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Working Paper 2

## **Mapping and Evaluating Migration and Integration Policies – The Case of Slovenia**

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Market Situations: Towards Policies and Action**

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# 1. Introduction

The increasing number of migrants in countries across the EU and the notable share of migrant workers on the labour market in recent years have brought forth the significance of migration and integration policies. Current integration policies declare integration as a two-way process that should equalise migrants' opportunities with those of the "nationals". However, these policies often remain at the descriptive level, lacking mechanisms in practice. Integration strategies fall short of addressing the specific migrants' needs. Faced with insecure jobs, poor working and living conditions, low level of social care, deskilling, language barriers and discrimination, "third country nationals" (hereafter TCNs) in particular remain at the margins of integration. Integration mechanisms frequently result in conditioning the TCNs integration possibilities with their position on the labour market. Policies directed towards regulating the employment and work of TCNs are often designed in a manner preventing the successful integration of migrants, while also encompassing discriminatory provisions, especially when compared to the policies in force for the EU nationals. In addition, negative attitudes toward migrants in Europe increasingly correspond to the current declining economic situation; restrictions are being applied to employment of TCNs in order to decrease the growing number of the unemployed "domestic" work force, which has been augmented by the social and economic crisis.

This report discusses the current migration and integration policies in Slovenia, as well as evaluates the wider EU policy level. It is aimed at assessing the policies with a particular focus on their relation to the labour market positions of TCNs. In addition to mapping the current situation, the report also moves the debate further by opening new avenues for critical policy analysis. Filling the gap in research by focusing the analysis on the impact of policies on TCNs, our attention is awarded to migration and integration policies, employment policies, as well as wider social policies as these affect the position of TCNs in Slovenia. The report critically evaluates the effects the policies, regulations and laws have on the migrants, particularly by exploring how these are employed in practice. Bottom-up activities, public and political discourses are included in the analysis in order to provide as comprehensive picture as possible of the current state of affairs in terms of the prospects for integration of migrants in Slovenia in general and TCNs' labour market situation in particular.

## 2. Migration and integration policies and their specific effects on TCNs

Migration to Slovenia from other republics of Yugoslavia began in the 1950s and intensified in the late 1970s, while as an independent state, Slovenia has seen increasing trends of migration flows since the late 1990s onwards. Slovenia's migration policy, already restrictive even before the adoption of EU standards, has been becoming even harsher with the 2004 EU membership and entering the Schengen border regime in 2008. Significantly, former "internal" Yugoslav migrants have recently become treated as "third country nationals", reflecting the growing dependence of Slovenia on EU documents and guidelines. This is visible in Slovenia's migration policies both generally in terms of stricter border control, institution building and changes to legislation, and more particularly in terms of introducing additional subcategories of "foreigners". After Slovenia's EU accession in 2004, "third country nationals" need work and residence permits to stay in Slovenia legally and are subject to quota restrictions in terms of employment, which profoundly affects their status and positions on the labour market and in the society in general.

Slovenia still does not have much experience with the area of integration policy, even though the 1999 *Resolution on Immigration Policy*, which appeared slightly before the processes of transposing various EU regulations and laws began in the period of 2001–2002, stated that integration is one of the three constituent parts of Slovenia's migration policy.<sup>1</sup> The resolution took into account the cultural plurality of Slovene society and it based the goals of integration policy on the principles of equality, freedom and mutual cooperation. The resolution envisaged a pluralistic (multicultural) model of integration policy (Bešter 2003, 283). This form of integration as a model of migration management was confirmed by the 2002 *Resolution on Migration Policy of the Republic of Slovenia*.<sup>2</sup> The 2002 Resolution repeated the provisions of the first resolution, adding as its goals the prevention of discrimination, xenophobia and racism. It stressed integration of migrants as one of the basic foundations of migration policy. Despite the fact that the resolution highlighted the importance of effective integration and the need for more active integration approaches, integration in Slovenia remained a merely declaratory obligation of the state. In practice, the integration in Slovenia remains a linear, one-way process that demands adaptation of migrants. The Resolution fails to envision any change in society at large and defines integration only in relation to migrants.

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<sup>1</sup> Resolucija o imigracijski politiki Republike Slovenije, *Official Journal RS* 40/1999.

<sup>2</sup> Resolucija o migracijski politiki Republike Slovenije, *Official Journal RS* 106/2002.

Moreover, integration is highly individualistic, it is exemplified as an individual migrant's activity, thus leaving migrants without proper guarantee of protection (Pajnik 2007, 853).

Attempting to surpass this deficiency, in 2008 a *Decree on Aliens Integration* was adopted.<sup>3</sup> Despite its notable shortcomings and the continuous lack of effective implementation in practice, the Decree is so far the only official document focusing specifically on integration of “foreigners” in Slovenia, stipulating to enable their “integration into the cultural, economic and social life”. The Decree sets the foundation for the integration of TCNs, suggesting different measures, such as learning Slovene language, culture and history. As part of the integration measures, TCNs residing in Slovenia on the basis of permanent residence permits or at least two years on the basis of temporary residence permit have a right to free classes of Slovene history, culture and constitution. Under certain conditions<sup>4</sup> also immediate family members of TCNs, who have temporary residence permit on the grounds of family reunification provision, are entitled to the same cost-free programmes, intended for stimulating integration.

## **2.1. Overview and critical evaluation of country specificities**

The basic framework for migration and integration policies in Slovenia is provided in the Constitution, stipulating that “foreigners” enjoy all the rights guaranteed by the Constitution and laws, except for those rights that are only reserved for citizens.<sup>5</sup> The Constitution stipulates that “[e]ntry into the country by aliens, and the duration of their stay in the country, may be limited on the basis of law”, while it also provides for special rights of “foreigners” employed in Slovenia and members of their families. The particulars are further defined by several laws regulating the status of “foreigners” in Slovenia. The main law is the *Aliens Act*, which categorises three different statuses for migrants: i) temporary residence, ii) permanent residence, and iii) permission to remain.<sup>6</sup> The Constitution also defines the right to asylum, which is further defined with the Asylum Act.<sup>7</sup> It has to be pointed out that in Slovene policies and regulations the practice of regularisation (legalising irregular status) of

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<sup>3</sup> Uredba o integraciji tujcev, *Official Journal RS* 65/2008.

<sup>4</sup> These conditions are tied to the type of residence permits held by TCNs who assert their right to family reunification.

<sup>5</sup> Ustava Republike Slovenije, *Official Journal RS* 33I/1991-I, 42/1997, 66/2000, 24/2003, 69/2004, 69/2004, 69/2004.

<sup>6</sup> Zakon o tujcih, *Official Journal RS* 108/2002.

<sup>7</sup> Zakon o azilu, *Official Journal RS* 61/1999, 124/2000, 67/2001, 98/2003, 17/2006.

“undocumented” migrants is still unknown in contrast to some other countries such as Italy or France.

The acquisition of citizenship still represents the most potent measure of integration into a society; however, the carefully prescribed lists of various requirements that the applicants need to fulfil make it difficult for migrants to acquire citizenship. The fundamental legal act defining and regulating rules for acquiring Slovene citizenship is the *Citizenship of the Republic of Slovenia Act*.<sup>8</sup> The Act provides three types of naturalisation: 1. regular naturalisation, 2. facilitated naturalisation, and 3. exceptional naturalisation.

The most common way for a person to obtain a citizenship is through the regular naturalisation. In accordance with the regular naturalisation rule of the *Citizenship Act*, the conditions that have to be fulfilled are the following: to be 18 years of age; to have a release from current citizenship or proof that a release will be obtained if citizenship of Slovenia is acquired. The stipulations further include a requirement of actually living in Slovenia for 10 years, of which continuously for the past 5 years prior to the submission of the application, that is having the legal status of a “foreigner”. Applicants must also demonstrate a guaranteed permanent source of income at least in the amount that enables material and social security, and must settle all tax obligations. A good command of Slovene language for the purposes of everyday communication is also required, as is proof of not having a criminal record.<sup>9</sup> The applicants are also subject to verification whether their naturalisation poses “no threat to the public order, security or defence of the state” and they need to declare their agreement with the legal system of Slovenia.<sup>10</sup> The required residing in Slovenia (10 years) before a citizen of another country gets the right to request for naturalisation is one of the longest in Europe. The same time-period condition for first generation migrants applying for naturalisation is also required in Austria, Italy, Luxembourg, Spain and Portugal. To compare, in Germany this stipulation is set to 8 years, in Denmark to 7, whereas Cyprus, Finland, France, Greece, Ireland, Netherlands, Sweden and UK demand 5 years of uninterrupted residence in their respective countries, while Belgium has the mildest condition of 3 years of residence prior to requesting for citizenship (Bauböck 2006; Waldrauch 2005).

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<sup>8</sup> Zakon o državljanstvu Republike Slovenije, *Official Journal RS* 7/2003.

<sup>9</sup> The requirement specifies not being sentenced to a prison sentence longer than one year, with some additional stipulations regarding criminal offences specifically in Slovenia.

<sup>10</sup> Current administration tax when applying for Slovene citizenship is 152.44 Euros.

Facilitated naturalisation is naturalisation of individuals of Slovene descent, “foreigners” married to the citizens of the Republic of Slovenia, persons born in Slovenia who have been residents since their birth, persons with refugee status, stateless persons and minors. Exceptional naturalisation occurs in cases when foreigners that do not fulfil all the necessary conditions prescribed for regular naturalisation are granted citizenship due to the special interest of the state for their naturalisation, e.g. reasons of significance in terms of culture, economy, science, sport, human rights, etc.

When discussing citizenship requirements, it is necessary to point out the specific case of the “erased”. In February 1992, well over 25,000 people were deleted from the registry of permanent residents of Slovenia without any prior notification. As a result they became “foreigners”. This illegal and unconstitutional administrative measure later became known as the “erasure”. Most of the “erased” or at least one of their parents were born in other republics of the former Yugoslavia, which shows that the “erasure” was based on ascribed ethnic criteria.<sup>11</sup> The result of the administrative “erasure” left these people status-less. They were forced to live without documents, which had been destroyed upon submitting them to public officials, without healthcare and social security, and denied the right to work, or rather, forced to resort to undeclared labour and in constant fear of persecution and subject to exploitation of employers. In effect, the act of the “erasure” transformed these permanent residents into illegal migrants (Bajt and Pajnik forthcoming). The precariousness of their position, still not resolved for a number of these people even after more than a decade, offers a significant comparison with the situation of TCNs in Slovenia.<sup>12</sup>

## **2.2. EU provisions: their adoption and implementation in practice<sup>13</sup>**

Until the late 1980s, early 1990s the migration and integration policies have been entirely in the domain of the EU member states. However, with the rapidly increasing numbers of asylum seekers and migrants some of the member states realised they will not be able to cope with the influx of large numbers of migrants with their existing policies and therefore agreed to develop common migration and integration policies on the EU level. The main objective is

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<sup>11</sup> People with permanent residence in the Socialist Republic of Slovenia prior to 1991, whose citizenship was of any state other than the former Yugoslavia, did not experience the same drastic measure.

<sup>12</sup> For more on the “erased” see Dedić et al. 2003.

