

REPORT
on the Free Movement of Workers
in Finland in 2008-2009

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Introduction

Under section 153(3) of the Finnish Aliens Act 301/2004, the provisions on free movement apply to EU citizen's family members only if they move to Finland from another EU Member State where they have resided together with their EU citizen family member. It is further required that the non-EU citizen family member's residence in the other EU State has been lawful and of its duration non-temporary. This requirement concerning previous lawful residence is contrary to the ruling of the ECJ in *Metock*. Therefore the Finnish Government gave on 29 May 2009 to the Parliament a proposal for amending section 153(3) of the Aliens Act. The Government proposes that the requirement concerning previous lawful residence shall be abolished from the Act. In the meanwhile, the Ministry for the Interior has instructed the local police, that are the authority responsible for registering EU citizens' right of residence and issuing family members' residence cards, not to apply section 153(3) insofar as it concerns the requirement for previous lawful residence. The Police should apply instead directly the Citizenship Directive.

Section 1 of Chapter 6 of the Sea Act (Merilaki 674/1994), according to which the captain of a Finnish commercial ship had to be a Finnish national, was amended in 2008. Under the amended act, not only Finnish citizens but also citizens of the other EU and EEA states may function as a captain of commercial ship flying under the Finnish flag.

In 2008 the number of posted workers from Estonia and the other EU8 States continued to be relatively high compared with the number of those citizens of these states, who were employed directly by Finnish employers. According to the Central Criminal Police and the occupational safety and health authorities, it is not uncommon that posted workers are paid less than Finnish workers and sometimes even below the minimum wages, and that they are not paid supplementary payments such as overtime compensation. Furthermore, posted workers are not always insured and offered occupational health care. The legislative reforms undertaken with the purpose of tackling these problems have so far turned out to be rather ineffective.

Chapter I

Entry, Residence, Departure

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

The provisions on EU citizens' and their family members' entry, residence, and departure are contained in Chapter 10 of the Aliens Act (Ulkomaalaislaki 301/2004) as amended by the Act amending the aliens Act 360/2007. Unofficial English translation of the Aliens Act can be found at <http://www.finlex.fi/en/laki/kaannokset/2004/en20040301.pdf>.

Texts in force

Aliens Act 301/2004 (Ulkomaalaislaki) as amended by the Act 360/2007, sections: 155 §, 156 §, 156a §, 158, 158 a §, 159 §, 159 a §, 160 §, 161 f §, 161 g, 163 §, 165 §, 166 §, 167 §, 168 §, 168 a §, 168 b §, 170 §, 171 §, 172 §, 172 §.

Section 158a of the Aliens Act transposes art. 7 (1)(a) of the Citizenship Directive.

Section 158a

'The right to reside for longer than three months

A Union citizen is entitled to reside in Finland for longer than three months if:

1) she is engaged in an economic activity as a paid employee or a self-employed person;

... or

4) she is a family member of a Union citizen who meets the requirements laid down in 1-3 of this section.

The right of residence as prescribed in subsection 1 of this section also applies to a Union citizen's family member who is not a Union citizen if the Union citizen meets the requirements laid down in 1-3 of subsection 1 of this section.'

The Government Proposal 205/2006 concerning transposition of the Citizenship Directive clarifies that it is presumed that workers and self-employed persons earn their living from their economic activities. The authorities are not allowed to require any proof of the sufficiency of the income. It is, furthermore, reminded in the Proposal that under art. 14.4 of the Citizenship Directive, an employee, a self-employed person, or a jobseeker can not be removed from the country even if she would constitute a burden on the social assistance system.

According to the Government Proposal 205/2006, when applying section 158a of the Act, the crucial question is whether the person concerned can be regarded as a worker. The Proposal clarifies that the individual's employment has to be real and not merely ostensible. Furthermore, the employee must get remuneration for her work. The work can be part-time or low-paid. Its purpose must, however, not be to circumvent immigration legislation. The Proposal does not clarify what is meant by 'circumvention of immigration legislation' and there is no judicial practice concerning this issue. The Proposal refers to case 139/85 *R. H. Kempf vs. Staatssecretaris van Justitie*. An individual who asks for registration of her right of residence must establish proof of her employment before her right of residence can be registered.

Section 159 of the Act concerns registration of a Union citizen's right of residence.

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Section 159

'Registration of a Union citizen's right of residence

If a Union citizen resides in Finland for longer than three months, she has to register her residence. The application for registration shall be lodged with the local police of her place of residence within three months of the entry to Finland.

After a Union citizen has provided proof that she meets the requirements for registration, she shall immediately be issued with a certificate of registration. The certificate shall state the name and the address of the person concerned and the date of registration.'

The Government Proposal 205/2006 clarifies that a Union citizen has to register her right of residence within three months of her entry, and that the registration can be done at any point of time during these three months. A precondition for the registration is that the residence lasts at least for three months. This means that the right of residence can not be registered if the individual intends to reside in Finland for shorter than three months. After registration of the right of residence, the person concerned is enrolled in the population data system of her home municipality and entered into the Finnish residence based social security system.

The Government Proposal 205/2006 refers in this connection to section 185 of the Aliens Act according to which an alien, who fails to register her right of residence or to apply for a residence card or a permanent residence card, shall be sentenced to fine.

Section 159a of the Aliens Act transposes art. 8 of the Citizenship Directive and defines what information and proof an EU citizen has to submit when she asks for registration of her right of residence.

Section 159a

'Proof required for the registration of the right of residence

When seeking to obtain the certificate for registration, the applicant has to present a valid identity card or a passport and:

- 1) if the applicant is an employee, a confirmation of engagement from the employer or a certificate of employment;
- 2) if the applicant is a self-employed person, proof concerning the self-employed activity;'

The Government Proposal 205/2006 clarifies that the applicant must not be requested any other documents, certificates, or other proof than those mentioned in this provision.

Section 160 of the Act concerns retaining the status of a worker or a self-employed person. This provision reflects art. 7.3 of the Directive.

Section 160

'Retaining the status as worker or self-employed person

A Union citizen who is no longer a worker or a self-employed person retains her status as a worker or a self-employed person even though she;

- 1) is temporarily unable to work as a result of an illness or accident;
- 2) is, after having been employed for more than one year, in involuntary unemployment and is registered as a job-seeker with the employment office;
- 3) is, after completing a fixed-term employment contract for duration shorter than one year, or after having become involuntarily unemployed during the first twelve months of the employment, in involuntary unemployment and is registered as a job-seeker with the employment office; in this case she retains the status as a worker for six months; or
- 4) starts vocational training that is related to her previous employment, or she is in involuntary unemployment and starts other vocational training.

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Section 163 of the Act lays down conditions for the right to permanent residence in case of persons who are no longer involved in economic activities. This provision transposes art. 17 of the Citizenship Directive.

Section 163

'The right to permanent residence of those who no longer work or are no longer engaged in self-employment

The right to permanent residence shall be acquired before completion of continuous period of five years of residence by a worker or self-employed person who:

- 1) has, upon termination of her employment, reached the age entitling her to old-age pension and worked or been engaged in self-employed activity in Finland for at least the 12 months immediately preceding the termination of her employment, and has resided in Finland continuously for at least three years; if a self-employed person is not entitled to old age pension, the age condition shall be deemed to have been met once the person concerned has reached the age of 60.
- 2) has terminated employment on grounds of permanent incapacity to work after living in Finland continuously for two years; or
- 3) after working and living in Finland continuously for three years, has moved to work in another EU Member State while still living in Finland and regularly returning to Finland daily or at least once a week.

If the invalidity referred to in subsection 1(2) is due to an employment accident or occupational disease which entitles an EU citizen to statutory pension in Finland, the length of residence has no bearing on the right to permanent residence.

