

REPORT
on the Free Movement of Workers
in Slovenia in 2008-2009

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Introductory Remarks

The developments in the field of free movement of workers are mostly characterized by two facts.

First, the activities related to the transposition of the EC law into the Slovenian legal order have been slowed down. It is important to mention that on 1 September 2008, the 2007 Scholarships Act entered into force. In March 2009, the draft of the amendments to the Aliens Act was adopted; these amendments, however, do not relate to the issues of free movement of the EU citizens.

Second, there still is no case-law that could be referred to when comparing the EU law and case-law of the Court of Justice with the domestic situation.

Chapter I

Entry, Residence, Departure

Texts in force

- Aliens Act (Ur.l. RS, No. 71/2008 – ZTuj-1-UPB5 - officially consolidated text)
- Instructions for the Refusal of Entry into Slovenia (Ur.l. RS, No. 74/2006)

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

As regards the *right of the EU citizens of entry*, the Directive 2004/38/EC has been correctly transposed into the Slovenian law. According to the Aliens Act in force, EU citizens may enter the Slovenian territory with a valid identity card or passport. They do not need a visa or a residence permit (Art. 93b); the same same applies for EEA citizens. (Art. (93a). No entry visa is required for the family members who are EU citizens, either (Art. 93k/2). The violation of the Art.5/4 of the Directive can be established in relation to the *family members who are not nationals of a Member State*. They may enter the Republic of Slovenia (RS) with a valid passport and a visa, when it is still required, or with a valid passport and a residence permit, issued by another Member State if not otherwise agreed upon by an international treaty.

Entry to an EU citizen may only be refused in the following four cases:

- he/she does not have a valid identity card or a valid passport,
- the period during which the entry is forbidden, has not expired yet,
- his/her staying in the RS may pose a threat to public order, security or international relations of the RS, or if it is suspected that his/her staying in the country will be linked to the execution of terrorist or other violent activities, illegal intelligence activities, drug trafficking or the performance of other criminal activity,
- he/she is coming from the territory with infectious or epidemic diseases and is without a proof of being vaccinated. (Art. 93 b/3)

Provisions on the *right of residence for more than three months* (Art. 7/1a and 7/3a-d) have been transposed in the following manner:

An EU citizen who has entered the RS with a valid identity card or a valid passport and wishes to reside on the territory of the RS for a period longer than three months has to register his residence with the competent authority. According to Art. 93. c/3 of the Aliens Act, he/she is issued a registration certificate for one of the following reasons: the employment or work, self-employment, performance of services, studies or other forms of schooling and other reasons.

Conditions under which one of the above mentioned registration certificates is issued, are laid down by the Act. Such a registration certificate can be, for exemple, issued to an EU citizen, who wishes to be employed or work, if he/she obtains a valid identity card or passport, a confirmation of engagement from the employer or a certificate of employment and a valid work permit, if such is required by the Employment and Work of Aliens Act. The last condition is not the one that is allowed by Art. 8/3 of the Directive on the administrative

formalities for Union citizens. The registration certificate for the self-employment is issued to an EU citizen if he/she obtains a valid identity card or a passport, a proof that he/she is a self-employed person and holds a valid work permit, if such is required by the Employment and Work of Aliens Act. Again, the transposition can be considered questionable as regards the possible requirement of a work permit.

Regarding Art. 7/3 of the Directive, the Aliens Act provides that the registration for the purpose of employment or work shall not expire:

- if the EU citizen's employment has terminated due to temporary incapacity to work as the result of an illness or accident,
- if he/she becomes unemployed without any fault of his/her own after having been employed for more than one year, and has registered as a job-seeker,
- if he/she embarks on vocational training (Art. 93. d/2).

It has already been assessed that the article was incorrectly transposed, as the Act provides for the retention of the right of residence, but not of the right of the retention of the status of worker.

The registration shall expire six months after his/her becoming unemployed in the case of completing a fixed-term employment contract of less than a year, or when an EU citizen loses his/her employment without any fault of his/her own during the first twelve months and has registered as a job-seeker (Art. 93. d/3). This allows the presumption that an EU citizen could be seriously hindered as regards the acquisition of his/her right to permanent residence.

