

**REPORT**  
**on the Free Movement of Workers**  
**in Bulgaria in 2010-2011**

Rapporteur: Dr. Valeria Ilareva,  
Lawyer, member of the Sofia Bar

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## **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

## General Introduction

The Republic of Bulgaria became a Member State of the European Union on 01 January 2007. At the time of writing the current report, the efforts of the Bulgarian State are concentrated towards joining the Schengen area.

The 2010/2011 report has a structure that is similar to the 2009/2010's one with regard to the issues studied, but its content has been updated to reflect the latest developments.

In 2010 and the first half of 2011 many of the problematic discrepancies and gaps of non-transposition identified in previous reports persist, but there are also issues resolved.

*Major changes include:*

- Amendments in Bulgarian law as of January 2011 corrected a substantial mistake in the transposition of the main rule regarding *eligibility for the right of permanent residence* under Art.16 and Art.17 of the EU Citizens Directive. As it has been reported in previous annual reports, regarding the right to permanent residence the Bulgarian law had transposed the exemptions from the five years continuous period condition as cumulative conditions. However now Art. 16 LERD correctly provides that an EU citizen or his/her family member who is an EU citizen is given a permanent residence certificate, if that person has resided continuously in the Republic of Bulgaria for five years **or** he/she fulfills any of the requirements under Art.17 of the EU Citizens Directive;  
Some amendments also took place regarding the right to permanent residence of family members of EU citizens who are third country nationals.
- In July 2010 important legal amendments in the *Attorney's Act* were adopted in order to transpose *Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained*. The legal change abolished the condition previously envisaged in the Attorney's Act that a lawyer who is an EU, EEA or Swiss citizen was allowed to practice in Bulgaria only together with a barrister from the Bulgarian Bar. The new provisions provide for equal access to the practice of the profession of lawyer in Bulgaria for EU citizens who have acquired their professional qualification in an EU Member State;
- Amendments to the *Labour Code* in force since 28 August 2010 brought needed clarity to the issue of *recognition of periods of employment* in other Member States for the purposes of labour law rights in Bulgaria;

*Specific issues of concern that persist from the previous year are as follows:*

- The scope of *posts in the public sector reserved for Bulgarian nationals* remains questionable as to its conformity with Article 45 (4) TFEU and the narrow understanding of the public service by the CJEU. For example, all posts in the Ministry of the Interior are reserved for Bulgarian nationals, regardless of whether it is a civil servant or labour contract employee. The Law on the Administration also requires Bulgarian nationality for an extensive list of posts.
- The Law on the Entry, Residence and Departure of the Republic of Bulgaria of EU Citizens and the Members of their Family *makes no reference to a right of residence over 3 months of documented job-seekers*;

## BULGARIA

- There is *no transposition in Bulgarian law of Art.14 (4) (b) of the EU Citizens Directive* providing that ‘Union citizens and their family members may not be expelled for as long as [they] can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged’;
- Reverse discrimination against family members of Bulgarian nationals persists, though judicial practice marks slow progress. *In 2010 the first judgments on cases against refusals of visas to family members of Bulgarian citizens were ruled.* In all cases the court repealed the refusals of visa. However after that the Ministry of Foreign Affairs simply issued a new refusal, this time stating reasons, which is subject to a new long process of judicial appeal over two judicial instances. In the meantime family members are separated. The effect of the *Zambrano* judgment on national case law is to be seen.
- *On 11 May 2010 the Bulgarian Volleyball Federation adopted new Rules on the Competition Rights and Internal Transfer.* However the new rules are *even more limiting* to freedom of movement since they provide that volleyball clubs should not have more than three players with foreign nationality, and only two of them can play in a game at a time. There are no exceptions provided for EU citizens.

Judicial practice in Bulgaria related to Directive 2004/38/EC concerns predominantly cases of *exit bans imposed on Bulgarian citizens* and their conformity with Article 4 (1) and Article 27 (1) of the EU Citizens Directive. In 2010 and the first half of 2011 the case law in this regard is even more significant. Following a request by the Bulgarian Ombudsman, by Judgment of 31 March 2011 the *Constitutional Court of the Republic of Bulgaria* declared some national legal provisions unconstitutional, citing *inter alia* Article 27 of Directive 2004/38/EC. On 22 March 2011 the *General Assembly of judges from the Supreme Administrative Court* issued an Interpretative Judgment relating to judicial review of exit bans in relation to Directive 2004/38/EC. Alongside, on 09 May 2011 the Sofia City Administrative Court made a new reference for *a preliminary ruling before the Court of Justice of the European Union* as to whether it is compatible with the EU Citizens Directive for a national regulation to envisage the imposition of an exit ban on ground of a debt above a certain threshold that is owed to a private legal person.

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

The European Parliament and Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (hereafter 'the EU Citizens Directive') is transposed in Bulgaria by means of the *Law on the Entry, Residence and Departure of the Republic of Bulgaria of EU Citizens and the Members of their Family* (hereafter 'LERD'), separate from the Law on the Foreigners in the Republic of Bulgaria.

Amendments to LERD took place in *January 2011* (State Gazette No.9 of 28 January 2011). *Inter alia* the changes corrected a substantial mistake that had been made in the transposition of Article 16 and 17 from the EU Citizens Directive. As it has been reported in previous annual reports, regarding the right to permanent residence the Bulgarian law had transposed the exemptions from the five years continuous period condition as cumulative conditions. However since January 2011 this has been corrected.

### 1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

- *Art. 7 (1) (a) of the EU Citizens Directive* is transposed in Art. 8 (1) (1) LERD. Right of residence for more than three months ('*continuous residence*' as it is called in LERD) is recognized to EU citizens if they are workers or self-employed persons in the Republic of Bulgaria.
- *Art. 7 (3) (a-d) of the EU Citizens Directive* is transposed into Art. 8 (3) LERD. The conditions for retention of status are the same as stipulated in the EU Citizens Directive, except for one divergence in the transposition of Art. 7 (3) (d) of the EU Citizens Directive. Art. 8 (3) (4) LERD still stipulates that when the Union citizen is involuntarily unemployed, vocational training *shall not be* related to the previous employment. This goes contrary to the idea of the EU Citizens Directive that in those cases vocational training not related to the previous employment is allowed, but it is not envisaged to exclude the one related to the previous employment. In the cases under Art. 8 (3) (c) of the EU Citizens Directive, the period through which the status is retained is six months.
- *Art. 8 (3) (a) of the EU Citizens Directive* is transposed into Art. 9 (2) LERD. The national law requires '*a document proving the existence of the circumstances*' under Article 7 (1) (a) of the Directive.

The same wording is found in Circular No. I3-487 from 28 March 2007 on the procedure and organization of the issuance of the documents under LERD.

- *Art. 14 (4) (a-b) of the EU Citizens Directive* is not yet transposed.
- *Art. 17 of the EU Citizens Directive*: Amendments in LERD in January 2011 corrected the substantial mistake reported in previous years regarding the right to permanent residence under Art. 16 and Art. 17 of the EU Citizens Directive. Now Art. 16 LERD correctly provides that an EU citizen or his/her family member who is an EU citizen is given a permanent residence certificate, if that person has resided continuously in the Republic of Bulgaria for five years *or* he/she fulfills any of the requirements under Art. 17 of the EU Citizens Directive.

- *Art.24 (2) of the EU Citizens Directive* is not transposed.

## 2. SITUATION OF JOB SEEKERS

There is *no transposition in Bulgarian law of Art.14 (4) (b) of the EU Citizens Directive* providing that 'Union citizens and their family members may not be expelled for as long as [they] can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged'.

One could argue that documented job-seekers would fall within the scope of Article 8, Paragraph 1, Subparagraph 2 of LERD, which transposes Article 7 (1) (b) of the EU Citizens Directive and states that a right of residence for more than three months is recognized to persons who have comprehensive sickness insurance cover and sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence. However there is no explicit national regulation regarding job seekers and Art.14 (4) (b) of the EU Citizens and/or the judgment of the ECJ in the *Antonissen Case C-292/89*.

Under Art. 18 of the *Law on Employment Promotion*, EU citizens and their family members formally have *a right to registration to seek work* at the local employment office of the Employment Agency at the Ministry of Labour and Social Policy.

