



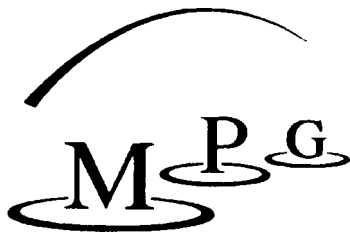
EU and US approaches to the management of immigration

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Finland

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The Migration Policy Group (MPG) is an independent organisation committed to policy development on mobility, migration, diversity, equality and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

This report is part of a series of 18 country reports prepared in the framework of the project *EU and US approaches to the management of immigration*, which was carried out by MPG with the support of the German Marshall Fund of the United States and in co-operation with partners in the European Migration Dialogue. Countries included in the project are Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Switzerland, and the UK.

Reports on these countries are available from MPG's website individually or jointly, together with EU-US comparative perspectives and European comparative perspectives. See Jan Niessen and Yongmi Schibel, *EU and US approaches to the management of immigration – comparative perspectives*, MPG/Brussels, May 2003.

All papers were presented and discussed at a transatlantic dialogue meeting preceding the official launch of the European Migration Dialogue attended by Commissioner António Vitorino (Brussels May 2003).

Brussels/Helsinki, May 2003

Preface

The European Union and the United States are areas of immigration, and both are entities of multi-level governance facing the task of managing international migration. However, unlike the United States most European states do not consider immigration as a matter of national interest.

In the US a regulated immigration system aims to enhance the benefits and minimise the drawbacks of immigration. The country's bi-partisan immigration policy receives strong support from a wide variety of stakeholders.

In Europe the emphasis is on immigration restriction and prevention, reflecting the position of most stakeholders that the costs of immigration outweigh its benefits. Immigration is a sensitive and sometimes controversial issue, as is demonstrated in recent elections in a number of European countries.

On both sides of the Atlantic migration ranked high on the agenda throughout the nineties. Changes in the size and direction of migratory movements as a result of global developments, EU enlargement and NAFTA received a great deal of attention. The ways in which migration policies are designed and implemented were reviewed and underwent some important changes.

In 1997, the US Commission on Immigration Reform presented its final report to Congress, proposing important changes in US immigration policies and management.

In Europe the 1997 Amsterdam Treaty empowered the European Union's institutions to act on migration, changing intergovernmental co-operation among member states into the development of joint policies on immigration and immigrant integration. A new debate emerged on the role of immigration to address economic and demographic imbalances.

The events of September 11 did not in themselves have an impact on the foundations of immigration policies' governance structures, or lead to changes in them, other than those already proposed. The events added, however, a range of other issues to the overall policy agenda (issues related to the fight against terrorism became a top priority) and the immigration agenda (where security issues became a priority). This resulted in a stagnation of the further development of immigration policies (the best example probably being the US-Mexico migration agreement) and in a refocusing of attention on countering the victimisation of immigrants and the straining of community relations.

It is against this backdrop that MPG launched the project *EU and US approaches to the management of immigration* in an attempt to identify the main drivers of immigration management in EU and US systems of multi-level governance. Building on an understanding of how migration needs are assessed and translated into policy on the national or state level, the project focused on the way in which national or state governments promote their immigration related interests within the federation (in the case of the United States) and the Union (in the case of the European Union). How successful are the different entities in shaping common policies according to their needs? Do they consider centralisation (which the extension of EU powers suggests), or decentralisation (as the campaigns of some states for a greater say in immigration matters suggest) more useful for realising their immigration-related goals?

The reports on fourteen EU Member States, three candidate countries and one associated state each have four chapters:

- The first chapter reviews the (emerging) debates on migration and pays particular attention to the terms of the debate. It examines whether migration is debated in terms of control, security and restriction, or rather in terms of migration management and the assessment of migration needs. It asks whether the terms of the debate are different for different types of migrants, for instance irregular migrants vs. highly qualified migrants. The chapter analyses whether immigration has been linked with and embedded in larger discussions about social and economic policies for the future. In particular, it looks at the debates around the labour market and demography and considers whether and how immigration has been considered as an option for meeting emerging challenges in these areas.
- The second chapter provides an inventory of stakeholders and an analysis of their activities. It gives a detailed account of who is responsible for which area of migration management in the different government departments. It also covers the activities of the various non-governmental organisations active in this field. The central question is which groups (within government, employers, trade unions, NGOs, academics and other experts) assess national migration needs, which instruments and mechanisms they use to make these assessments, and how they assert influence in the political decision-making process to translate these assessments into policies.
- The third chapter provides an analysis of migration management in the areas covered by three of the most important Directives proposed by the European Commission (on admission for employment, family reunification¹, and long-term residents). Rapporteurs compare the national legal framework with the proposed European measures, and assess the degree of convergence between the two. The chapter addresses each of the substantive points dealt with in the Commission's proposals and sets out the corresponding national provisions, if such provisions exist under the current system. Recent and impending changes of national law are also examined, with a view to assessing whether immigration management rules are moving closer to or further away from the proposed European legislation.
- The fourth chapter offers concluding remarks and evaluations by the rapporteurs. It addresses the Commission proposal for an Open Method of Co-ordination and considers whether such a mechanism would fit well with existing policy-making structures. Where appropriate, the chapter looks more closely at the proposed Guidelines and evaluates the degree to which they are already tackled in national policy. The impact of the European Employment Strategy on immigration management is also assessed. The fourth chapter also gives the rapporteurs an opportunity to make recommendations and to suggest alternative benchmarks for future debates and policy developments.

¹ Reports were drafted before the definition of a common approach to family reunification, which Member States agreed to at the Justice and Home Affairs Council of 27/28 February 2003. Rapporteurs base their comments on the text of draft Directive COM (2002) 225, published on 2 May 2002.

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Chapter 1: The terms of the policy debates

1.1. Introduction: “Large” and “small” immigration policy

This paper includes a component that helps us establish an outsider's point of view of the debates and legislation that form the actual substance of this paper.

This paper argues, that all policies are characterized by a split between

- 1) “large” policy, consisting of political agendas, goals, and legislation, and
- 2) “small” policy, which includes administrative practices, representing the actual form of what the government and the authorities do.²

These two policies – large and small – are rarely similar. In the case of Finnish immigration policy, administrative practice has been strict, whereas the legislative context has been looser.

In Finland, immigration policy was primarily a part of security policy before the 1990's. The break-up of the Soviet Union at the beginning of the 1990's, the EU membership of Finland in 1995, and the changes in the international safety and economic environment happened at the same time as immigration to Finland began to rise. These tendencies brought new viewpoints and positions to immigrant policy. One could even argue that there was no debate about migration policy in Finland prior to the 1990's.

Fundamental changes in the socio- and economic political environment are reflected in the development of Finnish immigration legislation in the 1990's. The current Aliens' Act that came into force in 1991 has already been amended 20 times³. Due to continuous changes, the law is not consistent, and a new Aliens' Act is being prepared.

The Governments' first proposal for a new Aliens' Act, however, stumbled into political disagreements even before Parliament had a chance to vote on it. In the parliament there seems to be a consensus over “the big picture”, and over the fact that the current Aliens' Act is not meeting the demands of the 21st century. The incoherent law is partly guilty for giving the authorities too much space to affect the policies with their own interpretations and actions. This has given strength to the “small” immigration policy, and has made it difficult for the Government to pursue a coherent national immigrant policy. This can be observed for example in the work permit practices; in the 1990's they did not meet political objectives, since individual authorities had such a great influence on the actual outcomes⁴.

² Paananen 1999 introduces the concept. His definition is more accurate and slightly larger, but in this case, it is believed that this shorter definition is adequate.

³ Ulkomaalaislakiesityksen (...) 2002, Detailed reasons of the proposal for a new Aliens Act, draft version of 21 October 2002.

⁴ Sorainen 1999.

