

Slovenia

REPORT
on the Free Movement of Workers
in Slovenia in 2004

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Introductory remarks

1. After the dissolution of the former Yugoslavia and the Republic of Slovenia becoming the independent state a lot of citizens of other Yugoslav republics (workers, displaced persons) remained in Slovenia. Due to numerous different problems related to that situation the immigration of the workers from other republics of the former Yugoslavia was the core issue of our migration policy for some years. A relatively restrictive legislation on aliens and the employment and work of aliens has been adopted at that time. It has been amended and partly harmonized with EC law. Still it has to be liberalised on one hand and to be aligned with the latest EC directives. The attention shall be drawn to the legislation which has been put into drafting procedure after the May 2004 (e.g. Amendments of the Aliens Act) or to the Regulations already adopted after the said period.

2. One of characteristics in the field which is the object of this report is that up till now our activities were oriented towards legal regulation and harmonisation with the EC law. Up till now no conflicts appeared in the implementation of the legislation in force. For this reason the report shall be limited to the outline of current legislation and no case-law shall be mentioned.

3. As regards the bibliography mentioned under the respective chapters, it has to be mentioned that it is mainly informative. It contains either the information and/or description of the EC law that has to be taken into consideration when drafting the Slovenian legislation. It does not deal with legal problems in practice as we do not have any case-law in this regard.

As regards the Commission's comments on the Slovenian report:

Referring to the documents containing comments on our national report I would like to add the following:

1. The access to posts in the public sector

The Slovenian nationality is required only for the posts in which public authority is exercised (judges, public prosecutors, policemen etc.) As regards all other so-called technical employees, who perform administrative and other similar jobs – according to the Public servants Act they are included into the category of public servants – the said act does not provide for Slovenian nationality.

2. Equality of Treatment (Chapter II):

As already indicated under Chapter VII (EU Enlargement), in the transitional period the free access to the Slovenian labour market (equality of treatment with the Slovenian nationals) applies as a rule (the abovementioned public servants excluded) to the citizens of the EU-10 Member States and Ireland, Sweden and UK. ES Regulations are directly applicable for them.

The information on sport activities was not given due to different reasons. Firstly, the Sport Act (1998) defines the professional sportspersons in a very unclear, even confusing way.

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According to the definition of a “sportsperson” this term covers two categories: the sportspersons and the so-called top sportspersons. The status of the “sportspersons” can be given to those active sportspersons who are 15 years old, are members of a national sport organisation and have a temporary or permanent residence permit. The name “top sportsperson” can be given to the Slovenian national who has special results on the international level. Secondly, professional sportspersons in collective sports perform their job on the basis of civil law contracts (as independent entrepreneurs or sole traders) and not on the basis of employment contracts. Those involved in individual sports, are often employed in the Ministry of interior or the Ministry of defence. To become a top sportsperson some foreign citizens were given the Slovenian nationality.

According to my information sport organisations do not provide a quota system.

Chapter I

Entry, Residence, Departure and Remedies

Entry

Texts in force

The conditions for and methods of the entry into, departure from and residence of aliens in the Republic of Slovenia are stipulated by the Aliens Act (Ur.l.RS, no.61/1999, 87/2002, 108/2002 – officially revised text). In the framework of the amendments in 2002 a new Article 100 (included in: Transitional and final provisions) has been adopted. It contains special provisions applying to citizens of the EU Member States. It is laid down that on the day the Republic of Slovenia enters the EU as a full member, the provisions of the Aliens Act shall cease to apply to citizens of EU Member States, unless they are more favourable for them. In addition to this provision of principle it is provided for that on the same day the Republic of Slovenia shall commence the enforcement of all EU regulations governing the free movement, entry and residence of citizens of EU Member States in the Republic of Slovenia (article 100/2). Citizens of EU Member States shall be guaranteed the right to free entry and residence in the Republic of Slovenia (Article 100/3)

We are dealing with a special legal situation. As numerous directives concerning the freedom of movement and residence within the Community (Directives: 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EE, 93/96/EEC) have not been transposed into the Aliens Act and/or the Slovenian legal system till 2002 (there are no explicit provisions concerning the entry of citizens of EU Member States into Republic of Slovenia), it has been decided to make them the constituent part of the Aliens Act by referring to »all EU regulations governing the free movement, entry and residence« (Article 100/2). The chosen manner of »transposing« the EC law into our legal order enables us to implement directives directly and fully. The system shall remain in force till the adoption of new amendments pursuant to Aliens Act but no later than till 30 April 2006.

In accordance with the above mentioned provisions citizens of EU Member States are guaranteed the right to free entry in the Republic of Slovenia. They must be in possession of a valid passport and/or in accordance with international agreements, the identity card.

Residence

Texts in force

According to Article 100/3 of the above mentioned Aliens Act citizens of the EU Member States enjoy the right of residence in the Republic of Slovenia. There are no special provisions regarding the residence permits of the citizens of the EU member States (and persons equalised to EU citizens). As already indicated the relevant EC directives are directly applied. In practice, residence permits issued to the citizens of the EU Member States who wish to stay in the Republic of Slovenia for a period that exceeds three months are named residence permits of the citizens of the EU Member States.

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According to Article 100/4 of the Aliens Act citizens of the EU Member States who do not have sufficient funds to support themselves or to pay for health insurance covering all risks, shall have the right to residence if they can provide the competent authority with:

- a statement from their employer relating to their employment or a confirmation on employment relationship, or
- proof that they are performing an independent gainful activity, or
- proof that in the six month period after entering the country they have good prospects of commencing the performance of an independent gainful activity, or
- proof that as an immediate family member of a citizen on an EU Member State, they will be provided with sufficient funds to support themselves.

