

REPORT
on the Free Movement of Workers
in Slovenia in 2011-2012

Rapporteurs: prof.dr.Polonca Končar,
Doc.dr.Luka Tičar
University of Ljubljana

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Contents

Introduction	
Chapter I	The Worker: Entry, residence, departure and remedies
Chapter II	Members of the family
Chapter III	Access to employment
Chapter IV	Equality of treatment on the basis of nationality
Chapter V	Other obstacles to free movement of workers
Chapter VI	Specific issues
Chapter VII	Application of transitional measures
Chapter VIII	Miscellaneous

Introduction

1. As regards the legal framework, - I have in mind the Labour Market Regulation Act, 2010, the Aliens Act, 2011, and the Employment and Work of Aliens Act, 2011, - situation remains pretty much the same. The named acts have not been amended during the reference period and for this reason and due to the lack of the case-law not much can be reported in the present report.
2. The Strategy of Economic Migrations for the Period 2010-2020 from November 2010 remains more or less a political document practically not referred to. The migration issues among are not present enough among people in general.
3. The competent Ministry of Labour, Family and Social Affairs is for the time being following the developments regarding the proposals of some new directives, e.g. the Proposal for the Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment or the Proposal for the Directive of the European Parliament and the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.
Since the constitution of the new Government at the beginning of this year up till now the Ministry focused on the migration issues not connected narrowly with the right to free movement of workers. It has elaborated and sent to the legislative procedure the Proposal for the amendments to the Prevention of Undeclared Work and Employment Act. By the amendments Article 4 of the Directive 2009/52/EC and Articles 4 and 5 of the directive 2010/41/EU are supposed to be transposed into the Slovenian legal order. The above mentioned Act has been, in fact, adopted last year, but it never entered into force since it has been rejected on the referendum.
4. The consolidated text of the Act Regulating the Qualifications Recognition Procedure for Access of Citizens of EU Member States to Regulated Professions and Professional Activities in the Republic of Slovenia has been elaborated by the respective services of the Parliament. By the Act Directives 2005/36/EC and 2006/100/EC have been transposed into domestic law.
5. The Ministry of Labour, Family and Social Affairs is forecasting relative intensive legislative activity for the next year. The Aliens Act and the Employment and Work of Aliens Act are expected to be harmonized with the Directive 2011/98/EU of the European Parliament and the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.
6. As regards the number of the EU citizens who got employed in the Republic of Slovenia it has not changed significantly during the reference period. According to the statistical data of the Employment Service of the Republic of Slovenia 2015 EU citizens were employed in Slovenia in 2011 (compared to 2035 in 2010 and 1615 in 2009). The great majority of workers are coming from Bulgaria (1592), Hungary (210), Romania (196) and Italy (145).

SLOVENIA

7. It might be appropriate to point out in the introductory remarks that the information regarding the position of jobseekers shall in principle be removed from the present report into analytical report on jobseekers.

Chapter I

The Worker: Entry, residence, departure and remedies

General observation regarding issues under (1) is that the situation in law and practice has not change during the reference period. That means that the assessment in the previous European Report that there are deficiencies in the transposition of some of the provisions of the Directive 2004/38/EC is still in place. On the other hand no new informations can be given.

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

Nothing new to report

2. SITUATION OF JOB-SEEKERS

Freedom of movement of workers assures the EU nationals equality with the nationals at employment and/or when looking for the employment. Free movement of workers contains several rights: the right to free staying, the right to look for the employment, the right to work and the right to retire in whichever EU Member State. In relation to job-seeking and employment the Labour Market Regulation Act, which entered into force on 1 January 2011, is the basic regulation in Slovenia. According to its Article 6 citizens of EU Member States, the EEA and the Swiss Confederation have equivalent rights and obligations as recognised to the Slovenian citizens. Jobseekers from the EU Member States are not expressly mentioned by the Act, but it is obvious that the Act applies to them, too.

About residents rights of jobseekers and equal treatment in respect of their access different benefits see the report on the situation of jobseekers.

