player.

The governing body of the Slovak major ice-hockey league is the company Pro Hokej. According to director of Pro Hokej, Mr. Paštinský, the number of foreign players allowed to play in a championship game for one club is four; distinction between EU citizens and other foreigners is not made⁵³.

The SAIH issued also Directives and Criteria for Granting of Trainer Licenses of Trainers of Ice-hockey – Licenses A, B, and C. According to Part I – General Conditions for Obtaining a Trainer License, citizen of Slovak Republic can obtain the license. A citizen of other state can take part in the training only if accepted by the Accreditation Commission of the SAIH.

Nationality issues

According to Article 5 (1) of the Constitution of Slovak Republic, acquirement and loss of citizenship will be determined by an act.

The act No. 40/1993 on citizenship as amended is governing the acquirement and loss of citizenship. Dual citizenship is not prohibited. Loss of Slovak citizenship is, according to Article 9 (1) of the Act, possible only on request of a citizen concerned. When acquiring Slovak citizenship, the person concerned is not obliged to renounce his/her other citizenship(s). In 2004, 15 citizenships were granted. In 2003, 40 citizenships were granted, while in 2005 – until the end of August – no citizenship was granted. All together since the establishment of independent Slovak Republic, 164 citizenships were granted, no one of those people was a citizen of any other member state of the EU⁵⁴. The statistics on Slovak citizens, who acquired citizenship of another member state of the EU are not available.

53 Phone call on 8 September 2005.

54 The statistics on citizenship can be found on the webpage of the Migration Office of the Ministry of Interior <http://www.minv.sk/mumvsr/STAT/statistika.htm>.