

**Network on the Free Movement of Workers
within the European Union**

Czech Republic

Report 2006

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Czech Republic

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ABBREVIATIONS

AA	Alien's Act
EU	European Union
CR	Czech Republic
TCN	third country national

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INTRODUCTION

The year 2006 was the third year of the Czech Republic's membership in the European Union (EU). After alignment of national legal provisions with the *acquis communautaire* during previous years there was a new phase 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. These amendments reflect newly adopted pieces of the European law which were negotiated with either passive (under the status of an observer) or active participation of the Czech Republic.

The transposition of the new EU legislation on foreigners including the legislation on free movement of workers to the Czech laws was realized in the year 2006. Most of the provisions of the Directive 2004/38/EC to be transposed were covered by Act No. 161/2006 Coll. amending Alien's Act /draft proposed by the Government, entered into force on 24 April 2006/ and other transposing laws are supposed to be adopted in 2007. Delay in the process of adoption of all respective laws has been caused mainly by the political situation (elections and setting-up of a new Government with a tight majority in the Parliament). There were also other laws with impact on the issue of free movement of workers adopted, *inter alia* the amendment to the Employment Act etc.

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CHAPTER I. ENTRY, RESIDENCE, DEPARTURE

Text(s) in force

- Act No. 326/1999 Coll. of Laws., on Residence of Alien's on the Territory of the Czech Republic (Alien's 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.
- Act No. 310/1999 Coll. of Laws, on Temporary Stay of Foreign Armed Forces in the CR.

The conditions for entry, residence and departure of all foreigners on the territory of the Czech Republic are covered by the Alien's Act.¹² The first rules on free movement of persons were implemented into this Act in 2004 (EU enlargement) and several transposing laws has been adopted since then. The Alien's Act contains the provisions as regards both third country nationals (hereinafter TCN) and EU nationals and their family members.³ The provisions concerning EU nationals and their family members contain more favorable treatment comparing to the treatment of the legal position of the third country nationals in the country.

The Alien's Act was amended several times in 2006, the changes were aimed both to the part of the law containing provisions on EU nationals and their family members (mainly transposition of the Directive 2004/38/EC of 20 April 2004) and also to the part containing the provisions on TCN (transposition of the Directive 2003/109/EC of 25 November 2003 and Directive 2004/81/EC of 29 April 2004). Only one of the amendments was large, others were only partial amendments.

The Czech government plans to prepare a new Act on aliens and the Minister of Interior was charged by the government to prepare a new legislative intention till the April 30, 2006,⁴ but no draft legislation was published till the end of 2006.

A. Entry

Requirements for entry

All foreigners⁵ are entitled to enter the Czech Republic through a border crossing point at the place and time as specified for border control. A foreigner is obliged to present documents required by the Alien's Act:

1 Zákonník č. 326/1999 Sb., o pobytu cizinců (Act No. 326/1999 Coll., Alien's Act, as amended), available at http://portal.gov.cz/wps/portal/s.155/701/.cmd/ad/c/313/.ce/10821/.p/8411?PC_8411_number1=326

2 The Alien's Act is not applied to an alien who a) applied for protection by the Czech Republic in the form of asylum, and to refugees, unless provided otherwise by the Alien's Act or a special legal regulation, b) remains in the territory on the basis of a special legal regulation which governs the temporary stay of foreign armed forces in the Territory, c) applied for temporary protection, or has been granted temporary protection, unless provided otherwise by the Alien's Act or a special legal regulation. See Sec. 2 Alien's Act.

3 Provisions on admission, residence and departure of a European Union national apply also on nationals of a state bound by an agreement with the EC and on nationals of a state bound by the Treaty on European Economic Area unless this Treaty stipulates otherwise. See Sec. 1 (3) Alien's Act.

4 Usnesení vlády ČR ze dne 24. srpna 2005 č. 1055 (Government Decree No. 1055, August 24, 2005), available at http://kormoran.vlada.cz/usneseni/usneseni_webtest.nsf/WebGovRes/2BoDDCFB834E7F10C12571B6006E995F?OpenDocument (Czech language only). There are no more official documents available till 31.12.2006.

5 A foreigner (alien) means a natural person who is not a Czech national. See Sec. 1 Alien's Act.

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The *EU national* is obliged to present a valid travel document (e.g. passport or identity card) (Sec. 5/a and Sec. 6 (2) AA).

The *third country national family members of EU citizens (TCN family member)* is obliged to present a valid travel document, and a visa, if required by the national law. Visa is required unless an international treaty or directly applicable community rule or an exception in the Alien's Act stipulates otherwise.

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 Alien's Act thus 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. 6/10 AA). Analogous 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. 6/10 AA). 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 AA). The time limit for issue of the visa is up to 14 days (Sec. 170/3 AA).

Visa is not required for the stay of the TCN family members for up to three months if (1) the TCN family member possesses a residence card of a family member of an EU citizen issued in another Member State, or (2) if the TCN family member's visa expired, but he accompanies his/her EU family member during his/her stay on the territory of CR (Sec. 18 AA). The law does not contain explicit provision on possibility to apply this exception on the TCN family members who are joining the EU citizen.

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

Generally, the police will refuse entry to the territory if e.g. an alien fails to meet the obligation to submit documents required by the Act (as mentioned above), his/her visa was cancelled by the issuing body or has expired; he/she is an undesirable person; the alien stated untrue information about the purpose of his stay in the territory; there is a well-founded fear that the alien might endanger the security of the state, seriously violate public policy or obstruct the exercise of decisions of courts or administrative decisions etc. (Sec. 5 of AA).

The *EU national or his TCN family member* can be refused entry in the above mentioned cases, if they can be applied on him. He/she will be refused entry if he/she does not submit a passport or does not prove his identity otherwise, he/she is an undesirable person;⁶ or if there is a well-founded fear that he might endanger the security of the state, violate public order seriously or obstruct the exercise of decisions of courts or administrative decisions etc. (Sec. 5 of AA).⁷

If the entry is denied to an *EU citizen* the alien's 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 EU citizen resides on the territory on the basis of temporary residence certificate or permanent residence permit (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) AA). Police (the checking officer) inform the foreigner about the reasons for

6 This provision should be applicable on EU citizens and their family Member State in case that the foreigner already holds a decision on expulsion and he would obstruct the exercise of decision of the court by his presence on the territory/as he was ordered to leave the country/.

7 This provision should be applicable on EU citizens and their family Member State in case that the foreigner already holds a decision on expulsion and he would obstruct the exercise of decision of the court by his presence on the territory /as he was ordered to leave the country/.

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refusal of entry on standard form for refusal of entry at the border⁸ and affix an entry stamp on the passport. The entry stamp is therefore cancelled (Sec. 9 (7) AA). Decision on refusal of entry of *EU national* or a *TCN family member* is issued in an administrative procedure according to the provisions of the Administrative Proceedings Code (a remedy against the decision is possible). If the decision on refusal of entry of a foreigner was issued for the reasons that he/she is an undesirable person, or that there is a well-founded fear that the alien might endanger the security of the state, violate public policy seriously or obstruct the exercise of decisions of courts or administrative decisions, the EU national or his family member can ask for a new decision after 2 years since the day of refusal (Sec. 11a AA).

Draft legislation, circulars, etc.

No draft legislation was presented during the period under examination.

Judicial practice

Nothing to report. There are no relevant judgments of the higher courts yet.

Miscellaneous (administrative practices, etc.)

