REPORT
on the Free Movement of Workers in the Czech Republic in 2010-2011

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October 2011

Contents

Abbreviations

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

Introduction

The free movement legislation was developed soon after the Czech Republic entered into EU in 2004. Compared to rapid changes which were done in previous years, there were only few developments in the legislation on free movement in 2010/June 2011. There was a major change of the Act on Residence of Foreigners (hereinafter 'FoRa') at the end of 2010, but the amendments focused mainly at third country nationals. Some of the changes nevertheless assured the guarantees given by the 2004/38/EC Directive and they will be dealt with in the report. The rapporteur focused the report also on practice, i.e. whether the implementation of the *acquis* is in compliance with the relevant EU legislation.

The Act on Residence of Foreigners remains a very complex law, which is hard to understand. The Ministry of Interior finally prepared foundations of a new Act at the end of 2010. Some of the intentions – if they will be used in the drafts and elaborated on – seem to be a step forward in assurance of free movement of workers. The Ministry plans to adopt two laws instead of current one; one should be aimed at EU citizens and their family members, and the other at third country nationals. Another interesting point is planned possible transmission of the agenda of stay of EU citizens to local authorities.

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

Detailed information on the transposition of Directive 2004/38/EC was already provided in the reports 2006 and 2007.

The issue of entry, residence and departure of the EU nationals and their TCN family members is covered by provisions of the Foreigners' Residence Act[1] (a general law which focuses on the position of all foreigners). The law is divided into several main parts: entry, residence, departure, detention or functions of the relevant authorities. One part of the law focuses only on the residence of EU citizens and their family members (Secs. 87a – 87aa), whose position is reflected also in other provisions of this act. The issue of entry, residence and departure of EU nationals and their TCN family members is basically in compliance with the Directive. Some problems with the implementation of obligations arising from the Directive are mentioned in the following paragraph or in Chapter II.

In summary, the main problems in transposition may be seen mainly in the following aspects:

Entry, residence and departure of the EU citizens:

1) The CR requires more documents to be submitted with an application for a registration certificate than the Directive allows for (photographs, accommodation; Sec. 87a FoRa), which is not in compliance with Art. 7 (1) of the Directive.
2) When deciding on expulsion, only proportionality of the decision to private or family life of the foreign national is taken into account before taking the decision, while Art. 28(1) provides for a more extensive list of grounds. An important change was made in the law aiming at protection of persons who already were issued a decision on expulsion before, but intent to stay in the CR then. The authorities must revoke the decision on expulsion unless a foreigner remains a danger for state security etc. (in compliance with Art. 27 of the Directive).
3) Application of the notion of public policy remains a problem in practise, because it is transposed to FoRa as an 'abstract legal concept'. The issue was more elaborated on in the Report of 2008-2009 and esp. 2009-2010. The extended bench of judges of the Supreme Administrative Court had not decided yet on the case which should unify the interpretation of 'public policy'.

There was a change of the responsible authority for the issue of residence of foreigners in the Czech Republic; it is the Ministry of the Interior that is responsible for the agenda since 1 January 2011. It is too early to evaluate the impact of the change on those to whom the law gives guarantees. But since it is the complexity of the FoRa which seems to be the main problem and there is no new, more understandable act, the impact of this change will not be noticed by EU citizens much.

The title of the document confirming the stay of a family member of EU citizen was changed to more understandable 'residence card'.

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

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

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

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

The right of residence in the CR for more than three months is guaranteed, if EU citizens are workers or self-employed persons.

The CR does not require an EU citizen to register with the relevant authorities if the person intends to stay for a period longer than three months. The Ministry issues a *registration certificate* (the FoRa calls it '*temporary residence certificate*') only upon request of a foreigner – the law does not stipulate an obligation to ask for it, an EU citizen may stay in the CR even without the certificate. The registration certificate is issued, if an EU citizen intends to stay in the CR for more than three months. For the registration certificate to be issued to a worker or a self-employed person the CR requires an EU citizen to present (Sec. 87a FORA):

- confirmation of engagement from the employer or a certificate of employment, or proof that he/she is a self-employed person,
- a passport or valid identity card,
- a document confirming assured accommodation,
- photographs.

The requirements of the Czech laws are stricter than those provided for in the Directive.

The request for registration certificate of EU citizen will be rejected, if an applicant (1) becomes a burden on the social assistance system, unless directly applicable EC law is applicable; (2) if there are reasonable grounds that he might endanger the security of the state or might seriously violate public policy; (3) or is an undesirable person pursuant to the provision of Sec. § 154 FORA[2] and *the fear that he/she may endanger state security or might seriously violate public policy persists* (Sec. 87d (1) FORA). The last-mentioned condition was added to the law in 2010. In 2010 also a possibility of rejection of the request for the registration certificate for the sole reason that a person did not submit the documents required by the law was removed from the law (it was mentioned as a problem in the previous report). This change seems to give a real guarantee of the right of residence for more than three months for EU citizens.

