

REPORT
on the Free Movement of Workers
in Slovakia in 2007

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Introduction

As the Directive 2004/38/EC was transposed already before 2007, the biggest issue from the legal point of view was the transposition of the Directive 2005/36/EC on recognition of professional qualifications. This directive was transposed into Slovak legislation in May 2007 by the Act No. 293/2007 Coll. on Recognition of Professional Qualifications, which came into force in October 2007.

Although no major changes were made in the law with regard to entry, residence, and departure of workers, positive changes concerning financial issues connected with entry and residence of third country family members were observed, where, as from 1 January 2007, an obligation of a third country family member of an EEA citizen to prove financial coverage for duration of his/her stay when entering the country was deleted from the law, as well as the obligation of a third country family member of an EEA citizen to pay administrative fees for issuing visa.

The Government of Slovakia has decided not to apply any transitional measures with regard to the accession of Bulgaria and Romania into the EU. There was a little debate about this, as the majority of the political parties were of the opinion that it would not be right to apply any measures against Bulgaria and Romania whilst criticising the “old” Members States for doing the same to Slovakia. The decision was also supported by professional studies. According to them, the opening of labour market for Bulgaria and Romania would not pose any threat with regard to position of Slovak citizens in the labour market. Nevertheless, Romania became immediately the country with third largest number of individuals residing in Slovakia (Bulgaria ninth). However, no negative attitudes at all towards allowing access to Slovak labour market for nationals of these countries were observed.

Chapter I

Entry, Residence and Departure

The issues of entry, residence, and departure of foreigners in Slovakia are regulated in the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts, as amended (hereinafter “Foreigners Act”).

Directive 2004/38/EC was transposed into the Slovak legislation at the end of 2005 already by the Act. No 558/2005 amending the Foreigners Act, which was adopted on 8 November 2005 and came into force on 15 December 2005.

A. ENTRY

Texts in force

- zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov¹ – the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts

Amendments of Foreigners Act

- zákon č. 408/2002 Z. z. ktorým sa mení a dopĺňa zákon č. 313/2002 Z. z. o verejnej službe v znení neskorších predpisov a zmene a doplnení niektorých zákonov² – the Act No. 408/2002 Amending the Act No. 313/2002 on Public Service as amended, and on Amendments of some Acts
- zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov³ – the Act. No. 480/2002 on Asylum, and on Amendments of some Acts
- zákon č. 606/2003 Z. z. ktorým sa mení a dopĺňa zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a dopĺňa zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov⁴ – the Act No. 606/2003 Amending the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts as amended and Amending the Act. No. 480/2002 on Asylum, and on Amendments of some Acts
- zákon č. 69/2005 Z. z. ktorým sa mení a dopĺňa zákon č. 171/1993 Z. z. o Policajnom zbore v znení neskorších predpisov a o zmene a doplnení niektorých zákonov⁵ – the Act No. 69/2005 Amending Act No. 171/1993 on the Police Corps as amended, and on Amendments of some Acts
- zákon č. 474/2005 Z. z. o Slovákoch žijúcich v zahraničí a o zmene a doplnení niektorých zákonov⁶ – the Act No. 474/2005 on Slovak Nationals Living Abroad and on Amendments of some Acts
- zákon č. 558/2005 Z. z. ktorým sa mení a dopĺňa zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov⁷ - the Act No. 558/2005 Amending the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts as amended

¹ *Collection of Laws (Zbierka zákonov)*, Vol. 23 (2002).

² *Collection of Laws (Zbierka zákonov)*, Vol. 160 (2002).

³ *Collection of Laws (Zbierka zákonov)*, Vol. 184 (2002).

⁴ *Collection of Laws (Zbierka zákonov)*, Vol. 247 (2003).

⁵ *Collection of Laws (Zbierka zákonov)*, Vol. 32 (2005).

⁶ *Collection of Laws (Zbierka zákonov)*, Vol. 190 (2005).

⁷ *Collection of Laws (Zbierka zákonov)*, Vol. 226 (2005).

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- zákon č. 693/2006 Z. z. ktorým sa mení a dopĺňa zákon č. 48/2002 Z.z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov⁸ – the Act No. 693/2006 Amending the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts as amended and on Amendments of some Acts
- zákon č. 330/2007 Z. z. o registri trestov a o zmene a doplnení niektorých zákonov⁹ – the Act No. 330/2007 on the Criminal Book and on Amendments of some Acts
- zákon č. 342/2007 Z. z., ktorým sa menia a dopĺňajú niektoré zákony v súvislosti so vstupom Slovenskej republiky do Schengenského priestoru¹⁰ – the Act No. 330/2007 amending some Acts with regard to the Entry of Slovak Republic into the Schengen Area
- zákon č. 643/2007 Z. z., ktorým sa mení a dopĺňa zákon č. 480/2002 Z.z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov – the Act No. 643/2007 Amending the Act No. 480/2002 on Asylum and on Amendments of some Acts as amended, and on Amendments of some Acts
- zákon č. 71/1967 Zb. o správnom konaní (správny poriadok)¹¹ v znení neskorších predpisov – Act No. 71/1967 on Administrative Procedure (Administrative Order), as amended

No provisions regarding entry of EEA citizens are in the Foreigners Act since 1 January 2007, only situations when the entry may be denied are regulated in the act. Regarding border controls, there is just a reference to the Regulation 2006/562/EC.

As to the denial of entry, specific provisions related to EEA citizens and their family members can be found in the Foreigners Act. A policeman may deny entry of an EEA citizen and his/her family member only if he/she is an undesirable person; if there is a reasonable suspicion that he/she will endanger the security of the country, public order, or it is necessary for the protection of public health; or if he/she does not submit travel document or does not possess visa, if necessary (Article 6 (3) of the Foreigners Act).

Before deciding on denial of entry, the policeman shall make it possible to EEA citizen and his/her family member, who cannot show his/her travel document, to get or obtain it in reasonable time, or to prove in other reliable way that he/she has the right of movement and residence (Article 6 (4) of the Foreigners Act).

An undesirable person is a foreigner (including EEA citizens and their family members), who was administratively expelled or on which a punishment of expulsion in criminal procedure was imposed (Article 2 (d) of the Foreigners Act). Problems with this regard might arise, if a foreigner concerned was expelled in the past for a reason, which cannot be subsumed under reasons for denial of entry provided for in Article 27 of the Directive 2004/38/EC.

There are no specific provisions on what is understood under security of the State, public policy or public health.

⁸ *Collection of Laws (Zbierka zákonov)*, Vol. 265 (2006).

⁹ *Collection of Laws (Zbierka zákonov)*, Vol. 146 (2007).

¹⁰ *Collection of Laws (Zbierka zákonov)*, Vol. 149 (2007).

¹¹ *Collection of Laws (Zbierka zákonov)*, Vol. 27 (1967).

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The last sentence of Article 27 (1) of the Directive 2004/38/EC regarding economic ends was not transposed into Slovak legislation. The same counts for paragraph 2 of Article 27.

There is no specific provision regarding appeal against denial of entry, therefore provisions of Administrative Order apply. According general administrative rules, an appeal has a suspensive effect.

Slovak legislation does not recognize the term Union Citizens.

B. RESIDENCE

Texts in force

- zákon c. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov – the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts (Foreigners Act) 12
- zákon c. 71/1967 Zb. o správnom konaní (správny poriadok) v znení neskorších predpisov – Act No. 71/1967 on Administrative Procedure (Administrative Order) as amended

Title V of the Section III of the Foreigners Act regulates the residence of EEA citizens and their family members, and the Title V is named “Special provisions for the EEA citizen and his/her family member”.

EEA citizens are not obliged to register for residence permit, and their residence is considered as a first residence permit.¹³

If a Union citizen who satisfies the conditions referred to in points (a), (b) or (c) of the Directive 2004/38/EC is accompanied by his/her family members – EEA citizens, it is questionable, if residence of those family members can be considered as a first residence permit too. It will be so, only if they have financial means to secure their stay and health insurance in Slovakia. If it is not the case, their residence cannot be considered as a first residence permit. However, there is a presumption that all EEA citizens fulfil requirements for registration.

