

REPORT
on the Free Movement of Workers
in Slovakia in 2009-2010

Rapporteurs: Martin Škamla and Peter Varga

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Contents

Chapter I	The Worker: Entry, Residence, Departure and Remedies
Chapter II	Members of the Worker's Family
Chapter III	Access to Employment: Private sector and Public sector
Chapter IV	Equality of Treatment on the Basis of Nationality
Chapter V	Other Obstacles to Free Movement
Chapter VI	Specific Issues
Chapter VII	Application of Transitional Measures
Chapter VIII	Miscellaneous

Chapter I

Entry, Residence, Departure and Remedies

Texts in force

- zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov¹ – the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts

Amendments of Foreigners Act

- zákon č. 408/2002 Z. z. ktorým sa mení a dopĺňa zákon č. 313/2002 Z. z. o verejnej službe v znení neskorších predpisov a zmene a doplnení niektorých zákonov² – the Act No. 408/2002 Amending the Act No. 313/2002 on Public Service as amended, and on Amendments of some Acts
- zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov³ – the Act. No. 480/2002 on Asylum, and on Amendments of some Acts
- zákon č. 606/2003 Z. z. ktorým sa mení a dopĺňa zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a dopĺňa zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov⁴ – the Act No. 606/2003 Amending the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts as amended and Amending the Act. No. 480/2002 on Asylum, and on Amendments of some Acts
- zákon č. 69/2005 Z. z. ktorým sa mení a dopĺňa zákon č. 171/1993 Z. z. o Policajnom zbore v znení neskorších predpisov a o zmene a doplnení niektorých zákonov⁵ – the Act No. 69/2005 Amending Act No. 171/1993 on the Police Corps as amended, and on Amendments of some Acts
- zákon č. 474/2005 Z. z. o Slovákoch žijúcich v zahraničí a o zmene a doplnení niektorých zákonov⁶ – the Act No. 474/2005 on Slovak Nationals Living Abroad and on Amendments of some Acts
- zákon č. 558/2005 Z. z. ktorým sa mení a dopĺňa zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov⁷ - the Act No. 558/2005 Amending the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts as amended
- zákon č. 693/2006 Z. z. ktorým sa mení a dopĺňa zákon č. 48/2002 Z.z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov⁸ – the Act No. 693/2006 Amending the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts as amended and on Amendments of some Acts
- zákon č. 330/2007 Z. z. o registri trestov a o zmene a doplnení niektorých zákonov⁹ – the Act No. 330/2007 on the Criminal Book and on Amendments of some Acts

1 *Collection of Laws* (Zbierka zákonov), Vol. 23 (2002).

2 *Collection of Laws* (Zbierka zákonov), Vol. 160 (2002).

3 *Collection of Laws* (Zbierka zákonov), Vol. 184 (2002).

4 *Collection of Laws* (Zbierka zákonov), Vol. 247 (2003).

5 *Collection of Laws* (Zbierka zákonov), Vol. 32 (2005).

6 *Collection of Laws* (Zbierka zákonov), Vol. 190 (2005).

7 *Collection of Laws* (Zbierka zákonov), Vol. 226 (2005).

8 *Collection of Laws* (Zbierka zákonov), Vol. 265 (2006).

9 *Collection of Laws* (Zbierka zákonov), Vol. 146 (2007).

SLOVAKIA

- zákon č. 342/2007 Z. z., ktorým sa menia a dopĺňajú niektoré zákony v súvislosti so vstupom Slovenskej republiky do Schengenského priestoru¹⁰ – the Act No. 330/2007 amending some Acts with regard to the Entry of Slovak Republic into the Schengen Area
- zákon č. 643/2007 Z. z., ktorým sa mení a dopĺňa zákon č. 480/2002 Z.z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov – the Act No. 643/2007 Amending the Act No. 480/2002 on Asylum and on Amendments of some Acts as amended, and on Amendments of some Acts
- zákon č. 233/2008 Z. z., ktorým sa mení a dopĺňa zákon č. 172/2005 Z. z. o organizácii štátnej podpory výskumu a vývoja a o doplnení zákona č. 575/2001 Z. z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy v znení neskorších predpisov a o zmene a doplnení niektorých zákonov¹¹ – the Act No. 233/2008 Amending the Act No. 172/2005 on Organisation of the State Support for research and development, and on Amendment of the Act No. 575/2001 on Organisation of the Activities of the Government as amended, and on Amendments of some Acts
- zákon č. 451/2008 Z. z., ktorým sa mení a dopĺňa zákon č. 480/2002 Z.z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov¹² - the Act No. 451/2008 Amending the Act No. 480/2002 on Asylum and on Amendments of some Acts as amended, and on Amendments of some Acts
- zákon č. 445/2008 Z. z., ktorým sa menia a dopĺňajú niektoré zákony v pôsobnosti Ministerstva vnútra Slovenskej republiky v súvislosti so zavedením meny euro v Slovenskej republike¹³ – the Act No. 445/2008 Amending Some Acts in the Scope of the Ministry of Interior of the Slovak Republic in relation to the introduction of euro in the Slovak Republic
- zákon č. 594/2009 Z. z., ktorým sa mení a dopĺňa zákon č. 48/2002 Z.z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov¹⁴ – the Act No. 594/2009 Amending the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts as amended and on Amendments of some Acts

The issues of entry, residence, and departure of foreigners in Slovakia are regulated in the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts, as amended (hereinafter ‘Foreigners Act’).

Directive 2004/38/EC was transposed into the Slovak legislation at the end of 2005 already by the Act. No 558/2005 amending the Foreigners Act, which was adopted on 8 November 2005 and came into force on 15 December 2005.

Title V of the Section III of the Foreigners Act regulates the residence of EEA citizens and their family members, and Title V is named ‘Special provisions for the EEA citizen and his/her family member’.

10 *Collection of Laws (Zbierka zákonov)*, Vol. 149 (2007).

11 *Collection of Laws (Zbierka zákonov)*, Vol. 91 (2008).

12 *Collection of Laws (Zbierka zákonov)*, Vol. 167 (2008).

13 *Collection of Laws (Zbierka zákonov)*, Vol. 164 (2008).

14 *Collection of Laws (Zbierka zákonov)*, Vol. 199 (2009).

SLOVAKIA

Article 7 (1) (a) of the Directive 2004/38/EC

Workers and self employed persons, who intend to stay in Slovakia for more than three months, are seen as having a first residence permit,¹⁵ i.e. permanent residence permit granted for the first time for the period of five years.¹⁶ Workers and self employed persons (or any other EEA citizens) are not obliged to register for residence permit.

No difficulties with transposition of this provision of the Directive 2004/38/EC were observed.

Article 7 (3) of the Directive 2004/38/EC

According to relevant provisions of the Foreigners Act, residence of an EEA citizen on the basis of the first residence permit will retain, if the reason for termination of the employment was occupational disease or work accident, or if he/she cannot temporarily run business because of injury or disease. Residence of an EEA citizen on the basis of the first residence permit will also retain, if the person concerned is involuntarily unemployed, and he/she was employed for more than one year and is registered as a job applicant; if the person concerned is involuntarily unemployed and finished his employment agreed for less than one year or his employment was finished during first twelve months and he/she is registered as a job applicant, or; if the person concerned is involuntarily unemployed and embarks on vocational training. Residence of an EEA citizen on the basis of the first residence permit will also retain, if the person concerned is voluntarily unemployed and embarks on vocational training related to previous employment.¹⁷

If an EEA citizen is not working anymore, and he/she is temporarily unable to work as the result of an illness or accident, and it is not a occupational disease or work accident, which was the reason for termination of the employment, according to the Slovak law, such EEA citizen is not considered as having residence on the basis of the first residence permit in Slovakia, unless there is an assumption that he/she will be employed. This does not seem to fully respect the wording of the Article 7 (3) of the Directive 2004/38/EC.