The residence certificate may be withdrawn if an EU citizen who is a worker or a self-employed person, *inter alia*, becomes a burden on the social assistance system, unless directly applicable EU law applies (87d (1)(a) FORA). But the sole reason of Art. 7 (3a-d) does not result in a person´s position of being a burden on the social assistance system.

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

The EU citizens have equal position with the Czech citizens in the field of employment and self-employment. The legislation contains general provisions which deal with the status of persons who are no longer workers or self-employed persons in general, i.e. the situation is solved for all persons, and no specific provisions apply to EU citizens. The legislation covers situations of involuntary unemployment or illness etc. If the EU citizen (employee or self-employed person) is unable to work as a result of an illness or an accident, he/she is then entitled to health benefits. He/she may not be at the same time receiving health benefits and be registered as a jobseeker. He/she may recover (=stay ill) for a period of maximum one year, the retirement and the respective benefits are provided after that. If the EU citizen becomes involuntary unemployed after having been employed for more than one year during last three years and registers him/herself as a job-seeker with the relevant labour office, he/she gets unemployment benefits for certain period of time (5 months in case he/she is younger than 50 years, 8 months if he/she is 50 to 55, 11 months if he/she is older than 55 years; the jobseeker has certain duties, e.g. to cooperate with the labour office). The EU citizen who is no longer a worker or self-employed person basically retains the status of worker or self-employed person in circumstances of Art. 7 (3 a-d). The period of time when an EU citizen is registered as a jobseeker is counted for the period of time which is required for permanent residence permit (in compliance with Art. 16 and 17 of the Directive).

A labour office acts according to the Employment Act, and e.g. seeks work for the jobseeker, offers relevant jobs, etc. A jobseeker is obliged to cooperate with the labour office (to come to an interview with a possible employer which is recommended by the labour office, to visit the labour office regularly etc.), otherwise he/she may be excluded from the register of jobseekers.

The Employment Act refers to necessity of having a registered place of residence in CR for jobseekers in order to treat them as jobseekers. Nevertheless a registered place of residence of an EU citizen and a family member of an EU citizen is defined as an address of his temporary or permanent residence and in case that there is no such a place then a place where he/she usually resides in the CR is taken into account (Sec. 5 (b) EA). A registered place of residence may play its role only in determination of a responsible labour office.

A registered jobseeker is also entitled to unemployment benefits (with some exceptions – e.g. a contract was terminated with him/her because of serious violation of legal obligations connected to his/her work). There are several conditions stipulated by the law for the possibility to grant the benefits. The Czech legislation requires previous 12 months employment in last three years for the entitlement to unemployment benefits/jobseeker's allowance.

Art. 14 (4 a-b)

The Czech legislation is in compliance with the Art. 14 (4a-b) of the Directive; only one problem could be identified.

The law allows for expulsion of an EU citizen or of his/her TCN family member

- only on grounds of public policy (serious violation of…), state security (danger to…) or public health (a disease occurred in the time limit of three-month after the entry) in case of a right of residence for more than three months,
- only on grounds of public policy (serious violation of…) or public security (danger to…) in case of a right of permanent residence.

The expulsion order may be issued only if the withdrawal of a permanent residence permit will not be sufficient with regard to seriousness of his/her behaviour (Sec. 120 FORA). A decision on expulsion cannot be issued, if it has disproportional impact on private or family life of the person concerned (Sec. 119a FORA). The position of unemployed persons or jobseekers is the same as those who are employed or self-employed; the law does not differentiate between those categories of persons.

As was already mentioned above a problem may appear when deciding on expulsion of EU citizens and/or family member of an EU citizen. Before taking the decision on expulsion, the disproportional impact to on private or family life of a foreign national is taken into account as the only ground. However, Art. 28(1) provides for a more extensive list of grounds. The amendment introduced also an important change with regard to the protection of those who already were issued a decision on expulsion before, but intent to stay in the CR then. The authorities are obliged to revoke the decision on expulsion unless a foreigner persists to constitute a danger for state security, etc. (reasons in compliance with Art. 27 of the Directive).

Art. 17, art. 24 (2).

