



European Network Against Racism  
Réseau européen contre le racisme

# ENAR Shadow Report 2012-2013

## ENAR SHADOW REPORT

### Racism and related discriminatory practices in employment in Slovenia

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Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism in the EU and its Member States. NGO reports are, by their nature, based on many sources of data - official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by racism. It is this that gives NGO reports their added value, complementing academic and official reporting.

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## **Executive summary**

The aim of this report is to contribute to knowledge and to provide insight from activists and professionals on the ground working to combat racism and discrimination in Slovenia as an advocacy tool by which to influence policy. This report takes on a more narrow focus than previous reports, by exploring the situation of racism and discrimination in the field of employment in Slovenia for the period of March 2012 to March 2013.

A general anti-discrimination provision is contained in Article 14 of the Constitution of the Republic of Slovenia, stating that everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, gender, language, religion, political or other beliefs, financial status, birth, education, social status, disability or any other personal circumstance. In the field of employment, the 2013 Employment Relationship Act (*Zakon o delovnih razmerjih –ZDR-1*), prohibits discrimination and ensures equal treatment of a job candidate in recruitment procedure, or equal treatment of an employee in the course of employment and in relation to termination of employment contract, irrespective of ethnicity, race or ethnic origin, national and social origin, gender, skin colour, health condition, disability, religion or belief, age, sexual orientation, family status, membership in a trade union, financial situation or other personal circumstance. It also prohibits sexual or other harassment at the workplace.

Labour market discrimination and racism are predominantly not receiving much attention in the public discourse. Due to lack of data and research on the matter, assessment of incidence of labour market discrimination and racism in Slovenia is difficult. Generally, in the field of discrimination, Slovenia does not have a system for systematically collecting equality data and independent monitoring of the situation of groups vulnerable to discrimination as none of the institutions has the competency to conduct surveys. The data of institutions such as The Advocate of the Principle of Equality (Slovenian equality body), the Human Rights Ombudsman and the Labour Inspectorate of the Republic of Slovenia, reveal very few cases of labour market discrimination on the ground of ethnic origin and/or religious belief, however the activities of the non-governmental sector show that discrimination and racism are very much present in the labour market, but fear from victimisation (in addition of absence of monitoring mechanisms) is preventing these cases to reach state institutions and courts.

The few cases, detected by the Human Rights Ombudsman, the Advocate of the Principle of Equality and the NGOs indicate the difficulties of ethnic minorities (Roma), migrant workers and their family members (residing in the county on the basis of family reunification), asylum seekers and refugees when accessing employment.

Due to the absence of monitoring of discrimination and issues with under-reporting, information concerning possible discriminatory practices on the ground of ethnic origin and/or religion related to workplace mostly come from the non-governmental sector as well. The majority of workers that seek help works in companies employing migrant workers only. The level of isolation is therefore very high and it is increased by the language barrier. There are reports of deregistering workers during the employment relationship without giving notice, payments in cash and without issued pay slips, non-payment of salaries and contributions work-related injuries not reported, while injured workers are deregistered from insurance scheme, borrowing of workers between employment agencies to avoid permanent employment of workers, etc. The majority of male workers seeking help are employed in construction, manufacturing, food service and printing plants. Female workers are mostly employed in cleaning services and manufacturing.

The main national instrument designed to facilitate inclusion of unemployed persons into the labour market is active employment policy, consisting of a number of measures for increasing employment of persons in the labour market and competitiveness and flexibility of employers. For each measure target groups are determined, e.g. members of ethnic minorities, members of Roma community, migrants, refugees, women, people with disabilities and people that are over 50 years old, etc.

In Slovenia, labour and social courts (*delovna in socialna sodišča*) deal with matters of labour and social law, including labour market discrimination, however no case-law concerning discrimination on the ground of ethnic origin/religion in employment could be identified.

The Advocate of the Principle of Equality (*Zagovornik načela enakosti*) and the Human Rights Ombudsman (*Varuh človekovih pravic*) deal with labour market discrimination, but while there are serious issues concerning independence, staffing and powers of the Advocate, the Ombudsman is not competent for violations in the private sector. The non-governmental sector (NGOs, trade union) is carrying out activities of providing information and counselling to migrant workers and ethnic minorities (Roma).

The main barrier in the field of anti-racism and anti-discrimination in general, which Slovenia urgently needs to address, is the lack of an effective system of protection of and support to victims of discrimination and absence of collection and monitoring of data on situations of discrimination. This has been continuously pointed out by the institutions such as the Advocate of the Principle of Equality and the Human Rights Ombudsman and the civil society organisations. The lack of data and case-law presents a false image of the incidence of labour market discrimination and racism as experience of the non-governmental sector reflect many violations of worker's rights and incidents in employment.

To conclude, the report offers the following recommendations to tackle discrimination in employment (and in general):

- The Government should establish an effective system of protection of victims of discrimination by establishing an independent body for providing effective, independent assistance to victims, conducting independent surveys concerning discrimination, active monitoring of the state of discrimination and planning policies and measures in the field of discrimination - a body that is sufficiently financially supported (a direct budget recipient) and has sufficient staff to perform its tasks;
- The Government should provide for an effective possibility of support in proceedings to victims of discrimination by the non-governmental organisations – by adequately amending the provision of Article 23 of the Act Implementing the Principle of Equal Treatment, so that it will in practice allow non-governmental organizations to have the right to take part in judicial and administrative proceedings initiated by alleged victims of discrimination. The Government should also consider the option of introducing the possibility of *actio popularis* in discrimination cases;
- The Slovenian authorities should further develop the support services, provided by the Employment Service's Focal point for migrants (*Info točka za tujce*) and ensure its constant functioning also in other Slovenian cities; and provide for other awareness-raising activities among workers concerning workers' rights related to protection against labour market discrimination and workers' rights in general;
- the Slovenian authorities and the Employment Service of Slovenia should provide for awareness-raising activities concerning the availability of active employment policy and services provided by the Employment Service of Slovenia;

- The Slovenian authorities should take measures for increasing awareness among administrative employees (at administrative offices and employment service), dealing with groups of workers, more vulnerable to labour market discrimination;
- The Slovenian authorities should strengthen supervision by the labour inspectorate in the field of labour market discrimination and racism by empowering the inspectorate so that they are sufficiently staffed and have sufficient knowledge and skills to detect, investigate and sanction cases of labour market discrimination and racism ;
- The Slovenian authorities should make sure that the experience of the organisations working on the ground and identified needs are properly transferred into legislation and policies.

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## **1. Introduction**

Racism is a reality in the lives of ethnic and religious minorities in the Slovenia. The extent and manifestations of this fact are often unknown and undocumented, especially with regard to official data sources. As a consequence, it can be difficult to analyse the situation and to establish solutions. Even when there is extensive official data, NGO's offer a vital alternative data source which comes directly from the experiences of individuals and communities experiencing racism on a daily basis. The ENAR Shadow Reports have become a major tool for monitoring the situation of racism and xenophobia in EU Member States. Both ENAR's national and European Shadow Reports have proved to be an invaluable documented starting point for strategic and coordinated action, particularly for anti-racist civil society advocacy towards national governments, the European institutions, bodies and the media.

The aim of this report, therefore, is to contribute to knowledge and to provide insight from activists and professionals on the ground working to combat racism and discrimination in Slovenia as an advocacy tool by which to influence policy. This report takes on a more narrow focus than previous reports, by exploring the situation of racism and discrimination in the field of employment in Slovenia for the period of March 2012 to March 2013. The results will be used at national level to influence policy developments and will be further compiled into a European comparative report to influence European policies. With improved statistical and comparative data, the Shadow Reports will have a demonstrable impact for changing policy and bringing about necessary policy reforms.

### **1.1 Definitions**

There are three ethnic groups receiving explicit constitutional protection in Slovenia - two national minorities - Italian and Hungarian National Community - and special Roma community (article 64 and 65 of the Constitution of the Republic of Slovenia).<sup>1</sup> Article 64 of the Constitution guarantees several rights to the autochthonous Italian and Hungarian national communities and their members, such as the right to use their national symbols freely, the right to establish organisations and develop economic, cultural, scientific and research activities, right to education and schooling in their own languages, etc. In order to exercise these rights the members of these communities have the right to establish their own self-governing communities in the geographic areas where they live. The two national minorities are also directly represented in representative bodies of local self-government and in the National Assembly. Article 65 of the Constitution states that the status and special rights of the Roma community living in Slovenia shall be regulated by law.

Considering the fact that many members of the Albanian, Bosnian, Montenegrin, Croatian, Macedonian and Serbian nation reside in Slovenia and that they had an actual and formal constitutional role in the former common state of the Socialist Federal Republic of Yugoslavia and were with Slovenia's independence put in a new and different position as minorities, in February 2011 Slovenian National Assembly adopted the Declaration of the Republic of Slovenia on the Position of National Communities of the Nations of the Former SFRY in Republic of Slovenia.<sup>2</sup> In

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<sup>1</sup> Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1991 and subsequent amendments.

<sup>2</sup> Declaration of the Republic of Slovenia on the Position of National Communities of the Nations of the Former SFRY in Republic of Slovenia (*Deklaracija Republike Slovenije o položaju narodnih skupnosti pripadnikov narodov nekdanje SFRJ v Republiki Sloveniji*), 1 February 2011.

accordance with the Declaration these national communities, in addition to all of the individual rights bestowed by the Constitution, enjoy the right to self-organization based on ethnic affiliation in order to develop their culture and maintain their language and history and ensure their public presence and contribute to multiculturalism of Slovenia.

The Constitution of the Republic of Slovenia ensures equal rights to all religious communities that pursue their activities freely, while the state and religious communities are separate. The manner of exercising religious freedom and the legal position of churches and other religious communities is further determined by the Religious Freedom Act.<sup>3</sup>

In May 1999 the National Assembly of the Republic of Slovenia adopted the Resolution on the migration policy of the Republic of Slovenia<sup>4</sup>. The Resolution defines three forms of international migration: regular migration, involuntary (forced) migration and irregular migration. Regular migration is defined as voluntary migration of individuals who, based on their free will and in accordance with existing legislation, change the country of their residence. Situations when people flee as individuals in fear of persecution or massively in fear of gross violations of human rights and other circumstances, caused by conflicts and catastrophes are defined as involuntary (forced) migration. Irregular migration is connected with illicit crossings of state borders and unauthorised residence. To define who is to be considered an immigrant, the Resolution considers the duration of residence within the country as the main point of reference – one year since registering residence based on approved residence permit, issued for the minimum period of one year. According to the Resolution such definition enables differentiation between short-term immigrants and residents.

## 1.2 Statistical overview

Statistical data concerning Slovenian population are collected by the Statistical Office of the republic of Slovenia. On 1 January 2013 2.058.821 resided in Slovenia (1.019.061 male residents and 1.039.760 female residents). Out of these, 1.967.436 were Slovenian citizens (956.940 male and 1.010.496 female) and 91.385 were foreign nationals (62.121 male and 29.264 female).<sup>5</sup>

The only data on ethnic origin or religious belief are available from the 2002 census.<sup>6</sup> The data on ethnic background and religious belief are based on self-enumeration and responding to these questions was optional, which is why it might not reflect the precise situation (for instance, some of the respondents chose 'Muslim' also as their ethnic background).