1.2. Changes in the discourse

Weakening position of the “problems” discourse

Finland was a country of emigration from the 1930's all the way to the 1990's. In the 1920's, and again in the 1960's and 70's, hundreds of thousands of Finns emigrated to North America and Sweden; these migration flows were smaller than those from other Nordic countries during the same time, but still remarkable in the Finnish context. Prior to the 1990's, there was only one substantial immigration cycle to Finland, namely the 400,000 Finnish war refugees of the 1940's, fleeing from Carelia, which was passed into the Soviet Unions' reign. At the end of the 1980's, the number of foreign nationals in Finland was extremely low.

An upswing in the economy in the late 1980's brought in the public the first concerns about the sufficiency of domestic labour force. The debate concerned most of all construction work, which faced labour shortages; some companies even started recruiting workers from Estonia⁵. However, labour immigration suddenly ceased, as foreign trade volumes collapsed alongside with the Soviet Union, and as the Government's financial policy failed⁶. These issues were followed by a sudden and deep economic depression, and already in 1994, Finland experienced its highest overall unemployment rate so far, 18.9 percent⁷.

At the same time, however, immigration to Finland increased, as the amount of asylum seekers started to rise, and the Government engaged the so-called return migration of ethnic Ingrian Finns, mainly from Russia and Estonia. The amount of foreign nationals rose clearly in comparison to the previous situation, although the percentage of foreign nationals in Finland (1.9 percent in 2001) is still the lowest in the EU⁸.

The labour market situation of immigrants is not equal to that of the native population. Foreign nationals are over-represented in the marginal segment of the labour force when the situation is measured with factors such as labour force participation rate, unemployment rate, type of employment (fixed-term/part-time), absolute wage levels, and wages compared to natives in similar jobs. Immigrants have been seen as a labour reserve; they are the last to be employed during an economic upswing, and the first to be made redundant when depression occurs⁹.

Immigration to Finland has so far been based on reasons other than economic ones, which contributes to the mismatch between the labour market competences of immigrants, and the demand for labour in the labour market. In addition, ethnic discrimination is common on the Finnish labour market¹⁰. A typical labour market career for immigrants is characterized by short or fixed-time fragments of work, studies, unemployment and so forth, as well as by jobs that are not up to the

⁵ Paananen 1999.

⁶ Karisto et. al. 1998.

⁷ Statistics Finland.

⁸ Statistics Finland 2002.

⁹ In Finland, see Forsander 2002, on the general situation in Europe, see Pierson 1998.

¹⁰ Discrimination takes place mostly in the form of exaggerated requirements regarding foreign jobseekers' knowledge of the Finnish language. This form of hidden discrimination has proved to be the kind that is difficult to grasp by legal means; however, it is expected that the national implementation of the EU's so-called racism Directive will tackle discrimination more effectively. Studies that focus on ethnic discrimination in the Finnish labour market include Paananen 1999, Jasinskaja-Lahti et al. 2002, Forsander 2002, Jaakkola 2000.

individual educational and vocational skill levels. As a whole, the labour market position of immigrants is characterized by polarization, which puts those with a western nationality and/or labour migrants in a better position than refugees and most of the people from developing countries¹¹.

As stated earlier in this paper, before the 1990's, the national viewpoint on immigration was constructed from premises of security policy and control, whereas during the 1990's, this point of view was challenged by the concern over social integration of the newcomers. However, neither of these two discourses gave much thought to the potential benefits that immigration and immigrants can bring to the receiving country. The potential costs, threats and problems deriving from migration have dominated the Finnish immigration debate in the media as well as in political discussions all the way to the late 1990's.

Change in the discourse: a demand for labour immigration

Already in the late 1980's, some Finnish demographers brought out their concern over the fact that demographic and economic dependency ratios would worsen in the 2010's if net migration could not be reversed to become positive. Later research has updated the figures, but the conclusions have remained the same¹².

This was not the first time that population scenarios had caused political worries. In the 1930's similar worries about the declining population appeared, but different kinds of solutions were offered. The cure of the 1930's was to increase fertility and decrease mortality, but in the 1990's, it seemed obvious that neither of these factors could be affected to an extent that would make a difference in demographic terms¹³.

Demographic tendencies and changes in the demand for labour have formed the background to many recent reports, such as labour market and economic scenarios by the Ministry of Labour¹⁴ and the Ministry of Finance¹⁵, and by employer and business life organisations¹⁶. These reports represent a wide range of influential actors in the Finnish society, and alongside with independent researchers, they state that immigrant labour will be needed already in the near future and from then on, in order to secure the performance of business life and survival of the welfare state. This view has been quite influential, and together with the national employment action plan (based on the EU employment guidelines), it has affected work permit legislation and policy.

EU employment guidelines and the governmental agendas of Lipponen's 1995 and 1999 governments set the context and objectives of immigration policy. Based on them, governmental papers state that the objective of immigration and integration policy and of legislation is to support a comprehensive management of the increasing immigration, and to support the social integration of immigrants.¹⁷

The Integration Act of 1999 combines the integration and employment discourses, as it strongly emphasizes employment as the primary way to social integration. In spite

¹¹ Forsander 2002.

¹² Ministry of Labour 2002a, 1999, Valkonen 1998, Forsander 2000.

¹³ Karisto et. al. 1998, Forsander 2000.

¹⁴ Ministry of Labour 2000 & 2002a & 1999

¹⁵ Ministry of Finance 2000.

¹⁶ Elinkeinoelämän valtuuskunta 2001, Teollisuus & työnantajat 2002 & 2003, Palvelutyönantajat 2002.

¹⁷ Act on Integration, Detailed reasons of the proposal for a new Aliens Act, draft version of 21 October 2002.

of this, it may be possible that the administration has not completely understood the resource and coordination requirements that this kind of policy sets. If Finland is going to count on immigrants as a source of labour, the administration has to take care not only to let labour immigrate, but also to make sure that public policy has the tools and sufficient resources to support the labour market integration of immigrants.

The labour shortage and integration debates have been quite separate so far, although research¹⁸ shows that without supporting measures such as vocational and language training, it is difficult for immigrants to gain stable positions in the labour market. Therefore, in order to ease labour shortages, labour immigration needs to be supported by a well functioning integration policy with adequate resources.¹⁹

Ethnic discrimination is common in the employment sector, especially in recruitment. Research has grasped the phenomenon from the point of view of employers, as well as from that of the victims²⁰. Several administrative reports, especially from the labour administration, have been keen to stress that discrimination is the key reason that slows down the labour market integration of immigrants²¹.

This might, however, be a too obvious explanation. One has to agree that discrimination slows down integration, but there is no empirical evidence of how large this effect is in comparison with, for example, the inadequate public supply of language training²². As Reitz²³ states, basically all researchers agree that discrimination does slow down the labour market integration of ethnic minorities and immigrants, but very few actually claim that discrimination or employer's attitudes are the only reason. From this point of view, it seems that administrative reports in Finland sometimes possibly exaggerate the effect of discrimination, and at the same time ignore systemic and administrative problems, for example in vocational and language training.

1.3. Position of the different groups of migrants in the debate

In short, public debate about immigration has been two-edged. Labour immigration has been discussed in terms of its positive contribution to the Finnish society, whereas asylum-seekers and refugees have been unpopular and stigmatised in the media and even in some political statements. Their motives are often questioned, even though the Finnish asylum process is one of the strictest, if not the strictest in the European Union²⁴.

¹⁸ Koistinen 1997, Pitkänen 1999, Forsander & Alitolppa-Niitamo 2000, Forsander 2002.