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

With regard to Art. 24 (2) it must first be noted that the social assistance system is quite complicated. Benefits guaranteed by provisions of relevant regulations are secured through the direct applicability of these regulations; granting of some benefits might be subject to the condition of a minimum three months stay in the CR, unless directly applicable EU laws stipulate otherwise. E.g. Sec. 5 of Assistance in Need Act stipulates that a person is entitled to the benefits only if he/she 'is registered on the territory of the CR for more than three months', which means that he/she must hold a residence certificate or a residence card. The benefits pursuant to this act include living benefits, supplementary payment for housing and exceptional immediate help. However, granting of these benefits to a person is at the same time to be considered as an indicator of this person becoming a burden on the social assistance system with the consequence that the registration certificate of such person will be terminated (unless directly applicable EU laws applicable to him/her stipulate otherwise).

2. SITUATION OF JOBSEEKERS

In general, the Employment Act differs between 'person who, despite being employed, are interested in a new job' and 'jobseekers' (Sec. 22 and 24 EA). A person interested in a job may still be an employee and for some reason seek a new job while employed; a jobseeker is

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

a person who is unemployed and seeks a new job. The Report further focuses on the treatment of jobseekers (Sec. 24-58 EA).

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

The registration as a jobseeker may be relevant for the purpose of granting a permanent residence permit later. The Ministry of Interior issues a permanent residence permit to an EU citizen upon her/his request, subject to, inter alia, requirement of a five years continuous (temporary) stay. The fact of whether a person was employed or unemployed in this period of time is not decisive, i.e. also periods of unemployment are counted towards the five years requirement. However, this is true only for the case of involuntary unemployment and only for periods, during which the person was registered with a labour office. The labour office confirms the length of the registration of a jobseeker for this purpose.

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

Regarding the *Antonissen* judgment, it follows from the above analysis that the Czech legislation does not contain the possibility of termination of stay of an EU citizen in a case when he/she is not able to find a job after certain period of time. The person is allowed to look for an employment without any time restrictions. If he/she registers within the labour office (a one-year period of previous employment is needed, see above), the unemployment benefits are provided, but only for a certain period of time. The labour office presents job offers (appropriate employment, preferably employment which is relevant to the qualification of a person) to the person.

3. OTHER ISSUES OF CONCERN

There were cases of workers – also from an EU country (Romania) – who worked in slave-like conditions. The case raised awareness of civic society; e.g. a march to support them was organized in March 2011. Workers returned back to their country, the Czech Republic paid the costs of the return.

4. FREE MOVEMENT OF ROMA WORKERS

There are no figures available regarding the ethnicity of workers who come to the Czech Republic. Only figures on citizenship may be used as a relevant source of information.[4] Generally, it may be said, that there are no restrictions towards specific ethnic group regarding free movement of workers, as placement of such restrictions would be illegal. There are neither restrictions stipulated for the entry, nor there are any for the departure.

There is a specific type of Roma migration as a topic on political agenda in the Czech Republic, which is the departure of (there are no figures on ethnic origin, it is the public discourse which is used here) Roma asylum seekers to Canada.[5] Canada imposed visa requirement on the Czech Republic in 2009 (the visa requirement was lifted on the Czech Republic only in October 2007). It might be noted that several social inclusion programs and the Anti-discrimination Act (since 2009) exist in the Czech Republic; they shall help the minority, which remains the main target of extremists´ speeches and acts, against the discrimination.[6] A latent discrimination of the Czech society against the Roma community also continues to constitute a serious problem (see also the case of European Court of Human Rights D. H. and others v the Czech Republic).

4 We may compare e.g. figures of migration from Romania to the Czech Republic: there were 4,112 migrants from Romania in the Czech Republic in January of 2010 compared to 4,437 migrants in January 2011 and 4,520 in March 2011; see website of Czech Statistical Office, www.czso.cz. But since there is no obligation of registration for EU nationals who come to the CR, the significance of the data is low.

5 See the figures at http://www.cic.gc.ca/english/resources/statistics/facts2009/temporary/26.asp (accessed on May 25, 2011).

6 See also findings from an interesting research on extremism realized by a private sociological research company STEM with a grant from the Interior Ministry, http://www.mvcr.cz/clanek/ministerstvo-vnitra-zmapovalo-postoj-verejnosti-k-extremismu.aspx (accessed June 2, 2011, Czech only), or regular quarterly reports on extremism prepared by the Interior Ministry or National Security Service, see http://www.mvcr.cz/clanek/bezpecnostni-hrozby-337414.aspx?q=Y2hudW09NA%3d%3d (accessed June 2, 2011, Czech only).

Chapter II: Members of the Family

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

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

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

The provisions on family members will also apply to a foreigner, who is a living in a common household with an EU citizen; or who is sustained by an EU citizen; or who cannot care for him/herself due to health reasons without personal care provided by the citizen of the European Union; or who is living in a stable and durable relationship with an EU citizen in a common household.

