

REPORT
on the Free Movement of Workers
in Slovakia in 2005

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Chapter I

Entry, residence and departure

Entry

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 Foreigners and on Amendments of some Acts (Foreigners Act)

Amendments of Foreigners Act

- a) 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
 - b) 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
 - c) 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 Foreigners and on Amendments of some Acts as amended and Amending the Act No. 480/2002 on Asylum, and on Amendments of some Acts
 - d) 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
 - e) zákon č. 558/2005 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 o zmene a doplnení niektorých zákonov⁶ - the Act No. 558/2005 Amending the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts as amended
- zákon č. 71/1967 Zb. o správnom konaní (správny poriadok)⁷ v znení neskorších predpisov – Act No. 71/1967 on Administrative Procedure (Administrative Order) as amended
- zákon č. 145/1995 Z. z. o správnych poplatkoch⁸ v znení neskorších predpisov - the Act No. 145/1995 on Administrative Fees as amended

The issues of entry of foreigners into Slovakia are regulated in the Foreigners Act. In 2005, this Act was amended by the Act No. 69/2005, which came into force on 1 May 2005, and by the Act No. 558/2005, which came into force on 15 December 2005. The former one extended provisions relating to citizens of EEA countries also to citizens of Swiss Confederation. The purpose of the latter amendment was transposition of new legal acts of the European Union, in particular, transposition of directives 2004/38/EC, 2004/82/EC, 2003/86/EC, 2003/109/EC, and 2003/110/EC. Therefore, when covering year 2005, we have two distinct periods, one before the Act No. 558/2005 came into force, and one after 15 December 2005.

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

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

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

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

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

⁶Collection of Laws (Zbierka zákonov), Vol. 226 (2005)

⁷Collection of Laws (Zbierka zákonov), Vol. 27 (1967)

⁸Collection of Laws (Zbierka zákonov), Vol. 49 (1995)

Before 15 December 2005

Article 5 (7) concerned different treatment of EEA nationals in comparison to other foreigners with regard to their entry into Slovakia. Article 5 (7) provided:

“Provisions of paragraph 1 subparagraph (d) and Article 4 (2) (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’)”

With Act No. 69/2005, citizens of the Swiss Confederation were included.

Article 5 (1) (d) provided:

“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) (b) and (c) provided: “At the execution of border control the foreigner is obliged, upon request: ... (b) to submit a document on health insurance for coverage of costs related to the provision of health care to a foreigner 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; a foreigner 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 were 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 was required from an EEA citizen when entering the Slovak Republic. A travel document was 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).

Family members of an EEA citizen were obliged to fulfil the same requirements as all foreigners who were not EEA citizens. The conditions for an entry into Slovak Republic were outlined in Article 3 (1) and Article 4 (2) (b) and (c). A foreigner was obliged to possess a travel document and visa, unless a foreigner was from a country whose nationals, according to international treaty, were not required to hold visa. Furthermore, family members of an EEA citizen were 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) provided:

“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 was no exclusion for family members of EEA citizens with regard to the visa requirement when entering the country. This requirement was 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 were not exempt from the obligation to pay fees for visa, which was in contradiction with the Article 9 (2) of Directive 68/360 and Article 7 (2) of Directive 148/1973.

Article 6 of the Foreigners Act dealing with the denial of entry into the Slovak Republic applied also to citizens of the EEA, and their family members. It provided:

“(1) The policeman denies entry, if
a) The foreigner 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 foreigner does not meet the terms of entry pursuant to paragraph 3,
d) The foreigner refuses submission to border control or does not submit documents required by the border control,

- e) There is well-grounded suspicion that the foreigner 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 foreigner failed to pay his/her financial obligations against the Slovak Republic.
- (2) The policeman may deny entry, if
- a) The travel document of the foreigner 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 a foreigner 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 foreigner.
- (6) To the procedure on denial of entry the general regulation on administrative procedure ^{9[6]} does not apply.”

Reasons for denial of entry stipulated in paragraph 1 of Article 6 were 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 might deny an entry of a person on grounds of public policy, public security or public health. These grounds were embodied in the subparagraph (b) of the Article 6. The other subparagraphs were either superfluous with regard to EEA citizens and their family members, if they were not used, or might have been applied in broader sense than is permitted by the EC Treaty.

According to paragraph 6 of Article 6, the Administrative Order did not apply to the procedure on denial of entry. As no procedure on remedies incorporated in the Foreigners Act existed, there was 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 was available only. This was inconsistent with Article 8 of Directive 64/221, which provided 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.

After 15 December 2005

As regards the issues of entry, following amendments were adopted.

