

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

Poland

Report 2006

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INTRODUCTION

Analysing the Poland's steps in the field of free movement of workers the year 2006 may be compared with years before accession to the EU when Poland was adjusting its legal system to the community law. The main achievement in this field was the adoption of the new Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members, which fulfils the transposition requirement of the directive 2004/38/EC. Some other steps were also taken, for example in the field of recognition of diplomas and qualifications.

However, it must be stressed that the "EU migrant cases" have not appeared before the courts (either the European Court of Justice or Polish courts) yet. The new law referring to entry, residence and departure came into force in August 2006 and there have not been any cases before courts on grounds of application of new provisions yet. As in the previous years the number of migrant workers from the EU countries is still relatively low in Poland, so there are not many controversial cases. There are a few reasons for really low interest of workers from EEA to work and stay in Poland. First, much lower salaries than in their own countries and also bureaucracy and rather mere cooperation of employees with EURES. The foreigners who mainly take employment in Poland are those who come from Ukraine, Byelorussians, Russians, citizens of Viet Nam and China. It must be also remembered that in 2006 the rules on the free movement of workers were applied with some limitations because of still existing transitional periods and the Schengen rules do not apply yet.

UE nationals' lack of interest in coming to live in Poland caused that the authorities have taken first steps to abolish obstacles for them to take up employment in Poland in 2006. However, the results of these endeavours may be observed in 2007.

CHAPTER I. ENTRY, RESIDENCE, DEPARTURE

As it was stated in the previous reports in light of Polish law there are three groups of aliens within the territory of Poland. First, the Act on Aliens of 2003 regulates the rules of entry and residence of the third country nationals in Poland (following the amendment of 2005 it also refers to the EU long term residents). The Act on granting the protection to aliens within the territory of Poland of 2003 refers to the third country nationals who need the international protection (the refugee status, the territorial asylum, the so called tolerated stay and the temporary protection).

The EU (and the EEA) nationals are the third – the most privileged group. Their legal situation is regulated by the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members. The act entered into force on 26 August 2006 and replaced the described in the previous Reports Act of 27 July 2002 on the principles and conditions of entry and residence of nationals of the Member States of the European Union and members of their families within the territory of the Republic of Poland.

The Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members (and the its regulations) implements the provisions of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

Transposition of the aims of the Directive 2004/38 is the main aim of the new Act but it may be also stated that in comparison with the previous Act the new one is not only more precise but it also introduces really fundamental changes into the Polish law.

First, according to the new rules EU nationals are not obliged to apply for residence permit. If they want to stay longer than 3 months they should register and after 5 years of residence they obtain the right to permanent residence in Poland.

Secondly, the Act contains provisions on conditions of the expulsion of an EU national or a member of his/her family (these provisions were missed in the Act of 2002).

The adoption of this Act has entailed changes of other legal acts referring directly or indirectly to the situation of migrant workers in Poland. The Act amends the acts on Polish citizenship, on registration of population and identity cards, on the Police, on education system, business activity law, the stamp duty, both Acts of 13 June 2003 on Aliens and on granting protection to foreign nationals within the territory of the Republic of Poland, Acts on social benefit and on social assistance, on employment promotion and labour market institutions, on the freedom of economic activity, Law on higher education and even the Act of 2005 on the amendment of certain acts due to the changes in the division of duties and powers of local administration.

A. Entry*Texts in force:*

- Ustawa z 13 czerwca 2003 o cudzoziemcach¹ - the Act of 13 June 2003 on Aliens
- Ustawa z 14 lipca 2006 o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej² - Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members;

1 Uniform text Journal of Laws [Dziennik Ustaw]. 2006, no. 234, item 1694. The act has been amended in 2007 but the amendment has not affected the situation of the EU nationals.

2 Journal of Laws [Dziennik Ustaw]. 2006, no.144, item 1043.

- Ustawa z 22 kwietnia 2005 o zmianie ustawy o cudzoziemcach i ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw³ - Act of 22 April 2005 on amendment of the Act on aliens and the Act on granting the protection to aliens within territory of Poland and other acts.

The second chapter of the Act of 2006 refers to entry into territory of Poland.⁴

Article 9 states that EU nationals may enter the territory of the Republic of Poland if they are in possession of valid travel documents or other documents certifying their identity and citizenship. As it was in the old Act of 2002 in comparison with third-country nationals, nationals of the EU State are in a privileged situation because third-country nationals must be in possession of valid travel documents and visas (when required). Moreover, due to the principle of reciprocity in relations with other States, permission to cross the border into the territory of the Republic of Poland by a third-country national may be dependent on paying an entry fee.

In the case of EU nationals even passports are not necessary; they can enter the territory of the Republic of Poland if they possess any other documents certifying their identity and country of origin, hence the use of valid identity cards.

According to the information obtained from the Polish Border Guard, at the border there is no difference (not only in law but also in practice) in treatment of EU nationals and citizens of Switzerland, Iceland, Norway and Liechtenstein. Moreover, no specific changes in this treatment took place in 2006.

According to Article 13 of the Act decisions to refuse entry into the territory of the Republic of Poland are issued by the Commander of the Border Guard Unit. The higher instance in such cases is the Commander of the Border Guard. The Act does not itemize any reasons for refusal but it may be interpreted that they are identical with the reasons for expulsion, which are described below.

B. Residence

Texts in force:

- Ustawa z 13 czerwca 2003 o cudzoziemcach⁵ - the Act of 13 June 2003 on Aliens
- Ustawa z 14 lipca 2006 o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej⁶ - Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members;
- Ustawa z 22 kwietnia 2005 o zmianie ustawy o cudzoziemcach i ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw⁷ - Act of 22 April 2005 on amendment of the Act on aliens and the Act on granting the protection to aliens within territory of Poland and other acts.
- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 24 sierpnia 2006 r. w sprawie wniosków i dokumentów w sprawach prawa pobytu na terytorium Rzeczypospolitej Polskiej obywateli państw członkowskich Unii Europejskiej oraz członków ich rodzin⁸ – the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents and referring to right to residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families;
- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 24 sierpnia 2006 r. w sprawie wniosków i dokumentów w sprawach prawa stałego pobytu na terytorium

3 Journal of Laws [Dziennik Ustaw]. 2005, no.94, item 778.

4 Chapter 2 of the Act refers to the family members but these matter will be discussed in Chapter V of the Report.

5 Journal of Laws [Dziennik Ustaw]. 2003, no. 128, item 1175.

6 Journal of Laws [Dziennik Ustaw]. 2006, no.144, item 1043.

7 Journal of Laws [Dziennik Ustaw]. 2005, no.94, item 778.

8 Journal of Laws [Dziennik Ustaw] 2006, no. 154, item 1105.

Rzeczypospolitej Polskiej obywateli państw członkowskich Unii Europejskiej oraz członków ich rodzin⁹ – the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents and referring to right to permanent residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families;

- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 31 sierpnia 2006 r. w sprawie opłat za wydanie lub wydatowanie zaświadczenia o zarejestrowaniu pobytu obywatela państwa członkowskiego Unii Europejskiej oraz karty pobytu członka rodziny obywatela Unii Europejskiej¹⁰ – the Regulation issued by the Minister of Internal Affairs and Administration of 31 August 2006 on fees for issuance or exchange of the certificate on registration on the EU national's residence or the residence card of a member of his/her family;
- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 31 sierpnia 2006 r. w sprawie opłat za wydanie lub wydatowanie potwierdzającego prawo stałego pobytu lub karty stałego pobytu członka rodziny obywatela Unii Europejskiej¹¹ – the Regulation issued by the Minister of Internal Affairs and Administration of 31 August 2006 on fees for issuance or exchange of the certificate confirming the permanent residence of the EU national's or the permanent residence card of a member of his/her family;
- Kodeks postępowania administracyjnego¹² - The Code of Administrative Procedures;

Residence up to 3 months

Chapter 3 of the Act regulates rules of residence. In comparison with the previous legal system they are more favourable for the EU nationals and their families.

Under Article 15, an EU national and a family member who is not a Union citizen may reside within the territory of the Republic of Poland for a period of 3 months without any residence requirements. They should only possess valid identity documents (in case of a family member who is not an EU citizen it should be a travel document).

Residence over 3 months

According to Article 16 an EU national has the right to reside for a period longer than 3 months if he/she meets one of the following conditions: he/she is an employee or a self-employed person within the territory of the Republic of Poland; he/she is covered by general health insurance or is a person entitled to health insurance or is a person entitled to health insurance benefits on the grounds of the provisions on coordination¹³ and is in possession of enough funds to provide for himself/herself and his/her family members within the territory of the Republic of Poland without the need of making use of social insurance benefits; he/she studies or undergoes vocational training in the Republic of Poland and is covered by general health insurance or is a person entitled to health insurance or is a person entitled to health insurance benefits on the grounds of the provisions on coordination¹⁴ and is in possession of enough funds to provide for himself/herself and his/her family

9 Journal of Laws [Dziennik Ustaw] 2006, no. 154, item 1106.

10 Journal of Laws [Dziennik Ustaw] 2006, no. 160, item 1133.

11 Journal of Laws [Dziennik Ustaw] 2006, no. 160, item 1134.

12 Journal of Laws [Dziennik Ustaw] 2000, no. 98, item 1171.

13 Within the meaning of Article 5 (23) of the Act of 27 August 2004 on health insurance benefits finances from public funds (Dz.U. no. 210, item 2135, as amended Amendments to the Act were published in: Dz.U. of 2005 no. 94, item 788, no. 132, item 1100, no. 138, item 1154, no. 157, item 1314, no. 164, item 1366, no. 169, item 1411 and no. 179, item 1485 as well as of 2006, no. 75, item 519.

14 Within the meaning of Article 5 (23) of the Act of 27 August 2004 on health insurance benefits finances from public funds.

members within the territory of the Republic of Poland without the need of making use of social insurance benefits; he/she is married to a Polish national.

He or she has the right to residence if the purpose of residence in the Republic of Poland is to undertake gainful employment. However, it must be remembered that the transitional periods still existed in 2006, so a Union national against whom the limitations in the access to labour market applied pursuant to international agreements should be granted the right to reside for a period longer than three months after obtaining a promise of employment permit in that territory.

Article 17 of the Act refers to a situation when an EU national finishes his/her work or economic activity. He or she keeps the rights to residence in following situations:

- if he/she does not undertake employment or any other gainful activity in his/her own name and on his/her own behalf because he/she is temporarily unable to work as the result of an illness or accident;
- where he/she is in duly recorded involuntary unemployment in accordance with the unemployment register kept by the Poviats Employment Office;
- where he/she embarks on education or vocational training.

Moreover, it should be also added that if the period of employment or other gainful activity in their own name and on their own behalf within the territory of the Republic of Poland preceding the involuntarily unemployment referred to was shorter than one year, the EU national keeps the right to reside granted to an employee or self-employed person for a period of 6 months from the day of registration in the Poviats Employment Office.

Worth mentioning is that the job seekers from the EU countries and Norway, Iceland, Liechtenstein and Switzerland are treated in the process of job seeking as the Polish nationals. It is guaranteed by the Act on promotion of employment and the institutions of the labour market. However according to the transitional periods nationals of the EU States which introduced the limitations in the access to their labour markets are treated in the same way as the Polish nationals (and other EU nationals) if they worked legally in Poland on the day 1 May 2004 or after day 1 May 2004 they received the work permit for at least 12 months.

If the EU national resides in Poland longer than 3 months he/she should register his residence in Poland. The EU national is issued the certificate of registration of residence.

Articles 21 – 41 of the Acts refer to all the procedure of registration of the of EU national and the procedure on issuance the residence cards for family members of the EU nationals. Worth mentioning is the fact that according to Article 24 the authority which conducts the proceedings concerning the registration of residence shall establish whether the obligation to possess sufficient financial resources mentioned in Article 16 has been fulfilled.

It should be stressed that the procedure described in the Acts is fully compatible with requirements of Article 8 of the Directive 38/2004.

A Union citizen may be refused registration of residence if the conditions of the residence as described in the Act are not fulfilled, or if the residence of a Union citizen within the territory of the Republic of Poland constitutes a threat to defense or State security or protection of public security or public order.

Permanent residence

The Act introduces in Chapter four the right of permanent residence after five years of continuous residence within the territory of Poland, if he or she fulfilled all the conditions of residence described in Chapter three of the Act. The authorities may refuse to issue a document certifying the right to permanent residence in the same circumstances as in the case of refusal of issuing a certificate of registration.

Under Article 45 the period of five years is shortened if an EU national is:

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- employed or self-employed and who at the moment this person has finished working on their own behalf or finished other economic activity on their own behalf, reached the retirement age referred to in Polish legislation concerning retirement insurance or the person who finished working to exploit the possibilities connected with early retirement in case such a person worked or conducted other economic activities on their own behalf within the territory of Republic of Poland and resided within the territory of Republic of Poland continuously for a period of more than three years;
- an employee or a self-employed person who ceased to work or to conduct economic activities on own behalf within the territory for the reason of permanent inability to perform work, in case this person resided within the territory of the Republic of Poland continuously for more than two years;
- an employee or a self-employed person, who, after working continuously for the period of three years within the territory of the Republic of Poland, performs work or other economic activity in another Member State, residing at the same time within the territory of the Republic of Poland or visiting the territory of the Republic of Poland at least once a week.¹⁵

The EU nationals who obtained the right to permanent residence are given documents certifying the permanent residence right. The Polish provisions on the right to permanent residence are largely a copy of Chapter four of the Directive.

Current practice

The practice on issuing the documents towards EU nationals has been changed in 2006. As it was stated before they are obliged to register at the Voivod's office if they reside longer than 3 months.¹⁶

They should register themselves in person. The registration is done immediately and it costs 1PLN (about 0,38 EURO), which is really symbolic.

An EU national is obliged to submit completed application for registration of residence¹⁷ (and its 3 copies) to the appropriate (for the intended location) Voivod. Moreover, a copy of a travel document or ID (the original document should be shown to the officer for verification) shall be submitted.

If an EU national comes from a Member State which does not apply transitional periods in the access to employment, a person who wants to register his/her residence must produce a written statement of his/her employer about the employment or the intention to employ a given person. If he/she is a person performing any economic activity he/she should produce a certificate of such activity from the National Court Register.

In case when an EU national comes from a Member State which applies transitional periods in the access to employment, he/she should submit a promise of issuance of work permit.

Moreover he or she should produce evidence of his/her health insurance or verification of the financial means sufficient to cover the costs of residence.

If he/she is a student or takes the vocational training he/she must submit a certificate of this fact issued by a school or an appropriate institution.

15 Articles 45 and 47 explain also what means "conducting the economic activity", "performance of job", "continuous residence", the requirements concerning the length of continuous residence, the periods of job performance, etc.

16 Based on information obtained at the Silesian Voivodship (Governorship) and the other voivodships. It is worth mentioning that all these organs provide on their web sites appropriate information/instruction for aliens applying for registration and other forms of legalisation of their residence. The full instruction in English, French and German is available on the web site: of the Office for Repatriation and Aliens www.uric.gov.pl.

17 The application forms are also available at the Voivodship website.

In case of termination of any work, independent occupations or any economic activities due to coming up to the retirement age or due to the permanent inability to work,¹⁸ the EU nationals should produce employment certificates or any documents certifying that they carried out independent occupations or economic activities for the required period of time. For those persons who are unable to work as a result of occupational disease or workplace accidents, certificates of inability issued by the competent organ are required.

A spouse of a Polish citizen, must submit the marriage certificate.

If they have all the documents the EU nationals may register immediately in the Voivod's office then they must wait for a certificate of registration. It may take a few months but not longer than 6 months.

In the case of application for permanent residence the procedure is similar but an EU national must produce documents certifying his/her continuous residence in Poland for 5 years. The costs are also symbolic – 30 PLN, which is about 8 EUR.

All the applications and documents shall be submitted in Polish or translated into Polish by the sworn translator. But the most important thing is that according to the new law an alien should be provided with written information in a language which he/she may understand. The information explains the rules of registration and submission the applications for certificate of residence.

In all the residence cases the decisions are taken by the Voivod. In case of a negative decision, EU nationals or their family members have the right to appeal to the President of the Office for Repatriation and Aliens.¹⁹ According to the Administrative Code, such appeals should be submitted within 14 days from the day of receiving the refusal. If the decision issued by the President of the Office for Repatriation and Aliens is also negative, they can submit a complaint to the administrative court within 30 days.

C. Departure

Texts in force:

- Ustawa z 13 czerwca 2003 o cudzoziemcach²⁰ - the Act of 13 June 2003 on Aliens
- Ustawa z 14 lipca 2006 o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej²¹ - Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members;
- Ustawa z 22 kwietnia 2005 o zmianie ustawy o cudzoziemcach i ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw²² - Act of 22 April 2005 on amendment of the Act on aliens and the Act on granting the protection to aliens within territory of Poland and other acts.

In contrast to the Act of 2002 the new Act of 2006 governs the principles and conditions of expulsion of nationals of the Member States of the European Union and members of their families from the territory of the Republic of Poland – Chapter 5 of the Act.

It must be stated that the general rule is that the longer an EU national stays in Poland the more difficult his/her expulsion is. According to Article 70 of the Act in the proceedings related to the expulsion of a Union citizen or his/her family member without Union citizenship, the following shall be taken into account: how long the individual concerned has resided within the territory of the Republic of Poland; his/her age and state of health; family

18 These provisions are in accordance with Article 2 p.1 of Directive 34/75, Article 1 p. 1 of Directive 364/90, and Articles 1-3 of Regulation 1251/70.

19 Since August 2007 – Office for Foreigners.

20 Journal of Laws [Dziennik Ustaw]. 2003, no. 128, item 1175.

21 Journal of Laws [Dziennik Ustaw]. 2006, no.144, item 1043.

22 Journal of Laws [Dziennik Ustaw]. 2005, no.94, item 778.

and economic situation; social and cultural integration into the Republic of Poland; and the extent of his/her links with the country of origin.

It must be stressed that the situation of the EU nationals enjoying the right of residence and the EU nationals having the right to permanent residence is different.

According to Article 66 only those aliens who do not enjoy the right of permanent residence may receive an expulsion decision in the case when their residence on the territory of the Republic of Poland constitutes a threat to defence policy or national security, as well as to public safety, public order or public health. But it should be stressed that diseases occurring after a three-month period from the date of arrival of a Union citizen or family member without Union citizenship on the territory of Poland shall not constitute grounds for expulsion from the territory on grounds of public health.