Residence in the Republic of Slovenia may only be refused to citizens of the EU Member States if they pose an actual threat to public order and peace, or to national security, or if they represent a financial burden on the state (e.g. the entitlement to social assistance).

Draft legislation

Amendments to the Aliens Act are being drafted.¹ The proposed text is expected to enter the legislative process very soon. According to the amending act a new chapter under the title »Entry and Residence of the citizens of the EU Member States, their family members and the family members of the citizens of the Republic of Slovenia« is to be included into the Aliens Act. The purpose of the amendments is to align the Aliens Act with the EU legal order and especially with the following Directives: 2001/40/EC, 2001/52/EC, 2002/90/EC, 2003/86/EC, 2003/109/EC, 2003/110/EC and 2004/38/EC and to replace the up to the present direct applicability of the EU legal system by the substantial regulation concerning entry and residence of the citizens of the EU Member States, their family members and family members of the Slovenian citizens to the territory of Slovenia. The said categories of persons shall be allowed to *enter* the Republic of Slovenia on the production of an identity card or passport, which means that irrespective of the reason of the entry no visas or resident permits shall be required.

If citizens of the EU Member States will wish to *reside* on the territory of the Republic of Slovenia for a period longer than three months they shall be issued the *registration certificate* instead of the present residence permit. The amending act also lays down: 1. reasons for the issue of the registration certificate (employment or work, self-employment, performance of services, studies or other forms of schooling, other reasons); 2. conditions for the EU citizen to obtain a permanent residence card; 3. entry and the issue of temporary and/or permanent residence card for family members of a citizen of other Member State as well as family members of the Slovene citizen, who are not nationals of a Member State; 4. definition of a family member; 5. entry and residence of the third countries nationals for the purpose of the family reunification; 6. issue of permanent residence card to the third countries nationals; 7. entry of pupils and secondary school students due to school excursions etc.

¹ The amendments to the Aliens Act have been adopted in October 2005 (Ur.l. RS, no.93/2005), which is outside the reference period. The report shall in continuation refer to the text of the Aliens Act which has been in force in 2004.

Miscellaneous

The field of residence of nationals of EU member state is in great importance. National of a member state will be through the fact of residence entitled to many advantages, benefits, measures etc. Therefore it has to be said that Slovenian legislation does not provide any special rules on the acquisition or loss of Slovenian nationality by EU nationals.

Departure

Texts in force

According to the Aliens Act aliens leave the Republic of Slovenia freely in accordance with the law. They shall not be allowed to leave the country if criminal proceedings, violation proceedings or other proceedings have been initiated against them, for which their presence is necessary and if so requested by the authority conducting the proceedings. (Article 12) Special provisions applying to citizens of the EU Member States (Article 100 of the amended Aliens Act) do not contain any explicit provision on the departure and the EU law governing the free movement, entry and residence of the citizens of the EU member states is directly applied. For the purpose of leaving the country citizens of the EU Member States must be in possession of a valid passport or identity card.

It is laid down by Article 100 of the amended Aliens Act that residence in the Republic of Slovenia may only be refused to citizens of the EU Member States if: 1. they pose an actual threat to public order and peace, or to national security, or 2. they represent a financial burden on the state.

Draft legislation

In addition to what has already been reported under Residence, the following has to be pointed out.

In the proposed amendments to the Aliens Act provisions on the entry of EU citizens into the Republic of Slovenia there is an explicit provision according to which the EU citizen who has a valid identity card or passport shall be free to leave the country.

It is proposed that the chapter on entry and residence of the citizens of the EU Member States, their family members and family members of the citizens of the Republic of Slovenia would also contain more detailed provisions concerning the annulment of residence of the EU citizen and a family member and on their deportation from the country.

The Directive 2001/40/EC is also supposed to be transposed into Slovenian legal system by the said amendments. According to legislation in force the police are not allowed to deport the EU citizen from the country on the basis of the sentence of expulsion passed by the competent authority of another EU Member State. And the proposal is made to regulate a help to other EU Member State, which is deporting an alien by airway (Directive 2003/110/EC).

Chapter II Equality of Treatment

Texts in force

The Constitution of the Republic of Slovenia (Ur.l.RS/I, 33/1991, 47/97, 66/2000, 24/2003, 69/2004) guarantees to each individual equal human rights and fundamental freedoms irrespective of national origin, ...or any other personal circumstance (Article 14). General prohibition of discrimination in employment also derives from the constitutional provision on the freedom of work (Article 49), which provides that »there shall be no unjust discrimination in work opportunities available to each person«.

According to the 2002 amendments to the Employment and unemployment Insurance Act (Ur.l.RS, št. 5)1991, 65/2000, 67/2002) citizens of the EU Member States are equal to the Slovenian citizens as regards rights and duties, laid down by the act.

The new Employment Relationships Act, adopted in 2001, which became effective on 1 January 2003, laid down that »employers may not place a job seeker or a worker in an unequal position on the basis of ...national and social origin, ...or any other personal circumstance« (Article 6). According to its' provisions direct and indirect discrimination on different grounds, nationality included, is forbidden. It is also provided that national and social origin is not a valid reason for the termination of employment relationship at the initiative of the employer (Article 89).

In order to implement the Directive 2000/78/EC the Act concerning the Exercise of the Principle of Equal Treatment has been adopted in May 2004 (Ur.l.RS, št. 50/2004). It determines common bases and premises for ensuring the equal treatment of all persons in performing their rights and duties and their basic freedoms in every field of social life, especially in the field of employment relationships, freedom of association, education, social security, access to and supply of goods and services. This shall be "available irrespective of personal circumstances such as nationality,....or other personal circumstances" (Article 1).

