

REPORT
on the Free Movement of Workers
in Greece in 2007

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September 2008

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Introduction

From an EC law point of view the year 2007 was dominated by the transposition of Directive 2004/38/EC. With regard to EU citizens, there were no other legislative changes during the year 2007.

The number of court cases based on EU law on the free movement of workers continues to be extremely small compared to the total number of cases relating to third country migrants. This is probably due to the fact that a relatively small number of EU citizens are employed in Greece (1-2 %), and that most of the legal issues have been resolved in the past.

The items concerning the free movement of workers following the enlargement of the European Union continue not to be broadly discussed. The nationals of new EU member states represent a small number compared to the total number of immigrants.

The government continues to proceed to a transitional arrangement for access to the country of workers who are nationals of the new EU member states (Bulgaria, Romania).

Chapter I

Entry, Residence, Departure

Text(s) in force

The rules on free movement of workers have been implemented into Greek law by the P.D. 106/21.6.2007. The transposition and implementation of Directive 2004/38 in 2007 have no retrogressive effects for Union citizens and the members of their families as it did not result in treatment less favourable than under the previous Community rules on free movement. There is a general tendency to copy the provisions of the directive into national legislation without adapting them to national circumstances.

A. ENTRY

Art 5 of P.D. 106/2007 provides that, without prejudice to the provisions on travel documents applicable to national border controls, Union citizens are granted leave to enter Greek territory with a valid identity card or passport. Family members who are not nationals of a Member State are also granted leave to enter Greek territory with a valid passport. No entry visa or equivalent formality is imposed on Union citizens.

Family members who are not nationals of a Member State are required to have an entry visa in accordance with Regulation (EC) No. 539/2001. Possession of a Union family member valid residence card exempts such family members from the visa requirement.

An entry or exit stamp is not placed in the passport of family members who are not nationals of a Member State provided that they present their residence card.

Where a Union citizen, or a family member who is not a national of a Member State, does not have the necessary travel documents or, if required, the necessary visas, every reasonable opportunity is given to such persons, before turning them back, to obtain the necessary documents, or have them brought to them within a reasonable period of time, or to corroborate or prove by other means that they are covered by the right of free movement and residence.

B. RESIDENCE

Art 6 of P.D. 106/2007 provides that Union citizens have the right of residence on the Greek territory for a period of up to three months without any conditions or any formalities other than to hold a valid identity card or passport. The above provisions are also applied to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen. Union citizens and their family members have the right of residence as long as they do not become an unreasonable burden on the social assistance system.

Art 7 of P.D. 106/2007 provides that all Union citizens have the right of residence on Greek territory for a period of longer than three months if they are workers or self-employed persons in Greece; or have sufficient resources for themselves and their family members not to become a burden on the social assistance system during their period of residence and have comprehensive health insurance; or are enrolled at a private or public establishment, accredited or financed by Greece on the basis of the legislation or administrative practice, for the principal purpose of following a course of study, including vocational training and have comprehensive health insurance and assure the police authority, by means of a declaration or by

such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system, or are family members accompanying or joining a Union citizen who satisfies the conditions referred above. A Union citizen who is no longer a worker or self-employed person retains the status of worker or self-employed person if he/she (among other situations) is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker is retained for no less than six months.

Art 8 of P.D. 106/2007 provides that for periods of residence longer than three months, Union citizens are required to register with the police authorities not later than three months from the date of arrival. A registration certificate is issued immediately, stating the name and address of the person registering and the date of the registration. Failure to comply with the registration requirement render the person concerned liable to penal sanctions (art. 458 Penal Code). For the registration certificate to be issued, it is required that the above Union citizens a) present a valid identity card or passport and a confirmation of engagement from the employer or a certificate of employment, or proof that they are self-employed persons; or b) a valid identity card or passport and proof that have sufficient resources for themselves and their family members not to become a burden on the social assistance system during their period of residence and have comprehensive health insurance; or c) a valid identity card or passport and proof of enrolment at an accredited establishment and of comprehensive health insurance coverage and the declaration or equivalent means without referring to a specific amount of resources.

Art 11 of P.D. 106/2007 provides that the Union citizen's death does not affect the right of residence of his/her family members who are either nationals of a Member State, as long as before acquiring the right of permanent residence, the persons concerned meet the conditions regarding the right of residence. Union citizen's family members retain the right of residence, as long as they meet the conditions set out in this article. In specific cases where there is a reasonable doubt as to whether they satisfy the conditions set out in this Article, verification is carried out by the relevant authorities. This verification shall not be carried out systematically.

Art 12 of P.D. 106/2007 provides that divorce or annulment of the Union citizen's marriage does not affect the right of residence of his/her family members who are either nationals of a Member State, as long as before acquiring the right of permanent residence, the persons concerned meet the conditions laid down regarding the right of residence. Before acquiring the right of permanent residence, the right of residence of the persons referred to is retained, subject to the requirement that they prove that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system and have comprehensive health insurance cover in Greece, or that they are members of the family, already constituted in Greece, of a person satisfying these requirements. Union citizen's family members retain the right of residence as long as they meet the conditions set out therein. In specific cases where there is a reasonable doubt as to whether they satisfy the conditions set out in this Article, verification is carried out. This verification shall not be carried out systematically.

Permanent Residence

Art 13 of P.D. 106/2007 provides that Union citizens who have resided legally for a continuous period of five years in Greece and family members, who have legally resided with

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the Union citizen for a continuous period of five years, have the right of permanent residence. Continuity of residence is not affected by temporary absences not exceeding a total of six months per year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country. Once acquired, the right of permanent residence is lost only through absence from Greece for a period exceeding two consecutive years.

