

Employees Beyond Borders
Country report
Slovak Republic



Society of Goodwill

2014

Introduction

This analysis was prepared within the frame of the project “Employees Beyond Borders” which is financially supported by the International Visegrad Fund in four countries - Poland, Hungary, the Czech Republic and the Slovak Republic.

The aim of this project is to analyse the implementation and impact of the Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of third-countries nationals who are staying in the member states of the European Union illegally (the Sanctions Directive). The Directive was adopted by European Parliament and Council on 18th July 2009 and had to be transposed to national legislations of member states until 20th July 2011. The Directive was adopted as part of the conceptual fight of the European Union against illegal migration and illegal stay which is closely related to illegal employment. The Directive is to be considered as a complementary measure to fight illegal employment and exploitation of migrant workers by setting sanctions against employers of irregular third countries nationals and also by establishing the opportunity for irregular migrant workers to claim unpaid remuneration. As indicated in its title, the Directive only stipulates minimum standards which all EU member states shall guarantee. Hence, the member states have the right to decide whether they shall adopt or maintain tougher sanctions and measures and impose tougher obligations on employers than those provided by the Directive.

The information used for the processing of this analysis were obtained from publicly available sources or on the basis of research conducted within this project.

1. Background information

1.1. Migration in Slovak Republic

History of migration in the Slovak Republic is undoubtedly influenced by its historical development. During its history the Slovak Republic has undergone several socio-economic changes which have affected all areas of social life, including migration. In this respect, the most important milestones were undoubtedly change from the totalitarian regime to democracy (1989), consequently the breakup of the Czechoslovakia and formation of the independent Slovak Republic (1993), accession to the European Union (2004) and to the Schengen area (2007).

The fall of the Iron Curtain caused the opening of borders and from that moment we can speak about external migration.¹ Since 1993 there has been a gradual increase in the number of migrants entering the Slovak Republic, legally and undocumented. However, the interesting fact is that while the level of legal migration has been increasing, even after accession to the European Union and to the Schengen area, the level of undocumented migration and the number of persons seeking international protection has begun to gradually decrease from that moment.

For comparison, the statistics for the last three years:

Year	Number of the population	Legal migration	Irregular migration
2011	5 404 322	66 191	1213
2012	5 410 836	67 877	1 474
2013	5 425 919	71 649	1 088

¹ External migration is a term used for migration in which migrant crosses the borders. For the purposes of this report, we mean the term “external migration” when using the term “migration”.

Precise statistics of legal and undocumented migration are conducted by the Ministry of Interior of the Slovak Republic, specifically the individual bodies of the ministry which are responsible for different groups of migrants.

Migration Office of the Ministry of Interior of the Slovak Republic has the competences to decide about granting asylum and subsidiary protection to foreigners and is also responsible for the integration of these persons in cooperation with the Ministry of Labour, Social Affairs and Family. Migration Office collects statistics on the number of submitted asylum applications, the structure of asylum seekers, the way how these requests are arranged as well as other relevant indicators. All of this is kept and published on official website <http://www.minv.sk/?statistiky-20>.

Bureau of Border and Alien Police of the Presidium of the Police Force is competent to review the fulfilment of conditions for granting residence under the Act no. 404/2011 Coll. on Residence of Foreigners as amended, and to grant foreigners a residence under this Act.

The Act on Residence of Foreigners regulates these types of residence:

- Temporary residence for third-country national entitles this person to stay, to leave and to re-enter the territory of the Slovak Republic in the period for which he/she was granted the residence. Temporary residence is always linked to a specific purpose and in the case of change of the purpose of temporary residence it is necessary to submit a new application for the temporary residence. The law provides following purposes for granting the temporary residence: business, employment, study, specific activity (particular cases are prescribed by the law: for example lecturing activities, sporting activities, artistic activities etc.), research and development, family reunification , temporary residence of third-country national who is an expatriate living abroad or in the case of a third-country national who has been granted long-term resident in another EU Member State. The type of a temporary residence is also the residence on the grounds of the European Union's Blue Card.

The length of temporary residence is provided by law according to the purpose of temporary residence. For example, a maximum length of residence for temporary residence permit for employment purpose is set at two years, if staying for business purpose it is three years and in the case study is six years etc.

- Permanent residence for third-country national includes following types of the residence:
 - a) Permanent residence for five years – this applies for example to third-country national who is the spouse of a citizen of the Slovak Republic or a dependent relative in the direct line, underage child of third-country national who is the spouse of a citizen of the Slovak Republic or who have been already granted permanent residence for five years.
 - b) Permanent residence for an unlimited time – this applies to third-country nationals who are granted “permanent resident for five years” at least for four years and to the underage child of third-country national with a permanent residence permit for an unlimited time. However, the law gives the possibility to grant this residence even without meeting these conditions to specific categories of persons, such as stateless persons, underage child without accompaniment with a tolerated residence which he/she has had at least for three years before reaching the lawful age and during this period he/she attended school in Slovakia, etc.
 - c) Residence for third-country national with granted status of person with long term resident of the European Union.
- Tolerated residence for third-country national – this kind of residence is determined for very specific groups of people, usually for persons whose presence in the territory of the Slovak Republic is necessary for criminal proceeding or for humanitarian reasons. These are cases when there is an obstacle of an administrative expulsion of third-country national, if his/her departure from the country is not possible and his/her detainment is not purposeful, in the case of unaccompanied minors, in order to respect family and private life etc. Tolerated residence may be also granted in cases necessary for law enforcement and if the persons is a victim of human trafficking or a third-country national who was illegally employed if the offense of illegal employment is committed according to §251a of the Act no. 300/2005 Coll. Criminal Law, as amended.
- The right of residence for European Union citizen and family member of a EU citizen – European Union citizen and his family entitled to reside in the European Union are entitled to reside in the territory of Slovakia for three months from the date of entry into the territory of the Slovak Republic without specific conditions, but he/she is required to report a residence to the competent authority of the Alien Police. In case of interest in staying in Slovakia for a period longer than three months it is required a registration at the competent authority of the Alien Police. For a registration is required to submit

document certifying the reason for his/her stay in Slovakia, for example a proof of study, an employment contract, an evidence of the self-employment or if there is no such reason, he/she must to give proof of sufficient resources for staying for him/herself and his/her family members in order not to become a person in material need.

In addition to granting residence, the Bureau of Border and Alien Police provides controls and protection of external borders, control stay of foreigners, executes detention and administrative expulsion of foreigners. The Bureau of Border and Alien Police collects and processes statistics on arrivals and departures from the Slovakia, on numbers of issued residence permits, on numbers of detained and expelled migrants from the territory of the Slovak Republic as well as other relevant indicators. These statistics are annually published on the official website of the Ministry of Interior <http://www.minv.sk/?rocenky>; some of them are also available in English.

The issue of integration of foreigners, who legally reside the territory of the Slovak Republic, is the responsibility of the **Ministry of Labour, Social Affairs and Family**.

In addition to mentioned state authorities an important role plays **non-governmental organizations** which are dealing with issue of migration. They mostly carry out their activities thanks to projects financed by programs and funds from the European Union or other donors. NGOs cooperate with state authorities in the preparation of strategic documents and concepts for solving problematic issues and they also provide direct assistance to migrants and support in dealing with their life situations. However in this context it should be stated that NGOs are primarily dealing with legal migrants, undocumented migrants are only marginally in the spotlight – the assistance is offered only to certain groups of undocumented migrants, as foreigners in detention centres or foreigners enrolled in the program which assists with voluntary returns. It is necessary to point out that it is very difficult to obtain resources to finance projects aimed at undocumented migrants in Slovakia.

1.2. Structure of migration

The analysis of the structure of migration is based on official statistics from the Bureau of Border and Alien Police because it is not possible to monitor cases which are anonymous and therefore are documented nowise.

In term of origin of foreigners with a residence permit in the territory of Slovakia, the largest groups of foreigners are foreigners coming from EU member states. For better perspective, we present twelve the most numerous countries of origin of foreigners:

Year 2013	Number	Year 2012	Number
Czech Republic	9 321	Czech Republic	9 073
Hungary	6 912	Hungary	6 542
Ukraine	6 898	Ukraine	6 379
Romania	5 949	Romania	6 087
Poland	5 050	Poland	4 795
Germany	4 093	Serbia	3 685
Serbia	4 021	Germany	3 645
Russia	2 633	Russia	2 395
Austria	2 147	Vietnam	2 055
Italy	2 140	Austria	1 943
Vietnam	2 089	Italy	1 869
China	1 926	China	1 835

Foreigners are mainly employed in the economy sectors of business services, transport, building industry, automotive industry, wholesale trade, education, and further in the sectors of food production, manufacture of electrical machinery and manufacture of radio, television and communication equipment.

