REPORT
on the Free Movement of Workers in Estonia in 2007

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Introduction

The following report covers issues on free movement in Estonian legislation and in practice. This report covers the period of year 2007.

Joining the European Union, the changes in migration law were necessary. The Aliens Act mainly regulated the status of the aliens in Estonia. To guarantee the free movement between EU Member States, since May 1st 2004 a special act about the European citizens and their family members came into force. This act covers all the necessary EU directives and regulations, which were in force at the time being. From the 1st August 2006 the new Citizen of the European Union Act came into force. Through this act the directive 2004/38/EU was harmonised.

Analysing the situation of migration in Estonia one should keep in mind that in Estonia there is a number of persons who are not citizens of any country (stateless persons). They possess only an alien's passport. These persons are to allow to stay and to work in the country concern i.e. in Estonia. The accession to EU brought also changes in the civil service. Until May the 1st 2004 all the positions in civil service were guaranteed only for the citizens of the Republic of Estonia. This is also the main principle that is stated in the Constitution of the Republic of Estonia (Art.30). As the principle of the free movement of persons and workers has been applied, the changes in Civil Service Act were needed. Since May the 1st 2004, also the citizens of the EU Member States have a right to be appointed to a position in Estonian civil service. In accordance with the restrictions of the free movement in the European Union the citizens of the Member States of the EU cannot take all positions in the civil service. Some strategic positions are reserved only for the citizens of the Republic of Estonia.

Generally speaking the accession to the European Union has brought no massive migration form the other EU Member States. On the other hand the expected massive movement to the other EU Member States was not registered. The main movement concerns free movement of workers to the Scandinavian countries (Finland, Sweden), also England and Ireland. Mainly it concerns building construction, bus drivers and different service branches (hotels, restaurants etc).

At the end of 2007 Estonia joined the Schengen area. This has made the free movement of persons incl. workers easier in the meaning that there is no border control between the Schengen area states. At the same time it makes more difficult to observe the free movement of workers especially if they are working in Estonia less than three months. In this sense it is difficult to say how attractive Estonia is for workers from different EU Member States.

Chapter I
Entry, Residence, Departure

To discuss the problems about the entry, residence and departure of the aliens or citizens of the Member States of the EU, one should keep in mind the situation, which was applicable before and after the accession to the EU. Before the accession to the European Union there were not many special rules, which gave to the citizens of the Member States of the European Union advantages concerning the entry, residence and departure. Generally speaking, the rules, which were applied to all aliens, were also to the citizens of the EU Member States applied. There was generally one exception – the citizens of the Member States of the EU were exempted from the quota, which was applied by determining the number of aliens, who could get the residence permit in Estonia.

Since August the 1st, 2006 a new Citizen of the European Union Act was adopted in order to harmonise directive 2004/38/EC. The new Citizen of the European Union Act regulates all the necessary aspects of entry residence and departure of a citizen of the European Union Member State. The legal situation of the third country nationals is regulated mainly by the Aliens Act.

A. ENTRY

Text(s) in force

According to § 11^1 of the State Borders Act a citizen of the European Union arriving in Estonia has to have a valid identity document issued in a Member State of the European Union. Upon arrival in Estonia, a family member of a citizen of the European Union who is not a citizen of the European Union must hold a valid identity document recognised by the Republic of Estonia and conforming with international requirements and a visa or residence permit of Estonia or a residence permit of a Member State of the European Union.

The main act, which determines the legal Status of the citizen of EU is the Citizen of European Union Act (*Euroopa Liidu kodaniku seadus).* According to § 1 of the Citizen of European Union Act, this Act regulates the bases for the stay and residence in Estonia of citizens of the European Union and their family members. This Act applies to the citizens of the European Union and the citizens of the European Economic Area who are not Estonian citizens, and to the citizens of the Swiss Confederation and to their family members.

The right of stay is the legal basis for the stay in Estonia of citizens of European Union and their family members. The right of residence is the legal basis for the residence in Estonia of citizens of European Union and their family members.

Miscellaneous

To enter the Republic of Estonia there is no requirement for visa. To enter Estonia it is not necessary to have a passport. It is enough, if a person has an identification document (e.g. ID card etc.).

B. RESIDENCE

Text(s) in force

A citizen of the European Union has the right to stay in Estonia on the basis of a valid travel document or identity document. Not later than after three months after the date of entry in Estonia, a citizen of the European Union must register his or her residence pursuant to the procedure provided by the Population Register Act. A person who is a subject of the population register ensures the correctness of the address of his or her residence, his or her minor children and persons under his or her guardianship entered into the population register. For the address of a residence to be entered in the population register, a person submits a notice of residence in writing to a competent local government agency of his or her residence. The address of one residence is provided in a notice of residence. If a person uses several residences, he or she submits the address of the residences of his or her choice for entry in the population register. A person may also submit a postal address in the notice of residence. The space the address details of which a person indicates in a notice of residence is a residential building or apartment which is used as permanent residence

Address of a residence entered in the population register grant a person no right to use the space at that address as his or her residence if the person has no right to use the space on the grounds provided by law.

Address of residence has legal effect:

1) at *Riigikogu*, European Parliament and local government council elections, referendums and opinion polls;
2) upon payment of taxes into the budget of the local government on the bases provided by tax law;
3) upon performance of public duties if the performance of such duties is related to residence.

The right of stay in Estonia of a citizen of the European Union may be restricted if there is good reason to believe that the person poses a danger to public order, national security or the health of other persons. At the moment there is no case law or explanations in what circumstances it would be possible to refuse the right to enter Estonia. A citizen of the European Union whose right of stay in Estonia has been restricted is not permitted to enter Estonia. Restriction of the right to stay will be decided by the Minister of Interior Affairs, a higher official of the Ministry of Interior Affairs authorised by the Minister, a border guard authority, a police authority or the Security Police Board.

The Citizenship and Migration Board has a right to issue, a precept to leave Estonia to a citizen of the European Union staying in Estonia whose right of stay is restricted. A precept to leave is subject to compulsory execution after the thirtieth day as of the date of issue of the precept.

If the right to stay is restricted due to a threat to national security, the precept to leave will be subject to compulsory execution immediately.

Temporary right of residence

A citizen of the European Union acquires temporary right of residence in Estonia for five years if such citizen registers his or her residence pursuant to the procedure provided by the

Population Register Act. After five years, the term of temporary right of residence is extended for another five years if the residence of a citizen of the European Union continues to be registered in Estonia and the right of residence of a citizen of the European Union is not extinguished or has not been terminated. Upon registration of residence, a corresponding certificate is issued to the citizen of the European Union if he or she so desires.

A citizen of the European Union who has acquired temporary right of residence in Estonia must apply for an identity card within one month after the registration of his or her residence in Estonia pursuant to the procedure provided in the Identity Documents Act. An identity card certifies the temporary right of residence of a citizen of the European Union. This identity card will be issued by Citizenship and Migration Board.

According to § 15 of Citizen of European Union Act the temporary right of residence of a citizen of the European Union extinguishes:

1) if he or she has no registered residence in Estonia;
2) upon acquisition of permanent right of residence;
3) upon the grant of Estonian citizenship to the citizen or upon his or her resumption of Estonian citizenship;
4) upon loss of citizenship of the European Union, or
5) upon the death or declaration of death of the citizen.

Upon extinguishment of the temporary right of residence of a citizen of the European Union, the Citizenship and Migration Board revokes the identity card issued to him or her.