As regards *the retention of the right to reside* and especially para. 4 of Art. 14, Aliens Act does not contain any explicit provision on the prohibition of expulsion of EU citizens if they are workers or self-employed persons or if they have entered the territory of the RS in order to seek employment. The Act has laid down general provisions related to cases in which EU nationals or family members who do not want to leave country voluntarily, shall be deported. (Art. 93.z). Information on this regulation has been given in the 2007 Report.

There are some problems with the transposition of the *right of permanent residence* under Art. 16 and 17 where the following two conditions are provided for by the Aliens Act under which the permanent residence permit may be issued to an EU national: 1. the completion of a 5 uninterrupted years' period of his/her staying in the RS (there are also cases of temporary absences that shall not affect continuity of the residence provided for by the Act) and 2. non-existence of founded suspicion that his/her staying in the country would pose a threat to public order, security or international relations of RS and would not be linked to the execution of terrorist or other violent activities, illegal intelligence activities, drug trafficking or the performance of other criminal activity (Art. 93. j/1).

Permanent residence permit may be issued to an EU national before the completion of the five years' period of his/her staying in the RS in cases laid down in Art. 93. j/3 of the Aliens Act. The exemptions provided for in Art. 17 of the Directive were transposed almost literally. In addition to that, two other favourable rules for acquiring the right of permanent residence are provided for in the following cases: 1. for EU nationals of Slovenian origin and 2. for EU nationals whose residence in the RS is in the interest of the RS.

An issue of concern can be underlined when it comes to the transposition of Art. 24 of the Directive, consisting in fact that EU citizens residing in the territory of the RS are not assured equal treatment in the field of social assistance. The Act applies to Slovenian citizens, permanently residing in the RS, and to aliens obtaining a permanent residence permit

(Art. 5). Compared with Art. 24/2, it is also more restrictive. Due to the condition of 5 uninterrupted years' period of staying in RS it is more difficult for the family members of another EU citizen to acquire the right of residence in Slovenia.¹

2. SITUATION OF JOB-SEEKERS

According to the Employment and Work of Aliens Act, EU, EEA and Swiss federation citizens may record in the register of unemployed persons if they fulfil the conditions provided for by the Employment and unemployment Insurance Act, and if they are staying in the RS on the basis of a residence permit. (Art. 35.č). This provision is of a general nature in the sense that it makes no distinction between EU, EEA and Swiss federation citizens as to the length of their stay in the country.

According to Art. 33 of the Employment and Unemployment Insurance Act, the right to the unemployment benefit is at standstill (suspended) during the period an unemployed person is not staying in the RS. (Art.33). Having in mind that the present Act provides that citizens of the EU Member States enjoy equal status with the citizens of Slovenia as regards their rights and duties, laid down by the Act, one may presume that Art. 33 applies to the EU citizens, too.

As regards social assistance benefits, the Social Assistance Act is restrictive. It applies to Slovenian citizens residing in RS, and to aliens obtaining the permanent residence permit.

Draft legislation

On 11 March 2009, the government adopted the draft of the amendments to the Aliens Act in order to implement the Regulation 2252/2004/ES and the Regulation 380/2008/ES.²

Legal literature

Dr. Maja Brkan, Pravice slovenskih državljanov kot evropskih državljanov v praksi (Rights of Slovenian citizens as European citizens in practice), *Pravna praksa* 11/2009, p. 68-70.

¹ See also: Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside within the territory of the Member States, COM(2008)840/3, p. 6.

² Amendments of the Aliens Act have been adopted on 21 May 2009 (Ur.l. RS, No. 41/2009).

