

REPORT
on the Free Movement of Workers
in Finland in 2012-2013

Rapporteurs:

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Introduction

The question of free movement of EU workers did not raise any substantial debate in Finland in 2012-2013.

Implementation of the legislation on free movement of workers covers the activities of several ministries and other bodies, whose work impacts on the rights of EU workers working in Finland. The Ministry of Interior is responsible for the legislation concerning EU citizen's entry, residence and removal. The National Police Board, which operates under the Ministry of the Interior, is responsible delivering general directions and guidelines concerning operational police activities, including registration of the EU citizens' right of residence and the issuance of family members' residence cards, which belong to the responsibility of the local police. The police or the border control authorities take action to refuse an EU citizen's entry to Finland in cases where the residence has lasted for less than three months and the individual has not registered her right of residence or obtained a family member's residence card. If the residence has lasted for longer than three months, the responsibility to take the decision on removal is on the Finnish Immigration Service. The Finnish Immigration Service is also competent to take decisions on expelling EU citizens who have registered their right of residence, and on prohibition of entry. The Ministry of Social Affairs and Health is responsible for the policy and legislation on social security and health care. The Finnish Social Security Institute takes decisions on social security coverage in individual cases, and on issuance of social security benefits. The Ministry of Employment and Economy is responsible for employment policy and legislation, whose practical implementation is at the responsibility of the local employment administration. The municipalities are responsible *inter alia* for means-tested minimum social assistance that guarantees the minimum subsistence, for public health care, as well as for day-care, schooling, and other public services. The Tax Administration is responsible for taxation, and the National Board of Education for the recognition of diplomas.

The areas in which positive developments took place in 2012-2013 or where there do not appear to be substantial problems for EU workers in the Finland include:

- * The transposition of the Citizenship Directive – the rules on the EU citizen's right to enter and reside in Finland are, by and large, compatible with the Citizenship directive. A decision given by the Supreme Administrative Court (KHO:2013:88) on 10.5.2013 further clarified the legal nature of registration of the right of residence and the preconditions for it. In this case, the local police had not registered an EU citizen's right of residence because he was regarded to constitute jeopardy to public order and security. The Supreme Administrative Court ruled that the police should have registered the applicant's right of residence, and because it had failed to do so, it had violated the applicant's rights as an EU citizen. The Court clarified that the registration of one's right of residence is an administrative formality and not a constitutive act in the sense that the existence of the right of residence would be dependent on its registration. In addition to this, the Court clarified that the fact that the person in question does not constitute jeopardy to the public order and security is not a precondition for the registration of one's right of residence. Instead, it is a ground for restricting one's freedom of movement. Therefore, the authorities are not allowed to reject the request to register one's right of residence on the ground that the person in question is regarded to constitute jeopardy to public order or security. This issue comes under consideration if the EU citizen's removal from Finland is considered.
- * Access to employment at the private sector – equal treatment of EU citizens as regards access to employment is guaranteed by general legislation on equality and non-

discrimination. Furthermore, trade union membership is open for all workers regardless of their nationality. There does not appear to be wide spread discrimination against EU nationals in the labour market. However, the position of posted workers is, in this regard, worse than that of directly employed workers. It is not uncommon that posted workers are treated less favourably than directly employed workers as it concerns *e.g.* wages and overtime pay.

- * Access to employment at the public sector – as the main rule, EU nationals are only excluded from public service functions where there is a need for special allegiance and which are therefore reserved only for Finnish nationals. However, in certain sectors, such as in the foreign service and Ministry for Defence, all functions are reserved for Finnish nationals regardless of the tasks to be performed and whether they actually involve exercising of powers conferred by public law and safeguarding general interests. In the absence of specific rules on this, professional experience and seniority obtained in another EU state shall be taken into account for the purposes of access to the public sector as well as for benefits and promotion in an equal manner as experience and seniority acquired in Finland. It is unclear to what extent the rather demanding language requirements create obstacles for the access to public posts.
- * In the Finnish system, a person liable to pay income tax in Finland may reduce from her income tax certain costs for the care, cleaning, construction, and other such work which is performed at her home or at the home of her spouse or parents regardless of in which country this property is located. The precondition for this deduction used to be that the company that performed the work was enrolled in the preliminary taxation register in Finland even when the work was performed abroad. In 2012, the legislation was amended so that this so called ‘home-work deduction’ can be made in cases where the property, where the work is performed, is located abroad also when the company, which performed the work is registered in the preliminary taxation register – or other similar register – in the country where the work was performed. It is therefore no longer required that the company is registered in Finland if the a property is located abroad.

The main problem areas for EU nationals exercising Treaty rights in Finland in 2012 and the first half of 2013 have remained rather consistent with those of the preceding years:

- * Although the national legislation transposing the Directive 2004/38/EC is by and large in line with the Directive, there are certain discrepancies in this regard. For instance, the prohibition to impose restrictions on free movement on economic grounds as laid down in article 27 of the Citizenship Directive is not explicitly transposed to the Aliens Act. Furthermore, the form of removal from Finland is dependent on whether the person concerned has registered her right of residence or not. In the former case the form of removal is deportation, whereas in the latter refusal of entry, regardless of for how long the individual has *de facto* resided in Finland and whether or not she meets the requirements for the right of residence. The formal procedural safeguards are stronger in the context of deportation than in the context of refusal of entry.
- * Job-seekers coming to Finland from the other member states may encounter practical problems because they do not, as the main rule, get a Finnish identity number. For instance, banks sometimes require a Finnish identity number in order to open an account.
- * The compatibility of the so called ‘four month’s rule’ with EU law raises issues. Regarding certain social benefits, the precondition for the eligibility is that the employment or the self-employed activity lasts in Finland at least for four months. This ‘four months

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rule' covers national health insurance, child care subsidy, accruing credits towards national pension and survivor's pension, rehabilitation benefits, and unemployment allowances under the Act on Unemployment Security (Työttömyysturvalaki 1290/2002). If the employment is estimated to last at least for four months, the person concerned is entitled to these benefits since the moment when the employment or the self-employed activity starts. If the 'four month's rule' is not met, the employee is excluded from these benefits. A working group functioning under the Ministry of Social Affairs and Health, which gave its final report in October 2012 proposed the 'four months rule' to be abolished.

- * The teams playing in the Finnish Basket Ball League and in the Finnish Volley Ball League applied foreign players' quotas *i.e.* limited the number of foreign players in the playing line-up. EU players were included in the foreign players' quotas.

Chapter I

The Worker: Entry, Residence, Departure and Remedies

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

The national provisions transposing the relevant articles of the Citizenship Directive on EU citizens' and their family members' entry to, residence in, and departure from the country are contained in Chapter 10 of the Finnish Aliens Act (*Ulkomaalaislaki* 301/2004) as amended by the Act Amending the Aliens Act 360/2007.¹

Article 7(1 a) of the Citizenship Directive is transposed to the Finnish legislation through section 158a (1)(1) of the Aliens Act.

Section 158a

The right to reside for longer than three months

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

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

The Government Bill 205/2006 concerning transposition of the Citizenship Directive² clarifies that it must be presumed that workers and self-employed persons earn their living from their economic activities. The authorities are not allowed to require any proof of the sufficiency of the worker's income. It is, furthermore, reminded in the Bill that pursuant to article 14.4 of the Citizenship Directive, an employee, a self-employed person, or a jobseeker cannot be removed from the country even if she would constitute a burden on the Finnish social assistance system.

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

It is to be noted that the Aliens Act defines the fact that the EU citizen does not constitute a danger to public order or security as a precondition for her entry and residence and not as a ground for limiting the right to free movement. Pursuant to section 156 of the Aliens Act,

1 Unofficial English translation of the Aliens Act can be found at <http://www.finlex.fi/en/laki/kaannokset/2004/en20040301.pdf>.

2 Hallituksen esitys ulkomaalaislain muuttamisesta HE 205/2006 vp. The explanatory texts contained in Government Bills are not legally binding. They do, however, offer guidance in interpreting the legislation and this guidance is commonly followed in practice both by administrative authorities and the courts of law.

Section 156 (360/2007)

Public order and security

(1) A requirement for an EU citizen's and his or her family member's entry into and residence in the country is that they are not considered a danger to public order or security.

The Supreme Administrative Court clarified in its decision KHO:2013:88 of 10.5.2013 that the registration of an EU citizen's right of residence is an administrative formality which has to be done if the person in question meets the preconditions laid down in section 158a (1)(1) of the Aliens Act, and that in this context it is not possible to examine whether or not she constitutes a jeopardy to public order or security. The fact that the person in question does not jeopardize public order or security must thus not be regarded as a precondition for registration. (See further chapter 1.1 below.)