At the time of the census, the population of Slovenia was 1.964.036. According to the census data 1.631.363 (83,06 %) residents declared they are Slovenians, 2.258 declared themselves 38.964 (1,98 %) Serbian, 35.642 (1,81 %) Croatian, 21.542 (1,10 %) Bosnian, 3.972 (0,20 %) Macedonian, 3.246 (0,17 %) Roma, 2.258 (0,11 %) Italian, 6.243 (0,32 %) Hungarian, 6.186 (0,31 %) Albanian, 181 (0,01 %) Austrian, 138 (0,01 %) Bulgarian, 273 (0,01 %) Czech, 2.667 (0,14 %) Montenegrin, 54 (0,00 %) Greek, 28 (0,00 %) Jewish, 10.467 (0,53 %) Muslim, 499 (0,03 %) German, 140 (0,01 %) Polish, 122

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<sup>3</sup> Religious Freedom Act (*Zakon o verski svobodi*), 2 February 2007.

<sup>4</sup> Resolution on the migration policy of the Republic of Slovenia (*Resolucija o imigracijski politiki*), 14 May 1999.

<sup>5</sup> Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*), [https://www.stat.si/novica\\_prikazi.aspx?id=5454](https://www.stat.si/novica_prikazi.aspx?id=5454), accessed 3 September 2013.

<sup>6</sup> Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*), [http://pxweb.stat.si/pxweb/Database/Popis2002/04\\_Slovenija/03\\_Previvalstvo/02\\_05W16\\_Demografske\\_znacilnosti/02\\_05W16\\_Demografske\\_znacilnosti.asp](http://pxweb.stat.si/pxweb/Database/Popis2002/04_Slovenija/03_Previvalstvo/02_05W16_Demografske_znacilnosti/02_05W16_Demografske_znacilnosti.asp), accessed 3 September 2013.

(0,01 %) Romanian, 451 (0,02 %) Russian, 216 (0,01 %) Slovak, 259 (0,01 %), Turkish, 470 Ukrainian (0,02 %) and 1.548 (0,08 %) ‘other’. Some of the respondents declared themselves Yugoslavs (527 – 0,03 %)) and some did not wish to answer (48.588 – 2,47 %). For 126.325 (6,43 %) respondents ethnical background is unknown.

Concerning religious belief 1.135.626 respondents declared themselves Catholic, 14.736 Evangelical, 1.399 other protestant, 45.908 Orthodox, 1.877 other Christian, 47.488 Muslim, 1.026 oriental, 928 other religious beliefs and Agnostic, 68.714 believer but not belonging to any religion, 199.264 atheist. While 307.973 did not wish to respond, for 139.097 respondents religious belief is unknown.

In addition to the statistical data collected by the Statistical Office, some estimates of the number of members of certain groups are available. While only 3.246 respondents declared themselves Roma in the 2002 census, the estimate for the number of Roma residing in Slovenia is between 7.000 and 10.000.<sup>7</sup>

The estimates of the number of members of the Italian National Community are also higher than the number of people declaring themselves as members. According to the Office of National Minorities, the actual number of members of the Italian National Community is 3.388 (the number is based on the electoral register compiled by the Italian National Community itself for the local election in November 2002), while only 2.258 respondents declared themselves members of the Italian National Community in the 2002 census.<sup>8</sup> The situation is similar for the Hungarian National Community - on the basis of electoral register compiled by the Hungarian National Community itself for the local election in November 2002, 8.328 members of the Hungarian National Community live on the territory of the Republic of Slovenia (6.186 respondents declared themselves members of the Hungarian National Community in the 2002 census.<sup>9</sup>

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<sup>7</sup> Republic of Slovenia, Office for National Minorities (*Republika Slovenija, Urad za narodnosti*), [http://www.arhiv.uvn.gov.si/en/minorities/roma\\_community/index.html](http://www.arhiv.uvn.gov.si/en/minorities/roma_community/index.html), accessed 3 September 2013.

<sup>8</sup> Republic of Slovenia, Office for National Minorities (*Republika Slovenija, Urad za narodnosti*), [http://www.arhiv.uvn.gov.si/en/minorities/italian\\_national\\_community/index.html](http://www.arhiv.uvn.gov.si/en/minorities/italian_national_community/index.html), accessed 3 September 2013.

<sup>9</sup> Republic of Slovenia, Office for National Minorities (*Republika Slovenija, Urad za narodnosti*), [http://www.arhiv.uvn.gov.si/en/minorities/hungarian\\_national\\_community/index.html](http://www.arhiv.uvn.gov.si/en/minorities/hungarian_national_community/index.html), accessed 3 September 2013.

## **2. The context: labour market and legal framework**

### **2.1 Outlook of the labour market**

In 2012, the labour force (i.e. persons in employment plus registered unemployed persons) in Slovenia numbered 920,184 or 1.5% less than in the previous year. The growth of unemployment calmed in 2012 (compared to previous year). As a result, the number of registered unemployed persons in Slovenia stopped at 110,183. The registered unemployment rate (the share of unemployed persons among the labour force) was 12.0%. The number of unemployed women was higher than the number of unemployed men; the unemployment rate for women was 12.6% and for men 11.5%.<sup>10</sup>

Migrant workers – from January to November 2012, 54.200 residence permits were issued – a 5% decline compared to the previous year. Out of these 86% were issued to non-EEA nationals and the rest to EU nationals. The majority were temporary permits issued to non-EEA nationals (37-500), which means a decrease of 14% compared with the previous year.

Residence permits were mostly granted for the purpose of employment or work, followed by family reunification and study. By the end of November 2012, the total population with a valid residence permit reached 106.600 persons, an increase of 6 % with the previous year.<sup>11</sup>

Concerning labour participation of migrants some older data are available. In 2011 among Slovenian citizens aged 15 or more, 46% were employed. Among foreign citizens of the same age, more were employed: 64%. There was a large gap between men and women regarding employment/population ratio among foreigners: 76% of the men and only 35% of the women were employed. This gap was smaller among citizens of Slovenia: 51% of the men and 42% of the women were employed. The gap was even smaller among Slovenian citizens aged 25–49, where 82% of the men and 79% of the women were employed.<sup>12</sup>

Foreign citizens who represented 4.4% of total population of Slovenia aged 15 or more had on average lower education than Slovenian citizens, although higher than one year earlier. The share of the population with tertiary education among foreign citizens increased from 5.9% to 6.5%, and the share of those with upper secondary education from 50.2% to 53.6%. Accordingly, the share of those with basic or lower education decreased (to 40.0%). On 1 January 2012, 28% of citizens of Slovenia had basic or lower education, 53% had upper secondary education, and 19% had tertiary education, which is very similar to the education structure of this population group from one year earlier.<sup>13</sup>

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<sup>10</sup> Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*), [http://www.stat.si/eng/novica\\_prikazi.aspx?id=5684](http://www.stat.si/eng/novica_prikazi.aspx?id=5684), accessed 3 September 2013.

<sup>11</sup> OECD (2013), International Migration Outlook 2013, OECD Publishing, available at: [http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/international-migration-outlook-2013\\_migr\\_outlook-2013-en#page1](http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/international-migration-outlook-2013_migr_outlook-2013-en#page1), accessed on 2.9.2013

<sup>12</sup> Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*), [http://www.stat.si/eng/novica\\_prikazi.aspx?id=5411](http://www.stat.si/eng/novica_prikazi.aspx?id=5411), accessed 3 September 2013.

<sup>13</sup> Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*), SURS [http://www.stat.si/eng/novica\\_prikazi.aspx?id=5411](http://www.stat.si/eng/novica_prikazi.aspx?id=5411), accessed 3 September 2013.

In 2011, 14,083 people immigrated to Slovenia, which is 8.6% less than in 2010; 10,765 of them were foreign nationals and 3,318 were Slovene citizens. Since 2005 most of the foreign nationals have come to Slovenia to find employment. Their share in total immigration has always been above 60%; however, in 2011 it was for the first time below 50% (5,192 people). The second largest group (4,304 people) of foreign nationals immigrated to Slovenia to join their families; the most frequently the employed foreign nationals were joined by their relatives (most frequently wives with children). Compared to 2010, their number grew by 1,330.<sup>14</sup>

At the beginning of 2011 three quarters of foreign nationals aged 25-64 who emigrated from Slovenia (4,238 people) were employed. Most of them worked in construction (36.9%) and manufacturing (14.7%). Most of the employed foreign nationals were craft and related trades workers (31.8%) or worked in elementary occupations (20.4%) Due to the economic crisis, which affected the mentioned activities the most, which is the reason why they emigrated from Slovenia.<sup>15</sup>

More detailed data on the socio-economic situation of the general population and persons who immigrated to Slovenia were published in November 2011 and are related to 1 January 2010, the observation date. These data pointed to historical ties and long-established trends showing that a majority of migrants comes to Slovenia from the territory of the former Yugoslavia, mostly for reasons of employment.

At the beginning of 2010, 12.4% of Slovenia's population was not born in the country. A majority were born in Bosnia and Herzegovina (36.3%) and Croatia (28.8%). On the same date, 15.1% of persons in employment in Slovenia were born abroad, of them 51.4% in Bosnia and Herzegovina.<sup>16</sup>

With regard to the educational attainment of persons in employment, most of the persons in employment in Slovenia who were born in Slovenia had upper secondary education (60.3%). Similar trends may be observed among the foreign-born persons in employment in Slovenia, but the share was lower (52.1%). Among those born in Slovenia, the next largest group were tertiary educated persons (almost 28%), while among those born abroad the next largest group included persons with primary education or less (36.3%). Among the persons in employment in Slovenia who were born in Bosnia and Herzegovina, i.e. in the country from which the greatest number of people immigrated to Slovenia, 58.4% had upper secondary education or more.<sup>17</sup>

At the beginning of 2010, most persons in employment who were born abroad were employed in construction (28%) and manufacturing (21.5%). Some 41% of all foreign-born men in employment were in the construction industry, while slightly more than 21% were employed in manufacturing. At the same time, 22.4% of foreign-born women were employed in manufacturing, followed by health and social care services (13.4%). With regard to persons born in the country, 23.5% worked in

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<sup>14</sup> Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*), SURS [http://www.stat.si/eng/novica\\_prikazi.aspx?id=5226](http://www.stat.si/eng/novica_prikazi.aspx?id=5226), accessed 3 September 20

<sup>15</sup> Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*), [http://www.stat.si/eng/novica\\_prikazi.aspx?id=5226](http://www.stat.si/eng/novica_prikazi.aspx?id=5226), accessed 3 September 2013.

<sup>16</sup> Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*), [www.stat.si/eng/novica\\_prikazi.aspx?id=4345](http://www.stat.si/eng/novica_prikazi.aspx?id=4345), accessed 3 September 2013.

<sup>17</sup> Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*), [www.stat.si/eng/novica\\_prikazi.aspx?id=4345](http://www.stat.si/eng/novica_prikazi.aspx?id=4345), accessed 3 September 2013..

manufacturing, followed by those in employment in wholesale, retail trade and repair of motor vehicles (almost 15%).<sup>18</sup>

The majority of most persons in employment born abroad were employed in elementary occupations (25.1%) and as craft and related trades workers (24.8%), compared to 20.7% of natives who were engaged in occupations of technicians and associate professionals, followed by professionals (16%).<sup>19</sup>

The foreign-born population also experienced a slightly higher unemployment rates, and their unemployment, generally, lasted longer, compared to the natives.

The data further showed that the economic crisis reduced the number of persons who immigrated to the country. Some 15,416 persons immigrated to Slovenia in 2010, 49.1% less than in the previous year. Of them, 12,705 of them were foreigners. The same as in the previous years, foreigners who immigrated to Slovenia in 2010 mostly migrated for employment (a little more than 65%), followed by individuals who migrated for family reunification (23.4%).<sup>20</sup>

The year 2010 also saw a significant decrease in number of foreigners who immigrated to Slovenia and found a job in the same year. Out of 12,705 foreigners who in 2010 immigrated to Slovenia, 6,663 were in employment in the same year. Like in the past, most foreigners who immigrated to Slovenia in 2010 were employed in construction industry (43.8%) and manufacturing (just over 13%). Almost one-third were craft and related trades workers, followed by elementary occupations (30%). More than half of foreigners (53.3%) who immigrated to Slovenia in 2010 and in the same year found job had at least upper secondary education.<sup>21</sup> These data could indicate that at least a certain portion of recent immigrants face over-qualification at their workplaces.

