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Practical measures to reduce irregular migrations in the Republic of Slovenia

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The study Practical measures to reduce irregular migrations has been prepared in cooperation with the Legal and Information Centre for NGOs of Republic of Slovenia – PIC, National contact point within the European Migration Network Slovenia and Border Police Department under the auspices of the General Police Directorate at the Ministry of the Interior of the Republic of Slovenia.

European Migration Network was established due to the need to exchange information on all aspects of migrations and the establishment of a common asylum and migration policy. Council Decision 2008/381/EC which provides a legal basis for the establishment of the European Migration Network, was adopted on 14 May, 2008.

More information about the European Migration Network is available at: www.emm.si

1 ABSTRACT

The situation in the field of irregular migration encourages the states to become increasingly effective in control of migration and borders and to create an increasingly effective method of forced return procedures, and at the same time diverts the attention from the causes of irregular migrations as such.

The purpose of this study is to prepare a review of existing practical approaches for reducing irregular migration in Slovenia prior to entering the country, at the entrance to the country of residence in the control of unauthorized aliens, and the potential for regularization of residence. Collected practical measures are put in Slovenian social and historical context, taking into account the impact of European legislation and policy in Slovenian legislation and migration policies.

Within the European Union by the Amsterdam Treaty and in the context of building a common space "of freedom, security and justice/fairness" Tampere European Council conclusions of October 1999 set element of the common policy on immigration and asylum. This strategy should also be reflected in the RS in a more comprehensive approach to managing migration flows, which operates in the dialogue in relations between countries of origin, transit and destination, taking into account the political and developmental needs of all and fundamental human rights and freedoms. Key elements in the administration are, inter alia: measures for the systematic reduction of irregular migration, migrant smuggling and human trafficking, development of a common visa policy, re-admission, the establishment of

judicial and police cooperation, the flow and transparency of information and assistance to the countries of origin and transit.

Through the review of both statutory bases for the regulation of migration, as well as practical measures, it is clear that Slovenia after 2008 took important steps forward. In particular, has been enhanced and improved work on the external borders and more staff training organized, the technical equipment provided was of better quality, strengthened the cooperation at the international level and with international organizations, but less has been done in cooperation with the countries of origin and addressing the causes of irregular migration in their foundation, although the Republic of Slovenia recently introduced measures, which are the result of a global approach to migration at the EU level.

2 INTRODUCTION

Purpose

The Steering Committee of the European Migration Network (hereinafter referred to as the EMM) has within the work program for 2011 approved the preparation of studies in the Member States on practical measures to reduce irregular migration. The overall aim of these studies is to review the existing approaches, mechanisms and measures undertaken by the individual Member States to reduce irregular migrations.

The purpose of the study, which has for the needs of EMM in Slovenia been prepared by the Law and Information Centre for NGOs – PIC supported by the Ministry of the Interior is the review of practical approaches to irregular migrations in the RS and an outline of national policy for the prevention, detection, addressing and reducing irregular migrations and their drivers.

In accordance with the specifications of the EMM¹, which constituted the framework for this study, the first part presents an overview of the historical and political approach, which is in Slovenia used for managing migration flows and adopting measures to reduce irregular migrations. The study presents the most important documents and relevant legislation in this area, as well as the latest changes in legislation and the reasons for them. Hereinafter the study focuses on practical measures to reduce irregular migrations and assesses their effectiveness; also in connection with international cooperation. The study also refers to statistics obtained in the field of migration and evaluation of their trends relative to the implementation of the measures. In the last part the study tries to answer the questions of how the European migration policy and legislation influenced the national policy and legislation, and developing measures and practices in the field of irregular migrations.

¹ Specification for the EMN study – »Practical measures to reduce irregular migrations«, last version: 13 March, 2011, European Commission, MIGRAPOL, EMN, Doc. 231

The study should serve primarily to policy makers at the national level (competent Ministries and their officials) as well as European institutions and their officials, representatives of civil society, researchers and other interested public on the issues of migration management, and in the context of this particularly effective way to reduce irregular migrations.

Methodology

The study Practical measures to reduce irregular migrations is prepared in accordance with European Migration Network specifications. Methodologically speaking is a so-called theoretical research or secondary research, for which the existing public data apply and no special analyses or studies for the review of this area have been made to this end. For this study we thus used the existing studies, legislation, reviews and other sources; we also reviewed the records in the media and information about public events on migration in Slovenia.

The primary sources of the study are to analyze the national and European legislation, publications and other relevant documents and online resources of the competent official bodies, national and international organizations. A further source are academic contributions of Slovenian and foreign authors in the field of migration policy and border management, available in printed or electronic form.

A significant contribution in the preparation of the study was attributed to the Ministry of the Interior, which sent us the majority of the relevant data. As experts in the field of migration the following people participated in the preparation of the study:

- Mr. Andrej Janežič, Senior Police Inspector, Head of Illegal Migration Department, Border Police Department, General Police Directorate,
- Mr. Darjo Cizel, Border Police Department, General Police Directorate.

As regards the analysis of migration flows and associated areas we used statistics of the European Statistical Office (EUROSTAT) and the Ministry of the Interior. Statistical data are relating to the period from 2005 to 2010, in some parts also to 2011. It is important to stress that the information system does not allow access to all necessary information. According to the data of the Statistical Office of Slovenia, it obtains all the data relating to the migrations from the Ministry of the Interior and does not carry out any specific analyses or estimates of irregular migrations and migrants in the RS.

The fundamental obstacle in the realization of this study is the lack of existing resources on the incidence of migration flows in the country, the implementation of migration policy and legislation in practice, and especially the academic contributions and civil society view. We also observed a lacking dealing with migrations in the annual reports and plans of the competent official bodies, where otherwise would have expected a more comprehensive dealing with issues in relation to the planned solutions and programs. Another problem is the scattered nature of sources, which significantly affects the difficulty and quality of research in this area.

As a result, in the area of practical measures the study relies almost entirely on the data obtained by Slovenian official bodies. Similarly, there are no sufficient existing sources to analyze the impact of the transfer of relevant European legislation into Slovenian law.

Definitions

EMM specification to this study in the context of migrations dictates the use of the term of unauthorised or irregular migration as recommended in the Resolution of the Parliamentary Assembly of the Council of Europe 1509 (2006)². The Assembly namely proposes replacing the term »illegal immigrant« and thus also »illegal migrations« with the term »irregular« or »irregular migrant« or »migrant without documents«. The term »irregular migrations« is significantly more neutral and does not stigmatize immigrants, who (no longer) meet the conditions for the entry, as it is provided by the Schengen Code or other Slovenian legislation. This term is used by a growing number of international organizations covering this area of irregular immigrants' rights.

According to the terminology in the existing Slovenian policy documents and legislation, where the term »illegal migrations« and »illegal immigrants« primarily applies, this study also uses both terms, namely, in parts that analyze or summarize the statutory texts or texts of legal documents the term »illegal migrations« applies (because analyzed texts use this term), and in the remaining part of the study we plan to use the term »irregular« migrations to follow the recommendations of the Resolution to the greatest extent possible. We understand that the mentioned term does not satisfy the strict translation into Slovenian language, but we believe that, as such, better follows European and professional contents.

² Resolution is available at:

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta06/eres1509.htm>

In the context of this study the terms of irregular migrants refers to persons who have illegally entered the territory of the Member State (as victims of human trafficking, by use of foreign, falsified or otherwise modified documents, with a false statement about the purpose of their stay), whose visa has expired, persons who violate the conditions of the issued visa, working permit or residence permit, persons who have not left the territory of the Member State following a negative decision in the proceedings for granting international protection and persons who have fled during the procedure for granting international protection but have not left the territory of the Member State of EU.

3 POLITICAL AND LEGAL FRAMEWORK REGULATING IRREGULAR MIGRATIONS IN THE REPUBLIC OF SLOVENIA

National policy and legislation on migrations

Irregular migrations as part of migration policy

Irregular migrations in recent years became one of the major aspects of the migration policies of most developed countries. Slovenia faced the migration policy issue for the first time after its independence in 1991. Motives for migration policy making have been conditioned by migration conditions, processes and trends in the global, European and Slovenian territory and a tendency for the enforcement of constitutional and international legal provisions, and in particular the objective of the Republic of Slovenia's integration into the European Union. Thus a **Resolution on Immigration Policy** was adopted in 1999 and in 2002 also the **Resolution on Migration Policy**, which confirms and complements the principles, objectives and the foundations of the first, with an emphasis on measures for its realization in the context of contemporary migration trends and new approaches to developing a common policy on migrations and asylum of the European Union. Both resolutions were adopted based on the 5th Article of the then Aliens Act.