It is possible to penalise an employer for discrimination in employment. Article 141 of the Penal Code of 1994 makes it a criminal offence to deprive anyone – for reasons connected with nationality, ...or any other circumstance – of any of the human rights or fundamental freedoms recognised by the international community or laid down by the Constitution or by a statute, to restrict those rights or freedoms or to grant a right or a specific advantage for such discriminatory reasons. In pursuance of Article 206/1 of the Penal Code, the infringement of the right of free access to employment on the basis of equal conditions is an offence. Both offences are punishable by a fine or by a maximum of one year's imprisonment.

It has to be mentioned that the Republic of Slovenia is a contracting party to all the most important international instruments (UN, ILO, Council of Europe) concerning the prohibition of discrimination on different grounds. Due to the monistic system are the ratified international treaties are in principle directly applicable in our internal legal system.

Lawyers Act (Ur.l.RS, št. 18/19993, 24/1996) has been amended in 2001 (Ur.l.RS, št. 24/2001). The new Article 2a provides:

“A foreign lawyer who has acquired the right to practise law in his home country may, under conditions determined by this Act, carry out the following in the Republic of Slovenia:
- the services of a lawyer,

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- the practice of law under the professional title of his home country,
- the practice of law under the title of 'lawyer'.

Home country shall mean that country in which the lawyer has the right to practise law under a professional title acquired in accordance with the regulations of that country.

A lawyer from another EU Member State shall, according to this Act, be a lawyer who has the right to practise law in any EU Member State under a professional title acquired in accordance with the regulations of that country”.

See also the report under Chapter X.

As far as a nationality condition for captains of ships is concerned, there is no such condition stipulated in slovenian legislation. The same apply for pilots.

Miscellaneous

According to the Elementary Schools Act (Ur.l.RS, št. 12/1996, 33/1997, 59/2001) children of migrant workers are subject to compulsory primary education on the same basis as Slovenian children. The children of aliens with the permanent residence in Slovenia also have access to secondary and university education. All foreign children registered in primary and secondary schools receive special teaching in the Slovenian language.

As the language of the receiving country is vital factor for the integration of migrant workers and for equality of treatment it might be interesting to point out, that University of Ljubljana organises each year a course called »Slovenian for foreigners« which is attended by an average of 400 aliens a year.

Children of foreign workers lawfully residing within Slovenian territory may receive additional optional teaching of their mother tongue in the primary and secondary schools. As an example lessons in Hungarian can be mentioned.

Literature

Tanja Jesenko, Prvi steber Evropske unije: prosto gibanje delavcev znotraj evropske skupnosti v kontekstu prostega gibanja oseb, *Pravna praksa*, let. 17, št. 10, 1998, str. 20-26.

Rajko Knez, Prosto gibanje delavcev, *EVRO Pravna praksa*, 4/2003, str. 19-22.

Peter Grilc, Pravo Evropske skupnosti, *Pravna obzorja* 17, CZ, Ljubljana 2001, str.146-147, 449-454, 462-469.

Chapter III

Employment in the Public Sector

Texts in force

Civil Servants Act (2002) does not require nationality of the Republic of Slovenia for the employment as civil servant. The same is also true for the inspection.

The nationality is, for example, still required for the functions with the courts, the public prosecutor's office, the attorney general's office, the police, the defence, the customs service etc.

According to the Health Services Act (Uradni list RS, št. 23/2005 –officially revised text) health services may be performed with permission of the Ministry of Health by national and foreign legal entities and physical persons provided that they fulfil the conditions laid down by this act. (see also report under Chapter X)

Miscellaneous

According to the information given by the Bar Association of Republic of Slovenia there are 6 lawyers that have been entered in to the register of foreign lawyers permitted to practise law in our country under the professional title of their home country. In addition 2 lawyers have been entered in to the register of foreign lawyers who may carry out individual services within the framework of the practice of law and have notified to the Bar Association their intention to carry out individual services in our country.

Literature

Konrad Plauštajner, Slovenski odvetniki in Evropska unija, *Evropsko pravo in praksa* 3/2004, str. 13-18

Hinko Jenull, Približevanje slovenskega odvetništva Evropi, *Odvetnik* 11/2001, str.17-18

Chapter IV Family Members

Texts in force

There are no explicit provisions concerning administrative formalities for third country national family members of EU migrants in the Aliens Act in force (Article 100). That means that for them Aliens Act as such is applicable.

Draft legislation

The above indicated gap in the law is supposed to be filled by the amendments to the Aliens Act (mentioned already in Chapter I, B., b)). In relation to the draft text which is accessible for the time being, the following can be resumed:

The *definition of family members* of EU citizen and of the Slovene citizen shall be incorporated in the Act. For the purpose of this Act family members shall mean: 1. the spouse, 2. unmarried children under the age of 21, 3. unmarried spouse's children under the age of 21, 4. unmarried children above the age of 21 and parents who have the right to be maintained by the EU citizen or the Slovene citizen according to the law of his country, 5. unmarried children above the age of 21 and the spouse's parents who have the right to be maintained by the EU citizen or the Slovene citizen according to the law of his country, 6. parents of the EU citizen and the Slovene citizen who is under the age of 21. A competent body shall have discretion to recognize a status of a family member also to other relative, if this would be in favour of a unification of a family.

The definition of family member is still incorporated just into the drafting text, but inclusion of "unmarried" as a requirement in adopted Act might not be in compliance with Article 10(1) of the Regulation 1612/68 and its doctrinal understanding.

Family members, having the nationality of a Member State, shall have the right to enter the territory of Republic of Slovenia with a valid identity card or passport. No entry permit shall be needed. Family member, who is not a national of the EU Member State, shall for the purpose of the unification of the family have the right to enter the territory of the Republic of Slovenia with a valid passport (with the entry visa if not differently agreed with the respective State) or with a valid passport and the residence permit.