The Act of 2006 obliges the Minister responsible for health to issue Regulation containing a list of diseases that would justify taking an expulsion decision against Union citizens or their family members without Union citizenship on grounds of public health. The Regulation shall contain only diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host Member State in accordance with the Act of 6 September 2001 on contagious diseases and infections.²³ Until the end of 2006 such a regulation was not issued by the competent Minister.²⁴

If an EU citizen or his/her family member who is not an EU national enjoys the right to permanent residence may receive an expulsion decision in the case when their residence on the territory of the Republic of Poland constitutes a threat for defense policy or national security, as well as for public safety or public order (Article 67) but an EU national (but not his/her family member who is not an EU national) who has resided in the Republic of Poland for the period exceeding ten years cannot be expelled unless the decision on expulsion is based on imperative grounds of national defense, national or public security by means of constituting a threat for peace, humanity, independence or defense of the Republic of Poland, or due to terrorist activity (Article 68).

Worth mentioning is the fact that the Act of 2006 refers also to minors and the Act in its Article 69 directly invokes the Convention on Rights of Child of 1989 (especially its general rule contained in Article 3 - the best interests of the child).

Generally a minor Union citizen cannot receive an expulsion decision, except if: circumstances itemized in Article 68 occur, or in situation when 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.

The new Act contains procedural provisions on expulsion. It is worth mentioning that the EU nationals are in a better situation than the third country citizens in a situation related to expulsion. They have the guarantee that if they submit a complaint against decision on expulsion to the administrative court the execution of expulsion is suspended (it does not refer expulsion on the grounds of Article 68). There are not such guarantees in other acts referring to aliens – third country nationals. Even asylum-seekers whose applications were rejected in both administrative instances should leave Poland within 14 days regardless of their complaint submitted to the court.

Expulsion is an extreme situation. More common situations are situations when a Union citizen is refused registration of residence because he/she does not fulfil the conditions of the residence. In these situations an alien should leave the territory of Poland but the Act does not contain any provisions referring to forcing an EU national to leave Poland if his/her residence is not registered or he/she has not obtained the right to permanent residence. It seems that lack of these provisions is justified because an EU

²³ Journal of Laws [Dziennik Ustaw] 2001, no. 126, item 1384 with subsequent amendments.

²⁴ Described in the previous reports the Regulation of the Minister of Health of 25 September 2003 on specifying diseases recognized as dangerous to public health, as reason for refusal of residence permits or temporary residence permits to EU nationals and their family members is not binding now because its legal basis (Act of 2002) has expired.

national may leave Poland just for one day and enter next day and stay in Poland for next 3 months.

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CHAPTER II: ACCESS TO EMPLOYMENT**1. Equal treatment in access to employment***Texts in force*

- Ustawa z 20 kwietnia 2004 o promocji zatrudnienia i instytucjach rynku pracy - Act of 20 April 2004 on promoting employment and institutions of the labour market²⁵
- Rozporządzenie Pracy i Polityki Społecznej z 21 lipca 2006 w sprawie zakresu ograniczeń w sferze wykonywania pracy przez cudzoziemców na terytorium Rzeczypospolitej Polskiej²⁶ - The Regulation of the Minister of Labour and Social Policy of 21 July 2006 on the scope of restrictions on the undertaking of work by foreigners within the territory of the Republic of Poland
- Rozporządzenie Ministra Pracy i Polityki Społecznej z 21 lipca 2006 w sprawie określenia przypadków, w których przyrzeczenie i zezwolenie na prace cudzoziemców jest wydawane przez wojewode bez względu na sytuację na lokalnym rynku pracy i kryteria wydawania przyrzeczeń i zezwoleń na prace cudzoziemców²⁷ - The Regulation issued by the Minister of Labour and Social Policy on 21 July 2006 relating to cases of the promise and permission for a foreigner to work being issued by Voivode regardless of either the situation in the local labour market or the criteria for issuing promises and work permits for foreigners (so called “the Simplified Regulation”)
- Rozporządzenie Ministra Gospodarki i Pracy z 26 maja 2004 w sprawie zakresu ograniczeń w sferze wykonywania pracy przez cudzoziemców na terytorium Rzeczypospolitej Polskiej²⁸ - The Regulation of the Minister of Economy and Labour of 26 May 2004 on the scope of restrictions on the undertaking of work by foreigners within the territory of the Republic of Poland
- - Rozporządzenie Pracy i Polityki Społecznej z 21 July 2006 w sprawie trybu i warunków wydawania zezwolenia na prace²⁹- the Regulation of the Minister of Labour and Social Policy on procedure and conditions of issuance of work permits for foreigners was adopted.
- Rozporządzenie Ministra Pracy i Polityki Społecznej z 30 sierpnia 2006 w sprawie wykonywania pracy przez cudzoziemców bez konieczności uzyskania zezwolenia na prace³⁰ - The Regulation of the Minister of Labour and Social Policy of 30 August 2006 on performance of work by foreigners without necessity to obtain the work permits.

As it was stated in the Chapter I of this Report the new Act on principles of entry and residence of the EU nationals was adopted in 2006. That is why the main law referring to the access to employment - Act of 20 April 2004 on promoting employment and institutions of the labour market - was also amended in order to adjust these two documents (Article 33 of the Act of 2006).

In 2006 the transitional periods in the field of the “access to employment” remained but the rules adopted in 2001 and 2004 (just after the accession) required some amendments—and thus three new regulations were adopted on 21 July 2006. The most important is the Regulation of the Minister of Labour and Social Policy of 21 July 2006 on the scope of restrictions on the undertaking of work by foreigners within the territory of the Republic of Poland which replaced the Regulation of 26 May 2004 (as described in the

25 Journal of Laws [Dziennik Ustaw] 2004, no. 99, item. 1001 amended in 2005 - Journal of Laws [Dziennik Ustaw] 2005, no. 164, item. 1366.

26 Journal of Laws [Dziennik Ustaw] 2004, no. 123, item 1293.

27 Journal of Laws [Dziennik Ustaw] 2006, no. 141, item.1004.

28 Journal of Laws [Dziennik Ustaw] 2004, no. 123, item 1293.

29 Journal of Laws [Dziennik Ustaw] 2006, no. 141, item 1002.

30 Journal of Laws [Dziennik Ustaw] 2006, no. 156, item 1116.

previous Report the so called “transitional regulation”. The Regulation invoked the Annex XII to the Accession Treaty and on the basis of reciprocity maintained the restrictions. The restrictions referred to nationals of the following EU States: Austria, Belgium, Denmark, France, Luxemburg, the Netherlands, Germany, Italy. Moreover, restrictions referred to citizens of Switzerland, Liechtenstein and Norway. Annex no. 2 to this regulation determined the scope of the above mentioned restrictions.

It must be mentioned that this Regulation was in force only few months. On 17 January 2007 the new Regulation³¹ in this field was adopted. It has annulled all the restrictions towards the EU citizens, so since 2007 despite the transitional periods the EU nationals may take up employment in Poland without any restrictions.

On 21 July 2006 the Regulation of the Minister of Labour and Social Policy on procedure and conditions of issuance of work permits for foreigners was adopted. It replaced the old Regulation of 2001. The new one determines the procedure of issuance of the work permits, among others the obligation of employers and employees, situations of refusal of the work permits and organs responsible for issuance of the work permits. The voivod was an organ competent in this field till 31 December 2006. Since 1 January 2007 the speaker of the local self-government (*marszałek województwa*) is a competent body. But from a foreigner’s point of view the procedure has not been changed significantly. It should be added that this Regulation relates to all foreigners not only the EU nationals.

The third act is the Regulation issued by the Minister of Labour and Social Policy on 21 July 2006 relating to cases of the promise and permission for a foreigner to work being issued regardless of either the situation in the local labour market or the criteria for issuing promises and work permits for foreigners. This Regulation simplifies the procedure of issuance of work permits in the case of a certain group of the EU nationals (mentioned in Article 52 of the Association Treaty), family members of diplomats, doctors and dentists holding the trainings or specialization programs on the basis of other legal acts, representatives of foreign companies in Poland, members of the private service of diplomats or consuls, sport coaches and sportsmen working for sports clubs, foreigners working on the basis of international agreements and, what is important in the light of previous reports, citizens of Turkey if the application on prolongation of their employment is submitted (if they have worked for 1 year legally for a relevant employer).³²

On 1 September 2006 the Regulation issued by the Minister of Labour and Social Policy on performance of work without a necessity on the part of foreigners to obtain work permit entered into force. The Regulation refers to all kinds of foreigners not only to EU citizens.

Citizens of Ukraine, Russia, Byelorussia and Germany (of neighboring countries) legally employed by the Polish employer in the agricultural sector for a period not exceeding 3 months within 6 months are exempted from the obligation of obtaining the work permit.³³

Moreover, there are other types of foreign workers who are exempt from the obligation of holding work permits are itemized in this Regulation:

- citizens of non EU/EEA States (for example Ukrainians) temporarily delegated by their employers to deliver services in Poland
- graduates from Polish medical schools during their postgraduate internships
- foreign language teachers if they teach their mother tongues
- members of management boards of companies from the EU/EAA States
- Turkish citizens and their families who have been living in Poland for at least 5 years and have been working legally for at least 4 years
- full-time students of Polish universities (and other higher education schools) working during their holidays
- permanent correspondents of various types of media (newspapers, radio, TV)

31 Journal of Laws [Dziennik Ustaw] 2007, no. 7, item 54.

32 It should be noticed that it is the first Regulation which refers directly to the citizens of the Republic of Turkey.

33 It was stressed in the public debate that such an exemption is necessary in Poland because it may eliminate illegal employment of citizens of the eastern neighbouring countries but it was also noticed that it came into force too late – after the work in agriculture.

- foreign researchers working for research institutes or members of the European Parliament or who are working on implementation of weaponry systems.

It should be mentioned that the explanatory report to the Regulation of the Ministry of Labour and Social Policy stated that one of the aims of this Regulation is transposition of requirements of the Directive 96/71 and the judgments of the ECJ in cases referring to third – country nationals - *Rush Portuguesa* (C-113/89) and *Vander Elst* (C-43/93).

Generally, it may be stated that EU workers did not constitute a unified group in terms of access to employment in Poland in 2006. However, the tendency to simplification and even to the abolishing of work permit procedures have been observed.

Practice

In 2006 the practice in the field of issuing work permits has not been changed very much despite the new Act of 14 July 2006. The procedure, conditions and terms remained the same but the documents which should be enclosed to an application for the work permit had different titles (documents certifying on registration of the EU national or certifying on his/her right to residence or permanent residence). Moreover, the payments for work permit rose in 2006. It was 946 PLN (about 240 EUR).

As previously, the procedure consisted of two levels. First, there were steps taken by the employer (or the future employer) and secondly, the steps taken by a worker. It must be stressed that the procedure on work permits referred to these EU nationals who are obliged to obtain such a permit due to reciprocal measures. It means that the procedure does not refer to nationals of Great Britain, Ireland, Sweden and nationals of the new Member States. In the case of citizens of Norway, Denmark and the Netherlands it was simpler.

However, as it was stated before on 17 January 2007 the Regulation of 21 July 2006 expired and all EU nationals (as well as nationals of Switzerland, Norway, Iceland and Liechtenstein) may take up employment in Poland without any work permits.

It should be also added that the employment agencies should treat the Polish and other EU nationals equally according to the Act on 10 April 2004. However it should be noticed that employers are not interesting in cooperation with these agencies even though there is shortage of the work force in some sectors.

2. Language requirement

- Texts in force

- Ustawa z 7 października 1999 o języku polskim³⁴ - the Act on the Polish language of 7 October 1999

The other aspect of the access to employment is the issue of the language requirement which may become an obstacle in taking up and performing particular professions. Since the employment in the public sector is elaborated in the next chapter it is necessary to mention about this requirement in the private sector. Generally there are not any specific provisions referring to this issue but the obstacles may arise from practical reasons. For example, an employee should communicate with the Polish – speaking customers.

34 Journal of Laws [Dziennik Ustaw] 1999, no. 90, item 999 with subsequent amendments. The most important for EU nationals and controversial amendment was adopted on 2 April 2004. Journal of Laws [Dziennik Ustaw] 2004, no. 92, item 878.

It should be also remember that the Act on the Polish language of 7 October 1999 is in force and it requires, among others, to prepare the texts of employment contracts in Polish. It cannot be recognize as the act of discrimination but it may be an obstacle.

Moreover it should be stressed that there are almost 300 professions which have been recognized as “regulated”.³⁵ They may be performed in the public and private sectors. That is way also legislation on the regulated professions should be also taken into consideration.

EU nationals who intend to take up an employment in any regulated profession should submit a declaration on their language capability. This obligation arises from the regulations issued by the relevant ministers. Usually citizens of third countries must sit for examinations in the Polish language. That is why the position of the EU nationals is more comfortable than the third country citizens. Relevant ministers have issued the regulations on the language requirements for each profession or groups of professions.

3. Recognition of diplomas

Texts in force

- Ustawa z 26 kwietnia 2001 o zasadach uznawania nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów regulowanych³⁶ - the Act of 26 April 2001 on the rules governing the recognition of the qualifications required in EU Member States for the pursuit of the regulated professions
- Ustawa z 10 maja 2002 o zasadach uznawania nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do podejmowania lub wykonywania niektórych działalności³⁷ - the Act of 10 May 2002 on the rules governing the recognition of qualifications acquired in EU Member States for the taking up or pursuit of some of activities
- Ustawa z 12 września 2003 o zmianie ustawy o zasadach uznawania nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów regulowanych³⁸ - the Act of 12 September 2003 amending the Act on the rules governing the recognition of qualifications acquired in EU Member States for the pursuit of a regulated profession and amending certain other Acts
- Ustawa z 20 kwietnia 2004 o zmianie i uchyleniu niektórych ustaw w związku z uzyskaniem przez Polskę członkostwa w Unii Europejskiej³⁹ the Act of 20 April 2004 on the annulment of certain acts in connection with Poland obtaining EU membership
- Rozporządzenie Ministra Infrastruktury z 21 lipca 2005 w sprawie adaptacyjnego i przeprowadzania testu umiejętności w toku postępowania o uznanie kwalifikacji do wykonywania zawodów regulowanych⁴⁰ - the Regulation of the Minister of Infrastructure of 21 July 2005 on probationary period and carrying out of aptitude tests on recognition of qualifications for performance of regulated professions.
- Rozporządzenie Ministra Gospodarki, Pracy i Polityki Społecznej z dnia 15 kwietnia 2004 r. w sprawie odbywania stazu adaptacyjnego oraz przeprowadzania testu umiejętności w toku postępowania o uznanie nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania niektórych zawodów regulowanych⁴¹ - Regulation of the Minister of Economy, Labour and Social Policy of 15 April 2004 on probation period and carrying the aptitude test in procedure on recognition of

35 The full list of them is published on the website of the Bureau for Academic Recognition and International Exchange - www.buwiwm.edu.pl.

36 Journal of Laws [Dziennik Ustaw]. 2001, no. 87, item 954 with the subsequent amendments.

37 Journal of Laws [Dziennik Ustaw]. 2002, no. 71, item 655.

38 Journal of Laws [Dziennik Ustaw]. 2003, no. 190, item 1864.

39 Journal of Laws [Dziennik Ustaw]. 2004, no. 96, item 959.

40 Journal of Laws [Dziennik Ustaw] 2005, no. 147, item 1226.

41 Journal of Laws [Dziennik Ustaw]. 2004, no. 75, item 705.

qualifications for practicing certain regulated professions obtained in the EU Member States

- Rozporządzenie Ministra Gospodarki z dnia 27 stycznia 2006 r. uchylające rozporządzenie w sprawie odbywania stazu adaptacyjnego oraz przeprowadzania testu umiejętności w toku postępowania o uznanie nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania niektórych zawodów regulowanych⁴² - Regulation of the Ministry of Economy on annulment of the Regulation of the Minister of Economy, Labour and Social Policy of 27 January 2006 on probation period and carrying the aptitude test in procedure on recognition of qualifications for practicing certain regulated professions obtained in the EU Member States

The other aspect of the access to employment is the issue of recognition of diplomas which may become a quite significant obstacle in taking up and performing particular professions. The main legal norms in this field are contained in the Act of 26 April 2001 on the rules governing the recognition of the qualifications required in the EU Member States for the pursuit of the regulated professions. It gives the general rules for recognition of degrees, certificates and other documents procedure is still in force. It also contains lists of organs and institutions which are responsible for recognition of diplomas in other EU countries. According to the Act if a given profession in Poland is regulated, holders of foreign qualifications obtained in another member state need official recognition. In non-regulated professions the decision of employment depends exclusively on the employer. This applies only to the citizens of European Union countries and those of the countries belonging to the European Economic Area, as well as Switzerland.

It should be also remembered that the admission to, and practicing in, certain professions may depend on participation in a probationary period or on passing an aptitude test which are described in regulations issued by the relevant ministers.

The Act of 2001 is complemented by more than 40 regulations issued by ministers which describe in detail the conditions for taking up work in regulated professions by persons who obtained qualifications in other EU States. Such regulations apply mainly to professions of the public sector but also to detectives, tax advisers, tourist guides as well as those working in the areas of sport, mining, geology, archeology, museology, architecture, hydrology, nuclear and radiological protection, energy industry, accountancy and many others.

Drafts

On 23 June 2006 the draft of the new Act on principles of recognition of professional qualifications obtained in the EU Member States was published. The aim of this drafted Act in the implementation of the Directive 2005/36 of 7 September 2005. The legislative procedure is continued.

4. Nationality condition for captains of ships

Texts in force

- Ustawa 9 listopada 2000 z o bezpieczeństwie morskim⁴³ the Act of 9 November 2000 on maritime safety;
- Rozporządzenie Ministra Infrastruktury z 4 lutego 2005 w sprawie wykszolenia i kwalifikacji zawodowych marynarzy⁴⁴ - the Regulation of the Minister of Infrastructure of 4 February 2005 on training and qualifications of seafarers

42 Journal of Laws [Dziennik Ustaw]. 2006, no. 24, item 179.

43 Uniform text Journal of Laws [Dziennik Ustaw] 2006, no. 99, item 693.

44 Journal of Laws [Dziennik Ustaw] 2005, no. 57, item 492.

- Rozporządzenie Ministra Infrastruktury z 13 lipca 2005 w sprawie programów szkolen i wymagan egzaminacyjnych w zakresie kwalifikacji zawodowych marynarzy⁴⁵ - the Regulation of 13 July 2005 on training programs and exam requirements towards seafarers qualifications

There have not been any significant changes relating to the access to work in the maritime sector in 2006. The Act of 9 November 2000 on maritime safety is still the principal act. It applies to qualifications in the maritime sector. The third chapter of the Act refers to the qualifications of officers and crew of vessels. It stipulates in Article 18 that the qualifications of officers of vessels and procedures for the issue of certificates must be compatible with international conventions (STCW, SOLAS, ILO Conventions 69 & 74) as well as with further provisions of the Act in Articles 19–22. The provisions of the Act have required the minister responsible for the maritime sector to provide details of training programs and exam requirements.