¹⁹ Pierson 1998 has emphasised that in the 1950's and 1960's, the European countries which received a large amount of labour immigration seemed to believe that return migration would be a solution to the unemployment of immigrants. Once out of employment, immigrants could "go home"; this was the political mood according to Pierson. However, although immigrants may intend to settle only temporarily when they first arrive, statistics show that the rate of return migration is not as high as the supporters of "guest worker" policies hope. Labour immigration leads to the formation of permanent ethnic communities in host countries, and therefore, a comprehensive management calls for a strong link between work permit policies and integration policies. See also Sassen 1999.

²⁰ Paananen 1999, Forsander 2002, Jasinskaja-Lahti et. al. 2002.

²¹ See for example Ministry of Labour 2002a.

²² Tyynelä 2001.

²³ Reitz 1998.

²⁴ Makkonen 2000, Jaakkola 1999.

In December 2002, the Nordic head of UNHCR expressed his concern about several aspects in the Finnish asylum process, which in the case of accelerated processing does not include a realistic right of appeal, and which sets the standards for refugee status higher than is recommended by the UNHCR²⁵. Even in this situation, the common expression used to refer to asylum seekers in opinion polls²⁶ is “elintasopakolaiset”, which translates as “living standard refugees”.

A worrying fact is that attitudes regarding ethnic groups and asylum-seekers are quite negative not only among the public, but among the authorities as well. In a 1999 survey, 40 percent of policemen stated that they *do not think* that people should face legal sanctions if they are suspected of having committed racist crimes or ethnic discrimination²⁷. A supervisor representing the Directorate of Immigration (UVI) publicly denied²⁸ the critical arguments used by UNHCR, stating that in UVI's view, Finland “has no accelerated processing” of asylum applications. This view is in contrast with that of the UNHCR, and the accelerated process probably goes against the obligations set by Article 13 of the European Convention on Human Rights.²⁹

The proposal for the new Aliens' Act was turned down in a committee in the Parliament³⁰ in January 2003 mostly because a moderate right-wing party³¹, also the third strongest group in the Parliament, insisted that accelerated processing should be established in the new Act. Other influential parties rejected this demand. However, this kind of attitude shows quite a rejective approach towards immigrants who do not bring obvious and immediate economic benefits to the Finnish society.

It seems that whereas prior to 1990's the security discourse dominated, it has now retreated, and attacks target mostly those who migrate on humanitarian grounds. Labour migrants and students meet a warmer welcome.³²

1.4. Connections between the immigration debate and social policy and economic policy discussions

Since 2000, the debate on immigration has followed two major lines. Firstly, several thousand Roma from Eastern Central Europe have applied for asylum since then; their motives have been claimed to be economic, rather than humanitarian³³. Even though, as was mentioned in the previous chapter, the Finnish asylum process is

²⁵ Helsingin sanomat 16.12.2002 & 25.1.2003.

²⁶ On the ethnic attitudes and prejudices of Finns, see Jaakkola 1999.

²⁷ Pitkänen & Kouki 1998.

²⁸ In Helsingin sanomat, 25 January 2003.

²⁹ United NGO comments on the Aliens Act reform, October 2002.

³⁰ Legislation proposals are passed on from the government to a specialised committee in the Parliament, which may change the contents of the proposal. If the government accepts the proposal after the changes potentially made by the committee, the parliament votes on the proposal. The government can also reject the modified version of the proposal either by cancelling the whole process, or by asking the Parliament to vote on the original proposal.

³¹ Namely the *Kokoomus* party.

³² The “WTC” or “*international terrorism*” discourse has not been used as an argument for strict control; it is more likely that the strict asylum and refugee policy derives from the history of the restrictive Finnish immigration policy; see Lepola 2000.

³³ Finnish NGOs have stressed that the human right situation of the Roma community in countries such as Slovakia, Romania and Poland is not satisfactory, and that these countries should not be classified as “safe countries of origin”, as this classification automatically leads to an accelerated processing of asylum applications without a realistic opportunity to appeal against the final decision.

very strict in comparison with the international situation, new control methods and restrictions have continuously been introduced, such as the accelerated processing of asylum applications, and DNA tests for those applying for family reunion. Since the number of people who seek asylum in Finland is very low compared to most other EU member states, as well as compared to the whole Finnish population, there are hardly any economic grounds for this strictness. Therefore, the connection between asylum policy and economic or social policy is difficult to imagine. Rather, the connection remains strong between asylum policy and national security and control policy.

The second line in the immigration debate during the last few years anticipates future needs that derive from changes in the supply and demand of labour. The situation is rather complex, since the structural unemployment rate remains high, and at the same time, recruitment problems are increasing. This mismatch in the labour market reveals obvious connections between economic policy and immigration policy.

Labour shortages are already on the increase in several lines of business³⁴. Foreseen labour shortages in the 10-15 coming years will be caused both by the mismatch between demand of labour and domestic labour supply, and by the ageing process within the population, which will cause large elderly cohorts to exit the labour market, creating quantitative or *acute* labour shortages³⁵. In the political process towards new Aliens Act, one of the main themes has been to tie together immigration policy and labour market policy.

The general justifications in the draft proposal for a new Aliens Act consider that the future need for labour immigration depends firstly on changes in the quantity of jobs on the labour market, and secondly on the extent to which it is possible to increase the general employment rate, which is currently quite low, i.e. 68 percent³⁶. Hidden unemployment in particular is still at a high level, and according to a recent statistical forecast, the general unemployment rate will not drop under its current level of 9 percent, but will increase slightly³⁷.

According to an evaluation made by the Ministry of Finance in 2001, the so-called *balance unemployment rate* (when the unemployment rate drops under this balance level, it causes inflation pressure and indirectly leads to a new increase in unemployment) is currently around 7.5 percent³⁸. Following the EU employment guidelines, the Government has sought to reduce hidden unemployment and to lift the employment rate, in other words to increase the quantity of labour by diminishing the number of people who are included in different kinds of retirement and education statuses, and are not counted as part of the labour force³⁹.

The Finnish National Action Plan on employment for 2001 was based on the European employment strategy guidelines and recommendations from the Council. Guidelines 3 and 6, concerning the supply of labour and the securing of the labour

³⁴ Tuomaala 2002.

³⁵ Forsander 2000, Ministry of Labour 2000.

³⁶ Ministry of Labour 2003. The aim of the Ministry of Labour is to increase the employment rate to 75 percent, which should happen in 2010 at the earliest.

³⁷ Ministry of Labour 1999.

³⁸ Ministry of Finance 2001.

³⁹ However, in January 2003, the Ministry of Labour announced that it was planning to get the unemployment rate down by 5 percent in the next 5 years. If the evaluation made by the Ministry of Finance concerning the balance unemployment rate (7.5 %) is correct, the objective of the Ministry of Labour may not be very realistic, and is possibly rather a political statement.

market, have motivated several research projects⁴⁰. In addition, the Ministry of Labour publishes labour supply and demand scenarios every three years. The shortage of labour is forecast to strike first sectors that have large amounts of employees, where the workforce is elderly, the retirement age is low, and where the influx from young age cohorts is low as well. These sectors include construction, caring/nursing, the service sector, and industrial work⁴¹. The demand of labour is growing especially in public services and municipalities, since the ageing population needs more social and health care services.

Expected consequences of labour shortages

Because of the growing outflow of labour from the labour market, as well as the changes in the employment rate and the mismatch of labour supply and demand, the labour market debate is centred on the notion that labour shortages will become more common and more severe in many lines of businesses already in the coming years. According to one of the darkest reports⁴²,

“The insufficient pool of labour sets limits to economic growth. Large-scale difficulties in the availability of labour also add disturbances in the labour market, easily lead to the growth of pay rises, and add inflation pressure. A threat of this kind of development slows down economic growth by pushing investments abroad.”

A project group that prepared the reform of the work permit procedure for the Ministry of Labour stated that ageing within the labour force is not the only reason to liberalize work permit policies. According to the project, it is also important because in that way it is possible to “add in a flexible and predictable manner the availability of low-skilled labour”. The report also states that “as job opportunities decrease, it is necessary for people in the labour force to adapt to low salaries and irregular working hours”⁴³.

