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MEJNE POLICIJE - PRIMER SLOVENIJE
RESPECT OF HUMAN DIGNITY AND NON-DISCRIMINATION PRINCIPLE IN THE WORK OF
BORDER POLICE - THE CASE OF SLOVENIA

**PRIPOROČILA za IZVAJANJE
SCHENGenskega sistema**
**RECOMMENDATIONS for the
IMPLEMENTATION of the
SCHENGEN system**

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**PRIPOROČILA ZA IZVAJANJE SCHENGenskega
SISTEMA****RECOMMENDATIONS FOR THE
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kazalo/ CONTENTS

PRIPOROČILA.....	5
RECOMMENDATIONS.....	17
KONTAKTI/CONTACTS.....	31

za reševanje problemov v zvezi z izvajanjem schengenskega sistema na meji s hrvaško in v drugih državah na zunanjih mejah unije

Republika Slovenija je 21. decembra 2007 pričela v celoti izvajati določila schengenskega pravnega reda (urejeno varovanje podatkov, varovanje mej, vključitev v SIS, poenoteno izdajanje vizumov in sodelovanje policijskih organov med državami članicami). Sprejeta je bila vsa potrebna zakonodaja, ki prenaša schengenski pravni red v pravni red Republike Slovenije. V novem mejnem režimu na slovenski zahodni, severni in vzhodni mej ni več, med drugimi spremembami, kontrole gibanja ljudi čez mejno črto, na naši južni meji, torej na meji z Republiko Hrvaško, pa je uveden nov poostren mejni režim, saj se ta meja spreminja v »zunanjo schengensko mejo Evropske unije.

Republika Slovenija je izvedla zahtevne in obsežne priprave na področju varnosti in zakonodaje, prehod na schengenski režim varovanja meje je bil uspešen in učinkovit. Na tem mestu želimo izraziti pohvalo službam v Sloveniji, ki izvajajo schengenski sistem nadzora meje, ob tem imamo predvsem v mislih obmejno policijo in carino, saj prvi meseci schengenskega obdobja v Sloveniji niso prinesli kakšnih večjih težav pri izvajanju nalog teh služb.

Kljub temu pa ostaja dejstvo, da je uvedba schengenskega režima na slovenski južni meji ostro zarezala v območja ob meji in v marsičem vpliva na vsakodnevno življenje lokalnega prebivalstva na obeh straneh meje. Vnesla je nove ovire za potovanje čez to mejo in nove možnosti za izvajanje diskriminacije in kršenje človekovih pravic oseb, ki na kakršen koli način pridejo v stik z novim, schengenskim mejnim režimom. Poleg tega se odpirajo možnosti, da je lahko napačno in nestrokovno izvajanje schengenskih predpisov podlaga za razvijanje negativnih ocen demokratičnega značaja Republike Slovenije in prek nje Evropske unije v celoti.

Na podlagi obširnih razprav, ki smo jih organizirali v okviru mednarodnega projekta, ki ga je sponzorirala Evropska komisija, smo pripravili pet priporočil

zaboljšanje delovanja ali uvedbo novih politik Republike Slovenije in Evropske unije, ki zadevajo 1) delo mejne policije, 2) dopolnjevanje in sprejem ustrezne zakonodaje, 3) razvoj obmejnih krajev v novih pogojih, 4) sodelovanje z Republiko Hrvaško v novih okoliščinah in 5) oblikovanje programa pomoči Evropske unije obmejnih območij ob zunanji, schengenski meji Unije.

Prvo priporočilo

POTREBNO JE STAĽNO USPOSABLJANJE MEJNE POLICIJE

Učinkovit nadzor meje ni samo v interesu države članice, ki izvaja schengenski pravni red na svoji zunanji meji, temveč tudi v interesu vseh držav članic, ki so odpravile nadzor na svojih notranjih EU mejah. Slovenska policija je na slovensko-hrvaški meji in v obmejnem pasu postavljena v zelo odgovoren položaj. Soočena je s pritiski evropske in slovenske javnosti o nepopustljivem boju zoper nezakonito priseljevanje in trgovanje z ljudmi ter preprečevanju katere koli grožnje notranji varnosti, javnemu redu in zdravju. Na drugi strani se od nje zahteva, da svoje delo opravlja brez diskriminacije in ob spoštovanju človekovih pravic in dostojanstva oseb, s katerimi pride v stik pri svojem delu. Poleg tega so policisti na meji prvi, ki pridejo v stik z državljanji tretjih držav, in od njihovega ravnanja je odvisno, kakšno mnenje si bodo le-ti ustvarili o demokratičnem značaju Slovenije in Evropske unije v celoti. Policisti so tudi neke vrste turistični delavci, na katere potniki pogosto naslavljajo najrazličnejša vprašanja.

Pristojnim v razmislek dajemo naslednje predloge:

Prvič. Policija je tista, ki mora, kljub pogosto neupravičenim ali upravičenim kritikam, ohraniti profesionalnost in na strokoven način opravljati svoje dolžnosti. Za doseg takšnih ciljev pa je seveda potrebno obilo znanja. Zato bi morale ministrstvo za notranje zadeve in še posebej policijska uprava zagotoviti stalno usposabljanje in dodatno izobraževanje policistov, ki so na kakršen koli način vključeni v izvajanje novega, schengenskega režima mejne kontrole in varovanja zunanje meje Evropske unije. Poseben poudarek bi moral biti namenjen treningom odkrivanja in ustreznega ravnanja v primeru prepoznanja žrtev trgovanja z ljudmi (zlasti otroci in ženske), ki povečini prihajajo iz balkanske regije in v Slovenijo vstopajo čez slovensko-hrvaško mejo. To je še toliko bolj pomembno, ker so policisti, ki sedaj opravljajo te naloge, v večini mladi po stažu in s srednješolsko izobrazbo ter brez praktičnih izkušenj. Program izobraževanja bi moral obsegati tako profesionalne veščine kot tudi znanja, ki so mejnemu policistu nujno potrebna, da bi lahko

učinkovito in v skladu z mednarodnimi standardi opravljal svoje delo.

Drugič. Po potrebi spremeniti in prilagoditi pravne norme, ki zadevajo izvajanje schengenskega mejnega režima in še posebej dolžnosti posameznih služb, če se pokažejo, da so zastarele, neživljenjske ali ne ustrezajo novim okoliščinam, ki jih je v ospredje postavila praksa. Pri tem je treba proučevati in prenašati v delo slovenske policije primere dobre prakse in pozitivne izkušnje tujih policijskih služb, ki se srečujejo s podobnimi izjemno zahtevnimi situacijami.

Tretjič. V okviru sistema delovanja policije oz. strukture ministrstva za notranje zadeve je potrebno oblikovati avtonomno telo, ki bi sproti svetovalo izvajalcem represivnih ukrepov, kaj predstavlja kršitev načela nediskriminacije in človekovih pravic. Na to telo bi se lahko policisti obrnili v situacijah, ki se bodo prav gotovo pojavile pri uresničevanju schengenskega sistema nadzora prehajanja in zagotavljanja varnosti na zunanji meji EU.

V Avstriji se je, na primer, kot zelo uspešna in učinkovita rešitev uveljavil institut koordinatorja za človekove pravice. To je posebno posvetovalno telo, katerega člani (eksperti s področja varstva človekovih pravic in prepovedi diskriminacije) s svojimi strokovnimi nasveti in priporočili pomagajo policiji in drugim represivnim organom vselej, kadar se le-ti znajdejo v dilemi, kako postopati, da bo njihovo ravnanje v celoti upoštevalo obvezujoče mednarodnopravno standarde o prepovedi diskriminacije in o varstvu človekovih pravic in da bo v skladu z relevantnimi normami mednarodnega in nacionalnega prava.

