

## **TEMPORARY AND CIRCULAR MIGRATION: EMPIRICAL EVIDENCE, CURRENT POLICY PRACTICE AND FUTURE OPTIONS IN SLOVENIA**

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### **Povzetek**

Osnovni cilj te študije je v njenem prispevku k razumevanju lastnosti začasne migracije delovne sile in krožnih oziroma ponavljajočih se selitvenih vzorcev državljanov tretjih držav v Slovenijo. Začasne in krožne migracije vključujejo več kategorij migrantov, med temi okvirne kategorije predstavljajo državljani tretjih držav, ki se začasno preselijo v Slovenijo za namene kratkoročne zaposlitve, sezonskega dela, študija ali raziskovanja ter migranti, ki prebivajo v Sloveniji in se začasno gibljejo v svoje države izvora. Cilj študije je podati tudi opredelitve in konceptualizacije začasne in krožne oz. ponavljajoče se migracije delavcev migrantov kakor tudi merila in pogoje za vstop, delo in bivanje v Sloveniji. Nadaljnji cilj študije je podati pregled in analizo obstoječih statističnih podatkov ter empiričnih dokazov za krožne in začasne migracije ter preveriti možne pristope za merjenje in/ali oceno o tem, ali migracije postajajo po svojem značaju vse bolj krožne in začasne in če je temu tako, v kolikšnem obsegu. Študija poskuša analizirati tudi politične preference, prepričanja in pojmovanja oblikovalcev politike, raziskovalcev in drugih zainteresiranih deležnikov o začasnih in krožnih migracijah. Ambicija študije je v tem, da oblikovalce politike in nosilce odločanja spodbudi k sprožitvi novih politik.

Slovenija nima posebnih programov ali shem za začasne in krožne migracije. Vendar v okviru celovite migracijske politike, razprava o začasni in krožni migraciji poziva k premisleku o načelih, ciljih in prioritetah slovenske kot tudi skupne evropske i/migracijske politike. Koncepti začasne in krožne migracije niso niti novi niti niso razlike med obema konceptoma povsem jasno opredeljene. Medtem ko je krožno migracijo predvsem razumeti v kontekstu migrantov in/ali krožnega gibanja med dvema državama (back-and-forth movement), se

začasna migracija nanaša na eno samo selitev z določeno motivacijo in/ali namenom ter kasneje vrnitve v matično državo ali selitve drugam. Kljub temu sta v Sloveniji oba koncepta videna kot orodje za izboljšanje upravljanja migracij oziroma nadzor priseljevanja na trg dela in v socialni sistem. Poleg tega se koncepta vse bolj dojemata kot spodbujanje migracij, ki »delajo za razvoj« in za t.i. »triple win« – za Slovenijo, razvoj držav izvora in koristi migrantov samih.

Predlog slovenske Strategije ekonomskih migracij iz septembra 2010 med drugim promovira učinkovito implementacijo ukrepov, ki bodo integrirali migracijske zadeve v zunanjo in razvojno politiko. Akcijski načrt poudarja učinkovitost upravljanja migracij in predvideva oblikovanje selektivnih ukrepov za bolj enostaven, transparenten in nadzorovan sprejem določenih skupin migrantov ter učinkovitejše zagotavljanje njihovih pravic. Predvideni so predvsem štiri sklopi ukrepov: (i) začasne omejene sektorske sheme / po dejavnosti; (ii) shema Modre karte EU; (iii) proučitev načinov za vzpostavitev krožnih migracij in (iv) poenostavitev in poenotenje postopkov za sprejem državljanov tretjih držav za namene dela in zaposlitve in nekaterih drugih namenov.

Poskus oblikovanja programa krožne migracije je osnutek dvostranskega sporazuma o zaposlovanju državljanov Bosne in Hercegovine v Sloveniji, ki sledi referenčnemu okvirju politik EU na področju celovite migracijske politike, s poudarkom na krepitvi partnerskega dialoga s tretjimi državami in pozitivnih učinkov krožne migracije, prostovoljni vrnitvi delavcev migrantov v matično državo in etični politiki rekrutiranja delavcev v prid preprečevanja bega možganov. Namen je zagotoviti boljši nadzor nad migracijskimi tokovi iz Bosne in Hercegovine. Delavcu migrantu se bo izdalo delovno dovoljenje za obdobje treh let, omogočen pa je tudi prehod od prvotnega delodajalca in iz sezonskega zaposlovanja. Načeloma je prostovoljno vračanje v matično državo norma, vendar z možnostjo ponovne vrnitve v Slovenijo po šestih mesecih. Izjeme bi bile mogoče, npr. kadar gre za podaljšanje delovnega dovoljenja ali ko je bila podeljena pravica do združitve družine ter v primerih t.i. »strokovne zaposlitve«. Bosna in Hercegovina bi imela možnost, da prepreči beg možganov z omejitvijo izselitve posameznih poklicnih skupin in pod določenimi pogoji ponovne zaposlitve delavca migranta v Sloveniji. Delavci migranti so upravičeni do enake obravnave kot državljani Slovenije, zlasti v zvezi z delovnimi pogoji, s svobodo združevanja in članstva v predstavniških organizacijah delavcev, delodajalcev ali poklicev ter poklicnega izobraževanja in usposabljanja. Sporazum pojasnjuje tudi pogoje pretvorbe začasnega v stalno prebivanje.