The registered partnership was given equivalent position to marriage for the purposes of the FoRa provisions (Sec. 180f). Such partnership can be registered in the Czech Republic only if one of the partners is a citizen of the Czech Republic, but there are no limits for partners (EU citizens or third country nationals) whose partnerships are registered outside the Czech Republic. Section 180f of FoRa provides that the norms which apply to 'marriage', 'spouse' and 'child' also apply to the partners who have contracted a registered partnership. Therefore wherever the law uses the term marriage, spouse and child it applies non-discriminatorily also on the registered partnership. The possibility to register a partnership is restricted to same-sex partners.

The issue of reverse discrimination firstly appeared in the Czech practice in 2008. Legal provisions are in practice discriminatory towards persons in the same position (TCN family members of Czech citizens whose entry and residence are not handled by the Directive). There was a judgment of the Supreme Administrative Court in 2008, which dealt with access of third country nationals who are family members of Czech citizens to the register of job seekers.[7] The judgment was already analysed in the report of 2008/2009. The court held that the position of EU citizen´s family members and Czech citizen´s family members in the respective law must be identical - otherwise it would constitute a discriminatory treatment. As the consequence of the case, the respective provisions of the Employment Act were changed.

The issue of reverse discrimination was also mentioned by Public Defender of Rights of the Czech Republic (hereinafter 'Ombudsman') in access of third country nationals who are family members of Czech citizens to the public health care scheme in 2009 (see also the 2009/2010 report). TCN family members of Czech citizens must pay for the health care or have a commercial insurance for the first two years of their stay as a family member in the

7 See Judgment of Supreme Administrative Court, July 23, 2008, No. 4 Ads 40/2008-73, available at www.nssoud.cz.

Czech Republic, while the family members of EU citizens have access to public health care system immediately (on the basis of 1408/71 Regulation). This problem was mentioned already in previous reports and continues to exist.

Similar situation is also in the access to social benefits. The issue of reverse discrimination seems to be interpreted as having an impact on *de facto* situation of Czech citizens and thus causing discriminatory treatment of Czech citizens. There were no new cases decided by Czech courts in the period under review (2010/June 2011).

2. ENTRY AND RESIDENCE RIGHTS

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

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

3. IMPLICATIONS OF THE *METOCK* JUDGMENT

The Czech legislation is in compliance with the Metock judgment. A possible problem which might have caused incompliance with the judgment was solved by the law No. 427/2010 Coll., which changed FoRa (residence permit to TCN family member was issued only upon the condition that he/she was not recorded in the evidence of undesirable persons). Compliance of previous practice with the judgment was ensured with an Instruction of the Minister of the Interior.[8]

8 See the explanatory report of the Government to the draft law, which was then adopted as Act. No. 427/2010 Coll. Available at http://www.psp.cz/sqw/text/tiskt.sqw?O=6&CT=70&CT1=0 (Czech only, accessed June 10, 2011).

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

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

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

During the period under review serious problems appeared in cases when a Czech citizen recognizes paternity of child – child of a foreigner. The child then become a Czech citizen and has a right to family reunification with e.g. his mother – foreigner. The mother then has a right to family reunification with her husband. The child may not be deprived of the Czech citizenship, because there is no legal foundation for it in the Czech law, and moreover it would be questionable what is the best interest of the child pursuant to the Art. 3 of the Convention on the Rights of a Child.

5. ACCESS TO WORK

The Sec. 3 of Employment Act stipulates that citizens of another EU Member States and their family members have equal position to Czech citizens in legal relations regulated by this Act, unless provided otherwise. Furthermore Sec. 85 defines the term 'foreign employees', who for the purposes of this Act are considered as individuals who are neither citizens of the Czech Republic or of the European Union, nor they are their family members. Therefore EU citizens and their family members are treated as Czech citizens; they do not need to obtain a work permit pursuant to the provisions of the Czech laws, and their employers do not need to apply for a permit to engage foreign workers. Only an information duty towards a labour office is stipulated by the EA (Sec. 87, 102).

6. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

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

Chapter III: Access to employment. (a) Private sector and b) public sector

1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

1.1 Equal treatment in access to employment

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

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

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

1.2 Language requirements

The laws contain provision on non-discrimination and it may be said, that although the employer can have different requirement according to the announced vacancy, the requirements must not be discriminatory. The person who meets the criteria should be employed regardless of his/her nationality, age etc. As the non-discrimination in the access to a job position is protected by the Employment Act (see below in Chapter IV) and also by the Antidiscrimination Act the possible violation of this principle might be brought to a court.