The temporary right of residence of a citizen of the European Union is terminated if there is good reason to believe that such person poses a danger to public order, national security or the health of other persons. The temporary right of residence of a citizen of the European Union in Estonia is terminated by a decision of the Citizenship and Migration Board.

Permanent Right of Residence of Citizen of European Union

A citizen of the European Union who has permanently resided in Estonia for a period of five consecutive years based on temporary right of residence is entitled to permanent right of residence.

A citizen of the European Union is entitled to permanent right of residence before the term mentioned above, if he or she:

1) has, by the date of termination of his or her employment or operation as a sole proprietor, attained the age of retirement (63 years) and has been employed or has operated as a sole proprietor in Estonia for at least the last twelve months and has stayed in Estonia on the basis of temporary right of residence at least for the last three consecutive years,
2) has permanently stayed in Estonia on the basis of temporary right of residence at least for the last two consecutive years and has terminated employment or operation as a sole proprietor due to permanent incapacity for work,
3) resides in Estonia on the basis of temporary right of residence and has terminated employment due to permanent incapacity for work arising from a work injury or occupational disease, or
4) resides in Estonia on the basis of temporary right of residence and has been employed or has operated as a sole proprietor in Estonia at least for three consecutive years and has commenced employment in another Member State of the European Union but resides in Estonia and returns to Estonia at least once a week.

A citizen of the European Union with permanent right of residence is a permanent resident of Estonia. The time during which a citizen of the European Union, due to reasons independent of him or her, is unemployed, will be included in the period of employment.

A citizen of the European Union has to register his or her permanent right of residence with the Citizenship and Migration Board. A citizen of the European Union has to submit a standard format application for registration of his or her permanent right of residence to the Citizenship and Migration Board. Citizenship and Migration Board will verify the existence of the permanent right of residence of the citizen of the European Union and if such right exists, it will issue an identity card to the citizen of the European Union which is the document certifying his or her permanent right of residence.

The permanent right of residence of a citizen of the European Union extinguishes:

1) upon the grant of Estonian citizenship to the person or upon his or her resumption of Estonian citizenship;
2) upon loss of citizenship of the European Union; or
3) upon the death or declaration of death of the person.

The permanent right of residence of a citizen of the European Union is terminated:

1) at the request of the citizen of the European Union;
2) if the person has been absent from Estonia at least for a consecutive period of two years; or
3) if there is good reason to believe that the person poses a threat to public order, national security or the health of other persons.

The permanent right of residence of a citizen of the European Union is terminated by a decision of the Citizenship and Migration Board.

A citizen of the European Union with right of residence in Estonia is required to notify the Citizenship and Migration Board of the following circumstances:

1) acquisition of right of residence in another Member State of the European Union;
2) temporary absence from Estonia for a period longer than 183 days related to performance of compulsory military service, pregnancy, delivery, serious illness, studies, professional training or business trip;
3) loss of citizenship of the European Union;
4) divorce or annulment of marriage if this is registered outside of Estonia and the spouse of the citizen of the European Union has right of residence in Estonia;
5) unemployment;
6) retirement;
7) permanent incapacity for work.

No special rules have been foreseen for job seekers who are coming from the other Member States of the European Union. The general rules are also applicable for jobseekers. They can stay in Estonia three months without any obligation to register their address in population register. After this period of time they have to register their address in population register and to apply for temporary right to residence.

C. DEPARTURE

Text(s) in force

The main rule concerning departure, which is applicable for all aliens including citizens of the EU Member States is, that according to the § 3 of the Obligation to Leave and Prohibition on Entry Act *(väljasõidukohustuse ja sissesõidukeelu seadus)* (RT I 1998, 98/99, 1575; 2001, 68, 407; 2002, 53, 336; 61, 375) an alien has to leave Estonia if the legal basis to stay in Estonia expires, will not be prolonged and the alien does not have any other legal basis to stay in Estonia. If a person concerned will not leave Estonia, the administrative measures will be applied.

The circumstances, why the residence permit expires or it has been revoked can be different. According to the § 16 of the Citizen of European Union Act the termination of temporary right of residence of citizen of European Union could be different. Generally speaking the temporary right of residence of a citizen of the European Union is terminated if there is good reason to believe that such person poses a danger to public order, national security or the health of other persons.

The temporary right of residence of a citizen of the European Union in Estonia is terminated by a decision of the Citizenship and Migration Board.

According to the § 42 of the Citizen of European Union Act the permanent right of residence of a citizen of the European Union extinguishes:

1) upon the grant of Estonian citizenship to the person or upon his or her resumption of Estonian citizenship;
2) upon loss of citizenship of the European Union; or
3) upon the death or declaration of death of the person.

Upon extinguishment of the permanent right of residence of a citizen of the European Union, the Citizenship and Migration Board revokes the identity card issued to him or her.

According to § 43 of the Citizen of European Union Act the permanent right of residence of a citizen of the European Union is terminated:

1) at the request of the citizen of the European Union;
2) if the person has been absent from Estonia at least for a consecutive period of two years; or
3) if there is good reason to believe that the person poses a threat to public order, national security or the health of other persons.

The permanent right of residence of a citizen of the European Union is terminated by a decision of the Citizenship and Migration Board.

Upon termination of the permanent right of residence of a citizen of the European Union, the Citizenship and Migration Board revokes the identity card issued to him or her.

The Citizenship and Migration Board will issue, a precept to leave to a citizen of the European Union whose permanent right of residence is terminated on the basis, if there is good reason to believe that the person poses a threat to public order, national security or the health of other persons. The public order and the national security has always been the question to the Member States to determine what such threats are. So far there is no such clarification in Estonian practice.

The precept to leave is subject to compulsory execution after the thirtieth day as of the date of issue of the precept. If the permanent right of residence is terminated due to a threat to national security, the precept to leave will be subject to immediate compulsory execution.

D. REMEDIES

Texts in force

According to the Citizen of European Union Act, the following system of control and remedies has been foreseen.

The institution that has a right to control the legal status of the citizen of European Union and his or her family members is the Citizenship and Migration Board. Citizens of European Union and their family members have an obligation to cooperate with this institution

A family member is obliged to provide proof of his or her conformity to the prerequisite and conditions which are the basis for the temporary right of residence or extension thereof. In the case of justified doubt, a citizenship and migration official has the right to verify whether or not a citizen of the European Union or his or her family member performs the obligations and fulfils the conditions provided by the law, abuses the rights foreseen by law or uses deception.

If there is violation of the Citizen of European Union Act, the following sanctions have been foreseen.

Stay or residence of a family member of a citizen of European Union in Estonia without a legal basis is punishable by a fine of up to 300 fine units.

Employment of a family member of a citizen of European Union in Estonia without a legal basis is punishable by a fine of up to 300 fine units or by detention.

Enabling employment of a family member of a citizen of European Union in Estonia without a legal basis is punishable by a fine of up to 300 fine units. The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons (approx 3200 EURO).

The fine unit is equal to 60 Estonian kroons (approx 4 EUR).