The foregoing Act was amended by the Act of 20 April 2004 [o zmianie ustawy o bezpieczeństwie morskim oraz o zmianie niektórych innych ustaw]⁴⁶ to adjust Polish law in this area to the EU accession requirements. This Act requires, *inter alia*, that Directive 2001/25/EC on the minimum level of training of seafarers be implemented.

The Regulation of the Minister of Infrastructure on training and qualifications of seafarers adopted in 2005 is still in force. Its paragraph 7 [4] stipulates that qualifications obtained in EU Member States in the regulated profession “seafarer” will be recognized according to the Act of 26 April 2001 on the rules governing the recognition of qualifications required in EU Member States for practicing in regulated professions. It must also be added that in 2005 the Minister of Infrastructure issued another regulation – the Regulation of 13 July 2005 containing training programs and exam requirements towards seafarers. The mentioned acts and regulations do not contain any provisions containing the nationality requirements for the access to posts of captains of vessels.

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45 Journal of Laws [Dziennik Ustaw] 2005, no. 173, item 1445.

46 Journal of Laws [Dziennik Ustaw] 2004, no. 93, item 895.

CHAPTER III: EQUALITY OF TREATMENT ON THE BASIS OF NATIONALITY

1. Working conditions, social and tax advantages

Texts in force

- Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 - Constitution of the Republic of Poland 2 April 1997– Articles 32 sect. 2, 33 and 37.
- Kodeks pracy z 24 czerwca 1974- the Labour Code of 24 June 1974 – Articles 11 and 18 [3a-3e], 94, 94 [1]
- Ustawa z dnia 26 lipca 1991 r.⁴⁷ - the Act of 26 July 1991 on personal income tax
- Ordynacja podatkowa z 26 sierpnia 1997r⁴⁸ – the Act of 26 August 1997 on the tax law system

There were not any significant changes in the field of equality of treatment on the basis of nationality in 2006. It should be remember that the anti-discrimination clause in the Constitution of Poland⁴⁹ is of a very general nature and appears to be compatible with international and European standards. The anti-discrimination clause has been clarified in certain legal acts, for example in the Labour Code.⁵⁰

In 2006 all the anti discriminatory provisions of the Constitution and the Labour Code remained unchanged.

Articles 11 [2] and 11 [3] of the Labour Code contain two of the basic principles of labour law. Article 11 [2] contains the principle of equality of employees. “Employees shall enjoy equal rights for the same performance of the same duties. This applies in particular to equal treatment of men and women in employment”. The main criterion is “the performance of the same duties”, not the criterion of citizenship. This principle corresponds with Article 94 which outlines the duties of employers; its paragraph 9 stipulates that employers apply objective and fair criteria in the assessment of employees and the results of their work.

Article 11 [3] states that: “Any discrimination in employment, direct or indirect,⁵¹ in particular on grounds of sex, age, disability, race, religion, nationality, political convictions, union membership, ethnic origin, creed, sexual orientation, as well as on grounds of the terms of employment for a fixed or unfixed term or full time or part time, shall be inadmissible”. It is easy to notice that “citizenship” is not itemized in this Article. There is an opinion in legal literature that “citizenship of an EU Member State” should be added to Article 11 [3] as another criterion which cannot be grounds for discrimination, but in 2006 any legislative steps were not taken in this field. On the other hand, this Article contains the phrase “in particular”, which means that other grounds may be considered.

⁴⁷ Journal of Laws [Dziennik Ustaw] 1991, no. 80, item 350 with subsequent amendments.

⁴⁸ The unified text is published in: Journal of Laws [Dziennik Ustaw] 2005, no. 8, item 60. Another amendment has been adopted on 30 June 2005. (Journal of Laws [Dziennik Ustaw] 2005, no. 143, item 1999. (It implements provisions of the following directives 2004/56/EC of 21 April 2004 and 2004/106/EC of 16 November 2004). In 2006 the Act was amended three times but these amendments do not refer particularly to the EU nationals.

⁴⁹ Article 32 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. 2. No one shall be discriminated against in political, social or economic life for any reason whatsoever. Article 33 1. Men and women shall have equal rights in family, political, social and economic life in the Republic of Poland. 2. Men and women shall have equal rights, in particular regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold offices, and to receive public honours and decorations. Article 37 1. Anyone under the authority of the Polish State shall enjoy the freedoms and rights ensured by the Constitution. 2. Exemptions from this principle with respect to foreigners shall be specified by statute.”

⁵⁰ It should be also remembered that the ban on discrimination on the grounds of citizenship is expressed in the ILO Convention no. 111 and in the European Social Charter, both of which Poland is a party to.

⁵¹ The terms “direct” or “indirect” were introduced in 2001 and 2003, following negotiations with the EU.

The general principles of equality and non-discrimination have been summarized in the new Chapter IIa of the Labour Code.

Article 18 [3a] paragraph 1 states that “employees shall be accorded equal treatment as far as the entering into and terminating of an employment relation, terms of employment, promotion and access to training for the improvement of professional qualifications are concerned”, noting the requirements of Article 11 [3].

Also subsequent paragraphs of this Article give definitions of “equal treatment” and various types of discrimination.

According to paragraph 2, equal treatment in employment shall mean that “one should not be discriminated against in any way, directly or indirectly, on grounds set out in paragraph 1”. Next, “direct” and “indirect discrimination” are also explained. The first one occurs where, on one more of the grounds set out in paragraph 1 of Article 18 [3a] and in Article 11 [3], “an employee has been, is, or might be treated in a comparable situation in a manner less favourable than other employees.”

According to paragraph 4, the indirect discrimination “occurs where, as a result of a seemingly neutral decision, a criterion applied, or action taken, there are differences in terms of employment to the detriment of all, a substantial number of employees, or one of the groups singled out, on one or more of the grounds set out in paragraph 1, if such differences cannot be justified on objective grounds”

Article 18 [3b] explains the meaning of “breach of the principle of equal treatment”. The principle is violated if differentiation of the position of employees has in particular⁵² referred not only to the entering into or the termination of an employment relation but also in respect to terms of remuneration for work, other terms of employment, missing out an employee in promotion, upgrading professional qualifications or granting of other work-related benefits (usually various social benefits).⁵³

The issuance of equal pay has been regulated in the Labour Code separately. Article 18 [3c] stipulates: “employees shall have the right to equal remuneration for the same work or for work of the same value”. Remuneration means all components of remuneration as well as other work-related benefits; also those granted to employees in other forms than money.

Paragraph 3 defines “work of the same value”. It is work which requires comparable professional qualifications, certified by appropriate documents or practice and professional experience, and also comparable responsibility and effort.

Situations where the principle of equal treatment has been breached can result in the following consequences:

- a. Recognition that certain provisions of employment contracts (or other instruments creating employment relations) are invalid; the appropriate provisions of the labour law should apply instead (Article 18 paragraph 3 of the Labour Code);
- b. Recognition of agreements as not binding following Article 9 paragraph 4 of the Labour Code; it refers to collective bargaining agreements and other collective agreements, regulations and statutes;
- c. Determination of compensation. According to Article 18 [3d] of the Labour Code “A person who is the victim of a breach by an employer of the principle of equal treatment in employment shall be entitled to damages in an amount not less than the minimum remuneration for work established under separate provisions”.

It should be stressed that in law the frontier workers are not treated in any special way. They have the same rights and obligation as others employees in the working relations. However in practice residence clauses may affect the situation of this group of employees.

⁵² Therefore not all consequences of breach of the principle of equal treatment are itemised in this provision.

⁵³ It is stated in Paragraph 1. of Article 18 3b. Paragraphs 2-4 outlines the situations which are not breaches of the principle of the equal treatment.

Worth mentioning is the amendment of the Act of 2004 on promotion of employment and institutions of the labour market.⁵⁴ The amendment became effective on 1 January 2007 (so it was not in force in 2006) but it seems to be very important in the light of the non discrimination principle. Article 8a was introduced into the Act. It obliges the self-governments of the provinces (*województwa*) to establish criteria of issuance of work promises and permits. They should not contain any discriminatory requirements like: sex, age, disability, race, nationality, sexual orientation, political opinion, worship and membership in a trade union. This provision seems to be extremely important but it should be remembered that it referred to the EU nationals and their family members only from 1 January to 16 January 2007 because on the next day the obligation to obtain the promises and work permits for this group of foreigners was exempted.

It is obvious that if migrant workers live and earn money in Poland, they should pay taxes. EU nationals are not treated in this area in any exceptional way (also in the sphere of company car taxation). The Polish tax system is quite complicated. Since the social and political transformations of 1989/ 1990, the Polish tax system has been gradually reformed. The tax rules are changed very often. But the types of taxes are the same. The Polish tax system distinguishes 12 types of taxes, including nine direct taxes and three indirect taxes. There are corporate income tax (CIT), personal income tax (PIT), tax on civil law transactions, real estate tax, tax on means of transport, inheritance and donations tax, agricultural tax, forestry tax, tax on dogs in the first group. Tax on goods and services (VAT), excise duty and game tax belong to the second group.

The personal income tax seems to be the most important. It is regulated in the Act on personal income tax of 1991.⁵⁵ The most important norm is article 3 of the Act. It states that all individuals, whose place of residence is in Poland, are subject to unlimited tax liability in Poland, which means that they are liable to pay Polish taxes on the total of their income, irrespective of where it was generated. Individuals who do not have their place of residence in Poland are subject to limited tax liability, which means that they are liable to pay taxes only on income resulting from work carried out in the territory of Poland according to a service relationship or employment relationship, irrespective of where they receive their payment, and on other income received on the territory of Poland. So there are not any exceptions to the EU nationals.

However, it must be remembered that that all these rules are modified by the international agreements on elimination of double taxation. Poland is bound by 77 agreements including all EU Member States, Iceland, Norway and Switzerland.⁵⁶

Analysing the issue of the equal treatment it should be mentioned that that Article 1119 of the Code of Administrative Procedure requires a bail from an alien – plaintiff in order to assure cost of proceedings if a defendant applies for it. This requirement cannot be applied to the EU nationals because it would be in breach of the EC law and the principle of free movement of persons.⁵⁷

54 Journal of Laws [Dziennik Ustaw] 2005, no. 175, item 1462 and no. 267, item 2257.

55 The Act of 1991 was amended many times just in 2006 there were 10 amendments.

56 The full list of agreements is on the web site of the Ministry of Finance: www.mf.gov.pl.

57 See J. Ciszewski: Commentary on the Civil of the Civil Procedure. The judgements of the ECJ are invoked in interpretation of this provision, for example *Hubbard v. Hamburger*- C-20/92, *Data Delecta v. MSL Dynamics* - C-43/95, *Hayes v. Kronenberger* C-323/95, *Saldanha and MTS Securities v. Hiross Holding* - C-122/96. See also: R. Mikulski, T. Czapla, Od cudzoziemca z Unii Europejskiej kaucja niepotrzebna.[The EU national is obliged to pay a bail, *Rzeczpospolita* 2005, March 25.

2. Other obstacles to free movement of workers?

Texts in force

- Ustawa z 7 października 1999 o języku polskim⁵⁸ - the Act on the Polish language of 7 October 1999

Analysing the issue of the equal treatment worth mentioning is the Act on the Polish language of 7 October 1999. The Act protects the Polish language and regulates rules of usage of the Polish language in realisation of the public tasks and usage of the Polish language in the labour law sphere. It, for example, limits possibilities of using languages other than Polish among others in economic relations. The Polish language must be used also in the names of goods and services, offers, advertisements, operating manuals and information on properties of goods and services, in guarantee terms, on invoices, bills and receipts. Foreign language descriptions of goods and services and foreign language offers and advertisements released into circulation must be used always accompanied by Polish language version.

However, the most controversial was the part of the Act which refers to the labour contracts concluded with EU nationals. Article 8 sec. 2 and Article 8 sec. 3 provide for exceptions from a general principle of mandatory usage of the Polish language in labour law contracts and in agreements involving consumers. These two Articles came into force on the first of May 2004 –on the day of Poland’s accession to the EU.⁵⁹

Article 8 sec. 2 of the Act allows for foreign-language versions of those types of documents to be signed alongside and at the same time as the Polish version, and for the foreign-language versions to be made prevailing so long as that aspect is clearly indicated in the agreement.

Article 8 sec. 3 of the Act concerns foreign citizens. A labour contract, or an agreement involving a consumer may be signed in a foreign-language version if the employee or consumer is an EU national other than Poland and they have been notified of their right to have the contract concluded in Polish. The rule also applies to labour contracts with any foreign national so long as the employer is an EU citizen or an EU-based entity.

In the light of the principle of the equal treatment and non discrimination of the EU citizens the Constitutional Tribunal ruled both Articles unconstitutional. The Constitutional Court on 13 September 2005. In the Tribunal’s opinion, Article 8 sec. 2 allowing for concurrent language versions of agreements violates the Constitution by not providing sufficient protection of consumers and employees against discriminatory market practices. The Tribunal opinion is that the regulation would allow foreign-language versions to be forced on weaker counterparts, thereby increasing the risk of those parties agreeing to unfavourable or unclear conditions.⁶⁰

Article 8 sec. 3 concerning foreign citizens was recognized as being in violation of Article 32 of the Constitution of Poland by differentiating the scope of protection of consumers and employees depending on their citizenship.

Ruling on the unconstitutionality of these provisions the Tribunal extended the validity of them through 30 June 2006. On this day they lost their binding force. The expiring of these provisions was postponed until 30 June 2006 in order to give the Parliament time to prepare the new provision referring to language usage in contracts between objects of the Polish and other (EU) nationality but such an amendment was not adopted in 2006.

58 Journal of Laws [Dziennik Ustaw] 1999, no. 90, item 999 with subsequent amendments. The most important for EU nationals and controversial amendment was adopted on 2 April 2004. Journal of Laws [Dziennik Ustaw] 2004, no. 92, item 878.

59 The most important for EU nationals and controversial amendment was adopted on 2 April 2004. Journal of Laws [Dziennik Ustaw] 2004, no. 92, item 878.

60 See also: B. Ziębiński, Constitutional Court Rules on the Polish Language, *Warsaw Voice*, 26 October 2005.

3. Specific issue: frontier workers

Texts in force

- Ustawa z 16 listopada 2006 zmieniająca ustawę o podatku dochodowym od osób fizycznych z lipca z 26 1991 r.⁶¹ - the Act of 16 November 2006 amending the Act of 26 July 1991 on personal income tax.
- Rozporządzenie Ministra Pracy i Polityki Społecznej z 30 sierpnia 2006 w sprawie wykonywania pracy przez cudzoziemców bez konieczności uzyskania zezwolenia na pracę⁶² - The Regulation of the Minister of Labour and Social Policy of 30 August 2006 on performance of work by foreigners without necessity to obtain the work permits

The Regulation issued by the Minister of Labour and Social Policy on performance of work without a necessity on the part of foreigners to obtain work permit should be mentioned once again because it may refer (at least indirectly) to the frontier workers. This Regulation refers to all kinds of foreigners not only to EU citizens. According to this Regulation citizens of Ukraine, Russia, Byelorussia and Germany legally employed by the Polish employer in the agricultural sector for a period not exceeding 3 months within 6 months are exempted from the obligation of obtaining the work permit. Citizens of others neighboring countries (Lithuania, Slovakia and Czech Republic) are allowed to work legally in Poland without any work permits.

It should be also mentioned that on 16 November 2006 the Act on personal income tax of 1991 was amended. In the light of this amendment a person who resides in Poland longer than 183 days in a tax year is recognized as a person having an inhabitancy in Poland. Moreover, it is stated that if individuals do not reside within the territory of Poland they are liable to pay taxes in relation to income obtained in Poland (limited tax obligation). These provisions may have affect (but not must) the situation of the frontier workers in Poland.

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61 Journal of Laws [Dziennik Ustaw] 2006, no. 217, item 1588.

62 Journal of Laws [Dziennik Ustaw] 2006, no. 156, item 1116.

CHAPTER IV. EMPLOYMENT IN THE PUBLIC SECTOR

1. Access to public sector

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

Texts in force

- Ustawa z 16 września 1982 o pracownikach urzędów państwowych⁶³ – the Act of 16 September 1982 on employees of government offices;
- Ustawa z 13 lutego 1984 o funkcjach konsułów Rzeczypospolitej Polskiej⁶⁴ – The Act of 13 February 1984 on the functions of consuls of the Republic of Poland;
- Ustawa z 24 sierpnia 2006 o służbie cywilnej⁶⁵ – the Act of 24 August 2006 on civil service
- Ustawa z 20 marca 1990 o pracownikach samorządowych⁶⁶ – the Act of 20 March 1990 on employees of self-government;
- Ustawa z 8 marca 1990 o samorządzie gminnym⁶⁷ – the Act of 8 March 1990 on communal self-government;
- Ustawa z 5 czerwca 1998 o samorządzie powiatowym⁶⁸ – the Act of 5 June 1998 on district self-government;
- Ustawa z 15 września 1998 o samorządzie wojewódzkim⁶⁹ – the Act of 15 September 1998 on regional self-government;
- Ustawa z 20 kwietnia 2004 o zmianie ustawy – Ordynacja wyborcza do rad gmin, rad powiatów i sejmików województw oraz niektórych innych ustaw⁷⁰ – the Act of 20 April 2004 amending the principles of elections to communal, district and regional councils and regional parliaments and on amendment of certain other Acts.
- Ustawa z 21 listopada 1967 o powszechnym obowiązku obrony Rzeczypospolitej Polskiej⁷¹ – Act of 21 November 1967 on common duty of the defense of the Republic of Poland
- Ustawa z 6 października 1990 o Policji⁷² – Act of 6 October 1990 on the Police;
- Ustawa z 12 października 1990 o Strazy Granicznej⁷³ – the Act of 12 October 1990 on Border Guards;
- Ustawa z 26 kwietnia 1996 o Służbie Więziennej⁷⁴ – the Act of 26 April 1996 on the Penitentiary Service;

63 Consolidated text: Journal of Laws [Dziennik Ustaw] 2001, no. 86, item 953.

64 Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 215, item 1823 with subsequent amendments. The requirement of citizenship does not apply to honorary consuls.

65 Journal of Laws [Dziennik Ustaw] 2006, no. 170 item 1218 with subsequent amendments..

66 Consolidated text: Journal of Laws [Dziennik Ustaw] 2001, no. 142, item 1593 with subsequent amendments. The last amendment was adopted on 25 August 2006 but it does not refer to the EU nationals. Journal of Laws [Dziennik Ustaw] 2006, no. 169, item 1201.