Knowledge of the Czech language can be required for some professions, where the language is so important that it constitutes the basic element of the profession. Knowledge of the Czech language is e.g. required for performance of a regulated activity, but it may be required only to the extent that is necessary for a pursuit of a regulated activity (Sec. 21 Act

on Mutual Recognition of Qualifications).[9] There are also several provisions in the laws transposing sectoral directives. The knowledge of the Czech language is required from the doctors, dentists and pharmacists to the extent that is necessary for a pursuit of the medical practice (the language skills are verified by the Ministry of Health (Sec. 32 of Act on Mutual Recognition of Diplomas on Medical Qualification of Doctors, Dentists and Pharmacists).[10]

Czech Public Defender of Rights criticized the job advertisements for being discriminatory (every 6th advertisement pursuant to his analysis) in June of 2011. The Ombudsman pointed at the discriminatory character of those advertisements in their requirements of e.g. specific gender, marital status, age or knowledge of Czech language, where he explicitly mentioned the necessity to comply with relevant EU laws.[11]

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

2.1 Nationality condition for access to positions in the public sector

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

The Act on Public Services[12] is still not in force (adopted in 2002! - and a new one is already being prepared).

2.2 Language requirements

The Czech language should be required to the extent necessary to the execution of the employment. The conditions must not be discriminatory; the general information on language requirements in private sector described above applies here too. Again, the Act on Public Services is not in force yet (adopted in 2002!).

2.3 Recognition of professional experience for access to the public sector

The recruitment procedure depends on the conditions given by the employer who may grant additional points for the professional experience within the procedure. The advertisements

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

10 Act No. 95/2004 Coll., on Medical Qualification of Doctors, Dentists and Pharmacists (Zákon č. 95/2004 Sb. o zdravotnických povoláním lékaře, zubního lékaře a farmaceuta).

11 See http://www.ochrance.cz/tiskove-zpravy/tiskove-zpravy-2010/kazdy-sesty-inzerat-nabizejici-praci-je-diskriminacni (Czech only, accessed May 12, 2011).

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

for positions in public sector often contain requests for certain level of education, certain language knowledge etc.

The term professional experience means certain knowledge or ability which is necessary for pursuance of the activity. The knowledge or abilities may be documented by a formal document on certain education or training or by a document, that a person actually pursuit an activity where he/she used the required knowledge or ability. Recognition of the training, education and experience undertaken in another member state for the regulated professions is recognized according to the Act on Mutual Recognition of Qualifications (incl. the recognition of formal qualification for pursuit of an activity (e.g. diplomas etc.). The Czech Republic has large number of regulated professions (390),[13] so a lot of jobs fall within the scope of regulated profession. There is no other law which would regulate recognition of professional experience. The recognition of education in more academic terms is done according to the provisions of the Act on Pre-elementary, Elementary, Secondary, Higher Vocational and Other Education (Act on Education,[14] mainly for third country nationals) and the Act on University Education[15] when it deals with the recognition of academic diplomas.

The conditions of the recruitment procedure often contain a request of professional experience and a request must be reviewed according to the principle of non-discrimination (principle of non-discrimination is stipulated in the Labour Code and Employment Act).

3. Other aspects of access to employment

See above.

13 See the database at website of Ministry of Education, Youth and Sports, http://uok.msmt.cz/ru_list.php (Czech only, accessed May 12, 2011).

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

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

Chapter IV: Equality of treatment on the basis of nationality

1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

Equal treatment in private and public sector is ensured by provisions of the respective laws. According to the Labour Code the employers are obliged to treat all employees equally as regards the conditions of work including the remuneration and other financial obligations (Sec. 16 (1) of Labour Code). Labour Code also prohibits direct and indirect forms of discrimination based on the citizenship, nationality etc. (Sec. 16 of Labour Code).

1.1 Direct and indirect discrimination

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

The basis for equal treatment in terms of non-discrimination can be found also in other laws, inter alia Employment Act, which contains an obligation to treat individuals exercising the right of employment equally, prohibits both direct and indirect discrimination on the basis of sex, sexual orientation, racial or ethnical origin, nationality, citizenship, social origin, language, health, age, religion, matrimony or marital status or obligations to a family, membership in political parties or movements, trade unions or unions of employers. The Employment Act defines direct and indirect discrimination for the purposes of the respective act and also stipulates the possibility to give a claim against the discrimination conduct of the employer and ask inter alia to cease the conduct and appropriate compensation (Sec. 4 of the Employment Act). The prohibition of discrimination is stipulated also e.g. by Consumer Protection Act or Education Act. There is a general norm on prohibition of discrimination, Antidiscrimination Act.