The latter was also confirmed by the Analysis of needs for education, training and other services for migrants (non-EEA nationals) and their family members in the Republic of Slovenia.<sup>22</sup> One of the findings of the Analysis was that contrary to certain expectations and stereotypes, the educational structure of the non-EEA nationals is not poor at all. Many completed secondary education and entered tertiary education programmes. Nevertheless many third country nationals hold positions of employment for which lower levels of education are required, which leads to disappointment and emigration of more educated migrant workers. According to the Analysis migrant workers are not aware of possibilities for education in Slovenia and the majority of interviewed migrant workers never entered any educational programmes in Slovenia, although 41% expressed the need for additional education and training.

According to the review of the situation of unemployment rates of members of the Roma community in Slovenia, contained in the National Programme of Measures for Roma of the Government of the Republic of Slovenia for the period 2010 – 2015, there are no detailed records on the number of unemployed Roma, since data of the unemployment records do not contain information on ethnic

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<sup>18</sup> Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*), [www.stat.si/eng/novica\\_prikazi.aspx?id=4345](http://www.stat.si/eng/novica_prikazi.aspx?id=4345), accessed 3 September 2013.

<sup>19</sup> Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*), [www.stat.si/eng/novica\\_prikazi.aspx?id=4345](http://www.stat.si/eng/novica_prikazi.aspx?id=4345), accessed 3 September 2013.

<sup>20</sup> Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*), [www.stat.si/eng/novica\\_prikazi.aspx?id=4345](http://www.stat.si/eng/novica_prikazi.aspx?id=4345), accessed 3 September 2013.

<sup>21</sup> Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*), [www.stat.si/eng/novica\\_prikazi.aspx?id=4345](http://www.stat.si/eng/novica_prikazi.aspx?id=4345), accessed 3 September 2013.

<sup>22</sup> Josipović B. and Bofulin M., *Analiza potreb po izobraževanju, usposabljanju in drugih storitvah delavcev iz tretjih držav in njihovih družinskih članov v RS Employment Service of Slovenia*, Zavod Republike Slovenije, Ljubljana, 2011.

origin and the estimates can only be based on typical Roma surnames or when persons are known to the surveyor – but the data are then distorted.<sup>23</sup> In this respect, data for September 2009 show that there were 2,193 Roma registered at the Employment Service of Slovenia (*Zavod za zaposlovanje Republike Slovenije*), which is 2.5% of all registered unemployed persons in Slovenia – the number of Roma is an estimate. This document also states that each year, the number of unemployed Roma grows, both in absolute and relative terms.

## 2.2 Legal framework

Article 14 of the Constitution of the Republic of Slovenia contains a general anti-discrimination provision, stating that everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, gender, language, religion, political or other beliefs, financial status, birth, education, social status, disability or any other personal circumstance.<sup>24</sup> According to Article 63 of the Constitution any incitement to ethnic, racial, religious or other discrimination, as well as inflaming of ethnic, racial, religious or other hatred or intolerance is also unconstitutional. The Constitution further prohibits harassment and enshrines the right to personal dignity and safety (Article 34) and the protection of the right to privacy and personality rights (Article 35). Everyone shall be guaranteed equal protection of rights in any proceeding before a court and before other state authorities, local community authorities and bearers of public authority that decide on their rights, duties or legal interests (Article 22).

In 2004 the Act Implementing the Principle of Equal Treatment was adopted, guaranteeing equal treatment irrespective of personal circumstances such as gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, or other personal circumstance.<sup>25</sup> This Act prohibits discriminatory acts in every area of social life, and in particular in relation to:

- conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- access to all types and to all levels of career orientation, vocational and professional education and training, advanced vocational training and retraining, including practical work experience;
- employment and working conditions, including dismissals and pay;
- membership of and involvement in an organization of workers or employers, or any organization whose members carry on a particular profession, including the benefits provided for by such organizations;
- social protection, including social security and healthcare;
- social advantages;
- education;
- access to and supply of goods and services which are available to the public, including housing.

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<sup>23</sup> Government of the Republic of Slovenia (*Vlada Republike Slovenije*), *Nacionalni program ukrepov za Rome Vlade Republike Slovenije za obdobje 2010-2015*, Vlada Republike Slovenije, Ljubljana, 2010, pp. 17-19.

<sup>24</sup> Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1991 and subsequent amendments.

<sup>25</sup> Implementation of the Principle of Equal Treatment Act (Zakon o uresničevanju načela enakega obravnavanja), 22 April 2004 and subsequent amendments.

In 2013 the new Employment Relationship Act (*Zakon o delovnih razmerjih* –ZDR-1), regulating employment relations, was adopted.<sup>26</sup> In accordance with Article 6 of this Act, an employer has to ensure equal treatment of a job candidate in recruitment procedure, or equal treatment of an employee in the course of employment and in relation to termination of employment contract, irrespective of ethnicity, race or ethnic origin, national and social origin, gender, skin colour, health condition, disability, religion or belief, age, sexual orientation, family status, membership in a trade union, financial situation or other personal circumstance. Article 6 prohibits direct as well as indirect discrimination based on the said personal circumstances.

Article 7 of the Employment Relationship Act also prohibits sexual or other harassment at the workplace. In accordance with this provision harassment is any unwanted verbal, nonverbal or physical conduct or conduct of a sexual nature with the effect or the purpose to affect the dignity of a person, in particular when creating intimidating, hostile, degrading or offensive environment; harassment is also any unwanted conduct, related to any personal circumstance with the effect or purpose to hurt the dignity of a person or create intimidating, hostile, degrading or offensive environment. Refusal of conduct considered as harassment should never constitute a legitimate reason to discriminate, which means that if a job candidate refuses to be harassed he or she should not suffer any adverse consequences in a form of discrimination.

In accordance with Article 47 of the Employment Relationship Act, the employer is obliged to guarantee the working environment without harassment and to adopt necessary measures to protect employees subject to harassment.

These provisions were also included in the Employment Relationship Act (ZDR) which was in force prior to the adoption of the new 2013 Employment Relationship Act (ZDR-1); however, the new Act introduced the obligation of the employer to notify the employees in a written form about the measures adopted to protect employees from harassment.

The former act governing employment relationships only stipulated that in cases of violation of the prohibition of discrimination, an employer shall be liable to provide compensation to a job candidate or a worker under the general rules of civil law. Article 8 of the new act further stipulates that mental distress suffered by the victims because of unequal treatment or discriminatory conduct by an employer or because of employer's failure to provide protection against sexual or other forms of harassment suffered by the victim shall also be deemed as non-pecuniary damage incurred to a job candidate or a worker.

Unequal treatment or sexual or other harassment are the grounds for extraordinary termination of employment by the employee (without period of notice), after notifying the employer and the labour inspectorate about the breach in writing (Article 111 of the Employment Relationship Act).

The 2011 Occupational Health and Safety Act (*Zakon o varnosti in zdravju pri delu* – ZVZD-1) stipulates the obligation of the employer to adopt measures for prevention, elimination and control cases of violence, mobbing, harassment and other psycho-social risks at workplace that can endanger the health of workers.<sup>27</sup>

In regard to the Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying

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<sup>26</sup> Employment Relationship Act (*Zakon o delovnih razmerjih*), 5 March 2013.

<sup>27</sup> Occupational Health and Safety Act (*Zakon o varnosti in zdravju pri delu* – ZVZD-1), 24. May 2011.

third-country nationals,<sup>28</sup> the amendments to the Prevention of undeclared work and employment act were adopted in July 2012.<sup>29</sup> The amendments transposed the provisions related to claims for outstanding remuneration and defined illegal employment as employment of an illegally residing third-country national.

The 2011 Aliens Act was also harmonised with the Directive 2009/52/ES and Article 50 the Aliens Act included protection measures for victims of illegal employment (guaranteeing same level of protection as the victims of trafficking in human beings).<sup>30</sup> In accordance with Article 50 of the Aliens Act a temporary residence permit can be issued to victims of illegal employment. The police shall allow the victim of illegal employment who resides illegally in the Republic of Slovenia to stay, upon his/her own request or ex officio, for a period of three months in order to decide whether he/she shall participate as a witness in criminal proceedings regarding the illegal employment (reflection period). The period of stay may be extended for a period of up to three months for justified reasons. Under certain conditions the stay may be denied, for instance if residence of the victim illegal employment in the Republic of Slovenia would pose a threat to public order, security or international relations of the Republic of Slovenia. The temporary residence permit is issued for the foreseen duration of the criminal proceedings, but for not less than six months or more than one year. The temporary residence permit may be extended upon the victim's request, each time for the period of up to one year, until the criminal proceedings are concluded. A victim of illegal employment who has been issued a temporary residence permit and has no means of subsistence is entitled to emergency healthcare as well as health insurance and basic care, same as aliens who are allowed temporary stay in the Republic of Slovenia. The victim may obtain employment or perform work in the Republic of Slovenia during the period of validity of the temporary residence permit under the conditions defined by the act regulating the employment and work of aliens. A further temporary residence permit is issued for another purpose for residence in the Republic of Slovenia, if the victim fulfils the conditions for the issue of such a permit.

The Criminal Code (*Kazenski zakonik*) constitutes harassment at workplace as a criminal offence.<sup>31</sup> Article 197 of the Code states that causing humiliation or fear to another employee by sexual harassment, psychological violence, mobbing or unequal treatment, shall be sanctioned with imprisonment of up to two years.

Discrimination on the ground of disability is additionally prohibited. Namely, Article 5 of the Vocational Rehabilitation and Employment of Persons with Disabilities Act (*Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov*)<sup>32</sup> explicitly prohibits direct and indirect discrimination during the recruitment and employment of persons with disabilities, in relation to the termination of employment and also in the procedures in place for defining the status of a person with disabilities and the procedure for acquiring the right to vocational rehabilitation.

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<sup>28</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ 2009 L 168 (*Employers Sanctions Directive*).

<sup>29</sup> Act amending the Prevention of undeclared work and employment act (*Zakon o spremembi in dopolnitvah Zakona o preprečevanju dela in zaposlovanja na črno*), 18 July 2012.

<sup>30</sup> Aliens Act (*Zakon o tujcih*), 15 June 2011.

<sup>31</sup> Criminal Code (*Kazenski zakonik*), 20 May 2008 and subsequent amendments.

<sup>32</sup> Vocational Rehabilitation and Employment of Disabled Persons Act (*Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov*), 10 June 2004 and subsequent modifications.

### **3. Manifestations of racism and structural discrimination in employment**

#### **3.1 Perceptions of discrimination in employment**

Labour market discrimination and racism are predominantly not receiving much attention in the public discourse. In the opinion of the actors in the field the issue of labour market, since the bankruptcy of the major undertakings in the construction sector in 2010 and 2011, revealing exploitation of migrant workers, labour market discrimination and/or racism did not receive sufficient attention. However, the problems in the field remain the same. The NGOs and trade unions, implementing projects, related to rights of migrant workers, the Advocate of the Principle of Equality (*Zagovornik načela enakosti*) and the Human Rights Ombudsman (*Varuh človekovih pravic*) seem to be the only organizations pointing to these issues. For example, the Human Rights Ombudsman continues to stress that, in addition to problems faced by workers in general, migrant workers are facing specific problems: non-payment of social contributions by employers is making it harder for the worker to prolong his or her temporary residence permit arising from work; migrant workers are also more often included in the workforce loan chain, where supervision by competent institutions is weak.<sup>33</sup>

With the economic crisis and insolvency of many employers the issues of non-payment of salaries and non-payment of social security contributions are highlighted, however the issues are rarely linked to discrimination or racism.