The basic principles of developing a migration policy of the RS, which were also identified in the previous resolution on immigration policy are: principle of solidarity, the international division of burdens and responsibilities; principle of responsibility to citizens and the state; the principle of respect for law and human rights; the principle of long-term macro-economic benefits that defines relatively free migrations; the principle of historical responsibility, which builds on the concept of continuum of history and structure of international relations; the principle of equality, freedom and mutual cooperation specifically aimed at integration policy.

Within the framework of the European Union, based on the Amsterdam Treaty and in the context of building a common space of “freedom, safety and justice/fairness“ the Tampere European Council conclusions of October 1999 set elements of the strategy for common policy on migrations and asylum. This strategy is in Slovenia also reflected in a more comprehensive approach to managing migration flows enforcing the dialogue in relations between countries of origin, transit and countries of destinations, taking into account everyone's political and developmental needs and fundamental human rights and freedoms. The key elements in the management are, inter alia: measures for the systematic reduction of

irregular migrations, migrant smuggling and human trafficking, development of a common visa policy, policy of foreigners' expulsion, the establishment of judicial and police cooperation, the flow and transparency of information and assistance to the countries of origin and transit.

In terms of content, **on these foundations develops the national policy in various areas of migration policy**, which should take into account a few elements, their interrelationships and other factors of which are particularly important:

- systemness or consistency built on interconnections of migration policy consisting of: asylum policy, immigration policy, migration flow management policy and integration policy or policy towards immigrants;
- systemness formed by connections of migration policy with other relevant policies;
- suitable institutionalisation of migration in the context of public administration, which within the framework of legislation provides independent, high-quality and efficient performance of duties;
- compliance with international standards in the field of human rights and freedoms protection, as reflected inter alia also in the consistent adherence to the principle of non-refoulement and enforcement and respect of basic principles of the right to family reunification;
- creating conditions in which migration processes may provide an incentive to economic and socio-cultural development;
- facilitating the expansion of scientific and research activity as support of migration policy planning;
- checking the consistency and effectiveness of the adopted measures, consistency between the objectives, mechanisms and effects of policy with the aim of constant adaptation to circumstances and processes;
- implementation of technical, social, parliamentary, judicial and international control.

As concerns implementation of measures in the field of migration, which essentially link the principles, foundations and elements of migration policy, is of particular importance the requirement of resolution indicating that the Government of the RS appoints a working group composed of experts from different fields within the period of six months.

On the proposal of the Ministry of the Interior of the RS, the Government of the RS in 2009 set up an **inter-ministerial working group to prepare possible measures for enforcing the migration policy of the RS**³, which was launched on 01 August, 2009. One of the tasks of the aforementioned inter-ministerial working group is also to analyze the situation in the field of migrations and on its basis propose appropriate measures, including starting-points for harmonization of national legislation with European Union acquis in the field of migrations and prevention of any abuse of procedures under national law in the field of migration.

³ Link to article in connection with the report of the Working Group: <http://195.246.12.4/clanki.asp?clanek=4193>

In 2010 Government of the RS adopted the **Resolution on National Security Strategy of the RS**⁴, which is a basic developmental and guidance document in the field of national security. It is used for determining national interests and national security objectives of the RS, analyzing the security environment, sources of security threats and security risks of countries, it also provides baseline policy of Slovenia's responding to specific security threats and risks and provides the broadest system and organizational solutions of an integrated functioning of a country in providing national security.

In addition to others resolution also includes irregular migrations among transnational security threats. Irregular migrations in the context of this resolution address the course of migration flows across its territory. The resolution states that a wider range of irregular migrations could in general threaten national security.

With the aim to control and prevent irregular migrations, RS in accordance with this resolution monitors and analyzes the situation in this area, exercises control at border crossings and compensatory measures in the country, prevents illegal stay of immigrants in the country, encourages specific cooperation with neighbouring countries and within the European Union participates in the exchange of statistical data and making risk analyses of irregular migrations and cross-border criminality and in carrying out joint operations at the Schengen border. Resolution pays particular attention to exchange of operational information with the police forces of neighbouring countries and European Union Member States, in particular the police forces of South East Europe countries, which are, according to the resolution, the source of irregular migrations.

Directing migration policy in Slovenia was at the end of 2010 also defined in the **Strategy of economic migrations for the period 2010 to 2020**⁵. Strategy also emphasises that careful management of migration flows also means setting frameworks for governing legal migrations, and thereby also for reducing illegal migrations. At the same time the document also states that it is necessary to continue developing measures for eliminating the causes of migrations in the countries of origin, i.e., strengthen political stability and human rights and enhance economic growth in order to eliminate the causes of migration. This is one of the few documents in the National Policy Framework, which also mentions elimination of causes of migration, although at a very general level.

Socio-historical context of migrations in the Republic of Slovenia

In terms of demographic and migratory structure Slovenia does not differ much from other European Union countries. Slovenia is one of those developed countries that will soon start to face labour shortages as a consequence of the aging of active population. Migrations, their management and control are thus becoming one of the most important political priorities from economic and also social as well as cultural perspective.

On 1 January 2011 2.050.189 inhabitants lived in Slovenia; compared to the beginning of 1991, population increased by 50.244 persons. From 1991 to 1999, the number of people in Slovenia declined, than became to increase relatively quickly; the main increase occurred in 2008. The increase in population over the last fifteen years was mainly affected by positive

⁴ Resolution on National Security Strategy of the Republic of Slovenia (ReSNV-1), (Official Gazette of RS, no. 27/2010)

⁵http://www.mdds.gov.si/fileadmin/mdds.gov.si/pageuploads/dokumenti__pdf/Strategija_ekonomskih_migracij-2010-2020.pdf, 16. 8. 2011.

migration flows from abroad; these were most intense in the years of economic boom in 2007 and 2008, and in Slovenia mostly immigrated people from countries that emerged in the territory of the former common state (from Bosnia and Herzegovina, Macedonia, Serbia and Croatia). Natural increase in the period from 1997 to 2005 was negative and again positive since 2006 on. The difference between the number of young and the number of elderly rapidly declined after 1991 and since 2004 the number of elderly has been greater than the number of young people. In early 2010, there were only 12 percent among all inhabitants of Slovenia, who were born abroad (every eighth inhabitant). Among these, most were born in Bosnia and Herzegovina (41 percent), Croatia (22 percent) and Serbia (8,2 percent). With respect to immigration is necessary to mention also foreigners, who in Slovenia apply for granting international protection or application for asylum. Their number has since 1995 on been very small, and rose sharply in 2000 and then significantly fell; in recent years there are approximately 210 foreigners per year who submit an application for asylum. Number of approved applications for granting international protection is small; there were 209 such applications approved or 1,3 percent of submitted application throughout the period from 1995 to 2010.

EU external border in Slovenia represents a border with the Republic of Croatia. The length of land border is 670 kilometres, and the length of sea border has not been defined yet. There are 57 border crossings points of different categories (international, interstate and local border traffic) on the border with Republic of Croatia. In addition, the EU external border crossing points are represented by three air traffic cross border points (Ljubljana-Brnik, Maribor-Slivnica and Portorož) and three border crossings in maritime transport (Koper, Piran and Izola). Slovenia lies at the end of so-called »Balkan route«, which makes the incidence of illegal migration flows strongly linked to those in Serbia, Macedonia, Bosnia and Herzegovina and Croatia. Although current trends in illegal migrations are favourable, there were over 35.000 cases of illegal crossing the state border recorded in Slovenia in 2000. In addition, the »Balkan route« is also interesting in terms of cross-border crime, as there are channels on this route for illicit drugs, weapons, stolen vehicles and other forms of cross-border criminality.

The position of Slovenia in migration sensitive environment of Central Europe, along the EU and the Schengen area border, to Western European countries comparable share of immigrants, new types of immigration, primarily of persons seeking refuge and increased migration pressures with extending the geographical origins suggest that Slovenia is now relatively attractive as a destination and as a transit post particularly in European Union directed migration flows. Therefore, Slovenia faces similar problems as other Member States of the European Union, and also with particulars arising from the still relatively independent democratic statehood, internationalization of the former Yugoslav interrepublic migrations and with regard to the size relatively long external border protected in accordance with the Schengen Code.