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

There is very little case law on this issue. Possibly there are some cases, but they might either be settled before taking the case before a court or might not yet be decided by higher courts whose judgments are accessible only. The discrimination is not perceived as a problem much from the society (although there is a problem e.g. with the discrimination of Roma minority). The adoption of Antidiscrimination Act was connected to lively debates since it was submitted to the Parliament in 2007; one of the topics which were discussed was possible favouritism of one group of people against another (objections against the use of affirmative action). The Czech president vetoed the bill (with the reasoning that the law is useless,

counterproductive and of low quality, and he considers its impact problematic[16]), the Chamber of Deputies (lower chamber) of the Czech Parliament outvoted his veto finally. Until now, there were cases of gender discrimination in labour relations (Czech women), or on access to services (Roma applicant not allowed to enter a restaurant).

1.2 Specific issue: Working conditions in the public sector

The professional experience and the qualification and other professional skills influence the determination of the professional advantages, the experience acquired in other Member States may be taken into account. According to the legislation, the salary is given to the employee according to a salary tariff (Sec. 123 Labour Code). The salary tariff is applied on the employee according to a salary group and salary level to which he/she is situated pursuant to his/her qualification and professional experiences. There are 16 salary tariffs. A governmental regulation gives precise conditions for determination to which salary group and salary level should be an employee placed. The professional experience and diplomas are taken into account when placing an employee to a certain level and a certain group non-discriminatorily. An employee who was given 13th or higher salary tariff may have a contractual salary, i. e. higher salary then presumed by those above mentioned 16 tariffs. This issue might be subject to changes towards higher contractual autonomy as was debated by the Government in June 2011.

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

This issue is connected to the issue of nationality exceptions in employment in public sector, but once a person is employed in public sector, his/her access to all rights is secured and applied non-discriminatorily.

2. Social and Tax Advantages

As regards the Income Tax Act the situation of the worker from another Member States is in the same position as the Czech national under the condition that he/she has „tax domicile' in the Czech Republic (Sec. 2 of Income Tax Act; a person has a tax domicile in the CR when he/she stays there at least 183 days per year). From the year 2004 even persons without the tax domicile (a person who do not habitually reside in the Czech Republic, i.e. mainly frontier workers) can require the tax reduction or tax bonus for a child and tax-relief for a spouse. There is number of bilateral treaties to prevent double taxation, their survey is accessible on the website of Ministry of Finance.[17]

16 The position of the President can be found on the website of the Parliament (Czech only): http://www.psp.cz/sqw/text/orig2.sqw?idd=29448, opened on January 27, 2010.

17 See http://cds.mfcr.cz/cps/rde/xchg/SID-3EA9846C-5355E46B/cds/xsl/4379.html?year=0 (accessed 12 May, 2011).

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

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

The schemes of state social support and state social assistance are primarily based on residence in CR, so to be eligible for a benefit, the recipient must be have a residence certificate or a residence card issued by the CR and usually also reside there for at least three months. To assure access to benefits for migrant workers, the Sec. 7 (2) is applied to overrule the permanent residence requirement in case of workers covered by Regulation 1612/68 (the laws contain provision 'the EU citizen is entitled to the benefits if he/she is registered for residence in the CR for more than three months, unless directly applicable EC law is applied'). Other conditions for granting benefits within these schemes consist in assessment of the income of a family concerned, overall social situation, the ability to improve the situation by own effort, the fact that the beneficiary is taking care of a child etc. are connected with the individual's situation and do not have a discriminatory character. The same applies to provision of social services which depend on residence of a person too. However, for EU workers and their family members this requirement is overruled by the regulation (the law refers to the application of directly applicable regulation). The same applies to access to the services provided within the institutions (for example nursing homes) and their waiting lists.

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

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

2.2 Specific issue: the situation of jobseekers

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

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

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

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

Chapter V: Other obstacles to free movement of workers

Checks on the borders with Germany which were described in previous Report of 2009-2010 remained a problem in 2010, but seems not to cause problems anymore in 2011.

Chapter VI: Specific Issues

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

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

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

2. SPORTSMEN/SPORTSWOMEN

As regards the application of free movement rules in the sports sector there is no legislation regarding the issue of quotas or transfer fees and the sport clubs themselves set up the rules. According to the information given by respective sport clubs there are no national quotas for EU citizens participating in all sport activities at all levels. The only exception where the Czech citizenship is required is the Czech national team. There seems to be a problem with application of Czech Football Associations´ 'Directive on register of professional contracts' (Directive) in the light of Bernard case (C-325/08).

