

REPORT
on the Free Movement of Workers
in Estonia in 2010-2011

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October 2011

Contents

Introduction

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

Chapter II Members of the family

Chapter III Access to employment

Chapter IV Equality of treatment on the basis of nationality

Chapter V Other obstacles to free movement of workers

Chapter VI Specific issues

Chapter VII Application of transitional measures

Chapter VIII Miscellaneous

Introduction

The following report covers issues on free movement in Estonian legislation and in practice. This report covers the period of year 2011 and the situation by June30st 2011.

Joining the European Union, the changes in migration law were necessary. The Aliens Act mainly regulated the status of the aliens in Estonia. To guarantee the free movement of persons between EU Member States, since May the 1st 2004 a special act about the European citizens and their family members came into force. This act covers all the necessary EU directives and regulations, which were in force at the time being. From the August 1st, 2006 the new Citizen of the European Union Act came into force. Through this act the directive 2004/38 /EU was generally harmonised.

Analysing the situation of migration in Estonia one should keep in mind that in Estonia there is a number of persons who are not citizens of any country (stateless persons). They possess only an alien's passport. These persons are to allow to stay and to work in the country concern i.e. in Estonia. The accession to EU brought also changes in the civil service. Until May the 1st 2004 all the positions in civil service only for the citizens of the Republic of Estonia were guaranteed. This is also the main principle that is stated in the Constitution of the Republic of Estonia (Art.30). As the principle of the free movement of persons and workers has been applied, the changes in Civil Service Act were needed. Since May the 1st 2004, also the citizens of the EU Member States have a right to be appointed to a position in Estonian civil service. In accordance with the restrictions of the free movement in the European Union the citizens of the Member States of the EU cannot take all positions in the civil service. Some strategic positions are reserved only for the citizens of the Republic of Estonia. Although there have been drafts of the legislation concerning the modernisation of the public service, still the Public Service act from 01.01.1996 is applicable.

Generally speaking the accession to the European Union has brought no massive migration form the other EU Member States. On the other hand the expected massive movement to the other EU Member States was not registered. The main movement concerns free movement of workers to the Scandinavian countries (Finland, Sweden), also England and Ireland. Mainly it concerns building construction, bus drivers and different service branches (hotels, restaurants etc). In May 1st 2011 the restrictions for Estonian workers were removed entirely. Estonian workers have now the access to the all EU 27 labour markets. The opening labour markets in Germany and Austria did not have an influence for free movement to those countries. There are two obstacles, why Estonians are not looking for a job in those countries: 1) quite high requirements and language abilities 2) the level of wages is not too high in order to enter those countries for employment.

The trend is, that 3rd country nationals are entering the Estonian labour market as members of the board. The number of such applications has increased rapidly.

At the end of year 2007 Estonia joined the Schengen area. This has made the free movement of persons incl. workers easier in the meaning that there is no border control between the Schengen-area states. At the same time it makes more difficult to observe the free movement of workers especially if they are working in Estonia less than three months. In this sense it is difficult to assess how attractive Estonia is for workers from different EU Member States.

ESTONIA

During the reference period there were no significant changes in legislation and case law concerning the free movement of workers.

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

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

The main act, which determines the legal Status of the citizen of EU is the Citizen of European Union Act (*Euroopa Liidu kodaniku seadus*). According to the § 1 of the Citizen of European Union Act, this Act regulates the basis for the stay and residence in Estonia of citizens of the European Union and their family members. This Act applies to the citizens of the European Union and the citizens of the European Economic Area who are not Estonian citizens, and to the citizens of the Swiss Confederation and to their family members.

The right of stay is the legal basis for the stay in Estonia of citizens of European Union and their family members. The right of residence is the legal basis for the residence in Estonia of citizens of European Union and their family members. In order to act as a worker or as a self-employed person a family member has to have a right for residence.

The art 7 1 a has been transposed into Estonian legislation correctly. There has been guaranteed a right to stay on territory of Estonia longer than three months if a person is a worker or self-employed person.

Art 7 (3 a-d)

The Estonian Citizen European Union Act foresees in § 21 the list of circumstances in which a person will be seen as a workers like it has been foreseen in the directive art 7 p 3. As the wording of the § 21 of CEUA is the same as it is in art 7 (3 a-d) of the directive, it has been applied correctly.

Art 8 3 a

Estonian legislation has also the same requirements that have been foreseen in art 8 section 3a. A worker has to present to the Police and Border Guard Board (PBB) his or her identity card and also a document, that states that he or she has been engaged as an employee or as a self-employed person. This rule has been fixed in § 52 of the CEUA. The necessary list of documents to present has been fixed by the Governmental Decree from 26.7.2006 (last amendment 22.12.2010). The Art 8 3a of the directive has been transposed correctly.

Art 14 4a-b

The Citizen of the European Union Act foresees, that so far a person can be viewed as a worker or as a job-seeker, he or she can be viewed as a legally residing person and therefore may not be expelled from Estonia.

According to the CEUA §8 the right to stay for citizen of the Member State can be restricted, if there is proof that he or she could be a danger for public order, state security or health of other persons. If the right to stay in Estonia has been restricted, this person could also be expelled. The same applies also for family members (CEUA § 11). The Estonian legislation does not foresee specific provision for jobseekers. Also the specific legislation does not refer to the situation where the person has entered territory of Estonia only for purpose to find a job. Although there is no contradiction between the directive and Estonian legislation, the Estonian legislation needs improvements in clarification of the situation of the jobseekers, especially concerning the right to stay.

Art 17

A citizen of the European Union who has resided in Estonia for a period of five consecutive years based on temporary right of residence is entitled to permanent right of residence (CEUA § 40).