However, *LERD makes no reference to a right of residence over 3 months of EU citizens who are documented job-seekers*. The residence regime is within the exclusive competence of the Migration Directorate at the Ministry of the Interior. Its powers with regard to the residence of EU citizens and their family members are exhaustively regulated in LERD.

According to Article 24, LERD, *discontinuance of the right of residence in the Republic of Bulgaria* is imposed if the person ceases to meet the requirements stipulated in Art. 8 LERD (Art. 8, LERD, transposes Art.7 (1) (a) – (c) of the EU Citizens Directive).

Contradictions in the web site of the Employment Agency explained in the 2007 report with regard to the document certifying address registration of the job seekers (required for their registration at the employment office) seem not to reflect contradictions in practice. This suggestion is based by analogy on additional data published in the same web page with regard to non-EEA citizens that are family members of EEA citizens.<sup>1</sup> However this issue is an object of further monitoring and reporting.

## 3. OTHER ISSUES: FREE MOVEMENT OF BULGARIAN CITIZENS

In 2010 and the first half of 2011 judicial practice in Bulgaria related to *exit bans imposed on Bulgarian citizens* became even more significant. Although in 2009 the *Law on the Bulgarian Identity Documents* (in Bulgarian: *Закон за българските лични документи*) was amended to delete grounds for imposing exit bans that contradicted the EU Citizens Directive (State Gazette No.82 of 16 October 2009) some conflicting provisions remained and have been an object of discussion by the highest judicial instances in Bulgaria.

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1 [http://www.az.government.bg/eng/internal\\_en.asp?CatID=12&WA=JobSeekers/RegBT\\_EAAen.htm](http://www.az.government.bg/eng/internal_en.asp?CatID=12&WA=JobSeekers/RegBT_EAAen.htm).

Following a request by the Bulgarian Ombudsman, by Judgment of 31 March 2011 in constitutional case No.2 of 2011 *the Constitutional Court of the Republic of Bulgaria* declared Article 75, Paragraphs 5 and 6 of the Law on the Bulgarian Identity Documents as unconstitutional. *Inter alia*, the Constitutional Court stated that declaring the provisions unconstitutional created better conditions for the full and precise transposition of Article 27 of Directive 2004/38/EC, which stipulates the admissible grounds for limiting the free movement of EU citizens and their family members. Article 75, Paragraphs 5 of the law concerned the automatic imposition of exit bans on grounds of debt under the Code on Tax and Social Security Procedure. Paragraph 6 of Article 75 concerned debts to private physical or legal persons.

On 22 March 2011 the *General Assembly of judges from the Supreme Administrative Court* issued an Interpretative Judgment to the following question: ‘Is the order for imposing a coercive measure under Article 75, Paragraph 6 of the Law on the Bulgarian Identity Documents subject to repeal on ground of contradiction to Directive 2004/38?’. The Supreme Administrative Court did not consider the exclusion cause under Article 3 (1) of the EU Citizens Directive. Instead, it made a profound comparative analysis between the Bulgarian national provision and the Directive as applicable to Bulgarian citizens. The Supreme Court concluded that an individual approach should be taken in each case and the principle of proportionality should be carefully applied.

Alongside with the above jurisprudence by the highest courts in Bulgaria regarding the application of the free movement rules to Bulgarian citizens, the issue became a subject matter of a new request for a preliminary ruling before the Court of Justice of the European Union as of 09 May 2011. In Case No.5873/2010 the Sofia City Administrative Court asked the CJEU whether it was compatible with the EU Citizens Directive for a national regulation to envisage the imposition of an exit ban on ground of a debt above a certain threshold that is owed to a private legal person. There are two other pending references for preliminary rulings by Bulgarian judges to the Luxembourg court that concern exit bans. These are:

- the *Aladzhov* case C-434/10, which concerns interpretation of the term ‘public order’ under Article 27 of the EU Citizens Directive;
- and the *Gaydarov* case C-430/10, which concerns the imposition of an exit ban on ground of a crime committed in a third country.

All three cases are pending before the CJEU.

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

Roma exclusion is a fundamental human rights problem domestically. Poor living conditions, low access to education and high level of unemployment are rampant among the Roma population in Bulgaria. Therefore free movement in the European Union is an opportunity for many Bulgarian citizens belonging to the Roma minority.

Unfortunately expulsion of Bulgarian citizens of Roma origin from EU Member States in 2010 did not lead to a genuine public debate in Bulgaria. The media placed focus on the money that the expelling authorities had given to the returnees, which – compared to the standard of living in Bulgaria – was considered a significant sum of money. Lack of strong reaction by the Bulgarian society against the ethnic deportation of their compatriots could be explained with the low profile and discrimination against the Roma minority in the country.

## Chapter II: Members of the Family

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

#### 1.1 *The definition of family members*

The transposition of Art.2 (2) of the EU Citizens Directive is found in §1.1 of the Additional Provisions of LERD, which gives a definition of a ‘member of the family of an EU citizen’. The national norm includes all the categories of family members enumerated in Art.2 (2) of the EU Citizens Directive, with the following two types of exceptions:

- 1) Exceptions that narrow the scope of family members:
  - 1.1.) With regard to Art.2 (2) (c) of the EU Citizens Directive, §1.1.LERD does not mention the direct descendants *of the partner* as defined in Art.2 (2) (b) of the EU Citizens Directive;
  - 1.2.) With regard to Art.2 (2) (d) of the EU Citizens Directive, §1.1.LERD does not mention the direct relatives in the ascending line *of the partner* as defined in Art.2 (2) (b) of the EU Citizens Directive.
- 2) Exceptions that enlarge the scope of family members:
  - 2.1.) With regard to Art.2 (2) (c) of the EU Citizens Directive, §1.1.LERD does *not* mention the word ‘*direct*’ when referring to descendants, which shall mean that grandchildren are also included;
  - 2.2.) With regard to Art.2 (2) (d) of the EU Citizens Directive, §1.1.LERD does not mention the word ‘*direct*’ when referring to relatives in the ascending line, which shall mean that grandparents are also included.

Art. 5 LERD stipulates that ‘*a right to entry, residence and departure of the Republic of Bulgaria is recognized also to*’:

- 1) ‘another member of the family, irrespective of his/her citizenship, who does not fall within the definition of §1.1.LERD and who in the country, from where he/she comes, is a dependant person or a member of the household of the EU citizen, that has a right to free movement, or in cases where serious health reasons necessarily require personal care for the family member by the EU citizen’;
- 2) ‘the person with which the EU citizen has certified factual partnership’.

Art. 5 LERD seems to equal the rights of beneficiaries under Art.2 (2) and Art.3 (2) of the EU Citizens Directive. Art.5 LERD refers to recognition of ‘*a right to entry, residence and departure of the Republic of Bulgaria*’ and not to just facilitation.

However, *it is not clear how Art.2 (2) (b) and Art.3 (2) (b) of the EU Citizens Directive will be applied in Bulgaria*. On the one hand, §1.1(a) LERD refers to ‘factual partnership’. On the other hand, Art.5 (1) (2) LERD requires ‘*certified* factual partnership’. The law does not elaborate on the issue *how* the factual partnership should be proved or certified or under what circumstances it is recognized as such.



According to the EU Citizens Directive, the partner under Art.2 (2) (b) is recognized as a family member, 'if the legislation of the host Member State treats registered partnerships as equivalent to marriage'. This issue is currently questionable in Bulgaria. On the one hand, *the new Family Code in force since 01 October 2009 does not provide a regulation for a (certified) factual partnership and therefore does not treat it as equivalent to marriage*. On the other hand, it could be argued that the term 'factual spouse partnership' is gaining legal recognition in Bulgaria by including it in several legal acts – the Law on Protection against Domestic Violence, the Law on Asylum and Refugees, etc. However the problem of proving that partnership remains since the inclusion of the term is usually a consequence of literal transposition of EU provisions and it is not clear how those texts will be implemented in practice.

## ***1.2 The issue of reverse discrimination***

The problem of reverse discrimination in Bulgaria has persisted since accession to the EU and currently the issue is an object of a pending application against Bulgaria before the European Court of Human Rights, as well as on the agenda of the national institutions.