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

Recent legal literature

Cizinecký zákon 2006, občané EU (Alien's Act 2006, EU citizens), Poradna pro občanství/Občanská a lidská práva, Praha, 2006

B. Residence

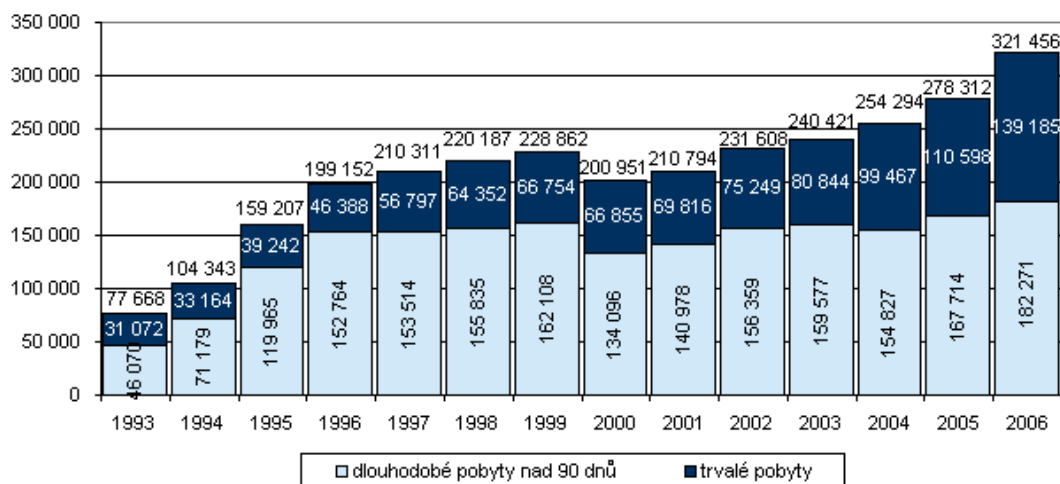
The legislation regulating the foreigners' stay on the territory has existed already during the communist regime, when there were only a few foreigners on the territory of the Czech Republic. The laws on foreigners became more important after the fall of the communist regime, when a relatively massive influx (in terms of the conditions in the Czech Republic, the figures are still low compared to the old EU Member States) of foreigners began; and the number of foreigners increased 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 1985 – 2006 (the table contains figures for both EU nationals and TCN). The number of foreigners increases rapidly, and the governmental policy starts to focus more on the integration measures (plans to introduce requirements of language exams in the draft amendment of the Alien's Act).

Table I. Number of foreigners by type of residence (1985 – 2006).

8 According to a Council Decision of 29 April 2004 amending the Common Manual (2004/574/CE).

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**Vývoj počtu cizinců s trvalým pobytem a dlouhodobými pobyty nad 90 dní v ČR
1993 - 2006 (31.12.) (Pramen: ŘS CPP MV ČR)**



Source: Czech Statistical Office, 2007

This table compares figures of foreigners residing on the territory of CR on the basis of a long term residence permit (light blue) with the figures of foreigners residing on the basis of a permanent residence permit (dark blue).

1. EU citizens and their family members

The provisions of amendment to the Alien's Act which entered into force in 2006 transposes *inter alia* the 2004/38 Directive. The amendment changes the provisions on the right of residence of EU nationals and their family members which are included in the Alien's Act.

1.1. Right of residence for up to three months for EU nationals and their TCN family members

EU citizens can stay on the territory with a valid travel document (or other 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.

1.2. Right of residence for more than three months for EU nationals and their TCN family members

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

1. the temporary residence certificate for EU nationals (the temporary residence permit for TCN family members); and
2. the permanent residence permit for EU nationals (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 Alien's Police Department (according to the place of residence in the Czech Republic) or at the Czech Embassy.

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1.2.1. The temporary residence certificate for EU nationals (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 AA). When applying for the temporary residence permit, the EU citizen is required to present (Sec. 87/2 AA) (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 permit*. He/she presents 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 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 presents the same documents as the family member who is an EU national (Sec. 87a/3, 87b AA). There is an obligation given to the family member of an EU citizen who is a TCN family member while there is only a possibility for the family member who is an EU citizen himself.

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 according to § 154 AA.⁹

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).

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 Alien's 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) and in case of a marriage of convenience. The consequences of the rejection must not have inadequate impact to a private or family life of the person concerned. The temporary residence permit will be *withdrawn* for the same reasons for which it will be canceled and also when the residence right of the EU citizen is terminated. 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.

1.2.2. The right of permanent residence for EU nationals and their TCN family members

The aliens police department issues the *permanent residence permit* to the *EU citizen* upon her/his request *inter alia* (1) after five years of continuous temporary stay¹⁰ on the territory

9 The Alien's Act stipulates that the undesirable person is a person, who can not be admitted to the territory, because he/she might /during his stay/ endanger state security, public order or public health, or endanger rights or freedoms of others, or similar interest protected by international treaty.

10 The continuous stay is defined by the Alien's Act /Sec. 87g (7) AA/ and the definition corresponds to the definition in Art. 16 (3) of the Directive.

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of CR (87g/1/a AA); (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 AA).

For the possibility to grant a permanent residence permit according to Article 17 (1) (a) and (c) of the Directive (Sec. 87g (1) (b) and (d) AA), 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) AA).

The EU citizen is required to present (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 aliens police department issues the *permanent residence permit* to the *family members of an EU national* (the law does not differ between TCN family member and family member who is an EU citizen here) upon his request *inter alia* (1) after five years of continuous temporary stay on the territory of CR; (2) if he/she is a family member of a Czech Republic citizen or of the EU citizen who holds the permanent residence permit; (3) 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, (4) 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 (Sec. 87h AA).

The *request for permanent residence permit* will be *rejected*, if the applicant will not submit the documents required by the law; if there are reasonable grounds that he might endanger the security of the state or might seriously violate public policy; endanger the public health; he is undesirable person; contracted a marriage with the aim to get the permit on the territory (marriage of convenience), this does not apply if a child was born from the marriage or a child was irrevocably adopted. The *permanent residence permit* will be withdrawn upon request of the holder of the permit; if he endanger the security of the state or seriously violates public policy, and the expulsion procedure is not initiated; if the holder is absent for a period exceeding two consecutive years; if the holder contracted a marriage of convenience, this does not apply if a child was born from the marriage or a child was irrevocably adopted (this provision reflects the necessity of the best interest of a child).

As was mentioned above, the law contains provisions on a *marriage of convenience*. The Police will cancel a temporary residence permit of TCN family member if it is found out, that the marriage was contracted with the purpose to obtain a residence permit. But the residence permit will not be cancelled if a child was born from the marriage or a child was irrevocably adopted during the marriage. This provision tries to reflect the necessity of the best interest of a child (the same provisions applies to TCN, who are not family members of EU citizens).

The provisions on a marriage of convenience can be misused, esp. the part on the irrevocable adoption. According to the information given by the Alien's Police the applications for the residence permit for the reasons family reunification (for the reasons of irrevocable adoption of a child) increased considerably and it can be said, that this possibility may presumably be misused in practice. The irrevocable adoption is done pursuant to provisions of the Family Act (Sec. 52).

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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).

The labour office will act according to the Employment Act,¹¹ e.g. seek work for the job-seeker, 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 AA). 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.

Draft legislation, circulars, etc.

Nothing to report.

Judicial practice

Nothing to report. There are no relevant judgments of the higher courts yet.

Miscellaneous (administrative practices, etc.)

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

Recent legal literature

Cizinecký zákon 2006, občané EU (Alien's Act 2006, EU citizens), Poradna pro občanství/Občanská a lidská práva, Praha, 2006.

C. Departure

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

The *expulsion of an 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 after three-month after the arrival). The EU citizen cannot be expelled, if he resides in the CR continuously for a period 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 (see Secs. 119-120 AA).

The *expulsion of an 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

11 Zákon č. 435/2004 Sb., o zaměstnanosti (Act No. 435/2004 Coll., Employment Act, as amended), available at <http://portal.gov.cz/wps/portal/s.155/701?number1=435%2F2004&number2=&name=&text=> (Czech language only).

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endanger public security, if the withdrawal of the permanent residence permit is not sufficient with regard to seriousness of his behaviour (Sec. 120 AA).

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 AA).

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) AA).

There is a possibility to appeal against a decision on expulsion pursuant to the provisions of Administrative Proceedings Act.¹²

Draft legislation, circulars, etc.

Nothing to report.