Art 14 of P.D. 106/2007 provides that Union citizens have, exceptionally, the right of permanent residence before completion of a continuous period of five years of residence by, in the following cases: (a) they are workers or self-employed persons who, at the time they cease working in Greece, have reached the age laid down for entitlement to an old age pension or workers who cease paid employment to take early retirement, provided that they have been working in Greece for at least the preceding twelve months and have resided there continuously for more than three years; (b) they are workers or self-employed persons who have resided continuously in Greece for more than two years, provided that they cease working as a result of permanent incapacity to work, (c) they are workers or self-employed persons who, after three years of continuous employment and residence in Greece, work in an employed or self-employed capacity in another Member State, while retaining their place of residence in Greece, to which they return, as a rule, each day or at least once per week. The above mentioned conditions as to length of residence and employment and to length of residence do not apply if the worker's or the self-employed person's spouse has Greek nationality or has lost Greek nationality by marriage to that worker or self-employed person. If the worker or self-employed person has acquired for himself the right of permanent residence in Greece, his/her family members who are residing with him/her in the Greek territory, irrespective of nationality, have the right of permanent residence as well. In the case of worker's or self-employed person's death while still working but before acquiring permanent residence status in Greece, his family members who are residing with him acquire the right of permanent residence there, on condition that:(a) the worker or self-employed person had, at the time of death, resided continuously on Greek territory for two years, or (b) the death resulted from an accident at work or an occupational disease, or (c) the surviving spouse lost Greek nationality following marriage to the worker or self-employed person.

Art 15 of P.D. 106/2007 provides that in the event of a Union citizen's death or divorce or annulment of the Union citizen's marriage, the third country nationals family members who are workers, or self-employed, persons or they have sufficient resources for themselves and their family members not to become a burden on the social assistance system, and have comprehensive health insurance coverage in Greece, or they are members of the family, already constituted in Greece, of a person satisfying these requirements, acquire the right of permanent residence after residing legally for a period of five consecutive years in Greece.

Art 16 of P.D. 106/2007 provides that upon application submitted in person, the relevant police authorities issue a document certifying permanent residence of Union citizens, after the duration of residence has been verified, with the presentation of the registration certificate.

Art 17 of P.D. 106/2007 provides that a "Permanent residence card for family members of a Union citizen" is issued for third country nationals family members of a Union citizen. In order to obtain that permanent residence card, a national of a third country submits an application to the relevant services before his residence card expires, which is accompanied by the required documentary evidence. At the latest within a period of six months from the date the application and all the documentary evidence required were submitted a Decision is issued, with which a residence card is issued for the family members of a union citizen. Failure to comply with the requirement to submit the application render the person concerned

liable to administrative sanctions. The permanent residence card is renewable every 10 years upon application accompanied by a copy of the previous permanent residence card.

Restrictions on the Right of Entry and the Right of Residence on Grounds of Public Policy, Public Security or Public Health

According to art 21 of P.D. 106/2007 restrictions on the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, may be imposed on grounds of public policy, public security or public health. These measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned, which must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. That means that previous criminal convictions shall not in themselves constitute grounds for taking such measures and that justifications isolated from the particulars of the case or that relied on considerations of general prevention shall not be accepted. In order to be ascertained whether the person concerned represents a danger for public policy or public security, the relevant authorities may, if they consider this essential, request the Member State of origin and, if need be, other Member States to provide information concerning any previous police record the person concerned may have. Such enquiries shall not be made as a matter of routine. For measures taken on grounds other than public policy, public security or public health, the provisions of articles 23 and 24 regarding the notification of the decisions and the lodging of an appeal are applied. In this case, no ban on entry in the context of an expulsion decision may be imposed. Moreover, if a Union citizen or his/her family member, irrespective of nationality, for whom the relevant Greek police authorities have issued the passport or identity card, has been expelled on grounds of public policy, public security, or public health from another Member State, Greek Authorities are obliged to allow the re-entry of the holder of the document to its territory without any formality even if the document is no longer valid or the nationality of the holder is in dispute.

Persons, against whom an exclusion order has been taken on grounds of public policy or public security, may submit an application for the lifting of the exclusion order after a reasonable period and in any event after three years from the issue of the final exclusion order, by putting forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering their exclusion. The persons concerned have no right of entry to the territory of the Greek State while their application is being considered.

With respect to the grounds of public health, the only diseases justifying refusal of entry or residence or other measure restricting freedom of movement are the diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation and other infectious, contagious or parasitic diseases if protection measures, applying to nationals, are necessary to be taken. In that case, where there are serious indications that it is necessary, the relevant authorities may, within three months of the date of arrival, require the person concerned to undergo, free of charge, a medical examination to certify that they are not suffering from any of these diseases. Such medical examinations may not be required as a matter of routine. However, diseases occurring after a three-month period from the date of arrival in Greece do not constitute grounds for expulsion from the territory.

Expulsion

According to art 22 of P.D. 106/2007 the expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its

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territory, is taken only on serious grounds of public policy or public security. In that case, considerations such as how long the individual concerned has resided on the territory of Greek state, his/her age, state of health, family and economic situation, social and cultural integration into Greece and the extent of his/her links with the country of origin are taken into account. However, even if the expulsion decision is based on imperative grounds of public security, an expulsion decision may not be taken against Union citizens, if they: (a) have resided in Greece for the previous 10 years; or (b) are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989. An expulsion measure is in no event the automatic consequence of a Union citizen's or his or her family member's recourse to the social assistance system of the Greek State or of expiry of the identity card or passport on the basis of which the person concerned entered the Country. The Court may issue an expulsion order against a Union citizen of a member of his/her family as a penalty or legal consequence of a custodial penalty.