67 Consolidated text: Journal of Laws [Dziennik Ustaw] 2001, no. 79, item 855 with subsequent amendments. The last amendment was adopted on 27 January 2006 but it does not refer to the EU nationals. Journal of Laws [Dziennik Ustaw] 2006, no. 17, item 128.

68 Consolidated text: Journal of Laws [Dziennik Ustaw] 2001, no. 142, item 1592 with subsequent amendments.

69 Consolidated text: Journal of Laws [Dziennik Ustaw] 2001, no. 142, item 1590 with subsequent amendments. Two amendments introduced in 2006 refer to the protection of monuments and the development policy.

70 Journal of Laws [Dziennik Ustaw] 2004, no. 102, item 1055. The last amendment was adopted on 27 – 01- 2006 but it does not refer to the EU nationals. Journal of Laws [Dziennik Ustaw] 2006, no. 146, item 1055.

71 Article 4 sect. 1. of the Act. Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 21, item 205 with subsequent amendments.

72 Article 25 of the Act. Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 7, item 58 with subsequent amendments. Two amendments of 2006 do not affect the situation of the EU nationals.

73 Article 31 of the Act. Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 171, item 1399 with subsequent amendments. The amendment of 2006 does not affect the situation of the EU nationals.

POLAND

- Ustawa z 31 sierpnia 1999 o Służbie Celnej⁷⁵ – The Act of 31 August 1999 on the Customs Service
- Ustawa z 24 maja 2002 o Agencji Bezpieczeństwa Wewnętrznego i Agencji Wywiadu⁷⁶ – the Act of 24 May 2002 on the Agency of Internal Security and Agency of Secret Service;
- Ustawa z 27 lipca 2001 - prawo o ustroju sądów powszechnych⁷⁷ – the Act of 27 July 2001 – Law on the structure of common law courts;
- Ustawa z 25 lipca 2001 - prawo o ustroju sądów administracyjnych⁷⁸ – The Act of 25 July 2001 – Law on the structure of administrative courts;
- Ustawa z 23 listopada 2002 o Sadzie Najwyższym⁷⁹ – the Act of 23 November 2002 on the Supreme Court;
- Ustawa z 20 czerwca 1985 o prokuraturze⁸⁰ – the Act of 20 June 1985 on the public prosecutor’s office;
- Ustawa z 14 lutego 1991 – prawo o notariacie⁸¹ – the Act of 14 February 1991 on public notary’s office
- Ustawa z 29 sierpnia 1997 o komornikach sądowych i egzekucji⁸² – the Act of 29 August 1997 on court executive officers and execution.
- Ustawa z 27 lipca 2001 o kuratorach sądowych⁸³ – the Act of 27 July 2001 on court-appointed curators;
- Ustawa z 5 lipca 2002 o świadczeniu pomocy prawnej przez prawników zagranicznych w Rzeczypospolitej Polskiej⁸⁴ – the Act of 5 July 2002 on rendering legal assistance by foreign lawyers in the Republic of Poland;
- Ustawa z 6 lipca 1982 o radcach prawnych⁸⁵ – the Act of 6 July 1982 on legal advisers;
- Ustawa z 26 maja 1982 – prawo o adwokaturze⁸⁶ the Act of 26 May 1982 – Law on the Bar;
- Ustawa z 19 kwietnia 1991 o samorządzie pielęgniarek i położnych⁸⁷ – the Act of 19 April 1991 on self-administration of nurses and midwives;
- Ustawa z 20 kwietnia 2004 o zmianie ustawy o zawodach pielęgniarstwa i położnictwa oraz innych ustaw⁸⁸ – the Act of 20 April 2004 on the amendment of the Act on the profession of nursing and midwifery and certain other Acts;

74 Article 24 of the Act. Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 207, item 1761 with subsequent amendments.

75 Article 24 of the Act. Journal of Laws [Dziennik Ustaw] 1999, no. 72, item 802 with subsequent amendments.

76 Article 15 of the Act. Journal of Laws [Dziennik Ustaw] 2002, no. 74, item 676. The amendment of 2006 have not any influence on position of foreigners.

77 Journal of Laws [Dziennik Ustaw] 2001, no. 98, item 1070 with subsequent amendments; The amendment of 1 July 2006 does not refer to the EU nationals but it may be interesting to notice that that it empowers the Minister of Justice to delegate judges to work in international bodies. Journal of Laws [Dziennik Ustaw] 2006, no. 144, item 1044.

78 Journal of Laws [Dziennik Ustaw] 2002, no. 153, item 1269.

79 Journal of Laws [Dziennik Ustaw] 2002, no. 240, item 2052 with subsequent amendments.

80 Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 21, item 206 with subsequent amendments. The amendment of 14 July 2006 does not refer to the EU nationals but it may be interesting to notice that that it empowers the Minister of Justice to delegate public prosecutors to work in international bodies. Journal of Laws [Dziennik Ustaw] 2006, no. 144, item 1044.

81 Act of 14 February 1991 on notaries [prawo o notariacie]. Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 42, item 369 with subsequent amendments.

82 Consolidated text: Journal of Laws [Dziennik Ustaw] 2006, no. 167, item 1191.

83 Journal of Laws [Dziennik Ustaw] 2001, no. 98, item 1071 with subsequent amendments.

84 Journal of Laws [Dziennik Ustaw] 2002, no. 126, item 1069 with subsequent amendments.

85 Journal of Laws [Dziennik Ustaw] 1982, no. 19, item 145 with subsequent amendments. Amendment referring to EU nationals in: Journal of Laws [Dziennik Ustaw] 2002, no. 123, item 1069.

86 Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 123, item 1058 with subsequent amendments.

87 Journal of Laws [Dziennik Ustaw] 1991, no. 41, item 178 with subsequent amendments.

88 Journal of Laws [Dziennik Ustaw] 2004, no. 92, item 855.

- Ustawa z 1 grudnia 1996 o zawodzie lekarza⁸⁹ – the Act of 5 December 1996 on the medical profession;
- Ustawa z 17 maja 1989 o izbach lekarskich⁹⁰ – the Act of 17 May 1989 on the self-administration of medical practitioners;
- Ustawa z 19 kwietnia 1991 o izbach aptekarskich⁹¹ – the Act of 19 April 1991 on the self-administration of pharmacists;
- Karta Nauczyciela 1982⁹² - The Teachers' Charter of 1982;
- Ustawa z 27 lipca 2005– Prawo o szkolnictwie wyższym⁹³ – Act of 27 July 2005 - Law on higher education ;
- Ustawa z –8 lipca 2005 o Prokuraturii Generalnej Skarbu Państwa⁹⁴ – Act of 08 July 2005 on General Office of Attorney of the State Treasure.

In the field of access to public sector there were not any fundamental changes in 2006. The requirement of Polish citizenship still exists where there is direct or indirect exercise of the State's powers – in positions at offices requiring loyalty towards the State. So there are some positions unavailable for nationals from other EU Member States, like the leading representatives of the Republic of Poland (from the Constitution). Also it is obvious that access to the uniformed services requires citizenship of the Republic of Poland – these are, *inter alia*, the Army, the Police, Border Guards, Prison Officers, Municipal Security Guards and Customs Officers; other services would include the Agency of Internal Security (Agencja Bezpieczeństwa Wewnętrznego) or Secret Service and other such services. The citizenship requirement is fully understood in these cases. It is also obvious that Polish citizenship should be held by diplomatic representatives and consuls (but not honorary consuls).

Captains (and other officers and sailors) of vessels of the Polish Navy must be Polish citizens. The captains (and other officers and sailors) of merchant ships may be of other citizenship (see: Chapter II).

Many various acts stipulate that the personnel of other State institutions should be citizens of the Republic of Poland. This applies to employees of government offices, Parliamentary offices (chancellery), the President's Office (chancellery), office of the Constitutional Tribunal, offices of the Commissioner for Citizens' Rights and the Commissioner for Children's Rights, the Public Interest Commissioner, National Remembrance Institute, Supreme Chamber of Control, the National Electoral Bureau, the State Labour Inspection, the National Council of Radio Broadcasting and Television, the Government Centre for Strategic Studies, the Government Centre of Legislation, Regional Accounting Chambers and other State inspectorates.

The provisions of the Act of 16 September 1982 on government offices employees are usually interpreted so that not only persons taking decisions or planning national strategy should possess Polish citizenship but also other persons employed in the above mentioned institutions should be Polish citizens. However, the requirement refers to civil servants, not to all employees working at those offices. On the other hand, the list of civil servants is very wide.

Worth mentioning is that on 24 August 2006 the new Act on civil service was adopted. The Act defines the status of officials of the State administrative agencies, voivodeships and

89 Consolidated text: Journal of Laws [Dziennik Ustaw] 2002, no. 21, item 204 with subsequent amendments.

90 Journal of Laws [Dziennik Ustaw] 1989, no. 30, item 158 with subsequent amendments.

91 Consolidated text: Journal of Laws [Dziennik Ustaw] 2003, no. 9, item 108 with subsequent amendments.

92 Consolidated text: Journal of Laws [Dziennik Ustaw] 2006, no. 97, item 674.

93 Journal of Laws [Dziennik Ustaw] 2005, no. 164, item 1365.

94 Journal of Laws [Dziennik Ustaw] 2005, no. 169, item 1417.

other offices which are the responsibility of ministers and other central administrative agencies. The list of officials who must be the Polish citizens is long. It is interesting that according to Article 2 sec. 2 of the Act on civil service even the poviats and frontier veterinarians are on this list.

Another aspect of the access to the public sector is the possibility to participate in the political and social life of a country. That is why the situation of EU nationals regarding access to self-government at the local level should be also taken into consideration. It is worth mentioning that the Act of 20 April 2004 on amendment of the Act regulating the principles of elections to communal, district and regional councils and regional parliaments and on amendment of certain other Acts implemented Directive 94/80/EC. It describes the arrangements for exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the EU residing in a Member State of which they are not nationals.

EU nationals will have the right to participate in the next local elections if they have the same rights in their own country, either for voting or for standing as candidates. However, from Article 26 sect. 2a of the Act of 8 March 1990 on communal self-government, Article 26 sect. 2a of the Act of 5 June 1998 on district self-government and Article 31 sect. 2a of the Act of 15 September 1998 on regional self-government, persons who are not Polish citizens cannot be elected to the positions of heads of communes [*wójt*] or heads of towns [*prezydent* or *burmistrz*]. Persons who are not Polish citizens also cannot be elected members of district and regional boards of management.

According to Article 3 of the Act of 20 March 1990 on employees of self-government,⁹⁵ employees who are elected, nominated or appointed should be Polish citizens. Such requirements do not apply to employees who work under employment contracts. Each commune regulates this group of employees in their own statutes, so it is difficult to provide a complete list of contract workers at the lowest level of the self-government who should possess the Polish citizenship. It means that the situation regarding access of EU nationals to employment in offices of self-government may vary, depending on the commune.

Also judges, public prosecutors, court executive officers, court appointed curators, notaries should have Polish citizenship. The Act of 2005 on General Office of Attorney of the State Treasury requires that the state attorneys must be citizens of the Republic of Poland.

The year 2006 did not bring any changes in position of various types of lawyers in Poland. The position of barristers and solicitors was defined by the Act of 5 July 2002 on rendering legal assistance by foreign lawyers in the Republic of Poland. The foreign legal advisers or advocates are allowed to render legal assistance in Poland, but lawyers from third countries are allowed to render such assistance only on the principle of reciprocity (from agreements between Poland and their home countries) and only in connection with international law or law of their home country. Since the day of accession to the EU the position of legal advisers or advocates from the EU States is almost the same as for Polish lawyers. They have the same rights and duties as Polish advocates or legal advisers except being ineligible to be elected to the autonomy of the Bar or the autonomy of Legal Advisers. According to the amendment of 2005 the foreign advocates – third country nationals (so not EU citizens) are obliged to produce the certificate confirming that he/she is on the list of advocates in their own country.

This Act amended the Act of 6 July 1982 on legal advisers and the Act of 26 May 1982 – Law on the Bar. Each regional Bar decides about admission to the list of advocates.

The regional council of legal advisors decides if EU nationals can be exempted from legal post-graduate practical training (*aplikacja radcowska*) and about admitting EU nationals to the list of the legal advisors. They must produce appropriate documents regarding their qualifications as well as demonstrating appropriate knowledge of the Polish language.

95 Self-government means: Urząd Małszkowski [the office of the Speaker of the local sejm (diet)], starostwo powiatowe [office of head of a district], communal offices and other administrative local institutions.

The EU nationals have access to all medical professions (e.g. doctors, nurses, midwives, pharmacists, veterinary surgeons, hospital attendants, etc.) as well as other professions like social workers or teachers.

There can be also other requirements like the obligation of undergoing of the health examination allowing to take up the work as a doctor or dentist. The Act on medical professions allows to suspend a doctor in his/her duties if his/her state of health could be dangerous for patients.⁹⁶

Considering access to public sector, attention should also be paid to the regulation allowing persons to carry out the profession of teaching. The Act of 20 April 2004, on amendment and annulment of certain Acts resulting from Poland obtaining EU membership, introduced into the principal Act relating to teachers – The Teachers’ Charter of 1982 a provision allowing EU nationals and citizens of EEA States access to the profession as “nauczyciel mianowany” (appointed teacher) and “nauczyciel dyplomowany” (diploma teacher) – the highest categories of teachers (Article 10 sect. 5, p. 1).

It is also worth mentioning that the Act referring to the higher education was adopted in 2005 – Law on higher education. According to Article 109 of this Act universities are free to employ foreigners and citizenship is not a criterion of employment. There were not any changes in this field in 2006.

1.2. Language requirement

Texts in force

- Ustawa z 7 października 1999 o języku polskim - the Act on the Polish language of 7 October 1999
- Rozporządzenie Ministra Zdrowia z 30 kwietnia 2004 w sprawie szczegółowego zakresu znajomości języka polskiego, koniecznego do wykonywania zawodu pielęgniarstwa i położnej przez obywateli państw członkowskich Unii Europejskiej⁹⁷ - Regulation of 30 April 2004 of the Ministry of Health on depth of knowledge of the Polish language indispensable for performance of the professions of nursing or midwifery by the EU nationals
- Rozporządzenie Ministra Zdrowia z 10 października 2002 w sprawie zakresu znajomości języka polskiego w mowie i piśmie, koniecznego do wykonywania zawodu lekarza lub lekarza stomatologa na terenie Rzeczypospolitej Polskiej⁹⁸ - Regulation of 10 October 2002 of the Ministry of Health on depth of knowledge of the Polish language (oral and in writing) indispensable for performance of the professions of a doctor or a dentist by the EU nationals.
- Rozporządzenie Ministra Zdrowia z 5 czerwca 2002 w sprawie zakresu znajomości języka polskiego, koniecznego do wykonywania zawodu farmaceuty na terenie Rzeczypospolitej Polskiej oraz egzaminu z polskiego⁹⁹ - Regulation of 5 June 2002 of the Ministry of Health on depth of knowledge of the Polish language indispensable for performance of the profession of a pharmacist in Poland and on the exam of the Polish language.
- Rozporządzenie Ministra Zdrowia z 28 czerwca 2002 w sprawie zakresu znajomości języka polskiego, koniecznego do wykonywania zawodu felczera na terenie Rzeczypospolitej Polskiej oraz egzaminu z polskiego¹⁰⁰ - Regulation of 28 June 2002 of the Ministry of Health on depth of knowledge of the Polish language indispensable for performance of the profession of a hospital attendant in Poland and on the exam of the Polish language.

96 The Administrative Court in Warsaw issued judgement in a case of a foreigner who refused to take the health examination. The court stated that the decision forbidding him to perform work was in accordance with the Polish law.

97 Journal of Laws [Dziennik Ustaw] 2004, no. 104, item 1102.

98 Journal of Laws [Dziennik Ustaw] 2002, no. 74, item 688.

99 Journal of Laws [Dziennik Ustaw] 2002, no. 218, item 1846.

100 Journal of Laws [Dziennik Ustaw] 2002, no. 160, item 1675.

- Rozporządzenie Ministra Rolnictwa i Rozwoju wsi z 25 sierpnia 2004 w sprawie zakresu znajomości języka polskiego przez lekarzy weterynarii będących obywatelami państw członkowskich Unii Europejskiej koniecznego do wykonywania zawodu lekarza weterynarii¹⁰¹ - Regulation of 25 August 2004 of the Ministry Agriculture on depth of knowledge of the Polish language indispensable for performance of the professions of a veterinary surgeon by the EU nationals]

The first principle of employment of EU nationals is that they should meet the same requirements as Polish citizens, so they should have equivalent professional qualifications and usually they also need to prove that they know the Polish language. Each minister issues regulations on the depth of knowledge of the Polish language in the relevant sector. So it is difficult to elaborate or even mention all of them. However it is worth mentioning the regulations issued by the Minister of Health. The Minister of Health in its regulations of 30 April 2004, indicated the level of knowledge of the Polish language indispensable for performance of the professions of nursing or midwifery by nationals of EU Member States. It should be equivalent to that required previously for doctors, dentists, pharmacists and hospital attendants. Similarly, the Minister of Agriculture has issued a Regulation applying to veterinary surgeons.

It must be remembered that the profession “belonging” to the public sector are usually “regulated professions”. That is why EU nationals should submit a declaration on their language capability or fulfil the requirement for probationary periods or tests.

1.3. Recruitment procedures: follow-up of *Burbaud* case

Texts in force

- Ustawa o zakładach opieki zdrowotnej¹⁰² – the Act of 31 August 1991 on the health care institutions
- Rozporządzenie Ministra Zdrowia z dnia 27 lipca 2005 r. w sprawie stazu adaptacyjnego i testu umiejętności w toku postępowania o uznanie kwalifikacji do wykonywania medycznych zawodów regulowanych¹⁰³ – the Regulation of the Minister of Health of 27 July 2005 on probation period and the aptitude test in procedure on recognition of qualification for performance of the regulated medical professions.

There are not any general act referring to the recruitment procedures as whole. However there are provisions on recruitment in acts referring to civil servants, the personnel of the self-government or employees of the State offices. These procedures are regulated in details and the recruitment is always announced in the BIP (*Biuletyn Informacji Publicznej*) – Bulletin of the Public Information. But all these professions belong to the public sector in the very narrow sense and the are inaccessible for foreigners.