### **1.2.1 The problem**

As mentioned above, the regulation of the entry and residence rights of the family members of EU citizens is found in the Law on the Entry, Residence and Departure of the Republic of Bulgaria of EU Citizens and the Members of their Family (LERD). However, Art.1, Para.2 of the *Law on the Foreigners in the Republic of Bulgaria* (LFRB) stipulates that *third-country nationals that are family members of Bulgarian citizens* fall under its scope. This explicitly excludes family members of Bulgarian citizens from the facilitated regime of entry and residence for family members of other EU nationals.

Under Art.24 of the Law on the Foreigners in the Republic of Bulgaria, a foreigner can receive a permit for continuous residence (valid for up to 1 year), *only after entering Bulgaria with a long-term visa (called 'D-type')*. This precludes the regularization of the status of many third-country nationals who are family members of Bulgarian citizens, but for some reason have remained as undocumented immigrants and/or there are deportation orders pending against them. In order to complete the legal requirements of Art.24 LFRB, they need to go out of Bulgaria and re-enter with a D-visa. However, such a D-visa is refused to these persons, often without any reasoning by the Bulgarian institutions. Furthermore, deportation orders are usually accompanied by an explicit ban to enter Bulgaria for a number of years (from 3 to 10 years). Therefore, these third country nationals that are family members of Bulgarian citizens either remain in Bulgaria as illegal immigrants or are separated from their families by not allowing them re-entry to Bulgaria once they have come out of the country to get a D-visa.

*In 2010 the first judgments on cases against refusals of D-visas to family members of Bulgarian citizens were ruled*. In all of them both the Sofia City Administrative Court and the Supreme Administrative Court dismissed the arguments of the Ministry of Foreign Affairs that the appeals were inadmissible as they concerned the sovereign foreign policy. In all cases the court repealed the refusals of visa to family members of Bulgarian citizens. However at the time of writing the report in neither of these cases a visa has been issued follow-

## BULGARIA

ing the judgment of the court. The Ministry of Foreign Affairs simply issued a new refusal, this time stating reasons, which is subject to a new long process of judicial appeal over two judicial instances. In the meantime family members are separated.

By excluding family members of Bulgarian citizens from the ambit of the law transposing Directive 2004/38 – the Law on the Entry, Residence and Departure of the Republic of Bulgaria of EU Citizens and the Members of their Family (LERD) – a presumption is created for their *exclusion from the application of the guarantees stipulated in the MRAX judgment (C-459/99) and the Metock judgment (C-127/08)* of the ECJ.

The *Zambrano* judgment of the CJEU from 08 March 2011 (C-34/09) has already been invoked before the national court in a pending case on reverse discrimination, but the judgment is yet expected at the moment of writing the report.

Although the practical consequences of it are yet unknown, in 2009 a new Article 9a was inserted in LERD providing as follows:

‘(1) A family member of an EU citizen who is not an EU national and *has not exercised his right to free movement* [emphasis added] is given a residence permit in accordance with the requirements under Regulation No.1030/2002 of the Council of 13 June 2002 laying down a uniform format for residence permits for third-country nationals.

(2) The order for issuance of the permit under Paragraph 1 is determined by an act of the Council of Ministers.’ (State Gazette No. 36 of 2009)

With regard to the still *pending cases before the European Court of Human Rights*, in which the applicants invoked Article 14 in relation to Article 8 of the European Convention on Human Rights for reasons of reverse discrimination, please refer to the previous annual report as of June 2010.

### 1.2.2 Other forms of reverse discrimination

The reverse discrimination against the family members of Bulgarian nationals also concerns:

- The scope of the ‘family members’ notion

According to Art.2 (6) of the Law on the Foreigners in the Republic of Bulgaria, the partners under Art.2 (2) of the EU Citizens Directive are not included in the ‘family’ notion.

- The administrative fee for issuing the residence permit

The fee for the issuance of a continuous or permanent residence permit under LERD is 7 levs (3.5 Euro).

The fee for the issuance of a *continuous* residence permit of family members of Bulgarian citizens under LFRB is 500 levs (250 Euro), if the residence permit is for a period of up to 1 year, and 200 levs (100 Euro), if the residence permit is for a period of up to 6 months.

The fee for the issuance of a *permanent* residence permit under LFRB is 1000 levs (500 Euro) in principle. There is an exception only for the spouses of Bulgarian citizens where the fee is 150 levs (75 Euro).

## 2. ENTRY AND RESIDENCE RIGHTS

At the beginning of 2011 some amendments were adopted with regard to the right to permanent residence.

### *Right to permanent residence*

Regarding family members of EU citizens who are EU citizens, amendments in Bulgarian law as of January 2011 corrected a substantial mistake in the transposition of the main rule regarding eligibility for the right of permanent residence under Art.16 and Art.17 of the EU Citizens Directive. As it has been reported in previous annual reports, regarding the right to permanent residence the Bulgarian law had transposed the exemptions from the five years continuous period condition as cumulative conditions. However now Art. 16 LERD correctly provides that an EU citizen or his/her family member who is an EU citizen is given a permanent residence certificate, if that person has resided continuously in the Republic of Bulgaria for five years *or* he/she fulfills any of the requirements under Art.17 of the EU Citizens Directive.

Regarding family members of EU citizens who are *third country nationals*, Article 19 of LERD was *amended in January 2011* (State Gazette No.9 of 2011) to extend the grounds for qualification for permanent residence status. The required five-year term of residence in Bulgaria is valid also in cases of death of the spouse that is an EU citizen, if certain conditions stipulated in Article 15 of LERD are met.

The permanent residence card for family members who are not nationals of a Member State is issued within one month of the submission of the application. The application shall be submitted two months before the residence card expires. (Art.19, Paras.2 and 3 LERD)

An important amendment of LERD in December 2009 *introduced explicitly judicial review over denial of entry and residence to EU citizens and members of their family* (it is stipulated in a new Paragraph 6 to Article 4 of LERD, published in State Gazette No.102 of 22 December 2009). The standard rules under the Code of Administrative Procedure will apply in these cases.

There is literal transposition of Art.5 (2) and (3) of the EU Citizens Directive in Art.4 (2), (3) and (4) of LERD. LERD stipulates that *visas* are issued to third-country national family members free of charge and in a special procedure that shall be stipulated in an act of the Council of Ministers. In December 2009 Paragraph 2 of Article 4 of LERD was amended to explicitly provide that *the act for denial of a visa shall contain reasoning*. Rules on the issuance of visas for third-country national family members of EU Citizens are elaborated in the new *Ordinance on the Conditions and Order for Issuance of Visas and Determination of the Visa Regime* (in Bulgarian: *Наредба за условията и реда за издаване на визи и определяне на визовия режим*). The Ordinance was adopted in 2008; it is in force since 10 July 2008 and was amended in State Gazette No.18 of 05 March 2010. Amendments of March 2010 include the introduction of a *specific provision on the procedure when a visa is denied to a family member of an EEA citizen*. The new Paragraph 2 of Article 38 of the Ordinance provides that a visa is denied to an EEA citizen family member ‘if a ground under Article 22 of LERD is present’ (Article 22 of LERD provides: ‘*The right to entry and the right to residence in the Republic of Bulgaria of a EU citizen or his family member might be restricted by way of exception and on grounds related to the national security, the public order or the public health*’). The denial to issue a visa is reflected in a standard form according to a sample provided in an annex to the Ordinance. The grounds (motives) for the denial

shall be written down in the form, with the exception of reasoning related to the national security. There should also be an indication of the date of handing over or sending of the form to the person concerned.

*In 2010 the first judgments on cases against refusals of visas to family members of Bulgarian citizens were ruled. In all cases the court repealed the refusals of visa. However after that the Ministry of Foreign Affairs simply issued a new refusal, this time stating reasons, which is subject to a new long process of judicial appeal over two judicial instances.*

Art. 5 (2) LERD literally transposes the last paragraph of Art.3 (2) of the EU Citizens Directive.

The Ordinance on the Conditions and Order for Issuance of Visas and Determination of the Visa Regime also contains several *provisions that facilitate the issuance of visas* to third-country national family members of EEA citizens. According to Article 13 (2) of the Ordinance, the only documents required to be presented with their visa applications is evidence regarding their family tie. Under Article 19 (1) they are explicitly exempted from the obligation to present evidence for means of subsistence, housing and transport.

