

**REPORT**  
**on the Free Movement of Workers**  
**in the Czech Republic in 2009-2010**

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**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. There were not many developments in the legislation on free movement in 2009/beginning of 2010 comparing to rapid changes which were done in previous years. A large draft law which will change the FoRa was prepared in 2009 (it is not publicly available yet, it is now debated by the Government and then it will be submitted to the Parliament, which will decide on it). But the changes which are proposed regarding the issue of free movement of workers are very small. The rapporteur therefore focused this report also on practice, i.e. on whether the implementation of the *acquis* is in compliance with the respective EC legislation. The practice is the key to a correct evaluation now.

Several problems appeared when the relevant legislation was applied and it shows that the law provisions may not be formulated well enough to ensure adequate implementation of the *acquis*. Some of the cases were held by the Public Defender of Rights, others were held by courts. As the court proceedings take usually months or years, it was the last year when finally the issue of free movement of workers found its way towards the Supreme Administrative Court (the decisions of lower courts are not available publicly). More information about concrete judgments is given in the text of the report.

But at least one very important legal development took place in 2009. A general antidiscrimination legislation, Antidiscrimination Act, was adopted. The adoption of this act was connected to lively debates since it was submitted to the Parliament in 2007. The law is created as a general antidiscrimination instrument of the national legislation. It provides a necessary definition of the relevant terms found in the existing national legislation and ensures the remedies against discrimination (e.g. as provided in the Labour Code). It also frames the whole area of prohibition of discrimination and supplements the currently rather diffuse legislation. Although the remedies against discrimination in free movement of workers' legislation was well covered in the area of employment, the new act is a necessary general norm.

The Foreigners' Residence Act, the act which deals with the issue of entry, residence and departure of foreigners (including EU nationals and their family members) is a very complex act. Because of the constant changes (28 larger or smaller changes were done since 2000, 4 of them in 2009/2010) the FORA became a very complex document. The Czech government plans to prepare (already for several years) a new Act on Residence of Foreigners and the Minister of Interior was given a task by the government to prepare a new concept of legislation till the April 30, 2006.<sup>1</sup> But no draft legislation was published till the end of April 2010. The complexity of the law may affect also citizens of EU Member States and especially their TCN family members who may have difficulties to understand what their legal position is like under the Czech law. It must be also said, that the Ministry of Interior, Ministry of Foreign Affairs and Foreigners Police work hard on enabling access to information for foreigners, either through websites (many information are available in English, also in some other languages) or e.g. in the offices of the Foreign Police. The progress in access to information is visible, but the law remains a very complex one.

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<sup>1</sup> Usnesení vlády ČR ze dne 24. srpna 2005 č. 1055 (Government Decree No. 1055, August 24, 2005). There are no more official documents available till 30.04.2010.

## Chapter I

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

#### *Text(s) in force*

- *Act No. 326/1999 Coll. of Laws, on Residence of Foreigners on the Territory of the Czech Republic (Foreigners' Residence Act, FORA), as amended.*
- *Act No. 634/2004 Coll. of Laws, on Administrative Fees, as amended.*
- *Act. No. 500/2004 Coll., Administrative Proceedings Act, as amended.*
- *Act. No. 150/2002 Coll., Code of Administrative Justice, as amended.*

Detailed information on the transposition of Directive 2004/38/EC was already provided in the reports 2006 and 2007, therefore – apart from the requested issues – only the problems which appeared in 2009-2010 newly are analysed.

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 (a general law which focuses on the position of all foreigners). The law is divided into several main parts: entry, residence, departure, detention or functioning of the relevant authorities. One part of the law focuses in its provisions only on the residence of EU citizens and their family members (Secs. 87a – 87aa), whose position is also reflected 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. There were some problems with implementation of the obligation which arise from the Directive and those problems are mentioned below 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) 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 inadequate impact 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. 3) (and this is more a problem of application) the notion of public policy is transposed to FoRa as an 'abstract legal concept'.

The interpretation of the term 'public policy' appeared as a problem in practice. This issue was already mentioned by the Report of 2008-2009 as a possible issue of concern and problems with interpretation appeared several times in 2009-2010. The term public policy is not defined in the migration legislation; it is an abstract legal concept. It nevertheless must be applied 'in conformity with the EU law'.<sup>2</sup>

According to the Public Defender of Rights, problems with application of the public policy notion appeared in the practice of the Foreign Police.<sup>3</sup> Although the police corrected its practice in those particular cases and the cases were not forwarded to higher authorities, it is still worth mentioning as it means that executive authorities are not always able to apply the 'euroconformal

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2 The necessity of 'euroconformal' interpretation of those laws which must be in conformity with the EU law was explicitly mentioned in the Judgment of the Supreme Administrative Court from August 13, 2008, No. 2 Azs 45/2008-67. The necessity of euroconformal interpretation of the public policy notion was also mentioned by the judgment of the Supreme Administrative Court from August 13, 2008, No. 5 As 51/2009-68.