C. DEPARTURE

Art 4 of P.D. 106/2007 provides that without prejudice to the provisions on travel documents applicable to national border controls, all Union citizens with a valid identity card or passport and their family members who are not nationals of a Member State and who hold a valid passport have the right to leave the national territory to travel to another Member State. No exit visa or equivalent formality is imposed on the above persons.

D. REMEDIES

Art 23 of P.D. 106/2007 provides that the persons concerned shall be notified in writing of any decision taken restricting their freedom of movement and residence on the grounds of public policy, public security or public health, in such a way that they are able to comprehend its content and the implications for them. The persons concerned shall be informed, precisely and in full of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security. The notification shall specify the court or administrative authority with which the person concerned may lodge an appeal, the time limit for the appeal, and where applicable, the time allowed for the person to leave the national territory. Except in duly substantiated cases of urgency, the time allowed to leave the territory shall be not less than one month from the date of notification.

Art 24 of P.D. 106/2007 provides that the persons concerned have access to administrative redress procedures to appeal against or seek review of any decision of expulsion. The same persons have access to a judicial redress procedure before the Council of State against the above decision and against the decision rejecting the application for granting a certificate of registration, or a residence card or for its renewal or withdrawal.

Where the application for appeal against or judicial review of the expulsion decision is accompanied by an application for an interim order to suspend enforcement of that decision, actual removal from the territory may not take place until such time as the decision on the interim order has been taken, except: where the expulsion decision is based on a previous judicial decision; or where the persons concerned have had previous access to judicial review; or where the expulsion decision is based on imperative grounds of public security.

The redress procedure allows for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. They shall ensure that the decision is not disproportionate.

The individual concerned may be excluded from their territory pending the redress procedure, but they may not be prevented from submitting his/her defence in person, except when his/her appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory.

According to art 21 par. 3 P.D. 106/2007 the above procedures are also applied by analogy to all decisions restricting free movement of Union citizens and their family members on grounds other than public policy, public security or public health. A ban on entry in the context of an expulsion decision shall not be imposed.

Judicial practice

In case No. 1550/2007, the Court of First Instance of Iraklion ruled that the permanent expulsion as a legal consequence to the custodial penalty, should not be applied in cases of nationals of New Member States, even during the transitional period, unless the requirements of articles 27-33 of Directive 2004/38/EC are met. In this case, a custodial penalty and permanent expulsion as a legal consequence to it was imposed on a Bulgarian who had resided in Greece for more than 5 years. The country of his origin (Bulgaria) is a Member State from 1/01/2007, but for a two-year period, in accordance with the transitional arrangements for the freedom of movement of workers in the enlarged Union, Bulgarian workers still require a work permit in order to gain access to the labour market of the other Member States. On his appeal for lifting the expulsion order, the Court ruled that regarding the measure of permanent expulsion, the nationals of a third country, who gained the Union Citizenship due to the accession of his Country to the EU, after the enforcement of the initial expulsion order, falls under the direct effect of the Directive mentioned above and therefore no such expulsion measure may be applied against him unless the conditions referred to in articles 27-33 of this Directive are satisfied. It should be noted that at the time of issuance of that decision, the transposition and the implementation of the Directive 2004/38/EC by P.D. 106/2007 had not yet taken place, and therefore the Court Decision refers to the direct effect of the Directive, in accordance with the case law of ECJ, and not to the P.D.

Chapter II

Access to Employment

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT (E.G. ASSISTANCE OF EMPLOYMENT AGENCIES)

Ministerial decision 200295/2005 provides that new places of employment are subventioned by the State in cases of unemployed persons, either of Greek or of an EU member State nationality.

Art. 27 of law 3016/2002 provides a special allowance for long term unemployed workers. The law also provides that this special allowance is granted only to Greek citizens and to the citizens of EU member States.

2. LANGUAGE REQUIREMENT

Law 3304/2005 implemented Directives 2000/43 and 2000/78 and lays down a framework for combating discrimination on the grounds of racial or ethnic origin. A language requirement is possible that forbids indirect discrimination, as it puts persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (art. 3). A difference of treatment which is based on a characteristic related to racial or ethnic origin does not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate (art. 5).

3. RECOGNITION OF DIPLOMAS

Text(s) in force

Recognition of diplomas

Presidential Decree 165/2000 concerning the recognition of higher education diplomas implements Directive 89/48/EEC. The Council of Recognition of Professional Equivalence of Higher Education Degrees, which is the competent institution for the recognition of professional qualifications does not recognise the diplomas awarded by the competent authorities of other Member States if the studies are in the context of a franchise basis, under licence. The action brought on 4 July 2005 by the Commission against the Hellenic Republic was discussed in January 2007 before the European Court of Justice. The Greek Government contends that the Greek Constitution (art. 16) does not permit the recognition of the above diplomas. The decision of the European Court has not yet been published.

However, if an applicant has a diploma of TEI acquired in Greece and afterwards acquires a postgraduate diploma recognised in Greece, the Council of Recognition of Professional Equivalence of Higher Education Degrees does not recognise the professional qualifications corresponding to the higher diploma (postgraduate diploma), unless this professional qualification is already recognised in another State.