A motivation of foreigners for staying in the Slovak Republic is various – the most typical are: employment in Slovakia, family reunification, entrepreneurship and study. In the past, the arrival of foreigners at the territory of the Slovak Republic in order to employ was often associated with large investments of foreign companies when they delegated employees (particularly at management positions as well as ordinary employees) to launch activities in Slovakia - mainly in the field of industry and information and communication technologies. A large part of foreigners is employed in the field of gastronomy, services and trade and employers are often foreigners themselves (Asian restaurant, spa facilities and shops of textiles and consumer goods).

When analysing undocumented migration for the purposes of this report, we will work with information from statistical data:

- The number of detected cases of illegal crossing of the state border² and illegal stay³ of third-country nationals;
- The number of cases of foreigners who legally entered the Schengen area but consequently ceased to be legal residence (i.e. overstayers);
- The most frequent countries of origin of third-country nationals who are undocumented migrants;
- Areas with the highest number of detected undocumented migrants – third-country nationals.

Year	Illegal crossing of the state border	Illegal stay	Overstayers
2012	658 persons	821 persons	577 persons
2013	398 persons	673 persons	499 persons

Structured of undocumented third-country nationals as per countries of origins – TOP 5

Year	U n a u t h o r i z e d crossing of the state border	Illegal stay	Overstayers
2012	S o m a l i a – 2 5 6 persons Afghanistan – 64 Moldavia - 55 Ukraine - 53 Congo - 49	Ukraine – 327 person Russia - 48 Moldavia - 46 Somalia - 31 Serbia- 29	U k r a i n e – 3 1 7 persons Russia - 39 Libya - 28 Serbia - 24 USA – 22

² The term illegal crossing of the state borders means cases of foreigners who illegally crossed the state border of the Slovak Republic or they tried for it, including persons returned under readmission agreements.

³ The term illegal stay means cases of foreigners who are at the territory of the Slovak republic contrary to the legislation in force, regardless of whether they entered the territory of the Slovak Republic legitimately or without authorization (including overstayers).

2013	Ukraine – 79	Ukraine - 314	Ukraine - 298
	Afghanistan – 75	Afghanistan - 45	Vietnam - 21
	Somalia - 55	Moldavia - 26	Russia- 19
	Georgia - 53	Russia - 26	Serbia - 17
	Moldavia - 32	Vietnam – 24	Macedonia - 14

According to the statistics of the year 2013, the most third-country nationals residing without permit were detained in the scope of the Alien Police Department Bratislava (119 cases). In the second largest city of Slovakia, Kosice, were detected only 27 cases by the Alien Police Department Kosice. For comparison, we present the total number of population in both cities and the number of detained undocumented migrants detected by relevant departments of the Alien Police. For completeness it should be noted that the territorial scope of the Alien Police Kosice is not limited only to the territory of the city of Kosice but also includes the area around the town of Kosice and three smaller cities (Gelnica, Spišská Nová Ves, Rožňava) what increases the population in the territorial jurisdiction of this department. It should also be noted that the number of urban residents listed in the table is obtained from the official statistics of the Statistical Office of the Slovak Republic which takes into account only habitants with official registration as resident of the city. The actual number of population may differ as many residents of eastern Slovakia migrates to Bratislava and its surroundings in order to employ without changing resident address or they subscribe only to temporary residence what is not considered in the statistics.

City	Number of the population	Residence permits granted to third countries nationals	Detected cases of the illegal stay (including overstayers)
Bratislava	417 389	10.234	119
Kosice	362 045	4.123	27

It can be assumed that the number of detected cases of illegal stay in the various regions of Slovakia gives a better picture of the illegal stay of third-country nationals who remain undetected. Based on these data, we can assume that most illegal immigrants live in

big cities (in addition to Bratislava it is also Trnava, Žilina, Michalovce etc.) where there are more job opportunities and also better opportunity to hide before state authorities and therefore remain anonymous. Centralization of migrants into major cities and their surroundings follows the general urban trends of Slovak population which concentrates in the cities especially in relation to bigger labour market and possibility to prove one's worth.

According to the most experts in the field of migration, the Slovak Republic is a transit country, although there are still a growing number of foreigners who are interested in staying here. This is confirmed by the statistics on the number of residence permits from the Bureau of Border and Alien Police, which continues to grow. However it should be stated that most of these foreigners are nationals of the EEA. There are various reasons for the low interest from the side of third-countries nationals. Compared to the older EU member states, there is lower employee's wages, but the cost of living is comparable. In addition, in Slovakia is high unemployment rate what in combination with current legislation causes that most of free job positions are occupied by jobseekers; however the prerequisite for recruitment foreigner is precisely the impossibility of filling the vacancy by jobseeker.

1.3. Legislation and procedure to employ foreigners

The basic framework of legislation for employing foreigners is formed primarily by acts which regulate conditions of entry and residence of foreigners in the territory of the Slovak Republic, namely:

- Act no. 404/2011 Coll. On Residence of Foreigners, as amended – it applies to all foreigners located in Slovakia. Besides conditions of entry and residence of foreigners in the territory of the Slovak Republic the Foreigners Act regulates the rights and obligations of foreigners, reasons for and conditions of detention, reasons and progress of the expulsion, control and sanction mechanisms to prevent illegality of foreigners as well as for violation of statutory obligations by foreigners or by other bodies.

Legal status of foreigners, namely the extent of their rights and obligations, primarily depends on the type of residence which has been granted. However, in principle is valid that any foreigner with granted residence in Slovakia is entitled to reside in the territory

of the Slovak Republic, to leave and to re-enter the territory of the Slovak Republic during the period for which he was granted residence. If a type of residence explicitly specifies, he/she is entitled to run a business in the territory of Slovakia. Permission to enter into an employment relationship is regulated by the Act on Employment Services; conditions for employment of foreigners are elaborated below. The Act on Residence of Foreigners sets out the general obligations of foreigners in relation to the residence and it is applicable to all foreigners regardless of the type of granted residence, for example an obligation to declare true information, an obligation to report damage and loss of the residence permit, identity card or passport, a notification duty – to report any changes in personal information, change of residence, third-country nationals are required to notify the fact that they will reside outside the territory of the Slovak Republic for a period longer than 180 days, etc.

Other rights and obligations of foreigners result from a plenty of other laws regulating the various areas of social life. There are rights and obligations applicable to all citizens of the Slovak Republic irrespective of nationality and they belong to everyone who is a part of defined legal relationships. This concerns for example the social security law, if the foreigner is employed or self-employed, compulsory school attendance in case of underage child in the statutory age, criminal liability etc.

- Act no. 480/2002 Coll. On Asylum, as amended – it regulates specific position of foreigners in the territory of the Slovak Republic who has applied for the international protection (asylum, subsidiary protection, temporary shelter) and who has been granted such protection. The Act particularly regulates conditions for obtaining any form of the international protection, the process of the asylum procedure (its specifics in compare with general administrative procedure), the rights and obligations of the applicants during the procedure and the rights and obligations in the case of granting some form of the international protection. The Foreigners Act also applies to the residence of applicants for the international protection and foreigners with granted international protection in matters which asylum law does not regulate differently.

The actual conditions and procedures for employment of foreigners are required by Act no. 5/2004 Coll. On Employment Services, as amended. This law specifies the conditions for access to the labour market of various foreigners' categories, employers' obligations

when employing foreigners as well as the control power of the Ministry of Labour, Social Affairs and Family, the Central Office of Labour, Social Affairs and particular offices aimed at detecting illegal work and illegal employment under this Act.

The rights and obligations of employers and foreigners are also set out in the Act no. 82/2005 Coll. On Illegal Work and Illegal Employment, as amended, which first of all defines the illegal work and illegal employment, regulates certain rights and obligations of employers who illegally employ third-country nationals as well as foreigners who work illegally. The act adjusts the obligations of inspection bodies in the field of control of illegal work and illegal employment too.

Sanctions for employers, who employ third-country nationals illegally as well as the control power of authorities, who control illegal work and illegal employment, are included in the Act no. 125/2006 Coll. On Labour Inspection, as amended.

All those legal standards transposed the provisions of the **Directive 2009/52/EC which set minimum standards on sanctions and measures against employers of third-countries nationals who are staying in the member states of the European Union illegally.**

The transposition of the Directive 2009/52/EC brought into Slovak legal system several significant legislative changes:

- Sanctions against employers of third-countries nationals who do not have valid residence permit. There are financial sanctions (fines) and other non-financial sanctions (obligation to pay costs for return of illegally employed third-country nationals, inability to apply for grants, exclusion from public procurement, etc.).
- Obligation of employers to pay outstanding wages to third-country nationals who were employed.
- Anchoring legal fiction of duration of labor-law relation as well as amount of agreed wage for the purpose of claiming the outstanding wage in case when it is not possible to prove real duration of labor-law relation or real agreed wage.
- New criminal offence in connection with employment of these kind of third-countries nationals as well as anchoring option for third-country national to gain tolerated residence if his/her presence in Slovak Republic is necessary for criminal procedure.