There are no special provisions regarding treatment of job seekers in the law. According to Article 45a (1) (e) of the Foreigners Act, if there is an assumption that an EEA citizen will be employed, his/her residence at the territory of Slovakia is considered as a first residence permit. They do not have to register their residence; according to Article 45a (2) of the Foreigners Act, they can request registration, however, there is no obligation to register in the law.

Residence of an EEA citizen on the basis of the first residence permit will retain, if the reason for termination of the employment was occupational disease or work accident, or if he/she cannot temporarily run business because of injury or disease. Residence of an EEA citizen on the basis of the first residence permit will also retain, if the person concerned is involuntarily unemployed, and he/she was employed for more than one year and is registered

¹² For amendments of the Foreigners Act, see this Chapter's Section A.

¹³ According to the wording of Article 45a (1): “Residence of an EEA citizen intending to stay at the territory of Slovak Republic for more than three months, is considered as a first residence permit, if: (a) he/she is employed, (b) he/she is running a business, (c) he/she studies at public school or at a school recognized by the government, and has financial means to secure his/her stay and health insurance in Slovakia, (d) he/she has financial means to secure his/her stay and health insurance in Slovakia, or (e) there is assumption that he/she will be employed.”

as a job applicant; if the person concerned is involuntarily unemployed and finished his employment agreed for less than one year or his employment was finished during first two months and he/she is registered as a job applicant; if the person concerned is involuntarily unemployed and is undergoing special education, or; if the person concerned is voluntarily unemployed and is undergoing special education related to previous employment. Residence of an EEA citizen on the basis of the first residence permit will also retain, if the person concerned is voluntarily unemployed and is undergoing special education related to previous employment (Article 45a (5) of the Foreigners Act).

If an EEA citizen is not working anymore, and he/she is temporarily unable to work as the result of an illness or accident, and it is not an occupational disease or work accident, which was the reason for termination of the employment, according to the Slovak law, such EEA citizen will lose his/her residence on the basis of the first residence permit in Slovakia. This does not seem to respect the wording of the Article 7 (3) of the Directive 2004/38/EC.

It also appears that the situation, when an EEA citizen is involuntarily unemployed and is undergoing special education is not covered in Slovak legislation in contrast to Article 7 (3) (d) first sentence of the Directive 2004/38/EC.

Article 14 of the Directive 2004/38/EC was not transposed at all.

According to the wording of Article 45c (1) (d) a stay of an EEA citizen is regarded as a next residence permit (equivalent to permanent residence according to the Directive 2004/38/EC), provided that he/she is employed or undertakes business on the territory of another EEA state and returns to Slovakia at least once a week, while in the past he/she continuously stayed in the territory of Slovakia and was simultaneously employed for at least three years. When comparing this wording with wording of Article 17 (1) (c) of the Directive 2004/38/EC, a situation, when the individual concerned was simultaneously undertaking business for at least three years in Slovakia was omitted by the transposition and those undertaking business were not covered by the provision concerned.

Second and third subparagraphs of Article 17 (1) of the Directive 2004/38/EC on periods of employment spent in the Member State and on periods of involuntary unemployment were not transposed at all.

C. DEPARTURE

Texts in force

- zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov – the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts (Foreigners Act) 14
- zákon č. 171/1993 Z. z. o Policajnom zbore¹⁵ v znení neskorších predpisov - the Act No. 171/1993 on the Police Corps as amended

The right of exit is not explicitly embedded in the Slovak legislation. However, there is no legal provision that would prevent anyone from leaving the country.

¹⁴ For amendments of the Foreigners Act, see this Chapter's Section A.

¹⁵ *Collection of Laws (Zbierka zákonov)*, Vol. 46 (1993).

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According to the Article 57 (7) of the Foreigners Act, EEA citizens and third-country family members of EEA citizens can be expelled if they endanger security of the state, public order, or public health.

According to Article 57 (8) of the Foreigners Act, EEA citizens and their family members with next permit may be expelled only on the basis of serious reasons of threat to the security of the country, or public order.

If an EEA citizen does not fulfil conditions laid down in Article 45a (1) (d) of the Foreigners Act, or if a favoured foreigner does not fulfil conditions laid down in Article 45b (1) (b), he/she can be expelled without having the period for prohibition of entry defined (Article 57 (9)).

An EEA citizen residing lawfully in Slovakia for more than ten years cannot be expelled, save the situation, if he/she constitutes a threat to the security of the country (Article 57 (10) (a)). Children under 18 cannot be expelled too save cases, where expulsion of the child is in the child's interest.

There are no detailed provisions on what is understood under security of the country and public order in the Foreigners Act. There is also no provision on what should be taken under consideration, when deciding on the expulsion. The provisions in Foreigners Act are vague, and leave a lot of space for discretion of police.

There is no specific provision on the duration of expulsion order with regard to EEA citizens and third-country family members of EEA citizens. Using analogy, the same duration, as when expelling other foreigners for reasons of endangering security of stay, public order or public health, shall be applied. According to the general provision (Article 57 (1) (1)) on duration prohibition of entry for above mentioned reasons, the duration of foreigner's prohibited entry into Slovakia is ten years.

In the situation, when the EEA citizen does not produce his valid identity card or passport, as envisaged in the ECJ judgment in case *Oulane*, he/she has to prove his/her identity in reliable way. This way of proving identity is regulated in Article 18 of the act No. 171/1993 on the Police Corps, and is valid also for Slovak citizens. If a foreigner does not prove his/her identity in reliable way, there is a reason for his/her expulsion.

However, according to Article 57 (7) to (9), the EEA citizen could be expelled only if he/she threatened security of the state, public order, or public health, or if he/she has no financial means to secure his/her stay and health insurance in Slovakia. In a particular case, the decision of the police department on possible expulsion would depend on their consideration of reliability of the proof of identity. When considering it, reasons for tracing of identity have to be taken into consideration (Article 18 (4) of the Act on Police Corps).

In general, a policeman is empowered to ask a person to prove his/her identity by showing an identification document.

According to Article 57 (12), paragraph 6 of the Article applies accordingly to an EEA citizen and a favoured foreigner. Article 57 (6) of the Foreigners Act provides that police may shorten the duration of expulsion order or not administratively expel a foreigner who was granted a permanent residence permit, if the consequences were inadequate with regard to the foreigner's private and family life and the length of his/her stay, the age of a foreigner and his/her relation to a country of origin.

There is no time limit for leaving the territory of the country stipulated in the law with regard to EEA citizens and their family members. General time limit in case of expulsion of a foreigner is up to 30 days. The maximum time corresponds then to minimum time provided in the Article 30 (3) of the Directive 2004/38/EC.

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According to Article 61 (2) of the Foreigners Act, the EEA citizen and his/her family member can ask for cancellation of the decision on administrative expulsion, if they have proofs confirming that significant change of circumstances, for which he/she was expelled, occurred.

Despite the number of not transposed provisions of the Directive 2004/38/EC, and several provisions of the Directive, which does not seem to be transposed correctly, it has to be said that overall, the treatment of EEA citizens and especially their family members is more favourable for them after transposition of the Directive 2004/38/EC.