Vendar pa obstoječa slovenska zakonodaja bolj odvrča kot spodbuja koncept krožne migracije. V zadnjih letih se je liberalnejši pristop do dostopa delavcev migrantov na trg dela umaknil bolj restriktivni politiki, ki je med drugim prišla z roko v roki z gospodarsko krizo in naraščajočo brezposelnostjo. Pravni okvir vsaj do določene omejitve mobilnosti državljanov tretjih držav, ki želijo začasnodelati, na primer v sezonskih delih, študirati, se usposablјati ali sodelovati v programih mednarodnih izmenjav prostovoljcev ipd. Vendar pa je, glede na razlike med krožno migracijo, pojmovano v kontekstu kroženja migranta med Slovenijo in državo izvora (back-and-forth movement), ki migrantom, ki želijo začasnodelati na primer omogoča enostavne postopke za sprejem/ponovni vstop, mogoče sklepati, da je slovenska

zakonodaja utemeljena v filozofiji začasne migracije, ki se bolj nanaša na eno samo selitev v Slovenijo in nato časovno omejeno bivanje v njej z namenom vrnitve v matično državo ali selitve drugam. Načrtovane spremembe zakonov na tem področju, kljub uvedbi strožjih ukrepov za delodajalce za preprečevanje kršitve pravic delavcev in novih zakonskih določb v smislu usklajevanja z EU zakonodajo, med drugim z uvedbo Modre karte EU ne odsevajo bistvene spremembe tega razmišljanja. Tako do sedaj niso bile sprejete konkretne spodbude za vračanje priseljencev v njihove države izvora za stalno ali za daljše obdobje niti ni možna prenosljivost socialnih pravic državljanov tretjih držav, v kolikor ni sporazuma z državo izvora. To vodi do teženj migrantov, da se ustalijo v Sloveniji, jih odvrča od vrnitve v matično državo ter preprečuje vzorce krožne migracije.

Sistem zbiranja podatkov še vedno temelji na t.i. »trajni paradigmi migracij«, ki ni ustrezna za zbiranje podatkov o krožni oz. začasni migraciji. Jasna opredelitev oblik migracij bi pripomogla k izboljšanju kakovosti zbiranja in izčrpnosti podatkov. Priporočljivo bi bilo, da se na tej podlagi izdela metodologija in določi kazalce, ki bodo omogočali pravočasno spremljanje in nadzor nad izvajanjem predvidenih programov in pravnih okvirov za začasne in krožne migracije ter za bolj poglobljeno vedenje o obsegu »spontanih ali naravnih« (de facto) začnih oz. krožnih migracij. Bilo bi koristno da se razvijejo ključni kazalci, ki bi veljali za vse države članice EU in bi jih zagotavljal Eurostat.

Končno pa ostaja vprašanje v kolikšni meri se novi, predvideni programi krožnih migracij bistveno razlikujejo od znane politike »gostujočih delavcev« pred letom 1974. Empirične študije izkušenj priseljevanja v Slovenijo kažejo, da je večina migrantov prišla na začasno delo iz drugih regij nekdanje Jugoslavije. Danes je večina teh priseljencev in njihovih otrok bodisi dvojnih državljanov ali pa imajo v Sloveniji stalno prebivališče. Transnacionalna socialna omrežja, ki so se razvila v procesu migracije segajo čez meje novih držav, ki so nastale na ozemlju nekdanje skupne države in povezujejo kraje porekla in bivanja. Te mreže igrajo ključno vlogo v vzorcih mobilnosti in krožnosti, ki so v veliki meri neodvisni od parametrov vladnih politik. To pa nakazuje na to, da je krožna migracija ali bolje rečeno de facto krožna migracija odvisna od okoliščin, v katerih se pojavi in od omejitev, ki jo obkrožajo, predvsem pa od stopnje posameznikove izbire.

## **Executive Summary**

The aim of the study is to understand the characteristics of temporary labour migration and circular/repetitive migration patterns of third-country nationals in Slovenia. This migration includes several categories of migrants, such as the following indicative ones: third-country nationals (TCNs) moving temporarily to Slovenia for short-term employment, seasonal work, study or research as well as settled migrants living in Slovenia moving temporarily to their countries of origin. The study also aims at providing definitions and conceptualisations of temporary labour migration and circular/repetitive migration as well as the criteria and conditions applied in Slovenia, such as entry and re-entry conditions, work and residence permits. It also attempts to analyse policy preferences, convictions and conceptualisations of

political actors, the research community and other stakeholders on temporary/circular migration, and to discuss policy options both for the national and the EU level. Further aims of the study are to review and analyse existing statistical data and empirical evidence for circular/temporary migration and to examine possible approaches for measuring and/or estimating whether, and if so to what extent, migration has become increasingly circular or temporary in nature. The ambition of this paper is to strengthen the knowledge base of policymakers and encourage them to initiate new policies.