Chapter II
Access to employment

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT

Text(s) in force

The main legal source for the employment conditions is Employment Contracts Act (ECA) of Republic of Estonia. According to ECA a migrant worker has generally to hold a working permit in order to have an opportunity to work in Estonia. As the EU migrant workers do not have any obligation to hold a working permit, is this requirement applicable only for the third country workers. The Employment Contracts Act does not concretise in what circumstances there is a need for employment permit. These rules are to find in Aliens Act (applicable for third country nationals) or in Citizen of European Union Act for citizens of Member States of the European Union. There are no restrictions for migrant workers form the EU Member States to start their employment in Estonia. There are some differences concerning the employment in public service especially for officials *(s. Chapter IV public service).*

The principle of equal treatment in employment relations can be found in Wages Act § 5 and in Employment Contracts Act § 10. According to those articles any discrimination on the ground of nationality of an employee is prohibited. According to the Labour Market Services and Benefits Act the EU citizens residing legally in Estonia have the right to register themselves as jobseekers or unemployed person.

2. LANGUAGE REQUIREMENTS

According to the Language Act *(keeleseadus –RT I 1995, 23, 334…I 2005, 1, 1*) employees of state agencies administered by government agencies and of local government agencies, and employees of legal persons in public law and agencies thereof, notaries, bailiffs and certified interpreters and translators and the employees of their bureaus must be able to understand and have to use Estonian at the level which is necessary to perform their service or employment duties.

The Government of the Republic has established the mandatory levels of language proficiency for public servants, employees and sole proprietors mentioned above.

Proficiency in Estonian can be required at one of the three levels of language proficiency:

1) basic level – limited oral and elementary written proficiency in Estonian. The person can manage in familiar language situations, understands clear speech on everyday topics, understands the general meaning of uncomplicated texts and can complete simple standard documents and write short texts for general use;
2) intermediate level – oral and limited written proficiency in Estonian. The person can manage in various language situations, understands speech at normal speed, understands the contents of texts on everyday topics without difficulty and can write texts relating to his or her area of activity;
3) advanced level – oral and written proficiency in Estonian. The person can express himself or herself freely irrespective of the language situation, understands speech at high

speed, understands the contents of more complicated texts without difficulty and can write texts which are different in style and function.

Persons who have passed an Estonian language proficiency examination will be issued a certificate of proficiency in the Estonian language.

Language proficiency at least at the basic level is required from public servants, employees of state agencies administered by government agencies and of local government agencies, and from employees of legal persons in public law and agencies thereof whose duties of service or employment are of specific nature involving routine instances of language use and whose written assignments involve only standard documents.

Language proficiency at least at the intermediate level is required from public servants, employees of state agencies administered by government agencies and of local government agencies, and from employees of legal persons in public law and agencies thereof whose duties of service or employment are varied and may be related to records management, management of a subordinate unit and co-operation and the nature of whose written work can be defined.

Language proficiency at the advanced level is required from public servants and employees of state agencies administered by government agencies and of local government agencies, and from employees of legal persons in public law and agencies thereof whose duties of service or employment are related to the management of a unit, planning and coordination of activities thereof, advising and preparing public reports, speeches and official written texts.

The requirements concerning linguistic competence of professors and other teachers at universities are not as strict as the requirements concerning other civil servants and there is more place for discretion that makes it possible to take into account the particularities of each situation.

3. RECOGNITION OF DIPLOMAS (INCLUDING THE ACADEMIC DIPLOMAS)

The procedure of recognition of foreign professional qualifications is determined in the Recognition of Foreign Professional Qualifications in Estonia Act *(Välisriigis omandatud kutsekvalifikatsiooni tunnustamise seadus – RT I 2000, 29, 168…I 2007, 12, 64).* A competent body has to, pursuant to the procedure provided by law, compare the professional qualifications of an applicant to the professional qualifications required for working in a regulated profession in Estonia and will decide, pursuant to the procedure prescribed in the Act mentioned above, whether the applicant meets the requirements set for the given profession in Estonia.

A relevant government agency, a state agency administered by a government agency, another agency performing functions in public law, an association of employees or employers, a professional association, or the Estonian National Academic Recognition Information Centre may act as a competent body.

If a diploma is required for working in a regulated profession in Estonia, a competent body will not, on grounds of non-conformity of professional qualifications, prohibit an applicant from working in Estonia under the same conditions as applicable to persons who have acquired their professional qualifications in Estonia, if:

1) in the foreign state (in meaning of the Member State of the European Union) where the professional qualifications were acquired the same profession is regulated and the applicant has the professional qualifications required in such profession;
2) in the foreign state where the professional qualifications were acquired the same profession is not regulated but the applicant has worked in the profession full-time for two years during the last ten years. In such case, the applicant is required to submit a document issued by a foreign official, which certifies that the applicant has completed at least three years of post-secondary training in the corresponding field in a foreign educational institution providing higher education and, if necessary, has undergone professional training, and has the professional qualifications required in that profession.

If more than four years of post-secondary training is required for working in a regulated profession in Estonia, an applicant has the right to work in the regulated profession if he or she holds a diploma.

If an applicant's period of study has been one or more years shorter than the period of study required for working in the same profession from a person who has acquired his or her professional qualifications in Estonia, a competent body may require the applicant to submit evidence of professional experience. The required period of professional experience should not exceed the period of time by which the applicant's period of study is shorter than that required in Estonia.

Further, this act also contains the rules about the recognition of professional qualifications in regulated professions requiring higher education and not requiring the higher education.

So far there are no concrete initiatives in order to apply the directive 2005/36/EC.

Draft legislation, circulars, etc.

In July 2008 the Estonian government adopted new requirements for employees in order to be able to communicate in Estonian. According to the new rules there are three levels for understanding Estonian language: A, B, C. Level A means that a person has an ability to communicate on the minimum level. This level can be required from employees whose employment obligations are quite concrete and they are involved papers, task that have routine nature. Level B means that an employee has a higher ability to communicate in Estonian and he is able to compose e.g. already the texts that are not typical and routine. The level B can be demanded from the employees whose employment obligations have different nature or who are in leading positions, like leading a group of employees. Level C is the highest level and this level can be demanded from the employees who have an obligation to coordinate an activity of an institution, office and who is involved with composing of official statements.

It is the obligation of an employer to guarantee and to be responsible that the employees have the sufficient level of knowing the Estonian language.

Judicial practice

There is no special case law concerning the legal issues of the migrant workers from the EU Member States.

Miscellaneous (administrative practices, etc.)

There are no concrete data available, how many persons from different EU Member States work in Estonia. Although there is also a special law about the posted workers, there is no official number of the posted workers available. The number of posted workers can be approx. 1000. It is expected that the number of the migrant workers from the other Member States will increase.

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

1. WORKING CONDITIONS, SOCIAL AND TAX ADVANTGES /DIRECT, INDIRECT DISCRIMINAATION)

Texts in force

In Estonia there are different legal rules, which set forth the general principles of equal treatment. There are different legal acts, which state the principle of equal treatment. All the legal rules about the equal treatment are also applied in case there is a discrimination based on the nationality of the person concerned. In Constitution of the Estonian Republic in Art 12 it has been foreseen, that everyone is equal before the law.

There is no legal rule, which states, that there should not be any discrimination between citizens of the EU Member States based on the citizenship. At the same time, there are some general rules, that forbid discrimination based on the citizenship of persons concerned.

Estonian Constitution

§ 12. Everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds.

This principle of equal treatment is mainly concretised in Estonian labour law.

The principle of equal treatment in employment relations and for jobseekers can be found in Wages Act § 5 and in Employment Contracts Act § 10. According to those articles it is prohibited any discrimination on the ground of nationality of an employee. According to the Labour Market Services and Benefits Act the EU citizens residing legally in Estonia have the right to register themselves as jobseekers or unemployed person.