Article 8 (3) first intend of the Directive 2004/38/EC

Until beginning of 2010, EEA citizens, who wanted to register their residence, were required to present a travel document only.¹⁸ However, as from 15 January 2010, when new amendment of the Foreigners Act came into force, a document certifying provision of accommodation is required. If such document is not submitted together with the application, the police department will not accept the application for registration of the first permit. This requirement exceed those listed in Article 8 (3) first intend of the Directive 2004/38/EC.

A confirmation of engagement from the employer or a certificate of employment, or proof that they are self-employed persons is not required.

15 According to the wording of Article 45a (1): 'Residence of an EEA citizen intending to stay at the territory of Slovak Republic for more than three months, is considered as a first residence permit, if: (a) he/she is employed, (b) he/she is running a business, (c) he/she studies at public school or at a school recognized by the government, and has financial means to secure his/her stay and health insurance in Slovakia, (d) he/she has financial means to secure his/her stay and health insurance in Slovakia, or (e) there is assumption that he/she will be employed.'

16 Article 34 (1) of the Foreigners Act.

17 Article 45a (5) of the Foreigners Act.

18 Article 45a (2) of the Foreigners Act.

Article 14 (4) (a) and (b) of the Directive 2004/38/EC

Slovak Foreigners Act provides in this context that a police department may administratively expel an EEA citizen, provided that he/she does not have financial means for covering the costs of the stay and health insurance on the territory of the Slovak Republic, and his/her family member, provided that he/she constitutes a burden to the health care system and social security system of the Slovak Republic¹⁹.

This provision explicitly provides, to whom it does not apply. According to the Foreigners Act, this does not apply to those having permanent residence within the meaning of Chapter IV of Directive 2004/38/EC.

No exceptions with regard to workers and self-employed persons, and those seeking employment and their family members that are having a residence within the meaning of Chapter III of Directive 2004/38/EC are to be found in the Foreigners Act.

Saying this, it appears that Article 14 (4) (a) and (b) was not transposed into Slovak legislation, and EEA citizens and their family members facing the situation foreseen by these provisions and not having permanent residence within the meaning of Chapter IV of Directive 2004/38/EC, might be expelled from Slovakia in breach of Directive 2004/38/EC.

Article 17 of the Directive 2004/38/EC

According to the wording of Article 45c (1) (d) of the Foreigners Act, stay of an EEA citizen is regarded as a next residence permit (equivalent to permanent residence according to the Directive 2004/38/EC), provided that he/she is employed or undertakes business on the territory of another EEA state and returns to Slovakia at least once a week, while in the past he/she continuously stayed in the territory of Slovakia and was simultaneously employed for at least three years. When comparing this wording with wording of Article 17 (1) (c) of the Directive 2004/38/EC, a situation, when the individual concerned was simultaneously undertaking business for at least three years in Slovakia was omitted by the transposition and those undertaking business were not covered by the provision concerned.

Second and third subparagraphs of Article 17 (1) of the Directive 2004/38/EC on periods of employment spent in the Member State and on periods of involuntary unemployment were not transposed at all.

Moreover, Article 17 (4) was transposed with regard to family members – EEA citizens only. If Article 17 (4) concerns third country family members, Slovak legislation does not provide for right for permanent residence for this group of individuals.

Article 24 (2) of the Directive 2004/38/EC

This provision was not transposed in the Slovak legislation.

2. SITUATION OF JOB-SEEKERS

According to Article 45a (1) (e) of the Foreigners Act, if there is an assumption that an EEA citizen will be employed, his/her residence at the territory of Slovakia is considered as a first residence permit. He/she does not have to register his/her residence; according to Article 45a (2) of the Foreigners Act, he/she can request registration, however, there is no obligation to

¹⁹ Article 57 (10) of the Foreigners Act.

SLOVAKIA

register in the law. If he/she requests registration, travel document together with a document certifying provision of accommodation have to be submitted.

As his/her residence is considered as a first residence permit, he/she can ask for any social assistance available for those having first residence permit.

Moreover, Article 45a (5) of the Foreigners Act provides that an EEA citizen's residence based on the first residence permit remains preserved even if such citizen is involuntarily unemployed and has been employed for more than one year and is registered as a jobseeker, or if his/her employment agreed for a fixed period of less than one year ended or if his/her employment ended during the first 12 months and he/she has been registered as a jobseeker.

As already mentioned above, a police department may administratively expel a jobseeker, provided that he/she does not have financial means for covering the costs of the stay and health insurance on the territory of the Slovak Republic.

No reference to recital 9 of the Directive 2004/38/EC can be found in Slovak legislation and in preparatory documents to it.

Chapter II

Members of the Family

Texts in force

- zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov – the Act No. 48/2002 on the Residence of Foreigners and on Amendments of some Acts, as amended
- zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov²⁰ v znení neskorších predpisov - the Act No. 5/2004 on Services of Employment and on Amendments of Some Acts, as amended

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

Definition of family members

According to Article 2 (m) of the Foreigners Act, family member of a citizen of the European Economic Area shall mean:

1. a spouse and his child younger than 21 years or his dependent child,
2. a child younger than 21 years or dependent child,
3. a direct relative dependant on him/her,
4. a direct relative of the spouse dependant on him/her,
5. other family member dependant on him/her or a member of his/her household.

As Slovakia does not treat registered partnerships as equivalent to marriage, registered partners are not considered as family members, if they are not members of a household of an EEA citizen. Partners according to Article 3 (2) (b) of the Directive 2004/38/EC have to be members of a household of an EEA citizen too, in order to be considered as family members according to Slovak legislation. This might create problems in cases, where partners are not living in one household for particular reasons.

Reverse discrimination

The conditions for granting of the permit are still tougher for family members of Slovak citizens, than for family members of EEA citizens. Apart from the conditions for the family members of EEA citizens mentioned below, the family member of Slovak citizen has to prove that he/she has no criminal record, and needs to have his/her stay financially secured, which has to be proved by the sum of 224,56 EUR.

Moreover, there are differences in the definition of family members of Slovak citizens and family members of EEA citizens. As regards Slovak citizens, only their spouses and direct relatives of Slovak citizens dependant on them are entitled for the permanent residence in Slovakia. Children of a spouse must be younger than 18 years. Direct relatives of the

20 *Collection of Laws (Zbierka zákonov)*, Vol. 4 (2004).

spouse of Slovak citizen dependant on the spouse, and other family members dependant on the Slovak citizen or members of his/her household are not entitled for the permanent residence in Slovakia.

2. ENTRY AND RESIDENCE RIGHTS

Third country family members shall be granted first residence permit, if they are family members of EEA citizen residing in Slovak Republic and if they are not a burden to the health security system and social security system of Slovak Republic (Article 45b (1) of the Foreigners Act). Requirements regarding health security and social security imposed directly to family members are exceeding requirements set by the Directive 2004/38/EC, in particular in its Article 7 (2).