Chapter II

Access to Employment

Texts in force

- Employment and Work of Aliens Act (Ur.l. RS, No. 76/2007-ZZDT-UPB-2, officially consolidated text)
- Aliens Act (Ur.l.RS, No. 71/2008-ZTuj-1-UPB5, officially consolidated text)
- Employment and Unemployment Insurance Act (Ur.l.RS, No. 107/2006-ZZZPB-UPB1, officially consolidated text)

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT

The provision of employment services is governed by the Employment and Unemployment Insurance Act. Employment services may be provided by the Employment Service of Slovenia, a public institution, and by other organisations/employers (elsewhere called employment agencies) which are granted authorisation to perform employment services on the basis of a concession contract. In accordance with Article 6.b of the said Act, the Employment Service and the authorised agencies/employers may perform their activities in favour of Slovenians, EU and EEA citizens and those third countries nationals with permanent residence permits, if they are required by the international agreements. Temporary employment agency, performing its activity in accordance with the regulations of another EU or EEA Member State, may perform its activity in the RS under conditions provided for by the Act, i.e. by advance notification on the planned activity addressed to the Ministry of Labour, by complying with the requirements relating to staff, offices, equipment, etc.

According to the Employment and Unemployment Insurance Act, EU Member States citizens are equal to the citizens of Slovenia as regards rights and duties, laid down by the Act. (Art. 4.c) In addition, the Act has laid down that unemployed citizens of the EU, EEA and the Swiss Federation are equal to the unemployed Slovenians.

The 2007 Report on the Free Movement of Workers in Slovenia has drawn attention to the inconsistency between the provisions of Aliens Act and the Employment and Work of Aliens Act regarding the kind of permit provided for as a condition on the basis of which the unemployed EU, EEA and Swiss federation citizens may record in the register of unemployed persons in the RS. According to unofficial information, this inconsistency is supposed to be abolished by the amendments to the Employment and Work of Aliens Act.

2. LANGUAGE REQUIREMENT

No new information is needed to complete previous reports.

Chapter III

Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS

It can be recalled here the information on acts containing explicit provisions on equal treatment of the EU citizens in matters of employment, presented by the 2007 Report on the Free Movement of Workers in Slovenia, with the emphasis on the Employment and Work of Aliens Act.

No notice on individual disputes in this regard is given for 2008. Nevertheless, this does not mean that cases of direct or indirect discrimination on the basis of nationality cannot actually happen.

2. SOCIAL AND TAX ADVANTAGES

As regards social advantages, we shall primarily focus on advantages deriving from article 7 of the Regulation 1612/68 EC. In other words, we shall limit our findings to issues that do not deal with with rights legally based on social insurances as covered by Regulation 1408/71 EC.

The right to social assistance is regulated by the Social Assistance Act. This right includes social welfare services and social assistance benefits in cash as means-tested benefits. The Act regulates social, personal and family counselling, institutional care and similar services. According to the Act, aliens have the right to services and to financial assistance if they either fulfill the condition of nationality, or they are in possession of a permanent residence permit. System of social assistance does not cover special benefits for job-seekers. EU nationals are entitled to social assistance in cash if they fulfil the same general conditions as those applied for Slovene nationals. The persons, entitled to social assistance in cash, either have no income at all, or their monthly income is below the level of the basic minimum income (approximately 220 EUR). In case they have no income, the entitled persons receive the full stated amount; in other case, they are entitled to receive amounts representing the difference between own income and the above stated amount. When assessing the eligibility, both the already mentioned ceiling, as well as actual facts are taken into consideration: i) an individual or family has assets enabling subsistence, ii) all other rights have been exhausted (social assistance is the last of the rights within the system, eligible when all other subsistence options are exhausted) and iii) the person concerned is actively seeking opportunities to solve his/her situation. The latter is of particular importance to all those with the ability to work; they have to be registered with the Employment Service of Slovenia, participate in offered programmes of active employment policy and actively seek employment.

Family benefits are regulated by Parental Protection and Family Benefits Act. They comprise two groups of rights, one dealing with social insurance for parental protection and therefore based on paid contributions, the other based exclusively on state funds and therefore not connected with employment. Within the scope of the latter, there are three types of benefits, where permanent residence is not condition for entitlement: Parental allowance, child benefit and partial payment for lost income.

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Tax status of workers coming from EU Member States depends on their residency status according to the national tax legislation. Residents are liable to an income tax on their worldwide income (i.e. income derived in Slovenia as well as abroad), non-residents are liable to pay the tax on income received in Slovenia. According to Personal Income Tax Act, an individual, irrespective of his/her nationality, is a resident in Slovenia for personal income tax purposes if he has a formal residential tie with Slovenia or actual residential tie with Slovenia (has a habitual abode or centre of personal or economic interests or is present in Slovenia for more than 183 days in a taxable year).