The penal code *(Karistusseadustik)* also foresees that in special circumstances the violation of the principle of equal treatment could be handled as a criminal offence. In Estonian penal code there is a special subtitle, where the criminal offences against the equal treatment are regulated.

Penal code (Karistusseadustik)

Offences Against Equality

§ 152. Violation of equality
Unlawful restriction of the rights of a person or granting of unlawful preferences to a person on the basis of his or her nationality, race, colour, sex, language, origin, religion, political opinion, financial or social status is punishable by a fine of up to 300 fine units or by detention.
(2) The same act, if committed:
1) at least twice, or
2) significant damage is thereby caused to the rights or interests of another person protected by law or to public interests, is punishable by a pecuniary punishment or up to one year of imprisonment.

All these rules mentioned above will be also applied in case there is discrimination due to the nationality.

One special rule concerning the legal status of EU citizens and third country nationals to be hired in Estonia should be mentioned here. According to the amendment in Estonian Aliens Act there is minimum salary requirement in order to hire workforce from the third country. The salary to be paid to the third country nationals must not be lower than monthly average wage multiplied through 1.24. This rule will guarantee that the third county nationals will get ca 1000 Euro in a month. For workers from the EU Member States there is no such rule. For the workers who are citizens of the European Union only the general rule of Estonian wage regulation is applicable: if an employee has been employed on full time basis, at least the minimum wage should be paid. The minimum wage in Estonia at the moment is approx 275 EUR.

Judicial practice

Although the rules about the equal treatment have been in force already since 1992, so far there is no judicial practice and concrete case law on that subject matter. This means that the discrimination on ground of nationality, citizenship etc, has not been legally defined by the courts. At same time 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).

2. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS

Nothing to report.

3. SPECIFIC ISSUES

According to the Act about the Law of a Ships Flag and Ships Register *(Laeva lipuõiguse ja laevaregistrite seadus – RT I 1998, 23, 321, I 2005, 57, 450)*, the captain of a ship can be an Estonian citizen or a citizen of the EU Member States. As to the nationality conditions for captains of ship there is no contradiction to the EU legislation.

The principles of free movement of persons are also applied in sports sectors. In general there are no restrictions for different teams to hire team-members also from other EU Member States. The main rules about hiring the members outside the Estonia are concretised by the internal rules of a sport club. Although there is also adopted a special law about the sportsmen, this law does not concretise the rules of the free movement for sportsmen.

In Estonia there does not exist any authority that has an authorisation to control and to manage the activity of different national sport clubs or federation. Also there is no regulation how many persons in a sport-sector should have Estonian nationality.

Concerning the frontier workers and artists no special regulations has been adopted. At the same time there are no obstacles for free movement for frontier workers and artists. The general problems and questions described in this report are also applicable for frontier workers and artists.

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

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.

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. In addition to the ordinary social assistance, the Social Welfare Act also guarantees extraordinary social assistance. Under the extraordinary social assistance the benefits in cash or in kind to be guaranteed in unexpected situations are meant. The extraordinary 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 social assistance, it is not necessary that the person in need would have a residence permit. As the extraordinary 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 will be needed.

Judicial practice

The main important question that arises in social security is the question about guaranteeing parental benefit. Parental benefit *(vanemahüvitis, Vanemahüvitise seadus- - RT I 2007)* is a benefit paid to the parents until the child reaches the age one year. The amount of that benefit usually depends on the amount of the social tax that was paid in the last year, but at the same time, the law has foreseen the minimum amount that should be paid for all persons.
Right for a parental benefit has a permanent Estonian resident or the alien, who is resident under the fixed term permit or under the fixed term right to stay. Estonian resident who has the living place in different states has a right to get the benefit only in case he or she is a resident in meaning of the income tax act or he or she lives in Estonia permanently in the meaning of the Aliens Act or in the meaning of Citizen of European Union Act. A resident in the meaning of the income-tax-act is a person, who has lived in Estonia at least 183 calendar days in a year.

Literature

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Chapter IV
Employment in the public sector

1. ACCESS TO PUBLIC SECTOR

1.1 Nationality condition for access to positions in the public sector

Text(s) in force

Requirements concerning Estonian citizenship

According to the general regulation concerning the employment in public sector, between two categories of persons who are working in public sector should be distinguished. First there are persons who are working under the employment contract *(abiteenistujad).* Those persons are mostly fulfilling tasks, which are more technical and supportive nature (secretary, drivers etc). By those persons there are no requirements that they have to be Estonian citizens. This means, persons working under the employment contract may also be aliens or citizens of the EU Member States. The second type of persons who are working in public sector are officials *(ametnikud*). These persons should in general have Estonian citizenship.

Estonian constitution

According to the Estonian constitution, the persons who are Estonian citizens may have positions in different state and local governmental agencies and institutions. At the same time, the constitution also gives an opportunity, that if in an act will be determined, then also the persons who do not have Estonian citizenship may be appointed as an official. This was so far only the case if there was a transition period for applying the new system of the employment in public sector (especially by policemen).

§ 30

Positions in state agencies and local governments shall be filled by Estonian citizens, on the basis of and pursuant to procedure established by law. These positions may, as an exception, be filled by citizens of foreign states or stateless persons, in accordance with law.

The Public Service Act

In 1995 a reform in the employment in public sector was introduced. Until the 1995 the employment in public service was performed under the employment contract and the regulations of labour law were also applicable to the civil servants. From beginning 1996 there is the distinction between the public service and the employment on the basis of the employment contract. According to this reform, there is distinction between those people who are appointed as officials and those persons, who are also employed in public sector, but under the employment contract. According to the § 1 of the Public Service Act *(avaliku teenistuse seadus – RT I 1995, 16, 228)* the public service is employment in a state or local government administrative agency.

Employment in a state office is deemed to be an employment relationship in an elected or appointed office prescribed, on the staff of an institution exercising legislative, executive or judicial power, state supervision, control or national defence. An administrative agency is an agency that is financed from the state budget or a local government budget and the function of which is to exercise public authority.

A public servant is a person who performs remunerative work in a state or local government administrative agency.

A person who is in a service relationship with the state is a state public servant. A person who is in a service relationship with a local government is a local government servant.

Public servants are divided into:

1) officials;
2) support staff;
3) non-staff public servants.

An official is a person elected or appointed to an office on the staff of an administrative agency. Officials are divided into state officials and local government officials.

Support staff are clerical staff employed under employment contracts in support staff positions on the staff of an administrative agency.

A non-staff public servant is a person who is employed in the service for a specified period of time on the basis of an appointment or an employment contract to perform those functions of an official or member of support staff, which are not permanent, by their nature.

What kind of requirements an official should fulfil, this is determined in § 14 of the Public Service Act. According to this paragraph an Estonian citizen, who has attained eighteen years of age, has at least a secondary education, has active legal capacity and is proficient in Estonian to the extent provided by or pursuant to law may be employed in the service as a state or local government official.

A person who has attained 21 years of age and complies at least with the requirements mentioned above may be appointed to a position of higher or senior official in the state public service.

A citizen of a Member State of the European Union who conforms to the requirements established by law and on the basis of law may also be appointed to a position in public service. Estonian citizens will be appointed to positions, which involve exercise of public authority and protection of public interest. Such positions which are reserved only for Estonian citizens are, for example, exercise of state supervision, national defence and judicial power, processing of state secrets, representing of public prosecution and diplomatic representation of the state, and the positions in which an official has the right, in order to guarantee public order and security, to restrict the basic rights and freedoms of persons.