The draft text provides for that a family member shall be refused the entry on the following grounds: 1. if he/she is not in possession of a required personal document and/or permit, 2. if the period for which the prohibition of entry was passed has not yet expired, 3. if his/her staying in the Republic of Slovenia would pose a threat to public order, security or international relations of Slovenia or if there is a suspicion that his/her residence in z country is associated with the carrying out of terrorist or other violent activities, illegal intelligence activities, drug trafficking or carrying-out of other criminal activities, 4. if he/she comes from the territories with the infectious diseases and has no certificate of being vaccinated.

Family member shall have the right to stay in Slovenia for the period of up to three months without a residence permit. If family member is not a national of an EU Member State and wishes to stay in the country for more than three months he/she will have to apply for the *temporary residence permit*. Conditions under which the permit may be issued, provided for in the draft law, are the following: 1. that he/she is a family member of a EU citizen who is residing and/or intends to reside in Slovenia and has registered the residence in

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the Republic of Slovenia, 2. has a valid identity card or passport, 3. has sufficient resources which are higher than the level that is the limit to become entitled to a social assistance, 4. has a corresponding sickness assurance, 5. has legally entered the territory of the Republic of Slovenia, 6. there are no reasons, that are provided for by the law, to reject the issue the residence permit. The temporary residence permit shall be issued for the period of five years and its validity may be extended.

The proposed amendments to the Aliens Act cover also conditions for the retention of the right of the temporary residence by a family member in the event of death of the EU citizen or the Slovene citizen with whom he/she has resided in Slovenia for at least one year (sufficient resources and the corresponding sickness insurance) and in the event of divorce or annulment of marriage.

It is proposed that family member, not a national of a Member State, who has legally resided in Slovenia for a continuous period of five year, shall be entitled to a *permanent residence permit*. Special provisions are proposed relating to the issue of the permanent residence permit to a family member of the EU national and the Slovene national before the expiration of the period of five years.

The proposal contains also provisions on the annulment of the temporary and permanent residence permit of a family member and on the termination of its validity.

Chapter V
Influence of Recent Judgements of the Court of Justice

Nothing to report.

Chapter VI

Policies of a General Nature with Possible Repercussions on the Free Movement of Union Citizens

Texts in force

It is provided for by the *Employment and Work of Aliens Act* (Ur.l.RS, št. 66/2000) that the Government shall, in accordance with its migration policy and taking into account the conditions and fluctuations of the labour market, annually determine the quota of work permits through which the number of aliens on the labour market is restricted. The quota is an instrument which enables the Government to intervene in due time in the case of disturbances on the labour market. The above mentioned Act explicitly provides that the quota shall not include aliens who, on the basis of an agreement with the EU, have been granted equality with the citizens of the Republic of Slovenia, nor shall it include aliens for whom the Act does not prescribe that they must obtain a work permit, aliens in possession of the so-called personal work permit or managers. The quota are divided into groups of work permits for the following purposes: employment of aliens in the Republic of Slovenia, aliens posted to the Republic of Slovenia, training and advanced training, seasonal work, individual services provided by aliens. According to the statute provisions the quota shall be divided in three priorities (valid work permits, work permits issued on the basis of international agreements which already include agreed-upon quotas, new work permits). The categories of aliens that shall enjoy priority in issuing of new work permits are also quoted by the Act.

In November 2002 the *Resolution on Migration Policy of the Republic of Slovenia* has been adopted by the Parliament (Ur.l.RS, št. 106/2002). As regards the principles of the Slovene migration policy, the Resolution also pointed out “the principle of the long-term macroeconomic advantage of the relatively free migration”, which allows defining criteria for the controlled access of aliens to the Slovenian labour market, taking into consideration, among others, the approaching to the EU internal market.

Chapter VII EU Enlargement

The present situation

1. Politicians as well as people of the Republic of Slovenia accepted the transitional provisions lay down in the Treaty on the Accession and limiting the free movement of workers with a disappointment and great regret, understanding them also as an unfounded discrimination. In political and everyday discussions it was pointed out that there should be no fear that the Slovene workers intend to emigrate in great numbers to the EU Member States. It was argued that it is not in the people's nature to be eager to leave the homeland and that; on the other hand, the economic situation could not be the reason for the mass movements of the Slovenian citizens.

The state representatives try, on the bilateral level, to convince other EU Member States to give up the eventual intention to apply the measures limiting the free movement until the end of the seven years period.

2. In accordance with the Treaty on the Accession (transitional provisions) and due to the application of the principle of reciprocity during the transitional period *three different regimes of the employment of aliens* began to apply on the day the Republic of Slovenia entered the EU as a full member:

1. the employment of the citizens of those EU-15 /EEA Member States which do not allow the free access to their labour market; they need a *work permit* to be employed on the territory of the Republic of Slovenia;
2. the employment of the citizens of the EU-10 Member States and Ireland, Sweden and UK, in which the free access to the labour market has been introduced; they are equal to the Slovene nationals, they do not need a work permit, but they have to be *registered* by the Employment Service of the Republic of Slovenia;
3. the employment the third countries' nationals; they need a work permit.

As regards the third countries' nationals they may be employed in the Republic of Slovenia under conditions laid down by the Employment and Work of Aliens Act, 2000. The said Act provides for quota of work permits, fixed each year by the Government. In accordance with the Act the Government adopted in 2004 and 2005 Regulation fixing quotas of work permits limiting the number of aliens in the labour market (Ur.l.RS, št.33/2004; Ur.l. RS, št. 31/2005).

