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TARTALOMJEGYZÉK

TRUONG THI ANH NGUYET
Inclusion of Environmental Interests in Hungary's Bilateral Investment Treaties…7

BENE ENIKŐ INGE
Építésügyi eljárások joggyakorlata – jogi dilemmák a régi törvény alapján……23

DAJKA-CZIFRA BEÁTA
A modern irodai munkavégzés kihívásai és következményei……47

Petra FRÁTER-BIHARI
Dark Patterns as Unfair Commercial Practices and Some Possible Links to Child Protection……65

HARSÁNYI VIVIEN
Gyermekvédelmi beavatkozás: jogi lehetőségek és korlátok a veszélyeztetettség felismerésében……86

KÁLLAI ERIKA
Az urbanizáció hatása a madárvilágra……101

KERTÉSZ TAMÁS
Kockázat és kockázatviselés a római jogban……...……131

KÖTELES ÁDÁM
A realizmus perspektívái……147

MICHAŁ MRUGAŁA
Private and state monopolies in the Kingdom of Poland in the years 1821–1830……..165

KRISTIJAN PANEV
The Impact of Open Balkan Initiative on Cross-Border Employment and Labour Mobility……181

GÁBOR RÉVÉSZ
Sexual communication, interaction and consent among adolescents in the context of grey areas and sexual harassment…….199

SIMON LAVINIA REGINA
Fenntarthatóság és szellemi tulajdonvédelem – összehasonlítható célok?.....215

SZŰCS DÁNIEL
Az emberkereskedelem elleni uniós küzdelem új mérföldköve, a 2011/36/EU irányelv 2024. évi módosítása……...…..237

KRISTIJAN PANEV*

The Impact of Open Balkan Initiative on Cross-Border Employment and Labour Mobility

Abstract: The free movement of persons, including the free movement of workers, is one of the four fundamental freedoms of the European Union's single market. It includes the elimination of barriers to workers mobility, as well as the prohibition of all forms of discrimination and unequal treatment of EU citizens within the territory of the European Union. Workers from one Member State should enjoy free access to the labour markets of all Member States within the EU.
The Western Balkan countries, including Macedonia, as aspiring EU members, seek to incorporate European values and harmonize their domestic legislation with the EU acquis, including the rules of labour mobility and non-discrimination in employment. Considering the length of the integration process and the growing Euroscepticism in these countries, the Open Balkan Initiative (previously known as Mini Schengen) was established as an initiative to facilitate rather than substitute for the EU integration process. The objective of Open Balkan Initiative is to implement the four fundamental freedoms of the European Union in the Balkans, thereby contributing to economic development, increased economic growth, investments, and employment in the Western Balkans. The Initiative established a commitment to facilitate border crossings for the citizens of the signatory countries, inter alia, to ensure free access to the labor market in the Western Balkans, thus encouraging cross-border employment and investments. Consequently, a few agreements have been concluded to facilitate labour mobility and ensure equal treatment of workers from the signatory countries. This paper shows insights into the applicable legal framework in Macedonia, regarding the employment of foreigners, with reference to the citizens of the member states of the Open Balkan Initiative. It analyses the level of harmonization between the adopted Open Balkan regulation and the existing Macedonian legislation, as well as the potential impact of the Open Balkan Initiative on labour mobility and cross-border employment in Macedonia.
Keywords: Open Balkan, labour market, foreign worker, employment, regulation.

1. Introduction

Regional cooperation and integration of the Western Balkan have always been an idea that was advocated, not only by the Western Balkan countries themselves, but also by the European Union and various Member States. In 2014, the stagnation of the enlargement process and the slow integration of the Western Balkan countries

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in the EU, as well as the rising Euroscepticism in the countries of the region, the Berlin Process was established as an initiative to facilitate reconciliation and foster economic cooperation among the WB countries. The objective of the Berlin Process was not to substitute EU integration, but rather to facilitate their integration.

On the other hand, labour migration from the Western Balkan countries to the European Union has increased significantly in the last decade. For example, the World Bank's bilateral migration matrix shows that in 2018, 564.949 Macedonian citizens lived abroad, most of them (55%) in high-income countries such as Switzerland, Austria, and Germany.[1] For comparison, the total population of North Macedonia in the same year was estimated at 2.077.132 inhabitants.[2] Eurostat data indicate that, over the last decade, there has been a growing trend of Macedonian citizens who have been issued their first residence permits in the EU Member States.[3] Recent research based on data from the latest population census conducted in Germany shows that approximately 222,000 people from Macedonia are currently reside in Germany. Moreover, 85,000 Macedonian citizens moved to Germany during the previous two years.[4] Similar migration patterns can also be observed in the other countries from the Western Balkan region. These emigration trends have had a serious impact on labour structures in the Western Balkan countries, resulting in labour shortages in certain sectors.