In the connection with the transposition of the Directive, it also is necessary to mention the Act no. 300/2005 Coll. Criminal Law, as amended, which introduces a new criminal offense of § 251a Unauthorized employment in consent with the Directive.

The Act no. 311/2001 Coll., Labour Code should not be forgotten regarding the legislation for employing foreigners. This act applies to all legal relations between employers and employees, regardless of nationality. The Labour Code defines labour relations, their content, the rights and obligations of participants in the employment relationship, resolution of disputes arising from the employment and partially control of labour relations, etc.

The procedure to employ foreigners in Slovakia is mainly regulated by the Act on Employment Services. It lays down the conditions and form of access to the labour market for individual foreigners. On 1st January 2014 there was a change in legislation in connection with the transposition of the Directive 2011/98/EU of the European Parliament and of the Council On a Single Application Procedure for a Single Permit for Third-Country Nationals to Reside and Work in the Territory of a Member State.

Under current legislation it is possible to employ a third-country national who:

- a) holds the European Union Blue Card;
- b) has been granted temporary residence for employment purposes upon confirmation of the possibility to fill a vacancy;
- c) has been granted a work permit and temporary residence with purpose of the employment, a temporary residence with purpose to reunite the family or temporary residence of third-country national who has the status of long-term resident in a Member State of the European Union;
- d) is not required to confirm the possibility of filling a vacancy or work permit - the law exhaustively set quite wide categories of people, therefore we list only some cases: for example foreigners with permanent residence in Slovakia, asylum seekers after 12 months period from the start of the asylum procedure unless it was lawfully completed, refugees, persons with subsidiary protection etc.

In that context, there have been introduced new forms of access to employment for third-country nationals in the Slovak Republic, namely:

1. Employment of third-country nationals upon confirmation of the possibility to fill a vacancy - the employer, who wishes to employ third-country national, must inform the relevant Labour Office about vacancy at least 30 working days prior submitting the application from the third-country national side for residence permit with purpose of the employment. When the employer reports a vacancy, he/she must note his/her interest in employing of third-country national. If Labour Office is unable to occupy this vacancy by registered jobseekers within 30 working days from reporting vacancy, employers can give a promise of employment or conclude a contract. Third-country national applies for temporary residence with the purpose of employment to the Embassy of the Slovak Republic, respectively to the relevant department of police, **at the earliest 30 working days after the date** of reporting vacancy on which he intends to work along with relevant documents. The Foreigners Act also mentions other documents which must be submitted by foreigner. The police department decides on applications for temporary residence within 90 days. To third-country national is issued, along with proof of residence, the proof of "Additional data on employment" in which states name, address and employer identification number, place of work, type of work and period of employment. If third-country national does not work under this information from the proof, it is considered as a violation of generally binding legal regulations and it is possible to revoke the residence permit.
2. Employment of third-country nationals upon confirmation of the possibility to fill vacancy matching highly qualified employment (to application for a Blue Card). In this case, the procedure is same as in first paragraph. If Labour Office is unable to find jobseekers within the period, employer can give a promise of employment or conclude a contract. Consequently, the third-country national may submit an application for a temporary residence permit with the Blue card to the Embassy of the Slovak Republic, respectively to the relevant department of police. The police department issues a written decision on the application for a Blue Card within 30 days from delivery of the application. The police department issues to third-country nationals a residence permit in which it states as a type of residence an EU Blue Card and in note is specified a relevant area to which the third-country has higher professional qualifications.
3. Employment of third-countries nationals with work permit - the law provides cases where a work permit for foreigner is required, such as seasonal employment no more than 180 days during the 12 consecutive months; a foreigner with granted temporary

residence for the purpose of family reunification in the period until 12 months from the granting of temporary residence for family reunification (after this period foreigner does not need a permit); the same applies for a temporary residence permit of third-country national who has the status of long-term resident in a Member State of the European Union etc. In principle, the employer must inform the relevant Labour Office, according to the place of business, about vacancy **at least 15 working days** prior submitting the application for residence permit with by the third-country national. Consequently, the foreigner can submit an application for a work permit to the relevant office with relevant documents. Third-country national with work permit can only work under the terms of the work permit otherwise it is considered as violation of generally binding legal regulations and it is possible to revoke the residence permit.

4. Employment of third-country nationals who is not required to have work permit or confirmation of possibility to fill vacancy. As was noted above, these cases are enumerative laid down by the Act on Employment Services – for example foreigners with permanent residence in Slovakia, asylum seekers after 12 months from the start of the asylum procedure unless it was lawfully completed, refugees, persons with subsidiary protection. In this case, the employer must inform the relevant Office of Labour about start and termination of employment of third-country nationals **within 7 working days** after the start or termination of employment.

A special permit is not required for the employment of EU citizens. The legislation only sets the obligation to notify the start and the end of such employment.

Compare to existing legislation the access to the labour market for certain categories of foreigners it should be simplified, because previously it was possible to employ a third-country national, in principle, only on the basis of a work permit. The law allowed exceptions when the work permit was not required – for example third-country national with permanent residence permit, asylum seeker after 12 months from the start of the asylum procedure unless it was lawfully completed, refugees, persons with subsidiary protection, foreigners granted tolerated residence in order to respect his/her family and private life, from the reason of being a victim of human trafficking or illegally employed, if his/her presence is necessary for the purposes of criminal proceedings and likewise.

However, since the new legislation has been effective for a relatively short time, it is difficult to consider its real impact and whether it facilitates the access for third-country nationals. At first, employers as well as employees – foreigners must be familiar with the new legislation; mainly with new rights and obligations as well as with new time-limits in the procedure of the employment of foreigners and so they avoid unnecessary delays and complications. Pros and cons of the new legislation will bring only practice.

Expenses related to employment of third-country nationals particularly include the fee for granting residence permit; there is no special fee for issuing work permit in Slovakia. The procedure is more expensive in case when the employment of third-country national is arranged by employer or an employment agency (not by third country national himself/herself), because it also includes reward for intermediation of employment. This reward is set by specific agreement between agency and third-country national or employer therefore it is not public information.

Fee for temporary residence permit with the purpose of employment is 165,50 € in case when an application for permit is submitted within the territory of the Slovak Republic and fee for issuing of a residency card is 4,50 €. When the application for residence permit is submitted at the embassy of the Slovak Republic, the fee is 170, - €.

1.4. Control system of illegal work and illegal employment

Legal framework for the control of illegal work and illegal employment is defined by acts:

- Act no. 82/2005 Coll. On Illegal Work and Illegal Employment as amended
- Act no. 125/2006 Coll. On Labour Inspection as amended
- Act no. 5/2004 Coll. On Employment Services as amended

The Act on Illegal Work and Illegal Employment defines illegal work and illegal employment, regulates certain rights and obligations of employers and employees (foreigners) and also outlines the structure and some powers of inspection bodies in the field of illegal work and illegal employment.

Control of illegal work and illegal employment is primarily executed by:

- a) Labour inspectorates; the system of labour inspectorates consists of the National Labour Inspectorate and 8 labour inspectorates which are based in each county capital. The National Labour Inspectorate is the governing body to all labour inspectorates.
- b) Office of Labour, Social Affairs and Family; together there are 46 established offices.
- c) Central Office of Labour, Social Affairs and Family; it is governing body to all labour offices.

All these authorities are organized under the Ministry of Labour, Social Affairs and Family. Control authorities are dealing not only with the control of illegal work and illegal employment but as well as with monitoring the other obligations of employers, violation of which is not classified as an illegal employment – for example violation of registration and reporting obligations, breach of work conditions etc.

Labour inspection aimed at controlling compliance with the prohibition of illegal work and illegal employment can be realized within the scope of planned nationwide tasks, planned county tasks, extraordinary tasks, investigation of claims/complaints from legal persons and individuals, exercising subsequent enforcement of the measures orders or in cooperation with other authorities.

By these other controls authorities are meant for example Border and Alien Police, Department of Entrepreneurship at district offices. Border and Alien Police carries out controls the eligibility of foreigner residence and in cooperation with labour inspectorates carry out joint inspections.

The National Labour Inspectorate within its competence leads and collects information and statistics on the state of illegal work and illegal employment. Annually, in the period to 1st July, Inspectorate shall provide to the European Commission with information from the previous year – the number of controls in each risk sectors, the percentage of controlled entities from the number of employers in each risk sectors and results of controls carried out in the various risk sectors, within the scope of the first sentence.