Judicial practice

Nothing to report. There are no relevant judgments of the higher courts yet

Miscellaneous (administrative practices, etc.)

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

Recent legal literature

Cizinecký zákon 2006, občané EU (Alien's Act 2006, EU citizens), Poradna pro občanství/Občanská a lidská práva, Praha, 2006.

12 Zákonník č. 150/2002 Sb., Soudní řád správní (Act. No. 150/2002 Coll., Administrative Proceedings Act), available at http://portal.gov.cz/wps/portal/_s.155/701?number1=&number2=&name=soudn%C3%AD+%C5%99%C3%A1d+spr%C3%A1vn%C3%AD&text= (Czech language only).

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CHAPTER II. ACCESS TO EMPLOYMENT

Text(s) in force

- Act No. 65/1965 Coll., Labour Code, as amended, as of 1.1.2007 replaced by Act No. 262/2006 Coll., Labour Code
- 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. 866).
- 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/Practising in Construction, as amended.
- Act No. 166/1999 Coll., On Veterinary Care, as amended.
- Governmental regulation No. 330/2003 Coll., on Remuneration of Employees in the Public Service and Administration, as of 1.1.2007 replaced by Act No. 262/2006 Coll., Labour Code.
- Act. No. 143/1992 Coll., on Remuneration in Budgetary Organizations, as amended.
- Act No. 111/1998 Coll., on University Education, as amended.
- Act No. 561/2004 Coll., on Pre-elementary, Elementary, Secondary, Higher Vocational and Other Education (Act on Education).

1. Equal treatment in access to employment (e.g. assistance of employment agencies)

According to the *Sec. 3(2) Employment Act*,¹³ 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 Act also defines a term *foreign employees* which pursuant to *Sec. 85 Employment Act*, means individual who is neither Czech citizen nor EU citizen nor his family member.

Therefore EU citizens and their family members are *not* obliged to obtain work permits for the access to the Czech labour market. The obligation to obtain the work permit applies only to third country nationals who are not family members of the EU national (with several exceptions for special categories of TCN, *inter alia* a foreigner who has 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*).

Legal basis for the work of employment agencies are given by the *Employment Act (Part 2, esp. Secs. 58-66 of the Employment Act)*. As the EU citizens and their TCN family member have equal position with Czech citizens, the agencies does not make difference between them.

13 Zákon č. 435/2004 Sb., o zaměstnanosti (Act No. 435/2004 Coll., Employment Act, as amended), available at <http://portal.gov.cz/wps/portal/s.155/701?number1=435%2F2004&number2=&name=&text=> (Czech language only).

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Direct and indirect discrimination

According to Sec. 1 of the *Labour Code*¹⁴ employers are obliged to treat all employees equally as regards the conditions of work including the remuneration and other financial obligations. The same provision also *prohibits direct and indirect forms of discrimination* of employees in labour-law relations on the ground of race, colour, sex, citizenship, nationality etc. 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. Discrimination on the grounds of pregnancy or maternity is considered to be the discrimination on the basis of sex (Sec. 4 of the Employment Act). Burden of proof in cases on discrimination in labour-law relations lies with an employer (Sec. 133a of the Civil Procedure Code). Facts bearing on the issue of discrimination are considered to be proved unless proven otherwise. Also the issue of equal payment in public services is addressed by the *Act on Remuneration in Budgetary Organizations* (Sec. 3 (2) Act on Remuneration); governmental regulation on *Remuneration of Employees in the Public Service and Administration* does not explicitly states the equal payment, but it would be redundant as the other above mentioned laws cover this issue.

2. Language requirement

The laws contain provision 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 is protected by several laws (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. A 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

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

Recognition of professional qualification in regulated professions (including the professions regulated by the sectoral directives) is provided for by the provisions of the Act on Mutual

14 Zákön č. 65/1965 Sb., zákoník práce (Act No. 65/1965 Coll., Labour Code, as amended).

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Recognition of Qualifications.¹⁵ The law stipulates principles and process of recognition of professional qualification in regulated profession.

This Act is focused on the recognition of qualification therefore it contains the 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. This Act applies on the EU citizens and their family members. The Act contains the provisions on levels of evidence of formal qualifications and procedure, which is adopted by a recognition authority (authority, which supervises the exercise of a profession) to recognize the professional qualification.

The outcome of the above mentioned process of recognition is a decision of the recognition authority. The decision determines whether the applicant is eligible for the employment (professional activity) pursuant the relevant legal regulation of the Czech Republic. The authority can either (1) recognize the applicant's eligibility for the employment, (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 it is possible to appeal against it.

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 above 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 acts. The Czech Republic has a large number of regulated professions (approx. 480 of them).¹⁶

b) Recognition of diplomas

Recognition of diplomas is provided for by the provisions of the Act on Pre-elementary, Elementary, Secondary, Higher Vocational and Other Education (Act on Education)¹⁷ and the Act on University Education.¹⁸ 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 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.¹⁹ 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

15 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), available at <http://portal.gov.cz/wps/portal/s.155/701?number1=18%2F2004&number2=&name=&text=> (Czech only).

16 The list of regulated professions is available at http://uok.msmt.cz/ru_list.php.

17 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), available at <http://portal.gov.cz/wps/portal/s.155/701?number1=561%2F2004&number2=&name=&text=> (Czech only).

18 Zákon č. 111/1998 Sb., o vysokých školách (Act No. 111/1998 Coll., on University Education, as amended), available at <http://portal.gov.cz/wps/portal/s.155/701?number1=111%2F1998&number2=&name=&text=> (Czech only).

19 E.g. a treaty between Czech Republic and Bulgaria, CR and Slovakia, CR and Slovenia.

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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 Poland in January 2006).

There was no draft law containing provisions on transposition of the Directive 2005/36/EC presented to the Parliament in 2006. The works on it has started, but the draft is not yet available to the public.

4. Nationality condition for captains of ships

Act No. 61/2000 Coll., On Sea Navigation

There is requirement of the Czech nationality for the captain of the ship flying the flag of Czech Republic (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 a power with a direct participation in exercise of sovereign rights. 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 (Sec. 7(2) Family Act. This power can be seen as the reason for the requirement of Czech citizenship for the captains of ships.

There were no ships flying the flag of the Czech republic for several years (also in 2006). The legislation on this issue has not been subject to changes since the year 2000, when the Act on Sea Navigation has been accepted.

Draft legislation, circulars, etc.

New Labour Code was adopted in April 2006. It contains provisions on direct and indirect discrimination and equal treatment (in Title IV, Section 16). The law enters into force on the January 1, 2007.

Judicial practice

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 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 has referred 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 Act on Care of People's Health)²⁰, but a veto was placed on the draft by

20 Draft No.1045, available at <http://www.psp.cz/sqw/historie.sqw?o=4&T=1045>.

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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. The new Parliament will discuss a new draft in 2007.

Miscellaneous (administrative practices, etc.)

A draft law on equal treatment and on the legal instruments for protection against discrimination (Law on Prevention of Discrimination) was presented to the Parliament in January 21, 2005.²¹ There was a debate in the Parliament in 2006 again and the law was not adopted. The draft contained, *inter alia*, a definition of discrimination.

Recent legal literature

Kozák, K.: Mediální analýza návrhu antidiskriminačního zákona (Media Analysis of the Draft Law on Equal Treatment (an essay), 2006, dostupné na www.migraceonline.cz (available at www.migraceonline.cz).

²¹ Draft No. 866; <http://www.psp.cz/sqw/historie.sqw?o=4&T=866>.

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CHAPTER III. EQUALITY OF TREATMENT ON THE BASIS OF NATIONALITY

Text(s) in force

- Act No. 65/1965 Coll., Labour Code, as amended, as of 1.1.2007 replaced by Act No. 262/2006 Coll., Labour Code.
- Act No. 435/2004 Coll., Employment Act, 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. 482/1991 Coll., on Social Need, as amended, as of 1.1.2007 replaced by Act. No. 111/2006 Coll., Assistance in Need Act.
- Act No. 586/1992 Coll., Income Tax Act, as amended.
- Act No. 133/2000 Coll., on Population Registration and Birth Numbers, as amended.