Četrtrič. Domači pravni predpisi, ki so neposredno ali posredno vezani na izvajanje schengenskega pravnega sistema, morajo biti v skladu z normami ustave Republike Slovenije, zlasti s tistimi, ki določajo temeljne svoboščine in pravice človeka ter prepovedujejo kakršno koli diskriminacijo. Zapleti, na primer, v zvezi z nekaterimi novejšimi dopolnitvami prejšnjega Zakona o azilu, ki je zaradi neskladnosti nekaterih njegovih določb z ustavnimi normami bil večkrat predmet ustavne presoje pred Ustavnim sodiščem Republike Slovenije, kažejo na to, da je potrebno z izredno visoko stopnjo odgovornosti sprejemati relevantne pravne predpise, ki morajo biti v skladu z ustavo Republike Slovenije ter hkrati upoštevati vse relevantne mednarodnopravno obvezujoče standarde. Razen tega ne bi bilo odveč, če bi zakonodajalec bil pripravljen prisluhniti priporočilom in dobronamernim kritikam pomembnih mednarodnih teles, kot so npr. Visoki komisariat ZN za begunce ter mednarodne in domače nevladne organizacije za varstvo človekovih pravic.

Petič. Policija mora posvetiti posebno pozornost stalnemu dialogu z obmejnimi prebivalstvom, lokalnimi skupnostmi in nevladnimi organizacijami, predvsem o stvareh, ki se tičejo problemov ljudi, ki živijo ob meji. Potrebno bi bilo proučiti oblikovanje stalne institucionalne oblike za razvijanje posvetovanja med policijo in lokalnimi skupnostmi oziroma z ustreznimi upravnimi enotami vzdolž schengenske meje.

Drugo priporočilo

POTREBNO JE DOPOLNITI OBSTOJEČE IN SPREJETI NOVE PREDPISE

Vlada in državni zbor naj pripravita oziroma sprejmeta manjkajoče predpise, ki sodijo v okvir pravne ureditve problematike prehajanja zunanje schengenske meje in vstopa posameznikov na ozemlje Republike Slovenije.

Priporočamo naslednje:

Prvič. Pri dopolnjevanju in sprejemanju pravnih predpisov je treba dosledno upoštevati vse mednarodnopravno obvezujoče standarde, kot je npr. temeljno mednarodnopravno načelo na področju begunskega in azilnega prava o prepovedi izгона in zavračanja beguncev (*non-refoulement*), vključeno v Konvencijo ZN o statusu beguncev iz leta 1951, ki predstavlja osnovo za pravno ureditev mednarodne zaščite tudi v okviru pravnega reda EU: *“Demokratični značaj neke države se kaže tudi v tem, da so temeljni mednarodni pravni standardi minimum in ne maksimum njenega notranjega pravnega reda.”*

Drugič. Vlada in državni zbor naj čim prej ustrezno spremenita kritične določbe Zakona o mednarodni zaščiti (Ur. l. RS, št. 111/2007). Zakon je sicer sistematično in celovito uredil področje azila, a je raven pravnega varstva prosilcev za mednarodno zaščito znižal na »minimalne evropske pravne standarde« in odredil ureditve, ki so pod splošno priznanimi mednarodnopravnimi standardi. Določbe tega zakona namreč omogočajo ukrepe, ki lahko imajo za prosilce za azil zelo neugodne posledice. Zaradi tega smatramo, da pomenijo takšna in podobna ravnanja pristojnih državnih organov korak nazaj na področju normativne zaščite pravic človeka.

Tretjič. Kar zadeva preprečevanje, zatiranje in boj zoper trgovanje z ljudmi je Slovenija sicer sprejela zakonodajne, politične in druge ukrepe. Osnovo za aktivno ukrepanje glede identificiranja žrtev predstavlja 387/a čl. slovenskega Kazenskega zakonika (KZ-UPB1, Ur. l. RS, št. 95/2004). Pomembna pa so tudi nekatera druga določila, kot npr. 311. čl. KZ, v katerem so inkriminirane oblike in načini prepovedanega prehajanja meje ali ozemlja države, 38.a čl. Zakona o tujcih (ZTuj-1-UPB5, Ur. l. RS, št. 71/2008), ki ureja pravni status žrtev trgovine z ljudmi z nezakonitim bivališčem v Republiki

Sloveniji ter nenazadnje tudi Zakon o zaščiti prič (ZZPrič-UPB1, Ur. l. RS, št. 81/2006).

Kljub temu pa obstajajo pravne praznine in pomanjkljivosti, predvsem glede specifičnih določb naše zakonodaje o identificiranju in zaščiti žrtev trgovanja z ljudmi, ki bi izrecno in natančno pravno uredile status, pravice in zaščito žrtev. Obstajajo smernice mednarodnih organizacij, ki so v pomoč identificiranju žrtev trgovanja, kot so npr. Smernice UNICEF-a za zaščito pravic otrok, žrtev trgovanja v JV Evropi (2003), Regijski policijski priročnik Mednarodnega centra za razvoj migracijske politike za boj proti trgovanju z ljudmi (2003), dokumenti Pakta stabilnosti v JVE ipd.

Razen sprejema specifične zakonodaje, ki bi celovito uredila problematiko trgovanja z ljudmi v Sloveniji, bi bilo potrebno povečati tudi denarna sredstva, ki jih slovenska vlada namenja ukrepom na področju boja proti trgovanju z ljudmi, ter dosledno implementirati vso relevantno zakonodajo, kakor tudi izvesti kampanje za širjenje informacij med širšo javnostjo, in še posebej mladino. Še bolj bi bilo potrebno okrepiti tudi medresorsko, medagencijsko in mednarodno sodelovanje na tem področju. Na mednarodni ravni je to mogoče doseči v okviru sodelovanja slovenskih vladnih oblasti z Europolom, Interpolom, Eurojustom, Svetovno carinsko organizacijo, Mednarodnim centrom za razvoj migracijske politike, Mednarodno organizacijo za migracije, Visokim komisariatom Združenih narodov za begunce in drugimi za to specializiranimi telesi.

Četrta. Slovenija mora čim prej ratificirati Konvencijo Sveta Evrope o ukrepanju proti trgovini z ljudmi iz leta 2005, protokol 12 k Evropski konvenciji o temeljnih svoboščinah in pravicah človeka iz leta 2000, ki bo nudil mednarodno sodno varstvo žrtvam katere koli diskriminacije, Konvencijo Sveta Evrope o preprečevanju terorizma iz leta 2005 in Dodatni protokol h Konvenciji za zaščito posameznika v odnosu do avtomatske obdelave osebnih podatkov, ki se nanaša na nadzorne organe, in čezmejnega prenosa podatkov iz leta 2001.

Tretje priporočilo

SLOVENIJA NAJ OBLIKUJE PROGRAM RAZVOJA OBMOČIJ OB SCHENGENSKI MEJI

Predstavniki lokalnih skupnosti so v okviru projektnih razprav ugotavljali, da občani ob meji še vedno niso dovolj obveščeni o podrobnostih delovanja novega schengenskega mejnega režima, ki posega v njihovo življenje in možnosti za delo in razvoj. Podobnega mnenja so bili tudi uslužbenci upravnih enot ob meji s Hrvaško; kljub temu da delajo neposredno z ljudmi, ki živijo na meji, niso bili deležni nobenih dodatnih izobraževanj, ki bi jim olajšala

razumevanje schengenskega mejnega režima in posledično izboljšala usluge, ki jih nudijo prebivalcem ob meji.