In relation to the above, it can be summarised that the citizens of the Republic of Slovenia, the citizens of the EU-10 Member States and the citizens of Ireland, Sweden and UK enjoy priority in employment. Other citizens of the EU-15 Member States enjoy priority in employment in comparison to the third countries' nationals.

As regards the *citizens of the EU-15 Member States* (with the exception of Ireland, Sweden and UK) and their position during the transitional period, the following has to be added.

The free access to the Slovenian labour market applies for them under the following two conditions: 1. that on the day the Republic of Slovenia entered the EU as a full member they were in the possession of a work permit valid for a period of at least one year, or 2. that work

permit, valid for a period of at least of one year, has been issued to them later on. They have to be registered with the Employment Service by their employer.

The free access to the labour market also applies to *family members of the citizens of the EU Member States*, to whom the free access to the Slovene labour market applies, who, on the day of the entrance to the EU, were legal residents of the Republic of Slovenia. To those, who received the residence permit later on, the free access to the labour market applies after the 18 months of legal residence in the Republic of Slovenia.

As regards the employment of the *citizens of the EU-10 Member States, of Ireland, Sweden and UK and aliens equal to them* free movement of persons applies to them. They do not need work permits, but they need the registration certificate issued by the Employment Service.

The third countries' nationals need work permits to be employed on the territory of the Republic of Slovenia.

3. In order to understand the statistics under the chapter VIII better it might be useful to point out that the Employment and Work of Aliens Act in force differs three kinds of the above mentioned *work permits*: so called personal work permit, a permit for employment and a permit for work.

A *personal work permit* is issued for a limited (in that case it is renewable) or indefinite period of time by the Employment Service. During its period of validity, it provides the alien with free access to the labour market. An alien who obtains it may be employed by any employer, or may become self-employed person. Aliens who are in possession of a personal work permit and who are job-seekers enjoy equal status with citizens of the Republic of Slovenia, and may enter in the register of unemployed persons. An application for a personal work permit valid for one year may be submitted by a refugee and an alien fulfilling the legally prescribed conditions for self-employment. An application for a personal work permit valid for a period of three years may be submitted inter alia: 1. by a Slovenian citizen's immediate family member who has been in possession of a valid permit for temporary residence for at least 3 years if, prior to submitting an application, he resided in the Republic of Slovenia on the basis of a permit for temporary residence, 2. a person, who is an immediate family member of an alien who is in possession of a personal work permit valid for an indefinite period of time, and who has been in possession of a permit for temporary residence for at least three years, if he resided in the Republic of Slovenia for at least 3 years, 3. an alien who has been employed in the Republic of Slovenia uninterruptedly by the same employer for five years and who has not committed an offence, 4. a self-employed alien, who has been self-employed in the Republic of Slovenia uninterruptedly for three years. A personal work permit for an indefinite period of time may be issued to an alien in possession of a permit for permanent residence in the Republic of Slovenia.

A *permit for employment* is a form of work permit linked to the permanent employment needs of an employer. An alien in possession of this type of work permit may be employed by an employer that has submitted an application for such a work permit but is not permitted to provide service for another employer.

A permit for employment may only be issued on the basis of an application submitted by an employer if the following conditions are fulfilled: 1. the employer fulfils the prescribed conditions, 2 the quota applying to this form of employment has not been filled, 3. the alien's employment has no negative effects on the labour market, 4. an alien has not committed an offence in accordance with the Act. The permit for employment is, as a rule, issued on the

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condition that there are no domestic job-seekers or people, who, with regard to employment rights, enjoy equal status with citizens of the Republic of Slovenia entered in the records of the Employment Service. The permit is issued for up to one year and is renewable.

Immediate family members of Slovenian citizens or of aliens in possession of a work permit are issued with a permit for employment for a period of validity of their permits for residence.

A *permit for work* is the third type of work permit on the basis of which an alien may be employed or may work in the Republic of Slovenia in accordance with the purpose for which the permit was issued. It can relate to: work performed by posted alien workers, training and advanced training of aliens, seasonal work of aliens, work performed by alien managers, individual services provided by aliens. The permit is issued within the quota determined for individual purpose. It may be renewed only in exceptional cases.

4. As regards the above mentioned registration certificates it might be useful to repeat that citizens of the EU Member States, citizens equal to the EU citizens and their family members, to whom the right to free movement applies, do not need work permits. They only have to be registered with the Employment Service of the Republic of Slovenia.

No condition on the side of workers has to be fulfilled. The register has been introduced to simply record aliens working on the Slovenian territory. It enabled us to assess the situation on the labour market and to collect better statistics.

According to new Regulation from April 2004 (Ur.l.RS, at. 45/2004) the Employment Service keeps three different registers: register of employments, register of works performed on the basis of civil law contracts and register of posted workers, providing services on the territory of the Republic of Slovenia. 3,941 registration certificates have been issued in the period between 1st May and 31st December 2004.

5. According to the Treaty on Accession the provision of services among the EU Member States is free. Germany and Austria are the only two exceptions. As long as they apply the national legislation relating to the freedom of movement of workers they are also limiting certain services provided by the Slovenian posted workers to Germany or to Austria. In this case Slovenia does not apply the principle of reciprocity.

According to the Employment and Work of Aliens Act citizens of the EU and EEA Member States do not need work permits for the provision of services on the territory of the Republic of Slovenia. The customer of their services is obliged to register their work.

Self-employed EU citizens are exempted from the quota system as any other EU worker and work permit obligation as well.

Miscellaneous

1. In order to deepen the economic cooperation between the former Yugoslavia and the EEC Member States, Agreement on cooperation between SFRY and EEC has been signed in 1980. The Agreement was mostly consecrated to economic and commercial cooperation between the two parties. Nevertheless, it contained some provisions concerning employment of workers. According to Article 44 the discrimination on the ground of Yugoslav nationality *in employment* (working conditions, wages) in the Member States was forbidden. The same regime was laid down for workers, citizens of the EEC Member States, employed on the territory of SFRY.