<sup>13</sup> This chapter is based on the report on EU provisions related to migration and integration prepared for the PRIMTS project by Neža Kogovšek.

to better manage migration flows by a coordinated approach, which takes into account the economic and demographic situation of the EU. Nevertheless, it was only in 1999 that the foundation for a common EU migration policy was developed. With the Amsterdam Treaty of May 1999 migration policies became a part of the first pillar of the EU law, establishing the competence of the Council to adopt binding legislation for EU member states. The adoption of the Amsterdam Treaty was followed by the European Council in Tampere in October 1999 where the “commitment to work in asylum and immigration” was confirmed. At this occasion the Council provided guidelines to the Commission on the policies that need to be developed in four fields: partnership with countries of origin; a common European asylum policy; fair treatment of TCNs; and the management of migration flows. Integration was seen as a scope of measures “aiming at granting legally resident TCNs rights and obligations comparable to those of EU citizens”.<sup>14</sup>

Following the European Council in Tampere, which explicitly called for a more vigorous integration policy, the EU adopted an arsenal of instruments for facilitating integration in the following areas:

- the right to family reunification;
- the status of TCNs who are long-term residents;
- the conditions of entry and residence of TCNs for the purpose of paid employment or self-employed economic activities;
- admission of students and volunteers;
- asylum policy (minimum standards for the reception of asylum seekers and minimum standards for the qualification and status of TCNs and stateless persons as refugees or as persons who otherwise need international protection);
- combating discrimination (Directives 2000/43/EC and 2000/78/EC);
- granting TCNs the same protection as EU workers in the field of social security when moving in the EU.

The approach agreed in Tampere in 1999 was confirmed in 2004 with the adoption of *The Hague Programme*, which sets the objectives for strengthening freedom, security and justice in the EU for the period 2005–2010. The Programme also detailed a proposal for new EU

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<sup>14</sup> Presidency Conclusions of the Tampere European Council 15–16 October 1999 (SN 200/99).



measures on migration and asylum, including a chapter on integration, in the light of maximising a positive impact of migration.

The latest developments in the field of migration and integration policies on the EU level include adoption of a *Policy Plan on Legal Migration* in December 2005,<sup>15</sup> which lists actions and legislative initiatives that the Commission intends to take, so as to pursue the consistent development of the EU legal migration policy. Further, in September 2007, the Commission presented the *Third Annual Report on Migration and Integration*,<sup>16</sup> continuing the monitoring process of policy developments on admission and integration of TCNs in the EU. At the Justice and Home Affairs Council held in November 2008<sup>17</sup> the importance of coherent integration policy was stressed and set priority actions for the future, which are promotion of “European values”, integration process, access to employment, integration of women and education of children, intercultural dialogue, and integration policy governance.

Despite the numerous (legal) actions undertaken by the EU, legally binding documents, communications and frameworks adopted and meetings held, the question is how this is implemented by the member states. The legally binding outcomes of the EU policies for the member states are written down in the Directives of the Council. The most important Directives connected to TCNs are the following: *Racial Equality Directive*,<sup>18</sup> adopted in 2000, prohibits discrimination on the grounds of race and ethnicity in access to employment, employment conditions, vocational training, membership in trade unions, education, health, social benefits including housing and access to goods and services; the 2001 *Temporary Protection Directive*,<sup>19</sup> which defines the content of the protection by granting the beneficiaries the rights that can facilitate their integration; this was followed by the *Family Reunification Directive*,<sup>20</sup> and in 2003 the *Directive on the status of TCNs who are long-term residents*.<sup>21</sup> Slovenia adopted all these directives. Also in 2003, the *Regulation 1408/71 protecting workers in EU in the field of social security* was extended to TCNs working and

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<sup>15</sup> Communication from the Commission, COM (2005) 669.

<sup>16</sup> Communication from the Commission, COM (2007) 512.

<sup>17</sup> Conclusions of the Justice and Home Affairs Council, 27–28 November 2008, 16325/1/08/REV 1.

<sup>18</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>19</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member states in receiving such persons and bearing the consequences thereof.

<sup>20</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

<sup>21</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of TCNs who are long-term residents.

moving in the EU.<sup>22</sup> In 2004, the legislative activity continued with the adoption of *Victims of Trafficking Directive*<sup>23</sup> and *Qualification Directive*.<sup>24</sup> In 2005, the *Directive concerning a specific procedure for admission of researchers*<sup>25</sup> was adopted, providing admitted researchers from “third countries” with special rights. In May 2009, the Council adopted additional two directives: the *Directive on improving the conditions of entry and residence in the EU of TCNs for the purpose of highly qualified employment* (known as the EU Blue Card) and a *Directive providing for minimum standards on sanctions and measures against employers of illegally staying TCNs*.<sup>26</sup> Slovenia transposed all these directives into the national legislation. Other directives important for migrants include also the 1977 *Directive on the education of the children of the migrants*,<sup>27</sup> which was incorporated into Slovene *Elementary School Act* and it gives children of migrants the right to free classes in their native language. It is just one example of how the legal framework fails short of enforcing the implementation of its provisions, as migrant children are in reality not necessarily able to attend language classes, usually because of lack of financial means or inability to find a teacher, and so on.

The Slovene legislation is therefore more or less mirroring the EU guidelines, however, only adopting appropriate legislation cannot assure that the implementation will actually be carried out in practice. There are no effective mechanisms that would assure the implementation of the Council Directives, which are transposed into Slovene legislation, meaning that also EU policies in Slovenia often stay at mere descriptive level. The Slovene legislation is primarily restrictive, which corresponds to the Southern model of EU migration policies (Kovač 2003). It lacks a superstructure that could harmonise the three basic areas: asylum law, movement of people and integration of “foreigners” into Slovene society (ibid, 246). However, even though Slovenia is characterised by the “Southern model of migration” (King and Thomson 2008, 273), the socialist past still plays a major role in its migration patterns. History produced

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<sup>22</sup> Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of “third countries” who are not already covered by those provisions solely on the ground of their nationality.

<sup>23</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to TCNs who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

<sup>24</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of TCNs or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

<sup>25</sup> Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting TCNs for the purposes of scientific research.

<sup>26</sup> Conclusions of the Agriculture and Fisheries Council in Brussels, 25 May 2009, 10245/09.

<sup>27</sup> Council Directive 1977/486/EC.

different waves and directions of migration and a migration crisis and policies of increased nationalism emerged after the dissolution of Yugoslavia. A further move to a more restrictionist stance was made in 2004, with the entrance of Slovenia in the EU, and in 2006, with the introduction of initial police check on asylum-seekers (ibid., 277–278).

The *International Convention on the Protection of the Rights of All Migrant Workers and Their Families*<sup>28</sup> should also be mentioned. Even though it is not an EU policy but an UN instrument, it is a highly relevant document because its primary objective aims at fostering respect for migrants' human rights. The Convention does not create new rights for migrants but aims at guaranteeing equality of treatment and the same working conditions for migrants and nationals. The Convention relies on the fundamental notion that all migrants should have access to a minimum degree of protection. However, so far the countries that have ratified the Convention are primarily only “countries of origin” of migrants. For these countries, the Convention is an important mechanism to protect their citizens living abroad. Slovenia, as other EU member states, has not signed and ratified the Convention; therefore, the “countries of destination” are not legally obliged to respect its principles. It is therefore possible to detect various hypocrisies in the legislation and practice, pointing – on the one hand – towards the inability of institutions such as the United Nations or the European Union to fully enable the enforcement of their common basic human rights principles, as well as – on the other hand – the unwillingness on the part of the national states to submit fully to supra-national policies. Put differently, while the EU pressures its member states into complying with its laws, policies and regulations, particularly during accession negotiations, it itself often fails to provide a model example in matters of full inclusion of all migrants.

As derives from the EU policies, the EU bodies are dedicating quite a lot of time and effort to the issues of integration; however, very few legally binding provisions have been adopted in this respect. The member states are mainly “encouraged” to adopt integration policies in accordance with common basic principles and the common agenda on integration. The fact that integration measures are almost entirely in the competence of the member states enables those member states that are lacking such measures to continue to maintain such a condition. In other words, the countries that are lacking integration policies and do not see these as a priority are not sufficiently encouraged by the EU to change their attitudes.

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<sup>28</sup> Adopted by the UN General Assembly resolution 45/158 of 18 December 1990.

### 2.3. Discussion of gender and regional dimension in integration mechanisms

In Slovenia, legal provisions in principle are not sensitive to gender issues, and vulnerable groups are often not treated by the programmes; for example, the *National Social Care Programme for the Period 2006–2010* does not mention migrants, asylum seekers, or refugees. Gender issues in migration are predominately neglected, and there is a gap in public policy. Laws and legislation in Slovenia are therefore generalised in terms of gender perspective; there is a lack of specificities in terms of gender. However, there are some specific laws and provisions that apply specifically to women, such as stipulations regarding pregnancy, maternity leave and child support. An example of this is the provision of the *Employment and Insurance in Case of Unemployment Act*, which refers directly to women in Article 79 about the regulation of financial compensation in case of unemployment while pregnant or on maternity leave. The *Asylum Act* also specifies health care services for women: contraception, abortion, and health care during pregnancy and delivery. These provisions of the Act are the only gender-specific provisions in terms of the integration of female migrants.

The *Act Implementing the Principle of Equal Treatment*<sup>29</sup> defines common grounds and starting points for assuring equal treatment of everybody in all spheres of social life. It covers employment, working relations, inclusion in unions and associations, education, social security, and access to goods and services and their provision. It also mentions personal circumstances on the grounds of which equal treatment must be assured. Among these are nationality, race or ethnic origin, gender, health condition, disability, language, religion or any other belief, sexual orientation, education, wealth, social position or any other personal circumstance. The problem with this act is that many of its key provisions are too vague to be applicable in practice and may hence discourage persons from filing complaints in court. The Act can be seen as representing a good legal basis for fight against discrimination, as demonstrated by a few successful cases. Nevertheless, the low number of cases on the overall points to the low awareness of the right to require protection against discrimination.

In terms of gender mainstreaming in general, under the umbrella of the Government of Slovenia, the Office for Equal Opportunities was set up in 2001, which is a successor of the Office for Women's Policy that was established in 1992. By founding the Office, the Government committed itself to integrating the principle of gender equality into governmental

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<sup>29</sup> Zakon o uveljavljanju načela enakega obravnavanja, *Official Journal RS* 50/2004.

policies and to eliminating inequality in all areas of life. Equal opportunities for women and men and the related special attention to women, who are still in a position of inequality, remain at the forefront of the operations of the Office for Equal Opportunities.

The main law on equal rights for women, which can also be applied to the rights of migrant women even though it contains no special provisions that would directly influence their status, is *The Equal Opportunities for Women and Men Act*.<sup>30</sup> This act is set as an umbrella law, arranging common grounds for the improvement of women's situation and for the establishment of equality of men and women in political, economic, social, educational and any other sphere of public life. The law contains guidelines and recommendations for their fulfilment in practice, and defines the responsibility for implementing, monitoring, assessing, planning and reporting on measures in individual areas defined in the act. The principle of equality of women and men is further set in the *Resolution on the National Programme for Equal Opportunities for Women and Men (2005–2013)*.<sup>31</sup> The problem is, however, that the Office lacks specific provisions and programs that would be directed specifically to migrant women.

The Council of the European Union acknowledges successful integration as a critical aspect of managing migration, adding that integration takes place simultaneously at the individual, family, general community and state levels, thus occurring in all facets of life. Consequently, successful integration policy must engage local, regional and national institutions, with which migrants interact, in both public and private realms. The development and implementation of integration policy is therefore the primary responsibility of individual member states, rather than of the EU as a whole. This conclusion hence offers a justification for retaining the competence for specific integration measures not only on the level of individual member states, but also on the level of their regional and local authorities.

In Slovenia, integration has so far been an unattained goal of policies that remain caught between the state-level proclamations and integration plans that are to be implemented on a regional level. One of the main problems in integration policies is that local communities are not sufficiently informed about and equipped for the integration of “foreigners.” This is planned to change as soon as the regionalisation of Slovenia takes place; for now, however,

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<sup>30</sup> Zakon o enakih možnostih žensk in moških, *Official Journal RS* 59/2002.