The other situation is in the public sector in the broader sense – which refers for example to the posts in schooling, the health care and social work sectors. Usually the competition for a given post is announced. Such a situation is for example in the health care branch. The principles of the competition for the post of a hospital director and a head of the ward in hospital are described in the amended Act of 31 August 1991 on the health care institutions. Its Article 44 refers to this issue but it does not contain any nationality requirements. The other particular acts regulate conditions of recruitment and rules of competition in other branches of the public sector. However it may be stated that there are not any rules which refer to a training school which is intended to train future workers. That is why it is difficult to assess the influence of the judgement in the *Burbaud* case on the Polish jurisprudence or the practice of administrative bodies. On the other hand if such a system existed in Poland for example in the health care sector probably the problem of the

101 Journal of Laws [Dziennik Ustaw] 2004, no. 205, item 2100.

102 Consolidated text in: Journal of Laws [Dziennik Ustaw] 2007, no. 14, item 89.

103 Journal of Laws [Dziennik Ustaw] 2005, no. 152, item 1270.

recognition of diplomas obtained during relevant courses or trainings in other Member States would appear.

1.4. Recognition of diplomas

Texts in force

- Ustawa z 26 kwietnia 2001 o zasadach uznawania nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów regulowanych¹⁰⁴ - the Act of 26 April 2001 on the rules governing the recognition of the qualifications required in EU Member States for the pursuit of the regulated professions
- Ustawa z 10 maja 2002 o zasadach uznawania nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do podejmowania lub wykonywania niektórych działalności¹⁰⁵ - the Act of 10 May 2002 on the rules governing the recognition of qualifications acquired in EU Member States for the taking up or pursuit of some of activities
- Ustawa z 12 września 2003 o zmianie ustawy o zasadach uznawania nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów regulowanych¹⁰⁶ - the Act of 12 September 2003 amending the Act on the rules governing the recognition of qualifications acquired in EU Member States for the pursuit of a regulated profession and amending certain other Acts
- Ustawa z 20 kwietnia 2004 o zmianie i uchyleniu niektórych ustaw w związku z uzyskaniem przez Polskę członkostwa w Unii Europejskiej¹⁰⁷ – the Act of 20 April 2004 on the annulment of certain acts in connection with Poland obtaining EU membership
- Rozporządzenie Ministra Infrastruktury z 21 lipca 2005 w sprawie adaptacyjnego i przeprowadzania testu umiejętności w toku postępowania o uznanie kwalifikacji do wykonywania zawodów regulowanych¹⁰⁸ - the Regulation of the Minister of Infrastructure of 21 July 2005 on probationary period and carrying out of aptitude tests on recognition of qualifications for performance of regulated professions.
- Rozporządzenie Ministra Gospodarki, Pracy i Polityki Społecznej z dnia 15 kwietnia 2004 r. w sprawie odbywania stazu adaptacyjnego oraz przeprowadzania testu umiejętności w toku postępowania o uznanie nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania niektórych zawodów regulowanych¹⁰⁹ - Regulation of the Minister of Economy, Labour and Social Policy of 15 April 2004 on probation period and carrying the aptitude test in procedure on recognition of qualifications for practicing certain regulated professions obtained in the EU Member States
- Rozporządzenie Ministra Gospodarki z dnia 27 stycznia 2006 r. uchylające rozporządzenie w sprawie odbywania stazu adaptacyjnego oraz przeprowadzania testu umiejętności w toku postępowania o uznanie nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania niektórych zawodów regulowanych¹¹⁰ - Regulation of the Ministry of Economy on annulment of the Regulation of the Minister of Economy, Labour and Social Policy of 27 January 2006 on probation period and carrying the aptitude test in procedure on recognition of qualifications for practicing certain regulated professions obtained in the EU Member States

104 Journal of Laws [Dziennik Ustaw]. 2001, no. 87, item 954 with the subsequent amendments.

105 Journal of Laws [Dziennik Ustaw]. 2002, no. 71, item 655.

106 Journal of Laws [Dziennik Ustaw]. 2003, no. 190, item 1864.

107 Journal of Laws [Dziennik Ustaw]. 2004, no. 96, item 959.

108 Journal of Laws [Dziennik Ustaw] 2005, no. 147, item 1226.

109 Journal of Laws [Dziennik Ustaw]. 2004, no. 75, item 705.

110 Journal of Laws [Dziennik Ustaw]. 2006, no. 24, item 179.

- Rozporządzenie Ministra Edukacji Narodowej i Sportu z 15 lutego 2005 w sprawie stazu adaptacyjnego i testu umiejętności w toku postępowania o uznanie nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów regulowanych w dziedzinie kultury fizycznej i sportu¹¹¹ - the Regulation of the Minister of National Education and Sport of 15 February 2005 on probation periods and aptitude tests for recognition of the obtained in EU Member States qualifications for practicing regulated professions in the area of physical education and sport;
- Rozporządzenie Rady Ministrów z 15 marca 2005 w sprawie szczegółowego sposobu realizacji przez organy zatrudnienia zadań wynikających z udziału publicznych służb zatrudnienia¹¹² - the Regulation of the Council of Ministers of 15 March 2005 on particular way of realization by the organs of employment tasks arising from the participation of public employment service in the EURES network
- Ustawa 29 lipca 2005 r. o sporcie kwalifikowanym¹¹³ - the Act of 29 July 2005 on championship sport.

As it was stated in Chapter II. the Act of 26 April 2001 on the rules governing the recognition of the qualifications required in EU Member States for the pursuit of the regulated professions gives the general rules for recognition of degrees, certificates and other documents procedure is still in force. It also contains lists of organs and institutions which are responsible for recognition of diplomas in other EU countries. It also confirms that EU nationals, whose qualifications have been recognized, have the right to practice any regulated profession in the Republic of Poland in the same way as persons who have obtained their qualifications in Poland (Article 1 sect. 3). General idea of the Act is that where a given profession in Poland is regulated, holders of foreign qualifications obtained in another member state need official recognition.

This Act was amended on 16 December 2005 but the amendment came into force on 9 February 2006.¹¹⁴ The amendment refers to the paramedical sphere and sectors related to social work, maritime sector, craft sector and technical disciplines.

The admission to, and practicing in, certain professions may depend on participation in a probationary period (no longer than 3 years) or on passing an aptitude test (the choice of one of these forms of assessment depends on the candidate), in accordance with Directive 89/48.

The general principles of probationary training and testing are given in the Regulation issued by the Regulation of the Minister of Infrastructure of 21 July 2005 on probationary period and conducting aptitude tests on recognition of qualifications for performance of regulated professions. It must be remembered that all (or almost all) professions of the public sector are recognized as “the regulated professions”.

Also the regulations of ministers responsible for respective fields determine the scope of the aptitude tests or probationary periods.¹¹⁵ The tests and periods are adjusted to the individual situations of the candidates, their degrees, experience and future positions. The assessment of candidates’ skills usually occurs when there are differences in teaching programmes or the level of competence for the intended position varies between the two EU Member States.

The Act of 20 April 2004 on amendment and annulment of certain acts, after Poland had obtained EU membership, introduced into the Act of 26 April 2001 provisions confirming implementation of Directives 89/48/EEC, 92/51/EEC, 94/51/EC, 95/43/EC,

111 Journal of Laws [Dziennik Ustaw] 2005, no. 33, item 294.

112 □ Journal of Laws [Dziennik Ustaw] 2005, no. 47, item 445.

113 Journal of Laws [Dziennik Ustaw] 2005, no. 155, item 1298.

114 Journal of Laws [Dziennik Ustaw] 2006, no. 12, item 62.

115 The requirement for probationary periods or tests does not breach EC Directives 98/49/E or 92/51/EEC which allow for the checking of skills of candidates in certain cases.

97/38/EC, 2000/5/EC and 2001/19/EC. Also, these amendments extend the rules for recognition of qualifications of nationals of other EFTA and EAA States. It was the most significant amendment, so since that time there have not been any other similar amendments in this area.

The Act of 2001 on the rules governing the recognition of the qualifications required in EU Member States for the pursuit of the regulated professions had to be complemented by enactment of legislation. As it was stated before there are more than 40 regulations issued by ministers which describe in detail the conditions for taking up work in regulated professions by persons who obtained qualifications in other EU States mainly in professions of the public sector (teachers, social workers, custom agents, firemen and many medical professions) Every year there are more and more regulated professions. Moreover, the relevant minister may empower any institution to verify the professional qualifications of foreigners in a specified professions.

It may be observed that the concept of regulation each profession or group of professions separately has been adopted in Poland. That is why the Regulation of the Minister of Economy, Labour and Social Policy of 15 April 2004 on probation period and carrying the aptitude test in procedure on recognition of qualifications for practicing certain regulated professions obtained in the EU Member States was annulled in January 2006.

Sportsmen constitute a very peculiar group of employees. Their situation is regulated by the rules adopted by the particular sport associations, clubs, and on the other hand, the labour law, the law on aliens and rules adopted by various spot unions.

On 14 July 2006 the Polish Football Union Board adopted the Resolution no. III/39 amending its own Resolution on the status of the Polish football players and the change of the club membership.¹¹⁶

This Resolution invokes directly the FIFA and UEFA Regulations stating that in matters which are not regulated by the Resolution these Regulations should be applied. For example, in paragraphs 58 the chapter XII of the FIFA Regulations is invoked in the context of permits for foreign players to participate in the inter-State matches.

Moreover, parts VII and VIII of the Resolution regulate the rules of transfer of football players. Part VIII of the Resolution refers to access of foreign players to the Polish clubs. It may be presumed that the situation of the football players from the EU countries are in a better situation than players from third countries because the Resolution regulates the situation of players from outside the EU in details (for example in terms of legalization of residence and access to work). The situation of the EU nationals is not described in this Resolution but it may entail some problems with its interpretation.

Worth mentioning is also the Regulation of the Minister of National Education and Sport of 15 February 2005 on probation periods and aptitude tests for recognition of the obtained in EU Member States qualifications for practising regulated professions in the area of physical education and sport¹¹⁷. If necessary (not obligatory) the probation periods or the aptitude tests may be applied to such regulated professions as: coaches/trainers, coaches of particular sports, trainers/coaches of disabled persons for recreation, sports therapists, sports managers, managers of particular sports and managers of sporting events.

Drafts

On 23 June 2006 the draft of the new Act on principles of recognition of professional qualifications obtained in the EU Member States was published. The aim of this drafted Act in the implementation of the Directive 2005/36 of 7 September 2005. The legislative procedure is continued.

116 Uchwała nr III/39 z dnia 14 lipca 2006 roku Zarządu Polskiego Związku Piłki Nożnej – see: www.pzpn.pl. The Resolution of 1992 was amended few times, see for example the Report on 2005.

117 It has replaced the Regulation of 6 April 2004.

2. Equality of treatment

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

Another second principle is that if EU nationals are admitted to any profession, their standing is the same as Polish citizens and it depends not on the nationality but such elements as seniority or professional experience. Referring to the recognition of professional experience it should be stated that in many cases of employment in the public sector the requirement of seniority (length of employment) */staz pracy/* may be applied. Usually this requirement does not refer to the experience in a specific profession but generally to the period of employment. Sometimes the experience of being an executive/manager is required.

Such requirements are contained in the regulations issued by the relevant ministers or the Council of Ministers. In practice there are many regulations containing tables of requirements for persons employed in the public sector. If an EU national is allowed to perform a profession (without the requirement of being a Polish national) requirement the conditions of employment are always the same. The seniority has the influence on the remuneration of an employee (seniority bonus) or the leave ceiling. Sometimes the seniority in the public sector only or at a given post is taken into consideration. It depends on the post which is offered. **Such conditions are described in acts or executive regulations which are relevant to given branches and posts. It means that that there is not one general rule on seniority requirement in relation to the recruitment procedure in the public sector. Whereas the Polish citizenship is not required there are not any rules or practice indicating that the nationals from other Member States could be treated in other way than the Polish nationals in relation to their seniority.**

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

Text in force

- Kodeks pracy – Labour Code

As it was stated before if somebody is allowed to take any job/post his/her rights and obligations are the same regardless his/her nationality. The principle of equality is applied in public and private sectors. If any person is employed, his/her nationality has not any influence on his/her situation. The main legal guarantee of the equality in this field is the Labour Code. This issue was described in Chapter III. It seems that some obstacles may (but not must) appear in the process of recruitment but there is not any jurisprudence of the Polish labour courts in this field, so it is difficult to identify any particular problems.

Recent literature:

Dubownik A.: Nowe zasady naboru do służby cywilnej a zasada równego dostępu obywateli do służby publicznej [New principles of recruitment of citizens to the civil service], *Praca i Zabezpieczenie Społeczne* 2006, no 2.

CHAPTER V. MEMBERS OF THE FAMILY**1. Residence rights***Texts in force*

- Ustawa z 13-06-2003 o cudzoziemcach - the Act of 13-06-2003 on aliens
- Ustawa z 14 lipca 2006 o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej - Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members;
- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 24 sierpnia 2006 r. w sprawie wniosków i dokumentów w sprawach prawa pobytu na terytorium Rzeczypospolitej Polskiej obywateli państw członkowskich Unii Europejskiej oraz członków ich rodzin – the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents and referring to right to residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families;
- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 24 sierpnia 2006 r. w sprawie wniosków i dokumentów w sprawach prawa stałego pobytu na terytorium Rzeczypospolitej Polskiej obywateli państw członkowskich Unii Europejskiej oraz członków ich rodzin – the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents and referring to right to permanent residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families;
- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 31-sierpnia 2006 r. w sprawie opłat za wydanie lub wydatowanie zaświadczenia o zarejestrowaniu pobytu obywatela państwa członkowskiego Unii Europejskiej oraz karty pobytu członka rodziny obywatela Unii Europejskiej – the Regulation issued by the Minister of Internal Affairs and Administration of 31 August 2006 on fees for issuance or exchange of the certificate on registration on the EU national's residence or the residence card of a member of his/her family;
- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 31-sierpnia 2006 r. w sprawie opłat za wydanie lub wydatowanie zaświadczenia o potwierdzającym prawo stałego pobytu lub karty stałego pobytu członka rodziny obywatela Unii Europejskiej – the Regulation issued by the Minister of Internal Affairs and Administration of 31 August 2006 on fees for issuance or exchange of the certificate confirming the permanent residence of the EU national's or the permanent residence card of a member of his/her family;
- Ustawa z 7 września 1991 o systemie oświaty¹¹⁸ - the Act of 7 September 1991 on the system of education
- Kodeks postępowania administracyjnego - The Code of Administrative Procedures

In 2006 the law referring to the position of the family members, their right of entry and residence was changed fundamentally. Certainly, the main principles have not been changed and as it was previously, their situation is strictly connected with the position of EU nationals who arrive in Poland with the intention of taking up any occupation or performing economic activity. (This issue has been discussed in the Chapter I).

¹¹⁸ Consolidated text: Journal of Laws [Dziennik Ustaw] 2004, no. 256, item 2572. Two new amendments were adopted in May and June 2005 but they do not refer to EU nationals. The Act of 14 July 2006 amended this Act but the amendment just corrects the wording of the Act on Educational System.

The entry, residence and departure of family members are also regulated by the new Act of 17 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members. According to Article 2 of the Act the family member – shall signify: the spouse, the descendants of the Union citizen who are under the age of 21 or are dependants and those of the spouse or living in the common household with the Union citizen, dependent direct relatives of the Union citizen in the ascending line and those of the spouse or living in the common household with the Union citizen.

In comparison with the previous Act, the new one is much more precise and refers to more practical situations, such as for example marriages of convenience. Moreover, the legal position of family members who are not citizens of an EU Member State has been regulated in details.

Entry

From Article 9 of the Act of 2006 a family member who is not a Union citizen may enter the territory of the Republic of Poland on the grounds of a valid travel document and visa. The obligation to have a visa does not apply to a national of the state, against whom the visa obligation was lifted partially or in whole, pursuant to EC law.¹¹⁹

According to Article 10 a family member who is not a Union citizen shall be issued an entry visa for stay or to join a national of the Member State. He or she shall be refused a visa if his/her personal data is listed in the register of foreign nationals, whose stay in the territory of the Republic of Poland is not welcome.¹²⁰ The decision on visa issuance or refusal is taken by the consul or a commander of Border Guards immediately after the receipt of the application.

A family member who is not an EU national may enter the territory of Poland on the grounds of a valid travel document but, as it was stated in Chapter I, an EU national may produce the ID card.

Residence

Up to 3 months

From Article 15, a family member who is not an EU national may reside within the territory of Poland for a period of 3 months without the need to meet the residence requirements referring to employment, economic activity or education, etc. During this time he/she is obliged to be in the possession of a valid travel document.

Right to residence

According to Article 18 if an EU national has the right to residence described in Articles 16 and 17 (see: Chapter I of this Report), it covers also a family member accompanying him/her in the territory of the Republic of Poland.¹²¹

Usually the most complicated cases arise when the marriage is discontinued (because of death or divorce, etc.). The question is: if and under which circumstances a family member

119 Council Regulation (EC) No. 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ EC L 81 of 21.03.2001, p.1) amended by Council Regulation (EC) No. 2414/2001 of 7 December 2001 amending Regulation (EC) No. 539/2001 (OJ EC L 327 of 12.12.2001, p.1) and Council Regulation (EC) No. 453/2003 of 6 March 2003 amending Regulation (EC) No. 539/2001 (OJ L 69 of 13.03.2003, p.10).

120 On the grounds of Article 124 (4) of the Act of 13 June 2003 on Aliens.

121 If an EU national studies or undergoes vocational training in of Poland the right to residence is granted only to the spouse and dependent children accompanying him/her in the territory of the Republic of Poland.

has the right to stay. The Act of 2006 differs the situation of family members who are EU nationals and who are not. On the basis of Article 19 in the event of divorce, annulment of marriage, death or exit from the territory of Poland of an EU national his/her family member who is a Union citizen shall retain the rights of residence.

Family members who are nationals of the third countries shall retain the right of residence in following cases:

- death of a Union citizen if he/she accompanied him/her in the territory of Poland for a period longer than one year preceding the date of death of the Union citizen;
- divorce, annulment of marriage to an EU national if: the marriage lasted for at least 3 years prior to initiation of the divorce or annulment proceedings, including one year of residence of a Union citizen in the territory of the Republic of Poland, or by agreement between the spouses or by court order, as a former spouse of the Union citizen he/she has custody of a Union citizen's children, or this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting, or by agreement between the spouses or by court order, the former spouse has the right of access to a minor child, provided that the court has ruled that such access must be in the Republic of Poland, and for as long as it is required.

In the event of departure or death of an EU national his/her residing in Poland and enrolling at the educational establishment children and a parent who has actual custody of the children, irrespective of nationality, shall not lose the right of residence if the children residing in Poland are enrolled at an educational establishment or, for the purpose of studying there, until the completion of their studies.