Prebivalci in lokalne skupnosti ob meji so bili z uvedbo schengna postavljeni več ali manj pred izvršeno dejstvo v smislu "čim prej se sprijaznite z novim režimom." Predstavniki lokalnih skupnosti so večkrat opozorili na gluhost države za njihove skupne težave ter tudi za probleme posameznikov, ki živijo neposredno ob meji oz. na meji. Državne institucije zavlačujejo z reševanjem posameznih problemov oz. prenašajo odgovornost za reševanje na lokalno skupnost, kljub temu da je uveljavitev schengenskega režima nacionalni projekt in ne projekt obmejnih lokalnih skupnosti. Republika Slovenija je dolžna prebivalcem ob meji olajšati bivanje in ne, da reševanje omenjenih težav prenaša na pleča lokalnih skupnosti oziroma celo na prizadete posameznike z izgovorom, da se tu ne da ničesar storiti in da ni nikakršnih možnosti za individualno obravnavo pri izvajanju schengenske zakonodaje. Lokalne skupnosti in ljudje ob meji so upravičeni do kompenzacije zaradi negativnega učinka meje na življenje in gospodarsko delovanje na teh območjih.

Poostrena kontrola na meji in kontrola ljudi v obmejnem pasu je že in še bo negativno vplivala na trgovino in turistično dejavnost posameznih obmejnih občin. Turistične organizacije in destinacije, ki so imele tradicionalno goste iz sosednje Hrvaške, že občutijo upad gostov iz Hrvaške in predvidevajo, da bo upad gostov v bodoče še večji. Upad tradicionalnih gostov močno znižuje prihodke posameznih ponudnikov turističnih storitev, poleg upada prihodkov, so turistični delavci soočeni še s povečanjem stroškov za promocijo na novih trgih.

Posameznikom, ki nimajo urejenega dostopa do svoje hiše po slovenskem ozemlju, je nova schengenska meja še dodatno otežila življenje, saj jim slovenska država kljub obljubam ni zagotovila izgradnje ceste oz. drugače uredila dostop do hiš preko slovenskega ozemlja. Nekaterim posameznikom je policija omogočila dostop do svojih hiš preko sistema zapornic, ki pa omogočajo dostop do hiš samo lastnikom in ne tudi nujnim vožnjam (reševalci, gasilci, ipd.). Mejni prehodi so sicer zgrajeni, vendar prebivalcem ne lajšajo življenja, prej nasprotno, pot do njihovih domov je precej daljša, kar pomeni dodatni čas in strošek. Stavbe, ki so locirane neposredno na meji, so postale neuporabne, saj je dostop do teh zgradb zaradi poostrene mejne kontrole onemogočen, rešitve pa »schengenska zakonodaja« za take individualne primere ne zagotavlja.

Prebivalci so nezadovoljni s poostreno kontrolo v mejnem pasu ob meji s Hrvaško. Izpostavljeni so dodatnim, po njihovem mnenju nepotrebim,

kontrolam osebnih dokumentov, tudi po večkrat na dan. Kontrolo dokumentov doživijo, ko gredo na obisk k sosedom, na njivo ipd. Pritožujejo se nad povečano prisotnostjo policije, ki s svojo prisotnostjo še dodatno vdira v življenja vaščanov ob meji, saj jih pogoste kontrole, ne samo prometa oseb, po nepotrebem vznemirjajo.

Posamezniki so zaradi omejitev prometa ob meji prisiljeni v drugačen življenjski stil oziroma sedANJI način življenja postane naenkrat precej dražji (npr. dodatni stroški za prevoz kurilnega olja), druženje v krajih, ki jih deli meja, postane nemogoče oziroma skrajno nadzorovano ipd. V primeru lastništva na drugi strani meje se stroški obdelovanja zemlje močno povečajo, obenem nihče ne upošteva izgube časa zaradi nepotrebnih daljših poti in čakanja na meji. Individualne zapornice, do katerih so upravičeni nekateri posamezniki na meji, so samo administrativna in tehnična ovira za posameznike, ki živijo ob meji, iz varnostnega vidika pa nimajo posebnega pomena, saj je iluzorno pričakovati, da bodo takšne zapornice lahko ustavile ilegalno trgovino in ilegalno prehajanje ljudi.

Posebno pereča je problematika zmanjševanja števila prebivalstva v obmejnih krajih. Podatki kažejo celo na 50 % zmanjšanje prebivalstva v nekaterih obmejnih krajih. Dodatno prebivalce skrbi znižanje vrednosti njihovih nepremičnin in zelo majhne investicije v te obmejne kraje.

Predstavniki lokalnih skupnosti, upravnih enot, razvojnih agencij in drugi strokovnjaki, ki so sodelovali na posvetovanjih, so ugotavljali, da imajo prebivalci ob meji občutek, da jih Slovenija zapostavlja, še posebej ob dejstvu, da je infrastruktura na hrvaški strani pogostejša v boljšem stanju kot na slovenski strani. Slovenska vlada ni pripravila nobenih ukrepov ali programov, ki bi pomagali lajšati negativne posledice novega mejnega režima za ljudi ob meji in bi bili v podporo revitalizaciji obmejnih področij, ki se že po pravilu soočajo s slabšimi razvojnimi priložnostmi. Policija samo izvaja »schengensko zakonodajo« in nima pristojnosti za individualno obravnavo posameznih primerov, ki so za posameznike življenjskega pomena.

Mejo in nadzor nad dogajanjem na njej moramo razumeti kot tehnično administrativno ločnico, medtem ko so resnična vsebina dogajanja na obmejnem območju seveda ljudje, ki tam živijo. Ob meji s Hrvaško se je že zaradi skupne zgodovine razvila oblika sobivanja ljudi z obeh strani meje, meja je bila območje stika in ne območje ločevanja. Poostreni tehnični ukrepi na tej meji zato precej spreminjajo pogoje življenja meji in bodo verjetno poslabšali razvojne možnosti obmejnih krajev.

Na prej opisanih spoznanjih in izhodiščih smo poskušali oblikovati nekatera priporočila, katerih glavni namen je, da pripomorejo k lažšanju negativnih

posledic, ki jih ima uvajanje schengenskega režima na slovensko-hrvaški meji za lokalno prebivalstvo in za razvojne možnosti obmejnih krajev.

Prvo. Vlada naj naroči pripravo vsestranske analize posledic uveljavitve schengenskega mejnega režima za življenje ljudi ob meji in za razvoj obmejnih skupnosti. Študijo naj pripravi neodvisna strokovna skupina ob konzultaciji obmejnih lokalnih skupnosti, razvojnih agencij in drugih, ki bi lahko pripomogli k popolnosti analize in pripravi predlogov za izboljšanje stanja. Študija naj bo podlaga za razpravo o teh vprašanjih v parlamentarnih in vladnih strukturah in v relevantnih organizacijah in institucijah civilne družbe.

Drugo. Vlada naj na podlagi ugotovitev prej omenjene študije in predlogov v njej za izboljšanje stanja prouči možnosti, da bi posamezne probleme preliminarно, do sprejema celovitega programa, reševali z dopolnitvijo obstoječih relevantnih programskih in razvojnih dokumentov, zakonov in podzakonskih aktov. V mislih imamo zlasti Zakon o spodbujanju skladnega regionalnega razvoja ter ustrezne uredbe o pogojih in merilih za dodeljevanje spodbud, pomembnih za skladni regionalni razvoj. Ugotavljamo tudi, da v razvrstitvi razvojnih regij po stopnji razvitosti za programsko obdobje 2007-2013 schengenska obmejna lega ni bila uvrščena med kazalce ogroženosti, zato v teh območjih stopnja razvojne perspektive ni bila določena primerno.