<sup>31</sup> Resolucija o nacionalnem programu za enake možnosti žensk in moških 2005–2013, *Official Journal* 59/2002.

Slovenia is not yet administratively divided into regions.<sup>32</sup> When this happens, the competencies for integration policies are planned to be transferred to the level of municipalities and regions. Since the technicalities and practical side of these proposed changes are not yet known, it is impossible to evaluate the application of the integration provisions to practice. Until the *Law on Regionalisation* actually enters into effect and the relevant competencies are transferred, their effects on the situation of migrants are dubious. As another recent incentive, a representative from the social work centre in Kranj pointed out the necessity to establish specific programmes for integration of migrant women because many of them have a status of dependants, who formally do not engage in much contact with local communities. However, in reality many of these women actually work in informal economy and have therefore more contact with the local communities as is perceived.

The Ministry of the Interior confirms that current integration policies are too centralised, proposing (in public speeches) to establish a coordination between institutions that are competent for the integration of migrants, such as social work centres, Employment Service of Slovenia, municipal administration and health and education sectors. However, until now such group has not been set up yet.

### **3. Employment policies affecting TCNs' access to the labour market**

Policies and practices across Europe vary considerably regarding granting legal access to the labour market for different groups of migrants. At the EU level, labour market integration is the area with the most concretely defined policy objectives, as the 2003 Employment Strategy Guidelines propose to achieve a significant reduction in the unemployment gap between non-EU and EU-nationals by 2010. The reality, however, is different. Not only in Slovenia, but in most EU countries, migrant workers experience much higher levels of unemployment and underemployment than “domestic” workers. For this condition much guilt is transferred to current economic crisis. However, even in times of economic growth many migrants were unable to make use of their previous skills and working experience and were often working in low skilled, temporary and badly paid jobs, in generally more precarious positions. They are

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<sup>32</sup> We base this observation on a telephone conversation with Sabina Hrovatin, Head of the Sector for Integration at the Ministry of the Interior.

also over-represented in the informal labour market, working as undocumented and undeclared workers in order to survive, due to lack of access to legal employment.

### **3.1. Overview and critical evaluation of employment and residence requirements**

In order for a TCN to work and live in Slovenia they need to obtain work and residence permits before coming to Slovenia. However, it has to be noted that these procedures are long-lasting. It can take even up to 6 or 7 months before obtaining all the necessary documents.<sup>33</sup> In addition, in mid 2009 the entry conditions for some types of employment opportunities have been sharpened, completely preventing certain migrants from entering the Slovene labour market.

Residence permits and work permits are separate documents issued by different authorities. For migrants entering with intent to work, a valid work permit is considered a prerequisite for a residence permit, which is issued for the duration of the former by the relevant administrative unit. The various types of work permits for “foreigners” affect TCNs, whose access to the labour market is most limited. Employment permits must therefore be obtained before entering Slovenia and are subject to quota restrictions. One of the key conditions for issuing work permits is the current situation on Slovenia’s labour market, which affects the distribution of quotas. This means that for a work permit to be issued for a TCN unused quotas for foreign workers must still be available and no adequate domestic unemployed persons registered at the Employment Service, who could otherwise fill the position.

#### **3.1.1. Residence permits**

The conditions and ways of entry into, departure from, and residence of “foreigners” in the Republic of Slovenia are set in the *Aliens Act*.<sup>34</sup> In accordance with this Act, a “foreigner” who is a TCN and who wants to reside in Slovenia longer than three months for reasons other than those enabling residence based on a visa must obtain a residence permit.<sup>35</sup> In addition to

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<sup>33</sup> The time frame is based on the testimonies from the migrant workers, who went through all these procedures to obtain residence and work permits.

<sup>34</sup> Zakon o tujcih, *Official Journal RS* 108/2002.

<sup>35</sup> Visas are issued for tourist, business, personal or other kinds of visits. A residence permit may be issued to “foreigner” who intends to reside in the Republic of Slovenia for one of the following purposes: i) employment

having to demonstrate one of the valid purposes for residence in Slovenia, migrants must also prove adequate health insurance and sufficient funds to support themselves during their residence in Slovenia.<sup>36</sup> A temporary residence permit is initially issued with the maximum duration of one year.<sup>37</sup>

Permanent residence awards more rights in terms of socio-economic and political provisions. A permanent residence permit may be granted to a TCN who has been residing in Slovenia for a period of five years uninterruptedly on the basis of a temporary residence permit and who also fulfils other conditions stipulated in the *Aliens Act*. In addition to the completion of the five-year uninterrupted period of residence in Slovenia, migrants must fulfil the same conditions and submit the same documents as for obtaining a temporary residence permit. The *Aliens Act* also specifies exceptions to the five year residence requirement: “foreigners” of Slovene descent; those whose stay is of interest to the state; and relatives of Slovene citizens or of “foreigners” with permanent residence permit or with refugee status.

### **3.1.2. Employment**

Employment is one of the main elements of integration, since it enables economic independence and creates more possibilities for interaction with members of the majority society. Conditions for employment and work of TCNs are very different from requirements that have to be fulfilled by EU citizens. Whereas EU citizens are free to work in Slovenia, the rules for TCNs are much stricter. The only possibility for TCNs to work in Slovenia is by obtaining work permits before entering Slovenia. In addition, a set of restrictions is enforced according to the type of permits that TCNs possess.

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or work; ii) study, education, specialisation or advanced professional training, practical training, cooperation or participation in international volunteer exchange programmes and other programmes for young people which are not deemed to be part of formal education; iii) family reunification, iv) other legitimate reasons justified by law, international acts, or international principles and practice and v) to “foreigners” of Slovene origin to the third generation in direct descent and children of “foreigners” born in Slovenia.

<sup>36</sup> In addition to these conditions being fulfilled, the body issuing the permit must establish that there are no reasons for not issuing the residence permit as defined in Article 43 of the *Aliens Act*. These reasons are stated as a danger to public order, security or international relations and non-compliance with the Slovene law. In addition, a “foreigner” must also submit a certificate proving that he or she has not got a criminal record.

<sup>37</sup> For the issuing of a temporary residence permit for the purpose of employment or work, the following must be submitted: i) a valid work or other necessary permit; ii) in case of a first residence permit a declaration of the employer that they will enter a labour relationship or work contract with the “foreigner” and do so in the event of ensuing permit renewals; iii) a certificate on non-criminal record issued by the country of origin; iv) proof of guaranteed subsistence funds; v) proof of appropriate health insurance; and vi) a certified photocopy of a valid passport.



The main act regulating work and employment in Slovenia is the *Employment Relations Act*,<sup>38</sup> which contains a provision that a fixed-term employment contract can be entered with a “foreigner” who has a fixed-term work permit. Employment and work of migrants is further regulated by the *Employment and Work of Aliens Act*.<sup>39</sup> It requires migrants to obtain a work permit before entering Slovenia for the purposes of work or employment. The number of work permits issued by the Employment Office is limited yearly (in quotas) by a decision of the government. The quota, which should not exceed 5 per cent of the total number of the active Slovene population, changes annually. For 2009 the quota has been set to 24,000, which is 8,000 less than in 2008.

With the modification of the *Employment and Work of Aliens Act* in 2007 some simplifications in procedures of acquiring work permits entered into effect. The most important changes to the Act include (Zatler 2007):

1. First employment of a “foreigner”: under the old Act, employer had to submit more documents for the first employment of a TCN, now only 4 are required. Employers have to declare a need for a worker, submit a job contract, an identification of “foreigner” and proof of education is requested.
2. Prolongation of work permits: the employer has to submit an application for prolongation to the Employment Service of Slovenia that then proceeds with the process of confirming and fulfilling the conditions.<sup>40</sup> However, the employers are required to submit the application for a work permit prolongation within a tight timeframe, otherwise the application is treated as a first-time employment of the foreigner and all the documents have to be re-submitted.
3. Migrants with at least vocational level of education may now obtain personal work permits after two years of uninterrupted employment in Slovenia rather than five as was the requirement before.
4. Fewer conditions than before have to be met for deficit professions. However, this point became irrelevant with the new 2009 amendment to the *Rules on work permits, on registration and de-registration of work and on the supervision of the employment and work of aliens* that effectively abandoned the deficit professions.

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<sup>38</sup> Zakon o delovnih razmerjih, *Official Journal RS* 42/2002.

<sup>39</sup> Zakon o zaposlovanju in delu tujcev, *Official Journal RS* 66/2000.

<sup>40</sup> Under the old Act, employers had to submit five different documents. These were the balance sheet of the company, the confirmation that the company paid taxes, proof that neither the future employee nor the employer have a criminal record, proof that a “foreign” worker is actually employed and will arrange a residence permit. Now the Employment Service of Slovenia verifies these data without the employer needing to submit any documents.

5. Compulsory declaration at the Employment Service of Slovenia: under the new Act the employer does not have the additional obligation of declaration at the Employment Service when a TCN enters the regular work contract. In this case this is done directly at The Health Insurance Institute of Slovenia.

6. Requirements and evidences: the employer had to submit financial balance sheets of the company and evidence of paid taxes and contributions, which is no longer a requirement. Also, procedures to certify education gained abroad were long and expensive, which is now said to be done immediately. However, there are no evident changes in terms of shortening the waiting periods and the procedures are still long and often not in favour of the applicants.

There are three different categories of work permits that a “foreigner” can obtain for employment in Slovenia:

- *Permits for work* are temporary permits with their duration depending on the purpose of work. They are subject to quota restrictions and meant for seasonal work, referred or appointed workers, movement of persons within an enterprise, education and training in Slovene enterprises for managers, training, contractual services. Permits for work are issued on the application of employer, and were not subject to prior inspection of the actual labour market situation until June 2009, when changes were introduced that affect seasonal jobs (banning seasonal work permits for all sectors but agriculture and forestry, where the labour market demand is deemed to remain unmet and therefore in need of migrant labour).<sup>41</sup>
- *Employment permits* are issued to TCNs for a maximum of one year and are also issued based on employer’s application. Employment permits must be obtained by the employer before a migrant enters Slovenia and are dependent on the absence of suitable registered unemployed “domestic” workforce. This means that they are related to the demand on the labour market and the Employment Service of Slovenia needs to check the register for suitable domestic unemployed persons before issuing employment permits for “foreign” workers.
- *Personal work permit* (temporary or permanent) is issued on the application of TCNs (including refugees, asylum seekers and persons under temporary protection) and is not related to the labour market demand. The minimum condition for a personal work permit with the duration of one year is a permit to reside in Slovenia and that the

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<sup>41</sup> See section 3.2. for explanation of recent changes.

person has lived in Slovenia for at least one year without interruptions before the application. However, an additional stipulation that requires financial means in the amount of 10,000 EUR prevent most TCNs from applying for a personal work permit after residing in Slovenia for a year. Instead, they usually wait until they have reached the requirement of having been employed by the same employer for two years, which enables them to apply for the personal work permit without the above mentioned financial requirement. Personal work permits for indefinite time are issued to “foreigners” with a permanent residence and to refugees.<sup>42</sup>

The “employment permits” and “permits for work” represent a more restrictive type of permits because they allow a migrant to work only for one specific employer, whereas only “personal work permit” allows a migrant to freely choose between employers, or to be self-employed. This is a formally granted status; though in practice migrants often encounter various obstacles in terms of equal access to the labour market, as well as in terms of accessing the same level of social and other rights. Namely, a personal work permit in principle gives a migrant the same level of rights as enjoyed by Slovene nationals, including unemployment benefits. In opposition to employment permits and permits for work, personal work permits are exempt from quota restrictions and the situation on the labour market and allow their holders to move freely between employers, which is also why they are only issued after a prescribed period of time spent in Slovenia (the usual minimum is 2 years, it used to be 5 years).