On the other hand a trade union and an NGO which carry out a project aimed at migrant workers and extensively work with them and the Focal point for migrants (*Info točka za tujce*), providing information to migrant workers, note many incidents that could be deemed as cases of discrimination and reveal unfavourable situation of migrant workers (their observations are described in the following sections of this report).

Darko Rudaš, president of the Forum of Roma counsellors (*Forum romskih svetnikov*) says that the level of prejudice against employing Roma workers is still very high and the unemployment rates for members of the Roma community is consequently high.<sup>34</sup> The situation in the labour market with the impact of the economic crisis is much less favourable for the Roma compared to mainstream citizens – with so many people unemployed the Roma workers have even less possibilities for success when applying for a job post.

According to the Bosnian Cultural Association of Slovenia (*Bošnjaška kulturna zveza Slovenije*) the members of the Bosnian community in Slovenia often mention that their ethnic origin is a considerable obstacle in accessing employment (particularly for female Muslims wearing a headscarf) and promotion in the workplace.<sup>35</sup> They also observe greater impact of the economic crisis for the members of the Bosnian community, mostly due to bankruptcy of the major undertakings in the construction sector in which a much higher percentage of members of the Bosnian community is or was employed (compared to mainstream citizens). In the increasing numbers of unemployed persons

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<sup>33</sup> Human Rights Ombudsman (*Varuh človekovih pravic*), Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for the Year 2011, *Varuh človekovih pravic*, Ljubljana, 2012.

<sup>34</sup> Author's interview with Darko Rudaš (President of the Forum of Roma counsellors), 20 January 2014.

<sup>35</sup> Information provided by Admir Baltić, secretary of the Bosnian Cultural Association of Slovenia upon request, 20 January 2014.

the share of Bosnian community is much higher than their share in Slovenia's population. They find that due to the collapse of the economy the incidence of discrimination on the ground of ethnic origin in employment is increasing.

### **3.2. Incidence of discrimination in employment**

Due to lack of data and research on the matter, assessment of incidence of labour market discrimination and racism in Slovenia is difficult. Generally, in the field of discrimination, Slovenia does not have a system for collecting data and independent monitoring of the situation as none of the institutions conducts independent surveys in terms of Article 13 of the Council Directive 2000/43/EC.<sup>36</sup>

The case law of the Labour courts, the Labour Inspectorate of the Republic of Slovenia (*Inšpektorat Republike Slovenije za delo*) and the non-judicial institutions (the Advocate of the Principle of Equality and the Human Rights Ombudsman) on the subject is very scarce as well.

The Advocate of the Principle of Equality (*Zagovornik načela enakosti*) is noting a decrease of petitions (complaints) related to labour market discrimination and petitions concerning discrimination on the ground of ethnic origin or religion are practically non-existent.<sup>37</sup> In the opinion of the Advocate this does not indicate absence of labour market discrimination, but merely reflects that people gave up their hope that the legal system would protect them from discrimination and exploitation. The cases the Advocate receives are not representative of the state of discrimination in the country and the information received is not sufficient to allow distinction between direct and indirect discrimination.

Petitions, received by the Human Rights Ombudsman reveal similar situation. It is important to stress that **the Ombudsman has no competencies in relation to the private sector** – when it comes to possible violations in the private sector, the Ombudsman can only monitor, for example, the operation of the Labour Inspectorate, responding to a report of a violation.<sup>38</sup> There is another possible obstacle to monitoring cases of labour market discrimination: when handling petitions, the Ombudsman's office categorizes the petitions under one of the fields of the Ombudsman's work; for example, a case could be classified either under the field of discrimination or the field of employment; rarely a case would be classified under both, which means that when a case is classified under employment, the elements of discrimination might not be detected. In 2012 the Ombudsman received 65 discrimination-related petitions, out of which 17 allege discrimination on the ground of ethnic origin and three (3) allege labour market discrimination. However, the annual report for 2012 does not contain any cases of labour market discrimination on the ground of ethnic origin. According to the Human Rights Ombudsman, discrimination found in petitions is almost always direct discrimination; apparently neutral provisions, criterion or practice that would put persons at a particular disadvantage compared with other persons due to their personal circumstances were not found.

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<sup>36</sup> Advocate of the Principle of Equality (*Zagovornik načela enakosti*), Annual Report of the Advocate of the Principle of Equality for the Year 2011, Ljubljana, 2012, p. 17.

<sup>37</sup> Author's interview with Boštjan Vernik Šetinc (Advocate of the Principle of Equality), 23 August 2013.

<sup>38</sup> Human Rights Ombudsman (Varuh človekovih pravic), *Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for the Year 2012*, Varuh človekovih pravic, Ljubljana, 2013.

The Labour Inspectorate of the Republic of Slovenia (*Inšpektorat Republike Slovenije za delo*) does not disaggregate statistical data on cases of discrimination to different grounds of discrimination.<sup>39</sup> According to the Inspectorate, the numbers of recorded violations of the prohibition of discrimination are very low; the possible reasons for such low number of reports are as follows: inspectors are overwhelmed with large number of other employment-related violations (such as non-payment of salaries); such violations are very difficult to detect and to prove; employees are discouraged from reporting such violations due to fear of retaliation – often these reports are anonymous, which is an important obstacle for handling such reports; statements regarding alleged violations in such reports are often too vague, which makes determination of violations very difficult; sufficient evidence is not available. In 2012 the Inspectorate detected eight (6) cases of discrimination in access to employment and two (2) cases of discrimination in the workplace. In 2012 the inspectorate determined 60 cases of violation of Article 47 of the Employment Relations Act (obligation to guarantee the working environment without harassment). None of these cases reveal discrimination on the ground of ethnic origin or religion.

Therefore the most insight into possible cases of labour market discrimination and racism is provided by the activities of the non-governmental sector. One of such activities is the project ‘Integration package for unemployed migrants, refugees and asylum seekers’ (*Integracijski paket za brezposelne migrante, begunce in prosilce za azil*), implemented by Slovenian Association of Free Trade Unions (*Zveza svobodnih sindikatov Slovenije*) and Slovene Philanthropy (*Slovenska filantropija*). Between March 2011 and July 2013 the project provided information to 5,085 persons and counselling to 2,187 persons.<sup>40</sup> It is not possible to assess how many cases were related to labour market discrimination and racism. The majority of the people were seeking help only after not receiving salaries for many months or their right to annual leave being denied by the employer. When seeking help for these problems they only mention other difficulties they are facing, such as harassment, degrading insults and humiliation.

Unawareness that providing harassment-free work environment and respect of the principle of non-discrimination are obligations of employers is only partially the reason for under-reporting of such incidences. In the opinion of the trade union, the biggest reason for not reporting discrimination is fear. Migrant workers do not wish to confront the employer and risk conflicts, as that might jeopardise their employment and consequently the right to legally reside in the country. Namely, in order for a migrant worker to come to Slovenia to work for the first time, he or she already has to have an employer who is prepared to employ him/her. The employer then obtains permit for employment (*dovoljenje za zaposlitev*) for the migrant, which is the basis for acquiring a residence permit. This permit for employment is directly linked to the employer and on its basis the worker can only work for the employer that obtained the permit for employment. If the employer does not renew the permit for employment, the worker cannot renew the residence permit. Only after being employed for at least 20 months in the last 24 months, the worker can obtain a personal work permit with the validity of 3 years.<sup>41</sup> Only when holding this personal work permit, the worker has access to the labour market and can seek employment with other employers as his or her permit is no longer tied to the employer that initially acquired the permit for employment. The complete dependence of the initial employer is the reason why many migrant workers do not react to violations of their rights unless their very existence (e.g. due to non-payment of salaries) is at risk.

When the migrant workers finally decide to report the violations to the inspectorate or file a lawsuit with the Labour court, the elements of discrimination and harassment are not included in their

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<sup>39</sup> Information provided by the Labour Inspectorate upon request.

<sup>40</sup> Author's interview with representatives of Slovenian Association of Free Trade Unions, 30 August 2013.

<sup>41</sup> Employment and Work of Aliens Act (*Zakon o zaposlovanju in delu tujcev*), 29 March 2011 and subsequent modifications.

complaints and (direct or indirect) discrimination is not officially found in court and labour inspectorate decisions.

The majority of migrant workers seeking help with the Trade Union, Slovene Philanthropy and the Focal point for migrants are from the republics of the former Yugoslavia, mostly Bosnia and Herzegovina. Some also come from Bulgaria and Romania.

Numerous cases of potential labour market discrimination are also detected by the Focal point for migrants (*Info točka za tujce*), which is a project of the Employment Service of Slovenia (*Zavod za zaposlovanje Republike Slovenije*).

There are some official data proving particular vulnerability of the Roma community in relation to the employment situation. Roma are a community by far the most affected by lower educational attainment, which is further mirrored in their vulnerability in the field of employment. According to estimates, 98.2% of unemployed Roma in the region of Dolenjska and 90% in the region of Prekmurje, the two regions with the largest share of the Roma population, have not completed elementary schooling.<sup>42</sup> Such a low level of education is considered as a structural obstacle for improvement of their employment situation.

In 2010, the then Office for Equal Opportunities (*Urad za enake možnosti*, UEM) commissioned another research study focusing on instances of discrimination in the labour market on the grounds protected by the Treaty of Amsterdam. The study comprised of semi-structured interviews with 86 employees and 46 employers. In addition to this, a survey among general public was also carried out involving 978 persons of whom 810 responded to all questions. The research findings showed that members of Roma communities, along with elderly and persons with disabilities, tend to be perceived as one of the groups most vulnerable to discrimination when seeking a job. The reasons include prejudice and alleged previous bad experience with the employed Roma.<sup>43</sup>

### **3.4 Discrimination in access to employment**

The few cases, detected by the Human Rights Ombudsman, the Advocate of the Principle of Equality and the NGOs indicate the difficulties of ethnic minorities and migrant workers when accessing employment.

The Human Rights Ombudsman received a complaint of a petitioner who wished to be included in the Employment Service community work programme for members of the Roma community.<sup>44</sup> In order to prove that he in fact was a member of the Roma community, he was required to produce a certificate, issued by the Union of Roma of Slovenia (*Zveza Romov Slovenije*). The petitioner claimed that such requirement presents unequal treatment of other Roma organisations who are, by legal organisational form (private institution) and financing, in the same relation with the State as the Union of Roma of Slovenia. The Ombudsman made an inquiry with the Employment Office that

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<sup>42</sup> Government of the Republic of Slovenia (Vlada Republike Slovenije), *Poročilo o položaju romske skupnosti v Sloveniji: poročilo o izvajanju Zakona o romski skupnosti v Republiki Sloveniji*, Ljubljana, Vlada Republike Slovenije, 2010, p.17, available at: [www.mnz.gov.si/fileadmin/mnz.gov.si/pageuploads/SOJ/word/7-10-POROCILO\\_o\\_položaju\\_romske\\_skupnosti\\_v\\_RS.pdf](http://www.mnz.gov.si/fileadmin/mnz.gov.si/pageuploads/SOJ/word/7-10-POROCILO_o_položaju_romske_skupnosti_v_RS.pdf).

<sup>43</sup> University of Primorska, Faculty for Management (Univerza na Primorskem, Fakulteta za management Koper), *Študija o diskriminaciji na trgu dela: zaključno poročilo*, Ljubljana, Urad za enake možnosti, 2010 p. 50, available at: [http://www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/Porocilo\\_Diskriminacija\\_na\\_trgu\\_dela\\_za\\_splet.pdf](http://www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/Porocilo_Diskriminacija_na_trgu_dela_za_splet.pdf).

