



**Illegal Employment of Third-Country Nationals:
2017-2022 Situation Analysis
– contribution of the Slovak Republic**

EMN Study – Questionnaire Form
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EMN activities are focused on topics related to migration of third-country nationals. The activities are implemented through national contact points in the EMN Member (EU Member States except Denmark) and Observer Countries (Norway, Georgia, Moldova, Ukraine, Montenegro, Armenia, Serbia) in coordination with the European Commission (Directorate-General for Migration and Home Affairs).

Elaboration of the study was conducted by the International Organization for Migration (IOM) Bratislava as the coordinator of the EMN National Contact Point for the Slovak Republic. The Slovak EMN National Contact Point comprises of the Ministry of Interior of the Slovak Republic (the Bureau of Border and Foreign Police of the Police Force Presidium, the Migration Office, the Department of Foreign and European Affairs of the Office of the Minister of Interior), the Ministry of Labour, Social Affairs and Family of the Slovak Republic (the Department of International Relations and European Affairs), the Statistical Office of the Slovak Republic (the Section of Social Statistics and Demography) and IOM.

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Preface

The aim of the study is to provide a descriptive overview of the situation of illegal employment in the EU, as well as in some EMN observer countries. It will enable national politicians and EU policy makers to better understand the approaches adopted by EMN Member and Observer Countries regarding various aspects of illegal employment of third-country nationals. In addition, the study provides insight into the extent of illegal employment of third-country nationals in the EU and the sectors affected. The study summarises how this issue is legislatively, institutionally and methodologically anchored and addressed, what tools are used to prevent it and where room for improvement for the future can be observed, as well as existing good practice or positive experiences that can be passed on.

Methodologically, the study is based on the analysis and summarization of available legislation, statistical data and information contained in information documents, as well as the analysis of other strategic documents, available literature, the author's own knowledge and information obtained by interviewing representatives of relevant institutions (National Labour Inspectorate). The information provided in the study is also based on the results of inspection activities carried out in the monitored period by labour inspectorates, the Central Office of Labour, Social Affairs and Family and the offices of labour, social affairs and family. The report also contains information from state administration bodies that cooperate with inspection bodies in the performance of inspections of illegal employment, namely the Border and Foreign Police Office of the Presidium of the Police Force and the regional directorates of the Police Force. The study also builds on previous outputs of the European Migration Network (EMN) on this topic¹.

Based on the questionnaire form of studies from EMN Member and Observer States, the European Commission prepares a synthesis report with key findings. The questionnaire form of the study for the Slovak Republic, as well as the synthesis report, are available on the Slovak EMN National Contact Point website www.emn.sk.

¹ In particular, the EMN study Illegal Employment of Third-Country Nationals (2017). Available at https://home-affairs.ec.europa.eu/system/files/2020-09/00_eu_illegal_employment_synthesis_report_final_en_0.pdf (consulted on 8/12/2023).

List of Abbreviations

BBFP PFP – Bureau of Border and Foreign Police of the Police Force Presidium
COM – European Commission
ELA – European Labour Authority
EMN –European Migration Network
ES – Európske spoločenstvo
EU – European Union
IOM – International Organization for Migration
LI – labour inspectorate(s)
MOLSAF – Ministry of Labour, Social Affairs and Family of the Slovak Republic
NLI – National Labour Inspectorate
OLSAF – Office of Labour, social Affairs and Family
SR – Slovak Republic
TCN – third-country national

Summary

The European Migration Network's (EMN) study titled "Illegal Employment of Third-Country Nationals: 2017-2022 Situation Analysis" was selected for preparation by the EMN Steering Board within the EMN's work programme for 2023. The study is for each participating EMN Member and Observer Country prepared based on common specifications – questions provided in the below text. From national studies the European Commission prepares common synthesis report with main findings.

The individual chapters below specifically consider the situation of Ukrainian refugees in the country since the beginning of the war in Ukraine.

The first chapter contains a basic analysis of the scope of the issue of illegal employment of third-country nationals in the Slovak Republic in the period 2017-2022 (with a perspective until 2023), as well as the analysis of policies and strategic documents addressing this issue. This chapter also indicates which legislative changes have been adopted in this respect in the given period.

The area of illegal employment of third-country nationals has undergone certain developments in the period between the years 2017 and 2022. The years 2017 and 2018 were marked by a significant increase in the number of cases of illegally employed third-country nationals, which was reflected even in the, to some extent intensive public debate on this issue.

Furthermore, illegal employment has become the subject of a number of strategic documents of the Slovak Republic, e.g. the Migration Policy of the Slovak Republic: Perspective until the Year 2020. The Action Plan of the Migration Policy: Perspective until the Year 2025, the National Employment Strategy of the Slovak Republic until the Year 2020, etc.

In terms of legislative changes in this area, in particular the changes related to the status of third-country nationals during emergency situations caused by the spreading of COVID-19 and in connection with the mass influx of third-country nationals into the territory of the Slovak Republic caused by the armed conflict in the territory of Ukraine were adopted.

These legislative changes related to the COVID-19 pandemic, legalising in certain cases the stay and performance of work of third-country nationals on the territory of the Slovak Republic, but also the direct impact of the pandemic on the activities of the relevant inspection bodies in the given period, in particular concerning the continued limited number of inspections carried out to check compliance with the ban on illegal employment, have most likely caused that the period of years 2021 and 2022 was marked by a significant decrease in the number of violations of the ban on illegal employment of third-country nationals.

The second chapter offers a summary of the measures aimed at preventing the illegal employment of third-country nationals, as well as an analysis of how risks are assessed in this respect.

The findings of the relevant Slovak inspection authorities show that the most risky sectors in the period of years 2017-2022 were the manufacturing sector, the administrative and support services sector, and the construction sector. These were assessed as risky mainly on the basis of the percentage of detected violations of the ban on illegal employment of the number of natural persons inspected in these sectors.

The risk analysis also identified the violations of the ban on illegal employment in the given period were most frequent among small employers, the so-called micro-enterprises, with 1 to 9 employees. In terms of legal form of entities, "spoločnosti s ručením obmedzeným" (limited liability companies) and self-employed persons were the most risky.

In this context, a number of preventive instruments have been implemented in the SR, aimed both at employers and employees. Examples include the 2020 information campaign aimed at employers and employees alike, the information support provided to both employees and employers, or the cooperation with the relevant trade union body. Special information tools have also been developed in connection with the mass influx of foreigners into the territory of the Slovak Republic caused by the armed conflict in the territory of Ukraine.

The third chapter focuses on the measures that are being taken to address the above-mentioned issues, on the institutions which are working together in this effort and on their cooperation methods.

Between 2017 and 2022, there has been no fundamental change in the activities of the inspection bodies in relation to the checks of violations of the ban on illegal employment of third-country nationals. One of the reasons for this may be the fact that the results of the inspections carried out in this area, which the Slovak Republic reports annually on the basis of Directive 2009/52/EC, show a high proportion of employers checked every year. A more significant change in this area is the loss of competences of the COLSAF and the labour offices to control violations of the ban on illegal employment effective as of 1 January 2023.

The main tools which proved useful when used by the inspection bodies included the performance of planned national and regional tasks, extraordinary (national) tasks, investigations into complaints filed by legal and natural persons, follow-up checks of the implementation of the measures ordered by the inspection authorities, investigations into incidents (accidents at work and occupational diseases) and the cooperation with other bodies.

The cooperation between the labour inspectorates, the COLSAF and the labour offices took place on the basis of the valid legislation, as well as on the basis of mutual agreements, which were also concluded with other relevant institutions, such as the Police Force and the Social Insurance Agency.

The chapter concludes by describing the problematic aspects of the identification of cases of illegal employment in the period under review, but also by providing the cases of good practice. The language barrier hindering communication with illegally employed persons, the creation of complicated and opaque supply chains, the activities of letterbox companies, as well as the insufficient capacities on the side of the control bodies can be considered a problem.

On the other hand, the relatively sophisticated model of cooperation of the inspection bodies with other relevant institutions, such as the Bureau of the Border and Foreign Police or the Social Insurance Agency, can be seen as a positive example.

The fourth chapter is concerned with enforcement tools used by inspection authorities, in particular with what kind of sanctions can be imposed on employers employing third-country nationals. The Slovak Republic uses a comprehensive system of sanctions for employers who breach the ban on illegal employment based on monetary, non-monetary and criminal sanctions. Between 2017 and 2022, there have been no significant changes to this system. The chapter also describes existing disadvantages of sanction tools as well as good practice examples. Disadvantages include enforcing sanctions against entities based outside the territory of the SR. Existence and maintenance of the central public list of subjects who have breached the ban on illegal employment is a good practice example. The information is thus available not only to the relevant state authorities, but also to the public.

The fifth chapter summarizes the status and consequences for employees, third-country nationals who are illegally employed, and distinguishes three categories of them (with both residence and work permit, with residence permit and without work permit, and without both work and residence permit). All the illegally employed third-country nationals risk sanctions and expulsion by competent authorities. The chapter also describes the options and ways in how these persons can defend their rights. This applies mainly to the illegally employed third-country nationals who also stay in the SR illegally: the obligation of Labour Inspectorates to inform them about their right to submit a complaint is enshrined in the legislation. In their case, the additional payments (back payments) will also be applied. The tool was implemented in the Slovak Republic based on the requirements of Article 6 of Directive 2009/52/EC. Third-country nationals can also assert their rights in courts. They have the right to be represented by a legal entity whose activity objective or subject is to protect the rights and interests of third-country nationals.

SECTION 1: NATIONAL LEGAL AND POLICY FRAMEWORK CHANGES ON ILLEGAL EMPLOYMENT IN THE EMN MEMBER OR OBSERVER COUNTRY²

Q1. Is the prevention of illegal employment of third-country nationals a national priority in your EMN Member or Observer Country?³

Yes. In the SR, the priority is the fight against illegal employment as a complex problem which concerns not only third-country nationals but also other groups in the population. In the conditions of the SR, this also includes Slovak citizens.

The fight against illegal employment is addressed in a number of strategic documents of the Slovak Republic. The issue of illegal employment of third-country nationals is specifically addressed in the strategic document Migration Policy of the Slovak Republic: Perspective until the Year 2025. This document is a baseline document and a basis for building a modern, comprehensive and effective governmental policy in all areas of migration. The draft Action Plan of the Migration Policy in the domain of the Ministry of Labour, Social Affairs and Family of the Slovak Republic: Perspective until the Year 2025 was submitted on the basis of the Resolution of the Government of the Slovak Republic No. 496 of 8 September 2021 on the Migration Policy of the Slovak Republic: Perspective until the Year 2025.