3. OTHER ISSUES OF CONCERN

The importance of the ECJ judgement in joint cases C-424/10 *Tomasz Ziolkowski v. Land Berlin* and C-425 *Barbara Szeja and Others v. Land Berlin* for the future practice of the Slovenian administrative authorities has been underlined - for the time being on the level of theoretical discourse.¹ The ECJ had to answer to the two questions: 1. how to interpret Article 16 of Directive 2004/38/EC, or more precisely, whether periods of residence completed in the territory of the host Member State in compliance with national law alone may be regarded as periods of legal residence within the meaning of the European Law, 2. whether periods of residence completed by nationals of a non-Member State before the accession of that State to the EU must be taken into account in calculating the five-year period of residence necessary to acquire the right of permanent residence. The Court's answer to the first question was that a right of permanent residence may be acquired only

¹ Zoran Skubic, *Pravica državljanov EU do stalnega prebivališča v državi gostiteljici – nekaj dilem in odgovorov*, *Pravna praksa* 2/2012, str. 23-24.

SLOVENIA

through periods of residence which satisfy the conditions laid down by EU law. In the opinion of some more convincing interpretation was given by the Court in answer to the second question: periods of residence completed by nationals of a non-Member State before the accession of that State to the EU must be taken into account when calculating the five-year qualifying period, provided they were completed in compliance with the conditions laid down by the EU law. As soon as the Croatia becomes the EU Member State Slovenian administrative authorities can expect applications of some Croats to recognize them the right of a permanent residence in Slovenia. It shall be possible to base the decisions on the above mentioned cases.

4. FREE MOVEMENT OF ROMA WORKERS

During the reference period no specific problemes were detected.

Chapter II Members of the Family

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

No change in legislation and nothing new to report.

2. ENTRY AND RESIDENCE RIGHTS

Nothing new to report.

3. IMPLICATIONS OF THE *METOCK* JUDGMENT

It has been pointed out in several reports that the judgement did not have impact on Slovenian law and practice.

4. ABUSE OF RIGHTS, I.E. MARRIAGES OF CONVENIENCE AND FRAUD

Nothing new to report.

5. ACCESS TO WORK

It has already been reported that the Employment and Work of Aliens Act from March 2011 now expressly provides for a family member's free access to the labour market (Article 15/2) Conditions laid down might be questionable since the right is recognized if family members hold a temporary residence permit for a family member or a visa for long-term residence, unless an international treaty binding in the Republic of Slovenia determines otherwise or the National Assembly (Parliament) adopts measures referred to in the third paragraph of Article 2 of the Act.

6. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

There is no explicit provision regarding the family members of jobseekers. In addition to paragraph 2 of Article 15 of the Employment and work of Aliens Act, 2011, the above mentioned Article 6 of the Labour Market Regulation Act has to be taken into consideration. During the reference period the rules have not changed and nothing new can be reported.

Chapter III

Access to Employment

The issue that is linked to the employment in both sector can be mentioned in this introductory part. I would like to draw the attention to the issue of the regulated professions. The Slovenian Government is more and more aware of the fact that the regulation of professions can represent a significant obstacle either to the employment of domestic workers in general or to the free movement of workers. In 2010 a special research »Between the public interest and the competitiveness« has been initiated by the Ministry of Labour, the Ministry responsible for the »deregulation« of professions in Slovenia, in order to get the overview of the number of regulated professions and after that to be able to propose in which manner and by which measures the »deregulation« could be carried out.² Slovenia belongs to the countries with high number of regulated professions. According to the available data 319 professions are on the list of regulated professions.³ For the time being the impression is that the present discussions on the »deregulation« focus on professions which are in principle carried out by Slovenian nationals. Dilemmas related to the principle of the free movement of workers are not mentioned enough, but one can expect that situation shall change in this regard soon.

1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

1.1. Equal treatment in access to employment (e.g. assistance of employment agencies)

In addition to the information given in the previous report the following can be pointed out:

The Labour Market Regulation Act differs unemployed persons,⁴ other job-seekers⁵ and job-seeker whose employment is at risk.⁶

Different registers are laid down by the Act. Persons who have free access to labour market and have registered a residential address in Slovenia can enter either in the register of unemployed persons or the register of jobseekers. Registers are kept by the Employment Service of the Republic of Slovenia. EU, EEA citizens and citizens of the Swiss Confederation may seek some kind of assistance by the EURES, when they do not want to register by the Employment Service or by one of the regional Employment Service offices. Registration gives access to various types of assistance in seeking employment, provided for by the Act, which can be carried out. The assistance/measures may be provided by the Employment Service of the Republic of Slovenia, domestic or foreign legal entities with a registered office in the RS which obtain cocession in accordance with the Act (different agencies) and the Slovenian Human Resources Development and Scholarship Fund.