3 Phone interview with a representative of the Public Defender of Rights from March 13, 2010.

interpretation', i.e. the interpretation which is compliance with the obligation arising from the EU law.

Although the notion should be applied 'euro-conformally' (in compliance with the *acquis*), several complaints against decisions of authorities where the notion of public policy was interpreted already appeared at courts, even at Supreme Administrative Court who already gave several judgments (see previous reports). The Supreme Administrative Court forwarded a case on public policy to the extended bench of judges just recently (by Judgment of Supreme Administrative Court No. 3 As 4/2010 – 129 from May 5, 2010, the judgment of the extended bench should follow within months). It had done so because judgments in which different court benches interpreted the notion of public policy were different. There were more judgments on it in the 2009 and 2010 and a clear interpretation is needed. The cases which appeared at the Supreme administrative court were connected with the issue of spouses of Czech nationals. But the term is used in provisions that are applicable to both third country national family members of the EU citizens and also of the Czech citizens, so the interpretation is the same for both.

## 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 Employment Act (EA).

The EU citizens may stay in the CR for indefinite period of time, so the right of residence for a period not exceeding three months is fully guaranteed. The EU citizen must only hold a valid identity card or a passport. The FoRa requires an EU citizen to report his/her presence on the territory of the Czech Republic within 30 days (if he/she intends to stay in CR for more than 30 days) unless an accommodation provider does so.

The Foreign Police issues a *registration certificate* (the FoRa calls it '*temporary residence certificate*') to an EU citizen if he/she intends to stay in the Czech Republic for more than three months. This certificate is issued upon request of the foreigner – there is no obligation to have it, the EU citizen may stay in the CR even without this certificate. When applying for the registration certificate, an EU citizen who is a worker or a self-employed person is required to submit certain documents; some of the documents which are required are not in compliance with the requirements provided for in Art. 8 (3) of the Directive. A foreigner is obliged to present (*Sec. 87a FORA*):

- confirmation of engagement from the employer or a certificate of employment, or proof he/she is a self-employed person,
- a passport or valid identity card,
- a document confirming assured accommodation,
- and photographs,
- (in case a person is not employed or self-employed then a confirmation of assured health insurance is asked).

The law also provides for the possibility to reject the request for registration certificate or withdraw the registration certificate. The request for registration certificate of EU citizen will be rejected, if an applicant (1) does not submit the documents required by the law; (2) if he becomes a burden on the social assistance system, except for those persons, to which the directly applicable EC regulation is applicable; (3) if there are reasonable grounds that he might endanger the security of the state or might seriously violate public policy; (4) or is an undesirable person pursuant to the provision of Sec. § 154 FORA<sup>4</sup> (*Sec. 87d (1) FORA*). The points (2), (3) and a reason of a threat to public health (within the limits given by the Art. 29 (2) of the Directive) apply also to the possibility of withdrawal of a registration certificate of an EU citizen (*Sec. 87d (2) FORA*).

So the right of residence for a period of longer than three months for workers or self-employed persons is guaranteed, but the law requires more documents than the Directive allows. The request for the registration certificate may be rejected, if the EU citizen does not submit the documents required by the law.

The EU citizen who is no longer a worker or self-employed person basically retains the status of worker or self-employed person. The EU citizens have equal position with the Czech citizens in the field of employment and in the self-employment. The legislation contains general provisions which deal with the status of a person who is no longer a worker or a self-employed person in general, i.e. the situation is solved for all persons, and no specific provisions apply to EU citizens. The legislation covers situation 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 registered as a job-seeker. 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 and registers him/herself as a job-seeker with the relevant employment 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 11 months; the jobseeker has certain duties, e.g. to cooperate with a labour office).

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 jobseeker that is included into the register of jobseekers is also entitled to unemployment benefits (with some exceptions – e.g. a contract was terminated with him/her because of serious

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4 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.

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. The term of employment in another member state is also taken into account.

*Art. 14 (4 a-b)*

The Czech legislation is in compliance with the Art. 14 (4a-b) of the Directive. The law allows for expulsion of an EU citizen or of his/her TCN family member only in case of serious violation of public policy (if the length of his/her stay is less than 10 years), endangerment of state security or public health (a disease occurred in the time limit of three-month after the entry) when they reside temporarily (upon a *registration certificate (temporary residence permit in case of TCN family members)*). If they reside on the basis of a *permanent residence permit* then only a reason of serious violation of public policy or reason of endangerment of public security are taken into account. The expulsion order may be issued only if the withdrawal of a permanent residence permit will not be sufficient enough with regard to seriousness of his/her behavior (*Sec. 120 FORA*). Any decision on expulsion cannot be issued if its consequence has inadequate impact to a private or family life of the person concerned (*Sec. 119a FORA*). The fact that a person is unemployed or is a job-seeker is not of interest to the law, their position is the same as those who are employed.

