

EMPLOYMENT OF FOREIGN LABOR FORCE IN SLOVAKIA

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Abstract

The dynamic changes that are taking place currently in many areas of life in Slovakia have impact also on the area of the employment of foreign labor. At present, Slovakia is becoming a state that accepts foreign labor due to the lack of domestic skilled labor. Based on description and analysis of applicable legislation and relevant statistical data, the main goal of the article is to analyze the current state of employment of foreigner labor force from EU, as well as from the non-EU Member States in particular. Methodological tools used in the research include desk research and complementary methods for textual analysis as description, analysis, generalization, and data synthesis.

Key words:

foreign labor force, foreigner, labor code, legislation

JEL Classification: F22, J21, J23

Introduction and literature review

Slovakia has been gradually changing from the state of emigrants to the transit state, to which foreigners are coming. Since the year 1990 Slovakia is becoming a destination country to which, on the one hand, its inhabitants return from abroad, on the other hand also foreigners from the EU Member States and / or third countries come. More significant changes have been brought by the accession of Slovakia to the European Union and Schengen area. The twenty-first century can be considered as a century of mobility and migration. The first to systematically analyze migration of people was an English author Ravenstein (1885). He was perhaps the first scientist who attempted to study migration. He also distinguished various kinds of migrants, be it local migrants, long-and short-journey migrants and temporary migrants. Though he limited his research to what is now United Kingdom and Ireland, he identified “flows” of migration in this area and presented his Laws of Migration (1885). Based on Casteles (2010), migration contributes to changes in structure and institution in global economic, political and social relationship. We can observe two demographic trends in the EU: the first one is

a continuously aging population and increasing migration flows (European Commission, 2014). According to Zimmermann (2009), mobility can be considered as a factor for safeguarding economic growth, prosperity, employment and social security. The analysis of Baas, Brucker and Hauptmann (2010) shows that labor migration after EU enlargement in 2004 increased GDP in the newly integrated states by approximately 2%. Kahanec (2013) argues, that labor mobility might provide EU with more effective ways to productively use human workforce. Gilmartin states that the relationship between countries and migration is framed through laws and policies (Gilmartin, 2015). Laws define citizenship, legal and illegal migration, necessary procedures, legislative protection and obligations of foreigners.

Employment of Foreigners in Slovakia

Since 2004 especially illegal and asylum migration decreased in Slovakia, and legal migration increased sixfold. In spite of the fact that the increase of the number of foreigners in Slovakia was the second highest among all EU Member States in 2004-2008, the representation of foreigners in the population compared to other EU countries still remains low. Foreigners make

up 2.67% of the total population of the Slovak Republic and their number is growing. Based on statistical data, 145,940 foreigners with a residence permit lived in Slovakia in June 2020 and their number has increased almost sevenfold since 2004 (from 22,108 migrants in 2004 to 145,940 in 2020) (Ministry of Interior of the Slovak Republic, 2020). From among this number citizens of the European Union represent 39.5% of all foreigners in Slovakia. The biggest number of foreigners from the EU countries living in Slovakia comes from the Czech Republic forming 8% from the overall number of foreigners in Slovakia, following by persons from Hungary (6,2%) , Poland (4,1%), Germany (3,1%), Italy (2,1%) and United Kingdom (1,8%). A more significant increase of number of migrants from the EU is from Romania (5%), who came to Slovakia as labor migrants. In June 2020 there were 8.044 Romanians employed in Slovakia as compared to 5.895 citizens of the Czech Republic (Central Office of Labour, Social Affairs and Family, 2020).

The share of third-country nationals represents 60.5% of the total number of foreigners in Slovakia and accounts for approximately 1.6% of the total population of Slovakia. The share of Ukrainian citizens in the total number of foreigners represents 27.1%. From among foreigners from countries outside the EU, migrants from Serbia, Vietnam, the Russian Federation and China also have the largest representation in Slovakia.

In June 2020 74.298 foreigners were working in Slovakia, from this number there were 43.768 third-countries nationals. In 2020, foreigners from approximately 130 countries were employed in Slovakia, mostly from Ukraine (21.411), Serbia (12.380), Romania (8.044), the Czech Republic (5.895) and Hungary (5.075). Among migrant workers, men significantly exceed with more than 73% of all employed foreigners. Thus, there is currently one employed foreigner per 32 domestic employees. Among migrant workers, the ratio of men is significantly higher, more than 73% of all employed foreigners (Ministry of Interior of the Slovak Republic, 2020).

