

**REPORT**  
**on the Free Movement of Workers**  
**in the Czech Republic in 2007**

Rapporteur: Mgr. Věra Honusková  
Charles University

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## Abbreviations

FoRA	Foreigners' Residence Act
EU	European Union
CR	Czech Republic
TCN	third country national

## Introduction

Year 2007 was the fourth year of the Czech Republic's membership in the European Union (EU). After the alignment of national legal provisions with the *acquis communautaire* during previous years a new phase was launched when the harmonized legislation has been subject to further amendments according to developments of the European law and practice of the European Court of Justice. The drafts in 2007 also tried to solve newly recognized practical problems which had appeared during previous years.

Most of the provisions of the Directive 2004/38/EC were already transposed in 2007. The main changes were done by Act No. 161/2006 Coll. amending Foreigners' Residence Act (draft proposed by the Government, entered into force on 24 April 2006), but some laws with the impact on the issue of free movement were adopted also in 2007. The delay in the process of adoption of all respective laws has been caused mainly by the political situation, elections and setting-up of the new Government with a tight majority in the Parliament in 2006. Also other laws with impact on the issue of free movement of workers were adopted (but not the transposing laws as such), *inter alia* the amendment to the Foreigners' Residence Act (FoRA) through which the institute of registered partnership had been introduced into the migration legislation etc.

Concerning the first most important development in the 2007, we can emphasize the access of the Czech Republic (CR) to the Schengen system. The Czech Republic entered the Schengen area in 2007. The checks on the land borders were abolished on December 21<sup>st</sup>, 2007, and the checks at its international airports are going to be abolished at the end of March 2008 (on flights within the Schengen territory). The Czech Republic is not the country with external borders of the EU and the borders with the third countries thus remains only at the international airports. There had been a large information campaign aimed at both Czech citizens and foreigners; there were some problems reported, but they were mostly solved immediately.

The implementation of the registered partnership into the migration legislation can be indicated as the second most important development. The registered partnership was introduced to the Czech legislation in 2006 by the Act on Registered Partnership and was implemented to the Foreigners' Residence Act in 2007. The partners in the registered partnerships have been granted some rights that are comparable to the rights of spouses. Although the registered partnership is not treated as a marriage generally, it had been given equivalent position to marriage for the purpose of the provisions of e.g. the Foreigners' Residence Act (*Sec. 180f FORA*). A partnership can only be registered in the Czech Republic if one of the partners is a citizen of the Czech Republic, but there are no limits for partners (EU citizens or third country nationals) whose partnerships are registered outside the Czech Republic and they move into the Czech Republic.

There are number of other important developments; the one which can be chosen as the third most important development is the impact of the last amendment (Act No. 379/2007 Coll.) to the Foreigners' Residence Act on the position of third country national (TCN) family members of EU citizens. The old version of the law gave the possibility to grant a permanent residence permit to the spouse of an EU or Czech citizen *inter alia* immediately after the request upon the condition that the TCN family member was (1) a family member of a citizen of the Czech Republic who was registered as a permanent resident in the CR or (2) a family member of a citizen of another EU member state who had been issued a permanent

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residence permit in the territory of the CR. This condition does not apply anymore. Two years of continuous stay in the CR (from which at least one year as a family member) are required instead.

## Chapter I

### Entry, Residence, Departure

There were only relatively small changes in the Foreigners' Residence Act during the period under scrutiny. There were two laws adopted which changed the Foreigners' Residence Act in 2007; the changes were aimed *inter alia* at the position of third country nationals who are spouses and partners of EU and Czech citizens. The issue of entry, residence and departure of the EU nationals and their TCN family members were not changed much in 2007 comparing to the major changes in previous years. The first law, which was adopted in 2007, was the Act No. 170/2007 Coll., which had changed some laws in connection with the entry of the Czech Republic into the Schengen system. This law implemented some last small changes connected to the issue of entry of CR into the Schengen system. The second law, Act. No. 379/2007 Coll., which changes the Foreigners' Residence Act, implemented *inter alia* registered partnership, the Act on Registered Partnership was adopted in 2006 and the relevant changes in the Foreigners' Residence Act had been done in December 2007 (in force since January 2008). The latter law had been a subject to a very lively and wide public debate because of its changes of the position of family members of the Czech and EU citizens (their position had been made less opened).

The Foreigners' Residence Act became a very complex document which is hard to understand by the foreigners – by those to whom it is appointed. The Czech government has been planning to prepare (already for several years) a new Act on Residence of Foreigners and the Minister of Interior had been given a task by the government to prepare a new concept of legislation till the April 30, 2006.<sup>1</sup> But no draft legislation was published till the end of 2007. The inactivity of Ministry of Interior is not in place as the law has become too complex for those to whom it is appointed. The complexity of the law does not have much practical impact on EU citizens and their third country national family members as they rarely come into contact with the Foreigners' Police and Foreigners' Residence Act. But more understandable law would also be in favour for them so that they could be sure about their legal position under the Czech law. There is a need for a new concept of migration legislation.

None of the changes of the legislation had retrogressive effect. The retrogressive effect is basically not allowed by the general principle of law (*lex retro non agit*). The retrogressive effect is explicitly forbidden for the criminal law (Art. 40/6 Charter of Basic Rights and Freedoms). The ban in other areas of law rises from the above mentioned general principle of the law and is confirmed by the interpretation of Art. 1 and Art. 2 of the Charter and as such had been used by the courts. The Constitutional Court had confirmed the ban in several decisions, e.g. Judgement of the Constitutional Court published in the Collection of Laws under No. 145/2002 Coll.<sup>2</sup>

The issue of entry, residence and departure of the EU nationals and their TCN family members is covered by provisions of the Foreigners' Residence Act. This Act focuses on the

<sup>1</sup> Usnesení vlády ČR ze dne 24. srpna 2005 č. 1055 (Government Decree No. 1055, August 24, 2005). There are no more official documents available till 31.12.2006.

<sup>2</sup> “The ban on retrogressive effect rises from the principle, that every person must have the possibility to know which conduct is forbidden, so that he/she can be charged for the breach of the law. The ban also relates to the function of the legal norm, which is to impose an obligation to persons, an obligation how should they behave after the norm comes into effect. And that is why the norms apply only *pro futuro*. Accent on the ban on retrogressive effect as on the one of the basic principles of the legally consistent state rises from the requirement of the legal certainty.”

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position of foreigners in general; it adjusts the legal position of third country nationals and also the legal position of EU citizens and their TCN family members. The law is divided into sections on entry, residence and departure. One part of the law contains provisions only on the residence of EU citizens and their family members (Secs. 87a – 87aa), but their position is reflected also in other provisions of this law. The current Czech Foreigners' Residence Act was adopted in 2000 and was rather restrictive at the beginning. It did not reflect the different position of EU citizens in the migration law and did not mention issue of family reunification (even with EU nationals) at the beginning. But the law was gradually changed following the accession of the Czech Republic into EU. The changes which resulted (1) in the regulation of the issue of the position of EU nationals and their TCN family members as such and (2) in defining their position in much better way than before, when EU citizens were treated equally TCN. The legislation on free movement of workers was more or less transposed in time and its implementation is basically in compliance with the Directive 2004/83/EC.

The registered partnership was introduced in 2006 by the Act on Registered Partnership and was implemented to the Foreigners' Residence Act in 2007. The partners in the registered partnerships have been granted some rights that are comparable to the rights of spouses. Although the registered partnership is not treated as a marriage generally, it has been given equal position to marriage for the purpose of the provisions of e.g. the Foreigners' Residence Act (*Sec. 180f FORA*). A partnership can only be registered in the Czech Republic if one of the partners is a citizen of the Czech Republic, but there are no limits for partners (EU citizens or third country nationals) whose partnerships are registered outside the Czech Republic and they move into the Czech Republic.

The legislation on entry, residence, departure remained mostly the same as in 2006. The report nevertheless provides the basic information here again.

### *Text(s) in force*

- Resolution of the Presidium of the Czech National Council No. 2/2003 Coll., on the Declaration of the Charter of Fundamental Rights and Basic Freedoms as a part of the Constitutional Order of the Czech Republic.
- Act No. 326/1999 Coll. of Laws, on Residence of Foreigners on the Territory of the Czech Republic (Foreigners' Residence Act), as amended.
- Act No. 325/1999 Coll. of Laws, on Asylum and on the Change of Law No. 238/1991 Coll. of Act on the Police of the Czech Republic (Asylum Act), as amended.
- Act No. 221/2003 Coll. of Laws, on Temporary Protection, as amended.
- Act No. 310/1999 Coll. of Laws, on Temporary Stay of Foreign Armed Forces in the CR, as amended.
- Act No. 634/2004 Coll. of Laws, on Administrative Fees, as amended.
- Act. No. 500/2004 Coll., Administrative Proceedings Act, as amended.
- Act. No. 150/2002 Coll., Code of Administrative Justice, as amended.

### **A. ENTRY**

The Czech Republic entered the Schengen area in 2007. The checks on the land borders were abolished on December 21<sup>st</sup>, and the checks at the international airports are going to be abolished at the end of March 2008 (on flights within the Schengen territory). The Czech Republic is not the country with external borders of the EU and the borders with the third countries



thus remains only at the international airports. The Czech diplomatic missions started issuing Schengen visas and the Czech Republic started to accept the Schengen visas issued by another state for entry into and short-term stay (not exceeding 3 months) on its territory. There had been a large information campaign aimed at both Czech citizens and foreigners; there were some problems reported, but they were mostly solved immediately. Laws ensuring compliance with the Schengen system were adopted in 2007. The provisions of the laws changed large number of provisions of the Foreigners' Residence Act even if *rationae materiae* had not been so extensive.

Even if there are no checks on the land borders anymore, the borders as such did not cease to exist and there are still borders with the third countries at the international airports placed. The Foreigners' Police and the Diplomatic Missions continue to issue visas and residence permits; most of the basic provisions of the Foreigners' Residence Act (the law which regulates the issue) remained unchanged. The law No. 379/2007 Coll., which changed the Foreigners' Residence Act, added a provision on the direct applicability of the Schengen Borders Code.

### **Entry**

The issue of entry of EU nationals and their TCN family members is basically in compliance with the Directive. One of the questionable things seems to be the length of the procedure of the issue of the visa for TCN family members of EU nationals on the borders as the law stipulates the time limit of up to 14 days; it is a question whether the time limit might be counted as reasonable period of time. Another questionable issue is the definition of the notion of public policy and public security as there is no definition in the migration legislation available.

The provisions mentioned below now apply only at the airport (their applicability at the land borders had been abolished).

Generally, the conditions of entry to the territory are stipulated by the direct applicable regulation of European Communities (Sec. 5 FORA). Subsidiary, all foreigners<sup>3</sup> are entitled to enter the Czech Republic through a border crossing point at the place and time as specified for border controls. An *EU national* is obliged to submit a valid travel document (e.g. passport or identity card) (*Sec. 5 (5) FORA*), a *third country national family members of EU citizens (TCN family member)* is obliged to submit a valid travel document and a visa, if required by the national law (*Sec. 5 (6) FORA*). Visa is required unless an international treaty or directly applicable community rule or an exception in the Foreigners' Residence Act stipulates otherwise. There is no entry visa or equivalent formality imposed on Union citizens.

If the *TCN family member* needs a visa and does not possess one, he/she can also apply for the visa on the border crossing point of CR (*Sec. 26 (6) FORA*). The time limit for issue of the visa is up to 14 days (*Sec. 170 (3) FORA*). When comparing the time limit given by the law for the issue of the visa for TCN family members with the regular time limit given by the law for the issue of visa (30 days), it can be said, that the procedure is accelerated. There is a question whether the time limit stipulated by the law as "up to 14 days" might be counted as issuing "as soon as possible" pursuant to the Art. 5 (2) of the Directive. There is no information available on complains on application of this provision (source: Foreigners'

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<sup>3</sup> A foreigner means a natural person who is not a Czech national. See *Sec. 1 Foreigners' Residence Act*.

Police, newspapers, NGOs). The above mentioned visas are issued free of charge (*item 117A, 144A Act on Administrative Fees*).<sup>4</sup>

The Directive 2004/83/EC stipulates that possession of the valid residence card referred to in Article 10 of the Directive shall exempt family members who are in possession of this card from the visa requirement. The Czech law stipulates that the family member who possess a valid residence card issued by another Member State can reside on the territory of the CR for the first three months of his/her stay without a visa, so it can be said, that such a family member should be (using *a maiori ad minus* argument) exempted from the visa requirement (*Sec. 18 (d) (6) FORA*). There were no problems with the application of this provision reported, but it *stricto sensu* may be a possible problem with the implementation of the Directive in practice. This provision also does not define the residence card the same way as the Directive defines the "Residence card of a family member of a Union citizen" in Art. 10. The Foreigners' Residence Act only generally stipulates, that "no visa is required if the person is a family member of an EU citizen who him/herself is not an EU citizen, he/she is a holder of a residence card of temporary or permanent residence in another EU Member State." Wording of this provision is not clear (even the language interpretation does not help). It is even not clear whether the person who holds the residence card must be at the same time also a family member of an EU citizen. See below for more elaboration on the provision.

The Directive requires the state to give an EU citizen or his/her family member every reasonable opportunity to obtain the necessary documents or to bring the documents within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence. The Foreigners' Residence Act gives an opportunity to the *TCN family member* who does not have a passport or cannot obtain one to prove his identity and the existence of family relationship with an EU citizen to the police border control by another document (*Sec. 5 (5) FORA*). The conditions for the issue of a visa are described above. Similar possibility is given to an EU citizen: if the *EU citizen* does not have a passport or cannot obtain one, the police border control allows him to prove his identity and his citizenship of an EU member state by another document (*Sec. 5 (5) FORA*).

The Foreigners' Residence Act requires the EU citizen to report his/her presence within the territory of the Czech Republic within 30 days (if he/she intends to stay in CR for more than 30 days). The same obligation is placed on the TCN family members; the time limit is also 30 days. The obligation does not apply to a foreigner who has fulfilled this obligation with the accommodation provider (*Sec. 93 (2) FORA*). The time limit is non-discriminatory, the sanctions are proportionate and non-discriminatory (*Sec. 157 (1) (r) in connection with 157 (2) FORA*). If the TCN family member intends to stay on the territory of CR for more than three months, he is obliged to ask for a temporary residence permit within the three month period from his entry to CR.

### ***Refusal of entry***

There are complex provisions on the issue of refusal of entry. The police will refuse entry to the territory if the EU citizen does not submit documents required by the Act, i.e. a valid travel document and cannot prove his/her identity otherwise, if he/she submits a falsified or modified travel document or residence permit, if there is a well founded suspicion that he suffers an illness, if there is a well-founded fear that the foreigner might endanger security of

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<sup>4</sup> Act. No. 634/2004 Coll., on Administrative Fees (Zák. č. 634/2004 Sb., o správních poplatcích).

the state or seriously violate public policy or if he/she is an undesirable person (basically a person who may endanger public policy, public security or public health, *Sec. 154 FORA*). The reason of falsified or modified documents can be counted as violation of public policy (*Sec. 9 (3) (a) FORA*). The restrictions are more or less in compliance with the provisions of the Directive.

The problem which can be seen is that the terms “public policy” and “public security” are not defined in the migration legislative (although the third term, the term “public health”, is more elaborated on). A definition of the term public policy can be find e.g. in the Act on Private and Procedural International Law (Sec. 36), the respective Act considers the issue of public policy to cover the most fundamental principles of the social structure and of the state.<sup>5</sup> There is no definition of these terms in the migration legislation and the first decisions of courts on these concepts appear in those years. The terms public policy and public security are counted as “abstract concepts of law”. An important decision of the Supreme Administrative Court appeared this year (Judgment of the Supreme Administrative Court of 16<sup>th</sup> May, 2007, case No. 2 As 78/2006-64, [www.nssoud.cz](http://www.nssoud.cz)). The court has dealt with the issue of the marriage of convenience and stated that it is necessary to concurrently consider the relation of the notion public policy with the interests protected by the relevant law (Foreigners’ Residence Act) and also the intensity (importance) of the violation.

The absence of the definition of the terms public policy and public security may lead to unjustified differences in the decision-making of relevant authorities in practice when applying the respective Directive, which nevertheless may be challenged before courts and it is more a question of practical implementation.

The Foreigners’ Residence Act uses a cross-reference to its Sec. 182a to define the term public health. The Sec. 182a stipulates that the Ministry of Health will issue a public notice providing a list of diseases that could endanger public health and a list of diseases and disabilities that could significantly endanger public order. The diseases were stated by the public notice of the Ministry of Health No. 274/2004 Coll.<sup>6</sup> The law would probably need amendment and narrower link to EU law.

The police will refuse entry to the territory to a *TCN family member of an EU citizen* for the same reasons as mentioned above and the law stipulates also several other reasons: if the family member does not submit a visa or residence permit (in case he/she is subject to visa requirements), if there is a well-founded fear that the foreigner might endanger the security of another EU member state, if he/she is included in the information system of contracting states and the state which included the person in the system confirms that the person constitutes danger to public policy or public security (*Sec. 9 (3) (b) FORA*). The law reflects Case C-503/03 (*Commission v Spain*) here, but the wording of the law is not sufficient. The law does not explicitly consider that the personal conduct of the individual represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. There is an internal instruction which according to the available information stipulates that

<sup>5</sup> The Act on Private and Procedural International Law had been adopted in 1963 and its provisions are limited by the then prevailing ideology.

<sup>6</sup> The public notice recognizes e.g. tuberculosis of respiratory system in active stage, lues, diseases which need to be notified pursuant to the International Health Order, or other new dangerous infections (SARS, pox) as diseases that could endanger public health (there might be ad hoc measures adopted by public authority to prevent importation of another communicable diseases; those diseases are not specified by the law, the law only refers to “another communicable diseases”); acute psychotic alienation, delirium and other diseases connected with behaviour endangering another persons (accompanied with violence or demolition), or mental disorder and behaviour alienation caused by misuse of psychoactive substance are listed as diseases and handicaps that could seriously endanger public order.

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the authority should consider the cases individually pursuant to the above mentioned principles stipulated in the judgment of ECJ. But, as it is described in the miscellaneous, the internal instruction is not available publicly, so the rapporteur was not able to examine the wording of it. The problem with the definition of the public policy and public security notion which is described above applies here too.

If the entry is denied to an *EU citizen* the foreigners' police issue an administrative decision on his/her refusal of entry. Similar procedure applies to denial of entry of *a family member of an EU citizen* if the family member accompanies the EU citizen or proves that the EU citizen resides on the territory of the CR. The decision is not issued if the denial of entry is based on the decision of a court on the penal expulsion or decision on administrative expulsion (*Sec. 9 (4) FORA*).

There is no exit visa or equivalent obligation imposed on EU citizen or their TCN family members.

### ***Draft legislation, circulars, etc.***

The draft act presented during the period under examination had been adopted as a law and is described above.