Family members – EEA citizens are not obliged to register for residence permit. Until 14 January 2010, their residence was considered as a first residence permit, if they had financial means to secure their stay and health insurance in Slovakia, whether they were family members of EEA workers or not. Until that date, family relationship was not considered at all with regard to family members of EEA citizens, who were themselves EEA citizens. The wording of the Foreigners Act in force since 15 January 2010 introduced as a specific reason to consider an EEA citizen as having a first residence permit a family membership to an EEA citizen considered to have a first residence permit for any of the reasons other than family membership.

Article 12 (1) of the Directive 2004/38/EC remains not transposed.

Article 12 (3) of the Directive 2004/38/EC does not seem to be transposed correctly in Slovak legislation. Slovak legislation poses additional requirements for retention of the right for residence for children studying in Slovakia, whose parent – EEA citizen died or left the country. According to the wording of Article 45b (5) (c) of the Foreigners Act, the right for the residence permit shall also be retained if he/she is employed or undertakes business or has financial means for covering the stay in order to avoid becoming a burden to the social security system, and he/she has a health insurance, and provided that he/she studies and a citizen of the European Economic Area, who is his/her parent, has died or terminated his/her stay on the territory of the Slovak Republic. Again, requirements regarding health security and social security are imposed to family members.

Article 45b (5) (b) (3) of the Foreigners Act provides for the right for retention of the residence for the reasons worth special consideration. It appears that this provision intends to transpose Article 13 (2) (c) of the Directive 2004/38/EC, however, it is questionable, whether such transposition could be considered as sufficient, if the domestic violence was not explicitly mentioned.

Article 17 (4) of the Directive 2004/38/EC was transposed only with regard to family members, who are EEA citizens. According to Slovak legislation in force, third country family members are not entitled for permanent residence under circumstances provided in Article 17 (4) of the Directive 2004/38/EC.

SLOVAKIA

3. ACCESS TO WORK

According to Article 22 (7) (a) of the Act on Services of Employment, foreigners with permanent residence in Slovakia are not required to have a permission to work. Therefore, family members granted first or next residence permit (i. e. those having permanent residence within the meaning of the Slovak Foreigners Act) are allowed to work without a need to get any other permission.

4. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

No specific provisions are applied with regard to family members of job seekers.

Chapter III

Access to employment: a) Private sector and b) Public sector

A) ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

Texts in force

- zákon č. 311/2001 Z. z. Zákonník práce²¹ v znení neskorších predpisov - the Act No. 311/2001 Labour Code, as amended
- zákon č. 663/2007 Z. z. o minimálnej mzde v znení neskorších predpisov – the Act No. 663/2007 Coll. on Minimum Wages, as amended
- nariadenie vlády č. 441/2009 Z. z. ktorým sa ustanovuje suma minimálnej mzdy – the Government Decree No. 441/2009 Coll. on Amount of the Minimum Wage
- zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon) – the Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination and on Change and amendment of some acts (Antidiscrimination Act), as amended
- zákon č. 461/2003 Z. z. o sociálnom poistení, v znení neskorších predpisov – the Act No. 461/2003 Coll. on Social Insurance, as amended
- zákon č. 125/2006 Z.z. o inšpekcii práce – the Act No. 125/2006 Coll. on Work Inspection, as amended
- zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov²² v znení neskorších predpisov - the Act No. 5/2004 on Services of Employment and on Amendments of Some Acts, as amended
- zákon č. 270/1995 Z. z. o štátnom jazyku Slovenskej republiky²³ v znení neskorších predpisov - the Act No. 270/1995 Coll. on the National Language in Slovak Republic as amended
- zákon č. 578/2004 Z. z. o poskytovateľoch zdravotnej starostlivosti, zdravotníckych pracovníkoch, stavovských organizáciách v zdravotníctve a o zmene a doplnení niektorých zákonov²⁴ v znení neskorších predpisov - the Act No. 578/2004 on Providers of Health Care, Health Service Workers, Professional Organisations in Health Care and on Amendments of Some Acts, as amended
- zákon č. 586/2003 Z. z. o advokácii a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon)²⁵ v znení neskorších predpisov - the Act No. 586/2003 on Advocacy and on Amendment of the Act No. 455/1991 on Trade Business (Trade Act), as amended
- zákon č. 477/2002 o uznávaní odborných kvalifikácií a o doplnení zákona Národnej rady Slovenskej republiky č. 145/1995 Z. z. o správnych poplatkoch²⁶ v znení neskorších predpisov - the Act No. 477/2002 on Recognition of Professional Qualifications and on

21 *Collection of Laws (Zbierka zákonov)*, Vol. 130 (2001).

22 *Collection of Laws (Zbierka zákonov)*, Vol. 4 (2004).

23 *Collection of Laws (Zbierka zákonov)*, Vol. 89 (1995).

24 *Collection of Laws (Zbierka zákonov)*, Vol. 245 (2004).

25 *Collection of Laws (Zbierka zákonov)*, Vol. 239 (2003).

26 *Collection of Laws (Zbierka zákonov)*, Vol. 182 (2002).

Amendment of the Act of the National Council of Slovak Republic No. 145/1995 on Administrative Fees, as amended

- zákon č. 293/2007 o uznávaní odborných kvalifikácií²⁷ - the Act No. 293/2007 on Recognition of Professional Qualifications

a.1. Equal treatment in access to employment (e.g. assistance of employment agencies).

Access to employment is regulated by EU legislation (most of the legal acts are directly applicable and are also binding in a horizontal relationship) as well as by Slovak legislation which is the transposition of EU legislation.

The Act No. 5/2004 Coll. on Services of Employment and on Amendments of Some Acts, as amended (Act on Services of Employment) regulates access to employment in Slovakia. The Act on Services of Employment is applicable both in the private sector as well as the public sector.

According to this act, no work permit is required for citizens of EEA countries, citizens of Switzerland, and their family members. Article 2 (2) of the Act on Services of Employment provides that citizens of a Member State of the European Union, citizens of a state, which are a party to the Agreement on European Economic Area, and citizens of the Swiss Confederation, and their family members, have the same legal position as citizens of Slovak Republic, if not stipulated otherwise.

There is no formal provision which would threaten the equal treatment in access to employment between Slovak citizens on one hand, and of EU, EEA and Swiss citizens on the other hand, as Article 2 (2) stipulates that EU/EEA and Swiss citizens have equal status in relationship arising from the Act on Services of Employment as Slovak citizens, including access to employment.

The position of third country family members is not completely clear. They are regarded as foreigners according to Article 2 (1) (n) (unless they are EU/EEA or Swiss citizens), however, according to the abovementioned Article 2 (2), they have the same legal position as Slovak citizens. This might cause problems in practice with regard to equal treatment.

Right to access to employment is regulated in Article 14. Article 14 (1) ensures the right to access to employment. The right to access to employment includes a right of a person (Slovak citizen and those with the same legal position, i.e. including EU, EEA and Swiss citizens) to services designed to help and support in order to facilitate the entry in the labour market, including help and support for the entry and persistence of handicapped job seekers on the labour market, for a minimum period of six consecutive months.