Law 3328/2005 (Off. Journ. 80 A/1.4.2005) concerning the academic recognition of higher education diplomas establishes the Hellenic National Academic Recognition and In-

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formation Center (DOATAP). Thus, the new organization follows a more severe procedure of recognition of foreign diplomas. It does not recognize the diplomas granted by foreign universities collaborating with private institutes operating under licence on a franchise basis in Greece. In the past there was some flexibility by recognizing as years of normal studies the academic years completed abroad and not recognizing the years completed in Greece. The solution given was to complete some additional courses in a Greek University or to consider as years of studies for the fundamental diploma the years of a Master's diploma granted by a foreign institution and completed abroad. The new organization does not follow such a practice. It rejects the recognition of a diploma granted by a foreign university in collaboration with a private Institute operating in Greece if the total of the academic years are not completed abroad. It does not give an alternative solution as was done in the past. The above recognition is however necessary to exercise some professions, i.e. to be a member of a Bar Association.

P.D 140/2007 concerning free movement of persons who provide services of nursing and midwifery implements Directive 2006/100/EC. In accordance with the provisions of P.D. 40/1986, which was applied before that P.D., general nurses who are nationals of Member States may reside and provide services of general nursing in Greek territory as long as they obtain a licence to provide the above mentioned services, in accordance with Greek legislation. However, in accordance with art. 3 of P.D. 140/2007, in the case of nationals of Member States whose diplomas or certificates for nursing or midwifery were issued by Romanian Educational Institute, or whose education program began in that country before the accession of Romania to the EU and when those diplomas do not satisfy the lowest educational requirements set out in art. 1 of Directive 77/453/EEC, their diplomas or certificates are recognized as an adequate proof of their knowledge, when they are accompanied by the required documents and a certificate certifying that they have provided these services legally.

P.D 143/2007 implements Directive 2006/100/EC concerning the occupation of dentist. In accordance with art. 6 of that P.D., for the fulfilment of the scope of Directive 78/686/EEC, diplomas or certificates issued by Romanian Educational Institute are recognized from 1st January 2007, as long as their holders began their medical education in that country before 1st October 1999 and they present, except from the required documents, a certificate certifying that they are providing these services legally for a certain period of time.

Draft legislation, circulars, etc.

Directive 2005/36/EC is not yet been transposed in Greece. According to the declarations of the Greek Government, initiatives will be taken to transpose it during the summer of 2008.

Chapter III

Equality of Treatment on the Basis of Nationality

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

Working conditions

Law 3305/2005 implements EC Directives 2000/43 and 2000/78 concerning the equal treatment between persons, irrespective of racial or ethnic origin, and the establishment of a general framework for equal treatment in employment and occupation. The above law is addressed for all, old and new discrimination grounds, such as race, ethnic origin, belief, religious belief, disability, age and social orientation, and also provides new measures such as positive action against discrimination, reversal of the burden of proof, and the possibility of collective action (class action).

Social advantages

Ministerial decision 200295/2005 provides that new places of employment are subventioned by the State in cases of unemployed persons either of Greek or of an EU Member State nationality.

Art. 27 of law 3016/2002 provides a special allowance for families including students in Greek schools of age less than 16 years. This allowance is granted also to the citizens of EU States under the same conditions as to the Greek citizens.

Art. 27 of law 3016/2002 provides a special allowance for long term unemployed workers. The law also provides that this special allowance is granted only to Greek citizens and to the citizens of EU member States.

Art. 1 of law 1296/1982 provides that Greek citizens or people of Greek origin older than 68 years and not having sufficient resources are granted a special pension and free medical care. This pension and the medical care are not granted to the citizens of EU States even if they reside in Greece. Therefore, there is discrimination between Greek and EU citizens concerning the conditions of granting this allowance and the medical care.

Art. 39 of law 2459/1997 provides that children's allowances and pension for parents having more than three children are granted to EU citizens and to the members of their family under the same conditions as to Greek citizens, provided that they reside or work in Greece. We have also to underline the decision 329/1999 of the Administrative Court of First Instance of Iraklion (EDKA 2001, 937) which held that the provision of Article 2 of the Illness Regulation of the Institution of Social Security in Greece, as far as the maternity allowance depends on the residence of the beneficiary in Greece, constitutes indirect or disguised discrimination. The Court held that this condition set by the Illness Regulation which concerns both Greek nationals and nationals of the other member states, is irrelevant, since it is fulfilled more easily by Greek nationals than by other E.U. citizens. Consequently, the Court held that this clause is invalid and not in compliance with the demands of European Union Law.

However, art. 20 par. 3 of P.D. 106/2007, by way of derogation from the general principle of equality, does not confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period seeking employment and providing evidence that they are continuing to seek employment and that they have a genuine chance of being engaged. It is not, prior to acquisition of the right of permanent residence,

granted maintenance aid for studies, including vocational training consisting of student grants or student loans to persons other than workers, self-employed persons, persons who retain such status, and members of their families.

Tax advantages

Ministerial decision 1036725/2005 provides that the release from the tax of transmission of real estate is dependent on the continuous work or residence in Greece for at least 12 months.

2. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS?

Notaries Public

Article 19 of the Code of Notaries Public (law 2830/2000) provides that posts of Notaries Public are open only to persons of Greek nationality. Therefore, these posts are reserved to Greek nationals. This measure is reasoned by the fact that Notaries Public are entrusted with powers under public laws.

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

The question of frontier workers is not of importance in Greece as there are no other frontier EU countries, other than Bulgaria and Romania whose workers are subject of transitional measures.

