EUROPEAN REPORT ON THE FREE MOVEMENT OF WORKERS IN EUROPE IN 2007

Chapter II Access to Employment

Recognition of Diplomas

REPORT: *"Estonia: the legislation requires all non Estonians to register if they plan to engage in regulated professions and for the state agency to assess the equivalence of the qualifications. There is no initiative to transpose Directive 2005/36." (Page 24)*

EE comment:
There is no overall requirement for all non Estonians to register if they plan to engage in regulated professions. If a person wants to engage in a regulated profession, the person must have his or her foreign professional qualifications recognized. A designated competent authority evaluates the professional qualifications and decides whether the person meets the requirements for the given regulated profession or whether compensatory measures (an aptitude test or an adaptation period) are needed. The competent authority may be a state agency, a professional association or a private entity as well.

There has been initiative to transpose Directive 2005/36/EC. At the beginning of December 2007 the draft of the new Recognition of Foreign Professional Qualifications Act was made public and sent for approval to the relevant authorities and institutions. This new Act implemented Directive2005/36/EC and included provisions on the general system professions as well as the specific sectoral professions. The new Act was adopted in June 2008 and came into force on 1 July 2008.

REPORT ON THE FREE MOVEMENT OF WORKERS IN ESTONIA IN 2007

Chapter II Access to Employment

2. Language requirements

REPORT: *"The Government of the Republic has established the mandatory levels of language proficiency for public servants, employees and sole proprietors mentioned above." (Page 12)*

EE comment:
It should be specified, that according to the Language Act Estonian language proficiency examination is not required if the person has acquired (formal) education in Estonian on at least one of the following levels:

1) basic education;
2) general secondary education;
3) secondary vocational education based on basic education;
4) vocational secondary education based on basic education;
5) higher education.

3. Recognition of Diplomas (including the academic diplomas)

REPORT: *"So far there are no concrete initiatives in order to apply the directive 2005/36/EC." (Page 14)*

EE comment:
There has been initiative to transpose Directive 2005/36/EC. At the beginning of December 2007 the draft of the new Recognition of Foreign Professional Qualifications Act was made public and sent for approval to the relevant authorities and institutions. This new Act implemented Directive2005/36/EC and included provisions on the general system professions as well as the specific sectoral professions. The new Act was adopted in June 2008 and came into force on 1 July 2008.

Chapter IV Employment in the Public Sector

1.2. Language requirements

REPORT: *"The Estonian language requirements are established for persons, who have Estonian citizenship, but whose mother tongue is not Estonian. To prove the ability to communicate in Estonian, there is a special examination for that." (Page 22)*

EE comment:
The sentence above is incorrect. The language requirements and necessity to pass the special examination does not depend on mother tongue. According to the Language Act Estonian language proficiency examination is not required if the person has acquired (formal) education in Estonian on at least one of the following levels:

1) basic education;
2) general secondary education;
3) secondary vocational education based on basic education;
4) vocational secondary education based on basic education;
5) higher education.

Miscellaneous (administrative practices, etc.)

REPORT: "*It is expected that the number of the migrant workers from the other Member States will increase*." (Page 15)

EE comment:
Considering current economic situation more elaboration on the topic and also reference to the source of the statement could be useful.

Chapter III Equality of treatment on the basis of nationality - Obstacles to free movement

Judicial practice

REPORT: *"…at the political level there has been many discussions, that especially the basic human rights of the third country national are violated (in case of Estonia the rights of the Russian speaking population).* (Page 17)

EE comment:
The statement about violated basic human rights of the third country nationals is misleading and therefore more elaboration on the topic could be useful. There have been discussions about rights of Russian speaking population, and especially stateless persons, but the claims about violating basic human rights of the minorities in Estonia however tend to have a more populist touch.

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

REPORT: *„In pension system the problem arises with the second pillar of the pension system and with opportunity to join this pillar. According to the Funded Pension Insurance Act (Kogumispensionide seadus – RT I 2004, 37, 252), the second pillar is mandatory for those employees, who were born after January 1st, 1983. For elderly employees there is a transitional period, where they can choose, whether they would like to join this system or not. If they decide to join this system, they will be bound to this system for their life. If they would like not to join this system, there is no possibility to join to this system later on. This pension system could arise problems for the persons who are using their right for free movement, as it is not clear enough if the citizens of the European Union Member States who are working in Estonia have possibility to join system. Also it is not clear, if the European co-ordinating system will cover such pension system. At the moment there seems to be no concrete law or provisions, which could give to the employees, who were born before January 1st, 1983, opportunity to join the second pillar of the Estonian pension system."* (Page 18)

EE comment:
We cannot agree that the pension system could cause problems for the persons who are using their right for free movement. First of all, a person, who has pension rights (accumulated sums) in the scheme, will keep these rights irrespective of movement to abroad. Of course, if employer is not obliged to pay Estonian social tax, no contributions will be made to pension funds. But when person will reach the pensionable age, he will get the pension regardless of residence.