*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, so the law is relatively in compliance with the Directive.

Regarding the transposition of Art. 17 (3), the law seems to meet the Directive only partly. The family member of a worker or a self-employed person shall be given a permanent residence permit upon his/her request in several cases, *inter alia* after 5 years of his/her continuous residence in the CR, or after 2 years of continuous residence in the CR under the condition that a worker or a self-employed person (of whom he/she is a family member) was granted a permanent residence permit. The time limit of 2 or 5 years is not applied in exceptional cases, like when the residence permit on humanitarian bases is granted. The condition of 2 years of continuous residence was introduced to the FoRa at the end of the year 2007; the change was done to prevent misuse of the law, esp. marriages of convenience.<sup>5</sup>

EU citizens and their family members enjoy equal treatment with the Czech nationals.

Regarding Art. 24 (2) it must be said that system of different social security payments or other benefits is quite complicated. Benefits pursuant to the relevant regulations are secured through their direct applicability; some benefits might be given upon the residence in CR for at least three months. E.g. Assistance in Need Act stipulates that a person is entitled to the benefits pursuant to this act only if he/she has a registered place of residence for more than three months (the benefits pursuant to this act include supplementary benefit, supplementary payment for housing, exceptional immediate help). The fact that those benefits according to the Assistance in Need Act are given to a person may at the same time be an indicator that he/she might become a burden on the social assistance system (if a person becomes a burden on the soc.as.system, then his/her registration certificate is terminated unless a directly applicable regulation applies to him/her).

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<sup>5</sup> See the explanatory report of the draft law No. 191, available at <http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=191&CT1=0> (accessed on April 2, 2010).



## 2. SITUATION OF JOBSEEKERS

The Employment Act differs between a person interested in a job and a jobseeker (*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 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 him/herself as a job-seeker within a competent labour office. A person has no obligation to do so, he/she may still seek a job and need not to be registered—but he/she cannot use the service of labour office then.

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 *inter alia* after five years of continuous temporary stay<sup>6</sup> on the territory of CR, the length of registration of a jobseeker is also taken into account (only in case of involuntary unemployment). 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 CR as long as he/she wants; there is 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 Foreigners' Residence Act only requires an EU citizen to report his/her presence within the territory of the Czech Republic within 30 days (if he/she intends to stay in CR for more than 30 days) (*Sec. 93 (2) FORA*). The same obligation is placed 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 only possibility to return an EU citizen mentioned in Art. 14(4) to a country of his/her nationality is the violation of public policy etc. And the term public policy must be interpreted 'euroconformally'. So the simple fact that a person is a jobseeker may not result into expulsion.

If a person (EU citizen) asks for a registration certificate (which is not necessary for the person's stay for more than 3 months), then all necessary documents, which are mentioned above, must be presented. If the documents are not presented, the certificate will not be issued, but a person may still stay in CR.

Regarding the *Antonissen* judgment, as it may be seen from the above analysis, the Czech legislation does not count with the possibility of termination of stay of an EU citizen in case he/she does not find an employment after certain period of time. The person may look for an employment for any period of time. 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 offers employment (appropriate employment, preferably employment which is relevant to the qualification of a person) to the person.

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<sup>6</sup> The continuous stay is defined by the Foreigners' Residence Act /Sec. 87g (7) AA/ and the definition corresponds to the definition in Art. 16 (3) of the Directive.

### 3. OTHER ISSUES OF CONCERN

Nothing to report

#### *Draft legislation, circulars, etc.*

Nothing to report (a draft law which will change FoRa was prepared and is being debated in the Government, but is not publicly available yet).

#### *Judicial practice*

The Supreme Administrative Court forwarded one of the cases on the issue of the public policy notion to the extended bench of judges of this court (by Judgment of Supreme Administrative Court No. 3 As 4/2010 – 129 from May 5, 2010, the judgment of the extended bench should follow within months). It had done so because judgments in which different court benches interpreted the notion of public policy were different.

The Supreme Administrative Court decided in a case where a citizen from a new Member State was held in detention while a proceeding on his expulsion was held. A person falsified his documents and resided in CR illegally during previous years. The court held, that the fact that a person is an EU citizen since 1. 1. 2007 means, that there is a higher protection against interference into his life. The EU law must be taken into account when interpreting the relevant provisions of FoRa (e.g. Directive EC/2004/38). The court said that in this particular case the duration of residence of a person must be taken into account with regards to integration of a person in the CR (the court referred to the *Royer* case here). It also said that the actual possibility to give a decision on expulsion must be taken into account otherwise the authority is not authorized to detain a person with the aim to expel him. See Judgment of Supreme Administrative Court No. 7 As 85/2009-81 from January 21, 2010.