Chapter II

Access to Employment

Texts in force

- zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov¹⁶ v znení neskorších predpisov - the Act No. 5/2004 on Services of Employment and on Amendments of Some Acts, as amended
- zákon č. 311/2001 Z. z. Zákonník práce¹⁷ v znení neskorších predpisov - the Act No. 311/2001 Labour Code, as amended
- zákon č. 270/1995 Z. z. o štátnom jazyku Slovenskej republiky¹⁸ v znení neskorších predpisov - the Act No. 270/1995 Coll. on the National Language in Slovak Republic
- zákon č. 578/2004 Z. z. o poskytovateľoch zdravotnej starostlivosti, zdravotníckych pracovníkoch, stavovských organizáciách v zdravotníctve a o zmene a doplnení niektorých zákonov¹⁹ v znení neskorších predpisov - the Act No. 578/2004 on Providers of Health Care, Health Service Workers, Professional Organisations in Health Care and on Amendments of Some Acts, as amended
- zákon č. 586/2003 Z. z. o advokácii a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon)²⁰ v znení neskorších predpisov - the Act No. 586/2003 on Advocacy and on Amendment of the Act No. 455/1991 on Trade Business (Trade Act), as amended
- zákon č. 477/2002 o uznávaní odborných kvalifikácií a o doplnení zákona Národnej rady Slovenskej republiky č. 145/1995 Z. z. o správnych poplatkoch²¹ v znení neskorších predpisov - the Act No. 477/2002 on Recognition of Professional Qualifications and on Amendment of the Act of the National Council of Slovak Republic No. 145/1995 on Administrative Fees, as amended
- zákon č. 293/2007 o uznávaní odborných kvalifikácií²² - the Act No. 293/2007 on Recognition of Professional Qualifications

EQUAL TREATMENT IN ACCESS TO EMPLOYMENT

The Act No. 5/2004 Coll. on Services of Employment and on Amendments of Some Acts, as amended (Act On Services of Employment) regulates access to employment in Slovakia.

The Act On Services of Employment came into force on 1 February 2004 with the exception of provisions governing mediation of employment from Slovakia to EU and vice versa (Article 72(9)(10) of the Act On Services of Employment). One of the reasons for its adoption was the accession of Slovak Republic to the EU; Directives 76/207, 86/613, 91/383, 96/71, and 2000/78 were transposed with this act. This was not the only reason for adoption of this act. The main purpose of the act in issue is according to the explanatory report to the act is the necessity to modernize the execution of services of employment, neces-

¹⁶ *Collection of Laws (Zbierka zákonov)*, Vol. 4 (2004).

¹⁷ *Collection of Laws (Zbierka zákonov)*, Vol. 130 (2001).

¹⁸ *Collection of Laws (Zbierka zákonov)*, Vol. 89 (1995).

¹⁹ *Collection of Laws (Zbierka zákonov)*, Vol. 245 (2004).

²⁰ *Collection of Laws (Zbierka zákonov)*, Vol. 239 (2003).

²¹ *Collection of Laws (Zbierka zákonov)*, Vol. 182 (2002).

²² *Collection of Laws (Zbierka zákonov)*, Vol. 133 (2007).

sity to create conditions for their flexible organisation and provision depending on different needs of job seekers.

According to this act, no work permit is required from citizens of a Member State of the European Union, citizens of EEA countries, citizens of Switzerland, and their family members. Article 2 (2) of the Act On Services of Employment provides that citizen of a Member State of the European Union, citizen of a state, which is a party to the Agreement on European Economic Area, and citizen of Swiss Confederation, and their family members, have the same legal position as citizens of Slovak Republic, if not stipulated otherwise. There are no such provisions with regard to access to employment of EU, EEA and Swiss citizens.

Therefore, there is no formal provision, which would threaten the equal treatment in access to employment of Slovak citizens on one hand, and of EU, EEA and Swiss citizens on the other hand.

The position of third country family members is not completely clear. They are regarded as foreigners according to Article 2 (1) (n), however, according to abovementioned Article 2 (2), they have the same legal position as Slovak citizens. Nevertheless, even if they would have been regarded as foreigners, they have right to permanent residence, and those with permanent residence do not need a work permit.

Right to access to employment is regulated in Article 14. According to paragraph 1 of this provision, right to access to employment means right of a person (Slovak citizen and those with the same legal position) to services aimed at providing assistance with seeking suitable employment, education, and preparation for the labour market necessary for assertion at the labour market.

Paragraph 2 of Article 14 provides for a general anti-discrimination clause with regard to access to employment by referring to the Anti-Discrimination Act²³. Ban on discrimination based on national origin is explicitly mentioned. Similar provisions can be found in the Labour Code too.

The operation of employment agencies is regulated by Articles 25 to 31 of the Act On Services of Employment. As the EU citizens and their family members have the same legal position as Slovak citizens, they should be treated equally.

The issue of possible reciprocal measures of Slovakia to those applied by a Member State of EU with regard to Articles 1 and 6 of the Council Regulation on free movement of workers is dealt with in Chapter VIII on EU enlargement.

LANGUAGE REQUIREMENT

There is no such condition for access to employment in general, as knowledge of Slovak language. Article 14 of the Act on Services of Employment provides that regarding the right for access to employment, no discrimination on the basis of language or nationality is permitted. The same prohibition of discrimination is in Article 1 of the Basic Principles of the Labour Code. However, the employer can have specific language requirements, as long as the language requirement is not discriminatory.

²³ Zákon č. 365/2004 o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon) v znení neskorších predpisov - the Act No. 365/2004 on Equal Treatment in Several Areas and on Protection Against Discrimination and on Amendments of some Acts, as amended; Collection of Laws (Zbierka zákonov), Vol. 153 (2004).

Some difficulties regarding the language requirement in employment relations may arise from the Act No. 270/1995 Coll. on the National Language in Slovak Republic, according to which, among other issues, all written legal acts in employment relations have to be in Slovak.

The Act No. 293/2007 Coll. on Recognition of Professional Qualifications provides for requirements to know Slovak language with regard to regulated professions.²⁴ Article 27 (1) of the Act on Recognition of Professional Qualifications provides for a requirement of an applicant to know Slovak language to the extent necessary for the execution of a particular regulated profession. According to Article 27 (2) of the Act on Recognition of Professional Qualifications, knowledge of the language may be checked by a special commission in well founded cases. The commission consists of two professionals in the particular regulated profession and a person with a university degree in Slovak language, the latter being chairman of the commission. The knowledge of Slovak language is checked by a general interview, by reading of an article from press or a professional magazine, by interview about the article, and by a test on knowledge of Slovak language.

Article 31 (4) of the Act No. 578/2004 Coll. on Providers of Health Care as amended provides that a foreigner is required to know special terminology in Slovak language to the extent necessary for the execution of a medical profession. As there is no explanation of the term foreigner in the Act, EEA citizens seem to be considered as foreigners with this regard.

According to Article 5 of the Act No. 586/2003 Coll. on Advocacy as amended provides that in order to be enrolled in the List of Advocates in Slovakia, EEA citizens have to pass a qualification exam in Slovak, if they did not provide legal services in Slovakia for three years as Euroadvocates. However, there is no language requirement for enrolment into the List of Euroadvocates. The legal position of a Euroadvocate is the same as of an Advocate, subject to some restrictions regarding applying for positions in the Bar association.

RECOGNITION OF DIPLOMAS

Act No. 477/2002 Coll. on Recognition of Professional Qualifications as amended, which substantial part came into force on 1 May 2004, regulated the process of recognition of diplomas and professional qualifications until 20 October 2007.

On 20 October 2007, new Act on Recognition of Professional Qualifications, namely the Act No. 293/2007 Coll. with the same name as the previous one (hereinafter, when referring to the Act on Recognition of Professional Qualifications, the new 2007 Act is meant). This act was adopted by Slovak Parliament in May 2007, and its main goal was to transpose Directive 2005/36/EC.

It regulates conditions for recognition of documents on professional qualification issued by schools, or other competent authorities for purposes of execution of regulated professions and for the purposes of free provision of services in Slovakia with regard to EU citizens and their family members.

Procedure on recognition of professional qualifications is regulated in Articles 23 to 30 of the Act on Recognition of Professional Qualifications. Person concerned is obliged to submit identification document; verified copy of the documents on education; extract on subjects attended and exams executed, if required; certificate on character and length of praxis issued by a relevant authority of the country of origin, if required; other documents, if re-

²⁴ The list of regulated professions is in Annex to this report.

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quired. Verified translation of all documents into Slovak is needed. Applications for recognition of professional qualifications shall be reviewed within 30 days.