Personal Income tax Act treats EU workers, resident according to tax legislation, in the same way as Slovenian workers, special treatment is provided for non-residents. This special treatment applies to tax exemptions and tax allowances. Non-residents are not obliged to pay an income tax out of capital profits and savings profits generated in Slovenia.

Non-residents can claim general allowance, seniority allowance and family allowance if an individual can attest that the taxable income gained in Slovenia amounts to at least 90% of his entire taxable income for the tax year. A non-resident claiming such allowances is obliged to file the same annual active income tax return that applies to residents.

3. OTHER OBSTACLES FOR FREE MOVEMENT OF WORKERS

Nothing to report.

4. SPECIFIC ISSUES: FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES), SPORTSMEN/SPORTSWOMEN, MARITIME SECTOR, RESEARCHES, ARTISTS

4.1. Frontier workers

The Slovene legal system has no specific administrative or legal schemes for frontier workers, in addition to the EU rules. Article 35 of the Employment and Work of Aliens Act (the right to free access to the labour market) applies to frontier workers, too. The third- countries family members need the residence permit for the purpose of family reunification in order to get employed or self-employed.

Slovenia has not signed any bilateral agreements in order to facilitate frontier mobility.

3.2. Sportsmen/sportswomen

In June 2008, the Rules concerning registration and status of football players were amended. The Rules do not make any difference among the EU citizens and other aliens, they refer to foreigners. The “transfer within the EU, EEA and Swiss federation” is mentioned only in the case of younger players. The Rules oblige the new club (abroad) to present to the Slovenian Football Association proofs that the best possible training conditions are offered to Slovenian players between 16 and 18 years of age, along with professional training, education or higher education opportunities.

3.3. The maritime sector

All ships of the only Slovenian ship company sail under the flag of convenience.

Regarding the status of seafarers it may be pointed out that the Maritime Code does not contain provisions that could be of specific importance from the viewpoint of employment and labour relations of seafarers. In the 2006 Report it has already been mentioned that for example the Code does not require nationality condition for captains of ships.

Employment Relationships Act contains some provisions (Articles 218-223) on employment contract of seafarers. They cover the following issues: registration of the employment contract, minimum wage, trial period, working time, night work and annual leave.

Slovenia is bound by 16 ILO convention and the Protocol 147. Out of more recent conventions the following can be mentioned: C 108, C 109, C 147 and C 180.

As for the time being all ships of the only one Slovenian ship company are under the flag of convenience the above mentioned legislation does not apply to the seafarers on these ships.

3.4. Researchers/artists

In 2007, the Directive 2005/71/EC was transposed by the Employment and Work of Aliens Act. According to Art. 3/2, the Act does not apply to researchers that have signed an agreement with a research institution, and researchers performing a research program which lasts *up to three months* and obtaining the residence permit of a researcher issued in another EU Member State. The non-application of the Act means that the researchers (regardless of their citizenship) do not need work permit to work in the RS.

Researchers, EU, EEA and Swiss federation citizens, are covered by provisions on the right to free access to labour market included in a special chapter of the Employment and Work of Aliens Act. They do not need a work permit. Their family members who are third-country nationals have free access to labour market provided they have a residence permit issued for the purpose of family reunification (Art.35.a).

3.5. Access to study grants

The previous report mentioned that study grants were regulated by the Rules on Scholarships (the Rules were in force till 1 September 2008). Slovenian citizenship was provided for as the condition for obtaining a study grant, students' loan subvention or state financial help for the accommodation.