From Article 20 if the residence in the territory of the Republic of Poland of an EU national and his/her family lasts for more than 3 months, a family member who is not a Union citizen is obliged to obtain the Union citizen family member residence card. The residence card of a member of a Union citizen's family shall be issued at the request of the family member who is not a Union citizen. He/she immediately receives a certificate confirming the submission of the request. The residence card of a member of a Union citizen's family shall be issued not later than within 6 months from the date of the submission of the request for its issue or it shall be denied within that time (Articles 21-22).

In accordance with Article 25 the authority which conducts the proceedings is competent to establish whether the marriage to a Union citizen is not a marriage of convenience if:

- one of the spouses has accepted a financial benefit in return for the consent for contracting a marriage, unless it results from a custom established in a given state or a social group;
- the spouses do not fulfill the legal responsibilities arising from the marriage;
- matrimonial cohabitation is not maintained;
- the spouses have never met before their marriage;
- the spouses do not speak a language understood by both;
- the spouses are inconsistent about their respective personal details and about other important circumstances concerning them;
- one or both of the spouses had contracted a marriage of convenience in the past;

If a marriage of convenience is proved the organ may take the decision on refusal of residence card of the Union citizen family member in the case of marriage of convenience (Article 31). It is also possible that such a residence card will be annulled if it has turned out that the marriage of a Union citizen family member who is not a Union citizen was of convenience (article 36).

Generally it may be stated that if a family member who is not an EU national intends to enjoy all the benefits arising from being a spouse or a child of an EU national, he or she

should reside in Poland legally. To some extent such an approach is compatible with the judgement in the *Akrich* case (case C-109/01 *Secretary of State for the Home Department v. Hacene Akrich*). However, there are not any provisions referring to the situation when a spouse of an EU national had resided illegally in another EU State and then moved to Poland.

Right to permanent residence

Article 46 stipulates that the right of permanent residence as obtained by the employee or person working on own behalf on the basis of Article 45¹²² extends to the family member who resides with such person within the territory of Poland, without regard to this person citizenship. In case the employee or person working on own behalf dies during the period of employment or performance of other form of economic activity before obtaining the right of permanent residence on the basis of Article 45 above the family member who resided with such a person within the territory of Republic of Poland on the day of this person's death, the right of permanent residence shall be granted without regard to this person citizenship, if:

- 1) The employee or person working on own behalf resided within the territory of Republic of Poland at least for two years before the death or
- 2) The death of the employee or person working on own behalf was caused by accident or occupational disease.

Analyzing the situation of family members in relation to retaining of the right to permanent residence some differences may be observed.

First, a general rule is set in Article 43 of the Act of 2006. According to this provision a family member who is not a Union citizen shall obtain the right of permanent residence after five years of continuous residence within the territory of Poland with a Union citizen, if all the conditions of residence were fulfilled within this period.

However, a family member who is a third country national, and who has resided within the territory of Poland continuously for a period of five years, and who retained the right of residence despite the death, departure of an EU national or annulment of marriage or divorce, shall be granted the right of permanent residence if he/she fulfils at least one of following conditions:

- he/she is an employee or a self-employed person in the territory of the Republic of Poland
- he/she is covered by the general health insurance or is a person entitled to health insurance or is a person entitled to health insurance benefits on the grounds of the provisions on coordination and is in possession of enough funds to provide for himself/herself and his/her family members in the territory of the Republic of Poland without the need to make use of social insurance benefits;

The same conditions should be fulfilled by a third country national who became a member of the family of a person who fulfils at least one of the above mentioned conditions.

Family members who are EU nationals may retain the right to permanent residence in all the above mentioned cases and if he/she studies or undergoes vocational training in the Republic of Poland and is covered by general health insurance or is a person entitled to health insurance or is a person entitled to health insurance benefits on the grounds of the provisions on coordination.

According to Article 54 a family member of a EU national is obliged to possess a residence card of the Union citizen family member. It confirms this person's right to

122 See Chapter I of the Report.

permanent residence within the territory of the Republic of Poland and enables (together with a relevant travelling document) the multiple crossing of the border of the Republic of Poland without a visa.

Departure

The rules of expulsion in the case of the family members are the same as in the case of the EU migrant workers or persons performing their own economic activity. However, Article 68 of the Act of 2006 is not applied towards non-EU nationals. (Article 68 refers to EU nationals who have lived in Poland for longer than 10 years. They cannot be expelled except for the reason of threat for peace, humanity, independence or defense of the Republic of Poland, or due to terrorist activity.

Current practice

The rules of issuance of the card of residence and card of permanent residence of a family member of a EU national are similar to rules of registration of the EU national and issuance of the appropriate documents for him/her. A family member is obliged to submit the certificates testifying to the ties (for example: marriage certificate, birth certificate) between him/her and the EU national who performs work or economic activity in Poland.

2. Access to work

Text in force

- Ustawa z 20 kwietnia 2004 o promocji zatrudnienia i instytucjach rynku pracy - Act of 20 April 2004 on promotion of employment and institutions of the labour market.

The general rule is that the family members of the EU migrant workers are in the same situation as their spouses, parents or children – the EU nationals in relation to access to work. Their position arises from the fact that they are “the family members”,¹²³ not from their nationality.

That is why the family members of the EU nationals, even those who are not the EU citizens, have the same access to the labour market as their relatives – citizens of the EU Member States. (See: Chapter II of the Report). It should be stressed that the definition of a “family member” in the Act on promotion of employment and institutions of the labour market is compatible with the definition of a family member from the Act of 2006.

3. Access to education (study grants)

Texts in force

- Ustawa z 7 września 1991 o systemie oświaty – the Act of 7 September 1991 on the system of education
- Ustawa z 27 lipca 2005 – prawo o szkolnictwie wyższym – the Act of 27 July 2005 on higher education
- Rozporządzenie Ministra Edukacji Narodowej z 4 października 2001 w sprawie przyjmowania osób nie będących obywatelami polskimi do publicznych przedszkoli,

¹²³ However, it must be remembered that in the light of the Polish law the unmarried couples and the same – sex couples are not recognised as “family”.

- szkół, zakładów kształcenia nauczycieli placówek¹²⁴ - the Regulation of 4 October 2001 issued by the Minister of Education on admission of persons who are not Polish citizens to public nursery schools, schools and educational institutions for teachers
- Rozporządzenie Ministra Edukacji Narodowej i Sportu z dnia 3 czerwca 2005 r. w sprawie nostryfikacji stopni naukowych i stopni w zakresie sztuki uzyskanych za granicą¹²⁵ - the Regulation of 3 June 2005 of the Minister of National Education and Sport on the nostrification of academic degrees and degrees in the scope of art obtained abroad.
 - Rozporządzenie Ministra Edukacji Narodowej z 6 kwietnia 2006 w sprawie nostryfikacji świadectw szkolnych I świadectw maturalnych uzyskanych za granicą¹²⁶ - the Regulation of the Minister of Education and Science on the Nostrification of School Certificates and Maturity Certificates Obtained Abroad of 6 April 2006.

It should be also noticed that there were not any changes in the Polish law in this field of education in 2006. According to Article 94a, sect. 2, paragraph 1 of the Act of 7 September 1991 on the system of education EU nationals and members of their families (regardless their nationality) are allowed to attend all kinds of public schools (nursery schools, primary, secondary schools – lower as well as upper, artistic schools and special schools for teachers) on the same basis as for Polish citizens. It should be stressed that third country nationals (except recognized refugees and asylum seekers in procedure on granting the refugee status¹²⁷) may attend public schools on the same basis as Polish nationals only at nursery school, primary school and the lower–secondary school levels. This restriction means that EU nationals and members of their families are privileged.

Also Article 94a, sect. 4 requires local administration to organize Polish language lessons for persons who are not Polish citizens but are required to be educated if their language capability is not sufficient to participate in lessons at schools. The details of arrangements of this kind of additional education are determined by the Regulation of 4 October 2001 issued by the Minister of Education on admission of persons who are not Polish citizens to public nursery schools, schools and educational institutions for teachers. Paragraph 6 of the Regulation relating to courses¹²⁸ teaching the Polish language and coaching¹²⁹ became law on the day of Poland's accession to the EU, so it was adopted mainly in favour of EU nationals.

It may be added that there are not any special public schools in Poland for children of migrant workers because as for now the number of legal migrant workers is still not significant.¹³⁰

Worth mentioning is the Regulation of the Minister of Education and Science on the Nostrification of School Certificates and Maturity Certificates Obtained Abroad of 6 April 2006. According to this Regulation any school certificate obtained abroad has to be legalized in the country in which it was issued and then presented to the local educational authority (kuratorium oświaty) in Poland in order to be nostrified (recognised). It means that the

124 Journal of Laws [Dziennik Ustaw] 2001, no. 131, item 1458.

125 Journal of Laws [Dziennik Ustaw] 2005, no. 104, item 874.

126 Journal of Laws [Dziennik Ustaw] 2006, no. 63, item 443.

127 In this the Polish law has become more favourable for asylum seekers due to the transition of the directive on reception of 2003.

128 When there are at least 15 participants.

129 When there are fewer than 15 participants.

130 Nationals of Slovakia, Germany, Lithuania, and Czech Republic are in a better situation. They have the possibility to attend minority schools where they are taught in their mother tongue or at least the special courses of their languages are organized. The minority schools are State/public schools. However, in practice there are not many minority schools in Poland. They depend on a number of national minorities living in Poland and therefore they are usually situated near borders.

schools certificates are not recognized automatically. They must be recognized by a competent authority.¹³¹

Foreign scientific degrees are recognized in Poland on the basis of the Regulation of the Minister of National Education and Sport on the nostrification of academic degrees and degrees in the scope of art obtained abroad of 3 June 2005.¹³² The procedure of recognition is similar to that of higher education diplomas. Bodies which can nostrificate academic degrees are the councils of faculties which are entitled to award the degree of *doktor habilitowany*.

4. Other issues concerning equal treatment (social and tax advantages)

The fact of being a family member of the EU national in the meaning of the Directive 2004/38 means that the family members (also third – country nationals) are treated as their spouses or parents – the EU nationals in relation to social security, taxes and other other fields.

Recent literature:

- J. Barcz & I. Kolowca (eds), *Przestrzen wolności bezpieczeństwa i sprawiedliwości. Wybór dokumentów* [Area of freedom, security and justice. Compilation of documents], Warszawa 2006.
- J. Bijak & I. Korys, *Statistics or Reality? International Migration in Poland*. Accesible on <http://migracje.uw.edu.pl>
- J. Chlebny (ed.), *Prawo o cudzoziemcach. Komentarz* [Law on Aliens. Commentary], Warsaw 2006.
- Poland and Schengen – Last Lap or the Beginning of a Difficult Climbing?*, Warszawa 2006. Accesible on <http://wsiw.natolin.edu.pl>
- A. Weinar, *Europeizacja polskiej polityki wobec cudzoziemców 1990-2003* [“Europeisation” of the Poland’s Policy Towards Foreigners 1990 -2003], Warszawa 2006.

131 The author of this Report is also a vice dean at the law faculty and she may confirm that the nostrification procedure is not complicated and candidates for studies with school certificates obtained abroad do not report about any obstacles.

132 Journal of Laws [Dziennik Ustaw] 2005, no. 104, item 874.

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

In 2006 there were not such fundamental judgements as the judgement of the Constitutional Tribunal 11 May 2005 stating that the Accession Treaty as a whole as well as its particular provisions do not break the provisions of the Constitution of Poland. In this judgment the Tribunal did not agree with the argument that the competences of ECJ are in contradiction with the principle of the sovereignty of Poland, the supremacy of the Polish Constitution in the Polish legal system and the position of the Constitutional Tribunal. It concluded that the interpretation of the EC law provided by the ECJ is one of its competences and functions which have been transferred to it by the Member States. The interpretation of the EC law given by the ECJ should respect the principle of mutual loyalty of the EU institutions and the institution of the Member States. It means that the ECJ should foster the internal legal systems and, on the other hand, the Member States should preserve the highest standard of respecting the EC norms.¹³³

This judgment of the Tribunal of 2005 has not been just a dead letter. The amendment of the Act on the tax ordination of 16 November 2006¹³⁴ is the best example of the consequence of the above mentioned judgment. The new provision has been introduced into the tax ordination. Article 14 a states that the minister responsible for the financial matters endeavours to ensure the uniform application of the tax law by the fiscal organs and is obliged to interpret the tax law in accordance with the courts' jurisprudence, the jurisprudence of the Constitutional Tribunal or the European Court of Justice. It refers to the general interpretations.

It seems to be still too early to assess this above mentioned "respect for EC norms" and the influence of the ECJ judgements on the Polish law and practice, but more and more often the EC law is invoked in the court's judgements.¹³⁵ But the time which has gone from the moment of accession is still short. It is rather difficult to suppose that the legislator in such a short period of time is able to take into consideration the newest judgements issued by the ECJ. Moreover, the number of migrant workers from other Member States is still very low, which means that there are not many judgements of the Polish courts in their cases.

That is why the Polish law, and administrative practice are not comparable with the facts, administrative practice and law considered by the ECJ in cases *Van Lent* (C-232/01) and *Commission v. Denmark* (C-464/02).

The same situation is in the case of the judgement of the ECJ in the *Collins case*, it seems that it is difficult to adjust Mr. Collins' situation to the Polish legal system. As it was stated in the Report of 2005 a person in the circumstances of Mr. Collins could not be recognized as a worker in the meaning of the Act 2002 on the principles and conditions of entry and residence of nationals of the Member States of the European Union and members of their families within the territory of the Republic of Poland. It seems that he cannot be recognized as a migrant worker in the light of the new Act of 2006. It would be very difficult to grant him any jobseeker's allowance due to the Act of 2004 on promotion of employment and institutions of the labour market because such allowance may be paid only for a person who has "worked out" the right to such financial assistance. There would be not any discrimination towards him, because each job seeker should work in Poland or in another

133 The judgement published Journal of Laws [Dziennik Ustaw] 2005, no. 86, item 744. The text in English is also accessible at the Tribunal's web page: http://www.trybunal.gov.pl/eng/summaries/wstep_gb.htm.

134 Journal of Laws [Dziennik Ustaw] 2006, no. 217, item 1590.

135 For example the regional court in Katowice dismissed a claim pharmacists against the company selling medications via internet. It is against the Polish law but the court in its judgement invoked the supremacy of the EC law in this case (Judgement of 12-02-2007).

EU country for a specified period if he/she wants to obtain the right to unemployment allowance. However, it is not excluded that he could apply for the other kind of assistance (not financial) in seeking any job.

It is very possible that in a case similar to *Trojani*, the Polish court would submit the preliminary question to the ECJ because it is difficult to assess the “nature” of the job/service performed by Mr. Trojani. In the light of the Act of 2006 (like the old Act) it would be difficult to provide him with a residence permit and in consequence the right to social assistance.

It would also be difficult to assess a situation similar to the *Ioannidis* case, because there are not any relevant provisions in the Polish law which subject the allowance for a person seeking her/his first job to the condition of graduating from a grammar school in Poland.

However, it is very possible that the ECJ judgements in cases *Simutenkov* (C-265/03) and *Kolpak* (C-438/00) had an influence on changes introduced into the mentioned in Chapter II Resolution of the Polish Football Union Board of June 2006. Previously, as it was noticed in Report of 2005 this Regulation restricted the number of players from non-EU countries, not the EU nationals. The amended Regulation does not contain any limits for EU and non-EU players.

Moreover, it may be observed that more and more often the ECJ jurisprudence is invoked in the explanatory reports for the new law adopted by the Parliament or the government, for example like in case of the mentioned in Chapter II the Regulation of the Ministry of Labour and Social Policy exempting in certain circumstances the obligation to obtain the work permit. The ECJ judgments in *Rush Portuguesa* (C-113/89) and *Van der Elst* (C-43/93) cases were invoked.

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

Texts in force

- Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 - Constitution of the Republic of Poland 2 April 1997
- Kodeks pracy z 24 czerwca 1974- the Labour Code of 24 June 1974
- Ustawa z 15 lutego 1962 o obywatelstwie polskim¹³⁶ - the Act of 15 February 1962 on Polish citizenship
- Ustawa z 24 Marca 1920 o nabywaniu nieruchomości przez cudzoziemców¹³⁷ - the Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners;
- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z 26 kwietnia 2004 w sprawie szczegółowych informacji oraz rodzajów dokumentów, jakie jest obowiązany przedstawić cudzoziemiec ubiegający się o wydanie zezwolenia na nabycie nieruchomości¹³⁸ - the Regulation of Minister of Internal Affairs and Administration of 26 April 2004 on detailed information and types of documents, which a foreigner, applying for a permission to purchase real estate, is obliged to present

The main principles of non discrimination contained in the Polish law were not changed in 2006. The relevant provisions of the Labour Code and the Act on promotion of employment and institutions of the labour market of 2004 and other acts of labour law forbidding discriminatory practices have remained the same. However, it seems that the practices of the administrative bodies on counteracting discrimination in various fields may be assessed as rather limited or at least less active as it was in previous years.

Referring to the acquisition of citizenship it should be noticed that the Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members of 2006 introduced changes into the Act of 15 February 1962 on Polish citizenship. Presently binding Article 8 (1) shall read as follows:

“1. A foreign national may be granted Polish citizenship on his/her request if he/she has been living in the territory of the Republic of Poland for at least 5 years pursuant to the permit to settle, long-term resident’s EC residence permit or having the right of permanent residence.”

The permanent residence may obtain only an EU national or his/her family member after 5 years of possessing the right to residence. Outwardly it may seem that the situation of the EU nationals and their family members is the same as other groups of foreigners in respect to acquisition of nationality but in practice it may¹³⁹ turn out that in case of the EU nationals obtaining the Polish citizenship take much less time. In practice non-EU nationals should possess other kinds of visas before they obtain the permit to settle, so in fact it takes much more time than 5 years to obtain the Polish citizenship. In case of the EU nationals there are not any obstacles to apply for the Polish citizenship just after the obtaining of the right to permanent residence.

Another act which may be important for foreigners intending to come and settle down in Poland is the Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners.

¹³⁶ Journal of Laws [Dziennik Ustaw] 2000, no. 28, item 353. Amendments to the consolidated Act have been published in Dz.U. of 2001 No. 42, item 475, of 2003, no. 128, item 1175 and of 2005, no. 94, item 788.

¹³⁷ Consolidated text in: Journal of Laws [Dziennik Ustaw] 2004, no. 167, item 1758.

¹³⁸ Journal of Laws [Dziennik Ustaw] 2004, no. 94, item 925.

¹³⁹ However, it will be possible to check if really it takes less time in more or less 5 years.