Thus, concerns about the possible effects in the age structure of the population are connected to economical concerns about the balance unemployment rate, and show that a certain level of unemployment is considered as functional for the economic system. Therefore it can be argued that in the most important ministries in this case, concerns about the national economic performance may have been set ahead of activating domestic labour reserves. This virtue strengthens the already unavoidable labour market strategy, which builds on immigrant labour.

The Ministry of Finance, in particular, has stressed the mismatch between labour supply and demand as the main reason for the need for labour immigration⁴⁴, whereas in the Ministry of Labour, some reports have stressed the importance of activating domestic labour reserves⁴⁵, and some others have argued that activating these reserves is not a realistic option⁴⁶, or that activating them would even be harmful to economic life⁴⁷.

⁴⁰ Ministry of Labour 2002a.

⁴¹ Ministry of Labour 1999.

⁴² Ibid.

⁴³ Ministry of Labour 2000.

⁴⁴ Ministry of Finance 2001.

⁴⁵ Ministry of Labour 2003.

⁴⁶ Ministry of Labour 2000.

⁴⁷ Ministry of Labour 2002a.

To sum up, the ministries' strategic policy choices and the effect of EU employment guidelines 3 and 6 have together led to political scenarios in which a determined and quite high unemployment rate and an oversupply of labour are seen as functional and pursuable. Labour shortages originate, therefore, from three sources; firstly, from the changing age structure; secondly, from the mismatch between the demand and supply of labour; and thirdly, from societal policy, in which macro-economic premises have gained a strong foothold. Acute and unavoidable reasons for labour shortages are, therefore, accompanied by a policy that is fuelled by concerns about the (global) economic performance of business life in Finland.⁴⁸

By adding the amount of potential labour in the labour market, the working conditions and the price of labour can be kept low in certain jobs, the flexibility of the labour market increases, and finally, the room for manoeuvre of business life is widened. Existing and foreseen recruitment problems are real, but at the same time, the government seems to be building up a strategy which might be more connected to the premises of neo-classical economic theory than to premises of the Nordic or "social democratic" welfare state⁴⁹. Weakening working conditions in marginal positions on the labour market particularly affect the position of immigrants, since they are statistically over-represented in those positions⁵⁰.

The proposal for the new Aliens Act sought to increase the possibility of some branches to recruit workforce from abroad more flexibly than before. This reflects the wishes of the Ministry of Labour⁵¹, the Ministry of Finance⁵², and economic life⁵³. In practice, work permit policies were loosened already in April 2001, as the procedure was reformed, following the criticism from two Ministry of Labour's project reports.⁵⁴

In the proposal for a new Aliens Act this point of view is reflected in such a way that the authorities generally recommend work permit applications if the labour administration thinks that no domestic workforce can be recruited for the job at hand within reasonable time. Presently, around 70 percent of the applications are recommended, even though officers have conducted stricter policy than the Act recommends.

The need for more flexibility in the field of immigration, in response to emerging labour shortages, has also appeared in the 2002 Finnish National Action Plan for employment, which stressed the necessity to improve the procedures for work related immigration, clarifying the situation of immigrants, promoting good ethnic relations and preventing racism and discrimination.⁵⁵

Labour immigration is considered to play an important role in securing the vitality of the welfare state and the competitiveness of economic life in Finland. Both high-skilled experts and skilled staff to public welfare services are required. The influential report of Ministry of Labour⁵⁶ has so far been one of the few to consider the macro economical functionality of a rather low employment rate, which supports low inflation

⁴⁸ See also Kasvio & Nieminen 1998.

⁴⁹ On the definitions, see Pierson 1998.

⁵⁰ Reitz 1998.

⁵¹ Ministry of Labour 2000

⁵² Ministry of Finance 2001

⁵³ Elinkeinoelämän valtuuskunta 2001, Teollisuus & työnantajat 2002.

⁵⁴ See Sorainen 1999 and Ministry of Labour 2000.

⁵⁵ All National Action Plans on Employment can be found on the website of the European Commission, Directorate General for Employment and Social Affairs,

http://europa.eu.int/comm/employment_social/news/2002/may/naps2002_en.html

⁵⁶ Ministry of Labour 2000.

and flexibility within the workforce. In some Western countries immigrants and women in the workforce have previously counterbalanced economic fluctuations by creating a flexible “bumper” at the margins of the labour market,⁵⁷ but as the Nordic welfare state is heavily built on the virtue of social equality, this kind of “hard” capitalistic economic and labour policy would not fit well in the Nordic tradition.

To sum up, the interests of economic life have probably affected immigration policy more indirectly than via straight political statements. The domestic labour supply is seen as insufficient for several reasons, and this insufficiency poses a threat to the capacity of drawing investments, production and jobs to Finland. Immigration is widely seen as the primary way to secure the interests of economic life, the welfare state and public welfare services; this view has a strong foothold when immigration policy is reformed⁵⁸.

1.5. Ageing within the population and related demographic concerns

At the end of 1990's, demographic population scenarios entered the political expert debate and administrative reports. The subject has appeared in the media every now and then, but *public* debate is too strong an expression to describe it in the Finnish context. For example, the Labour Minister made her first public comments on the expected labour shortages and the possible need for labour immigration only in autumn 2002.

As previously argued in this paper, ageing within the population plays a central role in the immigration policy debate. Demographic research and population scenarios are carried out by the administration and academics, and interest groups on economic life refer to them⁵⁹. Studies have stressed scientific economic and demographic facts, labour demand and supply patterns, factors that affect the competitiveness and the interests of economic life, the sufficiency of tax funds and the preconditions for the funding of public welfare services and for ensuring sufficient labour availability in public services.

The quantitative decrease in the total population has not been a subject of debate as such. Whereas in the 1930's arguments concerned things such as the “survival of the Finnish people”, now concerns are connected merely to economic factors, such as the economic dependency ratio⁶⁰. Politicians have debated mostly on how the welfare state can survive the imminent “pension bomb” which will be caused by the retirement of the “baby boom” generation of the late 1940's.

The lack of public political debate on labour immigration is interesting. Even though research clearly shows the importance and unavoidability of increasing labour immigration, and actual policies and legislation have been reformed, there has not been any public debate on the matter, even in cases where closely connected

⁵⁷ Pierson 1998.

⁵⁸ See Kasvio & Nieminen 1998, TT 2002 Globalisaatio ja suomen elinkeinoelämä pdf 7.5.02. xxx käänös.

⁵⁹ Elinkeinoelämän valtuuskunta 2001, Kasvio & Nieminen 1998, Parkkinen 1998, Ministry of Labour 2002a & 1999 & 2003, Ministry of Finance 2001.

⁶⁰ Interestingly, this also reflects how the premises of policy have shifted; even though the debate in both decades was centred around the national interest, in the 1930's, *biological* (or “genetic” in modern terms) national existence was considered to be important, whereas in the 1990's and at the beginning of the 21st century, *economic* existence was the focus of discussions. Naturally, the context has also changed from an international nation-state system to a global system of national economies.

issues, such as how to ensure adequate welfare services for the growing numbers of elderly people, have been discussed. Parliamentary elections will take place in March 2003, and the next Government will get to introduce the new Aliens Act in the Parliament. Even though important reforms can be expected, they have not been discussed in the election debates⁶¹.

The debate has taken place between the authorities and experts, who represent academic research groups as well as various interest groups. The subject of these debates has not questioned the importance of increased labour immigration, but merely focused on how this process should be carried out and governed. Employing the domestic unemployed has stabilized as a parallel strategy; neither one of these two are considered to solve the expected imbalances in the national economy and economic life.

⁶¹ For discussion initiatives, see for example SITRA's Finland 2015 project, which is targeted at politicians, government representatives and influential interest groups in the society.