When deciding on recognition of a professional qualification, a relevant authority shall abide by a public interest, interests of individuals and legal persons, which could be infringed by pursuit of a regulated profession by persons with inadequate professional qualification, and which are protected by special regulations on governing requirements for pursuit of a regulated profession. These protected interests are in particular protection of the safety of the country, of public order and public health.

If a special regulation does not provide otherwise, the competent authority for decisions on recognition of a document on education is the Ministry of Education of the Slovak Republic. The Ministry shall issue the decision on recognition of the document on education within two months since receiving a complete application.

Possible decisions are:

- recognition;
- refusal.

In decisions on refusal, data on possible compensation mechanisms are included, in particular requested length of adaptation period including length of additional education, which forms part of it; professional areas, which will be included into examination on qualification.

In general, provisions of the Administrative Order are applicable to the procedure on recognition of professional qualifications.

As regards medical professions, Annex 4 to the Act on Recognition of Professional Qualifications provides for list of diplomas, which shall be recognized in Slovakia. In addition, diplomas shall be recognized, even if they are not on the list, but (i) the diploma is complemented by a document issued by a competent authority of the Member State confirming that the diploma is considered to be equivalent to those on the list; (ii) the diploma is complemented by a document on recognition of the diploma by a competent authority of an other Member State than the one, which issued the diploma; or (iii) the applicant fulfilled minimum training conditions or conditions for a professional activity.

Chapter III

Equality of Treatment on the Basis of Nationality

Texts in force

- zákon č. 460/1992 Zb. Ústava Slovenskej republiky²⁵ v znení neskorších predpisov – the Act No. 460/1992 Constitution of Slovak Republic, as amended
- zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov v znení neskorších predpisov - the Act No. 5/2004 on Services of Employment and on Amendments of some Acts, as amended
- zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov - the Act No. 311/2001 Labour Code, as amended
- zákon c. 600/2003 Z. z. o prídavku na diet'a a o zmene a doplnení zákona c. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov - the Act No. 600/2003 on Child Allowances and on Amendment of the Act No. 461/2003 on Social Insurance as amended
- zákon c. 280/2002 Z. z. o rodičovskom príspevku²⁶ v znení neskorších predpisov - the Act No. 280/2002 on Parental Allowance as amended
- zákon c. 235/1998 Z. z. o príspevku pri narodení diet'at'a, o príspevku rodičom, ktorým sa súčasne narodili tri deti alebo viac detí alebo ktorým sa v priebehu dvoch rokov opakovane narodili dvojčatá a ktorým sa menia ďalšie zákony²⁷ v znení neskorších predpisov - the Act No. 235/1998 on Childbirth Benefit, on Parental Allowance for those Parents, to Whom Three or More Children Were Born at the Same Time, or for those, to Whom Were Twins Born Repeatedly in Course of Two Years, and on amendments of other acts as amended
- zákon č. 595/2003 Z. z. o dani z príjmov²⁸ v znení neskorších predpisov – the Act No. 595/2003 on Tax from Incomes, as amended
- zákon č. 435/2000 Z. z. o námornej plavbe²⁹ v znení neskorších predpisov – the Act No. 435/2000 on Maritime Navigation, as amended

WORKING CONDITIONS, SOCIAL AND TAX ADVANTAGES

Article 36 (b) of the Constitution constitutes a general equal treatment provision with regard to working conditions. It provides that all employees shall have the right to fair and satisfactory conditions at work. The law shall provide in particular for the security from arbitrary dismissal and discrimination at work.

The Act on Services of Employment comprises in its Article 2 (2) a general clause on the equality of treatment regarding EU citizens EEA countries, citizens of Switzerland, and their family members. This provision stipulates that the EU citizens have in general the same legal position as Slovak citizens. Article 14 (2) of the Act on Services of Employment prohibits discrimination based, among other grounds, on nationality. Prohibition of direct or

²⁵ *Collection of Laws (Zbierka zákonov)*, Vol. 92 (1992).

²⁶ *Collection of Laws (Zbierka zákonov)*, Vol. 125 (2002).

²⁷ *Collection of Laws (Zbierka zákonov)*, Vol. 90 (1998).

²⁸ *Collection of Laws (Zbierka zákonov)*, Vol. 243 (2003).

²⁹ *Collection of Laws (Zbierka zákonov)*, Vol. 179 (2000).

indirect discrimination with regard to working conditions based on nationality is also part of the Labour Code, in particular Article 1 of the Basic Principles of the Labour Code. Similar provision on ban on discrimination in employment relations based on nationality can be found also in the Antidiscrimination Act. However, the term nationality (národ) does not have a meaning of citizenship in Slovak language, but rather a meaning of ethnic origin. Article 6 of the Basic Principles of the Labour Code contains a clause on equal treatment with regard to access to employment, remuneration, professional education and working conditions. However, this applies to equal treatment between men and women, and not particularly with regard to nationality. Ban on discrimination and equal treatment applies also to posted workers from the EU countries. For posted workers from EU countries apply also provisions of Slovak law regarding length of working time and of rest, length of holiday, minimum salary, minimum tariffs and extra pay for overtime, safety and protection of health at work, working conditions of women and juveniles and of the workers taking care of a child younger than three years, working conditions, if employed by an agency of temporary employment. In case the law of the country of origin is more favorable, this law may be applied.

Act No. 600/2003 on child allowances came into force on 1 January 2004. Child allowance is a state social benefit, which is a contribution of the state to the upbringing and maintenance of a child. Conditions for entitlement for child allowance are determined in its Article 7 (1), including permanent or temporary residence in Slovakia for both parent and child.

Another family benefit, parental allowance, is regulated by the act No. 280/2002. Parental allowance is a state social benefit, which is a contribution of the state to secure personal and proper care of the child up to the age of three years, or of a child with long-term unfavourable health condition up to the age of six years. The conditions for the entitlement for the parental allowance are provided in Article 3 (1) of the Act, and contain same requirements as for the child allowance.

Requirement of permanent residence is also embodied in Article 3 (1) and Article 6 (1) of the act No. 235/1998 on childbirth benefit, on benefit to parents, whom three or more children were born, or whom twins were born in course of two years repeatedly. According to both provisions the entitled person needs to fulfil the requirement of permanent residence in order to receive the benefit. In case of the latter, which regulates the conditions for the benefit to parents, whom three or more children were born, or whom twins were born in course of two years repeatedly, the requirement of permanent residence counts for children too. Childbirth benefit is a state social benefit, which is a contribution of the state to cover the expenses related to secure the essential needs of a newborn child. Benefit to parents is a state social benefit, which is an annual contribution of the state for parents for increased expenses, which incur with regard to care for three or more children born simultaneously, or for in course of two years repeatedly born twins.

In the Act No. 595/2003 on Tax from Incomes, there is a provision, which enables individuals to apply a tax bonus for each child living in the household with the individual, and even if the child is not living temporarily in the household, as long as he/she is dependent on parents. According to Article 33 (10) of the Act on Tax from Incomes, only those, who have a permanent residence in Slovakia and staying at least 183 days in the country, can apply for the tax bonus.

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

Frontier workers

The Act No. 595/2003 on Tax from Incomes contained several provisions, which provided for tax bonuses and non-taxable incomes only for those, who have permanent residence in the country. In particular, the assessment base could be lowered because of having a wife without any income only by those workers, who had permanent residence in the country. Other possibilities for lowering the assessment base applicable only to those with permanent residence were: life insurance, contributions to complementary pension system, and special purpose savings. However, at the end of 2006, the provision of the Act No. 595/2003 on Tax from Incomes restricting the above mentioned benefits to those with permanent residence was abrogated by the Act No. 688/2006, which came into force on 1 January 2007.

Nevertheless, tax bonuses on children are applicable only to those, who have permanent residence in the country. This remained into force also after 1 January 2007. This situation does not seem to follow the line of the EU legislation on frontier workers in the light of ECJ jurisdiction.