Sports field

Greek regulations concerning athletes provide equal treatment of Greek and EU citizens. In the case of Football (Minist. Decision 18337/2001), both groups of persons are placed in the same category of athletes, while the aliens are placed in another category. Therefore there is no limit concerning the number of athletes-nationals of EU countries employed by Greek football companies.

In other cases (Basketball - Minist. Decision 14484/2001, Volleyball - Minist. Decision 18540/2002) Greek and EU citizens are placed in different categories, but it provides that for both categories there is no limit concerning the number of athletes employed by Greek sports associations. However, there is another category composed only by amateur athletes of Greek origin, aged less than 18 years and having the right to participate in national sport teams. Up to four players belonging to this category have the right to be employed by a Sports Company. Therefore there exists a distinction between amateurs of Greek origin and amateurs of foreign origin, even of an EU country.

Concerning the amateurs sports associations, the ministerial decisions regulating the participation of athletes in these associations provide that citizens of EU States who reside permanently in Greece and the members of their family are entitled to be registered in the associations and to participate in the games and in every kind of championship (e.g. Gymnastics, Handball, Swimming, Cycling, Tennis, Horse-riding). Therefore, there is no distinction between Greek and EU citizens in this field.

Most Regulations concerning the employment of coaches provide that only nationals have the right to be recruited as coaches. For the recruitment of aliens as coaches the permis-

sion of the General Secretary of Sports is necessary. However, they require that EU legislation must be respected. This is the case of Regulation Basketball (Minist. Decision 41556/1992) and Volleyball (Minist. Decision 361/2006) coaches. However, in other points some differences of treatment continue to exist. It provides that if an alien is employed as a coach and another person is recruited as his assistant, the latter must be a Greek citizen (art 1 par. 4 Minist. Decision 41556/1992 concerning basketball coaches, art 1 par. 5 Minist. Decision 1588/1993 concerning volleyball coaches). It also provides that if an alien is dismissed from an association, he does not have the right to be employed during the same sports session by another association (art 1 par. 5 Minist. Decision 41556/1992 concerning basketball coaches, art 1 par. 5 Minist. Decision 1588/1993 concerning volleyball coaches). There is no distinction among aliens, citizens, and non citizens of an EU State. Therefore, there is discrimination between Greek and EU citizens concerning the conditions of employment as coaches. However, these restrictions seem not to be applied in practice

The new Regulation concerning Football coaches provides (art 3 par. 1 Minist. Decision 25533/2005 concerning football coaches) that for the recruitment of aliens as coaches the permission of the General Secretary of Sports is necessary. Some special conditions are also provided for the recruitment of these persons, such as previous experience in a national team, being under 70 years of age, and the recruitment of a Greek citizen as his assistant (art 4 par. 1 Minist. Decision 25533/2005). There is no distinction among aliens, citizens, and non citizens of an EU State. Therefore, there is discrimination between Greek and EU citizens concerning the conditions of employment as football coaches. The only distinction concerns the recruitment of an alien as football coach from amateur associations and from professional football companies of B and C category. In this instance the recruitment of an alien is forbidden, but the law provides that this restriction does not affect EU citizens.

The Maritime sector

Presidential Decree 12/1993 modified Greek legislation concerning the employment of EU citizens to posts of merchant ships flying the Greek flag. These posts are open to seamen - EU citizens in the same way as concerning Greek citizens. The quality of seaman is accorded pursuant to the rules of the state of his origin. Art 2 par. 3 of Presidential Decree 12/1993 provides that wherever in Greek legislation it refers to Greek seamen this also includes nationals of EU States. Therefore, there is no field for difference of treatment between Greek and EU citizens.

Thus, there is still an exception concerning the posts of master and his substitute (chief mate). These posts are reserved to Greek nationals (art 2). This measure is reasoned by the fact that the master of a vessel is entrusted with powers under public law.

During 2007 the Greek Government made proposals in order to bring the national rules into conformity with Community law. However it is not certain that these proposals are in conformity with the community rules as interpreted by the Court.

Researchers/artists

No particular problems are identified concerning researchers and artists.

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

Supplementary pension schemes

Presidential Decree 227/2004 implemented European Directive 98/49/EC in Greece. Directive 98/49 is intended to protect the rights of members of supplementary pension schemes who move from one Member State to another. Each worker should be able to move to a job in another Member State without loss of rights to future retirement benefits. In particular, it deals with the issue that workers and others holding entitlement should have certain guarantees for equal treatment regarding their preservation for the vested pension rights deriving from supplementary pension schemes.

The protection afforded by the Presidential Decree refers to pension rights under both voluntary and compulsory supplementary pension schemes, with the exception of schemes covered by Regulation 1408/1971. The Presidential Decree applies to members of supplementary pension schemes and others holding entitlement under such schemes, who have acquired, or are in the process of acquiring, rights in one or more Member State. As defined in Article 3, supplementary pensions are retirement pension schemes established in conformity with Greek legislation and practice, invalidity and survivors' benefits, intended to supplement or replace those provided in respect of the same contingencies by statutory social security schemes.

The core of the Presidential Decree is found in Article 4. It applies the principle of equal treatment to migrant workers in respect to pensions to which contributions are no longer being made. In particular, the vested pension rights for members of a supplementary pension scheme, in respect of whom contributions are no longer being made to that scheme as a consequence of their moving from Greece to another Member State, are preserved to the same extent as for members in respect of whom contributions are no longer being made but who remain in Greece. In addition, in respect to beneficiaries of supplementary pension schemes and others holding entitlement under such schemes, supplementary pension schemes make payment in other Member States, exclusive of any taxes and transaction charges which may be applicable to all benefits due under such schemes.