#### *Miscellaneous (administrative practices, etc.)*

The internal instruction of the Director of the Foreigners' Police is issued regularly in order to unify the approach of local foreigners' police departments towards foreigners. The instruction also contains interpretation of provisions of the FORA. The instruction is very wide and together with often changing FORA creates a hard-to-orientate-in system of documents. The executive authorities (when dealing with day to day cases) apply the law as it is written in the instruction; i.e. the Directive was transposed into the FoRa and the FoRa is explained by the instruction. The original meaning of the provision of the Directive may be misinterpreted. Therefore the risk of misinterpretation in the direct application is high. The internal instruction is not available to the public, although it influences the practice.

#### *Recent legal literature*

Honusková, V.: Aplikace výhrady veřejného pořádku při zásazích do osobní svobody [Application of public policy notion in intervention to personal liberty], in: D. Jílek and P. Pořízek, *Společný evropský azylový systém: zásahy do osobní svobody*, Brno: Kancelář Veřejného ochránce práv 2010, pp. 206-226.

## Chapter II

### Members of the Worker's Family

#### *Text(s) in force*

- *Act No. 326/1999 Coll. of Laws, on Residence of Foreigners on the Territory of the Czech Republic (Foreigners' Residence Act), as amended,*
- *Act No. 115/2006 Coll. on Registered Partnership,*
- *Act No. 435/2004 Coll., Employment Act, as amended,*
- *Act. No. 586/1992 Coll., Income Tax Act, as amended.*

In summary, the main problems in transposition may be seen mainly in the following aspects: Entry, residence and departure of TCN family members: 1) 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 (21) of the Directive. 2) FoRa does not cover situation of dependent direct relatives of students who are not members of household of the EU citizen (Sec. 15a FoRa), which means an incorrect transposition of Art. 7(4) of the Directive.

#### **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*).

If the purpose for stay of the EU citizen in the CR is study, then only a spouse and a dependent child are considered as family members (*see Sec. 15a (2) FORA*).

The provisions on family members will also apply to a foreigner, who is living in a common household with a EU citizen; or who is subsisted 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 purpose of the provisions of the Foreigners' Residence Act (Sec. 180f FORA). A partnership can only be registered in the Czech Republic 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 the Foreigners' Residence Act provides that the norms which apply to 'marriage', 'spouse', 'child' also apply to the partners who has 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 started to appear in the Czech practice in 2008. Legal provisions have double standard, which is compatible with the *acquis*, but are in fact discriminatory towards persons in the same position (typically TCN family members of Czech citizens whose entry and residence are not handled by the Directive). Nevertheless the Czech Charter of Human Rights, which is part of the Czech Constitution, allows for application of different legal regulation for foreigners in matters of e.g. employment (Art. 26).

First of the cases which appeared was a judgment of the Supreme Administrative Court in 2008. The judgment dealt with access of third country nationals who are family members of Czech citizens to the register of job seekers.<sup>7</sup> This judgment was already mentioned in the report of 2008/2009, so it will be repeated only shortly: one of the arguments which were presented by the applicant (the family member) was a different position of TCN family members of EU citizens compared to the position of TCN family members of Czech citizens in the provisions of the Employment Act. This different position of TCN family members leads according to his opinion also to *de facto* discrimination of the position of Czech citizens just for the sole reason that they are family members of TCN (being a family member means a connection with each other in the family, so the position of both members is influenced by any legal measure). The court held that the position of EU citizen's family members Czech citizen's family members in the respective law must be identical otherwise there would be a discriminatory treatment. The respective provisions of the Employment Act were changed then (see Act. No. 382/2008 Coll., which is in force since January 1, 2009). The issue of reverse discrimination was also mentioned in the statement of Public Defender of Rights when he dealt with access of third country nationals who are family members of the Czech citizens to the public health care scheme in 2009.<sup>8</sup> The Public Defender of Rights (Czech Ombudsman) pointed on an imbalanced situation of some categories of foreigners in their access to the public health care system. Esp. family members of Czech citizens who are third country nationals must pay for the health care or have a commercial insurance for the first two years of his/her stay as a family member in the Czech Republic, while the family members of EU citizens have access to public health care system immediately (on the basis of 1408/71 Regulation). There was no change since the end of April 2010. Similar situation is also in the access to social benefits.

The issue of reverse discrimination seems to be interpreted as having an impact on *de facto* situation of Czech citizens and thus causing discriminatory treatment of Czech citizens.

## 2. ENTRY AND RESIDENCE RIGHTS

The issue of entry, residence and departure of TCN family members of EU citizen is basically in compliance with the Directive, for possible problems see below (most of them was already mentioned in the report of 2008/2009).

<sup>7</sup> See Judgment of Supreme Administrative Court No. 4 Ads 40/2008-73, available at [www.nssoud.cz](http://www.nssoud.cz).