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

Section 159

Registration of a Union citizen's right of residence

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

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

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

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

Section 159a

Proof required for the registration of the right of residence

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

1) if the applicant is an employee, a confirmation of engagement from the employer or a certificate of employment;

2) if the applicant is a self-employed person, proof concerning the self-employed activity;

[...]

The Government Bill 205/2006 emphasises that the authorities are not allowed to request the applicant to submit any other documents, certificates, or other proof than those mentioned in this provision.

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

Section 160

'Retaining the status as worker or self-employed person

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

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

Section 168a of the Aliens Act, which concerns the removal of workers and job-seekers, transposes article 14 (4) of the Citizenship Directive.

Section 168a

Removing from the country a worker or a person seeking employment

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

Accordingly, workers and jobseekers may be removed from Finland only on grounds of public order or security or public health. However, it is noteworthy that the prohibition to impose restrictions on free movement on economic grounds as laid down in article 27 of the Citizenship Directive is not explicitly transposed to the Finnish Aliens Act. In this respect there is thus a discrepancy between the Act and the Directive.

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

Section 163

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

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

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

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

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

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

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

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

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

As regards article 24(2) of the Citizenship Directive, it is to be noted that workers, self-employed persons, and persons who retain such status, as well as members of their families, are entitled to social assistance since their entry to Finland. Such persons are also entitled to maintenance aid for students provided that they meet the preconditions for this benefit.

1.1. Case Law

The decision given by the Supreme Administrative Court (KHO:2013:88 of 10.5.2013) clarified the legal nature of and the preconditions for the registration of one's right of residence.

In this case, the local police had not registered an EU citizen's right of residence because he was regarded to constitute jeopardy to public order and security. The Supreme Administrative Court ruled that the police should have registered the applicant's right of residence, and because it had failed to do so, it had violated the applicant's rights as an EU citizen. The Court clarified that the registration of one's right of residence is an administrative formality and not a constitutive act in the sense that the existence of the right of residence would be dependent on its registration. In addition to this, the Court clarified that the fact that the person in question does not constitute jeopardy to the public order and security is not a precondition for the registration of one's right of residence. Instead, it is a ground for restricting one's freedom of movement. Therefore, the authorities are not allowed to reject the request to register one's right of residence on the ground that the person in question is regarded to constitute jeopardy to public order or security. This issue comes under consideration if the EU citizen's removal from Finland is considered.

2. SITUATION OF JOBSEEKERS

Under section 158(3) of the Aliens Act, an EU citizen who looks for employment in Finland is entitled to reside in the country for a reasonable time beyond three months without registering her right of residence or other administrative formalities. The precondition for this is that the individual continuously looks for employment and has real chances of getting employed. Neither the Aliens Act, nor the Government Bill concerning the transposition of the Citizenship Directive, nor any administrative guidelines defines what is to be regarded as *reasonable time* in this context. According to information received from the National Police Board,³ in practice, EU job-seekers are, under this provision, allowed to reside in Finland for six months. If the residence continues after this, the job seeker is required to register her right of residence or to leave the country. However, the police do not systematically follow the residence of job seekers, and therefore cases involving persons whose residence has lasted for longer than six months only rarely come to the knowledge of the police.

The legislation, its drafting history or any administrative guidelines do not clarify under which conditions an individual shall be regarded to have *a genuine chance of getting employment* in Finland.

According to sections 167, 168, and 168a of the Aliens Act, a jobseeker can be removed from Finland only if she constitutes jeopardy to public order or security or to public health, but not on any other grounds. Hence, a job-seeker may not be removed from the country even if she constituted a burden on the Finnish social security system.

2.1. Access to services offered by employment offices

Pursuant to section 2 of chapter 2 of the Act on Public Employment and Enterprise Services (laki julkisesta työvoima- ja yrityspalvelusta 916/2012), job-seekers coming to Finland from the other EU states and applying for being registered at the employment office shall be registered regardless of whether or not they have registered their right of residence. As registered job-seekers they are entitled to all employment services offered by the employment offices ranging from information services to services such as labour market training.

2.2. Job-seekers' identity number

Job-seekers coming to Finland from the other member states may encounter various kinds of practical problems because they do not necessarily get a Finnish identity number. Under the main rule, an identity number is given only to a person who resides in Finland in a non-temporary manner, for instance, as a worker or a student; who has registered her right of residence; and who has either a temporary or permanent home municipality in Finland. The legislation does not preclude granting of an identity number exceptionally also in other cases, provided that there are special grounds for that.⁴ Hence, it is possible to give a Finnish identity number to a job-seeker who comes from another EU state, provided that there are

3 E-mail from senior officer Jukka Hertell, National Police Board, 4.6.2012.

4 Act on population registration system and the certification services offered by the Population Register Centre (Laki väestöietojärjestelmästä ja väestökisterikeskuksen varmennepalveluista 661/2009), Section 9.

special grounds for this. However, the practices of the registration authorities are not fully consistent in this regard.

If a job-seeker does not have a Finnish identity number, she may encounter practical problems, for instance, when trying to open a bank account. The practices of the banks seem vary in this regard: some banks require a Finnish number while others also accept other proof of one's identity, such as a foreign passport.⁵ An identity number is also required *e.g.* in order to lend books from the public libraries, to get consumption credits, to buy things on hire-purchase, as well as to get some other comparable public and private services.

3. OTHER ISSUES OF CONCERN

No significant developments were identified in this regard in 2012-2013.

There seem to be some discrepancies between the Finnish legislation and the Citizenship Directive as regards the restrictions on freedom of movement. Section 167 of the Aliens Act lays down grounds for refusing EU citizens' and their family members' entry to Finland and section 168 for deporting them. Refusal of entry may occur either at the frontier when the person is entering Finland, or after she has *de facto* entered the country, but before her right of residence has been registered or she has been issued with a residence card. Refusal of entry may, thus, take place months after the EU citizen or her family member has entered Finland and settled in the country and regardless of whether or not she meets the preconditions for the right of residence. Regarding those who have registered their right of residence, the method of removal from Finland is deportation. The form of removal is thus dependent on the registration of the right of residence or issuance of a residence card, and not on the existence of the right of residence.

The legal guarantees relating to deportation are stronger than those relating to refusal of entry. For instance, section 168b of the Aliens Act which transposes article 28 of the Citizenship Directive is formally applicable when taking decisions on deportation but not on refusal of entry. Section 168b lays down an obligation for the authorities to carry out an overall consideration on factors, such as the duration of the EU citizen's or her family member's residence in Finland, her age, state of health, and family and economic situation, and how well she has become integrated into Finnish society and culture, when making the decision on deportation. There is no express obligation under the Aliens Act to perform a similar overall consideration when removing from Finland a person who has not registered her right of residence or obtained residence card, no matter for how long she has actually resided in the country. Section 5 of the Aliens Act, which lays down an obligation not restrict foreigners' rights any more than necessary, is applicable also in cases of refusal of entry. However, this provision does not detail the elements which have to be taken into account when assessing the proportionality of the measure under consideration.

A deportation decision may be enforced only after it has become final, whereas a decision on refusal of entry may be enforced before it has gained legal force.⁶

5 This was pointed out *i.a.* by the Ombudsman for Minorities in a recent statement: http://www.vahemmistovaltuutettu.fi/download/43222_Ulkomaalaisten_asema_ja_mahdollisuudet_avata_pankkitili_SuomessaFinal.pdf (1.7.2013).

6 According to section 172(1) of the Aliens Act: 'A decision on refusal of entry may be enforced immediately regardless of any appeal unless otherwise ordered by an administrative court if the person is refused entry under section 167(1) or 169(1), and if the matter is justifiably urgent.' Under section 167(1) of the Aliens Act, EU citizens

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

4. FREE MOVEMENT OF ROMA WORKERS

No significant developments were identified in this regard in 2012-2013.

Over the past couple of years, the position and the treatment of persons belonging to the Bulgarian and Romanian Roma minority who reside temporarily in Finland has raised some debate. It has been estimated that in Helsinki there are at the moment about 400-600 Roma from Bulgaria and Romania. Most of them earn their living by playing music or begging in the streets or by collecting empty bottles. They lodge in camps and in cars, and occasionally in private apartments.⁷

The Finnish authorities seem to be rather well aware of the rights of these persons as EU citizens who are entitled to free movement. For instance, no information on any unlawful expulsions of persons belonging to this group was found. The media has reported of incidents of the police dispersing illegal camps of persons belonging to the Roma minority under the Act on Public Order (612/2003) as well as of prohibiting obtrusive begging under this same act. The punishment for breaching the Act on Public Order is a fine.