Personal work permits bring most social security, since only migrants holding this type of permit can register in case of unemployment at the Employment Service of Slovenia and can claim some social security in case of unemployment. Employment permits and permits for work are much more rigid and do not allow a “foreign” worker to change employers, often leading to situations where migrants are totally dependent on the will of their employers to prolong the permit and provide them basic social rights. Recently, *Rules on work permits, on registration and de-registration of work and on the supervision of the employment and work*

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<sup>42</sup> Personal work permits can also be issued for self-employment of “foreigners”, or for validity of up to 3 years (with possibility of extension); namely, to “foreigners” who have been employed by the same employer for at least 2 years; or based on family reunification policies to immediate family members of Slovene citizens and to immediate family members of “foreigners” with personal work permit for indefinite period, with additional requirement that they have already lived in Slovenia for 2 years.

*of aliens*<sup>43</sup> were amended to include a stipulation that allows employment of TCNs only if there are no appropriate unemployed Slovene citizens available for the job. This effectively means that the so-called deficit professions, which were part of the so-called “uncontrolled labour market”, are now being controlled. The government justifies this change as part of its recently adopted measures aimed against recession, i.e. protecting jobs of Slovene nationals. The Ministry of Labour, Family and Social Affairs issued the following statement regarding the change:

We believe that the changed pattern of increased unemployment trends of domestic workers has to be accounted for, and therefore assure that additional employment of “foreigners” will not have harmful effects on the labour market and the consequent less opportunities for employment of domestic workers, which are currently registered at the Employment Service of Slovenia. We are assessing that therefore such change of the Rules is vital.<sup>44</sup>

While EU nationals enjoy formally equal access to the labour market in Slovenia, TCNs’ access is carefully monitored and regulated. This measure adds to the precariousness of TCNs, also by not respecting the equal opportunities for all and the non-discrimination clauses of the Slovene Constitution.

### **3.2. Policies regulating employment in sectors with high participation of TCNs**

Slovenia, marked with rapidly ageing population and economic growth in the past years, had a high demand for (unskilled) labour on the labour market. The Slovene government responded to these demands by raising the quotas for employment and work of TCNs. Consequently, numbers of TCNs who came to work and live in Slovenia increased. However, recently, due to the recession the general (economic) climate changed substantially. Economic growth decreased, companies are faced with severe difficulties, many of them forced to declare bankruptcy and more and more workers are losing their jobs. In the light of this, the government introduced new measures, which would protect jobs of the “domestic” workforce at the expense of migrant workers, without having a clear strategy on how to prevent the negative effects of such actions on the migrants.

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<sup>43</sup> Pravilnik o delovnih dovoljenjih, prijavi in odjavi dela ter nadzoru nad zaposlovanjem in delom tujcev, *Official Journal* 28/2009.

<sup>44</sup> Statement in a letter from the Ministry of Labour, Family and Social Affairs on 3 February 2009, explaining the amendment to the *Rules*, available at [http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti\\_pdf/p\\_del\\_dovolj\\_tujci\\_sprem\\_obr.pdf](http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/p_del_dovolj_tujci_sprem_obr.pdf) (28 May 2009).

In the first half of June 2009, the government of Slovenia accepted new measures in the *Decree on restrictions and prohibition of employment and work of aliens*,<sup>45</sup> which substantially limits the employment and work of TCNs. The government justified these changes with increased unemployment of “domestic” workers and with the argument that some abuse of the *Employment and Work of Aliens Act* was noticed.<sup>46</sup> The Decree was prepared by the Ministry of Labour, Family and Social Affairs and does not change the number of quotas for 2009; however, it introduces the following restrictions and prohibitions within the quota:

1. *Prohibition of seasonal work*: the prohibition of seasonal work is in place for all sectors apart from agriculture and forestry, the two sectors that may continue employing seasonal TCN workers. This means that seasonal work in construction and tourism is no longer available to TCNs. The reasons for prohibition of seasonal work conveyed in the Decree and repeated by the state officials are the rapidly increasing unemployment trends in Slovenia. Seasonal work is allowed only in cases when the demand on the labour market is higher than the supply.

2. *Prohibition of issuing new permits for representatives of micro and small companies and for representatives of branch offices*: according to the Decree, many migrants who got their permits as representatives then “abused” their work and residence permits to go to other Schengen countries.<sup>47</sup>

3. *Prohibition of issuing work permits to companies that do not have vacancies for migrants in the time of issuing the work permit*: the Decree reasons that employers arrange work permits in advance, in this way distorting the picture of the actual needs for workers, unjustifiably using up the quotas for work permits.

4. *Prohibition of employing TCNs from certain regions*: the decree sets a regional distribution of the quotas: 95% of unused quotas should be distributed among the nationals of Yugoslavia successor states, except those coming from Kosovo. The remaining 5% should be distributed among citizens of Kosovo and all other TCNs. This represents a notable limitation of employment for people from Kosovo, as well as additionally limited access to the labour

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<sup>45</sup> Uredba o omejitvah in prepovedih zaposlovanja in dela tujcev, *Official Journal RS* 44/2009.

<sup>46</sup> The Decree was factually a response to a question raised by a nationalist MP Zmago Jelinčič, while the base for such measures was justified with the necessity to respond to other countries’ warnings issued to Slovenia because of TCNs, whose work and residence permits were issued in Slovenia, but were found working or residing “illegally” in other countries, apparently “abusing” the Schengen visa system etc.

<sup>47</sup> Here it is worthwhile mentioning that the talk about the “abuses” is dubious and may function as a populist discourse.

market for all other TCNs. The most disputable issue in this case is that the proposed change is violating the equality and non-discrimination clause of the Constitution.

5. *Prohibition of issuing work permits for certain occupations*: employment in the entertainment sector is severely limited as work permits for “nightclub dancers” can now only be issued to “foreigners” who do not need visas to enter Slovenia, or nationals of countries with visa alleviation agreements with the EU. The reasons for this measure lie in the suspicion that women from “third countries” are victims of criminal acts of prostitution and human trafficking. The Decree also aims to prevent employers from “lending” each others’ employees, since now the artistic and entertainment workers will only be able to perform their job on one location.

The Decree lists some questionable arguments as reasons for the initiated changes and has been criticised for its discriminatory treatment of TCNs, particularly residents and nationals of Kosovo, but also for its short-sighted measures to tackle the recession, which respond to populist demands to protect the “domestic” workforce, while releasing the government and state apparatus from responsibility for more profound changes that could alleviate the economic crisis.

### **3.3. Policy assessment of informal economy, undeclared and undocumented work**

A wide array of names has been used to describe the phenomenon of undeclared work: hidden, moonlight, parallel, underground, second, unofficial, and shadow economy are a few examples. Many of these names differ in elements of description they use (work, activities, paid labour etc.) or in the distinguishing criteria used (fiscal, statistical, legal). The definition of undocumented work as “productive activities that are lawful as regards to their nature, but are not declared to the public authorities, taking into account the differences in the regulatory system between member states” (Renooy et al. 2004, 7) is relevant for the present report. Main groups of undeclared workers are persons with two or more jobs; “economically inactive” persons (students, “housewives”, early retired persons), the unemployed and “illegal” migrants.

Informal economy, undeclared work and undocumented work go hand in hand. Undeclared and undocumented work are categories of work, which are not recognised or protected under

the legal and regulatory frameworks. This is not, however, the only defining feature of informality, undocumented and undeclared. Informal workers are characterised by a high degree of vulnerability. They are not recognised under the law and therefore receive little or no legal or social protection. Sometimes various forms of this kind of work border on illegal activities, black market economy, but sometimes this is the only possible means of survival for many migrants. Undocumented workers are usually conceptualised as individuals who have crossed borders illegally, who have been smuggled into the country and who are living in the shadows, working in the semi-legal and sometimes illegal economies. Individuals may begin their migration journey as documented workers and may fall into undocumented status, for example, when work permits expire. They may also start their migration as undocumented workers, but due to changes in state legislation, may acquire documented status through a regularisation programme, through marriage or in some other way (McKay 2009, 1–2).

Slovenia accepted the programme of ascertaining and preventing the undeclared labour in 1997, and the corresponding law was passed in 2000. In 1997 the undeclared labour was discovered in 35% of examined cases. In the following years the amount of the ascertained cases was diminishing gradually. In 2002 undeclared labour was confirmed in 15% of examinations (Renooy et al. 2004, 133).

The share of gross domestic product made by undeclared labour in Slovenia is between 17 and 25%. According to the report *Undeclared Work in an Enlarged Union* published by the European Commission, in Slovenia in 2003, 17% of gross domestic product was made by undeclared labour. According to estimates, undeclared labour causes damage to the state in approximately four billion Euros per year due to unpaid taxes and contributions, whereas common rule is that the limit, which does not threaten the Slovene legal economy, is 15%. The report for 2003 also shows that the construction sector tops the league for undeclared work. As exhibited in our previous report (Pajnik et al. 2009), it is indeed in the construction sector where most migrant workers work as undeclared workers. Besides construction, agriculture and the hotel and restaurant sector are then followed by personal and domestic services. In the new member states and the candidate countries medical services, private tutoring, real estate transactions and business services also appear as notable sectors of undeclared work (Renooy et al. 2004, 25–26).<sup>48</sup>

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<sup>48</sup> In the time of writing the cited report, Bulgaria and Romania were still candidate countries.

In Slovenia, undeclared labour is still a widespread type of work performed by regularly employed in their spare time. Another type is also smaller building businesses, which, along with the regular activities, perform construction work mostly for private clients without issuing invoices for such services. The payment is performed in cash, with no taxes accounted. On many occasions hired undeclared workers also collaborate in performing such works. Similarly as in many other states, the undeclared labour is most widely spread in construction, transport, catering industry and services (e.g. hairdressing, cleaning, housework services etc). The EC report does not specifically tackle the undeclared work of migrants, but discusses the general trends in EU countries. However, most undocumented and undeclared migrant workers are hard to be tracked statistically and there are no known numbers of undeclared or undocumented migrant workers in Slovenia. This is also connected to the fact that no study exists that would analyse undocumented work in Slovenia.

Since 1996, the Slovene government has delivered a coherent package of policy measures to fight undeclared work. By the order of the Government of the Republic of Slovenia from December 2001 a special *Committee for the Exposure of Undeclared Work* has been established. Its objective is to determine, coordinate and follow the activities in order to prevent the undeclared labour and hiring undeclared workforce, and to coordinate the implementation of direct and indirect supervision over the provisions of the statute. The majority of measures tackling undocumented work are centralised. The Ministry of Labour, Family and Social Affairs and the Tax Administration of the Republic of Slovenia are combining their efforts to stimulate transition from informal to formal economy. Proposed measures include tax incentives on labour cost and changes in labour legislation. The representatives of all competent inspectorates, tax and customs administration as well as the police were appointed to the commission; as well as some other representatives. The parliament passed a law on undeclared work – *Prevention of Illegal Work and Employment Act* in 2000.<sup>49</sup> In 2008 the Labour Inspectorate dealt with 1,169 violations of the Act. Undeclared work constituted almost half of all violations and the other half represented undeclared employment of people. These numbers in comparison to 2007 and 2006 represent some reduction, since there were 1,334 discovered violations in 2007 and 1,580 altogether in 2006. The drop in numbers is also a consequence of increased inspections for 20% compared

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<sup>49</sup> Zakon o preprečevanju dela in zaposlovanja na črno, *Official Journal RS* 36/2000.



to previous years.<sup>50</sup>

A national social protection programme was adopted in 2006 to increase the attractiveness of certain jobs and motivate unemployed people to actively look for work and accept occasional and temporary employment. Undeclared work is nevertheless not a major political priority in Slovenia. A law to define and tackle undeclared work was only adopted in 2000 and amended in 2006 to regulate many forms of nonstandard (previously considered undeclared) employment and encourage the declaration of economic activity. A commission was set up in 1997 to co-ordinate activities of many agencies involved in tackling undeclared work. The competences of inspectorates have been enhanced to enable them to issue administrative measures and fines. Joint inspections between several agencies exist.