A citizen of the European Union is entitled to permanent right of residence before the term mentioned above, if he or she:

- 1) has, by the date of termination of his or her employment or operation as a sole proprietor, attained the age of retirement (63 years, since the year 2026 65 years) and has been employed or has operated as a sole proprietor in Estonia for at least the last twelve months and has stayed in Estonia on the basis of temporary right of residence at least for the last three consecutive years;
- 2) has permanently stayed in Estonia on the basis of temporary right of residence at least for the last two consecutive years and has terminated employment or operation as a sole proprietor due to permanent incapacity for work;
- 3) resides in Estonia on the basis of temporary right of residence and has terminated employment due to permanent incapacity for work arising from a work injury or occupational disease, or
- 4) resides in Estonia on the basis of temporary right of residence and has been employed or has operated as a sole proprietor in Estonia at least for three consecutive years and has commenced employment in another Member State of the European Union but resides in Estonia and returns to Estonia at least once a week.

A citizen of the European Union with permanent right of residence is a permanent resident of Estonia. The time during which a citizen of the European Union, due to reasons independent of him or her, is unemployed, will be included in the period of employment

Concerning the migrant workers the directive has been implemented into Estonian legislation correctly. This means that there are no contradictions between art 17 1-3 and the Estonian legislation. The art 17 4 that concern the legal status of the family members has also transposed into Estonian legislation in CEUA § 45 section 2 and 3. The Estonian legislation

does not contain any rules according to the art 17 4c and this situation constitutes no fulfilment of the directive requirements.

Art 24

The article 24 of the directive has been harmonised into the Estonian legislation through the different legal acts. Generally speaking according to the Estonian legislation, the persons who are staying in Estonia on basis right to stay, they have also a right to get social assistance, study loans and vocational training. The Social Welfare Act § 4 determines, that persons who have permanent right to stay or fixed right to stay are entitled to social assistance. Employment Market Services and Benefits Act states that persons who have fixed term or permanent right to stay have a right for benefits and services that have been foreseen for unemployed person. According to the Study Loans Act § 5 a student who has fixed term or permanent right to stay has a right to apply for study loans. To summarise - it could be concluded that the art 24 of the directive has been implemented correctly.

2. SITUATION OF JOB-SEEKERS

No special rules have been foreseen for job-seekers who are coming from the other Member States of the European Union. The general rules are also applicable for job-seekers. They can stay in Estonia three months without any obligation to register their address in population register. After this period of time they have to register their address in population register and to apply for temporary right to residence.

3. OTHER ISSUES OF CONCERN

Nothing to report.

4. FREE MOVEMENT OF ROMA WORKERS

There are no specific rules for free movement of Roma workers. The question about of Roma people was raised at the end of he year 2010. At the end of the year the group of Roma people were sent out from Helsinki back to Romania through Estonia. The Estonian migration institutions did not takes specific steps for observing their movement in Estonia. As they were not stayed in Estonia longer than free months, no specific problems or conflicts were raised.

Chapter II: Members of the family

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

According to § 3 of the CEUA a family member of a citizen of the European Union is a person who is not a citizen of the European Union or a citizen of Estonia and who is:

- 1) a spouse of the citizen of the European Union (hereinafter spouse),
- 2) a child under 21 years of age or a dependent adult child of the citizen of the European Union or of his or her spouse (dependent child);
- 3) a dependent parent of the citizen of the European Union or of his or her spouse, or
- 4) a person not specified in clauses 1)–3) who, in the country of origin of the citizen of the European Union, is a dependant of the citizen of the European Union or is a member of his or her household, or who is permanently unable to cope independently due to health reasons or disability and it is necessary that the citizen of the European Union personally cares for him or her.

2. ENTRY AND RESIDENCE RIGHTS

Generally speaking the legal regulation of the status of the family members is in line with the requirements of the Directive. Also the administrative practice seems to be in line with the requirements of the Directive.

Right to enter and right to stay in Estonia

A family member has the right to stay in Estonia together with a citizen of the European Union on the basis of a valid travel document for a period of up to three months after the date of entry in Estonia. For entry in Estonia, a family member must have a valid travel document and if necessary a visa. Visa is not required from a family member if:

- 1) the family member has a residence card issued by a Member State of the European Union, Member State of the European Economic Area or the Swiss Confederation, or
- 2) the family member is a citizen of the state with which Estonia has entered into an agreement to forego the visa requirement or in the case of which Estonia has unilaterally foregone the visa requirement.

A family member staying in Estonia on the basis of the right to stay is obliged, within three months after the date of entry in Estonia, apply for temporary right of residence, or leave Estonia before the expiry of such term, unless he or she has applied for temporary right of residence. The stay in Estonia of a family member who has applied for temporary right of residence is legal until the processing of his or her application for temporary right of residence has been concluded.

A family member staying in Estonia on the basis of the right to stay is prohibited from employment or operation as a sole proprietor in Estonia.

The right of stay in Estonia of a family member may be restricted if there is good reason to believe that the person poses a danger to public order, national security or the health of other persons. A family member whose right of stay in Estonia has been restricted will not be permitted to enter Estonia. So far *Police and Border Guard Board (PBGB)* has made any decision to expel a person based on ground public order, health or state security.

According to the Social Welfare Act § 4 only persons who are residents of Estonia (i.e. Estonian Citizen or who have permanent right to stay) or who has got temporary or permanent right to stay have a right to get social assistance. This means that persons who are family members of jobseekers and have stayed in Estonia up to three months on basis right to stay do not have any access to the social assistance system. The same principle applies in case of unemployment. According to the Employment Market Services and Benefits Act (*tööturuteenuste- ja toetuste seadus*) § 3¹ the family members of the jobseekers who are staying in Estonia on the basis right to stay do not have any access to the employment market services and benefits. This means that during the first three months after entering the Estonia there is no right to get social assistance and employment services for family members of jobseekers.