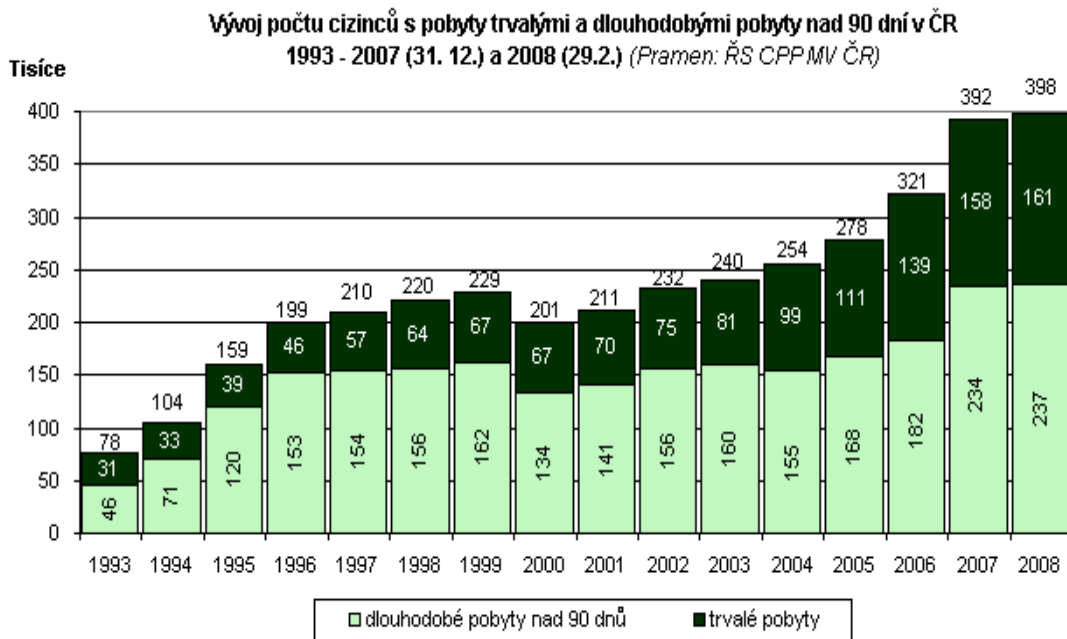
### ***Miscellaneous (administrative practices, etc.)***

The internal instruction of the Director of the Foreigners' Police is issued regularly in order to unify the approach of local foreigners' police departments towards foreigners. The instruction also contains interpretation of provisions of the Foreigners' Residence Act. The instruction is very wide and together with often changing Foreigners' Residence Act creates a hard-to-orientate-in system of documents. The internal instruction is not available to the public, although it influences the practice.

## **B. RESIDENCE**

The legislation regulating the foreigners' stay on the territory has existed already during the communist regime, when there were only a few foreigners on the territory of the Czech Republic. The laws on foreigners became more important after the fall of the communist regime, when a relatively higher number of foreigners intended to stay in the CR (it may be counted as higher number in terms of the conditions in the Czech Republic, the figures are still low compared to the old EU member states). The number of foreigners increases every year. The legislation regarding the status of foreigners has changed many times due to a duty to comply its provisions with the *acquis communautaire* and also due to newly recognized problems. The table below illustrates the number of foreigners in the years 1993 – 2008 (February 2<sup>nd</sup>); the table contains figures for both EU citizens and third country nationals. The number of foreigners increases rapidly, and the governmental policy starts to focus more on the integration measures (language exams requirement had been introduced in the amendment of the Foreigners' Residence Act in 2007).

Table I. Number of foreigners by type of residence (both EU citizens and TCN citizens, 1993 – 2008 (February 2<sup>nd</sup>) (in thousands).



Source: Czech Statistical Office, 2007.

This table compares figures of all foreigners residing on the territory of CR on the basis of a long term residence permit (light green) with the figures of foreigners residing on the basis of a permanent residence permit (dark green); the figures provided in the table are in thousands. The changes in the law described in the report may be better understood with these statistical data.

The issue of residence of EU citizens and their TCB family members is basically in compliance with the Directive. A possible problem may be seen in the transposition of the Art. 6 (2) of the Directive (a TCN family members who is in possession of a valid passport and is accompanying or joining the Union citizen shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport). The provision which transposed this article had been subject to changes in 2007 and the changes made the law less clear.

### ***Right of residence for up to three months***

*EU citizen can stay* on the territory with a valid passport (or other valid document confirming his/her identity) without any conditions or any formalities. The *TCN family member can stay* on the territory with a valid travel document and a visa, if required (see above in Chapter I) for up to three months; if he intends to stay on the territory of CR for more than three months, he is obliged to ask for a temporary residence permit within the three month period from the date of arrival into CR.

The Directive stipulates in the Art. 6 (2) that a TCN family members who is in possession of a valid passport and is accompanying or joining the Union citizen shall have

the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport. The Foreigners' Residence Act contained a provision regarding this matter; this provision had been changed in 2007. The new wording of this provision is not clear (even the language interpretation does not help to understand). It is *e.g.* not clear whether the person who holds the residence card must be at the same time also a family member of an EU citizen. It is also not clear whether the family member must accompany or join an EU citizen, because the new wording of the provision does not mention this condition. The explanatory report stipulates that the former provision had been problematic and that the wording was not clear, because there were cases when persons asked for remission of visa even if they were not family members of EU citizens. The new wording nevertheless does not make the situation clear. The new wording is as follows:

“A foreigner can reside on the territory temporarily without a visa if he/she is a family member of EU citizen, who is not himself/herself an EU citizen, holds a residence card of temporary or permanent residence in another EU Member State and the residence will not exceed three month.” (Sec. 18 (d) (6) FORA).

### ***Right of residence for more than three months***

As regards conditions for the *stay* on the territory of CR for the *EU citizens and their TCN family members* there is a preferable regime stated by the Foreigners' Residence Act (Sec. 87a – 87u FORA). The Foreigners' Residence Act recognizes two types of residence statuses:

1. the temporary residence *certificate* for EU citizens (the temporary residence *permit* for TCN family members) and
2. the permanent residence permit for EU citizens (the permanent residence permit for TCN family members).

Application for both temporary residence certificate and permanent residence permit can be filled either on the territory of the Czech Republic on the Foreigners' Police Department (stipulated according to the place of residence in the Czech Republic) or at the Czech Embassy.

#### *1. The temporary residence certificate for EU citizens (the temporary residence permit for TCN family members)*

An *EU citizen* can (*is entitled, not obliged to*) apply for the *temporary residence certificate* when he intends to stay in the Czech Republic for more than three months and did not endanger the security of state or did not seriously violate public policy (Sec. 87a/1 FORA). When applying for the temporary residence permit, the EU citizen is required to submit (Sec. 87/2 FORA) (1) a passport (identity card), (2) a document confirming his/her reason of stay (this condition applies only if the reason is employment, business activity or study), (3) a document confirming accommodation, (4) photographs, (5) a document certifying a sickness insurance (this document is not required in case of request for the reason of employment or business activity).

The *family member who is also an EU citizen* and intends to reside on the territory of CR with the EU citizen for more than three months can ask for the *temporary residence cer-*

*tificate*. He/she must submit the same documents as EU citizen (except for the document confirming the reason of stay) plus a document attesting the existence of a family relationship (which is at the same time the document confirming the reason of stay). If a dependent direct relative lodges an application, he/she must also enclose a document certifying his dependency on the EU citizen.

The *TCN family member of EU citizen* is obliged to ask for the *temporary residence permit* within the period of three months from his entry into CR. He/she submits the same documents as the family member who is an EU citizen (*Sec. 87a/3, 87b FORA*). There is an obligation to apply for the residence permit given to the family member of an EU citizen who is a TCN family member.

The request for *temporary residence certificate of EU citizen* will be *rejected*, if the applicant does not submit the documents required by the law; if he became a burden on the social assistance system, except for those persons, to which the directly applicable EC regulation is applicable; if there are reasonable grounds that he might endanger the security of the state or might seriously violate public policy; or is a undesirable person pursuant to the provision of *Sec. § 154 FORA<sup>7</sup> (Sec. 87d (1) FORA)*.

The reasons for *withdrawal* of the *temporary residence certificate of EU citizen* are stipulated similarly: if the person become a burden on the social assistance system (except for those persons, to which the directly applicable EC regulation is applicable); if there are reasonable grounds that he might endanger the security of the state or might seriously violate public policy; or if he suffers from the serious illness (a disease occurred within three-month period after the arrival) (*Sec. 87d (2) FORA*). The decision must not have inadequate impact to a private or family life of the person concerned.

The request for *temporary residence permit of TCN family member* will be *rejected* for the same reasons as the temporary residence certificate of the EU citizen. The Foreigners' Residence Act moreover stipulates that a temporary residence permit of a TCN family member will be rejected if the TCN family member suffers from the serious illness (a disease occurred within three-month period after the arrival; for detail information on the term disease see p. 13) and the consequences of the rejection will not have inadequate impact to a private or family life of the person concerned. The residence permit will also be rejected if the person is included in the information system of contracting states, the Czech Police discuss the possible issue of residence permit with the state which included the person in the system and takes into account the position of this state. The residence permit will also be rejected in case of circumvention of the law, *e.g.* in case of a marriage of convenience or false acknowledgement of paternity. The law also stipulates that the request for the residence permit will be rejected if the person will not appear (without serious reason) on an interrogation, denies to testify or gives false information in his/her testimony (*Sec. 87e FORA*). This provision is aimed at the issue of misuse of the law - marriage of convenience or false acknowledgement of paternity. The previous liberal regulation was replaced by a restrictive one in 2007 with the reasoning of large misuse of the relevant provisions. The law gives more specification to the term interrogation in *Sec. 169 (3) FORA*.

The Police will *withdraw the temporary residence permit* of TCN family member of EU citizen if the TCN family member asks for it, or for the same reasons as mentioned above for canceling of the permit. The permit will also be withdrawn in case of departure, death or di-

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<sup>7</sup> The Foreigners' Residence Act stipulates that the undesirable person is a person, who cannot be admitted to the territory, because he/she might during his/her stay endanger state security, public order or public health, or endanger rights or freedoms of others, or similar interest protected by an international treaty.

voiced by the TCN family member with the EU citizen. The law stipulates some exemptions for the retention of the right of residence of TCN family member in case of departure, death or divorce of the TCN family member with the EU citizen, the provisions reflect Art. 12, 13 of the Directive (*Sec. 87f FORA*).

## 2. The right of permanent residence for EU citizens and their TCN family members

The foreigners' police department issues the *permanent residence permit* to the *EU citizen* upon her/his request *inter alia* (1) after five years of continuous temporary stay<sup>8</sup> on the territory of CR (87g/1/a FORA); (2) to workers or self-employed persons who have reached the age for entitlement to an old age pension or cease employed to take early retirement, provided that he has been working in CR for at least the preceding twelve months and have reside in CR continuously for more than three years (Art. 17 (1) (a) of the Directive); (3) to worker or self-employed person according to the Art. 17 (1) (b) of the Directive, (4) to worker or self-employed person according to the Art. 17 (1) (c) of the Directive, (5) the law states also a possibility to ask for the permanent residence permit on the humanitarian basis or in cases deserving special consideration or if the applicant's stay is in the interest of the Czech Republic etc. (*Sec. 87g FORA*).

For the possibility to grant a permanent residence permit according to Art. 17 (1) (a) and (c) of the Directive (*Sec. 87g (1) (b) and (d) FORA*) the "requisite period of employment" covers also a time for which the EU citizen is registered as a job seeker with the relevant labour office. The termination of the employment contract must have been done for the reasons independent on his will / involuntary unemployment (*Sec. 87g (6) FORA*).

The EU citizen is required to submit (1) travel document (passport or identity card), (2) a document certifying the fulfillment of conditions for granting a right of permanent residence (see above), (3) photographs, (4) a document confirming accommodation.

The foreigners' police department issues the *permanent residence permit* to the *family members of an EU citizen* upon his request *inter alia* (1) after five years of continuous temporary stay on the territory of CR; (2) if he is a surviving relative after an EU citizen, who stayed on the territory of the Czech Republic for the reasons of employment or self-employment continuously for at least two years and the EU citizen died due to a work illness or casualty, or lost his/her Czech citizenship due to a marriage with this EU citizen, (3) the law states also a possibility to ask for the permanent residence permit if the applicant's stay is in the interest of the Czech Republic or for humanitarian reasons e.g. if he cares for an EU citizen (*Sec. 87h FORA*).

This provision had been subject to changes in 2007. The position of TCN family members of EU citizens was changed. The old version of the law gave the possibility to grant a permanent residence permit to the spouse of an EU or Czech citizen *inter alia* immediately after the request upon the condition that the TCN family member was (1) a family member of a citizen of the Czech Republic who was registered as a permanent resident in the CR or (2) a family member of a citizen of another EU member state who had been issued a permanent residence permit in the territory of the CR. This condition does not apply anymore. Instead two years of continuous stay in the CR are required (from that at least one year as a family member) as a condition for issue of permanent residence permit for this reason of

<sup>8</sup> The continuous stay is defined by the Foreigners' Residence Act /Sec. 87g (7) AA/ and the definition corresponds to the definition in Art. 16 (3) of the Directive.



a family reunification. The provision is in compliance with the Directive, but it is worth mentioning this change as it illustrates the attitude towards the misuse of the law.

The *request for permanent residence permit* will be *rejected*, if the applicant will not submit the documents required by the law or if there are reasonable grounds that he might endanger the security of the state or might seriously violate public policy. The law also stipulates other reasons, e.g. if he/she endanger the public health; he is undesirable person; if he/she is included in the information system of contracting states, the Czech Police discuss the possible issue of residence permit with the state which included the person in the system and takes into account the position of this state. The request for residence permit will also be rejected in case of circumvention of the law, e.g. in case of a marriage of convenience or false acknowledgement of paternity. The law also stipulates that the request for the residence permit will be rejected if the person will not appear (without serious reason) on an interrogation, denies to testify or gives false information in his/her testimony (*Sec. 87e FORA*). This provision is aimed at the issue of misuse of the law - marriage of convenience or false acknowledgement of paternity. The previous liberal regulation was replaced by a restrictive one in 2007 with the reasoning of large misuse of the relevant provisions. The law gives more specification to the term interrogation in *Sec. 169 (3) FORA*.

The *permanent residence permit* will be withdrawn upon request of the holder of the permit; if he endangers the security of the state or seriously violates public policy, and the expulsion procedure is not initiated; or if the holder is absent for a period exceeding two consecutive years. The residence permit will also be withdrawn in case of circumvention of the law, *i.e.* in case of a marriage of convenience or false acknowledgement of paternity (*Sec. 87i FORA*). The decision must not have inadequate impact to a private or family life of the person concerned.

The restrictions regarding the rejection and withdrawal of temporary and permanent residence permit in compliance with the provisions of the Directive; the problem which can be seen here is that the term public policy and public security is not specified in the migration legislative (although the third term, the term public health, is more elaborated, see above on p. 13). A definition of the term public policy can be find e.g. in the Act on Private and Procedural International Law (Sec. 36), the respective Act considers the issue of public policy to cover the most fundamental principles of the social structure and of the state.<sup>9</sup> There is no definition of these terms in the migration legislation and the first decisions of courts on these concepts appear in those years. The terms public policy and public security are counted as “abstract concepts of law”. An important decision of the Supreme Administrative Court appeared this year (Judgment of the Supreme Administrative Court of 16<sup>th</sup> May, 2007, case No. 2 As 78/2006-64, [www.nssoud.cz](http://www.nssoud.cz)). The court has dealt with the issue of the marriage of convenience and stated that it is necessary to concurrently consider the relation of the notion public policy with the interests protected by the relevant law (Foreigners’ Residence Act) and also the intensity (importance) of the violation.

The absence of the definition of the terms public policy and public security may lead to unjustified differences in the decision-making of relevant authorities in practice when applying the respective Directive, which nevertheless may be challenged before courts and it is more a question of practical implementation.

As was mentioned above, the law contains provisions on a *marriage of convenience*. The Police will withdraw a permanent residence permit of TCN family member in case of

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<sup>9</sup> The Act on Private and Procedural International Law had been adopted in 1963 and its provisions are limited by the then prevailing ideology.

circumvention of the law, *i.e.* in case of a marriage of convenience or false acknowledgement of paternity. There used to be a provision in the law, that the residence permit will not be cancelled if a child was born from the marriage or a child was irrevocably adopted during the marriage. It was found out in the last years that the respective provisions can be misused (according to the information given by the Foreigners' Police in 2007 the applications for the residence permit for the reasons family reunification increased considerably and many cases of clear misuse were found out) and therefore the more restrictive attitude had been chosen. The protection of best interest of a child should be ensured by the provision which stipulates that the decision of respective authority must not have inadequate impact to a private or family life of the person concerned. Practice will show whether this provision will ensure proper application.

As it was mentioned above on p. 11, an EU citizen is obligated to report his/her place of residency at the department of foreigners' police up to 30 days after his/her entry into the CR provided that he/she intends to stay in the Czech Republic for more than 30 days. The same applies to his/her family members in case that he/she resides in the CR as well (Sec. 93 (2), (3) FoRA).

***Draft legislation, circulars, etc.***

See Part A.

***Judicial practice***

Decisions on the term public policy: Judgment of the Supreme Administrative Court of 16<sup>th</sup> of May, 2007, case No. 2 As 78/2006-64, [www.nssoud.cz](http://www.nssoud.cz); Judgment of Municipal Court of Prague from 20<sup>th</sup> February, 2007, case No. 10 Ca 330/2006-89.

The decision of Municipal Court of Prague formulates a necessity to achieve balance between the national interest on the public security, public policy or public health on one side and respect to private and family life of the foreigner on the other side when the respective authorities decide on the administrative expulsion. The court stipulates that the authorities must always consider seriousness of the tort committed by the foreigner and risk which the foreigner constitutes to the public interest protected by the law in relation to his/her private and family ties in the CR.<sup>10</sup>

***Miscellaneous (administrative practices, etc.)***

See Part A.

***Treatment of jobseekers***

The citizens of other Member States and their family members have equal position with the Czech citizens in the employment (e.g. access to employment, access to the public employment services including registration in order to seek work etc.). EU citizens and their family members thus may register as a job-seeker within the relevant labour office (according to the place of residence).

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<sup>10</sup> See Collection of Decisions of the Supreme Administrative Court No. 7/2007.

The labour office will act according to the Employment Act,<sup>11</sup> e.g. seek work for the jobseeker, offer relevant jobs etc. The labour office also confirms the length of the registration of a job-seeker for the purpose of the permanent residence permit (Sec. 8 of the Employment Act, Sec. 87g/6 FORA). A job-seeker is entitled to unemployment benefits (Sec. 39 of the Employment Act). The job-seeker is obliged cooperate with the labour office (to come to an interview with a possible employer which is recommended by the labour office, to visit the labour office regularly etc.), otherwise he/she may be excluded from the register of job-seekers.

Regarding the question of jobseekers in respect of residence rights and possible necessity of registration with the authorities following information can be provided. As it was mentioned above, the foreigners (1) do have obligation of registration within the foreigners' police department if they intend to stay for more that 30 days. It may be presumed, that the jobseekers intend to stay for more that 30 days and that they therefore will register with the police. The Employment Act stipulates that a job-seeker is a natural person (...; Sec. 25 (1) Employment Act). The Act does not stipulate the condition of a registered place of residence in CR (within the foreigners' police) for job-seekers in order to treat them as job-seekers explicitly although it presumes it (e.g. the labour office is designated according to the place of residence of the person, the term place of residence of EU citizen or his/her family member is defined as the address of permanent or temporary residence in CR, or if the person does not have one, than the address of place where he/she usually resides – Sec. 5 (b) EA). Furthermore (2) the labour office keeps register of job seekers; so in order to be treated as a job-seeker (to get the services of the office or to get unemployment benefits) the person must register him/herself as a job-seeker. But there is no obligation to do so, a person may still seek a job and need not to be registered, he/she only does not get the services of labour office.