<sup>44</sup> Human Rights Ombudsman (Varuh človekovih pravic), *Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for the Year 2012*, Varuh človekovih pravic, Ljubljana, 2013, p. 52 - 53

confirmed that the certificate of the Union of Roma of Slovenia was indeed a requirement for inclusion, but it was later changed to a certificate, issued by the Roma Community Council of the Republic of Slovenia (state body). The Ombudsman deemed that such a requirement does not have any basis in the law and until the necessary amendment of The Roma Community Act (*Zakon o romski skupnosti*) the Employment Service should allow integration in the community work programme based on a statement of a beneficiary.

In 2008 the Human Rights Ombudsman received a petition of a person, who described the difficulties faced by a young Roma person seeking employment.<sup>45</sup> The employers in the small community, to which the young Roma man moved together with his partner, denied his applications without substantiated reasons, some even tore his application into pieces in front of him. The Ombudsman replied that such petitions reflect the prejudice and stereotypes present in the media and the political discourse, stigmatising members of the Roma community. The petition describes a case of discrimination on the ground of ethnic origin; although there are active employment policies in place for the Roma community, the policies cannot be successful without a broader strategy of positive action in the field of social inclusion through education, employment, health services and housing conditions and also elimination of damaging prejudice and stereotypes through awareness-raising.

The Advocate of the Principle of Equality received a petition of a woman from Ukraine who applied to two calls for competition concerning a job post. Although she has the required education, which was formally recognised by the competent Slovenian authorities and has a good command of Slovenian language, she was never invited to an interview. In both cases less qualified candidates were selected and both times the selected candidates were men, which is a reason to assume this is a case of intersectional discrimination – on the ground of both ethnic origin and gender.

The NGOs also report of cases when foreign education was not recognised in accordance with the legislation and migrants were caught in a vicious circle of appeals and repeated procedures.

The Focal point for migrants (*Info točka za tujce*) often assists migrants and makes the first contact with the potential employer. The first question of the employer is where the person is coming from and if it is an African migrant, very often the employer says that they are not interested. In some cases the employer asks which African country the migrant is coming from, which may be interpreted as the employer is inquiring what the migrant's skin colour is. The Institute for African Studies (*Inštitut za afriške študije*) points out that migrants from Africa in general have difficulties accessing employment. Often the name of the applicant reveals his or her ethnic origin, which is why they do not have a chance even at getting an interview.<sup>46</sup>

Slovenian Association of Free Trade Unions (*Zveza svobodnih sindikatov Slovenije*) and Slovene Philanthropy (*Slovenska filantropija*) mostly handle cases of discrimination in the workplace, as migrants, due to the rules in the field of work and residence permits, already have employment upon their arrival to Slovenia. Possible discrimination when accessing employment is therefore more noticeable with the family members of the migrant workers who came to Slovenia on the basis of family reunification. However, they note a high number of migrant workers with job positions that require lower education than the one held by workers, which indicates that they were not able to access job positions which they are qualified for.

The project also offers assistance to asylum seekers and refugees, who encounter many difficulties when accessing employment. Asylum seekers may apply for a work permit nine months after filing

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<sup>45</sup> Information provided by the Human Rights Ombudsman upon request.

<sup>46</sup> Author's interview with the Institute of African studies, 6 September 2013.

their asylum application under the condition that his or her asylum procedure is still pending and that the asylum seeker is not the one responsible for the delay in the decision-making process.<sup>47</sup> The work permit is issued for the period of three months and can be renewed until the asylum seeker receives a final decision on his asylum application. The three-month validity of the work permit is very short and as procedures before the Employment Service and the process of finding employment are time consuming, the asylum seeker must renew the work permit even before actually starting a job. The situation is even more difficult when an asylum seeker, who has been employed for a while, receives a negative decision on his asylum application and consequently loses his or her work permit. After the negative decision a (former) asylum seeker loses the right to reside in Slovenia and does not have the legal possibility of acquiring a residence permit based on employment, although he or she was already successfully integrated into society. Asylum seekers also do not receive sufficient support and information on how to exercise their acquired right to work and the language is also a substantive barrier. Refugees face similar problems.

### **3.5 Discrimination in the workplace**

Due to above mentioned absence of monitoring of discrimination and issues with under-reporting, information on possible discriminatory practices on the ground of ethnic origin and/or religion mostly come from the Slovene Philanthropy (*Slovenska filantropija*) and Slovenian Association of Free Trade Unions (*Zveza svobodnih sindikatov Slovenije*) and also the Focal point for migrants (*Info točka za tujce*).

Slovenian Association of Free Trade Unions (*Zveza svobodnih sindikatov Slovenije*) noted that discrimination faced by migrant workers (e.g. workers from Bosnia and Herzegovina) is perhaps not discrimination on the ground of ethnic origin *per se* but a form of 'economic' discrimination (structural discrimination). The starting position of these workers is less favourable from the position of native mainstream workers, which is why they are prepared to accept worse working conditions than the native mainstream workers. While some of the migrant workers do report, for example, of Slovenian workers receiving higher salaries for same job positions, the majority works in companies employing migrant workers only. The level of isolation is therefore very high and it is increased by the language barrier – the higher the language barrier, the higher is the level of exposure to discrimination and harassment. Migrant counsellors, active within the project, often cannot access these workers and even when they make contact, workers refuse to speak up about their problems. Workers do not receive sufficient information on their rights deriving from employment neither from employers nor the state institutions. The migrant counsellors of the Association of Free Trade Unions even handled cases when asking about the right to annual leave caused workplace mobbing such as exposing the worker to extreme heat in the work environment and reassignment to night shift for 20 days continuously. As mentioned under section 3.2., migrant workers do not wish to confront the employer and risk conflicts, as that might jeopardise their employment and consequently the right to legally reside in the country.

Slovenian Association of Free Trade Unions (*Zveza svobodnih sindikatov Slovenije*), Slovene Philanthropy (*Slovenska filantropija*) and the Focal point for migrants (*Info točka za tujce*) report various violations affecting migrant workers including:

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<sup>47</sup> International Protection Act (*Zakon o mednarodni zaščiti*), 21 November 2007 and subsequent modifications.

- deregistering workers during the employment relationship without giving notice and without informing the workers who found out about their situation upon visiting healthcare institutions,
- in case of temporary layoffs, workers receive no payments and are also deregistered from insurance schemes,
- probationary employment without contracts and insurance and, at the end, without payment,
- payments in cash and without issued pay slips (e.g. payments on piece of paper), when it is not known if contributions have been paid,
- overtime work, including contributions, not paid as such, but expressed as costs related to transportation to work,
- the same employer once calculates and pays contributions, then calculates, but does not pay them, while the next time contributions are neither calculated nor paid,
- employment of so called “tourists”, that is – persons who legally reside in Slovenia but do not have work permits, mostly in construction and forestry – a case when upon arrival of the labour inspector, an entire shift of workers was sent to a different part of a building and locked in a closed for an hour;
- unpaid wages or irregular payments,
- unpaid holiday pay or forcing workers to give up holiday pay,
- overtime work over daily, monthly and yearly limits, which is not paid as overtime work,
- pay cuts without workers’ consent (a so called “recession tax”),
- work-related injuries not reported, while injured workers are deregistered from insurance scheme, and sent to their country of origin without compensation for sick leave or any compensation,
- borrowing of workers between employment agencies to avoid permanent employment of workers,
- employment of migrant workers without medical examination, without passed exams on health and safety at work,
- health and safety equipment not provided to workers,
- Forging workers’ signatures on contracts or agreements on the termination of employment, and deregistering of workers from insurance schemes,
- the recruitment of workers by the empty promises and sending them as seconded workers to sites in Western European countries, particularly Germany, where they work well over 200 hours per month, without proper contracts of employment. They work for much lower hourly rates than those in the receiving State, without payroll contributions paid and at the end even without a salary, while being charged significant sums for sleeping in containers and without the basic conditions ;

- cases when the relationship between the employer and the workers could be considered as modern-day slavery : the employer also provides accommodation to workers, holds their passports, has control of their mail, the workers let the employer to take care of their personal work permits and maintain such relationships even after acquiring personal work permits (although that enables them to seek work with other employers) as they do not wish to offend the employer – in hope the employer will pay their missing salaries, despite repeated incidents of non-payment and other violations of workers' rights ;
- A case of expression of religion as ground for extraordinary termination of the employment contract: in the reasoning of extraordinary termination the employer stated that the employee is not following employer's orders and he 'only listens to Allah'. The true reason behind the termination was the employee's injury at work and the employer wished to get rid of the worker. Unfortunately the worker did not wish to report this to the Labour Inspectorate or file a lawsuit before the Labour court and wrongful termination was never officially determined.

### **3.6 Economic sectors**

While official data are not available, Slovenian Association of Free Trade Unions (*Zveza svobodnih sindikatov Slovenije*), Slovene Philanthropy (*Slovenska filantropija*) and the Focal point for migrants (*Info točka za tujce*) report that the majority of male workers seeking help are employed in construction, manufacturing, food service and printing plants. Female workers are mostly employed in cleaning services and manufacturing.

This information corresponds to the official data of the beginning of 2010, when most persons in employment who were born abroad were employed in construction (28%) and manufacturing (21.5%); some 41% of all foreign-born men in employment were in the construction industry, while slightly more than 21% were employed in manufacturing; 22.4% of foreign-born women were employed in manufacturing, followed by health and social care services (13.4%).<sup>48</sup>

The above mentioned organisations also pointed out cases of sportsmen who were members of their national teams and signed contracts with sports clubs in Slovenia, receiving payment of only 500 EUR per month.

The Focal point for migrants (*Info točka za tujce*) also expressed concern about migrant women who came to Slovenia as waitresses and dancers in night clubs but were then exploited for prostitution by their so-called employers, who also took away their documents. With clear signs of trafficking in human beings, the police were informed, however control in this field is insufficient.<sup>49</sup>

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<sup>48</sup> Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*), [www.stat.si/eng/novica\\_prikazi.aspx?id=4345](http://www.stat.si/eng/novica_prikazi.aspx?id=4345), accessed 3 September 2013.

<sup>49</sup> Author's interview with representatives of the Focal point for migrants (*Info točka za tujce*), 2 September 2013.

## 4. Tackling the challenges

### 4.1 Public policies

The 2010 Labour Market Regulation Act (*Zakon o urejanju trga dela*) provides for active employment policy, which is the main national instrument designed to facilitate inclusion of unemployed persons into the labour market, mostly implemented and funded by the Employment Service of the Republic of Slovenia (*Zavod za zaposlovanje*).<sup>50</sup> The policy consists of a number of measures for increasing employment of persons in the labour market and competitiveness and flexibility of employers. Measures include training and education, stimulations for employment, creation of jobs and stimulation of self-employment. On the basis of the law, the Government then adopts guidelines and plans for implementation of active employment policy measures. For each measure target groups are determined (for 2014 there are measures, among other groups, targeting members of ethnic minorities, members of Roma community, migrants, refugees, women, people with disabilities and people that are over 50 years old, etc.). Employers to be included in the active employment policy are selected on the basis of a public call. In June 2012 a public call 'Employ.me 4-2012' (*Zaposli.me 4-12*) was published.<sup>51</sup> The aim of the call was to ensure employment of 5,108 target group unemployed persons for the minimum period of 12 months, out of which at least 55 % should be women; members of the Roma community were among the target groups.