The process of control of illegal work and illegal employment is same regardless of which entity performs the control. Part of the performance control is on-site inspection at the place of business of the employer. For this purpose the inspection body is eligible to enter the premises and workplaces, to require the submission of the necessary documents and explanations from employers and employees, to make a photo documentation and video documentation needed for the purpose of this control, to demand proof of identity from

persons being in the premises of the employer and clarification of his/her presence etc. The outcome of the inspection is a protocol made by the control authority and it is required to consult it with the controlled entity. Part of the protocol, in addition to the general requirements, is the subject of labour inspection, found infringements of regulations and obligations resulting from collective agreements, and expressions of the controlled entity on the findings as well as other facts mentioned in the protocol. The Protocol also contains a draft of the measures needed to removed detected gaps, the obligation to adopt these measures and to deliver a report on the fulfilment of these measures in due time. If there is a violation of the prohibition of illegal work and illegal employment, the protocol contains a time when it was found a violation of the prohibition of illegal work and illegal employment, and also agreed wage and duration of illegal work and illegal employment if it was proven.

After completion of the inspection the control authority will start administrative proceedings to impose penalties depending according to severity of found negatives. The Act on Labour Inspection allows the Labour Inspectorate to impose a fine for violation of the prohibition of illegal employment in the range of 2.000 EUR to 200.000 EUR; in the case of illegal employment of two or more individuals at the same time a fine is at least 5.000 EUR. Offices of Labour, Social Affairs and Family impose sanctions to employers under the Act on Employment Services, for violation of the employers' obligations may impose a fine up to 33.193,91 EUR. In addition to financial penalties, there are also other types of non-financial sanctions which are applied in case of a lawful decision imposing fines such as an obligation to pay the administrative costs associated with the expulsion of a third-country national who is in the territory of the Slovak Republic contrary to applicable legislation, a restrict access to obtain grants, a publication of the register of entities that have committed violation of the prohibition of illegal employment, an exclusion from participation in public procurement, a closure of place of business or a cancel of permit for enterprise activities.

Anyone working illegally commits a misdemeanour for which it is possible to impose a fine of 331 EUR.

2. Methodology and respondents

The research, in the form of processing questionnaires, was conducted as a research interviews with respondents. The interview was made as an individual conversation in the

semi-structured form – respondents answered to the same, pre-defined, open questions. The only exception was interview with the employment agency no. 16 in which was partially and occasionally involved the other person, within the agency responsible for the contact with employers and job seekers.

Whole questionnaire en bloc was prepared by the main coordinator of the project from Poland and it was the same for all four countries in the project. Questions focused on five spheres of research issues:

1. Introductory questions – questions were primarily tasked to determine the respondent's background, his/her job position and his/her intersection with the issue of employing foreigners. Secondly, the aim was to focus on his/her opinion on employing foreigners, illegal employment of domestic citizens as well as nationals of other countries and reasons why foreigners agree with illegal employment.
2. Sources of information – questions investigated the level of knowledge of Slovak laws regarding employing foreigners from the side of employers, places where they can get this information and eventually the type of assistance which they would require. In case when respondent was not employer him/herself, researcher tried to find out knowledge and opinion of the respondent on question whether the employer has knowledge of above mentioned issues.
3. Procedure to employ foreigners – questions concerned the complexity of this procedure, potential problems with employing, the tendency to employ foreigners as well as knowledge of foreign workers' rights and institutions which have the aim to protect them (knowledge not only from the employer's side but as well as from the employee's side).
4. Implementation of the Directive 2009/52/EC and Slovak legal acts – primarily, this field of questions focused on knowledge of the Directive and subsequently it covered the knowledge of Slovak laws affected by this Directive from the employer's side as well as their application in Slovak conditions.
5. Significance of the Directive – questions polled the personal opinions of respondents on this Directive, existing legal acts and possible steps that could possibly prevent undocumented migration and illegal employment.

In some interviews the order of the questions varied during the interview because the researcher wanted to keep a relaxed atmosphere. Moreover, the researcher wanted to keep it as a free dialogue rather than an interview with strictly specified format which could

limit interesting answers. Given that a number of questions referred to each other, possibly partially overlapped, the respondent naturally associated them in his/her answers. Besides, in some interviews were skipped some questions since the course of interview had showed that the respondent was unable to give an opinion or to take a stand, in some cases was not willing to share his private opinion. Nevertheless, this method of interviewing allowed the researcher to keep better flexibility in terms of responding to the course of the interview and obtaining necessary information from respondents.

In addition to same questions for all countries in the project, were in advance pre-identified five categories of professions (or fields of activity) as respondents by the main coordinator of the project. These categories should come into contact with the studied issue of employing and with issue of third-country nationals – civil servants, non-governmental organizations and trade unions, employers employing foreigners, employment agencies and employers' unions and scientists, researchers and experts. Then, countries themselves identified and chose specific respondents from their country. Respondents were chosen on the basis of their work experience, previous collaboration with the Society of Goodwill or on the ground of personal contact what significantly facilitated the cooperation. In two cases respondents were identified based on the recommendation of other respondents who regularly came into the contact with them. For identifying the respondent was also taken into account his/her ability to answer all the questions from the questionnaires which was quite long and covered several areas of studied issue. Finally, the researcher managed to identify and carried out interviews with 20 respondents who covered all definite categories of professions and also worked in one of the studied cities.

In the category of civil servants were identified four officers who are coming into contact with the foreigners (although some of them only partially) and have rich working experience. Two of them work in the capital city, Bratislava, and the other two in other studied city, Kosice. Respondents, civil servants come from several state institutions which are dealing with foreigners. Firstly, it is the Ministry of Labour, Social Affairs and Family, Department of Migration and Integration of Foreigners which deals with the integration of foreigners legally residing in the territory of Slovakia, especially in the field of employment. Secondly, it is the Office of Labour, Social Affairs and Family, Department of expert consulting services and cooperation with employers, which grants permits for employing third-country

nationals. Respondent from the Migration Office of the Ministry of the Interior deals with the preparation of expert opinions and background papers for negotiations in the area of asylum and migration, both at national and international level, including participation at them. Last but not least, there is the National Labour Inspectorate inspecting illegal work and illegal employment resulting directly from the Act no. 125/2006 on Labour Inspection.

Some of the civil servants, who could provide useful information about procedure²¹ of employment foreigners, illegal employment or implementation of Directive 2009/52/EC, were reluctant to cooperate or it was necessary to gain the consent from the main office in the capital city which was not always gained.

The second field of respondents should focus on non-governmental organizations and trade unions. However, the researcher was not able to identify and to get in touch with trade unions which are dealing with the issue of employing of third-country nationals or are able to give an opinion to questions from questionnaire with regard to their working field and interconnection of issues. Also according to the statement of the trade union KOVO, trade unions in Slovakia deal above all with protection of its members and employees who are overwhelmingly Slovak citizens. Trade union KOVO does not know other trade union whose members would be third-country nationals. From this reason, the second category of respondents covers only NGOs dealing with third-country nationals, including those who unauthorized crossed the border or are in Slovakia illegally. Their aim is to assist their integration, to provide legal, labour and social guidance and to assist them in finding employment. Although respondents work in Kosice, all organizations operate in whole Slovakia as well as in Bratislava. Even, respondent no. 7 is executive director of the organization based in Bratislava. The final number of respondents in this category was three.

The largest group of respondents is the third category – employers employing foreigners, together there are seven respondents. The researcher mainly spoke with workers at Human Resources departments (or similar) who mostly come into contact with personnel issues and have the best knowledge of labour law too. Exceptions were interviews with employers no. 13 and no. 14 – respondents were specifically head of the unit (different job description as HR employee) or the owner of the company who knows labour-law provisions due to its other business activities. Therefore when in the report is mentioned the “employer”, it means “employer” in general. Although some respondents are not directly the

employer, but their statements represent him/her in general issues, except for answers on questions about own opinion. It is also important to mention that many times the employer directly (in terms of job supervisor, boss, director, executive officer) does not know all aspects of labour law in detail, but he/she has the responsible personnel for it at particular departments.

Employers cover a wide scale of businesses' size - from large multinational companies with several thousand employees in Slovakia through local companies with hundreds of employees to smaller companies employing with no more than 25 employees. Respondents are also from different sectors of economy – IT, telecommunications, machine and engineering industry, arts, wellness or education.

In the category of employers unions and employments agencies were interviewed five respondents – three employments agencies and two employers unions (chamber of commerce). The interesting situation occurred with employments agencies during acquisition contacts and addressing respondents. Employment of foreigners is first of all done by larger agencies with an international background, because employing foreigners increases an administrative burden. It is more complicated than employing the European Union citizens and it requires a team of workers too. Therefore in terms of finances it is disadvantageous for smaller agencies and they do not have sufficient capacity of staff which would cover the administrative. It should be also mentioned that the entire service of obtaining working permits is usually financed by the companies themselves which are going to employ foreigners. And from this reason these companies are parts of strong international groups with worldwide activities and experience. They also have worldwide contracts with international employment agencies which can work as well in the home state of potential employees.