Legislation on irregular migrations

Competence in the field of migrations in the RS is almost entirely under the Ministry of the Interior, except for the field of work (migrant workers), which is under the jurisdiction of the Ministry of Labour, Family and Social Affairs.

Umbrella act in the field of migrations is the Aliens Act and regulates the entry of foreigners in the RS, obtaining visas and residence permits, leaving the country, voluntary return, deportation of foreigners, particularities in relation to procedure, the authorities responsible for issuing decisions of the law, integration of foreigners in the RS, records and conditions for entry and residence of EU citizens, their family members and family members of Slovenian citizens. The method of applying individual parts of the act is further defined by specific secondary acts (regulations, instructions, rules and orders).

Aliens Act

Aliens Act (Ztuj-1) was first adopted in 1999⁶ and was revised and amended several times. Thus, Act amending the Aliens Act and the Aliens Act were adopted in 2002, 2005, 2006, 2007, 2008 and in 2009. The reasons for such frequent changes are primarily in alignment with the EU acquis, as 10 EU Directives and a decision of the EU Council have been transferred into the Aliens Act. The Act also implements four Council Regulations.

In the last Aliens Act⁷ are thus further transferred three EU Council Directives into the national legislation, which brings into Act a change of the entire chapter on deportation of foreigners, a change of the concept of obtaining residence permits and the imposition of new sanctions and measures against employers of irregularly staying third-country nationals⁸.

Also, the new Aliens Act implements Regulation (EC) no. 810/2009 of the European Parliament and Council of 13 July, 2009 on Community Code on Visas⁹ and Regulation (EU) no. 265/2010 of the European Parliament and Council of 25 March, 2010 amending the Convention implementing the Schengen Agreement and Regulation (EC) no. 562/2006 as regards movement of persons with long-term national visa¹⁰. The entry into force of these regulations made it necessary to fully amend the chapter on visas.

State Border Control Act¹¹

This Act provides for the organization and method of border control conducted by the police, implementation of compensatory measures, international police cooperation and provides competent authorities for the implementation of the Schengen Borders Code¹². National border control within the meaning of this Act are activities and measures from the Schengen Borders Code.

The national border control is carried out in order to:

- protect human life and health;

⁶ Aliens Act-(Ztuj-1 (Official Gazette of RS, no. 61/1999)

⁷ Aliens Act - ZTuj-2 (Official Gazette of RS, no. 50/2011 (57/2011 amended))

⁸ Official Gazette no. 168, 30.6.2009, pg. 24

⁹ Official Gazette no. 243, 15.9.2009, pg. 1,

¹⁰ Official Gazette no. 85, 31. 3. 2010, pg.)

¹¹ State Border Control Act (official consolidated text) -ZNDM-2-UPB1 (Official Gazette no. 35/2010)

¹²REGULATION (EC) no. 562/2006 of the EUROPEAN PARLIAMENT AND COUNCIL of 15 March, 2006 on the Community Code regulating cross-border movement of persons (Schengen Borders Code)

- prevent and detect criminal offences and misdemeanours and locate and apprehend their perpetrators;
- **prevent illegal migrations;**
- ensure the safety of people, property and environment;
- prevent and detect other threats to public safety and order.

The police can, for the purposes of exercising control over the state border, adopt and implement other urgent measures to prevent danger, which in a specific case constitute a direct threat to public safety and order, particularly life and health of people and property, and must adhere to the principle of proportionality. In order to prevent and detect illegal migration and cross-border criminality the police may implement compensatory measures. These include various police powers such as document check, inspection of persons, control of a person and control of means of transport and personal belongings. Powers within the framework of compensatory measures are exercised by police officers in such manner to check the persons who have crossed the internal border in a random and non-discriminatory manner.

Since neither the State Border Control Act nor the Schengen Borders Code do not regulate crossing the border in the local border traffic, in their performance of border control in the local border traffic police officers comply with the provisions of an international agreement, namely, **Agreement between the Republic of Slovenia and the Republic of Croatia on Border Traffic and Cooperation**¹³.

International Protection Act¹⁴

As far as applicants for international protection are concerned the Aliens Act does not apply, the International Protection Act does. It governs fundamental guarantees in proceedings for granting international protection, establishing the conditions for international protection, the procedure for obtaining international protection and the procedure of judicial protection. The Act also defines the rights and duties of those who have already been granted international protection, and regulates the procedure for renewal and refusal to renew subsidiary protection status.

International Protection Act (hereinafter referred to as the ZMZ) came into force in 2008 and replaced the Asylum Act. ZMZ is an umbrella act in the field of international protection, which contains material and certain procedural on international protection. Adoption of the ZMZ was necessary to transpose the provisions in the Common European Asylum System (CEAS) into domestic legislation. The procedures introduced by the ZMZ provide protection to third country citizens and allow them to integrate into the Slovenian society, and in case of a negative decision prompt deportation of a foreigner into his or her home country.

¹³ coordinated with the Community rules on the border traffic (Regulation (EC) no. 1931/2006 of the European Parliament and Council of 20 December, 2006 laying down rules on border traffic at the external land borders of the Member States and amending the provisions of the Schengen Conventions

¹⁴ International Protection Act -ZMZ (Official Gazette of RS, no. 111/2007)

Due to the fact that since the enforcement of the ZMS in 2008 deficiencies were shown in the process of international protection as well as in rights and duties of applicants for international protection and persons enjoying international protection, an Act amending the ZMZ was adopted in 2010, which eliminates these deficiencies to some extent.

The Act also brings shorter procedures, extension of a deadline for filing an action, in certain cases introduces mandatory main hearings before administrative court, narrows the possibilities for the suspension of a personal interview, increases the extent of what needs to be translated in proceedings, the amending act allows more movement and free legal assistance for applicants and raises the level of health care as well as the level regarding how much and how they can educate. It also regulates the system of legal representation. In terms of interest for Slovenia as a country, where applicants decide to submit (or not to submit) an application for international protection, in addition to other modifications, is of particular importance also the introduction of pocket money, access to the labour market following nine months since the application for international protection and access to higher education and university education.

In part, the amendment of the Act considered proposal of non-governmental organizations, but did not take into account, for example, the recommendation of the United Nations High Commissioner for Refugees (UNHCR) indicating that such Act should contain a principle of non-refoulement, which was deleted by the amended Act.

Number of applicants for international protection or asylum has from 1995 onwards been very small, rose sharply in 2000 and then greatly fell; in recent years there are approximately 210 foreigners per year who file an application for asylum. Number of approved applications for granting international protection is small; there were 209 applications or 1,3 of the filed applications approved throughout the period from 1995 to 2010. Slovenia is still primarily a transit country for a number of international protection seekers; on average about half of them leave the Asylum Centre in Ljubljana and not even wait until the first decision regarding their application, so the procedure for granting international protection is terminated.

In case of mass arrival of persons who cannot permanently return to the country of origin because of armed conflict, occupation or violation of human rights, in compliance with European Guidelines, the **Temporary Protection of Displaced Persons Act** is applied¹⁵.

The field of employment and work of third country nationals in the RS is regulated by the **Employment and Work of Aliens Act**¹⁶, which is a basic act in the field of labour migration and establishes the terms and conditions for employment and work of foreigners and the related tasks of the country to regulate and protect the domestic labour market. The Act was amended several times from 2000 to 2011. The purpose of these changes was on the one hand transfer of relevant directives and on the other hand elimination of deficiencies, which occurred during the implementation of the Act. The last amendment of the Act relates primarily to the transposition of directives regarding the conditions for entry and residence of third country nationals for the purposes of highly qualified employment and¹⁷ and introduction of sanctions against employers who employ illegal immigrants¹⁸.

¹⁵ Temporary Protection of Displaced Persons Act – ZZZRO (Official Gazette of RS, no. 65/2005)

¹⁶ Employment and Work of Aliens Act (Official Gazette of RS, no. 26/2011)

¹⁷ COUNCIL DIRECTIVE 2009/50/EC of 25 May, 2009 laying down the terms and conditions for entry and stay of third country nationals for the purposes of highly qualified employment

Under the auspices of the Employment Service of Slovenia operates a **CONTACT point for migrants**, which provides information on the procedures for obtaining relevant documents for employment, housing, education, regulating the family member status, national legislation on employment of foreigners and training opportunities for foreigners.

Decree on restrictions and prohibition of employment and work of aliens

In 2009, a problem occurred in Slovenia, because foreigners abused setting up a company in Slovenia and issuing a work permit for the sole purpose of obtaining a residence permit without having a real purpose to live and work in Slovenia. With such residence permit issued in Slovenia foreigners then went to other Schengen countries, particularly in Switzerland, Germany and Austria and lived there illegally, worked as moonlighters and similar.