The Roma community is included in the measures of the active employment policy on the basis of the National programme of measures for Roma of the Government of the Republic of Slovenia for the period 2010-2015 (*Nacionalni program ukrepov za Rome Vlade Republike Slovenije za obdobje 2010-2015*).<sup>52</sup> The national programme of measures defines two main measures aimed at improving the employment situation of the Roma – in addition to their intensive inclusion in Active employment policy measures, also providing for equal opportunities in the labour market and promotion of social inclusion for members of Roma community.<sup>53</sup> Most of the Roma take part in programmes of institutional training and formal education (mostly programmes giving them opportunity to complete elementary schooling) and in programmes of public works. In 2007, 2008 and 2009 altogether 2,147 Roma persons were included in the Active employment policy measures.<sup>54</sup> However, there are some critiques that inclusion in the Active employment policies is not success in itself if that does not lead to actual employment of Roma and that the measures lack clear and effective action tackling prejudice, which is the element that mostly influences the decision of the employer not to hire a Roma person.<sup>55</sup>

In the scope of the Employment Service of Slovenia (*Zavod Republike Slovenije za zaposlovanje*) the Focal point for migrants is operating. The Focal point is providing information on legal remedies and

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<sup>50</sup> Labour market regulation act (*Zakon o urejanju trga dela*), 28 September 2010.

<sup>51</sup> Employment Service of Slovenia, [http://www.ess.gov.si/\\_files/3859/Zaposli\\_me\\_2012\\_Povabilo.pdf](http://www.ess.gov.si/_files/3859/Zaposli_me_2012_Povabilo.pdf), accessed on 10 September 2013.

<sup>52</sup> Government of the Republic of Slovenia (*Vlada Republike Slovenije*), *Nacionalni program ukrepov za Rome Vlade Republike Slovenije za obdobje 2010-2015*, Vlada Republike Slovenije, Ljubljana, 2013.

<sup>53</sup> Ibid.

<sup>54</sup> Government of the Republic of Slovenia (*Vlada Republike Slovenije*), *Poročilo o položaju romske skupnosti v Sloveniji: poročilo o izvajanju Zakona o romski skupnosti v Republiki Sloveniji*, Ljubljana, Vlada Republike Slovenije, 2010, p.17, available at: [www.mnz.gov.si/fileadmin/mnz.gov.si/pageuploads/SOJ/word/7-10-POROCILO\\_o\\_položaju\\_romske\\_skupnosti\\_v\\_RS.pdf](http://www.mnz.gov.si/fileadmin/mnz.gov.si/pageuploads/SOJ/word/7-10-POROCILO_o_položaju_romske_skupnosti_v_RS.pdf).

<sup>55</sup> Author's interview with Darko Rudaš (President of the Forum of Roma counsellors), 20 January 2014.

competent institutions, offering help to migrants when reporting violations to the labour inspectorate, accompanying migrants to different institutions in order to facilitate communication, cooperation with trade unions when reporting possible crime offences to the police, facilitation of communication with the employer, etc.<sup>56</sup> Due to a broader approach to issues of migrants, the operation of the Focal point for migrants can be considered as an example of good practice, particularly since it allows communication in a language that each migrant understands best.

On the basis of the Labour Market Regulation Act (*Zakon o urejanju trga dela*) the Employment Service keeps a record of employers, who were issued a final decision of the Labour Inspectorate, finding violations of the work code - including the provisions prohibiting discrimination and harassment.<sup>57</sup> In case such employers advertise an open job position, the Employment service is not obliged to refer workers to them. In order for an employer to be included in the list, first a report to the labour inspectorate is required. If the inspectorate finds violations of the work code, it informs the Employment Service. The problem is that reports of violations are not sufficient and the records of violators are therefore incomplete.<sup>58</sup> The level of legal certainty in this field is very low and the law is often circumvented, the employers included in the list simply open new companies and continue with violations of workers' rights; cases were also recorded when the Employment Service referred workers to employers with closed or blocked bank accounts, which are signs that the employers are not operating in accordance with the law.<sup>59</sup>

## 4.2 Access to effective remedies

### 4.2.1 Judicial remedies

Labour and social courts (*delovna in socialna sodišča*) deal with matters of labour and social law, i.e. disputes deriving from employment relations, social security, health insurance, disability and pension insurance etc. The procedure before Labour and Social Courts is regulated by the Labour and Social Courts Act.<sup>60</sup> The dispute is initiated with a lawsuit filed in the court. Article 200 of the Employment Relationship Act (*Zakon o delovnih razmerjih –ZDR-1*) prescribes the manner in which an employee enforces his or her rights.<sup>61</sup> Should a worker deem that the employer is not fulfilling the obligations arising from the employment relationship or that the employer violates any of the rights arising from employment relationship, the worker has the right to request in writing the employer to abolish the violation and/or fulfils obligations arising from the employment relationship. Should the employer not fulfil obligations arising from the employment relationship and/or not abolish the violation within eight working days upon the receipt of the worker's written request, the worker may request judicial protection before the competent labour court within 30 days from the expiry of the time limit stipulated for the fulfilment of obligations and/ or abolishment of violation by the employer. A worker may request the establishment of illegality of termination of the employment contract, of other modes of termination of the employment contract, and/or of a decision on disciplinary responsibility of the worker within 30 days from the day of the service or the day when he learnt about the violation of the right, before the competent labour court. A job applicant, who has not

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<sup>56</sup> Author's interview with representatives of the Focal point for migrants (*Info točka za tujce*), 2 September 2013.

<sup>57</sup> Employment Service of Slovenia, [http://www.ess.gov.si/iskalci\\_zaposlitve/prosta\\_delovna\\_mesta/delodajalci\\_z\\_negativnimi\\_referencami](http://www.ess.gov.si/iskalci_zaposlitve/prosta_delovna_mesta/delodajalci_z_negativnimi_referencami), accessed 5 September 2013.

<sup>58</sup> Author's interview with representatives of the Focal point for migrants (*Info točka za tujce*), 2 September 2013.

<sup>59</sup> Author's interview with representatives of Slovenian Association of Free Trade Unions, 30 August 2013.

<sup>60</sup> Labour and Social Courts Act (*Zakon o delovnih in socialnih sodiščih*), 19 December 2003 and subsequent modifications.

<sup>61</sup> Employment Relationship Act (*Zakon o delovnih razmerjih*), 5 March 2013.

been chosen, and who thinks that the statutory prohibition of discrimination has been violated in the selection process, may request judicial protection before the competent labour court within 30 days from the receipt of employer's notification.

In Slovenia, there is no *actio popularis* available in the field of discrimination. This means that only a person (natural or legal) who has a legal interest can initiate a case before the labour and social courts. The Advocate of the Principle of Equality does not have the power to initiate a case before a court.

Although the Act Implementing the Principle of Equal Treatment in Article 23 states that non-governmental organizations have the right to take part in judicial and administrative proceedings initiated by alleged victims of discrimination, the rule is not concrete enough to be functional in practice.<sup>62</sup> Therefore general procedural rules, prescribed for a certain type of procedure, apply. In the case of the procedure before labour and social courts, the rules are prescribed by the Labour and Social Courts Act and the Civil Procedure Act. According to Article 199 of the Civil Procedure Act, a third party who has a legal interest can intervene in support of one of the parties at any time until the end of the proceedings.<sup>63</sup> Only in such case an NGO can get involved in the court procedure. In terms of legal representation, in civil procedures the only legal entity that can represent the party to the procedure is a law firm. Individuals who can represent the party are attorneys and lawyers who passed the state legal exam. Before the labour courts legal representation may also be performed by a representative of a trade union who passed the state legal exam and who is employed by the trade union for that purpose. However, these are not legal entities but individuals - NGOs and trade unions cannot represent the victims in courts as legal entities and victims can only be represented by an individual working at or engaged in a trade union or an NGO.

The review of case-law published at the Supreme Court's online database available at [http://www.sodisce.si/znanje/sodna\\_praksa/](http://www.sodisce.si/znanje/sodna_praksa/) showed no relevant case-law on discrimination on the ground of ethnic origin/religion in employment.

The possible reasons why the cases of labour market discrimination are not represented in the case law of the courts are described in section 3.2.: the people do not place trust in the ability of the legal system to provide protection and fear of conflict with the employer and jeopardising their employment - many migrant workers do not react to violations of their rights unless their very existence and when the migrant workers finally decide to report the violations to the inspectorate or file a lawsuit with the Labour court, the elements of discrimination and harassment are not included in their complaints and (direct or indirect) discrimination is not officially found in court decisions.

## 4.2.2 Non-judicial remedies

### 4.2.2.1 Ombudsman or equality body

The Advocate of the Principle of Equality (*Zagovornik načela enakosti*) was established in January 2005 the Advocate of the Principle of Equality (based on Implementation of the Principle of Equal Treatment Act- in order to implement the Directive 2000/43/EC). The Advocate covers all grounds as foreseen by the Implementation of the Principle of Equal Treatment Act (gender, nationality, race or ethnic origin, religious or other belief, disability, age, sexual orientation or any other personal

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<sup>62</sup> Implementation of the Principle of Equal Treatment Act (Zakon o uresničevanju načela enakega obravnavanja), 22 April 2004 and subsequent amendments.

<sup>63</sup> Civil Procedure Act (Zakon o pravdnem postopku), 25 March 1999 and subsequent amendments.

circumstance) in any area of social life. The institute of the Advocate consists of one single civil servant that is nominated by the Government for the period of five years. The primary task is examination of cases, which in practice takes almost all of the Advocate's time, which consequently means there is not much room for other tasks such as necessary promotional and awareness raising activities. There are no legal provisions obligating the Advocate to conduct surveys concerning discrimination which leaves many areas of discrimination unmonitored by the equality body.

The Advocate does not have the power to initiate a case before a court. It also does not have any investigative powers, it can only issue non-binding opinions and cannot ensure enforcement of, or compliance with, its opinions. The only competence that the Advocate has in this respect is that when the recommendations stated in the non-binding opinion of the Advocate are not respected in due time, the Advocate shall send the case to the relevant inspectorate. If the inspectorate also assesses that discrimination took place, it can impose sanctions which are executable.

The Advocate is nominated by the Government for the period of five years. The institution was initially established within the Office for Equal Opportunities (*Urad RS za enake možnosti*). In 2012 the Office was abolished along with 128 other governmental offices and agencies as a part of public administration rationalization due to the economic crisis. The tasks of the Office were transferred to the Ministry of Labour, Family and Social Affairs (*Ministrstvo za delo, družino in socialne zadeve, MDDSZ*) and the Advocate continues the work in the framework of the Ministry. The institution's tasks and powers did not change but the Advocate pointed to the urgency of establishment of an independent specialized body competent for protection against discrimination even before the mentioned change.<sup>64</sup> If the question of independence of the body was a pressing problem when the Advocate was functioning within the governmental office, its position from the independence viewpoint is thus further impaired.

Every year the Advocate prepares a report on his or her work, however, the last annual report was published in 2012 for the year 2011.

In 2011 the Advocate handled 8 cases in the area of employment.<sup>65</sup> There is no information on the grounds for discrimination, however, in general in majority of cases discrimination was on the ground of gender (5 cases out of 33 in 2011); in 2011 there was only once case of discrimination on the ground of ethnic origin, however there is no information on the area of life in which it occurred. The Advocate is noting a decrease of petitions (complaints) related to labour market discrimination and petitions concerning discrimination on the ground of ethnic origin or religion are practically non-existent.<sup>66</sup> The case of a petition concerning discrimination on the ground of ethnic origin in access to employment, handled by the Advocate, was described in Section 3.4 of this report.