Art.6 LERD recognizes a *right of residence for up to three months* to family members who are not EU citizens, on the basis of their passport.

Bulgaria has opted for the requirement in Art.8 (1) of the EU Citizens Directive. Union citizens and their family members shall *register* at the Ministry of the Interior for periods of *residence longer than three months*. The deadline for registration is 3 months from the date of arrival.

Union citizens and their family members, who are themselves Union citizens, are issued a *registration certificate on the same day* of the submission of the relevant documents.

Family members who are not nationals of a Member State are issued a *residence card* no later than *three months* from the date on which they submit the application.

*Retention* of the right of residence of family members as provided for in Art.12 and 13 of the EU Citizens Directive is transposed in national law with the following discrepancies concerning family members who are not nationals of a Member State:

- in the event of divorce, annulment of marriage or termination of registered partnership, along with the requirements set out in Art.13 (2) of the EU Citizens Directive, Art.15 (3) LERD requires presence of the conditions in Art.7 (1) (a) or (b) of the EU Citizens Directive in order for the right of residence to be retained (not in order to acquire permanent residence);
- Art.13 (2) (c) of the EU Citizens Directive is transposed as to referring only to cases of being a victim of domestic violence and not to ‘other particularly difficult circumstances’.

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

National law in Bulgaria seems to be in line with the judgment of 25 July 2008 in the *Metock* Case C-127/08, which stated that the EU Citizens Directive does not require previous lawful residence by the family member of an EU citizen who is a third country national. According to Article 12 (3) of LERD, the only documents that are required in order to be issued a residence card are a valid national passport, a document proving the family relationship, a document proving the residence of the EU citizen in Bulgaria and a paid administrative fee.

## BULGARIA

Art. 9a of LERD states:

‘(1) A family member of an EU citizen who is not an EU national and *has not exercised his right to free movement* [emphasis added] is given a residence permit in accordance with the requirements under Regulation No.1030/2002 of the Council of 13 June 2002 laying down a uniform format for residence permits for third-country nationals.

(2) The order for issuance of the permit under Paragraph 1 is determined by an act of the Council of Ministers.’ (State Gazette No. 36 of 2009)

Yet the practical effect of this provision is to be seen.

The judgment in the *Metock* case has not been explicitly cited by Bulgarian courts so far.

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

According to Article 24, Paragraph 1, Subparagraph 2 of LERD the right to residence in the Republic of Bulgaria is *withdrawn* from the EU citizen or their family member when ‘it is established that he/she had presented untrue data for receiving the right to residence’. LERD provides no further detail in this regard. By way of analogy, the rules under the Law on Foreign Nationals in the Republic of Bulgaria could apply.

Article 26, Paragraph 3 of the Law on Foreign Nationals states that a residence permit shall be refused and the one given shall be revoked if evidence exists that the marriage has been contracted or the adoption of a child took place solely for the purpose of evading the norms stipulating the regime for foreigners in the Republic of Bulgaria and obtaining a permit for stay. Paragraph 4 stipulates that the decision to refuse or withdraw the permit under paragraph 3 shall be taken by the offices for administrative control of the foreigners on the basis of evidence justifying an objective conclusion. Such evidence can be:

1. the circumstance that the spouses or the adoptive parents and the adopted child do not live together;
2. lack of contribution to the commitments ensuing from the marriage;
3. the circumstance that the spouses have not known each other before the marriage;
4. the presentation of contradicting information for the personal data of the other spouse or for the adopted (name, address, nationality, profession), for the circumstances of their acquaintance or other important personal information;
5. the circumstance that the spouses or the adoptive parents and the adopted do not speak a language understandable by both of them;
6. the payment of money for the contracting of the marriage beyond the usual dowry;
7. the presence of previous marriages or adoptions contracted for the purpose of evading the norms stipulating the regime for the foreigners;
8. the circumstance that the marriage or the adoption were done after the foreign national received a residence permit.

According to Paragraph 5 of Article 26 the data under paragraph 4 can be established by interviews held by officials from the services for administrative control of foreigners, by statements of the interested parties or third persons, by documentary means or by investigation and check up carried out by the state bodies. The services for administrative control of

## BULGARIA

foreigners shall provide the persons concerned with the possibility to express their opinion on the evidence.

### 5. ACCESS TO WORK

With the entry into force on 01 January 2007 of the Treaty of Accession to the European Union, *Bulgaria exempted family members of EU citizens from the general work permit obligation.*

Under Art.4, Para.1, point 11 and Para.6 of the Ordinance on the Conditions and Procedure for Issuance, Rejection and Withdrawal of Work Permits for Foreigners in the Republic of Bulgaria, *family members* of EU citizens, EEA citizens and Switzerland are not required work permits, but until they are given permanent residence *their employer shall declare the fact of their employment* at the local Employment Office within a period of 7 days of its initiation.

Art.18 of the *Law on Employment Promotion* formally envisages *a right of registration to seek work* at the local employment office of the Employment Agency at the Ministry of Labour and Social Policy. Registered job-seekers that are members of the families of EU citizens have the same rights and obligations under the Law on Employment Promotion as Bulgarian nationals, with the exception of cases in which Bulgarian citizenship is explicitly required. However, *LERD makes no reference to a right of residence over 3 months of documented job-seekers.* The residence regime is within the exclusive competence of the Migration Directorate at the Ministry of the Interior. Its powers with regard to the residence of EU citizens and their family members are exhaustively regulated in LERD.

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

There is *no transposition in Bulgarian law of Art.14 (4) (b) of the EU Citizens Directive* providing that 'Union citizens and their family members may not be expelled for as long as [they] can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged'. As explained above, *LERD makes no reference to a right of residence over 3 months of EU citizens who are documented job-seekers.* Art.6 LERD recognizes a *right of residence for up to three months* to family members who are not EU citizens, on the basis of their passport.

## Chapter III: Access to Employment

EU citizens can exercise their right to free movement for work purposes in the territory of Bulgaria, without need for a work permit.

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

#### A.1 *Equal treatment in access to employment*

According to the Law on Employment Promotion, registered job-seekers that are EU citizens or members of their families have *the same rights and obligations* under the Law on Employment Promotion *as Bulgarian nationals*, with the exception of cases in which Bulgarian citizenship is explicitly required. However, as explained in the previous chapter, LERD makes no reference to a right of residence over 3 months of EU citizens who are documented job-seekers.

*Services* offered by the National Employment Agency to those actively seeking employment are:

- Information and Consultation/ Career Orientation
- Employment Mediation<sup>2</sup>
- Psychological Support<sup>3</sup>
- Career (Professional) Orientation<sup>4</sup>
- Enrollment in appropriate Programmes<sup>5</sup> and Employment Measures<sup>6</sup>
- Qualification and Motivation Training<sup>7</sup>

The *Law on Protection against Discrimination* has a special section on equal treatment in the field of employment. Discrimination on the basis of nationality is explicitly prohibited, save in cases where the nationality requirement is stipulated by law.