Paragraph 2 of Article 14 provides for a general anti-discrimination clause with regard to access to employment by referring to the Anti-Discrimination Act²⁸. A ban on discrimination based on national origin is explicitly mentioned. A similar ban is also expressed in the Antidiscrimination Act which is a general act applicable to non-discrimination. Article 6(2)(a) of the Antidiscrimination Act explicitly prohibits discrimination in access to em-

²⁷ *Collection of Laws (Zbierka zákonov)*, Vol. 133 (2007).

²⁸ Zákon č. 365/2004 o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon) v znení neskorších predpisov - the Act No. 365/2004 on Equal Treatment in Several Areas and on Protection Against Discrimination and on Amendments of some Acts, as amended; *Collection of Laws (Zbierka zákonov)*, Vol. 153 (2004).

ployment based on grounds of national origin (by using of broad interpretation and in connection with indirect effects of EU law, the term national origin can also be applicable to EU/EEA and Swiss citizens). Similar provisions can be found in the Labour Code as well.

The Act on Services of Employment requires the employers to observe the non-discrimination principle. Employers must not advertise discriminatory employment offers, including employment offers that would discriminate based on national origin.

Assistance of employment agencies is regulated by Articles 25 to 31 of the Act on Services of Employment. As EU citizens and their family members have the same legal position as Slovak citizens, they should be treated equally.

The issue of possible reciprocal measures by Slovakia to those applied by a Member State of the EU with regard to Articles 1 and 6 of the Council Regulation on free movement of workers is dealt with in Chapter VII on transitional measures.

a.2. Language requirements

There is no condition requiring knowledge of Slovak language for access to employment in general. Article 14 of the Act on Services of Employment provides that regarding the right for access to employment, no discrimination on the basis of language or nationality is permitted. This prohibition for employers also applies to advertising of employment offers. The same prohibition of discrimination is in Article 1 of the Basic Principles of the Labour Code. However, the employer can have specific language requirements, as long as the language requirement is not discriminatory, i.e. they must be objectively justified by the character of the concrete work position.

There is an amendment to the Act No. 270/1995 Coll. on the National Language in Slovak Republic (hereinafter 'National Language Act') effective beginning 1 September 2009. This amendment enables execution of employment documentation in foreign languages only beside the Slovak language text. This obligation applies also to foreigners employed in the Slovak Republic.

The Act No. 293/2007 Coll. on Recognition of Professional Qualifications provides for requirements to know the Slovak language with regard to regulated professions²⁹. Article 27 (1) of the Act on Recognition of Professional Qualifications provides for a requirement of an applicant to know the Slovak language to the extent necessary for the execution of a particular regulated profession. According to Article 27 (2) of the Act on Recognition of Professional Qualifications, knowledge of the language may be tested by a special commission in well founded cases. The commission consists of two professionals in the particular regulated profession and a person with a university degree in the Slovak language, the latter being chairman of the commission. The knowledge of the Slovak language is tested by a general interview, reading an article from the press or a professional magazine, an interview about the article, and a test on knowledge of the Slovak language.

Article 31 (4) of the Act No. 578/2004 Coll. on Providers of Health Care as amended provides that a foreigner is required to know special terminology in the Slovak language to the extent necessary for the medical profession. As there is no explanation of the term foreigner in the Act, but EEA citizens seem to be considered as foreigners in this regard.

²⁹ The list of regulated professions is in Annex to this report.

Article 5 of the Act No. 586/2003 Coll. on Advocacy as amended provides that in order to be enrolled in the List of Advocates in Slovakia, EEA citizens have to pass a qualification exam in Slovak if they did not provide legal services in Slovakia for three years as settled attorneys at law (Slovak law used the term settled Euroadvocate). However, there is no language requirement for enrolment into the List of settled attorneys at law (and consequently the List of Advocates in Slovakia) after three years of performance of activities in the Slovak Republic and upon the request of the settled attorney at law. The legal position of a settled attorney at law is the same as an Advocate, subject to some restrictions regarding applying for positions in the Bar Association.

B) ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

Texts in force

- zákon č. 460/1992 Zb. Ústava Slovenskej republiky v znení neskorších predpisov – the Act No. 460/1992 Constitution of Slovak Republic, as amended
- zákon č. 400/2009 Z. z. o štátnej službe a o zmene a doplnení niektorých zákonov³⁰ v znení neskorších predpisov – the Act No. 400/2009 on Civil Service and on Amendments of some Acts, as amended
- nariadenie vlády SR č. 411/2009, ktorým sa ustanovujú štátnozamestnanecké miesta, na ktorých môže štátnu službu vykonávať len občan Slovenskej republiky – Governmental Regulation No. 411/2009 Coll. on stipulating the public service positions that can only be performed by the citizens of the Slovak Republic
- zákon č. 73/1998 Z. z. o štátnej službe príslušníkov Policajného zboru, Slovenskej informačnej služby, Zboru väzenskej a justičnej stráže Slovenskej republiky a Železničnej polície³¹ v znení neskorších predpisov – the Act No. 73/1998 on civil service of members of Police Corps, Slovak Information Service, Corps of Prison and Court Guard, and Railways Corps, as amended
- zákon č. 200/1998 Z. z. o štátnej službe colníkov a o zmene a doplnení niektorých ďalších zákonov³² v znení neskorších predpisov – the Act No. 200/1998 on Civil Service of Custom Officers and on Amendments of some Acts, as amended
- zákon č. 346/2005 Z. z. o štátnej službe profesionálnych vojakov ozbrojených síl Slovenskej republiky a o zmene a doplnení niektorých zákonov³³ v znení neskorších predpisov - the Act No. 364/2005 on Civil Service of Professional Soldiers of Armed Forces and on Amendments of some Acts, as amended

b.1. Nationality condition for access to positions in the public sector

According to Article 61 (2) of the Constitution of the Slovak Republic, only Slovak citizens may be elected for the posts of president and vice-president of the Supreme Audit Office. Also a Member of Parliament, according to Article 74 (2) of the Constitution, may only be

30 *Collection of Laws* (Zbierka zákonov), Vol. 145 (2009).

31 *Collection of Laws* (Zbierka zákonov), Vol. 28 (1998).

32 *Collection of Laws* (Zbierka zákonov), Vol. 76 (1998).

33 *Collection of Laws* (Zbierka zákonov), Vol. 148 (2005).

SLOVAKIA

an elected Slovak citizen. Furthermore, according to Article 103 (1), only a Slovak citizen may be elected as President of Slovakia. Slovak citizens can also only be appointed as prime minister, deputy prime minister and minister (Articles 110 (2) and 111). According to Articles 134 (3) and 145 (2), constitutional court judges and judges must be appointed Slovak citizens. Finally, the Public Defender of Rights (ombudsperson) can only be a Slovak citizen too.

