

# **REPORT**

## **on the Free Movement of Workers in the Czech Republic in 2012-2013**

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# Contents

Abbreviations

Introduction

Chapter I The Worker: Entry, residence, departure and remedies

Chapter II Members of the family

Chapter III Access to employment

Chapter IV Equality of treatment on the basis of nationality

Chapter V Other obstacles to free movement of workers

Chapter VI Specific issues

Chapter VII Application of transitional measures

Chapter VIII Miscellaneous

## Abbreviations

CR	Czech Republic
Directive	Directive 2004/38/EC
EA	Employment Act
EU	European Union
EU citizen	a citizen of another European Union Member State
EU MS	Member State of European Union
FORA	Foreigners' Residence Act
TCN	third country national

## Introduction

There were only few changes in the legislation on FMW in 2012/June 2013, compared to the period of time following the accession of the CR to the EU, when the FMW legislation was developed. The rapporteurs thus focused the report also on practice, i.e. whether the implementation of relevant laws is in compliance with the EU legislation.

The most important legal provisions concerning the area of FMW remain to be enshrined in the Act on Residence of Foreigners. This act remains a very complex law, which is hard to understand. There were new draft laws on the matter prepared and introduced by the Ministry of Interior in 2013. This issue will be further elaborated on below.

The number of foreigner from EU countries remains to increase, the figures show that citizens of EU Member states (and Island, Norway, Switzerland and Lichtenstein) form almost one third of all foreigners living in the Czech Republic (there are around 160 000 EU nationals and the overall number of foreigners is around 440 000)<sup>1</sup>. Slovak and Polish citizens form the largest group of foreigners from the EU Member States (there are almost 80 000 Slovak and 20 000 Polish citizens).<sup>2</sup>

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1 The statistics are available at the website of the Ministry of Interior, <http://www.mvcr.cz/clanek/cizinci-s-povolenym-pobytem.aspx?q=Y2hudW09Mg%3d%3d> (accessed on April 7, 2013).

2 See the website of Ministry of Interior, <http://www.mvcr.cz/clanek/cizinci-s-povolenym-pobytem.aspx> (accessed May 12, 2012), the updated information was given by an employee of Ministry of Interior in a phone interview.

## Chapter I

### The Worker: Entry, Residence, Departure and Remedies

Detailed information on the transposition of Directive 2004/38/EC was already provided in previous reports. The issue of entry, residence and departure of the EU nationals and their TCN family members is covered by provisions of the Foreigners' Residence Act<sup>3</sup> (hereinafter 'FoRa', a general law which focuses on the legal status of foreigners). The law is divided into several main parts: entry, residence, departure, detention, functions of the relevant authorities. One part of the law focuses only on the residence rights of the EU citizens and their third country national family members (Secs. 87a-87aa). The issue of entry, residence and departure of EU nationals and their TCN family members is basically in compliance with the Directive, few rather minor problems remain.

In summary, the main problem in transposition may be seen mainly in the fact that the CR requires more documents to be submitted with an application for a registration certificate than the Directive allows for (photographs, accommodation; Sec. 87a FoRa), which is not in compliance with Art. 7 (1) of the Directive.

#### 1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS: ART. 7(1A); ART. 7 (3 A-D); ART. 8(3A); ART.14 (4 A-B), ART.17, ART. 24 (2) OF DIRECTIVE 2004/38

##### *Art. 7 (1a), 7 (3 a-d), art. 8(3a)*

The provisions of Art. 7 (1a), 7 (3 a-d) and 8 (3a) are transposed mainly into the Sec. 87a-87aa FORA and into the provisions of the Employment Act (hereinafter 'EA').

The right of residence in the CR for more than three months is guaranteed. The Czech laws do not require an EU citizen to register with the relevant authorities if he/she intends to stay for a period longer than three months. An EU citizen may ask for a registration certificate (the FoRa calls it 'temporary residence certificate'), for a document confirming that he/she stays in the CR for longer than 3 months. It is a right of EU citizens to request such certificate, but there is no obligation to do so. If an EU citizen asks for a certificate, he/she needs to provide necessary documents pursuant to the Directive (plus photographs and accommodation certificate).<sup>4</sup> EU workers do not need to provide a health insurance certificate. We have to note that the certificate may be issued also on the basis of other reasons; the wording of the law supports the interpretation that there may be any reason of stay (e.g. a reason 'other' may be seen in practice<sup>5</sup>).

3 Act No. 326/1999 Coll., Act on Residence of Foreigners (Zák. č. 326/1999 Sb., o pobytu cizinců).

4 For the registration certificate to be issued an EU citizen attaches to his/her request (Sec. 87a FORA) the following documents:

- a passport or a valid identity card,
- a document confirming the purpose of stay (in case that the purpose of stay is employment or self-employment or study),
- accommodation certificate (a proof of accommodation),
- photographs,
- a document confirming a health insurance (not in case that the purpose of stay is employment or self-employment).

The requirements of the Czech laws are stricter than those provided for in the Directive. The Commission is aware of this problem and takes the necessary steps.

5 Information given in the phone interview with an employee of Ministry of Interior on May 25, 2013.

We also need to mention, that the certificate is nevertheless often required from EU nationals (e.g. banks sometimes ask for it, various service providers sometimes do too, but this information based purely on practical experience by EU nationals, there is no case-law on it).

There is no special category of 'jobseekers' recognized in the FoRa (actually nor 'EU worker' is a special category).

The request for registration certificate of EU citizen will be rejected, if an applicant (1) becomes an unreasonable burden on the social assistance system, unless directly applicable EC law is applicable; (2) if there are reasonable grounds that he/she might endanger the security of the CZ or might seriously violate public policy (and also in case that he/she endangered the security of the state or seriously violated public policy); (3) or is an undesirable person pursuant to the provision of Sec. § 154 FORA<sup>6</sup> and the fear that he/she may endanger state security or might seriously violate public policy persists (Sec. 87a(1)(b), 87d(1) FORA).

The residence certificate may be withdrawn if an EU citizen *inter alia*, becomes an unreasonable burden on the social assistance system, unless directly applicable EU law applies (87d (1)(a) FORA) or there is a well-founded danger that he may threaten the state security or seriously violate public policy. But the sole reason stipulated in Art. 7 (3a-d) of the Directive does not result in a person's position of being an unreasonable burden on the social assistance system.

The EU citizens and their TCN family members have equal position with the Czech citizens in the field of employment and self-employment; the relevant laws apply to both EU citizens Czech nationals. The legislation contains general provisions which deal with the status of persons who are no longer workers or self-employed persons in general, i.e. the situation presumed by the Directive is solved for all persons under jurisdiction of the Czech laws, and no specific provisions apply to EU citizens. The legislation covers situations of involuntary unemployment or illness etc. If an EU citizen (employee or self-employed person) is unable to work as a result of an illness or an accident, he/she is then entitled to health benefits. However, he/she may not be receiving health benefits and be registered as a job-seeker at the same time. The health benefits are provided for a period of maximum one year, other benefits are provided after that (e.g. disability pension). If an EU citizen becomes involuntary unemployed after having been employed for more than one year during last two years and registers him/herself as a job-seeker with the relevant labour office, he/she gets unemployment benefits for certain period of time. A jobseeker has certain duties, e.g. to cooperate with a labour office, not to leave a job arranged by a labour office without a serious reason. An EU citizen who is no longer a worker or self-employed person basically retains the status of worker or self-employed person in circumstances of Art. 7 (3 a-d). The period of time when an EU citizen is registered as a jobseeker is counted for the period of time which is required for a permanent residence permit (in compliance with Art. 16 and 17 of the Directive).

A net of labour offices exists in the Czech Republic. A person needs to register as a job seeker with a labour office in order to be entitled to its services. However, an unemployed person has no legal obligation to do so; the registration is required in order to enable unem-

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6 The Foreigners' Residence Act stipulates that the undesirable person is a person, who cannot be admitted to the territory of the CR, because he/she might during his/her stay endanger state security, public order or public health, or endanger rights or freedoms of others, or endanger similar interest protected by an international treaty. The law also stipulates that *inter alia* the person whose deportation costs were covered by the Ministry of Interior and the person did not reimbursed the costs of his/her voluntary return will be indicated as an undesirable person.

ployed persons to use labour office services and be granted unemployment benefits (as it is the Labour Office which then decides on granting of the benefits). Furthermore, the Employment Act refers to necessity of having a registered place of residence in CR for job seekers in order to treat them as job seekers. Nevertheless a registered place of residence of an EU citizen and a family member of an EU citizen is defined as an address of his/her temporary or permanent residence. In case that there is no such a place then a place where he/she usually resides in the CR is taken into account (Sec. 5 (b) EA). According to the relevant legal provisions, a registered place of residence is important only for determination of the labour office responsible for provision of services for the unemployed person.