To prevent abuse, the Government of the RS on the proposal of Ministry of Labour, Family and Social Affairs in June 2009 adopted a Decree on restrictions and prohibition of employment and work of aliens¹⁹. The Decree also prohibits the issuance of work permits to foreigners who are representatives of micro and small companies and are domiciled in the territory of Kosovo and have no residence permit in RS. According to the explanations of the police the aforementioned Decree, a reduction of abuse by foreigners from the territory of Kosovo was observed. The Decree was issued on the basis of a report presented by the Inter-ministerial Working Group for studying possible measures for the implementation of migration policy in Slovenia.

Statutory provisions relating to entry, stay and leaving the territory of the Republic of Slovenia

a.) Entry into the Republic of Slovenia

Entry into the RS at the external borders can only take place at the crossing points and at internal borders anywhere without border controls. A foreigner may be denied entry into the RS for the reasons set out in the Schengen Borders Code or on grounds of danger to public order, internal security of the RS or public health, in accordance with the Aliens Act.

The decision to refuse entry shall be taken by the border control body according to the process governed in the Schengen Borders Code. A foreigner may appeal against the decision on refusal of entry and the appeal shall be subject to a decision adopted by the Ministry of the Interior. An appeal shall not delay the execution, which means that the foreigner monitors the procedure from another country. Refusal of entry shall be marked in the foreigner's travel document and entered in the records of rejected persons in the manner set out in the Schengen Borders Code.

Entry into the RS shall be according to the Aliens Act deemed illegal if foreigners:

¹⁸ DIRECTIVE 2009/52/EC OF THE EUROPEAN PARLIAMENT AND COUNCIL of 18 June, 2009 laying down minimum standards on sanctions and measures against employers of irregularly staying third-country nationals

¹⁹ Decree on restrictions and prohibition of employment and work of aliens (Official Gazette of RS, no. 44/09)

- enter the RS, although they have been refused entry into the country;
- evade border control;
- use another person's, a forged or otherwise modified travel or other document required for entry, or if they give false information to border control bodies;
- enter the RS at an internal border in contravention of the provisions of this Act relating to the conditions of entry at the internal borders (i.e. no passport, identity card, residence permit).

A person who has illegally entered the territory of the Republic of Slovenia or who is illegally residing in the territory of the RS is punishable by a fine imposed by the Aliens Act²⁰. The process of such an offense is run by the police. In the event that a person enters the country with forged, amended or otherwise modified documents **criminal proceedings** shall be initiated against him headed by the Attorney General. **Misdemeanour proceedings** shall be suspended if a foreigner who has illegally crossed the state border asks for international protection. When a foreigner tries to enter using another person's, a forged or otherwise modified document then criminal proceedings shall be initiated against him or her regardless of whether he or she seeks international protection.

One of the most important changes in legislation in recent years in the field of illegal migrations is the adoption of a new **Criminal Code**. Article referring to the offense of illegal crossing of border or territory has been modified. In addition, a paragraph was added sanctioning also the acquisition or gathering of people for illegal migration, providing false documents or transport or other organization of illegal migration. The reason for this has always been increased activity in the area of providing assistance in unauthorised border crossings. In recent years the assistance in crossing the state border shall be organized from Sarajevo, where Middle Eastern countries citizens could come without a visa, and were provided help from there by individual organized groups²¹.

Foreigners can freely leave RS in accordance with the law. Exit of persons shall not be permitted in cases where criminal proceedings, proceedings on offence or other offence have been initiated against the foreigner, which require his or her presence and this is also required by the authority conducting the procedure.

b.) Illegal residence

A foreigner is considered to be illegally residing in the RS, if:

- if he or she has entered the country illegally;
- if his or her visa has been annulled or has expired, if he or she resides in the country in violation of the entry address of if the period in which he or she is allowed to reside in the country in accordance with the law or international agreement has expired;
- if he or she does not have a residence permit or if the permit has expired.

A foreigner, who is residing illegally in Slovenia, is issued a decision on his or her return, except in cases where the foreigner has been apprehended illegally crossing the state border or in connection with it and after that has not obtained a right of residence or to a foreigner in a

²⁰ 145 Article of the ZTuj-2

²¹

return or extradition proceedings based on the international agreement on return of persons and to foreigner whom the additional sentence of expulsion from the country has been imposed on him or her.

In proceedings before courts concerning the decision of the Ministry of the Interior, the foreigner has the right to free free-of-charge legal aid as governed by the law governing free-of-charge legal aid. The decision on return shall be served to foreigner personally. Operative part and legal instruction of the decision on return shall be in writing or orally translated into a language understood by the foreigner only upon foreigner's request. The decision to return a foreigner may also serve to provide a prohibition on entry into the country, if:

- foreigner was prevented from voluntary return due to the risk of escape or danger to public order, public or national safety or
- foreigner has not left the country during the period for voluntary return.

c.) Expulsion and deportation of foreigners

The Aliens Act provides that a foreigner illegally residing in the territory of the RS shall be deported from the country. Deportation can be forced or voluntary. In case of voluntary deportation of foreigner the police can cooperate with other national authorities, international and non-governmental organisations. A foreigner against whom the additional sentence of expulsion from the country or a secondary sanction of expulsion from the country has been passed or a foreigner, who does not voluntarily leave the country, shall be deported from the country. A foreigner, who must in accordance with the law and international agreement, be deported from the country, is brought to the national border by police and directed across the border or handed over to the authorities of the country in question. Slovenian legislation imposes carrying out processes of deporting foreigners back to police, while the voluntary deportation also allows cooperation of non-governmental and other organizations. An Agreement on Cooperation between the Government of the RS and International Organization for Migration (IOM) was signed in 2006.

When, for objective reasons, a foreigner cannot be immediately deported from the country, he or she shall be accommodated in the Aliens Centre, which proceeds with the deportation procedure. Aliens Centre²² is a specialized unit of the police, body within the Ministry of the Interior of the RS and is as a department in the Uniformed Police Directorate responsible for the reception, accommodation and deportation of those foreigners from the country, which are staying in the Republic of Slovenia in contravention of applicable regulations. This refers mainly to those foreigners, who cannot be immediately deported from the country by the police for whatever reason.

A foreigner, who is in the process of deportation and for whom a risk of escape exists or he or she has not left the country, may be imposed a restriction of movement by the police for no longer than six months until his or her deportation. Movement can also be limited for women, families, children, unaccompanied minors, and elderly, seriously ill and other vulnerable persons.

²² <http://www.policija.si/index.php/delovna-podroja/241?lang=>

When returning or deportation of a foreigner is not possible he or she is granted to temporarily stay in the RS. A foreigner, who was allowed to stay, has the right to emergency health care²³, primary care²⁴, and school-age minor foreigners shall also have to right to basic education.

Persons under temporary protection according to the Temporary Protection of Displaced Persons Act

Displaced persons with temporary protection are also obliged to leave the country after the cessation of the protection. The deadline, until which they are obliged to do so, is determined by a Government of the RS decision on introduction of temporary protection (Article 19 ZZZRO). The obligation to leave the country also arises if the protection is terminated early, which occurs if the conditions in the country of the region of origin are such as to enable a safe and permanent return in a way which reassures respect of human rights, fundamental freedoms and obligations arising from the principle of non-return. The rights of persons with temporary protection belong to persons who wish to return until the day which is determined as a day of the return by the Government's decision. In case persons whose temporary protection has ceased and who have not acquired another status do not choose to voluntarily return into the country or region of origin until the due determined deadline, the regulations regarding deportation apply, as defined in the Aliens Act (

Institutional framework

The **Constitutional arrangement** of the asylum and migration field in Slovenia is based on the Constitution of the RS (Constitution). Human rights protected by the constitution are stated in the second chapter of the Constitution, certain provisions also cover the fields of legal basis of asylum and migrations. Article 48 of the Constitution states that foreign citizens and persons without citizenship, who are being prosecuted for advocating human rights and fundamental freedoms, have the right, within the limits of the law, to refuge in Slovenia. Despite the fact that the concept of refuge is narrower than the concept of international protection, as defined in Slovenian and European legislation on asylum, it still represents the basis for further regulations in this field. On the legislative level, the right to refuge is further regulated by the International Protection Act and the Temporary Protection of Displaced Persons Act (previously by the Asylum Act and the Temporary Asylum Act and their amendments). The area of illegal migrations in the RS is subject to competence of the Ministry of the Interior (MNZ). There are two constituent bodies and four directorates operating within the MNZ. Two constituent bodies are Inspectorate of the RS for the Interior and the Police.