Also the positions related to the directing of the administrative agencies specified in Public Service Act are to be fulfilled by the Estonian citizens. There is no concrete list of the posts which are exclusively reserved for Estonian citizens. If there will be a dispute about the discrimination or non-discrimination in public services it should be decided case by case which posts are exclusively reserved for Estonian citizens.

It should be added, that not all positions that are involved with exercising of the public authority.

An administrative agency is an agency which is financed from the state budget or a local government budget and the function of which is to exercise public authority.

State administrative agencies where employment is considered to be public service are:

1) Chancellery of the Riigikogu (parliament);
2) Office of the President of the Republic;
3) Office of the Chancellor of Justice;
4) courts (including land registries and their departments);
5) government agencies within the meaning of § 39 of the Government of the Republic Act
6) Headquarters of the Defence Forces;
7) departments of national defence;
8) military units of the Defence Forces;
9) Headquarters of the National Defence League;
10) State Audit Office.

Local government administrative agencies in which employment is considered to be public service are:
1) office of a rural municipality or city council;
2) rural municipality and city governments (as agencies) together with their structural units;
3) governments of a district of a rural municipality and of a district of a city (as agencies);
4) city government executive agencies;
5) bureaus of local government associations.

1.2. Language requirement

Requirements concerning language proficiency

In situation where there is a requirement for persons to be hired in the civil service, there is also the requirement to have certain abilities to communicate in Estonian. According to the Estonian constitution the language used in Estonia and especially in different state institutions and local government institutions is Estonian. The constitution itself guarantees, that only in cases where the majority of population speaks other language as Estonian language, also the other language can be used (this is mainly the case in regions, where the majority of population is Russian speaking e.g. in eastern part of Estonia).

Main requirements for the ability to communicate in Estonian are determined in the Language Act *(Keeleseadus -RT I 1995, 23, 334…I 2005, 1, 1)* and in the Government decree, in which it is concretised what level the ability in Estonian can be demanded. The requirements to communicate in Estonian have been established for public servants, who are the officials working in the state and local government institutions. 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.

According to the Language Act public servants and employees of state agencies administered by government agencies and of local government agencies, and employees of legal persons in public law and agencies thereof, notaries, bailiffs and certified interpreters and translators and the employees of their bureaus must be able to understand and has to use Estonian at the level which is necessary to perform their service or employment duties.

The Government of the Republic has established the mandatory levels of language proficiency for public servants, employees and sole proprietors mentioned above.

Proficiency in Estonian can be required at one of the three levels of language proficiency:

1) basic level – limited oral and elementary written proficiency in Estonian. The person can manage in familiar language situations, understands clear speech on everyday topics, understands the general meaning of uncomplicated texts and can complete simple standard documents and write short texts for general use;
2) intermediate level – oral and limited written proficiency in Estonian. The person can manage in various language situations, understands speech at normal speed, understands the contents of texts on everyday topics without difficulty and can write texts relating to his or her area of activity;
3) advanced level – oral and written proficiency in Estonian. The person can express himself or herself freely irrespective of the language situation, understands speech at high speed, understands the contents of more complicated texts without difficulty and can write texts which are different in style and function.

Persons who have passed an Estonian language proficiency examination will be issued a certificate of proficiency in the Estonian language.

Language proficiency at least at the basic level is required from public servants, employees of state agencies administered by government agencies and of local government agencies, and from employees of legal persons in public law and agencies thereof whose duties of service or employment are of specific nature involving routine instances of language use and whose written assignments involve only standard documents.

Language proficiency at least at the intermediate level is required from public servants, employees of state agencies administered by government agencies and of local government agencies, and from employees of legal persons in public law and agencies thereof whose duties of service or employment are varied and may be related to records management, management of a subordinate unit and co-operation and the nature of whose written work can be defined.

Language proficiency at the advanced level is required from public servants and employees of state agencies administered by government agencies and of local government agencies, and from employees of legal persons in public law and agencies thereof whose duties of service or employment are related to the management of a unit, planning and coordination of activities thereof, advising and preparing public reports, speeches and official written texts.

1.3. Recruitment procedures

Anyone who meets the formal recruitment criterions concerning education and language proficiency may apply and be nominated for open posts at the public sector.

1.4. Recognition of diplomas

The procedure of recognition of foreign professional qualifications is determined in the Recognition of Foreign Professional Qualifications in Estonia Act *(Välisriigis omandatud kutsekvalifikatsiooni tunnustamise seadus – RT I 2000, 29, 168…I 2004, 45, 316).* A competent body has to, pursuant to the procedure provided by law, compare the professional qualifications of an applicant to the professional qualifications required for working in a regulated

profession in Estonia and will decide, pursuant to the procedure prescribed in the Act mentioned above, whether the applicant meets the requirements set for the given profession in Estonia.

A relevant government agency, a state agency administered by a government agency, another agency performing functions in public law, an association of employees or employers, a professional association, or the Estonian National Academic Recognition Information Centre may act as a competent body.

If a diploma is required for working in a regulated profession in Estonia, a competent body will not, on grounds of non-conformity of professional qualifications, prohibit an applicant from working in Estonia under the same conditions as applicable to persons who have acquired their professional qualifications in Estonia, if:

1) in the foreign state (in meaning of the Member State of the European Union) where the professional qualifications were acquired the same profession is regulated and the applicant has the professional qualifications required in such profession;
2) in the foreign state where the professional qualifications were acquired the same profession is not regulated but the applicant has worked in the profession full-time for two years during the last ten years. In such case, the applicant is required to submit a document issued by a foreign official, which certifies that the applicant has completed at least three years of post-secondary training in the corresponding field in a foreign educational institution providing higher education and, if necessary, has undergone professional training, and has the professional qualifications required in that profession.

If more than four years of post-secondary training is required for working in a regulated profession in Estonia, an applicant has the right to work in the regulated profession if he or she holds a diploma.

If an applicant's period of study has been one or more years shorter than the period of study required for working in the same profession from a person who has acquired his or her professional qualifications in Estonia, a competent body may require the applicant to submit evidence of professional experience. The required period of professional experience should not exceed the period of time by which the applicant's period of study is shorter than that required in Estonia.

Further this act contains also the rules about the recognition of professional qualifications in regulated professions requiring higher education and not requiring the higher education.

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

About recognition of professional experience see above IV1.4

2. EQUALITY OF TREATMENT

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

In Estonia there are no specific rules in order to take into account the professional experience and seniority for the purposes of access to the public sector or for the purposes of the determination of professional advantages. The discretion concerning professional competence is

open so that all relevant matters contributing to the professional competence may be taken into account. In this discretion professional experience and seniority acquired in another Member State are taken into account in a similar manner as experience and seniority acquired in Estonia

Miscellaneous

In July 2008 the Estonian government adopted new requirements for employees in order to be able to communicate in Estonian. According to the new rules there are three levels for understanding Estonian language: A, B, C. Level A means that a person has an ability to communicate on the minimum level. This level can be required from employees whose employment obligations are quite concrete and they are involved with papers and tasks that have routine nature. Level B means that an employee has a higher ability to communicate in Estonian and he is able to compose e.g. already the texts that are not typical and routine. The level B be can be demanded from the employees whose employment obligations have different nature or who are in leading positions, like leading a group of employees. Level C is the highest level and this level can be demanded from the employees who have an obligation to coordinate an activity of an institution, office and who is involved with composing of official statements.