So the law probably relies on the above mentioned interpretation – the foreigner registers with the police and therefore has a place of residence, then he/she registers as a job-seeker with the office and then he/she is treated as a job-seeker by the respective labour office. If the foreigner does not register him/herself with the police, than he/she does not have the place of residence but he/she still can be counted as a job-seeker as there is nothing what explicitly prevents this interpretation of the laws; but it was most probably not the intention of the legislator. If he/she does not register with the labour office then he/she cannot be treated as a job-seeker.

The Employment Act differs between a person interested in a job and a job-seeker, but the difference does not affect the information written above.

### **C. DEPARTURE**

The issue of departure of EU citizens and their third country national family members is in compliance with the Directive.

The Czech legislation contains no exit visa or equivalent formalities which would be imposed on EU citizens.

The *expulsion of EU citizen or of TCN family member*, who resides on the grounds of a *temporary residence permit*, can be taken only if he seriously violates public policy, endanger state security or public health (a disease occurred in the time limit of three-month after the entry). The EU citizen cannot be expelled, if he resides in the CR continuously for a pe-

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<sup>11</sup> Zákon č. 435/2004 Sb., o zaměstnanosti (Act No. 435/2004 Coll., Employment Act, as amended).

riod exceeding ten years. A minor can be expelled only on the grounds of public security, or if it is in accordance with the best interests of a child according to a Convention on the Rights of the Child (*Secs. 119 – 120 FORA*).

The expulsion of *EU citizen or of TCN family member*, who resides on the grounds of a *permanent residence permit*, can be taken only if he seriously violates public policy or endangers public security. The expulsion order may be issued only if the withdrawal of the permanent residence permit will not be sufficient enough with regard to seriousness of his/her behavior (*Sec. 120 FORA*). Moreover any decision on expulsion (not only those regarding the EU citizens or their family members) cannot be issued if its consequence has inadequate impact to a private or family life of the person concerned (*Sec. 119a FORA*).

If the decision on administrative expulsion was issued, the EU citizen or his/her family member can apply for mitigating of harshness of such a decision and claim issuing of a new administrative decision revoking the decision on expulsion, if a half of the period for which was the expulsion stipulated or at least three years has passed and the person concerned left the territory of the Czech Republic (reasons for expulsion lapsed so) (*Sec. 122 (6) FORA*).

***Draft legislation, circulars, etc.***

See Part A.

***Miscellaneous (administrative practices, etc.)***

See Part A.

**D. REMEDIES**

***Remedies against visa rejection***

Decision on refusal of entry of *EU citizen* or a *TCN family member* is issued in an administrative procedure according to the provisions of the Administrative Proceedings Act.<sup>12</sup> A remedy against the decision is possible; the law stipulates one exemption, the exemption covers the refusal of entry when a previous decision of expulsion is still in force (*Sec. 171 (2) FORA*). The exemption is based on the approach, that the persons concerned have had previous access to judicial review.

***Remedies against rejection or withdrawal of residence permit***

The rejection or withdrawal of the temporary or permanent residence permit can be challenged by a) an appeal to a superior authority (*Sec. 81 par. 1 Administrative Proceedings Act*) and consequently with b) the judicial review (*Sec. 172 par. 1 Foreigners' Residence Act* in conjunction with *Sec. 65 par. 1 Code of Administrative Justice*).<sup>13</sup>

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<sup>12</sup> Zákon č. 500/2004 Sb., Správní řád (Act. No. 500/2004 Coll., Administrative Proceedings Act).

<sup>13</sup> Zákon č. 150/2002 Sb., Soudní řád správní (Act. No. 150/2002 Coll., Code of Administrative Justice).

***Remedies against departure***

There is a possibility to appeal against a decision on expulsion pursuant to the provisions of Administrative Proceedings Act. An appeal the expulsion decision has suspensive effect. The expulsion order cannot be appealed if the previous decision is in force (*Sec. 171 (2) FORA*).

***Miscellaneous (administrative practices, etc.)***

See Part A.

As had already been mentioned above, the law is very complex. The Czech government plans to prepare (already for several years) a new Act on Residence of Foreigners and the Minister of Interior had been given a task by the government to prepare a new concept of legislation till the April 30, 2006, but no draft legislation was published till the end of 2007. More understandable law would be in favour also for EU citizens and their TCN family members so that they can be sure about their legal position under the Czech law. A new concept of migration legislation is needed.

***Recent legal literature***

- Čechovský, M., Interpretace a aplikace tzv. výhrady veřejného pořádku obsažené v §87k odst.1 písm.b) zákona o pobytu cizinců v řízení ve věci žádosti o povolení k trvalému pobytu za účelem sloučení rodiny (Interpretation and Application of the Public Policy Notion pursuant to the Sec. 87k (1) (b) Foreigners' Residence Act), in *Bulletin advokacie*, č. 4 (ročník 37), duben 2007, p. 46-49.
- Rozumek, M.: Problémy použití mezinárodních smluv v azylovém a cizineckém právu (Problems with the Use of International Treaties in Asylum and Foreigners' law), in *Správní právo*, č. 1 (ročník 40), leden 2007, p. 55-62.

## Chapter II

### Access to Employment

#### *Text(s) in force*

- Act No. 262/2006 Coll., Labour Code, as amended.
- Act No.99/1963, Civil Procedure Code, as amended.
- Act No. 435/2004 Coll., Employment Act, as amended.
- Act No.455/1991 Coll., Trade License Act, as amended.
- Act No. 251/2005 Coll., Act on Labour Inspection, as amended.
- Draft of the Act on Antidiscrimination (Draft No. 361).
- Act No. 18/2004 Coll., on Mutual Recognition of Qualifications, as amended.
- Act No. 95/2004 Coll., on Mutual Recognition of Diplomas on Medical Qualification of Doctors, Dentists and Pharmacists, as amended.
- Act No. 96/2004 Coll., on Mutual Recognition of Diplomas on Paramedical Qualification, as amended.
- Act No. 85/1996 Coll., on the Legal Profession (Legal Profession Act), as amended.
- Act No. 360/1992 Coll., on Pursuit of Activities of Authorized Architects and on Pursuit of Activities of Authorized Engineers and Technicians Involved/Practicing in Construction, as amended.
- Act No. 166/1999 Coll., On Veterinary Care, as amended.

#### 1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT

The new Labour Code entered into force during the period under scrutiny. Most of the other laws remained unchanged.

Equal treatment in access to employment is ensured mainly by the provisions of the Employment Act.<sup>14</sup> The citizens of other EU Member States and their third country family members have equal position with the Czech citizens in the field of employment (*Sec. 3(2) Employment Act*). The equal treatment pursuant to the provisions of the Employment Act comprises access to employment and also access to the public employment services including registration in order to seek work etc.

EU citizens and their family members do not need work permits for the access to the Czech labour market. They have equal position with Czech citizens and therefore there are no limits imposed on their access to the labour market. The obligation to obtain the work permit applies only to third country nationals who are not family members of the EU citizen. There are several exceptions for special categories of TCN who are not family members and have access to the labour market without a work permit, those are *inter alia* foreigners who have been issued a permanent residence permit; a family member of a member of a diplomatic mission; a foreigner who has been granted international protection etc. *Sec. 98 of Employment Act*). The Act also defines a term *foreign employee* which pursuant to *Sec. 85 Employment Act* means an individual who is neither a Czech citizen nor an EU citizen nor his family member.

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<sup>14</sup> Zákon č. 435/2004 Sb., o zaměstnanosti (Act No. 435/2004 Coll., Employment Act, as amended).

The employee can be assisted by a Labour Office or an Employment Agency in the searching for a job. The assistance can be obtained *inter alia* in the form of searching for a job or by advisory and information services (§ 14 *Employment Act*). Legal basis for the work of Labour Offices are given by Sec. 18 *Employment Act*, legal basis for the work of employment agencies are given by Part 2, esp. Secs. 58 – 66 of the *Employment Act*. As the law stipulates that the EU citizens and their TCN family member have equal position with Czech citizens, there should be no difference between them for the purposes of the services given by the Labour Offices and Agencies.

The Czech legislation (provisions of *Employment Act*, direct application of the Regulation 1408/71 and 1612/68 and the instructions issued by the central administration) requires previous 12 month' employment in last three years either on the territory of the Czech Republic or in another member state in order to be entitled for granting of the unemployment benefits/jobseeker's allowance. The benefits can be granted to a jobseeker that was included into the register of job seeker (the law stipulates specific conditions for including a job seeker into the register, incl. substitute periods of employment), the law stipulates also the amount of the allowances.

## 2. LANGUAGE REQUIREMENT

The laws contain provisions on non-discrimination and it may be said, that although the employer can have different requirement according to the announced vacancy, the requirements must not be discriminatory. The person who meets the criteria should be employed regardless of his/her nationality, age etc. As the non-discrimination in the access to a job position is protected by *Employment Act* (see above) the possible violation of this principle can be brought to a court.

Knowledge of the Czech language can be required for some professions, where the language is so important that it constitutes the basic element of the profession. Knowledge of the Czech language is e.g. required to the extent that is necessary for a pursuit of a regulated activity (*Sec. 21 Act on Mutual Recognition of Qualifications*). There are several provisions in the laws transposing sectoral directives. The *doctors, dentists and pharmacists* must be able to understand their patients so the *knowledge of the Czech language* is required to the extent that is necessary for a pursuit of the medical practice (the language skills are verified by the Ministry of Health (*Sec. 31 of Act on Mutual Recognition of Diplomas on Medical Qualification of Doctors, Dentists and Pharmacists*)). The requirements for the paramedical qualification are similar (*Sec. 82 Act on Mutual Recognition of Diplomas on Paramedical Qualification*).

## 3. RECOGNITION OF DIPLOMAS

During the period under scrutiny there has been a draft law transposing the Directive 2005/36/EC adopted by the Government and had been delivered to the Parliament on November 16, 2007 (Draft No. [361](#)).<sup>15</sup>

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<sup>15</sup> The Draft is being debated in the Chamber of Deputies (Lower House of the Parliament); if the draft is adopted by Chamber of Deputies, it will be submitted to the Senate (Upper House of the Parliament). A draft supported by both Houses of the Parliament has to be signed by the President. So please note, that the text can still be changed by the Chamber of Deputies or by the Senate.

The scheme applicable in 2007 is the same as in the year 2006 and can be described as follows:

The Czech legal system contains provisions on recognition of professional qualification (incl. the recognition of formal qualification (e.g. diplomas etc.) for the purpose of the access to the regulated professional activity) and on recognition of academic diplomas.

a) Recognition of professional qualification in regulated professions (including the professions regulated by the sectoral directives) is regulated by the Act on Mutual Recognition of Qualifications.<sup>16</sup> The law had transposed the *acquis communautaire* on the matter and stipulates principles and process of recognition of professional qualification in regulated profession. The respective Act is *lex generalis* for the issue of recognition of qualification.

The Act on Mutual Recognition of Qualifications is aimed at the recognition of *qualification* therefore it contains also provisions on recognition of applicant's eligibility for the employment pursuant to the relevant legal regulation of the Czech Republic, not only the substance of recognition of diplomas. The respective Act applies on the EU citizens and their family members. The Act contains a procedure, which is adopted by a recognition authority (authority, which supervises the exercise of a profession) to recognize the professional qualification.

The recognition authority issues a decision which determines whether the applicant is eligible for the employment (professional activity) in accordance with the relevant legal regulation of the Czech Republic. The authority can either (1) recognize the applicant's eligibility for the employment, or (2) reject the applicants claim, or (3) impose a proportionate compensation measure (pursuit of the relevant activity, an aptitude test or an adaptation period). Decisions not to grant recognition is reasoned decisions, and a remedy is possible.

The Act on Mutual Recognition of Qualifications contains the *general system* for all regulated professions. Provisions of this Act apply unless provisions of special laws (laws transposing the sectoral directives) stipulate otherwise (*Sec. 1 (2) Act on Mutual Recognition*). The sectoral directives were transposed by five acts, which are listed below in the *texts in force*. The situation in the specific sectors (architects, dentists, doctors, nurses, midwives, pharmacists, veterinary surgeons and lawyers) differs according to the respective acts. The Czech Republic has a large number of regulated professions (approx. 435 of them).<sup>17</sup>

b) Recognition of diplomas is regulated by the provisions of the Act on Pre-elementary, Elementary, Secondary, Higher Vocational and Other Education (Act on Education)<sup>18</sup> and the Act on University Education.<sup>19</sup> There are also several bilateral international treaties on this issue.

The *Act on Pre-elementary, Elementary, Secondary, Higher Vocational and Other Education (Act on Education)* contains provisions on recognition of elementary, secondary and higher vocational education (Sec. 108 of Act on Education). The recognition is implemented in most cases by a Regional authority, some powers are given to the ministries (Ministry of Education, Ministry of Interior for his area of concern – police and fire service). This Act stipulates two possible procedures of *recognition of diplomas and recognition of equivalency*

<sup>16</sup> Zák. č. 18/2004 Sb., o uznávání odborné kvalifikace a jiné způsobilosti státních příslušníků členských států Evropské unie a o změně některých zákonů (zákon o uznávání odborné kvalifikace) (Act No. 18/2004 Coll., on Mutual Recognition of Qualifications).

<sup>17</sup> The list of regulated professions is available at [http://uok.msmt.cz/ru\\_list.php](http://uok.msmt.cz/ru_list.php) (opened on February 25, 2008).

<sup>18</sup> Zákon č. 561/2004 Sb., o předškolním, základním, středním, vyšším odborném a jiném vzdělávání (Act No. 561/2004 Coll., on Pre-elementary, Elementary, Secondary, Higher Vocational and Other Education (Act on Education)).

<sup>19</sup> Zákon č. 111/1998 Sb., o vysokých školách (Act No. 111/1998 Coll., on University Education, as amended).



of the education by the administrative authority. First one is applied on the recognition of diplomas in case that there is an international treaty on mutual recognition of diplomas.<sup>20</sup> A certificate according to the treaty is issued by the authority in this case. If there is no international treaty then the second procedure is applied and the authority compares the contents and extent of the education with a study program similar in its contents and extent of the education in the Czech Republic. If the contents and extent of the education differs partially or the contents and extent is not clear, the authority will require an exam on recognition. If the contents and extent of the education differs significantly, or the person does not pass the exam, then the request is rejected. The authority issues a decision on recognition.

The recognition of the university diplomas is regulated by the *Act on University Education (Secs. 89 and 90 of Act on University Education)*. The recognition of the diploma depends on the examination of the diploma by a relevant public higher education institution providing a study program similar in its contents and extent of the education. Some powers are given to the ministries (Ministry of Education when there are doubts which high school is authorized for the recognition according to the contents and extent of the education, or if an international treaty stipulates so; Ministry of Interior for the education in security services, Ministry of Defense for the education within his area of concern). There are several bilateral international treaties on the mutual recognition of diplomas ratified (e.g. with Germany in March 2007).

#### ***Draft legislation, circulars, etc.***

The draft law transposing the Directive 2005/36/EC has been adopted by the Government in 2007 and had been delivered to the Parliament on November 16, 2007 (is discussed by the Parliament as Draft No. [361](#)).<sup>21</sup>

The draft of Antidiscrimination Act is now being debated in the Parliament (Government Draft Law No. 253, delivered to the Parliament on July 7, 2007).<sup>22</sup> There is no general Antidiscrimination Act in the Czech legal order now (January 2008), although it had been once proposed in recent years. The fact that there is no Antidiscrimination Act had been criticised by e.g. Committee on Elimination of All Forms of Discrimination of Women or Committee on Elimination of Racial Discrimination. The Antidiscrimination Act is *inter alia* transposing also the Directive 86/378/EEC and the Directive 96/97/EC; both directives are still not transposed and there has been infringement procedure opened in 2005.

#### ***Judicial practice***

There is almost no relevant case law on the matter. It can be said, that either cases in the relevant issue had not been brought before courts yet, or (and it is more likely) there are some cases brought before courts, but they had not get to the higher instance yet and therefore are not accessible (only the decisions of highest courts are available publicly). There were at least some cases of malpractice in the issues connected to the issue of free movement of workers, those cases were dealt with by the Office of Public Defender of Rights, who can nevertheless only monitor and publish his findings (see below in Chapter III).

<sup>20</sup> E.g. a treaty between Czech Republic and Bulgaria, CR and Slovakia, CR and Slovenia, CR and Poland.

<sup>21</sup> Available at: <http://www.psp.cz/sqw/historie.sqw?o=5&T=361> (opened on February 13th, 2008).

<sup>22</sup> Available at: <http://www.psp.cz/sqw/historie.sqw?o=5&T=253> (opened on February 13th, 2008).

There was one decision of the Supreme Administrative Court in 2007 (Judgment of the Supreme Administrative Court of 24<sup>th</sup> January, 2007, case No. 3 As 12/2006-52, [www.nssoud.cz](http://www.nssoud.cz)) regarding the issue of mutual recognition of qualification. The qualification had been acquired in Ukraine in this case. Both sides argued with EU law, but – as the court also stated in its judgment – the decision of an administrative authority which was under examination had been issued in 2003 therefore the *acquis communautaire* was not applicable in the case and the court did not use it.

There are some judgments regarding the issue of discrimination, but none of them relates to EU citizens. There is also an interesting finding of the Constitutional Court in the issue of shifting burden of proof in discrimination cases. It had been published already in 2006 (under No. 419/2006 Coll.), but still very relevant in the recent discussions. The shifting of the burden of proof had been challenged before the Constitutional Court as a principle which contravenes to the principle of equality of the parties. The court stated that the principle of reverse burden of proof does not contravene the principle of equality of the parties, because the unequal position of the parties is objectively and reasonably justified.

#### *Miscellaneous (administrative practices, etc.)*

A problem with national measures implementing Directives 78/686/EEC and 93/16/EEC on the mutual recognition of the diplomas of practitioners of dentistry and doctors appeared in the Czech Republic. The problem has been found in the provisions of laws stipulating that the doctors and dentists from other EU Member States working in the Czech Republic for a short period of time need to register with the Czech medical chamber while under EU legislation they only need certificates from their home countries. The European Commission had referred the Czech Republic to the European Court of Justice in January 2006. Czech members of Parliament proposed a change of the respective laws (added to the Draft amendment to the Health Care Act),<sup>23</sup> but a veto was placed on the draft by the president. The Parliament did not manage to vote about the law again as the elections took place in June and the Parliament was dissolved in 2006. In January 18, 2007 the ECJ in judgment No. C-203/06 declared that the Czech Republic failed to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 93/16/EEC to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications. On the same day the ECJ in judgement No. C 204/06 declared that the Czech Republic failed to transpose Council Directive 78/686/EEC concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services. The new Parliament discussed a new draft of the law in 2007 and a change to the Act on Czech Medical Chamber, Czech Dental Chamber and Czech Pharmacy Chamber had been adopted (Act No. 111/2007 Coll., changing the Health Care Act). The provisions now stipulates that the persons who intends to work in the Czech Republic for a short period of time, posted worker, does not need to register with the Czech medical chamber.