<sup>8</sup> The statement is available at the website of Public Defender of Rights, <http://www.ochrance.cz/tiskove-zpravy/tiskove-zpravy-2009/nerovne-postaveni-cizincu-v-cr-v-pristupu-k-verejnemu-zdravotnimu-pojisteni/>, (Czech only) accessed on February 13, 2010.

One of the questionable things is the length of the procedure of the issue of a visa at the borders for TCN family members of EU citizens in case that they are required to have one as is presumed in the Art. 5 (2) of the Directive. The Directive stipulates that a visa should be issued *as soon as possible and on the basis of an accelerated procedure*. The law stipulates the time limit of up to 14 days (*Sec. 170 (3) of the FORA*). When comparing the time limit given by the law for the issue of a visa for TCN family members of EU nationals with the regular time limit given by the law for the issue of a visa (30 days), it can be said, that the procedure is accelerated. But there is a question 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. 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*).

Access to information about the visa regimes, about the possible necessity of obtaining visas and about the procedure which must be followed to have a visa issued to a TCN family member of an EU national may also be a problem. This problem is connected to the issue of complexity of the FoRa which was already described above and also to limited sources of information. The information sources, esp. relevant websites, approved very much in 2009.

Another problem seems to be procedural position of a TCN family member of an EU citizen when he/she was refused entry into CR. The law does not provide for the possibility of a judicial review (*Sec. 171 (2) FoRa*). The right of entry of TCN family members may be refused and the reasons are more or less in compliance with the Directive. But its correct use very much depends on the ability of the Foreign Police to apply the ‘euroconformal’ interpretation (as was explained above in Chapter I) of e.g. the notion of public policy or its correct use of the ECJ judgment C-503/03 (*Commission v Spain*). Even if the euroconformal interpretation was held by the Supreme Administrative Court as necessary, when the law is not precise, the authorities may have problems with application.

Another problem which now appeared in practice was mentioned to the rapporteur by an employee of Public Defender of Rights. It is connected with application of the *Metock* judgment. The Czech Republic does not require a third country national who is a spouse of an EU citizen to reside previously in another Member State before arriving to the Czech Republic in order to benefit from the provisions of the Directive 38/2004/EC. But the executive authorities, when it is a first entry of the family member into the EU/Schengen countries seem to examine whether the marriage of the EU citizen and the TCN family member is not a marriage of convenience already before they let a person enter.<sup>9</sup> But the fact that the person is approved entry into whole Schengen should be taken into account.

Similar to the problems which appear in the obtaining of a registration certificate of EU citizen, the FoRa requests a TCN family member to present more documents than the Directive allows for. If the TCN family member intends to stay in the CR for more than 3 months then he/she is obliged to ask for a temporary residence permit. He/she is obliged to present certain documents (a passport or identity card, a document confirming accommodation, photographs, a document certifying sickness insurance and a document attesting the existence of a family relationship. If a dependent direct relative lodges an application, he/she must also enclose a document certifying his dependency on the EU citizen.

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9 Phone interview with a representative of the Public Defender of Rights from March 13, 2010.

The FoRa also does not cover situation of dependent direct relatives of students who are not members of household of the EU citizen (Sec. 15a FoRa), which means an incorrect transposition of Art. 7(4) of the Directive. Also the Czech legislation still seems to appear problematic In the light of *Jia* judgment, as it limits the reasons for dependency of a child. Sec. 15a (3) of FoRa stipulates that a dependent person is considered to be a foreigner: who is systematically preparing for his/her occupation; or cannot systematically prepare for his/her occupation or cannot perform gainful activity due to illness or injury; or is unable to perform systematic gainful activity due to a long-term unfavourable state of health. It remains questionable, whether such narrowed definition is consistent with the *Jia* judgment conclusions.

### **3. ACCESS TO WORK**

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

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

Family members of EU citizens have equal position in the employment as Czech citizens (and also as EU citizens). So the analysis which was done in Chapter I apply here too. A family member may (does not need to do so) register him/herself within the respective labour office and if all the conditions are fulfilled, he/she is included into the register of job seeker 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 social benefits. The test on unjustifiable burden to social system is done if the social benefits are considered (see above).

*Draft legislation, circulars, etc.*

Nothing to report (a draft law which will change FoRa was prepared and is being debated in the Government, but is not publicly available yet).