Chapter 2: The stakeholders

Influence of EU employment guidelines and Directive proposals

The annual Finnish national employment action plans are based on the EU employment strategy and on the Council's recommendations for Finland; the governmental agendas also set a context to the plans. Each year, the action plan sets national employment objectives which support the common European employment scenarios that have been decided in the Council. The national plan also seeks for measures to reach the objectives.

Representatives from the government, the labour administration, labour market organisations, and municipalities sketch the employment plans. Several small research projects have been established in order to evaluate the present situation in relation with EU guidelines.

In the preparation for a new Aliens Act, one premise has been to harmonize national legislation with the EU directives and to make the law more flexible so that it can be reformed as Directives or guidelines change. The third part of this paper argues that the gap has already decreased, but in the proposal for a new Aliens Act, there were elements for which the national legislation is still developing in the opposite direction⁶².

Even though the traditional link between security policy and immigration policy still seems to affect policy and legislation, the European dimension and the European Union's policy have a strong influence on national immigration and employment strategies. So far, the only actual reform remains the reform of work permit policy in April 2001; it seems that the new Aliens Act will not be in force before several years.

"Triangle cooperation" as a context for debate and research results on policy making as its source

The unionisation rate in Finland is high in comparison with the international situation. The Finnish labour market policy has a long tradition of so-called "triangle cooperation", in which policies are constructed in cooperation with employer organisations, labour unions and the public sector. The system tends to seek a consensus between the different actors, for example regarding wage policy.

This kind of broad-based representation has also been used in the drafting of immigration policy in the past few years. The actors have provided information via discussion initiatives and projects, the largest one of which being the Finland 2015 project by SITRA. Based on its research, SITRA has argued that multicultural national identity and active immigration policy are of highest importance as a base for the Finnish information society strategy and for the performance of economic life⁶³. The preparation process of the proposal for the new Aliens Act was also broad-based, as political parties, labour market organisations, authorities and NGOs were

⁶² This is the case, for example, with the sections on deportation, which go against the Commission proposal COM(2001) 127 final.

⁶³ SITRA 2001 & 2002, Kasvio & Nieminen 1998

consulted⁶⁴. However, the united NGO statement on the proposal for the new Aliens Act ignored aspects of labour immigration⁶⁵.

The failed proposal for the new Aliens Act is a good yardstick of the influence of different viewpoints on immigration policy. The Ministry of the Interior and UVI käännös kept the link between security and immigration policies strong. Asylum seekers' protection in the law was weakened, so that according to NGOs⁶⁶, ECRI⁶⁷ and UNHCR⁶⁸, the present practice, as well as the sections that were suggested, go against the European Convention on Human Rights. The criteria for immigration for humanitarian reasons are stricter than ever in Finland, and are the strictest in the EU; for example, only four asylum seekers were granted refugee status in 2000⁶⁹.

Strict immigration control also potentially concerns labour migrants, in cases when their employment or income status decreases, or when they are found guilty or even only suspected of crime (see Chapter 3).

However, in the proposal for the new Aliens Act, work permit policies have been developed from the premises of labour market needs, and in this reform, the influence of labour market organisations and of the Ministry of Labour have been stronger. In the future, work permit policy could be developed in a special body, in which labour market and labour administration would be represented. The reforms of work permit policy are based on EU legislation and on the dysfunctions that were found in the current act.

Finnish immigration and foreigner policy is carried out through cross-sectoral cooperation; seven ministries are involved. It seems that this situation does not come from any specific plan, but from the fact that the management of immigration and foreigner issues has not been developed as a whole.

The broad-based administration has created some difficulties. According to an evaluation carried out by the Government, the implementation of the 1999 Act on Integration has encountered administrative difficulties because the implementing authorities are so many and the areas of responsibilities are not unambiguous in the Act⁷⁰. The important connection between labour immigration scenarios and integration measures that support the stability of immigrants' labour market status disappears in front of this administrative complexity.⁷¹

In the future, the objective seems to be setting up a labour immigration policy which would be controlled by labour market organisations and by the Ministry of Labour. Currently, local employment agencies are left with too much room for making work permit decisions, and the proposal for the new Aliens Act sketched that national policy would be implemented through regional guidelines, which would give a clear

⁶⁴ This kind of consultation is part of the legislative reform process in Finland, although many NGOs feel that they are often consulted after the actual decisions have already been made.

⁶⁵ United NGOs comments on the proposal for a new Aliens Act, October 2002.

⁶⁶ Ibid.

⁶⁷ European Commission against Racism and Intolerance 2002.

⁶⁸ In Helsingin Sanomat, 16 December 2002.

⁶⁹ Streng 2002.

⁷⁰ Government's report on the implementation of the Integration Act, 2002.

⁷¹ The Ministry of Labour has efficient tools to promote the integration of immigrants on the labour market, but due to inadequate budgeting, these tools are not widely used; therefore, the most efficient measures are used mostly in projects, or targeted at special groups. See the Government's report on the implementation of the Integration Act, 2002. The complexity of the 1991 Aliens Act is another example.

context to local employment agencies where the actual work permit decisions are made. The security aspect remains strong in many respects, and particularly threatens the protection of asylum seekers in the law⁷², but potentially that of labour migrants and their families as well.

Most criticism towards labour immigration has come from the central organisation of Finnish labour unions (SAK), which represents over one million wage earners in Finland. SAK has repeatedly expressed its concern about the entry of cheap foreign labour on the Finnish labour market, since it would be harmful to the objectives, members and member organisations of SAK. In the shipping business, the interests of employers and workers have already conflicted. Mr. Nils Gustaf Palmgren, CEO of one of the main shipping companies, Silja Line, stated in a radio interview in 2001, that

“using cheap [foreign] labour is a way to decrease the level of costs, and therefore it is of course a positive, not a negative thing [...] in this sense, Finnish business life is way behind other Nordic countries.”⁷³

SAK's member organisation Merimiesunioni, representing sailors, has taken action against vessels that use cheap foreign labour several times.

Employers' organisations have clearly stated that their objective is to support balance and consensus in the employment sector⁷⁴, but on the company level, immigrants are already facing a situation where their working conditions and wages are below that of the native population⁷⁵. The situation is difficult for the labour union movement, which has a strong foothold in the Finnish corporative labour market policy.

⁷² Sirva & Åberg from the Finnish Refugee Council and the Finnish Red Cross, in Helsingin sanomat, 23rd of January 2003.

⁷³ Radio Ylen ykkönen 2001.

⁷⁴ Palvelutyöntajat 2002, Teollisuus & työntajat 2002.

⁷⁵ Paananen 1999.

Chapter 3: European legislative proposals

3.1. Current situation of the national legislation: towards a new Aliens Act

The current Aliens Act⁷⁶ came into force in 1991. The act has been amended about 20 times after this, and it is neither comprehensive nor coherent⁷⁷. The Act was completed with the Aliens Decree⁷⁸ in 1994. The implementation of the Act is closely tied to administrative guidelines, which are public documents, but are not easily accessible except by the authorities⁷⁹.

The Government submitted its proposal for a new Aliens Act to the parliament in December 2002, but it was rejected already before voting, following disputes over several human rights issues. The new Act was supposed to come into force in 2004, but since parliamentary elections are due in 2003, the proposal must partly go through a new preparation process which will delay the schedule and will probably affect the contents of the proposal.

The premises in the preparation process have been firstly the problems that have been noticed in the current legislation, and secondly the changes that have taken place in Finland's political and economical international environment. Even though the proposal for the new Act was turned down in the Parliament, it reflected current trends and ambitions in immigration policy and has, therefore, been referred to in this text.