The new act No. 400/2009 Coll. on Civil Service (Act on Civil Service) regulates legal relations when executing civil service. Article 3 (1) of the Act on Civil Service stipulates that the right to employment in civil service belongs to Slovak citizens as well as to EU/EEA and Swiss citizens under conditions stipulated in the Act on Civil Service and under conditions stipulated by special laws. However, if required by legitimate interests of the Slovak Republic, it is possible to restrict the employment in civil service only to Slovak citizens. The list of civil servants employment posts which are open only for citizens of Slovakia is set by a generally binding Governmental regulation. The former ordinance of the Ministry of Labour, Social Affairs and Family No. 390/2006 was cancelled by the new Act on Civil Service which became effective on 1 November 2009 and was replaced by a Governmental regulation that specifies the employment posts which are open only for Slovak citizens. The civil service in the following areas of state service are open for Slovak citizens only:

- Justice
- Defence
- Industrial Property
- Home Affairs
- Protection of Secret Issues
- Posts of extraordinary significance (According to the Article 8 of the Act on Civil Service this post is defined by the Slovak government as important for fulfilment of tasks and priorities defined by the government)
- Posts where the civil servant must be authorized to be acquainted with secret matters

In addition, the civil service in the following authorities is open for Slovak citizens only:

- Supreme Audit Office
- Ministry of Foreign Affairs
- Public prosecutor authorities on all levels
- Government Office of Slovak Republic

According to Article 2 (3), civil service by members of the Police Corps, Slovak Information Service, National Security Authority, Corps of Prison and Court Guard, Railways Corps, custom officers and professional soldiers, and of members of Fire-fighting and Rescuing Corps is governed by special acts.

Members of the Police Corps, Slovak Information Service, National Security Authority, Corps of Prison and Court Guard, and Railways Corps must only be Slovak citizens speaking Slovak according to Article 14 (1) of the act No. 73/1998 .

Article 14 (1) of the act No. 200/1998 comprises the same citizenship and language requirement for custom officers, and Article 17 (1) of the act No. 315/2001 for firemen.

The condition of Slovak citizenship and the language requirement applies also to soldiers. It is embodied in Article 13 (1) of the act No. 346/2005 on Civil Service of Profes-

sional Soldiers of Armed Forces of Slovak Republic. According to this provision, only Slovak citizens speaking Slovak may be accepted as professional soldiers.

Special categories are legal professions. The Act No. 385/2000 Coll. on Judges and Associate Judges stipulates that only Slovak citizens having permanent residence in Slovak territory can be appointed for judges. Similarly, the distrainers and notaries can only be Slovak citizens.

The above mentioned restrictions seem to fulfil the criterion of posts in which the exercise of public authority and the responsibility for safeguarding the general interests of the State is involved.

b.2. Language requirements

According to Article 19 (1) (e) of the Act on Civil Service, knowledge of the Slovak language is one of the conditions for admission to the civil service. Similar provisions on knowledge of the Slovak language can be found also in acts governing special civil service positions as policemen, soldiers, custom officers, etc. There are no specific provisions on how the knowledge of the Slovak language is examined.

b.3. Recognition of professional experience for access to the public sector

The Act on Civil Service regulates the conditions for access to the public sector. Article 19 enumerates the conditions and requirements for candidates. However, previous professional experience is not explicitly stipulated as a condition for access to the public sector. However, this also does not exclude taking into account the previous professional experience in the recruitment process.

b.4. Other aspects of access to employment

Special laws can stipulate the conditions for candidates, including the requirements for holding a diploma. This is typical for legal professions, where the candidates must have a complete university education of the second degree.

The Act on Civil Service also contains an Appendix No. 1 that stipulates characterisation of salary classes of state service employees. These classes also stipulate the educational requirements, including the condition to be holder of a university diploma.

Chapter IV

Equality of Treatment on the Basis of Nationality

Texts in force

- zákon č. 460/1992 Zb. Ústava Slovenskej republiky³⁴ v znení neskorších predpisov – the Act No. 460/1992 Constitution of Slovak Republic, as amended
- zákon č. 365/2004 Z.z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon) – the Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination and on Change and amendment of some acts (Antidiscrimination Act), as amended
- zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov v znení neskorších predpisov - the Act No. 5/2004 on Services of Employment and on Amendments of some Acts, as amended
- zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov - the Act No. 311/2001 Labour Code, as amended
- zákon č. 400/2009 Z. z. o štátnej službe a o zmene a doplnení niektorých zákonov³⁵ v znení neskorších predpisov – the Act No. 400/2009 on Civil Service and on Amendments of some Acts, as amended
- zákon č. 600/2003 Z. z. o prídavku na dieťa a o zmene a doplnení zákona č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov - the Act No. 600/2003 on Child Allowances and on Amendment of the Act No. 461/2003 on Social Insurance as amended
- zákon č. 571/2009 Z. z. o rodičovskom príspevku³⁶ v znení neskorších predpisov - the Act No. 571/2009 Coll. on Parental Allowance, as amended
- zákon č. 235/1998 Z. z. o príspevku pri narodení dieťaťa, o príspevku rodičom, ktorým sa súčasne narodili tri deti alebo viac detí alebo ktorým sa v priebehu dvoch rokov opakovane narodili dvojčatá a ktorým sa menia ďalšie zákony³⁷ v znení neskorších predpisov - the Act No. 235/1998 on Childbirth Benefit, on Parental Allowance for those Parents, to Whom Three or More Children Were Born at the Same Time, or for those, to Whom Were Twins Born Repeatedly in Course of Two Years, and on amendments of other acts as amended
- zákon č. 595/2003 Z. z. o dani z príjmov³⁸ v znení neskorších predpisov – the Act No. 595/2003 on Tax from Incomes, as amended
- zákon č. 461/2003 Z. z. o sociálnom poistení³⁹ v znení neskorších predpisov – the Act No. 461/2003 Coll. on Social Insurance, as amended
- zákon č. 580/2004 Z. z. o zdravotnom poistení a o zmene a doplnení niektorých zákonov⁴⁰ v znení neskorších predpisov - the Act No 580/2004 Coll. on Health Insurance and on Amendments of some Acts, as amended

34 *Collection of Laws (Zbierka zákonov)*, Vol. 92 (1992).

35 *Collection of Laws (Zbierka zákonov)*, Vol. 145 (2009).

36 *Collection of Laws (Zbierka zákonov)*, Vol. 125 (2002).

37 *Collection of Laws (Zbierka zákonov)*, Vol. 90 (1998).

38 *Collection of Laws (Zbierka zákonov)*, Vol. 243 (2003).

39 *Collection of Laws (Zbierka zákonov)*, Vol. 200 (2003).

40 *Collection of Laws (Zbierka zákonov)*, Vol. 246 (2004).

1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

Article 36 (b) of the Constitution constitutes a general equal treatment provision with regard to working conditions. It provides that all employees shall have the right to fair and satisfactory conditions at work. The law shall provide particularly for security from arbitrary dismissal and discrimination at work.

The Antidiscrimination Act provides a general prohibition of discrimination. All employers are also prohibited from discriminating against an individual, directly or indirectly, on the following grounds: marital status, family status, colour of skin, language, political or other conviction, trade union activity, national or social origin, property, nationality or ethnic origin, race, lineage, descent, sex, religious affiliation, health incapacity, sexual orientation or any other status. The Antidiscrimination Act prohibits discrimination in labour relationships and relationships connected with labour-law relationships. The term *labour relationships and relationships connected with labour-law relationships* is interpreted very broadly and covers all relationships and all areas of the employment of an employee. Discrimination is prohibited not only during employment, but also prior to establishing the employment relationship, including discrimination against job seekers. In addition, during employment, the employer is prohibited from discriminating against the employee in all employment areas, such as work conditions, vocational training, remuneration, promotion, dismissal, etc.

Article 6(2)(a) of the Antidiscrimination Act explicitly prohibits discrimination in access to employment for grounds of national origin (by using broad interpretation and in connection with indirect effects of EU law, the term national origin can also be applicable on EU/EEA and Swiss citizens). Similar provisions can be found in the Labour Code as well.