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2 More information on this service is published at the web site of the National Employment Agency at [http://www.az.government.bg/eng/internal\\_en.asp?CatID=12/02&WA=JobSeekers/HelpJobSeek\\_en.htm](http://www.az.government.bg/eng/internal_en.asp?CatID=12/02&WA=JobSeekers/HelpJobSeek_en.htm) (accessed on 13 April 2010)

3 More information on this service is published at the web site of the National Employment Agency at [http://www.az.government.bg/eng/internal\\_en.asp?CatID=12/03&WA=JobSeekers/Psiho\\_en.htm](http://www.az.government.bg/eng/internal_en.asp?CatID=12/03&WA=JobSeekers/Psiho_en.htm) (accessed on 13 April 2010)

4 More information on this service is published at the web site of the National Employment Agency at [http://www.az.government.bg/eng/internal\\_en.asp?CatID=12/04&WA=Training/Orientation\\_en.htm](http://www.az.government.bg/eng/internal_en.asp?CatID=12/04&WA=Training/Orientation_en.htm) (accessed on 13 April 2010)

5 More information on this service is published at the web site of the National Employment Agency at [http://www.az.government.bg/eng/internal\\_en.asp?CatID=12/05&WA=Projects/Programmes.htm](http://www.az.government.bg/eng/internal_en.asp?CatID=12/05&WA=Projects/Programmes.htm) (accessed on 13 April 2010)

6 More information on this service is published at the web site of the National Employment Agency at [http://www.az.government.bg/eng/internal\\_en.asp?CatID=12/06&WA=Projects/UnemplMeasures\\_en.htm](http://www.az.government.bg/eng/internal_en.asp?CatID=12/06&WA=Projects/UnemplMeasures_en.htm) (accessed on 13 April 2010)

7 More information on this service is published at the web site of the National Employment Agency at [http://www.az.government.bg/eng/internal\\_en.asp?CatID=12/07&WA=Training/Training\\_en.htm](http://www.az.government.bg/eng/internal_en.asp?CatID=12/07&WA=Training/Training_en.htm) (accessed on 13 April 2010)

## ***A.2 Language requirements***

*In general* there are no explicit requirements in law for knowledge of Bulgarian language for employment in the *private sector*. As a rule, this is to be decided by the employer, subject to rules on contractual freedom, if the nature of the job so requires. Art.7 (1) (2) of the Law on Protection against Discrimination stipulates that there is no discrimination if certain treatment/requirement is reasoned with the nature of a particular occupation or activity, or of the conditions in which it is performed, if such a characteristic constitutes an essential and decisive occupational requirement, the aim is legitimate and the requirement does not go beyond what is necessary for its achievement.

There could be language requirements for some professions in the private sector, justified on public interest grounds.

With regard to EU, EEA or Swiss citizens whose medical professional qualification has been recognized in Bulgaria, Article 186, Paragraph 2 of the *Law on Health* provides that the Ministry of Health and the high schools should provide them with conditions for acquiring the necessary language knowledge and professional terminology in Bulgarian ‘when this is in their interest and in the interest of their patients’. In comparison, Paragraph 3 of the same provision stipulates that third country nationals are allowed to practice their medical profession in Bulgaria only after it has been established in accordance with the rules in a Minister’s ordinance that they know Bulgarian language and the respective professional terminology in Bulgarian.

*In July 2010* important legal amendments in the *Attorney’s Act* were adopted (State Gazette No.53 of 13 July 2010) in order to transpose *Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained*. The legal change abolished the condition previously envisaged in the *Attorney’s Act* that a lawyer who is an EU, EEA or Swiss citizen was allowed to practice in Bulgaria only together with a barrister from the Bulgarian Bar. The new provisions provide for equal access to the practice of the profession of lawyer in Bulgaria for EU citizens who have acquired their professional qualification in an EU Member State. *Still, however, it is noteworthy that the official language in Bulgarian institutions (including judicial hearings) is Bulgarian.*

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

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

The nationality requirement for access to positions in the public sector in Bulgaria is found both in the Constitution and in the laws. A significant legislative change took place in 2008 (State Gazette No.43/29.04.2008) with regard to Art.7 (1) (1) of the *Law on the State Servant*, which before the amendment stipulated that only Bulgarian nationals could be appointed to be state servants. However, in 2008 the provision was amended to include also EU, EEA and Swiss citizens as eligible to be appointed as state servants. For more details on this change, please refer to the 2008 report.



## BULGARIA

However, high ranking positions and certain sections from the public sector are still reserved for Bulgarian citizens and it is questionable whether all positions for which Bulgarian nationality is required are in line with Article 45(4) TFEU and fall within the narrow understanding of the public service by the CJEU. The following restrictions still persist:

- Art. 19, Para. 5 of the *Law on the Administration* explicitly requires Bulgarian nationality for the following posts: the chairmen, the vice-chairmen and the members of state agencies, state commissions, executive agencies and state institutions functioning in connection with the implementation of the executive power and established by a law or decree of the Council of Ministers. Specific conditions are set in Decree No. 47 of 01 March 2004 on the adoption of a classifier of positions in the administration and of an Ordinance on the application of the classifier of the positions in the administration.
- According to Art. 179 of the *Law on the Ministry of the Interior*, a requirement for occupying any post at the Ministry of the Interior is Bulgarian nationality. This is valid not only for civil servants (employed according to an administrative act), but also to labour contract employees. The Ministry of the Interior encompasses the policemen and the firemen.
- Art. 67 (1) of the *Law on the Judiciary* stipulates that members of the juries in penal law cases shall be Bulgarian nationals. According to Art. 162 of the Law on the Judiciary only a Bulgarian national can be appointed as a judge, a prosecutor or an investigator. The posts of the assistants of judges and prosecutors are also reserved to Bulgarian nationals only (Art. 245).

According to Art. 295 of the Law on the Judiciary, an internee-lawyer (with regard to obligatory state practice, necessary for the recognition of rights to practice the lawyer's profession) can also be an EU citizen or a foreigner who has graduated Law in Bulgaria or whose Law diploma has been recognized accordingly.

- *The Constitution of the Republic of Bulgaria* requires Bulgarian nationality for the following positions: Art. 59 – positions in the army; Art. 65 – members of the National Parliament; Art. 93 (2) – President of the Republic of Bulgaria; Art. 110 – members of the Council of Ministers (the government).
- There is no constitutional requirement for Bulgarian nationality of mayors and members of municipal councils. In January 2011 the Parliament adopted an *Elections Code* (in Bulgarian: *Изборен кодекс*), which repealed the Law on Municipal Elections. However, its Article 4, Paragraphs 5 and 6 confirmed the position in previous law that only a Bulgarian national can stand to be elected as a mayor. As far as the members of municipal councils are concerned, an EU citizen is eligible, provided that he/she has no other nationality outside the EU, has a continuous or a permanent residence status and before scheduling of the elections has lived on the territory of the respective municipality.

### **B.2 Language requirements**

Art. 3 of the Constitution of the Republic of Bulgaria stipulates that the official language in the Republic is Bulgarian. Art.36 of the Constitution provides that studying and usage of the Bulgarian language is a right and an obligation of all Bulgarian citizens. Art. 36 (3) states that the cases in which only the official language is used are stipulated by law.

Although such explicit language requirements are rarely found in laws, since Bulgarian is the official language in the State, knowledge of it is presumed as naturally needed in order to perform one's functions.

Art. 13 of the *Law on the Judiciary* stipulates that all procedures before the judiciary bodies (courts, prosecutors and investigators) are carried out in Bulgarian language.

### ***B.3 Recognition of professional experience for access to the public sector***

Important amendments to the *Labour Code* that took place in 2010 (State Gazette No15 of 2010; in force since 28 August 2010) brought needed clarity to the issue of *period of employment* that is recognized as professional experience in Bulgaria. A new Paragraph 2 to Article 351 of the Labour Code was introduced to stipulate that period of employment is also the period of time of fulfilling civil service or work under a labour contract according to the legislation of another Member State of the European Union, Member State of the EEA or Switzerland, as well as the period of employment in an European Union institution that is evidenced by a certifying act for the initiation and the termination of the employment relationship.

Article 352, Paragraph 2 of the Labour Code stipulates that the cases when a term of employment is recognized without actual work on the part of the employee apply also to cases of employment relationship in accordance with the legislation of another Member State of the European Union, Member State of the EEA or Switzerland.

Article 354, Paragraph 2 of the Labour Code stipulates that periods of employment without an existing employment relationship are recognized under the same circumstances if those circumstances have occurred in another Member State of the European Union, Member State of the EEA or Switzerland.

A new *Law on the Establishment of Periods of Employment and Periods of Social Insurance by the Court* (in Bulgarian: *Закон за установяване на трудов и осигурителен стаж по съдебен ред*) has been adopted in 2011 and published in the Official Gazette No.26 of 29 March 2011.

These amendments pave the way to the full application of Article 12 of the *Ordinance on the Structure and the Organization of the Salary* (in Bulgarian: *Наредба за структурата и организацията на работната заплата*),<sup>8</sup> which was an object of discussion in the previous annual report.

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8 State Gazette No.11/05.02.2008

## Chapter IV: Equality of treatment on the basis of nationality

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

For a detailed list and description of *the legal texts* in force with regard to Working Conditions and Equality of Treatment on the Basis of Nationality, please refer to the 2008 report.