Tretje. Vlada naj pripravi celovit in finančno podprt program reševanja problemov prebivalstva ob meji, ki so posledica schengenskega mejnega režima in ki bo namenjen spodbujanju razvoja lokalnih skupnosti ob meji s Hrvaško.

Četrto priporočilo

**POTREBNO JE RAZVIJATI ČEZMEJNO SODELOVANJE S HRVAŠKO KOT
PODLAČO DOBROSOSEDSKIM ODNOSOM**

Prebivalstvo, ki živi ob tej meji, je zaradi novega mejnega režima ločeno bolj, kot kdaj koli prej v zgodovini. Posebno priložnost za ohranjanje in poglobitev stika skupnosti z obeh strani meje je do uveljavitve Schengna omogočal Sporazum med Republiko Slovenijo in Republiko Hrvaško o obmejnem prometu in sodelovanju (SOPS). V predpristopnih pogajanjih je bil SOPS sprejet s strani Evropske unije in se je lahko uporabljal brez omejitev do uveljavitve Schengenskega sporazuma. Z uveljavitvijo Zakonika o schengenskih mejah (Uredba (ES) št. 562/2006) pa je bil SOPS še enkrat

podvržen evalvaciji s strani Evropske komisije, ali ustreza novim okoliščinami. Tudi po tej presoji ostaja SOPS v veljavi in omogoča vrsto ugodnosti za prestop meje za obmejno prebivalstvo v obeh državah.

Vendar moramo ugotoviti, da so se kljub SOPS-u razmere po uvedbi schengna zaostrole, saj je gibanje lokalnega prebivalstva v obmejnem pasu veliko bolj omejeno kot prej; med ukrepi omenimo posebne prepustnice za gibanje v obmejnem pasu, ki so dodeljene samo lastnikom zemljišč na obeh straneh meje in v katere se vpisujejo natančni datumi in ure prehoda meje, nadalje so vse točke za prehod meje izven mejnih prehodov zaprte z zapornicami, ključ za njihovo odpiranje je dodeljen zelo ozkemu krogu upravičencev. Takšni poostreni ukrepi že imajo negativen vpliv na sobivanje ter izvajanje gospodarskih aktivnosti, še posebej turističnih, na obmejnem območju. Upadla je živahnost socialnih stikov, različnih kulturnih, športnih in drugih prireditvev ob meji, saj so administrativne zahteve, ki jih predvideva schengenski pravni red za vzpostavitev začasnega mejnega prehoda (v primerih krajših turistično-športnih prireditvah), tako visoke (predčasna najava, pridobitev soglasij policije in carine, visoki stroški), da so tovrstne prireditve skoraj neizvedljive.

Poleg fizične in administrativne meje s Hrvaško želimo opozoriti tudi na meje »v glavah«, ki lahko zaradi neustreznih politik postanejo še posebej nevarne in trdovratne. Prvič v zgodovini je fizična meja ostro zarezala med Slovenci in Hrvati, stroge administrativne in varnostne zahteve Bruslja ustvarjajo mentalne pregrade tudi v glavah prebivalcev obeh držav; v Sloveniji z občutkom, da so znotraj, na Hrvaškem pa, da so (neupravičeno) zunaj sistema. Ob dejstvu, da tudi dnevna politika obeh držav izrablja obrobna nerešena mejna vprašanja za pridobivanje političnih točk v javnostih obeh držav, se lahko prepad v glavah ljudi samo še poglobi. Ob tem, da v polnosti uresničujemo schengensko zakonodajo, moramo vendarle tudi poskrbeti, da ponudimo prebivalcem in lokalnim skupnostim nove možnosti za sodelovanje in razvijanje gospodarskih aktivnosti, saj bo le na ta način meja v glavah padla, še preden bo odpravljena tudi fizična, schengenska meja med obema državama.

Na podlagi dosedanjih razprav in ugotovitev predlagamo:

Prvič. Vlada naj pripravi podrobno študijo sedanjega stanja čezmejnega sodelovanja na slovensko-hrvaški meji, v kontekstu analize odnosov med Slovenijo in Hrvaško v celoti ter politike EU do zahodnega Balkana in še posebej pridružitvenih pogajanj s Hrvaško. Študija naj obsega tudi predloge za ohranitev tradicionalnih oblik sodelovanja in za razvoj novih pobud sodelovanja obmejnih lokalnih in regionalnih skupnosti.

Drugič. Uveljavitev schengenskega mejnega režima ne sme negativno vplivati na dobro sodelovanje lokalnih skupnosti in posameznikov z obeh strani meje. Zato mora vlada Republike Slovenije z ustreznimi ureditvami in programi, sprejetimi na podlagi zgoraj omenjene študije, zagotoviti, da nadzor zunanje schengenske meje ne bo omejeval utečeno družbeno in kulturno sodelovanje prebivalcev in lokalnih skupnosti z obeh strani meje.

Tretjič, vlada naj prouči vse inštrumente EU, ki so namenjeni vzpodbujanju čezmejnega sodelovanja, predvsem možnosti v okviru programov INTERREG in IPA. Po konzultacijah lokalnih skupnosti (in pokrajinskih, če bodo ustanovljene) naj predlaga konkretne pobude za razvoj različnih oblik sodelovanja na slovensko-hrvaški meji. Potrebno bi bilo proučiti tudi možnosti in izrabilo razvojne priložnosti, ki jih prinaša nov inštrument EU za ustanavljanje Evropskih skupin za ozemeljsko sodelovanje (ESOS) (Uredba ES št. 1082/2006).

Četrtoč. Vlada Slovenije naj predlaga hrvaški vladi ustanovitev posvetovalnega slovensko-hrvaškega foruma za obravnavanje sodelovanja med državama, ki bi ga sestavljali predstavniki ustreznih ministrstev, lokalnih in regionalnih skupnosti, organizacij in institucij civilne družbe in kvalificirani strokovnjaki. Forum bi se sestajal enkrat na leto in obema vladama in drugim dejavnikom predlagal ustrezne rešitve in pobude za razvoj sodelovanja.

Peto priporočilo

EVROPSKA KOMISIJA MORA PRIPRAVITI PREDLOGE ZA SPODBUJANJE RAZVOJA LOKALNIH IN REGIONALNIH SKUPNOSTI IN ČEZMEJNEGA SODELOVANJA NA ZUNANJI MEJI UNIJE

Svet ministrov in Evropska komisija morata vzeti v obzir dejstvo, da je prišlo pri sedanjih širitvi schengenskega prostora do bistvenih sprememb, zlasti kar zadeva razvojne možnosti lokalnih in regionalnih skupnosti, ki se nahajajo ob zunanji, schengenski meji unije, in čez-mejno sodelovanje s sosednjimi državami. Večina teh skupnosti so nerazvite obmejne regije že tako ali tako najbolj revnih držav EU; nove schengenske meje mejijo tudi na države, ki izkazujejo nizke stopnje razvitosti in ki v kratkoročni perspektivi ne bodo postale članice EU, ali pa na države Zahodnega Balkana, ki se zaradi tragičnih dogodkov v bližnji preteklosti nahajajo v zelo zapletenem političnem, socialnem in ekonomskem položaju ter jim stabilizacijsko-asociacijski sporazumi odpirajo možnost za članstvo v EU.