Further action is needed to create more reliable estimates of undeclared work, enhance the efficiency of the judicial system in collecting fines, undertake a public awareness-raising campaign, improve the capacity of (labour) inspectorates and reinforce sanctions for employers caught hiring undocumented workers. The government in its latest report on undeclared work<sup>51</sup> estimates that the undeclared work and “illegal” employment are being reduced, however, it also acknowledges that even more control and improvement of existing legislation is needed. Especially in the times of crisis undeclared work is increasingly present and therefore adequate strategy to combat illicit and undeclared work is necessary. This fact is also taken into account for the plan of work for all competent governmental institutions for 2009 and 2010.<sup>52</sup> The strategy includes the examination of the effectiveness of the *Prevention of Illegal Work and Employment Act*<sup>53</sup> and the employment of more labour and tax inspectors. The plan to start-up awareness raising campaigns targeting the public about dangers of undocumented work and the encouragement of the development of the social entrepreneurship is underway. And the programme implemented by the Employment Service of Slovenia targeting the stimulation of the employment and education of migrants already started.

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<sup>50</sup> Komisija Vlade RS za odkrivanje in preprečevanje dela in zaposlovanja na črno. 2009. Gradivo za obravnavo problematike dela in zaposlovanja na črno na seji Odbora Državnega zbora za gospodarstvo. Ljubljana: Ministrstvo za delo, družino in socialne zadeve.

<sup>51</sup> Ibid. 2009.

<sup>52</sup> The recommendations of the Committee for the Exposure of Undeclared Work.

<sup>53</sup> Zakon o preprečevanju dela in zaposlovanja na črno, *Official Journal* 36/2000.

### 3.4. Discussion of gender specificities

The equality principle and non-discrimination clause based on gender or other (racial, ethnic, age etc.) grounds are included in several documents, including the Constitution and the *Act on Equal Opportunities for Women and Men*. Specifically relating to employment, the prohibition of discrimination in work place is defined in the *Employment Relationship Act*,<sup>54</sup> which states that an employer must not put employment seekers (candidates) in an inferior position when employing them or terminating their employment contract on the grounds of sex, race, colour of skin, age, health condition or disability, religious, political or other beliefs, membership in a syndicate, national or social background, family status, property status, sexual orientation, or other personal circumstances. Direct as well as indirect discrimination on the grounds of sex, race, age, health condition, religious or other beliefs, sexual orientation or other personal circumstances, or national background is prohibited. Moreover, the article on equal pay for the same work or work of the same value for men and women is included in the Act. Under this law equal opportunities and equal treatment in employment, promotion, training, wages and other incomes, absence from work, working conditions, working hours and cancelling employment, have to be assured to women and men. The purpose of the act is to establish a general legal basis for the adoption of various measures aimed at promoting actual gender equality, and at creating equal opportunities for women and men, to formulate a national policy in this area and to establish a special procedure for resolving individual violations of the principle of equal treatment of the sexes. The Act, however, does not specifically address migrant women.

The *Employment Relationships Act* devotes particular attention to the protection of pregnancy and parenting. For pregnancy and parenting, female workers have the right to special protection in employment, and in the event of a dispute in connection with claiming special protection for pregnancy and parenting, the burden of proof lies with the employer. In the same way, employers must make it possible for workers to co-ordinate more easily their family and occupational duties.

Family reunification provisions are another policy area that is very relevant to the gender dimension, since more women than men come to Slovenia on the family reunification

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<sup>54</sup> Zakon o delovnih razmerjih, *Official Journal RS* 42/2002.

grounds.<sup>55</sup> This is connected to the fact that there are more male migrant workers living in Slovenia, many of whom eventually request reunification with their families. Issuing of first time residence permits on the grounds of family reunification and employment are mutually excluding. This means that a migrant who wishes to come to Slovenia on the family reunification grounds cannot request a permit for work at the same time. However, migrants are, once they entered Slovenia on the family reunification grounds, entitled to seek employment. The conditions under which a “foreigner” can obtain a work permit vary according to the type of family reunification, whether it is reunification with the Slovene citizen, EU citizen or with a TCN. The family member must obtain personal work permit or other permit for work, which can be obtained on the grounds of temporary residence permit.

In June 2009 the Slovene Government also passed a new Decree, which limits the work and employment of the so-called artistic and entertainment workers from “third countries” with the aim of preventing their (sexual) exploitation and human trafficking. This is the only provision concerning directly female migrants that has been implemented recently.

#### **4. Critical evaluation of other relevant policies affecting the position of TCNs**

Policies related to employment and work are only one piece of the integration puzzle, others, equally important for the lives of migrants are also social policies such as education, health, language, family and anti-discrimination and policies on undocumented work that deeply affect integration processes. Similarly, the EU adopted many Directives in the social policies area that prescribe the desired integration outcomes and set the common foundation for EU member states. However, the integration in these areas is highly dependent also on national policies.

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<sup>55</sup> In 2008 the share for family reunification in category of family member of TCN was 70% for women and 30% for men.

## 4.1. Social policies pertaining to TCNs

### 4.1.1. Access to health insurance and social security

At the European level, policies of access to social rights have to be linked with the commitment to freedom of movement, which is an integral component of the EU, as well as with the political objective of non-discrimination. Social security and freedom of movement are provided for EU citizens. In 2003, the Regulation (EC) No. 859/2003 extended the social security schemes for employed persons and their families moving within the EU also to TCNs legally residing in a member state. The importance of not treating TCNs who are legally resident differently from EU nationals has finally been acknowledged by the EU law, although conditions for social security are still regulated by national law. In Slovenia, the main act regulating social policies is thus the *Social Security Act*, which also determines that TCNs with permanent residence have the same right to claim the provisions of this law as Slovene citizens.<sup>56</sup> A part of social policies is also access to health care and health insurance and both are essential components of the integration of migrants and their well-being.

The rights connected to health insurance and health care of “foreigners” living in Slovenia are arranged according to Article 15 of the *Health Care and Health Insurance Act*.<sup>57</sup> This article entitles migrants residing in Slovenia on the basis of a permanent residence permit to be included into compulsory health care and health insurance schemes. The right to health care services comprises services at the primary level (basic health care), including dentistry and health care services in certain types of social care institutions; secondary level, including specialist out-patient services, treatment and hospital stay; and tertiary level services, which are carried out by clinics and institutions dealing with more serious and complex diseases as well as research and education. Health insurance is compulsory for all “foreigners” with permanent residence. However, the right to health insurance is limited, since only “foreigners” with permanent residence permits formally have the same rights as Slovene citizens. Migrants with temporary residence permits are only granted some basic rights. These are usually dependent on the discretion of their employers to arrange their basic health insurance. The practice shows that even if it is legally binding the employers often do not provide health care and health insurance for their TCN employees.

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<sup>56</sup> Zakon o socialnem varstvu, *Official Journal RS* 54/1992, 41/2007.

<sup>57</sup> Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju, *Official Journal RS* 72/2006.

According to the *Health Care and Health Insurance Act* the compulsory insurance embraces: insurance in the case of illness or injury, insurance in the case of injury at work, and professional illness. Emergency health care has to be provided to all people living on the territory of Slovenia, regardless of their status and permits. This includes all TCNs who do not have basic health care insurance, as well as all temporary residents of Slovenia. However, in practice this is not always the case. Often the administration employees in hospitals and other health institutions deny admission to treatment without a health insurance card even in cases of emergency. Further, the definition of what constitutes an emergency can be differently construed, especially in cases when administration workers are not familiar with the provisions of the law, which state that a person without insurance is entitled to free health care in case of emergencies. There have been cases when the administrators did not want to discharge the patient before paying their bill. Some TCNs also come across difficulties in communicating with the health personnel, or do not understand their diagnosis and treatment.<sup>58</sup>

Migrants with permanent residence in Slovenia are included in compulsory health insurance scheme if they are employed, self-employed, retired or as a family member. Similarly, *Social Security Act* determines that “foreigners” with permanent residence in Slovenia have the same right to claim the provisions of this law as do Slovene citizens. In accordance with this Act, everyone who is in bad social conditions is entitled to social assistance, including “foreigners” with permanent residence permits. Under certain conditions also persons without permanent residence permits are entitled to social assistance according to international acts, which are binding Slovenia. However, which acts and under which conditions can the social assistance be applied for, is not stated.

In addition, employed “foreigners” with permanent residence permit can also claim parental protection insurance under the *Parental Protection and Family Benefit Act*.<sup>59</sup> They have a right to parental compensation, to parental leave, to shorter working hours and to the pay of contribution for social security on the grounds of parenthood. However, they do not have the right to parental allowance, which is assistance to parents, given to those who are not entitled to parental compensation. Only “foreigners” with permanent residence have a right to

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<sup>58</sup> Interview with a social worker in one of the health centres, 2007, the Femipol project.

<sup>59</sup> Zakon o starševskem varstvu in družinskih prejemkih, *Official Journal RS* 10/2008.

childbirth allowance<sup>60</sup> and only in the case if a child has a registered residence in Slovenia.<sup>61</sup> The right to child benefits is awarded to one of the parents “foreigners” if a child has registered residence in Slovenia.

Even though the so-called “socially endangered” people (i.e. people who live in bad social condition) can get social benefits from the government, the fact that most migrants (the ones holding temporary residence permits) cannot register at the Employment Service of Slovenia in case of unemployment is entirely neglected in these provisions. These migrants are also one of the most vulnerable groups and in need of protection. However, because of the current Slovene legislation, they are not entitled to these provisions. Moreover, even employed migrants are often excluded from basic social provisions as the employers do not ensure their health insurance and do not give them the right to sick leave in case of illness.

#### **4.1.2. Family reunification**

For the past twenty years, family reunification has been one of the main sources of migration to the EU.<sup>62</sup> Family reunification measures are not only a way of bringing families together, but they are also essential to facilitate the integration of TCNs. The 1999 Treaty of Amsterdam, which makes migration a competence of the European Union, made also the issue of family reunification one of the policy areas dealt with at the EU level. In Slovenia this means that the 2003 Directive on the right to family reunification for TCN was recognised and adopted into the national legal framework.<sup>63</sup>

In Slovenia, the area of the right to family reunification is regulated by the *Aliens Act*. Provisions attached to the right to family reunification are rather complicated as there are different rules depending on the status of the person requesting the reunification and

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<sup>60</sup> Childbirth allowance is a lump sum intended for the purchase of most necessary supplies for the newborn baby or for the provision of equipment in the amount of a fixed determined sum.

<sup>61</sup> Article 67, *Parental Protection and Family Benefit Act*. Before the changes of the Act in May 2006 the stipulated condition was that a child had to have a permanent residence permit, whereas now the requirement has been changed to only residence permit, regardless of the type.

<sup>62</sup> DG Freedom, Security and Justice, Family Reunification, General Context. <[http://ec.europa.eu/justice\\_home/fsj/immigration/family/fsj\\_immigration\\_family\\_en.htm](http://ec.europa.eu/justice_home/fsj/immigration/family/fsj_immigration_family_en.htm)> (20 July 2009).