The last category of respondents is scientists, researcher and experts on the studied issue. After all, the respondent became just one expert in labour law from the University of Kosice, PhD student at the Department of Labour Law and Social Security Law. Due to his working busyness a scheduled interview was finally conducted only through writing completion of questionnaire by the respondent himself. Unfortunately more experts could not be found because at the moment it is not paid enough attention to the employment of foreigners or illegal employment of foreigners at the theoretical and research level.

Most of the interviews were held in the working environment of the respondents, remaining ones in restaurants or cafes. Time of realization of interviews was the period from November 2013 to March 2014 and studied cities were the above-mentioned cities of Kosice and Bratislava. The average length of interview was in range from 22 to 25 minutes and the majority of respondents agreed with the recording it. Nine respondents from 19 carried out interviews did not allow recording it. Sometimes the interesting debate started after turning off the recorder, as if some respondents feared that their private opinion may have been abused. Even despite assurance that the questionnaire is anonymous.

In general the typical respondent of the research was a woman at the turn of thirty and forty years, with the university education who works at her position for a longer time. The men-respondent was only at the position of head of management or director, rather aged around fifty but also with the university education.

The problem with carrying out the research was particularly to find a relevant respondent who could answer all questions from the questionnaire. The questionnaire covers a number of areas and many times the respondent does not come into contact with all areas of interest and issues in their work (many companies have on each area individually responsible employee or targeted group is third-country nationals legally residing in Slovakia and legally employed). Since the respondent of the questionnaire should be a person not an institution according to the setting of the main coordinator of the project, it took quite a lot of time just to find the right person who could have knowledge on all questions or would be able to answer to most of them.

Consequently, the length of the questionnaire itself turned up to be problematic especially in the category of employers and civil servants – answering all questions required sufficient time what was not always possible due to working busyness of the respondent and some answers were thus shorter. However, many times personal and working relations ensured respondents willingness to cooperate on this project. Also it was shown that most employers did not register and did not know the Directive 2009/52/EC, but they were familiar with transposed parts into the Slovak law (more on the question of knowledge of the Directive and its impact on interviews in the part 3. III. Significance of the Directive 2009/52/EC).

3. Outcome of the research

3.1. Employment of foreigners

The issue of employment of foreigners, whether from member states of the European Union or outside, is still a sensitive topic in Slovakia in view of the currently high unemployment rate and many times even because of groundless fear of foreigners. This is also confirmed by conclusions of a research project Migration in the Slovak Republic after accession to the EU (2004-2008) which was conducted by the International Organization for Migration. The study captured the attitudes of Slovak public towards foreigners/migrants and foreign migration in Slovakia. According to the results of the representative survey people form their opinions on migration and foreigners with misconceptions, prejudices and misinformation. Most Slovaks have limited personal experience with foreigners (as it resulted that 86% did not live abroad for a long time) and have little knowledge of foreigners, often formed only by media without sufficient context. For example, Slovak public fears that Slovakia has the high number of foreigners; foreigners are an economic burden for the state budget and social system and they take over jobs for Slovak people; some of foreigners spread dangerous diseases and crime of foreigners may gradually increase. As far as the integration of foreigners is concerned, there is a growing tendency to perceive foreigners rather as a problem than as an opportunity. (Source: IOM – Project Next Door Family EU in Slovakia) However, many times are foreigners more responsible, polite and honest at work as domestic workers and as well as pride of their work. (employer 14)

Employers employing foreigners from both studied cities agreed that the most common reasons for employing foreigners are:

- Professional qualification of foreigner – foreigner is an expert, a specialist on the job position. Nowadays it is mainly the IT and telecommunications sector where is hard to find specialist not only in Slovakia but slowly in Europe too. (employer 9)
- Language qualification of foreigner – the reason for employing foreigner is his mother tongue (or a combination of several requested languages) with which he/she can primarily work in the segment of education. For example, this is the reason for the employer no. 11.
- international background of the company – an international company, where English is a business language, has no barriers against employing foreigners. If foreigner expresses an interest in working in this company and he/she fulfils requirements for employing, in such way he/she is employed without unnecessary obstructions. (employer 8)

Employment agencies, which mediate a job, come into contact with the issue of employing workers as well as with foreigners. Currently they help with the fulfilment of all necessary legal obligations. The assistance is also offered by the various NGOs and civic associations. Information for employers is provided as well as by employers' unions. In addition to already above-mentioned reasons by employers these groups added other ones, irrespective of the place of work:

∞ International experience of job seeker – in addition to professional and language qualification, the job seeker has better work experience which is rare at the Slovak labour market and therefore more desirable.

∞ Undervalued job positions – there are positions that are paid at a minimum wage and employers cannot find skilled labour force in Slovakia. Sectors as services and building industry are most affected by that. Therefore the employer needs to look for, perhaps not willingly, third-country nationals at the vacant posts directly abroad too, for example in Ukraine. (employers' union 19)

∞ Roots abroad – the company has its roots abroad and it prefers to relocate a permanent employee into Slovakia (not as a business trip abroad) rather than hardly look for someone here and even trained him/her. (employment agency 15)

∞ Type of work – not at every job position is possible to employ a foreigner or on the contrary at some positions it is more appropriate. Of course this depends on the people too who are applying for this job. (ngo 5) The foreigner also adapts better to conditions of offered job as it often has no choice (does not have a support from family), just takes what is offered to him/her. (ngo 6)

∞ Person of employer – the employment of foreigner also depends on the person of the employer, if he/she has a specific relationship with the community of foreigners. (ngo 5) Most often are such links the same national or ethnic origin.

At the end, respondents from the categories of civil servants and scientist add that reasons for employing foreigners are also:

→ Actual work description – some job positions require it just because of the name itself, such as Thai massage or cook of Chinese cuisine. (civil servant 2) Thus it is assumed that such a person is working at this position.

→ Seasonal work – entrepreneurs need to increase the number of employees for a temporary period of year, not exceeding eight months. (scientists 20)

From these reasons it is not possible to exactly determine the one reason for employing foreigners and assign it to categories of respondents respectively cities. It depends not only on the type of job position but also on the personality of the job seeker and employer. On the contrary, some jobs simply cannot be hold by foreigners. (civil servant 4)

Also, it is not possible to define whether the reason for the employing skilled and qualified foreigners prevails only in the capital city, whereas answers were same and overlapped without distinction to studied cities. Moreover, in the second studied city, Kosice, is gradually increasing the need of employers for foreign experts, as defined by employment agencies from Kosice. However, it should be mentioned that given socio-economic environment and surrounding of the city, there dominates a little bit the demand for the cheaper labour, especially from economy sectors such as building industry, textile manufacturing or agriculture.

Of course some employers avoid employing foreigners due to concerns about complicated procedure for granting working permits and also because of the increasing bureaucratic burden which can be financially challenging. Usually job seeker is not able to go through this procedure alone and not every company has a dedicated budget for it, or has a problem with approving it. (employment agency 17) Gaining a work permit requires to support application with various documents either notarized or with apostile, all translated into Slovak language. Similarly, in advance the employer must obtain a permit for employing of third-country national from the Office of Labour, Social Affairs and Family.

In the case of employing the nationals who are not EU citizens, entrepreneurs must notify the competent Office of Labour, Social Affairs and Family. Then the Office should grant the permit for employing. Nationals who are not citizens of the Slovak Republic as future employees of the employer, must also have a temporary residence permit for the purpose of employment from the competent department of police force, respectively must be holders of so called Blue card. The applicant for the Blue card must submit an employment contract, a document that confirms his/her ability to work, a proof of health insurance in Slovakia etc. (scientists 20)

At the same time there is high labour supply of Slovak workers on the Slovak's market so employers naturally prefer its own citizens. (scientists 20) The reason also can be cultural differences from which are employers afraid of. (employment agency 16) According to the employers themselves, the partial reason can be the language barrier in some companies too (employer 8) or salaries which are financially challenging at professional and language positions (employer 11).

Specific are third-country nationals who have been granted asylum or subsidiary protection from the Slovak Republic. Employees try to mainly avoid employing this category of potential workers from the reason of ignorance of law and also from the fear of cultural differences. (ngo 7) On the other hand, employing procedure is much less complicated with this category since they do not need a work permit and are considered as disadvantaged job seekers. (civil servant 4)

As previously mentioned the procedure of employment nationals from third-countries requires to meet several conditions in term of the law and subsequently requires to obtain necessary permits. First of all, it is obtaining a work permit and granting temporary residence permit for the purpose of employment. According to the employers themselves who thus have a direct experience with employing third-country nationals, their level of knowledge of this procedure is sufficient, regardless of the studied city. They comprehensively understand labour-law issues based on laws, especially the Act on Residence of Foreigners, which clearly define responsibilities for employing foreigners. Without this knowledge they would not been able to legally employ a third-country national. Moreover, the procedure to employ foreigners is not complicated in terms of Human Resources department. But on the other hand, it is difficult for a foreigner until he/she arranges everything and it is also expensive. (employer 12) We should also mention that employers = respondents help foreigners with providing all the necessary requirements (personal escort, language consultations and likewise), either directly through its staff at Human Resources department or it is covered by the employment agency to which it is refinanced later.