The Action Plan of the Migration Policy of the Slovak Republic: Perspective until the Year 2025 was developed into subsequent action plans and its development in the domain of the Ministry of Labour, Social Affairs and Family of the SR includes, inter alia, the following tasks:

- Implementing of preventive action in the area of violation of the ban on illegal employment of foreigners by raising awareness of this phenomenon (as well as that of human smuggling and trafficking in human beings), organisation of information and awareness raising campaigns aimed at selected sectors and groups of foreigners.
- Continuing the cooperation of the National Labour Inspectorate and Labour Inspectorates with the competent branches of the Police Force, in particular with the Bureau of the Border and Foreign and with the Offices of Labour, Social Affairs and Family Offices or the Central Office of Labour, Social Affairs and Family.
- Carrying out preventive checks on compliance with the ban on illegal employment of migrants, with a particular focus on preventing their illegal stay for employment purposes.

Q2. Is there a current or has there been any recent public and/or policy debate (since 2017) regarding illegal employment of third-country nationals in your country (i.e., in Parliament, the media, etc.)?

Yes. In this context, it needs to be pointed out that, in terms of numbers, the number of illegally employed third-country nationals in 2017 totalled up to 1,170 persons (almost 34.6% of the total number of illegally employed persons). Most frequently these were the nationals of Ukraine and Serbia.

Similarly high numbers of illegally employed foreigners were observed in 2018 (the share of cases of illegal employment of foreigners, especially third-country nationals from Serbia and Ukraine, accounted for 43% of the final total of all illegally employed persons).

Compared to the situation in the previous period, there has been a significant change concerning illegal employment of third-country nationals. In 2017 and 2018, the significantly higher numbers of illegally employed third-country nationals and the related individual cases became the subject of public debate and were also reported in the media.⁴

² Since the EMN study on the Illegal Employment of Third-Country Nationals in the EU (2017), https://home-affairs.ec.europa.eu/system/files/2020-09/00_eu_illegal_employment_synthesis_report_final_en_0.pdf (consulted on 8/3/2023).

³ Hereinafter, 'your country.'

⁴ Source: <https://spravy.pravda.sk/svet/clanok/468059-v-ziari-nad-hronom-nelegalne-zamestnavali-piatich-srbov-vyhostili-ich/> (consulted on 02/11/2023).

Source: <https://mynitra.sme.sk/c/22210992/obvinili-skupinu-co-nelegalne-zamestnavala-cudzincov.html> (consulted on 02/11/2023).

Source: <https://www.noviny.sk/krimi/357538-nelegalne-zamestnanych-pribuda-prichadzaju-najma-zo-srbska-a-ukrajiny> (consulted on 02/11/2023).

Between the years of 2017 and 2018 (when the number of illegally employed foreigners on the territory of the Slovak Republic peaked)⁵ and 2022, the total number of illegally employed foreigners, and especially third-country nationals, has decreased significantly.

For example, in 2021, the total number of illegally employed foreigners was 416, including 356 third-country nationals, which represented 23.6% of the total number of illegally employed persons.

In 2022, the number of illegally employed foreigners amounted to 387 persons, of which 295 were third-country nationals, which represented 21% of the total number of illegally employed persons. Similarly to the whole reporting period from 2017 to 2022, also in 2022 the largest group of illegally employed third-country nationals consisted of nationals of Ukraine and Serbia.

Since 2022, public attention has been drawn to the increased influx of Ukrainian nationals caused by the armed conflict happening on the territory of Ukraine and the related refugee crisis. Concrete cases of illegally employed Ukrainian nationals have been sporadically reported by the media⁶, however, the results⁷ of the inspection activities of the labour inspectorates do not indicate that this was a major problem. On the other hand, cases of violations of certain provisions of the Labour Code have been identified in relation to this group. These included, for example, deficiencies related to the formalities of employment contracts, deficiencies related to agreements on work performed outside the scope of employment relationship, deficiencies related to the keeping of records of working hours and deficiencies related to minimum wage entitlements.

Q3. What are the major changes to: a) law, b) policy and c) practice since 2017 regarding illegal employment of third-country nationals in your country?

- a) In terms of legislative changes, an important change in the area of finding and combating illegal work and illegal employment, which took place in 2018, can be mentioned. This change was the amendment to Act No 82/2005 Coll. on Illegal Work and Illegal Employment and on changes and amendments to some acts, as subsequently amended (hereinafter referred to as the "Illegal Labour Act"), effective as of 1 January 2018, which softened the facts of illegal employment consisting in late registration of employees in the Register of insured persons and savers in the old-age pension saving schemes of the Social Insurance Agency.

Effective as of 1 January 2018, illegal employment in this context shall mean the use of dependent work by employees who have an employment relation or a state employment relation established under a special regulation and are not registered in the Register of insured persons and savers in the old-age pension saving scheme within seven days of the expiry of the deadline under a special regulation, i.e. within seven days of the commencement of the performance of work, but at the latest until the commencement of the inspection of illegal work and illegal employment, if the inspection has commenced within seven days of the expiry of the time limit under the special regulation for registration in said Register.

Thus, a situation in which an employer registers their employee no later than seven days after the commencement of their work is no longer considered to constitute illegal employment, unless an inspection of compliance with the ban on illegal employment by the competent inspection bodies is carried out within that period.

In terms of legality of employment of third-country nationals, the amendment to Act No.5/2004 Coll. on Employment Services and on changes and amendments to some acts, as subsequently amended (hereinafter referred to as the "Employment Services Act"), effective as of 1 January 2019, has brought substantial changes.

⁵ Source: National Labour Inspectorate (NLI), Informative reports on finding and combating illegal work and illegal employment for the years 2017 – 2022.

⁶ Source: <https://www.tyzden.sk/spolocnost/84316/podfuk-s-ukrajincom-si-nikto-normalny-neriskne/> (consulted on 02/11/2023).

⁷ This conclusion results from the inspection activities of the labour inspectorate authorities. In this respect, the labour inspectorates e.g. carried out 2 extraordinary nationwide tasks focused on cases of illegal employment of third-country nationals in connection with their mass influx to the territory of the Slovak Republic caused by the armed conflict on the territory of Ukraine in 2022. The first task was implemented in April 2022 and the second one was carried out in October 2022. The results of both tasks show a low number of detected cases of illegal employment of this group. The task carried out in October 2022 identified a number of violations of the Labour Code concerning this group of persons. Source: Interview with JUDr. Lucia Sabová Danková, Labour Inspectorate Košice, Department of Employment Relations, 02/11/2023.

In this context, the expectations concerning the decrease in the number of illegally employed third-country nationals have been fulfilled, as the adoption of legislative measures effective as of 1 January 2019 has positively affected the TCN's legal employment by simplifying the rules of employment of the so-called scarce professions in the districts with the registered unemployment rate lower than 5%; the extension of the possibilities for third-country nationals to enter the labour market through temporary employment agencies in the case of professions with a shortage of labour; the shortening of the time limits for the processing of applications for temporary residence for employment purposes from 90 to 30 days in the case of professions with a shortage of labour; and the elimination of the assessment of an employer regarding the imposition of a fine by the labour inspectorate for violation of working conditions.

Furthermore, in terms of new legislative changes, the changes related to the legalisation of the residence of third-country nationals during the crisis situation caused by the COVID-19 can be mentioned. This concerns, for example, prolongation of the validity of temporary residence, permanent residence or tolerated stay which would otherwise expire during an emergency situation, state of emergency or state of extreme emergency declared in connection with the COVID-19; cases of authorisation granted to a foreigner who has legally entered the territory of the Slovak Republic and has not been granted a residence permit under Act No. 404/2011 Coll. on Residence of Foreigners and on changes and amendments to some acts, as subsequently amended (hereinafter referred to as the "Act on Residence of Foreigners") to reside in the territory of the Slovak Republic until the expiry of one month from the revocation of the emergency situation; and cases of extension of the time limits related to the expiry of the purpose for which the third-country national was granted temporary residence.

A significant impact on the detection of illegal employment was caused in 2022 by the emergency situation related to the mass influx of third-country nationals into the territory of the Slovak Republic caused by the armed conflict in the territory of Ukraine. This situation had a society-wide impact and it had undoubtedly influenced the activities of the relevant control bodies in the given period, in particular as concerns the low number of third-country nationals in relation to whom the ban on illegal employment was violated, especially in relation to particular illegal employment consisting in the absence of a legal status entitling third-country nationals to perform work in the territory of the Slovak Republic. This was inextricably linked to the granting of the so-called temporary protection, which the Slovak Government approved pursuant to Resolution No. 144 of 28 February 2022 concerning the proposal to declare the granting of temporary protection pursuant to Section 29(2) of Act No. 480/2002 Coll. on Asylum and on changes and amendments to some acts, as subsequently amended (hereinafter referred to as the "Asylum Act") to nationals of Ukraine and their family members.

In terms of illegal work and illegal employment, reference can also be made to the legislative changes made in 2022, which had an impact on the number of detected cases of illegal employment of third-country nationals. This can be, for example, the amendment to the Act on Residence of Foreigners related to the validity of temporary residence, permanent residence or tolerated stay permits, which would otherwise expire during an emergency situation declared due to the mass influx of foreigners into the territory of the Slovak Republic caused by the armed conflict in the territory of Ukraine, which is extended until the expiry of two months from the revocation of the emergency situation.

Similarly, in the context of the above-mentioned situation, a legislative change in the Employment Services Act can also be mentioned, in particular the change consisting in the extension of the validity of the confirmation on the possibility to fill the vacancy corresponding to highly qualified employment, the confirmation on the possibility to fill the vacancy and the employment permit, which would otherwise expire during an emergency situation declared due to the mass influx of foreigners into the territory of the Slovak Republic caused by the armed conflict in the territory of Ukraine until the expiry of two months from the revocation of the emergency situation. A change in this respect has also been made in the provision f of Section 54 of the Asylum Act, pursuant to which an applicant who is a national of Ukraine or a family member of a national of Ukraine may, during the emergency situation declared due to the mass influx of foreigners into the territory of the Slovak Republic caused by the armed conflict in the territory of Ukraine, enter into an employment relationship even before the expiry of nine months from the commencement of his/her asylum procedure. For the purposes of this clause the spouse of a national of Ukraine and the parent of a minor child who is a national of Ukraine shall be considered a family member of a national of Ukraine.