Police performs external border surveillance and operates on the concept of a unified police with unified command for all areas or all the functions of the police (criminal, traffic, border, general, etc.), and, therefore, shall not include Special Border Police within the Ministry of the Interior and no Separate Border Police within the police organization. State border control is carried out at three organizational levels; at the local police station level at the external border and police station for compensatory measures and procedures with foreigners (illegal

²³ The scope of these rights is regulated with the Health Care and Health Insurance Act: http://zakonodaja.gov.si/rpsi/r03/predpis_ZAKO213.html

²⁴ The right to basic care is a right to receive financing in the amount and manner provided by the law governing social security benefits.

refugees), at the regional level departments of the state border and foreigners and at the state level, Border Police Division, a Specialized Unit for State Border Control.

Aliens Centre is a specialized Police unit in charge of reception, accommodation and deportation of those foreigners from the country, who are staying in the Republic of Slovenia in contravention of applicable regulations. This is the only institution in the RS dealing with forced deportation of foreigners who have been issued a court or administrative act by judicial or administrative authorities, based on which they are obliged to leave the territory of the Republic of Slovenia. Specifics of the Aliens Centre, in comparison to similar EU institutions, is that in addition to accommodating and caring for foreigners illegally staying in the Republic of Slovenia, is also competent for their deportation and control, when required by the security evaluation of foreigners. In addition, during the stay of the foreigners, the is Centre also responsible for obtaining relevant documents for unidentified foreigners and in this regard to cooperate with foreign consular authorities.

Slovenian legislation thus imposes carrying out processes of deporting foreigners back to police, while the voluntary deportation also allows cooperation of non-governmental and other organizations. Among the NGOs that are present or otherwise participate in the work with foreigners in deportation proceedings are Jesuit Refugee Service in Slovenia²⁵, International Organization for Migration, Slovenia²⁶, Slovene Philanthropy, Law and Information Centre for NGOs – PIC²⁷.

In general, the area of asylum and migrations, since restructuring in 2009 within the MNZ, is subject to competence of the Migration and Integration Directorate. Directorate, inter alia, also monitors the situation as regards the work of migrations, international protection and integration of refugees and foreigners, identifies trends and events and takes measures; implements policies in the field of migrations, international protection and integration of refugees and foreigners, takes initiatives and makes proposal for developing and implementing migration policy of the RS; prepares technical bases and implements international and European cooperation in the field of migrations, international protection and integration of refugees and foreigners; cooperates with foreign countries' diplomatic and consular representatives and other domestic and international institutions; cooperates with international organizations in the field of migrations, international protection and integration of refugees and foreigners (IOM, ICMPD, SE, UNHCR ...); coordinates and implements functions of the intermediate body for the European Refugee Fund and European Fund for Integration of Third Country Nationals. Within the Directorate operate two division, namely, International Protection Division (within the scope of this Division operates the Asylum Centre in Ljubljana as an open centre for accommodation of applicants for international protection) and the Migration Division.

Within the Ministry of Labour, Family and Social Affairs, labour migration falls under the authority of the Labour Migration Division, which cooperates closely with other Ministry divisions, the Employment Service of Slovenia, and other ministries, in particular the Ministry of the Interior.

²⁵ www.rkc.si/jrs/

²⁶ www.iom.si

²⁷ www.pic.si

The Labour Migration Division draws up regulation and legislative proposals relating to the employment and work of third country nationals in Slovenia, monitors the implementation of rules and regulations, and handles complaints against the decisions of the Employment Service of Slovenia to refuse an issue of a work permit to an alien. The Labour Migration Division also participates in the preparation of the EU legislative proposals relating to the area of the free movement of workers and services, and the entry, stay and employment of third country nationals. Its representatives actively participate in the Advisory and Technical Committee on the free movement of workers, Council of Experts for the Posting of Workers, and the Migration Working Groups of the Council of the European Union.

Other ministries have only specific competences in the area of migrations and asylum, when the implementation of asylum and migration policy concerns their areas. Among other ministries, an important task in the area of migrations is contributed to the Ministry of Labour, Family and Social Affairs, under which the Labour Migration Division operates, which is primarily responsible for the area of work and employment of foreigners in the RS, and the Ministry of the Interior, under which operate diplomatic and consular representatives abroad, which among other things issue visas, accept applications for asylum and applications for a residence permit of an alien in the Republic of Slovenia.

Diplomatic-consular representatives of Slovenia have certain powers in the field of migrations and international protection. Their role is important in issuing visas, accepting applications for international protection and applies in the RS (except in cases where the law clearly defines that these should be submitted at administrative units) and performs other consular functions.

There are a few international (IOM) and NGOs active in Slovenia in the field of migrations, international protections and foreigners. UNHCR closed its representation offices in Slovenia in 2006 but is currently carrying out its activities directly from the Regional Representation Budapest via the Law and Information Centre of NGOs -PIC, as an implementation partner in the project Observations of Police Procedures in Dealing with Applicants for International Protection.

NGOs are dealing with this area both on the practical as well as theoretical/research level. Among these are: Jesuit Refugee Service in Slovenia, Slovene Philanthropy²⁸, Peace Institute²⁹, Society Ključ³⁰ and others.

4 PRACTICAL MEASURES TO REDUCE IRREGULAR MIGRATIONS IN THE REPUBLIC OF SLOVENIA

In the literature, in relation to the prevention or irregular migrations, emerge both arguments based on the economic efficiency in favour of open borders as well as arguments defending

²⁸ www.filantropija.org

²⁹

³⁰ <http://drustvo-kljuc.si>

control policy. Eagerness of countries to prevent irregular migrations is to be understood primarily in terms of security in the country. The evidence, that Slovenia also resolves the issues of migration flow management and prevention of irregular migration mainly because of safety, is the fact that the power to do so is almost entirely under the auspices of the Ministry of the Interior or Police as its constituent body. Although both resolutions dictating the migration policy were adopted in 1999 and 2002, is in part of practical measures for prevention of irregular migrations of particular importance primarily entry into the Schengen area.

Slovenia joined the Schengen area on 21 December, 2007 and took over Schengen obligations at the land and maritime borders. On 30 March, 2008 it also took over the Schengen obligations at the air borders. The inclusion of Slovenia into the Schengen area, however, did not mean only elimination of border control at the internal borders, but also taking responsibility for meeting the Schengen criteria relating to the external border control and thus prevention of irregular migrations in EU.

The state border control under Schengen standards in the Republic of Slovenian has been establishing since 1999 (pre-accession programs PHARE, »Transition Facility", Schengen Facility). Two projects of close interinstitutional cooperation were held in the initial period, in which also participated Austrian and German experts. The first project was held from 1999 to 2000 and included organization of the Border Police and border protection, equipment, information technology, training, personnel, airports and sea. The second project was held from 2000 to 2001 due to harmonization of Slovenian legislation with Schengen acquis, and also included drafting a new law on state border control, bilateral agreements, training of police officers and additional required information, and information and telecommunication equipment. So-called short project was held in October 2003 concerning the training of education providers. In 2004 all the police staff began training and getting familiar with European legislation and Schengen acquis, state border protection, border control and compensatory measures.

As part of preparations for membership in the European Union, the Government of the Republic of Slovenia adopted **Schengen Implementation Plan** in 2001. The plan identifies tasks and deadlines for the implementation of the Schengen control standards of the future external border. Based on this plan Slovenia began implementing a series of activities whose implementation by the end of 2005 ensured Slovenia will be able to implement the Schengen external border control level of the European Union.

Before entering into the Republic of Slovenia

In practice, Republic of Slovenia so far has not carried out any information campaigns in third countries. Notwithstanding this, in the period before the liberalization of the visa for citizens of certain Western Balkans countries, the Police informed the citizens of these countries of the conditions of entry and method of implementing border controls through embassies of those countries. The aim of this communication was to prevent the arrival of nationals of those countries to the Slovenian border crossing points without proper documents, depending on the purpose of entry and stay.