Article 5 of the Presidential Decree deals with the position of posted workers. It enables contributions to continue to be made to a supplementary pension scheme established in Greece, by or on behalf of a posted worker, who is a member of such a scheme during the period of his or her posting in another Member State. The posted worker should merely declare within 30 days from the notification to him or her of his or her detachment, his will to continue to make the abovementioned contributions to the Greek supplementary pension scheme.

Moreover, Article 6 provides that employers, trustees, or others responsible for the management of supplementary pension schemes provide adequate information to scheme Members when they move to another Member State as to their pension rights and the choices which are available to them under the scheme. As far as assurance companies are concerned, the information should be given in writing.

Furthermore, Article 7 states that all persons who consider themselves wronged by failure to apply the provisions of this Presidential Decree are entitled with exceptions to lodging their complaints with any competent administrative authorities, to pursue their claims by judicial process.

This Presidential Decree is applied retroactively since 14-8-2001.

Chapter IV

Employment in the Public Sector

1. ACCESS TO PUBLIC SECTOR

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

Approximately 35 presidential decrees (P.D.) are issued in order to specify the posts in the public sector which involve “direct or indirect participation in the exercise of powers conferred by public law and in the discharge of functions whose purpose is to safeguard the general interests of the state or of other public authorities and which therefore require a special relationship of allegiance to the state on the part of persons occupying them and reciprocity of rights and duties which form the foundation of the bond of nationality”.

Most of them provide that only persons of Greek nationality can be promoted as General Directors, Directors and Seniors of Sections of the Ministry of Finance, as security guards, policemen, firemen, frontier guards, special guards, rural policemen or civil servants of the Police. But in some cases it is doubtful if the specified posts really imply the exercise of public powers or the responsibility to safeguard the interests of the State. It is provided that only persons of Greek nationality can be appointed to the Ministry of Finance as data base-network-software-hardware specialists (P.D. 8/2002) to the Ministry of Transports and Communications as counsellors of the Minister, special collaborators and journalists (P.D. 74/2002), as civil servants of the Fire Brigade (P.D. 88/2002).

1.2. Language requirement

Art 2 (3) of Law 2431/1996 provides that the knowledge of the Greek language is necessary for employment in the public sector. The degree of knowledge of the language is defined each time by proclamation taking into account the requirements of the post of employment. As proof of the degree of knowledge of the Greek language, it often requires either a Bachelors certificate from a Greek High School or a special language certificate granted by the Center of Greek Language. Thus, other ways of proving the degree of knowledge of the language are not provided in the proclamation of the posts, e.g. the fact that the candidate has executed the same job for a long period in Greece.

1.3. Recruitment procedures

In Greece there do not exist competition procedures which give access to training and employment afterwards in the public sector with the only one exception being the competition for recruiting judges.

1.4. Recognition of diplomas

Presidential Decree 44/2005 (art. 1 par. 5) provides that university diplomas acquired in EU countries are accepted for access to the public sector of employment if an act of recognition of professional equivalence is granted. Other titles of professional education acquired in EU countries, to which the right of exercise of a profession is recognised, are also accepted according to a relative decision of the competent authority of recognition of professional education. However, the Hellenic National Academic Recognition and Information Center

(DOATAP) does not recognize the diplomas granted by foreign universities collaborating with private Institutes operating under licence on a franchise basis in Greece.

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

Art 1 par. 7 of Law 2834/2000 provides a system of recruitment of teachers of primary schools and professors of high schools taking into account, among other elements, the service of the candidate. Additional points are awarded for this service placing candidates at a higher position. The Supreme Administrative Court -Council of State (decision 196/2004) has interpreted this regulation conforming to the European community and accepted that it shall be taken into account in the same way as the service of the candidate in another member state.

2. EQUALITY OF TREATMENT

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

Text(s) in force

Article 15 of Law 3205/2003 provides that the seniority in the public sector of another EU State is also taken into account in order to determine the salary of the employee. The seniority in the private sector is not recognized.

Chapter V

Members of the Family

Art 20 of P.D. 106/2007 declares the general principle of equality of treatment of Union citizens residing in Greece. According to this provision, subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing, on the basis of the above P.D., in Greek territory enjoy equal treatment with Greek citizens within the scope of the Treaty.

1. RESIDENCE RIGHTS (INFORMATION ON THE TRANSPOSITION OF DIRECTIVE 2004/38/EC)

According to art. 6 par. 2 of P.D. 106/2007 implementing Directive 2004/38/EC third-country family members in possession of a valid passport accompanying or joining the Union citizen have the right of residence on the Greek territory for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.

The right of residence for more than three months is, according to art. 7 par. 2 of the P.D. 106/2007, extended to family members who are not nationals of a Member State, accompanying or joining the Union citizen, provided that such Union citizen satisfies the conditions provided by the law for such a residence.