Temporary right of residence of family member

a) Granting temporary right of residence

A family member is granted temporary right of residence in Estonia if the family member meets the conditions for grant of temporary right of residence.

A family member will be granted temporary right of residence for up to five years but not for longer than the period during which the citizen of the European Union resides in Estonia. The temporary right of residence of a family member will be extended for the period during which the citizen of the European Union resides in Estonia but not for longer than for five consecutive years at a time.

PBGB grants temporary right of residence to a family member provided that (*main conditions*):

- 1) the citizen of the European Union with whom the person wishes to take up residence, is employed or operates as a sole proprietor in Estonia;
- 2) the citizen of the European Union with whom the person wishes to take up residence has sufficient funds to maintain himself or herself and his or her family members, and he or she is a person insured pursuant to the procedure provided by the Health Insurance Act, or
- 3) the citizen of the European Union with whom the person wishes to take up residence is studying in Estonia and has sufficient funds to maintain himself or herself and his or her family members, and he or she is a person insured pursuant to the procedure provided by the Health Insurance Act.

If a family member of a citizen of the European Union has a newborn child who is not a citizen of the European Union and does not conform to the definition of a family member in

1 Tööturuteenuste ja toetuste seadus – RT I 2005, 54, 430 with amendments.

Citizen of European Union Act, then the PBGB grants temporary right of residence to the child provided that the parent has temporary right of residence in Estonia.

A family member who has been granted temporary right of residence by the PBGB must register his or her residence in Estonia pursuant to the procedure provided by the Population Act within one month after the date of grant of temporary right of residence.

PBGB will not grant temporary right of residence to a family member if:

- 1) the citizen of the European Union with whom the person wishes to reside does not meet the following requirements:
 - a) the citizen of the European Union with whom the person wishes to take up residence, is not employed or does not operate as a sole proprietor in Estonia;
 - b) the citizen of the European Union with whom the person wishes to take up residence has no sufficient funds to maintain himself or herself and his or her family members, and he or she is not a person insured pursuant to the procedure provided by the Health Insurance Act, or
 - c) the citizen of the European Union with whom the person wishes to take up residence is not studying in Estonia and has no sufficient funds to maintain himself or herself and his or her family members, and he or she is a person not insured pursuant to the procedure provided by the Health Insurance Act.
- 2) the citizen of the European Union with whom the person wishes to reside has no right of residence in Estonia;
- 3) the applicant for temporary right of residence does not conform to the definition of family member;
- 4) there is good reason to believe that the family member poses a threat to public order, national security or the health of other persons, or
- 5) the family member or the citizen of the European Union with whom the family member wishes to reside has abused the rights prescribed by CEUA or used deceit in order to achieve the aim of the family member obtaining temporary right of residence in Estonia.

Among other, the following will be considered as the abuse of rights, or deceit:

- 1) contracting fictitious marriage;
- 2) obtainment by the citizen of the European Union of temporary right of residence in Estonia in order to achieve the aim of the family member obtaining temporary right of residence in Estonia;
- 3) submission of falsified documents;
- 4) submission of false information.

b. Extending temporary right to stay

The PBGB extends the temporary right of residence of a family member if all the following conditions are complied with:

- 1) the citizen of the European Union for the purposes of settling with whom the right of residence was granted meets the requirements mentioned above;
- 2) the citizen of the European Union for the purposes of settling with whom the right of residence was granted continues to hold the right to reside in Estonia;
- 3) the family member continues to hold the temporary right of residence in Estonia;
- 4) the applicant for extension of temporary right of residence conforms to the definition of family member as provided in Citizen of European Union Act;

- 5) the residence of the family member in Estonia has been registered pursuant to the procedure provided by the Population Register Act;
- 6) no bases for refusal to extend the temporary right of residence of the family member exist.

The PBGB extends, for the period of the parent's temporary right of residence in Estonia, the temporary right of residence of a family member's newborn child who is not a citizen of the European Union and does not conform to the definition of a family member provided as provided in Citizen of European Union Act.

c. Termination of temporary right of residence

Temporary right of residence of a family member extinguishes:

- 1) upon expiry of the term of validity of the temporary right of residence;
- 2) upon acquisition of permanent right of residence;
- 3) upon acquisition by the person of Estonian citizenship or citizenship of the European Union, or restoration of such citizenship;
- 4) if the citizen of the European Union for the purposes of settling with whom the right of residence was granted has no right of residence in Estonia;
- 5) if the person no longer conforms to the definition of family member, or
- 6) upon the death or declaration of death of the person.

The temporary right of residence in Estonia of a family member may be terminated if:

- 1) the citizen of the European Union for the purposes of settling with whom the right of residence was granted does not meet the main conditions or
- 2) the family member does not permanently reside in Estonia.

In the case of the death of a citizen of the European Union, the temporary right of residence of his or her family member extinguishes unless the family member has resided in Estonia on the basis of temporary right of residence for at least a year before the death of the citizen of the European Union, and:

- 1) he or she is employed or operates in Estonia as a sole proprietor;
- 2) he or she has sufficient funds to maintain himself or herself and his or her family members, and he or she is a person insured pursuant to the procedure provided by the Health Insurance Act, or
- 3) he or she is a family member of a person specified in clause 1) or 2).

In the case of the death of a family member of a citizen of the European Union, his or her family member is entitled to permanent right of residence.

In case of the extinguishment or termination of the temporary right of residence of a citizen of the European Union, the temporary right of residence of his or her family member may be restricted, his or her temporary right of residence may be terminated or extension of the temporary right of residence may be refused pursuant to the general procedure, taking account of the specifications set forth in this section.