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

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.

Social advantages

The regulation 1612/68 is directly applicable; therefore, there is no transposition of its provisions into the relevant legislation. The Czech law uses the reference to the application of directly applicable regulation. 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, it is extremely important to apply Sec. 7 (2), 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 appli-

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cable regulation). It also applies to access to the services provided within the institutions (for example nursing homes) and their waiting lists.

In the field of access to housing there are lists of claimants managed by individual municipalities. There were some cases of nationality conditions in internal rules of municipalities. Ministry of Interior together with Ministry of Regional Development informed these municipalities about the fact, that this approach is incompatible with the acquis.

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

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.²²

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.

Draft legislation, circulars, etc.

The new Labour Code was introduced in 2006, in force since 1.1.2007. In the new Labour Code all forms of discrimination are prohibited in Title IV, Section 16. The provisions concerning the working conditions for posted workers implementing the Directive no. 96/71 are included in Section 319 of the Labour Code.

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)

Obstacles to the free movement of workers

According to information of public administration officers (Ministry of Labour and Social Affairs) there has been a malpractice as regards issuing work permits and length of their validity in certain Member States (Austria) applying restrictions on free movement of workers. The work permits have been issued for a period shorter than 12 months in order to prevent free access to the labour markets of the respective Member States even though the permits used to be issued for 12 months.

Specific issues: frontier workers (other than social security)

As regards frontier workers there seems to be one particular problem as regards the allocation of the individual identification number (in Czech Republic it is called "birth number") according to the Act on population registration and birth numbers, No. 133/2000 Coll, as amended.

Firstly, it is necessary to state that this number serves as a incommutable identification of a physical person for all public bodies (social and health insurance institutions, social and tax authorities, property registration etc.) but also for private institutions as banks. Czech citizens have their identification numbers allocated when they are born without any difficulty.

The responsible authority can issue the identification number to persons who are not Czech citizens in case they are residing (having a residence permit) in the Czech Republic

²² http://cds.mfcr.cz/mezdanvztahy/494_dvoji_zdaneni_zak.html.

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(*Sec. 16 of Act on Population Registration*). However, there is no provision at all, that would enable the citizen of another Member State who is a frontier worker²³, and therefore, resides in his state of origin, to be allocated the identification number. It can lead to considerable administrative complications as regards the registration with public authorities and exercising the corresponding rights. This situation, at the same time, forces the public authorities and (mainly in social sector) to issue separate identification to those persons, which normally differs from institution to institution. Although, it may not be seen as an obstacle, such practice and respective legislation does not contribute to the free movement.

Judicial practice

Nothing to report.

Miscellaneous (administrative practices, etc.)

In relation of social benefits the Ministry of Labour and Social Affairs issues the methodological instructions for the Labour Offices and Municipal authorities in order to unify their approach towards migrant workers. It describes different categories of Community citizens staying, working or residing in the Czech Republic, their status (self-employed, employed, family members, students etc.) and the resulting entitlements to different benefits.

²³ It concerns also other categories of workers employed in the Czech Republic who do not reside there – for example drivers in international transport.

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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 No. 186/1992 Coll., on Service Contract of Members of Police of the Czech Republic, as amended.
- will be replaced by the new 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 – not in force yet.
- Governmental regulation No. 330/2003 Coll., on Remuneration of Employees in the Public Service and Administration; as of 1.1.2007 replaced by Act No. 262/2006 Coll., Labour Code.

1. Access to public sector

1.1. Nationality condition for access to positions in the public sector (+ application of captains of ships' jurisprudence to posts 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 the 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 Government.

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Act on Elections to Municipal Councils requires a member of municipal councils and also a voter to the municipal councils to be either Czech citizen or a foreigner with the permanent residence in the district, who's right to vote is declared by an international treaty (Sec. 4, 5 of Act on Elections to Municipal Councils). Czech citizenship is not required for the officers of the municipal authorities, only the condition of the permanent residence must be fulfilled (Sec. 4 of Act on Officers of Municipalities).

According to other acts, also the service contracts of members of security departments (policemen – Sec. 3 of Act on Service Contract of Members of Police, or 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) require Czech citizenship.

Some positions of lawyers, who exercise the state power, require 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).

Czech citizenship is also required for the personnel of the state institutions, for employees who participate on exercising of sovereign rights (civil servants) (Sec. 17 of Act on Public Services, *the law is not in force yet*).²⁴ 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). The Act on Public Services was adopted at 2002, but is still *not in force* as its entry into force has been postponed twice.

Also the Sec. 2 of Act on Ombudsman states, that only 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 conditions must not be discriminatory.

1.3. Recruitment procedures: follow-up of Burbaud case

The 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 procedure 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.

²⁴ It is not a draft anymore, the Act has pasted the legislative procedure, but it's entry into force has been postponed.

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1.6. Application of captains of ships' jurisprudence to posts in the public sector

There is no sea in the Czech Republic and there were no ships flying its flag for several years. The legislation on this issue has not been subject to changes since the year 2000, when the Act on Sea Navigation has been accepted.

There is requirement of the Czech nationality for the captain of the ship flying the flag of Czech Republic (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).

As there were no ships flying the flag of the Czech Republic for several years, this issue has not been subject to changes, because no problems appeared to bring attention to it.

The relevant section of the Act on Sea Navigation is not applied for the above mentioned reasons. Therefore the impact of the jurisprudence of captains of ships' jurisprudence to posts in the public sector basically cannot be observed. The national legislation is so far in conformity with the jurisprudence.

2. Equality of treatment

2.1. Recognition of professional experience for the purpose of determining the professional advantages

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. 5 of Government Regulation on Remuneration of Employees in Public Service and Administration). 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 (Sec. 3, 4); the employee is placed there in dependence on his qualification and professional experiences.

Draft legislation, circulars, etc.

Nothing to report. Legislative trends following procedures of infringement set in motion by the Commission.

Judicial practice

Nothing to report.

Miscellaneous (administrative practices, etc.)

Nothing to report.

Recent legal literature

None.

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CHAPTER V. MEMBERS OF THE FAMILY

Text(s) in force

- Act No. 326/1999 Coll. of Laws, on Residence of Alien's on the Territory of the Czech Republic (Alien's 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 Alien's Act of the Czech Republic in its Sec. 15a.

For the purposes of the Alien's Act, a *family member of an EU citizen* is

- a spouse,
- a parent, if the EU national is younger than 21 years of age,
- a child under 21 years of age, or such 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) AA).

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) AA).

The provisions on family members will also apply to a foreigner,

- who is a member of the household of the EU citizen, or who, due to health reasons, is depended on a personal care by the EU citizen,
- who is a family member of a Czech national (see Sec. 15a (4) AA).

The Alien's Act does not contain explicit provisions on possibility of granting the residence permit on the basis of a registered partnership, although the a new legal institute of the registered partnership was introduced by the Act No. 115/2006 Coll. (becoming effective as of July 2006). It may be stated, that a partner can obtain a residence permit as a "person, who lives with an EU national in a common household" (see above), but I would doubt that the Directive is fully met in this part. Nevertheless the provisions on the right of entry and residence on the basis of a registered partnership are supposed to be included into the Alien's Act in 2007.

1. Residence rights

Entry, residence and departure of family members of EU citizens is connected to the position of the EU citizens. The issue of entry, residence and departure has been closely discussed in the Chapter I.

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.

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 pe-

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riod 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 in upon a strictly defined conditions (see Chapter I).

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 (see Secs. 119-120 AA). 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 endanger public security, if the withdrawal of the permanent residence permit is not sufficient with regard to seriousness of his behaviour (Sec. 120 AA). 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). 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) AA).