For acquiring the right to permanent residence under subsection 1(1) or (2), any periods of employment that took place in another EU Member State are also taken into consideration in the applicant's favour. Any spells of unemployment that were not attributable to the applicant and which were recorded by employment offices, or any breaks in self-employment that were not attributable to the applicant, or any absence due to illness or accident, are considered as periods of employment.

The requirements concerning the length of residence and employment laid down in subsection 1(1), or the length of residence in subsection 1(2) do not apply if the worker's or self-employed person's spouse is a Finnish citizen or has lost her Finnish citizenship upon marriage to the worker or self-employed person concerned.

Family members of an employee or a self-employed person who has acquired the permanent right of residence under subsection 1 or 2, have a permanent right of residence in Finland.

If an employee or a self-employed person who has not yet acquired the right to permanent residence under subsection 1 or 2 dies while still engaged in working life, her family members residing with her in Finland have the right to stay in Finland permanently if:

- 1) the employee or self-employed person had lived in Finland continuously for two years before her death;
- 2) the employee's or self-employed person's death was due to an employment accident or occupational disease; or
- 3) the spouse of the deceased employee or self-employed person has lost her Finnish citizenship upon marriage to the employee or self-employed person.'

Section 167 of the Aliens Act lays down grounds for refusing EU citizens' and their family members' entry to Finland and section 168 for deporting them. Refusal of entry may take place either at the frontier when the person is trying to enter Finland, or after she has *de facto* entered the country, but before her right of residence has been registered or she has been issued with a residence card. Refusal of entry may thus take place months after the EU citizen or her family member has entered Finland and *de facto* settled there. Once an individual has registered her right of residence or obtained a residence card, she shall be removed from Finland through deportation. The form of removal is thus dependent on the registration of the

right of residence or issuance of a residence card, and not on the existence of the right as such.

It is important to note that an individual's position is stronger in the context of deportation than in the context of refusal of entry. For example, section 168b of the Aliens Act that transposes art. 28 of the Citizenship Directive is applicable when taking decisions on deportation but not on refusal of entry. Section 168b lays down an obligation for the authorities to carry out an overall consideration and to take account of factors such as the duration of the EU citizen's or her family member's residence in Finland, her age, state of health, and family and economic situation, and how well she has become integrated into Finnish society and culture. Under the Aliens Act there is thus no explicit obligation to perform this overall consideration when removing from Finland a person who has not registered her right of residence or obtained residence card no matter for how long she has *de facto* resided in the country. This situation is hardly in line with the Citizenship Directive. It is further noteworthy that a deportation decision can be enforced only after it has become final, whereas a decision on refusal of entry may, under circumstances defined in section 172 of the Aliens Act, be enforced even before that.

According to section 167(4) of the Aliens Act, a person who has been excluded from Finland on grounds of public order or public security may be prevented from entering Finland on ground of this exclusion decision; no matter for how long time ago the exclusion decision was taken, there is no obligation to re-examine the circumstances and to assess whether the individual continues to pose a real and serious risk for the fundamental interests of the society. The person concerned may apply for lifting of the exclusion decision. Lodging of such application does, however, not prevent the enforcement of the decision on refusal of entry. The Aliens Act does not establish a procedure for lifting exclusion decisions.

Section 168a of the Aliens Act transposes art. 14 (4) of the Citizenship Directive.

Section 168a

'Removing from the country a worker or a person seeking employment

As an exception to what is provided in subsection 2 of section 167 or subsection 1 of section 168, a Union citizen or her family member may be returned or deported only on ground of public order or security as laid down in section 156 or public health as laid down in section 156a of the Act, if the Union citizen is a worker or self-employed person or she has entered the country in order to seek employment and can show proof of a genuine chance of being engaged.'

It is noteworthy that the prohibition to impose restrictions on free movement on economic grounds as laid down in art. 27 of the Citizenship Directive is not explicitly transposed to the Aliens Act. In this respect there is a clear discrepancy between the Act and the Directive.

Judicial practice

Deputy Parliamentary Ombudsman issued on 19.6.2009 (dnro 1657/4/07) a reprimand to the Helsinki Immigration Police for having acted unlawfully in not allowing EU citizens to depart from Finland to another EU country than their country of origin. The entry to Finland of the persons concerned had been refused. The Immigration Police had, however, refused to hand over their passports to them, because they did not wish to travel back to their home country but instead to another EU State.

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The Deputy-Ombudsman concluded that the Immigration Police had interpreted the Aliens Act and the Citizenship Directive erroneously when they took the view that persons who have been refused entry can return only to their home country and not to another EU State.

Miscellaneous (administrative practices, etc.)

Fee for the registration of the right of residence and for the issuance of a family member's residence card is 40e. The amount of this fee is in line with the fees for comparable documents issued to Finnish nationals. For example the fee for an identity card is 40e, and for a regular passport 46e.

2. SITUATION OF JOBSEEKERS

Under section 158(3) of the Aliens Act, EU citizens who are jobseekers may reside in Finland for a reasonable time beyond three months without registering their right of residence provided that they continue to look for employment and have real chance of getting employed. Neither the Aliens Act nor the Government Proposal or any administrative guidelines define what is to be regarded as reasonable time in this context. No case law clarifying this matter was found.

According to sections 167, 168, and 168 a of the Aliens Act, a jobseeker can be removed from Finland only if she constitutes jeopardy to public order or security or to public health, but not if she constitutes a burden on the social security system.

An EU citizen job-seeker who has taken a degree in Finland and who can be regarded as having links with the Finnish labour market may claim for labour market subsidy. No requirements such as that in *Ioannidis* are applied in Finland.

Chapter II Access to Employment

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT

Texts in force

- Act on the public employment services (Laki julkisesta työvoimapalvelusta 1295/2002)
- Act on Employment Contracts (Työsopimuslaki 55/2001), Chapter 2, 2 §
- Criminal Code (Rikoslaki 39/1889), Chapter 47, 3 §

Equal treatment of EU citizens as regards access to employment is guaranteed by general legislation on equality and non-discrimination.

Section 2 of Chapter 2 of the Act on Employment Contracts lays down prohibition of discrimination and an obligation for equal treatment. An employer who breaches this obligation may be ordered to pay to the victim compensation. The amount of the compensation depends on the severity of the infringement but it may not exceed 15 000e.

Act on Employment Contracts (Työsopimuslaki 55/2001), Chapter 2, 2 §

'Non-discrimination and Equality of Treatment

The employer may not without an acceptable reason treat employees differently on the grounds of age, state of health, disability, national or ethnic origin, nationality, sexual orientation, language, religion, opinion, conviction, family relationship, activities in trade union, political opinion and acts, or other comparable reason.

Prohibition of discrimination based on gender is laid down in the Act on Equality between Women and Men. The Act on Equality contains the definition of discrimination, the prohibition of counter acts and the rules concerning the burden of proof in cases concerning discrimination.

Those working under fixed-term contract or part-time may not, without an acceptable reason, be treated differently from other employees solely on the ground of the fixed duration of the employment contract or short working hours.

The employer has to treat the employees equally unless there are good reasons related to the tasks or the position in the organisation to make an exception to this.

The employer has to obey the prohibition of discrimination laid down in section 1 when hiring workers.'

The Criminal code criminalises discrimination at work. The punishment for this crime is fine or prison sentence for maximum duration of six months.

Criminal Code (Rikoslaki 39/1889), Chapter 47, 3 §

'Discrimination at Work

Employer or her representative, who when announcing a vacant job, hiring new workers, or during the employment without a weighty acceptable reason treats an applicant or an employee differently from others on the ground of her

- 1) race, national or ethnic origin, colour, language, sex, age, family relationship, sexual orientation or state of health; or
 - 2) religion, opinion, political activities or activities in trade union or other comparable ground,
- shall be convicted for discrimination at work to fine or prison sentence for maximum duration of six months.'