Poleg tega morata upoštevati, da je razvoj obmejnih območij in čezmejnega sodelovanja ob novi, schengenski zunanji meji Unije zelo pomemben element zagotavljanja stabilnosti in varnosti v sosedstvu EU. Svet ministrov in Evropska komisija bi zato morala še s posebno občutljivostjo obravnavati probleme ob teh mejah in pripraviti posebne oblike spodbujanja razvoja in čezmejnega sodelovanja ob teh »zunanjih« mejah.

Svetu ministrov in Evropski komisiji predlagamo naslednje:

Prvič. Dopolnitev INTERREG in drugih podobnih programov. Problem predstavlja upravičenost posameznih lokalnih skupnosti do sredstev iz tega programa INTERREG. Žal so kriteriji zelo ohlapni in omogočajo črpanje sredstev iz tega programa tudi tistim lokalnim skupnostim, ki niso locirane vzdolž slovensko-hrvaške meje, temveč tudi globlje v notranjosti. Taka ohlapnost povzroča dvojno škodo obmejnim skupnostim in ljudem ob meji: 1) lokalne skupnosti ob meji težje pridejo do sredstev, saj so izpostavljene večji konkurenci, oziroma so sredstva omejena, 2) sredstva, ki jih pridobijo lokalne skupnosti iz notranjosti pogosto niso porabljena v namene v katere je bil program INTERREG ustanovljen, saj občine v notranjosti nimajo neposrednih negativnih posledic življenja ob meji.

Drugič. Spodbujanje obstoječih oblik čezmejnega sodelovanja, predvsem obstoječih Evroregij. Različne oblike čezmejnega povezovanja lokalnih in regionalnih skupnosti, so se v preteklosti razvijale predvsem v okviru spodbud Sveta Evrope. Evropska komisija bi morala proučiti možnosti, da oblikuje inštrument za podporo takšnih trajnih (formalnih in neformalnih) oblik čezmejnega sodelovanja, ki presegajo projektno sodelovanje, ki ga sedaj podpirajo drugi inštrumenti EU. V tem kotensku bi morale čezmejne regije, ki ležijo na zunanji EU meji, dobiti posebno mesto in posebne ugodnosti.

Tretjič. Pripraviti posebne ukrepe in ugodnosti za sodelovanje obmejnih skupnosti in regij na zunanji EU meji v okviru novega UE inštrumenta za ustanavljanje Evropskih skupin za ozemeljsko sodelovanje (ESOS) (Uredba ES št. 1082/2006).

Četrtič. Pripraviti mehanizme za podporo pobudam civilne družbe, ki ponavadi najbolj odražajo realno sliko obstoječih problemov. Subjekti civilne družbe so tisti, ki se lahko najbolj približajo izzivom skupin in posameznikov v problematičnih okoljih. Tako lahko poleg obstoječega institucionalnega sodelovanja med EU in drugimi državami pripomorejo k izboljšanju razmer v obmejnih območjih, saj prebivalci institucionalno sodelovanje prevečkrat vidijo kot preveč formalizirano in preveč oddaljeno od njihovih konkretnih problemov.

Petič. Vključitev problemov objemnih skupnosti in regij na zunanji EU meji v zunanjepolitično platformo EU do sosledstva - Rusija, Zahodni Balkan itn. Taki programi za sinergijsko povezovanje razvojnega potenciala čezmejnih območij so še posebej potrebni v okoljih, kjer se predvideva, da bo zunanja schengenska meja v desetletju ali še prej postala notranja schengenska meja. (Pre)ostro ločevanje lokalnih skupnosti in upadanje razvojne moči takšnih območij povzroča nepopravljivo škodo za čas, ko bodo meje (zopet) izginile, ljudje pa na skupno življenje, tako kot sedaj na tako ostro ločitev, ne bodo pripravljani.

Šestič. Oblikovanje novega celovitega programa za spodbujanje razvoja in sodelovanja, ki bi bil namenjen izključno lokalnim skupnostim in regijam z obeh strani meje vzdolž celotne zunanje schengenske meje. Ta nov inštrument lahko vključuje že obstoječe mehanizme za spodbujanje čezmejnega sodelovanja, pripraviti bi bilo potrebno tudi nov sklop ukrepov in mehanizmov, ki bi naslavljali specifične probleme, s katerimi se srečujejo te skupnosti in regije.

Sedmič. Ustanovitev referenčnega centra EU za razvoj kadrov za sodelovanje ob zunanjih schengenskih mejah. Naloge takšnega centra bi bile 1) proučevanje in analiza stanja, 2) točka srečevanja za izmenjavo znanj in izkušenj (konference, seminarji delavnice), 3) vodenje dokumentacijskega centra, 4) izobraževanje - posebni programi usposabljanja, podiplomski študij, seminarji idr., 5) različne oblike usposabljanja, pomoč pri oblikovanju širokega spektra različnih profilov za predstavnike obmejnih služb (policija, carina), lokalnih skupnosti, pa tudi podjetnikov, pedagogov, kulturnih delavcev, delavcev v civilnem sektorju idr. Predlagani center bi tem ciljnim skupinam nudil potrebna znanja o obstoječih veljavnih predpisih z njihovega področja ter poteh za uspešno izrabljanje obstoječih mehanizmov pomoči, kar bi imelo za cilj lajšanje negativnih posledic meje kot fizične ločnice ter doseganje sinergijskega povezovanja razvojnega potenciala obmejnih območij. ISCOMET je v okviru svojih dejavnosti že pripravil predlog za tak center EU.

RECOMMENDATIONS

FOR SOLVING THE PROBLEMS CONNECTED TO THE IMPLEMENTATION OF THE SCHENGEN SYSTEM ON THE BORDER WITH CROATIA AND IN OTHER COUNTRIES AT THE EXTERNAL EU BORDERS

The Republic of Slovenia began on 21 December 2007 fully to implement the provisions of the Schengen legal order (regulated protection of data, protection of borders, inclusion into the SIS, unified issuing of visas and cooperation of police bodies among the member countries). Slovenia adopted all the necessary legislation, which transfers the Schengen legal order into the legal order of the Republic of Slovenia. In the new border regime there is, among other changes, no control of movement of persons across the Slovenian western, northern and eastern border; whereby on the southern border a stricter border regime was introduced as this border became an external "Schengen" border of the European Union.

The Republic of Slovenia has carried through challenging and extensive preparations in the field of security and legislation; the transition to the Schengen regime of border protection was successful and effective. We would like to take the opportunity to express praise to those institutions in Slovenia, who carry out the Schengen border control system; first of all to the border police and customs service, because the first months of the Schengen period in Slovenia did not bring any important problems in execution of the tasks of these institutions.

In spite of that, the fact remains that the introduction of the Schengen regime at the Slovenian southern border brought a severe cut into the territories along the border and that it in many ways affects the life of border population at the both sides of the border. It has introduced new obstacles to border crossing and new possibilities for occurrences of discrimination and human rights violation of persons who come in this way or another in contact with the new Schengen border regime. Moreover, possibilities have opened that the incorrect or unprofessional execution of Schengen provisions could cause development of negative judgments

about the democratic character of Slovenia and through it also of the European Union as such.

On the basis of extensive discussions, which we organised in the framework of the international Project, which was co-financed by the European Union, five recommendations were shaped, aiming at amelioration of the functioning or introduction of new policies of the Republic of Slovenia and the European Union, which appertain to: 1) work of the border police, 2) improvement and adoption of relevant legislation, 3) development of border regions in new circumstances, 4) cooperation with the Republic of Croatia in new conditions and 5) shaping of the assistance programme on the level of EU for border regions at the external, Schengen EU border.