It is true that workers who come to work in Estonia and were born after January the 1st, 1983 have to join the system (same applies to Estonian workers). If a person who comes to work in Estonia was born before January the 1st, 1983 he or she indeed cannot join the scheme. Concession was made to Estonian workers by allowing them to join during a transitional period.

It should be also noted that second pillar is a part of state pension scheme and goes under the Regulation (EC) No. 883/2004. Estonian mandatory funded old-age pension scheme is entered into Annex VIII part 2 of the Regulation (EC) No. 883/2004. There are no discrepancies between second pillar and portability directive in its current state of discussions

REPORT: Social assistance (page 18)

EE comment:

With regard to a paragraph concerning the social assistance we would suggest - with the reference to Social Welfare Act - replacing following terms:

"Concerning the social assistance following aspects should be taken into account: according to Social Welfare Act (Sotsiaalhoolekande seadus – RT I 1995,21, 323) the social assistance will be granted to the persons who are legally residing in Estonia. This means that the persons concerned are permanently staying in Estonia or they are staying in Estonia under the ~~temporary~~ residence permit or under ~~temporary right to stay~~ ***right of residence****. In addition to the ordinary social assistance, the Social Welfare Act also guarantees ~~extraordinary~~* ***emergency*** *social assistance. Under the ~~extraordinary~~* ***emergency*** *social assistance the benefits in cash or in kind to be guaranteed in unexpected situations are meant. The ~~extraordinary~~* ***emergency*** *social assistance will be provided for all persons who are ~~legally~~ staying in Estonia. According to the wording of the Social Welfare Act and also the meaning of ~~extraordinary~~* ***emergency*** *social assistance, it is not necessary that the person in need would have a residence permit. As the emergency social assistance is not a normal case of social assistance in general, it means that in order to apply for different services and benefits, which are granted in framework of social assistance, residence permit or the* ***right of residence*** *will be needed.*

Judicial practice

REPORT: The report raises the question of guaranteeing parental benefit for EU citizens who have no permanent residence in Estonia. (Page 18, also page 34 in synthesis report)

<u>EE comment:</u>
Estonia sees no major problems with guaranteeing parental benefit for parents who have exercised their right to free movement. Parental benefit is a benefit meant to cover the loss of income of the parent caring for a child less than 18 months of age. The wage-related benefit is financed form state budget. In accordance with the ruling of ECJ (case C-275/96 Kuusijärvi) parental benefit is coordinated as a family benefit in the meaning of the Regulation 1408/71. Estonia applies no qualification or waiting periods for EU citizens in order to qualify for parental benefit. For calculating the benefit amount in the cases where the recipient of the benefit has worked in other member state than Estonia during the reference period, Estonia has made an entry to Annex VI of the Regulation. According to the entry the periods of employment in other member states are taken into account when calculation the benefit amount. A similar entry has been made to Annex X of the Regulation 883/04. The approach is in full accordance with the principle of aggregation of periods of insurance of the Regulation.

Chapter V Members of the family

3. ACCESS TO EDUCATION AND STUDY GRANTS

REPORT: *„The* ***Migration Board*** *usually states the fact, that if the migration quota has been already reached, there are no possibilities to give to a person concerned a residence permit." (Page 32)*

Chapter VI Relevance/Influence/Follow-up of Recent Court of Justice Judgments

REPORT: *„The important judgments and their influence in the Estonian system are discussed in working groups and when there is need for that memoranda concerning the*

decisions are delivered to those making decisions i.e. to the staff of the ***Board of Immigration and Citizenship*** *on the one hand local police and passport control authority on the other." (Page 34)*

EE comment:
The correct official name of the body referred to is Citizenship and Migration Board.

REPORT: In the report (page 34) appropriate follow-up to the relevant ECJ decisions in the field of social security is questioned.

EE comment:
In this respect we would like to recall that ECJ rulings concern concrete cases and depend largely on the circumstances of the specific country concerned. In case an ECJ ruling is of wider interest, it is discussed in Administrative Committee and after that also among national bodies. As the result of these discussions relevant regulation is amended accordingly or the interpretation of the regulation is agreed on. As regulations are directly applicable, there is no need to amend national law. Just for the record, in Estonia, also some concrete initiatives have been taken for distributing information about ECJ rulings in social security field: in the near future a collection of relevant court rulings translated into Estonian will be published.

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

REPORT: It is suggested that rules for aliens to be hired in Estonia are in many aspects quite complicated (page 35).

EE comment:
It would be useful to mention in this context that rules for hiring highly qualified workers from third countries were considerably simplified in 2008. Preparations for simplifications by an appointed inter-ministerial working group started already in 2006. Also salary threshold set out for third country nationals referred to on page 17 is one element of these simplifications.

REPORT: "*According to the unofficial statistical data approx. 35000 Estonians are working in different EU Member States*."

EE comment:
As there is no data available, as also correctly pointed out in the report, we would be very careful with such estimations.