Following Poland's accession to the EU it has been amended, but there are some important restrictions. According to the last amendments of 2004 the EU nationals and the EEA nationals are not obliged to obtain the permit to buy a flat or a house, except the second house within 5 years since Poland's accession to the EU and land except the agricultural and forest real estate, during a period of 12 years after the Republic of Poland's accession to the European Union.

It should also be added that it is not obligatory for citizens of EU and EEA Member States to obtain a permit in the case of the acquisition of a second house if the buyer has legally been continuously residing for at least 4 years in the territory of the Republic of Poland or buys the second house in order to conduct economic activities involving the provision of tourist services.

In comparison with the situation of the non-EU nationals, the situation of the EU nationals is better, for example they are not obliged to obtain a permit if they want to buy the real estate in the border zone.

Practical details for the acquisition of a real estate are contained in the Regulation of Minister of Internal Affairs and Administration of 26 April 2004¹⁴⁰ on detailed information and types of documents, which a foreigner, applying for a permission to purchase real estate, is obliged to present.

Recent literature

J.J. Skoczylas, *Cywilnoprawny obrót nieruchomościami przez cudzoziemców (po wejściu Polski do Unii Europejskiej)* [Foreigners' conduct of civil law transactions on real estate], Warszawa 2005

Migracje półtora roku po akcesji [Migration - one and half year after accession], in: *Migracje. Szansa czy zagrożenie?* [Migration chance or challenge?], Warsaw: Instytut Badan nad Gospodarka Rynkowa (Institute for Markets Economics) 2005.

¹⁴⁰ Regulation of the Minister of Internal Affairs and Administration of 23 November 2004 on procedure and detailed principles of conducting registers of real estate, shares and stocks relinquished or taken over by foreigners [Rozporządzenie Rady Ministrów z dnia 23 listopada 2004 r. w sprawie trybu postępowania i szczegółowych zasad prowadzenia rejestrów nieruchomości, udziałów i akcji nabytych lub objętych przez cudzoziemców]. *Journal of Laws [Dziennik Ustaw]* 2004, no. 255, item 2556.

CHAPTER VIII. EU ENLARGEMENT

1. Information on transitional arrangements regarding EU 8

The year 2006 did not bring any fundamental changes in the field of the “EU enlargement” because the transitional rules were still in force. In 2006 Poland was still waiting for the abolishing of the transitional periods by 12 “old” Member States. From 1st of May 2006 four Member States -Finland, Greece, Portugal, Spain decided to abolish the transitional periods in relation to employment of the Polish nationals. Italy adopted the relevant rules in July 2006. France, Belgium, Denmark and the Nederland softened the rules on work permits for Poles and others EU nationals from the “new Member States”. Germany, Austria and Luxemburg remained the transitioned periods¹⁴¹. It entailed changes in the Polish law as well because Poland applied the same rules on employment according to principle of reciprocity. As the consequence of this principle the three regulations were issued by the Minister of Labour and Social Policy were adopted on 21 July 2006 - the Regulation on the scope of restrictions on the undertaking of work by foreigners within the territory of the Republic of Poland, the Regulation relating to cases of the promise and permission for a foreigner to work being issued by Voivode regardless of either the situation in the local labour market or the criteria for issuing promises and work permits for foreigners (so called “the Simplified Regulation”) and the Regulation on procedure and conditions of issuance of work permits for foreigners was adopted¹⁴².

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

As it was stated in the Introduction the tendency to abolish the restrictions in the access to the Polish labour market may be observed in 2006. This tendency was justified by rather low number of the EU nationals arriving to Poland in order to take up any work. The first sign of the future was issuance of the mentioned in Chapter II Regulation of the Minister of Labour and Social Policy of 30 August 2006 on performance of work by foreigners without necessity to obtain the work permits.

Indeed in January 2007 Poland abolished all the restrictions in access to employment, even for citizens of Germany and Austria which introduced the severest restrictions for the Polish workers. Concluding, it may be stated that the year 2006 was the last year of the principle of reciprocity in the field of the access to the labour market. As it was stated in Chapter II the first time the citizens of Turkey and members of their families were mentioned in the Regulation issued by the Minister of Labour and Social Policy on performance of work without necessity to obtain by foreigners the work permit entered into force. The Regulation refers to all kinds of foreigners not only to the EU citizens. According to this Regulation they are in group of foreigners who are exempted from the obligation to possess work permits if they have been living in Poland for at least 5 years and have been working legally at least for 4 years.

2. Transitional measures for workers from Bulgaria and Romania

Poland decided not to introduce any restrictions for the citizens of Bulgaria and Romania because the big flow of migrant workers from these countries is not predicted. In 2006 only 168 permits for work for Bulgarian and Romanian nationals were issued.¹⁴³ However, the number of migrants from these States working illegally is unknown, of course. On the other hand, taking into consideration that the

¹⁴¹ The United Kingdom, Ireland and Sweden opened their labour markets on 1 May 2004.

¹⁴² See: Chapter II Access to employment.

¹⁴³ The announcement of the Minister of Labour

emigration from Poland to other EU countries is still very high, remaining the restrictions in access to employment could be a disadvantage for the labour market.

Recent literature:

- K. Iglicka, *Kierunki rozwoju polskiej polityki migracyjnej w ramach obszaru legalnej migracji pracowniczej na lata 2007-2012* [Trends in development of the Polish migration policy in area of the legal migration of workers], Warszawa 2007.
- J. Shumylo, *The Debate on the EU Membership Prospects of Ukraine*, Warsaw 2007.
- P. Kaczmarczyk & M. Okólski, *Migracje specjalistów wysokiej klasy, w kontekście członkostwa Polski w Unii Europejskiej* [Migration of the High Qualified Specialists in the Context of the Poland's EU Membership], Urząd Komitetu Integracji Europejskiej Departament Analiz i Strategii, Warszawa 2005.
- Pierwszy rok członkostwa Polski, Republiki Czeskiej oraz Republiki Litewskiej w Unii Europejskiej* [The First Year of the Membership of Poland, Czech Republic and Lithuania in the EU], Katowice 2005.
- K. Smyk, *Konsekwencje przystąpienia Turcji dla procesu decyzyjnego w Unii Europejskiej* [Consequences of the Accession of Turkey for the Decision Making Process in the EU], UKIE 2005.

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CHAPTER IX. STATISTICS

Citizenship	Total number of the issued work permits	Total												
		Groups of workers				Groups of selected professions								
		Managers and experts		Skilled workers	Unskilled workers	Computer programmers	Lawyers	Artists	Medical professions	Including		Teachers	Language teachers	Delegated workers
		total	Members of boards in companies							Doctors	Nurses midwives			
Austria	37	28	2	0	0	0	2	0	0	0	0	1	0	0
Belgium	20	13	0	0	0	1	0	0	0	0	0	2	2	0
Denmark	48	28	2	7	1	1	0	0	0	0	0	1	0	1
Finland	9	8	0	0	0	1	0	0	0	0	0	0	0	0
France	294	181	3	27	1	12	5	7	1	1	0	10	7	36
Germany	281	178	7	57	2	2	4	4	1	1	0	10	6	14
Greece	7	5	0	1	0	0	0	1	0	0	0	2	2	
Italy	76	44	2	6	0	5	0	2	0	0	0	0	0	4
Luxemburg	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Holland	61	39	1	9	0	1	1	0	0	0	0	3	1	0
Portugal	15	2	0	1	0	1	0	1	0	0	0	0	0	0
Spain	22	13	0	1	0	1	0	0	0	0	0	3	0	0
Norway	19	4	0	2	0	1	0	1	0	0	0	0	0	0
Switzerland	14	11	3	0	1	0	0	0	0	0	0	0	0	3
Bulgaria	107	49	22	10	34	2	0	1	0	0	0	1	0	0
Romania	69	32	4	3	0	5	0	2	0	0	0	5	1	1

Country of citizenship	Work permits issued in 2006												
	total	manufacturing		constructing		trade	Hotels and restaurants	Real estate, financial agencies	Education		Health care and social welfare	Others	
Austria	37	11		9		8	1	6	2		0	0	
Belgium	20	10		0		1	0	3	1		0	5	
Denmark	48	23		1		8	1	9	0		0	6	
Finland	9	3		0		3	0	2	0		0	1	
France	294	125		18		64	11	40	6		10	20	
Germany	281	145		21		26	6	45	10		1	27	
Greece	7	1		0		1	1	2	2		0	0	
Italy	76	33		2		1	1	25	2		0	12	
Luxemburg	0	0		0		0	0	0	0		0	0	
Netherlands	61	19		0		11	2	21	2		0	6	
Portugal	15	8		4		0	0	1	0		0	2	
Spain	22	5		4		4	0	2	1		0	6	
Total:	880	383		59		127	23	176	26		11	85	
Norway	5	1		0		1	0	0	0		0	3	
Switzerland	10	4		0		4	1	1	0		0	0	
Bulgaria	107	6		0		78	6	4	0		0	19	
Romania	69	20		2		17	1	13	5		0	11	
Turkey	503	117		32		148	154	22	7		0	23	
Turkey	503	231	94	185	27	4	0	0	0	0	4	2	64

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In 2006 the Polish authorities issued 10 754 work permits. The EU nationals who applied and received the work permits consist only 8,18% of total number of foreigners working in Poland. It means that as it was stated in the previous reports, comparing with the other EU Member States it is not a significant number of the EU nationals who intend to take up the work in Poland. Relatively low salaries are one of the main reasons for this. In the light of the accession of Romania and Bulgaria to the EU on 1st January 2007, it should be noticed that not many citizens of these countries were interested in working in Poland.

The tables above refer only to the EU, EEA, EFTA and Turkey nationals who applied for the work permits in 2006. The Ministry of Labour and Social Science is not in possession of the statistics on the number of foreigners who were not obliged to obtain work permits. However, it should be assumed that the number of the other EU nationals who take up their work without any permission in Poland is comparable. But it must be remembered that the statistics take into account the EU nationals who have started their job in 2006 but it must be remembered that there are foreigners who came to Poland in previous years and their work permits were still valid in 2006. That is why it should be concluded that the number of migrant workers in Poland is growing all the time.

However, Poland is still more attractive for citizens of the third countries mainly Russia, Byelorussia, Ukraine (the biggest group – 3,275 work permits issued for them in 2006), Viet Nam, Turkey, China and India.

Unfortunately it is not possible to provide the full statistics referring to issuance of the documents legalising the residence of the EU nationals and members of their families in Poland in 2006. The accessible statistical data refers only to the residence permits issued in period from January to August 2006 on the basis of the Act of 27 July 2002. However it seems that even the incomplete statistics may show the general situation in this field. According to them during 8 months the EU/EEA/EFTA nationals and members of their families submitted 6,713 applications for residence permits. The Polish organs took positive decisions in 6,562 cases. There were 3 negative decisions and 148 decisions on discontinuation of the procedure. There were only 12 applications submitted by the family members who came from third countries (from Moldova, Ukraine, Russia, Belarus and Iraq). All the decisions in their cases were positive.

As usual Germans are the biggest group who applied for permits in 2006. During the discussed period 4,144 German citizens obtained the residence permits. French citizens – 441, British citizens – 384, citizens of Italy – 229, Dutch citizens – 202, citizens of Sweden – 178, citizens of Austria – 167, citizens of Lithuania – 106, citizens of the Czech Republic – 87, Danish citizens – 100, citizens of Belgium – 71, Spanish citizens – 71, Slovak citizens – 67, Greek citizens – 44, citizens of Portugal – 62, Greek citizens – 44, Irish citizens – 30, Hungarian citizens – 27, citizen of Finland – 23, citizens of Latvia – 16. There were also a few decisions in cases of other EU nationals and 51 positive decisions in Norwegian cases, 28 in cases of Swiss citizens and 1 positive decision in case of a citizen of Iceland¹⁴⁴.

Worth mentioning is that during the period of 8 months 909 the EU/EEA/EFTA nationals and members of their families obtained the temporary residence permits.

Analysing these numbers and average number of decisions taken every month it may be stated that in 2006 about 10,000 EU nationals applied for legalisation of their residence in Poland and almost all their applications were accepted.

144 Information from the Office for Foreigners.

CHAPTER X. SOCIAL SECURITY*Texts in force*

- Kodeks pracy - Labour Code
- Ustawa z 20 grudnia 1990 o ubezpieczeniu społecznym rolników¹⁴⁵ - the Act of 20 December 1990 on social insurance of farmers;
- Ustawa z 7 grudnia 1998 o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych¹⁴⁶ - the Act of 7 December 1998 on pensions from the Social Insurance Fund ;
- Ustawa z 27 sierpnia 1997 o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych¹⁴⁷ - the Act of 27 August 1997 on vocational and social rehabilitation and employment of disabled persons;
- Ustawa z 25 czerwca 1999 o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa¹⁴⁸ - the Act of 25 June 1999 on cash social insurance benefits in respect of sickness and maternity
- Ustawa z 30 października 2002 o ubezpieczeniu społecznym z tytułu wypadków przy pracy i chorób zawodowych¹⁴⁹ - the Act of 30 October 2002 on social insurance in respect of accidents at work and occupational diseases;
- Ustawa z 27 sierpnia 2004 o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych¹⁵⁰ - the Act of 27 August 2004 on the health care service financed from the public sources;
- Ustawa z 27 sierpnia 2003 o rencie socjalnej¹⁵¹ - Act of 27 June 2003 on social benefit;
- Ustawa z 28 listopada 2003 o świadczeniach rodzinnych¹⁵² - the Act of 28 November 2003 on family benefits;
- Ustawa z 12 marca 2004 z o pomocy społecznej¹⁵³ - the Act of 12 March 2004 on social assistance;
- Ustawa z 20 kwietnia 2004 o promocji zatrudnienia i instytucjach rynku pracy - the Act of 20 April 2004 on promotion of employment and the institutions of labour;

Comparing the situation in the field of social security in 2004 and 2005 it may be stated that it has not changed much. Several amendments to the above-mentioned acts have been adopted but they do not have any influence on the whole system and the situation of EU nationals. The Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member

145 Uniform text in: Journal of Laws [Dziennik Ustaw] 1998, no. 7, item 25 with subsequent amendments. The last amendment introduced by the Act of 23 March 2006 on amendment of the Act social insurance of farmers and other acts. Journal of Laws [Dziennik Ustaw] 2006, no. 75, item 519. The amendment does not refer directly to the situation of the EU nationals.

146 Journal of Laws [Dziennik Ustaw] 2004, no. 39, item 353 with subsequent amendments. There were 3 amendments of this Act in 2006 but they have not referred to the situation of the EU nationals.

147 Journal of Laws [Dziennik Ustaw] 1997, no. 123, item 776 with subsequent amendments. The amendment of 24-02-2006 have not any influence on the situation of the EU nationals.

148 Uniform text Journal of Laws [Dziennik Ustaw] 2005, no. 31 item 267 with subsequent amendments. The last amendment of 2006 amendment refers, among others, to the length of the maternity relief. Journal of Laws [Dziennik Ustaw] 2006, no. 221, item 1615.

149 Journal of Laws [Dziennik Ustaw] 2002, no. 199, item 1673 with subsequent amendments. The Act was amended in 2006 by the Act implementing the Directive of the Council and EP 2002/74/EC on the protection of employees claims in situation of the employers bankruptcy.

150 Journal of Laws [Dziennik Ustaw] 2004, no. 210, item 2135. The amendment of 2006 does not refer to the situation of the EU nationals.

151 Uniform text: Journal of Laws [Dziennik Ustaw] 2006, no. 139, item 992.

152 Journal of Laws [Dziennik Ustaw] 2003, no. 228, item 2255.

153 Journal of Laws [Dziennik Ustaw] 2004, no. 64, item 593. There were 5 amendments of this Act in 2006 but the main changes relating the EU nationals were introduced by the described above Act of 14 June 2006.

States and their family members introduced some amendments to the relevant acts but they are connected with the new wording which is used by the Act of 2006 – the EU nationals’ “right to residence” and the “right to permanent residence”.

As it was stated in the previous reports since the EU coordination system (Regulations 1408/71, 574/72 and the new Regulation 883/2004) does not introduce common “social security law” but is a set of standards which provide for avoiding conflicts between the national systems in this area. In Poland the most important role in this field plays the Act of 2004 on promotion of employment and the institutions of labour market (amended by the Act of 2006). It indicates the bodies and institutions as well as their tasks in the area of coordination systems for social security and free movement of workers. The tasks are divided between the Minister of Labour and Social Policy and the local self-government of districts (*powiat*) and voivodeships (*województwa*).

Unemployment

The Minister of Labour and Social Policy is a liaison institution in the area of unemployment benefits. Also the Minister has the authority to take decisions on appeals against decisions made by the marshals of voivodeships (*marszałkowie województw*) who are the bodies first contacted for granting unemployment benefits for EU nationals.

Apart from taking decisions on unemployment benefits, the tasks of local self-governments concerning labour market policy also comprise other functions connected with Poland’s participation in the coordination systems of social security and participation in the EURES network as well as performing other tasks arising from the principle of free movement of workers within EU Member States and EAA States which are bound with EC by appropriate agreements (Article 8 sect. 1 (8-9) of the Act of 2004 on promotion of employment and the institutions of labour).

According to Article 9 sect. 1 (15 and 16) the Act on promotion of employment and the institutions of labour, district self-government is obliged to carry out such tasks as, *inter alia*, paying unemployment benefits to EU nationals, thus implementing the decisions taken by the marshals of voivodeships.

Article 71 sect. 7 and Article 75 sect. 4 refer to the rules of EC law on obtaining the right to unemployment benefits. These benefits are paid to EU nationals based on EC regulations.

For unemployed persons, the provisions on social assistance are of special significance. Article 5 of the Act on social assistance of 12 March 2004 stipulates that citizens of EU Member States as well as EEA Member States have the right to social assistance (*inter alia*, cash allowances or allowances *in re*) in Poland. Social assistance is also provided by local self-governments. It seems that in this case it is possible to find the relation between 1408/71 and 1612/68 because even if the EU nationals cannot in these area enjoy the coordination system due to regulation 1408/71, they may receive any social assistance (as well as the social pension) if they are in need according to 1612/68.

The rules of granting the social assistance are contained in the Act of social assistance of 2004 which was amended in 2006 by the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members. Article 5 sec. 3 describes the groups of foreigners entitled the social assistance. After the amendment this group consists of “the nationals of European Union Member States, States of the European Economic Area which are not Member State of the European Union or States that are not party to the Agreement on the European Economic Area who may enjoy free movement of persons on the basis of agreements signed by these countries with the European Community and its Member States residing and staying in the territory of the Republic of Poland, having the right of residence or right of permanent residence in the territory of the Republic of Poland”.