The law contains provisions on a *marriage of convenience*. The Police will cancel a temporary residence permit of TCN family member if it is found out, that the marriage was contracted with the purpose to obtain a residence permit. But the residence permit will not be cancelled if a child was born from the marriage or a child was irrevocably adopted during the marriage. This provision tries to reflect the necessity of the best interest of a child (the same provisions applies to TCN, who are not family members of EU citizens).

The provisions on a marriage of convenience can be misused, esp. the part on the irrevocable adoption. According to the information given by the Alien's Police the applications for the residence permit for the reasons family reunification (for the reasons of irrevocable adoption of a child) increased considerably and it can be said, that this possibility may presumably be misused in practice. The irrevocable adoption is done pursuant to provisions of the Family Act (Sec. 52 FA).

The Alien's Act is in conformity with the *Akrich* judgment.

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 acc. to 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 (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 elementary 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

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for free are offered to children to integrate 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.

Draft legislation, circulars, etc.

Nothing to report.

Judicial practice

Nothing to report.

Miscellaneous (administrative practices, etc.)

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

Recent legal literature

Cizinecký zákon 2006, občané EU (Alien's Act 2006, EU citizens), Poradna pro občanství/Občanská a lidská práva, Praha, 2006

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CHAPTER VI. RELEVANCE/INFLUENCE/FOLLOW-UP OF RECENT COURT OF JUSTICE JUDGMENTS

In particular follow-up of cases: Trojani, Collins, Ioannidis, van Lent (C-232/01), Commission v. Denmark (C-464/02) as well as the application of free movement legislation in the sports sector (existence of national quotas although Bosman, Kolpak and Simutenkov rulings are applicable).

Text(s) in force

- Act No. 100/1988 Coll., on Social Security as amended,
- Social Services Act (entered into force 1.1.2007),
- Assistance in Need Act (entered into force 1. 1. 2007),
- Act No. 435/2004 Coll., Employment Act as amended,
- Act No. 56/2001 Coll., on Conditions of Traffic on Motorways.

Since the introduction of European citizenship by the Maastricht Treaty a considerable movement can be traced in the attitude towards persons moving within Community and their access to public benefits. It is reflected in the consolidation directive No. 2004/38 and in recent case law of the ECJ in cases C-184/99 *Rudy Grzelczyk*, 85/1996 *Martínez Sala*, C-456/02 *Trojani* and C-209/03 *Bidar*. All these judgments concern the right to residence resulting in access to public benefits based on Articles 12 and 18 of the Treaty (equality of treatment and right to residence). From the above mentioned directive and judgments it is possible to conclude, that an EU national has equal rights to nationals and access to public benefits as long as the conditions for the right to residence are fulfilled.

Following the legislative development (Directive 2004/38) and the extensive case law on access to public benefits of migrants the amendment to the Aliens Act has been adopted. Also the amendment was proposed to the Social Security Act that sets the personal scope of the social care scheme. It now includes all EU nationals who registered themselves with the Aliens and Border Police. In practice however, this change has impact only to a position of non-active persons, since the gainfully active – workers in particular – have another Community provisions to protect their social rights.

If such a registered person claims social benefit, the competent authority firstly examines whether the conditions for the entitlement are fulfilled. Simultaneously there will be a procedure designed to establish whether a person concerned could become an “unreasonable burden of the social assistance scheme”.

The scheme is based on the following principles:

- It creates groups of persons who can never be “unreasonable burden of social assistance scheme” – i.e. workers, other persons who are gainfully active etc.
- For other persons it establishes the system of point attributed to certain fact or characteristic of a person concerned. The facts that are taken into account are mainly the previous length of residence, previous length of employment or self-employment in the Czech Republic, previous periods of study in the Czech Republic, possibilities in finding a job).
- There is a discretionary power in order to take into account whether person concerned has only temporary difficulties, his/her personal circumstances, family commitments, and potential amount of benefit.
- Assessment base is a number of points received. When such number is low enough to create “unreasonable burden of the social assistance scheme”, the information from the municipal authority will be delivered to the Aliens and Border Police for the possibility of initiation of procedure of withdrawal of the status.

As it was stated above, the amendment that was proposed in order to implement the Directive 2004/38 together with recent case-law of the ECJ, and entered into force in 2006. The

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same changes are included into the Assistance in Need Act and Social Services Act that enters into force as of January 1, 2007.

The Czech legislation and practice is in conformity with C-138/02 *Collins* judgment. 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".

E.g. 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 months' employment in last three years either on the territory of Czech Republic *or* in another Member State for granting of the unemployment benefits/jobseeker's allowance.

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 nationals participating in all sport activities at all levels. The practice is therefore in conformity with *Bosman* case. The only exception where the Czech citizenship is required is the Czech national team.

As regards the C-232/01 *van Lent* judgment and C-464/02 *Commission v. Denmark* judgment the conformity of Czech legislation can be questioned. A person can use a vehicle which is registered in another EU Member State, nevertheless there is a time limit given by the Sec. 6 of the Act on Conditions of Traffic on Motorways; the law requires the registration of a vehicle if a person who uses it stays on the territory of Czech Republic for more than 185 days a year.

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CHAPTER VII. POLICIES, TEXTS AND/OR PRACTICES OF A GENERAL NATURE WITH REPERCUSSIONS ON THE FREE MOVEMENT OF WORKERS

Policies, texts and/or practices of a general nature with repercussions on free movement of workers (3rd country nationals' immigration for employment, Community citizens' priority, changes in general immigration law affecting also Community workers , etc.).

Relevant Legal Regulation

Bilateral agreements.

Pilot project "Selection of Qualified Foreign Labour"

As regards migration from third countries Czech Republic has been seeking for managed migration, mainly because of unfavourable demographic development of the Czech population that will lead to a lack of labour on the Czech labour market and also to prevent illegal foreign employment. Pilot project "Selection of Qualified Foreign Labour" represents an integral part of the migration policy mentioned above. Its purpose is to bring qualified foreign workers to the Czech Republic together with their families to settle. It should also invoke legislative changes with regard to findings resulting from the implementation of this scheme.

The project²⁵ started in July 2003 and target countries have been selected with respect to 5-year pilot phase. The target countries are the following: Bulgaria, Croatia, Kazakhstan, Belarus, Moldova, Canada, Serbia and Montenegro, Ukraine, Bosnia and Herzegovina, Macedonia and Russian Federation. Upon the date of entry into the European Union Bulgaria will be excluded from the target countries. 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.

Applications can only be lodged through on-line application available on web site of the pilot project www.immigrationcz.org. Since 2003 there have been 530 participants who 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. 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 Aliens and Border Police Service for granting of a permanent residence permit. There were 139 participants issued with the permanent residence permits in December 2006.

Community preference principle is applied pursuant to the provisions of the Employment Act. Sec. 3(2) 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.

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

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CHAPTER VIII. EU ENLARGEMENT

1. Information on transitional arrangements regarding EU 8

1.1 Changes in national law and practice in all EU Member States since previous national reports

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

- 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.
- Employment Act No. 435/2004 Coll., as amended.

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 2006 the Czech Republic has not introduced any transitional measures towards other Member States even though the Government Resolution No.13/2004 Coll. and the Sec. 103 of the Employment Act enable 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 partially for selected sectors or professions (Belgium, Denmark, France and the Netherlands) or fully (Finland, Greece, Italy, Portugal, Spain which joined the United Kingdom, Ireland and Sweden not applying these measures from May 2004). 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 transitional arrangements have been applied mostly without well founded reasons and as a sort of preventive action. Nevertheless there are significant changes in opinions of the individual Member States and can be assumed that their decisions regarding further application of the transitional measures after the two-year period were affected by the Report on the Functioning of the Transitional Arrangements set out in the 2003 Accession Treaty (period 1 May 2004–30 April 2006) published by the European Commission in February 2006 (Report). The figures on movement of workers from the new Member States stated in the Report confirmed a low migratory potential of the Czech nationals.

Existing position of the Czech Republic to the transitional measures confirmed by the facts stated in the Report found its reflection in the position towards free movement of nationals of Bulgaria and Romania see below.