Considering these migration trends and the large-scale emigration from the region, and inspired by the economic potential of regional integration, the leaders of the three Balkan Countries – Macedonia, Serbia, and Albania held a joint meeting in Novi Sad, Serbia in 2019. They announced a new regional initiative aimed at creating conditions necessary for the implementation of the four fundamental freedoms of the European Union within the region.[5]

Although the initiative was, and continues to be, open to all countries of the Western Balkans, only three of them i.e. Macedonia, Serbia, and Albania, have joined it to date. The initiative was initially known as a "Mini Schengen", reflecting its primary objective of establishing a regime comparable to the Schengen Area. However, at the Forum for Regional Economic Cooperation in 2021, the initiative was renamed the Open Balkans Initiative, although the objective remained the same.

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[1] ILIJEVSKI, K. – ILOSKA, A: The Case of North Macedonia: Post Workers – development of schemes and trends. *European Centre for Social Welfare Policy and Research, Brief Political Analysis of Public Policy* 2021/18, 2-3.

[2] Source: State Statistical Office, Republic of Macedonia, 2019.

[3] Supra Note 1., 2-3.

[4] *Research of the Institute for Public Policy "Arben Xhaferi", Skopje. Source: Nezavisen*. www.nezavisen.mk/vo-germanija-zhiveat-222-000-lugje-od-makedonija-samo-lani-zaminale-53-000/, Date of Access: 21 September 2023.

[5] See similar: JELISEVAC TROSIC, S. - ARNAUDOV, M.: *Open Balkans – Between Economic Opportunities and Political Reality, 10th International Scientific Conference "Social Changes in the Global World"*. Goce Delcev University, Stip, N.Macedonia, September 2023.

The main objective of the Initiative is to foster regional cooperation and facilitate the EU integration of the Western Balkans countries. It is focused on liberalization and policy integration, with a commitment to establishing the free movement of goods, services, capital, and people. In this regard, the Initiative is expected to contribute to economic development and to promote economic growth, investment, and employment in the Western Balkans. Nevertheless, all participating countries have emphasized that the Open Balkan Initiative is not intended to serve as a substitute for EU membership, but rather as a mechanism for facilitating the EU integration process.

One of the main aspects is that the Open Balkan Initiative focuses on the improvement of the conditions for labour mobility and cross-border employment through the establishment of free access to the labour market for all citizens of the Open Balkan member states. The political narrative promote by the leaders of the participating countries has been directed towards creating the conditions for the establishment of a single market, which inter alia includes a single labour market.[6] Consequently, in addition to numerous political declarations, several international agreements and memorandum that cover issues for enabling labour mobility and facilitating access to the labour markets have been concluded within the framework of the Open Balkan Initiative.

2. Regulation governing access to the Labour Market

This section focuses on a critical analysis and comparison between the regulations adopted within the framework of the Open Balkan Initiative and the existing legislation in Macedonia, which regulates the conditions and procedures for granting foreign nationals' access to the labour market.

Considering the objective of the Open Balkan Initiative to establish open access to the labour market for all citizens of the Contracting Parties, it is important to review and analyze the existing domestic legal framework regulating the access of foreign nationals to the Macedonian labour market. Such an analysis provides the basis for discussing the potential impact of the initiative and the legislative changes that it may trigger soon.

The conditions and grounds for issuing work and residence permits in Macedonia are regulated by the Law on Foreigners and the Law on Employment and Work of Foreigners. By comparison, the agreements concluded within the framework of the Open Balkan Initiative, such as the Memorandum of Understanding for Free Access to the Labour Market in the Western Balkans and

[6] President of the Republic of Serbia, Prime Minster of the Republic of Albania, and Prime Minister of the Republic of North Macedonia: *Joint Declaration on the four fundamental freedoms of the EU in the countries of the Western Balkans.* www.vlada.mk/node/19217, Date of Access: 15 October 2023.

the Agreement on Conditions for Free Access to the Labour Market in the Western Balkans, regulate several aspects that are already governed by the existing domestic legal framework.
On the other hand, the rights and obligations of employees and employers in the field of social protection and insurance are regulated by Bilateral Agreements on Social Insurance concluded between the respective countries of the employee and the employer. For the purposes of this paper, particular attention will be paid to the Bilateral Agreements with Serbia and Albania.