The Deaconesses' Institution in Helsinki, which is a non-profit organization, runs a centre where the members of the Roma minority are offered some basic services, such as an opportunity to take a shower and to do the laundry. In the centre, there is once a week a clinic which is run by volunteers and which offers some basic health care services to the members of the Roma minority as well as to undocumented migrants. In 2012 there were altogether 13 539 visits to the centre. Each day approximately 5-10 children visited it.⁸

and their family members may be refused entry into Finland if they don't meet the preconditions for entry and under section 169(1) if they are considered a danger to public order or security or public health.

7 <https://www.hdl.fi/fi/ajankohtaista/1589-liikkuva-vaesto-kesa-2013> [16.6.2013].

8 *Ibid.*

Chapter II

Members of the Family

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

No significant developments took place in this regard in 2012-2013.

Section 154 of the Aliens Act defines who is to be regarded as EU citizens' family members. This same definition is applied in cases involving Finnish citizens who have used their right to free movement by moving to another member state and thereafter returning to Finland. Under section 154 of the Aliens Act:

Section 154 (360/2007)

EU citizens' family members

The following persons are considered family members of an EU citizen:

- 1) his or her spouse;
- 2) his or her descendants who are under 21 years of age or dependent on him or her, and the descendants of similar status of his or her spouse;
- 3) his or her direct relatives in the ascending line who are dependent on him or her, and relatives of similar status of his or her spouse.

If the EU citizen living in Finland is a minor, his or her guardian is considered a family member.

In the application of this Chapter, persons living continuously in a marriage-like relationship in the same household regardless of their sex are comparable to a married couple if they have lived in the same household for at least two years. In the application of this Chapter, the relationship between them is comparable to a marriage. However, the requirement of living together for at least two years does not apply if the persons living in the same household have a child in their joint custody or if there are other weighty reasons for it.

Other relatives are treated in the same manner as family members of EU citizens, regardless of their citizenship, if:

- 1) the relative is, in the country of departure, dependent on an EU citizen who has the primary right of residence, or the relative lived in the same household with the EU citizen in question; or
- 2) serious health grounds absolutely require the EU citizen in question to give the relative personal care.

According to section 153(3) of the Aliens Act as amended by the Act 432/2010, the provisions on free movement apply to EU citizens who move to Finland or reside there, as well as to their family members who accompany them or join them later. Section 153(4) of the Act clarifies that the provisions on free movement apply also to the family members of Finnish citizens who have used their right to free movement.

As regards the treatment of third country national family members of Finnish citizens, the Government Bill 77/2009 states that it is in accordance with the purpose of the Citizenship Directive to apply the rules on free movement to them only when the family relationship is somehow connected with the Finnish citizen's residence in another member state. Therefore, the rules on free movement are applicable only if the third country national family member had lived with the Finnish citizen in the state where the Finnish citizen practiced her freedom of movement, or if the persons had met each other or their relationship had otherwise started, while the Finnish citizen resided in the other member state. The Bill stresses that the Directive shall not be applied in cases involving family members who had no con-

nections whatsoever with each other before the Finnish citizen's returning to Finland. The Bill clarifies that Finnish citizens who have at some point used their right to freedom of movement and resided on this ground in another member state would therefore not gain a continuous and lifelong right to be united with their family members with whom their relationship starts after returning to Finland. Other than this, the Bill does not specify any further requirements that the intra-community link would have to meet in order for the case to fall within the ambit of free movement. It is, for instance, not specified in which circumstances family members of economically non-active Finnish citizens who have resided in another member state come within the scope of the Directive. It is unclear for how long the residence in the other member state should have lasted in such cases in order to be regarded as a genuine intra-community link.

Section 37 of the Aliens Act lays down a definition of family that is applied in cases that do not fall within the ambit of free movement of EU citizens and their family members. Under this provision,

When applying this Act, the spouse of a person residing in Finland, and unmarried children under 18 years of age over whom the person residing in Finland or his or her spouse had guardianship are considered family members. If the person residing in Finland is a minor, his or her guardian is considered a family member. A person of the same sex in a nationally registered partnership is also considered a family member.

Persons living continuously in a marriage-like relationship within the same household regardless of their sex are comparable to a married couple. The requirement is that they have lived together for at least two years. This is not required if the persons have a child in their joint custody or if there is some other weighty reason for it.

When no official statement is available on the dependency status (foster child), an unmarried child under 18 years who is under his or her parent's or guardian's *de facto* care and custody and in need of such care and custody on the date a decision is made on the residence permit application shall be treated as a child under subsection 1. Treatment as a child under subsection 1 requires reliable evidence that the child's previous parents or guardians have died or are missing and that the sponsor or his or her spouse was the child's *de facto* guardian before the sponsor entered Finland. If the sponsor is a foster child residing in Finland, treatment as a child under subsection 1 requires reliable information which shows that the person concerned was the sponsor's *de facto* guardian before the sponsor entered Finland.

This definition of family is thus applied *inter alia* in cases involving EU citizens who do not meet the preconditions for free movement (*e.g.* the income requirement in case of economically inactive individuals), as well as Finnish citizens in cases where there is no intra-community linkage, and the situation does therefore not fall within the ambit of free movement. It is to be noted that this definition of a family is narrower than the one applied in the context of free movement. The former, for instance, covers unmarried children only up to 18 years of age, whereas the latter covers children up to 21 years of age.

Section 50 of the Aliens Act concerns issuing of residence permits to family members of Finnish citizens. Under this provision

Family members of a Finnish citizen living in Finland and minor unmarried children of the family members are issued with a continuous residence permit on the basis of family ties upon application filed in Finland or abroad.

Relatives other than family members of a Finnish citizen living in Finland are issued with a continuous residence permit if refusing a residence permit would be unreasonable because the per-

sons concerned intend to resume their close family life in Finland or because the relative is fully dependent on the Finnish citizen living in Finland. Such other relatives must remain abroad while the application is processed.

If a Finnish citizen has used the right of movement laid down in the Directive 2004/38/EC of the European Parliament and of the Council amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (*Free Movement Directive*), by moving to another Member State or by residing in another Member State and the family member has accompanied or joined him or her, provisions in Chapter 10 apply to the entry and residence of the family member.

Issuing a residence permit referred to in this section does not require the alien to have secure means of support.

In cases where there is no intra-community linkage and where the Citizenship Directive is therefore not applicable, the family members of Finnish citizens have to apply for a residence permit. The residence permit procedure is more thorough than the procedure for registration of the right of residence or applying for an EU citizen's family member's residence card. In the former, the grounds for granting a permit are examined more thoroughly than in the other two, which are of their nature more summary. It should, though, be noted that once an individual meets the requirements for obtaining a family member's residence permit, the authorities are under obligation to issue her with the permit. No discretion is allowed in this regard. Furthermore, no income-requirement is applied in cases involving Finnish citizen's family members.

There are a number of differences in how those coming within the ambit of free movement and those remaining outside of it are treated. For instance, under the main rule, the first family member's residence permit is issued with the validity period of one year. Thereafter the permit is renewable upon application. A family member's residence card is valid for five years after its issuance. Furthermore, persons whose residence is based on the right to free movement, enjoy enhanced protection against expulsion compared with those residing in Finland by virtue of a residence permit. Moreover, only those third country national family members of Finnish citizens (or EU nationals) who come within the scope of free movement of EU citizens are given grounds for negative decisions on their visa applications and are, in case of a negative decision, allowed to appeal to an administrative court.⁹ In other situations, the negative decisions are not subject to appeal to an administrative court.

Even despite the differences between the treatment of those family members of Finnish citizens who come within the scope of free movement and those remaining outside of it, the issue of reverse discrimination has not raised any considerable debate in Finland.

2. ENTRY AND RESIDENCE RIGHTS

No significant developments took place in this regard in 2012-2013.

Pursuant to section 153(3) of the Aliens Act which entered into force on 1 July 2010,

⁹ Sections 155 a and 191 of the Aliens Act.

Chapter 10 [of the Aliens Act that contains provisions on free movement] shall be applied to an EU citizen who moves to Finland or resides in Finland, as well as to family members of such person, who accompany their EU citizen family member or join her later.

The requirement that in order to come within the scope of free movement, the family member of an EU citizen would have had to reside with her EU citizen family member lawfully in another member state before coming to Finland, which was previously contained in this provision, is, thus, abolished from the Act. Government Bill (HE 77/2009 vp) concerning this amendment clarifies that the provisions on free movement apply to the family members of EU citizens when the family enters Finland from another member state, as well as in cases where the family members enter Finland directly from a third country and where the family relationship is established after the persons concerned had already arrived in Finland. Section 158 of the Aliens Act concerns EU citizens' and their family members' short-term residence in Finland. Pursuant to this provision,

Section 158

EU citizens' short-term residence

(1) EU citizens may reside in Finland without registering their right of residence for a maximum of three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.