First recommendation

PERMANENT BORDER POLICE TRAINING IS INDISPENSABLE

The efficient border control is in the interest not only of a particular member state that exercises Schengen provisions regarding its external Schengen border but also all member states that abolished the border controls at their common internal borders. Slovenian police at the border with the Republic of Croatia and local border area is putted in very responsible situation. It is faced with European and Slovenian public's pressures related to uncompromising combat against illegal immigrations and trafficking in human beings and prevention of whichever threat to the internal security, public order, and health. On the other hand, it is required from Slovenian police that it acts without discrimination and respects human rights and human dignity of persons coming into contact with while exercising border control. In addition, border policemen are the first ones who come into contact with third country nationals and their treatment is indeed relevant for the creation of third country nationals opinions concerning democratic character of Slovenia and the whole European Union. Policemen are also a sort of tourist workers often addressed with manifold questions asked by travellers.

We submit to the competent authorities into consideration these proposals:

First, despite often unjustified or justified critiques the police is the one who must remain professional and performs its duties in a proficient way. However, an achievement of these aims surely requires a lot of knowledge. The Ministry of the interior and particularly general police directorate

should therefore provide permanent training and additional specific education of policemen who take part in the exercise of a new Schengen regime of border control and the EU's external border safeguarding. A special emphasis should be given to trainings related to detection and appropriate treatment with victims of human trafficking (especially children and women), who come mainly from the Balkan region and cross Slovenian-Croatian border. Such border police trainings and educations are of special significance because policemen who currently perform these tasks are more often than not young and without much work experience and generally they completed secondary education. Taking this into account, a training programme should include professional skills as well as proficiency that are indispensable for effective police work which has to fulfil international standards.

Second, legal provisions concerning the execution of the Schengen border regime and in particular tasks of respective services should be altered and adjusted to new real situation in the case they prove to become obsolete, impractical or unsuitable in practice. For all that, it is necessary to examine closely and bring into Slovenian police's work examples of good practice and positive experiences of foreign police services encountered with similar very difficult situations.

Third, in the framework of police activities' system and the Ministry of the interior's structure it is necessary to establish an autonomous body that would in each case counsel to officials who are competent and responsible for the exercise of repressive measures on what represents violations of the non-discrimination principle and human rights violations. In this way policemen would be enabled to consult such a body in problematic situations that will surely emerge while exercising the Schengen system of border control and providing safety at the EU external border.

In Austria, for example, there was established a human rights coordinator as a very successful and efficient solution. This is a special consultative body whose members are human rights experts and connoisseurs of non-discrimination principle that assist police and other repressive bodies by providing professional advices and recommendations every time when they are on the horns of a dilemma how to act in accordance with legally binding international standards on the prohibition of discrimination and human rights protection as well as other relevant international and national law provisions.

Fourth, domestic legal provisions that are directly or indirectly linked to the implementation of the Schengen legal system should be in compliance with Slovenian constitutional provisions, particularly with those providing

fundamental freedoms and human rights and enacting the prohibition of discrimination of any kind. Many complications arising from a discrepancy between some amendments of previous Asylum Act and constitutional rules has shown that all relevant legal provisions should be prepared and adopted with a high degree of responsibility as they need to be in accordance with Slovenian constitution and meaningful international legal standards. By the same token, it is needless to say that a legislator should consider and if necessary also follow recommendations and well-intentioned critiques of important international bodies such as the United Nations High Commissioner for Refugees (UNHCR) as well as international and national non-governmental human rights organizations.

Fifth, the police should devote a special attention to the permanent dialogue with the population living in the close proximity or alongside the Slovenian-Croatian border, local communities and non-governmental organizations (NGO's), especially on problems of people living close to this external Schengen border. The possibility of creating a permanent institutional entity to facilitate consultative activities between the police and local communities or with proper administrative units along the external Schengen border should also be taken into deliberation.

Second recommendation

IT IS NECESSARY TO AMEND THE EXISTENT AND ADOPT NEW LEGAL PROVISIONS

The government and national assembly should prepare and adopt missing provisions that need to be included in the legal framework of the external Schengen border crossing regulation and legislation provided for entering of individuals on the territory of the Republic of Slovenia.

We recommend the following:

First, when amending and adopting relevant legal provisions it is necessary to seriously consider all internationally obligatory human rights standards like, for example, *non-refoulement* principle in the field of asylum and refugee law, which is enshrined in 1951 UN Convention relating to the Status of Refugees that also represents the legal foundation for the international protection within the EU *acquis*. The democratic nature of a country is indicated by the fact that the key international human rights standards represent a minimum and by no means a maximum of its domestic legal order.

Second, the government and national assembly should as early as possible properly amend some controversial provisions of the International Protection Act (Official Gazette of the Republic of Slovenia, No. 111/2007). This new law regulates the asylum area systematically and in a holistic manner. However, by it a level of the legal protection of international protection seekers was diminished to minimal European legal standards and regulations that do not fulfil universally accepted international human rights standards were prescribed. Current provisions of the International Protection Act allow measures that might have a very unpleasant impact on the status of asylum seekers. For that very reason, we believe that such and similar insufficiently considered acts of competent national authorities represent a step backward with regard to normative human rights protection.

Third, as far as the prevention, suppression and combating trafficking in human beings are concerned; Slovenia adopted and performed significant legal, political and other measures. The basis for active measures regarding victim identification, is the Article 387/A „Trafficking in Human Beings“ of the Slovene Criminal Code (Gazette of the Republic of Slovenia, No. 95/2004). In addition, there are also some other available legal provisions that may serve as a legal basis for appropriate reaction in particular circumstances such as the Article 311 of the Slovene Criminal Code in which the modes of prohibited crossing of the border and the state territory are incriminated, the Article 38/A of the Slovene Aliens Act (Gazette of the Republic of Slovenia, No. 71/2008) that provides legal protection for victims of the trafficking in human beings with illegal residence in the Republic of Slovenia and ultimately some Articles of the Slovene Witness Protection Act (Gazette of the Republic of Slovenia, No. 81/2006).

Nevertheless, there are still some legal vacuums and the lack of specific provisions in legislation regarding the identification and protection of victims of trafficking. Despite no legal instruments being in place, there are certain guidelines which help identify trafficked persons, e.g. UNICEF Guidelines for Protection of the Rights of Children Victims Trafficking in South-eastern Europe (05/2003), International Centre for Migration Policy Development (ICMPD) Manual for Police (2003), documents of the Stability Pact for South-Eastern Europe (SP SEE) etc.

The remaining needs concern the funds, which the government is putting into the combat trafficking in human beings activities, the consistent implementation of the laws as well as the implementation of the Mass Information Campaigns focused on the general public and on the youth. The inter-departmental, inter-agency and international cooperation should also be stepped up. At the international level this can be reached within the

inter-governmental cooperation and by the sustained cooperation between government authorities and Europol, Interpol, Eurojust, World Customs Organization (WCO) as well as ICMPD, UNHCR, International Organization for Migration (IOM) and other specialized bodies.

Fourth, Slovenia should as early as possible ratify 2005 Council of Europe Convention on Action against Trafficking in Human Beings, 2000 Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which will provide victims of every discrimination with the judicial protection, 2005 Council of Europe Convention on the Prevention of Terrorism and 2001 Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows.