2.1. Review of the Macedonian Regulation Applicable to the Access of Foreigners to the Labour Market

2.1.1. Law on Foreigners

The Law on Foreigners[7] is the principal legislative act that regulates the conditions for the entry, exit, and residence of foreign nationals, as well as their rights and obligations during their stay in the country. This law applies to all persons who are not Macedonian citizens, including persons without citizenship. From the perspective of foreigners' access to the labor market, the Law on Foreigners provides possibilities for granting residence permits to foreign nationals for the purpose of work and employment. The law regulates the conditions, procedures, and grounds for granting residence permits for employment purposes, including the employment of foreign nationals, as well as seasonal employment and posted workers. It also regulates the temporary residence of foreigners on other grounds, such as education and studies, volunteering, scientific research, medical treatment, accommodation or care in institutions for elderly persons, family reunification, etc. In addition, the Law on Foreigners establishes and applies quota system determining the number of foreign workers who may obtain access to the Macedonian labour market.

2.1.2. Law on Employment and Work of Foreigners

The Law on Employment and Work of Foreigners[8] regulates the procedures and conditions under which a foreign national may be employed or engage in work in Macedonia. At the same time, the legislator envisaged the possibility of derogating

[7] Law on Foreigners (Official Gazette of the Republic of Macedonia, number 97/18 and Official Gazette of the Republic of North Macedonia), number 108/19 and 294/21.
[8] Law on Employment and Work of Foreigners (Official Gazette of the Republic of Macedonia, number 217/15 and Official Gazette of the Republic of North Macedonia), no.163/21.

from these rules in relation to foreign nationals for are covered by ratified international agreements. This possibility is particularly important, especially in the context of the legal framework arising from the Open Balkan Initiative, as the relevant international agreements have been ratified by the Macedonian Parliament. These agreements provide for a different regime governing access to the Macedonian labour market for citizens of the other two member states of the Open Balkan Initiative. In addition, this law regulates in greater detail the limitation on the number of foreign nationals permitted to work in the Macedonian labor market, namely through the establishment of quotas for work permits issued to foreign nationals.

2.1.3. Bilateral Agreements on Social Insurance

Issues relating to social security and social insurance between the country of employment and the country of origin of the worker are regulated by separate bilateral agreements. There are 23 active bilateral agreements with other countries from the Western Balkans (Serbia, Albania, Bosnia and Herzegovina, Montenegro, and Kosovo). In addition, the Conventions on Social Insurance that Macedonia has inherited from the Former Socialist Federal Republic of Yugoslavia, are also applicable, until new agreements are concluded. This category includes social insurance conventions with France, the United Kingdom, North Ireland, Italy, Norway, Sweden, and Denmark. These international agreements regulate issues including rights and obligations in the field of health insurance, health care, maternity, pension and disability insurance, insurance in case of work injury and occupational disease, insurance in case of unemployment, and child protection. The scope of rights and obligations covered by bilateral agreements varies from one agreement to another. For the purposes of this paper, the analysis will focus on the Bilateral Agreements for Social Insurance with Serbia[9] and Albania.[10]

[9] *Agreement between the Republic of Macedonia and the Federal Republic of Yugoslavia for Social Insurance (Bilateral Agreement with FRY), Official Gazette of the Republic of Macedonia, number 13 from 18 February 2002.* Available online at: www.mtsp.gov.mk/content/pdf/zakoni/dogovori/Dogovor%20megju%20RM%20i%20SRJ%20za%20socijalno%20osiguruvanje.pdf

[10] *Agreement between the Republic of Macedonia and the Republic of Albania for Social Insurance (Bilateral Agreement with Albania), Official Gazette of the Republic of Macedonia, number 38 from 29 February 2016).* Available online at: www.mtsp.gov.mk/content/pdf/dokumenti/1.3_Dogovor%20za%20socijalno%20osiguruvanje%20megju%20RM%20RA.pdf

2.2. Review of the Open Balkan Regulatory Framework with implications for cross-border employment and labour mobility

2.2.1. Memorandum of Understanding on Cooperation Related to Free Access to the Labour Market in the Western Balkans

The Memorandum of Understanding[11] expresses the willingness of the Contracting Parties, namely Macedonia, Albania, and Serbia, to strengthen regional cooperation and implement the four fundamental freedoms of the EU single market within the Western Balkans. Regional cooperation is perceived as an opportunity for economic development, increased investment and economic growth in the region. The MoU was the first written document signed between the three Contracting Parties that is related to labour mobility. It opened the door for working on an Agreement that will facilitate access to the labour market in the Contracting Parties by simplifying the procedures and enabling equal access for all the workers from the Contracting Parties.[12] The MoU confirmed the intention of the Contracting Parties to develop models for the registration and regulation of workers' residence within their jurisdictions, including the elimination of work permits and the simplification of residence permit procedures for workers originating from another Contracting Party. As a result, the Agreement on conditions for free access to the labor market in the Western Balkans was signed five months later, on 21 December 2021.
The wording of the Memorandum of Understanding is relatively cautious, as it does not impose binding legal obligations on the Contracting Parties, but rather expresses a commitment to cooperate and to identify modalities for simplifying procedures that would "provide easier and freer access to the labour market."[13]