A labour office provides for services according to the Employment Act, and e.g. seeks work for the job seeker, offers relevant jobs etc. A job seeker is obliged to cooperate with the labour office, to come to an interview with a possible employer which is recommended by the labour office or to visit the labour office regularly, otherwise he/she may be excluded from the register of job seekers. There used to be an obligation to accept a 'public work' (in terms of beneficial work) in the relevant laws, this provision was cancelled by the Czech Constitutional Court, which found it inconsistent with the prohibition of forced labour under the Czech Charter of Human Rights and Freedoms and with several international treaties.<sup>7</sup>

Job seekers register is administered by the Labour Offices and a job-seeker may register there. Some exceptions for entry into the register of job seekers exist. E. g. in cases when a labour office finds a work for a job seeker and he/she leaves it without a serious reason or he/she leaves the work upon an agreement with an employer or when the work is terminated by the employer for the reason of job seeker's serious violation of an employment contract, the job seeker may register again as a job seeker after 6 months from the beginning of the work contract (which was found by the office).

If an EU national becomes involuntary unemployed after having been employed for more than one year during last two years and registers him/herself as a job seeker with the relevant labour office, he/she is provided unemployment benefits (*podpora v nezaměstnanosti*, Sec. 39 Employment Act). The aim of unemployment benefits is to help people who are currently unemployed and are looking for work (for a limited period of time when they do not have a regular income).

The unemployment benefits are granted for a certain period of time (5 months in case he/she is younger than 50 years, 8 months if he/she is 50 to 55, 11 months if he/she is older than 55 years). The unemployment benefits will not be granted to a person e.g. if a previous contract with him/her was terminated with him/her because of serious violation of legal obligations connected to his/her work. There are several conditions stipulated by the law for the possibility to grant the benefits. The Czech legislation requires previous 12 months employment in last two years for the entitlement to unemployment benefits.

The amount of money which is paid to a job seeker depends on the salary which he/she was paid before, as the amount of money is derived from his/her average salary during certain period of time (similarly for self-employed). The percentage is 65 % during the first two months, then 50 % during the second two months and 45 % during the rest of the time. If a job seeker left his/her work voluntary or upon agreement with the employer, the percentage is only 45 %. The maximum amount of money to which may a job seeker be entitled is approx. 540 EUR.

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<sup>7</sup> See Judgment of the Constitutional Court No. Pl. ÚS 1/12 from November 27, 2012, available at [http://www.usoud.cz/en/decisions/?tx\\_ttnews%5Btt\\_news%5D=1814&cHash=da4ccfa835ec017dd7db8a124460297f](http://www.usoud.cz/en/decisions/?tx_ttnews%5Btt_news%5D=1814&cHash=da4ccfa835ec017dd7db8a124460297f) (accessed on April 7, 2013), published as judgments No. 437/2012 Sb.

**Art.14 (4 a-b)**

The Czech legislation is in compliance with the Art. 14 (4a-b) of the Directive.

**Art.17, art. 24 (2).**

Wording of Art. 17 (1, 2 and 4) of the Directive is copied almost literally to the Sec. 87g and 87h FoRa. Hence this part of the Act is in compliance with the Directive.<sup>8</sup> Art. 17 (3) is embodied into Sec. 87h FoRa, and the interpretation of this Section is in compliance with the respective provision of the Directive.

With regard to Art. 24 (2) it must be noted that the social assistance system is quite complicated. Benefits guaranteed by provisions of relevant EC/EU regulations are secured through the direct applicability of these regulations on the territory of the Czech Republic. Granting of some benefits might be subject to the condition of a three months stay in the CR, unless directly applicable EU laws stipulate otherwise. Taking one of the laws as an example, e.g. the Act no. 111/2006 Coll., on Assistance in Material Need, as amended, we may see the complexity. The assistance in material need covers three types of benefits: allowance for living; supplement for housing; and extraordinary immediate assistance. Pursuant to Sec. 5 of the Act on Assistance in Material Need, all three types of benefits may be claimed also by EU nationals and their family members, subject to following conditions: 1. the claimant obtained a residence certificate (or of course a residence card) - except the case when the right to the social benefit follows from directly applicable EU law, and 2. he/she has a place of residence on the territory of the Czech Republic. The term place of residence used in this context is legally defined in Sec. 5(6) Act on Assistance in Material Need, according to which a person resides in the territory of the Czech Republic in particular if he/she is staying there on long term basis, works there, attends a school in order to comply with compulsory education requirements, or there are other reasons, which prove the close link of the claimant with the Czech Republic. However Sec. 16 of the act stipulates that in case the claimant is an EU national or a family member of an EU national the responsible authority must examine whether the claimant does not constitute an unreasonable burden for the system of assistance in material need (burden on the social assistance system).

**2. SITUATION OF JOBSEEKERS**

In general, the Employment Act distinguishes between a 'person who, despite of being employed, is interested in a new job' and a 'jobseeker' (Sec. 22 and 24 EA). A person interested in a job may still be an employee and seek a new job while employed; a jobseeker is a person who is unemployed and seeks a new job. The Report further focuses on the treatment of jobseekers (Sec. 24-58 EA).

In order to be treated as a jobseeker the person must register as such with a labour office. However, an unemployed person has no legal obligation to do so; the registration is required in order to give access to unemployed persons to labour office services.

The registration as a jobseeker may be relevant for the purpose of granting a permanent residence permit later. The Ministry of Interior issues a permanent residence permit to an EU citizen upon her/his request, subject to, inter alia, requirement of a five years continuous

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<sup>8</sup> The law uses a term 'third grade disablement' instead of 'permanent incapacity' (Art. 17 (1) (b)), the meaning seems to be the same. For details see Act 155/1995 Coll., on Retirement Pension, Sec. 39, and Regulation No. 359/2009 Coll. of Ministry of Labour and Social Affairs on Assessment of Disablement.

(temporary) stay. The fact of whether a person was employed or unemployed in this period of time is not decisive, i.e. also periods of unemployment are counted for the necessary five years. The labour office confirms the length of the registration of a jobseeker for this purpose.

As was already written above, an EU citizen may stay in the CR without any time restrictions. There is also no legal obligation to ask for a residence certificate; he/she has the right of residence in the Czech Republic without any formalities. He/she is not obliged to ask for any registration certificate even if his/her stay exceeds three months. The Act on Residence of Foreigners only requires an EU citizen to report his/her presence in the Czech Republic within 30 days (if he/she intends to stay in the CR for more than 30 days) (Sec. 93 (2) FORA). The same obligation applies on a family member who, if he/she is a third country national, has an *obligation* to apply for a temporary residence permit. The time limit is non-discriminatory, the sanctions are proportionate and non-discriminatory (Sec. 157(1)(r) in connection with 157(2) FORA). The possible grounds for a decision to return an EU citizen mentioned in Art 14(4) to a country of his/her nationality are those stipulated by Art. 27 of the Directive. So the simple fact that a person is a jobseeker may not result into expulsion.

It also follows from the above analysis that the Czech legislation is in compliance with *Antonissen* judgment as it does not provide for any possibility of termination of stay of EU nationals in case when they are not able to find a job after certain period of time. EU nationals may seek an employment without any time restrictions. If they register within a labour office (a one-year period of previous employment is needed, see above), unemployment benefits are provided to them for a certain period of time. The labour office offers employment opportunities to a jobseeker (appropriate employment, preferably employment which is relevant to the qualification of a person).

### **3. OTHER ISSUES OF CONCERN**

New draft migration legislation was prepared by the Ministry of Interior. The issue of free movement of workers is put into a separate law (it still forms a part of the FoRa now), the issue of family members of EU nationals is planned to be put there too. The issue of third country nationals and family members of Czech nationals is put into another law. There was a very negative reaction from NGOs, even a demonstration was organized. The disagreement is nevertheless not connected to the wording of the legislation on free movement, but to the wording of the second law, aimed at the issue of third country nationals. Many negative disagreements were also formulated by the Czech Ombudsperson. As to the information of rapporteurs, the draft laws will most probably be withdrawn.