The institution of the Human Rights Ombudsman (*Varuh človekovih pravic*) was introduced into the Slovenian constitutional order through the Constitution of the Republic of Slovenia, which was adopted in December 1991. In December 1993, the Slovenian National Assembly adopted the Human Rights Ombudsman Act which lays down powers and jurisdiction and sets out the legal basis for establishing the Ombudsman's office. The institution is acting as a (parliamentarian) Ombudsman, as a national institution for Human Rights that has been accredited at the ICC with B-status since 2000 and as a national preventive mechanism in the Republic of Slovenia in accordance with the Act of Ratification of the Optional Protocol to the Convention against Torture or Other Cruel, Inhuman or

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<sup>64</sup> Advocate of the Principle of Equality (*Zagovornik načela enakosti*), *Annual Report of the Advocate of the Principle of Equality for the Year 2011*, Zagovornik načela enakosti, Ljubljana, 2011.

<sup>65</sup> Ibid., p. 95.

<sup>66</sup> Author's interview with Boštjan Vernik Šetinc (Advocate of the Principle of Equality), 23 August 2013.

Degrading Treatment or Punishment (*Zakon o ratifikaciji Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnjanju*).<sup>67</sup> The Ombudsman is not limited to handling direct violations of human rights and freedoms, protected by the Constitution, but may act in all cases concerning all violations of rights by any public holders of authority. This on the other hand means that the Ombudsman is not competent for violations arising from the private sector. The Ombudsman's basic task is to address individual initiatives in several fields, such as constitutional rights, restrictions of personal liberty, social security, judicial procedures, etc. One of the fields is also the field of discrimination, including discrimination in the field of employment.

In relation to state bodies, the Ombudsman is an autonomous and independent institution. Unlike the Advocate, the Ombudsman's premises are separated from all other state bodies and the institution is a direct budgetary user, meaning that the amount of its funds is determined by the National Assembly upon the proposal of the institution.<sup>68</sup> The Ombudsman has four deputy ombudsmen and is supported by the expert service and the service of the general secretary.

The Ombudsman publishes annual reports on the work of the institution, which include the findings concerning each area of its work, related recommendations and descriptions of selected cases handled – the Ombudsman does not publish the information on the outcome in all individual cases (including discrimination), but only in a few selected cases that are presented in the annual report. In 2012 the Ombudsman received 65 discrimination-related petitions, out of which 17 allege discrimination on the ground of ethnic origin and three (3) allege labour market discrimination. Information on initiatives concerning discrimination on the ground of ethnic origin in access to employment, handled by the Ombudsman, was described in Section 3.4 of this report.

#### **4.2.2.2 Mediation or conciliation**

Article 201 of the Employment Relationship Act stipulates the possibility of alternative dispute resolution: employer and employee may within 30 days since the deadline for the employer to abolish the violation and/or fulfil obligations arising from the employment relationship, agree to resolve their dispute by mediation.<sup>69</sup> The mediation must be successfully concluded within 90 days after their agreement. The employee then has the possibility to request judicial protection before the competent labour court within 30 days from the unsuccessfully concluded mediation.

Article 201 also stipulates that with a collective agreement, arbitration may be prescribed as a method of alternative labour disputes resolution.

#### **4.2.2.3 Labour inspectorate**

Article 217 of the Employment Relationship Act (*Zakon o delovnih razmerjih –ZDR-1*) provides for penal provisions for violations of Article 6 (prohibition of discrimination and retaliation), Article 7 (prohibition on sexual and other harassment and bullying at the workplace), Article 27 (equal treatment on the ground of gender) and Article 47 (protecting the worker's dignity at work) of the Employment Relationship Act.<sup>70</sup>

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<sup>67</sup> Act of ratification of the Optional Protocol to the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (*Zakon o ratifikaciji Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnjanju*), 29 September 2006.

<sup>68</sup> Slovenia, The Human Rights Ombudsman Act (*Zakon o varuhu človekovih pravic*), 20 December 1993 and subsequent modifications.

<sup>69</sup> Employment Relationship Act (*Zakon o delovnih razmerjih*), 5 March 2013.

<sup>70</sup> Employment Relationship Act (*Zakon o delovnih razmerjih*), 5 March 2013.

For these violations Article 217 therefore prescribes a fine in the amount between 3,000 and 20,000 EUR which is imposed on an employer - legal entity; a fine between 1,500 and 8,000 EUR which is imposed on an employer who is employing 10 or less workers (smaller employer); a fine between 450 and 1,200 EUR which is imposed on an employer – natural person; a fine between 450 and 2,000 EUR which is imposed on a responsible person of a employer - legal entity.

Article 215 of the Employment Relationship Act stipulates that the supervision over implementation of the provisions of this Act, executive regulations, collective agreements and general acts of an employer, which regulate employment relationships, is exercised by a labour inspectorate in accordance with the provisions, regulating inspection and supervision. In accordance with Article 216 labour inspectorates are also competent for mediation in a dispute between a worker and an employer: Should the employer not fulfil the obligations arising from employment relationship and/or not abolish the violation within eight working days from the receipt of worker's written request, the worker and/or the employer may propose the settlement of the dispute through mediation by a labour inspector.

The Labour Inspectorate of the Republic of Slovenia (*Inšpektorat Republike Slovenije za delo*) does not disaggregate statistical data on cases of discrimination to different grounds of discrimination.<sup>71</sup> In 2012 the Inspectorate detected eight (6) cases of discrimination in access to employment and two (2) cases of discrimination in the workplace. In 2012 the inspectorate determined 60 cases of violation of Article 47 of the Employment Relations Act (obligation to guarantee the working environment without harassment). None of these cases reveal discrimination on the ground of ethnic origin or religion.

## **4.3 Civil society initiatives**

### **4.3.1 Trade Unions**

Slovenian Association of Free Trade Unions (*Zveza svobodnih sindikatov Slovenije*) is a trade union, whose members are also migrant workers. The trade union is not keeping separate registers of migrant worker members as they do not wish to separate them from mainstream policies of the trade union; however their field work experience shows that the membership of the migrant workers is increasing.<sup>72</sup> The trade union offers free legal aid to their members and they are also noting the increase of reports to the labour inspectorate and lawsuits to the labour courts, filed by migrant workers, which was not the case even a few years ago. The trade union was involved in several projects, tackling labour market discrimination. In 2009 the trade union was involved in the preparation of guidelines for employers and trade unions called 'Managing diversity in employment' (Raznolikost v zaposlovanju, Smernice za delodajalce in sindikate).

Together with the NGO Slovene Philanthropy (*Slovenska filantropija*) they are implementing a project called 'Integration package for unemployed migrants, refugees and asylum seekers' (*Integracijski paket za brezposelne migrante, begunce in prosilce za azil*).

The objective of the project is to provide information and counselling through a network of counsellors the majority of which is mostly working on a voluntary basis. The network includes

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<sup>71</sup> Information provided by the Labour Inspectorate upon request

<sup>72</sup> Author's interview with representatives of Slovenian Association of Free Trade Unions, 30 August 2013.

between 30 and 50 people, out of which 10 are lawyers. The project started in May 2011 and will be implemented until December 2013. Between March 2011 and July 2013 the project provided information to 5,085 persons and counselling to 2,187 persons. The counsellors provide a wide range of support to the workers: from facilitating communication with their employers to escorting them to different institutions and help with filing legal remedies with the labour inspectorate and the labour courts. They are also closely cooperating with the Employment Service's Focal point for migrants (*Info točka za tujce*).

The trade union also established cooperation with German trade unions concerning workers that were referred to Germany by Slovenian employers.

#### **4.3.2 NGOs activities**

The activities of NGOs in Slovenia are mostly not tackling discrimination and racism in employment in general but are implementing different projects targeting specific groups.

The Slovene Philanthropy (*Slovenska filantropija*) is implementing different projects concerning migrant workers, undocumented migrants, asylum seekers and refugees. One of their projects is the above described project 'Integration package for unemployed migrants, refugees and asylum seekers' (*Integracijski paket za brezposelne migrante, begunce in prosilce za azil*), which they are implementing together with Slovenian Association of Free Trade Unions (*Zveza svobodnih sindikatov Slovenije*) (see section 4.3.1).

There are also other NGOs implementing projects targeting migrants and asylum seekers such as Association for Development of Preventive and Volunteer Work (Društvo za razvijanje prostovoljnega dela) and Centre Institute for African Studies (*Inštitut za afriške študije*).

Association for Development of Preventive and Volunteer Work (Društvo za razvijanje prostovoljnega dela) is also carrying out programs for social integration of Roma, including computer courses.<sup>73</sup>

#### **4.3.3 Employers' organisations**

Chamber of Commerce and Industry of Slovenia (*Gospodarska Zbornica Slovenije*) is providing seminars in the field of labour market discrimination and racism and workplace mobbing.<sup>74</sup> The Chamber is also the associate partner of the project 'Integration package for unemployed migrants, refugees and asylum seekers' (*Integracijski paket za brezposelne migrante, begunce in prosilce za azil*), implemented by the Slovenian Association of Free Trade Unions (*Zveza svobodnih sindikatov Slovenije*) and the Slovene Philanthropy (*Slovenska filantropija*) (see section 4.3.1).

#### **4.3.4 Other civil society initiatives**

Regional Agency for Development Mura (Regionalna razvojna agencija Mura), which is a corporate entity, is implementing the project called 'Roma house' (*Romska hiša*). The project was selected based on the public call for funding by the Ministry of Labour, Family and Social Affairs, based on the national Operational Programme for Human Resources Development. The project is composed of four main types of activities: training for 100 Roma individuals willing to enter the labour market; organisation of workshops targeting the Roma councillors to facilitate improved representation of

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<sup>73</sup> Association for Development of Preventive and Volunteer Work, website: <http://www.drpdn.si/program.html>

<sup>74</sup> Chamber of Commerce and Industry of Slovenia (*Gospodarska Zbornica Slovenije*), <http://www.gzs.si/slo/>, Accessed 6 September 2013.

the Roma interests in the political arena, including with a view to equal opportunities in the labour market; establishment of a Roma academic network which shall enable contacts between students of the University of Ljubljana (*Univerza v Ljubljani*) and Roma activists and representatives with the aim to increase social capital of the Roma; and the fourth is focused on establishing the Roma agency for development – for that purpose the project is training a team of five Roma persons that first prepared a strategy for the development of the Roma community in the Pomurje region.<sup>75</sup>

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<sup>75</sup> Romano kher, Project website: [www.romsvet.si/sl-si/romano-kher](http://www.romsvet.si/sl-si/romano-kher).

## **5. Conclusions and recommendations**

### **5.1 Political and societal developments related to racism and discrimination**

In 2011 the Criminal Code was amended.<sup>76</sup> The amendments, which entered into force in May 2012, included changes of Article 297, stipulating the criminal offence of public incitement to hatred, violence and intolerance. This amendment is directly related to the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law;<sup>77</sup> according to the then Ministry of Justice, changes have been adopted in order to follow more closely the wording of the Framework Decision and to further specify the definition of the criminal offence. The amendments penalise such incidents only if committed in a manner that may endanger or disturb public order and peace, or with the use of threats, abuses or insults.