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

As reported in Chapter III above, Amendments to the **Labour Code** in force since 28 August 2010 brought needed clarity to the issue of **recognition of periods of employment** in other Member States for the purposes of labour law rights in Bulgaria.

Furthermore, a new Law on the Establishment of Periods of Employment and Periods of Social Insurance by the Court (in Bulgarian: *Закон за установяване на трудов и осигурителен стаж по съдебен ред*) has been adopted in 2011 and published in the Official Gazette No.26 of 29 March 2011.

The amendments in the Labour Code paved the way for the full realization of the 2008 amendments made in the **Ordinance on the Structure and the Organization of the Salary** that aimed to achieve equality with regard to working conditions. Recognition of length of labour experience could affect also one's professional promotion or seniority, right to leave of absence, unemployment benefits, etc.

Article 12 (4) (3) of the Ordinance on the Structure and the Organization of the Salary stipulates that when defining the size of the additional remuneration given for continuity of employment and professional experience, the employer should take into account periods of employment in the same or similar position of EU citizens and their family members in other Member States.

Article 12 (4) (4) of the Ordinance on the Structure and the Organization of the Salary provides for recognition of work in another Member State that has not been done under a labour contract as period of employment in labour contract relations. This is applicable in cases when the worker concludes a labour contract in Bulgaria and has been socially insured for the work done in the other Member State.<sup>9</sup>

A more detailed description and analysis of these legal amendments could be found in Chapter IV of the 2008 report.

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<sup>9</sup> The Ordinance defines as a 'Member State' each State that is a member of the EU, EEA or Switzerland.

## 2. SOCIAL AND TAX ADVANTAGES

### 2.1 General situation as laid down in Art. 7 (2) Regulation 1612/68-492/2011

#### a) Social Advantages

EU citizens and their family members are entitled to the same social security rights and (un-)employment) benefits under the same conditions valid for Bulgarian nationals according to the *Code on Social Security*. Explicit non-discrimination clauses are included in Article 4 of the Law on Protection against Discrimination, Article 2 of the Law on Health, Article 3, Paragraph 3 of the Code on Social Security, Article 5, Paragraph 5 of the Law on Health Insurance, Article 2 of the Law on Social Assistance, etc.

Article 3 (5) of the *Law on Family Allowances for Children* (in Bulgarian: *Закон за семейни помощи за деца*) provides that pregnant women who are foreign citizens and families of foreign citizens who permanently reside in Bulgaria and look after their children in the country have a right to family allowances for children if that is envisaged in an international treaty to which Bulgaria is a party. By analogy with the Law on Employment Promotion, the Treaty on the Accession of Bulgaria to the European Union could be regarded as falling within the scope of Article 3 (5).

An issue regarding the requirement in law to submit applications for allowances at one's *permanent* address arose in 2009 when the Directorate of Social Assistance in the Region of Bourgas denied a right to allowances for children to a mother of Belarusian nationality married to a Bulgarian citizen. The reasoning of the administrative organ was that the Belarusian citizen did not have a *permanent* address in Bulgaria. This narrow interpretation of the law however was dismissed by the first instance court, as well as by the Supreme Administrative Court of the Republic of Bulgaria (SAC). In its Judgment No.2621 of 25 February 2010 SAC stated that the *permanent* address specification in law concerned the territorial competence of the administrative organ rather than the recognition of the right of the individual.

Article 2 (4) of the *Law on Social Assistance* (in Bulgarian: *Закон за социално подпомагане*) provides that a right to social assistance is recognized to persons who are not Bulgarian citizens when that is envisaged in an international treaty to which Bulgaria is a party. By analogy with the Law on Employment Promotion, the Treaty on the Accession of Bulgaria to the European Union could be regarded as falling within the scope of Article 2 (4). Detailed rules on the conditions and the procedure for providing social assistance are found in the Rules on the Implementation of the Law on Social Assistance.

Article 3 of the *Law on the Integration of People with Disabilities* (in Bulgarian: *Закон за интеграция на хората с увреждания*) explicitly prohibits direct and indirect discrimination. According to the law, the integration of people with disabilities shall be implemented through medical and social rehabilitation, education and vocational training, employment and professional realization, accessible living and architectural environment, social services, social-economic protection and accessible information.

#### b) Tax Advantages

The taxation legislation envisages rules preventing double taxation of incomes already taken into consideration in an EU Member State or an EEA country (Art.37, Para. 7 of the *Law on Taxation of the Incomes of Physical Persons*). Problems with regard to non-deduction of

expenses for the purposes of determining the basis of assessment of taxation of the income have been resolved by amendments in the legislation; Infringement proceedings against Bulgaria in Commission case 2007/4881 were closed on 5 May 2010.

Under Chapter IV of the Law on Taxation of the Incomes of Physical Persons, the following tax advantages are applicable, regardless of nationality:

- Tax reduction for disabled persons;
- Tax reduction for voluntary social insurance;
- Tax reduction for young families with mortgage to pay;
- Tax reduction for having children;
- Tax reduction for donation.

Bulgarian is known to be the country with the lowest size of taxation in the European Union. This is related to the fact that Bulgaria is also the country with the lowest standard of living and lowest income per capita of the population. However, recently the media has been reporting a trend of Romanian entrepreneurs registering their businesses in Bulgaria due to the benevolent taxation policy in the country. It is expected that soon there should be more administrative practice and case law involving EU citizens and their family members. The issue will continue to be an object of further reporting.

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

As a preliminary remark it should be noted that, on the one hand, the Law on the Entry, Residence and Departure of the Republic of Bulgaria of EU Citizens and the Members of their Family *makes no reference to a right of residence over 3 months of documented job-seekers*. On the other hand, there is *no transposition in Bulgarian law of Art.14 (4) (b) of the EU Citizens Directive* providing that ‘Union citizens and their family members may not be expelled for as long as [they] can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged’.

Having said the above, formally registered job-seekers that are EU citizens or members of the families of EU citizens have the same rights and obligations under *the Law on Employment Promotion as Bulgarian nationals*, with the exception of cases in which Bulgarian citizenship is explicitly required.

Under the Law on Social Assistance allowances for job-seekers are considered ‘social assistance’, irrespective of the interpretation of the ECJ in the *Vatsouras* case that ‘benefits of a financial nature which, independently of their status under national law, are intended to facilitate access to the labour market cannot be regarded as constituting ‘social assistance’ within the meaning of Article 24 (2) of Directive 2004/38’. So far in the database of the Supreme Administrative Court of Bulgaria there are no related cases involving EU citizens and their family members. Nor the doctrine in the ECJ’s decision in *Vatsouras* has been raised as an issue. The practice in this matter will continue to be an object of follow-up reporting.

The cases of *Ioannidis* and *Collins* have not been referred by Bulgarian courts in 2010/11.

## **Chapter V: Other obstacles to free movement of workers**

At the present moment there is nothing more to report apart from what is already covered by the other chapters of the Report. Bulgaria is new to the law on free movement of workers and obstacles are yet to be identified with augmentation of administrative practice. At the present moment the tendency is for the legal regulation to be amended in a direction of formally abolishing obstacles to free movement of workers. Judicial practice relates mainly to free movement of Bulgarian citizens.

## Chapter VI: Specific Issues

This section will look at issues other than taxation. Problems with regard to non-deduction of expenses for the purposes of determining the basis of assessment of taxation of the income have been resolved in 2009/10 and are mentioned in Chapter IX of the previous annual report in relation with the analysis of the *Renneberg* case.

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

In this year's report I would like to draw attention to the Association for European Border Regions (AEBR)<sup>10</sup>, which might be a source of information on practical issues, as well as a tool for tackling problems encountered by frontier workers. Thus the Bulgarian-Romanian organization 'Euroregion Danubius'<sup>11</sup> is a member of AEBR. Its aim is to improve the 'multifunctional development' of the cross-border region between the Bulgarian city of Russe and the Romanian city of Giurgiu. This is an interesting initiative that might be worth following.

There is no special legal regulation of the issue of frontier workers in Bulgaria. The authorities consider that the direct applicability of Regulations 1408/71-883/2004 and 574/72-987/2009 are sufficient in this regard along with intra-institutional instructions on their application. They relate mainly to social security issues.