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EU citizens and their family members are entitled to public employment services, including assistance of employment agencies and other measures laid down in the Act on the public employment services (Laki julkisesta työvoimapalvelusta 1295/2002, English text can be found at <http://finlex.fi>) under the same conditions as Finnish nationals.

2. LANGUAGE REQUIREMENT PRIVATE SECTOR

There are no regulatory language requirements at the private sector. In practice it is, though, rather common to require that employees must command either Finnish or Swedish or both. Command of the national languages is, however, not required to certain low-skilled or high-skilled jobs. For example IT-companies, such as Nokia, use as their working language English and therefore don't require command of Finnish or Swedish. Studies concerning integration of immigrants from third countries indicate that the lack of knowledge of the national languages is one of the most significant impediment to the access to labour market.

The occupational safety and health authorities screen job announcements. If the authorities come across requirements concerning particular citizenship or disproportionately high language skills, they may issue to the employer a reprimand. No statistics on the number of such reprimands is available.

Chapter III

Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS

- Act on Employment Contract (Työsopimuslaki 55/2001), Chapter 2, 2 §
- Criminal Code (Rikoslaki 39/1889), Chapter 47, 3 §

Act on Employment Contract prohibits discrimination at labour market. It covers also discrimination pertaining to working conditions. Criminal Code criminalises discrimination at work.

The conditions for work such as minimum salary are in most branches defined by collective bargaining agreements that are of universal applicability. Standards defined in these agreements apply to all workers working in the field concerned independent of, for example, the worker's nationality or trade union membership.

No case law concerning discrimination against EU citizens in the Finnish labour market was found. According to the occupational health and safety authorities, incidents of discrimination against citizens of the old Member States are rather rare. Situation of citizens of the new Member States is in this respect worse. The authorities have come across incidents of discrimination both against workers employed directly by Finnish employers *e.g.* as cleaners, as well as against posted workers working *i.a.* in the house building and shipyard industry. In cases involving posted workers discrimination tends to be more severe than in cases involving directly employed workers. Incidents of discrimination proceed to courts very rarely. This is so either because the police and the prosecutor regard the offences as minor or because the victims of discrimination are not prepared to claim their rights.

2. SOCIAL AND TAX ADVANTAGES

In Finland there are two alternative set of criteria for defining who is entitled to social security. The first set of criteria is based on residence. The Act on scope of application (Sovel-tamisolaki 1573/1993) and the related social security legislation lay down the criteria for assessing who is to be regarded as a resident for the purpose of social security coverage. The second set of criteria is based on work. Those who are to be regarded as workers within the meaning of the Regulation 1408/71 are eligible for social security even though they would not meet the residence-based criteria. The family members of workers are entitled to benefits covered by the Regulation 1408/71 regardless of their country of residence.

A worker or a self-employed person who is insured according to the employee pension scheme is entitled to entitlements such as work pension, unemployment pension, and accident insurance as well as public health care, home care subsidy, and maintenance allowance since the moment when the employment starts.

Regarding certain benefits, the precondition for eligibility is that the employment or the self-employed activity lasts in Finland at least for four months. This 'four months rule' covers national health insurance, child care subsidy, accruing credits towards national pension and survivor's pension, rehabilitation benefits, and unemployment allowances under the Act

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on unemployment allowances (Työttömyysturvalaki 1290/2002). If the employment is estimated to last at least for four months, the person concerned is entitled to these benefits since the moment when the employment or the self-employed activity starts.

If the employment contract is either permanent or temporary but made for longer than two years, the worker is regarded as a permanent resident for the purpose of social security coverage. In addition to the aforementioned benefits, permanent residents are entitled to special benefits for disabled persons, for maternity benefit, and for general housing allowance.

If the employment of a foreign worker who is employed by a Finnish employer lasts for a maximum of six months, the employer collects tax at the source on salary. The amount of this tax is 35% of the salary. Before counting and collecting the tax, the employer makes a reduction of 510e/month or, if the employment lasts for shorter than one month, 17e/day. Besides tax, the employer withholds also social security payments that amount to approximately 7% of the salary. If the pay received from Finland constitutes 75% or more of the total annual gross income of the person concerned she can claim a progressive taxation instead of the 35% tax. If the employment lasts for shorter than six months but the employer is not Finnish, the tax is not paid to Finland but instead to the country of origin.

If the employment in Finland lasts for longer than six months, the employee will pay tax on the wages in Finland under the same conditions as Finnish tax payers. In this case it does not make a difference whether the employer is Finnish or foreign. Besides tax, the employer will also withhold social security payments that amount to approximately 7% of the pay. Social security payments are, however, not withheld from the salary of posted workers.

The Finnish income taxes on wages are the progressively figured state tax, the municipal tax, and the church tax for the members of the national churches. The employee is entitled to claim tax deductions for work-related costs and for payments of interest on a loan that she has taken to finance her permanent owner-occupied home. This applies also to home that is located abroad. Premiums for obligatory pension and unemployment insurance are deductible. Subject to certain restrictions, it is also possible to deduct voluntary pension insurance contributions paid in another EU state.

C-144/08 *Commission v. Finland* concerns the concept of residence as defined in the Finnish legislation on tax on cars (Autoverolaki 1482/1994). The Commission regards the concept of residence as defined in the Finnish legislation as incomplete in light of requirements flowing from EC law. According to the Finnish definition, a person who performs in Finland a work assignment of temporary duration is regarded to have her permanent place of residence in Finland for the purposes of car tax despite of the fact that she would have strong personal links to another country unless she returns to that country regularly. If the duration of the work assignment in such case is shorter than six months, the car tax is not collected in Finland. If the work assignment continues for longer than six months, the car tax is collected in Finland, unless the person concerned applies for extension of the tax-free period. The maximum duration of an extension is six months. The Finnish authorities regard the legislation as compatible with EC rules and hence there are no plans for amending the tax legislation in this respect.

3. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS

Relatively large number of EU citizens working in Finland in 2008 were posted workers mainly from Estonia but also from the other Baltic states and from Poland. Posted workers

often perform their work for Finnish companies as so called ‘leased employees’ (*vuokratyö*) i.e. they are employed by an employer established in another state but perform the work in Finland for a Finnish company. Furthermore, in particular in building and metal industry it is rather common for Finnish companies to use foreign subcontractors. The aforementioned situations fall within the ambit of freedom of services instead of freedom of workers. In cases involving posted workers, the conditions for work are often weaker than the conditions for work of the Finnish employees performing equivalent tasks. According to the occupational safety and health authorities and Central Criminal Police, it is rather common that in this kind of situations the workers are paid less than the Finnish employees or even below the minimum wages; the workers are not paid supplementary payments such as overtime pay; the workers are not insured; and no occupational health care is arranged. Legislative reforms undertaken by the authorities have proven to be rather inefficient in tackling these problems. One probable reason for this inefficiency is that the authorities supervising whether the relevant legislation is complied with, are not allocated sufficient resources for the supervision. Furthermore, there seems to be lack of sufficient co-operation among different authorities involved such as the tax authorities and the occupational health and safety authorities.

4. SPECIFIC ISSUES: FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES), SPORTSMEN/SPORTSWOMEN, MARITIME SECTOR, RESEARCHERS, ARTISTS

4.1. Frontier workers

The question of frontier workers actualises in Finland mainly in the northern parts of the country at the frontier between Finland and Sweden and Finland and Norway, and in the southern part between Finland and Estonia.