As part of measures to prevent irregular migration, training of police officers is certainly of particular importance. Schengen Borders Code requires border police officers to be

specialized and properly trained professionals. Thus, a series of specialist training courses has now been prepared for the Slovenian border police officers relating to:

- detection of document abuse,
- use of special equipment to control state border outside border crossing points,
- detection of human trafficking,
- work of shift managers on border crossing points,
- observation of the state border from the helicopter,
- deportation of foreigners,
- humanitarian law, human rights and police ethics,
- use of computer applications and information system,
- conducting interviews with illegal immigrants,
- procedures with applicants for international protection,
- implementing border control,
- implementing state border protection outside border crossing points,
- implementing compensatory measures,
- dealing with crimes committed and violations detected in the implementation of compensatory measures,
- knowledge of foreign languages.

Training is carried out under annual training plan in view of the proved needs.

In addition to proper development of human resources the Police also develops equipping police officers with specialist equipment and information support to control external border. The specialist equipment used by the Police in state border control, mainly includes the following:

- equipment for the detection of document abuse,
- equipment for the detection of smuggling in hidden areas of means of transport,
- fixed, mobile and handheld thermal imaging systems,
- night vision devices and binoculars,
- radar system,
- technical protection and video surveillance of the state border,
- different category vehicles,
- service dogs and horses.

All Slovenian police officers have access to police intranet, which maintains portals (database information) in the area of:

- document abuse (samples of original documents and their protection, examples of identified document abuse and evidence of alteration or falsification of documents, notices of document abuse, legislation in this area and materials to implement trainings)
- drug detection,
- detection of weapons and explosives,
- detection of car crime,
- detection of illegals.

Intranet provides all the necessary professional instructions, which include also policies, instructions and manuals in the field of border control.

Slovenian Police has **liaison officers** available in the Republic of Croatia, the Republic of Serbia, the Republic of Monte Negro and the Republic of Italy. The working areas of aforementioned liaison officers also include the work in the field of irregular migrations and foreigners. It mainly involves exchange of information among security authorities and obtaining information that benefit the Slovenian Police in the integrated border management.

Slovenian Police has reached its best effects relating to border control mainly in the field of human resource management. Meeting Schengen criteria namely required allocating an adequate number of police officer for state border protection outside border crossing points and for the implementation of the border control; staff were adequately trained and equipped to this end.

Measures on the entry into the Republic of Slovenia

Border control is an important segment of the fourth pillar concept of integrated border management implemented by the EU Member States. Slovenian Police conducts border control at border crossing points at their external border (land, air and see) in the interest of all Member States, which have abolished control at their internal borders. In order to provide efficient border control conduct at the border crossing points the management of police units are liable to allocate the appropriate number of police officers, vehicles and technical resources at any time and in a manner, which ensures efficient, high and unified level of control or exercising border control.

Border control, which ensures that persons including their vehicles and their personal belongings are allowed to enter to or exit the territory of the Member States, is carried out by police officers in accordance with the Schengen acquis³¹. In exercising border control police officers carry out basic and thorough border control on persons. Third country nationals may also be checked thoroughly in the second row. Police officers may in the performance of border control, in accordance with the national legislation, carry out control and investigation of passengers, means of transport and objects. Border control on external land, air or sea borders and for certain categories of persons is carried out by police officers in a manner and in accordance with specific rules listed in the Annexes of the Schengen Borders Code.

Measures for effective border control are also: the systematic stamping of third country nationals' passports, the use of separate tracks and markings for border control, consistent and correct use of modern technical equipment and exercising border control outside booths or office premises.

³¹ Regulation (EC) no. 562/2006 of the European Parliament and Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code); and in addition to that Commission Recommendation of 06/11/2006 establishing a common »Practical Handbook for Border Guards (Schengen Handbook)«, which is in conducting border control of persons applied by the competent authorities of the Member States) and the national legislation (State Border Control Act; Rules on the implementation of the National Border Control Act; Rules regulating the Signs identifying Border line, Border crossing and Border Crossing Zone; Aliens Act; Rules on the refusal of of entry to the Republic of Slovenia relating to the third country citizens, on issuing visas at the border and on the modalities of visas withdrawal; Instructions on the refusal of entry to the Republic of Slovenia relating to EU citizens, Visa Code)

Since the Schengen Borders Code fails to regulate crossing the border in the border traffic police officers, when exercising border control in the aforementioned border traffic, comply with international agreement provisions (Agreement between the Republic of Slovenia and the Republic of Croatia on the Border Traffic and Cooperation; the conclusions of Minutes of meetings of the Permanent Joint Committee for the implementation of the Agreement between the Republic of Slovenia and the Republic of Croatia on the Border Traffic and Cooperation), which comply with Community rules on border traffic (Regulation (EC) no. 1931/2006 of the European Parliament and Council of 20 December, 2006 laying down the rules for border traffic at external land borders of Member States and amendment of Schengen Convention provisions).

In order to ensure effective, high and unified level of control and exercising border control at the external border of the EU, Slovenian Police carried out and is still carrying out a series of measures important for the segment of work strategy of the Police in this area. This includes adequate infrastructure, technical equipment, means of transport, adequate technical resources for border control and corresponding IT and telecommunications equipment (on-line links to police databases, SIS, VIS, Interpol – wanted persons database, stolen and lost documents database and stolen vehicles database, Police Intranet, portal for fight against document abuse - PORLIS).

Determination of the authenticity and validity of travel documents is especially important in the context of thorough border control. Police officers carrying out border control are specially trained to detect misuse of documents. There is equipment installed at border crossing points for detecting misuse of documents, namely, devices for determining the authenticity of documents with a camera and printer (Projectina Docubox in Foster & Freeman VSC 4C) and optical passport scanners (OCR-B). Police officers have access to the central database that contains document descriptions and their characteristics and protections, descriptions of abuse (cases of detected abuse by the method of changing documents), instructions and manuals for work, training material and access to other databases in this field. Access is available via Police Intranet, and in addition, remote access is also enabled. Based on the Guidelines for risk analysis in the field of cross-border crime and irregular migrations, Slovenian Police has three different levels of producing analyses at its disposal. Risk analyses are made on the national (strategic), regional (operational) and local (tactical) level.

These Guidelines define types and contents of risk analyses, process of formulating risk analyses, purpose and structure of risk analyses, data sources and information and reporting (distribution) system of these analyses for each of these levels separately. Information flow between the three levels and distribution of written documents also define Rules on Informing and Reporting in Police.

At the national level are risk analyses in this field prepared by the Border Police Sector Uniformed Police Directorate.

The concept of making risk analyses is in line with the Schengen Catalogue on External Borders Control, Return and Readmission. It is based on systematic acquisition of information and data with the objective of evaluating the situation at the strategic level, identifying the current situation in the field of border management and long-term trends in irregular migrations and cross-border crime. An essential component of risk analyses and threat assessments are also predictions and recommendations for further work. The purpose and objective of making risk analyses is coordinated management of external borders and effective implementation of functions from the Schengen Borders Code.

Police obtains information in the field of irregular migrations from the central computer, where police officers enter data relating to irregular migrations and cross-border crime. An essential source of information are also documents of Police Directorates (police stations), referred to the General Police Directorate. Of particular importance are information of the Criminal Police Directorate, other departments and sectors in Police, police officers posted abroad, liaison officers, other ministries, European agencies, bodies and EU work groups. Information is obtained also through international cooperation with other Security Authorities, through cooperation with Frontex, Europol, Interpol and from publicly available (open) sources of information.

General Police Directorate makes periodic (annual, half-yearly and quarterly) risk analyses and target risk analyses, and threat assessments. Periodic risk analyses include consideration of all relevant indicators in the field of irregular migrations cross-border crime. Target threat assessments and risk analyses relate to a narrower field of work. The content of the latter is targeted at dealing with new manifestations, expected major border hazards, expected or demonstrated change in the situation and the like.

General Police Directorate communicates risk analyses and threat assessments to all police directorates (police stations), Aliens Centre, Specialised Unit for State Border Control, Criminal Police Directorate of the GPU, Ministry of the Interior (Migration and Integration Directorate, International Protection Division), Ministry of Foreign Affairs and also to other ministries, if necessary. Primarily transmission of documents to other ministries is a basis for inter-ministerial cooperation in formulating migration policy and measures to prevent irregular migrations.

Border Police Division of the Uniformed Police Directorate is actively involved in the analytical work of the Agency for the Management of Operational Cooperation at the External Borders of EU (FRONTEX). Cooperation takes place in the form of exchanging documents and information, and meetings, workshops and projects aimed at developing mutual cooperation and improving the quality of work in the field of analyzing trends and risks related to the management of external borders of EU Member States.

Schengen Borders Code also determines the protection of borders and defines it as protection of the border between border crossing points and protection of border crossing points outside working hours to prevent persons from circumventing border control. Successful state border control outside border crossing points is in terms of configuration, physical dimensions and communication successful only in case operational measures are also carried out in the interior and at the internal borders in addition to measures implemented in the vicinity of the external border.