The Labour Code explicitly prohibits discrimination (direct or indirect) against individuals in labour relations based on the above-mentioned grounds.

The Act on Services of Employment comprises in its Article 2 (2) a general clause on the equality of treatment regarding EU/EEA and Swiss citizens, and their family members. This provision stipulates that the EU citizens have in general the same legal position as Slovak citizens. Article 14 (2) of the Act on Services of Employment prohibits discrimination based, among other grounds, on nationality. Prohibition of direct or indirect discrimination regarding working conditions based on nationality is also part of the Labour Code, in particular Article 1 of the Basic Principles of the Labour Code. Article 6 of the Basic Principles of the Labour Code contains a clause on equal treatment regarding access to employment, remuneration, professional education and working conditions. However, this applies to equal treatment between men and women, and not particularly with regard to nationality. Ban on discrimination and equal treatment applies also to posted workers from the EU countries.

Provisions of Slovak law also apply to posted workers from EU countries regarding length of working time and of rest, length of holiday, minimum salary, minimum tariffs and extra pay for overtime, safety and protection of health at work, working conditions of women and juveniles and of the workers taking care of a child younger than three years, working conditions, if employed by an agency of temporary employment. Where the law of the country of origin is more favourable, that law may be applied.

Specific issue: Working conditions in the public sector

The National Council of the Slovak Republic (Slovak parliament) adopted on 16 September 2009 a new Act on Civil Service, which was published in Collection of Acts under number 400/2009 and came into force on 1 November 2009.

The Act on Civil Service, according to the government of the Slovak Republic, as the proposer, says that the new legal regulation shall respect the principles of professionalism, independency, effectiveness and stability of the civil service, political neutrality and ethics (Article 1 (2) of the Act on Civil Service).

The Act on Civil Service respects the principles of non-discrimination (for access to civil service of EU/EEA and Swiss citizens; see Chapter III, point b.1.). However, the prohibition of discrimination in civil service shall apply in relation to the conditions of civil service performance, remuneration and provision of other benefits, education, promotion and termination of civil service relationship (Article 4 (1) of the Act on Civil Service).

Recognition of professional experience for the purpose of determining the working conditions (e.g. salary; grade, career perspectives)

The Act on Civil Service in Articles 84 and 132 explicitly reflects the professional experience of civil servants in their remuneration. For each year of civil service professional experience the salary of the civil servant is increased by 1 percent of the tariff salary (capped by 32 years of professional experience).

Taking into account diplomas for determining working conditions (salary, grade, career perspectives etc)

The remuneration in civil service is set by the tariffs grades. Each tariff grade stipulates the conditions that must be fulfilled by the civil servant, including the requirement for diplomas and education.

The Act on Civil Service stipulates the system of recruitment and the selection of candidates. The free positions can be occupied by new candidates not working in the civil service and by candidates actually working in a civil service. The candidates must submit the relevant documentation confirming their education prescribed for the free position.

Equal treatment in relation to issues like civil servant status, trade union rights etc.

The Act on Civil Service respects the principles of non-discrimination also in relation to the right of each citizen to occupy a position in a civil service. This principle includes the prohibition of discrimination in the recruitment process (Article 4(2)). Discrimination of civil servants and candidates to civil service is prohibited for the following grounds: sex, sexual orientation, religion or belief, racial or ethnic origin, colour, language, social origin, property, origin, health handicap, age, marital or family state, responsibilities to the family, membership or activity in a political party or political movement, trade union organization or other organization, or for grounds of another state.

2. SOCIAL AND TAX ADVANTAGES

Act No. 600/2003 on child allowances came into force on 1 January 2004. Child allowance is a state social benefit, which is a contribution by the state to the upbringing and mainte-

nance of a child. Conditions for entitlement to child allowance are determined in Article 7 (1), including permanent or temporary residence in Slovakia for both parent and child.

Another family benefit, parental allowance, is regulated by the act No. 571/2009. Parental allowance is a state social benefit, which is a contribution by the state to secure personal and proper care of the child up to the age of three years, or of a child with a long-term unfavourable health condition up to the age of six years. The conditions for the entitlement of the parental allowance are provided in Article 3 (1) of the Act, and contain the same requirements as the child allowance.

A requirement of permanent residence is also embodied in Article 3 (1) and Article 6 (1) of Act No. 235/1998 on childbirth benefits and on benefits to parents to whom three or more children were born, or to whom twins were born in the course of two years repeatedly. According to both provisions the entitled person needs to fulfil the requirement for permanent residence in order to receive the benefit. In the latter case, which regulates the conditions for the benefit to parents to whom three or more children were born, or to whom twins were born in course of two years repeatedly, the requirement for permanent residence counts for children too. The childbirth benefit is a state social benefit, which is a contribution of the state to cover the expenses related to secure the essential needs of a newborn child. The benefit to parents is a state social benefit, which is an annual contribution by the state for parents for increased expenses which incur regarding care for three or more children born simultaneously, or for in the course of two years repeatedly born twins. The person is not entitled to childbirth benefits if this contribution was paid by a social security institution of another state.

EEA citizens do have access to all these advantages as long as the workers as well as their children are in Slovakia. However, if the child is not present in Slovakia, he/she is not considered as having permanent residence in Slovakia. Consequently, such families do not qualify for most of the benefits mentioned above.

In Act No. 595/2003 on Tax from Incomes, there is a provision which enables individuals to apply a tax bonus for each child living in the household with the individual and even if the child is not living temporarily in the household, as long as he/she is dependent on parents. According to Article 33 (10) of the Act on Tax from Incomes in force until the end of February 2009, only those who had a permanent residence in Slovakia could apply for the tax bonus. As of 1 March 2009, the permanent residence criterion was substituted by a criterion taking into account the percentage of income received in Slovakia.

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

Slovak legislation does not enable different treatment with workers coming from other EU member states.

In relation to equal treatment concerning the conditions in employment and work conditions, the Labour Code (and subsidiary the Antidiscrimination Act) provides for a general prohibition of discrimination for a broad range of reasons, including national origin which can also be applicable to EU/EEA or Swiss citizens.

In relation to equal remuneration, the Labour Code only regulates the explicit prohibition of discrimination in remuneration between men and women and between employees performing the same type of work. This provision could also be extensively applicable to foreign workers. In relation to dismissal, the Labour Code stipulates that the employer can dis-

SLOVAKIA

miss an employee for grounds stipulated in the Labour Code (not other grounds are allowed). The rules on dismissal are applicable to all employees regardless of their nationality or national origin. However, the selection process, i.e. selection of an employee that is being redundant is up to the employer. The Labour Code does not regulate the selection process for dismissal of employees.

Slovak social security system consists of the following funds:

- a) social insurance (namely, payments to sickness, pension, unemployment, accident insurance and reserve funds of solidarity and guarantee funds) – regulated by Act No. 461/2003 Coll. on Social Insurance; and
- b) health insurance – regulated by the Act No 580/2004 Coll. on Health Insurance.

The Act on Social Insurance and the Act on Health Insurance cover the social and health insurance of employees performing work in an employment contract. In addition, Regulation 1408/71 stipulates whether Slovak law is applicable. If Slovak law is applicable to an EU/EEA or Swiss citizen, such a citizen is entitled to all benefits under the same conditions as a Slovak citizen.