Free movement of labour within the area of the Nordic countries, including the treatment of frontier workers, is based on a web of treaties concluded among the states concerned. The Nordic citizens have since the 1950s been entitled to travel in the Nordic countries without a passport and to live and work in another country without a work or residence permit under the same working conditions as the nationals of that state. Special arrangements apply to the treatment of frontier workers regarding social security and unemployment issues as well as pensions and taxation. The social security payments performed by the frontier worker to the country of employment entitle her to social security coverage of that country. The country of employment pays also family allowances and the employee accumulates a pension benefit and earns the right to pension there. The basic precondition for unemployment insurance eligibility is that the person is available to work in the country where she has applied for unemployment insurance benefits. The Nordic countries apply a ‘five year right to return policy’, that means that an individual has the right to unemployment insurance benefits if, for the past five years, she has been covered by the statutory unemployment security legislation of the country from which unemployment security is now sought or has been in receipt of unemployment allowance from that country. In Finland and Sweden it is possible to take a voluntary unemployment insurance that is handled by unemployment funds. In order to be covered by this insurance, one has to be a member of an unemployment fund. Membership in such funds is open for all irrespective of nationality.

No information on any practical problems or case law concerning frontier workers was found.

C-212/05 Hartmann

The circumstances like that in *Hartmann* case are not likely to actualize in Finland. All employees who are entered into the Finnish employee pension insurance system are regarded as workers within the meaning of the Regulation 1408/71. Workers entered into the system are entitled to home care allowance, provided that they meet the preconditions. This allowance is paid regardless of the worker's or her family member's country of residence.

4.2. Sportsmen/sportswomen

The teams playing in the men's National Ice-Hockey League, Basket Ball League, and Volleyball league applied in season 2008-2009 'gentlemen's agreements' that set quotas for foreign players in the playing line-up. In case of ice-hockey and basket ball, the agreements were unwritten and the sport associations were not formally involved in the arrangements. In case of volleyball, the agreement on the quota that was concluded among the teams was written into the rules of the league.¹ In each of these three cases players from the other EU states were included in the foreign players' quota. It is unclear, what would have been the consequences for breaching the agreements on quotas. Apparently all teams adhered to them. No information was found on any measures taken by state authorities to intervene in the quota system that is problematic in light of EC law on free movement of workers.

The Competition Regulation adopted by the Football Association of Finland contains rules on quotas for foreign players, but players from the other UEFA-countries or from countries with which EU has concluded a treaty that prohibits discrimination of labour are not included in these quotas.

4.3. The Maritime sector

Section 1 of Chapter 6 of the Sea Act (Merilaki 674/1994), according to which the captain of a Finnish commercial ship had to be a Finnish national, was amended by Act 310/2008 that entered into force on 1.6.2008. The amended legislation enacts that the captain of a commercial ship has to be either Finnish citizen or a citizen of another EU or EEA state. There are no other statutory requirements concerning nationality at the maritime sector. In practice, though, members of crew of Finnish ships are often Finnish nationals. This is so because of the requirement that members of the crew have to command the working language of the vessel well enough to understand safety information and orders given in that language (*Asetus aluksen miehityksestä, laivaväen pätevyydestä ja vahdinpidosta* 1256/1997 5 §, Decree on crew of a ship, qualifications of the crew, and keeping watch) and because the working language at Finnish ships is normally either Finnish or Swedish.

1 Lentopallon SM-liigan sarjamääräykset sarjakaudelle 2008-2009, kohta 15: '*Ulkomaalaispelaajien lukumäärä*. Lentopallon SM-liigassa voi ottelukohtaiseen pöytäkirjaan nimetä korkeintaan 2 ulkomaalaista pelaajaa. Pelaajasopimuksia voidaan tehdä useampien pelaajien osalta.'

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The Finnish labour legislation and collective bargain agreements are applicable to all persons working at ships flying under the Finnish flag regardless of the nationality of the persons in question or her trade union membership. No information on incidents of discrimination was found.

4.4. Researchers/artists

The treatment of foreign researchers depends upon the circumstances of the case. If a researcher has an employment contract with a Finnish university or research centre, she is treated as a worker within the meaning of EC law. If a researcher has an employment contract with a foreign university and works in a Finnish university as a visiting scholar, she is treated as a posted worker. If, however, a researcher has a scholarship and not an employment contract, she is not regarded as a worker. If such researcher's work in Finland continues for longer than four months, and if the amount of her scholarship corresponds to minimum salary, she may be enrolled in the national health insurance scheme. If the researcher's work continues for more than two years, she may be regarded as a permanent resident. In that case she is entitled to full social security coverage. All researchers are entitled to certain public services such as public day care and schooling for children under the same conditions as permanent residents regardless of the duration of their stay in Finland.

Research funding allocated by the Academy of Finland, that is the prime funding agency for basic research in Finland, does not apply nationality conditions when allocating research funding. Research projects employing also foreign researchers working in Finland are promoted.

The treatment of artists, too, depends on the circumstances of the case. A freelance artist may enrol in the self-employed person's pension scheme. If she does that, she shall be treated as a self-employed worker.

4.5. Access to study grants

According to section 1 of chapter 1 of the Act on study grant (Opintotukilaki 65/1994, <http://www.finlex.fi/fi/laki/ajantasa/1994/19940065?search%5Btype%5D=pika&search%5Bpika%5D=opintotuki%2A#a7.5.2004-345>), citizens of the other EU States and their family members, whose right of residence has been registered or who have been issued with a residence card shall be granted study grants under the same conditions as Finnish citizens. A precondition for this is that the ground for the individual's residence in Finland is other than studying.

Chapter IV

Relationship between Regulation 1408/71 and Article 39 and Regulation 1612/68

The Regulation 1408/71 covers benefits such as pensions, sickness and accident insurances, unemployment benefits, family allowances and public health care. The Regulation 1612/68 covers all social services such as children's day care and public schools as well as services for aged persons.

Finnish Government argues, contrary to the Commission, that the disabled children's benefit, that is paid to the parents of a disabled child who is under 16 years old, is a special benefit that can be restricted to those residing in Finland. The Commission argues that this benefit is a family benefit within the meaning of the Regulation 1408/71 and should thus be exportable.

Civil servants who serve another Member State or an international organisation and who are stationed in Finland are not eligible for the Finnish social security system. They will, however, get public services such as public day care and schooling for children, as well as services for aged persons. Citizens of the other Member States who work for the Finnish government are treated equally to Finnish civil servants. They are entitled to social security and public services.

Chapter V

Employment in the Public Sector

1. ACCESS TO THE PUBLIC SECTOR

1.1 Nationality condition for access to positions in the public sector

Texts in force

- Finnish Constitution (Perustuslaki), sections 25 §, 26 §, 54 §, 60 § and 124.1 §
- Act on Public Offices (Virkamieslaki 750/1994), sections 7 § 1 and 11 §.

No legislative reforms took place in this field in 2008 or the first half of 2009.

Most public offices were opened to persons who are not Finnish citizens already in 1989. No information on practical problems or case law concerning this issue was found.

According to section 25 and 26 of the Finnish Constitution only a Finnish citizen may be elected as a Member of Parliament. Furthermore, according to section 54 of the Constitution the President of the Republic shall be a native-born Finnish citizen. According to section 60 of the Constitution the Ministers shall be Finnish citizens.

Furthermore, according to subsection 1 of section 125 of the Constitution ‘it may be enacted in an Act of Parliament that only Finnish citizens are eligible for appointment to certain public offices or duties’. According to the Committee Report 1997:13 concerning the Finnish Constitution, Finnish citizenship may be required only in exceptional cases. Therefore, under the main rule, the public sector is open for persons who are not Finnish citizens.

Section 7, sub-section 1 of the Act on Public Offices (Valtion virkamieslaki 750/1994) contains an exhaustive list of public offices to which Finnish citizenship is required. The Government Proposal to the Parliament for the Act on public offices (Hallituksen esitys Eduskunnalle valtion virkamieslaiksi ja laiksi valtion virkaehtosopimuslain muuttamisesta HE 291/1993 vp) argues that this provision is compatible with the requirements laid down in the EEA Treaty.