Protection of state border outside border crossing points is focused on two main segments:

- control of movement of persons at and along the state border (with patrols, ambushes, observations and other forms of police action) and
- other operational and technical action operation along the border and in the border area (work in police districts, the work of police patrols at entering roads, observations on the bus and railway stations, in different places, safety campaigns and cooperation with border population).

The protection of the state border crossing points outside crossing points falls under the competence of the regional police stations, which directly perform police functions³², thus also implementing the functions of protecting the land and sea state border. Police stations directly engaged in the protection of external state border, have been additionally completed with human resources. European Funds were used to purchase various equipment listed above.

The most important issue in the field of implementing border control is training of police officers. Training is carried out continuously, in particular upon the arrival of new staff to posts at border crossings. The greatest successes are achieved in training on detecting document abuse, which is determined primarily based on the number of identified abuse and quality of abused documents that have been identified. In this context is possible to establish a high standard of information and technical support in the implementation of border control, as the border crossings are fitted with quality equipment for detecting misuse of documents, and police officers have access to all known information about the characteristics of original documents and up to now known methods of modifying or producing documents. In this particular area a well developed network of multipliers for training implementation is also very important as it provides expansion of knowledge to a wide range of police officers. In addition, it is a system that »supplies itself« as its use increases the number of detected counterfeits, thereby entering new descriptions of identified cases.

Unauthorised stay in the Republic of Slovenia

Detection and prevention of irregular stay, employment and work, and identifying violation in registration and renunciation of residence of aliens shall be carried out through the following activities:

- verification of authenticity and validity of travel documents, visas and residence permits at border crossings and in the interior,
- identifying the purpose of arrival of foreigners in the country upon their entry at border crossings and identifying the purpose of their stay in the interior,
- efficient deportation of those foreigners from the country, whose allowed period of residing expired or who are residing contrary to the purpose, for which they were issued a visa or residence permit or their residence has been terminated or their residence permit cancelled,
- control of accommodation and other facilities that are designed to take guests to stay overnight and rest and other landlords, and identifying violations of the provisions of the Residence Registration Act,
- control over the places, where foreigners stay, get employed and work, and identifying violations of the provisions of the Employment and Work of Aliens Act and other legislation directly or indirectly related to the residence of aliens in our country (health care, safety at work, regulations on taxes, etc.), together with the competent inspection services.

³² Police Act (official consolidated text) (ZPol-UPB7) Official gazette RS, no. [66/2009](#)

Police carries out the listed functions by controlling places, road and railway relations in the country, and public and other means of transport, where most frequently gather and travel foreigners (bus and railway stations, marketplaces, shipping malls, fairs, trains, buses on fixed routes, buses to transport workers to various places of work, etc.).

Doing this, it carries out the following tasks:

- establishing identify of foreigners,
- verifying validity and authenticity of documents (including visas and residence permits),
- verifying timeliness of registrations and renunciations of residence,
- verifying the purpose of entry and stay in Slovenia,
- at the border crossing upon entry authorities identify the purpose of arrival of foreigners, and at their exit they note if the period of the allowed residence of foreigners has been exceeded.

Another segment of control is the control and supervision of catering establishments, night bars, amusement parks, casinos, accommodation and tourist facilities and other landlords (residential units for single persons, student residence, hotels, motels, guesthouses, camps, etc.).

Doing so, the Police implement the following tasks:

- establishing identify of foreigners,
- verifying validity of documents (visas and residence permits),
- determining the time of arrival of foreigners in the country and the purpose of their stay in accordance with the issued visas or residence permits,
- verifying timeliness of registrations and renunciations of residence or change of address of residence and the correctness of landlords' record keeping,
- identifying any violations of labour-law, health, market and tax legislation.

In the third segment the Police carry out supervision of work places and other facilities, where foreigners take up employment or work (companies, construction sites, marketplaces, shipyards, fruit and vegetables shops, sports clubs, etc.).

Doing this, it carries out the following tasks:

- establishing identify of foreigners and verifying validity and authenticity of documents,
- checking the validity of visas and residence permits, and compliance with the purpose of stay of foreigners with the issued permits and visas,
- identifying any violations of labour-law, health, market and tax legislation in cooperation with the competent inspection services.

An important factor in the field of irregular migrations is also the concept of implementing compensatory measures. Schengen Borders Code in the 21 Article also provides that the abolition of controls at internal border shall not affect the exercise of police powers in accordance with the national legislation if the implementation of these powers fails to have an effect equivalent to border control, which also applies to border areas. Exercise of police powers in the interior has no systematic control features, but rather a targeted control based on prepared risk analyses.

The purpose of implementing compensatory measures is identifying unauthorised entries, verifying legality of stay in the territory of the Republic of Slovenia and preventing and detecting irregular migrations and cross-border crime. Inspection of documents, check of persons and control of the means of transport and personal belongings are applied against persons in respect of whom there are reasonable probability of crossing the internal border. Police officers must previously establish whether a person crossed the internal border or not. Compensatory measures that must be carried out randomly may be implemented only in case of reasonable likelihood of crossing the internal border.

In terms of irregular migrations the contents of this control also includes checking the legality of entry, legal title to stay and residence, and in case of a long stay in our country, also checking obligations of declaring residence. Essential role in this field is played by the Specialised Unit for State Border Control (SENDM) and Police Stations for Compensatory Measures (PPIU).

SENDM and PPIU have been established and have posts in relation to security issues in the interior and in areas at internal Schengen border, having regard to migration flows and transport infrastructure, and structure of passengers crossing the state border and using public and other means of transport. Particularly are considered flows of all forms of cross-border crime and congestion of violations and criminal offences on so-called road link and along it.

In the Republic of Slovenia SENDM carries out police duties, which in addition to general one also require special skills and special technical equipment and shall be implemented in coordination with the police. SENDM in the field of irregular migrations carries out mainly the following tasks:

- identifies violations of regulations on state border and foreigners and reveals other cross-border crime in the Republic of Slovenia,
- based on risk analyses, carries out enhanced and pre-planned targeted controls on the internal and external border and in the interior to prevent, detect and investigate cross-border crime, illegal migrations, smuggling of drugs, weapons, ammunition, stolen vehicles and use of invalid and stolen documents,
- cooperates in the preparation and conduct of training for specific skills and knowledge in this field of work,
- carries out external border control using opto-electronic systems and inspections of means of transport, passengers and luggage using electronic and fibre optic devices,
- analyses and evaluates security situation and the efficiency and effectiveness of police work in implementing compensatory measures, and plans and organizes the implementation of compensatory measures.

Police station, in relation to compensatory measures in the area of its police directorate, performs police tasks, which in addition to general ones also require special skills and special technical equipment and shall be implemented with proper coordination. In the field of illegal migrations police station carries out mainly the following tasks:

- identifies violations of the state border and foreigners and detects other cross-border crime in the area of its police directorate,
- based on risk analyses, carries out enhanced and pre-planned targeted controls on the internal border and in the interior to prevent, detect and investigate cross-border crime, illegal migrations, smuggling of drugs, weapons, ammunition, stolen vehicles and use of invalid and stolen documents,

- carries out external border control using opto-electronic systems and inspections of means of transport, passengers and luggage using electronic and fibre optic devices,
- in cooperation with police administration and General Police Directorate coordinates its work with police stations in relation to compensatory measures of other police administrations, when such coordinated operation is necessary in a wider area,
- cooperates in the preparation and conduct of training for specific skills and knowledge in this field of work.

The field of residence permit abuse, which also includes fictitious marriage, abuse in obtaining work permits, fictitious companies and related abuse of financial flows and workers' rights abuse, directly also represent a component of police work. Mainly because some forms of abuse go beyond the scope of police and because of the possibility of obtaining data from various competent authorities, the inter-ministerial cooperation is of particular importance in this field of work.

The Aliens Act also defines the obligation of mutual cooperation between the competent authorities and exchange of information between them. An Inter-ministerial work group for the preparation of possible measures to promote the migration policy of the Republic of Slovenia was therefore established at the government level. Its tasks are in particular the preparation of systematic measures and amendments to legislation necessary to develop appropriate migration policy.

At the operational level Police cooperates with other competent authorities. This includes in particular inspection services, administrative units, health insurance institutes, employment services and other bodies involved in proceedings related to residence of aliens.