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<sup>23</sup> Draft No.1045, available at <http://www.psp.cz/sqw/historie.sqw?o=4&T=1045> (opened on February 13th, 2008).

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- Jouza, V., Zaměstnávání občanů ze států Evropské unie a cizinců (Employment of EU Citizens and Foreigners), in *Právo pro podnikání a zaměstnání*, č. 4 (ročník 16), duben 2007, p. 3-15
- Leiblová, Z., Zaměstnanci ze zahraničí (cizinci) a zaměstnávání občanů z EU (Employment of EU Citizen), in *Personální a sociálně právní kartotéka. PSK*, č. 11, listopad 2007, p. 1-5, č. 12 (ročník 10), prosinec 2007, p. 3-8

## **Chapter III**

### **Equality of Treatment on the Basis of Nationality**

#### *Text(s) in force*

- Act No. 262/2006 Coll., Labour Code, as amended.
- Act No. 435/2004 Coll., Employment Act, as amended.
- Act. No. 143/1992 Coll., on Remuneration in Budgetary Organizations, as amended.
- Act No. 251/2005 Coll., Labour Inspection Act, as amended.
- Act No. 100/1988 Coll., on Social Security, as amended.
- Act No. 117/1995 Coll., on State Social Support, as amended.
- Act. No. 108/2006 Coll., Social Services Act.
- Act. No. 111/2006 Coll., Assistance in Need Act.
- Act No. 586/1992 Coll., Income Tax Act, as amended.
- Act No. 61/2000 Coll., On Sea Navigation

#### **1. WORKING CONDITIONS, SOCIAL AND TAX ADVANTAGES (DIRECT, INDIRECT DISCRIMINATION)**

##### *Working conditions*

The equality provisions contained within the legislation on the access to employment that was described above have their counterpart within the labour legislation. According to the Labour Code the employers are obliged to treat all employees equally as regards the conditions of work including the remuneration and other financial obligations (*Sec. 16 (1) of Labour Code*). Similar provisions are included in the remuneration legislation (e.g. the Salary Act provides for the equal salary for the equal work in Sec. 3 (3)). Labour Code also prohibits direct and indirect forms of discrimination based on the citizenship, nationality etc. (*Sec. 16 of Labour Code*).

Under the current legislation, if an employee is posted to the Czech Republic, even if the labour law of another Member State applies to his/her labour contract, certain working conditions are required to comply with the ones provided for by the Czech legislation. These conditions contain: a) working time and the period of rest, b) length of holiday, c) minimum wage, minimum tariffs and extra pay for overtime, d) health and safety at work, e) working conditions of women and juveniles and of the workers taking care of a child younger than three years, f) equality of treatment between men and women. In case the law of the country of origin is more advantageous, these rules do not apply. There are also the exceptions provided for postings that are short.

The right to control of the compliance of the employers conduct with the rules on labour conditions is executed mainly by Labour Inspectorates (LI).

The Czech Public Defender of Rights (Ombudsman) decided to open an inquiry on its initiative regarding a malpractice of the Labour Inspectorates in 2007. The Defender's Office has repeatedly encountered malpractice of the LI (in complaints from complainants, e.g. a complainant on the inspection work of the Area Labour Inspectorate for Prague), so an inquiry focused on the given section of public administration comprehensively. The Defender's Office issued a general report, which mentions the most frequent malpractices as-

certained in the inspection practice of selected inspectorates. The report commented mainly upon inconsistency of inspection inquiries (Area Labour Inspectorates failing to consistently enforce fulfilment of remedial measures), sporadic imposition of fines for breaching labour-law regulations, reduced availability and frequency of advisory services compared with the situation where labour offices provided advisory services in all districts, failing to exercise the institute of disciplinary fines, insufficient personnel to carry out inspections.<sup>24</sup> The Defender's Office proposed some measures which would strengthen the labour inspection system. The report was forwarded for statement to the State Labour Inspection Authority; the response from the State LI Authority agreed with the major part of the findings and promised to take the comments into consideration. The inquiry conclusions were sent, along with the State Labour Inspection Office statement, to the Ministry of Labour and Social Affairs to enable the Ministry to take them into account in organization, personnel and conceptual work towards the labour inspection system.<sup>25</sup>

One of the cases which the Office of Public Defender's Rights has dealt with in 2007 was in the area of free movement of workers. The issue was also connected to the practice of inspection inquiries of LI's. The Czech Ombudsman had been requested by the Polish Ombudsman to act in the case of a labour-law terms of Polish workers. The Polish workers complaint on the working conditions to the Labour Inspectorate and were not satisfied with its work. Then Polish Ombudsman turned to Czech Ombudsman with the request. The Defender's Office opened an inquiry into the issue of the labour and accommodation situation of the Polish workers employed by the Zetka auto, s. r. o. agency in the Škoda auto, a. s. enterprise. The inquiry of the Defender's Office aimed at findings whether the complaints of some Polish workers had been properly inquired into by the Labour Inspection bodies. The Defender was also interested to find out whether the buildings in which the Polish workers were accommodated met the structural, technical and safety regulations. Pursuant to the Report of the Public Defender of Right's Office the findings of Defender's Office corroborated that *the relevant LI had failed to sufficiently ascertain the actual state of affairs in the inspection and was satisfied by the employer's measures, however unsatisfactory these were (in particular the wage entitlements of the agency employees in comparison with the core employees of Škoda auto, a. s.)*.<sup>26</sup> Defender's Office forwarded the findings for statement to the Area Inspectorate. The Area Inspectorate for the Moravian and Silesian Region performed a follow-up inspection at the Zetka Auto s.r.o. agency and found extensive shortcomings on the part of the agency, which has the obligation to ensure that the working and salary conditions of a temporary employee are not worse than those of a comparable permanent employee. Also the employer was obliged to take correct the shortcomings and administrative proceedings were opened on the imposition of a fine for committing an administrative infringement. The Defender's Office continues to monitor the procedure of the authority.<sup>27</sup>

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<sup>24</sup> See Report of the Public Defender of Right's Office for the second quarter of 2007, available at <http://www.ochrance.cz/dokumenty/document.php?back=/cinnost/index.php&doc=754> (opened on March 4<sup>th</sup>, 2008), p. 13.

<sup>25</sup> See Report of the Public Defender of Right's Office for the third quarter of 2007, available at <http://www.ochrance.cz/dokumenty/document.php?back=/cinnost/index.php&doc=854> (opened on March 4<sup>th</sup>, 2008), p. 13.

<sup>26</sup> See Report of the Public Defender of Right's Office for the second quarter of 2007, available at <http://www.ochrance.cz/dokumenty/document.php?back=/cinnost/index.php&doc=754> (opened on March 4<sup>th</sup>, 2008), p. 13.

<sup>27</sup> See Report of the Public Defender of Right's Office for the fourth quarter of 2007, available at <http://www.ochrance.cz/dokumenty/document.php?back=/cinnost/index.php&doc=1099> (opened on March 4<sup>th</sup>, 2008), p. 13.

***Direct and indirect discrimination***

According to the Labour Code the employers are obliged to treat all employees equally as regards the conditions of work including the remuneration and other financial obligations (*Sec. 16 (1) of Labour Code*)<sup>28</sup>. The Code explicitly prohibits discrimination (any discrimination in the labour relations is prohibited, *Sec. 16 (2) Labour Code*), and stipulates that the relevant terms, like direct and indirect discrimination, victimization, inciting discrimination, harassment or sexual harassment, are to be defined by a special law. The Labour Code also states that legal remedies against discrimination are to be defined by the Antidiscrimination Act, which had not been adopted until now and therefore the remedies against discrimination pursuant to the provisions of the Labour Code are not stipulated by the law. Therefore there is a problem of limited possibility to appeal in the discrimination matters pursuant to the provisions of Labour Code, e.g. matters in the labour relations.

The basis for equal treatment in terms of non-discrimination can be found also in other laws, *inter alia Employment Act*, which contains an obligation to treat individuals exercising the right of employment equally, prohibits both direct and indirect discrimination on the basis of sex, sexual orientation, racial or ethnical origin, nationality, citizenship, social origin, language, health, age, religion, matrimony or marital status or obligations to a family, membership in political parties or movements, trade unions or unions of employers. The Employment Act defines direct and indirect discrimination for the purposes of the respective act and also stipulates the possibility to give a claim against the discrimination conduct of the employer and ask *inter alia* to cease the conduct and appropriate compensation. (*Sec. 4 of the Employment Act*).

There is a shifting of the burden of proof in the labour law related civil cases (*Sec. 133a (1) of the Civil Procedure Code*). The allegations that the party has been directly or indirectly discriminated on the grounds of his/her sex, racial or ethnic origin, religion, belief, world opinion, disability, age or sexual orientation, shall be deemed proved by the court in labour matters unless the opposite has transpired in the proceedings (facts bearing on the issue of discrimination are considered to be proved unless proven otherwise). The principle of shifting of the burden of proof had been challenged before the Constitutional Court as a principle which contravenes to the principle of equality of the parties. The finding of the Constitutional Court was published under No. 419/2006 Coll., the court stated that the principle of reverse burden of proof does not contravene the principle of equality of the parties, because the unequal position of the parties is objectively and reasonably justified.<sup>29</sup> The respective judgment dealt with the shifting of the burden of proof in the cases of provision of services (§ 133a (2) Civil Procedure Code), but it can be nevertheless applied also on the similar provision of *Sec. 133a (1)* which contains the same principle.

The antidiscrimination legislation is rather diffuse, dispersed in different pieces of legislation; the most detailed is the antidiscrimination legislation regarding employment issues. There is no general Antidiscrimination Act in the Czech legal order now (March 2008), although it had been once proposed in recent years. A Government Draft on Antidiscrimination Act, Draft No. 253 was delivered into the Parliament on July 7, 2007. The draft had passed through the lower chamber of the Czech Parliament in March. The Antidiscrimination Act would provide a necessary definition of the relevant terms found in the

<sup>28</sup> Zákon č. 262/2006 Sb., zákoník práce (Act No. 262/2006 Coll., Labour Code, as amended).

<sup>29</sup> See also [http://www.vlada.cz/assets/cs/rvk/rlp/dokumenty/zpravy/Report\\_on\\_the\\_State\\_of\\_Human\\_Rights\\_in\\_the\\_CZ\\_in\\_2006\\_EN.pdf](http://www.vlada.cz/assets/cs/rvk/rlp/dokumenty/zpravy/Report_on_the_State_of_Human_Rights_in_the_CZ_in_2006_EN.pdf) (opened on February 18, 2008).

existing anti-discrimination legislation and ensure the remedies against discrimination, it would also cover the whole area of prohibition of discrimination and supplement the currently rather diffuse legislation.

### ***Tax advantages***

The income tax law is generally the field that is outside the Community regulation. The indication of a Member State that deducts taxes from the income is still governed by the bilateral double taxation treaties. The Czech Republic concluded over 70 such agreement including those with the other Member States.

As regards the Income Tax Act the situation of the worker from another Member States is in the same position as the Czech national if he has tax domicile in the Czech Republic (*Sec. 2 of Income Tax Act*). From the year 2004 even persons without the tax domicile (normally person who do not habitually reside in the Czech Republic, *i.e.* mainly frontier workers) can require the tax reduction or tax bonus for a child and tax-relief for a spouse.

### ***Social advantages***

The EU citizen is entitled to the social benefits pursuant to the Regulation 1612/68 and 1408/71, the regulations are directly applicable, no transposition took place. If the EU citizen is not entitled to the social benefits pursuant to the Regulation 1612/68, he is entitled to the social benefits pursuant to the Regulation 1408/71. The 1408/71 is directly applicable, while some national laws refer to the directly applicable EU legislation. If Regulation 1408/71 is not applicable, then national laws apply and a condition of previous stay can be applied. The purpose of the condition of previous stay was *inter alia* to avoid the sole purpose of the stay only for the reason to apply for social benefits (e.g. without seeking the job). If there is previous stay required then it's interpreted in the "community meaning".

Current legislation on social care and social services is replaced since 1.1. 2007 by the new acts:

- Social Services Act (in force since 1.1.2007)
- Assistance in Need Act (in force since 1.1.2007)

## **2. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS**

As regards malpractice of issuing work permits and length of their validity shorter than 12 months in order to prevent free access to the labour markets in certain Member States applying restrictions on free movement of workers there were not any information either on improvement or continuation of malpractice available.

Preliminary ruling procedure in case *Sahin C-551/2007* has been watched carefully by institutions involved. The ruling will be essential for further development of parallel existence of free movement of persons and migration/asylum policies in general which is not regulated by the Directive 2004/38/EC.

One of the cases which the Office of Public Defender's Rights has dealt with in 2007 was in the area of free movement of workers. The issue was also connected to the practice of inspection inquiries of Labour Inspectorates. The Czech Ombudsman had been requested by the Polish Ombudsman to act in the case of a labour-law terms of Polish workers. The Office found some malpractice. For detailed information see above (point 1).

### **3. SPECIFIC ISSUES: FRONTIER WORKERS, SPORTSMEN/SPORTSWOMEN, MARITIME SECTOR, RESEARCHERS, ARTISTS**

#### ***Frontier workers***

Of particular interest here is the existence of residence clauses (see for instance the case law of C-212/05 *Hartmann*).

In the field of social benefits, schemes of state social support and social assistance are primarily based on permanent residence; the same applies to the provision of social services. To be eligible for a benefit, the recipient must reside permanently in the territory of the Czech Republic.

However, for Community workers and their family members this requirement is overruled by the regulation (the law refers to the application of directly applicable regulation). If the EU citizen is not entitled to the social benefits pursuant to the Regulation 1612/68, he might be entitled to the social benefits pursuant to the Regulation 1408/71 (both regulations are directly applicable, the laws refer to them). If even Regulation 1408/71 is not applicable, then national laws apply and a condition of previous stay can be applied. The purpose of the condition of previous stay was *inter alia* to avoid the sole purpose of the stay only for the reason to apply for social benefits (e.g. without seeking the job). If there is previous stay required then it's interpreted in the "community meaning".

E.g. Provisions of the State Social Support Act No. 117/1995 Coll., which can be considered as the basic national legislation specifying social benefits and conditions under which they are granted, refer to the directly applicable Regulations 1408/71 and 1612/68 (*Sec. 1 (3) of the Act*).

#### ***Sportsmen / sportswomen***

As regards the application of free movement rules in the sports sector there is no legislation regarding the issue of quotas or transfer fees and the sport clubs themselves set up the rules. According to the information given by respective sport clubs there are no national quotas for EU citizens participating in all sport activities at all levels. The practice is therefore in conformity with the *Bosman* case. The only exception where the Czech citizenship is required is the Czech national team. The rapporteur asked the clubs for the document which would confirm the information given by them, but had not received all of them yet.

#### ***The Maritime sector***

Czech domestic legislation reserves the exercise of the post of captain of a ship flying the Czech flag to persons with Czech nationality (Sec. 28/4, 5 of Act on Sea Navigation). An exception from the Czech citizenship is possible, but only for the exceptional situations – extraordinary situations which can have immediate impact on the safety of sailing (Sec. 28/4, 5 of Act on Sea Navigation). Captains of ships flying the flag of the Czech Republic are given powers with a direct participation in exercise of sovereign rights. They are given *inter alia* following powers: in case of direct threat to a life of a person who wants to conclude a marriage, the marriage can be concluded before a captain of a ship flying the flag of CR (one of the intended must be a citizen of the Czech Republic), the captain can also attest a signature pursuant to a special law, he can also act pursuant to the Criminal Proceedings Code in



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case of a crime committed on the ship. The above mentioned power given to captains of ships is seen as the reason for the requirement of the Czech citizenship for the captains of ships.

There had been an action by the Commission of the European Communities brought before the European Court of Justice in November, 2007. The Commission argued against the reservation of exercising of the posts of captains of ships flying the Czech flag to persons with Czech nationality. The Commission argues that the Czech Republic has failed to fulfil its obligations under Article 39 of the EC Treaty. In the opinion of the Commission the clear and completely unconditional requirement of the Czech citizenship conflicts with the findings reached by the Court of Justice of the European Communities in Case C-405/01 and C-47/02. The Commission argues that

the relevant provisions of Czech law do not take into account the way in which and extent to which the master of a ship in reality exercises the powers conferred by public law, as required by the abovementioned case-law of the Court of Justice of the European Communities. The mere fact that Czech law entrusts masters of ships flying the Czech flag with powers which fall within the ambit of powers conferred by public law is not enough to warrant use of the derogation from the freedom of movement for workers laid down in Article 39(4) of the EC Treaty.

The Commission argued with the ECJ case C-405/01 and C-47/02 which stipulates that the derogation from the freedom of movement for workers provided for by Article 39(4) EC must be justified by the fact, that the powers given to the person are exercised on a regular basis by those holders and do not represent a very minor part of their activities. The scope of that derogation must be limited to what is strictly necessary for safeguarding the general interests of the Member State concerned.

The Czech Ministry of Transport presented a draft law which will change the current Law on Sea Navigation; the draft had been sent to the inter-ministerial commentary and will be presented to the Government and Parliament in 2008. The change proposed by the Czech legal experts stipulates that the captain of the ships must be either a Czech citizen or a citizen of an EU member state and at the same time must prove certain knowledge of the Czech language so that he/she can exercise the relevant powers. The explanatory report to the draft law refers to the ECJ judgments C-379/87 and C-414/97 when stipulating the condition of the Czech language. Exception from this requirement will be possible in the exceptional situations. The law is going to be debated on many places during the legislative process and it still can be changed.

The Czech law stipulates that the entrepreneur of the ship must possess a Czech permanent residence permit (have its domicile in the Czech Republic) (*Sec. 6 of the Law on Sea Navigation*). This provision is also subject to changes pursuant to the proposed draft law. The draft law opens the possibility also to other persons, e.g. EU citizens, legal persons with domicile in other EU member state, residents pursuant to the directives 2003/109/EC, 2003/86/EC or recognized refugees.

### ***Draft legislation, circulars, etc.***

A draft law which changes the Law on Sea Navigation had been submitted into the inter-ministerial process for the comments (see above).

***Researchers / artists:***

The Researchers/artists have same legal status as regards their access to the Czech labour market and other rights of migrant workers as the Czech nationals have. There are no restrictions or inequalities indicated.

**4. RELATIONSHIP BETWEEN REGULATION 1408/71 AND ARTICLE 39 AND REGULATION 1612/68**

The regulations 1612/68 and 1408/71 are directly applicable; therefore, there is no transposition of their provisions into the relevant legislation. The Czech law uses the reference to the application of directly applicable regulation (e.g. the newly adopted Social Services Act and Assistance in Need Act). For the due application of the regulation the Ministry of Labour and Social Affairs issues internal guidelines for the public authorities.