The Act on Public Offices (Virkamieslaki 750/1994), 7 § 1

‘Only a Finnish citizen may be appointed to the following offices:

- 1) Chancellor of Justice, Deputy Chancellor of Justice, and Chief Secretary, Assistant Chief Secretary and department head at the Office of the Chancellor of Justice;
- 2) post of the Secretary of State, Chief Secretary of the Secretary of State, head of government office, department head of government office, office manager, and other comparable or higher post;
- 3) post at the foreign service;
- 4) post of judge;
- 5) post of head of civil service department excluding rectors of universities;
- 6) post of county governor, department head of county administrative board, and head of preparedness;
- 7) post that includes tasks of public prosecutor or distrainer;
- 8) post of police within the meaning of the Act on Police (493/1995);
- 9) post, whose holder is a member of a prison board;
- 10) post at the Ministry of Defence and armed forces as well as Border Guard Detachment;
- 11) post other than police officer at Security Police;

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- 12) post at the customs to which appertains right to arrest as well as post at the customs to which appertains duties concerning supervising and securing the territorial integrity of Finland or duties concerning investigation and supervision of crimes;
- 13) post of the Head of the Public Unit of the Civil Aviation Administration; as well as
- 14) post of the Head of Maritime Safety of the Finnish Maritime Administration.’

Section 11 of the Act on Public Offices lays down the obligation of equal treatment and the prohibition of discrimination based, among other grounds, on nationality.

The Act on Public Offices 11 §

‘Public authorities have to treat civil servants equally so that no one is without an acceptable reason treated differently compared with other persons on the grounds of birth, ethnic origin, nationality, sex, sexual orientation, religion, conviction, disability, age, political activities or activities in trade union or other comparable reason. The Act on Equality contains provisions on the definition of discrimination, the prohibition of counter acts, and the rules concerning the burden of proof in cases concerning discrimination.’

1.2 Language requirement

Texts in force

Language Act (Kielilaki 423/2003)

Act on language proficiency required from personnel of public authorities (Laki julkisyhteisöjen henkilöstöltä vaadittavasta kielitaidosta 424/2003), in particular sections 6 § and 14 §.

No legislative reforms took place in the field of language requirements in 2008 or the first half of 2009.

The requirements concerning language proficiency are rather rigid and they may constitute an impediment for the access of citizens of the other EU States to the Finnish public sector. The requirements concerning linguistic competence are bound to the qualification requirement (for example university degree) and not, for example, to the tasks in question, which would be a more flexible approach. Furthermore, normally specified level of command of both of the national languages, Finnish and Swedish, is required. According to section 6 of the Act on language proficiency, for example for public offices for which the qualification requirement is a university degree, the required level of language proficiency in the majority language is *excellent oral and written skills* and in minority language *satisfactory oral and written skills*. The means by which a person can show that she has reached the required level of language proficiency are national language tests and certificate showing that she has completed her education and passed a maturity test at a Finnish university in the given language. According to section 14 of the Act on language proficiency, the Board on Language Exams (Kielitutkintolautakunta) may upon application issue a certificate on excellent command of Finnish or Swedish language to a person who can show that she has reached excellent language proficiency by other means than those specified in the Language Decree. Hence, the Board on Language Exams may upon application decide that, for example, language studies completed abroad may be equated with official Finnish exams.

The general legislation on languages does not apply to universities, to the Evangelic Lutheran Church, and to the Orthodox Church. These institutions have language policies specific for them.

It is not very common that citizens of the other Member States apply for open posts in the Finnish public sector. It is difficult to assess to what extent this is caused by the rigid requirements concerning language proficiency and to what extent by other factors.

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

No legislative reforms took place in this field in 2008 or in the first half of 2009.

There are no specific rules on how professional experience and seniority obtained in another EU state should be taken into account for the purposes of access to the public sector. In general, the requirements for appointment to an office and for promotion depend on the post in question. From the prohibition of discrimination follows that relevant professional experience and seniority acquired in another Member State should be taken into account in a similar manner as corresponding experience and seniority acquired in Finland. No information was found on how this principle is followed in practice and to what extent professional experience or seniority acquired in another Member State are, in fact, recognised in Finland. No judicial practice on this issue was found.

2. WORKING CONDITIONS

Over the past ten years there has been going on a reform of the pay-system at the public sector in Finland. The pay-system is specific for each government agency, but common principles guide the whole system. Pay comprises of a job-specific pay component that is based on the complexity of the job in question, and of an individual pay component that is based on the performance and competence of the employee. The individual pay component can account for maximum of 50% of the job-specific pay component. Each government agency applies its own appraisal system to evaluate job complexity and personal performance. Job complexity is normally determined on the basis of factors such as the required level of qualification, knowledge and skills, and the responsibility. Job performance is generally assessed according to professional competence, degree of productivity and collaboration skills. Each employee's job complexity and personal job performance is reviewed in meetings between the employee and her supervisor once a year.

No specific rules were found on how professional experience, skills and seniority acquired in another Member State are taken into account when assessing the individual pay component. It follows from the principle of non-discrimination that such factors should be taken into account in a similar manner as corresponding experience and seniority acquired in Finland. No information on how the system functions in practice in cases involving employees from the other Member States was found.

Chapter VI

Members of the Worker's Family and Treatment of Third Country Family Members

1. RESIDENCE RIGHTS: TRANSPOSITION OF DIRECTIVE 2004/38/EC

Texts in force

Aliens Act 301/2004 (Ulkomaalaislaki) as amended by the Act 360/2007, sections 153 §, 154 §, 155 §, 156 §, 156 a §, 158 §, 158 a §, 158 a §, 159 §, 161 §, 161 a §, 161 b §, 161 c §, 161 d §, 161 f §, 161 g §, 162 §, 163 §, 165 §, 166 §, 167 §, 168 §, 168 b §, 172 §, 172 a §.

1.1. Draft legislation and circulars

- Government Proposal for an act amending the Aliens Act HE 77/2009 vp, 29.5.2009.
- Guidelines given by the Legal Department of the Ministry for Foreign Affairs on issuance of visa to third country national family members (Ohje HEL5058-2, 04.07.2007).
- Guidelines given by the Police Department of the Ministry of the Interior. Changing of application practice on EU citizen's family member's entry. Direct application of the Citizenship Directive instead of the Aliens Act. (Soveltamiskäytännön muutos unionin kansalaisen perheenjäsenen maahantulossa. Vapaan liikkuvuuden direktiivin suora soveltaminen ulkomaalaislain sijasta SMDno/2009/54, 8.1.2009).

1.2. Application of Metock judgment

Law in force

According to section 153(3) of the Aliens Act, provisions on free movement apply to EU citizen's family members only if they meet the requirement for previous lawful residence. This means that to be covered by Chapter 10 of the Aliens Act, an EU citizen's family member must move to Finland from another Member State where she has resided together with her EU citizen family member lawfully and in a non-temporary manner. The Aliens Act does not specify what it is meant by non-temporary residence in this context. The Government Proposal 205/2006 states that by temporary residence is meant residence that lasts only for a short time and is not permanent. The Guidelines given by the Legal Department of the Ministry for Foreign Affairs on issuance of visa to a third country national family member (Ohje HEL5058-2, 04.07.2007) clarify further that the requirement on non-temporary residence is not met if the family member has resided in another EU Member State by virtue of a visa or if she has applied there for a residence permit or a residence card but the application has not yet been decided.