Working groups for investigating criminal offences related to this have been established to detect specific forms of abuse. The results were shown mainly in a number of detected crimes and convictions that followed. Work of these working groups has also improved inter-ministerial cooperation. The findings in the present cases were also used in the formulation of amendments to the legislation, particularly in the Criminal Code Amendment Act, Employment and Work of Aliens Act and in the preparation of the new Aliens Act.

As regards the area of detecting foreigners in the interior of Slovenia is necessary to highlight our effective system of implementing compensatory measures. The results are measured in the number and quality of their detected and dealt cases; they are particularly evident from analyses in the field of illegal migrations. The system is primarily important because of the border control abolition at internal borders in accordance with the Convention implementing the Schengen Agreement. Given that in the coming years border control over irregular migrations in the interior will gain significant importance.

Instruments of limitation on the number of non-EU economic migrants

Quota of work permits is the main instrument of limiting the maximum number of aliens in the labour market. It is annually determined by the Government, taking into account fluctuations and conditions of the labour market, but it may not exceed 5 per cent of the actively working population of Slovenia on an annual basis.⁶⁰ The quota is proposed by the minister responsible for labour, taking into account opinions of other ministries that are responsible for related areas as well as of employers and representative trade unions at the national level. The quota includes those categories of TCNs who seek access to the Slovenian labour market for the first time or are coming into the country annually to be employed or perform other forms of temporary contract work on various grounds. The quota is allocated for employment, seconded workers, training and advanced training, seasonal work and

individual services of TCNs.⁶¹ Besides these purposes, TCNs who are to gain a new work permit are categorised in the following priority order: (i) those who are to be issued a work permit irrespective of the situation and conditions on the labour market; (ii) immediate family members of TCNs in possession of personal work permits for an indefinite period of time; (iii) TCNs with professional qualifications in skill-shortage occupations; (iv) migrant workers from neighbouring countries; (v) long-term residents and close family members of TCNs who have a temporary residence permit.⁶²

Other instruments to regulate the labour market situation may be applied as well and can be activated in cases of an excessive influx of foreign labour. In addition to new employment or work of aliens being non-permissible when it has negative effects on the restructuring of the economy and the employment rate, the Government may set restrictions or prohibitions on the influx of new workers from third countries in its entirety or from specific regions if there are well-founded reasons that this is in public or general commercial interest.⁶³

Possibilities for legalization of stay

Police does not implement regularisation programs of aliens stay. Police competences include only some legal titles on the basis of which a foreigner may be held for longer than would otherwise have been permitted based on the previous entry of residence permit. One such measure or police powers is the permission to stay. By that police gives the foreigner, who has been given a deadline to leave a country, or a foreigner, who needs to be deported by force, a permit to temporarily stay in Slovenia. Stay shall be permitted in the event that forced deportation or return of a foreigner would be contradictory to the non-refoulement principle or deportation is not possible for other reasons. It is issued upon the foreigner's request or ex officio for a term of six months. The permit may be extended for as long as the reasons for such extension exist.

Another legal title, which may extend the residence of a foreigner, is voluntary return. This option will be available through the application of the new Aliens Act (Ztuj-2). Under the terms of the new Act the Police will issue decisions on deportations to foreigners illegally residing in Slovenia, except in the following cases:

- if a foreigner is apprehended illegally crossing the state border or in connection with it and did not obtain the right of residence after that,
- to a foreigner, who is the return or extradition proceedings based on the international agreement on return of persons,
- to foreigner whom the additional sentence of expulsion from the country has been imposed on him.

In a decision allowing a foreigner a voluntary return police will also set a deadline for the foreigner's return. This period shall not be less than 7 and longer than 30 days.

The following measures and factors proved to be most efficient in the field of expulsion of foreigner:

- the existence of agreement on readmission of foreigners with source and transit countries of illegal migration,
- conclusion of the protocols based on agreements on readmission of foreigners,
- effective detection of illegals and foreigners residing illegally,

- effective establishment of identity or obtaining travel documents required for return, if necessary,
- effective acquisition of evidence relating to the stay of foreigners in the returning country (usually a neighbouring country),
- cooperation in joint return operations,
- promotion of voluntary return of foreigners,
- encouraging or participating in aid programs for voluntary return,
- providing an adequate standard of foreigners' rights in return proceedings, legal protection, appropriate level of health, social and other protection of foreigners.

In the field of returning, the conclusion of agreements on return and protocols concluded on this bases, are of particular importance. It primarily concerns legal basis for return, providing appropriate standards of procedures, delimitation between obligations of States Parties in implementing the procedures and the like. Particularly relevant are protocols because they are usually practically oriented and facilitate implementation of procedures with their provisions. Most important for each country is having concluded agreements with all neighbouring countries and with countries of origin of illegal migration, which the country detects itself or which take place through its territory.

We should also highlight the practice of joint visit of the scene of illegal passage, which Slovenian Police carries out with Croatian security authorities. The aim is exact identification of location of illegal passage and thus demonstrating the arrival of the illegal from the neighbouring country, in particular case Croatia. This significantly increases the possibility of successful return.

The third measure, which should be highlighted, is participation in the aid program on voluntary return (AVR), in which International Organization for Migration (IOM) takes part. IOM is primarily involved in the return of vulnerable groups of foreigners and return in countries, to which usual return is more difficult. On one hand the program provides adequate standards of alien admission in the country of origin, facilitates procedures and ensures foreigner's readiness for departure in his or her country of origin, information brochures in 11 languages and other information material, conduct of informing foreigners regarding the possibility of entering the program and the actual return of foreigners. 34 foreigners were informed in 2010, of which 19 decided to join the program and were actually returned to their home country. IOM can only include those foreigners in the program, for whom proposal was made by inspector in the Aliens Centre.

Conclusion

The Justice and Home Affairs Council at its 2768th meeting on 4 and 5 of December, 2006 in Brussels adopted the following conclusions:

»The concept of integrated border management has the following dimensions:

- control of the border (border control and border surveillance) as defined in the Schengen Borders Code, including relevant risk analysis and intelligence information on crime,

- detection and investigation of cross-border crime in cooperation with competent prosecuting authorities,
- quadripartite access control model (measures in third countries, participation with neighbouring countries, border control, control measures in the area of free movement, including return),
- cooperation of the border services regarding border management (border police units, customs, police, national security units and other relevant authorities) and international cooperation,
- coordination and compliance of activities of Member States, institutions and other Community and European Union bodies;

Consistency between these dimensions and how they are applied by the Schengen countries are crucial to the success of the concept of integrated border management. Quadripartite access control model is a key element of the integrated border management. This means that the model assumes that a range of additional measures is implemented in different sets.

Measures from the first set shall be adopted in the third countries, primarily countries of origin and transit countries. Measures include support and training provided by the liaison officers and document experts and is intended for the consular staff at consulates and transport company personnel from third countries of origin and transit countries, which are the source of risks associated with illegal immigration.

The second set includes cooperation with neighbouring countries. Cooperation agreements with neighbouring countries in the field of border management are an effective tool to increase border security. Cooperation should take place so as to create appropriate working mechanisms such as exchange of information, appropriate communication channels, central, regional and local focal points, procedures for handling emergency situations and objective handling of incidents to avoid political conflicts etc.. In addition, regional cooperation structures across external borders should also be set up in maritime areas. These incentives should be combined by all countries in specific region.

The border control, which represents the third set of the model, provides systematic border control for each person entering or leaving the Schengen area. In addition, it also provides an appropriate level for the detection of illegal border crossings in the areas between two border crossing points or at sea, using false documents and hiding in vehicles. Border control is part of crime prevention since it seeks and detects the smuggling of people, stolen property and other cross-border or border related crimes and contributes to the detection of forms of serious crime.

The fourth set consists of control measures in the field of free movement, including the return. These measures, through enhanced search, control and control measures based on national data and which are in compliance with the national legislation, prevent illegal immigration and cross-border criminal in the territory of the Schengen states. Illegal immigrants found on the Schengen territory are taken under their jurisdiction by specific authorities. These immigrants must be registered and if there are no conditions for residence and no obstacles, based on serious humanitarian grounds or international law, they must be returned to their country of origin. Member States, together with the relevant authorities, shall define minimum standards for control measures in their territory, places, where third country national illegally reside, cross-border transport links, etc.«

The mentioned content of the *Schengen Catalogue on the External Border Control Return and Readmission* clearly indicates that external border control consists of different sets

connected to a single entity. Individual control elements complement and connect each other, making it difficult to distinguish the most important measures from the less important ones.