(2) The provisions of subsection 1 also apply to family members of EU citizens who are not EU citizens and who hold a valid passport.

Section 158a of the Aliens Act concerns the right to reside in Finland for more than three months. Pursuant to this provision,

Section 158a

Right to reside in the country for more than three months

(1) EU citizens may reside in Finland for more than three months if they:

- 1) are engaged in economic activity as paid employees or self-employed persons;
- 2) have for themselves and their family members sufficient funds and, if necessary, health insurance so that, during their time of residence, they do not become a burden on Finland's social security system by resorting repeatedly to social assistance provided in the Act on Social Assistance or other comparable benefits or in some other similar manner;
- 3) are enrolled at an accredited educational institution in Finland for the principal purpose of following a course of study and they have, for themselves and their family members, sufficient funds for their residence and, if necessary, health insurance, so that, during their time of residence, they do not become a burden on Finland's social security system by resorting repeatedly to social assistance provided in the Act on Social Assistance or other comparable benefits or in some other similar manner;
- 4) are family members of an EU citizen meeting the requirements laid down in subsection 1(1)-(3).

(2) The right of residence laid down in subsection 1 above also applies to family members of an EU citizen who are not themselves EU citizens, if the EU citizen meets the requirements laid down in subsection 1(1)-(3).

Section 161 of the Aliens Act concerns residence cards of third country national family members.

Section 161

Residence card

(1) Family members of EU citizens who are not EU citizens are, on application, issued with a residence card of a family member of an EU citizen, if the sponsor meets the requirements laid down in section 157 or 158a.

(2) A residence card is issued to family members planning to stay in Finland for more than three months.

Section 161a of the Aliens Act concerns the application of residence cards. Pursuant to this provision,

Section 161a

Applying for a residence card

(1) The application for a residence card of a family member of an EU citizen must be filed within three months of the date of entry.

(2) The following must be presented in connection with the application for a residence card:

- 1) a valid passport;
 - 2) a document attesting to the existence of a marriage or a registered partnership;
 - 3) the registration certificate of the EU citizen whom the applicant is accompanying or joining;
 - 4) in cases referred to in section 154(1)(2) or 154(1)(3), a document attesting to a family relationship;
 - 5) in cases referred to in section 154(3), proof of existence of a durable relationship with the EU citizen in question;
 - 6) in cases referred to in section 154(4), a document issued by an authority in the country of origin or the country of departure certifying that the other family members are dependents of an EU citizen or members of the same household or proof of the existence of serious health grounds which absolutely require the personal care of the family member by the EU citizen.
- (3) When filing the application for a residence card, the applicant is fingerprinted. She must attach to the application a photo.

Section 161b of the Aliens Act concerns the issuance of residence cards. Pursuant to this provision,

Section 161b

Issuing a residence card

The residence card of a family member of an EU citizen must be issued within six months of the submission of the application. A certificate of application for the residence card must be issued immediately.

Section 161c of the Act concerns validity of residence cards.

Section 161c

Validity of the residence card

(1) The residence card for a family member of an EU citizen is issued for five years or, if the envisaged period of residence is less than five years, for the envisaged period of residence.

(2) When considering the validity of the residence card, consideration is not given to temporary absences not exceeding six months a year, or to longer absences to undertake compulsory military service or to one absence of a maximum of twelve consecutive months for important reasons such as pregnancy or childbirth, serious illness, study or vocational training, or a posting in another EU Member State or a third country.

Section 161d of the Act lays down the preconditions for retaining the right of residence by family members in the event of death or departure from Finland.

Section 161d

Retaining the right of residence by family members in the event of death or departure from Finland

(1) An EU citizen's death or departure from the country does not affect the right of residence of his or her family members who are EU citizens. However, before being granted a right of permanent residence, the family member must meet the requirements laid down in section 158a(1).

(2) EU citizens' family members who are not EU citizens and who have resided in Finland as family members for at least one year before the death of the EU citizen do not lose their right of residence at the death of the EU citizen. Before family members are granted the right of permanent residence, they are subject to the requirement that they are employees or self-employed, or that they have, for themselves and their family members, sufficient funds so that they or their family members do not become a burden on the social assistance system of Finland, and comprehensive health insurance coverage in Finland, or that they are members of the family, already constituted in Finland, of an EU citizen meeting these requirements. Such family members retain their right of residence solely on personal grounds.

(3) When an EU citizen dies or leaves the country, his or her children or the parent who has actual custody of the children do not, irrespective of nationality, lose their right of residence before the children have completed their studies, if the children reside in Finland and are enrolled at an educational institution for the purpose of studying there.

Section 161f lays down the preconditions for retaining the right of residence in the event of divorce.

Section 161e

Retaining the right of residence of family members in the event of divorce

(1) A marriage of an EU citizen ending in divorce does not affect the right of residence of a family member of the EU citizen, if the family member is an EU citizen. However, before being granted the right of permanent residence, the family member must meet the requirements laid down in section 158a(1).

(2) Family members of an EU citizen who themselves are not EU citizens do not lose their right of residence in the event of divorce if:

- 1) the marriage has lasted at least three years, including one year in Finland;
- 2) by agreement between the spouses or a court decision, the spouse who is not an EU citizen has custody of the children of the EU citizen;
- 3) it is warranted by particularly difficult circumstances such as violence in the marriage; or
- 4) by agreement between the spouses or by a court decision, the spouse who is not an EU citizen has a right of access to a minor, and the court has ruled that the access must be in Finland.

(3) Before family members referred to in subsection 2 who are not EU citizens are granted the right of permanent residence, they are subject to the requirement that they are employees or self-employed, or that they have, for themselves and their family members, sufficient funds so that they or their family members do not become a burden on the social assistance system of Finland, and comprehensive health insurance coverage in Finland, or that they are members of the family, already constituted in Finland, of an EU citizen meeting these requirements. Such family members retain their right of residence solely on personal grounds.

Section 161f of the Aliens Act concerns retention of the right of residence.

FINLAND

Section 161f

Retaining the right of residence

(1) EU citizens and their family members have the right to short-time residence laid down in section 158 if they do not, by resorting repeatedly to social assistance provided in the Act on Social Assistance or other comparable benefits or in other similar manner, become an unreasonable burden on Finland's social security system during their residence.

(2) EU citizens and their family members have the right to stay in Finland for more than three months, as laid down in section 158a, 161d or 161e, if they meet the requirements laid down in these sections.

(3) In specific cases, if there are reasonable grounds to suspect that an EU citizen or his or her family member does not meet the requirements laid down in section 158a, 161d or 161e, the fulfillment of the requirements may be looked into.

Section 161g lays down the preconditions for permanent residence.

Section 161g

Right of permanent residence

(1) EU citizens who have resided legally in Finland for a continuous period of five years have the right to permanent residence. The right is not subject to the requirements for short-term residence or residence for more than three months.

(2) The provisions in subsection 1 also apply to family members of an EU citizen who are not EU citizens and who have legally resided in Finland with the EU citizen for a continuous period of five years.

(3) Continuity of residence is not affected by temporary absences not exceeding six months a year, or longer absences to undertake compulsory military service, or one absence of a maximum of twelve consecutive months for important reasons such as pregnancy or childbirth, serious illness, study or vocational training, or a posting in another EU Member State or a third country.

Section 161h concerns the issuance of a document certifying the right of permanent residence and section 162 a permanent residence card.

Section 161h

Document certifying the right of permanent residence of EU citizens

(1) EU citizens who have the right to permanent residence are, on application, issued with a document certifying permanent residence.

(2) The document must be issued as soon as possible after the period of residence has been verified.

Section 162

Permanent residence card

(1) Family members of an EU citizen who are not EU citizens and who have the right to permanent residence are, on application, issued with a permanent residence card within six months of filing the application.

(2) The application for a permanent residence card must be filed before the expiry of the validity of the residence card.

(3) Interruptions to residence not exceeding a maximum of two consecutive years do not affect the validity of the permanent residence card.

2.1 Case Law

The Supreme Administrative Court asked from the CJEU a preliminary ruling in two cases that concerned the right of residence of a spouse of a minor Finnish citizen's parent. In both cases, a person, who was the sole guardian of a minor Finnish citizen, was married to a third country national who did not have a residence permit in Finland because he did not meet the preconditions for obtaining it. The Supreme Administrative Court asked from the CJEU whether EU law precluded the refusal of the residence permit in such case on the grounds that it could result in a situation where an EU citizen, who is dependent on her guardian, may not be able to enjoy her rights flowing from this citizenship.