<sup>63</sup> This directive is incorporated into the Slovene legislation as a whole, however it gives the member states the freedom to determine the age of children who are considered minors. In Slovenia the bar is set to 21 years, even though the legal age of a person becoming an adult is 18. This means that young unmarried people who already turned 18 and are not older than 21 have the right to family reunification with their parents.

depending on the type of residence permit this applicant has. The *Aliens Act* stipulates that the right to family reunification is awarded only to “foreigners” with permanent residence permits and “foreigners” who have temporary residence permits valid for at least one year. This means that migrants residing in Slovenia have to wait at least one year before their immediate family member(s) can move to Slovenia. The Act defines immediate family members as: a spouse, a minor unmarried child of a “foreigner”, a minor unmarried child of a spouse, parents of the minor “foreigner” and adult unmarried child and parents of a “foreigner” or a spouse that a “foreigner” or a spouse is obliged to support under the law of the country of origin. The validity of the residence permit of family members is dependent on the type of the residence permit of the applicant. Family members of TCNs can initially only obtain temporary residence permits with a maximum duration of one year. After the expiration of the permit it can be prolonged but only with the validity of maximum up to two years. Family members of a TCN can obtain a permanent residence permit after five years of uninterrupted residence in Slovenia. Exempt from this are family members of TCNs with permanent residence permits or with a refugee status, who can apply for a permanent residence permit already after two years of uninterrupted residence in Slovenia.

The application for a temporary residence permit for the next of kin that are “foreigners” may be submitted by a Slovene citizen or a “foreigner” who has a permanent or temporary residence permit in the Republic of Slovenia, except those who have a temporary residence permit for the purpose of seasonal work.<sup>64</sup> Despite the fact that family reunification policies allow several concessions to migrants who are able to enforce their “family member” status in order to gain easier access to residence in Slovenia, the fact is that policies do not provide for a comprehensive integration mechanisms. For instance, migrants who are classified under the “family reunion” category are deemed to be “provided for” by the applicant, who is either the “primary migrant” (usually the husband) or the Slovene citizen married or otherwise related to a TCN. This significantly affects the lives of TCNs by assigning them the role of the dependant, also marked by prolonging their access to the labour market (work permits may be requested only after a year of residence in Slovenia) (cf. Pajnik and Bajt forthcoming).

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<sup>64</sup> The application must be accompanied by: an excerpt from the marriage register, which must not be older than three months (for a spouse); excerpts from the birth register (for children); proof of guaranteed subsistence funds; proof of health insurance for the family members; a certificate of non-criminal record for the adult next of kin issued by the country of origin; and certified photocopies of valid passports of the family members.

### 4.1.3. Education and language

In the world faced with increasing migration flows, the recognition of migrants' diplomas and academic qualifications should become a key component of the proper management of human mobility. Yet, most migrants from "third countries" are often stigmatised as having low education and low skills and are therefore not able to compete equally to EU nationals for many jobs. This is also due to their inability to have their educational qualifications recognised and thus forces many of them to take low-skilled and low-paid jobs. Moreover, even highly educated TCNs encounter significant difficulties when they want to have their education recognised and they often face de-skilling.

In Slovenia, a TCN that gained a particular education abroad and would like to have it recognised because of employment must submit an application for recognition of education for the purpose of employment to the competent ministry. The *Law on Recognition and Assessment of Education*<sup>65</sup> enables anybody who obtained their certificates and diplomas abroad to request recognition of their level of education. In case of higher degrees, the application is to be addressed to the Ministry of Higher Education, Science and Technology. For other diplomas or certificates, the application should be addressed to the Ministry of Education and Sport.

To ease the procedures and shorten the time spent waiting for a decision, the *Rules on work permits, on registration and de-registration of work and on the supervision of the employment and work of aliens* set the manner of proving adequacy of foreign education anew.<sup>66</sup> The Rules state that in cases when adequate education is among the required conditions of work, this adequacy can be proven with the copy of a certified diploma and its Slovene translation.<sup>67</sup> Despite recent changes to the procedures, these remain long, often taking longer than the defined waiting period of two months. Many applications are rejected, either because of "incompatibility" of school systems with the education system in Slovenia, or because an official processing the application is not familiar with the programme and school attended by

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<sup>65</sup>Zakon o priznavanju in vrednotenju izobraževanja, *Official Journal RS* 73/2004.

<sup>66</sup> Pravilnik o delovnih dovoljenjih, prijavi in odjavi dela ter nadzoru nad zaposlovanjem in delom tujcev, *Official Journal RS* 37/2008.

<sup>67</sup> The following documents have to be included with the application: legally verified Slovene translation of the education certificate and its original. Also a short chronological description of the whole educational period has to be included. The competent ministry is supposed to issue the decision within two months of the date of submitting a complete application.



the applicant, thus making it easier to simply reject the application rather than investigate the issue further.<sup>68</sup>

With the Decree on Aliens Integration, TCNs living in Slovenia on the basis of residence permit and their family members, that came to Slovenia under the family reunification provision are entitled to free classes of Slovene language, culture, history and the constitution, which are part of the programme for better integration of TCNs into the society. TCNs holding permanent residence permits and their family members are entitled to maximum 180 hours of free classes, whereas the TCNs with temporary residence permits, only after he or she has had the residence permit for minimum of two years, are entitled to maximum of 60 hours of classes. Any “foreigner,” regardless on the type of residence or work permit he or she is holding, is entitled to free classes of Slovene culture, history and the constitution of maximum duration of 30 hours. However, they are not entitled to free classes of Slovene language.

Under the *Elementary School Act*<sup>69</sup> a TCN is entitled to compulsory elementary school education under the same conditions as citizens of Slovenia. The Act also allows a TCN to access secondary or university level education; however, the conditions for TCNs are not the same as for EU nationals and Slovene citizens. They depend on the principle of reciprocity between countries or some other conditions. There are problems with tuition fees, language of instruction in school etc. “Foreign” pupils are in the first year after starting the school in Slovenia enabled to have certain amount of individual or group study sessions, however the Act does not explain whether these classes are provided in their native language or in Slovene. Children of migrants whose native language is not Slovene should have the possibility of learning their native language in school. This possibility is defined in the EU Directive 77/486/EEC on the education of the children of “foreigners”, in the *Elementary School Act* of Slovenia and in bilateral agreements and in-between protocols of the Republic of Slovenia with certain countries of origin of migrants. The law states that native language classes are organised as voluntary supplementary classes. With the changes of the *Elementary School Act* in 2007 also the voluntary extra classes of Slovene language for children of “foreigners” were added. However, the practice shows that not all schools guarantee the

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<sup>68</sup> We base this information on an informal talk with an anonymous employee at the office for recognising education at the Ministry of Higher Education, Science and Technology.

<sup>69</sup> Zakon o osnovni šoli, *Official Journal RS* 12/1966, 102/2007.

migrant children to learn their native language, especially in cases of less frequently used languages (that is native languages of migrants from countries where there are only few people residing in Slovenia, e.g. Vietnam, Georgia etc.). The rationale behind this is most often the lack of financial and human resources to actually guarantee teaching the migrants' native language within the frame of institutional education.

In the framework of the project that would enable children better integration into the society, Center for Slovene language as a second language in cooperation with Faculty of Philosophy, organised one week voluntary free classes for all children of migrants in Slovenia in the end of August 2009. In this first pilot phase only schools in Ljubljana and its surrounding were participating in the project, where around 40 children and their parents, mostly from Former Yugoslav republics, attended the classes that would facilitate the integration into schools and community where they live. The results were according to the organisers very satisfying and the responses among migrant communities very good. However, we would advise this project to be expanded also to the rest of Slovenia and to the larger time span of more than only one week of free classes, which could contribute towards achieving the goal of successful integration more effectively.

#### **4.1.4. Housing**

All over the EU, not only Slovenia, migrants are at greater risk of exclusion from the housing market.<sup>70</sup> This is shown in relation to discrimination in the allocation of housing, lower quality of housing and the high costs relative to the migrants' income and to the standard of their accommodation. Policies to address the factors that create the housing exclusion of migrants impact on the key areas of European policies involving discrimination, migration and social inclusion. In most EU member states these issues have long been of a minor significance. The Directive 2000/43/EC on Implementing the principles of equal treatment between persons irrespective of racial or ethnic origin has had an impact on ensuring the existence of legislative framework within which housing discrimination can be acted upon. However, the structures and guidance for monitoring the effectiveness of actions in the

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<sup>70</sup> Evidence suggested from the European Commission 2005 study "Policy Measures to Ensure Access to Decent Housing for Migrants and Ethnic Minorities" Brussels: DG Employment, Social Affairs and Equal Opportunities, where a comparison was made between the housing of EU nationals and of migrants and ethnic minorities in the member states.

housing field are either inadequate or lacking. This is the case for the majority of EU countries, including Slovenia.<sup>71</sup> Discrimination in the housing market is poorly reported in most country studies, also in Slovenia.

In Slovenia, the legislation on housing and real-estate sets different conditions for “foreigners” according to their citizenship. The *Housing Act*<sup>72</sup> does not list TCNs as entitled to non-profit (social) flats owned by municipalities, the state or public housing fund. The Slovene housing policies also do not treat TCNs as one of the “special needs groups”, which are otherwise included in special help programmes or schemes in the solution to the housing issues.<sup>73</sup> According to the Constitution, “foreigners” can acquire property rights to immovable property in Slovenia under the condition of reciprocity and under conditions laid down by the law and international agreements. Even though “foreigners” – EU and non-EU nationals – can buy property in Slovenia, it is extremely difficult for TCNs to obtain documentation on reciprocity, which makes their possibilities of buying minimal.

Most TCNs have no choice but to either rent their accommodation and pay the (high) asking price of landlords or to be dependent on their employers to provide them with accommodation. The housing situation is one of the most disputable areas concerning the violations of TCN workers’ rights, and it has been widely documented that the majority of migrant construction workers live in small rooms, which they share with others. It has also become known that there are cases when they have no warm water and no heating, while they pay for these unacceptable living conditions monthly rent of around 100 to 150 Euros, which employers most often deduct from their salaries. The problem lies also in the fact that the *Housing Act* does not define the standards of living for “residence halls for single persons”, which means that practically anybody can open such a residence hall without necessarily assuring decent standards of rented accommodation. It can be concluded that housing policies and integration strategies ignore access to decent housing for migrants in Slovenia. In addition, the precarious labour market positions of migrants restrict their choice in the housing market.

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<sup>71</sup> Ibid. 2005.

<sup>72</sup> Stanovanjski zakon, *Official Journal RS* 69/2003.

<sup>73</sup> Nacionalni stanovanjski program, *Official Journal RS* 43/2000.

#### **4.1.5. Anti-discrimination policies**

The EU is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to all member states. The same principles that are incorporated into EU treaties and texts are also the constituent part of the Slovene legislation. The right to non-discrimination is one of the fundamental human rights, which should be granted to all without exceptions. The EU Treaty bans all discrimination based on nationality, gender, race, ethnic origin, religion, disability, age or sexual orientation.

The Slovene Constitution defines “equality in law”; everyone must be assured the same rights and basic freedoms, regardless of their nationality, race, sex, language, religion, political or other beliefs, material condition, birth, education, social position or any other personal circumstances. Everybody is equal before the law. Everybody has the right to express affiliation to their nation or national community, to foster and express their culture and use their language and script. The Constitution prohibits stimulation of inequality and intolerance, and inflammation of ethnic, national, race, religious or any other hatred or intolerance.