Sportsmen/sportswomen

Each sport discipline is governed by its own association in Slovakia, and those associations are issuing their own rules to regulate, among other issues, the registration and operation of foreign sportspersons in the country.

In football, since the competition year 2005/2006, number of players, who are citizens of the EU, is not restricted.

The ice-hockey competes with football for the status of the most popular sport in Slovakia. The Slovak Association of Ice-hockey (SAIH) is the managing body of Slovak ice-hockey. The Association issued the Transfer Code, which is governing also transfers and registration of foreign nationals. According to Article 32 (a) of the Code, there is no limitation for registration of foreign nationals in a SAIH club. However, according to the same provision, only two foreign players can play in a championship game, if the governing body of the relevant competition does not allow a higher number. According to Article 32 (b) of the Code, every player without Slovak citizenship is regarded a foreign player. Also a player who acquired Slovak citizenship and played abroad during last three seasons having another citizenship than Slovak is regarded a foreign player.³⁰

The governing body of the Slovak major ice-hockey league is the company Pro Hokej. Since November 2006, when the Pro Hokej decided that the number of foreign players allowed to play in a championship game will not be restricted anymore, there is no such restriction anymore. One of the reasons for this decision was the issue of free movement of workers in the EU.

The SAIH issued also Directives and Criteria for Granting of Trainer Licenses of Trainers of Ice-hockey – Licenses A, B, and C. According to Part I – General Conditions for Obtaining a Trainer License, citizen of Slovak Republic can obtain the license. A citizen of

³⁰ The Transfer Code in Slovak can be found here: <http://media.szlh.sk/pdf/smernice2007-2008/05-prestupovy-poriadok.pdf>.

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other state can take part in the training only if accepted by the Accreditation Commission of the SAIH.

In volleyball, the number of foreign players in the top league is not restricted. However, for fourth foreign player in the team, the team has to pay 1,000,- EUR, for fifth player 2,000,- EUR, and for each next player 3,000,- EUR. In the lower league, only one foreign player is allowed. No explanation of the term foreign player can be found; therefore, also EU citizens should be considered foreign players. In volleyball, they have also transfer fees for transfers abroad regulated by FIVB Directive on international transfers. Every player, who intends to play abroad has to pay transfer fees for first three years of playing abroad. The fee depends on the quality of the player and on the quality of the foreign league.

Slovak Basketball association has a special directive on foreign players. Neither restrictions on numbers of foreign players, nor any restrictive fees with regard to foreign transfers are provided there.

Maritime Sector

Act No. 435/2000 on Maritime Navigation as amended does not contain a requirement that the captain of Slovak ship has to be a Slovak citizen. There is just one provision on citizenship of the ship's crew, Article 10 (2), which provides that crew of a maritime ship registered in the national maritime register is usually composed of citizens of the Slovak Republic.

This provision is not saying that someone, who is not a Slovak citizen, cannot be a member of the ship's crew, but implies that Slovak citizens are preferred before other EEA citizens.

With regard to equal (or unequal) treatment, Article 62 of the Act on Maritime Navigation is of particular interest. According to first sentence of this provision, the employment relationship is governed by the Labour Code (with several exceptions explicitly mentioned in the Act, but with no impact on equal treatment issues). However, Article 62 follows with its second sentence, which says that as regards foreigners, the employment issues are regulated by the employment contract itself.

It appears from the wording of the abovementioned Article that provisions on equal treatment from the Labour Code do not apply to foreigners.

Researchers/ Artists

There is no special legislation covering activities of researchers or artists in Slovakia. Therefore, provisions on equal treatment either from the Labour Code, or from the Trade Act apply.

Chapter IV

Employment in the Public Sector

Texts in force

- zákon c. 460/1992 Zb. Ústava Slovenskej republiky v znení neskorších predpisov – the Act No. 460/1992 Constitution of Slovak Republic, as amended
- zákon c. 312/2001 o štátnej službe a o zmene a doplnení niektorých zákonov³¹ v znení neskorších predpisov – the Act No. 312/2001 on civil service and on Amendments of some Acts, as amended
- zákon c. 73/1998 Z. z. o štátnej službe príslušníkov Policajného zboru, Slovenskej informačnej služby, Zboru väzenskej a justicnej stráže Slovenskej republiky a Železnicnej polície³² v znení neskorších predpisov – the Act No. 73/1998 on civil service of members of Police Corps, Slovak Information Service, Corps of Prison and Court Guard, and Railways Corps, as amended
- zákon c. 200/1998 Z. z. o štátnej službe colníkov a o zmene a doplnení niektorých ďalších zákonov³³ v znení neskorších predpisov – the Act No. 200/1998 on Civil Service of Custom Officers and on Amendments of some Acts, as amended
- zákon c. 364/2005 Z. z. o štátnej službe profesionálnych vojakov ozbrojených síl Slovenskej republiky a o zmene a doplnení niektorých zákonov³⁴ v znení neskorších predpisov - the Act No. 364/2005 on Civil Service of Professional Soldiers of Armed Forces and on Amendments of some Acts, as amended
- vyhláška c. 590/2006 Z. z., ktorou sa ustanovuje zoznam štátnozamestnaneckých miest, o ktoré sa môže uchádzať len občan Slovenskej republiky³⁵ – the Ordinance No. 590/2006, which sets the list of civil servants employment posts, which are open only for citizens of Slovakia

NATIONALITY CONDITION FOR ACCESS TO POSITIONS IN THE PUBLIC SECTOR

According to Article 61 (2) of the Constitution of the Slovak Republic, only Slovak citizens may be elected for posts of president and vice-president of the Supreme Audit Office. Also as a Member of Parliament, may be according to Article 74 (2) of the Constitution only Slovak citizen elected. Furthermore, according to Article 103 (1), as a president of Slovakia, only its citizen may be elected. As a prime minister, deputy prime minister and minister only Slovak citizen can be appointed too (Articles 110 (2) and 111). According to Articles 134 (3) and 145 (2), as constitutional court judges and judges are Slovak citizens appointed. Finally, the Public Defender of Rights (ombudsperson) can be Slovak citizen only too.

The act No. 312/2001 on Civil Service as amended (Act on Civil Service) regulates legal relations when executing civil service. Article 14 (12) of the Act on Civil Service provides that the list of civil servants employment posts, which are open only for citizens of

³¹ *Collection of Laws (Zbierka zákonov)*, Vol. 131 (2001).

³² *Collection of Laws (Zbierka zákonov)*, Vol. 28 (1998).

³³ *Collection of Laws (Zbierka zákonov)*, Vol. 76 (1998).

³⁴ *Collection of Laws (Zbierka zákonov)*, Vol. 148 (2005).

³⁵ *Collection of Laws (Zbierka zákonov)*, Vol. 139 (2006).

Slovakia, will be set by generally binding ordinance adopted by the Ministry of Labour, Social Affairs, and Family. The current ordinance 390/2006³⁶ came into force on 10 June 2006. The list of civil servants employment posts consists of two parts, which are embodied in annexes to the ordinance. In Annex 1, general part of the list is included. General part of the list includes civil servant employment posts in the department of civil service (a) 2.06 Judiciary; (b) 2.09 Defence; (c) 2.12 Industrial property; (d) 2.17 Home affairs; and (e) 2.24 Protection of secret issues; as well as civil servant employment posts in service office (a) Supreme Audit Office of the Slovak Republic; (b) Ministry of Foreign Affairs of the Slovak Republic; and (c) Prosecutor General Office, regional prosecutor offices, high military prosecution, district military prosecution.

Comparing with previous wording of the ordinance, following departments of civil service were excluded: International cooperation, financial means of the European Communities; Legislation; and Control, complaints and petitions, internal audit.

Annex 2 contains special part of the list. The special part of the list includes civil servant employment posts of exceptional significance, and posts where mandate to acquaint with secret issues is required.

Comparing with previous wording of the ordinance, posts of superior officers were excluded from the list.