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

1.4. Practical problems, individual cases and national case law pertaining to the transitional arrangements (e.g. concerning the application of 12-months rule)

According to the information of Czech Ministry of Labour and Social Affairs some of the Member States of the EU-15 introduced a sort of malpractice of issuing work permits to the Czech nationals for a time period shorter than 12 months in order to prevent them from accessing their labour markets freely afterwards even though this approach had not been

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applied before the accession to the EU. This is being applied when issuing the work permits both on the basis of bilateral agreements on employment or under an ordinary procedure.

2. Transitional measures for workers from Bulgaria and Romania and a short summary of transitional measures applicable on 1 January 2007

As regards the position towards free movement of nationals of Bulgaria and Romania the Government adopted the Resolution No. 1345/2006 of November 2006 in which 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. Nevertheless it did not abandon the possibility to introduce such restrictions later upon assessment of current situation on the Czech labour market.

The final decision was preceded by debates throughout the year 2006. Positive approach towards free movement of nationals of these two countries under a national regime was based on the following ideas mainly:

- To introduce free movement for Bulgaria and Romania followed the previously published 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.
- The transitional measures are being introduced as preventive and do not reflect real situation on the labour markets of the Member States. In addition this kind of protection could be applied for limited period of time (5 or 7 years).
- The abovementioned Report on the Functioning of the Transitional Arrangements set out in the 2003 Accession Treaty (period 1 May 2004–30 April 2006) published by the European Commission in February 2006 proved that opening the labour markets for nationals of the new Member States by some states of the EU- 15 did not give a raise to serious problems on the labour markets concerned.
- It has been assumed that the Romanian and Bulgarian nationals would not endanger the Czech labour market with regard to the fact these countries are not neighbouring on the Czech Republic. Moreover the above mentioned Pilot Project in which Bulgaria was one of the target countries and its nationals could obtain the permanent residency did not cause a significant increase of the Bulgarian nationals employed in the Czech Republic. For Romanian nationals there were as probable target countries of their migratory movements due to a language relationship expected in particular France, Italy and Spain and for Bulgarian nationals Spain and Germany.
- No legislative changes were required to introduce free movement for the workers from Bulgaria and Romania under the national law and in addition the national regime can be tightened up easily if necessary.
- Persons pursuing self-employed activities or posted workers of Bulgarian and Romanian companies or employers can provide services in the other Member States without being subject to the transitional arrangements for free movement of workers. These categories cannot be restricted in their activities in any way.

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CHAPTER IX. STATISTICS

At the end of 2006 there were more than 321 000 foreigners with a residence permit in the Czech Republic, making up 3 % of the total population. There were more than 182 000 of foreigners with temporary residence permit, and were more 139 000 with permanent residence permit. A number of EU citizens residing in the Czech Republic till the end of 2006 was almost 103 000.

The largest number of foreigners from EU Member States was composed by Slovak citizens (58 000), then Polish (almost 19 000) and German (10 000) citizens. The third country nationals were mainly from Ukraine (102 000), Vietnam (40 000) and Russian Federation (18 000).

The figures 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. According to the information of Czech Statistical Office the figures should be available in the future as they are aware of the difference.

Table 1. Employment and residence permits of EU citizens and TCN foreigners; 31 December 2006

Citizenship	Total	incl.: Females	Permanent residence	Temporary EU/Long- term residence	90-days- and- -over visa
Total number of foreigners	321 456	128 653	139 185	155 164	27 107
EU 25, total	102 886	38 702	45 009	57 877	-
<i>Belgium</i>	357	83	155	202	-
<i>Denmark</i>	249	62	92	157	-
<i>Estonia</i>	47	22	28	19	-
<i>Finland</i>	155	65	56	99	-
<i>France</i>	1 869	575	654	1 215	-
<i>Ireland</i>	319	68	103	216	-
<i>Italy</i>	2 011	320	1 129	882	-
<i>Cyprus</i>	48	7	34	14	-
<i>Lithuania</i>	286	153	113	173	-
<i>Latvia</i>	90	58	58	32	-
<i>Luxembourg</i>	19	6	7	12	-
<i>Hungary</i>	535	197	388	147	-
<i>Malta</i>	18	8	7	11	-
<i>Germany</i>	10 109	2 368	4 220	5 889	-
<i>Netherlands</i>	1 717	495	551	1 166	-
<i>Poland</i>	18 894	8 883	11 320	7 574	-
<i>Portugal</i>	70	20	28	42	-
<i>Austria</i>	3 022	595	1 196	1 826	-
<i>Greece</i>	805	259	720	85	-
<i>Slovakia</i>	58 384	23 494	22 472	35 912	-
<i>Slovenia</i>	192	66	150	42	-
<i>United Kingdom</i>	2 873	620	1 088	1 785	-
<i>Spain</i>	361	122	179	182	-
<i>Sweden</i>	456	156	261	195	-

Source: Czech Statistical Office, 2007

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Table 2. *Foreigners by category of residence and citizenship; 31 December 2006*

Citizenship	Total number	Permanent residence	% of permanent residence	Temporary EU / Long-term residence	% of temporary EU / long-term residence	90-days-and-over visa	% of 90-days-and-over visa
Total	321 456	139 185	43,3	155 164	48,3	27 107	8,4
<i>Ukraine</i>	102 594	25 408	24,8	61 268	59,7	15 918	15,5
<i>Slovakia</i>	58 384	22 472	38,5	35 912	61,5	-	-
<i>Viet Nam</i>	40 779	30 538	74,9	7 860	19,3	2 381	5,8
<i>Poland</i>	18 894	11 320	59,9	7 574	40,1	-	-
<i>Russian Federation</i>	18 564	8 898	47,9	7 928	42,7	1 738	9,4
<i>Germany</i>	10 109	4 220	41,7	5 889	58,3	-	-
<i>Moldova</i>	6 198	1 227	19,8	3 423	55,2	1 548	25,0
<i>Bulgaria</i>	4 635	2 781	60,0	1 479	31,9	375	8,1
<i>United States</i>	4 212	2 275	54,0	1 155	27,4	782	18,6
<i>China</i>	4 157	2 223	53,5	1 472	35,4	462	11,1
<i>Serbia and Montenegro (Yugoslavia)</i>	3 729	2 675	71,7	884	23,7	170	4,6
<i>Mongolia</i>	3 280	776	23,7	1 724	52,6	780	23,8
<i>Belarus</i>	3 211	1 521	47,4	1 482	46,2	208	6,5
<i>Austria</i>	3 022	1 196	39,6	1 826	60,4	-	-
<i>United Kingdom</i>	2 873	1 088	37,9	1 785	62,1	-	-
<i>Romania</i>	2 816	2 036	72,3	537	19,1	243	8,6
<i>Kazakhstan</i>	2 379	1 582	66,5	579	24,3	218	9,2
<i>Croatia</i>	2 225	1 686	75,8	458	20,6	81	3,6
<i>Italy</i>	2 011	1 129	56,1	882	43,9	-	-
<i>France</i>	1 869	654	35,0	1 215	65,0	-	-
<i>Bosnia and Herzegovina</i>	1 727	1 393	80,7	266	15,4	68	3,9
<i>Netherlands</i>	1 717	551	32,1	1 166	67,9	-	-
<i>Macedonia</i>	1 438	694	48,3	581	40,4	163	11,3
<i>Armenia</i>	1 374	1 055	76,8	252	18,3	67	4,9
<i>Japan</i>	1 251	136	10,9	869	69,5	246	19,7
<i>Other</i>	18 008	9 651	53,6	6 698	37,2	1 659	9,2

Source: Czech Statistical Office, 2007

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Table 3: Employment and residence permits of foreigners: EU nationals by citizenship; 31 December 2006