- b) Since 2017, the fight against illegal employment has been included in a number of strategic documents of the Slovak Republic. The document which particularly addresses the issue of illegal employment of third-country nationals is the Migration Policy of the Slovak Republic: Perspective until 2020, which sets the basic objectives, pillars and measures to be implemented in Slovakia in the field of migration

and elaborates on various measures in the field of legal migration, integration, emigration of skilled workers, irregular migration, return and combating human trafficking, border protection, international protection, migration and the development and institutional context of the topic.

Migration Policy of the Slovak Republic: Perspective until 2025 was adopted subsequently. It is a core document as well as a point of departure for building a modern, comprehensive and effective governmental policy concerning all areas of migration. The draft Action Plan of the Migration Policy in the domain of the Ministry of Labour, Social Affairs and Family of the Slovak Republic: Perspective until the Year 2025 is submitted on the basis of the Resolution of the Slovak Government No. 496 of 8 September 2021 on the Migration Policy of the Slovak Republic: Perspective until 2025.

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- Continuing the cooperation of the National Labour Inspectorate and Labour Inspectorates with the competent branches of the Police Force, in particular with the Bureau of the Border and Foreign and with the Offices of Labour, Social Affairs and Family Offices or the Central Office of Labour, Social Affairs and Family.
- Carrying out preventive checks on compliance with the ban on illegal employment of migrants, with a particular focus on preventing their illegal stay for employment purposes.

The strategic document Strategy for Labour Mobility of Foreigners until the Year 2020, which aspired to create the first strategic document of the Slovak Republic in the field of regulated labour mobility of foreigners into the Slovak labour market should also be mentioned. Even in this document, illegal employment is identified as a fundamental issue concerning third-country nationals.

Another strategic document that can be mentioned is the National Employment Strategy of the Slovak Republic until the Year 2020, which addressed the achievement of the target set as achieving a 75% employment rate for the population group of 20-64 years of age. To this end, tasks were adopted e.g. in the area of promoting the social economy concept, in particular in relation to the employment of disadvantaged groups of jobseekers. In the document, attention has been paid to improving working conditions, labour protection and work culture, including by reducing illegal employment. The tasks arising from the strategy were meant to ensure an effective response to long-term unemployment, strengthen public employment services, increase the skills of the workforce and coordinate employment policy across ministries. The period from 2017 to 2022 was marked by unprecedented societal changes, which were followed by legislative changes that also affected illegal employment of third-country nationals.

The situation on the labour market in the later years (from 2020 onwards) has been significantly impacted by emergency situations, be it the situation caused by the spreading of COVID-19 disease or the emergency situation related to the armed conflict in Ukraine.

The issue of vulnerable groups of persons who are becoming a target for labour exploitation, forced labour or sexual exploitation are addressed in the National Programme to Combat Trafficking in Human Beings for the Years 2019 – 2023, which aims to combat trafficking in human beings in a comprehensive and effective manner and to create conditions for the provision of support and assistance to victims, including ensuring their protection, protection of their human rights, freedoms and dignity. The programme also includes the task consisting in continuous inspections carried out within the scope of the set system of controls of businesses violating the ban on illegal employment.

- c) As concerns practical changes concerning illegally employed third-country nationals, reference can be made to the information provided in section Q2. It can also be added that since 2023 labour inspection authorities⁸, especially labour inspectorates, are starting to pay more attention to cases of illegal employment in the form of the so-called false trade licenses, where dependent work is performed on the basis of a commercial or civil law relationship.

⁸ Source: National Labour Inspectorate (NLI), Informative reports on finding and combating illegal work and illegal employment for the years 2017 – 2022.

Q4. Please briefly describe and indicate if any new changes are planned to: a) law, b) policy and c) practice in the future.

- a) An amendment to the Act on Residence of Foreigners is in the legislative process (as of October 2023, it is at the stage of evaluation of the inter-ministerial comment procedure), which primarily aims to transpose the new Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, and repealing Council Directive 2009/50/EC (hereinafter referred to as "the Directive") into the national legislation.

As a result of the adoption of the above-mentioned Directive, the draft amendment introduces several changes concerning the residence agenda aimed at increasing the attractiveness of EU blue cards (for highly skilled employment) for the purposes of its use on the labour market of the Slovak Republic.

The changes are expected to take effect in Q1 of 2024.

SECTION 2: PREVENTION MEASURES INTRODUCED

Q5. Does your country monitor specific economic sectors regarding the prevention of illegal employment of third-country nationals?

Yes. Based on the overall results indicated in the annual reports⁹, in the period of years 2017 to 2022 the manufacturing, administrative and support services, and construction sectors can be seen as most risky.

The sectors at risk are monitored and evaluated annually and they are included in the annual reports on finding and combating illegal work and illegal employment, which assess the risk of illegal employment comprehensively, taking into account all violations of the ban on illegal employment.

Q6. Has your country carried out new risk assessments to identify sectors of activity in which the illegal employment of third-country nationals is most concentrated since 2017?

Yes. When carrying out general inspections of illegal employment, labour inspectors focus on the sectors¹⁰ in which the highest number of illegally employed persons was detected in the previous period, as well as on the sectors which were assessed as risky based on the assessment of percentage of detected violations of the ban on illegal employment of the number of natural persons inspected. Complaints from employees, former employees or third parties concerning the cases of violations of the ban on illegal employment by employers at specific workplaces, as well as notifications of the posting of employees in the cross-border services by visiting employers and data from the labour offices' records on the employment of foreigners, including third-country nationals, serve as additional sources of information supporting the selection of the audited entities.

Pursuant to the Act on Illegal Work, the risk of illegal employment of third-country nationals staying in the territory of the Slovak Republic illegally and in violation of a specific regulation (i.e. without a residence permit) is assessed by a inspection authorities (LI, COLSAF or labour offices), which regularly identifies sectors of economic activities (risk sectors) in which illegal employment of third-country nationals is concentrated the most.

The control of illegal employment of third-country nationals is subsequently carried out especially in the risk sectors. These are identified on the basis of the number of detections, by the respective inspection bodies, of illegal employment of third-country nationals who were residing in the Slovak Republic legally, but were illegally employed. The risk identifier is the proportion of detected illegally employed persons of the total number of persons inspected in the given sector. Thus, the inspection authorities regularly assess previous inspection findings in order to identify sectors where the illegal employment of third-country nationals may be most concentrated.

Moreover, the numbers of illegally employed foreigners (EU nationals, third-country nationals without a residence permit and those with a residence permit) categorized according to the SK NACE classification are assessed regularly in the annual Informative reports on finding and combating illegal work and illegal employment published by the NLI, i.e. the risk sectors or the incidence of illegal employment in individual sectors are assessed.

⁹ Source: Informative reports on finding and combating illegal work and illegal employment for the years 2017 – 2022.

¹⁰ Source: NLI.

The NIP also prepares annual information on the number of illegal employment of third-country nationals inspections in each risk sector, on the percentage of inspected entities of the number of employers in each risk sector and on the results of inspections carried out in each risk sector in the previous calendar year.

Q7. What are the profiles of employers (i.e., type of enterprise: small, medium, large; type of industry/sector) that have been found to have engaged in illegal employment schemes of third-country nationals in your country?

According to the findings¹¹ of the inspection bodies, i.e. the labour inspectorates, COLSAF and the labour offices, in the period of years 2017 to 2022 the sectors with the highest occurrence of illegal employment included the construction sector, manufacturing sector, administrative and support service sector, and the wholesale and retail sector. Violations of the ban on illegal employment were most frequent among small employers, the so-called micro-enterprises, with 1 to 9 employees. In terms of legal form of entities, "spoločnosti s ručením obmedzeným" (limited liability companies) and self-employed persons are the most risky.

On the other hand, the least risky in this respect are the mining and quarrying industry, financial and insurance sectors and the electricity, gas, steam and cold air supply sectors. Large employers with more than 250 employees are the least likely to violate the ban on illegal employment.

In terms of the legal qualification of violations of the ban on illegal employment of third-country nationals, the most frequently occurring violation in 2017 was the failure to register or late registration of employees in the Register of insured persons and savers in the old-age pension saving scheme of the Social Insurance Authority. In the period between 2018 and 2021, the most frequent cases concerning third-country nationals were non-compliance with the conditions for their employment under the Act on Employment Services (e.g. absence of an employment permit). In 2022, the most frequent violation in this group was the failure to establish an employment relationship in a written form.

Q8. What measures and/or incentives are in place to

- a) prevent employers from engaging in the illegal employment of third-country nationals
- b) prevent third-country nationals from becoming illegally employed?

For example, awareness raising campaigns, reviews of sectors excluded from employment permits/shortage occupation lists. Please identify developments introduced by national authorities since 2017 and indicate if they target the employer or the third-country national, or both.

a) Measure/incentives for employers	
Information campaigns targeted at employers	<p>On 1 January 2020, the NLI has launched a two-year prevention campaign entitled "Work legally – Work safely"¹², which, in terms of OSH, aims to help prevent accidents and life- and health-threatening incidents in the workplace; while in terms of labour relations, the labour inspectorate focused primarily on preventing illegal employment and combating undeclared work.</p> <p>The campaign, which was marked by the outbreak of the COVID-19 pandemic, planned to disseminate ideas and materials through a variety of tools and channels:</p> <ul style="list-style-type: none">• Press releases and press conferences;• Conferences, seminars and lectures organised, free of charge, by the NLI in cooperation with employers' associations and with the representatives of various trade unions. The following events were planned for 2020: Employment culture (June 2020) Safety culture (22 October 2020) Three expert seminars at regional labour inspectorates (Košice, Banská Bystrica, Nitra) Three seminars organised in cooperation with EU-OSHA• Promotion of the campaign at conferences and seminars organised under the auspices of the NLI (approx. 15 conferences and seminars in 2020);

¹¹ Source: Informative reports on finding and combating illegal work and illegal employment for the years 2017 – 2022.

¹² Source: <https://www.ip.gov.sk/predstavenie-kampane-pracuj-legalne-pracuj-bezpecne/> (consulted on 02/11/2023).