In addition to the requirements mentioned above, the spouse has to:

- 1) be employed or operate in Estonia as a sole proprietor;

- 2) have sufficient funds to maintain himself or herself and his or her family members, and be a person insured pursuant to the procedure provided by the Health Insurance Act.

In the case of divorce or annulment of marriage, the temporary right of residence of a dependant child of the spouse or a dependant parent does not extinguish if the spouse meets the conditions mentioned in sections 1 and 2 above.

In the case of divorce or annulment of marriage, the temporary right of residence of a family member may be restricted, his or her temporary right of residence may be terminated or extension of the temporary right of residence may be refused pursuant to the general procedure.

Permanent Right of Residence of Family Member

A family member who has permanently resided in Estonia for a period of five consecutive years based on temporary right of residence is entitled to permanent right of residence. A family member with temporary right of residence in Estonia is entitled to permanent right of residence simultaneously with the citizen of the European Union if the permanent right of residence of the citizen of the European Union.

A family member with temporary right of residence in Estonia is entitled to permanent right of residence in the case of the death of the citizen of the European Union with right of residence in Estonia, if:

- 1) the citizen of the European Union was employed or operated as a sole proprietor in Estonia, and at the time of death, had permanently resided in Estonia at least for two years, or
- 2) the citizen of the European Union was employed or operated as a sole proprietor in Estonia, and his or her death was caused by an accident at work or occupational disease.

A newborn child of a family member with permanent right of residence in Estonia is entitled to permanent right of residence regardless of nationality.

A family member is not entitled to permanent right of residence if his or her temporary right of residence is extinguished or terminated, or if he or she has not resided in Estonia permanently for a period of five consecutive years,

The permanent right of residence of family member extinguishes:

- 1) upon acquisition by the person of Estonian citizenship or citizenship of the European Union, or restoration of such citizenship, or
- 2) upon the death or declaration of death of the person.

The permanent right of residence in Estonia of a family member is terminated:

- 1) based on the request of the family member;
- 2) if the family member has been absent from Estonia for a consecutive period of two years,
- 3) if there is good reason to believe that the family member poses a threat to public order, national security or the health of other persons, or
- 4) if the family member or the citizen of the European Union has abused the rights prescribed by CEUA or used deceit in order to achieve the aim of the family member obtaining right of residence in Estonia.

The family member must leave Estonia within two months after the date of termination of the permanent right of residence unless the family member has other legal basis for staying in Estonia.

The PBGB issues, pursuant to the procedure provided in the Obligation to Leave and Prohibition on Entry Act, a precept to leave to a family member whose permanent right of residence is terminated.

If the permanent right of residence is terminated due to a threat to national security, the precept to leave shall be subject to immediate compulsory execution.

3. IMPLICATIONS OF THE *METOCK* JUDGEMENT

The *Metock* judgment is not directly applied in Estonia. At the same time there are no obstacles for non-Member States citizen to join the migrant worker without any requirement to stay or reside legally in another member states. As the CEUA in this context is the direct translation of the directive, this means that the interpretation should be in line with *Metock* decision. This means that Estonia has to apply the principle according to which, third country nationals can directly join the migrant worker of the EU without any requirement to be legal resident in another Member State of the European Union. At least on the website of CMB there is no official link to the *Metock* decision or at least explanation of the decision and its consequences.

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

According to the CEUA PBGB will not grant temporary right of residence to a family member among others, if the family member or the citizen of the European Union with whom the family member wishes to reside has abused the rights prescribed by CEUA or used deceit in order to achieve the aim of the family member obtaining temporary right of residence in Estonia.

Among other, the following will be considered as the abuse of rights, or deceit:

- 1) contracting fictitious marriage;
- 2) obtainment by the citizen of the European Union of temporary right of residence in Estonia in order to achieve the aim of the family member obtaining temporary right of residence in Estonia;
- 3) submission of falsified documents;
- 4) submission of false information.

The same applies for application of permanent right permanent right of residence in Estonia

5. ACCESS TO WORK

According to the CEUA there is no access to work for family members if they are staying in Estonia on basis of right to stay (i.e. during the first three months). If they have obtained temporary right of residence or permanent right to stay, they have free access to work under the employment contract or as entrepreneur. There should be no discrimination based on

race, sex colour and other circumstances. At the same time the language requirements should be taken into account.

The main legal source for the employment conditions is Employment Contracts Act (ECA) of Republic of Estonia. According to ECA and Alien Act a migrant worker has generally to hold a working permit in order to have an opportunity to work in Estonia. The same principle applies to the family member of a migrant worker. As the EU migrant workers do not have any obligation to hold a working permit, this requirement is applicable only for the third country workers. The Employment Contracts Act does not concretize in what circumstances there is a need for employment permit. These rules are to find in Aliens Act or in Citizen of European Union Act.

6. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

Family members of a jobseeker have two possibilities: 1) if a family member is a citizen of the EU Member State he or she can stay in Estonia within period of three month without applying any right to stay in Estonia 2) if a family member is a third country national, usually there is a requirement for visa unless on basis of a mutual agreement a person can stay in Estonia without any visa.

Chapter III: Access to employment

1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

1.1 *Equal treatment in access to employment*

The main legal source for the employment conditions is Employment Contracts Act (ECA) of Republic of Estonia. According to ECA a migrant worker has generally to hold a working permit in order to have an opportunity to work in Estonia.² As the EU migrant workers do not have any obligation to hold a working permit, this requirement is applicable only for the third country workers. The Employment Contracts Act does not concretise in what circumstances there is a need for employment permit. These rules are to find in Aliens Act (applicable for third country nationals) or in Citizen of European Union Act for citizens of Member States of the European Union. There are no restrictions for migrant workers from the EU Member States to start their employment in Estonia. There are some differences concerning the employment in public service especially for officials.