2.2.2. Agreement on Conditions for Free Access to the Labour Market in the Western Balkans

The Agreement on Conditions for Free Access to the Labour Market in the Western Balkans[14] is the principal agreement adopted by the three Contracting Parties with the aim of creating an enabling environment for workers from one Contracting Party to work in another one. As already mentioned, the Agreement was preceded by the Memorandum of Understanding (MoU) that was signed a few months earlier, in which the Contracting Parties agreed to strengthen their cooperation in order to establish free access to the labour market. The Preambles of both the MoU and the

[11] Memorandum of Understanding on Cooperation Related to Free Access to the Labour Market in the Western Balkans (MoU for Access to the Labour Market), Skopje, 29 July 2021.
[12] Article 1 of the MoU for Access to the Labour Market.
[13] Article 2, MoU for Access to the Labour Market.
[14] Agreement on Conditions for Free Access to Labour Market in the Western Balkans (the Agreement for Free Access to Labour Market), Tirana, 21 december 2021.

Agreement emphasize the importance of regional cooperation and the free movement of workers as a condition for economic development and for increasing economic growth, investment, and employment in the Western Balkan.[15]
The content and scope of this agreement will be subject to further in-depth analysis later in this paper.

2.2.3. Agreement on cooperation in the Western Balkans in the field of mutual recognition of diplomas and academic qualifications issued by higher education institutions and other authorized institutions

The Agreement was concluded because of the intention of the Open Balkan's countries to facilitate the recognition of diplomas and academic qualifications issued by recognized higher education institutions and/or other authorized institutions according to the national law of any contracting party. The Agreement promotes institutional cooperation among competent authorities of the respective countries to facilitate the recognition, simplify procedures, and shorten statutory deadlines for recognition. Accordingly, the competent institutions now proceed directly with the recognition of diplomas without the need for mandatory electronic verification of the authenticity, although such verification remains available in cases where there is a reasonable doubt. However, it should be regarded as an exception rather than a rule. In addition, the statutory deadlines for recognition have been shortened, which should contribute to a more efficient and streamlined procedure for applicants.[16]

2.2.4. Agreement on the Interconnection of Electronic Identification Schemes of Citizens of the Western Balkans

On 21 December 2021, the Open Balkan contracting parties signed this Agreement[17] to enable access to existing eGovernment services for citizens of the other participating states. Accordingly, the contracting parties are obliged to recognize registered electronic identification schemes, to connect national software solutions related to eGovernment services, and establish Open Balkan ID numbers for their citizens.[18] The impact of this Agreement is that it allows each citizen of any contracting party to obtain an Open Balkan ID number by using the already existing

[15] Preamble of the Agreement for Free Access to Labour Market and Preamble of the MoU for Access to Labour Market.
[16] Agreement on cooperation in the Western Balkans in the field of mutual recognition of diplomas and scientific grades issued by higher education institutions and other authorized institutions (the Agreement for recognition of diplomas), Ohrid, Macedonia, 08 June 2022.
[17] Agreement on Interconnection of schemes for electronic identification of citizens of the Western Balkans, 21 december 2021.
[18] Article 3, Ibid.

national eGovernment service portals. The Open Balkan ID number should be an "additional attribute to the already existing electronic identity" of a citizen that will enable him or her to exercise rights and opportunities under the Open Balkan Initiative, such as the opportunity to move and work in another contracting party.[19]

2.2.5. Memorandum of Understanding on the cooperation between taxation administrations in the Western Balkans

This MoU was signed by the taxation authorities from Macedonia, Albania, and Serbia with the purpose of mutual coordination and to prevent, detect, and combat tax evasion in the three countries. The taxation authorities aim to foster cooperation through the exchange of experience and best practices within their respective areas of competence, the transfer of knowledge, the improvement of their performance, the promotion of voluntary tax compliance, and prevention, detection, and combating of tax evasion. However, the MoU explicitly provides that it is not legally binding, and it does not create any legal claims or obligations for any of the contracting parties.[20]

3. Critical analysis of the impact of the regulation on cross-border employment and labour mobility in Macedonia

3.1. The Narrative of the Open Balkan Initiative on Cross-border Employment

The Open Balkan Initiative was announced as a regional initiative aiming at incorporating the four European fundamental freedoms in the Western Balkan. It has been presented as an initiative to "connect the development of the Western Balkan's economies, for a common regional and single market, without restrictions, nor barriers, without borders and for its long-term development that will bring a better life for all citizens".[21] On 10 October 2019, the Governments of Macedonia, Albania, and Serbia issued a Joint Declaration stating that "the full and free movement of goods, services, capital, and labor throughout the Region is the best way for such a small Region to achieve growth in a globalized, ever-changing