The interviews showed that respondents = employers have sufficient knowledge of procedures to employ foreigners. They mainly use Slovak laws for acquiring necessary information and they regularly monitor amendments. Employers are gradually learning specifics of employing, necessary procedures and deadlines when they employ foreigner for

the first time and they are becoming more familiar with it after re-employment. What is problematic is the respect of the deadlines for submission of documents and their completeness. However, this is an individual matter and many times it depends on employers themselves while some of them put more attention than the others. (civil servant 1)

However, all employers agreed that a change of the Slovak Act on Employment Services, with effect from 1st January 2014, has brought the need to relearn the whole procedure since this law requires proof of highest achieved education with apostile even for positions where particular qualification skills are more important. (employer 12)

At the same time employers complain about the lack of a central source of information on the procedure to employ foreigners and on presenting all necessary documents. Many times they receive information full of contradictions, for example Alien Police in Kosice gives different information than Alien Police in Prešov, and then it is necessary to exactly contact the office which will rule on the matter. (ngo 6) Additionally, the employer no. 11 mentioned that according to his opinion and experiences police officers in Kosice interpret the law in more strict way than their colleagues from Bratislava. However, this experience was not confirmed in interviews with other respondents. Similarly, along with the staff of employment agencies they call attention to the language barrier – for example not always police officers from the Bureau of Alien Police speak foreign languages, especially English, what complicates the continuity of preceding all necessary permits within a legal deadline. The employer's union no. 18 warned that the legislation does not count with differences in cultures such as the absence of birth certificates in India what leads to complications when applying for permits and providing other documents. Finally, the employer no. 14 draws attention to the often subjective law interpretation, ambiguity and especially the incompetence of some officers at the Alien Police who do not initiatively remind missing documents, only after consultations what prolongs the period for gaining the permit.

Back to the procedure to employ foreigners, employment agencies and non-governmental organizations have an opposite view on the employers' knowledge of this procedure and they think that their knowledge is inadequate. Employers, with whom they work and cooperate, do not know these procedures and it is not surprising since procedures are very complicated, at least the granting of working permits. Yet, no one expects that they should know it. Such companies are more likely to find someone who can provide full service

for them. What they assume is that there are maybe required some working visas but they have no clue how long it takes and what is important to bring and provide. (employment agency 17)

Contrariwise, addressed respondents indicate that some employers have already the information which is often incorrect and distorted and therefore it would be better if they come without any information. (ngo 6) Even though the employers would have no motivation to study current legal acts, the quality source of information, which could be non-governmental organizations, should avoid complications with employing foreigners. And right at the beginning would employers obtain comprehensive and right information. At the same time, with one source it would be easier to eliminate prejudice that the procedure is complicated and it would encourage an employment of foreigners.

Employers also search for information about employing procedure at the above-mentioned groups of respondents. They enquire for their rights and obligations when employing foreigners, ask whether they will not have more complications than when employing Slovak citizen, if the language barrier is a problem or they ask about the reliability of foreigners who are going to employ by them. Eventually, they also come to make sure that employment of the foreigner (= client) is legal. (ngo 5)

Civil servants did not give an opinion about the employers' knowledge of employing foreigners by virtue of their position and work description. According to them, this is rather a question for another state authority; this information is provided by the Office of Labour, Social Affairs and Family as well as non-governmental organizations which work is also supported by European funds. (civil servant 3) Addressed respondent from the Office of Labour confirmed that until now employers have known the procedure to employ foreigners, but now they are surprised. The new law is bringing new challenges. Employers mostly take an interest in periods stipulated by law and permits since from 1st January there are new periods. (civil servant 2) Scientist no. 20 also confirmed a communication with the Office of Labour. According to him employers do not have sufficient knowledge of how to employ foreigners, for example which foreigner does not need a work permit, more information about employing foreigner who is not a citizen of the European Union. Employers also require help with how to proceed with employing foreigners, which documents are required for employing foreigners and to which rights are foreign workers entitled (which working conditions must employer provide, paying contributions to health care and social insurance).

For this type of help should be exactly responsible the Office of Labour by providing information about employing foreigners. (20 scientists)

Given that the positive discrimination is unconstitutional in Slovakia, third-countries nationals working in Slovakia (legally residing and with all necessary work permits) cannot claim any special rights which give them an advantage over Slovak employees. Therefore, none of the respondents did identify special rights of such employees. Third-countries nationals are subject to the same rights and obligations as citizens of the Slovak Republic. And that means that they are protected by the Labour Code which aim is to protect workers' rights. Whether employers know this law is on them but ignorance of the law is no excuse. (civil servant 2)

Like other employees, foreigners at the labour market are primarily protected by the National Labour Inspectorate as a state institution which is of course familiar to employers. Non-governmental organizations, such as IOM, are also involved in the protection of labour rights of foreigners.

Employer no. 14, working in wellness business, added information that the country of origin of its employees regularly carries out controls of the working environment of its citizens through its Embassy. And even before the signing contract between the foreigner and the employer, the employer had to undergo a personal interview at the embassy. Such an approach from home state is very unique. Some employer may provide for employed foreigners certain benefits but this usually applies to the senior management (employer 8) or to language experts (employer 11) and it is only an initiative on the part of the employer.

Addressed respondents from category of employers provide the same working conditions for third-countries nationals as for Slovak workers in accordance with the Labour Code. However, non-governmental organizations, whose clients are also refugees or persons with granted subsidiary protection, met with violations of workers' rights - for example, the problems were with employment on performance contracts which were full of contradictions. Or moreover, data about working hours from clients did not fit with those provided by the employer, which was reflected in paid wages. (ngo 7)

With the question of employers' knowledge of foreigners' work rights is closely linked the question of knowledge of rights by the employees themselves - foreigners. Respondents, who are in the contact with such persons, hold two different views, regardless of the individual category or studied city. On the one hand, the respondents believe that most

employees = foreigners know their rights, but they are meeting with a language barrier because minimum of information has been translated in English. (employment agency 17) On the other hand, some respondents say that foreigners know their rights to the extent of notification from the employer, eventually from the Office of Labour office work or from the Labour inspectorate when they control illegal employment. (scientists 20) Again, specific are asylum seekers, refugees and persons with granted subsidiary protection who have in general very low legal awareness and therefore the knowledge of their rights and institutions is at minimum level. (civil servant 4)

3.2. Legal and illegal employment

First of all, it should be remarked that the respondents from the employer's category do not come into contact with illegal work and illegal employment as all aspects of their employment are in accordance with the law. Their statements and views on the relevant subject are just private and do not reflect the opinion of companies and organizations. Also respondents from employment agencies and employers union do not come into contact with illegal work in their working environment.

The issue of illegal employment is widespread phenomenon and it is a problem of the whole society. Despite government measures or regular controls by labour inspectorate, the society still faces it. However, it is a matter of setting the economy in each country (employment agency 17) and also a tolerance of the society against undeclared work and illegal employment.

All the respondents from the category of employers clearly and consistently hold the view that currently the main reason for the illegal employment is an effort of employers to save on costs, as employees cost a lot. (Employer 14) The current financial and economic crisis has caused that employees have become so called a surplus at the labour market (with the exception of a few high qualified and skilled positions). In consequences of crisis, employers also look for the cheapest labour force when they would like to employ. (employment agency 17) This cheap labour force should help to save costs.

Economical, respectively wage, perspective as the main reason for the illegal employment was consistently indicated by other categories of respondents, regardless of the studied city. With regard to third-country nationals is also mentioned an inability to find legal employment for them (see below). At the moment, labour costs are high and employers

naturally seek to save these costs. One of steps on the way to saving costs is avoiding of paying taxes and contributions to health care and social security. Employees agree with such illegal employment under pressure of bad position at the labour market. (scientists 20) In addition to the high costs of labour it is added the high tax burden on labour too. (civil servant 4)

Undocumented workers are becoming cheaper labour in compare with legally employed colleagues. Partially, valid laws passed by the current government push employers to illegal employment. On the basis of this, entrepreneurs and self-employed persons are very disadvantaged... Clearly, there are thrown obstacles in their way. And anyone who wants to employ or to be self-employ has so many obstacles that employers prefer illegal work/employment. (employment agency 15) Also specific is the greed of some business groups and their aim to maximize the profit as much as possible. (employers union 18) This it is not anymore about effort to save costs but many times the need to enrich the expense of others. And such employers lose their inhibitions; gradually they care "a cuss". (employers union 19)

Of course, not every sector of the economy feels same the issue of illegal employment. A typical sector with a higher risk of illegal employment is building industry. (employer 8) But also services (restaurants, cafes, hotels) or seasonal work.