There are quotas which are aimed at citizens from third countries (non EU, non EEC etc.), they can be found e.g. at Football Competition Regulations, issued by Football Association of the Czech Republic; art. 51 of the rules stipulate that not more than three third country citizens may take part in one game. The number of EU citizens is not limited, although they must have a professional contract registered in the Czech Republic. Similar provision can be found in Technical-Competition Regulations of I. (Gambrinus) League and II. League.

There is a Law on Support of Sport, which determines sport as a nonprofit activity (common profit activity, obecně prospěšná činnost).[18] The law also stipulates tasks to ministries and other state authorities in the field of sport (they give conceptions, financial support

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

etc.).There is no general framework for sport activities or a special provision regulating them separately. Professional sports activities are organized by the sport authorities themselves, and their activities in sports are not governed by any special legislation. There is only a general framework for the legal status of some organizations (e.g. law on nonprofit organizations etc.).[19]

3. THE MARITIME SECTOR

Relevant Czech legislation is in compliance with the EU law at the moment. It was changed already in 2008 most probably because of the action which was brought before the European Court of Justice by the Commission of the European Communities in November of 2007 (C-496/07; the action was revoked by the Commission in March of 2009). The Czech Act on Sea Navigation does no longer reserve the post of captain of a ship flying the Czech flag to persons with Czech nationality and stipulates that the captain of the ships must be either a Czech citizen or a citizen of an EU member state and at the same time must prove certain knowledge of the Czech language so that he/she can exercise the relevant powers. The explanatory report to the draft law refers to the ECJ judgments C-379/87 and C-414/97 when stipulating the condition of the Czech language.[20] Exception from this requirement are possible in the exceptional situations (*Sec. 28 (4) of the Law on Sea Navigation*).

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

4. RESEARCHERS/ARTISTS

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

5. ACCESS TO STUDY GRANTS

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

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

20 See the explanatory report of the draft law No. 427, available at http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=427&CT1=0 (accessed February 28, 2010).

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

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

6. YOUNG WORKERS

One of the problems was already mentioned in the thematic report on young workers with regards to the sport sector. The relevant part is therefore copied here:

Football: Only registered sportsmen may start in a competition of the Czech-Moravian Football Associations. A person is registered only for one football club and may not be registered abroad. A club signs a professional contract with a person; also a possibility to sign a non-professional contract is possible, then it is stipulated that such a contract is not a main employment of a person.[21] The contract in e.g. football may be concluded only when a person is over 15 (and had finished the compulsory school attendance).[22]

There seems to be a problem in practice, which may be illustrated on the *Bernard* case. The case *Bernard*, C-325/08, concerned compensation of training of young football players, the legitimacy of such compensation, and its justification under EU law. First it has to be noted that no general document of the nature of a collective agreement applicable to all football players exists in the Czech Republic. At the same time the rules applicable in the various sports differ. Nevertheless, there are general rules issued by the Football Association of the Czech Republic.[23] These rules are applicable to all registered players, whereas the registration is compulsory for a player in order to enable him/her to participate in any event organised by the Association. At the same time, the registration establishes an affiliation to the football club. Relevant rules are stipulated in the Czech-Moravian Football Associations´ 'Directive on register of professional contracts' (Directive). Its Sec. 2(3) regulates a situation similar to the Bernard case. The provision contains entitlement of a professional club to require that a young player (at the age between 15 -18), who is registered for the club, signs a contract as a professional player (Sec. 1 of the Directive) with this club preferentially. If the club offers such a contract and the player refuses to sign it, the consequences prescribed by the Sec. 2(3) Directive are stricter than those under review before the ECJ in the respective case (Charte du football professionnel) – e.g. the player is not allowed to transfer to another

21 Sec. 4 (4) of Czech Football Associations' 'Directive on register of professional contracts'.
22 Sec. 2 of Czech Football Associations' 'Directive on register of professional contracts'.
23 As the ECJ observes 'it is settled case-law that Article 45 TFEU extends not only to the actions of public authorities but also to rules of any other nature aimed at regulating gainful employment in a collective manner' (see *Bosman*, paragraph 82 and the case-law cited).

club or to play as guest player there until his 18th year of age,, except the original club allows so. If the club does not offer such a contract, then the situation is different and a person may sign the professional contract with another club. Pursuant to rules applicable in the case *Bernard* a transfer of the player was in general possible. According to the current Czech Association´s rules, however, no transfer is possible at all. Pursuant to the Directive in such a case an application for transfer will simply not be considered by the Association. In the case Bernard, the player was required to pay for damages as the consequence of his refusal to sign a professional contract with the club which trained him at the end of his training period. This was considered by the ECJ as likely to discourage that player from exercising the player´s right of free movement, even if possibly justified under certain preconditions. The justification of payment of damages is based on the legitimate objective of encouraging the recruitment and training of young players, whereas the damages payment scheme must be actually capable of attaining that objective and be proportionate to it. The interference of the Czech rules with the player´s right of free movement appears to be even heavier; the rules prevent the player from signing a professional contract with another club (thus also with a club in another Member State). Consequently, it remains questionable, whether such restriction can still be considered as fulfilling the parameters of justification as set up by the Court in the *Bosman* case and reiterated in the *Bernard* judgment.