In its ruling (joined cases C-356/11 and C-357/11) the CJEU held that Article 20 of the TFEU does not preclude the refusal of a residence permit in cases like those at hand as long as this does not mean that an EU citizen is prevented from effectively enjoying the rights flowing from this citizenship.

On the basis of this, the Supreme Administrative Court concluded (KHO:2013:97, 22.5.2013) that the refusal of the residence permit of an EU citizen's parent's spouse did not prevent the EU citizen and her guardian to continue their life in Finland and the EU citizen to enjoy her rights flowing from this citizenship. Therefore, the residence permit could be rejected.

The Court gave a similar ruling in KHO:2012:47 of 20.6.2012.

3. IMPLICATIONS OF THE *METOCK* JUDGMENT

Before 1 July 2010, section 153 of the Finnish Aliens Act contained a requirement that in order for a family member of an EU citizen to come within the scope of free movement, this family member must have resided together with her EU citizen family member in another member state lawfully and in a non-temporary manner. This requirement of previous lawful residence was abolished from the Aliens Act as a reaction to the *Metock* judgment by an act that entered into force on 1 July 2010.

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

Section 172a of the Aliens Act is applicable in case of marriage of convenience. Pursuant to this provision, any rights conferred in Chapter 10 of the Aliens Act containing the rules on free movement of EU citizens may be

refused, terminated or withdrawn, if they have been obtained by knowingly providing false information about the applicant's identity or other relevant facts, or by concealing such information, or by other abuse of rights, such as marriages of convenience for the purpose of obtaining rights under this Chapter.

When applying this provision in practice, the police follows the instructions laid down in the Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States COM(2009) 313 final.

No information on any administrative or legal practice concerning this issue was found.

5. ACCESS TO WORK

According to section 164 of the Aliens Act, persons whose right of residence is based on chapter 10 of the Aliens Act laying down the conditions for free movement of EU citizens and their family members have unrestricted right to gainful employment and self-employment without a work permit. Furthermore, EU citizens' family members whose right of residence is based on chapter 10 of the Aliens Act have unlimited access to unemployment services.

6. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

Family members of jobseekers are entitled to free movement provided that they and the sponsor meet the general preconditions for free movement. As the right of job seekers' family members' residence is based on Chapter 10 of the Aliens Act and on EU free movement legislation, in principle they also have access to employment. No specific information and *e.g.* case law touching upon this issue were found.

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

In what comes to issues concerning equal treatment, the family members of EU citizens are treated similarly to the sponsors. No information was found on any specific problems relating to the treatment of EU citizens' family members as it concerns social and tax advantages.

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)*

No significant developments were noted in 2012-2013 regarding equal treatment in access to employment.

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

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

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

Non-discrimination and Equality of Treatment

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

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

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

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

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

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

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

Discrimination at Work

Employer or her representative, who when announcing a vacant job, hiring new workers, or during the employment without a weighty acceptable reason places an applicant or an employee in a worse position than others on the ground of her

1) race, national or ethnic origin, citizenship, colour, language, sex, age, family relationship, sexual orientation, heredity, disability, or state of health; or

2) religion, social opinion, political activities or activities in trade union, or on other comparable ground,

shall be convicted for discrimination at work to fine or prison sentence for a maximum duration of six months.

No judicial practice on the issue of discrimination as regards access to employment was found.

EU citizens and their family members are entitled to public employment services, including assistance of employment agencies and other measures laid down in the Act on Public Employment and Enterprise Services (laki julkisesta työvoima- ja yrityspalvelusta 916/2012).

1.2. Language requirements

No significant developments took place on 2012-2013 regarding language requirements at the private sector.

As the main rule, there are no statutory language requirements at the private sector. In practice it is, however, rather common to require that employees command Finnish or Swedish and in some cases both. According to a survey published by the Confederation of Finnish Industries (Elinkeinoelämän keskusliitto), over the recent years the relative importance of the knowledge of Swedish language has decreased, though, and the importance of other languages such as Russian, German, Spanish and Portuguese increased.¹⁰

Although it is in practice rather common to require knowledge of one or both of the national languages, there are certain low-skilled and high-skilled jobs where this requirement is not applied. For example, IT-companies, such as Nokia, and some other big companies use as their working language English and therefore do not require command of Finnish from all of their employees.

Studies concerning integration of immigrants from third countries indicate that the lack of knowledge of the national languages is one of the most significant impediments for their access to the Finnish labour market. Due to the weakening of the employment situation, as well as hardening of the general attitudes towards migration and migrants, no positive developments are discernible in this regard.

The Occupational Safety and Health Authority screens job announcements. If the Authority comes across requirements concerning particular citizenship or disproportionately high language skills, it may issue to the employer a reprimand. No statistical information on the number of such reprimands is available.

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

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

No significant developments have taken place regarding nationality condition for access to positions in the public sector in the second half of 2012 and the first half of 2013.

Most public posts were opened for persons who do not have Finnish citizenship already in 1989. There are, however, certain exceptions to this main rule.

According to section 25 and 26 of the Finnish Constitution, only a Finnish citizen may be elected as a Member of Parliament. Furthermore, according to section 54 of the Constitu-

10 http://www.ek.fi/www/fi/tutkimukset_julkaisut/2010/6_ksa/Tyoelamassa_tarvitaan_yha_useampia_kielia.pdf.

tion, the President of the Republic shall be a native-born Finnish citizen. According to section 60 of the Constitution, the Ministers shall be Finnish citizens.

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

Sub-section 1 of section 7 of the Act on Public Posts contains an exhaustive list of public posts to which Finnish citizenship is required. According to this provision,

Act on Public Posts (Valtion virkamieslaki 750/1994), section 7

Only a Finnish citizen may be appointed to the following posts:

- 1) Chancellor of Justice, Deputy Chancellor of Justice, and Chief Secretary, Assistant Chief Secretary and department head at the Office of the Chancellor of Justice;
- 2) post of the Secretary of State, Chief Secretary of the Secretary of State, head of government office, department head of government office, office manager, and other comparable or higher post;
- 3) post at the foreign service;
- 4) post of judge;
- 5) post of head of civil service department excluding rectors of universities;
- 6) post of the head of rescue services and preparedness at district administration;
- 7) post that includes tasks of public prosecutor or distrainor;
- 8) post of police within the meaning of the Act on Police (872/2011);
- 9) post, whose holder is a member of a prison board;
- 10) post at the Ministry of Defence and armed forces as well as Border Guard Detachment;
- 11) post other than police officer at Security Police;
- 12) post at the customs to which appertains right to arrest as well as post at the customs to which appertains duties concerning supervising and securing the territorial integrity of Finland or duties concerning investigation and supervision of crimes;
- 13) posts of the immediate subordinates of the Head of the Finnish Transport Agency and the Finnish Transport Safety Agency.

It follows that the Foreign Service, the Ministry of Defense and the armed forces, as well as the Border Guard Detachment, are, as sectors, excluded from persons who are not Finnish citizens, whereas in other situations the exclusion is done on the basis of the function in question.

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

The Act on Public Posts, section 11

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

No information on any practical problems or case law concerning this issue has been found.

2.2. *Language requirements*

No significant developments regarding language requirements took place in 2012 or the first half of 2013.

The issue of language requirements for posts at the public sector is regulated through the Language Act (Kielilaki 423/2003) and the Act on Language Proficiency Required from the Personnel of Public Authorities (Laki julkisyhteisöjen henkilöstöltä vaadittavasta kielitaidosta 424/2003), and through legislation concerning different sectors of administration. The primary purpose of this legislation is to guarantee the constitutional right to use one's own language, Finnish or Swedish, at the courts of law and other public authorities.

The requirements concerning language proficiency may constitute an impediment for the access of citizens of the other EU states to the Finnish public sector, at least when it concerns the higher posts in governmental authorities. The requirements concerning linguistic competence of persons working at governmental authorities are bound to the qualification requirement and not to the tasks in question, which would be a more flexible approach. Under section 6 of the Act on Language Proficiency, for public posts for which the qualification requirement is a university degree, the required level of language proficiency in the majority language is *excellent oral and written skills* and in minority language *satisfactory oral and written skills*.

The means by which an applicant for a post can establish that she has reached the required level of language proficiency are national language tests and certificate showing that the person concerned has completed her education and passed a maturity test at a Finnish university in the given language. According to section 14 of the Act on language proficiency, the Board on Language Exams (*Kielitutkintolautakunta*) may upon application issue a certificate on excellent command of Finnish or Swedish language to a person who can show that she has reached the required language proficiency by other means than those specified in the Language Decree. Hence, the Board on Language Exams may upon application decide that, for instance, language studies completed abroad may be equated with official Finnish exams.