Country	Working foreigners, total		
		Foreigners (labour office data)	Holding valid trade license
Foreigners, total – employed	250 797	185 075	65 722
EU 25, total	129 623	116 722	12 901
<i>Slovakia</i>	99 637	91 355	8 282
<i>Poland</i>	18 387	17 149	1 238
<i>Germany</i>	3 583	2 383	1 200
<i>Great Britain</i>	2 162	1 584	578
<i>France</i>	1 243	1 067	176
<i>Austria</i>	891	604	287
<i>Italy</i>	825	461	364
<i>Netherlands</i>	530	393	137
<i>Lithuania</i>	457	365	92
<i>Hungary</i>	353	253	100
<i>Spain</i>	249	201	48
<i>Greece</i>	219	88	131
<i>Belgium</i>	207	156	51
<i>Ireland</i>	193	151	42
<i>Sweden</i>	174	131	43
<i>Denmark</i>	131	107	24
<i>Slovenia</i>	94	70	24
<i>Finland</i>	87	69	18
<i>Latvia</i>	64	31	33
<i>Portugal</i>	59	51	8
<i>Estonia</i>	26	19	7
<i>Cyprus</i>	24	14	10
<i>Malta</i>	16	11	5
<i>Luxembourg</i>	12	9	3
Other countries, total	121 174	68 353	52 821

Source: Czech Statistical Office, 2007

This table includes the figures on posted workers.

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Table 4: Foreigners by continent and purpose-of-residence code (international taxonomy); 31 December 2006

Purpose-of-residence code	Total						
		EU	Other Europe	Africa	America	Asia	Other
<i>Foreigners, total</i>							
1	323 343	102 886	149 769	3 192	6 008	60 573	915
2	7 208	1 577	2 343	470	686	2 119	13
3	26 713	3 743	14 963	55	140	7 805	7
4	3	2	-	-	-	1	-
5	127 131	46 032	73 175	150	1 256	6 408	110
6	188	77	31	2	73	5	-
7	2 314	762	977	-	295	240	40
8	52 377	12 198	21 111	251	412	18 281	124
9	101 213	34 781	35 913	2 091	3 093	24 771	564
10	1 932	-	967	153	27	735	50
11	331	2	141	16	12	154	6
12	3 933	3 712	148	4	14	54	1
<i>incl.: Females</i>							
1	129 443	38 702	60 658	571	2 337	26 839	336
2	3 372	754	1 324	118	348	821	7
3	7 894	388	4 568	1	49	2 885	3
4	1	1	-	-	-	-	-
5	39 323	12 267	23 556	37	439	2 982	42
6	40	12	10	-	17	1	-
7	1 016	309	441	-	120	130	16
8	22 098	5 186	9 214	48	152	7 452	46
9	53 929	19 028	20 999	322	1 194	12 186	200
10	812	-	424	42	10	316	20
11	118	-	57	2	2	55	2
12	840	757	65	1	6	11	-

Source: Czech Statistical Office, 2007

Purpose-of-residence codes	
Code	Purpose of residence
1	Total
2	<i>Study and training</i>
3	<i>Business based on trade licence</i>
4	<i>Participation in legal person</i>
5	<i>Employment</i>
6	<i>Other economic activities</i>
7	<i>Free establishment (compatriots, etc.)</i>
8	<i>Settlement (permanent residence permit)</i>
9	<i>Family members; reunification of the family</i>
10	<i>Refugees</i>
11	<i>Humanitarian status; temporary protection</i>
12	<i>Other</i>

Table 5: Foreigners: EU 25 nationals by purpose of stay in regions; 31 December 2006 (Source: Czech Statistical Office, 2007) is attached in separate file.

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Table 6: Foreigners: by region, district and citizenship; 31 December 2006 (Source: Czech Statistical Office, 2007) is attached in separate file.

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CHAPTER X. SOCIAL SECURITY

Text(s) in force

- Act no. 48/1997 Coll., Public Health Insurance Act, as amended.
- Act no. 54/1956 Coll., Employee's Sickness Insurance Act, as amended.
- Act no. 100/1988 Coll., Social Security Act, as amended.
- Act no. 155/1995 Coll., Pension Insurance Act, as amended.
- Act no. 435/2004 Coll., Employment Act, as amended.
- Act no. 117/1995 Coll., on State Social Support, as amended.
- Act no. 482/1991 Coll., on Social Need, as amended.
- Social Services Act (entered into force 1.1.2007).
- Assistance in Need Act (entered into force 1.1.2007).
- Sickness Insurance Act (will enter into force on 1.1.2008, will replace Act no. 54/1956 Coll. above).
- Act no. 42/1994 Coll., Supplementary Pension Insurance with the State Premium.
- And implementing regulation to the above mentioned acts.

Relationship between 1408/71 and 1612/68

The regulation 1612/68 and 1408/71 both regulate the same subject – access of migrant workers to social benefits. Social benefits that are covered by the regulation 1408/71 can be also regarded as “social advantages” within the meaning of regulation 1612/68. On the other hand these regulations are based on different principles. Regulation 1612/68 is based on the territoriality, while Regulation 1408/71 stands on the principle of one applicable legislation and the payment of benefits abroad. The other important difference is the material scope – regulation 1408/71 covers narrower scope of benefits – for example social assistance benefits are excluded from its scope. Moreover, the personal scope is different. While regulation 1612/68 covers only “workers” within the Community meaning of this term, regulation 1408/71 applies not only to workers but also to the self-employed and in some cases even to all insured persons.

Considering the above-mentioned differences, there is a rule of mutual exclusivity of these two instruments²⁶ – the regulation 1612/68 does not apply, where the regulation 1408/71 is applicable.

Within the Czech social scheme, there is only one branch that is in whole excluded from the application of the regulation 1408/71, it is so called “social care” provided in the Social Security Act – it covers the assistance in need and the benefits for disabled persons and seniors, including the social services. There are also some individual benefits excluded - for example “birth grants” mentioned above, that is provided within the family benefit scheme (state social support). Therefore, this is the scope, to which Regulation 1612/68 is applicable in case of “workers” and their family members.

In practice of the Czech authorities the compliance with this regulation – applicability of principle of non-discrimination is secured by the instructions issued by the central administration to individual authorities.

As regards the social benefits covered by Regulation 1612/68 the application seems to function relatively, thanks to the direct applicability of its rules and the instructions issued by the central administration. The respective internal legislation also includes the references to this regulation.

²⁶ Article 42 (2): This Regulation shall not influence any measures adopted according to the Article 51 (now Art. 42) of the Treaty.

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Regulation 1408/71

This regulation is directly applicable in the Czech Republic; no transposition of its rules took place. Some of relevant legislation (new sickness insurance legislation) contains the reference to this regulation clearly stating that this act applies if the regulation does not provide otherwise, however the entry into force of that legislation was postponed by 1 year (i.e. 1.1.2008).

The consistent application of this regulation as in the case of previous regulation is secured by issuing the instruction by the central authorities to Health Insurance Companies, Czech Social Security Administration and its district offices, Labour Offices, Municipal Authorities).

Application of Article 17 of the Regulation 1408/71

In the year 2006 the competent Czech institutions responsible for application of Article 17 of this regulation (provision that enables to divert mainly from principle of payment of social insurance contribution in the state where the activity exercised) changed the approach to this provision slightly. If the request is made by a person is gainfully active in CR, but wishes to be insured in the other state, from this year the Czech Social Security Administration together with the Centre for International Reimbursement investigate the case and verify all information stated by applicant carefully. Those institution agreed common criteria for approving the application. Such approach was criticized by some Member States, nevertheless, the Community regulation gives the discretion on this matter to individual Member States, and it is an internal matter of each State.

Health Care

Czech health insurance companies follow in case of their insured persons Art. 22 of the Regulation 1408/71 for authorization of hospital care

Czech insurance companies also apply the jurisprudence of ECJ in cases *Kohl-Decker*, *Müller-Faurée* and others on freedom to provide services, if they are required the reimbursement of cost up to the corresponding price in Czech Republic. However, cases of patients insured with the Czech health insurance companies traveling in order to receive non-hospital treatment and requiring the reimbursement are still not numerous.