	<ul style="list-style-type: none"> Website of the Labour Inspectorate, Labour Inspectorate's profile on Facebook, Labour Inspectorate's YouTube channel; Expert and promotional articles in specialised journals; Expert discussions in the radio and on the TV; Cooperation with partner institutions, organizations and companies (promotion of the campaign, information sharing activities on websites and on social media, etc.). Presentations on exhibitions and fairs (e.g. JobExpo 2020). <p>International cooperation (e.g. European action week 16. – 20 March 2020, the European Week for Safety and Health at Work (19 – 23 October 2020), prevention materials sharing among the V4 countries).</p>
Information support for employers	Employers can contact the competent labour inspectorates, which provide advice in accordance with the valid legislation, including basic technical information and advice on how to comply with the relevant regulations (including on illegal employment and labour law) as effectively as possible, free of charge. Employers can contact the competent labour inspectorates e.g. by the online form. ¹³
Partnership agreements and initiatives by Social Partners	<p>In 2018, a mutual agreement¹⁴ was signed between the NLI and the Confederation of Trade Unions (KOZ), which extended the forms of cooperation for the identified areas of labour protection to occupational health and safety, labour relations and illegal work and illegal employment.</p> <p>The areas of cooperation concern, in particular, the following:</p> <ul style="list-style-type: none"> legislation – cooperation on legislation drafting; prevention - promotion, awareness raising and media campaign; education – vocational and lifelong learning; sharing of information from various national and international working groups, seminars, conferences and other professional events; absorption of the Structural Funds allocated under relevant operational programmes and recommendations concerning the absorption of these funds.
Obligation of the employer to notify the authorities about employing a TCN	<p>Pursuant to the law¹⁵, the employer is obliged to inform the Labour Office in writing about the commencement and termination of employment of a citizen of a Member State, his/her family members or a third-country national within seven working days from the date of commencement of their employment and within seven working days from the date of termination of their employment.</p> <p>In the case of the employment of a third-country national, the employer is also obliged to attach a copy of the employment contract or of the agreement on work performed outside the employment relationship to the above information.</p> <p>The employer is obliged to request a valid proof of residence or other residence permit pursuant to a special regulation from the third-country national before employing him/her. The employer shall keep a copy of the residence document or other residence authorisation permit for the duration of the third-country national's employment.</p> <p>The employer is obliged to inform the Labour Office in writing if a third-country national who has been granted an employment permit or who has been granted temporary residence for the purpose of employment on the basis of a confirmation on the possibility to fill the vacancy has not started work within seven working days of the date agreed as the date of commencement of employment.</p>
Other measures/incentives for employers	Another preventive activity aimed at employers is the NIP's "Responsible Employer" ¹⁶ programme, which was launched in 2020. The aim of the programme is to support "the introduction of an effective human resources management system and the improvement of working conditions on the side of employers". The prestigious title proves that the awarded employers take "a good care of their employees, working conditions, health and safety at the

¹³ Source: <https://www.ip.gov.sk/chcem-sa-poradit/> (consulted on 02/11/2023).

¹⁴ Source: NLI.

¹⁵ Section 23b par. 2 of Act on Employment Services.

¹⁶ Source: <https://www.ip.gov.sk/program-zodpovedny-zamestavatel/> (consulted on 02/11/2023).

	workplace and compliance with legal obligations”, in particular those pertaining to the area of labour relations and illegal employment.
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b) Measure/incentive for employees	
Information campaigns targeted at employees (potential or current)	<p>On 1 January 2020, the NLI has launched a two-year prevention campaign entitled “Work legally – Work safely”, which, in terms of OSH, aims to help prevent accidents and life- and health-threatening incidents in the workplace; while, in terms of labour relations, the labour inspectorate focused primarily on preventing illegal employment and combating undeclared work.</p> <p>See also the section entitled <i>Information campaigns targeted at employers</i>. The campaign was also aimed at employees, including third-country nationals. An example of a measure implemented under the scope of the “Work legally – Work safely” campaign targeting employees is the translation of information leaflets¹⁷ into selected languages.</p>
Information support for employees from third countries	<p>Employees can contact the competent labour inspectorates, which provide advice in accordance with the valid legislation, including basic technical information and advice on how to comply with the relevant regulations (including on illegal employment and labour law) as effectively as possible, free of charge. Employees can contact the competent labour inspectorates e.g. by the online form¹⁸.</p> <p>Another source of information on employment for third-country nationals is the information published on the website of the MoLSAF SR¹⁹ and on the website of the MIC IOM²⁰, which is co-financed by the EU and by the Ministry of the Interior of the Slovak Republic.</p> <p>In the context of the armed conflict on the territory of Ukraine and the related refugee crisis, in addition to the general information provided to employees as mentioned above, relevant institutions also provide information on the conditions of their stay and work on the territory of the Slovak Republic to Ukrainian citizens.²¹</p>

Q9. What 1) challenges and 2) good practices can be identified in your country in prevention of illegal employment of third-country nationals? Please briefly describe the situation since 2017 and please indicate the source or who has identified the challenges and good practices.

- 1) When it comes to the preventive activities, the main challenges²² are the lack of financial resources for the implementation of more costly information campaigns and the insufficient staff capacity on the side of the inspection bodies dealing with this issue. In this context, the cooperation with the European Labour Authority (ELA), through which a number of international cooperation and national campaigns have been organised on the topic of legal employment of third-country nationals in the context of their posting for the performance of work in the provision of services, as well as on the translation of the information materials in the language of groups of third-country nationals at risk, has proved to be very useful.
- 2) Provision of advice on how to comply, as effectively as possible, with the legislation governing the prohibition of illegal work and illegal employment can be considered a good practice²³ in this area. Labour inspectorates provide free advice on the legislation governing the ban on illegal work and illegal employment to employers, natural persons who are entrepreneurs but not employers, and employees, mainly concentrating on technical information and advice on how to comply with the legislation governing illegal employment.

¹⁷ Source: <https://www.ip.gov.sk/letaky-ku-kampani-pracuj-legalne-pracuj-bezpecne-v-troch-jazykovych-verziach/> (consulted on 02/11/2023).

¹⁸ Source: <https://www.ip.gov.sk/chcem-sa-poradit/> (consulted on 02/11/2023).

¹⁹ Source: <https://www.mpsvr.sk/sk/informacie-cudzincov/zamestnavanie-cudzincov/> (consulted on 02/11/2023).

²⁰ Source: <https://www.mic.iom.sk/sk/praca/zamestnavanie-cudzincov-na-slovensku.html> (consulted on 02/11/2023).

²¹ Source: <https://www.employment.gov.sk/sk/uvodna-stranka/informacie-odidencov-z-ukrajiny/informacie-odidencov-z-ukrajiny.html> (consulted on 02/11/2023).

Source: <https://www.mic.iom.sk/sk/praca/zamestnavanie-cudzincov-na-slovensku.html> (consulted on 02/11/2023).

Source: <https://www.ip.gov.sk/mimoriadna-situacia-na-ukrajine/?ip=nip> (consulted on 02/11/2023)

²²Source: Interview with JUDr. Lucia Sabová Danková, Labour Inspectorate Košice, Department of Employment Relations, 02/11/2023.

²³ Ibid.

SECTION 3: IDENTIFICATION OF ILLEGAL EMPLOYMENT MEASURES IMPLEMENTED

Q10. Have there been developments to improve the identification of illegal employment of third-country nationals taken place in your country since 2017 (e.g., new offices/agencies being introduced, increased number of inspections or other)?

No. In line with the Act on Illegal Work, there have been three inspection bodies which were authorised to control compliance with the ban on illegal work and illegal employment in the period between 2017 and 2022. These were the labour inspectorates, the Central Office of Labour, Social Affairs and Family (COLSAF) and the offices of labour, social affairs and family. Effective as of 1 January 2023, only the labour inspectorates continue to be authorised to act as the inspection body in this area, and this particular competence of the COLSAF and offices of labour, social affairs and family has been withdrawn from them.

Based on the Act No. 125/2006 Coll. on Labour Inspection and on changes and amendments to Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and on changes and amendments to some acts, as subsequently amended (hereinafter referred to as the "Act on Labour Inspection"), the labour inspectorates supervise compliance with the legislation regulating the ban on illegal work and illegal employment as one of the labour inspection authorities.²⁴ Therefore, they exercise their labour inspection duty.

In the period of years 2017 to 2022, the offices of labour, social affairs and family and the Central Office of Labour, Social Affairs and Family carried out inspection activities on the basis of the Act on Employment Services. As concerns the inspection activities in the field of compliance with the ban on illegal employment, they acted pursuant to Act No. 10/1996 Coll. on Control in State Administration, as subsequently amended.

Q11. How many inspections are carried out per year (in absolute numbers and as a percentage of employers for each sector)? See article 14 of Directive 2009/52/EC.

The number of inspections of compliance with the ban on illegal employment is shown in the Table 1 below. The highest number of inspections was recorded in 2018 (a total of 28,223 checks) and the lowest number was recorded in 2020 (13,182 checks).

Table 1 - Overview of statistics on illegal employment inspections in the Slovak Republic for the period of years 2017-2022

	2017	2018	2019	2020	2021	2022
Number of illegally employed natural persons (total)	3,384	2,751	1,791	1,641	1,510	1,410
Number of illegally employed TCNs	1,170	1,170	529	621	356	295
Number of illegally employed EU citizens	95	24	68	105	60	92
Number of illegally employed citizens of the SR	2,119	1,557	1,194	915	1,094	1,023
Number of illegal employment inspections carried out	20,945	28,223	23,891	13,182	17,233	17,637
Number of entities controlled	18,441	24,877	21,478	11,931	15,380	15,757
Number of natural persons controlled	49,093	65,524	56,605	28,482	34,814	34,056

Source: Annexes to the Informative reports on finding and combating illegal work and illegal employment for the years 2017 – 2022.

Table 2 shows the number of administrative proceedings initiated, the number and the sum of sanctions imposed on employers for violations of the ban on illegal employment of third-country nationals who were staying in Slovakia illegally and were performing dependent work. Table 2 also shows the percentage of employers inspected of the total number of employers for each calendar year, in accordance with the information submitted annually by the Slovak Republic pursuant to Directive 2009/52/EC.