The general legislation on languages does not apply to the Evangelic Lutheran Church, and to the Orthodox Church. These institutions have language policies specific for them. Furthermore, the municipalities have the right to determine by themselves the level of languages that they require from their personnel. From the Constitution and the Language Act however follow that the level has to be high enough to guarantee that the linguistic rights of both Finnish and Swedish speakers are fulfilled and that they get public services on their mother tongue.

2.3. *Recognition of professional experience for access to the public sector*

As the main rule, when a position becomes open or is created, each ministry or agency organizes the recruitment of new personnel and determines its own recruitment methods. There are no specific rules on how professional experience and seniority obtained in another EU member state should be taken into account for the purposes of access to the public sector in Finland. From the general prohibition of discrimination follows that relevant professional experience and seniority acquired in another member state should be taken into account in a similar manner as the corresponding experience and seniority acquired in Finland. No information was found on how this principle is followed in practice and to what extent profes-

sional experience or seniority acquired in another member state are actually recognised in Finland. No judicial practice on this issue was found either.

3. OTHER ASPECTS OF ACCESS TO EMPLOYMENT

No relevant information was found.

Chapter IV

Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

1.1. Working conditions in the public sector

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

No specific rules were found on how foreign diplomas as well as professional experience, skills, and seniority acquired in another member state should be taken into account when assessing the individual pay component. It follows from the principle of non-discrimination that these factors shall be taken into account in a similar manner as corresponding diplomas, experience, and seniority acquired in Finland. No information on how the system functions in practice in cases involving employees from the other EU member states was found. No information on practical problems or relevant judicial decisions concerning this issue was found either.

From the principle of non-discrimination follows that any diplomas or professional experience acquired in another member state should be taken into account in an equal manner as diplomas and experience acquired in Finland in the context of promotion and other career perspectives. It should be noted that apart from certain exceptions, the Finnish civil service is a post-based system and hence, the employee seeking promotion has to change posts.

All civil servants and employees regardless of their nationality enjoy trade union rights, including the right to join a trade union.

1.2. Working conditions in the private sector

Discrimination of EU citizens at the labour market is prohibited through the general legislation on equality and non-discrimination. Employment legislation and collective bargain agreements define the minimum conditions for employment and apply to all workers regardless of their nationality and whether or not they are members of a trade union. Membership of trade unions is open to all workers regardless of their nationality.

No case law concerning discrimination against EU citizens in the Finnish labour market was found. Furthermore, the statistics on reported incidents of discrimination do not indicate

the citizenship of the victim. According to the estimations of occupational health and safety authorities, incidents of discrimination against citizens of the old member states are rather rare. Situation of citizens of the new member states is in this respect worse. The authorities have come across incidents of discrimination both against workers employed directly by Finnish employers *e.g.* as cleaners, as well as against posted workers working *inter alia* as cleaners and in the house building and shipyard industry. In cases involving posted workers discrimination tends to be more severe than in cases involving directly employed workers. Posted workers are at times paid less than the Finnish employees or even below the minimum wages; the workers are not paid supplementary payments such as overtime pay; the workers are not insured; and no occupational health care is arranged. Incidents of discrimination go to courts only very rarely. The reason for this is often either that the police and the prosecutor regard the offences as minor or that the victims of discrimination are not prepared to claim their rights.

2. SOCIAL AND TAX ADVANTAGES

2.1. General situation as laid down in Art. 7 (2) Regulation 492/2011

Social advantages

Finnish legislation does not contain an explicit rule prohibiting discrimination of EU citizens on the basis of their nationality. Rather, the prohibition of discrimination is guaranteed by means of the general legislation on non-discrimination and equality. Furthermore, the scope of the legislation concerning various public services and benefits as well as taxation is sought to be formulated so that EU workers are included in it on equal grounds with Finnish citizens.

The Regulation 492/2011 is taken to cover all social services, such as children's day care, public schools, as well as services for aged persons. Such services have, therefore, to be offered without discrimination to EU workers working in Finland as well as to their family members.

The Parliamentary Ombudsman gave on 13.2.2013 a decision (Dnro 644/4/11) concerning an EU citizen's access to health care. The complainant, who worked in Finland and was therefore enrolled in the Finnish social security system, did not have a home municipality in Finland. He had contacted a public health centre in order to get health care. He was, however told by the centre that he was entitled only to emergency health care, because he did not have a home municipality in Finland. The complainant filed to the Parliamentary Ombudsman a complaint about his treatment. The Ombudsman concluded that instead of telling to the complainant that he was entitled only emergency treatment, the health centre should have requested the complainant to provide further proof of his right to health care in Finland, or instead contacted the National Insurance Institute in order to check whether the complainant was entitled also to other health services than just to the emergency treatment. The Ombudsman argued that the workers at the health centre should have presumed that the complainant was as an EU citizen entitled also to the other health care services than only to emergency care.

Taxation

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

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

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

In the Finnish system, a person liable to pay income tax in Finland may reduce from her income tax certain costs for the care, cleaning, construction, and other such work which is performed at her home or at the home of her spouse or parents regardless of in which country the property is located. The precondition for this deduction was that the company that performed the work was enrolled in the preliminary taxation register in Finland even in cases where the property was located abroad. In 2012, the law was amended so that this so called 'home-work deduction' can be made in cases where the property where the work is performed is located abroad also when the company, which performed the work, is registered in the preliminary taxation register – or other similar register – in the country where the work was performed. This reform had particular impact on the position of frontier workers who may now make better use of the home-work deduction.

The Supreme Administrative Court gave on 28.12.2012 a ruling concerning home-work deduction from income tax, that may have relevance in the context of free movement of workers although it primarily concerned freedom of services. The Court ruled that the applicant was not allowed to reduce from her income tax costs for work performed at her home which was located in Finland by a company which was based in Sweden, because this company was not enrolled in the preliminary taxation register in Finland. The Court argued that the registration in the preliminary taxation register is a simple administrative formality that does not constitute an unreasonable burden on companies based abroad. Furthermore, registration is necessary for the purpose of supervising taxation. Therefore it was possible to regard the registration at the preliminary taxation register in Finland as a precondition for home-work deduction in a case where the work was performed in Finland.

From this follows, that if the property, where the work is performed, is located abroad, the tax deduction may be made even if the company which performed the work is not registered in the Finnish preliminary taxation register, but if the property is located in Finland, the company must be registered in the Finnish register in order for the deduction to be made.

2.1. Specific issue: the situation of jobseekers

The general prohibition of discrimination and right to equal treatment concern also the EU job-seekers. However, in practice they do not necessarily have access to all public services although the practices vary in different municipalities. For instance, only children whose right of residence is registered gain in practice access to public day care in the area of Helsinki. Hence, children of job-seekers do not have, or have only limited access to public day care. Public schools accept also children whose right of residence is not registered. No systematic information on this issue was found, however.

Pursuant to section 14 of the Act on Social Assistance (laki toimeentulotuesta 1412/1997), regardless of the individual's legal status, everyone staying in Finland either temporarily or permanently is entitled to social assistance if she has an acute need for that. Social assistance is a last resort form of income security. The municipalities pay this means-tested assistance if the person concerned is not able to cover her acute expenses by other means. Accordingly, also job-seekers coming from the other EU states and who need financial assistance to cover their most basic needs shall be granted this form of assistance.

Chapter V

Other Obstacles to Free Movement of Workers

The Act on Unemployment Security (Työttömyysturvalaki 1290/2002) concerns unemployment security benefits. Pursuant to this act, a person must have worked in Finland for at least four weeks (in case of unemployed persons four months) before becoming unemployed in order for the employment and insurance periods gained in another member state to be taken into account when claiming unemployment benefits in Finland.¹¹ The Commission holds that this is not compatible with the Regulation 883/2004 (2011/2220). The Government of Finland holds that the requirement is not disproportionate and that its purpose is to make sure that the person in question has entered Finland for the purpose of employment.

The job alteration leave, which is regulated by the Act on Job Alternation Leave (vuoroteltuvapaalaki 1305/2002), is an arrangement which makes it possible for an employee to take from her employment a leave with the duration of 90 to 359 days, and during the leave receive an alternation leave compensation from an unemployment fund or the Social Insurance Institution of Finland. The precondition for this is that the employee meets the requirements laid down in the act, the employer agrees that the employee takes the leave, and the employer engages for a corresponding period a person who is registered as an unemployed job-seeker at an employment office. The purpose of this arrangement is to provide employees with a possibility to take a break from the employment and thereby to enhance their ability to cope in the working life in the future, and to improve the employment opportunities for unemployed persons (1 §).