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As Yugoslavia was a party to several bilateral agreement on temporary employment of the Yugoslav citizens abroad, which contained the same provision on non-discrimination in employment as the above mentioned Agreement with the EEC, the Agreement represented a step forward only in the case of the employment of Yugoslav workers in the countries which did not signed a bilateral agreement with Yugoslavia.

2. In June 1996 Europe Agreement establishing an Association between the European Communities and their Member States, acting within the framework of the European Union, of the one part, and the Republic of Slovenia, of the other part, has been signed. Under the Title IV "Movement of workers, Establishment, Supply of Services" chapter I related to the "Movement of workers". Article 38 provided that

"treatment accorded to workers of Slovenian nationality, legally employed in the territory of a Member State shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals".

"The legally resident spouse and children of a worker legally employed in the territory of a member State, with the exception of seasonal workers and workers coming under bilateral agreements, unless otherwise provided by such agreements, shall have access to the labour market of that Member State, during the period of that worker's authorized stay of employment."

According to the Agreement Slovenia agreed to accord the same treatment as accorded to its nationals to workers that were nationals of a Member State and were legally employed in its territory as well as to their spouse and children who were legally resident in the Slovenian territory.

Literature

Saša Vidmajer, *Asimetrije razširjene Evropske unije*, Delo, 26.2.2004, str.5.

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Chapter VIII

Statistics

Tables 1 and 2 enable us to assess the possible changes in the immigration flow in Slovenia immediately after becoming the full EU Member State.

As regards citizens of the EU-15 Member States the number of those working with a work permit decreased from 771 to 641. The entrance of Slovenia into the EU made 359 EU-15 citizens possible to begin to work in Slovenia without a work permit. They were only registered with the Employment Service of Slovenia (see column 5 in the table 2). After 1 May 2004 the number of the EU-10 workers also augmented, but not drastically. As expected, the most numerous were citizens of Slovakia (1047).

Table 1: Valid work permits on 30 April 2004, EU-15 Member States

Work permits	Personal	For employment	For work	Total
Austria	30	10	136	176
Belgium	2	5	8	15
Denmark	6	4	3	13
Finland	2	1	1	4
France	17	25	55	97
Greece	3	1	0	4
Ireland	3	1	4	8
Italy	65	33	115	213
Luxembourg				
Germany	54	9	72	135
Nederland	16	7	3	26
Portugal	0	2	1	3
Spain	0	5	2	7
Sweden	3	5	5	13
Great Britain	18	13	26	57
Total	219	121	431	771

EU-10 Member States

Work permits	Personal	For employment	For work	TotalL
Cyprus	0	1	0	1
Czech Republic	27	16	9	52
Estonia	1	0	0	1
Hungary	21	10	8	39
Latvia	1	2	0	3
Lithuania	3	4	0	7
Malta	0	1	0	1
Poland	11	9	14	34
Slovakia	13	11	278	302
Total	77	54	309	440

States of the former Yugoslavia

Work permits	Personal	For employment	For work	Total
Bosnia and Herzegovina	10.962	6.418	1.613	18.993
Croatia	5.232	1.206	551	6.989
Macedonia	1.031	1.371	947	3.349
Serbia and Montenegro	3.278	1.781	1.274	6.333
Total	20.503	64.776	4.385	35.664

Source: Employment service of Slovenia.

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Table 2: Number of foreign workers and workers from the EU Member States by type of work permit on 31 December 2004

	Personal work permits	Permits for employment	Permits for work, posted workers, managers and seasonal workers	Total of valid work permits	EU workers without work permit	Total (4+5)
	1	2	3	4	5	6
Austria	35	16	76	127	119	246
Belgium	5	7	5	17	6	23
Denmark	25	3	7	35	2	37
Finland	2	1	1	4	2	6
France	20	22	33	75	41	116
Greece	3	-	-	3	-	3
Ireland	4	-	-	4	2	6
Italy	68	39	68	175	50	225
Germany	61	12	51	124	36	160
Nederland	17	7	3	27	46	73
Portugal	1	2	-	3	-	3
Spain	2	3	-	5	4	9
Sweden	4	1	1	6	8	14
Great Britain	17	3	16	36	43	79
Total of the EU-15	264	116	261	641	359	1000
Cyprus	1		-	1	1	2
Czech Republic	25	3	7	35	63	98
Estonia	1		-	1	1	2
Hungary	21	2	5	28	56	84
Latvia	1	-	-	1	1	2
Lithuania	1	1	-	0	1	1
Malta	-	-	-	0	1	1
Poland	11	2	5	18	105	123
Slovakia	11	2	20	33	1.014	1.047
Total of the EU- 10	72	10	37	119	1.257	1.376
Bosnia and Herzegovina	11.720	6.652	1.435	19.807		19.809
Croatia	5.228	1.169	369	6.766		6.767
Macedonia	1.254	1.385	549	3.188		3.189
Serbia and Montenegro	3.608	1.883	967	6.458		6.458
Total-former Yugoslavia	21.810	11.089	3.320	36.219		36.223
Third countries	566	1.018				
Total	22.712	12.233				

Source: Employment service of Slovenia.

Table 3 relates to figures contained in column 5 in Table 2. It represents the number of the EU workers at the end of 2004 to whom the right of free movement applies. They did not

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need a work permit but they had to be registered with the Employment Service of Slovenia after they began to work in Slovenia.