²⁴ State administration bodies competent to carry out state administration activities in the field of labour inspection are the Ministry of Labour, Social Affairs and Family of the Slovak Republic, the National Labour Inspectorate and labour inspectorates. The structure of labour inspection bodies is as follows: the MoLSAF manages and controls the NLI and the NLI manages and controls the labour inspectorates, unifies and rationalises the working methods employed by labour inspectors and determines the organisational structure of the labour inspectorates.

Table 2 - Overview of statistics on fines imposed and administrative proceedings initiated under Article 14 of Directive 2009/52/EC in the Slovak Republic for the years 2017-2022

Type of sanction for employers (please fill in)	2017	2018	2019	2020	2021	2022
Fines imposed on employers for illegal employment of illegally staying TCNs	2 Fines amounting to 14,000 EUR	5 Fines amounting to 130,000 EUR	8 Fines amounting to 154,300 EUR	3 Fines amounting to 39,000 EUR	3 Fines amounting to 14,000 EUR	0
Number of administrative proceedings initiated for illegal employment of illegally staying TCNs	28	11	4	6	1	0
Percentage of inspected employers in all sectors	N/A	39.7%	32.5%	19%	25.3%	27.4%

Source: NLI's reports pursuant to the provisions of Section 5a par. 3 of the Act on Illegal Work.

Q12. Have there been measures put in place by your country to ensure that the inspections carried out to detect cases of illegal employment of third-country nationals are effective and adequate?

The main tool for identification of cases of violation of the ban on illegal employment of third-country nationals are labour inspection activities carried out either independently by the labour inspectorates, or the inspections carried out independently by labour offices or the Central Office of Labour, Social Affairs and Family (until 2022), or joint inspections possibly involving the presence of the Police officers.

The labour inspectorates perform labour inspections aimed at controlling compliance with the ban on illegal work and illegal employment within the scope of:

- planned national and regional tasks; as well as
- extraordinary (national) tasks;
- investigations into complaints filed by legal and natural persons;
- follow-up checks of the implementation of the ordered measures;
- investigations into incidents (accidents at work and occupational diseases);
- cooperation with other authorities.²⁵

The control activities of the COLSAF and of the labour offices were focused on the finding and combating illegal work and illegal employment and they were carried out within the scope of:

- focusing of the inspection activities planned for the given calendar year;
- investigations into complaints filed in writing by natural and legal persons;
- investigations into complaints recorded through the free hotline set up at the COLSAF;
- decisions of the Director General of the COLSAF or of directors of the labour offices.

²⁵ Source: The informative report on finding and combating illegal work and illegal employment for the year 2022.

Thus, the labour inspection activities in the given area is carried out as planned national and regional tasks, extraordinary (national) tasks, as a part of the investigations of submissions filed by legal and natural persons, as follow-up checks on the implementation of the measures ordered, as investigations of incidents (accidents at work and occupational diseases) and in the framework of cooperation with other authorities.

Plans of inspection activities were drawn up for each calendar year. In addition to the so-called annual tasks, the inspection bodies also carried out the so-called extraordinary tasks. These can be, for example, the tasks regularly performed by the labour inspectorates, the so-called exchanges between regions, which was an activity aimed at investigating compliance with the ban on illegal employment of third-country nationals when the territorial competence of labour inspectorates was temporarily changed by a decision of the Director General of the NLI on the basis of the act²⁶ and the inspectorates performed tasks falling into the scope of territorial competence of other labour inspectorates.

In particular, the main procedures and relevant tools of the inspection bodies included inspections targeting individual risk sectors. These are monitored and evaluated annually by the NLI on the basis of the results of inspections carried out in the previous periods. The role of the NLI in the evaluation of risk sectors is also based on a specific regulation.

In addition to the above-mentioned method, the audited entities are selected by the labour inspectorates and by the auditing bodies of the labour offices and of the COLSAF within their territorial jurisdiction and on the basis of information available to them from other public authorities; based on the suggestions received; but also on the basis of their own discretion or findings from their own auditing activities.

The labour protection information system (ISOP) is also helpful in the selection of audited entities, as it makes it possible to search the details of previous inspections or previously identified deficiencies. Thus, the inspections may also be carried out in entities that have already been subject to labour inspections in the past.

Q13. Do the national authorities and other relevant organisations cooperate to identify situations of illegal employment of third-country nationals in your country? Has your country introduced any specific cooperation mechanisms since 2017 (i.e., partnerships with IGOs, NGOs or other)?

The relevant institutions involved in the system of control of illegal employment cooperate with each other primarily on the basis of legal mandates, which can also be transformed into mutual cooperation agreements.

The backbone law regulating the cooperation of the inspection bodies is the Act on Illegal Work. Under this law, which was effective until 31 December 2022, the inspection bodies (labour inspectorates, COLSAF and labour offices) were obliged to cooperate and share the necessary information within the scope of their competence among themselves. The authority performing inspection activities under the special regulation is obliged to cooperate with the inspection authorities and provide them with information within the scope of its competence for the purposes of controlling illegal work and illegal employment and fulfilling the obligations under the special regulation.

In addition to the statutory mandate mentioned above, the cooperation between the labour inspectorates, the COLSAF and the labour offices was enshrined in the Agreement on cooperation concluded on 9 January 2013 between the COLSAF and the NLI. This agreement was replaced by a new Agreement on cooperation in the performance of inspections in the area of compliance with the ban on illegal employment, the compliance by employers with the conditions imposed on them by the Act on Employment Services and on the sharing of data from 2020²⁷.

The above-mentioned agreement established a basic framework for cooperation e.g. in the following fields: the cooperation and sharing of information between the COLSAF and the NLI; the defining of strategic objectives in the planning, execution and evaluation of inspections of compliance with the ban on illegal work and illegal employment; cooperation in the development of preventive measures consisting in the organisation of joint information and awareness raising campaigns among the employers with the aim to prevent cases of violations of the ban on illegal work and illegal employment; and in the development of educational and information materials and their subsequent publication on the websites of the parties to the Agreement and on social media; and cooperation in the training of staff carrying out the inspections on

²⁶ Pursuant to Section § 7 par. 1 third sentence of the Act on Labour Inspection: "The Director General may designate in writing a labour inspectorate to carry out the tasks referred to in paragraph 3 also in the district of another labour inspectorate, to the extent stipulated in his/her written assignment; to that extent, the tasks referred to in paragraph 3 shall not be carried out by the labour inspectorate, in whose territorial scope of competence it lies, but by the labour inspectorate designated in the written assignment."

²⁷ Source: <https://www.crz.gov.sk/zmluva/6027266/> (consulted on 02/11/2023).

compliance with the ban on illegal work and illegal employment and in the establishment of key performance targets for inspections on compliance with the ban on illegal work and illegal employment in a comprehensible format.

An important point in the cooperation between the labour inspectorates and the COLSAF was the co-creation of a central publicly accessible list²⁸ of natural and legal persons which had violated the ban on illegal employment in the previous five years, which is administered by the NLI. Effective as of 1 January 2023, this is a publicly accessible list of natural and legal persons on whom sanctions have been imposed for breaching the ban on illegal employment in the period of the last five years.

On the part of the COLSAF, the duties involve mainly the provision of data from the central register of data on the entry into employment and termination of employment of third-country nationals, the issued and cancelled confirmations on the possibility to fill the vacancy corresponding to highly qualified employment, the issued and cancelled confirmations on the possibility to fill the vacancy, on the employment permits granted and withdrawn, and other data.

The cooperation of inspection bodies active in the field of control of illegal employment is regulated by their mutual agreements. In case of the COLSAF it is the Agreement on Cooperation in the Field of Control of Illegal Work and Illegal Employment concluded between the MoI SR and the COLSAF on 10 June 2013; and in the case of the NLI it is the Agreement on the Joint Performance of Inspections of Business Entities²⁹ concluded between the MoI SR and the NLI on 30 December 2013. In addition to the contractually agreed cooperation, the cooperation between these inspection bodies and the Police Force of the SR also happens on an ad-hoc basis. Moreover, under the Act on Labour Inspection the Police Force is also obliged to cooperate with labour inspectors and protect them in carrying out labour inspections upon their request or at the request of the labour inspectorate.

When it comes to the monitoring of compliance with the ban on illegal employment, cooperation with the Social Insurance Agency is also important. Pursuant to valid legislation³⁰, the Social Insurance Agency is obliged to keep a Register of employers and a Register of insured persons and savers in the old-age pension saving scheme, and to keep separate records in the Register of insured persons and savers in the old-age pension saving schemes concerning natural persons in a legal relationship based on agreements on work performed outside the employment relationship and the application of the levy deductible items. Employers are obliged to register their employees in the Register of insured persons and savers in the old-age pension saving schemes.

The Social Insurance Agency and the NLI have concluded a number of agreements on mutual cooperation, based on which mainly the data from the Social Insurance Agency's information system is provided to the labour inspectorates. In the period of years 2017 to 2022 the similar agreement on cooperation was also concluded between the Social Insurance Agency and the COLSAF.

Within the scope of tax administration pursuant to Act No. 563/2009 Coll. on Tax Administration (Tax Code) and on changes and amendments to some acts, as subsequently amended (hereinafter referred to as the "Tax Code"), the Financial Administration is also performing activities during which it obtains various information important for the correct assessment of taxes. For the purposes of the correct assessment of an income tax from dependent activities, or for the purposes of searching for tax subjects who have not fulfilled their registration and notification obligations, the tax authorities also take into account the facts related to the possible occurrence of illegal employment and illegal work. In the event that they discover facts which indicate a breach of legislation concerning labour law and social security law, they shall, taking into account the provisions of Article 11 of the Tax Code - tax secrecy, inform the competent authorities of the facts they have discovered.

During 2022 and 2023, the National Labour Inspectorate ordered³¹ a number of joint controls or controls requesting additional cooperation with the competent institutions aimed at detecting the performance of dependent work by third-country nationals and their subsequent illegal employment.

In addition to the above-mentioned cooperations, the cooperation with the Statistical Office of the Slovak Republic cannot be omitted. Pursuant to valid legislation³² the Statistical Office of the SR is obliged to provide the NLI and the labour inspectorates with free electronic access to the register of economic entities. In carrying out their activities, the state administration bodies acting in the field of labour inspection

²⁸ Source: <https://www.ip.gov.sk/app/registerNZ/> (consulted on 02/11/2023).

²⁹ Source: NLI.

³⁰ Section 226 par. 1 (e) of Act on Social Insurance.