The new Constitution that came into force in 2000 also affected the premises of the proposal for a new Aliens Act. The constitution states that all enactments that affect the judicial status of individuals should be written in Acts. Following this, the new Aliens Act proposal included much more enactments than the present one, since the Aliens Decree and administrative guidelines were added to the Act itself. The proposal was influenced also by EU policy, especially by guidelines from the Amsterdam treaty.

The legislation has not only been affected by changes in the domestic and international judicial context; another important factor has been the growth of foreign population in Finland, and the existing and foreseen imbalances in the employment sector, which call for a closer connection between labour market and immigration policies⁸⁰.

3.2. Admission for economic purposes

3.2.1. Application procedure and criteria for granting the permit

The present national procedure differs from the directive proposal COM(2001) 368 final. According to the Aliens Act and the Aliens Decree, residence permits and work permits are separate, although if the conditions for granting a work permit are

⁷⁶ Act 378/1991.

⁷⁷ Detailed reasons of the proposal for a new Aliens Act, draft version of 21st October 2002

⁷⁸ Decree 142/1994.

⁷⁹ Detailed reasons of the proposal for a new Aliens Act, draft version of 21st October 2002

⁸⁰ Ibid.

fulfilled, a residence permit follows automatically. Residence permits can of course also be applied for independently from work permits. Concerning work permits, there are no time limits such as in the COM(2001) 368 final proposal, but generally these permits are requested from the beginning⁸¹.

For self-employed persons, only a residence permit is required; foreign entrepreneurs do not need a work permit or any other extra permit. When a residence permit is requested for the purpose of self-employment, it is granted provided the employment office considers that the business plan is profitable⁸².

Residence and work permits are applied for by the foreigner him/herself, generally from a Finnish embassy abroad. Since 1995, employers in Finland have been able to get binding work permit decisions for foreign workers in advance⁸³.

EEC nationals may stay in Finland without residence permit for three months⁸⁴, and even longer provided they seek work and have reasonable chances of finding a job. Third-country family members of EEC citizens are treated otherwise equally, but they may need a visa, depending on their nationality. EEC nationals and their family members do not need a work permit in Finland.

After receiving a work permit application, the Finnish embassy contacts the labour administration, which decides whether domestic workforce is available for that specific job within reasonable time. The Ministry of the Interior is also consulted, to check for possible security risks. Finland does not use the kind of skill-selective immigration policy that the USA or Australia use⁸⁵. Currently and probably also in the future, the work permit policy is based on a general evaluation of the domestic labour supply. Selection on the basis of skills has been suggested every now and then in the debate⁸⁶.

In the proposal for a new Aliens Act, the separation between the work permit and the residence permit was terminated, and the two were combined into a worker's residence permit. For self-employed persons, a separate entrepreneur's residence permit was introduced.

Decision-making over work permit applications has been mostly in the hands of local employment offices, which has led to a stricter policy than what was considered to be appropriate⁸⁷. Although the Aliens Act recommends that work permits should be granted at least for one year and for certain line of work, employment agencies have granted permits for shorter periods and for individual jobs. Therefore, the national work permit policy has been eroded by the small policy carried out by employment offices. Permits have for example been granted for jobs that should not require a permit, but also denied without grounds⁸⁸.

⁸¹ Act 378/1991, 2§. In 2000, more than one third of the work permits were granted for seasonal berry picking; since the formal procedure requires a large amount of resources and permits are almost automatically granted, the proposal for a new Aliens Act recommended that seasonal workers and several other groups be exempt from work permits.

⁸² Detailed reasons of the proposal for a new Aliens Act, draft version of 21st October 2002

⁸³ Ibid.

⁸⁴ Act 378/1991, §2.

⁸⁵ Reitz 1998.

⁸⁶ For example by the Ministry of Finance, 13.

⁸⁷ Detailed reasons of the proposal for a new Aliens Act, draft version of 21st October 2002, Sorainen 1999.

⁸⁸ Ibid.

Concerning the length of work permits, legislation does not include clear enactments, but they are written down in separate administrative guidelines, which are difficult to obtain for foreigners and employers⁸⁹. The situation has also been difficult for the authorities in employment offices, since the guidelines have not been clear enough.

The current situation has strained the work permit process needlessly and has decreased the predictability of the system, which makes it difficult firstly for foreign residents who try to plan their life in Finland, and secondly for employers who recruit workers from abroad. The proposal for the new Aliens Act recommended that all the grounds and guidelines of the process be written in the actual law, in order to fulfil the requirements of the present Constitution and to ease the situation of the parties concerned.

3.2.2. Special categories

The Aliens Decree does not require work permits when it is not likely that the application would be rejected; these cases include occupations and jobs which require special or rare expertise, as is the case for senior managers in private companies, special experts, lecturers and performing artists. People who work for a foreign employer in Finland are also exempt from holding a work permit, as well as asylum seekers who have been in Finland (reception centres) for three months⁹⁰.

The proposal for a new Aliens Act did not recommend the creation of a separate permit for these groups, as opposed to the Commission Directive proposal⁹¹; however, different time limits were set in the proposal, after which these groups would have had to apply for a normal worker's residence permit.

Therefore, legislation only has one work permit category, and in several cases, work permits are not required. Generally, in the Finnish legislation, the types of jobs for which the COM(2001) 368 final introduces special categories are exempt from work permit for a certain period, after which workers have to apply for a normal work permit.

The proposal for a new Aliens Act firstly introduced several new categories of worker's residence permits, and secondly, spared seasonal workers, mainly berry pickers, from applying for worker's residence permits. The third major reform was that entrepreneurs' residence permits were introduced for self-employed foreign nationals. Several smaller changes and specifications were also made.⁹²

To sum up, the Commission's Directive proposal COM(2001) 368 final includes more work permit categories than the present national legislation or the rejected proposal for a new Aliens Act. In the preparation process of the proposal for a new Aliens Act, it was considered unnecessary to require worker's residence permits for seasonal

⁸⁹ Ibid.

⁹⁰ §18 of the Aliens Decree 142/1994 states that work permits are not required for self-employed persons, persons who carry out agriculture in a farm that belongs to them, persons in occupations for which the Ministry of Foreign Affairs has granted a residence permit, persons who work in Finnish vessels that mainly do not visit Finnish harbours, persons who work for foreign employers in Finland, persons who temporarily visit Finland as lecturers, teachers, athletes or performing artists (etc.), persons who carry out duties connected to the bilateral or multilateral cooperation of states, persons who take part in international traineeship/other programmes, and persons who have lived in Finland for three months as asylum seekers.

⁹¹ COM (2001) 368 final.

⁹² Government's proposal for a new Aliens Act, January 2003, 79-81 §.

workers; the multiple exemptions have been made in order to save resources and working time in the employment offices that handle applications⁹³.

3.2.3. Limits to the issuance of residence permits on social grounds

National legislation does not mention such limits as those described in §26 of COM(2001) 368 Final. This is probably because the process is designed in such a way that when domestic labour supply is sufficient in certain lines of business, there are no grounds for issuing more work permits⁹⁴. However, this policy is not based on detailed criteria, as recommended by the Directive proposal. In the proposal for a new Aliens Act, the situation remained the same in this respect; the worker's residence permit policy would have depended on negotiations between the labour administration and labour market organisations⁹⁵.

3.2.4. Regularisation practices

No specific legislation related to the regularisation of irregular migrants was found, probably because irregular migration is a very recent phenomenon in Finland. Therefore, it is likely that regularisation takes place in the context of normal work- and residence permit legislation. So far discussions on regularisation practices have taken place, but the actual practices are still to be developed.

The authorities have not systematically observed illegal labour immigration until recently. It can be assumed that the amount of illegal foreign workforce is quite small, and in any case, not comparable to the illegal seasonal labour migration that takes place in some other European countries.

In November 2002, the opposition in the Parliament made an interpellation about illegal workforce in Finland. The Government replied that it would modify the proposal for a new Aliens Act so that the control of foreigners' terms of employment would be stricter. This feature signifies a rejection of illegal labour migrants⁹⁶.