Social security issues with regard to frontier workers have been addressed in the 2007 report. This year's report is required to focus on the issue of existence of residence clauses within the meaning in the case of *Hartmann* (C-212/05).

Bulgarian laws might require that the application for social benefits be submitted at the place of 'permanent address' of the applicant. An issue regarding the requirement in the Law on Family Allowances for Children to submit applications for allowances at one's *permanent* address arose in 2009 when the Directorate of Social Assistance in the Region of Bourgas denied a right to allowances for children to a mother of Belarusian nationality married to a Bulgarian citizen. The reasoning of the administrative organ was that the Belarusian citizen did not have a *permanent* address in Bulgaria. This narrow interpretation of the law however was dismissed by the first instance court, as well as by the Supreme Administrative Court of the Republic of Bulgaria (SAC). In its Judgment No.2621 of 25 February 2010 SAC stated that the *permanent* address specification in law concerned the territorial competence of the administrative organ rather than the recognition of the right of the individual.

Therefore it is also a matter of interpretation as to whether residence clauses exist or not as obstacles to equal treatment in Bulgaria. With augmentation of the number of frontier workers in Bulgaria we will follow whether any practical problems in this regard arise.

The case of *Hartmann* (C-212/05) has not been referred by Bulgarian courts in 2010/11.

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<sup>10</sup> Its web address is [www.aebr.eu](http://www.aebr.eu).

<sup>11</sup> [http://www.aebr.eu/en/members/member\\_detail.php?region\\_id=111](http://www.aebr.eu/en/members/member_detail.php?region_id=111).

## 2. SPORTSMEN/SPORTSWOMEN

The rules on the transfer of foreigners in sports clubs in Bulgaria, as well as on the possible nationality quotas in this regard, are adopted by the relevant National Federations in each sport area and approved by the head of the State Agency for Youth and Sport at the Bulgarian government. According to Art.8 of the Implementing Regulation of the Law on Physical Education and Sport, within a 6-months period from the receipt of their license, the Federation has to propose to the Minister for physical education and sport Rules on the recognition, discontinuance and withdrawal of competition rights and on the status of amateur and professional sportsmen/sportswomen that participate in the activities of the sport clubs that are federation members.

Below there is information on concrete sports in Bulgaria.

### *Football*

There are no nationality quotas for EU citizens in the areas of football. In the near past the Bulgarian Football Union took a decision to decrease the number of third country nationals in the sports clubs, but this decision does not affect EU citizens.

### *Volleyball*

On 11 May 2010 the Bulgarian Volleyball Federation adopted new Rules on the Competition Rights and Internal Transfer. However the new rules are *even more limiting* since they provide that volleyball clubs should not have more than three players with foreign nationality, and only two of them can play in a game at a time (Article 10 of the new Rules). According to Article 4 (6) of the previous Rules this limitation was valid only for volleyball clubs from the prime league. There are no exceptions provided for EU citizens. The quotas rule does not apply to foreigners with long-term residence.

### *Basketball*

According to Art.16 of the Rules on the Competition and Transfer Rights of the Bulgarian Basketball Federation, the Board of Directors of the Federation decides on the number of foreign nationals allowed to participate in a basketball club.

After an official request for the purpose of writing the 2009 report, on 19 March 2008 I received the following information from the Head Secretary of the Bulgarian Basketball Federation:

1. With regard to the number of foreigners that could be members of a basketball club, there are no quotas at all. However, the Ordinance on the National Championships for Men and Women stipulates the following limitation:

*'In the team list for each game within the National Championship or Bulgaria Coup for men and women there could be a maximum of six foreigners, within which number only three could be with nationality outside Europe.'*

2. With regard to international transfers, there is equal treatment of the sportsmen/sportswomen, regardless of their nationality. For each permission for international transfer of a Bulgarian or a foreign national the Bulgarian Basketball Federation charges an administrative fee of 100 Euro, payable by the new club of the sportsman/sportswoman.

3. There is equal treatment between Bulgarian and EU nationals with regard to the membership fee in Bulgaria – 5 levs (2.5 Euro). However, in this regard a problem has arisen with FIBA who treats every sportsman/ sportswoman with a non-Bulgarian passport as a foreigner, regardless of his/her EU citizenship. For that reason the Bulgarian Basketball Federation is required to pay FIBA 125 Euro for each



## BULGARIA

basketball-woman and 250 Euro for each basketball-man that are non-Bulgarians and this has led to charging the Bulgarian basketball clubs with that additional sum of money.

### *Handball*

As of July 2010 there are new *Rules on the Competition Rights and Membership* adopted by the Bulgarian Handball Federation. According to Art.15 competition rights are recognized to Bulgarian citizens and foreigners nationals who are permitted to reside in Bulgaria. This personal scope should encompass EU citizens.

The same was provided in the previous Rules of 01 August 2009.

### *Ice Hockey*

According to Art.15 of the Rules on the Status of Persons Participating in Training and Competition Activities and on the Transfer of Competition Rights of Ice Hockey Players in the Republic of Bulgaria, adopted for the season 2008/2009, competition rights are recognized only with regard to Bulgarian citizens or foreigners with long-term residence in Bulgaria. There are no exceptions provided for EU citizens.

More recent information on the issue has not been accessible to the national Rapporteur in 2011.

## **3. THE MARITIME SECTOR**

*Please note that this issue will be elaborated in a separate report in 2011.*

Bulgaria is a Member State of the *Organization of the Black Sea Economic Cooperation*.<sup>12</sup> There are only two other EU Member States in the organization (Greece and Romania). The rest of the States are non-EU countries: Albania, Armenia, Azerbaijan, Georgia, Moldova, Russia, Serbia, Turkey and Ukraine. This presupposes a more intensive dialogue between the States regarding the maritime sector. Influence of EU law in agreements with non-EU countries on equal treatment as regards employment and working conditions will continue to be an object of further follow-up.

There were positive legislative developments in 2008. At the time of writing the report for 2007, the Merchant Shipping Code (in Bulgarian: *Кодекс на търговското корабоплаване*) stipulated that ‘in all cases, the captain and the chief engineer officer of the ship shall be Bulgarian nationals’. However Art.88 (4) of the Merchant Shipping Code was amended in August 2008 (State Gazette No.71/12.08.2008) to provide that *the captain and the chief engineer officer of the ship should be Bulgarian nationals or EU, EEA or Swiss citizens*.

*The rest of the crew* may be formed of qualified foreign seafarers – nationals of Member States of the European Union, holding competency certificates, issued in compliance with the International Convention on Standards of Training, Certification and Watch keeping for Seafarers 78/95 (STCW 78/95) or with the Recommendations on Preparation of the Ship Drivers and their Provision with Competency Certificates for International Shipping of the

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12 Official web site: <http://www.bsec-organization.org/Pages/homepage.aspx>.

## BULGARIA

Inland Transport Committee of the United Nations Economic Commission for Europe and the Danube Commission, *without discrimination based on nationality of the workers regarding hiring, payment and other labour conditions, but knowing a language common on the ship.*

Ordinance No. 6 of 22 November 2007 (published in State Gazette No. 101 of 4 December 2007) on the Competences of Maritime Personnel in the Republic of Bulgaria, issued by the minister of transport regulates the procedure for recognition of the right of EU citizens, acquired in those Member States, to occupy positions in ships sailing under the Bulgarian flag.

### 4. A. RESEARCHERS

The *Law on Higher Education (LHE)* was amended as early as in 2005 (State Gazette No83/2005), with amendments entering into force on 01 January 2007, in order to facilitate integration of EU citizens into the higher education system of Bulgaria.

According to Art.68 (7) LHE the admission of students, doctoral students and researchers who are citizens of EU Member States or of EEA states, is realized under the conditions and procedure provided for Bulgarian nationals.

According to Art.95 (8) LHE, students, doctoral students and researchers who are citizens of EU Member States or of EEA states pay education fees according to the conditions and procedure provided for Bulgarian nationals.