In relation to tax aspects, a foreigner becomes a Slovak tax resident if he/she has a permanent residence in the territory of the Slovak Republic or if he/she usually resides in the territory of the Slovak Republic for more than 183 days within one calendar year (continually or in several periods). The tax object of a Slovak tax resident are all incomes from sources from the Slovak Republic and sources from abroad. The Act No. 595/2003 Coll. on Tax from Incomes does not recognize different treatment of Slovak citizens and foreign citizens. The only difference is division of tax-payers between Slovak tax residents and tax non-residents. This criterion does not depend on citizenship of the tax-payer.

A worker's personal income tax is calculated from the worker's total taxable income in a calendar year, reduced by tax bonuses, deductions and obligatory contributions, such as social security contributions and contributions on health insurance.

The personal income tax could also be reduced by the following non-taxed parts of the employee's income:

- Assigned amount of the non-taxable part of the worker's income: that is, the lower the income, the higher the non-taxable part of the income will be. The maximum non-taxable part corresponds to 19.2 times the life minimum⁴¹ if the worker's tax base does not exceed the amount corresponding to 100 times the life minimum.
- A sum corresponding to 19.2 times the life minimum for a spouse living with the tax resident together in one household, provided that the spouse does not have his or her own income), or income exceeding 19.2 times the life minimum and provided that the employee's income base is equal to or lower than 176.8 times the life minimum.
- Participation in the voluntary pension saving scheme, in a life insurance scheme, or in a purpose-saving scheme: the tax base is reduced to a maximum of EUR 398.33.

⁴¹ The life minimum is currently EUR 185.19 per month.

2.2. Specific issue: the situation of jobseekers

Slovak Act on Services of Employment provides a legal definition of jobseekers (Article 6). Jobseekers are citizens (EU/EEA and Swiss citizens are not excluded) who can and want to work and are actively searching a job, unless they are employed, are freelancers or perform a gainful activity in another EU member state or perform a gainful activity and earn more than 65% from the sum of the life minimum.

The Act on Services of Employment also stipulates that EU/EEA and Swiss citizens and their family members have the same status as Slovak citizens (Article 2(2)). Each citizen is guaranteed a right to access to a job and services according to the Act on Services of Employment aimed to help and to support the access to the labour market, including the help and support of the disadvantaged jobseeker for a period of 6 consecutive months.

In relation to social assistance, the Act on Services of Employment recognizes the following possibilities of recruitment of candidates (chosen based on each employer's discretion):

Labour Office

The Labour Office is the official public institution that is responsible for social affairs and monitors employment activities in the Slovak Republic. The Labour Office maintains official evidence of unemployed persons and official evidence of vacancies; provides consultation services to candidates and employers; and cooperates with employers in its region about employment issues.

Natural or legal entities entrusted by the Labour Office

Applicable Slovak law enables partnerships of private entities with the Labour Office concerning the realization of a concrete employment project aimed to support employment of people older than 50 years of age, recent graduates or minimally qualified candidates.

Recruitment agencies

Recruitment agencies are private licensed agencies that provide paid recruitment services. The payments for recruitment are be paid by the employers who intend to employ specific employees according to the employers' needs. The agencies are prohibited from charging such payments to the candidates.

Agencies of temporary work

Agencies of temporary work are private licensed companies that place specific employees to their clients. The employees remain employees of the agencies of temporary work despite their performance of work for the client.

Agencies of supporting employment

Agencies of supporting employment are private licensed companies that prepare handicapped and long-term unemployed candidates as well as the employers for employment of the disadvantaged candidates. These agencies provide vocational consulting and counselling for employers; prepare disadvantaged employees for work performance; and provide a selection of suitable candidates to the employer.

Under certain, very limited circumstances, the candidates can be entitled to draw benefits after they find and employment. These benefits are provided on a non discriminatory basis

SLOVAKIA

based on nationality, but they are provided only after fulfilment of specific condition reflecting the connection with the Slovak Republic and its social security system. We have not discovered any breach of equality principle on connection with providing of benefits based on nationality among EU/EEA or Swiss citizens.

Chapter V

Other Obstacles to Free Movement

We are not aware of any other obstacles to free movement of workers than those mentioned in this report.

Chapter VI Specific Issues

1. FRONTIER WORKERS

Until 2009, tax bonuses on children were applicable only to those, who had permanent residence in the country.⁴² This was the only provision with requirement of permanent residence remained in force also after 1 January 2007. This provision was amended in 2009, and from 1 March 2009, tax bonuses on children are not connected with the permanent residence. The residence criterion was changed to income criterion. 90% of the income of the person concerned has to be from Slovakia.

2. SPORTSMEN/SPORTSWOMEN

Each sport discipline is governed by its own association in Slovakia, and those associations are issuing their own rules to regulate, among other issues, the registration and operation of foreign sportspersons in the country.

In *football*, since the competition year 2005/2006, number of players, who are citizens of the EU countries, is not restricted.⁴³

The *ice-hockey* competes with football for the status of the most popular sport in Slovakia. The Slovak Association of Ice-hockey (SAIH) is the managing body of Slovak ice-hockey. The Association issued the Transfer Code, which is governing also transfers and registration of foreign nationals. According to Article 32 (a) of the Code, there is no limitation for registration of foreign nationals in a SAIH club. However, according to the same provision, only two foreign players can play in a championship game, if the governing body of the relevant competition does not allow a higher number. According to Article 32 (b) of the Code, every player without Slovak citizenship is regarded a foreign player. Also a player who acquired Slovak citizenship and played abroad during last three seasons having another citizenship than Slovak is regarded a foreign player.⁴⁴

The governing body of the Slovak major ice-hockey league is the company Pro Hokej. The Pro Hokej decided that the number of foreign players allowed to play in a championship game will be 20, which practically means, there is no restriction anymore. Every transfer of foreign player is subjected to registration by SAIH.

The governing body of the first league is ZOK I. HL SR. For the season 2009/2010, they adopted a rule that 5 foreign players including EU citizens are allowed to play in a championship game.

The SAIH issued also Directives and Criteria for Granting of Trainer Licenses of Trainers of Ice-hockey – Licenses A, B, and C. According to Part I – General Conditions for Obtaining a Trainer License, citizen of Slovak Republic can obtain the license. A citizen of

⁴² Article 33 (10) of the Act on Income Tax as amended

⁴³ See Article 10 (g) of the Schedule of Competitions at <http://www.futbalsfz.sk/rozpis-republikovych-sutazi-200910/>

⁴⁴ The Transfer Code (Prestupový poriadok) in Slovak can be found here: http://www.szlh.sk/riadenie-sutazi?__SEFrYnM1Mjg1PDE0-root2-v3.

other state including EEA citizens can take part in the training only if accepted by the Accreditation Commission of the SAIH and can obtain the license only for 24 months. Then they have to attend training with SAIH.

In *volleyball*, the number of foreign players in the top league is not restricted, but only three foreign players are allowed in a championship game. No explanation of the term foreign player can be found. However, according to the information received by phone from the volleyball association officials, it should apply to all foreigners, including EU citizens. In volleyball, they have also transfer fees for transfers abroad regulated by the association directive on international transfers. Every player, who intends to play abroad has to pay transfer fees for first three years of playing abroad. The fee depends on the quality of the player and on the quality of the foreign league.

Slovak *basketball* association has a special directive on foreign players. Neither restrictions on numbers of foreign players in a club, nor any restrictive fees with regard to foreign transfers are provided there. In a championship game, only three foreign players are allowed. EU citizens are not regarded as foreign players. According to officials from the association, there is no restriction with regard to EU players, neither in the first, nor in the second league. The same counts for men and women. Every foreign player, who wants to play abroad has to pay for registration and special FIBA card.