### **4. FREE MOVEMENT OF ROMA WORKERS**

There are no figures available regarding the ethnicity of workers who come to the Czech Republic. Generally, it may be said, that there are no restrictions towards specific ethnic group regarding free movement of workers, as placement of such restrictions would be illegal. There are neither restrictions stipulated for the entry, nor there are any for the departure. As was already mentioned in last years' report, there sometimes appear a specific type of Roma migration as a topic on political agenda in the Czech Republic. It is the departure of (there are no figures on ethnic origin, it is the public discourse which is used here) Roma

## CZECH REPUBLIC

asylum seekers to other countries, esp. Canada. This issue was not debated much in 2012 and 2013, but remains on the political agenda. Canada imposed visa requirement on the Czech Republic in 2009 (the visa requirement was lifted on the Czech Republic only in October 2007). It might be noted that several social inclusion programs and the Antidiscrimination Act<sup>9</sup> (since 2009) exist in the Czech Republic; they shall help the minority, which remains the main target of extremists' speeches and acts, against the discrimination.<sup>10</sup> A latent discrimination of the Czech society against the Roma community also continues to constitute a serious problem and moreover there is a problem with education for Roma children (see also the case of European Court of Human Rights *D. H. and others v the Czech Republic*), which was not solved yet. There was an increase of anti Roma atmosphere in several cities in 2012 and 2013, extremist organizations organized demonstrations which were attended also by local people (this is a new phenomenon). Also some politicians play the Roma card to gain votes. This may form a *de facto* obstacle for free movement of Roma workers.

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9 Law No. 198/2009 Coll., Antidiscrimination Act (Zák. č. 198/2009 Sb., antidiskriminační zákon).

10 See e.g. regular quarterly reports on extremism prepared by the Interior Ministry or National Security Service, see <http://www.mvcr.cz/clanek/bezpecnostni-hrozby-337414.aspx?q=Y2hudW09NA%3d%3d> (accessed May 22, 2013, Czech only).

## **Chapter II**

### **Members of the Family**

#### **1. THE DEFINITION OF FAMILY MEMBERS AND THE ISSUE OF REVERSE DISCRIMINATION**

The legal definition of a family member of an EU citizen is stipulated by the FORA in its Sec. 15a and is in compliance with the Directive. A family member of an EU citizen is

- a spouse,
- a parent, if an EU citizen is younger than 21 years of age and dependent and they are living in a common household,
- a child under 21 years of age, or such a child of a spouse of an EU citizen,
- a dependent direct relative in the ascending or descending line, or such relative of the spouse of an EU citizen (Sec. 15a (1) FORA).

The provisions on family members will also apply to

- a foreigner, who is a relative of an EU citizen and lived in a common household with an EU citizen and is at the same time either sustained by an EU citizen or cannot care for him/herself due to health reasons;
- a foreigner who is living in a stable and durable relationship with an EU citizen in a common household.

A registered partnership was given equivalent position to marriage for the purposes of the legislation on entry, residence and departure (Sec. 180f). Section 180f of FoRa stipulates that the provisions of FoRa which apply to ‘marriage’, ‘spouse’ and ‘child’ also apply to the partners who have contracted a registered partnership. Therefore wherever the law uses the term marriage, spouse and child it applies non-discriminatorily also on the registered partnership. The possibility to register a partnership is restricted to same-sex partners. A partnership can be registered in the Czech Republic only if one of the partners is a citizen of the Czech Republic.

Firstly, it must be said that the TCN family members of Czech citizens were given equivalent position to the TCN family members of EU nationals – their position was assimilated for the purpose of the employment and entry, residence and departure. So there is no reverse discrimination in those areas. But a new law on foreigners which is now being prepared may change this attitude. The issue of reverse discrimination appeared in the Czech practice in 2008. There was a judgment of the Supreme Administrative Court in 2008, which dealt with access of third country nationals who are family members of Czech citizens to the register of job seekers.<sup>11</sup> The judgment was already analysed in the report of 2008/2009. The court held that the position of EU citizen’s family members and Czech citizen’s family members in the respective law must be identical – otherwise it would constitute a discriminatory treatment. As the consequence of the case, the respective provisions of the Employment Act were changed.

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<sup>11</sup> See Judgment of Supreme Administrative Court, July 23, 2008, No. 4 Ads 40/2008-73, available at [www.nssoud.cz](http://www.nssoud.cz).

The issue of reverse discrimination was also mentioned by Public Defender of Rights of the Czech Republic (hereinafter ‘Ombudsman’) in access of third country nationals who are family members of Czech citizens to the public health care scheme in 2009 (see also the 2009/2010 report). TCN family members of Czech citizens must pay for the health care or have a commercial insurance for the first two years of their stay as a family member in the Czech Republic, while the family members of EU citizens have access to public health care system immediately (on the basis of 1408/71 Regulation). This problem was mentioned already in previous reports and still exists.

Similar situation is also in the access to social benefits. The issue of reverse discrimination seems to be interpreted as having an impact on *de facto* situation of Czech citizens and thus causing discriminatory treatment of Czech citizens.

## 2. ENTRY AND RESIDENCE RIGHTS

The issue of entry, residence and departure of TCN family members of EU citizen is basically in compliance with the Directive. In summary, the main problems in transposition mentioned in previous reports were already corrected (e.g. the definition of family members of students, or possibility of a judicial review in case of visa or entry refusal for a family member). The main issue to discuss thus remains the fact that the CR requires more documents to be submitted with an application for a residence card than the Directive allows for (photographs, accommodation; Sec. 87b FoRa), which is not in compliance with Art. 7 (2) of the Directive.

One of the problems is the length of the procedure of issuing a visa at the borders for TCN family members of EU citizens in case that they are required to have one, as is presumed in the Art. 5 (2) of the Directive. The Directive stipulates that a visa should be issued as soon as possible and on the basis of an accelerated procedure. The law stipulates the time limit of up to 14 days (Sec. 170 (3) of the FORA). When comparing the time limit given by the law for the issue of a visa for TCN family members of EU nationals with the regular time limit given by the law for the issue of a visa (30 days), it can be said, that the procedure is accelerated. But whether the time limit stipulated by the law as ‘up to 14 days’ might be counted as issuing ‘as soon as possible’ pursuant to the Art. 5 (2) of the Directive is questionable. There is no information available on complaints on application of this provision. The above mentioned visas are issued free of charge (item 117A, 144A Act on Administrative Fees).

We may also assume that there might be problems with possible delays in the procedure of issue of a residence card to family members of EU citizens. There are no judgments on this issue. Moreover problems appear mainly in connection to the situation of third country national family members of *Czech citizens*, not *EU citizens*.<sup>12</sup> However, it must be taken into account that the position of family members of Czech citizens was assimilated to the position of EU citizens and the same provisions of the laws apply on them. Therefore the problems which appear in handling the cases of family members of Czech citizens may appear also in the cases of family members of EU citizens. Similarly, another problem is caused by marriages of convenience and also fraud recognition of paternity. This issue is also primarily a

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12 The information was given to the rapporteur by an employee of Public Defender of Rights in a phone interview.

question of family members of Czech nationals, but cases of third country nationals family members of EU nationals also appeared.

### **3. IMPLICATIONS OF THE *METOCK* JUDGMENT**

The Czech legislation is in compliance with the *Metock* judgment. A possible problem which might have caused incompliance with the judgment was solved by the law No. 427/2010 Coll., which changed FoRa (residence permit to TCN family member was issued only upon the condition that he/she was not recorded in the evidence of undesirable persons). Compliance of previous practice with the judgment was ensured with an Instruction of the Minister of the Interior.<sup>13</sup>

### **4. ABUSE OF RIGHTS, I.E. MARRIAGES OF CONVENIENCES AND FRAUD**

The problem of marriages of conveniences and fraud marriages appears in practice. The relevant authorities try to prevent it by a careful procedure of issue of residence permit and detailed interviews with both partners. When a person does not (without a serious reason) attend the interview, refuses to answer during the interview or gives false facts then he/she will not be granted the residence permit.

The Police will withdraw permanent residence permit of TCN family member in case of circumvention of the law, i.e. in case of a marriage of convenience or false acknowledgment of paternity. The marriage of convenience or fraud marriage is a reason for denial of request for residence card by a family member (Sec. 87e FORA), or for denial of request for permanent residence permit by a family member (Sec. 87k (1) (c) FORA) and for withdrawal of such permit (87l (1) (b) FORA). An impact to a private or family life of the person concerned must always be taken into account.