Third recommendation

SILOVENIA SHOULD FORMULATE THE DEVELOPMENT PROGRAMME FOR THE REGIONS ALONG THE SCHENGEN BORDER

Representatives of the local communities have in the project discussions stated that the local population along the border is still not informed enough about the particularities of the functioning of the new Schengen border regime which affects their everyday life and their opportunities for work and development. The same opinion was shared by the employees from the administration units along the Croatian border; in spite of the fact that they work directly with people who live along the border they did not receive any additional education which would help them to understand the Schengen border regime and consequently improve the services that they are offering to the population along the border.

The population and local communities along the border have with the introduction of the Schengen been more or less put in the position of an accomplished act in the sense “get reconciled with the fact of the new regime as soon as possible”. Representatives of local communities have frequently drawn attention to the deafness of the state for their common problems and also for the problems of individuals who live directly along the border or at the border. State bodies are postponing the solution of particular problems or are shifting the responsibility for finding solutions to the local community, without regard to the fact that the introduction of the Schengen regime was a national project and not the project of local communities. The Republic of Slovenia has an obligation towards the population along the border to relieve their living and not to shift the solving

of the mentioned problems to the shoulders of the local communities or even affected individuals with the excuse that here nothing can be done and that there is no possibility for individual treatment in executing of the Schengen legislation. Local communities and people along the border are entitled to compensation because of the negative effect of the border on life and economic activity in these areas.

Stricter border control and control of persons in the border zone already has and still will negatively affect the trade and tourist activity of the particular border local communities. Tourist organisations and destinations with traditional guests from Croatia have already experienced the drop in the number of the guests from Croatia and they envisage even greater drop of the guests in the future. The decline in traditional guests causes important decrease in incomes of particular tourist organisations and destinations; besides the decline in incomes are the tourist workers also confronted with increased costs of promotion on new markets.

New Schengen border has additionally aggravated life to these individuals who do not have settled approach to their home through the Slovenian territory. The Slovenian state namely, in spite of the promises made, did not ensure building of adequate roads or in any other way arranged the approach to their homes through the Slovenian territory. The police has to some individuals gave the opportunity to approach their homes through the system of gates, which however enables the passage only to the owners and not also to emergency vehicles, for example (Ambulance, fire brigade et similar). Border crossings are built; they however do not relieve life for local population, on the contrary; the road to their homes is much longer which means also additional time and costs. Buildings, which are located directly on the border, have become of no use as the approach to them is because of the stricter border control impossible; and the Schengen legislation offers no special solutions for such individual cases.

People are unsatisfied with the stricter border control in the border zone along the border with Croatia. They are exposed to additional, to their mind, unnecessary checking of personal documents, sometimes also several times a day. They experience documents control when they pay a visit to their neighbours, or go to the field and similar. They complain over the increased presence of police, who with their presence additionally invade lives of people along the border as they are unnecessarily disturbed by frequent controls - not only of the traffic.

Individuals are due to limitations of traffic along the border forced into a changed life pattern or the up to know style of life becomes all of a sudden rather more expensive (e.g. additional expenses for the transport of the fuel oil), social contacts in places, which are separated by border, become

impossible or at least heavily controlled, and similar. The expenses of cultivating the land increase largely in the case of property ownership on the other side of the border; at the same time nobody pays regard to the loss of time due to unnecessary longer road and waiting at the border. Individual gates, which were arranged for some individuals at the border, are only an administrative and technical barrier for individuals, who live along the border; while from the security aspect don't have significant importance as it is illusionary to expect that such gates could stop the illegal trade and illegal human border crossings.

Especially burning is the problem of the population decline in border areas. Data show on even 50% drop in population in some border areas. Additionally worried is local population because of the decline in the value of their real estates and very low productive investments in these border areas.

Representatives of the local communities, administration units and other experts, who took part in our discussions, have stated that people living along the border share the feeling of being neglected by the state, especially as the infrastructure is in many cases in much better condition on the Croatia side than on Slovenian. The Slovenian government did not prepare any special measures or programmes, which would help to alleviate negative consequences of the new border regime for people along the border and which would represent assistance for the revitalisation of the border areas, which are already by the rule confronted with worse development opportunities. The police is only executing the "Schengen legislation" and are not competent to act in individual cases which, however, are of vital importance for individuals.

The border and the control over the occurrences on it must be understood as a technical administrative line of division, while the real importance of the happening in these areas are of course people, who live there. Due to common past has in the area along the border with Croatia developed a form of co-existence of people from both sides of the border; the border was a line of contact and not a line of division. The stricter technical measures on this border, thus, significantly change the conditions of life and will in the future very probably aggravate the development opportunities of the border areas.

On here described recognitions and derivation we have tried to shape some recommendations, with the main purpose to contribute to the alleviation of the negative effects, that the introduction of the Schengen regime on the Slovene-Croatian border has on local population and for development opportunities of the border areas.

First, the government should assign preparation of the integral analysis of consequences of introduction of the Schengen border regime on life of people along the border and for the development of local communities. The study shall be prepared by an independent group of experts with consultation of local communities, development agencies and other subjects that could contribute to the integrity of the analysis and to formulation of proposals for improvement of the situation. The study shall be a basis for discussion on these questions in parliamentary and governmental structures and in the relevant organisations and institutions of the civil society.

Second, the government should on the basis of the above mentioned study and proposals for improvement contained herein take under consideration possibilities to solve certain problems preliminarily, until the acceptance of an integral programme, with supplement of the existing relevant programme and development documents, laws and regulation acts. We are referring first of all to the Promotion of Balanced Regional Development Act and to relevant provisions on conditions and criteria for allocation of funds for balanced regional development. We are additionally pointing out that in the classification of border regions according to the level of development for the programme period 2007 - 2013 the position along the Schengen border was not included among the index of development endangering factors, thus, the level of development perspective in these areas was not positioned adequately.

Third, the government should prepare integral and financially backed programme for solving problems of population along the border, which arose as a consequence of the Schengen border regime and for encouragement OF development of local communities along the border with Croatia.

Fourth recommendation

IT IS NECESSARY TO DEVELOP CROSS-BORDER COOPERATION WITH CROATIA AS A BASIS FOR GOOD NEIGHBOURLY RELATIONS

The population along the border is due to the new border regime separated more than it has ever been in the history. Special opportunity for maintenance and strengthening of relations of communities along the border from both sides offered until the adoption of Schengen the Agreement between the Republic of Slovenia and the Republic of Croatia on Border Traffic and Cooperation (so called SOPS). In the accession negotiations was SOPS accepted from the side of the European Union and it could be used without any restrictions until the enforcement of the Schengen Agreement. With the

enforcement of the Schengen Borders Code (EC Regulation 562/2006) was SOPS once again subdued to the evaluation from the side of the European Commission whether it corresponds to the new circumstances. Also after this evaluation SOPS remains in force and allows for numerous exemptions for border crossing of the local population in both countries.

However, we must make a conclusion that in spite of the SOPS, the conditions after the Schengen did aggravate, because the movement of the local population in the border zone is much more restricted than before. Among the measures, let us mention special permits for movement in the border line, which were issued only to the property-owners from both sides and in which precise dates and hours of the crossing are inserted strictly every time. Further, all crossing points outside of official border crossings are closed with gates; the keys for them are given only to a very narrow circle of claimants. Such stricter measures already show negative effect on co-existence and on execution of economic activity in the border areas, still especially in the field of tourism. In decline is the vivacity of the social contacts, of different cultural, sport and other events along the border, because the administrative demands, as foreseen by the Schengen legal order, for establishment of the temporary border crossing (in case of short-term tourist-sport events) are so high (prior announcement, concordance of police and customs, high costs) that such events become almost impossible to organise.