One clause supplemented Article 3 (1) of the Foreigners Act, according to which a foreigner with permanent or temporary residence permit in Slovakia is allowed to enter Slovakia even if the validity of his/her travel document expired, or if the travel document was lost or stolen abroad.

New paragraph 2 was inserted in Article 3, according to which visa is not 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 citizens), 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 (long-term residence) in the EEA (as of 1 May 2005, “EEA” includes also Swiss citizens).

Moreover, family members of EEA citizens are, according to amended Annex to the act 145/1995 on administrative fees, exempt from the obligation to pay fees for visa, when visa are granted at the border, and when visa are requested from the family members concerned. At the border, it is possible to grant transit and short-term visa for no longer than 15 days to a foreigner for a humanitarian reason, provided that the alien proves that the transit (entry) is urgent and he/she could not foresee it or that granting of the visa is in the interest of the Slovak Republic.

However, the exemption from the obligation to pay fees for visa is missing when visa are requested in the regular procedure, and not at the border. This omission is not in compliance with the Article 5 (2) of the Directive 2004/38/EC.

Former Article 4 (2) (b) relating also to entry of family members of EEA citizens, was excluded by the Act No. 558/2005. The excluded provision provided: “At the execution of border control the

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

foreigner is obliged, upon request: ... (b) to submit a document on health insurance for coverage of costs related to the provision of health care to a foreigner on the territory of the Slovak Republic”.

The obligation of a family member of an EEA citizen to prove financial coverage for duration of his/her stay remained in the Foreigners Act, which is a possible obstacle with regard to his/her entry, which is not in compliance with the Directive 2004/38/EC.

A residence of the foreigner with a valid document of a residence in the EEA must be an equivalent to a next residence permit according to Article 38 (1) (b). Under this provision, police department issues upon request of a foreigner next permit to the foreigner, who has got a temporary residence permit for the purpose of employment or business, or to a foreigner, who has got a temporary residence permit for the purpose of family reunification with the former one, or with a foreigner on permanent residence, if his/her temporary residence lasts at least five years before lodging an application.

With this, in line with Directive 2003/109/EC, a new term long-term residence was introduced.

As to the denial of entry, specific provisions related to EEA citizens and their family members were included in the Foreigners Act. A policeman may 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, if necessary (Article 6 (3)).

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 (Article 6 (4)).

An undesirable person is a foreigner, who was administratively expelled or on which a punishment of expulsion in criminal procedure was imposed. Problems with this regard might arise, if a foreigner concerned was expelled in the past for a reason, which cannot be subsumed under reasons for denial of entry provided for in actual legislation.

The procedural issues regarding appeal against denial of entry were changed with the Act No. 558/2005 too. According to new wording of Article 6 (8), the appeal is possible against a decision on denial of entry, but without suspensive effect.

Provisions of the Act No. 558/2005 have eliminated several problematic issues with regard to entry of EEA citizens and their family members, however, several issues, in particular regarding entry of family members of EEA citizens, remained controversial.

Miscellaneous

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

Literature

- Balga, J., Systém vízového režimu Európskej únie. *Justičná revue*, 57, 2005, č. 5, s. 698 - 705 (System of visa regime of the European Union)
Zachar, A., Rozšírená Európska únia a terorizmus. *Justičná revue*, 57, 2005, č. 12, s. 1585 - 1598 (Enlarged European Union and terrorism)

Residence

Texts in force

zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov¹⁰ – the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts (Foreigners Act)

¹⁰Collection of Laws (Zbierka zákonov), Vol. 23 (2002)

Amendments of Foreigners Act

- f) 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 zmena a doplnení niektorých zákonov¹¹ – the Act No. 408/2002 Amending the Act No. 313/2002 on Public Service as amended, and on Amendments of some Acts
 - g) zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov¹² – the Act. No. 480/2002 on Asylum, and on Amendments of some Acts
 - h) 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 zákonov¹³ – the Act No. 606/2003 Amending the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts as amended and Amending the Act. No. 480/2002 on Asylum, and on Amendments of some Acts
 - i) 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 zákonov¹⁴ – the Act No. 69/2005 Amending Act No. 171/1993 on the Police Corps as amended, and on Amendments of some Acts
 - j) zákon č. 558/2005 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 o zmene a doplnení niektorých zákonov¹⁵ - the Act No. 558/2005 Amending the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts as amended
- zákon č. 71/1967 Zb. o správnom konaní (správny poriadok)¹⁶ v znení neskorších predpisov – Act No. 71/1967 on Administrative Procedure (Administrative Order) as amended
- zákon č. 145/1995 Z. z. o správnych poplatkoch¹⁷ v znení neskorších predpisov - the Act No. 145/1995 on Administrative Fees as amended
- zákon č. 171/1993 Z. z. o Policajnom zbore¹⁸ v znení neskorších predpisov - the Act No. 171/1993 on the Police Corps as amended

The issues of residence of foreigners in Slovakia are regulated in the Foreigners Act. In 2005, this Act was, as regards residence of foreigners, amended by the Act No. 558/2005, which came into force on 15 December 2005. Similarly, as in the part related to entry, when covering year 2005, there are two distinct periods, one before the Act No. 558/2005 came into force, and one after 15 December 2005.