During the period under review serious problems of fraud recognition of paternity continued (in cases when a Czech citizen recognizes paternity of child – child of a foreigner).<sup>14</sup> The child then become a Czech citizen and has a right to family reunification with e.g. his mother – foreigner. The mother then has a right to family reunification with her husband – a foreigner who may even be a genuine father of the child. The child may not be deprived of the Czech citizenship, because there is no legal basis for it in the Czech law, and moreover it would be questionable whether it is in compliance with the best interest of a child pursuant to the Art. 3 of the Convention on the Rights of a Child.

### **5. ACCESS TO WORK**

The Sec. 3 of Employment Act stipulates that citizens of another EU Member States and their family members have equal position to Czech citizens in legal relations regulated by

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<sup>13</sup> See the explanatory report of the Government to the draft law, which was then adopted as Act. No. 427/2010 Coll. Available at <http://www.psp.cz/sqw/text/tiskt.sqw?O=6&CT=70&CT1=0> (Czech only, accessed June 10, 2012).

<sup>14</sup> Information given by the member of a Commission on decision in residence issues of foreigners, interview, March 23, 2013.

this Act, unless provided otherwise. Furthermore Sec. 85 defines the term ‘foreign employees’, who for the purposes of this Act are considered as individuals who are neither citizen of the Czech Republic or of the European Union, nor they are their family members. Therefore EU citizens and their family members are treated as Czech citizens; they do not need to obtain a work permit pursuant to the provisions of the Czech laws, and their employers do not need to apply for a permit to engage foreign workers. There is an information duty towards a labour office stipulated by the EA (Sec. 87, 102).

## **6. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS**

Family members of EU citizens have equal position in the field of employment to Czech citizens (and also to EU citizens). Hence the analysis done in Chapter I is applicable to this issue too. A family member may (does not need to do so) register him/herself within the respective labour office and if all conditions are fulfilled, he/she is included into the register of job seekers and is e.g. entitled to unemployment benefits (under the condition of previous 12 months employment in last two years). The EU citizen and his/her family member may also be entitled to benefits under social assistance schemes. The test of unreasonable burden to social system is done if benefits are assessed, unless the directly applicable EU laws stipulate otherwise (see below).

## Chapter III

### Access to Employment. (a) Private sector and b) public sector

#### 1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

##### 1.1. *Equal treatment in access to employment (e.g. assistance of employment agencies).*

There were no relevant changes in the period under review. Equal treatment in access to employment is ensured mainly by the provisions of the Employment Act. The citizens of other EU Member States and their TCN family members have equal position with the Czech citizens in the field of employment (Sec. 3(2) Employment Act). The equal treatment pursuant to the provisions of the Employment Act covers access to employment and also access to the public employment services including registration in order to seek work etc.

EU citizens and their family members do not need work permits for their access to the Czech labour market. They have equal position with Czech citizens and therefore there are no limits imposed on their access to the labour market. The obligation to obtain a work permit applies only to third country nationals who are not family members of an EU citizen (or of a Czech citizen). There are several exceptions for special categories of TCN who are not family members and have access to the labour market without a work permit; those are *inter alia* foreigners who were issued a permanent residence permit; a family member of a member of a diplomatic mission; foreigners who were granted international protection etc. (Sec. 98 of EA). The Act also defines a term foreign employee which pursuant to Sec. 85 Employment Act means an individual who is neither a Czech citizen nor an EU citizen nor a family member of EU or Czech citizen.

A job-seeker may be assisted by a labour office or an employment agency in searching for a job. An assistance can be obtained *inter alia* in the form of searching for a job or by advisory and information services (§ 14 Employment Act). Legal basis for the work of labour offices are given by Sec. 18 EA, legal basis for the work of employment agencies are given by Part 2 of EA (esp. Secs. 58 – 66 EA). As the law stipulates that EU citizens and their TCN family members have equal position with Czech citizens, there is no difference between them for the purposes of the services given by labour offices and agencies.

##### 1.2. *Language requirements*

The laws contain provision on non-discrimination and it may be said, that although an employer can have different requirements according to the announced vacancy, the requirements must not be discriminatory. A person who meets the criteria should be employed regardless of his/her nationality, age, language etc. As the non-discrimination in the access to a job position is protected by the Employment Act (see below in Chapter IV) and also by the Antidiscrimination Act, the possible violation of this principle might be brought to a court. Knowledge of the Czech language can be required for some professions, where the language is so important that it constitutes a basic element of the profession. High level of linguistic knowledge is sometimes required in particular situations and for certain jobs, but to our knowledge no requirements for EU workers to be *a mother-tongue speaker* appear in practice.

Knowledge of the Czech language is e.g. required for performance of some of the regulated activities, but it may be required only to the extent that is necessary for a pursuit of the regulated activity (Sec. 21 Act on Mutual Recognition of Qualifications).<sup>15</sup> There are also several provisions in the laws transposing sectoral directives. The knowledge of the Czech language is required for the professions of doctors, dentists and pharmacists to the extent that is necessary for a pursuit of the medical practice (the language skills are verified by the Ministry of Health (Sec. 32 of Act on Mutual Recognition of Diplomas on Medical Qualification of Doctors, Dentists and Pharmacists).<sup>16</sup> The requirements for paramedical qualification are similar (Sec. 82 Act No. 96/2004 Coll., on Paramedical Professions). The precise language testing procedure for paramedical professions is laid down in Sec. 22-24 of the Regulation No. 189/2009 Coll., on Exams according to the Act on Paramedical Professions.

An interesting intervention of the Czech Public Defender of Rights (Czech Ombudsperson) to this issue is also worth mentioning. The Ombudsperson criticized job advertisements for being discriminatory (every 6th advertisement pursuant to his analysis) in June of 2011. The Ombudsperson pointed out at the discriminatory character of advertisements in their requirements of e.g. specific gender, marital status, age or knowledge of Czech language, where he explicitly mentioned the necessity to comply with relevant EU laws.<sup>17</sup> Some of the firms approached the Ombudsperson with questions regarding their advertisements and the Ombudsperson then prepared in cooperation with a website operator of two main advertisement portals ([www.job.cz](http://www.job.cz) and [www.prace.cz](http://www.prace.cz)) a guide to a fair recruitment of employees.<sup>18</sup> Also State Labour Inspection Office also regularly penalizes firms for publishing discriminatory advertisements (discriminatory for the reason of age).

## 2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

### 2.1. *Nationality condition for access to positions in the public sector*

Various Acts require Czech nationality for some of occupations or functions (see also the Report of 2008-2009 for details). The nationality condition to access to those positions is legitimised by the exception provided for in the TFEU. According to the case law of the European Court of Justice such an exception is acceptable if there is a direct or indirect participation in exercise of sovereign rights or in fulfilling tasks connected to general targets of the state or other entities of the public law. The legislation regarding the public sector is rather extensive.

Taking into account the CJEU judgments C-47/08, C-50, 51, 53 and 54/08 and C-61/08 on status of notaries, according to which Member States may not reserve access to the profession of notary to their own nationals, the Czech laws appear to be contrary to the interpretation of the CJEU: the relevant legislation (Law No. 358/1992 Coll., Notary Code) requires Czech citizenship not only for notaries (notaries work as self-employed persons, thus free movement rules are not applicable), but also for Notary Candidates and Notary Trainees,

15 Act No. 18/2004 Coll., on Mutual Recognition of Qualifications (Zákon č. 18/2004 Sb., o vzájemném uznávání kvalifikací).

16 Act No. 95/2004 Coll., on Medical Qualification of Doctors, Dentists and Pharmacists (Zákon č. 95/2004 Sb. o zdravotnických povoláních lékařů, zubního lékaře a farmaceutů).

17 See <http://www.ochrance.cz/tiskove-zpravy/tiskove-zpravy-2010/kazdy-sesty-inzerat-nabizejici-praci-je-diskriminacni> (Czech only, accessed June 21, 2013).

18 See <http://www.lmc.eu/o-nas/ferovy-nabor/> (Czech only, accessed June 21, 2013).

who both have a status of worker (the law requires explicitly for them that they are employed by a notary).

The Act on Public Services<sup>19</sup> is not in force yet as a whole, only a few provisions entered into force (it was adopted in 2002 - and a new one is already being prepared).

## **2.2. Language requirements**

The answers to this question are the same for public and for private sector. As for the legislation, there is no specific Czech legislation concerning language requirements. However, antidiscrimination legislation applies to both, public and private sector. We may note that the Act on Public Services (Act No. 218/2002 Coll., on Public Services), which is applicable specifically in the public sector, contains specific provision (Sec. 80) prohibiting discrimination on the basis of language. This law, however, did not enter into force yet. There are nevertheless other antidiscrimination provisions in laws (and Antidiscrimination Act as such) which may be used in possible litigation. But to our knowledge there is no case law on this issue.