A special category is an illegal work and employment of third-country nationals. The reason why employers decide to hire them illegally it is in some cases impossibility to employ them according in law. (ngo 5)

Addressed respondents disagree in opinion on whether employers employ more illegally domestic workers or foreigners. Also it is not possible to generalize whether one of cities leans to one view and same with categories (more or less every respondent gives his personal opinion and statement). So they are leaning toward one of the three lines.

One part of respondents does not see difference between illegal employment of Slovak citizens and third-country nationals. Illegal employment is generally a problem of the whole society. (ngo 7) People who want to work and live in such a situation that they have no way how to get legal work, accept illegal employment just to earn money somehow. (employment agency 15) At the same time the person who does not have any inhibitions to employ illegally, does not care if it is Slovak or foreigner. (employers union 19)

Other respondents think that Slovaks know better their rights while foreigners do not understand current legislation so much. (civil servant 2) Therefore foreigners can be more abused for illegal work as the locals, often unawares. At the same time, illegal employment of foreigners may be caused due to increased bureaucracy at the side of the state. (scientists 20) Or eventually, foreigners are willing to work for fewer wages as Slovak citizens, or they are third-country nationals who are here on exchange visit, respectively are studying here. (employer 8)

Partially, illegal employment of foreigners can be also caused unintentionally, for example from the employee's side in case of late renewal of work permits for third-country national or by the employer not knowing that any changes in job descriptions, including the place of work, must be reported to the competent Office of Labour, Social Affairs and Family.

Conversely, some respondents hold the view that illegal employment, by percentage, touches more Slovak citizens since foreigners are threaten by significant penalties as cancellation of staying permit and consequently expulsion. (employer 12) Slovak citizens have better assurances because they are risking only fine for illegal work. (ngo 6)

Employment of third-country nationals is regulated by several laws in Slovakia. The actual conditions and procedures for employment are regulated by the Act no. 5/2004 Coll. On Employment Services, as amended. The law precisely defines the conditions for each category of foreigners in Slovakia for access to the labour market. Further legislation is contained in the Act no. 82/2005 Coll. On Illegal Work and Illegal Employment, as amended (more in the part 1. Background information).

Exactly complicated administrative procedures and increasing bureaucracy may discourage employers from legal employment of third-country nationals. Bureaucracy is in the form of presentation of permit for employment of foreigner from the Office of Labour, Social Affairs and Family and a temporary residence permit to which it is necessary to submit the amount of documents (such as proof of health insurance, proof that foreigner meets the prerequisites for employment and so on) under the Act on residence of foreigners. (scientists 20)

On the other hand, third-country national are those who agree with illegal employment. In theory, the respondents from the category of employers tend to the opinion that necessary permits act demotivating and this may be one reason why third-country nationals agree with it. Partially this can be a fear from the proceeding of necessary permits

or are reluctant to undergo this "legislative torture". (employer 10) On the other hand, from the perspective of the employer no. 11, third-country nationals would like to be and prefer to be legally employed.

According to remaining respondents (already irrespective of the category and location), other reasons why third-country nationals agree with illegal employment, are as followed:

- Third-country nationals have no choice, because otherwise they would not be employed, for example they do not possess valid residence permit or their type of the residence does not allowed to be employed. (civil servant 4)
- Third-country nationals are not able to find legal employment. (civil servant 4) Their type of residence indeed allows them to be employed and they also have a work permit, but for example they do not meet required professional and skilled conditions. Then they are forced to work illegally in order to obtain wherewithal means for living. (ngo 6)
- Third-country nationals may also be forced by circumstances, respectively they are living in such life situation where they need to support their families and they are able to earn more money in Slovakia than at home, albeit illegally. (employers union 19)
- And last but not least, it might be caused by a vision that they could have better times and still earn more than in their home country. (civil servant 2)

Despite all these reasons, the often cause of illegal work is an individual personality of third-country national and his/her personal needs. Of course, with this type of employment the employer takes the risk of business (for example in the form of financial penalties) and the employee (as third-country nationals) the risk of expulsion.

To all this it is necessary to add that the line between illegal employment and exploitation is very thin. (ngo 6) Employees are abused at unprofessional and with low qualifications working positions for which the employer looks for cheap labour. This problem applies not only to third-countries nationals but as well as to domestic citizens. It is not just a consequence of the current economic situation, but it is also affected by the low labour-law awareness and lack of basic knowledge of the Labour Code.

3.3. Significance of the Directive 2009/52/EC

Directive 2009/52/EC has set minimum standards on sanctions and measures against employers employing third-countries nationals who are staying in the member states of the European Union without authorization. The Directive has been transposed into several Slovak legal regulations (see part 1. III. Legislation and procedure to employ foreigners).

Regarding employer's opinion on the Directive, at first it is necessary to remark that the addressed respondents have not met with it before the interview (employers no. 8, 9 and 10); respectively they have had only marginal knowledge of it (employer no. 12). Or they did not realize that Slovak laws regulating methods and procedure to employ foreigners are also implementing provisions of the European Directive (employer no. 11 and 13). Only one respondent (employer no. 14) knew fairly accurately the Directive together with its provisions before the interview because of his other business activities.

Seeing that the Directive mainly covers the issue of undocumented migration and consequently illegal employment with what the addressed respondents from the category of employers do not come into contact, with regard to their way of the employment of third-country nationals (assistance with all formalities or full service from the employment agency), their knowledge of the Directive is limiting. But if we would like to generalize, better knowledge of the Directive had respondents from smaller companies where there is not such a big division of labour as in larger companies. Also it can be pointed out, taking into account the findings of part I. Employment of foreigners, that employers know these particular provisions of the Directive which have been transposed into the Slovak system and especially the Act no. 82/2005 On Illegal Work and Illegal Employment, as amended. It is possible to claim that employers primarily follow changes of Slovak laws and they do not pay much attention to directives passed at the European level (inasmuch as directives are later transposed into Slovak law). From this perspective, employers, who solve the employment of foreigners by themselves, have sufficient knowledge of the Slovak legislation which covers the issue of employment of third-country nationals. They know a relevant legislation to the extent necessary for their work, regardless of whether they work in Bratislava and Kosice.

In regard to limiting knowledge of the Directive in advance, it is employers' opinion on the Directive limited too. Employers, who did not meet with it before the interview, but after explanation of its content, think that the Directive can protect third-country nationals from an immediate deportation in a positive way. (employer 10) On the other hand, those, who already have some knowledge of it in advance, hold the view that it was only a general

statement. (employer 12) What is more, the Directive was not passed with good intention but it was a result of the work of lobbying groups. (employer 14)

Employer's opinion on the studied Slovak legislation is currently hard to define from the reason of legislative changes with effect from 1st January 2014. Most frequently were mentioned concerns about need to declare the highest achieved education with apostile also for job positions where it is essential to have a particular expertise (such as ballet, modern dance or massages). None of the addressed employers have had an experience with the procedure to employ foreigners or at least with renewing the permit in the early months of the year 2014 (or at the time of the interview). In fact, some of employers points out an emergence of risk for foreigners who will just apply for renewal of their permits, that they would not be able to attach the necessary documents, thus they would be unable to gain renew permit and employer and foreigner would find themselves in an uncomfortable situation. For foreigners, who will only come to work to Slovakia, it will be easier because they will know the necessity to declare such documents with the apostile in advance. (employer 12)

Equally important is employers' opinion on the issue of support for the employment of foreigners resulting directly from the Slovak legislation. On the one hand, there is the aim of Slovak migration policy to facilitate and support the employment of foreigners. (employer 12) This support particularly applies to a legal immigration of highly qualified workers from third countries, mainly immigration of students, scientists and researchers, artists, entrepreneurs and foreign Slovaks living in different countries. (civil servant 3)

But on the other hand, there is a natural protection of labour market. Due to high unemployment in Slovakia, it is understandable that the employment of foreigners is restricted. (employer 8) But what employers consider as strict one and not supportive for the employment of foreigners, are permits and lengthy procedure to obtain these permits, including the time complexity of the whole procedure.