It is the obligation of an employer to guarantee and to be responsible that the employees have the sufficient level of knowing the Estonian language.

Chapter V
Members of the family

1. RESIDENCE RIGHTS

Text(s) in force

The legal status of family members from the EU Member States and also family members who are from the third country are regulated in Citizen of European Union Act

According to § 3 of the Citizen of EU Act a family member of a citizen of the European Union is a person who is not a citizen of the European Union or a citizen of Estonia and who is:

1) a spouse of the citizen of the European Union (hereinafter spouse),
2) a child under 21 years of age or a dependent adult child of the citizen of the European Union or of his or her spouse (dependent child);
3) a dependent parent of the citizen of the European Union or of his or her spouse, or 4) a person not specified in clauses 1)–3) who, in the country of origin of the citizen of the European Union, is a dependant of the citizen of the European Union or is a member of his or her household, or who is permanently unable to cope independently due to health reasons or disability and it is necessary that the citizen of the European Union personally cares for him or her.

Right to enter and right to stay in Estonia

A family member has the right to stay in Estonia together with a citizen of the European Union on the basis of a valid travel document for a period of up to three months after the date of entry in Estonia. For entry in Estonia, a family member must have a valid travel document and if necessary a visa. Visa is not required from a family member if:

1) the family member has a residence card issued by a Member State of the European Union, Member State of the European Economic Area or the Swiss Confederation, or
2) the family member is a citizen of the state with which Estonia has entered into an agreement to forego the visa requirement or in the case of which Estonia has unilaterally foregone the visa requirement.

A family member is prohibited to stay in Estonia if he or she has no right or stay or another legal basis to stay in Estonia.

A family member staying in Estonia on the basis of the right to stay is obliged, within three months after the date of entry in Estonia, apply for temporary right of residence, or leave Estonia before the expiry of such term, unless he or she has applied for temporary right of residence. The stay in Estonia of a family member who has applied for temporary right of residence is legal until the processing of his or her application for temporary right of residence has been concluded.

A family member staying in Estonia on the basis of the right to stay is prohibited from employment or operation as a sole proprietor in Estonia.

The right of stay in Estonia of a family member may be restricted if there is good reason to believe that the person poses a danger to public order, national security or the health of

other persons. A family member whose right of stay in Estonia has been restricted will not be permitted to enter Estonia.

Restriction of the right to stay are decided by the Minister of Interior Affairs, a higher official of the Ministry of Interior Affairs authorised by the Minister, a border guard authority, a police authority or the Security Police Board.

The Citizenship and Migration Board issues a precept to leave to a family member staying in Estonia:

1) whose right of stay is restricted; or
2) who has stayed in Estonia for longer than three months after the date of entry in Estonia but has not applied for temporary right of residence and has no other legal base to stay in Estonia.

A precept to leave is subject to compulsory execution after the thirtieth day as of the date of issue of the precept. If the right to stay is restricted due to a threat to national security, the precept to leave is subject to compulsory execution immediately.

Temporary right of residence of family member

a) Granting temporary right of residence

A family member is granted temporary right of residence in Estonia if the family member meets the conditions for grant of temporary right of residence. A family member is granted temporary right of residence by a decision of the Citizenship and Migration Board.

A family member will be granted temporary right of residence for up to five years but not for longer than the period during which the citizen of the European Union resides in Estonia. The temporary right of residence of a family member will be extended for the period during which the citizen of the European Union resides in Estonia but not for longer than for five consecutive years at a time.

The Citizenship and Migration Board grants temporary right of residence to a family member provided that *(main conditions):*

1) the citizen of the European Union with whom the person wishes to take up residence, is employed or operates as a sole proprietor in Estonia;
2) the citizen of the European Union with whom the person wishes to take up residence has sufficient funds to maintain himself or herself and his or her family members, and he or she is a person insured pursuant to the procedure provided by the Health Insurance Act; or
3) the citizen of the European Union with whom the person wishes to take up residence is studying in Estonia and has sufficient funds to maintain himself or herself and his or her family members, and he or she is a person insured pursuant to the procedure provided by the Health Insurance Act.

If a family member of a citizen of the European Union has a newborn child who is not a citizen of the European Union and does not conform to the definition of a family member in Citizen of European Union Act, then the Citizenship and Migration Board grants temporary right of residence to the child provided that the parent has temporary right of residence in Estonia.

The Citizenship and Migration Board grants temporary right of residence to a family member if all the following conditions are fulfilled:

1) the citizen of the European Union with whom the person wishes to reside fulfils the following prerequisites:
   a) the citizen of the European Union with whom the person wishes to take up residence, is employed or operates as a sole proprietor in Estonia;
   b) the citizen of the European Union with whom the person wishes to take up residence has sufficient funds to maintain himself or herself and his or her family members, and he or she is a person insured pursuant to the procedure provided by the Health Insurance Act, or
   c) the citizen of the European Union with whom the person wishes to take up residence is studying in Estonia and has sufficient funds to maintain himself or herself and his or her family members, and he or she is a person insured pursuant to the procedure provided by the Health Insurance Act.
2) the citizen of the European Union with whom the person wishes to reside has right of residence in Estonia;
3) the applicant for temporary right of residence conforms to the definition of family member as provided in Citizen of European Union Act;
4) no bases for refusal to grant temporary right of residence to the family member exist.

If a family member with temporary right of residence in Estonia has a newborn child who is not a citizen of the European Union and does not conform to the definition of a family member then the child will be granted temporary right of residence for the term of the temporary right of residence of the parent.

A family member who has been granted temporary right of residence by the Citizenship and Migration Board must register his or her residence in Estonia pursuant to the procedure provided by the Population Act within one month after the date of grant of temporary right of residence.

A family member staying in Estonia has to submit an application for temporary right of residence to the Citizenship and Migration Board within three months after the date of entry in Estonia of the family member. For the time of processing an application for temporary right of residence, the Citizenship and Migration Board issues a certificate to a family member staying in Estonia which certifies that the family member's application for temporary right of residence is being processed by the Citizenship and Migration Board.

The Citizenship and Migration Board will not grant temporary right of residence to a family member if:

1) the citizen of the European Union with whom the person wishes to reside does not meet the following requirements:
   a) the citizen of the European Union with whom the person wishes to take up residence, is not employed or does not operate as a sole proprietor in Estonia;
   b) the citizen of the European Union with whom the person wishes to take up residence has no sufficient funds to maintain himself or herself and his or her family members, and he or she is not a person insured pursuant to the procedure provided by the Health Insurance Act, or
   c) the citizen of the European Union with whom the person wishes to take up residence is not studying in Estonia and has no sufficient funds to maintain himself or herself and his or her family members, and he or she is a person not insured pursuant to the procedure provided by the Health Insurance Act.

2) the citizen of the European Union with whom the person wishes to reside has no right of residence in Estonia;
3) the applicant for temporary right of residence does not conform to the definition of family member;
4) there is good reason to believe that the family member poses a threat to public order, national security or the health of other persons, or
5) the family member or the citizen of the European Union with whom the family member wishes to reside has abused the rights prescribed by this Act or used deceit in order to achieve the aim of the family member obtaining temporary right of residence in Estonia.