The basic rule, which needs to be taken into account with regards to anti-discrimination in employment, is defined in Article 6 of the *Employment Relationship Act*. An employer must not put a job-seeker looking for employment or a worker already employed and in connection with the termination of an employment contract in an unequal position due to gender, race, skin colour, age, state of health or disability, religious, political or other beliefs, trade union membership, national or social background, family status, financial conditions, sexual orientation or other personal circumstances. Therefore, the principle of equal treatment of a Slovene and “foreign” worker must be taken into consideration not only with regards to employment, but also with regards to payment and working conditions. Both “foreign” as well as Slovene citizens must be equal before the law. Thus, a Slovene employer must enter into employment contract with a “foreigner” in the same manner as with a Slovene citizen. However, the experiences show that this is not always the case. Just recently, the Slovene government accepted a decree on limiting the employment of citizens of Kosovo. This decree caught the attention of the Office of Human Rights Ombudsman: “The Office is still in the phase of investigating the matter; however, limitation on the basis of nationality or citizenship is contestable from the point of view of the Office, since it gives the foundation for

discriminatory treatments” stated the representative of the Ombudsman.<sup>74</sup> The Office will investigate the matter and if necessary give recommendations to the Ministry of Labour, Family and Social Affairs to change the decree. In addition, there is a lot of undocumented and black market work, where employees have no social protection and no work contracts. Mostly TCNs are forced to enter into this kind of work relations.

The *Equal Opportunities for Women and Men Act*<sup>75</sup> is the main law on equal rights for women, regardless of their ethnicity. Therefore, we can also apply it to the rights of migrant women, even though it contains no special provisions that would directly influence their status. In October 2005, the *Resolution on the National Programme for Equal Opportunities for Women and Men*<sup>76</sup> was adopted to define goals and measures and key policies for the realisation of equality for men and women in Slovenia in the period from 2005 to 2013. One of the most important activities is strengthening the inspectorates’ control and paying attention to cases of discrimination on all protected grounds.

The principles of the Constitution and other anti-discrimination legislation as described above are defended by the *Penal Code*,<sup>77</sup> which states that anyone who limits another person with regard to human rights or basic freedoms acknowledged by the EU or defined by the Constitution, or limits such a right or freedom because of differences in nationality, race, colour, religion, ethnicity, sex, language, political or other beliefs, sexual orientation, material conditions, birth, education, social position or any other circumstance will be punished with a fine or one year in prison. The same treatment applies to anyone who persecutes an individual or organisation because of their efforts toward equality. In case of a public official committing these acts and therefore abusing their official position, they can be punished by imprisonment of up to three years.

The *Implementation of the Principle of Equal Treatment Act*<sup>78</sup> defines common grounds and starting points for assuring equal treatment of everybody in all spheres of social life. It includes employment, working relations, inclusion in unions and associations, education,

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<sup>74</sup> Article in the daily newspaper *Delo*, Belovič, Mario, Uredba zoper Kosovarje diskriminatorna, 12 June 2009, page 2.

<sup>75</sup> Zakon o enakih možnostih, *Official Journal RS* 59/2002.

<sup>76</sup> Resolucija o nacionalnem programu za enake možnosti žensk in moških 2005–2013, *Official Journal RS* 100/2005.

<sup>77</sup> Kazenski zakonik Republike Slovenije, *Official Journal RS* 95/2004.

<sup>78</sup> Zakon o uresničevanju načela enakega obravnavanja, *Official Journal RS* 50/2004.

social security, and access to goods and services and their provision. Furthermore, it mentions personal circumstances on the grounds of which equal treatment must be assured. Among these are nationality, race or ethnic origin, gender, health condition, disability, language, religion or any other belief, sexual orientation, education, wealth, social position or any other personal circumstance. The problem with this Act is that many of its key provisions are too vague to be applicable in practice. For instance, it stipulates that the violation of this act can be redressed through civil and criminal procedures and in accordance with the general rules on the payment of damages. More specific provisions are missing in particular with regard to inspectorates, since many of them now consider themselves incompetent for the issues of discrimination (e.g. labour market inspectorates). In addition, this act does not take into account a specific nature of cases of discrimination, for which the general rules of the civil and tort law are not appropriate. In practice though, if a person claims compensation before the court and does not succeed entirely (but, for example, in 50% of the claims for damages), they must pay 50% of the judicial costs of the opponent. In cases of discrimination these provisions might discourage people from filing complaints in court.

#### **4.2. Unemployment provisions for TCNs**

The exact number of TCNs who are unemployed is hard to decipher from the official data on unemployment. Only holders of personal work permits issued for indefinite period or at least 3 years have the possibility to be registered at the Employment Service. This means that only those TCNs who possess such permits are entitled to register as unemployed should they find themselves in a situation without a job. Therefore, the unemployment provisions for TCNs are only applicable to TCNs who are able to register at Employment Service.<sup>79</sup> In case of unemployment, the unemployment provisions formally grant them the same rights as all registered unemployed persons, including social security and possibilities for re-skilling. They also have the opportunity to be included in the Active Employment Policy Programmes. Migrants holding permanent residence permits are also incorporated into the compulsory pension and disability insurance schemes.<sup>80</sup> Holders of other types of work permits are unable to register as unemployed at the Employment Service and the fact that their temporary

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<sup>79</sup> The rules regulating the unemployment provisions are set in the *Employment and Insurance against Unemployment Act – Zakon o zaposlovanju in zavarovanju za primer brezposelnosti*, Official Journal RS 5/1991, 63/2007.

<sup>80</sup> Article 13 and 15, *Pension and Disability Insurance Act. Zakon o pokojninskem in invalidskem zavarovanju*, Official Journal RS 106/1999.

residence permits are tied to the existence of valid work permits renders their situation additionally precarious. Considering the fact that TCNs in Slovenia who hold temporary permits, cannot register at Employment Service, they are also not officially entered into unemployment statistics, which automatically decreases the registered numbers of unemployment and seemingly diminishes the problems of unemployed TCNs. The real (unexplored and unregistered) numbers of unemployed migrants vividly point at the necessity for improvement of unemployment and social provisions. Only holders of permanent residence permits can apply for financial assistance in case of unemployment, whereas the rest of the TCNs are not entitled to such provisions. In the event of loss of an employer, the fact that they lose a job consequently means that they can no longer stay in Slovenia legally and are hence forced to return to their country of birth.

In case of unemployment, only TCNs holding personal work permits can register with the Employment Service of Slovenia and are consequently socially protected in case of unemployment. They are entitled to social assistance. Also other benefits such as parental benefits or health insurance in case of unemployment can only be claimed by migrants who are able to register at the Employment Service. The problem is that only a minority of all TCNs working and living in Slovenia fall under this category. Moreover, with recent changes of employment policies and in light of wider negative attitudes towards migrants in Slovenia spurred by the circumstances of the global recession, the state protection of the jobs of Slovene citizens puts migrants in an even more marginalised position of precariousness.

## **5. Political and public discourses**

### **5.1. Anti-migration discourse and extremisms**

In true xenophobic fashion, public opinion polls exhibit that notable shares of Slovenes feel “threatened” by “outsiders”, especially groups such as the Roma, the erased, asylum seekers, undocumented migrants, foreign workers, Muslims, the GLBT community, and so on.<sup>81</sup> Research confirms the presence of stereotypes and prejudice against the Other, while media

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<sup>81</sup> A recent display of extremist intolerance was an orchestrated attack on the GLBT community in the week of the Ljubljana Pride parade in June this year. The attack is significant not only because it exemplifies the rise in physical violence against gays and lesbians in Slovenia but also because of the intolerant and homophobic public discourse that it spurred in its aftermath.

(discourse) analyses point out the problematic discriminatory practices and exclusionary rhetoric, exposing the potentially inflammatory arsenal of such discourses. Analysis of media reporting (Pajnik 2003; Kralj 2008) shows migrants are often treated as a massive threat, where the attitude of the state may also serve as a legitimating frame for discriminatory discursive turns in the media. Not only are discriminatory patterns present in informational genres of the media, the analysis (Pajnik 2008) shows that also commentaries often do not avoid the reproduction of stereotypes about migrants.

If compared to the “West”, Slovenia is in fact no exception in its level of extremist intolerance, particularly when taking into account the current context of mounting recession and the consequent increasing public dissatisfaction with political elites, which tend to resort to populist scapegoating.<sup>82</sup> The rise in anti-migrant rhetoric across Europe has been widely documented. In Slovenia, however, the most frequently stigmatised have so far been the most marginalised groups such as the erased and the Roma. At the same time, the migrants, particularly TCNs, are the first to suffer the factual consequences of protectionist economic policies. Recent restrictions in employment of TCNs are just the most obvious example. The leap for the migrants to become an even more frequently stigmatised scapegoat in public discourse is therefore becoming more and more probable in the current situation of economic crisis and massive unemployment. Portraying migration as causing problems and presenting a threat to the national labour market, to the “domestic” workforce, even to the national security, intolerant and nationalistic discourses are on the rise in Slovenia as well. A recent proliferation of various “patriotic” (i.e. nationalistic) organisations and movements that oppose awarding rights to minorities gives further cause to concern. The matter is to be taken seriously also because the President of the Republic has recently (in June 2009) launched a public debate about patriotism, inviting experts to discuss the supposed lack of patriotic feelings among Slovenians. Taking into account that Slovenia has not shied away from openly ethnocentric policies and exclusivist practices that clearly discriminate the Other in view of “protecting” the “nationals”, the discourse of patriotism should not be mistaken for benign positive affirmation of a particular national identity (i.e. the Slovene). On the contrary, the self-proclaimed “patriotic” organisations promote unmistakably exclusionary and

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<sup>82</sup> If measuring the intolerant and xenophobic views of Slovenes through their voting behaviour, the support for the Social Democratic Party of Slovenia (SDS), the Slovenian National Party (SNS), the New Slovenia (NSi) and the Slovenian People’s Party (SLS) should be summarised. The right-wing oriented SDS has represented a significant force of the political spectrum and led the government between 2004 and 2008, which has also been connected to the rise in intolerant public rhetoric and political discourse, as well as in ethnocentric policies. However, other political parties have also been known to expose occasional exclusivist views.



discriminatory policies. And their position has recently been moved from the obscurity of extremist organisations to a problematic accompaniment of certain politicians, particularly those in desperate need of more public support, who hence resort to clearly populist rhetoric.

These stigmatising images are not only created and reproduced by the media, they emanate from official political and policy discourse as well. It is of particular relevance that the stereotypical discreditation of asylum seekers as not being actually victims of persecution but economic migrants in disguise is not only a matter of ill-informed media reporting, but a problematic accompaniment of several public officials. Burdened by such prejudiced attitudes, the populist politicians have made a political career of scapegoating various groups of “outsiders”, among them also migrants. TCNs are particularly affected by such xenophobic and intolerant attitudes and practices, particularly since they are stigmatised as a group based solely on their “foreigner” status.

Before the crisis the topic of migration and migrant workers in Slovenia has not been an issue of any relevance in the Slovene parliament, “nobody was really bothered with them,” to quote an Advisor for labour and social affairs in one of the parliamentary parties. Only with the recession and crisis have anti-migration discourses also come to the political forefront. In the context of the recent global recession the constructed threat of migrants as “stealing our jobs” gains increased importance. Hate speech and negative attitudes toward migrants are further spurred by different internet blogs, forums and by extremists, as well as by certain political elements, most notably the Slovene National Party. The leader of this party addressed the Government of Slovenia in the parliamentary initiative in April 2009 about limiting the employment and work of “foreigners” in Slovenia, with the argumentation that the employment of “foreign” workforce “weakens the gross domestic product” of Slovenia and “takes the much needed jobs away from the Slovene workers”.<sup>83</sup> The rhetoric of this initiative suggests negative political attitudes towards TCNs working in Slovenia and by adding the number of increased unemployed domestic workers in Slovenia it raises the importance of limiting the employment of migrant workers. The government responded to this initiative in June 2009 by adopting a decree, which limits the employment of “foreigners”, as discussed above.