Government proposal for amending the Aliens Act

The requirement concerning previous lawful residence as laid down in section 153(3) of the Aliens Act is contrary to the *Metock* judgment. Therefore, the Finnish Government gave on 29 May 2009 to the Parliament a proposal abolishing the requirement for previous lawful residence from the section 153(3) of the Aliens Act (HE 77/2009 vp). According to the proposed new wording of 153(3) of the Aliens Act: ‘Chapter [10 of the Aliens Act that contains provisions on free movement] shall be applied to an EU citizen who moves to Finland or resides in Finland, as well as to family members of such person, who accompany their EU citizen family member or join her later.’ The Government Proposal clarifies that under the amended provision the provisions on free movement would be applied also to those family members who enter Finland directly from a third country as well as in cases where the relationship is established in Finland.

Guidelines given by the Police Department of the Ministry for Interior

The Police Department of the Ministry of the Interior gave in January 2009 guidelines on changing of application practice in cases involving EU citizen’s family members (Soveltamiskäytännön muutos unionin kansalaisen perheenjäsenen maahantulossa. Vapaan liikkuvuuden direktiivin suora soveltaminen ulkomaalaislain sijasta SMDno/2009/54, 8.1.2009). Under these Guidelines, the police shall apply directly the Citizenship Directive instead of section 153(3) of the Aliens Act, and register EU citizen’s family member’s right of residence or issue her with a residence card even if she would not meet the condition of previous lawful residence.

Since the entry into force of the amendment of the Aliens Act transposing the Citizenship Directive in 30.4.2007, there have been circa 60 cases where an EU citizen’s family member has been issued with a regular residence permit instead of an EU citizen’s family member’s residence card, and six cases where such person’s residence permit had been denied. According to the Guidelines given by the Police Department, the local police must contact all the individuals concerned and advice them to apply for registration of their right of residence, or in case of third country national family members, a residence card. Furthermore, once an EU citizen’s family member applies for renewal of her residence permit, the police shall issue the individual with a family member’s residence card or, in case of family members who themselves are EU citizens, register the right of residence. The Guidelines state further that if the family member does not meet the requirements for free movement (*e.g.* the income requirement), she may still be issued with a residence permit if she meets the requirements for that.

The Guidelines clarify that the family members of Finnish citizens who have used their right to free movement shall be treated alike EU citizens’ family members. Hence, the requirement of previous lawful residence shall not be applied in these cases either.

These Guidelines shall be applied until the act amending section 153(3) of the Aliens Act proposed by the Government shall be adopted by the Parliament and enter into force.

Guidelines given by the Legal Department of the Ministry for Foreign Affairs

It is important to note that the Ministry for Foreign Affairs has not yet amended the Guidelines given by the Legal Department of the Ministry for Foreign Affairs on issuance of visa

to a third country national family member (Ohje HEL5058-2, 04.07.2007, hereafter the Guidelines) that is based on section 153(3) of the Aliens Act, or given new guidelines that would reflect the *Metock* judgment. According to information received from the Ministry for Foreign Affairs, the *Metock* judgment is understood in this context very narrowly. It is regarded to have implications only for cases involving third country nationals who have concluded their marriage in another Member State and who enter Finland directly from there. The *Metock* judgment is therefore not regarded to preclude application of the condition for previous lawful residence in other cases.

According to the Guidelines, only those family members who meet the requirement of previous lawful residence shall be treated as EU citizen's family members within the meaning of the Citizenship Directive and the national legislation implementing it unless they fall within the ambit of the narrow reading of the *Metock* judgment. Hence, to fall within the ambit of free movement, the non-citizen family member has to accompany or follow her EU-citizen family member from another EU state where she has resided with the family member lawfully and in a non-temporary manner. It is not sufficient that the family member has resided in another Member State by virtue of a visa, or that she has lodged there an application for a residence permit but the application has not yet been decided, unless she has concluded her marriage with the EU citizen family member there.

Whether or not an individual is treated as an EU citizen's family member has important implications for her treatment in the context of issuance of visa. The obligation to give reasons for a negative decision on visa application applies only in cases falling within the ambit of free movement legislation, or in other words, where the applicant meets the requirement of previous lawful residence or has concluded her marriage in another Member State. This is also the case with the right to appeal against a negative decision. Those who fall outside the ambit of free movement do not have a right to hear the grounds for a negative decision on their visa application or to appeal.

It is, though, noteworthy that the Guidelines state that also such third country national family members who come to Finland from outside the EU, or who don't otherwise meet the requirement for previous lawful residence must be treated favourably. If such person's EU citizen family member resides in Finland where she has registered her right of residence, the third country national family member shall be treated like Finnish citizens' family member are treated. If, however, the family member who is an EU citizen stays in Finland only temporarily e.g. as a tourist, the third country national family member's visa application shall be decided in the regular visa procedure. In such case she is not accorded more favourable treatment than other third country nationals.

According to information received from the Ministry for Foreign Affairs, it shall not amend the Guidelines before section 153(3) of the Aliens Act will be amended.

Judicial practice

Case 08/0176/3 of 14.2.2008 by the Administrative Court of Helsinki: The appellant, who had widowed, and whose children lived in Finland as workers, wanted to move to live with his children. The appellant argued that he was dependent on his children because his pension (40 e/month) was not sufficient to cover his living expenses in his home country. Furthermore, he claimed that due to severe health problems he needed his children's help in his everyday life. There was no one in the country of origin to help him. The police had not reg-

istered the appellant's right of residence because he was not regarded to be dependent on his children within the meaning of section 154(1)(3) of the Act and could therefore not be regarded as his children's family member for the purpose of the provisions on free movement. Furthermore, the appellant was not regarded to have sufficient funds to secure his subsistence and therefore he was not regarded to have an independent right of residence.

The Administrative Court sustained the decision taken by the police. The Court referred to cases 316/85 Lebon, C-200/02 Chen, and C-1/05 Jia, and concluded that the appellant was not dependent on his children within the meaning of section 154(1)(3) of the Aliens Act and the community law, and could thus not be regarded as his children's family member. Furthermore, the Court held that the applicant's pension (40 e/ month) was not sufficient to secure his subsistence in Finland and therefore his right of residence could not be registered. The Court did not attach any significance to the fact that the appellant's children had declared that they would take care of the appellant's subsistence in Finland. It is difficult to see on which grounds the Court reached the conclusion that the appellant was not dependent on his children. It is also questionable whether the way the Court applied the notion of 'dependency' was fully in line with community standards.

Judicial practice elaborating on the notion of 'dependency' in cases involving EU citizens is rather scarce. The Government Proposal 205/2006, however, explains this concept to some extent. The Proposal states that in this context 'dependency' means that the family member is financially dependent on the sponsor. When the application is decided, account shall be taken of the family member's personal circumstances and needs. The dependency has to be established by relevant documentary evidence.

1.2. The situation of family members of job-seekers

Family members of job-seekers are entitled to free movement under the same conditions as their EU citizen family member who is seeking employment.

1.3. How the problems of abuse of rights (marriages of convenience) are tackled

Section 172a concerns abuse of rights. This provision is based on art. 35 of the Directive.

Section 172a

'Abuse of rights

Any right conferred in this Chapter may be refused, terminated, or withdrawn if the person concerned has consciously given false information concerning her identity or other circumstances relevant for the case or by concealing such information or by otherwise abusing her rights such as by concluding marriage with the sole purpose of acquiring rights conferred in this Chapter.'

Government Proposal 205/2006 refers in this connection to the Resolution 97/C382/01 concerning marriages of convenience. The proposal clarifies that if the marriage or registered partnership is concluded for the purpose such as circumventing the rules on entry and residence, the family life shall not be regarded as real. In such case the application for registration of the right of residence or a residence card shall be refused. The Proposal however stresses that in case of Union citizens there is normally no need to examine whether the rela-

tionship is real or not. Such examination can be carried out only if there are particularly strong grounds for it. No case law or information on practical problems on this issue were found.