According to Nosková and others besides migration for social reasons, such as family reunification or marriage of a migrant with a Slovak citizen, the most significant legal migration to Slovakia today is for work purposes, business and university studies (Nosková, et al, 2017). The biggest number of employment foreigners from the EU/EEA is working in three Slovak regions: Bratislava, Trnava and Nitra regions.

In recent years, there has been a significant increase in the number of employees from third countries, who supplement the lack of suitable labor, especially due to the required qualifications in Slovakia. According to Treľová, in Slovakia, the number of new jobs created has been increased, however, companies "began to struggle with a modern problem (phenomenon) - the lack of free and skilled labor (especially in the manufacturing sector). One of the fastest and most effective measures to address the lack of a suitable labor force can be the employment of skilled and educated migrant workers and foreign students" (Treľová, 2016).

The three professions that employ the highest number of EU / EEA workers are: operators and fitters of machinery and equipment (8.793 persons), auxiliary and unskilled workers (4.240 people) and skilled workers and craftsmen (4.148 people) (Úpsvr, 2020). In spite of the high number of unskilled employees, the vast majority of foreigners represent the skilled workers. Employed foreigners from third countries work in the following professions: operators and fitters of machinery and equipment (4.696 persons), auxiliary and unskilled workers (4.034 persons) and skilled workers and craftsmen (1.749 persons) (Úpsvr, 2020). A significant part of third-country nationals work as skilled workers, nonetheless, a large number of people are employed in low-skilled occupations.

Methodology and research methods

The object of the research is the foreign labor force in Slovakia from the EU as well as from third countries. As this issue has an international legal dimension, the subject of research is also the

analysis of the Slovak legislation regulating the employment of foreigners.

Standard secondary research was used as a methodological tool, and standard working methods with text such as description, analysis, abstraction and synthesis of acquired knowledge and data were used to process the textual part of the work.

Key terms

The term migrant is not defined in the Slovak legislation, nonetheless, the term foreigner is defined therein. Anyone who is not a citizen of the Slovak Republic is a foreigner. In relation to the person (or a group of persons) who has decided to migrate (from Latin migration within the meaning of wondering, moving, change), and thus temporarily or constantly change their domicile, we distinguish several categories: voluntary migration within the territory of a given country (national migration), and voluntary migration from one country to another (international migration). There is also forced migration, which arises as a result of natural or man-caused situations such as trafficking in human beings, persecution, war conflicts, humanitarian, natural or environmental disasters or the consequences of the implementation of (infrastructure) development projects. The reasons for migration can be: economic with the aim to ensure better livelihoods, labor where there is a paid activity in the state of which the person is not a citizen. Another reason for migration represents the study and research, as well as persecution according to reasons stipulated in the Geneva Convention (in the Slovak legal order the notion of refugee has been replaced by the term asylum seeker.)

Basic legislative framework regulating the conditions of stay of foreigners in the territory of the Slovak Republic

Basic law norm regulating the problematics of immigration to Slovakia represents the Law No. 404/2011 Coll. Z. z. on Residence of Foreigners as amended, which has been amended numerous times from its entry into force. Another applicable law is the Law No. 480/2002 Coll. on Asylum as

amended, which regulates the specific status of foreigners as asylum seekers, persons who were granted asylum and persons who were granted subsidiary protection. According to article 2 paragraph 2 of the Law on the Residence of Foreigners anyone who is not citizen of the Slovak Republic is considered as the foreigner. The EU citizen is anyone who is not the Slovak citizen and at the same time s/he is the citizen of other Member State of the EU or EEA. The Member State of the European Union is according to article 2 paragraph 1 lit. c) of the Law on the Residence of Foreigners considered the Member State of the European Union, except for Slovakia, other contracting State of the Agreement on the European Economic Area (Iceland, Liechtenstein and Norway) and Switzerland. The citizen of third country is anyone who is not the citizen of the Slovak Republic, nor the EU citizen. As the third country national/citizen is considered also the stateless person (Law no. 404/2011 Coll, 2020).

Residence of the EU citizens on the territory of the Slovak Republic

Treaty on the Functioning of the European Union provides the EU citizens with the fundamental freedoms of free movement: free movement of persons, capital, goods and services. According to article 64 of the Law on Residence of Foreigners the EU citizen is entitled to stay in the territory of the Slovak Republic without any further restrictions for the period of three months after the entry. The EU citizen is obliged to have a valid passport or other valid travel document for the purpose of demonstrating his or her identity and citizenship of the EU Member State in a trustworthy way. An EU citizen is obliged to report the beginning of his/her stay in the territory of the Slovak Republic to the police department within 10 working days from the date of entry into the territory of the Slovak Republic and may stay in the territory of the Slovak Republic for 3 months from the date of entry. In case the EU citizen stays longer than 3 months within the territory of the Slovak Republic, s/he is obliged to apply for the registration of the residence by the fulfilled official form in person at the competent police department. The application has to be

accompanied by a confirmation according to the type of residence in the territory of the Slovak Republic (an employment contract in the case of employment; in the case of entrepreneurial activity, proof of being self-employed person).