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<sup>83</sup> Zmago Jelinčič’s initiative can be accessed at <<http://www.dz-rs.si/index.php?id=94&author=57&o=10&unid=VPP|553E77B8BAA32267C12575A100252878&showdoc=1>> (30 June 2009).

## 6. Bottom-up activities

In Slovenia, few associations, NGOs and movements exist that involve migrants in their work. There are different ways of including them, either by actively involving them in their organisation by making them part of the organisation or by providing services for the migrants. Many NGOs active in the field of migration do not perform profitable activities, and their financial backgrounds in most of the cases are not very strong; thus they cannot frequently meet the requirements of applications for funded projects and sometimes they are also faced with lack of human resources. Moreover, no specifically migrant associations or organisations exist in Slovenia. There are, however, many so-called cultural or ethnic associations that in a way also cater to the needs of TCNs in Slovenia. This is particularly the case with the cultural organisations of national minorities, such as Croats, Serbs, Macedonians, Bosnians and so on, where migrants who have arrived to Slovenia more recently may find the needed support and social ties. An umbrella association exists, encompassing 65 Slovene “ethnic-cultural associations” of Albanians, Bosnians, Montenegrins, Croats, Macedonians and Serbs who live in Slovenia. These associations, known under the joint name the *Coordination Group of Cultural Associations of Nations of Former Yugoslavia*, represent the frequently termed “new minorities” that do not have a special status in Slovenia. However, the Ministry of Culture funds some of their cultural activities.

The lack of such organisations is particularly potent in cases of smaller migrant populations, since because of the lack of supra-national migrant organisations these migrants are left entirely to their own devices also in terms of finding friends in their new environment.

Various movements, associations, organisations and other stakeholders are dealing with migrants’ issues in Slovenia. The Social Center Rog (movement Invisible Workers of the World) is promoting the rights of migrants. Activists in the movement are jointly cooperating with the migrant population, exploring the situation of migrants (living and working conditions, education), assisting them and raising awareness among the broader public about the precariousness of the migrants’ situation in Slovenia.

Various NGOs also deal with migrants. Among more visible are Amnesty International Slovenia, which is actively engaged in advocacy activities for the rights of asylum seekers,

refugees and migrants. The Institute for African Studies conducts social and employment programmes for refugees and asylum seekers, and is concerned mostly with African migrants in Slovenia and anti-racist issues. Jesuit Refugee Service, branch office in Slovenia conducts social and leisure programmes for refugees, asylum seekers and undocumented migrants. Legal Information Centre for Non-Governmental Organisations is an implementing partner of the UNHCR and provides legal assistance to refugees. Mozaik is an association for social inclusion and is running different programmes for socially excluded, such as managing the homeless shelter for marginalised groups. They also run the so-called “Panonska village” programme, which is a place where excluded groups of people can live and where different programmes are being carried out, such as help in finding jobs for the unemployed, as well as providing counselling and help for addicted people. Racio Social is an organisation, which conducts social and employment programmes for refugees and asylum seekers. Slovene Philanthropy is an implementing partner of the UNHCR – branch office in Ljubljana, which conducts psycho-social and integration programmes for refugees, especially unaccompanied minors. The Society KLJUČ – Centre for the Fight Against Trafficking in Human Beings is a non-profit humanitarian NGO aimed at providing assistance to victims of trafficking.

Recently, also the Association of Free Trade Unions of Slovenia redefined itself as a stakeholder in issues particularly related to migrant rights. It is an umbrella trade union and cooperates with NGOs and other parties involved in advocating the rights of migrants on the governmental level. Even though not directly a bottom up activity, “Info point for migrants” has recently been introduced by the Employment Service of Slovenia. Its aim and method of implementation have the characteristic of a bottom-up activity and also involve cooperation among different governmental and non-governmental stakeholders. Acknowledging that there is a need for such projects has in part been achieved through awareness-raising and applying pressure on state institutions. Civil society organisations and academic research (e.g. EU funded projects such as FeMiPol, FEMAGE) have helped to identify the need for such projects on the state and regional level. The Info point aims at informing migrants about their employment and educational opportunities in Slovenia and it aims at preventing discrimination and exploitation of migrants in the work place. It should enable their increased competitiveness, also through educational programmes. The programme is designed only for migrants and their families coming from “third countries”. However, the practical effects of this programme cannot yet be established.

## **7. Conclusion: suggestions for policy improvement**

Policy-wise, Slovenia has copied or has been constrained to adopt the standard EU framework, and especially its “southern version”, which favours control of borders and exclusion over integration measures. Based on the EU model, the Slovene legislation is primarily restrictive and it lacks a superstructure that could harmonise three basic areas, asylum law, movement of people and integration of migrants into Slovene society (Kovač 2003, 246). Provisions for acquiring citizenship on the basis of naturalisation, for instance, are one of the strictest in Europe, with required residence of ten years in Slovenia, which is a clear indicator of restrictive legislation. Also, the rights foreseen in the EU policies are meant to be granted gradually, and TCNs are to be gradually treated the same as nationals. This principle is clearly reflected in the directive on TCNs who are long-term residents. They obtain this status after five years of legally residing in member states, having access to a large scope of rights stipulated in the directive. Prior to this, their access to rights was limited and TCNs were regarded merely as those who contribute to economic goals, at the same time offering their “flexibility” in accordance with the demands of the labour market.

On the overall, many changes in policies have been adopted in recent years, many also to meet the legal framework of the EU and to address emerging issues of the new millennium that were not a priority before. In some ways the restrictions on TCN provisions such as requirements for residence permits, family reunification provisions and some procedures in employment have been relaxed. However, especially in employment policies, the change from welcoming more migrants to substitute the ageing Slovenia’s population and attracting migrants to work in deficit professions has been replaced with prohibitions in employment, which in some cases breach the anti-discrimination provisions of the Slovene Constitution.

Despite the high migration rates, a conceptualisation of more complex migration and integration policies in Slovenia is still at its early stages. The number of governmental bodies and non-governmental organisations, which are also dealing with migration issues, has risen in the past few years. The governmental bodies have mostly focused on questions concerning legal status of migrants, while the NGOs and civil society movements and associations concentrate on the defence of migrants’ rights in all spheres of public and private life. However, the well integrated approach that would be coordinated on the state, regional and local level is still missing.

Regarding employment policies for TCNs in Slovenia, migrants are faced with significant obstacles both on the labour market and when attempting to access it. These range from the fact that many of them work as undocumented workers, which gives them no social security, to the fact that the government is adopting more and more provisions that restrict the work of “foreigners”, with the main argument of protecting jobs of “domestic” workers because of the recession. Many social policies remain on descriptive level, without proper implementation in practice. One of the examples identified is the supposedly simplified process of recognition of educational levels; whereas the practice shows that procedures are still long-lasting and may resolve negatively for the applicants. Another problem is the social protection and rights stemming from employment and unemployment provisions, which are only guaranteed to TCNs with permanent residence permits. The majority of TCNs in Slovenia have only temporary residence permits, which means they have basically no social security, especially as securing social rights is left to the discretion of the employers, who often fail to do so. A further problem is that the government does not address undeclared work sufficiently, which means that many employers still employ TCNs without giving them job contracts. This further deepens the already precarious situation of many people and puts them in vulnerable positions with a lot of manoeuvre space for exploitation. Therefore, a more effective control of the (black) labour market in Slovenia are necessary.

A further area of concern is the housing for TCNs. In Slovenia there are no provisions of minimum living standard in place, therefore there is also no inspection of the inadequate living conditions of many TCNs. The recommendation is to define the minimum conditions for decent living standards, which are now missing from the *Housing Act*, and to sanction the landlords who are renting flats with inappropriate living conditions.

The government should also rethink its current migration and integration policies, so as to include migrants in all spheres of public life. In the light of current financial and economic crisis more and more negative political and public discourses can be found directed against migrants in particular. Several policy provisions have already been changed to correspond to this attitude, restricting work and employment of TCNs. The integration policies are still executed on the state level, therefore it is necessary to implement the trickle-down effect to the regional and local level as soon as possible. The successful integration can only be done in well coordinated manner of all stakeholders on all levels of public life.

## References

Bajt, Veronika and Mojca Pajnik. Forthcoming. Studying Migration in Slovenia: The Need for Tracing Gender. In *The New Female Migrants in European Societies – A State of the Art*, eds. Krystyna Slany, Maria Kontos, Maria Liapi, Krakow: Jagiellonian University Press.

Bešter, Romana. 2003. Immigrant Integration Policies. In *Migration – Globalization – European Union*, eds. Mojca Pajnik and Simona Zavratnik Zimic, 257–299. Ljubljana: Mirovni inštitut.

Bauböck, Rainer, ed. 2006. Legal Status, Rights and Political Participation. State of the Art Report for IMISCOE Cluster B3. Amsterdam: Amsterdam University Press.

Dedić, Jasminka, Vlasta Jalušič and Jelka Zorn. 2003. *The Erased: Organised Innocence and the Politics of Exclusion*. Ljubljana: Mirovni inštitut.

King, Russell and Mark Thomson. 2008. The Southern European Model of Immigration: Do the Cases of Malta, Cyprus and Slovenia Fit? *Journal of Balkan and Near Eastern Studies* 10 (3): 265–291.

Kralj, Ana. 2008. Ana. Nezaželeni? Medijske in politične konstrukcije tujcev v Sloveniji. *Dve domovini* 27: 169–190.

Kovač, Bogomir. 2003. Globalization, Migration and Economic Development on the Margins of Slovenia's Migration Policy Dilemma. In *Migration – Globalization – European Union*, eds. Mojca Pajnik and Simona Zavratnik Zimic, 213–255. Ljubljana: Mirovni inštitut.

McKay, Sonia. 2009. *Undocumented Workers: The Relationship Between Status and Rights*. London: Working Lives Research Institute, University of Westminster.

Pajnik, Mojca. 2003. Poročanje medijev o marginaliziranih skupinah. *Socialno delo* 42(2): 87–94.

Pajnik, Mojca. 2007. Integration Policies in Migration Between Nationalising States and Transnational Citizenship, with Reference to the Slovenian Case. *Journal of Ethnic and Migration Studies* 33 (5): 849–865.

Pajnik, Mojca. 2008. Mnenja o migrantih v tisku: potreba po korektivu javnomnenjskega raziskovanja. *Annales: Series historia et sociologia*, 18(1): 219–232.

Pajnik, Mojca, Veronika Bajt, and Sanja Herič. 2009. *Analysis of Data on (Un)employment of “Third Country Nationals” and of Industry and Service Sectors Where They Work – The Case of Slovenia*. Working Paper 1, PRIMTS project.

Pajnik, Mojca and Veronika Bajt. Forthcoming. Migrant Women’s Transnationalism: Family Patterns and Policies. *International Migration*.

Renooy P. Ivarsson, Van Der Wusten-Gritsai and R. Meijer. 2004. *Undeclared Work in an Enlarged Union. An Analysis of Undeclared Work: An In-depth Study of Specific Items*. Brussels: DG Employment & Social Affairs, European Commission.

Waldrauch, Harald. 2005. *Acquisition and Loss of Nationality. Policies and Trends in 15 EU Countries*. IMISCOE. Amsterdam: Amsterdam University Press.

Zatler, Renata. 2007. Zakon o delu in zaposlovanju tujcev – sprememba. Gospodarska zbornica Slovenije. <[www.gzs.si/pripone/16553/oei33332d16553a9550a.doc](http://www.gzs.si/pripone/16553/oei33332d16553a9550a.doc)> (28 July 2009).