Among other, the following will be considered as the abuse of rights, or deceit:
1) contracting fictitious marriage;
2) obtainment by the citizen of the European Union of temporary right of residence in Estonia in order to achieve the aim of the family member obtaining temporary right of residence in Estonia;
3) submission of falsified documents;
4) submission of false information.

If a family member staying in Estonia is denied the temporary right of residence, the Citizenship and Migration Board will issue the family member a precept to leave pursuant to the procedure provided by the Obligation to Leave and Prohibition on Entry Act. The precept to leave may be made by the decision to refuse the grant of temporary right of residence. The precept to leave is subject to compulsory execution after the thirtieth day as of the date of issue of the precept. If the temporary right of residence is denied due to a threat to national security, the precept to leave is subject to immediate compulsory execution.

b. Extending temporary right to stay

The Citizenship and Migration Board extends the temporary right of residence of a family member if all the following conditions are complied with:
1) the citizen of the European Union for the purposes of settling with whom the right of residence was granted meets the requirements mentioned above;
2) the citizen of the European Union for the purposes of settling with whom the right of residence was granted continues to hold the right to reside in Estonia;
3) the family member continues to hold the temporary right of residence in Estonia;
4) the applicant for extension of temporary right of residence conforms to the definition of family member as provided in Citizen of European Union Act;
5) the residence of the family member in Estonia has been registered pursuant to the procedure provided by the Population Register Act;
6) no bases for refusal to extend the temporary right of residence of the family member exist.

The Citizenship and Migration Board extends, for the period of the parent's temporary right of residence in Estonia, the temporary right of residence of a family member's newborn child who is not a citizen of the European Union and does not conform to the definition of a family member provided as provided in Citizen of European Union Act.

A family member has to submit a standard format application for extension of right of residence to the Citizenship and Migration Board not later than one month prior to the extin-

guishment of the temporary right of residence, or to leave Estonia within two months as of the date of extinguishment of the temporary right of residence. The term for submission of the application for extension of right of residence mentioned above will not be restored if the temporary right of residence has extinguished. Upon extension of temporary right of residence, the Citizenship and Migration Board issues an identity card to the family member. The identity card is the document in proof of the temporary right of residence of the family member.

The Citizenship and Migration Board has a right to refuse to extend the temporary right of residence of a family member if:

1) the citizen of the European Union for the purposes of settling with whom the right of residence was granted has no right of residence in Estonia;
2) there is good reason to believe that the family member poses a threat to public order, national security or the health of other persons, or
3) the family member or the citizen of the European Union for the purposes of settling with whom the right of residence was granted has abused the rights prescribed by this Act or used deceit in order to achieve the aim of the family member obtaining temporary right of residence in Estonia.

The Citizenship and Migration Board may refuse to extend the temporary right of residence of a family member if:

1) the citizen of the European Union for the purposes of settling with whom the right of residence was granted does not meet the main conditions;
2) the applicant for extension of temporary right of residence no longer conforms to the definition of family member, or
3) the family member does not permanently reside in Estonia.

If a family member staying in Estonia is denied extension of the temporary right of residence, the Citizenship and Migration Board issues the family member a precept to leave. The precept to leave may be made by the decision to refuse to extend the temporary right of residence. A precept to leave is subject to compulsory execution after the sixtieth day as of the date of issue of the precept unless the family member has other legal basis for stay in Estonia. If the extension of temporary right of residence is denied due to a threat to national security, the precept to leave will be subject to immediate compulsory execution.

c. Termination of temporary right of residence

Temporary right of residence of a family member extinguishes:

1) upon expiry of the term of validity of the temporary right of residence;
2) upon acquisition of permanent right of residence;
3) upon acquisition by the person of Estonian citizenship or citizenship of the European Union, or restoration of such citizenship;
4) if the citizen of the European Union for the purposes of settling with whom the right of residence was granted has no right of residence in Estonia;
5) if the person no longer conforms to the definition of family member, or
6) upon the death or declaration of death of the person.

The temporary right of residence in Estonia of a family member will be terminated:

1) based on the request of the family member;

2) if there is good reason to believe that the family member poses a threat to public order, national security or the health of other persons, or
3) if the family member or the citizen of the European Union for the purposes of settling with whom the right of residence was granted has abused the rights prescribed by Citizen of European Union Act or used deceit in order to achieve the aim of the family member obtaining temporary right of residence in Estonia.

The temporary right of residence in Estonia of a family member may be terminated if:
1) the citizen of the European Union for the purposes of settling with whom the right of residence was granted does not meet the main conditions or
2) the family member does not permanently reside in Estonia.

Temporary right of residence in Estonia of a family member citizen of European Union is terminated by a decision of the Citizenship and Migration Board.

Family member must leave Estonia within two months after the date of extinguishment of the temporary right of residence unless the family member has other legal basis for staying in Estonia. The Citizenship and Migration Board issues a precept to leave to a family member whose temporary right of residence extinguishes or is terminated. A precept to leave issued in the case of extinguishment of temporary right of residence will be subject to compulsory execution after the sixtieth day as of the date of issue of the precept.

A precept to leave issued in the case of termination of temporary right of residence will subject to compulsory execution after the thirtieth day as of the date of issue of the precept. If temporary right of residence is terminated due to a threat to national security, the precept to leave will be subject to immediate compulsory execution.

In the case of the death of a citizen of the European Union, the temporary right of residence of his or her family member extinguishes unless the family member has resided in Estonia on the basis of temporary right of residence for at least a year before the death of the citizen of the European Union, and:
1) he or she is employed or operates in Estonia as a sole proprietor;
2) he or she has sufficient funds to maintain himself or herself and his or her family members, and he or she is a person insured pursuant to the procedure provided by the Health Insurance Act, or
3) he or she is a family member of a person specified in clause 1) or 2).

In the case of the death of a family member of a citizen of the European Union, his or her family member is entitled to permanent right of residence.

Upon the death of a citizen of the European Union, a child of the citizen of the European Union residing in Estonia who is enrolled in an educational institution for study, and the parent caring for such child will have temporary right of residence in Estonia until the child concludes his or her studies.

Upon the death of a citizen of the European Union, the temporary right of residence of a family member may be restricted, his or her temporary right of residence may be terminated or extension of the temporary right of residence may be refused pursuant to the general procedure, taking account of the specifications set forth in this section.

In case of the extinguishment or termination of the temporary right of residence of a citizen of the European Union, the temporary right of residence of his or her family member may be restricted, his or her temporary right of residence may be terminated or extension of

the temporary right of residence may be refused pursuant to the general procedure, taking account of the specifications set forth in this section.

In the case of a divorce or annulment of marriage, the spouse's temporary right of residence in Estonia extinguishes, except in the case where:

1) the marriage has lasted for at least three years before the initiation of the divorce or annulment proceedings, including one year of living together in Estonia during the time the spouses were using the temporary right of residence right;
2) according to a court judgment or agreement between the spouses, the spouse specified above has custody of the child of the citizen of the European Union;
3) according to a court judgment or agreement between the spouses, the spouse specified above has the right to access the child with the condition that such access must take place in Estonia, or
4) special circumstances justify the use of temporary right of residence, for example the fact that the spouse specified above has been a victim of domestic violence in the course of the marriage.

In addition to the requirements mentioned above, the spouse has to:

1) be employed or operate in Estonia as a sole proprietor;
2) have sufficient funds to maintain himself or herself and his or her family members, and be a person insured pursuant to the procedure provided by the Health Insurance Act.