³¹ Source: NLI.

³² Section 18 par. 3 of Act on Labour Inspection.

cooperate with other state administration bodies, municipalities, employee organisations, employers' associations, public institutions and other natural persons and legal entities. Upon the request of the state administration bodies acting in the field of labour inspection, the state administration bodies, municipalities and public institutions shall provide the documents and information necessary for the performance of their activities³³.

Q14. Has your country pursued international/European cooperation initiatives to identify cases of the illegal employment of third-country nationals since 2017 (i.e., cooperation agreements or practises between two or more countries)?

Yes. Signing of the Protocol on Mutual Cooperation in Work and Employment between the Ministry of Labour, Social Affairs and Family of the Slovak Republic and Ministry of Labour, Employment, Veterans Affairs and Social Affairs of the Republic of Serbia³⁴ in 2017 can be seen as an example of international cooperation of the SR in the field of illegal employment of third-country nationals. The aim of this document, among other things, has been to establish cooperation and exchange of information between the relevant institutions of the Republic of Serbia and the Slovak Republic with the aim, inter alia, of suppressing illegal employment.

In the years 2018-2019, a joint assistance project of the European Platform tackling undeclared work at the European Commission (hereinafter referred to as "the Platform")³⁵ was also implemented on the basis of the invitation of the Minister of Labour, Social Affairs and Family of the SR with the aim to support the Slovak Republic in general, and the National Labour Inspectorate in particular, to improve its own functioning through structured and systematic feedback within the specific political, institutional and organisational context in relation to the issue of undeclared work.

In this context, the Platform's experts prepared a synthesis report in 2018 containing findings, guidelines and recommendations to improve practices in the area of monitoring compliance with the ban on illegal employment. The National Labour Inspectorate cooperated with the Ministry and other state administration bodies to continuously implement these recommendations. This was positively perceived during the experts' follow-up visit, as well as in the Final Progress Report on the implementation of the recommendations, which was delivered to the National Labour Inspectorate in October 2019.

The Platform's recommendations stressed the need to establish a coordinating body composed of government institutions (ministries and their subordinate state agencies) and social partners to prepare a national strategic plan to combat undeclared work (a so-called holistic strategy).

Although the concept of undeclared work is not clearly defined in the Slovak Republic, in reality it has a significant impact on society, be it in the form of payment of parts of wages as "cash in hand", the keeping of inadequate records of working hours, or forcing employees to perform dependent work as sole traders, which results in the failure to pay the appropriate amounts of taxes and levies to the relevant institutions. In this context, it would seem appropriate to introduce legislation facilitating easier detection of such forms of undeclared work by the inspection authorities.

In a European context, undeclared work means any paid activity that is legal by nature but is not declared to relevant public authorities, taking into account the differences in Member States' regulatory systems.

Platform representatives pointed out the need for more frequent and more regular collection and analysis of the data on undeclared work available to the various state authorities within their scope of competence, as well as the need to develop a method for the assessment of undeclared work risk and identification of risk entities in order to effectively target future checks and labour inspections.

The Platform's recommendations also put particular emphasis on the need to change key performance indicators while taking into consideration the contribution of the illegal employment inspections, which can be expected to have a positive impact on the fulfilment of the social security system's levy obligations.

The Platform's key recommendations also include a change in the approach adopted by the authorities enforcing the ban on illegal employment in the context of undeclared employment, by transforming the authorities which are primarily focused on deterrence of perpetrators through the imposition of sanctions into authorities more oriented towards prevention of illegal employment and protecting the individual rights of employees. To this end, it was recommended that awareness-raising materials be produced and disseminated, presenting the advantages of legal work and the disadvantages of illegal activities.

³³ Section 18 par. 4 of Act on Labour Inspection.

³⁴ Source: NLI.

³⁵ Source: The informative report on finding and combating illegal work and illegal employment for the year 2019.

Q15. What 1) challenges and 2) good practices can be identified in your country in the area of the identification of illegal employment of third-country nationals since 2017?

- 1) The language barrier undoubtedly ranks among the biggest obstacles³⁶ to identifying violations of the ban on illegal employment of third-country nationals. This particularly concerns the difficulties in communicating between the inspectors and the employee and the subsequent drawing up of official records of the performance of such inspections.

The inspection authorities have also identified the problem represented by sophisticated employment schemes³⁷ involving third-country nationals who are moved by a chain of various entities on their way to the final recipient of their services or work in Slovakia. This has subsequently caused complications in identification of the accountable entities.

Another problem that can be encountered in case of employment of third-country nationals are problems in communicating with the employers if the seat of the employer is outside the territory of the SR. This is the case, for example, when third-country nationals are posted from another EU Member State, especially if the employer shows signs of a letterbox company.

In addition to the above-mentioned obstacles, the lack of members of staff of the inspection authorities who are handling these issues can also be considered a problem, since the enforcement of the ban on illegal employment is only one of a number of areas that the relevant inspection bodies in charge deal with.

- 2) With regard to the examples of good practice³⁸ concerning procedures for detecting violations of the ban on the illegal employment of third-country nationals, reference can be made to cooperation between the inspection authorities and other institutions. Especially positive is the cooperation with Foreign Police officers, who are particularly helpful in checking the validity of residence permits. Cooperation with the Social Insurance Agency, which mainly provided the information on the registration of employees in relevant registers, should not be overlooked, too. This information is available to the inspection bodies on-line through the specially established access to the system of electronic services operated by the Social Insurance Agency.

SECTION 4: SANCTIONS FOR EMPLOYERS INTRODUCED

Q16. Has your country amended legislation on sanctions to employers for illegally employing third-country nationals since 2017?

No. There were no changes in the legislation related to the sanctions for illegal employment of third-country nationals. There are three kinds of existing sanctions for employers: monetary, non-monetary and criminal.

The monetary sanctions include the right (and obligation) of illegal employment inspection authorities (COLSAF and Labour Offices by 31 December 2022 and the Labour Inspectorate) to impose a fine on the employer (legal entity) or a natural person if they breach the ban on illegal employment as set out in the Act on Illegal Work amounting to €2,000 – €200,000; if the number of illegal employees in question is two or more, the minimum fine is €5,000.

The existing non-monetary sanctions include maintaining a centralized public list of natural persons and legal entities who have breached the ban on illegal employment in the last five years; it provides their business name, place of business of natural person/seat of legal entity, identification number, and the dates on which the breach was detected, as well as when the decision on imposing the fine entered into force. As of 1 January 2023, there has been a change in maintaining the list. The imposition of the fine for breaching the ban on illegal employment has become the decisive fact for entry and duration of the entry in the list.

In relation to being included in the above mentioned list, the Labour Inspectorate used to issue a confirmation that as of the day of the request, there was no violation of the ban on illegal employment detected. The confirmation was issued upon request, within seven days from submitting the request and in order to prove the fulfilment of the conditions under a specific regulation (e.g. Act No. 523/2004 Coll. on Budget Rules of the Public Service and on changes and amendments to some acts, as amended or the

³⁶ Source: Interview with JUDr. Lucia Sabová Danková, Labour Inspectorate Košice, Department of Employment Relations, 02/11/2023.

³⁷ Source: The informative report on finding and combating illegal work and illegal employment for the year 2019.

³⁸ Source: Interview with JUDr. Lucia Sabová Danková, Labour Inspectorate Košice, Department of Employment Relations, 02/11/2023.

Act No. 528/2005 Coll. on Assistance and Support from the European Community Funds, as amended). As of 1 January 2023, this changed to the confirmation that no legally imposed fine for breaching the ban on illegal employment has been imposed on the natural person or legal entity in question.

The confirmation (information) is necessary for the provision of subsidies from the State Budget or the assistance and support from the European Community Funds, or in order to be able to participate in public procurement.

In compliance with Section 3 Par. 3 of Act on Illegal Work, repeated breach of the ban on illegal employment is considered an especially serious violation of this Act, based on which the trading licence might be withdrawn from the offender. For these purposes, the Labour Inspectorate had the right to notify the respective Trade Licensing Office about repeated breach of the ban on illegal employment.

As for the criminal sanctions, the following provisions of the Criminal Code are relevant: Section 251a Paragraph 1 of the Criminal Code, which stipulates that whoever illegally employs a person staying in the SR in violation of a generally binding regulation, although they were punished for a similar act in the last 24 months, will be punished by imprisonment for up to two years.

The offender shall be liable to a term of imprisonment of six months to three years, if they illegally employ a person who stays in the territory of the SR in violation of a generally binding legal regulation regardless of whether the offender has already been penalized for a similar action: if the victim of the crime is a protected person or if acting in a more serious manner occurred; if there is an obvious disproportion between the working conditions of legally employed persons and those of the victim that impacts their health and safety and is contrary to human dignity; or if the victim has been subjected to human trafficking.

Q17. What 1) challenges and 2) good practices can be identified in your country in the area of sanctioning employers for illegal employment of third-country nationals since 2017?

Please briefly describe the situation since 2017 and please indicate the source or who has identified the challenges and good practices.

- 1) As for the challenges³⁹ related to sanctioning employers for breaching the ban on illegal employment of third-country nationals, the complications related to imposing – and, in particular, enforcing – the sanctions on entities based outside of the SR are the most prominent. This concerns, for example, the cases of illegal employment of employees posted from other EU Member States. It is not possible to address them within the existing national⁴⁰ and European legislation.
- 2) From best practices perspectives⁴¹ we might underline the effective and comprehensive system of sanctions for breaching the ban on illegal employment in the Slovak Republic. The centralized public list of natural persons and legal entities who have breached the ban on illegal employment in the last five years can be considered one such example. The list offers a comprehensive database of illegal employers not only to the public, but also to relevant state institutions, which use this information as a precondition for the provision of various benefits from State Budget, European resources, access to public procurement etc.

SECTION 5: OUTCOMES FOR THIRD-COUNTRY NATIONALS

Q18. If a situation of illegal employment is detected, please describe the outcome (regularisation, detention, return, other) that applies to the following categories of employees:

- a) third-country nationals with a residence permit and a work permit.
- b) third-country nationals with a residence permit but without a work permit.
- c) third-country nationals without a residence permit and a work permit.

The following applies to all three of the above situations: In the Slovak Republic, all of the above situations (apart from the cases when a third-country national proves at the check that they hold a valid residence

³⁹ Source: Interview with JUDr. Lucia Sabová Danková, Labour Inspectorate Košice, Department of Employment Relations, 2 November 2023.