Art 9 of P.D. 106/2007 provides that for third-country family country entitled to the right of residence, a “Residence Card of a family member of a Union citizen” is issued, as long as: (a) he/she is a holder of a valid passport or travel documents, (b) he/she is a holder of a document attesting to the existence of a family relationship with a Union citizen, (c) he/she proves the legal residence of the Union citizen in Greece, (d) he/she proves with any means that he/she is dependant on a Union citizen, (e) he/she proves with a document issued by the relevant authority in the country of origin or country from which they are arriving, that he/she is dependant or member of the household of the Union citizen, or that the existence of serious health grounds strictly require the personal care of the family member by the Union citizen. The submission of the application for the residence card should take place within a period of three months from the date of their arrival. The relevant authorities check whether the documentary evidence presented is complete and immediately issue a certificate of submission of the documentary evidence. At the latest, within a period of six months, from the date the application and all the documentary evidence required were submitted, a Decision by the relevant authorities shall be issued. Failure to comply with the requirement to apply for a residence card, render the person concerned liable to administrative sanctions.

Art 10 of P.D. 106/2007 provides that the residence card of family members of a Union citizen, who are nationals of a third country, is valid for five years or for the envisaged period of residence of the Union citizen, if this period is less than five years. The validity of the residence card is not affected by temporary absences not exceeding six months per year, or by absences of a longer duration for compulsory military service or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

Art 11 of P.D. 106/2007 provides that the Union citizen's death does not affect the right of residence of his/her family members nationals of a third country, provided they have been residing in Greece as family members for at least one year before the Union citizen's death. However, before acquiring the right of permanent residence, the right of residence of the

family members who are nationals of a third country is retained, subject to the requirement that they prove that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system and have comprehensive health insurance coverage in Greece, or that they are members of the family, already constituted in Greece, of a person satisfying these requirements. Union citizen's family members retain the right of residence, as long as they meet the conditions set out in this article. In specific cases where there is a reasonable doubt as to whether they satisfy the conditions set out in this Article, verification is carried out by the relevant authorities. This verification shall not be carried out systematically.

Art 12 of P.D. 106/2007 provides that in the event of divorce or annulment of the Union citizen's marriage the right of residence of his/her family members who are nationals of a third country the right of residence is not affected and they retain it on a personal basis where: (a) prior to initiation of the divorce or annulment proceedings, the marriage has lasted at least three years, including one year in Greece, or (b) the spouse who is a national of a third Country has custody of the Union citizen's children, or (c) this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage was subsisting, or (d) the spouse who is a national of a third country has the right of access through one of the provided legal procedures to a minor child, provided that by agreement or by court order has been ruled that such access must be in Greece, and for as long as is required. Before acquiring the right of permanent residence, the right of residence of the persons referred to is retained, subject to the requirement that they prove that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system and have comprehensive health insurance cover in Greece, or that they are members of the family, already constituted in Greece, of a person satisfying these requirements. Union citizen's family members retain the right of residence as long as they meet the conditions set out therein. In specific cases where there is a reasonable doubt as to whether they satisfy the conditions set out in this Article, verification is carried out. This verification shall not be carried out systematically.

2. ACCESS TO WORK

The family members of a Union citizen having the right of residence are entitled, irrespective of their nationality, to work in Greece in a dependent or an independent way (art. 20 of the P.D. 106/2007). Therefore, third country nationals members of the family have access to work.

3. ACCESS TO EDUCATION AND STUDY GRANTS

Art. 20 par. 7 of P.D. 106/2007 provides that third country family members are entitled the rights provided by art. 72 law 3386/2005 for third country citizens residing legally in Greece. The above rule provides that minor third country nationals and third country nationals having finished their secondary studies in Greece have access to education under the same conditions as Greek citizens.

However it seems that the right of adult third country nationals having finished their secondary studies abroad, to accede to education under the same conditions as Greek citizens is not guaranteed. There is no information concerning the practice of Greek educational institutions.

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

Art. 20 par. 7 of P.D. 106/2007 provides that third country family members are entitled the rights provided by art 71 Law 3386/2005 for third country citizens residing legally in Greece. The above rule provides that third country nationals who live in Greece are insured by the relevant social security institutions and enjoy the same rights as Greek nationals. They also enjoy the same social protection as Greek nationals.

Art. 39 of law 2459/1997 provides that children's allowances and parents' pensions are granted to EU citizens and to the members of their family under the same conditions as to Greek citizens, provided that they reside or work in Greece.

Practice of Independent Authorities

Greek nationals whose spouses are third countries' nationals submitted several complaints regarding the denial of the local authorities to grant a benefit to "multi-child" parents in accordance with the Greek legislation, due to the fact that the mother is not a national of Greece or of a Member State. The Greek Ombudsman expressed his opinion that families, where the spouses are Greek citizens and nationals of third countries, should be protected by the State. Moreover, a "multi-child" family should be supported irrespective of whether one of the spouses is a third country's national, since one of the parents is a Greek citizen and their children also have the Greek nationality. Therefore, the denial of granting a benefit, which does not have a mere provisional character, as long as it aims at the treatment of the demographic problem, contravenes the political intents and constitutes an unjustified discrimination between the Greek families and children. Coming into conclusion, the Greek Ombudsman suggests a regulation to set down, according to which a mother of a "multi-child" family, who is national of a third country and resides lawfully and permanently in the country merits the benefit for multi-child families set out in article 63 of Law No 1892/1990, as long as the children, who are taken into account for the foundation of that right, have the Greek citizenship.

The spouse of an EU citizen who is national of a third country submitted a complaint, regarding the denial of the local authorities to provide her with a residence permit. The Greek Ombudsman expressed his opinion that, in accordance with the legislation regime in force before the issue of the Directive 2004/38/EC, the rejection of the application due to the fact that the applicant did not attend to the interview required by the Greek legislation, is not lawful, since in accordance with the provisions of the community law and particularly the application for a residence permit submitted by a family member of an EU citizen may be rejected only for specific reasons, i.e. on grounds of Public Policy, Public Security or Public Health or in case of notably marriage. Moreover, the Greek Ombudsman mentioned that a fine to the tune of 150.000 drs. (440, 20 €) is not in accordance with the Law. In that particular case the Greek Ombudsman's intervention led to a positive outcome and finally the local authorities required the applicant with the residence permit.