[19] Article 4, Ibid.
[20] Memorandum of Understanding on the cooperation of the taxation administration in the Western Balkans, Ohrid, Macedonia, 08 June 2022.
[21] *Government of North Macedonia: What is Open Balkan?* www.vlada.mk/Otvoren-Balkan, Date of Access: 15 October 2023.

economy".[22] In addition, they emphasized that "citizens will be able to work in any country of the Region, once they have acquired qualifications in one of the countries of the Region".[23] On 29 July 2021, this narrative was reaffirmed in a joint statement by senior officials of the same three countries, repeating that the main goal of the initiative is "to have a single market, without borders"[24], and one of the key priorities should be "to ensure that our people can work anywhere in our countries."[25]

Consequently, the narrative of the Open Balkan initiative in relation to labour mobility has been directed towards the establishment of a single labour market in the region. As a result, the three countries signed a Memorandum of Understanding on Cooperation related to the Free Access to the Labour Market in the Western Balkans. A few months later, an Agreement on Conditions for Free Access to the Labour Market in the Western Balkans was also signed.

However, despite the ambitious titles of both the MoU and the Agreement, neither establishes a single labour market.[26] The MoU expresses the willingness of the countries to cooperate in the field of movement of workers, by simplifying the procedures that will guarantee equal access to the labour market in the contracting parties. The Contracting Parties are emphasizing their will to facilitate the movement of workers to provide "easier and freer access to the labour market".[27] Although the political discourse points towards the establishment of a single labour market, the wording of the signed document is much more cautious. The focus is primarily on procedural simplification that will enable easier access to the labour market, however, it does not establish a single labour market, as it is understood and practiced in the EU context.

The Agreement largely mirrors the MoU. Although it begins by affirming that citizens of the three countries in question possess the right to freely move, reside, and work within the territories of the Contracting Parties, it does not establish free access to the labour market. It serves to simplify the administrative procedures by establishing specific criteria and procedures for acquiring the right to work and temporarily stay for employment purposes in one contracting party when a citizen of another contracting party is involved. Therefore, the Agreement does not address

[22] President of the Republic of Serbia, Prime Minster of the Republic of Albania, and Prime Minister of the Republic of North Macedonia: *Joint Declaration on the four fundamental freedoms of the EU in the countries of the Western Balkans.* www.vlada.mk/node/19217, Date of Access: 15 October 2023.
[23] Ibid.
[24] *Closing Statement of the Open Balkan Initiaitve's Leaders.* www.vlada.mk/node/26061, Date of Access: 15 October 2023.
[25] Ibid.
[26] RADOVIC, R.: *Open Balkans Shows No Sign of Delivering Promised Freedoms.* https://balkaninsight.com/2022/06/16/open-balkans-shows-no-sign-of-delivering-promised-freedoms/, Date of Access: 15 October 2023.
[27] Article 2, MoU for Access to the Labour Market.

the general rights of mobility, residence, and employment, as it is implied in the opening provision, but rather focuses on rights about employment in a different country.[28]

Most significantly, access to the labour market remains subject to approval by the host state on a case-by-case basis, allowing the worker to remain in the host state for a maximum of two years, with a possibility for renewal.[29]

It may be argued that the regulation does not establish true freedom of movement, stay, and work for the citizens of the participating countries. It would mean that they could enter, reside, and work in any of the countries for as long as they wish, without needing formal approval from the host state.[30]

As an illustration, the freedom of workers within the European Union (EU) allows the citizens of any Member State to live and work in any other EU Member State without restriction or discrimination based on nationality.[31] In practice, that means that each citizen of an EU Member State under the same conditions as nationals of that state, equally reside, and enjoy the same treatment in terms of access to education, healthcare, and other social benefits, and be protected from any discrimination on the grounds of their nationality when it comes to employment and working conditions. Nonetheless, there are some exceptions to this. For example, registration requirements may be imposed by a Member State to exercise the rights, but those requirements should not restrict the enjoyment of the rights given by the freedom of movement of persons principle.

By contrast, the Open Balkan regulatory framework does not yet reach this level of integration. It still requires approval from the host state to get access to the labour market, and it is limited to two years (with a possibility of renewal). It does indeed simplify the administrative procedures for applying and getting approval to access the labour market; however, it does not remove it, and it is time limited.