In the field of social benefits, schemes of state social support and social assistance are primarily based on permanent residence. To be eligible for a benefit, the recipient must reside permanently in the territory of the Czech Republic. Therefore, for access to these kinds of benefits for migrant workers the Sec. 7 (2) is applied to overrule the permanent residence requirement in case of workers covered by Regulation 1612/68. Other conditions for granting benefits within these schemes consist in assessment of the income of a family concerned, overall social situation, the ability to improve the situation by own effort, the fact that the beneficiary is taking care of a child etc. are connected with the individual's situation and do not have a discriminatory character.

The same applies to the provision of social services that is also internally based on the permanent residence. However, for Community workers and their family members this requirement is overruled by the regulation (the law refers to the application of directly applicable regulation). It also applies to access to the services provided within the institutions (for example nursing homes) and their waiting lists.

Nevertheless, as the range of social advantages are considerably wide, there might still be some cases of inequalities. On the other hand, the respective authorities did not record complaints indicating the violations of the regulation.

The regulations are applied non-discriminatorily.

***Judicial practice***

Judgment of the Supreme Administrative Court of 22<sup>nd</sup> November, 2007, case No. 9 Afs 55/2007-76, [www.nssoud.cz](http://www.nssoud.cz), in the field of Foreign Sportsmen's Income Tax (to avoid taxation in two states).

***Miscellaneous (administrative practices, etc.)***

The Ministry of Labour and Social Affairs issues internal guidelines for the public authorities to ensure the due application of the regulation 1612/68 and 1408/71.

*Recent legal literature*

Pelech, P.: Vysílání cizinců zahraničním zaměstnavatelem do ČR z hlediska daňové problematiky (Posting of Employees from the Tax Perspective), in *Mzdová účetní*, č. 7-8 (ročník 13), srpen 2007, p. 33-35.

Rylová, Z.: Zahraniční sportovci a daň z příjmů fyzických osob (Foreign Sportsmen and the Income Tax), in *Účetní a daně*, č. 7-8 (ročník 10), srpen 2007, p. 41-44

## Chapter IV Employment in the Public Sector

### *Text(s) in force*

- Act. No 1/1993 Coll., Constitution of the Czech Republic, as amended.
- Act No. 62/2003 Coll., on Elections to the European Parliament, as amended.
- Act No. 247/1995 Coll., on Elections to the Parliament, as amended.
- Act No. 491/2001 Coll., on Elections to Municipal Councils, as amended.
- Act No. 312/2002 Coll., on Officers of Municipalities, as amended.
- Act No. 182/1993 Coll., on the Constitutional Court, as amended.
- Act No. 6/2002 Coll., on Courts and Judges, as amended.
- Act No. 283/1993 Coll., on Public Prosecutors, as amended.
- Act No. 349/1999 Coll., on Ombudsman, as amended.
- Act 361/2003 on Service Contract of Members of Security Corps from 1.1.2007.
- Act No. 221/1999 Coll., on Professional Soldiers, as amended.
- Act No. 154/1994 Coll., on Security Information Service, as amended.
- Act No. 218/2002 Coll., on Public Services (i.e. civil servants and the other employees at administrative authorities and their remuneration), as amended.
- Act No. 262/2006 Coll., Labour Code.

### **1. ACCESS TO PUBLIC SECTOR:**

#### *1.1. Nationality condition for access to positions in the public sector*

Various Acts (see relevant texts in force) require Czech nationality for some of occupations or functions. Even for these positions the EU citizens can apply, nevertheless, on the basis of the exception provided for by the Treaty and with regard to the European Court of Justice interpretation the nationality will be in these cases one of the prerequisites for the occupation. Therefore some positions in the Czech Republic will be held by the Czech citizens only, which is in compliance with Art. 39 (4) concerning the exception to the above mentioned rule regarding the employment in the public sector. According to the case law of the European Court of Justice such an exception is acceptable if there is a direct or indirect participation in exercise of sovereign rights or in fulfilling tasks connected to general targets of the state or other entities of the public law.

The legislation regarding the public sector is rather extensive and the requirement of Czech citizenship is included in the conditions for the positions where *there is direct or indirect exercise of the State's powers*. There is number of positions unavailable for nationals of other Member States.

The laws, *inter alia*, require Czech citizenship for leading representatives of the Czech Republic, e.g. for becoming a president (*Art. 57 (1) of Constitution of the Czech Republic*), for becoming a Member of Parliament (*Art. 19 (1), (2) of Constitution of the Czech Republic*), also the voters and the members of the electoral committees must be Czech citizens (*Sec. 1 (7), 14e of the Act on Election*); the Czech citizenship is not required for the elections to the European Parliament, the voters and also the candidates can be citizens of another Member State (the candidates must fulfill the condition of having the permanent residence

permit on the territory at least for 45 days on the second day of the elections, *Sec. 5, 6 of the Act on Elections to the European Parliament*). There are no requirements for the members of the Government. The Act on Elections to Municipal Councils requires a voter to the municipal councils (and also a member of municipal councils) to be either a Czech citizen or a foreigner with the permanent residence in the respective district who's right to vote is declared by an international treaty (*Sec. 4, 5 of Act on Elections to Municipal Councils*). The Czech citizenship is not required for officers of the municipal authorities, only the condition of the permanent residence must be fulfilled (*Sec. 4 of Act on Officers of Municipalities*). Also policemen, security corps (firemen, members of counter-intelligence service etc.) and professional soldiers are required Czech citizenship (policemen – *Sec. 3 of Act on Service Contract of Members of Police, security corps - Sec. 13 of Act on Service Contract of Members of Security Corps*, which will replace the old one from 1.1.2007, professional soldiers – *Sec. 2 of Act on Professional Soldiers*). Some positions of lawyers, who exercise the state power, require the Czech citizenship; those are, *inter alia*, judges and assistants of the Constitutional Court and High Court (*Art. 84, 93 of Constitution, Sec. 9 of Act on the Constitutional Court, Sec. 16 of Act on Courts and Judges*), all judges (*Art. 93 of Constitution*) or public prosecutors (*Sec. 17 of Act on Public Prosecutors*). The Czech citizenship is also required for the personnel of the state institutions, for employees who participate in exercising of sovereign rights (civil servants) (*Sec. 17 of Act on Public Services*). The Act on Public Services does not apply *inter alia* to the employees who exercise the auxiliary, manual and technical support and those, who operate, organize or control the work of the support employees (*Sec. 2 of Act on Public Services*). Also the *Sec. 2 of Act on Ombudsman* states that only a Czech citizen can become ombudsman.

The Czech citizenship may thus be required for participation in a recruitment procedure as prerequisites for the occupation within the above mentioned extent.

### ***1.2. Language requirement***

Under the current legislation, the language requirements depend on the conditions for participation in a recruitment procedure, which are stated by the employer. The Czech language should be required to the extent necessary to the execution of the employment. The conditions must not be discriminatory.

### ***1.3. Recruitment procedures***

The recruitment procedure depends on the conditions given by the employer. Recognition of the training undertaken in another member state is recognized according to the *Act on Mutual Recognition of Qualifications*.

### ***1.4. Recognition of diplomas***

There is no specificity; the conditions for recognition of diplomas are the same.

### ***1.5. Recognition of professional experience for access to the public sector***

Recognition of professional experience for access to the public sector also depends on the conditions for participation in a recruitment procedure; the conditions of the recruitment pro-

cedure often contain the request of professional experience and the request must be reviewed according to the principle of non-discrimination (principle of non-discrimination is stipulated in the Labour Code and Employment Act). If professional experience is required then a certificate of the professional experience may be requested.

## **2. EQUALITY OF TREATMENT**

### ***2.1 Recognition of professional experience for the purpose of determining the professional advantages (e.g. salary; grade)***

The professional experience and the qualification and other professional skills influence the determination of the professional advantages (the experience acquired in other Member States is basically taken into account on the basis of the *Act on Mutual Recognition of Qualifications*).

According to the legislation, the salary is given to the employee according to a *salary tariff* (Sec. 122 Labour Code). The salary tariff is applied on the employee according to a *salary group and salary level* to which he is situated. There are 16 salary groups, which differ in accordance with the qualification of the employee and 12 salary levels which differs in accordance with the professional experiences; the employee is placed there in dependence on his qualification and professional experiences.

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

See above.

## Chapter V Members of the family

### *Texts in force*

- Act No. 326/1999 Coll. of Laws, on Residence of Foreigners on the Territory of the Czech Republic (Foreigners' Residence Act), as amended,
- Act No. 115/2006 Coll. on Registered Partnership,
- Act No. 435/2004 Coll., Employment Act, as amended,
- Act No. 561/2004 Coll., on Pre-elementary, Elementary, Secondary, Higher Vocational and Other Education (Act on Education), as amended,
- Act No. 111/1998 Coll., on University Education, as amended,
- Act. No. 586/1992 Coll., Income Tax Act, as amended.

The legal definition of *family members of an EU citizen* is provided for by the Foreigners' Residence Act of the Czech Republic in its Sec. 15a.

For the purposes of the Foreigners' Residence Act, a *family member of an EU citizen* is

- a spouse,
- a parent, if the EU national is younger than 21 years of age and dependent and they are living under the same roof (in a common household),
- a child under 21 years of age, or such a child of a spouse of the EU national,
- a dependent direct relative in the ascending or descending line, or such relative of the spouse of the EU national (*see Sec. 15a (1) FORA*).

If the purpose for stay in the Czech Republic is study, then only a spouse and a dependent child are considered as a family member (*see Sec. 15a (2) FORA*).

The provisions on family members will also apply to a foreigner, who is a living in a common household with a EU citizen; or who is subsisted by an EU citizen; or who cannot care for him/herself due to health reasons without personal care provided by the citizen of the European Union; or who is living in a stable and durable relationship with an EU citizen in a common household.

The registered partnership was introduced in 2006 by the Act on Registered Partnership. The partners in the registered partnerships have been granted some rights that are comparable to the rights of spouses, i.e. representation in ordinary matters and mutual maintenance/subsistence obligation, the right to refuse to give testimony in criminal proceedings and the possibility of choosing a defending counsel for the partner. There is a different position with regard to the family life of registered partners in comparison with the family life of spouses. Although the registered partnership is not treated as a marriage generally, it has been given an equivalent position to marriage for the purpose of the provisions of e.g. the Foreigners' Residence Act (Sec. 180f FORA). A partnership can only be registered in the Czech Republic if one of the partners is a citizen of the Czech Republic, but there are no limits for partners (EU citizens or third country nationals) whose partnerships are registered outside the Czech Republic.

Section 180f of the Foreigners' Residence Act provides that the norms which apply to "marriage", "spouse", "child" also apply to the partners who has contracted a registered partnership. Therefore wherever the law uses the term marriage, spouse and child, it applies

non-discriminatorily also on the registered partnership. The possibility to register a partnership is restricted to same-sex partners. Family reunification of registered partners is therefore possible with spouse, children (also children of the spouse) and with other persons as defined by the Foreigners' Residence Act.

The law which was adopted in 2007 and changed the Foreigners' Residence Act incorporated pursuant to the explanatory report to the respective law *inter alia* the case *Zhu and Chen* (C-200/02). The legislation had been in compliance even before this change, but the law made the provision more explicit. The definition of family member can be seen as in compliance with the Directive.

There were some changes in the area of schooling, the changes mostly made the law more clear.

## 1. RESIDENCE RIGHTS

Entry, residence and departure of family members of EU citizens are connected to the position of the EU citizens.

The issue of entry, residence and departure has been closely discussed in the Chapter I. There are several things of interest. One of the questionable things seems to be the length of the procedure of the issue of the visa for TCN family members of EU nationals on the borders as the law stipulates the time limit of up to 14 days; it is a question whether the time limit might be counted as reasonable period of time (See Chapter I: Entry for details). Another possible problem may be seen in the transposition of the Art. 6 (2) of the Directive (a TCN family member who is in possession of a valid passport and is accompanying or joining the Union citizen shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport). The provision which transposed this article had been subject to changes in 2007 and the changes made the law less clear (See Chapter I: Residence for details). Another issue is the definition of the notion of public policy and public security as there is no definition in the migration legislation available (See Chapter I: Entry or Residence for details).

The family members, who are EU citizens, have the position as EU citizens and their position will not be a subject of this text. The *third country national family members of EU citizens (TCN family member)* can enter CR with a valid travel document, and a visa, if required. The law stipulates a possibility to prove his identity by other means (another document). If the TCN family member possesses a residence card of a family member of an EU citizen issued in another Member State or accompanies his EU family member he/she does not need a visa for his/her stay up to three months. If he needs a visa and does not possess one, he can apply for the visa on the borders; the time limit for the issue of the visa is up to 14 days.

If the TCN family member intends to *stay* on the territory of CR for more than three months, he is obliged to ask for a *temporary residence permit* within the three month period from his entry into CR. The law stipulates, upon what conditions the TCN family member can ask for a *temporary or permanent residence permit* (see Chapter I). The permission to stay of TCN family member can be *withdrawn* only upon a strictly defined conditions (see Chapter I). Retention of the permit in the events defined by the Directive is ensured.

The *expulsion* of TCN family member, who resides on the grounds of a *temporary stay*, can be taken only if he seriously violates public policy, endanger state security or public



health (a disease occurred within three-month period after the arrival). A minor can be expelled only on the grounds of public security, or if it is in accordance with the best interests of a child according to a Convention on the Rights of the Child (*Secs. 119 – 120 FORA*). The expulsion of TCN family member, who resides on the grounds of a *permanent stay*, can be taken only if he seriously violates public policy or endangers public security. The expulsion is ordered only if the withdrawal of the permanent residence permit is not sufficient with regard to seriousness of his behavior (*Sec. 120 FORA*). Moreover any decision on expulsion cannot be issued if its consequence has inadequate impact to a private or family life of the person concerned (*Sec. 119a FORA*). If the decision on administrative expulsion was issued, the EU citizen or his/her family member can apply for mitigating of harshness of such a decision and claim issuing of a new administrative decision revoking the decision on expulsion, if a half of the period for which was the expulsion stipulated or at least three years has passed and the person concerned left the territory of the Czech Republic (reasons for expulsion lapsed so) (*Sec. 122 (6) FORA*).

As was mentioned above, the law contains provisions on a *marriage of convenience*. The Police will withdraw permanent residence permit of TCN family member in case of circumvention of the law, i.e. in case of a marriage of convenience or false acknowledgement of paternity. There used to be a provision in the law, that the residence permit will not be cancelled if a child was born from the marriage or a child was irrevocably adopted during the marriage. It was found out in the last years that the respective provisions can be misused (according to the information given by the Foreigners' Police in 2007 the applications for the residence permit for the reasons family reunification increased considerably and many cases of clear misuse were found out) and therefore the more restrictive attitude had been chosen. The protection of best interest of a child should be ensured by the provision which stipulates that the decision of respective authority must not have inadequate impact to a private or family life of the person concerned. Practice will show whether this provision will ensure proper application.

## **2. ACCESS TO WORK**

The Sec. 3 of Employment Act stipulates that the *citizens of another EU Member States and their family members* are at the *same legal position* in legal relations regulated by this Act as Czech citizens, unless provided otherwise. Furthermore Sec. 85 defines *foreign employees* who for the purposes of this Act as individuals who are neither citizens of the Czech Republic or of the European Union nor their family members. Therefore EU citizens and their family members do not need to obtain the work permit pursuant to the provisions of the Czech laws, and their employers do not have to apply for the permit to engage foreign workers. There is only an information obligation towards the Labour Office (*Sec. 87, 102 of Employment Act*).

## **3. ACCESS TO EDUCATION AND STUDY GRANTS**

The school attendance in the length of 9 years is compulsory for Czech citizens, EU nationals and their family members residing on the territory upon a temporary or permanent residence permit.

*EU citizens and their family members* have access to elementary and secondary education upon the same conditions as Czech citizens (*Sec. 20 (3) Act on Education*). The elemen-

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tary and secondary education on the governmental schools is declared as free of charge (*Sec. 2 of Act on Education*). The sufficient knowledge of the Czech language is required for secondary and higher vocational schools, and can be attested during the entrance exams or by an interview taken by the school (*Sec. 20 (4) of Act on Education*). Czech language courses for free are offered to children to integrate them to elementary schools (*Sec. 20 (5) of Act on Education*).

All students regardless of their nationality have access to the institutions of higher education (state university education) in the Czech language. The universities can establish conditions for the university education of foreigners. All students have equal access to study grants and have the right to scholarships granted to students for their outstanding scholastic achievements, for outstanding study results, in case of student's strenuous social situation and in other cases worth special consideration (*Sec. 91 of Act on University Education*). Students can also study within the framework of the foreign development aid of the Czech Republic and under bilateral international agreements on co-operation in the field of education.

### **4. OTHER ISSUES CONCERNING EQUAL TREATMENT (SOCIAL AND TAX ADVANTAGES)**

As regards the Income Tax Act the situation of the dependent family member from another Member States is in the same position as the Czech national if he has tax domicile in the Czech Republic (Sec. 2 of Income Tax Act). From the year 2004 even persons without the tax domicile (normally person who do not habitually reside in the Czech Republic, *i.e.* mainly frontier workers) can require the tax reduction or tax bonus for a child and tax-relief for a spouse.

#### ***Judicial practice***

Decisions on the term public policy: Judgment of the Supreme Administrative Court of 16<sup>th</sup> May, 2007, case No. 2 As 78/2006-64, [www.nssoud.cz](http://www.nssoud.cz), Judgment of Municipal Court of Prague from February 20, 2007, No. 10 Ca 330/2006-89; see above in Chapter I.

#### ***Recent legal literature***

Čechovský, M., Interpretace a aplikace tzv. výhrady veřejného pořádku obsažené v §87k odst.1 písm.b) zákona o pobytu cizinců v řízení ve věci žádosti o povolení k trvalému pobytu za účelem sloučení rodiny (Interpretation and Application of the Public Policy Notion pursuant to the Sec. 87k (1) (b) Foreigners' Residence Act), in *Bulletin advokacie*, č. 4 (ročník 37), duben 2007, p. 46-49.

## Chapter VI

### Relevance/Influence/Follow-up of recent Court of Justice judgements.

#### *Text(s) in force*

- Act No. 117/1995 Coll., on State Social Support, as amended,
- Act No. 100/1988 Coll., on Social Security, as amended,
- Act No. 108/2006 Coll., on Social Services, as amended,
- Act No. 626/2006 Coll., on Assistance in Need Act, as amended,
- Act No. 110/2006 Coll., on Subsistence Minimum,
- Act No. 329/1999 Coll., Foreigners' Residence Act, as amended, in the consolidated version as Act No. 42/2008,
- Act No. 435/2004 Coll., Employment Act, as amended.

At first it needs to be mentioned that in general it is not very common for Czech authorities to use *judgements of ECJ* in their activities. This is in contrary to the positive trend as in regard to references to other sources of EU law. The result of such practice is a broad use of EU legislation in the activities of relevant national authorities, however, hardly any reference to ECJ judgements can be found.

As regards judgements of national courts it has to be considered that in general it is difficult to assess the overall respect for ECJ judgements and their influence on decisions of the lower courts level, as in the Czech Republic there is no official publication of the case law of lower courts. The judgments of lower courts are being published only partly electronically by private companies. Therefore the significance of ECJ judgements for national courts and the extent of their influence can be evaluated merely on the basis of the case-law databases and collections covering in particular decisions of the Constitutional Court, the Supreme Court and the Supreme Administrative Court. The examination of these case-law databases and collections revealed that in 2007 the above mentioned courts did make reference to ECJ decisions; however, there is no new case-law which specifically refers to the issue of free movement of workers matter.