Article 55 (1) contains a definition, what are the civil servant employment posts of exceptional significance. According to this provision, head of the office shall determine, which civil servant employment posts of the service office are posts of exceptional significance, save civil servant employment posts of exceptional significance, to which personal salary applies; civil servant employment posts of exceptional significance are those civil servant employment posts, which are decisive in particular for fulfilment of the programme declaration of the government, or fulfilment of tasks connected with drawing of financial means of the European Union. The government determines civil servants employment posts of exceptional significance, to which personal salary applies.

According to Article 2 (7), civil service of members of Police Corps, Slovak Information Service, National Security Authority, Corps of Prison and Court Guard, Railways Corps, custom officers and professional soldiers, and of members of Fire-fighting and Rescuing Corps is governed by special acts.

Members of Police Corps, Slovak Information Service, National Security Authority, Corps of Prison and Court Guard, and Railways Corps can be according to Article 14 (1) of the act No. 73/1998 Slovak citizens speaking Slovak only.

Article 14 (1) of the act No. 200/1998 comprises the same condition of citizenship for custom officers, and Article 17 (1) of the act No. 315/2001 for firemen.

The condition of Slovak citizenship applies also to soldiers. It is embodied in Article 13 (1) of the act No. 346/2005 on Civil Service of Professional Soldiers of Armed Forces of Slovak Republic. According to this provision, only Slovak citizens may be accepted as professional soldiers.

³⁶ As the Civil Service Office ceased to exist, the same fate was followed by its ordinances. Therefore, new ordinance of the Ministry of Labour, Social Affairs, and Family had to be adopted. The difference in wording of the two ordinances was not explained by the legislator.

LANGUAGE REQUIREMENT

According to Article 14 (1) (g) of the Act on Civil Service, knowledge of Slovak language is one of the conditions for admission to the civil service. Similar provisions on knowledge of Slovak language can be found also in acts governing special civil service positions as policemen, soldiers, custom officers, etc. There are no specific provisions on how is the knowledge of Slovak language examined.

RECOGNITION OF DIPLOMAS

There are no specific provisions for access to the public sector with regard to recognition of diplomas in comparison with general rules on recognition of diplomas.

RECOGNITION OF PROFESSIONAL EXPERIENCE FOR ACCESS TO THE PUBLIC SECTOR

The professional experience is not taken into consideration in the selection procedure. As from 1 January 2004, provisions regarding professional experience were repealed from the Act on Civil Service.

EQUALITY OF TREATMENT

In 2003, provisions regarding professional experience for the purpose of determining salary, etc. were repealed from the Act on Civil Service. The salary in civil service is not dependent on the professional experience at all, it depends just on the position of the person concerned and on assessment of the work of the person concerned by his/her superior officer.

Chapter V

Members of the Family

Texts in force

- zákon c. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov – the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts as amended³⁷
- zákon c. 145/1995 Z. z. o správnych poplatkoch³⁸ v znení neskorších predpisov - the Act No. 145/1995 on Administrative Fees as amended (Act on Administrative Fees)
- zákon č. 342/2007 Z. z., ktorým sa menia a dopĺňajú niektoré zákony v súvislosti so vstupom Slovenskej republiky do Schengenského priestoru³⁹ – the Act No. 330/2007 amending some Acts with regard to the Entry of Slovak Republic into the Schengen Area (Schengen Act)
- zákon c. 600/2003 Z. z. o prídavku na diet’ a o zmene a doplnení zákona c. 461/2003 Z. z. o sociálnom poistení⁴⁰ v znení neskorších predpisov - the Act No. 600/2003 on Child Allowances and on Amendment of the Act No. 461/2003 on Social Insurance as amended
- zákon c. 131/2002 Z. z. o vysokých školách a o zmene a doplnení niektorých zákonov⁴¹ v znení neskorších predpisov – the Act No. 131/2002 on Universities and on Amendments of some Acts as amended

RESIDENCE RIGHTS

After transposition of the Directive 2004/38/EC, family members⁴² of EEA citizens were, according to Annex to the Act on Administrative Fees, exempt from the obligation to pay fees for visa, when visa were granted at the border, and when visa were requested from the family members concerned. At the border, it was possible to grant transit and short-term visa for no longer than 15 days to a foreigner for a humanitarian reason, provided that the foreigner proved that the transit (entry) is urgent and he/she could not foresee it or that granting of the visa is in the interest of the Slovak Republic. However, the exemption from the obligation to pay fees for visa was missing when visa were requested in the regular procedure, and not at the border. This raises doubts, whether it is in compliance with the Article 5 (2) of the Directive 2004/38/EC.

Nevertheless, the Act on Administrative Fees was amended by the Schengen Act with effect from the day set by the Council Decision on lifting of checks at the internal borders of

³⁷ For amendments of the Foreigners Act see Chapter I.

³⁸ *Collection of Laws (Zbierka zákonov)*, Vol. 49 (1995).

³⁹ *Collection of Laws (Zbierka zákonov)*, Vol. 149 (2007).

⁴⁰ *Collection of Laws (Zbierka zákonov)*, Vol. 245 (2003).

⁴¹ *Collection of Laws (Zbierka zákonov)*, Vol. 58 (2002).

⁴² Article 45b (2) provides: “A family member of the EEA citizen is (a) a spouse, and his/her child under 21 or his/her unprovided child, (b) a child under 21 or unprovided child, (c) relative in straight row dependent on him/her, (d) relative of a spouse in straight row dependent on him/her, (e) other family members dependent on him/her, or members of his/her household.”

the Slovak Republic⁴³ (21 December 2007). This act repealed the above mentioned exemption from the obligation to pay visa. This exemption was replaced by another one. According to the new one, those exempted from the obligation to pay fees for visa in the Decision of the Executive Committee on the definitive versions of the Common Manual and the Common Consular Instructions⁴⁴ are exempted from the obligation to pay fees for visa. Family members should be included.

As from 1 January 2007, an obligation of a third country family member of an EEA citizen to prove financial coverage for duration of his/her stay when entering the country was deleted from the law. Until then, a third country family member of an EEA citizen had to prove financial coverage for duration of his/her stay.

Third country family members shall be granted first residence permit, if they are family members of EEA citizen residing in Slovak Republic and if they are not a burden to the health security system and social security system of Slovak Republic (Article 45b (1) of the Foreigners Act).

Requirements regarding health security and social security are exceeding requirements set by the Directive 2004/38/EC, in particular in its Article 7 (2).

Family members – EEA citizens are not obliged to register for residence permit. Their residence is considered as a first residence permit, if they have financial means to secure his/her stay and health insurance in Slovakia, whether they are family members of EEA workers or not. Family relationship is not considered at all with regard to family members of EEA citizens, who are themselves EEA citizens, Article 7 (1) (d) of the Directive 2004/38/EC was not transposed into Slovak legislation. Consequently, Article 12 (1) of the Directive 2004/38/EC was also not transposed into Slovak legislation.

Article 12 (3) of the Directive 2004/38/EC does not seem to be transposed correctly in Slovak legislation. Slovak legislation poses additional requirements for retention of the right for residence for children studying in Slovakia, whose parent – EEA citizen died or left the country. According to the wording of Article 45b (6) (c) of the Foreigners Act, the right for the residence permit shall also be retained if he/she is employed or undertakes business or has financial means for covering the stay in order to avoid becoming a burden to the social security system, and he/she has a health insurance, and provided that he/she studies and a citizen of the European Economic Area, who is his/her parent, has died or terminated his/her stay on the territory of the Slovak Republic. Although this wording might sound strange, and it is hard to imagine, how studying children could fulfil all the conditions at one time, this is the current wording regarding studying children, whose parent – EEA citizen died or left the country.

Article 45b (6) (b) (3) of the Foreigners Act provides for the right for retention of the residence for the reasons worth special consideration. It appears that this provision intends to transpose Article 13 (2) (c) of the Directive 2004/38/EC, however, it is questionable, whether such transposition could be considered as sufficient, if the domestic violence was not explicitly mentioned.

Article 14 of the Directive 2004/38/EC was not transposed at all.