## Chapter III

### Access to employment: a) Private sector and b) Public sector

#### *Text(s) in force*

- *Act No. 262/2006 Coll., Labour Code, as amended.*
- *Act No.99/1963, Civil Procedure Code, as amended.*
- *Act No. 435/2004 Coll., Employment Act, as amended.*
- *Act No.455/1991 Coll., Trade License Act, as amended.*
- *Act No. 251/2005 Coll., Act on Labour Inspection, as amended.*
- *Act No. 18/2004 Coll., on Mutual Recognition of Qualifications, as amended.*
- *Act No. 95/2004 Coll., on Mutual Recognition of Diplomas on Medical Qualification of Doctors, Dentists and Pharmacists, as amended.*
- *Act No. 96/2004 Coll., on Mutual Recognition of Diplomas on Paramedical Qualification, as amended.*
- *Act. No. 198/2009 Coll. Antidiscrimination Act..*
- *Act. No 1/1993 Coll., Constitution of the Czech Republic, as amended.*
- *Act No. 62/2003 Coll., on Elections to the European Parliament, as amended.*
- *Act No. 247/1995 Coll., on Elections to the Parliament, as amended.*
- *Act No. 491/2001 Coll., on Elections to Municipal Councils, as amended.*
- *Act No. 312/2002 Coll., on Officers of Municipalities, as amended.*
- *Act No.182/1993 Coll., on the Constitutional Court, as amended.*
- *Act No. 6/2002 Coll., on Courts and Judges, as amended.*
- *Act No. 283/1993 Coll., on Public Prosecutors, as amended.*
- *Act No. 349/1999 Coll., on Ombudsman, as amended.*
- *Act 361/2003 on Service Contract of Members of Security Corps, as amended.*
- *Act No. 221/1999 Coll., on Professional Soldiers, as amended.*
- *Act No. 154/1994 Coll., on Security Information Service, as amended.*
- *Act No. 218/2002 Coll., on Public Services (i.e. civil servants and the other employees at administrative authorities and their remuneration), as amended.*

#### **A) ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR**

##### ***a.1. Equal treatment in access to employment (e.g. assistance of employment agencies).***

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 third country 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 the 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 was issued a permanent residence permit; a family member of a member of a diplomatic mission; a foreigner who was granted international protection etc. *Sec. 98 of Employment Act*). 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.

An employee can 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 should be no difference between them for the purposes of the services given by labour offices and agencies.

### ***a.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 III) the possible violation of this principle can 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*). 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*). The same requirements apply for the paramedical qualification (*Sec. 82 Act on Mutual Recognition of Diplomas on Paramedical Qualification*).

## **B) ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR**

### ***b.1. Nationality condition for access to positions in the public sector***

Various Acts (see relevant texts in force) also require Czech nationality for some of occupations or functions (see also the 2008/9 report for details). Even for these positions the EU citizens can apply, nevertheless, on the basis of the exception provided for by the Treaty and with regard to



the European Court of Justice interpretation the nationality will be in these cases one of the prerequisites for the occupation. 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 requires the Czech citizenship for the employment in public service, unless the employment is of manual, service or unskilled character (Sec. 17 (1) in connection with Sec. 2 (3) Act on Public Services). The Act on Public Services does not therefore apply to the employees who exercise auxiliary, manual and technical support and those, who operate, organize or control the work of the support employees (Sec. 2 of Act on Public Services). The execution of public service includes inter alia preparation of draft laws, preparation of proposals of international treaties, preparation of conceptions, supervision of lower administrative authorities, administration of a chapter of a state budget, defense of the foreign interests of the CR, protection of classified information, state control, supervision and inspection, i.e. all these activities are connected with the participation in exercise of sovereign rights of the state (Sec. 6 (2) Act on Public Services).

The Czech citizenship may thus be required for participation in a recruitment procedure as prerequisites for the occupation within the above mentioned extent.

### ***b.2. Language requirements***

Under the current legislation, the language requirements depend on the conditions for participation in a recruitment procedure, which are stated by the employer (*e.g. Sec. 17 of the Act on Public Service allows for a requirement of knowledge of foreign language for the respective field of activity*). The Czech language should be required to the extent necessary to the execution of the employment. The conditions must not be discriminatory.

### ***b.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 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),<sup>10</sup> so a lot of jobs fall within the regulated profession. There is no other law

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<sup>10</sup> See <http://www.msmt.cz/mezinarodni-vztahy/databaze-regulovanych-povolani> (accessed April 20, 2010).

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, mainly for third country nationals) and the Act on University Education 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).

***b.4. Other aspects of access to employment***

See above.