In 2010 a new *Law on the Development of the Academic Staff in the Republic of Bulgaria* (in Bulgarian: *Закон за развитието на академичния състав в Република България*) was adopted (State Gazette No.38 of 21 May 2010; latest amendments are published in State Gazette No.101 of 28 December 2010). Reference to EU nationals is made in Article 13 of the Implementing Rules to the Law (published in State Gazette No.75 of 24 September 2010; latest amendments are published in State Gazette No.19 of 8 March 2011). The provision however refers to equal treatment between Bulgarian and other EU nationals only with regard to *access* to the PhD studies. Application of the new law and its implementing rules will continue to be further monitored and reported on, as the new norms are still an object of continuing amendments and further development by the implementing rules of autonomous universities.

### 4. B. ARTISTS

The *Law on Copyright and Neighboring Rights* was amended as early as in 2005 (State Gazette No99/2005), with amendments entering into force on 01 January 2007 to enlarge its scope to EU citizens, based on the equal treatment principle. Issues of implementation in practice will continue to be an object of further monitoring and reporting.

## 5. ACCESS TO STUDY GRANTS

*Please note that this issue is elaborated in a separate analytical note in 2011.*

## BULGARIA

The *Law on Employment Promotion* (Chapter Seven) envisages qualification and motivation training for unemployed and employed job seekers. The training programmes are carried out either by the Labour Office Directorates or by licensed educational institutions. Access to these trainings is not conditioned on any residence requirements with regard to EU, EEA and Swiss nationals and members of their families.<sup>13</sup>

According to Art.91 (5) (4) of the *Law on Higher Education*, unlike other foreigners, citizens of EU Member States or of EEA states are not excluded from state-subsidized scholarships.

### 6. YOUNG WORKERS

*Please note that this issue was elaborated in a separate analytical note in 2010.*

On 31 July 2010 the *Law on Employment Promotion* (in Bulgarian: *Закон за насърчаване на заетостта*) was amended to envisage measures for encouraging access to the labour market of workers of up to 29 years of age. According to Article 41 of the Law, the State will provide employers with financial means to pay a salary for up to nine months to an intern who has been contracted after referral by the Employment Agency. The criteria stipulated in the law concern the age of the employee, acquisition of professional qualification in the last 24 months and lack of labour experience. No residence-based criteria are envisaged besides the requirement of registration as a job-seeker at the local employment office of the Employment Agency at the Ministry of Labour and Social Policy.

Regarding issues in the sports sector and access to study grants, please refer to the sections above.

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<sup>13</sup> For more detailed information on this issue, please visit the web page of the National Employment Agency at [http://www.az.government.bg/eng/internal\\_en.asp?CatID=12/07&WA=Training/Training\\_en.htm](http://www.az.government.bg/eng/internal_en.asp?CatID=12/07&WA=Training/Training_en.htm) (last visited on 30 June 2011).

## **Chapter VII: Application of transitional measures**

Bulgaria acceded to the European Union on 01 January 2007. In accordance with the provisions of the Accession Treaty, some European countries have availed of the possibility to apply transitional arrangements for the access to their labour market by workers who are Bulgarian citizens. *Bulgaria has not applied reciprocal restrictions* to those EU Member States.

## Chapter VIII: Miscellaneous

### 1. RELATIONSHIP BETWEEN REGULATION 1408/71-883/04 AND ART 45 TFEU AND REGULATION 1612/68-492/2011

*Comparative analysis of Article 3 (5) of the new Regulation 883/04 in relation to Article 45 TFEU and Article 7 of Regulation 1612/68-492/2011*, leads to the conclusion that issues on social security fall within the material scope of *Regulation 883/04*, while issues on social assistance and other 'equity' laws such as the one on integration of people with disabilities fall within the scope of Article 45 TFEU and Article 7 of Regulation 1612/68-492/2011. With regard to the personal scope, Article 2 of Regulation 883/04 points out that it applies also to 'stateless persons and refugees residing in a Member State'. Regulations and their equality of treatment clauses respectively are directly applicable.

The Coordination regulations are published in Bulgarian language at the web site of the Ministry of Labour and Social Policy.<sup>14</sup> Information on applicable legislation and instructions on how the rules are applied at national level are published at the web site of the National Revenue Agency.<sup>15</sup> Administrative Instructions on the Application of the Rules for Coordination of the Social Security Schemes and relevant model application forms are published at the web site of the National Social Security Institute, under the 'European Integration' section.<sup>16</sup> Information on the benefits in kind, European Health Insurance Card and medical treatment in the European Union – under the coordination regulations and under the national legislation – is provided on the web page of the National Health Insurance Fund.<sup>17</sup>

At the beginning of 2010 the *Code on Social Security* was amended in order to make possible transfer of pension rights from/to the special pension scheme of the European Communities. Amendments published in State Gazette No19 of 09 March 2010 introduced a special Part Two in the Code on Social Security – '*Interaction with the Pension Scheme of the Communities*'. The Code envisages that an Ordinance of the Council of Ministers will regulate the details.

With regard to the relationship between Regulation 1408/71-883/04, on the one hand, and Article 45 TFEU and Regulation 1612/68-492/2011, on the other hand, in general neither material, nor procedural national laws in Bulgaria contain provisions on their interaction. In principle the laws enumerate and refer to the EU regulations with regard to their direct applicability. Issues of practice will continue to be an object of further monitoring and reporting.

The case of *Hendrix* has not been referred by Bulgarian courts in 2010/11.

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14 <http://www.mlsp.government.bg/bg/integration/agreements/index1.htm> (last visited on 30 June 2011).

15 <http://www.nap.bg/ospage?id=184> (last visited on 30 June 2011).

16 <http://www.nssi.bg/index.html> (last visited on 30 June 2011).

17 <http://www.nhif.bg/bg/default.phtml?w=1024&h=734> (last visited on 30 June 2011).

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

There is no administrative or judicial practice in Bulgaria that allows reporting on the issue other than the general information on frontier workers provided above.

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

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

There is no specific regulation of integration measures *vis-a-via* EU nationals/EU-12 nationals in Bulgaria.

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

The Law on the Foreigners in the Republic of Bulgaria (LFRB) provides that *citizens from EU, EEA and Switzerland are no longer considered foreigners*. According to Art.2 (1) ‘a foreigner under this law is every person who is not a Bulgarian citizen or a citizen of a Member State of the European Union, the European Economic Area or Switzerland.’ This conceptual change has the practical consequences that EU citizens and their family members no longer fall under the scope of the provisions of the Law on the Foreigners that allow for important limitations to basic human rights. Furthermore, stronger procedural guarantees in the judicial review of coercive administrative measures have been introduced. Concrete examples with detailed analysis in this regard have been provided in previous year reports.

In January 2011 legal amendments to the Law on the Foreigners in the Republic of Bulgaria took place (State Gazette No.9 of 28 January 2011). The amendments aim to improve transposition of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, etc..

Regarding the *Union preference principle*, Bulgarian law provides that before providing a work permit to a third-country worker, the Employment Agency requires proof that no one already part of the domestic labour market can fill the vacancy concerned, although there are exceptions for certain categories. This is found in Article 6 (3) of the Ordinance on the Conditions and Procedure for Issuance, Rejection and Withdrawal of Work Permits for Foreigners in the Republic of Bulgaria. The provision states that a work permit may be given to a third country national only if a Bulgarian citizen or person with an equivalent status under Article 70 (3) of the Law on Employment Promotion cannot fill the position.

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

N/a

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

The general thematic organizations and bodies apply. To my information, no Community specification of national organs exists. Workers who are members of associations of employees or professional and trade unions could eventually search their assistance or advice in cases of violations.

In 2010/2011 the new Ombudsman in Bulgaria has had an active position on exit bans limiting the free movement rights of Bulgarian citizens, as well as with regard to issues related to third country nationals under the Law on Foreigners in the Republic of Bulgaria.

#### **5. SEMINARS, REPORTS AND ARTICLES**

Report: Open Society Institute, *Tendencies in the transborder migration of labour force and the free movement of persons – effects for Bulgaria* (in Bulgarian: *Тенденции в трансграничната миграция на работна сила и свободното движение на хора – ефекти за България*), Sofia 2010.

Susie Alegre, Ivanka Ivanova and Dana Denis-Smith, *Safeguarding the Rule of Law in an Enlarged EU. The Cases of Bulgaria and Romania*, CEPS Special Report/April 2009.

Alexey Pamporov, *Social Distances Report*, Open Society Institute, July 2009.