⁹³ Detailed reasons of the proposal for a new Aliens Act, draft version of 21 October 2002

⁹⁴ Aliens Act.

⁹⁵ Government's proposal for a new Aliens Act, January 2003.

⁹⁶ If the Government's proposal had come into force, it would also have concerned the citizens of the EU member states, and would have gone against the EU's objectives to promote labour mobility between the member states. It is not clear why the Government suggested that foreigners in particular should be controlled, as the percentage of foreigners among illegal workers in Finland is minimal. The Government also suggested that there should be a stricter control of the workers who are already registered and legal; this would hardly bring any major result.

3.3. Family reunification

3.3.1. General overview

§18 of the Aliens Act defines the conditions for granting residence permits on grounds of family ties. Generally, family members of Finnish or Nordic citizens are granted residence permits provided several (national security) conditions are met. The livelihood of the foreign person has to be secured.

In §18 of the Aliens Act, family members are defined as generally including the spouse and children under 18 of a person living in Finland. The criteria can be seen as being quite strict. A family member from a third-country may be granted a residence permit if his/her livelihood is secured. In practice this means that the person living in Finland has to earn 1000 euros monthly (net wage), excluding social benefits. Therefore, family reunion is limited when a foreign person living in Finland is receiving welfare benefits.

The Directorate of Immigration (UVI) has the right to control kinship by doing DNA tests if the proof of family link is considered insufficient. According to §18 of the Aliens Act, the foreign person can in some cases be requested to pay for the tests personally, but generally, the state pays for it.

Family members of foreign nationals residing in Finland can be granted residence permits on grounds of strong family ties or unambiguous economic dependency. The decision must take into account the possibility of the person moving to another country "if the family ties as a whole can be seen as centring there."⁹⁷

The duration of residence permits granted on grounds of family reunification is mentioned neither in the Aliens Act, nor in the Aliens Decree. This is one of the problems with the current legislation. In the proposal for a new Aliens Act, it was suggested that family members would receive a status for the same duration as the family member who already lives in Finland.

According to a specialised lawyer, the general rule is that the first residence permit for a family member is granted for one year. The permit can then be renewed for another year, and after this a permanent residence permit can be applied for. Minor family members normally receive a two-year permit as first permit. The processing of residence permit applications can take time up to 6 months. The Aliens Act does not include enactments on the waiting periods.

The working group on the new Aliens Act found several problematic aspects in the current legislation. It includes inconsistent sections which have created awkward and judicially impossible situations in practice⁹⁸.

One of the main reasons for the rejection of the proposal for the new Aliens Act was a dispute that took place in a parliamentary committee concerning the family reunification sections. The moderate right-wing party Kokoomus insisted that family reunification should generally take place in the country where the parents live, in order to avoid situations where foreign nationals send their children to Finland and

⁹⁷ Detailed reasons of the proposal for a new Aliens Act, draft version of 21st October 2002.

⁹⁸ Ibid. The working group was also concerned by the lack of precision of the family reunification sections, and particularly by the fact that this might allow for fake marriages. In the proposal for a new Aliens Act, these regulations were clarified.

then apply for family reunification in Finland. However, the Green League argued that this section could be used also the other way around, by sending foreign children back to unsafe countries⁹⁹.

A foreign citizen who holds a residence permit and is registered as job seeker has the right and obligation to take part in an integration programme. According to the Government's evaluation, integration measures do not reach everyone equally. The situation is particularly difficult for women who are dependent on their husbands or other male relatives. The right to integration measures, therefore, does not always apply to immigrant women. Under-aged foreign citizens have the right and obligation to go to school, and the municipality must arrange special teaching, for example in their native language¹⁰⁰.

3.3.2. Standstill and deadline clauses

Considering the complications in the reform process of the Aliens Act, it is quite difficult to give an evaluation of future developments in relation to the standstill and deadline clauses. However, it is worth stressing that the proposal for a new Aliens Act was rejected because the third largest political group in the Parliament insisted that the Act should contain certain sections¹⁰¹ which most likely would have gone against the international obligations that bind Finland. Therefore, even though Finland's international commitments and the EU judicial context were said to be among the major premises in the preparation of the Aliens Act proposal, it does not seem guaranteed that these principles will show in the actual legislation.

3.4. Long-term residence right

3.4.1. Conditions for granting long-term residence right

The Aliens Act states that permanent residence permits are generally granted to foreigners who have lived in Finland continuously for a period of two years, provided there are no special reasons against this¹⁰². Permanent residence permits will not be granted if the first residence permit (which is always temporary) is granted on grounds of fixed-term residence, e.g. for certain jobs or for studies. When the grounds of residence change from temporary to permanent, a foreigner may receive permanent residence status two years after these new grounds have come into effect¹⁰³.

Therefore, Finnish legislation is more liberal than the COM(2001) 127 final proposal regarding the necessary period of residence before having the possibility to receive a permanent residence permit. There is no mention of guaranteed livelihood as a condition for granting a permanent residence permit, but in order to receive a temporary residence permit, which again is needed in order to obtain a permanent permit, a person needs to hold a work permit, have guaranteed livelihood, a close social relation to a person who lives in Finland, or humanitarian reasons¹⁰⁴.

⁹⁹ The root of the dispute goes back to the criteria for the determination of "safe countries of origin". The Directorate of Immigration has a list of safe countries of origin, which includes several countries where human rights violations have been reported recently, such as Iran and Turkey.

¹⁰⁰ Government's report on the implementation of the Integration Act.

¹⁰¹ Namely, accelerated processing of asylum applications.

¹⁰² Aliens Act, 16§.

¹⁰³ Decree 142/1994, 15§.

¹⁰⁴ Aliens Act, 18§.

In the proposal for a new Aliens Act, the required period of residence before having the possibility to receive permanent residence status was lifted to four years. A very strict addition was also made: a criminal record and even the suspicion of a crime of a certain degree were suggested as possible reasons for rejecting an application. Another ground for rejection was if the foreign person was suspected of two or more crimes of any kind; this actually would have included suspicions of all types of crimes, no matter how small, for example traffic infractions such as speeding¹⁰⁵.

3.4.2. Protection from withdrawal of status and expulsion

Regarding the withdrawal of residence status, the Finnish legislation is quite similar to the Directive proposal COM(2001) 127 final. However, expulsion grounds are more extensive both in the Aliens Act and in the proposal for a new Aliens Act. The fact that the proposal for a new Aliens Act failed to come closer to EU legislation might reflect the control tradition in Finnish immigration policy, as well as the influence of the Ministry of the Interior and of the Directorate of Immigration (UVI).

In the current legislation, no clear distinction is made between temporary and permanent status concerning the grounds for expulsion and withdrawal of status¹⁰⁶. Neither is this difference mentioned in the general arguments of the proposal for a new Aliens Act.¹⁰⁷

Currently, grounds for expulsion include inability to support oneself, which in practice means that the authorities conclude that the person does not have sufficient economic resources for living. There is a clear contradiction between the Aliens Act and the Directive proposal when it comes to the grounds for expulsion. The Aliens Act states that sufficient grounds are either a crime leading to at least one year of imprisonment, or repeated crimes. The problem lies in the absence of definition of what kind of crime the latter condition refers to; court decisions have, therefore, been made on a case-by-case basis, even though, according to the Aliens Act working group, the crimes that have been used as grounds for expulsion have been mostly aggravated assault and drug cases¹⁰⁸.

However, a crime sentence is a reason for expulsion, most likely in the case of foreign nationals holding a permanent residence permit. In the proposal for a new Aliens Act, the grounds for expulsion because of crime were extended even further¹⁰⁹, which contradicted the statement, made in the same document, according to which one of the premises of the reform was to take the EU legislative context and guidelines into account. The working group also suggested that "reasonable suspicion of a person's capacity to threaten national security or Finland's relations with third countries" would be a ground for expulsion. If no judicial proof had been required in these cases, the protection of foreigners in the law would have been at stake.