3.2 Scope and Content of the Regulation

To understand the legal regime of labour mobility in the Western Balkans and to examine if there is a consensus emerging between national and Open Balkan legal regimes, this section examines how the concept of labour mobility is reflected in national legislation and Open Balkan's regulation, through two parameters: the content and the scope and reach of the regulation. The starting point is the existing national legislation regulating the status, conditions, and grounds on which a foreign

[28] Supra Note 26.
[29] Article 7 of the Agreement for Free Access to Labour Market. See also: Supra Note 26.
[30] Supra Note 26.
[31] Article 45 of the Treaty of the Functioning of the European Union, Official Journal of the European Union, C 326/47 from 26 October 2012. https://publications.europa.eu/resource/cellar/e7d644d3-1e8c-11e2-91ce-01aa75ed71a1.0001.04/DOC_1, Date of Access: 15 October 2023.

can move, work, and reside for the purposes of work in Macedonia. Hence, a comparative legal method will be used to examine the level of harmonization between the domestic legislation and the Open Balkan's regulation.

3.2.1. Personal Scope of the Regulation

The personal scope of the regulation provides an answer to whom the regulation applies. There is a difference between the personal scope of the existing domestic legislation and the Open Balkan regulation.

The Law on Foreigners[32] regulates the conditions, the procedure, and grounds for granting temporary and permanent residence permits to foreign nationals.[33] It governs temporary residence for employment purposes, including the employment of foreign nationals, seasonal workers and posted workers.[34] Accordingly, seasonal and posted workers are eligible to apply for a temporary residence permit for employment purposes. In addition, the Law on Foreigners also regulates the temporary residence on other grounds, such as education and studying, volunteering, conducting scientific research, medical treatment, accommodation and care in institutions for elderly people, family reunification, etc.

By contrast, the Open Balkan regulatory framework has a narrower personal scope as it covers only temporary residence for the purpose of employment. At the same time, it does not cover either seasonal or posted workers who would come from another contracting party. Consequently, the current Law on Foreigners would remain applicable to seasonal and posted workers originating from any state participating in the Open Balkan Initiative.

3.3. Content of the regulation

3.3.1. Work Permit and Residence Permit for Employment purposes

The requirement to obtain a residence permit is provided in both regulations, the existing Macedonian national legislation and the Open Balkan regulations. While the Law on Foreigners is focused on regulating the rules for issuing a residence permit, the Law on Employment and Work of Foreigners regulates the conditions for issuing a working permit to a foreign worker, which may be two different permits. The latter can be granted for a limited time period of up to one year, or without limited time.[35] On the other hand, the Law on Foreigners expressly provides

[32] Article 1, Law on Foreigners.
[33] Article 1, Ibid.
[34] Article 80, Ibid.
[35] Article 7, Law on Employment and Work of Foreigners.

that the temporary residence permit for the purpose of work is the only permit for work and residence of the foreigner, thus no double permits should be issued. According to the existing national legislation, a temporary residence permit can last up to one year,[36] although the existing legislation also provides a possibility for granting a permanent residence permit when the foreigner lawfully resides in the country for at least five years.[37] In addition to fulfilling the prescribed conditions, the Employment Agency must issue its consent for the foreigner to get a temporary residence permit. Such consent constitutes a mandatory condition for granting temporary residence permits to foreign and seasonal workers. The validity of such consent is limited to one year for foreign workers and six months for seasonal workers.[38] The only exception concerns seasonal workers employed in the construction sector, for whom the consent may last for up to nine months.[39]

The Employment Agency grants its consent for a temporary residence permit of a foreign worker if the following three conditions are fulfilled: 1) the employer satisfies all statutory requirements; 2) the annual quota established for the employment of foreigners has not been filled; and 3) if the employment of a foreign worker will not have any negative impacts on the domestic labor market, considering the structure of the labor market, domestic unemployment and regional needs for creating new opportunities for work in the industry.[40] In all cases, the temporary residence permit for the purpose of work is limited exclusively to performing the work for which the solution was given.[41]

On the other hand, the Open Balkan regulation does not make any significant changes on this requirements, but it only goes a step further in facilitating the administrative procedure for the citizens of the contracting countries, by introducing a possibility for electronic issuance of a residence permit, i.e. unique identification number for a foreign national and eliminating the separate procedure for securing a work permit.[42]

Considering the signed Agreement on Interconnection of Schemes for Electronic Identification of Citizens of the Western Balkans, the citizens of Serbia and Albania are granted access to the Macedonian eGovernment service platforms, thus it will be possible for them to apply for the newly introduced Open Balkan ID Number (OB ID), as a unique identification number introduced within the Open Balkan Initiative. The possession of a valid OB ID number represents as an

[36] Article 79, Ibid.
[37] Article 129, Ibid.
[38] Article 81, Law on Foreigners.
[39] Article 88, Ibid.
[40] Article 86, Ibid.
[41] Article 82, Ibid.
[42]How will the workforce move in the Open Balkans? Critical review of the proposed regulatory framework and the existing one work regulation for foreigners, *Policy Brief n.61.*, 6.