2. ACCESS TO WORK

According to section 164 of the Aliens Act, persons who are entitled to residence under chapter 10 of the Aliens Act laying down the conditions for free movement of EU citizens and their family members have unrestricted right to gainful employment. This covers also self-employed activities. Such persons are not required to have a work permit.

3. OTHER ISSUES CONCERNING EQUAL TREATMENT (SOCIAL AND TAX ADVANTAGES)

No information was found on any problems relating to the social and tax advantages of EU citizen's family members.

According to section 1 of chapter 1 of the Act on study grant (Opintotukilaki 65/1994, <http://www.finlex.fi/fi/laki/ajantasa/1994/19940065?search%5Btype%5D=pika&search%5Bpika%5D=opintotuki%2A#a7.5.2004-345>), citizens of the other EU States and their family members, whose right of residence has been registered or who have been issued with a residence card shall be granted study grants under the same conditions as Finnish citizens. A precondition for this is that the ground for the individual's residence in Finland is other than studying.

4. FAMILY MEMBERS OF STUDENTS

Under section 158a(3) of the Aliens Act, if an EU citizen's right of residence is based on studying in Finland, only her spouse and her and her spouse's children who are under 21 years of age or dependent on her or her spouse, but not the student's or her spouse's parents, are regarded as family members within the meaning of the free movement legislation. The Government proposes the special provision on students' family members to be abolished from the Aliens Act. Thereafter students will be treated in this respect equally with the other categories of EU citizens.

Chapter VII

Relevance/Influence/Follow-up of recent Court of Justice Judgments

The practice of the ECJ is taken into account in legislative reforms. New or amended legislation is drafted so that it reflects the relevant case law of the ECJ. Furthermore, if Finnish legislation is found to be contrary to the ECJ case law, it is amended.

What comes to the practice of Finnish courts, it is not very common to find in their decisions explicit references to the ECJ case law. It is therefore difficult to estimate to what extent courts follow the practice of the ECJ and adjust their practice to it.

C-212/05 Hartmann

This judgment has not had and is not likely to have any impact in Finland because the domestic system is already in line with it. The family members of workers who are insured in Finland under the employee pension insurance scheme are entitled to home care subsidy provided that they meet the general requirements for obtaining this benefit. This subsidy is paid under equal conditions regardless of whether the worker's family members live in Finland or in another Member State.

Hendrix C-287/05

In the Finnish system, the benefit comparable to that at issue in *Hendrix* is disability pension, the purpose of which is to secure minimum subsistence for persons who are unable to work. This benefit is covered by the Regulation 1408/71. Disability pension is exportable. The judgment in *Hendrix* has not had and is not likely to have any impact in Finland as the Finnish system is in line with it.

C-527/06 Renneberg

In Finland employees are entitled to claim tax deductions for payments of interest on a loan that is taken to finance the permanent owner-occupied home. Employees are entitled to make this deduction regardless of whether the home is located in Finland or abroad.

C-94/07 Raccanelli

No information was found on that arrangements comparable to that in *Raccanelli* would be used in Finland.

Chapter VIII

Application of Transitional Measures

No transitional arrangements are applied in Finland.

Relatively large number of workers from Estonia and the other EU8 states work in Finland as posted workers in situations where the worker is in a contractual relationship with an employer established in another Member State but the work is performed for a company established in Finland (*leased workers*), or as workers working for subcontractors. Such workers fall within the ambit of freedom of services instead of freedom of workers. According to the Central Criminal Police and the occupational safety and health authorities, in this kind of situations it is rather common that the minimum conditions for work are not applied and that e.g. the wages are below the minimum wages; no supplementary payments are paid; the workers are not insured; and no occupational health care is arranged. Furthermore, it is not uncommon that social security legislation is circumvented in such situations.

Posted workers are used in particular in building and cleaning work and in shipyard industry. Due to the recession that has affected particularly hard the building and shipyard industries, the increase in the number of leased workers is estimated to have begun to steady. It is, however, also reckoned that in particular in the building sector the recession has affected the structure of the labour market so that companies prefer to use leased workers instead of directly employed workers, as the former group is more flexible than the latter.

The Act on registration of information on employment of citizens of certain EU Member States (Laki eräiden Euroopan unionin valtioiden kansalaisten työntekoa koskevien tietojen rekisteröinnistä 418/2006), the Act amending section 85 of the Aliens Act (Laki ulkomaalaislain 85 §:n muuttamisesta 419/2006), and the Act amending sections 5 and 7 of the Act on alien's register (Laki ulkomaalaisrekisteristä annetun lain 5 §:n ja 7 §:n muuttamisesta 419/2006) that were given on 2.6.2006 and that entered into force on 5.6.2006 laid down a procedure for registering specified information regarding the employment of citizens of the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia in cases where the employment lasted for a minimum of 14 days, and where the worker had not registered her right of residence. The procedure covered not only employees employed directly but also posted workers. The information that was registered included the name, the date and place of birth, as well as the nationality of the worker, and the duration of the employment, as well as the remuneration and the collective bargain agreement that was applied in the employment. This information had to be given to the employment authority within 14 days of the day when the employment started. The employment authority registered the information in the aliens register. This procedure was abolished on 30th of April 2009.

Legislation concerning leased workers (työsopimuslaki 55/2001, työturvallisuuslaki 739/2002, tilaajavastuulaki 1233/2006) was amended in the beginning of 2009. The purpose of these legislative amendments was to improve the position of leased workers. Now the shop steward and the industrial safety delegate of the company where the work is performed is entitled to receive information on the working conditions of leased workers, and to represent them in matters concerning working conditions. The purpose of this reform is to increase transparency as regards working conditions and to improve the possibilities to supervise them.

Chapter IX

Miscellaneous

National organisations and bodies where citizens can launch complaints for violation of community law on free movement for workers

The Parliamentary Ombudsman and the Chancellor of Justice exercise oversight to ensure that public authorities and officials as well as private bodies that perform public functions observe the law and fulfil their duties. Complaints for violation of community law on free movement by the Finnish authorities may be lodged to the Ombudsman and to the Chancellor of Justice.

The Ombudsman for minorities has the basic task of advancing the status and legal protection of ethnic minorities and foreigners as well as equality and non-discrimination. The ombudsman can be contacted in cases of discrimination *e.g.* on the ground of nationality.

Occupational health and safety authority supervises working conditions. The authorities conduct inspections at working places. Furthermore, employees may contact the local occupational health and safety authority in case of discrimination at work. Often the first step to be taken in cases involving discrimination is to contact the shop steward or industrial safety delegate at the place of work, or the trade union.

Recent publications

Sakslin, Maija (2009) Euroopan unionin oikeus sosiaalisten oikeuksien turvana, in: Kanninen, Koskinen, Rosas, Sakslin & Tuori (eds.), *Puhuri käy: Muuttuva suomalainen ja eurooppalainen valtiosääntömme*, Helsinki: Edita, p. 363-388 (*EU as protector of social rights*).

Application of the community preference principle

Before the Directorate of Immigration may issue a third country national with a residence permit for the purpose of working in Finland, the employment office has to consider whether there is at the labour market labour that would be suitable for the work in question and to ensure that the issuance of the permit would not prevent a person already at the labour market from finding employment. Finnish citizens and citizens of the other Member States as well as third country nationals residing lawfully in Finland are regarded as persons already at the labour market.