Before 15 December 2005

Section 5 of the Foreigners Act regulates the residence of EEA citizens and their family members. It is the last section of Part III of the Foreigners Act and it is named “Special provisions for the EEA citizen and his/her family member”. Before the Act No. 558/2005 came into force, Article 45a, which concerns EEA citizens, provided:

- “(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^{19[2]},

¹¹Collection of Laws (Zbierka zákonov), Vol. 160 (2002)

¹²Collection of Laws (Zbierka zákonov), Vol. 184 (2002)

¹³Collection of Laws (Zbierka zákonov), Vol. 247 (2003)

¹⁴Collection of Laws (Zbierka zákonov), Vol. 32 (2005)

¹⁵Collection of Laws (Zbierka zákonov), Vol. 226 (2005)

¹⁶Collection of Laws (Zbierka zákonov), Vol. 27 (1967)

¹⁷Collection of Laws (Zbierka zákonov), Vol. 49 (1995)

¹⁸Collection of Laws (Zbierka zákonov), Vol. 46 (1993)

- 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^{20[6]}.”

According to these provisions, an EEA citizen was obliged to register for the permanent residence. There was no time limit stipulated in the Foreigners Act for the registration. The EEA citizen was obliged to present his/her travel document and document on secured accommodation upon registration. There were no other obligations for the EEA citizen with regard to the permanent residence. There was no differentiation concerning different categories of EEA citizens in this respect. There was no procedure on granting the permanent residence, nor was any other evidence required. As there was no procedure, no decision was issued and no remedies were available. Nothing was provided with regard to situation, if the EEA citizen would not present document on secured accommodation.

According to the Article 46 (5) of the Foreigners Act, identity card was issued to the EEA citizen with validity for five years. After this period identity card with validity for ten years was issued upon request. Article 46 (5) provided:

“The police department shall issue document on permanent residence in form of identity card with photograph for a foreigner, 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.”

After 15 December 2005

As regards the issues of residence, following amendments were adopted.

The obligation to register for residence was excluded from the law for EEA citizens. According to present wording of Article 45a (1):

“Residence of an EEA citizen intending to stay at the territory of Slovak Republic for more than three months, is considered as a first residence permit, if:

- (a) he/she is employed,
- (b) he/she is running a business,
- (c) he/she 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,
- (d) he/she has financial means to secure his/her stay and health insurance in Slovakia, or
- (e) there is assumption that he/she will be employed.”

EEA citizens, who are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c) of the Directive 2004/38/EC are difficult to be subsumed under one of the points in the Article 45a (1) of the Foreigners Act cited above. Either they have financial means to secure their stay and health insurance in Slovakia, or their residence cannot be considered as a first residence permit.

The EEA citizen may, according to 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.

Confirmation on registration of the first residence permit is issued at the day of application for registration.

According to paragraph 6 of Article 45a, the Administrative Order does not apply to the issue of confirmation on registration of the first residence permit. As no procedure on remedies incorporated in

¹⁹ [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)

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

Slovakia

the Foreigners Act exists, there is no possibility to challenge the decision on non acceptance of an application for registration of the first residence permit in an ordinary administrative procedure. Complaint to a court against final and effective decision on denial of entry is available only.

According to Article 45a (4), residence of an EEA citizen on the basis of the first residence permit expires, when:

- “(a) he/she notifies the police department in written form about the termination of permanent stay,
- (b) he/she was expelled in the administrative procedure, or
- (c) he/she acquired citizenship of Slovak Republic.”

Residence of an EEA citizen on the basis 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 the basis 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 registered as a job applicant; 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 registered as a job applicant; if the person concerned is involuntarily unemployed and is undergoing special education, or; if the person concerned is voluntarily unemployed and is undergoing special education related to previous employment. Residence of an EEA citizen on the basis of the first residence permit will also retain, if the person concerned is voluntarily unemployed and is undergoing special education related to previous employment (Article 45a (5)).