## **2.3. RECOGNITION OF PROFESSIONAL EXPERIENCE FOR ACCESS TO THE PUBLIC SECTOR**

There is no general law which would regulate recognition of professional experience; specific provisions for a regulate profession of attorneys are provided for e.g. in the Act on the Legal Profession.<sup>20</sup> The recognition of education in more academic terms is done according to the provisions of the Act on Pre-elementary, Elementary, Secondary, Higher Vocational and Other Education (Act on Education,<sup>21</sup> mainly for third country nationals) and the Act on University Education<sup>22</sup> when it deals with the recognition of academic diplomas.

The recruitment procedure depends on the conditions given by the employer who may grant additional points for the professional experience within the procedure. The advertisements for positions in public sector often contain requests for certain level of education, certain language knowledge etc. The requests must not be discriminatory (principle of non-discrimination is stipulated in Labour Code<sup>23</sup> and Employment Act).

The term professional experience means certain knowledge or ability which is necessary for pursuance of the activity. The knowledge or abilities may be documented by a formal document on certain education or training or by a document, that a person actually pursuit an activity where he/she used the required knowledge or ability. Recognition of the training, education and experience undertaken in another member state for the regulated professions is recognized according to the Act on Mutual Recognition of Qualifications (incl. the recognition of formal qualification for pursuit of an activity (e.g. diplomas etc.). The Czech Repub-

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19 Act No. 218/2002 Coll., on Public Services (Zák. č. 218/2002 Sb., o státní službě).

20 Act No. 85/1996 Coll., Act on Legal Profession (Zák. č. 85/1996 Sb., o advokacii), see [http://www.cak.cz/assets/act-on-legal-profession\\_2009\\_aktualni-podoba.doc](http://www.cak.cz/assets/act-on-legal-profession_2009_aktualni-podoba.doc).

21 Act No. 561/2004 Coll., on Education (Zák. č. 561/2004 Sb., školský zákon).

22 Act No. 111/1998 Coll., on University Education (Zák. č. 111/1998 Sb., o vysokých školách).

23 Act No. 262/2006 Coll., Labour Code (Zák. č. 262/2006 Sb., zákoník práce).

## CZECH REPUBLIC

lic has large number of regulated professions (384),<sup>24</sup> hence a lot of jobs fall within the scope of regulated professions.

### **3. OTHER ASPECTS OF ACCESS TO EMPLOYMENT**

See above.

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<sup>24</sup> See the database at website of Ministry of Education, Youth and Sports, [http://uok.msmt.cz/ru\\_list.php](http://uok.msmt.cz/ru_list.php) (Czech only, accessed April 12, 2013).

## Chapter IV Equality of Treatment on the Basis of Nationality

### 1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

There is a general norm on prohibition of discrimination, Antidiscrimination Act.

Equal treatment in private and public sector is ensured by explicit provisions and also by anti-discrimination provisions of the respective laws. According to the Labour Code the employers are obliged to treat all employees equally as regards the conditions of work including the remuneration and other financial obligations (Sec. 16 (1) of Labour Code). Labour Code also prohibits direct and indirect forms (Sec. 16 of Labour Code) and refers to Antidiscrimination Act for definitions of the terms.

#### *Direct and indirect discrimination*

According to the Labour Code the employers are obliged to treat all employees equally as regards the conditions of work including the remuneration and other financial obligations (Sec. 16 (1) of Labour Code). The Code explicitly prohibits discrimination (*'any discrimination in the labour relations is prohibited'*, Sec. 16 (2) Labour Code), and stipulates that the relevant terms, e.g. direct and indirect discrimination, victimization, inciting discrimination, harassment or sexual harassment, are defined by a special law (the definitions are stipulated in Antidiscrimination Act). The legal remedies against discrimination are provided for by a special law, Antidiscrimination Act.

The basis for equal treatment in terms of non-discrimination can be found also in other laws, inter alia Employment Act, which contains an obligation to treat individuals exercising the right of employment equally. The prohibition of discrimination is stipulated also e.g. by Consumer Protection Act or Education Act.

The burden of proof is shifted in the labour law related civil cases (Sec. 133a of the Civil Procedure Code). The direct or indirect discriminated on the grounds of sex, racial or ethnic origin, religion, belief, world opinion, disability, age or sexual orientation is considered as proved by a court in labour law matters unless the opposite was proven (facts bearing on the issue of discrimination are considered to be proved unless proven otherwise).

There is very little case law on this issue. Possibly there are some cases, but they might either be settled before taking a case before a court or might not yet be decided by higher courts whose judgments are accessible only. The discrimination is not perceived as a problem much from the society (although there is a problem e.g. with the discrimination of Roma minority). The adoption of Antidiscrimination Act was connected to lively debates since it was submitted to the Parliament in 2007; one of the topics which were discussed was possible favouritism of one group of people against another (objections against the use of affirmative action). The former Czech president Václav Klaus vetoed the bill (with the reasoning that the law is useless, counterproductive and of low quality, and he considers its impact problematic), the Chamber of Deputies (lower chamber) of the Czech Parliament outvoted his veto finally. Until now, there were cases of gender discrimination in labour relations (Czech women), or on access to services (Roma applicant not allowed to enter a restaurant).

***Specific issue: Working conditions in the public sector***

Professional experience and qualifications and other professional skills influence the determination of professional advantages, experience acquired in other Member States may be taken into account. According to the Czech legislation, a salary is given to an employee according to a salary tariff (Sec. 123 Labour Code). The salary tariff is applied on an employee according to a salary group and a salary level to which he/she is situated pursuant to his/her qualification and professional experiences. There are 16 salary tariffs. A governmental regulation gives precise conditions for determination to which salary group and salary level should be an employee placed. The professional experience and diplomas are taken into account when placing an employee to a certain level and a certain group non-discriminatory. An employee who was given 13th or higher salary tariff may have a contractual salary, i. e. higher salary than presumed by those above mentioned 16 tariffs.

***Equal treatment in relation to issues like civil servant status, trade union rights etc.***

This issue is connected to the issue of nationality exceptions in employment in public sector, but once a person is employed in public sector, his/her access to all rights is secured and applied non-discriminatory. We may note that the Act on Public Services (Act No. 218/2002 Coll., on Public Services) is not in force yet (although adopted in 2002).

**2. SOCIAL AND TAX ADVANTAGES**

As regards the Income Tax Act the situation of the worker from another Member States is in the same position as the Czech national under the condition that he/she has 'tax domicile' in the Czech Republic (Sec. 2 of Income Tax Act; a person has a tax domicile in the CR when he/she stays there at least 183 days per year). There are bilateral treaties to prevent double taxation, their survey is accessible on the website of the Ministry of Finance.<sup>25</sup> There were two preliminary questions posed by the Czech Courts.<sup>26</sup>

***2.1. General situation as laid down in Art. 7 (2) Regulation 1612/68***

Art. 7 (2) stipulates that a worker who is a national of a Member State shall enjoy the same social and tax advantages as national workers.

The schemes of state social support and state social assistance are primarily based on residence in CR. So to be eligible for a benefit, the recipient must have a residence certificate or a residence card issued by the CR and usually also reside there for at least three months. To assure access to benefits for migrant workers, the Sec. 7 (2) is applied to overrule the

25 See <http://cds.mfcr.cz/cps/rde/xchg/SID-3EA9846C-5355E46B/cds/xsl/4379.html?year=0> (accessed 12 June, 2012).

26 In re C-53/13 Strojírny Prostějov and in re C-80/13 ACO Industries Tábor, see Bulletin of Foreign Department of Czech Highest Court, [http://www.nsoud.cz/JudikaturaNS\\_new/ns\\_web.nsf/0/6EB37DCD029A76F4C1257B4A00559404/\\$file/Bulletin%20NS%201-2013.pdf](http://www.nsoud.cz/JudikaturaNS_new/ns_web.nsf/0/6EB37DCD029A76F4C1257B4A00559404/$file/Bulletin%20NS%201-2013.pdf) (accessed on May 12, 2013).

permanent residence requirement in case of workers covered by Regulation 1612/68 – 492/2011 (the laws contain provision ‘the EU citizen is entitled to the benefits if he/she is registered for residence in the CR for more than three months, *unless directly applicable EC law is applied*’). Other conditions for granting benefits within these schemes consist in assessment of the income of a family concerned, overall social situation, the ability to improve the situation by persons’ own effort, the fact that the beneficiary is taking care of a child etc. are connected with the individual’s situation and do not have a discriminatory character. The same applies to provision of social services which depend on residence of a person too. However, for EU workers and their family members this requirement is overruled by the regulation (the law refers to the application of directly applicable regulation). The same applies to access to the services provided within the institutions (for example care-homes) and their waiting lists.