⁴³ Council Decision of 6 December 2007 on the full application of the provisions of the Schengen acquis in the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic (2007/801/EC).

⁴⁴ The Schengen acquis - Decision of the Executive Committee of 28 April 1999 on the definitive versions of the Common Manual and the Common Consular Instructions (SCH/Com-ex (99) 13).

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Article 17 (4) of the Directive 2004/38/EC was transposed only with regard to family members, who are EEA citizens. According to Slovak legislation in force, third country family members are not entitled for permanent residence under circumstances provided in Article 17 (4) of the Directive 2004/38/EC.

As Slovakia does not treat registered partnerships as equivalent to marriage, registered partners are not considered as family members, if they are not members of a household of an EEA citizen. Partners according to Article 3 (2) (b) of the Directive 2004/38/EC have to be members of a household of an EEA citizen too, in order to be considered as family members according to Slovak legislation. This might create problems in cases, where partners are not living in one household for particular reasons.

The situation of Slovak citizens, who want to reside in Slovakia with third country family member, was improved by the act No. 558/2005, which came into force at the end of 2005. Before adoption of this act, a family member of Slovak citizen had no legal entitlement for the permanent residence permit. According the old wording of Article 35 of the Foreigners Act, the police department might have granted a permanent residence permit. For family members of EEA citizens, Article 45b provided that the police department shall grant the permanent residence permit. The new wording of Article 35 provides also for a legal right of a family member of Slovak citizen to have a residence permit granted, if the conditions set by the law are fulfilled.

The conditions for granting of the permit are still harder for family members of Slovak citizens, than for family members of EEA citizens. Apart from the conditions for the family members of EEA citizens mentioned above, the family member of Slovak citizen has to prove that he/she has no criminal record, and needs to have his/her stay financially secured, which has to be proved by the sum of at least approximately 3.000 EUR.

The issues of departure of family members of EEA citizens are dealt with in Chapter I, as they are closely related to those of EEA citizens.

ACCESS TO WORK

According to Article 22 (7) (a) of the Act on Services of Employment, foreigners with permanent residence in Slovakia are not required to have a permission to work. Therefore, family members granted first or next residence permit (i. e. those having permanent residence) are allowed to work without a need to get any other permission.

ACCESS TO EDUCATION

According to Article 92 (3) of the Act on Universities, students, who did not exceed regular period for studies, did not pay any tuition fees at public universities. This did not apply to foreigners other than EEA citizens with an exception of foreigners with permanent residence permit. Therefore, EEA family members having first or next residence permit were not obliged to pay any tuition fees. This applied until the Act on Universities was amended by the Act No. 363/2007 Coll. amending the Act on Universities, which came into force on 31 August 2007. Since then, Universities can ask for tuition fees from students. According to amended Article 92 (3) of the Act on Universities, only foreigners, who are not citizens of a Member State, and who have not a permanent residence in a Member State can be asked to pay higher tuition fees than Slovak citizens.

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The right to receive a social scholarship is conditioned by a permanent residence of the applicant.

EQUAL TREATMENT TO SOCIAL BENEFITS AND TAX ADVANTAGES

As family members have right to permanent residence, when having this status, they are treated equally to Slovak citizens and EU nationals with regard to social benefits and tax advantages. However, according to Article 45b (8) in connection with Article 45b (5) (a) and Article 45b (1) (b) of the Foreigners Act, the police shall revoke the residence permit, if they determine that the family member concerned constitutes a burden to the health care system and social security system of the Slovak Republic. Therefore, if he/she applies for some of the social benefits, there is an option that the person concerned would be considered as constituting a burden to the social system, and thus, his/her residence permit can be as a consequence revoked.

Chapter VI

Relevance and Influence of Recent Judgments of the European Court of Justice

In general, it is not common for any authority to utilize judgments of ECJ in their activities.

As regards the courts, there is no procedure established yet, which would make their judgments easily accessible to public. There are efforts of the Ministry of Justice with this regard, but in the time being, there is no official method of publication of court decisions in administrative law. Civil and business law decisions only are published on a regular basis. However, some decisions of the Supreme Court of Slovakia are published on its website, but majority of those, which are published, relate to cases initiated before entry of Slovakia into the EU. None of the published decisions deals with free movement of workers issues.

One official journal of the Supreme Court of Slovakia is being published. It is called “Law reports of opinions of the Supreme Court and decisions of the courts of the Slovak Republic” (*Zbierka stanovísk Najvyššieho súdu a rozhodnutí súdov Slovenskej republiky*). On the publication of opinions and decisions are deciding boards of the Supreme Court. Decisions published do not represent opinion of an individual, but are outcome of team debate and decision on pertinence of their publication. No decisions regarding the field of free movement of workers were published.

There are several private companies, which issue decisions of Slovak courts on regular basis, but no decision was found, where ECJ judgment was applied.

Similar situation is in the legislation, where reports submitted with draft laws into parliament and explaining reasons for presenting the draft laws contain references to EU law very often, but hardly any reference to ECJ judgments was found.

The above mentioned situation is most probably the outcome of the fact that Slovakia is a Member State of the EU only for a short time, and it was very hard task to implement the legislation itself adopted for many years before the accession of Slovakia, therefore, the relevant authorities might need some time to realize that there is the ECJ and the judgments should be of interest for them and their activities.

Similar situation is in the academic field and among researchers. There are only few articles and publications to be found on the topic of ECJ judgments and on free movement of workers in general. Generally, the situation with legal literature of any kind is not very good in Slovakia, when not many up to date professional legal books are issued and the quality of articles published in periodic journals is unsteady.

However, there is a periodical on the market dealing exclusively with ECJ decisions. It is called “*Výber z rozhodnutí súdneho dvora Európskych spoločenstiev*” (Selection from Decisions of the European Court of Justice), and it is issued every second month. It consists of two parts, each issue is dedicated to one topic and there are also extracts from recent ECJ decisions included. In 2007, judgments C-212/05 *Hartmann* and C-213/05 *Geven* were published as regards free movement of workers.

FOLLOW-UP OF HARTMANN, GEVEN, HENDRIX, ITC, EIND AND JIA CASES

Almost all social and tax advantages in Slovakia are conditioned with permanent residence in the country, or at least temporary residence. Therefore, individuals in similar position as in

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the *Hartmann* case would not be entitled, according to Slovak legislation, to any social benefits contrary to the wording of Article 7 (2) of the Regulation 1612/68 in the light of above-mentioned decision.

There are no benefits, such as those dealt with in *Hendrix* and *ITC* judgments. Therefore, there are no consequences to be expected in Slovakia with this regard.

As regards *Eind* case, the right for permanent residence of family members of Slovak citizens with permanent residence in Slovakia is embodied in Slovak legislation, namely Article 35 of the Foreigners Act. No further requirements regarding previous residence are posed on family members, nor any requirement on the economic activity of the worker. Therefore, the legislation in this regard is fully in line with the judgment.

Those foreigners, who are family members of individuals residing in Slovakia who are not Slovak citizens, have right for temporary residence permit, in accordance with Article 23 of the Foreigners Act, and no further requirements regarding previous residence are posed on them. The legislation is in line with this part of the judgment. More complicated is the situation with interpretation of the term “dependent on them”. Slovak legislation recognises similar term with regard to a family member of an individual, but without further explanation. Therefore, this judgment should be important in Slovakia as regards interpretation of the term “dependent on them”.

Chapter VII

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

A document called “The Migration Policy Conception of the Slovak Republic” adopted by the Slovak Government in 2005 deals with general issues regarding migration issues.

According to the presentation report of the document, the conception is fully in line with the ongoing process focused on creation of single migration and asylum policy of the Member States of the EU. On the basis of to this date implemented recommendations, directives and regulations of the European Communities and European Union into legislation related to realisation of the migration policy in Slovakia, as well as in accordance with the Hague program on enhancement of freedom, security and justice in the EU, its task is to contribute to its more conceptual execution.