The system of scholarships has been changed in order to allow EU students to be treated on a footing of equality to their Slovenian counterparts. Therefore, the Parliament enacted Scholarships Act (Ur.l. RS, No.59/2007), which came into force on 1 September 2008. The Act regulates scholarships financed out of public funds, as well as those assigned by employers. The basic condition for the entitlement to a scholarship is that a potential holder is a secondary school education or higher education level student, or takes part in an education programme for adults (Art.7/1). Among persons that can be entitled to a scholarship are also listed:

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- nationals of EU Member States and their family members as defined in the Aliens Act, provided they have a permanent or temporary residence permit (Art.8/1, point 3),
- employed or self-employed citizens of an EU Member State and their family members, provided they have a valid residence permit (Art.8/1, point 4).

The state aid system helping students with accommodation has remained unchanged. Slovenian citizenship is still required if a student asks for such aid.

Chapter IV

Relationship between Regulation 1408/71 and Article 39 and Regulation 1612/68

There is no case-law regarding the above mentioned legal norms and/or the relationship between them. Nevertheless, we are aware that they share a common legal dimension. The fact is that Regulation 1408/71 in principle takes precedence, as *lex specialis*, over the provisions of Regulation 1612/68. This means that whenever such a particular situation occurs, one has initially to examine whether a particular problem falls within the scope of Regulation 1408/71, or not. Despite a rather broad scope of Regulation 1408/71, the article 7 of Regulation 1612/68 must be taken into account. A worker who is a national of a Member State shall enjoy the same social and tax advantages as national workers. Advantages related to employment are not the only ones relevant; the same applies to those having a direct connection with the worker him/herself. Disability allowance for worker's children, different advantages for large families, and the like, might for instance be considered social advantages.

According to some recent decisions of the Court (e.g. Hendrix), the Regulation 1612/68 might also have prevailing role in cases where the Regulation 1408/71 ought to apply. In Hendrix case a particular benefit (incapacity benefit for disabled young people) goes to those enumerated in annex IIa of Regulation 1408/71, for which the principle »lex loci domicilii« should apply. The court in Hendrix has ruled that this benefit for a disabled young people must be regarded as special non-contributory benefit, which may validly be reserved to persons who reside in a member state which provides that benefit, but has also emphasised that such legal solution must not entail an infringement of the rights of a particular person. National legislation should be interpreted in conformity with the Community law respecting the economic and social links of a person with the member state of origin.

In the Slovenian legal system there are three benefits belonging to the list of special non-contributory cash benefits from annex II a of Regulation 1408/71: State pension, Income Support for pensioners³ and Maintenance allowance. All these benefits originate from Slovene pension system and the main condition These benefits are similar nature to the incapacity benefit to disabled young people from the Hendrix case, a nature of social corrective and are therefore compatible with the Hendrix ruling

State pension is a special pension, intended for a person with permanent residence in the Republic of Slovenia who is not entitled to pension according to the Pension and Invalidity insurance Act, under a foreign public pension insurance scheme or according to other regulations, and whose own income does not exceed the income ceiling specified for the entitlement to pension support, has completed 65 years of age and was residing in the Republic of Slovenia for at least 30 years between the age of 15 and 65 (Art. 59). The state state pension currently amounts to approximately 180 EUR.

Maintenance allowance is a benefit intended for a widow or a widower after the cessation of transitional allowance,⁴ provided he/she has registered with the Employment Office within 30 days after the date of exhaustion of the right to transitional allowance, and pro-

³ Correct translation of the benefit called Income support for pensioners is **Supplementary allowance**.

⁴ Transitional allowance is another benefit, regulated by Pension and Invalidity Insurance Act, but is not part of the list in Anex II a of Regulation 1408/71.

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vided he/she fulfils the conditions for acquisition of the right to pension support with respect to his/her means (Art.129/1). The right to maintenance allowance shall also apply to a widow or a widower who has lost the right to widow/widower's pension because he/she has not fulfilled 53 years of age, provided he/she has registered with the Employment Office within 30 days after the date of the loss of the right to widow/widower's pension (Art.129/2). A widow or widower may acquire widow/widower's pension before the age of 53, if he/she was, after the death of the insured person, left with a child or several children entitled to survivor's pension by virtue of the deceased insured person and whom the widow/widower is liable to maintain (Art. 110/1). Maintenance allowance shall equal the amount of widow/widower's pension, but shall not exceed the amount of the rating base of a minimum pension (Art.130/1), that is 535 EUR. A widow or a widower shall be entitled to maintenance allowance for up to 24months after the cessation of payments of transitional allowance or widow/widower's pension (Art.130/2).