Table 3: Number of registration certificates on 31 December 2004

COUNTRY	EU EMPLOYED	EU WORK- civil law contract	EU SERVICES by posted workers	TOTAL
Austria	1		118	119
Belgium		1	5	6
Denmark		1	1	2
Finland		1	1	2
France		2	39	41
Italy		7	43	50
Germany		3	33	36
Nederland		1	45	46
Spain		3	1	4
Ireland	1		1	2
Sweden	1	1	6	8
Great Britain	14	8	21	43
Cyprus		1		1
Czech Republic	57		6	63
Latvia	1			1
Lithuania	9		7	16
Hungary	27	1	28	56
Malta	1			1
Poland	78		27	105
Slovakia	208	2	804	1.014
Total	398	32	1.186	1.616

Source: Employment service of Slovenia.

Table 4 gives us figures on those EU citizens working in Slovenia either on the basis of one of the three types of work permits or without work permit, being registered with the Employment Service. From these figures it is clear that in 2005 the structure of the immigrants did not changed very much in comparison with the previous year. A great majority of them are coming from the States of the former Yugoslavia (40313), 2850 workers are EU-25 citizens and/or persons equal to them and 2473 are the third countries' nationals. The most numerous among the third countries' nationals are those from Ukraine (795), Romania (384), China (263), Russia (217) and Moldova (135).

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Table 4: Valid work permits and registrations on 31 August 2005, EU-25 Member States

Citizenship/type of permit	Personal work permit	Permit for employment	Permit for work	EU registrations	total
Austria	62	15	41	143	261
Belgium	8	5	4	3	20
Cyprus	1			1	2
Czech Republic	25	1	1	82	109
Denmark	6	3	2	2	13
Estonia	1				1
Finland	2				2
France	36	15	20	48	119
Greece	2				2
Ireland	4			4	8
Italy	94	38	41	32	205
Latvia				2	2
Lithuania	1			25	26
Hungary	22		3	118	143
Malta				2	2
Germany	78	18	24	39	159
Nederland	28	8	1	1	38
Poland	11	1	1	104	117
Portugal	1	2			3
Slovakia	11		1	1522	1543
Spain	2	4		2	8
Sweden	4	1		12	17
Great Britain	14	3	8	34	59
total	413	114	147	2167	2.850

States of the former Yugoslavia

Citizenship/type of permit	Personal work permit	Permit for employment	Permit for work	EU registrations	total
Bosnia and Herzegovina	12482	6599	2331	4	21416
Croatia	5365	1040	788	1	7194
Macedonia	1496	1402	890		3788
Serbia and Montenegro	4026	2165	1724		7915
Total	23369	11206	5733	5	40313

Citizenship/type of permit	Personal work permit	Permit for employment	Permit for work	EU registrations	total
States of the former Yugoslavia	23369	11206	5733	5	40313
EU-25	413	114	147	2176	2850
Third countries	761	959	750	3	2473
Total	24543	12279	6630	2184	45636

Source: Employment service of Slovenia.

There are no exact figures on Slovenian citizens employed in the EU Member States. During the period between 1 May 2004 and 31 December 2004 EURES directed 322 job seekers to work in the EU Member States.

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Suzana Lovec, *Niso nas preplavili vzhodnjaki niti pokupili zahodnjaki*, Dnevnik, 28.april 2005, str.2

Chapter IX

Social Security: the relationship of Regulation 1408/71 and 1612/68; supplementary pension schemes

The relationship of Regulation 1408/71 and 1612/68

Slovenia has, as EU member since 1 May 2004, not yet faced itself with its own case law, connected with relationship between both regulations. Nevertheless, we are aware of the legal dimension between them. The fact is that Regulation 1408/71, which has its legal basis in Article 42 of the EC Treaty, takes precedence, as *lex specialis*, over the provisions of Regulation 1612/68. This means that in each particular situation at the beginning must be examined whether a particular problem falls within the scope of Regulation 1408/71. Despite rather broad scope of Regulation 1408/71 it must be taken into account the article 7 of Regulation 1612/68. Worker who is a national of a Member State shall enjoy the same **social** and tax advantages as national workers. Relevant are not just advantages linked with employment and not just those directly connected to the worker herself or himself. As social advantage can for instance be treated disability allowance for workers children, different advantages for large families etc.

The field of job-seeking regulates Employment and Unemployment insurance Act, adopted in 1991 and lastly changed in 2002. There is a provision that nationals of a member state are in view of rights and obligations from the Act in the same position as Slovenians. That means that job-seeker, national of a member state, is entitled to the same measures (also social advantages) as Slovenian job-seeker. One of the main social advantages derived from this Act is right to active employment policy.

Concerning right to social assistance in Slovenia, especially in view of Trojani case, there must be said that Slovenian legislation has not yet been completely harmonised with EC law. Social assistance Act as alternative to condition of nationality for aliens stipulates condition of permanent residence permit. Legislation dealing with those questions is still in drafting procedure (e.g. Amendments to Aliens Act). After the adoption of amendments, which will regulate also the field of residence (permanent residence card, p.5), legislation should be in compliance with EC rules and its case-law. Otherwise financial assistance as social security benefit and recipient's only means of living is a means-tested benefit.

Supplementary pension schemes

Texts in force

Questions on the relation between Regulation 1408/71 and 1612/68 on one hand and rights of migrant workers based on national supplementary pension schemes on the other hand are relevant for achieving freedom of movement. National legislation on supplementary pension insurance is therefore an important factor for achieving free movement of workers within the Community. Protection of their supplementary pension rights is also an important social issue which could not be dealt only within the scope of regulation 1408/71. In order to safeguard vested rights and guarantee payments, which are not subject of Regulation 1408/71, Council adopt directive 98/48 on safeguarding the supplementary pension rights of employed

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and self-employed persons moving within the Community. Directive protects rights of members of supplementary pension schemes and others holding entitlement under such schemes.