If an EEA citizen is not a worker anymore, and he/she is temporarily unable to work as the result of an illness or accident, and it is not a occupational disease or work accident, which was the reason for termination of the employment, according to the Slovak law, such EEA citizen will lose his/her residence on the basis of the first residence permit in Slovakia. This is in contradiction with the Article 7 (3) of the Directive 2004/38/EC.

Right of Permanent Residence

According to Article 45c (1):

“Residence of an EEA citizen should be considered as a residence on the basis of next permit, if the EEA citizen:

- (a) resides continuously for at least five years;
- (b) resides continuously for at least three years and his/her residence is considered as a residence on the basis 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; the condition of continuous residence is not required, if the EEA citizen is spouse of Slovak citizen or of a foreigner, who lost Slovak citizenship, because of a marriage with this foreigner;
- (c) resides continuously for more than two years and his/her residence is considered as a residence on the basis of the first residence permit and the reason for termination of his/her employment or business was permanent inability to work or run business; the condition of continuous residence is not required, if the EEA citizen became during his/her residence entitled to disability pension because of occupational disease or work accident, or if the EEA citizen is spouse of Slovak citizen or of a foreigner, who lost Slovak citizenship, because of a marriage with this foreigner;
- (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 before 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 according to paragraph 1 (b) to (d); or
- (f) is a mourner of EEA citizen, with whom he/she was staying in Slovakia and who was employed or ran business

1. continuously for at least two years before dying,
2. and died because of work accident or occupational disease, or
3. and lost Slovak citizenship because of marriage with the EEA citizen concerned.”

There is a discrepancy between Article 17 (1) (b) of the Directive 2004/38/EC and Article 45c (1) (c) of the Foreigners Law, and also between Article 17 (2) of the Directive 2004/38/EC and Article 45c (1) (b) and (c) of the Foreigners Law. Whereas the Directive is speaking about the condition of length of residence, which shall not be imposed in particular cases; the Foreigners Law is in the same context providing for condition of continuity instead of length.

The EEA citizen may, according to 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 the basis of next permit expires for the same reasons as the residence on the basis of first permit, or if a citizen of EEA is not staying in Slovakia for two subsequent years (Article 45c (4)).

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 Foreigners Act is not public; it is not possible to report on details and nuances of conduct of the Foreigners Police in particular issues.

Departure

Texts in force

zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov²¹ – the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts (Foreigners Act)

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- l) zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov²³ – the Act. No. 480/2002 on Asylum, and on Amendments of some Acts
- m) 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 zákonov²⁴ – the Act No. 606/2003 Amending the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts as amended and Amending the Act. No. 480/2002 on Asylum, and on Amendments of some Acts
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²¹Collection of Laws (Zbierka zákonov), Vol. 23 (2002)

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- o) zákon č. 558/2005 Z. z. ktorým sa mení a dopĺňa zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov²⁶ - the Act No. 558/2005 Amending the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts as amended
zákon č. 71/1967 Zb. o správnom konaní (správny poriadok)²⁷ v znení neskorších predpisov – Act No. 71/1967 on Administrative Procedure (Administrative Order) as amended
zákon č. 145/1995 Z. z. o správnych poplatkoch²⁸ v znení neskorších predpisov - the Act No. 145/1995 on Administrative Fees as amended
zákon č. 171/1993 Z. z. o Policajnom zbore²⁹ v znení neskorších predpisov - the Act No. 171/1993 on the Police Corps as amended

The issues of departure of foreigners in Slovakia are regulated in the Foreigners Act. In 2005, this Act was, as regards administrative expulsion of foreigners, amended by the Act No. 558/2005, which came into force on 15 December 2005. Similarly, as in the parts related to entry and residence, when covering year 2005, there are two distinct periods, one before the Act No. 558/2005 came into force, and one after 15 December 2005.

Before 15 December 2005

According to the Article 57 (8) of the Foreigners Act, EEA citizens and third-country family members of EEA citizens might have been expelled only if they endangered security of the state or public order. Article 57 (8) provided:

“A citizen of the European Economic Area and a favoured foreigner³⁰ may be expelled only if they endanger security of the state or public order.”

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

There was 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 foreigners for reasons of endangering security of stay or public order, should have been applied. According to the general provision (Article 57 (1) (a) (1)) on duration prohibition of entry for above mentioned reasons, the duration of foreigner’s prohibited entry into Slovakia was ten years. Article 57 (1) (a) (1) provided:

“The police department shall administratively expel a foreigner 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), a foreigner was 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) provided:

“A foreigner 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) was applicable to all foreigners, it might have been possible that for EEA citizens and their family member the maximum limit was used.