## Chapter IV

### Equality of Treatment on the Basis of Nationality

#### *Text(s) in force*

- *Act No. 262/2006 Coll., Labour Code, as amended.*
- *Act No. 435/2004 Coll., Employment Act, as amended.*
- *Act. No. 143/1992 Coll., on Remuneration in Budgetary Organizations, as amended.*
- *Act No. 251/2005 Coll., Labour Inspection Act, as amended.*
- *Act No. 634/1992 Coll., Consumer Protection Act, as amended.*
- *Act No. 561/2004 Coll., Act on Education, as amended.*
- *Act. No. 111/1998 Coll., Act on University Education, as amended.*
- *Act No. 221/1999 Coll., Act on Professional Soldiers, as amended.*
- *Act no. 361/2003 Coll., Act on Service Relationships of Members of the Service Corps, as amended.*
- *Act no. 218/2002 Coll., Act on Service of Public Servants, as amended.*
- *Act No. 100/1988 Coll., on Social Security, as amended.*
- *Act No. 117/1995 Coll., on State Social Support, as amended.*
- *Act. No. 108/2006 Coll., Social Services Act.*
- *Act. No. 111/2006 Coll., Assistance in Need Act.*
- *Act No. 586/1992 Coll., Income Tax Act, as amended.*
- *Act No. 61/2000 Coll., On Sea Navigation.*

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

##### *Working conditions*

Equal treatment in private and public sector is ensured by provisions of the respective laws and is secured. 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*). Similar provisions are included in the remuneration legislation (e.g. the Salary Act provides for the equal salary for the equal work in Sec. 3 (3). Labour Code also prohibits direct and indirect forms of discrimination based on the citizenship, nationality etc. (*Sec. 16 of Labour Code*).

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 basically 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 is situated. There are 16 salary groups, which differ in accordance with the qualification of the employee and 12 salary levels which differs in accordance with the professional experiences; the employee is placed there in dependence on his qualification and professional experiences.

***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, Education Act, Act on Professional Soldiers, Act on the Service Relationship of Members of the Security Corps and the Act on the Service of Public Servants. 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 allegations that the party has been directly or indirectly discriminated on the grounds of his/her sex, racial or ethnic origin, religion, belief, world opinion, disability, age or sexual orientation, shall be deemed proved by the court in labour matters unless the opposite has transpired in the proceedings (facts bearing on the issue of discrimination are considered to be proved unless proven otherwise).

There is very little case law on this issue and almost none with an EU citizen or his/her TCN family member as an applicant. 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<sup>11</sup>), the Chamber of Deputies (lower chamber) of the Czech Parliament outvoted his veto. Until now, there were cases of gender discrimination (Czech women), or on access to services (Roma applicant not allowed to enter a restaurant).

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

## 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 if he 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 (normally 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.<sup>12</sup>

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

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

In the field of social benefits, schemes of state social support and social assistance are primarily based on residence in CR. To be eligible for a benefit, the recipient must reside on the territory of the Czech Republic. Therefore, for access to these kinds of 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 (usually the law contains provision such as ‘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 ruling 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 the provision of social services that is also based on the residence. However, for Community workers and their family members this requirement is overruled by the regulation (the law refers to the application of directly applicable regulation). It also 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. 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.

So there is a group of persons who can never be ‘unreasonable burden of social assistance scheme’ – *i.e.* workers, other persons who are gainfully active etc. 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,

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12 See <http://cds.mfcr.cz/cps/rde/xchg/SID-3EA9846C-5355E46B/cds/xsl/4379.html?year=0> (accessed 28 April 2010).

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 Foreigners Police 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 *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**

Checks on the borders with Germany which seem to be quite frequent appeared. The issue of border checks was raised already in 2008 (in connection with checks from German and Austrian side) and is not solved till now.

Tens of complaints against the border checks by German authorities who checked cars or intercity buses regularly were sent to the Ministry of Interior and Ministry of Foreign Affairs. The drivers a) protested against repeated controls as such, b) against controls of personal belongings including search of persons, c) were not aware of the possibility to be controlled by policemen in 'plain clothes' (without uniforms).

Respective authorities (e.g. Ministry of Interior of the CR, Ministry of Foreign Affairs of the CR) deal with the issue. There were negotiations between Czech and German authorities on this issue too.

## Chapter VI Specific Issues

### 1. FRONTIER WORKERS

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, there is e.g. nothing debated on this issue at this moment. 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 laws refer to them in their provisions). In the field of social benefits, schemes of state social support and 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 delimits a place of a sport as a nonprofit activity (common profit activity, *obecně prospěšná činnost*) in the society.<sup>13</sup> The law also stipulates tasks

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



to ministries and other state authorities in the field of sport (they give conceptions, financial support 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 work of those entities as such (e.g. law on non-profit organizations etc.).<sup>14</sup>

### 3. THE MARITIME SECTOR

Czech legislation was changed already in 2008. The change was most probably done 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.<sup>15</sup> 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 fact is raised 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 as Czech citizens (*Sec. 20 (3) Act on Education*). The elementary and secondary education on the governmental schools is declared as free of charge (*Sec. 2 of Act on Education*). The sufficient knowledge of the Czech language is required for secondary and higher vocational schools, and can be attested during the entrance exams or by an interview taken by the school (*Sec. 20 (4) of Act on Education*). Czech language courses for free are offered to children

<sup>14</sup> Act No. 83/1990 Coll., on Association of Citizens (zák. č. 83/1990 Sb., zákon o sdružování občanů).