It is noteworthy that Czech authorities recognize in their information materials (e.g. official websites of the Ministry of labour and social affairs) the principal importance of ECJ judgements in the field of social security and list them together with the Regulations 1408/71 and 574/72, as well as decisions of the Administrative Commission on social security of migrant workers as principal sources of law governing this field. However, due to the general character of information provided, they often lack up-to-datedness' in respect of current ECJ decisions. The fact of mentioning ECJ judgements shows at least a certain awareness of them.

The implementation or possible impact of ECJ judgements, which are of special interest to the Commission, shall be examined in the following text.

In the Case C-287/05 *Hendrix* the ECJ ruled that it is not contrary to the Treaty, Art. 39, for a member State to validly reserve benefits for young disabled persons residing on the territory of the Member State providing such benefits, which fall into category of special

non-contributory benefits within the meaning of Article 4 (2a) and Article 10a of Council Regulation No. 1408/71, and which are listed in the Annex IIa to Regulation 1408/71.<sup>30</sup>

Member States were required to list/submit benefits which are considered to fall within the category of “special non-contributory benefits” for listing of those benefits in the Annex IIa to Regulation 1408/71. The Czech Republic listed/submitted social benefits which are granted on the basis of the State Social Support Act. However, benefits to disabled persons are in general regulated by the Act No. 100/1988 Coll. on Social Security. Nevertheless, a special non-contributory benefit payable to young persons suffering from total or partial long-term incapacity for work before joining the labour market does not exist in the Czech Republic. The only provision regarding the social benefits of young disabled persons can be found in the Act No. 155/1995 on Pension Insurance granting an invalidity pension to very young people who never worked, because they are disabled from the day of birth, or became disabled when they were very young.

Benefits for disabled persons are in general granted to persons with permanent residence in the Czech Republic under the Czech law.<sup>31</sup> But they can be granted also to citizens of other EU member States, who are entitled to them pursuant to direct applicable EU law, i.e. EC Regulations 1612/68 and 1408/71. Both regulations are directly applicable and no transposition into national law took place. Only in cases falling outside of the scope of applicability of the directly applicable Regulations 1612/68 and 1408/71, national laws apply. In case that national law apply the requirement of previous stay of 3 months is applicable to EU citizens and their relatives in order to be entitled to benefits for disabled persons (and to social benefits in general on the basis of Act No. 100/1998 Col., on Social Security).

### ***The Cases Geven, Hartmann and Hendrix***

The Cases C-213/05 *Geven* and C-212/05 *Hartmann* both concern social benefits, *in concreto* the German Erziehungsgeld (child raising allowance).

The Case C-212/05 *Hartmann* is based on the refusal of German authorities to give a child raising allowance to a spouse of a migrant worker carrying on an occupation in one Member State, who does not work and is resident in another Member State. The problem of whether such worker and/or his/her spouse fall within the scope of the Regulation 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community appears in the Czech legal context as unlikely.

One of the reasons is the non-existence of a social benefit comparable to the German Erziehungsgeld in Czech social system. Furthermore under Czech law governing social benefits, EU citizens are entitled to social benefits pursuant to Regulations 1612/68 and 1408/71. Provisions of the State Social Support Act No. 117/1995 Coll., which can be considered as the basic national legislation specifying social benefits and conditions, under which they are granted, refer to the directly applicable Regulations 1408/71 and 1612/68. Thus the issue of frontier workers, i.e. persons who are employed in one State while residing in another State and who return to their State of residence at least once a week (Article 1(b) of Regulation 1408/71) is regulated in the Czech Republic by direct application of Regulations 1408/71 and 1612/68. Therefore as regards to the classification of a person as a migrant worker it can be assumed, that under legislation applicable in the Czech Republic, a national

<sup>30</sup> In this case the benefit was provided under the Law on provision of incapacity benefit to disabled young people (“Wet arbeidsongeschiktheidsvoorziening jonggehandicapten” in Dutch).

<sup>31</sup> § 103 Act No. 100/1988 Coll., on Social Security as amended.

of a Member State who, while maintaining his employment in that State, has transferred his residence to another Member State and has since then carried on his occupation as a frontier worker can also claim the status of migrant worker for the purposes of Regulation No. 1612/68.

Taking into account this conclusion, also family members of a migrating worker would be entitled to social benefits under the Regulations stated above. From this it follows, that also the question of granting a social benefit to the spouse of a migrant worker carrying on an occupation in one Member State, who does not work and is resident in another Member State, would be in the Czech legal context most probably resolved in conformity with the *Hartmann* judgement. However, in the case, that in Czech social care scheme a benefit comparable to German child raising allowance would be granted, it is most probable – especially when taking into consideration the national court arguments in *Hartmann* Case regarding the character of the German child-raising allowance as an instrument of national family policy, that Czech courts would have to submit the case to the ECJ for a preliminary ruling under Article 234 EC.

In the Case C-213/05 *Geven* the ECJ dealt with the question of granting German child raising allowance again. The situation was similar to the Case C-212/05 *Hartmann*, whereas the refusal to grant the benefit was based on the fact that the applying non-resident worker does not have a sufficiently substantial occupation in the Member State concerned.

As already stated, the Czech social system does not comprise a social benefit comparable to German child raising allowance. At the same time the ECJ recognized, that the access of migrating workers to social benefits in the field of family policy can be limited by proportional requirements, which have to prove a connecting link to the Member State providing the benefit. Therefore it can be estimated, that in case of existence of similar child raising allowance in the Czech Republic, the legislative would require fulfilment of conditions similar to those in the Case *Geven*, which can be considered as proportionate and therefore not in contrary to the Article 7(2) of Regulation No 1612/68 providing the migrating workers with the same rights as the national workers.

In the Case C-287/05 *Hendrix* the ECJ ruled that it is not contrary to the Treaty, Art. 39, for a member State to validly reserve benefits for young disabled persons residing on the territory of the Member State providing such benefits, which fall into category of special non-contributory benefits within the meaning of Article 4 (2a) and Article 10a of Council Regulation No. 1408/71, and which are listed in the Annex IIa to Regulation 1408/71.<sup>32</sup>

Member States were required to list/submit benefits which are considered to fall within the category of “special non-contributory benefits” for listing of those benefits in the Annex IIa to Regulation 1408/71. The Czech Republic listed/submitted social benefits which are granted on the basis of the State Social Support Act. Benefits to disabled persons in general, however, are in the Czech legal system regulated by the Act No. 100/1988 Coll. on Social Security. Nevertheless, in the Czech Republic, a special non-contributory benefit payable to young persons suffering from total or partial long-term incapacity for work before joining the labour market does not exist. The only provision in regard to social benefits of young disabled persons can be found in the Act No. 155/1995 on Pension Insurance, as amended, granting an invalidity pension to very young people who never worked, because they are disabled as of birth, or became disabled when they were very young.

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<sup>32</sup> In this case the benefit was provided under the Law on provision of incapacity benefit to disabled young people (“Wet arbeidsongeschiktheidsvoorziening jonggehandicapten” in Dutch).

***The Cases Yunying Jia, Eind and Gattoussi***

The Cases C-1/05 *Yunying Jia*, C-291/05 *Eind* and C-97/05 *Gattoussi* all concern the position of third country nationals under free movement law, *in concreto* the right to residence in an EU member State. It has to be noted that none of these ECJ judgments was referred to *explicitly* in decisions of national Courts or other authorities.

In C-1/05 *Yunying Jia* the ECJ ruled, following-up its judgement in Case C-109/01 *Akrich*, that a member State is not required to make grant of a residence permit to a third country national subject to the condition of lawful residence in a member state.

The questions of position of third country nationals in the Czech Republic are governed by the Foreigners' Residence Act No. 326/1999 Coll. The Foreigners' Residence Act includes a special provision regulating the residence of EU citizens and their family members, following the Directive 2004/38, in particular its Article 2. The last amendment to the Foreigners' Residence Act mentions in its Explanatory report only the ECJ judgement C-200/02 *Zhu and Chen*. The change of national legislation makes a follow-up of this case.

Family members of an EU citizen pursuant to Section 15a para. 1 Foreigners' Residence Act include *inter alia*: spouse; parent, if the citizen of the European Union is younger than 21 years of age and dependent and they are living under the same roof (in a common household); child younger than 21 years of age or such child of the spouse of a European Union citizen; dependent direct relative in the ascending or descending line or such relative of the spouse of a European Union citizen (See Chapter V. for details). Therefore, in case such as C-1/05 *Yunying Jia*, Section 15a para. 1d Foreigners' Residence Act would be applicable. For the entry of such persons the Czech law requires presentation of entry visa (if needed) and a proof that he/she is a family member of a European Union citizen. As regards conditions for residence permit, under Section 87b Foreigners' Residence Act a family member of an EU citizen is obliged to request the Police for a temporary residence permit in the case he intends to stay on the territory of the Czech Republic for more than 3 months. Such person must prove the fact of being family member to the EU citizen and in the case of an foreigner as defined by Subsection 15a (1)(d), a document confirming that he/she is a dependant person must also be submitted. These provisions do not make the grant of a residence permit to nationals of a non-member State subject to condition of previous legal stay in another member State. In this matter, the Czech law is in conformity with the relevant EU law and ECJ judgements. Previous legal stay may play its role in case that the person concerned does not possess a visa (in case the visa is needed) and the entry without a visa or stay without a visa is conditioned by the existing residence card issued by another member state. But it is not a precondition.

However, the last mentioned requirement of "proof of dependency", which was in question in the C-1/05 *Yunying Jia* Case, might be problematic in the Czech legal context. According to the case-law of the Court, "the status of 'dependent' family member is the result of a factual situation characterised by the fact that material support for that family member is provided by the Community national who has exercised his right of free movement or by his spouse (see, in relation to Article 10 of Regulation No 1612/68 and Article 1 of Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26), *Lebon*, paragraph 22, and Case C-200/02 *Zhu and Chen* [2004] ECR I-9925, paragraph 43, respectively)". Therefore, there is no need to determine the reasons for recourse to such support or to raise the question whether the person concerned is able to support himself by taking up paid employment. The Czech legislation, however, limits the reasons for dependency in

a pretty strict way, stating in Section 15a para. 3 Foreigners' Residence Act, that a dependent person is considered to be an foreigner who is systematically preparing for a future occupation; or cannot systematically prepare for a future occupation or cannot perform gainful activity due to illness or injury; or is unable to perform systematic gainful activity due to a long-term unfavourable state of health. Hence this provision appears to be inconsistent with the conclusions in the ECJ *Yunying Jia* judgement on interpretation of Article 6 (b) of Directive 73/148.

In the Case C-291/05 *Eind* the ECJ ruled, that in the case of a Community worker returning to the Member State of which he is a national, Community law does not require the authorities of that State to grant a right of entry and residence to a third country national, who is a member of that worker's family, for the mere fact, that in the host Member State where that worker was gainfully employed, that third-country national held a valid residence permit issued on the basis of Article 10 of Regulation No. 1612/68.

Family members of EU citizens are under Czech law granted the right to entry and to obtain temporary residency permit on the grounds of the mere fact, that they enjoy the status of a family member of an EU citizen. Therefore it appears that Czech legislation is in the context of the Case C-291/05 *Eind* in conformity with the conclusions of the Court.

In the Case C-97/05 *Gattoussi*, concerning effects of provisions of the Euro-Mediterranean Agreement (EMA), the Court held in conformity with its previous judgements (*El-Yassini*) that if the host Member State has previously granted the migrant worker specific rights in relation to employment which are more extensive than the rights of residence conferred on him by that State, it cannot then re-open the question of that worker's situation on grounds unrelated to the protection of a legitimate national interest.

A direct reference of this ECJ judgement in activities of national authorities in 2007 could not be revealed. However, the circumstances and outcome of the case in the Czech legal context may be assessed.

According to the judgement of the ECJ, the provision of Article 64 para. 1 EMA has a direct effect. It might be noted that as EMA forms a part of *acquis communautaire* enjoying primacy over the law of the Member States, it would (1) prevail over inconsistent Czech legislation and (2) have direct effect in the Czech national legal system. However, these facts may remain out of consideration for following reasons based on the grounds of legal context applicable in the Czech Republic:

Under the Czech law, the work permit is accessory to the residence permit. Pursuant to Sec. 100 Sub. 1 c) Employment Act the validity of the work permit expires with the expiration of the residence permit. Therefore the validity of a work permit for a Tunisian national would be from the point of its issue limited by the validity of the residence permit.

In the case the Tunisian national is a family member of an EU citizen, he would be considered as a person covered by the Regulation No. 1612/68 and therefore under the Czech Employment Act as a person granted the same rights as those of Czech citizens under the Employment Act. Consequently, such third country national, who was granted a residence permit (temporary or permanent) for the reasons of being a family member of an EU citizen, would not be required to obtain a work permit, as he would be treated in the same way as Czech nationals. In the case of residence permit expiration, such person would also loose rights granted under the Employment Act.

According to the conclusions of the ECJ judgement in regard to the effect of Art. 64 para. 1 EMA the right to remain applies to a situation, where the Member State granted more extensive rights in relation to employment than to residence. However, this would not be the

case in the Czech Republic, as from what has been stated above it can be followed, that a Tunisian national, regardless of his capacity as a family member of an EU citizen, could not be granted a work permit more extensive than the permit of residence. Thus the Czech law appears not to be in conflict with the findings of the *Gattoussi* Case.

It also appears noteworthy to mention the impact of the last amendment (Act No. 379/2007 Coll.) to the Foreigners' Residence Act No. 329/1999 on the position of family members of EU citizens. The old version of the law gave the possibility to grant a permanent residence permit to the spouse of an EU or Czech citizen *inter alia* immediately after the request upon the condition that the TCN family member was (1) a family member of a citizen of the Czech Republic who was registered as a permanent resident in the CR or (2) a family member of a citizen of another EU member state who had been issued a permanent residence permit in the territory of the CR. This condition does not apply anymore. Instead two years of continuous stay in the CR are required (from that at least one year as a family member).

### ***The Case ITC***

Taking into consideration the judgement of the ECJ in the *ITC case*, it seems that it is difficult to adjust the main questions of the case to the Czech legal system. According to the ECJ judgement, the provisions of the EC-Treaty concerning free movement of workers "prohibit national legislation, which provides that payment by a Member State to a private-sector recruitment agency of the fee due to that agency by a person seeking employment in respect of that person's recruitment is subject to the condition that the job found by that agency be subject to compulsory social security contributions in that State".

In the Czech legislation governing the employment issues, there not only a possibility of a payment by the State to a private-sector recruitment agency does not exist, but the national legislation (*in concreto* Section 58 para. 2 of the Act No. 435/2004 Coll., Employment Act) also prohibits to demand payments for recruitment service agencies from a job seeking person (applies to natural persons only). Thus the Czech legislation contains provisions regarding recruitment agencies, however, financial support by the State is granted in the case of fulfilment of further conditions to job seekers and to employers only - recruitment service agencies are not included. Therefore the probability, that a question of non-compliance of a national legislation such as the one on issue in the *ITC case* with the relevant EU law appears in the Czech legal context as low.

The case of *Commission v Spain* (case C-503/03) had been implemented to the Czech legal order by the law No. 379/2007 Coll., which changed the Foreigners' Residence Act. The law stipulates that the police will refuse entry to the territory to a TCN family member of an EU citizen *inter alia* if he/she is included in the information system of contracting states. The law places a condition here to ensure, that the entry will not be deny on the sole ground that he/she appear on the list in the Schengen Information System. The Czech Police must be in contact with the state which included the person in the system; this state must confirm that the person continues to constitutes danger to public policy or public security (*Sec. 9 (3) (b) FORA*).



## **Chapter VII**

### **Policies, Texts and/or Practices of a General Nature with Repercussions on Free Movement of Workers**

Community preference principle is applied pursuant to the provisions of the Employment Act. Sec. 3(2) of Employment Act stipulates that the citizens of other Member States and their family members have equal position with the Czech citizens in the field of employment, i.e. access to employment, access to the public employment services including registration in order to seek work etc. (the only exemption is a duty of the employer to notify the employee to the labour office for the purpose of collection statistical data. The obligation to obtain the work permit applies only to third country nationals who are not family members of the EU citizen. There are several exceptions for special categories of TCN who are not family members and have access to the labour market without a work permit; those are *inter alia* foreigners who have been issued a permanent residence permit (the highest national residence permit status); a family member of a member of a diplomatic mission; a foreigner who has been granted international protection etc. (*Sec. 98 of Employment Act*).

The Czech Republic faces the problem of labour force shortage and adopts measures to make access of third-country nationals to the Czech labour market faster and easier and also to make the Czech Republic more attractive for TCN.

#### *System of green cards*

The system of green cards, which has been under the process of adoption, intends to introduce a dual type of documents enshrining both work and residence permits. Objective of this change is to make access of third-country nationals to the Czech labour market faster and easier. This element of migration policy should support circular migration.

The green cards are planned to be issued for vacancies that cannot be filled up by the Czech nationals or nationals of other EU Member States and their family members in 30 days as of their notification to a labour office by an employer. This mechanism should ensure a sufficient protection of the Czech labour market. There should be two categories eligible for the system: qualified workers (those with university level education and key personnel) and others (skilled workers with apprentice level education). There are two conditions for issuing such a permit in general: contract of future employment and required minimum level of qualification. Length of validity of the green card should be 3 years for qualified workers and 2 years for skilled workers. The green card holders should be given a two-month protection period in case they lose their jobs to prevent negative impacts of the loss into their lives. There are no other specific rights in comparison with other third country nationals that would be accorded to them. The green cards should be issued in 30 days that would shorten current periods and make the whole procedure for getting into the territory of the Czech Republic for the purpose of employment faster. These changes reflect requirements of the employers who call for making the whole process much faster and less complicated to get the employees who they need. Shortage of labour has already been indicated in some employments and regions and demand for qualified and skilled labour has been increasing.

The new system should be effective as of 2009 provided that all necessary amendments in particular to the Act No 326/1999 Coll., on Residence of Foreigners and to the Act No

435/2004 Coll., Employment Act, will be adopted. The respective draft amendments were submitted into interministerial discussions in December 2007.

***Pilot project “Selection of Qualified Foreign Labour”***

The Czech Republic continues to use the Pilot project “Selection of Qualified Foreign Labour”. The project<sup>33</sup> started in July 2003 and target countries have been selected with respect to 5-year pilot phase. Its purpose is to bring qualified foreign workers to the Czech Republic together with their families to settle. The target countries are following: Croatia, Kazakhstan, Belarus, Moldova, Canada, Serbia and Montenegro, Ukraine, Bosnia and Herzegovina, Macedonia, India and Russian Federation. Moreover there are other eligible groups set out. Foreign graduates of Czech universities and high schools having graduated in 1995 or later regardless their nationalities except those who studied under the development aid schemes can also apply for the project. The prerequisites for participation in the project besides nationality of one of the target countries or graduation at the Czech university or high school are a work permit and residence permit issued for the purpose of employment and minimum qualification.