⁴⁰ Act No. 351/2015 Coll. on Cross-Border Co-Operation in the Posting of Workers for the Performance of Works and on the amendment of certain laws, as amended.

⁴¹ Interview with JUDr. Lucia Sabová Danková, Labour Inspectorate Košice, Department of Employment Relations, 2 November 2023.

permit for the purposes of employment or that they meet one of the criteria for legal employment set out in the text below) are considered a breach of the ban on illegal employment.

Termination of authorised residence and work:

Pursuant to Section 59, Paragraph 3 of the Labour Code, an employment relation of a foreigner or a stateless person shall terminate, unless terminated by other means, upon the day their residency within the territory of the Slovak Republic is due to terminate pursuant to an executable ruling on the forfeiture of residence permit, a verdict imposing the sentence of expulsion from the territory of the Slovak Republic on such person enters into force or upon the day of expiration of the period for which the residence permit on the territory of the Slovak Republic was issued.

According to Act on Employment Services, the employer can only employ a third-country national, who is a holder of the EU Blue Card; who has been granted temporary residence for the purposes of employment based on the confirmation of the possibility to fill a vacancy; who has a work permit and has been granted temporary residence for the purpose of employment, unless a special regulation sets out otherwise; who has been granted a work permit and temporary residence for the purpose of family reunification; who has been granted a work permit and temporary residence of a third-country national with the status of long-term resident of an EU Member State, unless a special regulation sets out otherwise; or if they meet the requirements provided in Section 23a of the Act.

If any of the aforementioned residence permits was terminated or the Blue Card expires, the third-country national cannot be employed anymore. According to the Act on Residence of Foreigners, the competent Police department notifies the employer on the termination of temporary residence (for the purpose of employment, family reunification or temporary residence of a third-country national, who has been granted the status of a long-term resident of a different member state) or Blue Card within three working days. By the same deadline, the competent Police department notifies also COLSAF (in the case of Blue Card expiration) and the competent Labour Office (in the case one of the types of temporary residence expires).

According to Section 82 (2), Letter o) of Act on Residence of Foreigners, a Police department can administratively expel a third-country national, if they otherwise seriously or repeatedly breached generally binding legal regulations.

If an illegally employed third-country national without a residence permit is identified during an inspection, the illegality must be proved later, as only a suspicion of illegal employment arises at the place of inspection. The competent LI, Labour Office or COLSAF (Labour Offices and the Central Office of Labour, Social Affairs and Family within the scope of their competence only by 31 December 2022) must in such case primarily conclude proceedings to find out whether this was illegal employment, or conclude that the employee really was performing illegal work. Supervisory bodies are consequently obliged to notify several competent authorities including the Foreign Police on the identification of breach of the ban on illegal employment.

The LI sends a protocol/official record to the competent department of the Foreign Police stating that dependent work of a third-country national has been carried out. The competent Foreign Police department consequently acts and begins the process of administrative expulsion.

Detention and expulsion:

Members of the Border and Foreign Police examine the third-country national only in relation to their unauthorized residence. In terms of illegal work, a third-country national can be administratively expelled, if they otherwise seriously or repeatedly breached generally binding legal regulations.

A Police department administratively expels⁴² a third-country national, if their residence in the SR is unauthorised or they have otherwise seriously or repeatedly breached generally binding legal regulations. If the person has the relevant travelling documents, a departure period can be imposed in the administrative expulsion procedure and they can leave the country voluntarily. However, this does not apply if there is a legitimate reason for their detention. In the decision on administrative expulsion, the competent Police department shall not determine a deadline for voluntary departure for the third-country national, if there is suspicion that they will flee or will otherwise try to hamper the execution of the decision on administrative expulsion, especially if it is impossible to determine their identity, if they can be detained, or if they pose a threat to the state security, public order, health or the rights and liberties of other people.

Pursuant to Act on Residence of Foreigners, the competent Police department shall decide whether the third-country national will be prohibited from entering the SR or all MS if they failed to leave the country by the deadline provided in the decision on administrative expulsion. However, it does not apply if they

⁴² Source: BBFP PFP.

have already been imposed the prohibition of entry in the decision on administrative expulsion. If the Police department does not determine a legal departure deadline in the decision on administrative expulsion, the entry ban shall be imposed at any rate.

If the residence of the third-country national in the SR is not authorised or if they otherwise seriously or repeatedly breached generally binding legal regulations, the Police department can, in the decision on administrative expulsion, impose an entry ban for the period of one to five years (in the case of unauthorised residence), or one to three years (in the case of serious or repeated breaching of generally binding legal regulations).

I. e. if there is evidence that a third-country national resides in the SR in an unauthorised manner and at the same time that they worked there illegally, they have seriously or repeatedly breached the generally binding regulations. In this case, pursuant to Section 82, Paragraph 3 of Act on Residence of Foreigners, they may be prohibited from entering the country for the period of one to five years.

In calculating the prohibition period, pursuant to Section 82, Paragraph 4 of Act on Residence of Foreigners, the Police department specifically takes into account whether the TCN has already been expelled or entered the territory of the SR during a period of entry ban.

The same applies if an illegally employed third-country national, whose residence in the territory of the SR is unauthorised, is identified during a common joint control. In this case the Labour Inspectorate addresses the violation of legislation by unlawful conduct of the employer (i.e. illegal employment) and the third-country national can be procedurally sanctioned for breaching the ban on illegal work. The third-country national can thus be expelled pursuant to Section 82, Paragraph 2 Letter a) of Act on Residence of Foreigners.

Monetary sanctions:

Performing illegal work is considered an offence in the SR. This offence is sanctioned by a fine of up to €331. If a third-country national who is a holder of residence permit in another EU MS repeatedly commits this offence or they have otherwise breached the generally binding legal regulations of the SR in the past, they may be administratively expelled due to performance of illegal work, and they may be prohibited from entering the SR for a period of one to three years. The sanction for the offence of illegal work is not imposed in an obligatory manner as compared to the sanction for illegal employment – the LI therefore does not use this legal tool.

According to Act on Residence of Foreigners, the third-country national can be fined up to €1,600 for illegal residing in the territory of the SR.

If the third-country national is a holder of a residence permit in another EU MS and they perform illegal work in the SR, the competent Police department shall contact the authorities of the MS which granted them the residence permit and notify them that this person will be administratively expelled from the territory of the SR. Specific circumstances in each case are taken into account. A person can be expelled from the SR into the territory of the MS which has granted them residence, if the MS agrees to it.

Other:

The relevant Slovak legislation does not provide the opportunity to grant a residence permit for the purpose of employment to an illegally employed third-country national. Illegal work and illegal employment cannot be tolerated.

Human Trafficking Victims:

A TCN identified as a victim of human trafficking who is at least 18 years old can decide whether they want to initiate the procedure for granting a tolerated residence for trafficked human beings within the process of forced return. They shall be informed on the possibility and conditions upon which they can be granted tolerated residence as well as their rights and obligations resulting from it. They shall be also informed on the possibility to join the Support and Protection of Victims of Trafficking in Human Beings programme. A third-country national who is a victim of human trafficking and who is at least 18 years old is eligible for a maximum period of 90 days of tolerated residence during which they can decide whether they wish to cooperate with the law enforcement authorities in order to investigate the crime related to human trafficking. This maximum period can be further extended by 30 days upon a request by a person authorized by the Ministry of Interior of the SR. Granting of tolerated residence during this period does not depend upon the willingness to cooperate with the Police. However, further granting/extension of tolerated residence does depend upon the decision of the third-country national to cooperate with law enforcement authorities. Pursuant to Act on Residence of Foreigners, the Police department grants tolerated residence to a third-country national who is a victim of human trafficking and who is at least 18 years old for at least 180 days with the possibility of repeated granting, if their presence in the territory of the SR is necessary

for the purpose of criminal proceedings. However, the Police department shall not grant tolerated residence, if the applicant did not cease or even voluntarily renewed their communication with the persons suspected of having committed the crime related to human trafficking.

The Police department shall decide on the application for tolerated residence granting or extension within 15 from submitting the application to the Police department. After all legal requirements are met, the legislation of the SR allows the third-country nationals who are victims of human trafficking and have been granted tolerated residence to also apply for temporary or permanent residence in the territory of the SR.⁴³

Q19a. What effective procedures are in place to allow third-country nationals in illegal employment to lodge complaints against their employer?

Effective procedures are understood as those used in practice and trusted by migrant workers.

The legislation of the SR allows illegally employed third-country nationals to lodge a complaint against their employer and claim their rights also if they have already been administratively expelled or returned to their country of origin.

The inspection body responsible for the inspection of illegal employment and work is, under the relevant provisions of Act on Illegal Work,⁴⁴ obliged to inform an illegally employed third-country national who was illegally employed and is not a holder of the residence/work permit about their rights to submit a complaint to the Labour Inspectorate, if their salary has not been paid, to claim the amount of arrears related to their salary and to have the amount of arrears transferred to the country to which they will return or will be administratively expelled. The natural person or legal entity on whom the fine for breaching the ban on illegal employment was imposed shall bear the incurred costs.

The third-country national can enforce their rights towards the employer through general courts and according to general civil law provisions regarding the right to court and other legal protection. They can do so on their own or through a legal entity⁴⁵ whose activity objective or subject is to protect the rights and interests of third-country nationals. The legal entity can be authorized to act on behalf of the third-country national and represent them in the civil court proceedings regarding the protection of their rights. In the SR, this task is mostly carried out by non-governmental organisations.

Q19b. Are there different procedures in place to lodge complaints against employers if the third-country nationals in illegal employment are irregularly staying?

See article 13 of Directive 2009/52/EC.

No. Third-country nationals can use the processes stated in Q19a in both cases.

Q20. In which cases can a third party (for instance a trade union or an association) engage on behalf or in support of third-country nationals in illegal employment in administrative or civil proceedings against an employer?

Are there differences between engaging on behalf of regularly and irregularly staying third-country nationals?

See answer to Q19a.

Q21. Are there mechanisms in place in your country for the remuneration of a third-country national following a period of illegal employment (for example mechanisms to recover payment for overtime work) and what are the conditions for remuneration? Are there different mechanisms in place for regularly and irregularly staying third-country nationals?