In October 2012 the Act amending the International protection act was adopted and entered into force in November 2012.<sup>78</sup> In spite of criticism by NGOs working in the field of asylum and migration over its reliability and ethical impact,<sup>79</sup> amendments allowed the procedure of age assessment of unaccompanied minors. According to Article 44a of the act, the asylum authorities may order a review to determine the age of an unaccompanied minor when examining their application for international protection (i.e. asylum application). This procedure is carried out by a medical expert. Unaccompanied minors and their legal representatives must be notified in writing of the possibility of the age assessment procedure, the method of examination and possible consequences of the outcome of the review in relation to the processing of the asylum claim application, as well as on the consequences of unjustified refusal of such a review. In accordance with the law, the age assessment is only possible upon written consent by both the applicant and his/her legal representative. If the age assessment does not provide conclusive evidence (if there is still a doubt concerning applicant's age), the applicant will be considered a minor for the purpose of the international protection (i.e. asylum) procedure. However, if a minor and their legal representative decline their consent to age assessment procedure for unjustified reasons, the minor shall be observed as an adult during the asylum procedure.<sup>80</sup> The government also adopted the Rules amending the Rules on the rights of international protection seekers (*Pravilnik o spremembah Pravilnika o pravicah prosilcev za mednarodno zaščito*) which lowered the financial assistance to asylum seekers accommodated outside the Asylum home for 50%.<sup>81</sup>

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76 Act amending Criminal code (Zakon o spremembah in dopolnitvah Kazenskega zakonika, KZ-1B), 2 November 2011.

77 Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328.

78 Act amending the International protection act (Zakon o spremembah in dopolnitvah Zakona o mednarodni zaščiti, ZMZ-C), 25 October 2012.

79 Amnesty International Slovenije, Jezuitsko združenje za begunce Slovenije, Mirovni inštitut, Pravno-informacijski center nevladnih organizacij – PIC, Slovenska filantropija (2012), 'Izjava nevladnih organizacij ob svetovnem dnevu beguncev: Zaskrbljujoče nižanje standardov na področju mednarodne zaščite', Press release, 15 June 2012, available at: [www.filantropija.org/news.asp?FolderId=147&ContentId=756](http://www.filantropija.org/news.asp?FolderId=147&ContentId=756).

80 Act amending the International protection act (Zakon o spremembah in dopolnitvah Zakona o mednarodni zaščiti, ZMZ-C), 25 October 2012.

81 Rules amending the Rules on the rights of international protection seekers (Pravilnik o spremembah Pravilnika o pravicah prosilcev za mednarodno zaščito), 8 May 2012.

On the basis of the Aliens Act the Decree on manners and scope of providing programmes of support for integration of aliens who are not nationals of the European Union (*Uredba o načinih in obsegu zagotavljanja programov pomoči pri vključevanju tujcev, ki niso državljeni Evropske unije*) entered into force in January 2013.<sup>82</sup> The decree further elaborates beneficiaries and the scope of integration measures targeting migrants: free Slovenian language courses and Slovenian society courses. The courses are now available to non-EU nationals with permanent residence permit and their family members who reside in Slovenia on the basis of temporary residence permit issued for the purpose of family reunion (courses in the duration of 180 hours); non-EU nationals with temporary residence permit valid for at least one year, non-EU nationals who are family members of Slovenian citizens or the EU nationals who reside in Slovenia on the basis of residence permit issued for the purpose of family reunification (180 hours); non-EU nationals with temporary residence permit who have resided in Slovenia for at least 24 months uninterruptedly, and their family members who stay in Slovenia on the basis of temporary residence permit issued for family reunification; non-EU nationals who took part in 60-hour courses and later obtained permanent residence permit, or have resided in Slovenia for at least 24 months uninterruptedly, shall be entitled to further 120 hours of courses. However, compared to previous regulation, the scope of beneficiaries has not changed much.

In 2012, the Slovenian Human Rights Ombudsman produced a special report on living conditions of the Roma residing in south-eastern parts of the country, and submitted it to the National Assembly for consideration.<sup>83</sup> The report was based on the Roma-related cases observed by the Ombudsman. The cases included deprivation of access to safe drinking water in a Roma settlement; residents of a Roma settlement being deprived of the right to social security and healthcare, the right to vote and the right to education (because the relevant local authorities failed to initiate procedure for determination of house number); exclusion of Roma settlements from the relevant spatial plans, and missing the opportunity to take part in a public call intended for purchase of plots of land from non-Roma owners. The Ombudsman also received complaints from non-Roma residents residing in the vicinity to irregular Roma settlements who felt threatened by the actions of members of the Roma community such as acts against their property and disturbance of public order. Based on these initiatives, the Ombudsman established that the situation in the Roma settlements hinders both the exercise of human and special rights of the Roma community as well as the rights of the local non-Roma residents. According to the Ombudsman, several municipalities tend to be inefficient in solving the situation in these settlements as they often wish to transfer their responsibilities to the state authorities. Although identifying that fundamental rights were not guaranteed to the Roma, the Ombudsman, did not explicitly mention ethnic discrimination against the Roma.

In March 2012 the National Assembly (*Državni zbor*) adopted the Act Amending Public Administration Act which abolished the Office for Equal Opportunities (*Urad RS za enake možnosti*) where the Advocate was previously established.<sup>84</sup> The Office was abolished along with 128 other governmental offices and agencies as a part of public administration rationalization due to the economic crisis. The tasks of the Office (promoting equal opportunities and gender equality, coordination of the preparation of legislative proposals related to protection against discrimination, especially regarding the transposition and implementation of the EU non-discrimination provisions) were transferred to the Ministry of Labour, Family and Social Affairs (*Ministrstvo za delo, družino in socialne zadeve, MDDSZ*) and so was its staff, including the Advocate of the Principle of Equality, the

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82 Decree on manners and scope of providing programmes of support for integration of aliens who are not nationals of the European Union (*Uredba o načinih in obsegu zagotavljanja programov pomoči pri vključevanju tujcev, ki niso državljeni Evropske unije*), 13 September 2012.

83 Slovenia, Human Rights Ombudsman (Varuh človekovih pravic), Posebno poročilo o bivanjskih razmerah Romov na področju jugovzhodne Slovenije, Varuh človekovih pravic, Ljubljana, 2012.

84 Amending Public Administration Act (Zakon o spremembah in dopolnitvah Zakona o državni upravi), 19 March 2012.

Slovenian equality body. The Advocate's tasks and powers did not change but the Advocate pointed to the urgency of establishment of an independent specialized body competent for protection against discrimination even before the mentioned change.<sup>85</sup> If the question of independence of the body was a pressing problem when the Advocate was functioning within the governmental office, its position from the independence viewpoint is thus further impaired.

The Advocate of the Principle of Equality called for immediate system of effective protection from discrimination, as discrimination not only remains a structural problem in Slovenia but also systemic problem which is not addressed effectively – there is a collective inability to ensure equal rights and equal opportunities for a particular social group with particular personal circumstances. A lack of effective protection of and support to victims of discrimination is a particularly pronounced issue, and is a result of a lack of independent body for protection against discrimination, while NGOs are not provided with the possibility to support victims of discrimination in demanding procedures.<sup>86</sup>

The issues in this field were also pointed out by the Human Rights Ombudsman, together with the issue of an independent institution for protection and promotion of human rights in accordance with the Paris principles - Slovenia has no national institution that would actively monitor the state of human rights and provide advice to the Government when planning policies and measures in the field of human rights, equally participate within international organisations and research, inform, educate and cooperate at preparation of national reports.<sup>87</sup>

In 2013, discrimination testing was used for the first time in Slovenia in the field of housing. It was carried out by Ekvilib Institute (*Ekvilib inštitut*), an NGO, in co-operation with the Advocate of the Principle of Equality, the national equality body, the Serbian cultural association Danilo Kiš and with Global Institute (Zavod Global). The organisations undertook to check the situation regarding discrimination in the rental housing market. The testing was conducted in May and June 2013 by a small-scale telephone-based action. Apart from ethnic origin/nationality the characteristics of the testers were similar (employment status, income, sex, age between 24 and 47). The testers inquired with the real estate agencies about cheaper apartments (e.g. studio flat, one-bedroom apartment) for singles in the capital of Ljubljana. The exercise focused on the operation of real estate agencies, namely how they treated a non-Slovene person (e.g. with Serbian, Macedonian, African or Latin American name, with accent, with foreign citizenship) compared to a Slovenian counterpart who checked the availability of the same apartment a couple of hours later. Compared to Slovenian testers, unfavourable treatment of non-Slovenian testers was registered in 13 of the 40 cases, whereas almost a half of cases of unfavourable treatment included persons of Macedonian and Serbian origin. The agents, for example, falsely informed the non-Slovenian testers that the apartment was taken, but offered it lately to Slovenian testers. In some cases, they initially refused to provide more details regarding the apartments, but requested to be sent an email or to be called by the testers in very late hours, or claimed that they would call the testers later, but failed to do so.<sup>88</sup>

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<sup>85</sup> Advocate of the Principle of Equality (*Zagovornik načela enakosti*), Annual Report of the Advocate of the Principle of Equality for the Year 2010, Ljubljana, 2011.

<sup>86</sup> Advocate of the Principle of Equality (*Zagovornik načela enakosti*), Annual Report of the Advocate of the Principle of Equality for the Year 2011, Ljubljana, 2012.

<sup>87</sup> Human Rights Ombudsman (*Varuh človekovih pravic*), Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for the Year 2012, Varuh človekovih pravic, Ljubljana, 2013.

<sup>88</sup> Ekvilib inštitut, Advocate of the Principle of Equality (*Zagovornik načela enakosti*), "Rasna diskriminacija na trgu najemnih stanovanj pogosta", Press release, 24 July 2013, available at: [www.zagovornik.net/si/informacije/osvescanje/novice/novica/date/2013/07/24/rasna-diskriminacija-na-trgu-najemnih-stanovanj-pogosta/index.html](http://www.zagovornik.net/si/informacije/osvescanje/novice/novica/date/2013/07/24/rasna-diskriminacija-na-trgu-najemnih-stanovanj-pogosta/index.html).

## **5.2 Conclusions and recommendations**

The main barrier in the field of anti-racism and anti-discrimination in general, which Slovenia urgently needs to address, is the lack of an effective system of protection of and support to victims of discrimination and absence of monitoring of discrimination. This has been continuously pointed out by the institutions such as the Advocate of the Principle of Equality and the Human Rights Ombudsman and the civil society organisations. The lack of data and case-law presents a false image of the incidence of labour market discrimination and racism as experience of the non-governmental sector reflect many violations of worker's rights and incidents in employment.

To conclude, the report offers the following recommendations to tackle discrimination in employment and in general:

- The Government should establish an effective system of protection of victims of discrimination by establishing an independent body for providing effective, independent assistance to victims, conducting independent surveys concerning discrimination, active monitoring of the state of discrimination and planning policies and measures in the field of discrimination - a body that is sufficiently financially supported (a direct budget recipient) and has sufficient staff to perform its tasks;
- The Government should provide for an effective possibility of support in proceedings to victims of discrimination by the non-governmental organisations – by adequately amending the provision of Article 23 of the Act Implementing the Principle of Equal Treatment, so that it will in practice allow non-governmental organizations to have the right to take part in judicial and administrative proceedings initiated by alleged victims of discrimination. The Government should also consider the option of introducing the possibility of *actio popularis* in discrimination cases;
- The Slovenian authorities should further develop the support services, provided by the Employment Service's Focal point for migrants (*Info točka za tujce*) and ensure its constant functioning also in other Slovenian cities; and provide for other awareness-raising activities among workers concerning workers' rights related to protection against labour market discrimination and workers' rights in general;
- the Slovenian authorities and the Employment Service of Slovenia should provide for awareness-raising activities concerning the availability of active employment policy and services provided by the Employment Service of Slovenia;
- The Slovenian authorities should take measures for increasing awareness among administrative employees (at administrative offices and employment service), dealing with groups of workers, more vulnerable to labour market discrimination;
- The Slovenian authorities should strengthen supervision by the labour inspectorate in the field of labour market discrimination and racism by empowering the inspectorate so that they are sufficiently staffed and have sufficient knowledge and skills to detect, investigate and sanction cases of labour market discrimination and racism;
- The Slovenian authorities should make sure that the experience of the organisations working on the ground and identified needs are properly transferred into legislation and policies.

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