Since 2003 there have been approx. 1,000 participants at the end of 2007 that entered into the two-and-half-years probation period after which they are allowed to apply for the permanent residence permit in the Czech Republic together with their family members (another approx. 1 000 persons). After expiry of the probation period there is a “level of integration” assessment performed by the Ministry of Labour and Social Affairs. The assessment involves employers, local municipal representatives and educational institutions to give an answer to an elementary question whether the participants have met objectives of the project i.e. if they managed to integrate into the Czech society or not. Upon a positive answer they are recommended to the Foreigners’ and Border Police Service for granting of a permanent residence permit. There were approx. 200 participants to whom the permanent residence permits had already been issued in December 2007.

The project may be seen as not that successful as it was anticipated. The numbers of applicant are much lower than it was expected in the beginning of the project,<sup>34</sup> the interest of the target group was not high enough, although the program offers a number of advantages, as a month’s protective period to find a new job or shorter waiting period to obtain a permanent residence permit (a highest national status). The report on the project given by the Ministry of Labour and Social Affairs to the Government pointed out several difficulties which the clients of the project were facing.<sup>35</sup> The criteria for participation in the project were therefore made more attractive (the period after which the permanent residence will be granted was shortened for some groups of persons etc.). The opinion on failure of this project might be indirectly seen in the approach of the Government when the above mentioned Green Card system was announced. The Minister of Labour and Social Affairs spoke about

<sup>33</sup> The project is based on the Governmental Resolutions No. 975/2001, 720/2002, 340/2004, 394/2005, 1377/2005 and 431/2006.

<sup>34</sup> E.g. the figures that were mentioned in the first detailed plan were (maximum) 600 participants in the first year and (maximum) 1400 in the second year; see Government Resolution No. 720 from July 10, 2002, p. 7, see <http://www.imigracecz.org/?lang=en&article=project-legislative> (Czech only; opened on August 10, 2008).

<sup>35</sup> Report of 2004 mentions “a difficulty to find a job in the Czech Republic, which is related to the requirement to obtain a work permit and visa for more than 90 days for the purposes of employment”, see [http://www.imigracecz.org/download/usneseni\\_vlady\\_340.en.pdf](http://www.imigracecz.org/download/usneseni_vlady_340.en.pdf), p. 3 (in English, opened on August 10, 2008). The process is rather administratively intensive.

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maximum of tens of thousands of persons which may come to CR.<sup>36</sup> The newly proposed Green Card system seems to learn from the difficulties which the Selection of Qualified Foreign Labour project is facing and creates a system which tries to meet the expectations of the Government.

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<sup>36</sup> See interview with P. Necas, Minister of Labour and Social Affairs, <http://www.mpsv.cz/cs/4598> (Czech only; opened on August 10, 2008).

## Chapter VIII

### EU enlargement

#### *Texts in force*

- Government Resolution No 13/2004 on the position of the Government to transitional period on free movement of workers
- Government Resolution No 1345/2006 on the position of the Government concerning free movement for nationals of Bulgaria and Romania
- Act No 435/2004 Coll., Employment Act, as amended
- Act No 379/2007 Coll. amending Act No 326/1999 Coll., on Residence of Foreigners as amended, and other Acts
- Act on Accession of the Czech Republic to the EU

#### **1. INFORMATION ON TRANSITIONAL ARRANGEMENTS REGARDING MEMBER STATES WHO JOINED THE EU IN 2004**

As regards the transitional periods situation in the year 2007 did not change. Prior to joining the EU the Czech Republic did not renounce the possibility to introduce transitional measures towards Member and Acceding States upon evaluation of situation on the labour market (Government Resolution 13/2004). In the year 2007 the Czech Republic did not introduce any transitional measures towards other Member States even though the Act on Accession, the Government Resolution No.13/2004 Coll. and the Sec. 103 of the Employment Act enabled the Government to do so.

As far as further application of the transitional arrangements by other Member States towards the Czech Republic is concerned, some Member States of the EU-15 decided to maintain the transitional measures (Austria, Germany), while others decided to open their labour markets partly for selected sectors or professions (Belgium, Denmark and France) or fully (Finland, Greece, Italy, Luxemburg, Netherlands, Portugal, Spain, United Kingdom, Ireland and Sweden). In case of the partial opening of the labour markets in the respective Member States the work permits have been issued under easier and faster procedures. As regards the EU-8 the transitional measures towards the Czech Republic have not been introduced as of the date of joining the EU.

The proposed amendment to the Employment Act brings a change into the Sec.103 of the Act No 435/2004 Coll., Employment Act.<sup>37</sup> Its objective is to reformulate the respective provision in order to make it more general for any further enlargement of the European Union.

#### ***1.2. Changes in position with regard to the second phase of the transitional arrangements***

As stated above the second phase of the transitional arrangements did not bring any changes as far as an access of the nationals of other Member States to the Czech labour market is concerned. There were not restrictive measures adopted towards either the Member States of EU-15 or the Member States of EU-8.

<sup>37</sup> Governmental Draft Law No. 188, available at <http://www.psp.cz/sqw/historie.sqw?o=5&T=188> (opened on February 18<sup>th</sup>, 2008).

***1.3. Details of the legal regime, including relevant legislation, applicable for the second phase***

As mentioned above in the year 2007 the Czech Republic did not introduce any transitional measures towards other Member States even though the Act on Accession, the Government Resolution No 13/2004 Coll. and the Sec. 103 of the Employment Act enables the Government to do so.

The proposed amendment to the Employment Act brings a change into the Sec.103 of the Act No 435/2004 Coll., Employment Act. Its objective is to reformulate the respective provision in order to make it more general for any further enlargement of the European Union.

For comparison there are stated both wording of the Sec.103 before and after the respective change.

The wording of Sec. 103 in the year 2006 was as follows:

**Sec. 103**

If a Member State of the European Union adopts towards citizens of the Czech Republic and their family members, under conditions set out in the Agreement on the Accession of the Czech Republic to the European Union, a national measure or suspends fully or partly the application of Sections 1 through 6 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement of workers within the Community, the Government may decree towards which Member State and to what extent the Czech Republic will adopt a reciprocal measure.

If in connection with freedom of movement of workers on the basis of an application the Czech Republic announces to the European Commission, under conditions set out in the Agreement on the Accession of the Czech Republic to the European Union, full or part suspension of the application of Sections 1 through 6 of Council Regulation (EEC) No 1612/68 the Czech Republic in order to restore the normal state of the labour market in a given area or in employment, the Government may decree towards which Member State and to what extent the Czech Republic will suspend the application of Sections 1 through 6 of Regulation (EEC) No 1612/68.

The new wording of Sec. 103 as proposed at the end of the year 2007 is as follows:

**Sec. 103**

If an international agreement whose ratification was agreed by the Parliament of the Czech Republic and which is binding for the Czech Republic, or the European Communities' law enables to suspend wholly or partly application of provisions of the European Communities' law regarding access to employment, the Government under conditions set out in the respective international agreement or the respective law may decree towards which Member State and to what extent the Czech Republic will make use of this possibility. The Government may decree under the same conditions requirements for access to the labour market for nationals of the state concerned.

**2. INFORMATION ON TRANSITIONAL ARRANGEMENTS REGARDING MEMBER STATES WHO JOINED THE EU IN 2007**

As regards position towards free movement of nationals of Bulgaria and Romania there was not any change in 2007. The Government Resolution No 1345/2006 of November 2006 in which was stated the Czech Republic would not introduce measures restricting access of nationals of Bulgaria and Romania to the labour market as of the date of accession of these two states to the EU was applied. Nevertheless this Resolution did not renounce the possibility to introduce such restrictions later upon assessment of current situation on the Czech labour market.

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Opening the Czech labour market to nationals of these Member States did not give rise to adoption of any measures even though current figures on employment of Bulgarian and Romanian nationals were quite high in comparison with the situation before their joining the EU (end of the year 2006: employment of Bulgarian nationals: 1671, employment of Romanian nationals: 819, end of the year 2007: employment of Bulgarian nationals: 5393, employment of Romanian nationals: 4313).

Positive approach towards free movement of nationals of these two countries was based on the consistent position of the Czech Republic in the matter of free movement of persons as one of fundamental freedoms belonging to the EU citizens and an elementary condition for existence of the internal market.

## Chapter IX Statistics

### 1. DURATION OF MOBILITY

At the end of 2007 there were more than 392.000 foreigners (EU citizens and third country nationals) with a residence permit in the Czech Republic, making up 3,77 % of the total population. There were more than 234.000 of foreigners with temporary residence permit, and more than 158.000 with permanent residence permit.

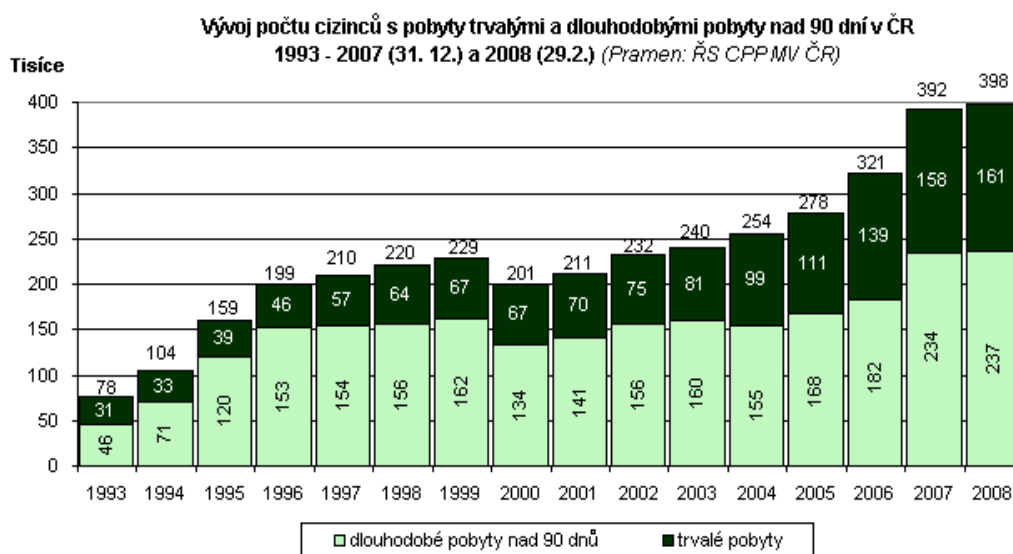
The largest number of foreigners from EU Member States was composed by Slovak citizens, then Polish and German citizens. The third country nationals were originally mainly from Ukraine, Vietnam and Russian Federation.

The general figures on third country nationals unfortunately do not differ between third country nationals who are family members of EU citizens and third country nationals who are not family members of EU citizens, therefore this kind of figures cannot be found in this report. According to the information of Czech Statistical Office the figures should be available in the future.

#### *General information*

The graph below illustrates the total number of foreigners; it contains figures on both EU citizens and TCN citizens (in thousands). The graph contains the most general figures and is used to illustrate the overall situation, so that the figures of EU and non-EU citizens can be compared accordingly. The next tables give the detailed information relevant to the report.

*Graph No. 1: Trends in figures of foreigners with temporary and permanent residence (in thousands).*



Source: Czech Statistical Office, 2007.

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Table No. 1: Employment of foreigners by country, sex and status in employment; 31 December 2007

Source: Ministry of Labour and Social Affairs CR-  
Employment Services Agency; Ministry of Industry and  
Trade of CR

Country	Employed foreigners, total				Registered at labour offices				Trade licence holdem			
	Total	Males	Females	% of females	Total	Males	Females	% of females	Total	Males	Females	% of females
<b>Foreigner (total)</b>	<b>309 027</b>	<b>210 285</b>	<b>98 742</b>	<b>32,0</b>	<b>240 242</b>	<b>161 406</b>	<b>78 836</b>	<b>32,8</b>	<b>68 785</b>	<b>48 879</b>	<b>19 906</b>	<b>28,9</b>
<b>EU / EEA / EFTA, total</b>	<b>159 580</b>	<b>111 515</b>	<b>48 065</b>	<b>30,1</b>	<b>144 751</b>	<b>99 493</b>	<b>45 258</b>	<b>31,3</b>	<b>14 829</b>	<b>12 022</b>	<b>2 807</b>	<b>18,9</b>
Slovakia	109 917	73 888	36 029	32,8	101 233	66 568	34 665	34,2	8 684	7 320	1 364	15,7
Poland	24 931	18 676	6 255	25,1	23 642	17 839	5 803	24,5	1 289	837	452	35,1
Bulgaria	6 319	4 480	1 839	29,1	5 393	3 764	1 629	30,2	926	716	210	22,7
Romania	4 538	3 422	1 116	24,6	4 313	3 237	1 076	24,9	225	185	40	17,8
Germany	4 108	3 323	785	19,1	2 847	2 344	503	17,7	1 261	979	282	22,4
United Kingdom	2 446	2 038	408	16,7	1 804	1 477	327	18,1	642	561	81	12,6
France	1 446	1 114	332	23,0	1 250	972	278	22,2	196	142	54	27,6
Austria	1 032	878	154	14,9	720	614	106	14,7	312	264	48	15,4
Italy	1 011	878	133	13,2	615	521	94	15,3	396	357	39	9,8
Netherlands	654	538	116	17,7	509	420	89	17,5	145	118	27	18,6
Hungary	559	428	131	23,4	457	348	109	23,9	102	80	22	21,6
Lithuania	513	262	251	48,9	399	215	184	46,1	114	47	67	58,8
Spain	364	264	100	27,5	312	221	91	29,2	52	43	9	17,3
Belgium	265	220	45	17,0	208	169	39	18,8	57	51	6	10,5
Sweden	209	172	37	17,7	163	137	26	16,0	46	35	11	23,9
Ireland	212	171	41	19,3	162	132	30	18,5	50	39	11	22,0
Denmark	149	117	32	21,5	122	93	29	23,8	27	24	3	11,1
Switzerland	143	107	36	25,2	106	79	27	25,5	37	28	9	24,3
Greece	236	200	36	15,3	105	87	18	17,1	131	113	18	13,7
Finland	108	74	34	31,5	91	58	33	36,3	17	16	1	5,9
Slovenia	107	73	34	31,8	78	51	27	34,6	29	22	7	24,1
Portugal	85	64	21	24,7	75	56	19	25,3	10	8	2	20,0
Norway	45	36	9	20,0	41	33	8	19,5	4	3	1	25,0
Latvia	83	28	55	66,3	30	13	17	56,7	53	15	38	71,7
Estonia	31	19	12	38,7	25	14	11	44,0	6	5	1	16,7
Cyprus	30	19	11	36,7	19	10	9	47,4	11	9	2	18,2
Malta	19	13	6	31,6	14	10	4	28,6	5	3	2	40,0
Iceland	9	6	3	33,3	9	6	3	33,3	-	-	-	-
Luxembourg	10	6	4	40,0	8	4	4	50,0	2	2	-	-
Liechtenstein	1	1	-	-	1	1	-	-	-	-	-	-

The figures on EU/EEA/EFTA citizens who are employed can be seen in Table 1.

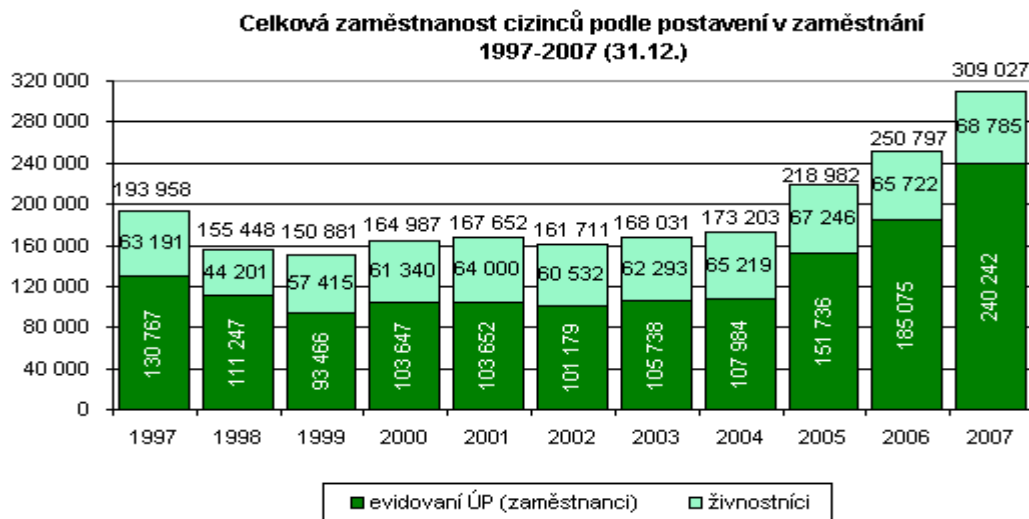
The total number of foreigners who are employed (green) or self-employed (blue) is illustrated by the graph No. 2, see below. The graph contains figures of EU citizens and TCN nationals. The figures here



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are lower than in the graph No. 1, as the number of economically active foreigners is lower than the total number of foreigners.

*Graph No. 2: Total number of foreigners (employed and self employed)*



Source: Czech Statistical Office, 2007.

The total number of employed foreigners till the 31<sup>st</sup> of December, 2007 was 309 027 persons. 240 242 (78 %) of them were employed foreigners, 68 785 (22 %) were holding trade licence (self employed).

### ***Employment***

The numbers of EU citizens who are employed can be seen in table 2. The number of self-employed EU citizens can be seen in table 3. The tables show the trends in the last decade. The largest groups of persons – EU citizens who were employed in the Czech Republic were formed by nationals of Slovakia, Poland, Bulgaria and Romania.