<sup>15</sup> See the explanatory report of the draft law No. 427, available at <http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=427&CT1=0> (accessed February 28, 2010).

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 nationality 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.

## Chapter VII

### Application of Transitional Measures

#### *Text(s) in force*

- *Government Resolution No 13/2004 on the position of the Government to transitional period on free movement of workers.*
- *Government Resolution No 1345/2006 on the position of the Government concerning free movement for nationals of Bulgaria and Romania.*
- *Employment Act No 435/2004 Coll., as amended.*
- *Act on Accession of the Czech Republic to the EU.*

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

Not applicable.

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

As regards the transitional periods situation in the year 2009/beginning of 2010 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 the year 2009/2010 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 not 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 not any change in 2009/2010. 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. According to the position of the Czech Ministry of Labour and Social Affairs the positive approach towards free movement of nationals of these two countries was based on the consistent position of the Czech Republic in the matter of free movement of persons as one of fundamental freedoms belonging to the EU citizens and an elementary condition for existence of the internal market.

## CZECH REPUBLIC

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).

As far as further application of the transitional arrangements by other Member States towards the Czech Republic is concerned, some Member States of the EU-15 decided to maintain the transitional measures (Austria, Germany), while others decided to open their labour markets fully (Finland, France, Greece, Italy, Luxemburg, Netherlands, Portugal, Spain, United Kingdom, Ireland and Sweden; plus Belgium and Denmark since May 2009). In case of the partial opening of the labour markets in the respective Member States the work permits have been issued under easier and faster procedures. As regards the EU-8 the transitional measures towards the Czech Republic have not been introduced as of the date of joining the EU.

## **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 Services 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 2009/beginning of 2010.

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

There are no integration measure 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). Their position is quite different and the Union preference principle can be clearly seen.

Two immigration policies for TCN nationals took place, as the CR faced the problem of labour force shortage and adopted measures to make access of third-country nationals 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) and System of Green Cards (applied since 2009), which were described in previous reports in detail.

But in 2009 in connection to the layoff of foreign employees as a result of the economic crisis a Government Resolution on ensuring the security of the Czech Republic was adopted.<sup>16</sup> The Ministry of Interior was authorized to review the situation on the labour market in cooperation with other ministries. The resolution also inter alia authorized the Ministry of Labour and Social Affairs to ensure that employers who do not act according to the Employment Act are imposed sanctions, and also authorized Ministry of Finances to execute the sanctions. It also authorized the Ministry of Interior to implement programmes aimed at employment of foreigners in their home country, at encouraging their re-entry on the labour market there (as a measure to prevent their repeated migration in the Czech Republic). This resolution was aimed at third country nationals. The Ministry of Interior also realized a project to prevent illegal stay in the Czech Republic in 2009 which was reaction to reduction of the number of jobs in connection with economic crisis. Some of the immigrants from third countries, who worked on the basis of a work permit, lost their jobs and therefore their residence permit expired. The project provided for a return to the country of origin, the foreigner got a ticket and pre-exit and transit assistance, allowance in the amount of €500 for an adult and €250 for a child under 15, emergency accommodation for the period from registration until exit from the Czech Republic, including basic food. Up to July 2009 only foreigners who had been legally present in the Czech Republic were allowed to enter the project, since September 15, 2009 also illegal immigrants may have entered the project. The project was finished in December 2009.<sup>17</sup>

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

There were no situations of concern in this issue.

## **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.

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

17 More information available on website of Ministry of Interior, e.g. <http://www.mvcr.cz/clanek/pokracovani-projektu-dobrovolne-navraty-cizincu.aspx> (Czech only, opened on April 10, 2010).

## 5. SEMINARS, REPORTS AND ARTICLES

A website, which was created by the public administration as a portal, started to be a very useful tool to get information also on the issue of free movement of workers. The information are more aimed at Czech citizens who are travelling abroad. The website [www.portal.gov.cz](http://www.portal.gov.cz) (Portal of the Public Administration) among others e.g. contain information on 'what to do' in case that a person terminated an employment in an EU MS – where to go, what to ask and whom to ask ([http://portal.gov.cz/wps/portal/\\_s.155/708?POSTUP\\_ID=82&PRVEK\\_ID=1024](http://portal.gov.cz/wps/portal/_s.155/708?POSTUP_ID=82&PRVEK_ID=1024)). This seems to be a useful tool to spread the knowledge of rights to persons and support their capability to request their rights.

### *Books and articles:*

Joklová, K., Ryšavá J. a kol., *Zaměstnávání cizinců a vysílání pracovníků do zahraničí*. Wolters Kluwer ČR, 2009.

Kühn, Z., Nová žaloba podle § 10 antidiskriminačního zákona, *Právní rozhledy*, 2010, č. 3.