As the Conception was prepared mainly by the Migration Office of the Ministry of Interior of the Slovak Republic, which is, notwithstanding its name, responsible only for asylum system in Slovakia, the main part of the document deals with asylum and illegal migration. Not much is dedicated to legal migration issues.

In its section 3.2, called “Policy in the field of legal migration and social integration of immigrants and recognized refugees into society” it says:

“Proceeding from existing principles applied in the migration policy, the government of Slovakia will not place barriers for foreigners when executing their right to entry its territory, right of free movement on its territory, and right to leave the territory, under conditions of acceptance and conformity with its legal order, and under a presumption that the rights provided will not be used in contrary with the interests of the security of the country, with the intention to threaten public order, or to restrict rights and freedoms of Slovak citizens.

That requires creation of respective legal environment, which respects legal acts of the European Communities and the European Union, and participation of the stakeholders on realisation of the migration policy ...

As the legal migration is a broad-spectrum problem, the measures under which foreigners can enter Slovakia, must emanate not only from legal conditions, but also from economic and social potential of the state.

In this regard, action plan on solutions of legal migration including procedures on acceptance of migrants has to be prepared. This plan has to take account of the outcome of discussions in the green book of the EU on migration of workers, and it should respect the requirement that determination of the volume of acceptance of migrants is under authority of particular Member States. The facts observed, as well as the necessity to coordinate the authorities involved in carrying out the tasks related to realisation of the migration policy in new conditions confirm the inevitability to create in short time horizon an intrasectional working group composed of competent representatives of relevant departments of the government.

...”

The section 4.2 “Legislation” provides, as regards the EU issues, following:

“In order to reach the goals of the migration strategy of the Slovak Republic, further unification of the national legislation with the EU legislation is necessary, with a view to create a flexible legal framework, which allows to react on all changes in the field of migration at international, national, and regional level.

In the field of approximation and creation of EC and EU law, ensuring of direct application of legally binding EC and EU acts in the conditions of Slovakia, ensuring of the transposition of le-

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gally binding EC and EU acts into legal order of Slovakia, and active participation of Slovakia at the creation of these acts.”

Only the cited part of the migration policy relates somehow to free movement of persons in the EU. The main part of the document discusses an illegal migration and asylum issues.

In practice and from the legislative efforts from time to time, it can be observed that the trends regarding third country nationals are rather restrictive ones. The expression of politicians and legislative drafts tend to create an environment, in which it would be more and more difficult to obtain any kind of residence permit in Slovakia for third country nationals. However, this does not affect third country nationals, who are family members of EEA citizens.

Chapter VIII

EU Enlargement

As regards legislation in this field, no changes were made in 2007. Article 24 of the Act No. 5/2005 On Services of Employment empowers the Government of Slovakia to take equivalent measures to those applied by a Member State of EU with regard to Articles 1 and 6 of the Council Regulation on free movement of workers. Article 24 reads as follows:

“(1) If a Member State of the European Union applies against citizens of the Slovak Republic and their family members under conditions provided in the Treaty on accession of the Slovak Republic to the European Union a national measure, or fully or partly suspends application of articles 1 and 6 of the Council Regulation (EEC) on free movement of workers in the Community, the Government of the Slovak Republic may issue a regulation establishing application of equal (equivalent) measures and their scope against that Member State.

(2) If the European Commission announce with regard to free movement of workers on the basis of an application of the Slovak Republic under conditions provided by the Treaty on accession of the Slovak Republic to the European Union complete or partial suspension of application of Articles 1 and 6 of the Council Regulation (EEC) on free movement of workers in the Community by the Slovak Republic by the reason of restoration of the common state on the labour market, the Government of the Slovak Republic may issue a regulation providing against which Member State and in what scope suspends the Slovak Republic application of Articles 1 and 6 of the Council Regulation (EEC) on free movement of workers in the Community.”

A number of the Member States have continued in applying national measures against Slovakia, and in suspension of application of articles 1 and 6 of the Regulation on free movement of workers in 2007. However, the Government of the Slovak Republic agreed at the beginning that no reciprocal measures will be applied, and they did not change that opinion since then.

The Government of Slovakia has decided not to apply any transitional measures with regard to the accession of Bulgaria and Romania into the EU. There was a little debate about this, as the majority of the political parties were of the opinion that it would not be right to apply any measures against Bulgaria and Romania whilst criticising the “old” Members States for doing the same to Slovakia. The decision was also supported by professional studies. According to them, the opening of labour market for Bulgaria and Romania would not pose any threat with regard to position of Slovak citizens in the labour market.

Chapter IX Statistics

The Bureau of Foreigners and Border Police of the Presidium of the Police Corps, upon request, provided following statistics:⁴⁵

Number of Persons Residing in Slovakia on 31 December 2007

Country	Temporary	Tolerated	Permanent	Total
Austria	14	3	1456	1473
Belgium	5	2	205	212
Bulgaria	0	0	984	984
Cyprus	1	0	18	19
Czech Rep.	85	24	5849	5958
Denmark	1	0	188	189
Estonia	0	0	18	18
Finland	1	0	67	68
France	16	1	1119	1136
Germany	30	4	2849	2883
Greece	11	1	158	170
Hungary	10	10	2693	2713
Iceland	0	0	9	9
Ireland	1	0	111	111
Italy	20	0	948	968
Latvia	0	1	49	50
Lichtenstein	0	0	3	3
Lithuania	0	2	36	38
Luxembourg	0	0	4	4
Malta	0	1	7	8
Netherlands	3	1	311	315
Norway	7	0	214	221
Poland	19	2	3990	4011
Portugal	0	1	66	67
Romania	58	7	2948	3013
Slovenia	2	0	130	132
Spain	1	0	270	271
Sweden	4	0	143	147
United Kingdom	14	0	934	948

⁴⁵ Taken from the 2007 Yearbook issued by the Bureau of Border and Foreigners Police of the Ministry of the Interior published on their website.

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Number of New Residences in Slovakia in 2007

Country	Temporary	Tolerated	Permanent	Total
Austria	0	1	349	350
Belgium	0	0	53	53
Bulgaria	0	0	753	753
Cyprus	0	0	1	1
Czech Rep.	0	18	1235	1253
Denmark	0	0	52	52
Estonia	0	0	5	5
Finland	0	0	34	34
France	0	0	296	296
Germany	0	1	897	898
Greece	0	0	65	65
Hungary	0	2	813	815
Iceland	0	0	5	5
Ireland	0	0	27	27
Italy	0	0	297	297
Latvia	0	0	15	15
Lichtenstein	0	0	0	0
Lithuania	0	1	25	26
Luxembourg	0	0	2	2
Malta	0	0	2	2
Netherlands	0	0	92	92
Norway	0	0	57	57
Poland	0	4	658	662
Portugal	0	0	25	25
Romania	0	6	3027	3033
Slovenia	0	0	50	50
Spain	0	0	105	105
Sweden	0	0	48	48
United Kingdom	0	0	248	248

The Head Office of Labour, Social Affairs, and Family is obliged, according to Article 12 (s) of the Act No. 5/2004 on Services of Employment, to administrate a central record of data on commencement and termination of employment of a citizen of a member state of the European Union and his/her family members. Upon request, they provided statistics, which are annexed to this report in .xcl format.

The Statistical Office of the Slovak Republic provided upon request statistics on Slovaks working in EU countries. These statistics are annexed to this report.

Chapter X

Miscellaneous

LEGAL LITERATURE

Following article has been published in Slovak legal magazines with regard to issues of free movement of workers:

Klučka, J. – Pecho, P.: Štátne občianstvo v medzinárodnom a európskom práve (Citizenship in international and in European Law), *Právny obzor*, 90, 2007, No. 3, p. 205-225.

WEBSITES WITH SLOVAK LEGISLATION

www.zbierka.sk – electronic Collection of Laws

http://jaspi.justice.gov.sk/jaspiw1/jaspiw_maxi_fr0.htm - all acts can be found in unofficial consolidated versions, system of legal information administered by the Ministry of Justice; some precedent setting judgments can be found here too