Besides the physical and administrative border with Croatia, we would like to draw attention also to the border “in the minds”, which can because of unsuitable policies become still especially dangerous and persisting. For the first time in history has the border made a severe cut among the Slovenians and Croats, strict administrative and security demands from Brussels however create mental obstacle also in the minds of people of both states, in Slovenia with the sensation that they are “in” and in Croatia that they are (unjustified) “outside” the system. The fact, that everyday politics in both countries uses the border questions for raising the political points in the public of both countries, can the abyss in the mind of people only deepen. Besides the strict execution of the Schengen legislation, it is however also important to offer to the population and local communities new possibilities for cooperation and development of economic activities, as only in this way will the border in the heads of people fall even before the physical, Schengen border will be eliminated between the both states.

On the basis of the so far discussions and assertions, we recommend:

First, the government shall prepare a detailed study of the current situation of the cross-border co-operation on Slovenian-Croatia border, in the context of the analysis of relations between Slovenia and Croatia as a whole and

the policy of the EU towards the Western Balkans and especially in the accession negotiations with Croatia. The study shall embrace also proposals for preservation of traditional forms of co-operation and for development of new incentives for co-operation of local and regional communities.

Second, the enforcement of the Schengen border regime should not have negative effects on the sound cooperation of local communities and individuals from both sides of the border. The government of the Republic of Slovenia should, thus, with relevant regulation and programmes, adopted on the basis of the above mentioned study, ensure that the monitoring of the external Schengen border will not hinder the traditional social and cultural cooperation of the population and local communities from both sides of the border.

Third, the government should thoroughly investigate all the EU instruments, which are intended for promotion of cross-border co-operation, existing especially in the framework of INTEREG and IPA. After consultations with the local communities (and also regional, if they will be introduced) it should propose concrete measures for development of different forms of co-operation along the Slovenian - Croatian border. It would be commendable to study also possibilities and use development opportunities, which are being introduced by the new EU instrument on establishment of the European Groupings for Territorial Co-operation - EGTC (EC Regulation 1082/2006).

Fourth, the government of Slovenia should propose to the government of Croatia the formation of the consultative Slovenian - Croatian forum for dealing with co-operation between the states, which should be composed by representatives of relevant ministries, local and regional communities, organisations and institutions, civil society and qualified experts. The Forum would meet once a year in its main mission would be to present both governments and other subjects adequate solutions and proposals for development of co-operation.

Fifth recommendation

THE EUROPEAN COMMISSION HAS TO PREPARE PROPOSALS TO STIMULATE LOCAL AND REGIONAL COMMUNITIES' DEVELOPMENT AND CROSS-BORDER COOPERATION AT THE EU EXTERNAL BORDER

The Council of the European Union and the European Commission has to take into consideration the fact that the last enlargement of the Schengen area involved substantial changes with regard to developmental possibilities of local and regional communities situated along the external Schengen

border and cross-border cooperation with neighbouring countries. Either way, most of these communities are undeveloped border regions that belong to the most indigent EU member countries; in addition, the new Schengen borders border also on countries with a low level of their development that, in terms of the short-term perspective, probably will not become the EU member countries or on certain western Balkan countries that are, for the sake of very tragic events which occurred in the near past, in a highly complicated political, social and economic situation, although they are provided with the opportunity for the EU membership in the frame of concluded stabilisation and association agreements.

Furthermore, The Council of the European Union and the European Commission have to pay attention to the fact that the development of borderlands and cross-border cooperation at the new external Schengen border represent a very important element for ensuring stability and security in the EU neighbourhood. The both institutions should therefore tackle such problems with a high degree of sensitivity and prepare particular forms of stimulating the development and cross-border cooperation along these "external" borders.

To the Council of the European Union and the European Commission we recommend the following:

First, the INTERREG programme and other similar programmes should be supplemented. The main problem is to be found in the eligibility of particular communities for funding deriving from the INTERREG programme. Unfortunately, the eligibility criteria are too lax and thus they make possible to get these resources even for those local communities that are not located along the Slovenian-Croatian border but rather in a hinterland area. The detriment caused by such a laxity to border communities and population near the border is two-fold: 1) because of a high level of competition and limited funds it is very hard for border local communities to get resources, 2) funds acquired by local communities in a hinterland area are often spent for the purposes other than those envisaged in the INTERREG programme as to the fact that municipalities in a hinterland area are not exposed to direct negative implications of the external Schengen border.

Second, existent forms of cross-border cooperation, particularly those existing within Euroregions should be encouraged. In the past, various forms of cross-border connection among local and regional communities were developing through the Council of Europe incentives. The European Commission should consider the possibilities to create an instrument designed to support such sustained (formal and informal) forms of cross-border cooperation that surmount a project cooperation supported by

the other EU instruments. In this context, cross-border regions that are situated along the external EU border should enjoy a special status and special benefits.

Third, in the framework of a new EU instrument designated to establish the European Grouping of Territorial Cooperation (EGTC) (Regulation (EC) No. 1082/2006) special measures and benefits for the cooperation among border communities and regions at the external EU border should be prepared.

Fourth, mechanisms supporting civil society's initiatives that usually largely reflect a reality of existent problems should be prepared. Subjects of the civil society are the ones that are most likely able to provide an appropriate approach to group and individual challenges emerging in problematic environments. Thus, in addition to existent institutional cooperation between the EU and other countries, this might help improving conditions in border areas as the institutional cooperation is too many times perceived by inhabitants as too much formalized and far distant from their concrete problems.

Fifth, problems of border areas and regions at the external EU border should be included in the EU foreign policy platform concerning the neighbourhood -Russia-western Balkan etc. Such programmes for synergic joining of cross-border areas' evolving potential are required especially in surroundings where it is expected that in a period of ten years or even before the external Schengen border will turn into the internal Schengen border. A separation between local communities that is (too) strict and a decrease in the capacity to develop in such areas cause an irreparable loss for the time when these borders will disappear (again) and then in all likelihood people will not be prepared for common life just like they were not prepared for such a rigid separation.

Sixth, a new holistic programme stimulating a development and a cooperation that would be designed exclusively for local communities and regions located along the both sides of the entire external Schengen border should be created. This new instrument may comprise existent mechanisms supporting cross-border cooperation. By this token, however, new measures and mechanisms that would address specific problems of these communities and regions should be prepared.

Seventh, the EU reference centre for developing skilled working capacities envisaged for cooperation along the external Schengen borders should be set up. The centre's tasks would comprise: 1) examining and analysing of a situation, 2) it would represent a meeting point to exchange knowledge and experiences (conferences, seminars, workshops), 3) managing of

a documentation centre, 4) education - special training programmes, postgraduate studies, seminars etc., 5) various forms of training and qualifying activities, assisting in the creation of a broad spectrum of varied profiles for cross-border services representatives (police, customs), local communities as well as entrepreneurs, pedagogues, cultural workers, employees in civil sector etc. The proposed centre would provide these targeted groups with the required knowledge on available provisions relevant for their field of work and on ways envisaged for the effective use of supporting mechanisms, what would aim at mitigating of negative border effects caused by physically divided border line and reaching a synergic joining of cross-border areas' evolving potential. In the framework of its activities ISCOMET has already prepared a proposal for such an EU centre.

ISCOMET - Inštitut za etnične in regionalne študije/Institute for Ethnic and Regional Studies

ISCOMET - Mednarodna nevladna organizacija s participatornim statusom pri Svetu Evrope/International non-governmental organisation with the participatory status with the Council of Europe

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