2 Dr. Valentina Franca, Vpliv (de)regulacije poklicev na zaposlovanje (The impact of (de)regulation of professions on the employment), *Podjetje in delo*, 2-3/2011/XI, str. 221-240.

3 Albina Kenda, Deregulacija poklicev je trd oreh, tudi za Maria Montija, *Finance*, 7 March 2012, str.12.

4 A job-seeker meeting the conditions laid down by the Act.

5 An economically active or inactive person and students seeking employment.

6 Job-seekers during the notice period in the event of ordinary termination of employment contract, persons whose work shall become redundant etc.

1.2. Language requirements

Nothing new to report

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

Nothing new to report.

3. OTHER ASPECTS OF ACCESS TO EMPLOYMENT

Nothing new to report.

Chapter IV

Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS - DIRECT AND INDIRECT DISCRIMINATION

Nothing new to report.

2. SOCIAL AND TAX ADVANTAGES

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

There is nothing new to report on the issue of social advantages.

About the tax status of workers from EU member states the legislation has not changed as well.

Nevertheless we can mention the state's efforts to treat Slovene nationals residing in Slovenia and working in Austria properly. According also to the Commission's viewpoint Slovenia tries to avoid double taxation of incomes of Slovenians working in Austria. Cross-border workers are entitled to the same legal position as workers that are employed in Slovenia. Their tax obligation is additionally reduced with amount of already paid taxes in Austria and special legally recognised reduction of tax basis.

2.2. Specific issue: the situation of jobseekers

Information on the issue is given in the analytical report.

Chapter V

Other Obstacles to Free Movement of Workers

The issue of the regulated professions has already been indicated in the Chapter III. Any further information can be given.

Chapter VI Specific Issues

1. FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES)

I can only repeat that the Slovenian legal system has no specific administrative or legal schemes for frontier workers, in addition to the EU rules. Nothing much can be said in this respect.

The information I would like to give is partly connected with the issue of frontier workers. It also illustrates the common activities of the Employment Service of the RS, employment agencies and the EURES. On 30 May 2012 the regional Employment Service in Maribor together with EURES organised the fifth Employment Fair, which was intended for the cross-border cooperation between Austria and Slovenia and the introduction of direct links between the jobseekers (some of them the possible frontier workers) and the Slovenian and Austrian employers. The Slovenian side presented about 350 jobs and the Austrian one 290 jobs. EURES presented 30 jobs. According to the available information the number of the visitors indicated relatively great interest from the part of those who seek employment in both countries.

2. SPORTSMEN/SPORTSWOMEN

Nothing new to report

3. THE MARITIME SECTOR

Nothing new to report.

4. RESEARCHERS/ARTISTS

Nothing new to report.

5. ACCESS TO STUDY GRANTS

Nothing new to report.

6. YOUNG WORKERS

Nothing to report.

Chapter VII

Applications of Transitional Measures

1. TRANSITIONAL MEASURES IMPOSED ON EU-8 MEMBER STATES BY THE EU-15 MEMBER STATES AND SITUATION IN MALTA AND CYPRUS

There were no transitional measures being applied.

2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA

There were never any transitional measures applied in Slovenia.

Chapter VIII Miscellaneous

1. RELATIONSHIP BETWEEN REGULATION 1408/71 – 883/04 AND ART. 45 TFEU AND REGULATION 1612/68

Nothing new to report.

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

Nothing new to report.

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

In respect to the Strategy of economic migration for the period 2010-2020, two observations are possible: 1. It is true that the strategy is primarily dedicated to third country nationals and 2. During the reference period it remained to great extent a dead letter.

The number of the EU citizens employed in Slovenia has always been small. In the time of economic and financial crisis we do not face any increase of the EU citizens coming to work in Slovenia. The reasons are numerous. I would draw the attention to the following two: economic situation in Slovenia and higher unemployment of the Slovenian workers and lower wages in comparison to wages in many other EU Member States.

3.1. Integration measures

Nothing to report.

3.2. Immigration policies for third country nationals and the Union preference principle

Nothing to report.

3.3. Return of nationals to new EU Member States

Nothing to report.

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

Nothing new to report.

5. SEMINARS, REPORTS AND ARTICLES

Nothing to report.