Nevertheless, as the range of social advantages is considerably wide, there might still be some cases of inequalities. On the other hand there are no claims at higher courts regarding this issue (the decisions of lower courts are not reviewable as they are not accessible publicly). The regulations are applied non-discriminatorily.

If a person claims social benefits, the competent authority firstly examines whether the conditions for the entitlement are fulfilled. Simultaneously there is a procedure designed to establish whether a person concerned could become an ‘unreasonable burden of the social assistance scheme’ if a person asks benefits pursuant to the provisions of the Assistance in Need Act or Act on Social Security. If a person is a worker, he/she may not become a burden on social assistance scheme. For other persons a system of points attributed to certain fact or characteristic of a person concerned is established. The facts that are taken into account are mainly the previous length of residence, previous length of employment or self-employment in the Czech Republic, previous periods of study in the Czech Republic, possibilities of finding a job. When the number of points is low enough to create ‘unreasonable burden of the social assistance scheme’, the information from the municipal authority is sent to the Ministry, which initiates a procedure of withdrawal of a temporary residence permit (registration certificate).

## ***2.2. Specific issue: the situation of jobseekers***

The Employment Act does not differ between jobseekers who are Czech nationals and jobseekers who are EU nationals. A jobseeker that is included into the register of jobseekers is entitled to unemployment benefits (with some exceptions – e.g. a contract was terminated with him/her because of serious violation of legal obligations connected to his/her work). There are several conditions stipulated by the law for the possibility to grant the unemployment benefits. The Czech legislation requires previous 12 months employment in last two years for the entitlement to the unemployment benefits/jobseeker’s allowance. The term of employment in another Member State is also taken into account.

In Ioannidis case, the question was whether a person who seeks his/her first employment is entitled to tide over allowances if he/she obtained a graduate diploma in another Member State. In the Czech Republic a person who seeks first employment is not entitled to unemployment benefits unless fulfils the above mentioned preconditions. The same applies to EU citizens.

## CZECH REPUBLIC

In the case *Vatsouras*, the ECJ considered i.a. the questions of level of remuneration and duration of the activity, retention of the status of ‘worker’ and the right to receive benefits in favour of job-seekers. Under the Czech legislation, the level of remuneration and duration of the activity are not decisive for the status of a person as a worker; additionally the Czech courts would have to apply the EU understanding of the notion of the ‘worker’. As to the right to receive benefits in favour of job-seekers, under the law applicable to unemployment benefits (Act No. 435/2004 Coll., on Employment), the EU citizens and their family members are in general treated equally with the Czech nationals (Sec. 3) and the provision stipulating concrete preconditions for receiving unemployment benefits (Sec. 39) does not contain any restrictions in this regard.

The Czech legislation and practice continues to be in conformity with Collins judgment. The EU citizens are entitled to the social benefits pursuant to the directly applicable regulations 1612/68 (492/2011) and 1408/71, of which no transposition took place and to which some national laws refer directly. In cases falling outside the scope of these directly applicable regulations, national laws apply and a condition of previous stay can be applied mainly for the reason to avoid social benefits tourism.

**Chapter V**  
**Other Obstacles to Free Movement of Workers**

There are no other obstacles besides those mentioned in the specific chapter of this report.

## Chapter VI Specific Issues

### 1. FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES),

There is no special administrative or legal scheme for frontier workers in addition to the EU rules stipulated. It is also not an issue of a large debate. The issue of frontier workers, i.e. persons who are employed in one State while residing in another State and who return to their State of residence at least once a week (Art. 1(b) of Regulation 1408/71) is regulated in the Czech Republic by direct application of Regulations 1408/71 and 1612/68 – 492/2011 (the relevant laws refer to them in their provisions). The schemes of state social support and state social assistance are primarily based on residence of the foreigner in the Czech Republic; the same applies to the provision of social services. There are several agreements on the internships programmes and several agreements on mutual employment, including agreements to facilitate employment of frontier workers.

Under Czech law, no social benefit comparable to the German *Erziehungsgeld* exists. Furthermore under the Czech law governing social benefits, EU citizens are entitled to social benefits pursuant to Regulations 1612/68 (492/2011) and 1408/71. Provisions of the State Social Support Act No. 117/1995 Coll., the basic national legislation specifying social benefits, refer to the directly applicable Regulations 1408/71 and 1612/68 (492/2011). Hence also the question of granting a social benefit to the spouse of a migrant worker carrying on an occupation in one Member State, who does not work and is resident in another Member State, would be in the Czech legal context most probably resolved in conformity with the *Hartmann* judgement.

### 2. SPORTSMEN/SPORTSWOMEN

First it has to be noted that there is no specific sports legislation in the Czech Republic. The only legislation regulating this area is the Law No. 115/2001 Coll., on Support of Sport<sup>27</sup>. This law determines sport as a non-profit activity (common profit activity, *obecně prospěšná činnost*) and stipulates tasks to ministries and other state authorities in the field of sport (covering issues such as regulation of financial support, etc.). Consequently aspects of application of free movement in the sport area are covered by general (non-specific) legal rules regulating antidiscrimination, employment, law on non-profit organisations,<sup>28</sup> etc.

On the other hand, specific legislation of sport federations/associations (e.g. The Football Association of the Czech Republic [FACR]) exists, as professional sports activities are organized by the sport federations/associations themselves and one of their guaranteed rights is to set-up their autonomous, internal rules. However, alike the situation in other countries, this legislation reflects global rules set up by international sport organisation like FIFA, UEFA, etc. For example the Association Articles of the Czech Football Association contain explicit 'incorporation' rule stipulating the obligation to follow the FIFA and UEFA rules (Article 2 para. 4 and Article 4 para. 8 of the FACR Association Articles), which are there-

<sup>27</sup> Act No. 115/2001 Coll., Law on Support of Sport (zák. č. 115/2001 Sb., o podpoře sportu).

<sup>28</sup> Act No. 83/1990 Coll., on Association of Citizens (zák. č. 83/1990 Sb., zákon o sdružování občanů).

fore directly applicable to football events in the Czech Republic. All regulations of the FACR must also be according to the FACR regulations in conformity and be interpreted in conformity with the FIFA and UEFA rules.

As for the *national quotas*, according to the information given by respective sport clubs there are no national quotas specifically for *EU citizens* participating in all sport activities at all levels. For example there is the Czech Basketball Federation's 'Directive concerning foreign players', which regulates in detail start of foreign players in basketball events in the Czech Republic, but contains no quotas or similar restrictions. The only exception where the Czech citizenship is generally required is the Czech national team. In the light of the CJEU's *Walrave* judgment (36/74) this is not problematic from the viewpoint of free movement rules.

Certain quotas exist in *ice-hockey* events taking place under the auspices of the Czech Ice Hockey Association (CIHA). For each of the events (Extra-league, First League, etc.) regulations are being issued, which contain restrictions on the number of 'Foreigners' allowed to start in the concrete event. The word 'foreigners' includes every person not having Czech citizenship (hence also EU-citizens),<sup>29</sup> except persons who played for at least three seasons in the events organised by the Czech Ice Hockey Association. For example technical rules of the First League stipulate that a maximum of 6 of such 'foreign' players may participate in the matches.<sup>30</sup> Consequently it might be followed that the rules are discriminatory against EU players and appear thus not to be in conformity with the free movement of workers rules.

Some quotas which are aimed at citizens from *third countries* (non-EU, non-EEC etc.) can be found in *Football Competition Regulations*, issued by Football Association of the Czech Republic; Article 51 of the rules stipulate that not more than five third country citizens may take part in one game. However, the number of EU citizens is not limited. Similar provision can be found in *Technical-Competition Regulations* of I. (Gambrinus) League and II. League (division).

As problematic appears the fact that according to the rules applicable to football activities under the level of first and second league, not more than three third country citizens may take part in a game, whereas this includes any non-Czech player, i.e. also EU-citizens. Football activities underneath the 1. and 2. league level are not being carried out by professional players, i.e. as economic activity, but by amateurs, which would exclude applicability of free movement of workers rules. However, in light of the CJEU judgments C-51/96 a C-191/97 (*Deliege*) applicability of free movement rules (free movement of workers, but also e.g. free movement of services) cannot be generally excluded.