In the case of divorce or annulment of marriage, the temporary right of residence of a dependant child of the spouse or a dependant parent does not extinguish if the spouse meets the conditions mentioned in sections 1 and 2 above.

In the case of divorce or annulment of marriage, the temporary right of residence of a family member may be restricted, his or her temporary right of residence may be terminated or extension of the temporary right of residence may be refused pursuant to the general procedure.

2. ACCESS TO WORK

See above V 1.

3. ACCESS TO EDUCATION AND STUDY GRANTS

See above V 1.

Judicial practice

Judicial practice in general has in this field many cases, which concern mainly permits issues third country nationals. The main problems in judicial practice concern the question of reunion of the families and the migration quotas set up by the government of the Republic of Estonia. 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. In such cases the Supreme Court of the Republic of Estonia has stated, that the quota set up by the Government is not the only reason to determine whether the person concerned gets the

permit or not. As there were and are no quotas for the citizens of the EU Member States, this case law cited above is not applicable to the citizens of the EU Member States.

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

In general, the judgments of the ECJ are taken into account in legislative reforms. Although there are no concrete references to the court decisions, by preparing the new legislation, the principles, which are elaborated by the practice of ECJ, will be taken into account.

Furthermore, the Estonian authorities including the Ministry of the Interior and the Board of Immigration and Citizenship follow the practice of the ECJ. 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. Furthermore, the relevant judgements of the ECJ are included in the training of those handling the applications and making decisions on refusal of entry and deportation.

In the field of social security, the Estonian National Social Insurance Board follows the case law of the ECJ. The persons, who are handling the applications, are informed about the aspects of the relevant judgments through the training. This is, however, not regarded as entirely satisfactory. The relevant legal rules and principles should be recognized at the level of legislation. Also more operative information is needed about the important ECJ decisions.

At the moment it is not clear how far and in what circumstances the recent case law of the European Court will be taken into account by other authorities.

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

Accession to the European Union did not bring any big changes into the migration from the third countries. On the other hand the Estonian employers want to hire qualified workforce from the third countries especially in building constructions and in IT-sectors. As the general rules for aliens to be hired in Estonia are in many aspects quite complicated, the Estonian employers are already loosing the interest to hire persons from the third countries. At the same time they are also not very intensively looking for missing workforce from other new Member States.

Chapter VIII
EU Enlargement

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

According to the Act of Accession Estonia to the European Union Estonia does not apply any restrictions to the freedom of movement and also to the free movement of the workers. If the "old" 15-Member States of the European Union have established transitional period two plus three plus two years in order to open their labour markets, such transitional period has not applied by the Republic of Estonia. Also concerning the new member states Bulgaria and Romania, there are no transitional rules that could limit free movement of workers from those countries to Estonia.

This means that Estonia does not apply any transitional measures for the free movement of workers from the new and from the old Member States. There are no restrictions for the EU citizens concerning the access to the labour market and other activities.

To harmonise the Estonian legal system with the European law, the different amendments were made and also different legislative acts were adopted e.g. important here are Citizen of European Union Act *(Euroopa Liidu Kodaniku seadus*), which concretise the legal statues of the citizens of the European Union and their family members and Posted Workers Act *(Eestisse lähetatud töötajate töötingimuste seadus – RT I 2004, 19, 134*), which determines the employment conditions for those employees who are temporarily send to Estonia to do their work in Estonia.

Estonia does not apply any transitional measures, because there is no need for that. The situation on the Estonian labour market has at the moment other problems. Many qualified workers are looking for the better positions in old Member States and this leads to the lack of the qualified workers in Estonia. Such situation brings the Estonian employers to the idea to import more qualified workforce from third countries especially from Russia and Ukraine (e.g. building construction, buss drivers, service sector).

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

See VIII 1.

Literature

Epp Kallaste, Kaia Philips, Reelika Leetmaa and Lauri Leppik, *EU Enlargement and its Impact on the Social Policy and Labour Markets of Accession and Non-Accession Countries*, PRAXIS Working Paper no. 4/2003.

Andres Võrk, Marit Priinits, Epp Kallaste, *Tervishoiutöötajate migratsioon Eestist: migratsiooni potentsiaalne suurus, mõju tervishoiutöötajate vajadusele ja võimalikud poliitikavalikud*, PRAXISe toimetised 18/2004.

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Chapter IX
Statistics

The Estonian migration policy has been stable and restrictive towards immigration since Estonia regained its independence. Most of immigrants have arrived from the CIS countries, mainly from the Russian Federation. Most of immigrants came to Estonia to settle with their spouses or close relatives. Another major group of aliens consist of those who try to find an employment in Estonia.

After to the accession to the European Union the movement between Estonia and other EU Member States has increased. The main EU Member States, where the Estonian workers go are Finland, Sweden, Denmark, England and Ireland. From the free movement mainly the following branches are influenced: buildings construction, bus traffic, forest industry, hotels and restaurants, medical services (especially young doctors, nurses and dentists).

Concerning the migration from the old Member States to Estonia the main countries are: Finland, Sweden, also Great Britain and Germany. The main reason, why persons are coming to Estonia is to establish a company due to the lower taxes.

Trends

Due to the economic grow the wages in Estonia have also grown. In order to keep the qualified workforce in Estonia the employers have been forced to raise the salaries and to offer other facilities. This leads to the situation that some Estonian workers who left Estonia, are returning, because in some branches the salary conditions are already equal to the conditions that are applied in Estonia (also taking into account all the necessary living costs). According to the unofficial statistical data approx. 35000 Estonians are working in different EU Member States. As there is no specific system of registration of employment in Estonia, there is also no data available from which countries and how many persons from other Member States works at the moment in Estonia.

Chapter X
Miscellaneous

The question of nationality or dual nationality should be discussed here. The legal rules about obtaining the Estonian citizenship are regulated in Citizenship Act. According to the Citizenship Act there are different possibilities to acquire the Estonian citizenship.

Estonian citizenship is:

1) acquired by birth;
2) acquired by naturalisation;
3) resumed by a person who lost Estonian citizenship as a minor;
4) lost through release from or deprivation of Estonian citizenship or upon acceptance of the citizenship of another state.

The general rule about the citizenship in Estonia is, that there cannot be double citizenship. This means, if a person is acquiring the Estonian citizenship, he or she has to prove, that he or she has lost his or her former citizenship or there is a certificate, that he or she will loose the citizenship of the state concerned.

Persons who by birth acquire the citizenship of another state in addition to Estonian citizenship have to renounce either their Estonian citizenship or their citizenship of the other state within three years after attaining the age of 18 years.

A person will lose Estonian citizenship:

1) through release from Estonian citizenship;
2) through deprivation of Estonian citizenship;
3) upon acceptance of the citizenship of another state.

Release from Estonian citizenship may be refused to a person if:

1) the person would become stateless as a result;
2) he or she has unperformed obligations before the Estonian state;
3) he or she is in active service in the Estonian Defence Forces.

Important Internet-sites

www.riigiteataja.ee – *legal text and laws in force, in Estonian only*
www.legaltext.ee – *Estonian legal acts in English*
www.riigikohus.ee – *Web-site of the Supreme Court, also court decisions are available (only in Estonian)*
http://kola.just.ee – *Database for court decisions (only in Estonian, covers the decisions from the first and the second instances)*
www.kohus.ee/kohtulahendid - *Database for court decisions (only in Estonian, covers the decisions from the first and the second instances), active since 01.01.2006.*
www.mig.ee - *Citizenship and Migration Board*