Since the July 1st 2009, the general principle of equal treatment has been stated in Equal Treatment Act.³ Equal Treatment Act does not contain any specific rule about discrimination based on citizenship. According to the Labour Market Services and Benefits Act § 3 the EU citizens residing legally in Estonia have the right to register themselves as jobseekers or as unemployed person.

1.2 *Language requirements*

According to the Language Act §23 (*keeleseadus –RT 2011, 1*) employees of state agencies administered by government agencies and of local government agencies, and employees of legal persons in public law and agencies thereof, notaries, bailiffs and certified interpreters and translators and the employees of their bureaus must be able to understand and have to use Estonian at the level which is necessary to perform their service or employment duties.

The Government of the Republic has established the mandatory levels of language proficiency for public servants, employees and sole proprietors mentioned above.⁴ These requirements are applicable for both public and private sector. According to the new rules there are three levels for understanding Estonian language: A, B, C. Level A means that a person has an ability to communicate on the minimum level. This level can be required from employees whose employment obligations are quite concrete and they are involved with tasks that have routine nature. Level B means that an employee has a higher ability to com-

2 Here one should keep in mind that since July 1st 2009 the new Employment Contracts Act came into force. In the ECA there is no word about the requirements for migrant workers. The requirements for migrant workers e.g. work permit etc can be found in Aliens Act.

3 Võrdse kohtlemise seadus (Equal Treatment Act) – RT I 2008, 56, 315.

4 Avaliku teenistuja, töötaja ning füüsilisest isikust ettevõtja eesti keele oskuse ja kasutamise nõuded. Vabariigi Valitsuse määrus nr 84, 01.07.2011.

Mandatory levels of ability to communicate in Estonian language for employees, public servants and self-employed persons Governmental Decree No 84, 01.07.2011.

municate in Estonian and he is able to compose e.g. already the texts that are not typical and routine. The level B can be demanded from the employees whose employment obligations have different nature or who are in leading positions, like leading a group of employees. Level C is the highest level and this level can be demanded from the employees who have an obligation to coordinate an activity of an institution, office and who is involved with composing of official statements.

It is the obligation of an employer to guarantee and to be responsible that the employees have the sufficient level of knowing the Estonian language.

Miscellaneous

There are no concrete data available, how many persons from different EU Member States work in Estonia. Although there is also a special law about the posted workers, there is no official number of the posted workers available. The number of posted workers can be approx. 1000. Concerning the language requirements one specific features should be taken into account. After the Schengen was introduced there was quite intensive movement between Estonia and Latvia, especially at the border town Valga/Valka. These movement brought also some questions about the services offered e.g. by the medical personnel. Although there could be complications by the communications between the patients and doctors, it could be the case that the third common language will be used (in case of Estonia and Latvia Russian language). The EU law does not forbid using the language of the third country.

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

2.1 Nationality condition for access to positions in the public sector

According to the general regulation concerning the employment in public sector, between two categories of persons who are working in public sector should be distinguished. First there are persons who are working under the employment contract (*abiteenistujad*). Those persons are mostly fulfilling tasks, which are more technical and supportive nature (secretary, drivers etc). By those persons there are no requirements that they have to be Estonian citizens. This means, persons working under the employment contract may also be aliens or citizens of the EU Member States. The second type of persons who are working in public sector are officials (*ametnikud*). These persons should in general have Estonian citizenship.

The Public Service Act

In 1995 a reform in the employment in public sector was introduced. Until the 1995 the employment in public service was performed under the employment contract and the regulations of labour law were also applicable to the civil servants. From beginning 1996 there is the distinction between the public service and between the employment on the basis of the employment contract. According to this reform, there is distinction between those people who are appointed as officials and those persons, who are also employed in public sector, but under the employment contract. According to the § 1 of the Public Service Act (*avaliku teenistuse seadus – RT I 1995, 16, 228*) the public service is employment in a state or local government administrative agency.

Employment in a state office is deemed to be an employment relationship in an elected or appointed office prescribed, on the staff of an institution exercising legislative, executive or judicial power, state supervision, control or national defence. An administrative agency is an agency that is financed from the state budget or a local government budget and the function of which is to exercise public authority.

A public servant is a person who performs remunerative work in a state or local government administrative agency.

A person who is in a service relationship with the state is a state public servant. A person who is in a service relationship with a local government is a local government servant.

Public servants are divided into:

- 1) officials;
- 2) support staff;
- 3) non-staff public servants.

An official is a person elected or appointed to an office on the staff of an administrative agency. Officials are divided into state officials and local government officials.

Support staff are clerical staff employed under employment contracts in support staff positions on the staff of an administrative agency.

A non-staff public servant is a person who is employed in the service for a specified period of time on the basis of an appointment or an employment contract to perform those functions of an official or member of support staff, which are not permanent, by their nature.

What kind of requirements an official should fulfil, this is regulated in § 14 of the Public Service Act. According to this paragraph an Estonian citizen, who has attained eighteen years of age, has at least a secondary education, has active legal capacity and is proficient in Estonian to the extent provided by or pursuant to law may be employed in the service as a state or local government official.

A person who has attained 21 years of age and complies at least with the requirements mentioned above may be appointed to a position of higher or senior official in the state public service.

A citizen of a Member State of the European Union who conforms to the requirements established by law and on the basis of law may also be appointed to a position in public service. Estonian citizens will be appointed to positions, which involve exercise of public authority and protection of public interest. Such positions which are reserved only for Estonian citizens are, for example, exercise of state supervision, national defence and judicial power, processing of state secrets, representing of public prosecution and diplomatic representation of the state, and the positions in which an official has the right, in order to guarantee public order and security, to restrict the basic rights and freedoms of persons.