²⁶Collection of Laws (Zbierka zákonov), Vol. 226 (2005)

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

²⁸Collection of Laws (Zbierka zákonov), Vol. 49 (1995)

²⁹Collection of Laws (Zbierka zákonov), Vol. 46 (1993)

³⁰A definition of a favoured foreigner is in the Article 45b (1) of the Foreigners Act cited in Chapter IV

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 a foreigner 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 could be expelled only if he/she threatened security of the state or public order. In a particular case, the decision of the police department on possible expulsion would 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) contained an obligation of an EEA citizen to notify the police department, when leaving Slovakia permanently. Article 45a (3) provided:

“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.”

After 15 December 2005

As regards the issues of departure, following amendments were adopted.

The reasons for expulsion of EEA citizens were 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. Article 57 (8) says:

“A citizen of the European Economic Area and a favoured foreigner may be expelled only if they endanger security of the state, public order, or public health; this does not apply, if the disease endangering public health occurs more than three months from entry of the EEA citizen or favoured foreigner.”

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

There are still no detailed provisions on what is understood under security of the country and public order in the Foreigners Act. There is also no provision on what should be taken under consideration, when deciding on the expulsion. The provisions in Foreigners Law are vague, and leave a lot of space for discretion of police.

If an EEA citizen does not fulfil conditions laid down in Article 45a (1) (d), or if a favoured foreigner does not fulfil conditions laid down in Article 45b (1) (b), he/she can be expelled without having the period for prohibition of entry (Article 57 (10)) defined.

An EEA citizen residing lawfully in Slovakia for more than ten years cannot be expelled, save the situation, if he/she constitutes a threat to the security of the country (Article 57 (11) (a)).

According to Article 57 (13), paragraph 7 of the Article applies accordingly to an EEA citizen and a favoured foreigner.

Article 57 (7) provides:

“A police department can reduce the period of prohibition of stay according to paragraph 1, or not expel a foreigner, who has got a permanent residence permit, if the consequences of the action according to paragraph 1 were not appropriate to private and family life of a foreigner, length of his/her stay, his/her age, and his/her ties with the country of origin.”

There is no time limit for leaving the territory of the country stipulated in the law with regard to EEA citizens and their family members. General time limit in case of expulsion of a foreigner is up to 30 days. The maximum time corresponds then to minimum time provided in the Article 30 (3) of the Directive 2004/38/EC.

Slovakia

According to 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 Foreigners Act is not public; it is not possible to report on details and nuances of conduct of the Foreigners Police in particular issues.

Chapter II Access to employment

Texts in force

zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov³¹ - the Act No. 5/2004 on Services of Employment and on Amendments of some Acts

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 predpisov³² - 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. 435/2000 Z. z. o námornej plavbe³³ – the Act No. 435/2000 on Maritime Navigation

The act No. 5/2004 on services of employment (Act On Services of Employment) regulates access to employment in Slovakia. According to this act, no work permit is required from citizens of a Member State of the European Union, citizens of EEA countries, citizens of Switzerland, and their family members.

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 issue of possible reciprocal measures of Slovakia 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 is dealt with in Chapter VIII on EU enlargement.

There is no such condition for access to employment in general, as knowledge of Slovak language; however, it is one of the conditions for admission to the civil service – this issue is discussed in Chapter IV below.

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 profes-

³¹Collection of Laws (Zbierka zákonov), Vol. 4 (2004)

³²Collection of Laws (Zbierka zákonov), Vol. 182 (2002)

³³Collection of Laws (Zbierka zákonov), Vol. 179 (2000)

Slovakia

sional 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.

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 XI.

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 Equality of treatment on the basis of nationality

Texts in force

zákon č. 460/1992 Zb. Ústava Slovenskej republiky³⁴ – the Act No. 460/1992 Constitution of Slovak Republic

zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov³⁵ - the Act No. 5/2004 on Services of Employment and on Amendments of some Acts

Article 36 (b) of the Constitution constitutes a general equal treatment provision with regard to working conditions. 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,

...”

The Act On Services of Employment was in 2005 amended by the Act No. 573/2005 Amending the Act No. 5/2004 on Services of Employment and on Amendments of some Acts as Amended and Amending Some Acts (zákon č. 573/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a ktorým sa menia a dopĺňajú niektoré zákony³⁶), which came into force on 1 January 2006 only.

In 2005, Article 2 (2) of the Act On Services of Employment constituted a general clause on the equality of treatment regarding EU citizens; this provision stipulated that the EU citizens have in general the same legal position as Slovak citizens. Article 2 (2) provided:

“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.”

This provision was amended by the Act No. 573/2005, which included citizens of EEA countries, citizens of Switzerland, and their family members in the equality of treatment clause.

As regards social benefits, these are discussed in Chapter X below.