Treatment of the citizens of the other Nordic countries

Due to various agreements and historical arrangements among the Nordic states, special arrangements apply to the Nordic citizens and their family members' entry to, residence in, and departure from Finland. Provisions concerning Nordic citizens are contained in chapter

10 of the Act concerning EU citizens. The Nordic citizens are, for example, exempted from the requirement to hold a passport upon entry to Finland. Furthermore, the Nordic citizens follow a different procedure for registration of one's residence compared with that followed by the EU citizens. The provisions on removal from Finland that are applicable to Nordic citizens are more lenient than those applicable to EU citizens.

Integration of immigrants

According to the Act on integration of immigrants and reception of asylum seekers (Laki maahanmuuttajien kotouttamisesta ja turvapaikanhakijoiden vastaanotosta 493/1999) EU citizens and their family members and other relatives who meet the preconditions laid down in the Act are entitled to integration measures. Participation to such measures is not compulsory.

According to the Act on integration, an immigrant who has moved to Finland after the 1st of May 1997, who has been entered in the population data system of her home municipality, and who is eligible for labour market subsidy and/or social assistance, is entitled to a personal integration plan. Subsistence during the plan period is secured with integration assistance.

A personal integration plan is drawn up after the immigrant has been entered in the population register as a permanent resident in Finland. The maximum plan period is three years. The plan is drawn up by the immigrant herself, the employment consultant, and where necessary a representative of the municipality. The integration plan includes an agreement on the measures taken to help the immigrant to enter into the Finnish society and working life. These measures include courses in Finnish or Swedish languages and an assessment on how the qualifications or degrees that the individual has taken outside Finland can be made to meet the requirements set by Finnish working life and what kind of supplementary training may be needed.

The Finnish Working Life Information Point

The Finnish Working Life Information Point that the Central Organisation of Finnish Trade Unions (SAK) and its partner organisations had in Tallinn and that provided information and advice about working in Finland was closed on December 2008.

Internet sites containing information for foreigners on moving to and working in Finland

Ministry of Employment and the Economy:

[http://www.mol.fi/mpl\(fi/02_tyosuhteet_ja_lait/02_ulkom_Suomessa/index.jsp](http://www.mol.fi/mpl(fi/02_tyosuhteet_ja_lait/02_ulkom_Suomessa/index.jsp)

Finnish Immigration Service:

<http://www.migri.fi/netcomm/default.asp>

Police:

<http://www.poliisi.fi/poliisi/home.nsf/pages/1804AF1D983CF7B6C2256ECC0035C981>

Homepage for Eures Crossborder Tornedalen and employment authorities in the North Calotte area: <http://www.crossbordertornedalen.net/?deptid=2088>

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Internet sites containing information on legislation and court decisions

Legislation in Finnish and Swedish: <http://www.finlex.fi>.

Finnish Immigration Service: <http://www.migri.fi>.

Supreme Court: <http://www.kko.fi>.

Supreme Administrative Court: <http://www.kho.fi>.

Labour Court: <http://www.oikeus.fi/tyotuomioistuin>.

Finnish Centre for Pensions <http://tyoelakelakipalvelu.etk.fi> (compilation of case law by the Insurance Court and other relevant bodies)

Insurance Court: <http://www.oikeus.fi/vakuutusoiikeus>.

Free Movement Committee;

Here comes 4 comments from Finland to Chapters I, III, VI of the Report by Eeva Nykänen. Unfortunately I didn't receive any comments to Chapters II, IV, V from my colleagues at the Ministries in question, so I presume that they do not have any comments to make. They are aware of the dead line.

1. The term "Citizenship Directive" is misleading, "Free Movement Directive" is more frequently used.
2. "Leased employee" is not a proper term; "temporary agency worker" should be used

Other obstacles to free movement of workers

Relatively large number of EU citizens working in Finland in 2008 were posted workers mainly from Estonia but also from the other Baltic states and from Poland. Often posted workers perform their work for Finnish companies as so called 'leased employees' ("**temporary agency worker**) i.e. they have employment contract with a company established in another state but perform the work in Finland for a Finnish company. Furthermore, in particular in building and metal industry it is rather common for Finnish companies to use foreign subcontractors. These situations fall within the ambit of freedom of services instead of freedom of workers. In cases involving leased workers the conditions for work are often weaker than the conditions for work of the Finnish employees performing equivalent tasks. According to the occupational safety and health authorities and Central Criminal Police, it is rather common that the workers are paid wages that are below the wages paid for Finnish employees or even below the minimum wages, supplementary payments, such as overtime pay, are not performed, and the employer neglect its obligation to insure the employee and to arrange occupational health care. Legislative reforms undertaken by the authorities have proven to be rather inefficient in tackling the problems in this field.

3. Report on the Free Movement by Eeva Nykänen, pages 6-7 (These comments have already been distributed in January 2009 to the Commission)

According to the Rapporteur only in cases of Deportation (Section 168 bin the Aliens' Act) and not in cases of refusal of entry (Section 167) an "overall consideration" is made. Article 14 (Retention of the right of residence) of the Directive is implemented in Section 167 and in Section 168 b Act Article 28 (Protection against expulsion) of the Directive. Even if a notion of "overall consideration" is not explicitly mentioned in Section 167, Finland emphasises that an overall consideration is always done in both cases, according to Section 146 of the Aliens' Act. Most of the legislation concerning residence of citizens of the European Union is gathered in Chapter 10 of the Aliens' Act, but it is important to notice that also other chapters of the Act might be applicable in EU cases. Particularly this is done in wide-ranging matters, as deportation and refusal of entry. The same rules for the overall consideration applies therefore for EU citizens and their family members as well as for other third country nationals.

Section 146 of the Aliens' Act

Overall consideration

(1) When considering refusal of entry, deportation or prohibition of entry and the duration of the prohibition of entry, account must be taken of the facts on which the decision is based and the facts and circumstances otherwise affecting the matter as a whole. When considering the matter, particular attention must be paid to the best interest of the children and the protection of family life. Other facts to be considered must include the duration and purpose of the alien's residence in Finland, the nature of the residence permit issued to him or her, the alien's ties to Finland and the cultural and social ties to the home country of his or her family. Should the refusal of entry, deportation or related prohibition of entry be on the basis of the

criminal activity of the alien, account must be taken of the seriousness of the act and the detriment, damage or danger caused to public or private security. (380/2006)

(2) When considering prohibition of entry and its duration, account shall also be taken of whether the alien has any such family or work ties to Finland or to another Schengen State that would suffer unreasonably from prohibition of entry. When considering prohibition of entry and the duration of the prohibition of entry for an alien whose application for international protection has been dismissed or rejected, the facts on which the dismissal or rejection was based and whether the alien has, by his or her own actions, hampered the processing of his or her application for asylum may also be taken into account.

4. pages 21-22 in the Free Movement Report by Eeva Nykänen; Guidelines given by the Legal Department of the Ministry for Foreign Affairs

"To get a more focused picture on practices as regards issuing visas to EU citizen's family members according the directive 2004/38/EC one must take into account that Finnish authorities issue for intended stays of no more than three months only Schengen-visas. No national visa types for short stays (e.g. visa type "D") which are based on national regulations and guidelines are issued in Finland. This means that Ministry for Foreign Affairs gives guidelines for issuing visas only in those cases where the Schengen Aquis does not give the required guidance on processing the visa applications. Until these days there have been only very limited Schengen guidelines on issuing visas for family members.

The European Parliament and the Council adopted 13 July 2009 a new Community Code on Visas (regulation 2009/810/EC). This proposal incorporates most legal instruments governing procedures for issuing visas into one legal instrument. The Community Code on Visas shall apply for most parts from 5 April 2010. The Commission has made a proposal for operational instructions on the practical application of the provisions of the Community Code on Visas. This proposal includes also a part which deals with issuing visas for EU citizen's family members according the directive 2004/38/EC. This new instruments will take the place of previous Schengen regulations and national guidelines as regards issuing Schengen visas in Finland and the other Schengen States."

Best regards

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