Family benefits

The other Act which directly determines the tasks of institutions within the European coordination systems on social security is the Act of 28 November 2003 on family benefits, in Article 21. But most importantly, Article 1 sect. 1 states that Polish citizens and aliens who are nationals of EU Member and EAA States are entitled to the benefits stipulated in the Act, meaning the family allowance (with other connected benefits) and the care benefit and other benefits. Article 1 sect. 2 p. 2 confirms *expressis verbis* the application of the principle of non-discrimination with respect to family benefits (family allowances with supplements and care benefits). Act of 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members redefined the group of foreigners entitled to the family benefits in the analogous way to the Act on social assistance.

Incapacity for work

Regarding incapacity for work, the following institutions are authorised to consider applications for pensions and disability pensions according to the EC coordination system:

- a. Zakład Ubezpieczeń Społecznych (ZUS) Social Insurance Institution - for former employees or persons who conducted their own economic activity (except for farmers)
- b. Kasa Rolniczego Ubezpieczenia Społecznego (KRUS) – Agricultural Social Insurance Institution - for farmers. Farmers are granted their respective rights and benefits in accordance with the Act of 20 December 1990 on social insurance of farmers
Special rules apply to insurance of the so-called “uniform services”. There are also special institutions making decisions on their behalf.
Wojskowe Biuro Emerytalne w Warszawie – Military Pension Office in Warsaw for soldiers in professional service
- c. Zakład Emerytalno-Rentowy Ministerstwa Spraw Wewnętrznych i Administracji Pension Institution of the Ministry of Internal Affairs and Administration for officers of agencies of State authority and administration (e.g. Police, Border Guard, security agencies, Fire Brigade, etc.)
- d. Biuro Emerytalne Służby Więziennej – Pension Office of the Penitentiary Service in Warsaw for officers of the Penitentiary Service.

The Ministry of Justice is responsible for the social security of judges and public prosecutors.

Requirements for eligibility for pensions in Poland (because of the universal system) by EU nationals are determined in the Act of 7 December 1998 r. on pensions from the Social Insurance Fund [ustawa o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych].¹⁵⁴ These requirements are modified by Regulations 1408/71 and 574/72.

These benefits include: old-age pension, disability pension (also training pension), dependants' pension, nursing supplement to pensions, supplement to survivors' pensions for complete orphans¹⁵⁵ and death grant.

However, the requirements for eligibility for Polish pensions from work accidents or occupational disease and the amount of such pensions are determined in the Act of 20 October 2002 on social insurance in respect of accidents at work and occupational diseases.

¹⁵⁴ Journal of Laws [Dziennik Ustaw] 2004, no. 39, item 353 with subsequent amendments.

¹⁵⁵ In the case of orphans applying for the Polish pension for orphans, they will obtain such a pension if their deceased parent was at some time subject to the law of another EU State but that law does not grant such pensions (there are for example special allowances for orphans or pensions for dependants).

EU nationals who have worked in Poland, or in Poland and in other EU States, should apply for pensions (arising from the coordination system) to one of the branches of the Social Insurance Institution.

It is worth mentioning that the vocational and social rehabilitation and employment of disabled persons takes place on the basis of the Act of 27 August 1997 on vocational and social rehabilitation and employment of disabled persons.

Pension scheme

The pension scheme (introduced in 1999) is based on the correlation between the amount of benefit and the amount of contribution actually paid. The currently binding old age pension scheme covers persons who on the day of its entry into force (1 January 1999) have not reached the age of 50. For persons under 30 years of age, participation in the first (pay-as-you-go) pillar and the second (funded) one is compulsory. Persons between 30 and 50 years of age had an opportunity to decide whether they should stay within the previous modified first pillar (pay-as-you-go) and also join the second pillar (they should have taken such a decision by 31 December 1999).

The first pillar is managed by the Social Insurance Institution. The second pillar is managed by private institutions (open pension funds). There is also the third pillar. It has a voluntary character and aims at ensuring above-standard benefits for an additional contribution. It consists mainly of occupational pension programs.

According to the information provided by the Social Insurance Institution,¹⁵⁶ the amount of the old age pension is an equivalent of the number of contributions after indexation (collected after 31 December 1998) and the number of the so called initial capital after indexation divided by the average life expectancy, expressed in months, for persons at the age equal to the retirement age of a given person applying for the pension.

Worth mentioning is the fact that the old-age pensions are granted to women who reached at least 60 years of age and to men of at least 65 years of age. There were not any amendments introduced to this system in 2006.

Other benefits

Also, the coordination of social security systems comprise:

- a. maternity allowances
- b. sickness allowances
- c. rehabilitation benefits
- d. care benefits.

The issue of remuneration for a time of inability to work, up to 33 days in a calendar year, is regulated by Article 92 of the Labour Code. Where an inability to work lasts a total of more than 33 days in a calendar year, an employee shall be entitled to sickness benefits.

These matters are regulated in the Act of 25 June 1999 on cash social insurance benefits in respect of sickness and maternity and in the mentioned Act of 20 October 2002 on social insurance in respect of accidents at work and occupational diseases.

From 1 May 2004 EU nationals (and EEA) as well as members of their families in accordance with the Act of 23 January 2003 on universal health insurance in the National Health Fund may be insured in this Fund if they perform legal work or carry out any economic activity, even if they, or members of their families, do not live within the territory

¹⁵⁶ *Social Insurance in Poland. Information, facts.* (Ed. A.Ledkiewicz, B.Radzik - Kazenas) Social Insurance Institution. Warsaw 2004.

of Poland. This is in accordance with the principle *lex loci laboris*. Persons seeking employment are also entitled to this type of insurance (with some restrictions though).

Social pensions

It is worth mentioning that according to Act of 27 June 2003 on social benefit, nationals¹⁵⁷ of other EU States also have the right to such benefits. However, it should be stressed that in Annex X to Regulation 883/2004, Poland excluded these benefits from the principle of the transfer of benefits).

The Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members amended the Act of 27 June 2003 on social benefit. Article 2 sec. 3 describes the groups of foreigners entitled the social benefit and it was amended in the analogous way as relevant provisions of the Acts on family benefits and social assistance.

After the amendment this group consists of “the nationals of European Union Member States, States of the European Economic Area which are not Member State of the European Union or States that are not party to the Agreement on the European Economic Area who may enjoy free movement of persons on the basis of agreements signed by these countries with the European Community and its Member States residing and staying in the territory of the Republic of Poland, having the right of residence or right of permanent residence in the territory of the Republic of Poland”.

Worth mentioning is that in 2006 the petition to the European Parliament was submitted by Anna Krazucka, on behalf of 'Izba Pracodawców Polskich' (the Polish Employers' Association), concerning alleged infringement by the Polish and German authorities of the EU provisions governing social security schemes for employed persons and their families moving within the Community¹⁵⁸. The petitioner maintained that the Polish sickness insurance institution and the German insurance body responsible for cross-border coordination, since 2005 had been systematically disregarding EU rules because of their restrictive policy on the issuing of E 101 forms to wage earners infringing in particular Article 14 of Council Regulation (EC) No. 1408/71 on the application of social security schemes to employed persons and their families moving within the Community and Article 49 of the EC Treaty. She indicated that such a practice was making it very difficult for Polish businesses to offer cross-border services. She called on the European Parliament to make representations to the responsible authorities to ensure that not only the two above-mentioned sickness insurance bodies but also others (Belgian, Dutch and German) cease such restrictive practices. The petition was recognised as admissible in May 2006 and sent to the Commission, however in January 2007 the Commission services did not consider the practice of the Polish and German authorities contrary to existing provisions on posting as contained in Regulation (EEC) No 1408/71 and therefore could not intervene on behalf of the petitioner. Regardless the result of steps taken in this case, the mentioned petition is the first visible sign that the idea of the free movement of workers is better and better known in Poland.

¹⁵⁷ The social pension is granted to adult persons who possess residence permits and who are unable to work because of their disability which emerged by the time a given person was 18 years old, or 25 if they were attending school or university or during doctoral studies (Article 4).

¹⁵⁸ Petition 0188/2006.

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CHAPTER XI. RIGHT OF ESTABLISHMENT, STUDENTS*Texts in force*

- Ustawa z 2 lipca 2004 o swobodzie dzialalnosci gospodarczej¹⁵⁹ - the Act of 2 July 2004 on freedom of economic activity;
- Ustawa z dnia 10 maja 2002 r. o zasadach uznawania nabytych w panstwach czlonkowskich Unii Europejskiej kwalifikacji do podejmowania lub wykonywania niektórych dzialalnosci¹⁶⁰ - the Act of 10 May 2002 on the rules governing the recognition of qualifications acquired in EU Member States for the taking up or pursuit of some of activities
- Rozporzadzenie Ministra Gospodarki i Pracy z dnia 10 lutego 2005 r. w sprawie stazu adaptacyjnego i testu umiejetnosci przeprowadzanych w celu uznania kwalifikacji do podejmowania lub wykonywania niektórych dzialalnosci nalezacych do dzialu gospodarka¹⁶¹ - the Regulation of the Minister of Economy and Labour of 10 February 2005 on the probation periods and the aptitude tests carried out for recognition of qualifications obtained in EU States entitling holders to take up and perform some economic activities
- Rozporzadzenie Ministra Edukacji Narodowej i Sportu z dnia 6 maja 2005 r. w sprawie wzoru formularza skladanego w postepowaniu o uznanie kwalifikacji do podejmowania lub wykonywania niektórych dzialalnosci¹⁶² – the Regulation of the Minister of National Education and Sport of 6 May 2005 on specimen of a form submitted in procedure on recognition of qualification for taking up or performance some activities.
- Ustawa z 27 lipca 2005 - prawo o szkolnictwie wyzszy¹⁶³ - the Act of 27 July 2005 law on higher education;
- Rozporzadzenie Ministra Nauki i Szkolnictwa Wyzszego z dnia 12 pazdziernika 2006 r. w sprawie podejmowania i odbywania przez cudzoziemcow studiow i szkolen oraz ich uczestniczenia w badaniach naukowych i pracach rozwojowych¹⁶⁴ – The Regulation of the Minister of Science and Higher Education of 12 October 2006 on taking up and continuing studies, trainings by foreigners and their participation in scientific research and developing works
- Ustawa z 17 lipca 1998 o pozyczkach i kredytach studenckich¹⁶⁵ - the Act of 17 July 1998 on loans or credit for students.

1. Right of Establishment

As it was stated in the previous reports the principal legal act in the area of establishment is the adopted Act of 2 July 2004 on freedom of economic activity which regulates the issues of taking up economic activity in Poland and the performance and discontinuance of such activity.¹⁶⁶ The Act refers also to provision of services. Moreover it indicates the responsibilities of the State administration in this area. This Act was amended in 2006 by the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European

159 Journal of Laws [Dziennik Ustaw] 2004, no. 173, item 184 with subsequent amendments.

160 Journal of Laws [Dziennik Ustaw] 2002, no. 71, item 655 with subsequent amendments.

161 Journal of Laws [Dziennik Ustaw] 2005, no. 42, item 403.

162 Journal of Laws [Dziennik Ustaw] 2005, no. 90, item 761.

163 Journal of Laws [Dziennik Ustaw] 2005, no. 164, item 1365.

164 Journal of Laws [Dziennik Ustaw] 2006, no. 190, item 1406.

165 Journal of Laws [Dziennik Ustaw] 1998, no. 108, item 685 with subsequent amendments.

166 The chapter on the record keeping (electronic system) of the economic activity will enter into force on 1 January 2007. As for now this matter is regulated by the old law – Act on economic activity Journal of Laws [Dziennik Ustaw] 2001, no. 102, item 1115 with subsequent amended. This Act expired except norms on record keeping of economic activity.

Union Member States and their family members but the amendment has not introduced any principal changes in the way of conducting the economic activity by the EU nationals and their family members. The Act of 2006 introduced changes in wording adjusting the Act on freedom of economic activity to the new form of the EU nationals' residence in Poland ("right to residence" and "the right to permanent residence").

It means that Article 13 of the Act on freedom of economic activity is still the most important norm for a EU citizen who decides to set up his or her economic activity in Poland. Article 13 contains the basic principle of the EC law – the principle of non-discrimination. It means that EU nationals (as well as citizens of Iceland, Liechtenstein, Norway and Switzerland) and legal persons from these countries may take up and carry out their economic activities under the same rules as Polish citizens. They are also allowed to set up branches of their companies according to the same rules as the Polish citizens (chapter VI of the Act). It is impossible in the case of third country nationals or companies.

Foreigners who have obtained refugee status, permission for the tolerated stay (*pobyt tolerowany*) or have been granted temporary protection are in the same situation. In 2005 the long term EU residents were added to this group of foreigners.

However, the scope of the right of establishment of other foreigners depends on bilateral agreements which are *lex specialis* for the general rule contained in Article 13 [3]. According to this provision they are only allowed to take up and perform economic activities in the form of limited liability companies, limited partnerships and mixed shareholding and limited companies.

The other important Act is the Act of 10 May 2002 on the rules governing the recognition of qualifications acquired in EU Member States for the taking up or pursuit of some activities, reflecting the principles mentioned in Chapter VI of this Report, the Act referring to migrant workers from EC countries.¹⁶⁷

Currently the Act has been complemented by five regulations. They regulate matters referring to classification of economic activities and the codes ISIC or NICE of such activities,¹⁶⁸ the information on the scope of the economic activity, its changes and the terms of submission of this information¹⁶⁹ and to a specimen of a form submitted in procedure on recognition of qualification for taking up or performance some activities.¹⁷⁰

One of them appear to be important for EC nationals who want to take up some economic activities in the territory of Poland. Firstly, the Regulation issued by the Minister of Economy and Labour of 10 February 2005 the probation periods and the aptitude tests carried out for recognition of qualifications obtained in EU States entitling holders to take up and perform some economic activities. The Regulations determines the activities¹⁷¹ requiring the probation period or the aptitude test and it contains the details of taking up and carrying the probation period and the rules governing the aptitude test.

There are also a very detailed regulation issued by the Minister of Economy and Labour in 2005¹⁷². It refers to the probation periods and the aptitude tests carried necessary to take up and perform activity of the tourist guide.

167 It implements the Directive 1997/42 /EC.

168 Regulation of the Prime Minister of 7 March 2003. Journal of Laws [Dziennik Ustaw] 2003, no. 51, item 445.

169 Regulation of the Prime Minister of 20 August 2003. Journal of Laws [Dziennik Ustaw] 2003, no. 160, item 1551.

170 The Regulation of the Minister of National Education and Sport of 6 May 2005. Journal of Laws [Dziennik Ustaw] 2005, no. 90, item 761.

171 Usually technical activities connected with heavy industry.

172 Regulation of 25 July 2005 Journal of Laws [Dziennik Ustaw] 2005, no. 151, item 1265.

2. Students

In 2005 the new Act of 27 July 2005 – law on higher education has been adopted. As it was in the case of the Act on freedom of economic activity the law on higher education was amended by the Act by the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members and the amendment has referred only to the wording and definitions of both acts.

The law on higher education stated in Article 43 sec. 3 foreigners having the right to settle down in Poland, who are recognized as refugees or who have obtained temporary protection, migrant workers and nationals of EU (or EAA) Member States and their family members in the meaning of the Act of 2006 and long-term EU residents (this is new), if they live in, and are currently or have been previously employed in, the territory of Poland (and members of their families), may take up and continue their education at university under the same rules as Polish citizens. Such students obviously have the same rights and obligations and follow the same rules of admission to universities as Polish nationals providing that they know the Polish language (it refers to admission to universities and other high schools) . This obligation refers to all types of candidates and arises from the Regulation of the Minister of Science and Higher Education of 12 October 2006 on taking up and continuing studies, trainings by foreigners and their participation in scientific research and developing works. If a foreigner intends to become a student he or she must produce documents certifying that he or she resides in Poland legally, possesses the insurance and his or her state of health allows him/her to take up the studies (it refers also to the Polish candidates). According to the Regulation foreigners may be admitted to various kinds of studies if: they complete the language course or they possess a confirmed certificate of the knowledge of the Polish language or they obtain the confirmation of the admitting higher education institution certifying that their language capacity is sufficient for taking up studies in Polish.

It should be added that The Act – law on higher education obliges universities and other schools to provide lessons in the Polish language for foreign students.

Analyzing the situation of the EU students in Poland it is necessary to mention their possibilities to obtain financial assistance. If EU (or EAA and EFTA) nationals and members of their families possess the financial resources which are sufficient to cover their cost of living during their studies they are allowed to take up (if their language capacity is sufficient) and continue their university education in Poland and have the same rights as Polish citizens except for the right to grants which depend on their social status. However, they may obtain the right to these grants through international agreements, a decision by the Minister of Education (it is not a complicated procedure and many ministerial grants are given) or a decision by a head of a particular school.

All the students are entitled to grants received for their learning achievements (as all the students).

If EU nationals take up studies for which fees are charged (for example part-time studies or evening studies) or attend non-governmental schools, they pay the same tuition fees as Polish students.

Worth mentioning is the Act of 17 July 1998 (still in force) on loans or credit for students. Its Article 6 stipulates that loans or credit may be obtained by students who are Polish citizens, who are migrant workers, EU nationals (or members of their families) who live in Poland or who work in Poland. The main requirement is that they must start their studies before they are 25 years old¹⁷³.

¹⁷³ Seemingly, that accounts for the fact that student in the situation of Mr Bidar (Case C-209/03) would not get any loan or credit in Poland because neither he nor his mother are employed in Poland. Information obtained from the Bank PKO.BP. SA. Loans and credits are granted to students by banks, not by universities.

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The number of students arriving to Poland is growing and it is obvious that more and more diplomas and certificates is recognised (nostrificated) but the statistics in this field are not accessible.

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CHAPTER XII: MISCELLANEOUS

Electronic sources of information and addresses of the institutions

- www.europa.eu.int/eures - EURES
- www.ukie.gov.pl - Office of the European Integration
- www.mpips.gov.pl - Ministry of Labour and Social Policy
- www.praca.gov.pl - web site of the Ministry of Labour and Social Policy dedicated employment
- www.buwiwm.edu.pl - Bureau For Academic Recognition And International Exchange
- <http://www.wsisw.natolin.edu.pl> European Centrum in Natolin
- <http://www.ips.uw.edu.pl> - Institute of Social Policy, Warsaw University
- <http://www.proxenia.org.pl> - Association for integration and protection of aliens on Poland
- <http://www.trybunal.gov.pl/eng/index.htm> - Constitutional Tribunal
- <http://www.nsa.gov.pl> – Supreme Administrative Court
- <http://www.sn.pl> - Supreme Court (in Polish)
- <http://www.sn.pl/english/orzecznictwo/index.html> - Supreme Court (in English)
- <http://www.prawo.lex.pl> - legal server in Polish
- <http://www.migration-news.uw.edu.pl>