³⁴Collection of Laws (Zbierka zákonov), Vol. 92 (1992)

³⁵Collection of Laws (Zbierka zákonov), Vol. 4 (2004)

³⁶Collection of Laws (Zbierka zákonov), Vol. 230 (2005)

Chapter IV Employment in the public sector

Texts in force

zákon č. 460/1992 Zb. Ústava Slovenskej republiky³⁷ – the Act No. 460/1992 Constitution of Slovak Republic

zákon č. 312/2001 o štátnej službe a o zmene a doplnení niektorých zákonov³⁸ – 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 predpisov³⁹ – 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 zákonov⁴⁰ – 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 predpisov⁴¹ – the Act No. 370/1997 on Army Service as Amended

zákon č. 346/2005 Z. z. o štátnej službe profesionálnych vojakov ozbrojených síl Slovenskej republiky a o zmene a doplnení niektorých zákonov⁴² - the Act No. 364/2005 on Civil Service of Professional Soldiers of Armed Forces and on Amendments of some Acts

zákon č. 578/2004 Z. z. o poskytovateľoch zdravotnej starostlivosti, zdravotníckych pracovníkoch, stavovských organizáciách v zdravotníctve a o zmene a doplnení niektorých zákonov⁴³ 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

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.

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(priemyselné) property,
 - g) 2.17 Home affairs,

³⁷Collection of Laws (Zbierka zákonov), Vol. 92 (1992)

³⁸Collection of Laws (Zbierka zákonov), Vol. 131 (2001)

³⁹Collection of Laws (Zbierka zákonov), Vol. 28 (1998)

⁴⁰Collection of Laws (Zbierka zákonov), Vol. 76 (1998)

⁴¹Collection of Laws (Zbierka zákonov), Vol. 143 (1997)

⁴²Collection of Laws (Zbierka zákonov), Vol. 148 (2005)

⁴³Collection of Laws (Zbierka zákonov), Vol. 245 (2004)

- 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.”

The Annex 2 contains special part of the list. The 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. 200/1998 comprises the same condition of citizenship for custom officers, and Article 17 (1) of the act No. 315/2001 for firemen.

The condition of Slovak citizenship applies also to soldiers. It was embodied in Article 2 § 2 of the act No. 370/1997. As Slovak Armed Forces became professional during 2005, a new act on civil service of professional soldiers of armed forces came into force on 1 September 2005. According to Article 13 of this act, only Slovak citizens may be accepted as professional soldiers.

There are no specific provisions for access to the public sector with regard to recognition of diplomas in comparison with general rules on recognition of diplomas.

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

Chapter V Members of Family

Texts in force

zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov⁴⁴ v znení neskorších predpisov – the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts (Foreigners Act) as amended⁴⁵

As mentioned in Chapter I, in 2005, the Foreigners Act was amended by the Act No. 69/2005, which came into force on 1 May 2005, and by the Act No. 558/2005, which came into force on 15 December 2005. The former one extended provisions relating to citizens of EEA countries and their family members also to citizens of Swiss Confederation and their family members. The purpose of the latter amendment was transposition of new legal acts of the European Union, in particular, transposition of directives 2004/38/EC, 2004/82/EC, 2003/86/EC, 2003/109/EC, and 2003/110/EC. Therefore, when covering year 2005, we have two distinct periods, one before the Act No. 558/2005 came into force, and one after 15 December 2005.

Before 15 December 2005

Article 45b, which concerns family members of EEA citizens (since 1 May 2005, family members of Swiss citizens were also included) provided:

- “(1) The police department grants permanent residence permit to a foreigner, who is not an EEA citizen and is family member of an EEA citizen with permanent residence permit (hereinafter “favoured foreigner”), 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 foreigner 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 foreigner is obliged to submit the travel document. If the favoured foreigner 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 foreigner 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 foreigner 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^{46[12]}, and a proof of a clear criminal record no older than 90 days.

⁴⁴Collection of Laws (Zbierka zákonov), Vol. 23 (2002)

⁴⁵For amendments of the Foreigners Act see Chapter I

^{46[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.

(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 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 foreigner 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 foreigner, if

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

(9) Permanent residence permit of a favoured foreigner 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 of expulsion^{47[2]}
- c) he/she was expelled in the administrative procedure,
- d) he/she acquired citizenship of Slovak Republic, or
- e) the police department cancelled his/her permanent residence permit.

(10) The police department shall cancel the permanent residence permit of a favoured foreigner, 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 foreigner 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 foreigner, 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 foreigner.”

The definition of a family member was outlined in paragraph 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 Foreigners Act, which is in contradiction to Regulation 1612/68, as interpreted by the ECJ in *Baumbast* case.