In order to be entitled to a job alternation leave and the related compensation, the employee must have been in employment for at least 10 years (4 §) and have been in employment relationship with the same employer for a consecutive period of at least 13 months immediately prior to the alternation leave (5 §). Work done abroad, including in the other EU Member States, is not included in the working history, unless the worker has been working abroad as a posted worker employed by a Finnish employer.

Job alternation leave is not a subjective right, but instead always dependent on a permission by the employer. An employee, who meets the preconditions for job alternation leave (i.e. has a working history of 10 years and has been in employment relationship with the same employer for 13 months), and the employer have to make a written agreement on the leave and its duration. In this agreement the employer commits to hire a person who is registered as an unemployed job-seeker at an employment office (8 §). Once such agreement is reached and signed, the employee has a right to alternation leave compensation. Members of unemployment funds apply for the compensation from the respective fund, and others from the Social Insurance Institution of Finland.

The legal nature of this arrangement is not fully clear. The arrangement is regarded as a part of the employment legislation and not social security legislation, and it belongs on the responsibility of the Ministry of Employment and Economy rather than the Ministry of Social Affairs and Health. The Ministry of Employment and Economy has described this arrangement as a mechanism for distributing work and working time, and not as a social or unemployment benefit. Therefore, this arrangement is not regarded to be covered by the Regulation 833/2004. It may, however, be argued that the entitlement to job alternation leave

¹¹ Työttömyysturvalaki 1290/2002, Chapter 5, section 9 (Act on Unemployment Security).

is a condition of employment or work and the right to the compensation a social advantage, and that therefore the grounds for obtaining this entitlement, including the requirement concerning working history, ought to be non-discriminatory and that therefore the fact that periods of work accomplished abroad are not counted in the working history, is problematic.

Chapter VI Specific Issues

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

The question of frontier workers actualises in Finland mainly in the northern parts of the country at the frontier between Finland and Sweden, and in the southern part between Finland and Estonia. Free movement of labour within the area of the Nordic countries, including the treatment of frontier workers, is based on a web of treaties concluded among the states concerned. Special arrangements apply to the treatment of frontier workers regarding social security and unemployment issues, pensions, and taxation. The purpose of these arrangements is to allocate the responsibilities among the states concerned and to avoid dual taxation and other such problems. Between Finland and Estonia, there are no similar arrangements.

No information on any particular practical problems or case law relating to the position of frontier workers was found.

A recent amendment of the tax legislation has an impact on the position of frontier workers. In the Finnish system, a person liable to pay income tax in Finland may reduce from her income tax certain costs for the care, cleaning, construction, and other such work which is performed at her home or at the home of her spouse or parents regardless of in which country this property is located. The precondition for this deduction was that the company that performed the work was enrolled in the preliminary taxation register in Finland. In 2012, the law was amended so that this so called 'home-work deduction' can now be made in cases where the property where the work is performed is located abroad also when the company, which performed the work, is registered in the preliminary taxation register – or other similar register – in that country.

2. SPORTSMEN/SPORTSWOMEN

The teams playing in the Finnish Basket Ball League applied in the season 2012-2013 a 'gentlemen's agreement' that limited the number of foreign players in the playing line-up to three players. All players who were not Finnish nationals were included in the foreign players' quota. The agreement on the quota was concluded among the teams themselves without the Finnish Basketball Association to be formally a party to it. No information was found on the consequences of breaching this agreement.

In the Finnish Volley Ball League, the rule on foreign player's quota was included in the written Rules of the League. Under paragraph 15 of the Rules, the playing line-up may include only three foreign players.¹² EU-players are included in the foreign players' quota and hence, their number is also limited.

In the Finnish Ice-Hockey League foreign players' quotas are applied, but since the season 2009-2010, players from the other EU member states and from the states with which EU has concluded agreements that prohibit discrimination of labour are no longer included in them. Hence, the number of EU-players in the playing line-up is no longer limited. In the

12 Lentopallon SM-liigan sarjamääräykset sarjakaudelle 2011 – 2012, paragraph 15.

Finnish Handball League, too, foreign player's quotas concerning the playing line-up are applied, but EU citizens and other comparable persons are not included in them.

The Competition Regulation adopted by the Football Association of Finland contains rules on quotas for foreign players. According to these rules, the playing line-up of each team may include no more than three foreign players. Players who come from the UEFA-countries or from countries with which EU has concluded agreement prohibiting discrimination of labour are not included in this quota.

No information on home-grown rules on team sports was found.

3. THE MARITIME SECTOR

The Finnish labour legislation and collective bargain agreements are applicable to all persons working at ships flying under the Finnish flag regardless of the nationality of the persons in question or her trade union membership. Despite this, discrimination occurs in practice. However, in the fear of harmful consequences, the victims of discrimination only rarely instigate legal proceedings against their employers. Although *de jure* nationality requirements are not applied, in practice higher positions often are reserved for the nationals of the state under whose flag the vessel flies. No judicial decision concerning this issue was found, though.

4. RESEARCHERS/ARTISTS

No important developments took place in this area in 2012-2013.

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

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

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

No information on any incidents of discrimination on the basis of nationality against researchers or artists was found.

5. ACCESS TO STUDY GRANTS

No significant developments occurred in 2012-2013.

According to section 1(3) of chapter 1 of the Act on Study Grants (Opintotukilaki 65/1994, <http://www.finlex.fi/fi/laki/ajantasa/1994/19940065?search%5Btype%5D=pika&search%5Bpika%5D=opintotuki%2A#a7.5.2004-345>), citizens of the other EU States and their family members, whose right of residence has been registered or who have been issued with a residence card, and who reside in Finland, are granted study grants for the purpose of studying in Finland. A precondition for this is that the ground for the individual's residence in Finland is other than studying.

Finnish citizens who have had their home municipality in Finland for the minimum of two years during the five years preceding the beginning of the studies, as well as EU citizens and their family members, who have gained the permanent right of residence in Finland, and who have had their home municipality in Finland for the minimum of two years during the five years preceding the beginning of the studies, shall be granted study grants for the purposes of studying outside Finland. The precondition for this is that the individual's residence outside Finland may be regarded as temporary.

6. YOUNG WORKERS

In Finland, there are various types of financial and other measures that seek to stimulate young persons' access to the labour market. These measures include workshops that offer opportunities for practical training; salary support, i.e. a commitment from the employment office to pay a specified share of a young worker's salary; and labour market training. Some of the measures are run and/or financed by the public sector, whereas others, such as many workshops, by private actors, such as various NGOs. Many of the projects run by private organisations are funded by the Finland's Slot Machine Association (Raha-automaattiyhdistys, RAY) which has an exclusive right in Finland to operate slot machines and casino table games and to run a casino, through which it raises funds to support Finnish health and welfare organisations.

Different criteria apply to the access to different types of stimulations measures. As the main rule, all the measures are open for all young workers regardless of their nationality, provided that they meet the particular criteria for the given measure. For some measures, such as workshops, *de facto* residence in Finland is sometimes required in practice.

No judicial decisions on this issue were found.

Chapter VII

Application of Transitional Measures

No transitional measures are applied in Finland.

Chapter VIII

Miscellaneous

1. RELATIONSHIP BETWEEN REGULATION 883/04 AND ART 45 TFEU AND REGULATION 492/2011

There are two alternative set of criteria for defining who comes within the Finnish social security system. The first set of criteria is based on residence. The Act on scope of application of social security legislation (Soveltamisalaki 1573/1993) and the related social security legislation lay down the criteria for assessing who is to be regarded as a resident for the purpose of social security coverage. The second set of criteria is based on work. Those who are to be regarded as workers within the meaning of the Regulation 883/2004 are eligible for social security even though they would not meet the residence-based criteria. Family members of workers are entitled to benefits covered by the Regulation 883/2004 regardless of their country of residence.

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

Regarding certain benefits, the precondition for eligibility is that the employment or the self-employed activity in Finland lasts at least for four months. This ‘four months rule’ covers national health insurance, child care subsidy, accruing credits towards national pension and survivor’s pension, rehabilitation benefits, and unemployment allowances under the Act on Unemployment Security (Työttömyysturvalaki 1290/2002). If the employment is estimated to last at least for four months, the person concerned is entitled to these benefits since the moment when the employment or the self-employed activity starts. The compatibility of this ‘four months rule’ with the EU law raises issues because workers may therefore be excluded from certain social benefits.

The working group on Revision of Residence Based Social Security Legislation, which gave its final report on 19.10.2012, proposed the Finnish legislation to be amended in this regard. The working group proposed that instead of four months, it would be required the employment to last for one month in order to constitute a ground for obtaining the benefits presently covered by the ‘four months rule’. Additional requirement would be a minimum salary of 1103 e/month.¹³ No legislative proposals have been given on this issue.