Slovenia does not have any temporary and circular migration policies and programmes or schemes. Nevertheless, within the comprehensive migration policy, discussion on temporary and circular migration calls for rethinking principles, goals and priorities of the Slovenian im/migration policy as well as migration policy at the EU level. Neither temporary nor circular migration concepts are new nor are the differences between these two concepts clearly defined. While the former is primarily understood in the context of a migrant and/or rotation movement between the two countries, i.e. a back-and-forth movement, the latter rather refers to a single movement for a specific motivation and/or purpose with the intention of return to country of origin or onward movement. In Slovenia, both forms are seen as tools to improve migration management or rather control of immigration into the labour market and the social system. Furthermore, both concepts are increasingly perceived as promoting migration to “work for development” and the so-called “triple win” situation – for Slovenia, for development in countries of origin and for benefit of migrants themselves.

The draft strategy paper on economic migration from September 2010 promotes, *inter alia*, effective implementation of measures that should integrate migration issues into external policy and development issues. The Action Plan emphasises the efficiency of migration management and provides for formulation of selective measures for a more simple, transparent and controlled admission of certain categories of migrants as well as more efficient provision of their rights. Primarily four sets of measures are intended in regard to: (i) temporary limited sectoral schemes / by activity (ii) EU Blue Card scheme (iii) ways to promote circular migration and (iv) simplification and standardisation of procedures for the admission of third-country nationals for purposes of employment and certain other purposes.

The draft bilateral agreement concerning employment of nationals of Bosnia and Herzegovina in Slovenia represents an attempt to design circular migration programme. It follows the reference framework of EU policies on a comprehensive migration policy, with the emphasis on the partnership dialogue with third countries and on beneficial effects of circular migration, voluntary return of migrant workers to the country of origin and ethical recruitment in favour of reducing the brain drain. The purpose of the agreement is to provide for more controlled flows of labour migration from Bosnia and Herzegovina. Migrant workers will be issued a work permit for a period of three years. The agreement allows for transition from the original employer and from seasonal employment. In principle, voluntary return is required and the option to return to Slovenia is open after six months. Exceptions would also be possible e.g. when there is a renewal of a work permit or the right to family reunification is being granted and in cases of ‘professional employment’. Bosnia and Herzegovina would have the possibility to prevent brain drain by restricting migration of individual occupational groups or re-employment of migrants in Slovenia. Migrant workers

are entitled to equal treatment as Slovenian nationals, particularly with regard to labour conditions, freedom of association and membership in the representative organisations of workers, employers or professions and educational and vocational training. The agreement also clarifies under what conditions temporary stay can be converted into a permanent one.

Yet, the existing Slovenian migration law discourages rather than encourages the concept of circular migration. In recent years, a liberal approach to migrant workers' access to the labour market gave way to a more restrictive policy. It came, *inter alia*, hand in hand with growing economic problems and a growing unemployment rate. The legal framework enables back-and-forth mobility to a certain degree, particularly for TCNs seasonal work, study, training or participation in international volunteer exchange programmes and similar. With regard to the differences between circular migration as considered in the context of a back-and-forth movement between Slovenia and the country of origin, which is enabled by, for example, simplified admission/re-entry procedures for migrants who wish to work temporarily, it is possible to conclude that the rationale behind the Slovenian legislation is temporary migration referring more to a single movement and then limited stay in Slovenia. Planned changes in spite of introducing tougher measures on employers to prevent violation of workers' rights and new legal provisions harmonising legislation, *inter alia*, with the EU Blue Card, does not reflect any change of this rationale. No concrete incentives for return of migrants to their countries of origin for good or for longer periods of time have been adopted so far neither is the portability of social rights of TCNs possible unless there is an agreement between Slovenia and the country of migrant's origin. This leads to a tendency of migrants to settle in Slovenia and discourage them from returning to their country of origin and prevents the patterns of circular migration.

Data collection system is still based on the so-called "permanent migration settlement paradigm," which is quite inadequate for measuring circular and temporary migration. Clear definitions of forms of migration would contribute to the quality and comprehensiveness of the data collection. An elaborated methodology of data collection and the identification of indicators are needed. This will allow timely monitoring and supervision of the implementation of envisaged programmes and legal frameworks for facilitating temporary and circular migration and for a better appreciation of the scale and scope of "spontaneously or naturally occurring" temporary/circular migration. It would be helpful to develop key indicators that would apply to all EU Member States and would be provided by EUROSTAT.

Conclusively, the question remains how the new envisaged circular migration schemes are to be significantly different from the well known pre-1974 »guest worker policies«. Empirical studies of Slovenia's immigration experience show that most settled migrants in the country came as temporary workers from other regions of the former Yugoslavia. Presently, most of these immigrants and their children are either nationals or permanent residents.

Transnational social networks which have evolved in migration process extend over borders of the new states established in the territory of the former common state and connect places of origin and residence. These networks play a crucial role in patterns of mobility and circularity, largely independent of parameters of government policies. This also, as argued by one scholar, suggests that circular migration, or indeed de facto circular migration, is dependent upon the circumstances in which it occurs and the constraints that surround it, and above all the degree of choice of individuals to exercise over their own mobility.

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