Supplementary allowance (Income support for pensioners) is regulated by a special law, Supplementary Allowance Act (Ur.list RS. No.10/2008-ZvarDod)). In principle, it is dedicated to recipients of old-age, invalidity, widow/widower's and survivor's pension with permanent residence in the Republic of Slovenia (Artc.4/1), whose pension does not attain the amount of 81,6% of the rating base of the minimum pension (approximately 440 EUR) and who along with his/her family member does not have other income and means that would enable subsistence (Art.5). The pension support shall not exceed the difference between the particular pension and the sum of 440 EUR.

Chapter V

Employment in the Public Sector

1. ACCESS TO THE PUBLIC SECTOR

1.1. Nationality condition for access to a position in the public sector

There have been no changes in legislation regarding the nationality condition for access to positions in public sector in 2008. Information given in the 2007 Report is still valid.

1.2 Language requirement

Nothing new to report.

1.3 Recognition of professional experience for access to the public sector and for determining working conditions

Civil servants Acts gives the definition of professional experience in Art. 6. The term relates to the years of service spent performing functions for which the same level of education is required.

The Act contains two parts. The first one deals with general principles that should apply to all persons employed in the public sector. The second part, which relates to persons working in state administration and in local administration, distinguishes between officials (ensuring the tasks of public authorities) and civil servants holding the so-called professional-technical positions. Professional experience that is to be met by state administration officials, judiciary and local administration bodies is provided for by the Government's regulations, professional experience that has to be met by officials working in other public bodies is set forth by the 'the employer's general act'.

Legislation does not contain any express provisions on whether professional experience acquired in other EU Member States is to be taken into consideration when decisions are made within recruitment procedures. To fill in the gap, the Ministry of Public Administration addressed an instruction to all ministries, Government's services and local administration in which it pointed out that the length of service accomplished in an EU member state shall always be taken into account for determining certain professional advantages of the employed (e.g. supplement for the years of service, the calculation of the length of the paid annual leave).

Chapter VI

Members of the Worker's Family and Treatment of Third Country Family Members

The definition of family members of the EU citizens and of the Slovenian citizens has not been changed by the amendments of the Aliens Act, adopted in 2007. The children remain referred to as unmarried children. A registered partner, on the other hand, is not considered member of the family (Art.93.k). A competent body shall have the discretion to recognize the status of a family member when it comes to other relatives, as well, in cases this might help a family to reunify.

The same scope of the definition used for the term family is provided for in the Employment and Work of Aliens Act. Nevertheless, the two definitions partly differ. According to the Employment and Work of Aliens Act, the definition covers family members of not only EU citizens, but also of EEA and Swiss federation citizens.

1. RESIDENCE RIGHTS – TRANSPOSITION OF DIRECTIVE 2004/38/EC

1.1. Situation of family members of job-seekers

A third-country family member who wants to stay in the RS for more than three months and/or after the residence permit, issued by another EU Member State, has expired, needs a temporary residence permit. This permit is issued under the following conditions: 1. he/she must have a residence certificate, 2. He/she must obtain a valid identity card or passport, 3. he/she must have sufficient financial resources (at the level of minimum wage in the RS), 4. he/she has a health insurance, 5. he/she has legally entered the RS, 6. the marriage of convenience has not been ascertained,⁵ 7. no grounds for the refusal of the residence certification have been ascertained.

The temporary residence permit can be issued for the same period as that of the residence certificate issued to the EU citizen. (Aliens Act, Art. 93. k/8, 93.1)

Permanent residence permits are as a rule issued to third-country family members upon the completion of 5 years' residence in the RS on the basis of temporary residence permits (Art. 93.n of the Aliens Act).

1.2. Application of Metock judgment

From the viewpoint of the *Metock* judgment, the Slovenian legislation as regards the conditions under which third country family members can enter and reside in Slovenia may be assessed as too limiting the freedom of movement such as it derived from the fundamental freedom of EU citizens to move freely.