The mechanisms for the remuneration of both regularly and irregularly staying third-country nationals are the same – see answer to Q19a.

Section 7a of Act on Illegal Work explicitly provides that the employer (natural person or legal entity) who was fined for breaching the ban on illegal employment of a third-country national who is not a holder of residence permit is obliged to pay additional payments – specifically, the unpaid wage to the person they employed illegally, the costs incurred when transferring the amount in question to the country to which the

⁴³ Source: BBFP PFP.

⁴⁴ Sec. 7c Par. 1 of Act on Illegal Work.

⁴⁵ Established/founded pursuant to the specific regulation: Act No. 83/1990 Coll. on Citizens Associations as amended, Act No. 147/1997 Coll. on Non-Investment Funds and amendments to Act of the National Council of the SR No. 207/1996 Coll. as amended. Act No. 213/1997 Coll. on Non-profit Organisations Providing Social Welfare Services as amended and Act No. 34/2002 Coll. on Foundations amending the Civil Code as amended.

illegally employed person returned or was administratively expelled, as well as taxes and payments to social and health insurance.

Unless a legal entity or natural person on whom a fine has been imposed due to the breach of the ban on illegal employment of a third-country national without residence permit or the illegally employed natural person proves otherwise, the amount of arrears related to their remuneration shall equal to the minimum monthly salary pursuant to the a special regulation or the salary agreed upon in the collective agreement for a comparable employee in case the collective agreement determines the salary to be higher than the minimum monthly salary.

If a legal entity or natural person on whom a fine has been imposed due to the breach of the ban on illegal employment of a third-country national without residence permit or the illegally employed natural person proves otherwise, the calculation of amount of arrears related to their remuneration shall be based on the presupposition that the employment lasted three months.

According to Section 7b of Act on Illegal Work, the responsibility for additional payments can be also transferred to other persons such as suppliers who participated in the supply of goods, work or service in question.

According to Section 7 of Act on Illegal Work, the inspection body responsible for the inspection of illegal employment and work is obliged to inform a third-country national who was illegally employed and does not have a residence permit about their right to submit a complaint if their salary has not been paid, to claim the amount of arrears related to their salary and to have the amount of arrears transferred to the country to which they will return or will be administratively expelled. The natural person or legal entity on whom the fine for breaching the ban on illegal employment was imposed shall bear the incurred costs.

Q22. How long does the presumed employment relation have to be for an employer to have to pay back outstanding remuneration and amounts equal to taxes or social security contributions?

There is a presumption of the duration of the employment relation enshrined in the Slovak Republic legislation. If a legal entity or natural person on whom a fine has been imposed due to the breach of the ban on illegal employment of a third-country national without residence permit or the illegally employed natural person proves otherwise, the calculation of amount of arrears related to their remuneration shall be based on the presupposition that the employment lasted three months.

See more details in the answer to Q21.

Q23. Are there mechanisms in place to ensure that irregularly staying third-country nationals can receive any back payment of remuneration in cases in which they have been returned?

The legislation of the SR allows illegally employed third-country nationals to lodge a complaint against their employer and claim their rights also if they have already been administratively expelled or returned to their country of origin. See answer to Q21.

Q24. Does your country provide information to illegally employed third-country nationals on their rights? Is this information translated? Does the information provided differentiate between regularly and irregularly staying third-country nationals?

See answer to Q21.

Third-country nationals in the vast majority of cases do not exercise⁴⁶ their rights to complain to the Labour Inspectorate if they were never paid their salary or want to claim the amount of arrears related to their salary, or transfer the arrears to the country to which they have returned or will be administratively expelled while the costs would be borne by the legal entity or natural person on whom the fine for breaching the ban on illegal employment has been imposed.

The competent authorities in the SR have started to publish⁴⁷ and translated several relevant information on illegal employment with the aim to explain important terms and legal provisions related to legal work and legal employment while respecting the importance of adhering to the rules of legal work and legal employment, especially in order to ensure the legality and harmony of the relation between the employee and employer in all matters related to employment.

⁴⁶ Source: NLI.

⁴⁷ Source: <https://www.ip.gov.sk/prirucka-legalna-praca-legalne-zamestnavanie/> (consulted on 2/11/2023).

SECTION 6: CONCLUSIONS

The inspection authorities (Labour Inspectorates, Central Office of Labour, Social Affairs and Family, and Labour Offices) are responsible for checking if the ban on illegal work and illegal employment is respected. The amendment of respective provisions of competence acts means that as of 1 January 2023, the competence of inspecting the compliance with the ban on illegal work and illegal employment was transferred exclusively to the Labour Inspectorates. The Labour Offices and the Central Office of Labour, Social Affairs and Family were authorised to finalise all the inspections initiated before the changes in the legislation.

Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and on changes and amendments to some acts contains the terminological definitions of illegal work, illegal employment, ban on illegal work on illegal employment as well as the performance of inspection. Important changes in finding and combating illegal work and illegal employment from 2020 were brought about by the amendment of Act No. 82/2005 Coll. effective from 1 January 2020. In this respect, the negative definition of the term “illegal employment” was broadened.

A trend, which had started in 2017 persisted until 2019:⁴⁸ third-country nationals were frequently employed illegally by entities based abroad and sophisticated third-country nationals employment schemes were present, in which they were moved along the chain of several subjects on their way to the final buyer of the service or work in Slovakia. Year 2017 is an important milestone in the development of third-country nationals employment. This year, for the first time, the number of detected illegally employed third-country nationals, mainly from Serbia and Ukraine, increased significantly. In this respect, cases of foreign employers (especially Czech, Polish, Romanian and Hungarian) including the temporary employment agencies having employees and conducting their work in Slovakia, were frequent – they did not meet their registration obligations in terms of social insurance of employees or they illegally employed third-country nationals (they did not meet the conditions for their employment set out in the provisions of Act on Employment Services). The “employment by exception” using the “information card” tool was one very problematic area of bypassing legal provisions: exceptions including the posting of workers for the performance of works when providing services and providing some types of services (repair, assembly and installation works when supplying goods) by employers based directly in the third countries were used.

The period between 2019 and 2022 was marked by an unprecedented society-wide change caused by the COVID-19 pandemic. The pandemic affected whole society, restricted business activities in affected sectors and undoubtedly influenced the activity of inspection authorities at that time, in particular as regards the number of inspections of compliance with the ban on illegal employment, including the number of detected cases of this unlawful activity. During the periods, when the measures were continually lifted, the inspections of illegal work and illegal employment fully resumed anew. Inspections during weekends and holidays were very successful as well – the rate of detection was higher.

As for the legislative changes, those related to regularisation of the residence of third-country nationals during the crisis situation caused by COVID-19 can be considered one of the factors⁴⁹ influencing the number of detected cases of illegal employment of third-country nationals. This concerns, for example, cases of extension of the validity of a temporary residence, permanent residence or tolerated residence, which would otherwise have expired during emergency situation, state of emergency or state of extreme emergency declared in relation to the COVID-19 situation or authorising a national who entered the territory of the Slovak Republic legally and has no residence permit to remain in the SR for the duration of one month after lifting the crisis situation, as well as extending the deadlines related to the termination of purpose for which the temporary residence was granted to the third-country national in question.

The ongoing influence of the amendment to Act No. 82/2005 Coll. effective from 1 January 2018 cannot be left out: it mitigated the nature of illegal employment consisting in late registration of employees into the database of insured persons and savers within the old age pension scheme run by the Social Insurance Agency.

Employees try to avoid illegal employment and subsequent high fine by using the tried and tested methods, which have been successfully used for many years as the unified process of inspecting illegal work and illegal employment has not changed substantially. They know them and have no problems using them; they include false statements in the records of providing information, instructing employees on how to avoid the conviction of illegal work – leaving the workplace.

⁴⁸ Source: Informative Reports On Finding And Combating Illegal Work And Illegal Employment 2017 – 2022.

⁴⁹ Source: Informative Report On Finding And Combating Illegal Work And Illegal Employment 2020.

The following were identified as risky: one-time works or trial works for a few days only when working on a commission, carried out by natural persons with lower qualifications, often in regions with high unemployment rate.

Serious shortcomings were identified in employers who conduct their work using foreign nationals claiming that they are unable to carry out work tasks without foreigners. Labour force, which is lacking on the Slovak market, is thus replaced by the labour force from Serbia, Ukraine, Macedonia, Bosnia and Herzegovina, Montenegro, Vietnam, Romania, Kazakhstan, Poland, Russia, Georgia, and Moldova.

When communicating directly at the workplace, the foreign nationals state that employers assure them that all the documentation related to their work is in compliance with the valid legislation. Foreign nationals are misled by their employers and they find out that they are working illegally and thus violating the valid legislation only during the inspection focusing on checking the compliance with the ban on illegal work and illegal employment. Employers justify the selected shortcomings in employing non-EU foreign nationals by too long and demanding administrative process. There is one relatively new way of obtaining labour, which has been detected by labour inspectors recently: employers use the dependent work of third-country nationals with residence permit for the purpose of entrepreneurship (mostly in quality control). Detection of such sophisticated schemes takes a lot of time and the labour inspection is thus prolonged.

Controlling dependent work within labour relations other than employment (false self-employment) has become a specific type since 2021.⁵⁰ It has proved to be the most complicated and legally the most difficult. Joint inspections with other state administration bodies which are concerned with this area have proved to be of high value in this respect. Between 2021 and 2023, the inspections were necessary due to the influx of Ukrainian nationals. Due to the armed conflict in their territory, the Slovak Republic has accepted them as refugees and issued them a temporary protection certificate upon application. The joint controls focused on the prevention and detection of exploitation of these third-country nationals as well as non-equal work conditions when compared to those of Slovak citizens.

Generally, it can be concluded that illegal employment of third-country nationals in the Slovak Republic territory has undergone a turbulent development since 2017. Illegal employment, which used to be the most frequently detected deficiency in the detection of illegal employment in general, has changed to a marginal area with a dramatic drop in the number of detected illegally employed third-country nationals due to the impact of legislative changes and, in particular, the development in crisis situations. The employment of third-country nationals through commercial or civil contracts for the provision of services using the legal tool of a residence permit for the purpose of entrepreneurship (replacing the employment relation) has become a new phenomenon in the illegal employment of third-country nationals since 2022. The inspection authorities have been intensively addressing this method of bypassing the legal employment legislation.

⁵⁰ Source: NLI.

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