¹⁰⁵ Government's proposal for a new Aliens Act, January 2003, 56§.

¹⁰⁶ At this point, the author would like to emphasise the fact that since judicial practice is not only based on the Aliens Act and the Aliens Decree, but also on many administrative guidelines which are difficult to find, this presentation may repeat the gaps that appear in the outspoken legislation. Therefore, the problems that foreigners and employers face in recruitment situations because of the gaps in the legislation are also partly encountered in research.

¹⁰⁷ Detailed reasons of the proposal for a new Aliens Act, draft version of 21st October 2002.

¹⁰⁸ Ibid.

¹⁰⁹ Government's proposal for a new Aliens Act, 149§.

3.4.3. Equal treatment with nationals

The section on basic rights in the Constitution¹¹⁰ was reformed in 1995¹¹¹. The most relevant reform was that the effect of this basic rights section was extended to cover all the people living even on a temporary basis in the Finnish jurisdiction area, and not only Finnish citizens as was the case previously. The section includes, for example, prohibition from ethnic discrimination¹¹², and extends freedom rights. The parts 1a-1i of the Directive proposal COM(2001) 127 final are secured equally for foreigners and nationals.

The Integration Act of 1999 basically secures the same level of unemployment compensation for foreigners and nationals. In short, when it comes to the position of immigrants and foreigners in the welfare state, they have the right to adequate services, but in practice, there are some continuous structural problems, for example in the implementation of the Integration Act¹¹³. Therefore, the supply and demand of (legally secured) social and welfare services do not go hand in hand in the case of foreigners, immigrants and ethnic minorities.

3.4.4. Mobility and residence of third-country nationals in the EU

No legislation concerning this issue was found. We have to refer to footnote number 108 and the gaps in the legislative documents that are realistically available.

¹¹⁰ Act 94/1919.

¹¹¹ Act 969/1995.

¹¹² Which is also present in several other acts that concern working life etc.

¹¹³ Government's report on the implementation of the Integration Act.

Chapter 4: Recommendations and open method of co-ordination

The meeting of 6th of February

In February 2003, SITRA organised a group discussion about labour immigration with participants from employers' organisations and the labour union SAK, the Ministry of the Interior, the Ministry of Labour, the Ministry of Foreign Affairs, research institutes and NGOs. The session did not give much new information regarding the positions that the parties hold in the debate, however, several interesting details came up.

The Ombudsman for Minorities was also present. Whereas the labour market parties and the ministries focused on their own interests and saw the whole process from a narrow point of view, the Ombudsman had a clear picture of the process as a whole.

A question of perspective

The Ombudsman stressed the same premise that has been used in this paper, namely that an “active immigration policy” does not include only work permit policy, but that it is formed by immigration and integration policies together. The Ombudsman called attention to the fact that in the 1950's, many European countries launched labour immigration policies without any coherent idea about how to take care of the social integration of immigrants and their family. According to him, the idea seems to have been that if one entered the country with a worker status, he should leave the country when his employment situation gets worse. The Ombudsman argued that the grounds for residence often change as the period of residence gets longer and social networks develop. Therefore, the Ombudsman concluded that active immigration policy has to include both immigration and integration policies in order to be efficient and humane.

This speech by the Ombudsman for Minorities gave a judicial aspect to the processes that have been observed socially and economically by Pierson and Sassen¹¹⁴. Our first policy suggestion is that labour immigration should be seen as a wide-range social process, not only from the perspective of a certain administrative sector or a labour market interest group. The legal, social and economical viewpoints support the premise that an active and coherent immigration policy has two components, namely the actual immigration policy (work permits etc), and the integration policy.

Secondly, it is important that the current Aliens Act and the related legislation be replaced with a new one. The basic problem of the current legislation is that the sections leave too much room for interpretation and for the kind of “small policy” that has been described in the first chapter. This was suggested to the representative of the Directorate of Immigration in the meeting, who at first rejected the concept, but was ready to admit that since the guidelines are not precise, the authorities are left with no other choice than to carry out “small policy”.

Because of the gaps and lack of precise formulations, policy-making is partly left to authorities whose duty is not to make the policy, but to carry it out. The situation is not good for immigrants, for employers, nor for the authorities. The authorities need specific guidelines in order to carry out a policy that is coherent and flexible, social and efficient at the same time. This would be for the good of all parties involved.

¹¹⁴ Pierson 1998, Sassen 1999.

Otherwise, Finland seems to have a collection of policy fractions instead of one coherent official immigration policy.

However, the structural problems in the legislation are not the only problem. The most important thing regarding the new Aliens Act is that the human rights factor should have a proper foothold. It is not exaggeration to say that human rights arguments have partly been overrun by other arguments, such as national security and public economy. Labour immigrants and humanitarian immigrants often stand in front of each other in the debate, and unfortunately this also shows in administrative practices and legislative reforms. It would also be important to support the inclusion of immigrants in the process of drafting administration, in order to widen the discourse.

The European dimension and the proposed Open Method of Coordination

According to an academic evaluation¹¹⁵ of the Open Method of Coordination as applied in the European Employment Strategy, the method has reached its goal when it comes to flexibility; however, some problems have occurred. These problems include, firstly, the narrow scope (employment sector only) for which, of course, the Method as such is not to blame. The second issue is the relationship between European goals and local circumstances, and this issue is more relevant in this report.

There are differences in applying the Method to employment policy, as opposed to immigration policy. Employment policies can be seen as being in close contact with the local (social) circumstances of each member state, whereas immigration policies link these countries.

From this point of view, it would probably be in the interest of all parties to add coordination via the Open Method of Coordination. On the other hand, according to Janine Goetschy¹¹⁶, national governments have taken advantage of the freedom given by the open method, by presenting their results and plans in a way that gives a positive picture of their policies.

Since immigration policy usually strongly affects the judicial position and rights of migrants, the Open Method should be backed up with the Community method (e.g. Directives) at least when it comes to the basic rights and human rights of immigrants. In other words, it could be a good model to secure a minimum level of individual rights for immigrants by setting strict normative standards at the European level, but to coordinate other aspects with the Open Method.

The problem in linking immigration policy to the employment strategy is that in the Finnish case, the link between migration and labour policy-making is already pushing the social aspects and necessities into the background. It seems to be quite obvious that the Open Method has a potential also for immigration policy, but if it leads to a situation where immigration policy is linked more to the European employment strategy and less to national social aspects, governments may be encouraged to develop incoherent and short-sighted immigration policies.

It is a many-fold question, but to sum up, one could state that governments – especially the Finnish government – should be encouraged to develop the link between immigration and integration policy. If this could be done by expanding the

¹¹⁵ Mayes & Berghman & Salais 2001, and Littlewood et al. 1999.

¹¹⁶ Ahonen 2002, 48; Goetschy 2001.

Open Method of Coordination to include immigration policy, it would probably be a good start.

The lack of European social policy is probably the most worrying aspect in this respect – after all, integration policy is most of all a part of social policy, and as social policy in Europe is still national, it is useful to think about how the Open Method could be used as a tool for combining employment policy and immigration policy at the European level.

In short, immigration policy should not be tied to employment strategies without strongly emphasising the important link that should be made with the development of an integration policy. The latter is a part of social policy, which again seems to remain in the hands of the member states, at least in the near future. However, if using the Open Method can encourage this link, it is an idea that should be supported.

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The Finnish League for Human Rights is a politically and religiously uncommitted general NGO for human rights. The main purpose is to monitor and develop the human rights situation in Finland. The League is dedicated to increasing public awareness of human rights and opposing human rights violations in Finland and abroad.

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