Also the positions related to the directing of the administrative agencies specified in Public Service Act are to be fulfilled by the Estonian citizens. There is no concrete list of the posts which are exclusively reserved for Estonian citizens. If there will be a dispute about the discrimination or non-discrimination in public services it should be decided case by case which posts are exclusively reserved for Estonian citizens.

State administrative agencies where employment is considered to be public service are:

- 1) Chancellery of the Riigikogu (parliament);
- 2) Office of the President of the Republic;
- 3) Office of the Chancellor of Justice;
- 4) courts (including land registries and their departments);

- 5) government agencies
- 6) Headquarters of the Defence Forces;
- 7) departments of national defence;
- 8) military units of the Defence Forces;
- 9) Headquarters of the National Defence League;
- 10) State Audit Office.

Local government administrative agencies in which employment is considered to be public service are:

- 1) office of a rural municipality or city council;
- 2) rural municipality and city governments (as agencies) together with their structural units;
- 3) governments of a district of a rural municipality and of a district of a city (as agencies);
- 4) city government executive agencies;
- 5) bureaus of local government associations.

2.2 Language requirement

Requirements concerning language proficiency

In situation where a person should be hired in the civil service, there is also the requirement to have certain abilities to communicate in Estonian. According to the Estonian constitution the language used in Estonia and especially in different state institutions and local government institutions is Estonian. The constitution itself guarantees, that only in cases where the majority of population speaks other language as Estonian language, also the other language can be used (this is mainly the case in regions, where the majority of population is Russian speaking e.g. in eastern part of Estonia).

Main requirements for the ability to communicate in Estonian are determined in the Language Act (*Keeleseadus – 2011, 1*) and in the Government decree, in which it is concretised what level the ability in Estonian can be demanded. The requirements to communicate in Estonian have been established for public servants, who are the officials working in the state and local government institutions. The Estonian language requirements are established for persons, who have Estonian citizenship, but whose mother tongue is not Estonian. To prove the ability to communicate in Estonian, there is a special examination for that.

According to the Language Act public servants and employees of state agencies administered by government agencies and of local government agencies, and employees of legal persons in public law and agencies thereof, notaries, bailiffs and certified interpreters and translators and the employees of their bureaus must be able to understand and has to use Estonian at the level which is necessary to perform their service or employment duties.

The Government of the Republic has established the mandatory levels of language proficiency for public servants, employees and sole proprietors mentioned above.

The Government of the Republic has established the mandatory levels of language proficiency for public servants, employees and sole proprietors mentioned above⁵. These re-

5 Avaliku teenistuja, töötaja ning füüsilisest isikust ettevõtja eesti keele oskuse ja kasutamise nõuded. Vabariigi Valitsuse määrus nr 84, 01.07.2011.

quirements are applicable for both public and private sector. According to the new rules there are three levels for understanding Estonian language: A, B, C. Level A means that a person has an ability to communicate on the minimum level. This level can be required from employees whose employment obligations are quite concrete and they are involved with tasks that have routine nature. Level B means that an employee has a higher ability to communicate in Estonian and he is able to compose e.g. already the texts that are not typical and routine. The level B can be demanded from the employees whose employment obligations have different nature or who are in leading positions, like leading a group of employees. Level C is the highest level and this level can be demanded from the employees who have an obligation to coordinate an activity of an institution, office and who is involved with composing of official statements.

It is the obligation of an employer to guarantee and to be responsible that the employees have the sufficient level of knowing the Estonian language.

2.3 Recognition of professional experience for access to the public sector

The procedure of recognition of foreign professional qualifications is determined in the Recognition of Foreign Professional Qualifications in Estonia Act (*Välisriigis omandatud kutsekvalifikatsiooni tunnustamise seadus – RT I 2000, 29, 168...I 2004, 45, 316*). A competent body has to, pursuant to the procedure provided by law, compare the professional qualifications of an applicant to the professional qualifications required for working in a regulated profession in Estonia and will decide, pursuant to the procedure prescribed in the Act mentioned above, whether the applicant meets the requirements set for the given profession in Estonia.

A relevant government agency, a state agency administered by a government agency, another agency performing functions in public law, an association of employees or employers, a professional association, or the Estonian National Academic Recognition Information Centre may act as a competent body.

If a diploma is required for working in a regulated profession in Estonia, a competent body will not, on grounds of non-conformity of professional qualifications, prohibit an applicant from working in Estonia under the same conditions as applicable to persons who have acquired their professional qualifications in Estonia, if:

- 1) in the foreign state (in meaning of the Member State of the European Union) where the professional qualifications were acquired the same profession is regulated and the applicant has the professional qualifications required in such profession;
- 2) in the foreign state where the professional qualifications were acquired the same profession is not regulated but the applicant has worked in the profession full-time for two years during the last ten years. In such case, the applicant is required to submit a document issued by a foreign official, which certifies that the applicant has completed at least three years of post-secondary training in the corresponding field in a foreign educational

Mandatory levels of ability to communicate in Estonian language for employees, public servants and self-employed persons Governmental Decree No 84, 01.07.2011.

ESTONIA

institution providing higher education and, if necessary, has undergone professional training, and has the professional qualifications required in that profession.

If more than four years of post-secondary training is required for working in a regulated profession in Estonia, an applicant has the right to work in the regulated profession if he or she holds a diploma.

If an applicant's period of study has been one or more years shorter than the period of study required for working in the same profession from a person who has acquired his or her professional qualifications in Estonia, a competent body may require the applicant to submit evidence of professional experience. The required period of professional experience should not exceed the period of time by which the applicant's period of study is shorter than that required in Estonia.