The rapporteurs also want to draw the attention to the situation in *water polo*, which unfortunately could be revealed only recently and concerns directly the national quotas' conflict with free movement rules.

In September 2010 the Czech Association of Water Polo (CAWP) introduced a new provision of the CAWP Competition Rules, pursuant to which a maximum of three foreign players including EU-citizens were allowed to start in a match. One of the Czech water polo clubs Stepp Praha (several players of this club come from Slovakia) challenged this provision in front of the respective organs of the CAWP and later of the Czech Sports Union (na-

29 See the definition of a 'foreigner' contained in the Transfer regulations of the CIHA, available online: [www.cslh.cz/dokument/1222-prestupni\\_rad\\_mimo\\_130619.pdf](http://www.cslh.cz/dokument/1222-prestupni_rad_mimo_130619.pdf) (accessed June 13, 2013).

30 Technical rules of the First League are available online: <http://www.cslh.cz/dokument/909-i-liga-cr-rozpis-souteze-201213.html> (accessed June 13, 2013).

tional federation covering various particular sports federations and organisations). According to their argument, free movement rules including the *Bosman* judgment were not applicable as the situation did not concern professional players. The affected club sought legal action and also asked for legal position from the Office of the Government of the Czech Republic, from the Ministry of Education, Youth and Sports of the Czech Republic, from the European Commission and also from the Czech Public Defender of Rights (Czech Ombudsperson). All institutions confirmed explicitly (under citation of the relevant EU legislation and CJEU judgments) that national quota provisions, such as the one introduced by the CAWP, are not in compliance with the EU legislation. The challenged provision was consequently removed and currently no such provision exists in CAWP rules. Moreover, it has to be stressed that as early as on 22nd December 2004 the Czech Ministry of Education, Youth and Sports sent to sports federations a letter<sup>31</sup> explicitly pointing out the necessity to remove immediately all rules from their regulations/statutes, etc., which could be contrary to the free movement legislation and European law in general. The Ministry stated also that if the federations will not carry out the necessary changes, it will have to reflect this deficiency when dividing financial support for the sports federations.

As for the *transfer fees/home grown players* issues, transfers involving international or European players (i.e. transfers to which free movement rules would be applicable) are regulated primarily by the FIFA rules (in the area of football). According to the information given by the respective sport associations, no situation similar to *Bernard* or *Bosman* case with regard to transfer fees/home grown players has occurred yet *in practice*.

Potentially problematic with regard to this issue, especially in light of the *Bernard* and *Bosman* CJEU judgments, appears Article 2 para. 3 of the Czech Football Association's 'Directive on registration of professional and non-amateur contracts' (Directive). The Directive contains rules applicable to all registered players, whereas the registration is compulsory for a player in order to enable him/her to participate in any event organised by the Association. The provision contains entitlement of a professional club to require that a young player (at the age between 15-18), who is registered for the club, signs a contract as a professional player (Sec. 1 of the Directive) with this club preferentially. If the club offers such a contract and the player refuses to sign it, the consequences prescribed by the Sec. 2(3) Directive are stricter than those under review before the ECJ in the respective case (*Charte du football professionnel*) – e.g. the player is not allowed to transfer to another club or to play as guest player there until his 18th year of age, except the original club allows so. If the club does not offer such a contract, then the situation is different and a person may sign the professional contract with another club. Pursuant to rules applicable in the case *Bernard* a transfer of the player was in general possible. According to the current Czech Association's rules, however, no transfer is possible at all. Pursuant to the Directive in such a case an application for transfer will simply not be considered by the Association. In the case *Bernard*, the player was required to pay for damages as the consequence of his refusal to sign a professional contract with the club which trained him at the end of his training period. This was considered by the ECJ as likely to discourage that player from exercising the player's right of free movement, even if possibly justified under certain preconditions. The justification of payment of damages is based on the legitimate objective of encouraging the recruitment and training of young players, whereas the damages payment scheme must be actually capable of attaining

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31 The text of the letter is available online:  
[http://www.stepp.cz/images/stories/stahovani/dokumenty\\_EU/vyhlaska\\_msmt\\_2004.pdf](http://www.stepp.cz/images/stories/stahovani/dokumenty_EU/vyhlaska_msmt_2004.pdf) (accessed June 10, 2013).

that objective and be proportionate to it. The interference of the Czech rules with the player's right of free movement appears to be even heavier; the rules prevent the player from signing a professional contract with another club (thus also with a club in another Member State). Consequently, it remains questionable, whether such restriction can still be considered as fulfilling the parameters of justification as set up by the Court in the Bosman case and reiterated in the Bernard judgment. On the other hand the Directive apparently applies only to non-international transfers, as the Czech Football Association registers only professional contracts with 'licensed' clubs, i.e. with clubs playing in the first and second Czech league (division). Consequently the free movement rules appear not to be applicable.

Finally rapporteurs want to draw attention to the fact that occurrence of collisions with free movement of workers rules and their application in practice is less probable in general simply because sportsmen and sportswomen are considered in the Czech Republic not as workers, i.e. they are not employed by their clubs, but as self-employed person. Even though there is no legal rules stipulating such legal status and thus avoiding the worker status of sportsmen and sportswomen, in our knowledge there is no such case in practice of the sport clubs in the Czech Republic. However, as has been shown above, there are some solved (water polo) and unsolved controversies concerning mainly the quotas for foreign players, whereas this aspect is subject to continuous changes and is regulated very differently in various sports. At the same time for reasons just stated national quotas seem not to be problematic under free movement rules, however, they are problematic from the viewpoint of general prohibition of discrimination based on nationality as stipulated by the EU law.

### 3. THE MARITIME SECTOR

The relevant Czech legislation is in compliance with the EU law at the moment. Previous legislation was changed already in 2008 most probably because of the action which was brought before the European Court of Justice by the Commission of the European Communities in November of 2007 (C-496/07; the action was revoked by the Commission in March of 2009). The Czech Act on Sea Navigation does no longer reserve posts of captains of ships flying the Czech flag to persons with Czech nationality and stipulates that a captain of a Czech ship must be either a Czech citizen or a citizen of an EU member state and at the same time must prove certain knowledge of the Czech language so that he/she can exercise the relevant powers given to him/her by the relevant law. The explanatory report to the draft law refers to the ECJ judgments C-379/87 and C-414/97 when stipulating the condition of the Czech language.<sup>32</sup> Exceptions from this requirement are possible in exceptional situations (*Sec. 28 (4) of the Act No. 61/2000 Coll. Law on Sea Navigation*).

As the CR is landlocked it must be said that the maritime law is not quite in the centre of attention; this perception is intensified by the fact that there are almost no ships flying the Czech flag. There are also no agreements with non-EU countries on this matter.

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<sup>32</sup> See the explanatory report of the draft law No. 427, available at <http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=427&CT1=0> (accessed June 12, 2013).

#### 4. RESEARCHERS/ARTISTS

The researchers/artists have same legal status as regards their access to the Czech labour market and other rights of migrant workers as the Czech nationals have. There are no restrictions or inequalities indicated.

#### 5. ACCESS TO STUDY GRANTS

The school attendance in the length of 9 years is compulsory for both, children of Czech citizens and children of EU nationals and their family members residing on the territory upon a temporary or permanent residence permit. *EU citizens and their family members* have access to elementary and secondary education upon the same conditions as Czech citizens (Sec. 20 (3) Act on Education). The elementary and secondary education on the governmental schools is declared as free of charge (Sec. 2 of Act on Education). The sufficient knowledge of the Czech language is required for secondary and higher vocational schools, and can be attested during the entrance exams or by an interview taken by the school (Sec. 20 (4) of Act on Education). Czech language courses for free are offered to children with the citizenship of other EU Member State to integrate them to elementary schools (Sec. 20 (5) of Act on Education).

All students regardless their nationalities have access to the institutions of higher education (state university education) in the Czech language (which is not subject to payment by students). The universities can set up admission criteria for foreigners. All students (including EU nationals and their family members and TCN students) have equal access to study grants and have the right to scholarships granted to students for their outstanding scholastic achievements, for outstanding study results, in case of student's strenuous social situation and in other cases worth special consideration (Sec. 91 of Act on University Education). Students can also study within the framework of the foreign development aid of the Czech Republic and under bilateral international agreements on co-operation in the field of education.