additional attribute to the already existing electronic identity of a person and enables its holder the possibility to fully enjoy and exercise the rights within the scope of the Open Balkan Initiative.[43] The citizens of the contracting parties may apply for the OB ID number within 90 days before starting to work in another contracting country.[44] Once the OB ID number is issued, the citizen will be able to register on the eGovernment service platform and have access to the labour market in the territory of the host country.[45] The approval for access to the labor market is limited to 2 years, with a possibility for renewal.[46] Once a citizen of any of the three contracting receives a successful notification, he/she will be able to access the labour market in any of the Open Balkan member states, without additional registration or any administrative fees. The Ministry of Interior Affairs as a competent authority in Macedonia has an obligation to issue an electronic residence permit within two weeks. Consequently, the Employment Agency would have full electronic insights into all registered people with an OB ID number Open Balkan on the eGovernment service platform. Hence, the newly established rules reduce the administrative procedures for the employers and facilitate the registration of workers in the system. The employers will not have to do any additional registration than the regular one which also applies to the employment of domestic workers.[47] However, the Open Balkan Regulation does not establish a single labour market for the three contracting parties. It reduces administrative burdens, facilitates digital registration of foreign workers, and facilitates employers, which may result in increased mobility of workers in the region, but it does not establish a single labour market. The fact that labour market access remains subject to authorization for a maximum period of two years clearly demonstrates that a genuine single labour market has has not yet been established, despite the political narrative underlying the Initiative.

3.3.2. Work and Residence Permit for Posted Workers

The work and residence permit for the purpose of work of posted workers are regulated in the Macedonian Law on Foreigners, which considers posted workers as eligible for applying for a temporary residence permit. Similar legal regime of regular foreign workers is applied to the posted workers i.e. there is a quota for foreign posted workers and consent from the Employment Agency is required in

[43] Article 4, Agreement od Interconnection of Schemes for Electronic Identification of Citizens in the Western Balkans.
[44] Article 7, Agreement for Free Access to Labour Market.
[45] Supra Note 42, 6.
[46] Article 7, Agreement for Free Access to Labour Market.
[47] Supra Note 42, 6.

order to grant a residence permit to a posted worker. There is a time limitation for a foreign posted worker, i.e. it cannot work in the country for more than two years.[48] On the other hand, the Open Balkan regulation does not cover the posted workers. Furthermore, such workers remain subject to the regular procedure from the existing domestic regulation and cannot benefit from the simplified procedure applied to them.

3.3.3. Quotas for Foreign Workers

According to the existing Macedonian legislation, the Government may establish quotas for the number of foreign workers who can be employed in Macedonia. The annual quota is adopted each year by the end of the year. This quota is proposed by the Minister of Labor and Social Policy, following the proposal of the Employment Agency, in cooperation with the ministers responsible for the relevant areas. The quota is divided into four groups: 1) employment of foreigners; 2) foreigners referred for work; 3) seasonal workers and 4) individual services from foreigners. In any case, the total quota cannot exceed more than 5% per year of the working population of the country that is legally employed.[49]

By contrast, the Open Balkan Regulation removes any quotas for the citizens of the contracting parties. Hence, the citizens of Serbia and Albania who want to work in the country would be exempted and will not count in the established quota for foreign workers.

3.3.4. Equal Treatment and Anti-Discrimination of Workers

The existing domestic legislation does contain anti-discrimination provisions and guarantee equal treatment of foreign workers. According to the Law on Foreigners, foreign nationals who lawfully reside in the country have the same rights and obligations as the citizens of the country.[50] Moreover, the Law on Employment and Work of Foreigners provides equal treatment and prohibition of discrimination of foreign nationals during the employment process. An employer may not place a foreign job applicant in an unequal position because of their race, skin color, gender, age, health condition, i.e. disability, religious, political or other conviction, membership in trade unions, national or social origin, family status, property situation, gender orientation or due to any other personal characteristic. The prohibition of direct or indirect discrimination in these cases refers to unequal

[48] Article 90, Law on Foreigners.
[49] Articles 5 and 6, Law on Employment of Foreigners.
[50] Article 4, Law on Foreigners.

treatment of the candidate for employment and the employee, following the Law on Labor Relations.[51]

The Open Balkan regulation also guarantees equal treatment to the citizens of the contracting parties in terms of access to the domestic labour market. Article 4 of the Agreement on Conditions for Free Access to the Labour Market in the Western Balkans refers to the principle of equality and the equivalent rules in the domestic legislation.