Further this act contains also the rules about the recognition of professional qualifications in regulated professions requiring higher education and not requiring the higher education.

3. OTHER ASPECTS OF ACCESS TO EMPLOYMENT

Nothing to report.

Chapter IV: Equality of treatment on the basis of nationality

1. WORKING CONDITIONS - DIRECT, INDIRECT DISCRIMINATION

In Estonia there are different legal rules, which set forth the general principles of equal treatment. There are different legal acts, which state the principle of equal treatment. All the legal rules about the equal treatment are also applied in case there is a discrimination based on the nationality of a person concerned. In Constitution of the Estonian Republic in Art 12 it has been foreseen, that everyone is equal before the law.

There is no legal rule, which states, that there should not be any discrimination between citizens of the EU Member States based on the citizenship. At the same time, there are some general rules, that forbid discrimination based on the citizenship of persons concerned. This principle of equal treatment is mainly concretised in Estonian labour law.

Since July the 1st 2009 new ECA came into force. According to this Act the requirements of the Equal Treatment Act should be applied. The principle is also applied in the public service. According to the Equal Treatment Act discrimination based on the citizenship should be forbidden unless there are no special requirements in which the citizenship would be important.

According to the Labour Market Services and Benefits Act the EU citizens residing legally in Estonia have the right to register themselves as jobseekers or unemployed person.

One special rule concerning the legal status of EU citizens and third country nationals to be hired in Estonia should be mentioned here. According to the amendment in Estonian Aliens Act there is minimum salary requirement in order to hire workforce from the third country. The salary to be paid to the third country nationals must not be lower than monthly average wage multiplied through 1.24. This rule will guarantee that the third country nationals will get ca 1000 Euro in a month. For workers from the EU Member States there is no such rule. For the workers who are citizens of the European Union only the general rule of Estonian wage regulation is applicable: if an employee has been employed on full time basis, at least the minimum wage should be paid. The minimum wage in Estonia at the moment is approx 275 EUR (4350 EEK).

2. SOCIAL AND TAX ADVANTAGES

2.1. General situation laid down in Art 7 (2) regulation 1612/68(492/2011)

Employment Market Services and Benefits Act states that persons who has a fixed term or permanent right to stay have a right for benefits and services that have been foreseen for unemployed person. According to the Study Loans Act § 5 a student who has fixed term or permanent right to stay has a right to apply for study loans.

Job-seekers can stay in Estonia three months without any obligation to register their address in population register. After this period of time they have to register their address in population register and to apply for temporary right to residence.

All the social advantages are connected with a right of residence. If a person has obtained right of residence, he or she has also right for social security benefits and for social

ESTONIA

assistance benefits. Persons who have only right to stay (i.e. during the first three month) have right for extraordinary social assistance (e.g. unexpected situation)

Chapter V: Other obstacles to free movement of workers

Nothing to report.

Chapter VI: Specific Issues

1. FRONTIER WORKERS

Concerning the frontier workers and artists no special regulations has been adopted. Also no specific agreement between states has been concluded. At the same time there are no obstacles for free movement for frontier workers and artists. The general problems and questions described in this report are also applicable for frontier workers. Social assistance is granted for those persons, who have obtained right of residence (fixed term or permanent).

2. SPORTSMEN/SPORTSWOMEN

In Estonia there does not exist any authority that has authorisation to control and to manage the activity of different national sport clubs or federation. Also there is no regulation how many persons in a sport-sector should have Estonian nationality.

The principles of free movement of persons are also applied in sports sectors. In general there are no restrictions for different teams to hire team-members also from other EU Member States. The main rules about hiring the members outside the Estonia are concretised by the internal rules of a sport club. Although there is also adopted a special law about the sportsmen⁶, this law does not concretise the rules of the free movement for sportsmen. Generally speaking Estonian nationals and EU nationals are treated on equal basis.

3. THE MARITIME SECTOR

According to the Act about the Law of a Ships Flag and Ships Register (*Laeva lipuõiguse ja laevaregistrite seadus – RT I 1998, 23, 321, I 2005, 57, 450*), the captain of a ship can be an Estonian citizen or a citizen of the EU Member States. As to the nationality conditions for captains of ship there is no contradiction to the EU legislation.

4. RESEARCHES/ARTISTS

The situation of doctor students is depending on their position. If there has been concluded an agreement between the university and a doctor student, he or she can be viewed as an employee. If there is no such agreement, the doctor student is viewed only as student without any status of an employee. According to the relevant legislation, EU nationals are treated equally

⁶ Spordiseadus (Sports Act) – RT I 2005, 22, 148 with amendments.

5. ACCESS TO STUDY GRANTS

There is no special treatment for Citizen of the European Union concerning the access to the study grants. The access is granted equally to Estonians and other citizens of the EU Member States.

6. YOUNG WORKERS

Nothing to report.

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

2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA

According to the Act of Accession Estonia to the European Union Estonia does not apply any restrictions to the freedom of movement and also to the free movement of the workers. If the “old” 15-Member States of the European Union have established transitional period two plus three plus two years in order to open their labour markets, such transitional period has not applied by the Republic of Estonia. Also concerning the new Member States Bulgaria and Romania, there are no transitional rules that could limit free movement of workers from those countries to Estonia.

This means that Estonia does not apply any transitional measures for the free movement of workers from the new and from the old Member States. There are no restrictions for the EU citizens concerning the access to the labour market and other activities.

To harmonise the Estonian legal system with the European law, the different amendments were made and also different legislative acts were adopted e.g. important here are Citizen of European Union Act (*Euroopa Liidu Kodaniku seadus*), which concretises the legal statuses of the citizens of the European Union and their family members and Posted Workers Act (*Eestisse lähetatud töötajate töötingimuste seadus – RT I 2004, 19, 134*), which determines the employment conditions for those employees who are temporarily sent to Estonia to do their work in Estonia.