Upon several complaints regarding technical matters about the issue of a residence card to family members of an EU citizen, who are nationals of a third country, in accordance with the provisions of articles 61 and 63 of Law 3386/2005, and the materialization of these provisions, the Greek Ombudsman intervened and expressed his opinion that whether the materialization of these provisions is pending for a long period of time, then this very important and crucial legislative arrangement of law 3386/2005 is subverted. Therefore, the Greek Ombudsman suggested to Minister of internal Affairs and the competent authorities that until all the technical and administrative problems for the issue of residence cards are solved, there

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should be a temporary solution to that problem and possibly a special title of residence or a renewal of the residence permit should be granted to the applicants for a permanent residence card of article 63 of Law 3386/2005, in accordance with the provisions of Law 3386/2005. After that, the competent authorities accepted that they will issue “residence titles” in accordance with the requirements set out in Law 3386/2005 for the rest of the categories of the third countries nationals who reside lawfully in Greece, until the issue of the residence card laid down in Law 3386/2005 will be technically accomplishable.

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

No particular court decisions concerning the free movement have been identified during 2007.

Chapter VII

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

The Labour Institute of the Confederation of Greek Workers has created in 2007 a Migration Observatory in the framework of EQUAL program. Aim of this Observatory is the support of immigrants and refugees in Greece, the information of the same persons and the observation of the immigration effect.

In accordance with the provisions of article 4 of Law 3536/2007, a Consultative Migration Committee was stroke in every district of the country. This Committee is composed of four employees of the competent Alien and Migration Service of the Region and a representative of the police authority. Aim of this Committee is the enouncement of an opinion regarding the issue or the renewal of a residence permit of a third country national. In order to form her opinion, the Committee takes into account all the evidence documents provided for in the provisions of Law 3386/2005 and the personality of the third country national.

Chapter VIII

EU Enlargement

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

The Greek government has decided in April 2006 to abolish the transitional measures and not to continue the transitional arrangements.

Practical problems, individual cases and national case law pertaining to the transitional arrangements

During that 2-years-period of time, when the transitional arrangements were in force (2004-2006), a Polish national, who was working in Greece and was a holder of a residence and work permit, in accordance with the provisions of Law 2910/2001, submitted a complaint, regarding the denial of the competent authorities to grant him a residence card for an EU citizen for workers, after the accession of his country to the EU (1/05/2004). The competent authorities considered that he was a free-lancer and therefore required tax documents for the provision of his services to his employer. The Greek Ombudsman with his Conclusion issued in December 2007 mentioned that in accordance with article 5 of PD 499/1987 regarding the mobility and the residence of workers, who are nationals of a Member State, and their family members, the presentation of the required tax documents is not provided for in the provision of the above mentioned article. Therefore, the competent authorities should receive the application and the required documents submitted by the individual concerned, look over the applicant's request in accordance with these provisions and provide him with a residence card of Citizen of a Member State. Following that conclusion, the competent authorities informed the Greek Ombudsman that finally the applicant's request was finally accepted and a residence card for EU citizen for workers in accordance with the legislation in force was granted.

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

Greece continues to apply transitional measures concerning new Member States' (Bulgaria – Romania) citizens.

Miscellaneous

The Greek Ombudsman intervened several times in order to inform, and some times support, EU citizens of new Member States concerning their rights after EU enlargement. In all cases referred, its intervention was without particular problems.

Chapter IX Statistics

Source: Ministry of Public Order and Ministry of Interior Affairs - March 2008)

Foreign Workers (valid permits)

	2006	2007
Total		
Community workers	8.185	10.302
Third country citizens	307.206	419.935

Repartition of community workers by sex

	2006	2007
Total		
Men	4.795	5.990
Women	3.390	4.312

Community workers Repartition by nationality

	2006	2007
Austria	118	129
Belgium	131	120
Denmark	119	120
Finland	78	71
France	608	594
Germany	906	801
Holland	246	269
Ireland	57	47
Italy	663	767
Luxembourg		0
Portugal	23	33
Spain	135	116
Sweden	197	181
United Kingdom	1.321	1.175
Poland	1.741	3.415
Cyprus	1.597	1.960
Malta	4	4
Slovenia	2	4
Hungary	33	111
Czech Republic	60	120
Slovakia	51	95
Lithuania	76	130
Latvia	13	31
Estonia	6	9
Total	8.185	10.302

New members

Bulgaria	26.479	4.260 (new permits)
Romania	14.976	3.042 (new permits)

The number of EU citizens residing in Greece remained very small compared to the number of citizens of third countries. There is no a very important increase of new permits.

Chapter X

Miscellaneous

Studies, seminars, reports, legal literature

The Greek Ombudsman in February of 2007 organised an International Conference entitled “Integration of immigrants and mechanism for intervention and consultation”.

Important sites

www.dsa.gr (Athens Bar Association)

www.parliament.gr (Greek Parliament)

www.mmo.gr (Mediterranean Migration Observatory)

www.imepo.gr (Migration Policy Institute)

www.synigoros.gr (Greek Ombudsman)

www.ypes.gr (Ministry of Interior Affairs)