In the light of developments in Hungary (employment obligation) we may note that such a problem does not exist in the Czech Republic. There are no fees on public elementary and secondary schools and at public universities, so there is no general study grants scheme. There are several types of scholarships at the universities, but the scholarships are not connected with any type of obligation to work for the scholarship provider after completion of studies. If a case like this occurs, it is not regulated by Czech laws but it is rather a question of agreement between the contracting parties. The problem of 'employment obligation' occurs rather in the context of professional training of employees. For example the costs of a postgraduate training of medicine doctors are often paid by their employer and as a compensation the employee is obliged by his/her working contract to work for an employer for a certain period of time. However, such situations are again not regulated by any specific legal norms, but are rather a matter of contractual relationship between the employee and the employer. As to your question concerning measures aiming to prevent the brain drain, we have contacted several ministries of the Czech Republic (Ministry of Health, Ministry of Education, Ministry of Labour and Social Affairs) and also the Government Office, but according to the information received from them there are no specific measures being implemented in order to prevent the brain drain.

**6. YOUNG WORKERS**

There is one potential problem concerning young workers in the sports sector (concerning football transfers of home grown players of age 15-18 years), which was already reported also in previous reports. This issue is described in detail above in the Chapter concerning Sportmen/Sportswomen.

## Chapter VII

### Application of Transitional Measures

#### 1. TRANSITIONAL MEASURES IMPOSED ON EU-8 MEMBER STATES BY EU-15 MEMBER STATES AND SITUATION IN MALTA AND CYPRUS

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#### 2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA

As regards the transitional periods, situation in the year 2012/June 2013 did not change. Prior to joining the EU the Czech Republic did not renounce the possibility to introduce transitional measures towards Member and Acceding States upon evaluation of situation on the labour market (*Government Resolution 13/2004*). In 2012/2013 the Czech Republic did not introduce any transitional measures towards other Member States even though the Act on Accession, the Government Resolution No.13/2004 Coll. and the Art. 103 of the Employment Act enable the Government to do so. There were no restrictive measures adopted towards either the Member States of EU-15 or the Member States of EU-8. As regards position towards free movement of nationals of Bulgaria and Romania there was no change in 2012/2013. The Czech Republic also does not plan to introduce measures restricting access of nationals of Croatia to the labour market. The Government Resolution No. 1345/2006 of November 2006 in which was stated the Czech Republic would not introduce measures restricting access of nationals of Bulgaria and Romania to the labour market as of the date of accession of these two states to the EU was applied. Nevertheless this Resolution did not renounce the possibility to introduce such restrictions later upon assessment of current situation on the Czech labour market. Opening of the Czech labour market to nationals of these Member States did not give rise to adoption of any measures even though current figures on employment of Bulgarian and Romanian nationals are higher in comparison with the situation before their joining the EU.

A change of Sec.103 of Employment Act was made with the objective to reformulate the respective provision in order to make it more general for any further enlargement of the European Union in 2008 (by Act No. 57/2008 Coll., which changes the EA).

## **Chapter VIII Miscellaneous**

### **1. RELATIONSHIP BETWEEN REGULATION 1408/71-883/04 AND ART 45 TFUE AND REGULATION 1612/68**

The regulations 1612/68 (492/2011) and 1408/71 are directly applicable. Therefore there is no transposition of their provisions into the relevant legislation. The Czech law uses the reference to the application of directly applicable regulation. E.g. Provisions of the State Social Support Act No. 117/1995 Coll., which can be considered as the basic national legislation specifying social benefits and conditions under which they are granted, refer to the directly applicable Regulations 1408/71 and 1612/68 (*Sec. 1 (3) of the Act*), similar provision can be found in Social Security Act and Assistance in Need Act).

### **2. RELATIONSHIP BETWEEN THE RULES OF DIRECTIVE 2004/38 AND REGULATION 1612/68 FOR FRONTIER WORKERS**

See above

### **3. EXISTING POLICIES, LEGISLATION AND PRACTICES OF A GENERAL NATURE THAT HAVE A CLEAR IMPACT ON FREE MOVEMENT OF EU WORKERS**

No such policies, legislation or practices appeared in 2012/June 2013.

#### ***3.1. Integration measures***

There are no integration measures for EU citizens in order to get a residence permit.

Czech language courses for free are offered to children with the citizenship of other EU Member State to integrate them to elementary schools (Sec. 20 (5) of Act on Education).

#### ***3.2. Immigration policies for third-country nationals and the Union preference principle***

The EU nationals and their TCN family members *have equal position* with the Czech citizens in the field of employment, i.e. access to employment, access to the public employment services including registration within a labour office etc. Other TCN foreigners do need a work permit and also a residence permit (with several exceptions for special categories of TCN). The work permit can be granted only for a job to which a Czech citizen (or EU citizen or his/her family member, as they have equal position) did not apply. Their position is quite different and the Union preference principle can be clearly seen.

Some immigration policies *for third country nationals* took place, as the CR faced the problem of labour force shortage and adopted measures to make access of third-country na-

tionals to the Czech labour market faster and easier and also to make the Czech Republic more attractive for TCN. Those were Pilot project ‘Selection of Qualified Foreign Labour’ (applied since 2003 to 2010) and System of Green Cards (applied since 2009), which were described in previous reports in detail. The system of Blue Cards was introduced in 2010.

In 2009, in connection to the layoff of foreign employees as a result of the economic crisis, a Government Resolution on ensuring the security of the Czech Republic was adopted.<sup>33</sup> The Ministry of Interior was authorized to review the situation on the labour market in cooperation with other ministries. The resolution also *inter alia* authorized the Ministry of Labour and Social Affairs to ensure that employers who do not act according to the Employment Act are imposed sanctions, and also authorized Ministry of Finances to execute the sanctions. It also authorized the Ministry of Interior to implement programmes aimed at employment of foreigners in their home country, at encouraging their re-entry on the labour market there (as a measure to prevent their repeated migration in the Czech Republic). This resolution was aimed *only at third country nationals*.

### 3.3. *Return of nationals to new EU Member States*

There were no such situations.

## 4. NATIONAL ORGANIZATIONS OR NON-JUDICIAL BODIES TO WHICH COMPLAINTS FOR VIOLATION OF COMMUNITY LAW CAN BE LAUNCHED

There are no special national organizations or non-judicial bodies to which complaints for violation of Community law can be launched. The complaints may be launched at the courts or respective state authorities.

An interesting case of water polo appeared. A new provision of the CAWP Competition Rules, pursuant to which a maximum of three foreign players including EU-citizens were allowed to start in a match was introduced. An affected club sought legal action and also asked for legal position from the Office of the Government of the Czech Republic, from the Ministry of Education, Youth and Sports of the Czech Republic, from the European Commission and also from the Czech Public Defender of Rights (Czech Ombudsperson). All institutions confirmed explicitly (under citation of the relevant EU legislation and CJEU judgments) that national quota provisions, such as the one introduced by the CAWP, are not in compliance with the EU legislation. The challenged provision was consequently removed and currently no such provision exists in CAWP rules. The state institutions delivered their opinion, which we see as a good aspect.

An important role is played by the Office of the Czech Ombudsperson. Although the free movement is not a main issue of its agenda, the office gives its point of view when necessary. The Office also helps in the discrimination cases.

The Highest Court started to publish also cases of highest courts of other countries in a Bulletin of Foreign Department.

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33 Usnesení vlády č. 171/2009 [Government Resolution No. 171/2009], available at [http://kormoran.vlada.cz/usneseni/usneseni\\_webtest.nsf/0/813889E9A7A4AA9EC125755B00460A14/\\$FILE/171%20uv090209.0171.pdf](http://kormoran.vlada.cz/usneseni/usneseni_webtest.nsf/0/813889E9A7A4AA9EC125755B00460A14/$FILE/171%20uv090209.0171.pdf) (Czech only, accessed on June 10, 2013).

**5. SEMINARS, REPORTS AND ARTICLES**

A website created by the public administration continues to be a useful tool to get information also on the issue of free movement of workers. The information are more aimed at Czech citizens who intent to work abroad. The website [www.portal.gov.cz](http://www.portal.gov.cz) (Portal of the Public Administration) among others e.g. contain information on ‘what to do’ in case that a person terminated an employment in an EU MS – where to go, what to ask and whom to ask.<sup>34</sup> This seems to be a useful tool to spread the knowledge of rights guaranteed by free movement of worker’s legislation and to support the capability of workers to request rights.

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<sup>34</sup> See e.g. [http://portal.gov.cz/wps/portal/s.155/708?POSTUP\\_ID=82&PRVEK\\_ID=1024](http://portal.gov.cz/wps/portal/s.155/708?POSTUP_ID=82&PRVEK_ID=1024) (accessed June 1, 2013).