Estonia does not apply any transitional measures, because there is no need for that. The situation on the Estonian labour market has at the moment other problems. Many qualified workers are looking for the better positions in old Member States and this leads to the lack of the qualified workers in Estonia. Such situation brings the Estonian employers to the idea to import more qualified workforce from third countries especially from Russia and Ukraine (e.g. building construction, buss drivers, service sector). Also the new trend is to enter the Estonian labour market as a member of the board. This gives faster opportunity for third country nationalities to enter the Estonian labour market.

Chapter VIII: Miscellaneous

The Estonian migration policy has been stable and restrictive towards immigration since Estonia regained its independence. Most of immigrants have arrived from the CIS countries, mainly from the Russian Federation. Most of immigrants came to Estonia to settle with their spouses or close relatives. Another major group of aliens consist of those who try to find an employment in Estonia.

After to the accession to the European Union the movement between Estonia and other EU Member States has increased. The main EU Member States, where the Estonian workers go are Finland, Sweden, Denmark, England and Ireland. From the free movement mainly the following branches are influenced: buildings construction, bus traffic, forest industry, hotels and restaurants, medical services (especially young doctors, nurses and dentists).

Concerning the migration from the old Member States to Estonia the main countries are: Finland, Sweden, also Great Britain and Germany. The main reason, why persons are coming to Estonia is to establish a company due to the lower taxes.

Trends

According to the unofficial statistical data approx. 35000 Estonians are working in different EU Member States. As there is no specific system of registration of employment in Estonia, there is also no data available from which countries and how many persons from other Member States works at the moment in Estonia. In changed economical situation, the migrant workers are at the moment coming back in order to seek for a job at home.

As the economical situation in other EU Member States is also not the best one, the free movement from Estonia to other EU member states has stabilised.

1. RELATIONSHIP BETWEEN REGULATION 1408/71 -884/04 AND ART 45 AND REGULATION 1612/68

In pension system the problem arises with the second pillar of the pension system and with opportunity to join this pillar. According to the Funded Pension Insurance Act (*Kogumispensionide seadus – RT I 2004, 37, 252*), the second pillar is mandatory for those employees, who were born after January 1st, 1983. For elderly employees there is a transitional period, where they can choose, whether they would like to join this system or not. If they decide to join this system, they will be bound to this system for their entire life. If they would like not to join this system, there is no possibility to join this system later on. This pension system could arise problems for the persons who are using their right for free movement, as it is not clear enough if the citizens of the European Union Member States who are working in Estonia have possibility to join system. Also it is not clear, if the European co-ordinating system will cover such pension system. At the moment there seems to be no concrete law or provisions, which could give to the employees, who were born before January 1st, 1983, opportunity to join the second pillar of the Estonian pension system.

Concerning the social assistance following aspects should be taken into account: according to Social Welfare Act (*sotsiaalhoolekande seadus – RT I 1995,21, 323*) the social assistance will be granted to the persons who are legally residing in Estonia. This means that persons are permanently staying in Estonia or they are staying in Estonia under the temporary residence permit or under temporary right to stay. In addition to the ordinary social assistance, the Social Welfare Act also guarantees extraordinary social assistance.⁷ Under the extraordinary social assistance the benefits in cash or in kind in unexpected situations will be guaranteed. The extraordinary social assistance will be provided for all persons who are legally staying in Estonia. According to the wording of the Social Welfare Act and also the meaning of extraordinary social assistance, it is not necessary that the person in need would have a residence permit. As the extraordinary social assistance is not a normal case of social assistance in general, it means that in order to apply for different services and benefits, which are granted in framework of social assistance, residence permit or at least fixed term right of residence will be needed.

The main important question that arises in social security is the question about guaranteeing parental benefit. Parental benefit (*vanemahüvitis, Vanemahüvitise seadus - RT I 2007*) is a benefit paid to the parents until the child reaches the age 18 months. The amount of that benefit usually depends on the amount of the social tax that was paid in the last year. At the same time, the law has foreseen the minimum amount that should be paid for all persons.

Right for a parental benefit will be granted to a permanent Estonian resident or the alien, who is resident under the fixed term permit or under the fixed term right to stay. Estonian resident who has the living place in different states has a right to get the benefit only in case he or she is a resident in meaning of the income tax act or he or she lives in Estonia permanently in the meaning of the Aliens Act or in the meaning of Citizen of European Union Act. A resident in the meaning of the Income-Tax-Act is a person, who has lived in Estonia at least 183 calendar days in a year.

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

Nothing to report.

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

Nothing to report.

⁷ § 2 p 12, Social Welfare Act –RT I 1995,21, 323.

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

Nothing to report.

5. SEMINARS, REPORTS AND ARTICLES

Articles

Majanduskriisi mõju töörandele Euroopa Liidus. Siekaitse Akadeemia, EMN, 3/2010 (The impact of economic crisis to employment migration in Estonia)
Korduvrännne- investeringinimvarasse?!, EMN, 4/2011 (Repeated migration – investments into human resources?)

Important Internet-sites:

www.riigiteataja.ee – legal text and laws in force, in Estonian only

www.legaltext.ee – Estonian legal acts in English

www.riigikohus.ee – Web-site of the Supreme Court, also court decisions are available (only in Estonian)

<http://kola.just.ee> – Database for court decisions (only in Estonian, covers the decisions from the first and the second instances)

www.kohus.ee/kohtulahendid - Database for court decisions (only in Estonian, covers the decisions from the first and the second instances), active since 01.01.2006.

www.politsei.ee - Police- and Boarder guard Board

<http://www.sisekaitse.ee/erv> - European Migration Network, Estonian Contact point