3.3.5. Social Security Rights

The social security rights of the citizens of the contracting parties are currently regulated with two different bilateral agreements: 1) Bilateral Agreement for Social Insurance between Macedonia and Serbia;[52] and 2) Bilateral Agreement for Social Insurance between Macedonia and Albania.[53]

Both Agreements guarantee equal treatment of the people covered by the regulation. However, there is a difference within the scope of social security rights that is covered by the agreements. For example, the Bilateral Agreement with Serbia has a wider range of rights covered, such as health Insurance, health care, and motherhood, pension and disability insurance, insurance in case of an injury at work and occupational disease, insurance in case of unemployment, child protection, reimbursement of social security expenses, giving in kind, and monetary giving. By contrast, the Bilateral Agreement with Albania has a narrower scope in terms of which social security rights are covered for the citizens of both countries. For example, this agreement does not cover any rights based on motherhood, child protection, and insurance in case of unemployment.[54]

Article 18(2) of the Agreement on Conditions for Free Access to the Labour Market in the Western Balkans envisages the conclusion of a Social Security Agreement. A Social Security Agreement should establish equal access to social security rights for the citizens of the contracting parties in their territories. Although there are already existing bilateral agreements between Macedonia and Serbia and Macedonia and Albania that cover social security rights, there is no such agreement between Albania and Serbia, so far. Consequently, one of the reasons for creating a Social Security Agreement within the Open Balkan Initiative may be to regulate the rights of the citizens between the three countries.

From a Macedonian perspective, no draft texts have yet been published, making a substantive legal analysis impossible at this stage, although there is an assumption

[51] Article 4, paragraph 6, Law on Employment and Work on Foreigners.
[52] Bilateral Agreement with FRY, Supra Note 9.
[53] Bilateral Agreement with Albania, Supra Note 10.
[54] Supra Note 42, 2.

that a Social Security Agreement will harmonize the differences between the existing bilateral agreements on social security.

4. Conclusion

The Open Balkan Initiative may be regarded as the first regional integration characterized by its own 'local ownership'. From a political perspective, this represents an important development in relations among the countries of the Balkan region, given this region's historical and political context, constitutes a positive step towards creating better neighborly relations. At the same time, the fact that only three out of six countries are currently participating in the Open Balkan shows the lack of trust and cooperation within the region.

The objective of the Initiative to establish a 'single market' has not yet been achieved. Regarding the establishment of a 'single labour market', this article has demonstrated that the Open Balkan Regulation has an impact on labour mobility and cross-border employment. We concluded that it only facilitates labour mobility by simplifying administrative procedures and enabling freer access to the labour market for the citizens of the contracting parties. However, it does not fully establish a single market, as it is understood in the European Union's single market. Despite numerous political meetings and declarations made by the three governments of the participating countries, the signed agreements do not fully achieve what the goal of the initiative is. Nevertheless, they represent an important step towards creating conditions for freer movement and employment of the citizens in participating countries.

From a legal perspective, the analysis presented in this article has shown that the Macedonian legislation is quite harmonized with the new international agreements signed within the Open Balkan Initiative. Consequently, these international agreements may not alter significantly the the existing legal framework and system for the employment of foreigners. In addition, the existing domestic legislation has a wider personal scope of application, as it regulates different types of foreign workers such as seasonal workers and posted workers, which is not the case with the Open Balkan Regulation. However, this may be providing a basis for extension of the regulation soon. Another important contribution of the Open Balkan Initiative lies in the willingless of the contracting parties to harmonize their policies and regulations, thus establishing free access to the labour market, as it is initially envisioned with the initiative. Another benefit of the Open Balkan Initiative may be the establishment of the same scope of social security rights and services for all citizens of the contracting countries, which is envisioned with the creation of the Social Security Agreement. The potential benefit of this agreement may be even bigger for the citizens of Serbia and Albania, given that no bilateral social insurance agreement currently exists between these two countries.

The practical impact of the Open Balkan regulation on the labour market and potential economic growth is still to be measured in the years to come. For example, some assumptions from economic experts are going in the direction that the Open Balkan may help to fill the gap between supply and demand in the labour market, however on the same time it may be a risk to an increased emigration of highly skilled workers in certain occupations, such as IT sector, engineers, etc. From the Macedonian perspective, this could further exacerbate labour shortages in sectors like agriculture, tourism, and construction sectors, due to the bigger salaries in those sectors in Serbia.[55]

Finally, the Open Balkan Initiative may also serve as a 'trial period' and stimulation for faster adaptation to the open market, once the Western Balkan countries join the European Union. One of the possible solutions to face the challenges of the open market is to foster reform and transformation of the educational policies and the current labour market. Consequently, the educational system should be reformed in a way to satisfy the needs of the labour market. As the Open Balkan Initiative is somehow opening the markets between the contracting parties, it may be a step forward in encouraging faster reforms.

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