Third-country family members of EEA citizens were according to Article 45b (3) not required to apply for permanent residence permit outside of Slovakia. It was also possible for them to apply during their stay in Slovakia at any foreign police department. There was 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.

The obligation of a third-country family member of EEA citizen to enclose documents pursuant to paragraphs 4 (d), (e) and (f) of Article 45b went 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

⁴⁷ [2] Article 57 of the Criminal Code

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 applied 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 Foreigners Act, a third-country family member of EEA citizen was not entitled for permanent residence permit anymore, when the permanent residence of an EEA citizen, of whom is he/she a family member expired. The only exception was 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 were not incorporated in the national legislation. The only possibility to remain in the country on permanent residence was paragraph 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 was no certainty for a third-country family member of EEA citizen that the police department would decide in the line with Directive 34/75.

According to the Article 46 (6) of the Foreigners Act, the same identity card as for an EEA citizen was issued for a third-country family member of EEA citizen. Article 46 (6) provided:

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

After 15 December 2005

As regards the issue of family members, following amendments were adopted.

Family members of EEA citizens still have to apply for the residence permit, but some new groups of foreigners were included into the notion of a family member: i) children under 21 and unprovided children, children of the spouse under 21 and unprovided children; ii) other family members dependent on EEA citizen, or members of his/her household.

The actual wording of the Article 45b (2) provides:

“A family member of the EEA citizen is

- a) a spouse, and his/her child under 21 or his/her unprovided child,
- b) a child under 21 or unprovided child,
- c) relative in straight row dependent on him/her,
- d) relative of a spouse in straight row dependent on him/her,
- e) other family members dependent on him/her, or members of his/her household.”

Such a family member is called a favoured foreigner, if he/she is a family member of an EEA citizen residing in Slovakia.

As Slovakia does not treat registered partnerships as equivalent to marriage, registered partners are not considered as family members, if they are not members of a household of an EEA citizen. Partners according to Article 3 (2) (b) of the Directive 2004/38/EC have to be members of a household of an EEA citizen too, in order to be considered as family members according to Slovak legislation. This might create problems in cases, where partners are not living in one household for particular reasons.

Family members shall 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 (Article 45b (1)).

Requirements regarding health security and social security are exceeding requirements set by the Directive 2004/38/EC and constitute a violation of its Article 7 (2).

According to Article 45b (5), the police department shall reject the application for granting first permit if the foreigner is an undesirable person, or there is well-grounded suspicion that the foreigner contracted a marriage with the aim of acquiring residence permit; if there is well-grounded suspicion that the foreigner could endanger the security of the country, public order in a serious manner, or public health. The police department shall also reject the application, if the conditions of Article 45b (1) are not fulfilled.

The right for the first permit will preserve, according to Article 45b (6), if a favoured foreigner 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; the 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.

Conditions for retention of the right for residence on the basis of first permit for family members after the EEA citizen died, requiring employment, running of business, or having enough financial means are clearly exceeding those set in Article 12 (2) of the Directive 2004/38/EC. The same counts for the other two situations mentioned above with regard to Article 12 (3) and Article 13 of the Directive 2004/38/EC.

The police department shall, according to 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 an 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 Article 45b (8), the fact that the police department finds out that the marriage was contracted with the aim of getting first permit.

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

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.

According to Article 45d (1), a police department shall grant next permit to a favoured foreigner, if his previous continuous residence lasts at least five years, or if he/she stays in Slovakia as a family member of an EEA citizen staying in Slovakia in accordance with Article 45c (1) (b) to (f)⁴⁸.

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

The situation of Slovak citizens, who want to reside in Slovakia with third country family member, was also improved by the act No. 558/2005. Before adoption of this act, a family member of Slovak citizen had no legal entitlement for the permanent residence permit. According the old wording of Article 35 of the Foreigners Act, the police department might have granted a permanent residence permit. For family members of EEA citizens, Article 45b provided that the police department shall grant the permanent residence permit. The new wording of Article 35 provides also for a legal right of a family member of Slovak citizen to have a residence permit granted, if the conditions set by the law are fulfilled.

The conditions for granting of the permit are still harder for family members of Slovak citizens, than for family members of EEA 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 2.200 EUR (before adoption of the act No. 558/2005, the sum was double).

⁴⁸ See Chapter I, Residence, After 15 December 2005

Chapter VI

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.

In the last issue, latest decision is from 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 above mentioned situation is most probably the outcome of the fact that Slovakia is a Member State of the EU only for a short time, 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.

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.