In Slovak *handball*, there are no restrictions in number of foreign players in one club, but in championship game only three foreign players are allowed, however, this does not apply to EU citizens. Every foreign player, it means non EU citizen and also citizen of the EU countries, who wants to play abroad has to pay for pass-certificate.

3. THE MARITIME SECTOR

Since the accession of Slovakia into EU, only one agreement was signed individually by Slovakia with a non-EU country, in particular with Korean Republic⁴⁵, covering the issues of equal treatment as regards employment and working conditions in the maritime sector.

The equal treatment clause in this agreement provides that the individuals concerned have an equal position with the citizens of one of the contracting parties when the laws of the contracting party are applied.

4. RESEARCHERS/ARTISTS

There is no special legislation covering activities of researchers or artists in Slovakia. Therefore, provisions on equal treatment either from the Labour Code, or from the Trade Code apply.

45 Communication No 51/2009 Coll.

5. ACCESS TO STUDY GRANTS

The right to receive a social scholarship is conditioned by a permanent residence of the applicant, therefore, the worker and the members of his/her family need to have permanent residence (within the meaning of the national law) in Slovakia⁴⁶ in order to apply for the social scholarship.

⁴⁶ Article 96 (1) of the Act on Universities as amended

Chapter VII

Application of Transitional Measures

As regards legislation in this field, no changes were made in 2009. Article 24 of the Act No. 5/2004 On Services of Employment empowers the Government of Slovakia to take equivalent measures to those applied by a Member State of EU with regard to Articles 1 and 6 of the Council Regulation on free movement of workers. Article 24 reads as follows:

‘(1) If a Member State of the European Union applies against citizens of the Slovak Republic and their family members under conditions provided in the Treaty on accession of the Slovak Republic to the European Union a national measure, or fully or partly suspends application of articles 1 and 6 of the Council Regulation (EEC) on free movement of workers in the Community, the Government of the Slovak Republic may issue a regulation establishing application of equal (equivalent) measures and their scope against that Member State.

(2) If the European Commission announce with regard to free movement of workers on the basis of an application of the Slovak Republic under conditions provided by the Treaty on accession of the Slovak Republic to the European Union complete or partial suspension of application of Articles 1 and 6 of the Council Regulation (EEC) on free movement of workers in the Community by the Slovak Republic by the reason of restoration of the common state on the labour market, the Government of the Slovak Republic may issue a regulation providing against which Member State and in what scope suspends the Slovak Republic application of Articles 1 and 6 of the Council Regulation (EEC) on free movement of workers in the Community.’

A number of Member States has continued in applying national measures against Slovakia, and in suspension of application of articles 1 and 6 of the Regulation on free movement of workers in 2007. However, the Government of the Slovak Republic agreed at the beginning that no reciprocal measures will be applied, and they did not change that opinion since then. Slovakia also did not apply any transitional measures against Romania and Bulgaria.

Chapter VIII Miscellaneous

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

The basic principle in the Slovak Republic is that Slovak legislation is applicable if a person performs work in the territory of the Slovak Republic. Slovak legislation expresses the principle of non-discrimination of EU/EEA and Swiss citizens in the Act No 461/2003 Coll. on Social Insurance.

The benefits regulated included in the branches of social security schemes as stipulated by article 4(1) of the Regulation 1408/71 are governed by the Act on Social Insurance. These benefits can be provided to individuals regardless of their residence in the territory of the Slovak Republic.

However, there are also some other benefits provided to individuals, i.e. benefits provided to individuals in a material need. These are only provided to Slovak citizens and to category of foreigners specified by the Act No. 599/2003 Coll. on Help in a Material Need (e.g. foreigners who are not nationals of any state, asylum seekers or foreigners having a status of a Slovak residing in a foreign country).

For providing of social benefits see chapter IV, point 2.

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

No specific administrative or legal schemes for frontier workers in addition to the EU rules exist in Slovak legislation.

As regards bilateral agreements and trans-national cooperation developed in order to facilitate frontier mobility, Slovakia has concluded two agreements, one with Hungary and the second one with Poland and Czech Republic.

The cross-border partnership between Slovakia and Hungary is called EURES-T Danubius (for further information see: <http://eures-t-danubius.eu/>).

The cross-border partnership between Slovakia, Poland and the Czech Republic is called EURES-T Beskydy (for further information see: <http://sk.eures-tbeskydy.eu/>).

Both partnerships mentioned were officially approved by the European Commission.

Other cross-border cooperation supporting frontier mobility is on Slovak and Polish borders, namely the cross border cooperation Zamagurie.

The latest frontier initiative of Slovak EURES is to build cross-border cooperation on the Slovak-Austria-Czech border, despite the application of transitional measures by Austria.

Finally, no public debate on the issue of frontier workers can be observed at the moment in Slovakia.

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

3.1. Integration measures

There are no integration measures with regard to EU nationals.

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

According to the website of the Ministry of Interior, the aim of migration policy of the Slovak Republic is to ensure:

- Protection of the national interests of the Slovak Republic and the achievement of the objectives and priorities in the field of migration, as well as the procedure for securing by the entities participating in the implementation of the migration policy,
- Creation of conditions in the field of human, material, and financial resources and co-ordination of relevant institutions in this area,
- Active participation of the Slovak Republic on the creation of the law of the European Communities and the European Union in the field of migration,
- Further harmonization of Slovak legislation with the law of the European Communities and the European Union in the field of migration,
- Development of the institutional framework necessary for the implementation of the policies in this area.

The principles applied with regard to the migration police include following:

- Principle of regulation of the legal migration - creates the scope for the statutory regulation of migration in accordance with the interests of the Slovak Republic, in particular with regard to the issue of economic, political and cultural stability of the society, as well as the situation on the labour market and employment structure, through the migration policy in the forms of managed and regulated immigration.
- Principle of active cooperation with the European Union – the accession of the Slovak Republic to the European Union plus the emphasis on ensuring coherent policy in the field of asylum and creation of stable solutions related to the implementation of the migration policy in conjunction with international and non-governmental organizations.
- Principle of prohibition of the discrimination - represents provision of equal opportunities for all foreigners residing legally in the Slovak Republic and eliminates the possibility of discrimination and provision of any privileges and advantages to individuals.
- The principle of flexibility - anticipates creation of scope for innovation of the adopted measures and procedures in the field of migration policy.

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

Office of the Public Defender of Rights exists in Slovakia. However, the Public Defender of Rights is not entitled to deal with any possible violation of Community law, only those, who believe that their fundamental rights and freedoms were infringed contrary to the legal order or principles of the democratic state and the rule of law in relation to the activities, decision-making or inactivity of a public administration body can turn to the public defender of rights. No other organisations or non-judicial bodies to which complaints for violation of Community law can be launched exist in Slovakia.

New Act No 9/2010 on complaints was adopted at the beginning of 2010 replacing the old one. According to this Act, individuals or legal persons can lodge a complaint when they seek to protect their rights or legitimate interests, which they consider to be infringed by an act or lack of action of a public authority, or when they point out specific deficiencies, in particular infringements of legal acts, where public authorities have the power to eliminate them.

5. SEMINARS, REPORTS AND ARTICLES

Nothing to report.