The other categories of respondents, such as employment agencies, employers' unions, non-governmental organizations or even some civil servants have only marginal information and knowledge of the Directive or they are not dealing with it in their work since their target groups have legal resident in the territory of the Slovak Republic. (civil servant 4) Or lawyers responsible for the Directive within the organization are dealing with it and its legal implication in the Slovak legislation. (ngo 6)

Those who have met with the Directive before the interview, welcome its direction - third-country nationals working without required documents are not immediately deported, it is avoided an inhuman treatment and this suggests that they are in the civilized world. On the other hand, this should not be a double-edged – the employer should be aware of that such things can not commit and he/she is going to be fined. (employment agency 17)

Adoption of the Directive of the European Parliament and the Council at the European level has strengthened the protection of third-country nationals and their rights. The aim of the Directive was to protect illegally employed third-countries nationals but at the same time to anchor a penalty system for employers who employ foreigners illegally. (employer 12) Moreover, it also seeks to limit undocumented migration by reinforcing measures against illegal employment of third-country nationals. (civil servant 3) In general, however, the mere existence of law is one thing, as long as this does not apply in practice as it was intended, its efficacy is not present or is it minimal. (civil servant 4)

Important parts of the Directive are mainly provisions concerning the definition of illegal work and illegal employment, the information obligation under § 7c of the Act no. 82/2005 Coll. On Illegal Work and Illegal Employment, as amended, liability for illegal employment under § 7b of the Act no. 82/ Coll. On Illegal Work and Illegal Employment, as amended. (scientists 20) Further, for employers are important provisions covering sanctions which threaten for violation of the prohibition of illegal employment. (civil servant 3)

For employees – the third-country nationals are essential provisions prohibiting the illegal work, sanctions for violation of illegal work as well as rights which belong to this foreigner in case of unpaid wages. (civil servant 3) The positive about this Directive is also the possibility for a third-country national, in case of need, to legalize his/her residence in the territory of Slovakia within 90 days legalize and so to avoid a deportation. (civil servant 2)

Taking into account the declining number of illegal stay and unauthorized crossing of the state border in the statistics of the Bureau of Border and Alien Policy (see part 1. II. Structure of Migration) it can be stated that also thanks to the adoption of the Directive and its successful implementation into the Slovak legal system occurs gradually to reduce undocumented migration in Slovakia. However, more fundamental factors for decreasing illegal immigration are measures connected with Slovakia's accession to the European Union and adoption of the *acquis communautaire*, in particular the application of the Dublin

Regulation (regulation establishes rules for the evaluation of applications in the EU Member States; application for asylum is considered in the country where the applicant apply for it for the first time) and later the enter into the Schengen area (the protection of a relatively short, though complicated by terrain, border with Ukraine). Slovakia has never been the final destination for most of migrants, rather a transit country forasmuch as his economical level is still lower compared to the old Member States. With the accession of Bulgaria and Romania on 1st January 2007 there has been a further decline in undocumented migration due to Slovakia's decision not to apply a transitional period for these two countries.

The other aim of the Directive is to combat illegal employment of third-country nationals. From the experience of those respondents who are dealing with such persons, has emerged a conclusion that their practical experience in applying the provisions of the Directive are minimal. Also considering the statistics of the National Labour Inspectorate it is possible to say that there is not a problem with illegal employment of third-country nationals in the Slovak Republic. (civil servant 1) In particular, the report of National Labour Inspectorate per year 2013 reveals that out of 1,323 persons who were employed illegally, only 22 persons were foreigners. And three of them were citizens of one of EU Member States. The remaining 19 persons, third-country nationals, were indeed employed illegally but in all cases they possessed a valid residence permit, thus they were not a subject to the provisions of the Directive. This therefore explains why the competent authorities have not met with the illegal employment of third-country nationals who would be a subject to the provisions of the Directive in practice. (civil servant 3) But that the illegal employment of foreigners is not registered by the competent authorities, does not mean that it does not exist. Only from the statistical point of view, such an illegal employment must be present in Slovakia too. But yet, it has not been detected such cases. Dangerous are mainly those sectors of the economy that rely on cheap labour as building industry, agriculture and services, and it is harder to check them. Given the existing statistics of only disclosed illegal employment it is impossible to estimate what is percentage of third-countries nationals on the total number of illegal work.

According to the opinion of scientist no. 2, the law which transposes the Directive can be blamed for not adequate protection of workers in the case of illegal employment. Information obligation (the right of foreigner to file a complaint) has the Office of Labour,

Social Affairs and Family, the Central Office of Labour, Social Affairs and Family and Labour inspectorate only if they find out during the control that to worker is not paid wage, under § 7c of the Act no. 82/2005 Coll. (scientists 20)

Since the employment of third-country nationals in Slovakia requires the acquirement of a number of permits and the majority of foreigners coming to Slovakia for particular job position, and while taking into account the statistics of the National Labour Inspectorate, the question of measures protecting the illegal employment of third-country nationals is not so significant as a matter of preventing their undocumented migration. If they legitimately crossed the state border, they would not be forced to be employed illegally and they would easier obtain a permit for working and staying. At the same time, the solution of occurred situation, in terms of granting asylum or subsidiary protection, also facilitates entry into the Slovak labour market since such persons do not need a work permit.

Considering that employed third-country nationals have the same rights as Slovak workers, should not exist a reason to take special instruments which would help exclusively to protect foreigners' rights, for example through the adoption of laws for preferential treatment, for example or by granting them rights which are not provided to Slovak citizens. Third-country nationals working for employers = respondents also enjoy the same rights as their Slovak colleagues, for example including the number of days of holidays and working hours. Although there are some differences in wages but this primarily depends on the individual qualifications of the employee. In some cases, foreigners enjoy benefits which do not have Slovak employees, but they are linked to technical or linguistic qualifications of the employee.

Transposition of the Directive also has enhanced better protection of foreigners working illegally in Slovakia. Proposed instruments should rather focus on the protection of workers' rights in general, regardless of their nationality, to avoid disobedience of their labour rights or violation or circumvention of the Labour Code by employers. This should be supported by regular inspections from the side of relevant authorities. As well as better information service from the authorities to foreigners about their rights and institutions to which they can turn in cases of suspected infringement of their rights.

4. Recommendations

Based on carried out interviews with employers employing foreigners and employment agencies, who have direct experience with employing third-country nationals, several recommendations have been resulted that could be implemented mainly at the national level to facilitate the procedures for employing foreigners:

1. Reduction of bureaucratic and administrative burden - for example, employers no. 12, 13 and 14 agreed that the requirement to provide the document proving the highest achieved level of education with apostile is useless for their profession since for them are mainly important expertises.
2. Reducing time limits for granting permits – the whole procedure to employ of foreigner often takes a lot of time. And often the employer is ready to accept foreigner much earlier but the procedure is extended because of handling all those requirements. (employer 8) For example, the employment agency notifies employers that the complete procedure is going to take about 6.5 months. During this time, the employer must wait for the employee. And this discourages firms from employment since the business stops and also for such period of time the current project may be no longer up-to-date. (employment agency 17)
3. Extension the period of validity of permits - employers would welcome if the permits could be granted for a period longer than one year. They have to trace the length of these permits and whole administrative consuming procedure again complete. The application must be filed at least 90 days before the expiry date. (employer 8)
4. Improving language skills, especially officers at Alien Police - despite their efforts, employers and employment agency complain about the low level of English which causes that the foreigner must be accompanied by the Slovak citizen for faster, easier and less complicated procedure.
5. Clarity and transparency of authorities - even if laws are clearly defined, workers themselves do not always interpret the law in the same way. With this is also linked the

flexibility of officers because they often require evidence that it is not issued in some countries. (ngo 6)

6. Support for the employment of the highly skilled workforce which is not enough in Slovakia. (employer 8)

Regarding the support for employers with the procedure to employ foreigners, addressed employers agreed that all necessary information is published on the website of authorities and this should be studied. (employer 12) However, there could be better cooperation between Slovak authorities and countries outside the European Union, as often specific situations occur such as dealing with fingerprints through the FBI in the United States. Then in need to employ the foreigner with dispatch, these fingerprints unnecessarily extend time and deadlines. (employer 11)

On the other hand, employment agencies (mainly because of their nature of business activity) indicate that some employers expect full service with the procedure to employ foreigner. But this is a matter of agreement and some companies are doing it by themselves (through the internal team of employees) or they leave it on the shoulders of the employees.

In the fight against illegal employment all respondents agreed that the state should mainly implemented the following steps:

1. Improve controls and strictly apply penalties - deployed mechanisms are fine but state should increase controls which would be more effective and thus more efficient what in general would lead to a reduction in illegal employment. (employer 12)
2. Reduce the burden of contributions for health care and social security what would lead to maintaining existing jobs under the terms in accordance with law, and to employers' efforts to get round the law and thus save costs.
3. Raise awareness of people who are supposed to be employed and also employers to complete missing information. (ngo 7)
4. Reduce the bureaucratic burden, especially when employing foreigners (see above).
5. Reducing the time limits for granting permits at employing foreigners (see above).
6. Create the conditions which would allow creating more jobs, and then the market should be more competitive so it would be more competitiveness and it would reduce illegal work. (civil servant 2)

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