If the employment contract is either permanent or temporary but made for longer than two years, the worker is regarded as a permanent resident for the purpose of social security coverage. Those who are regarded as permanent residence are, in addition to the aforementioned benefits, entitled also to *e.g.* special benefits for disabled persons, maternity benefit, and general housing allowance. The working group on Revision of Residence Based Social Security Legislation, which gave its final report on 19.10.2012, proposed the Finnish legislation to be amended so that in the future it would be enough if the temporary employment contract was concluded for one year – instead of two years, what is required at the moment –

13 Working Group on Revision of Residence Based Social Security Legislation: Working Group Report on Revision of Residence Based Social Security Legislation. Reports and Memorandums of the Ministry of Social Affairs and Health. 2012:24, p. 37.

provided that the person in question would have de facto resided in Finland for one year and that her centre of interests would be in Finland.¹⁴ No legislative proposals have been given on this issue.

The Regulation 492/2011 covers all social services such as children's day care and public schools as well as services for aged persons. Such services shall be granted without discrimination to workers and their families. However, family members of frontier workers, who do not live in Finland may encounter practical problems when seeking access to these services. No case law was found on this issue, though.

In practice there may be situations where an individual is not entitled to benefits covered by the Regulation 883/04, for instance because she does not meet the 'four months rule'. In such cases the question arises whether the person concerned and her family members should be entitled to these benefits on the grounds of the Regulation 492/2011 on the basis that withdrawing the benefits would amount to discrimination. No judicial decisions on this issue were found. It has been argued by the Social Insurance Institute that the judgment in C-213/05 *Geven* can be taken to offer support for the view that if the employment in Finland would be so minor as regards its duration and the weekly working hours that the person in question would not qualify as a worker for the purposes of the Regulation 883/04, she is not entitled to claim benefits under Regulation 492/2011, either.

2. RELATIONSHIP BETWEEN THE RULES OF DIRECTIVE 2004/38 AND REGULATION 492/2011 FOR FRONTIER WORKERS

No specific information on this was found.

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

3.1. *Integration measures*

The Act on Promotion of Integration (Laki kotoutumisen edistämisestä 1386/2010), which entered into force on 1 September 2011, contains provisions on voluntary integration measures to be provided to persons moving to Finland. This act applies to EU citizens who have registered their right of residence, to EU citizens' family members, who have obtained a residence card, as well as to EU citizens and third country nationals who reside in Finland by virtue of a residence permit.

Under the Act on Promotion of Integration, the authorities have an obligation to provide persons moving to Finland with general information on the Finnish society and integration services. Furthermore, persons coming into the scope of this act, and who are registered as unemployed job seekers, have a right to a personal integration plan. The maximum plan period for a personal integration plan is three years. The plan is drawn up by the immigrant herself, the employment consultant, and where necessary, a representative of the municipality where the individual lives. The integration plan includes an agreement on the measures to

¹⁴ Working Group on Revision of Residence Based Social Security Legislation: Working Group Report on Revision of Residence Based Social Security Legislation. Reports and Memorandums of the Ministry of Social Affairs and Health. 2012:24, p. 46.

be taken in order to help the immigrant to integrate into the Finnish society and to enter into the labour market. Such measures include courses in Finnish or Swedish languages and an assessment on how the qualifications or degrees that the person has taken outside Finland can be made to meet the requirements set by Finnish working life, and what kind of further training may be needed. All integration measures are voluntary to the persons concerned.

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

Before the Directorate of Immigration may issue a third country national with a residence permit for the purpose of working in Finland, the employment office has to consider whether there is labour suitable for the work in question at the labour market and, furthermore, to ensure that the issuance of the permit would not prevent a person at the labour market from getting employed.¹⁵ Finnish citizens and citizens of the other member states as well as third country nationals residing lawfully in Finland are regarded as persons already at the labour market and therefore accorded priority over workers coming from third countries.

3.3. Return of nationals to new EU Member States

The return of nationals from Finland to new EU Member States has not taken place in any significant numbers. No information on any administrative guidelines or practices or case law on issue was found.

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

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

The Parliamentary Ombudsman gave on 13.2.2013 a decision (Dnro 644/4/11) concerning an EU citizen's access to health services. The complainant, who worked in Finland and was therefore enrolled in the Finnish social security system, did not have a home municipality in Finland. He had contacted a public health centre in order to get health services. He was, however told by the centre that he was entitled only to emergency health care, because he did not have a home municipality in Finland. The complainant filed to the Parliamentary Ombudsman a complaint concerning his treatment. The Ombudsman concluded that instead of telling to the complainant that he was entitled only emergency treatment, the health centre should have requested the complainant to provide further proof of his right to health care in Finland in order to determine to what kind of treatment he was entitled to, or instead contacted the National Insurance Institute in order to check whether the complainant was enti-

¹⁵ See section 72 of the Aliens Act.

tled also to other health services than just to the emergency treatment. The health centre had failed its duty to properly clarify to what services the complainant was entitled to.

Ombudsman for Minorities has the task of advancing the status and legal protection of ethnic minorities and foreigners, as well as equality and non-discrimination. The Ombudsman can be contacted in cases involving discrimination on the grounds of nationality and ethnic origin.

No information was found on any statements by the Ombudsman for Minorities concerning EU citizens.

Occupational Health and Safety Authority supervises the prohibition of discrimination in the context of access to employment and working conditions. For this purpose the Authority may, for instance, conduct inspections at working sites. Furthermore, the Authority screens job announcements in order to find out whether any prohibited requirements, such as particular citizenship or disproportionately high language skills, are applied, and may issue to the employer a reprimand if such requirements are used. Employees who experience discrimination or other problems pertaining to working conditions may contact the Authority. Normally, however, the first step to take in cases involving discrimination is to contact the *shop steward or industrial safety delegate* at the place of work, or the *trade union*. It is to be noted that membership in trade union is not restricted to Finnish nationals but is open for all workers regardless of their nationality.

The Occupational Health and Safety Authority does disaggregate the statistical data which it collects of the incidents it has dealt with by citizenship. Therefore, no information on incidents of discrimination against EU citizens can be provided by the Authority.

Information on free movement of EU citizens is collected i.a. on the following www-pages:

Finnish Immigration Service:

http://www.migri.fi/tietoa_muualle/eu-kansalaiset_ja_pohjoismaan_kansalaiset

Police:

<http://www.poliisi.fi/poliisi/home.nsf/pages/87B0FE0A7886F6B7C22577D1002C8FE8?opendocument>

Ministry for Justice:

<http://www.kansanvalta.fi/Etusivu/Oikeudet/EUKansalaisenoikeudet>

Ministry for Foreign Affairs:

<http://www.eurooppatiedotus.fi/public/default.aspx?contentid=92694&contentlan=1&culture=fi-FI#.Ucwy7loqfjU>

Magistrate:

http://www.maistraatti.fi/fi/Palvelut/kotikunta_ja_vaestotiedot/Ulkomaalaisten-rekisterointi/

Info Bank for Migrants:

http://www.infopankki.fi/fi-fi/eu-maiden_kansalaiset/

5. SEMINARS, REPORTS AND ARTICLES

- The Finnish Ministry for Interior organized on 19.3.2013 a seminar on free movement of EU citizens. The topics dealt with included:
 - EU policies on free movement of workers within the EU
 - Free movement in the recent jurisprudence of the CJEU
 - Regulation of free movement as a part of immigration policy
 - The Right of EU citizens to social security
- The working group on Revision of Residence Based Social Security Legislation gave its final report on 19.10.2012. In the report the working group proposed some amendments to the Finnish social security system which would have impact on the position of EU workers. The group, for instance, proposed the amendment of the so called 'four months rule'. The working group proposed that instead of four months, it would be enough that the employment in Finland lasted for one month in order to constitute a ground for obtaining the benefits presently covered by the 'four months rule'. Additional requirement would be a minimum salary of 1103 e/month.¹⁶ No legislative proposals have been given on this issue.

In addition to this, the working group proposed the Finnish legislation to be amended so that to be regarded as a permanent residence for the purpose of social security coverage, in the future it would be enough if the temporary employment contract was concluded for one year, provided that the person in question would have de facto resided in Finland for one year and that her centre of interests would be Finland. At the moment it is required that the employment contract is either permanent or concluded for the minimum of two years.¹⁷

16 Working Group on Revision of Residence Based Social Security Legislation: Working Group Report on Revision of Residence Based Social Security Legislation. Reports and Memorandums of the Ministry of Social Affairs and Health. 2012:24, p. 37.

17 Working Group on Revision of Residence Based Social Security Legislation: Working Group Report on Revision of Residence Based Social Security Legislation. Reports and Memorandums of the Ministry of Social Affairs and Health. 2012:24, p. 46.