As regards the EHIC, it is used as a national card, more around 9 million cards were issued (i.e. 90 per cent of population have the EHIC). It is considered to be a tool for securing rights of insured persons during their stay abroad. Health insurance companies together with Centre for international reimbursement (liaison body) offer foreign institutions and providers the possibility of checking the validity of submitted EHIC via their web sites.

Supplementary pension schemes

Apart from the first pillar statutory pension insurance, in the Czech Republic there is a contribution defined supplementary pension insurance scheme. It is considered as a third pillar scheme based on private insurance of individuals with the possible participation of the employer. It is implemented by private pension funds.

According to Sec. 2 of the above-mentioned act, all residents of the Czech Republic can participate in this insurance and also the residents of other Member States even if they do not reside in Czech Republic on condition they participate either in Czech statutory health or statutory pension insurance.

As concerns non-residents, as soon as the participation in mentioned statutory schemes is terminated, the supplementary insurance terminates at the same date (*Art. 19 of the Supplementary Pension Insurance Act*). If a person will not acquire the right to supplementary pension benefit as a result of it, under the conditions provided for in the mentioned legislation the sum of money contributed can be paid back to the insured person. In case there is

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an entitlement, the supplementary pension is paid to other Member State or also to the third state (in case it is required by the beneficiary) without any limitation.

Recent national reports, legal literature

None.

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CHAPTER XI. ESTABLISHMENT, PROVISION OF SERVICES, STUDENTS

Text(s) in force

- Act No. 561/2004 Coll., on Pre-elementary, Elementary, Secondary, Higher Vocational and Other Education (Act on Education).
- Act No. 111/1998 Coll., on University Education, as amended.
- Act No. 513/1991 Coll., Commercial Code, as amended.
- Act No. 455/1991 Coll., Trade License Act, as amended.

Establishment, provision of services

Freedom of movement of persons covers many aspects and cannot be reduced to a possibility of movement of persons from one Member State to another only. Free movement of persons constitutes a possibility to change a place of residence for the purpose of exercising an economic activity either employed or self-employed i.e. the possibility to establish and exercise economic activity in the territory of any Member State and remain in the Member State after having ceased the economic activity. During the 1990s this freedom concerned persons exercising the economic activities and their family members but then the categories of the persons concerned were extended for non-active individuals like students, pensioners or individuals living on independent income.

Sec. 21-26 of the Commercial Code concern setting-up of the companies and cooperatives by foreigners in general. The foreigners may carry business in the Czech Republic under the same conditions and to the same extent as the Czech entities unless provided otherwise. The term foreigner means a private individual or legal entity having a place of residence outside the Czech Republic. The Czech legal entity means a legal entity having a place of residence in the Czech Republic. A business activity of the foreigner in the Czech Republic must be understood as a business activity on condition that the company or its branch is located in the Czech Republic. A business activity can be carried out as of the day of registration. This does not apply to the individuals who are nationals of the EU/EEA Member States and carry out the business activities in the Czech Republic; they fall under the same regulation as the Czech nationals. The foreigners entitled to carrying out business abroad are considered to be enterprisers according to this Act. Capital participation of the foreigner in the Czech legal entity is also possible.

According to the *Trade License Act* a trade can be carried on by a private individual or a legal entity under conditions provided for by this Act. The private individual or legal entity having a place of residence outside the Czech Republic can carry on the activity under the same conditions and to the same extent as the Czech individuals or entities unless provided otherwise. The Act requires the applicant (Czech citizen or EU national) to prove that he/she is of good character or repute and to prove the ability to carry on the activity (if required by the Act); the applicant must also be over 18.

Freedom to provide services allows nationals of the Member States established in one Member State to provide services in the Member States of the persons for whom the services are intended (Sec. 69a of the Trade License Act).

Students

The Czech citizens and EU Member States citizens have equal access to education; the elementary and secondary education for Czech citizens and EU Member States citizens on the governmental schools is declared as free of charge (Sec. 2 of Act on Education), there might be a tuition fee required for the study e.g. on the non-governmental schools (Sec. 123 of Act on Education), if a foreigner takes up studies for which fees are charged (private schools etc.), he pays the same fee as the Czech student pays.

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Individuals having a nationality of another EU Member State and their family members have access to education and education services upon the same conditions as the Czech citizens (Sec. 20 (3) of Act on Education). Individuals who are not Czech nor EU citizens or EU citizen's family member and reside in the territory of the Czech Republic legally have an access to the education (*elementary, secondary and higher vocational education*) upon the same conditions as the Czech citizens, but they must prove the legality of the stay in the Czech Republic by the beginning of the education at the latest (Sec. 20 (1, 2) of Act on Education). Foreigners have to prove sufficient knowledge of the Czech language as part of entry exams to the secondary and higher vocational schools, it can be forgiven upon application (Sec. 20 (4) of Act on Education). Children of EU citizens residing in the Czech Republic on a long-term basis who carry on compulsory school attendance have the right to the Czech language course for free to be assisted in elementary education (Sec. 20 (5) of Act on Education).

The school attendance is compulsory in the length of 9 years for Czech citizens, EU nationals and their family members residing on the territory upon a temporary or permanent residence permit, foreigners having a permanent residence or a long-term visa or temporary residence permit, asylum seekers and recognized refugees.

All students regardless their nationality has 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.

Issue of quotas

No quotas for foreign students were introduced.

Issue of private institutions' diplomas

If the private institutions are accredited as institutions of higher education by the Ministry of School and Education then the diploma will be recognized according to the accreditation.²⁷ If the private institutions are not accredited as such then the final certificate/diploma will not be recognized as an outcome from an institution of higher education.

Recent legal literature

Skuhrová, Š., Pastorová, Z., Dočekalová, I., Vašková, J., Záruba, L.: *Jak na vysokou školu* (Informace pro zájemce o studium na vysokých školách v České republice ve školním roce 2007/2008) (Applying to the High School), FORTUNA, Praha, 2006.

²⁷ A list of private institutions of higher education is available at <http://www.msmt.cz/vzdelavani/prehled-verejnych-soukromych-skol> (Czech language only).

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CHAPTER XII. MISCELLANEOUS

Seminars

There were 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.

There was a conference on the Free movement of workers held in 2006: International conference on free movement of workers in enlarged Europe: state of play and perspectives, 10th and 11th November of 2006, Prague

Websites

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

<http://www.mvcr.cz/rady/cizinci/index.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 (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 on the foreigner's 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)

Relevant legal literature

Králová, D., Vysílání zaměstnanců do zahraničí, *Právní rádce* 11/2006 (Posting of Foreigners), p. 57.

Jouza, L., Pronajímání pracovních sil, *Právní rádce* 2/2006 (Posting of Foreigners), p. 41-47.

Jouza, L., Změny v zaměstnávání cizince, *Právní rádce* 8/2006 (Changes in the Employment of Foreigners), p. 32-35.

Stavínohová, P., Svoboda usazování společností, *Právní rádce* 9/2006, p. 22-31.

Horáková, Milada, *Trendy trhu práce a pracovní migrace v Česku*, power-pointová prezentace prezentovaná na Mezinárodní konferenci Nelegální pracovní aktivity migrantu v Česku a střední Evropě, (Trends in Labour Market and International Labour Migration in Czechia, power-point presentation presented on International Conference Illegal Work Activities of Migrants in Czechia and Central Europe), VÚPSV 2006, dostupné na www.vupsv.cz (available at www.vupsv.cz).

Skuhrová, Š., Pastorová, Z., Dočekalová, I., Vašková, J., Záruba, L., *Jak na vysokou školu* (Informace pro zájemce o studium na vysokých školách v České republice ve školním roce 2007/2008) (Applying to the High School), FORTUNA, Praha, 2006.

Cizinecký zákon 2006, občané EU (Alien's Act 2006, EU citizens), Poradna pro občanství/Občanská a lidská práva, Praha, 2006.