However, a new periodical appeared on the market dealing exclusively with ECJ decisions. It is called “Výber z rozhodnutí súdneho dvora Európskych spoločenských” (Selection from Decisions of the European Court of Justice), and it is issued every second month. It consists of two parts, each issue is dedicated to one topic and there are also extracts from recent ECJ decisions included.

Application of the free movement legislation in the sports sector

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 2005/2006⁴⁹ 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

⁴⁹ 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

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 was 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 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. 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 made.

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.

Chapter VII

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

The Government of Slovakia adopted on 12 January 2005 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.

As the Conception was prepared mainly by the Migration Office of the Ministry of Interior of the Slovak Republic, which is, notwithstanding its name, responsible only for asylum system in Slovakia, the main part of the document deals with asylum and illegal migration. Not much is dedicated to legal migration issues.

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 foreigners 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 foreigners 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 transposition 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 VIII

EU enlargement

In Article 24 of the Act No. 5/2005 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 as follows:

“(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 continued in applying national measures against Slovakia, and in suspension of application of articles 1 and 6 of the Regulation on free movement of workers in 2005. However, the Government of the Slovak Republic agreed at the beginning that no reciprocal measures will be applied, and they did not change that opinion since then.

The Act On Services of Employment regulates among other issues the access of foreigners 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 Chapter IX – Statistics.

Chapter IX

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, there were statistics on residence of foreigners, but in the Yearbook 2005, only statistics on illegal migration were included. On a request, the Bureau of Alien and Border Police provided following statistics:⁵⁰

Numbers of Persons Residing in Slovakia on 31 December 2004

Country	Temporary	Tolerated	Permanent	Total
Austria	63	2	830	895
Belgium	8	2	115	125
Cyprus	2	0	16	18
Czech Rep.	177	20	4178	4375
Denmark	4	0	111	115
Estonia	0	0	8	8
Finland	2	0	18	20
France	22	1	611	634
Germany	70	2	1579	1651
Greece	13	1	72	86
Hungary	21	8	1737	1766
Iceland	0	0	3	3
Ireland	1	0	53	54
Italy	46	1	448	495
Latvia	0	1	12	13
Lichtenstein	0	0	1	1
Lithuania	0	0	22	22
Luxembourg	0	0	2	2
Malta	0	1	4	5
Netherlands	11	1	176	188
Norway	7	0	115	122
Poland	36	4	2820	2860
Portugal	0	0	28	28
Slovenia	2	0	67	69
Spain	4	0	115	119
Sweden	6	0	68	74
Switzerland	30	2	103	135
United Kingdom	26	0	467	493

The Head Office of Labour, Social Affairs, and Family is obliged, according to Article 11 (s) of the Act No. 5/2004, 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 information⁵¹:

⁵⁰E-mail from 16 March 2006

⁵¹E-mails from 16 March 2006 and 19 July 2006

Slovakia

Country	Number of EU/EEA citizens, who worked in Slovakia on the basis of								
	Labour law relation			dispatch to perform work			Total		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Belgium	21	19	2	25	24	1	46	43	3
Denmark	28	25	3	10	8	2	38	33	5
Finland	1	0	1	0	0	0	1	0	1
France	198	172	26	697	676	21	895	848	47
Greece	9	8	1	0	0	0	9	8	1
Holland	19	18	1	10	8	2	29	26	3
Ireland	6	4	2	3	2	1	9	6	3
Germany	231	205	26	145	131	14	376	336	40
Portugal	4	4	0	1	1	0	5	5	0
Austria	58	51	7	80	69	11	138	120	18
Spain	34	16	18	120	118	2	154	134	20
Sweden	18	17	1	6	4	2	24	21	3
Italy	55	51	4	33	28	5	88	79	9
United Kingdom	90	63	27	47	32	15	137	95	42
Cyprus	1	0	1	0	0	0	1	0	1
Czech Republic	618	441	177	187	168	19	805	609	196
Estonia	0	0	0	0	0	0	0	0	0
Lithuania	2	1	1	0	0	0	2	1	1
Latvia	0	0	0	0	0	0	0	0	0
Luxemburg	0	0	0	0	0	0	0	0	0
Hungary	185	160	25	15	13	2	200	173	27
Malta	0	0	0	1	1	0	1	1	0
Poland	332	223	109	208	201	7	540	424	116
Slovenia	14	10	4	5	5	0	19	15	4
Total EU 24	1924	1488	436	1593	1489	104	3517	2977	540
Island	0	0	0	0	0	0	0	0	0
Lichtenstein	0	0	0	0	0	0	0	0	0
Norway	5	5	0	0	0	0	5	5	0
Switzerland	2	2	0	1	1	0	3	3	0
Total	1931	1495	436	1594	1490	104	3525	2985	540