Slovenian basic legislation regulating supplementary insurance schemes is Pension and Invalidity Insurance Act, adopted in 1999. Act was changed several times, including parts dealing with supplementary pension insurance. The fact is that this Act in principle does not have special provisions for workers moving within the Community, who are supplementary pension insured in Slovenia. That means that they are treated as Slovenian workers. The first measure of the directive, that is to ensure equality of treatment as regards preservation of pension rights, is therefore respected.

About cross border payments as a second measure in directive there is a provision in Pension and Invalidity Insurance Act which ensure an insured person who has acquired the right to supplementary old-age pension and has emigrated abroad on a permanent basis, payment of such pension to the territory of another state. Although this provision is not dedicated exclusively to workers from EU member state its applicability for them is not in question.

Special measures dedicated to posted workers concerning continuation of contribution payments in a member state, where a supplementary pension scheme was established, also during posting period in another member state, are non-problematic. Directive is in Slovenia applicable only for voluntary supplementary pension schemes, which means that worker posted to work in Slovenia would not be obliged to access in a pension scheme unless he wanted to. The same applies for Slovenian workers. Voluntary basis of supplementary pension scheme in Slovenia guarantee the continuation of payments of contribution in a member state, where particular scheme was established.

Chapter X

The Right of Establishment, Provision of Services and Students

1. See point 5 in Chapter VII. EU enlargement.

2. A new chapter under the title “Performance of services and the practice of law by foreign lawyers in the Republic of Slovenia” has been included in the Lawyers Act (Ur.l.RS, št. 24/2001). It was set down that new provisions related to lawyers from the EU Member States shall enter into force on the day the Republic of Slovenia becomes a full EU Member State. According to the said amendments a lawyer from another EU Member State shall be entered in to the *register of foreign lawyers* who are permitted to practise law in the Republic of Slovenia *under the professional title the “lawyer”*, with all rights and duties in the practice of law, provided he fulfils the conditions set down by the Act and provided he has passed the test of knowledge of the legislation of the Republic of Slovenia. The contents of the test and the course of the test are regulated by the Regulation concerning the test of the lawyers from other countries (Ur.l. RS št. 132/2004). A lawyer from another EU Member State shall be entered in to the register of foreign lawyers who are permitted to practise law in the Republic of Slovenia *under the professional title of their home country* provided he submits a certificate of registration with the competent body of his home country. Lawyer who practises law under the professional title of his home country is allowed to provide legal advice on the legislation of his home country, the EU law, international law and the legislation of Republic of Slovenia. When carrying out legal services connected with the representation of clients before courts in our country, he must collaborate with a lawyer who has the right to practise law in the Republic of Slovenia under the title “lawyer”.

A lawyer from another EU Member State shall be entered in to the register of foreign lawyer permitted to practise law under the title »lawyer« regardless the provided conditions (e.g. the passed test) if he has actually and continually practised laws in the Republic of Slovenia for at least three years. Then there is the fourth possible category of foreign lawyers. Namely, a lawyer from another EU Member State who is not entered in the register of foreign lawyers may carry out individual services within the framework of the practice of law. He has to notify the Bar Association of Slovenia his intended activity.

3. In accordance with the Health Service Act (Ur.l. RS, št. 36/2004 – officially revised text) a special Act on the performance of health occupations by the citizens of other EU Member States on the territory of Slovenia has been adopted in 2002 (Ur.l. RS, št. 86/2002). It deals with the conditions that have to be fulfilled by a citizen of an EU Member States who would like to perform a health occupation in Slovenia. In addition it provides that a health worker is obliged to use the Slovenian language at his work (and in addition the Italian or Hungarian language in the regions where Italian or Hungarian minority live). The level of the knowledge of the Slovenian language has to be determined by his employer. The knowledge of the language as a condition to be able to perform a health profession in Slovenia has already been object to discussions as it was found to be the possible impediment to employ doctors coming from other EU Member States.

The issue of the knowledge of the language for, at least certain professions could partly be dealt with under the Chapter II.

Nationality of the Republic of Slovenia is as a rule required under the Community of Notaries Act (Ur.l.RS, št. 13/94). However, an exception is also provided. Foreign citizen

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may be appointed as a notary under conditions of legal and actual reciprocity and provided that he or she fulfils other conditions laid down by law. The “reciprocity” is not in compliance with EC law. It has to be pointed out that the Act has not been amended yet with so called European section as it is the case of Lawyers Act. Lawyers Act has in the past provided the reciprocity clause too, but the latter has been deleted now.

Students

Texts in force

The field of higher education is regulated by Higher Education Act (1993). Act was changed several times, in year 1999 in order to harmonize its content with the EU standards. Since Slovenian membership in EU all students from EU have enjoyed the same status as Slovenian students. They have got the right to education at faculties under the same conditions as Slovenian students. Therefore it is not possible to provide obligation of EU students to pay for undergraduate study performed as public service, unless a specific study exceeds certain by the state stipulated standards.

The procedure on the recognition of diploma's and professional qualifications obtained in another Member State as a formality for practicing certain regulated professional activity is the subject of special statute. Specific qualification is recognised by decision of Minister of labour, family and social affairs. Procedure is started on applicant's request, which must consist of documentary evidence of citizenship, higher education diploma, which is subject of recognition and evidence on education program, its duration etc. The statute has foreseen the option to require the applicant to complete an adaptation period or take an aptitude test, if the Minister would had considered applicants qualification as inadequate.

Literature

Janja Bedrač, “Osvoboditev” svobodnih poklicev, *EVRO Pravna praksa*, 1/2004, str.48-49.

Chapter XI
Miscellaneous

Studies, seminars, reports and legal literature

Nothing to report.