The EU citizen has the right to reside in the territory of the Slovak Republic for more than three months in accordance with article 65 paragraph 1 of the Law on Residence of Foreigners, if s/he is employed in the territory of the Slovak Republic, or if s/he self-employed person; studies at a primary or secondary school or at a university in the Slovak Republic; or is presumed to be employed; is a family member of the EU citizen; or has sufficient resources for himself/herself and his/her family and thus does not represent a burden for the system of assistance in material need in the Slovak Republic (Slovak Business Agency, 2019). If the EU citizen resides legally in the territory of the Slovak Republic for more than five years without interruption, s/he has the right to apply for permanent residence. S/he has the right for permanent residence in the Slovak territory also in case of his or her residence in Slovakia for less than 5 years. The requirements applicable for the right of the EU citizen (in this case employee, self-employed person or family member of the EU citizen) for permanent residence in case of legal/authorized residence in the duration of less than five years are regulated by article 67 paragraph 2 of the Law on Residence of Foreigners (Slovak Business Agency, 2019).

Legal regulation of employment of foreigners in Slovakia with the focus on third countries

The growing number of persons interested in staying in the Slovak Republic as well as the lack of labor force, which is recorded by many organizations in Slovakia, is also reflected in the change in the legislative conditions of residence. There are not only demographic changes in the labor market, but also changes related to technological development and industry. There are several differences between employment of Slovak citizens and foreigners in Slovakia in the Slovak legislation. The mentioned Law on Residence of Foreigners together with the Law on

Services of Employment No. 5/2004 Coll. represent the basic legislation regulating the area of employment of foreigners in the Slovak Republic. This problematic is also partially regulated by the Law No. 311/2001 Coll. (the Labor Code). According to Peráček and others (2020) in spite of this law has the status of *lex generalis* in the area of Slovak labor law, it is applied only as supporting legislation when it comes to employment of foreigners.

There are two basic groups of foreigners distinguished in relation to their employment in Slovakia:

1. foreigners who are citizens of one of the member states of the EU/EEA after fulfilling the conditions stipulated by the law can be employed in the territory of the Slovak Republic in the same way as citizens of the Slovak Republic. They are regarded as persons with same legal status as Slovak citizens,
2. third country nationals who do not belong to the EU/EEA. For the purposes of third-country nationals employment we distinguish: a) foreigners with permanent residence in Slovakia when employed, they are subject to the same conditions as Slovak citizens; b) foreigners with temporary residence in the Slovak Republic with their temporary residence granted for the purposes of employment or seasonal employment.

Documents and authorizations necessary for granting the temporary residence for the purpose of employment are stipulated in article 32 of the Law on Residence of Foreigners. As temporary residence is also regarded the residence based on the EU Blue Card. The foreigner can also be granted so called single permit for residence and employment, which is the type of temporary residence for the purposes of employment that is issued on the basis of confirmation of the possibility of filling a vacancy. According to the Law on Residence of Foreigners the foreigner can reside in the Slovak territory on the basis of permit, which is linked to the purpose of his stay and for a predetermined period. In the case of granting a temporary residence permit for employment purposes, the foreigner can only be

employed only in a part-time employment relationship for 37.5 hours per week or in a part-time employment relationship. The foreigner cannot be employed in a similar employment relationship (for example on the basis of the contract concluded to perform certain activity) or on the basis of other contract. Temporary residence (maximum 5 years, for the purpose of seasonal employment for a maximum of 180 days for 12 consecutive months) entitles a foreign national to stay in the Slovak Republic at a specified time, with the possibility to travel and return to the Slovak Republic and is tied to one purpose, which may be, inter alia, the purpose of employment. Following institutions cooperate in granting temporary residence permits procedure:

1. police department - decides on granting, prolongation, refusal or dismissal of application for temporary residence permit;
2. Central Office of Labor – determines whether the concrete job can be filled by foreigner without the necessity to examine the labor market in case of job shortages in districts with an unemployment rate of less than 5% per calendar quarter and the employer may employ a maximum of 30% of third-country nationals out of the total number of employees;
3. employer – is obliged to report to the Ministry of Labor, Social Affairs and Family any vacant job that has to be published minimum 10 working days in case of employment permits and minimum 20 working days, in the case of filling a job before applying for a temporary residence permit. The notification is mandatory also in case of shortage of jobs. The employer can employ third-country national only on the basis of employment contract and under conditions stipulated by article 21 paragraph 1 of the Law on Services of Employment and s/he can employ maximum 30% of third-country nationals from the total number of employees;
4. agencies of temporary employment – they employ the foreigner on the basis of employment contract and temporarily assign him / her to perform work for the employer. The employment contract between the temporary employment agency and the foreigner also serves as a document for the purpose of granting temporary residence permit.

The list of jobs with a shortage of labor was published by the Ministry of Labor, Social Affairs and Family for the first time on 25 June 2018. It is based on the database of jobs vacant for at least 3 months during the year as well as on the database of jobseekers suitable for filling vacancies

Third-country nationals can reside freely in the Slovak territory for the period of maximum 90 days within any period of 180 days. Milošovičová and coll. (2018) stresses that if foreigners want to carry out any gainful activity in the territory of the Slovak Republic, they must apply for a residence permit. There are three possibilities provided by the legislation: temporary residence, permanent residence or tolerated residence permits (Milošovičová et al, 2018)

Temporary residence authorizes the third-country national to reside in the Slovak territory, to travel out and return to the Slovak territory during the period of time specified by the police department. Temporary residence may be granted according to 21 paragraph 1 of the Law on Residence of Foreigners: „for the purpose of doing business for maximum 3 years; for the purpose of employment for up to 5 years; for the purpose of study for maximum 6 years; for the purpose of special activity for maximum 2 years; for the purpose of research and development for maximum 2 years; for the purpose of family reunification for maximum 5 years; for the purpose of performing service obligations by civil units of armed forces for maximum 5 years; foreigner who has the status of Slovak living abroad for maximum 5; foreigner who has the status of a person with long term residence in another Member State for maximum 5 years.“

As temporary residence is considered also the residence based on the EU Blue Card. The Law on the Residence of Foreigners in its article 43 stipulates the specific list of persons, third-country nationals, who can be granted permanent residence for 5 years. Requirements for granting permanent residence for unlimited period are regulated by article 46 of the Law on the Residence of Foreigners. Police department can according to article 52 of this Law grant the third-

country national the long term residence permit for indefinite time, if his/her authorized stay in the Slovak Republic territory was continuous during the period of five years immediately prior to the filing of an application, or in case of granted residence on the territory of any Member State of the EU or EEA as a Blue Card holder for at least two years immediately prior to the filling of the application for long-term residence, or his/her permanent residence permit expired according to article 52 paragraph 1 lit. b). In special cases the third-country national can be granted tolerated residence. This is granted for maximum 180 days on the basis of article 58 of the Law on the Residence of Foreigners. The third-country national with granted tolerated residence cannot do business in the territory of Slovakia. In some cases, specified by law nationals with tolerated residence permit may enter into employment relationship.

Conclusion

Although Slovakia is not considered a target country for foreign workers, the share of employed foreigners from the EU / EEA and third countries in total is more than 2%. Foreigners from the EU/EEA represent the stabile number of employees in Slovakia. The shortage of labor force in Slovakia is compensated by the employment of labor force from third countries, that are mostly working in the regions of Bratislava, Trnava and Nitra. The interest of

foreigners in work depends on the value of salary and sufficient job opportunities, but also to the existing working or entrepreneurial community of fellow citizens and families from the home state. The employment of the third-country nationals in Slovakia is demanding and lengthy. On the positive side, the time limit for processing the temporary residence permit for employment purposes has been reduced from 90 to 30 days in the case of professions with insufficient job applicants. The fact that the employees does not have to prove their education with a certificate if they are not interested in issuing a Blue Card or if it is not a highly qualified job, can also be perceived positively. The employment of foreigners is regulated by the legal regulations such as Labor Code, Law No. 404/2011 Coll. on the Residence of Foreigners and the Law No. 5/2004 Coll. on the Services of Employment. According to article 13 of the Labor Code the discrimination of foreigners in employment relations is prohibited. The applicable laws determine their equal position with other employees in the Slovak Republic. According to article 13 of the Labor Code the employer is obliged in employment relations to treat employees in accordance with the principle of equal treatment that is stipulated for the area of employment relations by the special Law on Equal Treatment in Certain Areas and on the Protection Against Discrimination (Anti-discriminating Law).

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