Chapter VII: Application of transitional measures

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

As regards the transitional periods, situation in the year 2010/June 2011 did not change. Prior to joining the EU the Czech Republic did not renounce the possibility to introduce transitional measures towards Member and Acceding States upon evaluation of situation on the labour market *(Government Resolution 13/2004)*. In 2010/2011 the Czech Republic did not introduce any transitional measures towards other Member States even though the Act on Accession, the Government Resolution No.13/2004 Coll. and the Art. 103 of the Employment Act enable the Government to do so. There were no restrictive measures adopted towards either the Member States of EU-15 or the Member States of EU-8. As regards position towards free movement of nationals of Bulgaria and Romania there was no change in 2010/2011. The Government Resolution No. 1345/2006 of November 2006 in which was stated the Czech Republic would not introduce measures restricting access of nationals of Bulgaria and Romania to the labour market as of the date of accession of these two states to the EU was applied. Nevertheless this Resolution did not renounce the possibility to introduce such restrictions later upon assessment of current situation on the Czech labour market. Opening of the Czech labour market to nationals of these Member States did not give rise to adoption of any measures even though current figures on employment of Bulgarian and Romanian nationals were higher in comparison with the situation before their joining the EU.

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

2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA

Chapter VIII: Miscellaneous

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

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

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

See above.

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

No such policies, legislation or practices appeared in 2010/June 2011.

3.1 Integration measures

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

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

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

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

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

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

In 2009, in connection to the layoff of foreign employees as a result of the economic crisis, a Government Resolution on ensuring the security of the Czech Republic was adopted.[24] The Ministry of Interior was authorized to review the situation on the labour market in cooperation with other ministries. The resolution also inter alia authorized the Ministry of Labour and Social Affairs to ensure that employers who do not act according to the Employment Act are imposed sanctions, and also authorized Ministry of Finances to execute the sanctions. It also authorized the Ministry of Interior to implement programmes aimed at employment of foreigners in their home country, at encouraging their re-entry on the labour market there (as a measure to prevent their repeated migration in the Czech Republic). This resolution was aimed *only at third country nationals*.

3.3 Return of nationals to new EU Member States

There were no such situations.

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

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

5. SEMINARS, REPORTS AND ARTICLES

There were several seminars on situation on labour market in Germany and Austria realized, because the transition measures which were applied by those countries ended in April 20, 2011. One of the seminars was organized as a round table by the Information Office of European Parliament on May 17, 2011 (also representatives of Ministry of Labour and Social Affairs were invited as speakers).[25] The Austrian law on prevention of wage and social dumping was a key issue of another seminar, which was Czech – Austrian seminar on the free movement after the May 1, 2011. It was realized on May 18, 2011 by the Czech Cham-

24 Usnesení vlády č. 171/2009 [Government Resolution No. 171/2009], available at http://kormoran.vlada.cz/usneseni/usneseni_webtest.nsf/0/813889E9A7A4AA9EC125755B00460A14/$FILE/171%20uv090209.0171.pdf (Czech only, accessed on April 10, 2010).

25 See http://ec.europa.eu/ceskarepublika/eu_house/roundtables_cs.htm (Czech only, accessed on June 10, 2011).

ber of Commerce in cooperation with the Czech Ministry of Labour and Social Affairs and Austrian Ministry of Labour, Social Affairs and Consumer Protection.[26]

A website created by the public administration continues to be a useful tool to get information also on the issue of free movement of workers. The information are more aimed at Czech citizens who intent to work abroad. The website www.portal.gov.cz (Portal of the Public Administration) among others e.g. contain information on 'what to do' in case that a person terminated an employment in an EU MS – where to go, what to ask and whom to ask.[27] This seems to be a useful tool to spread the knowledge of rights guaranteed by free movement of worker´s legislation and to support the capability of workers to request rights.

26 See http://www.businessinfo.cz/cz/clanek/kveten-2011/seminar-volny-pohyb-pracovniku-rakousko/1001948/60706/ (Czech only, accessed on June 10, 2011).

27 See e.g. http://portal.gov.cz/wps/portal/_s.155/708?POSTUP_ID=82&PRVEK_ID=1024.