⁵ The Act in fact does not use the term »marriage of convenience«. It requires »that it has not been ascertained that the marriage has been concluded exclusively or mainly with the purpose to obtain the residence permit

1.3. How the problems of abuse of rights (marriage of convenience) are tackled?

The establishment of a marriage of convenience is provided for as the basis on which temporary residence permit may not be issued (see the above cited Art. 93.1 of the Aliens Act). Marriage of convenience might also be the ground for the annulment of the temporary residence permit. (Art. 93p. of the Aliens Act)

According to the information available, no decisions in accordance with the two articles have been adopted yet.

2. ACCESS TO WORK

The right of the third-country family member of the EU, EEA or Swiss federation citizen to access to labour market is defined by the Employment and Work of Aliens Act (Art. 35.a /2) as a right to be employed or to become self-employed without having a work permit. He/she proves his/her right with the residence permit.

3. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

The reference has to be made again to Art. 35.č of the Employment and Work of Aliens Act. In the case of unemployment, the citizens of EU, EEA and Swiss federation and *their family members* have the same rights as Slovenian citizens. They shall be able to register as unemployed persons if they fulfil conditions laid down by the Employment and Unemployment Insurance Act, and provided that they are staying in the RS on the basis of residence permit.

4. OTHER ISSUES CONCERNING EQUAL TREATMENT (SOCIAL AND TAX ADVANTAGES)

In the fields of social and tax advantages, Slovenian legislation does not devote special attention to workers' family members, meaning that they have to satisfy generally stipulated conditions for entitlement to a particular right.

Chapter VII

Relevance/Influence/Follow up of recent Court of Justice Judgments

According to information from the Ministry of Labour, Family and Social Affairs, the jurisprudence is not subject of systematic analysis; therefore the evaluation of its relevance or influence is presently not possible. We have not yet been able to evaluate the measures of the State as a response to the latest Court of Justice decisions.

Despite the abovementioned fact, the following three cases of special interest deserve mentioning in this year's report. The *Hendrix* case was mentioned in Chapter IV, where we argued possible legally relevant dimension of the potentially prevailing role of the Regulation 1612/68 also in cases with special non-contributory benefits, for which the Regulation 1408/71 should apply. Slovene legislation does not include the 'unacceptable degree of unfairness' clause, as an exception to the rule of actual residence in a member state, obliged to provide such a non-contributory benefit, like Dutch legislation does. We believe that despite that fact applicability of the Regulation 1612/68 in Slovenia is not eliminated.

A parallel cannot be drawn between the *Renneberg* courts decision and the Slovene legal system, because the tax system in the Netherlands and Belgium is completely incomparable with the one in Slovenia. When a person exercises the right of free movement for workers and therefore falls within the scope of Regulation 1612/68, such a person must enjoy the same tax advantages as national workers.

As for the legal relevancy of the *Raccanelli* case, focusing on a decision whether a person has been working as subordinated worker or not, we can conclude that German labour law system on that issue is significantly different from Slovene one. In case of a dispute on the existence of the employment relationship between the worker and the employer, it shall be assumed that employment relationship exists, if the elements of employment relationship exist. The role of the court is therefore focused on assessment of the actual content of the contractual relation of the parties. The wording of the contract neither the type of that contract has no legal relevancy for courts decision. The possible situation when a worker is a national of another member state has no influence on the legal perspective of that issue.

Chapter VIII

Application of Transitional Measures

There are no transitional arrangements being applied.

Chapter IX

Miscellaneous

In general terms, the EU law has been transposed into the Slovenian legal order, but not entirely without deficiencies. One could judge that now it is up to the Government to analyse in detail the legislation in force, to find out where it is not in compliance with the EU law and case-law of the Court of Justice and to try to have it harmonized at best. The Government does not seem to be very closely concerned by issues dealing with the free movement of EU citizens; a position that may appear quite comprehensible as the extent of this type of immigration is very slight.

Apart from SOLVIT centers, two of the institutions to whom EU citizens and their family members, who have the right to free movement, may make complaints about violation of Community law on free movement of workers, are worth mentioning, namely: 1. labour inspectors, and 2. Labour and social courts.