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Table 2. Foreigners holding valid trade licence of citizens of EU27 member states; 1996-2007 (31 December)

Source: MIT CR														
Country	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Difference 2007-1996	Difference 2007-2006
Foreigners, total	45 499	63 191	44 201	57 415	61 340	64 000	60 532	62 293	65 219	67 246	65 722	68 785	23 286	3 063
<b>EU 27 total</b>	<b>9 196</b>	<b>12 143</b>	<b>9 521</b>	<b>10 665</b>	<b>11 224</b>	<b>11 951</b>	<b>12 082</b>	<b>13 337</b>	<b>14 437</b>	<b>14 705</b>	<b>14 020</b>	<b>14 788</b>	<b>5 592</b>	<b>768</b>
<i>EU to foreigners holding trade licence, total (%)</i>	<b>20,2</b>	<b>19,2</b>	<b>21,5</b>	<b>18,6</b>	<b>18,3</b>	<b>18,7</b>	<b>20,0</b>	<b>21,4</b>	<b>22,1</b>	<b>21,9</b>	<b>21,3</b>	<b>21,5</b>	-	-
<i>Belgium</i>	37	51	45	43	39	46	47	49	46	52	51	57	20	6
<i>Bulgaria</i>	334	672	734	1 104	1 174	1 123	1 004	1 092	1 113	1 091	906	926	592	20
<i>Denmark</i>	12	14	8	12	15	16	17	16	20	20	24	27	15	3
<i>Estonia</i>	2	3	4	5	6	6	6	8	8	7	7	6	4	-1
<i>Finland</i>	6	7	6	5	8	9	12	13	19	19	18	17	11	-1
<i>France</i>	74	230	90	102	110	132	137	143	160	176	176	196	122	20
<i>Ireland</i>	4	7	7	13	11	12	19	25	31	39	42	50	46	8
<i>Italy</i>	185	239	204	243	263	303	307	334	351	387	364	396	211	32
<i>Cyprus</i>	7	8	6	6	6	8	8	10	12	12	10	11	4	1
<i>Lithuania</i>	6	11	7	17	19	21	21	18	38	66	92	114	108	22
<i>Latvia</i>	5	7	10	15	13	10	10	12	16	31	33	53	48	20
<i>Luxembourg</i>	5	5	1	3	2	2	2	2	2	3	3	2	-3	-1
<i>Hungary</i>	105	121	84	85	89	99	98	104	109	109	100	102	-3	2
<i>Malta</i>	1	1	1	1	1	2	2	2	2	4	5	5	4	0
<i>Germany</i>	1 238	1 410	761	799	837	940	949	1 005	1 103	1 164	1 200	1 261	23	61
<i>Netherlands</i>	90	118	87	95	100	124	127	125	132	141	137	145	55	8
<i>Poland</i>	667	878	797	940	1 033	1 051	1 081	1 126	1 251	1 294	1 238	1 289	622	51
<i>Portugal</i>	1	1	1	1	1	1	1	1	2	3	8	10	9	2
<i>Austria</i>	236	413	200	215	206	248	250	258	268	282	287	312	76	25

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Table 3. Foreigners registered at labour offices: citizens of EU27 member states; 1995-2007 (31 December)

Source: MLSA CR-ESA															
Country	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Difference 2007-1995	Difference 2007-2006
<i>Foreigners, total</i>	111 859	143 246	130 767	111 247	93 466	103 647	103 652	101 179	105 738	107 984	151 736	185 075	240 242	128 383	55 167
<b>EU 27, total</b>	<b>77 514</b>	<b>92 244</b>	<b>92 938</b>	<b>80 156</b>	<b>67 277</b>	<b>78 630</b>	<b>77 278</b>	<b>71 347</b>	<b>72 815</b>	<b>75 016</b>	<b>96 423</b>	<b>119 915</b>	<b>144 594</b>	67 080	24 679
<i>EU27 to total number of foreigners - LOs (%)</i>	<b>69,3</b>	<b>64,4</b>	<b>71,1</b>	<b>72,1</b>	<b>72,0</b>	<b>75,9</b>	<b>74,6</b>	<b>70,5</b>	<b>68,9</b>	<b>69,5</b>	<b>63,5</b>	<b>64,8</b>	<b>60,2</b>	-	-
<i>Belgium</i>	86	90	86	104	111	120	106	107	102	93	117	156	208	122	52
<i>Bulgaria</i>	841	1 442	3 322	2 721	1 657	1 523	1 863	1 985	1 792	1 651	1 732	1 953	5 393	4 552	3 440
<i>Denmark</i>	50	55	37	55	60	69	73	74	64	46	77	107	122	72	15
<i>Estonia</i>	11	10	16	8	11	8	7	13	10	3	9	19	25	14	6
<i>Finland</i>	22	32	57	62	68	76	59	59	38	32	46	69	91	69	22
<i>France</i>	391	457	470	540	585	621	613	702	727	509	671	1 067	1 250	859	183
<i>Ireland</i>	127	124	99	89	72	74	65	84	83	67	108	151	162	35	11
<i>Italy</i>	146	209	245	242	235	243	230	250	296	202	287	461	615	469	154
<i>Cyprus</i>	2	3	5	8	6	6	6	9	7	6	8	14	19	17	5
<i>Lithuania</i>	39	70	137	92	26	59	42	40	40	142	353	365	399	360	34
<i>Latvia</i>	14	19	25	16	15	19	19	26	23	9	14	31	30	16	-1
<i>Luxembourg</i>	0	2	3	2	3	3	3	5	7	5	7	9	8	8	-1
<i>Hungary</i>	37	79	73	75	66	72	73	100	75	131	165	253	457	420	204
<i>Malta</i>	0	3	6	7	5	8	7	8	7	4	7	11	14	14	3
<i>Germany</i>	1 462	1 457	1 536	1 545	1 466	1 452	1 218	1 306	1 412	1 303	1 743	2 383	2 847	1 385	464

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**2. REPARTITION BY GENDER/BRANCH/SKILLS-QUALIFICATIONS/REGION.**

Table 4 illustrates the area of employment of the top 10 countries (pursuant to the numbers of persons originally coming from the countries). It contains the figure on three main EU countries from where the workers came: Slovakia, Poland and Germany, citizens from Bulgaria and Romania are also mentioned there.

*Table 4. Foreigners registered at labour offices: top 10 of countries by CZ-NACE ACTIVITY; 31 December 2007*

		<i>Foreigners - labour offices, total</i>	<i>Slovakia</i>	<i>Ukraine</i>	<i>Poland</i>	<i>Mongolia</i>	<i>Moldova</i>	<i>Viet Nam</i>	<i>Bulgaria</i>	<i>Romania</i>	<i>Germany</i>	<i>Russia</i>
	<b>Total</b>	<b>240 242</b>	<b>101 233</b>	<b>61 592</b>	<b>23 642</b>	<b>6 897</b>	<b>5 503</b>	<b>5 425</b>	<b>5 393</b>	<b>4 313</b>	<b>2 847</b>	<b>2 488</b>
D	<i>Manufacturing</i>	<b>94 158</b>	<b>41 700</b>	14 245	<b>14 067</b>	5 889	1 837	4 809	<b>3 014</b>	<b>2 880</b>	<b>1 108</b>	377
F	<i>Construction</i>	<b>52 658</b>	<b>13 097</b>	31 954	<b>1 868</b>	344	2 159	126	<b>438</b>	<b>259</b>	<b>51</b>	271
K	<i>Real estate, renting</i>	<b>35 710</b>	<b>17 073</b>	7 110	<b>3 006</b>	384	579	172	<b>876</b>	<b>509</b>	<b>431</b>	842
G	<i>Wholesale and retail trade; repairs</i>	<b>19 377</b>	<b>10 970</b>	2 636	<b>679</b>	100	232	159	<b>347</b>	<b>146</b>	<b>294</b>	423
O	<i>Other community, social activities</i>	<b>6 814</b>	<b>2 468</b>	1 394	<b>508</b>	135	101	28	<b>128</b>	<b>61</b>	<b>466</b>	184
I	<i>Transport, storage and communication</i>	<b>6 621</b>	<b>4 048</b>	565	<b>425</b>	18	65	4	<b>369</b>	<b>74</b>	<b>78</b>	123
N	<i>Health and social work</i>	<b>5 023</b>	<b>4 316</b>	214	<b>91</b>	0	10	1	<b>24</b>	<b>8</b>	<b>14</b>	68
A01,A02,B	<i>Agriculture, forestry and fishing</i>	<b>4 887</b>	<b>1 389</b>	2 362	<b>139</b>	5	386	12	<b>106</b>	<b>312</b>	<b>21</b>	11
H	<i>Hotels and restaurants</i>	<b>4 756</b>	<b>2 319</b>	812	<b>48</b>	18	46	106	<b>44</b>	<b>28</b>	<b>54</b>	67
C	<i>Mining and quarrying</i>	<b>3 893</b>	<b>970</b>	90	<b>2 660</b>	1	71	0	<b>16</b>	<b>11</b>	<b>3</b>	1
M	<i>Education</i>	<b>3 586</b>	<b>1 288</b>	93	<b>102</b>	3	10	5	<b>17</b>	<b>11</b>	<b>201</b>	73
J	<i>Financial intermediation</i>	<b>1 910</b>	<b>1 153</b>	48	<b>25</b>	0	2	3	<b>5</b>	<b>9</b>	<b>112</b>	40
	<i>Other</i>	<b>849</b>	<b>442</b>	69	<b>24</b>	0	5	0	<b>9</b>	<b>5</b>	<b>14</b>	8

Source: MLSA, Czech Statistical Office, 2007.

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3. TRENDS

Table 5. Trend in the number of foreigners registered by labour offices - monthly; by sex, type of registration and selected countries; 31.1.2007 - 31.12.2007 (Source: Ministry of Labour and Social Affairs)

	1/07	2/07	3/07	4/07	5/07	6/07	7/07	8/07	9/07	10/07	11/07	12/07
<b>Total</b>	<b>182 044</b>	<b>187 973</b>	<b>194 374</b>	<b>198 740</b>	<b>202 704</b>	<b>209 338</b>	<b>213 813</b>	<b>218 791</b>	<b>222 804</b>	<b>234 213</b>	<b>239 373</b>	<b>240 242</b>
<i>Males</i>	124 889	128 817	132 801	135 752	138 349	142 392	144 798	147 831	150 449	157 735	160 804	161 406
<i>Females</i>	57 155	59 156	61 573	62 988	64 355	66 946	69 015	70 960	72 355	76 478	78 569	78 836
<i>Holding valid work permit</i>	58 542	59 945	61 918	63 957	66 156	68 715	70 573	73 259	75 601	78 560	81 612	85 351
<i>Information on foreigners - employees from third countries</i>	6 188	6 622	7 201	7 550	7 891	8 232	8 450	8 716	9 014	9 622	10 014	10 140
<i>Information on foreigners - employees (citizens of EU/EEA/EFTA)</i>	117 314	121 406	125 255	127 233	128 657	132 391	134 790	136 816	138 189	146 031	147 747	144 751
<i>Slovakia</i>	88 080	90 522	93 218	94 039	94 753	96 671	98 380	99 408	99 687	102 605	103 018	101 233
<i>Ukraine</i>	45 662	46 596	48 160	49 668	51 290	53 147	54 514	56 181	57 117	58 492	59 760	61 592
<i>Poland</i>	17 711	18 729	19 193	19 761	19 918	21 072	21 374	21 823	22 366	24 293	24 659	23 642
<i>Viet Nam</i>	797	885	1 039	1 125	1 306	1 496	1 653	1 810	2 332	3 455	4 398	5 425
<i>Mongolia</i>	2 997	3 326	3 487	3 666	3 839	4 035	4 263	4 757	5 412	5 786	6 482	6 897
<b>Bulgaria</b>	<b>1 871</b>	<b>2 124</b>	<b>2 441</b>	<b>2 788</b>	<b>2 929</b>	<b>3 239</b>	<b>3 489</b>	<b>3 667</b>	<b>3 870</b>	<b>5 275</b>	<b>5 415</b>	<b>5 393</b>
<i>Moldova</i>	3 321	3 447	3 656	3 828	4 013	4 272	4 513	4 835	4 961	5 155	5 311	5 503
<b>Romania</b>	<b>1 305</b>	<b>1 569</b>	<b>1 734</b>	<b>1 781</b>	<b>1 986</b>	<b>2 126</b>	<b>2 314</b>	<b>2 574</b>	<b>2 757</b>	<b>3 808</b>	<b>4 425</b>	<b>4 313</b>
<i>Russia</i>	2 196	2 233	2 264	2 257	2 297	2 306	2 295	2 319	2 318	2 419	2 477	2 488
<i>Germany</i>	2 386	2 426	2 491	2 587	2 593	2 643	2 665	2 717	2 738	2 859	2 890	2 847
<i>Other</i>	15 718	16 116	16 691	17 240	17 780	18 331	18 353	18 700	19 246	20 066	20 538	20 909

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Table No. 6: Employed foreigners: top 10 of citizenships, EU, non EU by region; 31 December 2007

Source: MIT CR, MLSA CR

Region	Total	Slovakia	Ukraine	Viet Nam	Poland	Mongolia	Moldova	Bulgaria	Romania	Germany	Russian Federation	EU	non EU
<i>Employed foreigners, total</i>													
<b>Total</b>	<b>309.027</b>	<b>109.917</b>	<b>83.519</b>	<b>29.862</b>	<b>24.931</b>	<b>7.057</b>	<b>6.433</b>	<b>6.319</b>	<b>4.538</b>	<b>4.108</b>	<b>3.716</b>	<b>159.382</b>	<b>149.645</b>
Prague	95.443	30.701	34.561	4.354	2.737	584	1.967	1.399	637	1.158	1.954	41.888	53.555
Central Bohemia Region	44.893	18.817	10.002	3.591	5.577	732	1.385	877	399	436	405	26.825	18.068
South Bohemia Region	12.381	4.099	3.937	1.172	666	478	333	319	141	208	89	5.868	6.513
Pilsen Region	25.514	9.640	6.012	2.817	2.090	286	566	739	1.395	799	108	15.019	10.495
Karlovy Vary Region	9.754	1.569	1.282	4.647	585	209	65	155	92	297	316	2.800	6.954
Ústí Region	13.283	2.108	3.535	4.288	440	608	178	242	381	309	198	3.707	9.576
Liberec Region	12.049	3.718	2.917	1.010	2.686	313	332	187	138	128	110	7.009	5.040
Hradec Králové Region	13.305	3.020	4.636	757	3.249	422	274	63	122	84	68	6.718	6.587
Pardubice Region	16.597	5.337	3.932	2.095	1.392	1.135	208	1.072	584	81	62	8.649	7.948
Vysočina Region	8.482	2.871	2.534	606	271	898	448	73	26	130	33	3.585	4.897
South Moravian Region	27.839	12.972	7.228	1.704	644	853	307	841	488	202	171	16.177	11.662
Olomouc Region	6.166	2.775	1.148	677	348	205	142	94	44	94	57	3.559	2.607
Zlín Region	6.978	4.318	851	452	186	316	184	82	71	67	49	4.878	2.100
Moravian-Silesian Region	16.343	7.972	944	1.692	4.060	18	44	176	20	115	96	12.700	3.643
<i>Registered at labour offices</i>													
<b>Total</b>	<b>240.242</b>	<b>101.233</b>	<b>61.592</b>	<b>5.425</b>	<b>23.642</b>	<b>6.897</b>	<b>5.503</b>	<b>5.393</b>	<b>4.313</b>	<b>2.847</b>	<b>2.488</b>	<b>144.594</b>	<b>95.648</b>
Prague	76.524	28.554	26.791	210	2.600	559	1.736	1.028	603	934	1.375	38.147	38.377
Central Bohemia Region	37.340	17.715	7.266	1.376	5.461	724	1.243	729	380	298	248	25.097	12.243
South Bohemia Region	9.393	3.694	2.926	159	630	478	296	280	130	134	71	5.107	4.286
Pilsen Region	20.103	9.279	3.763	663	2.064	282	461	723	1.376	602	81	14.329	5.774
Karlovy Vary Region	4.052	1.371	766	172	561	191	48	135	80	167	205	2.370	1.682
Ústí Region	6.581	1.721	2.357	83	336	604	127	168	344	148	114	2.856	3.725
Liberec Region	9.294	3.431	1.884	123	2.571	311	260	148	136	68	71	6.438	2.856
Hradec Králové Region	10.831	2.734	3.594	95	3.116	419	202	40	110	42	43	6.163	4.668
Pardubice Region	14.876	5.033	3.063	1.847	1.347	1.135	200	1.057	562	50	42	8.173	6.703
Vysočina Region	7.014	2.680	1.947	193	251	888	434	66	25	108	24	3.218	3.796
South Moravian Region	21.938	11.899	5.257	165	543	799	237	761	466	136	107	14.530	7.408

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Olomouc Region	<b>4.426</b>	2.478	747	152	290	197	59	75	32	49	28	3.025	1.401
Zlín Region	<b>5.419</b>	3.625	602	130	160	299	167	68	59	45	36	4.031	1.388
Moravian-Silesian Region	<b>12.451</b>	7.019	629	57	3.712	11	33	115	10	66	43	11.110	1.341

*Trade licence holders*

<b>Total</b>	<b>68.785</b>	<b>8.684</b>	<b>21.927</b>	<b>24.437</b>	<b>1.289</b>	<b>160</b>	<b>930</b>	<b>926</b>	<b>225</b>	<b>1.261</b>	<b>1.228</b>	<b>14.788</b>	<b>53.997</b>
Prague	<b>18.919</b>	2.147	7.770	4.144	137	25	231	371	34	224	579	3.741	15.178
Central Bohemia Region	<b>7.553</b>	1.102	2.736	2.215	116	8	142	148	19	138	157	1.728	5.825
South Bohemia Region	<b>2.988</b>	405	1.011	1.013	36	-	37	39	11	74	18	761	2.227
Pilsen Region	<b>5.411</b>	361	2.249	2.154	26	4	105	16	19	197	27	690	4.721
Karlovy Vary Region	<b>5.702</b>	198	516	4.475	24	18	17	20	12	130	111	430	5.272
Ústí Region	<b>6.702</b>	387	1.178	4.205	104	4	51	74	37	161	84	851	5.851
Liberec Region	<b>2.755</b>	287	1.033	887	115	2	72	39	2	60	39	571	2.184
Hradec Králové Region	<b>2.474</b>	286	1.042	662	133	3	72	23	12	42	25	555	1.919
Pardubice Region	<b>1.721</b>	304	869	248	45	-	8	15	22	31	20	476	1.245
Vysočina Region	<b>1.468</b>	191	587	413	20	10	14	7	1	22	9	367	1.101
South Moravian Region	<b>5.901</b>	1.073	1.971	1.539	101	54	70	80	22	66	64	1.647	4.254
Olomouc Region	<b>1.740</b>	297	401	525	58	8	83	19	12	45	29	534	1.206
Zlín Region	<b>1.559</b>	693	249	322	26	17	17	14	12	22	13	847	712
Moravian-Silesian Region	<b>3.892</b>	953	315	1.635	348	7	11	61	10	49	53	1.590	2.302

Source: Czech Statistical Office, 2007

## **Chapter X**

### **Miscellaneous**

#### **STUDIES, SEMINARS, REPORTS, LEGAL LITERATURE**

##### *Seminars*

There were a number of seminars held during the 2006, most of them however focused on the issue of residence and employment of the third country nationals. The TCN are the issue which is publicly discussed in the Czech Republic and most of the organization focuses on it.

A Conference “European Justice on the Constitutional Crossroad”, organized by the Senate (upper chamber of the Parliament of the CR), was held on May 11, 2007.

A Conference “Migration and Development” was held in Ostrava on 4<sup>th</sup> and 5<sup>th</sup> of September, 2007.

##### *Websites*

There is number of website, where relevant information can be found, such as:

<http://www.mvcr.cz/rady/cizinci/info.html> (Website with information on the entry and residence of EU citizens, their family members and TCN; contains also the necessary forms).

[http://portal.mpsv.cz/sz/zahr\\_zam](http://portal.mpsv.cz/sz/zahr_zam) (Website with the information on access to employment).

<http://imigrace.mpsv.cz> (Website of the Pilot project “Selection of Qualified Foreign Workers” – Legal Migration – Open Chance)

<http://www.domavCR.cz> (Website ”Home in the Czech Republic”, contains information of the topics of interest for the foreigners living in the Czech Republic (practical advice for living, news from the societal life of communities).

<http://www.migraceonline.cz> (Internet project of Multicultural Centre (NGO), which focuses on the migration issues).

<http://www.csvs.cz> (Czech National Academic Recognition Information Centre – NARIC, Centre for Higher Education Studies).

<http://www.msmt.cz> (Ministry of Education, Youth and Sports (Centre for the recognition of professional qualifications).

<http://www.czso.cz> (Czech Statistical Office).

<http://www.vupsv.cz> (Research Institute for Labour and Social Affairs)

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